



EMPLOYMENT TRIBUNALS

Claimant: Ms Shazia Hussain

Respondent: DHU Healthcare CIC

Heard at: Nottingham

On: 2 December 2024 (Tribunal reading day)
3, 4 and 5 December 2024, 27 January, 16 and 17 July 2025
(Tribunal hearing days)
1 and 2 September 2025 (Tribunal deliberations)

Before: Employment Judge McTigue
Mrs Barrowclough
Mr Wood

Representation

Claimant: In person on 3, 4 and 5 December 2024
Ms N Mallick of Counsel on 27 January, 16 and 17 July 2025

Respondent: Mr M Cameron, Consultant

RESERVED JUDGMENT

The unanimous decision of the Tribunal is that:

1. The complaint of direct disability discrimination is not well-founded and is dismissed.
2. The complaint of unfavourable treatment because of something arising in consequence of disability is not well-founded and is dismissed.
3. The complaint of failure to make reasonable adjustments for disability is not well-founded and is dismissed.

REASONS

Introduction

1. As part of a pilot scheme the Claimant was temporarily employed as an Integrated Urgent Care Pharmacist (IUC Pharmacist) by the Respondent from 6 October 2018 until 5 October 2020.
2. She claims that the decision not to appoint her permanently to the role of IUC Pharmacist following an interview in November 2020 amounted to direct disability discrimination, pursuant to section 13 Equality Act 2010 (EqA 2010) or alternatively unfavourable treatment because of something arising in consequence of her disability, pursuant to section 15 EqA 2010.
3. In addition, the Claimant claims that the decision not to shortlist her for the post of IUC Pharmacist following an application she later made in January 2021 amounted to direct disability discrimination or alternatively unfavourable treatment because of something arising in consequence of her disability.
4. Further, the Claimant claims the decision not to appoint her to the permanent position of Clinical Advisor in February 2021 amounted to direct disability discrimination or alternatively unfavourable treatment because of something arising in consequence of her disability.
5. The Claimant also claims that the Respondent failed to make reasonable adjustments, pursuant to sections 20 and 21 EqA 2010, by requiring applicants for IUC Pharmacist roles and Clinical Advisor roles to attend an interview-based assessment.
6. Originally, the Claimant also brought claims of unfair dismissal, unlawful deductions from wages and breach of contract against the Respondent. Those complaints were struck out by EJ Clark following a judgment dated 18 January 2022 which was reconsidered on 7 June 2023.
7. The Claimant is disabled by reason of her dyslexia. The Respondent accepts that the Claimant was a disabled person and also accepts knowledge of disability at the material time.
8. ACAS was notified using the early conciliation procedure on 16 February 2021 and the certificate was issued on 11 March 2021. The ET1 was presented on 9 April 2021.

Claim and Issues

9. This claim has a lengthy procedural history. It is not necessary to set out in detail the procedural history here but, in brief, prior to this final hearing there were 3 prior attempts to commence the final hearing. Those were in June 2023, October 2023 and May 2024. In addition, preliminary hearings took place on the following occasions:

- 9.1. 22 September 2021 before Employment Judge (EJ) M Butler;
- 9.2. 10 November 2021 before EJ Heap;

- 9.3. 18 January 2022 before EJ Clark;
- 9.4. 7 December 2022 before EJ Brewer;
- 9.5. 5, 6, 7, 8 June 2023 before EJ Heap;
- 9.6. 4 October 2023 before EJ Heap;
- 9.7. 17 May 2024 before EJ Welch; and
- 9.8. 22 November 2024 before EJ M Butler.

10. There was a list of issues which had been agreed and finalised at the preliminary hearing on 5, 6, 7, 8 June 2023. The issues were as follows:

Disability and knowledge of disability

1.1 The Respondent concedes that at the material time with which the claim is concerned the Claimant was a disabled person within the meaning of Section 6 Equality Act 2010 by reason of the impairment of dyslexia.

1.2 Knowledge of disability is not in dispute.

Direct Discrimination – Section 13 Equality Act 2010

1.3 Did the Respondent treat the Claimant less favourably than it treated or would treat others because of her disability. The alleged less favourable treatment relied upon by the Claimant is:

1.3.1 The decision not to appoint the Claimant to the permanent post of IUC Pharmacist following her application and interview for the post on 16th/26th November 2020 (“The Internal Application”).

1.3.2 The decision not to shortlist the Claimant for interview for the permanent post of IUC Pharmacist following her application for the post on 19th January 2021 (“The External Application”). The Claimant relies on actual comparators by the name of Sarah and Adam.

1.3.3 The decision not to appoint the Claimant to the permanent post of Clinical Advisor following her application and interview in February 2021. The Claimant relies on an actual comparator by the name of Mark. She relies on an email dated 8th February 2021 which is said to confirm that it has been confirmed to an agency that Mark had passed the interview.

1.4 The comparators relied on by the Claimant in respect of allegation 1.3.1 above are the following:

- 1.4.1 Ojali
- 1.4.2 Bhavika
- 1.4.3 Usman
- 1.4.4 Manzar
- 1.4.5 Rebecca
- 1.4.6 Shanaz
- 1.4.7 Dibesh
- 1.4.8 Faraz
- 1.4.9 Nagina

1.5 It is the Respondent’s case that no one was interviewed or appointed to

the IUC Pharmacist role or Clinical Adviser role on the external recruitment campaigns. On the Respondent's case there are therefore no actual comparators and this part of the claim engages hypothetical comparators whose circumstances are not materially different from the Claimant save as for the issue of her disability. The Claimant does not accept the Respondent's position and relies on the actual comparators named above.

Discrimination arising from disability – Section 15 Equality Act 2010

1.6 Did the Respondent treat the Claimant unfavourably because of something arising in consequence of her disability?

1.7 The alleged unfavourable treatment relied upon by the Claimant is:

1.7.1 The decision not to appoint the Claimant to the permanent post of IUC Pharmacist following her application and interview for the post on 16th/26th November 2020 ("The Internal Application"). The Claimant contends that the "something arising" in consequence of her disability is that she performed poorly at the interview because of a slowness in the mental processing of verbal information so that she could not formulate a detailed response.

1.7.2 The decision not to shortlist the Claimant for interview for the permanent post of IUC Pharmacist following her application for the post on 19th January 2021 ("The External Application"). The Claimant contends that the "something arising" in consequence of her disability is that the Respondent perceived her as being difficult to manage because she would require additional management time and support because she has dyslexia. The Claimant contends that she was not shortlisted because there was no intention to appoint her to the post.

1.7.3 The decision not to appoint the Claimant to the permanent post of Clinical Advisor following her application and interview in February 2021. The Claimant contends that the "something arising" in consequence of her disability is that the Respondent perceived her as being difficult to manage because she would require additional management time and support because she has dyslexia. The Claimant contends that the interview by the Respondent was a sham and there was no intention to appoint her to the post and/or that her scoring was deliberately skewed to ensure that she was not appointed.

1.8 If the Respondent did subject the Claimant to unfavourable treatment in respect of and of the matters at paragraphs 1.7.1 to 1.7.3 above, can it demonstrate that that unfavourable treatment was a proportionate means of achieving a legitimate aim?

1.9 The legitimate aims relied upon by the Respondent are:

1.9.1 To maintain levels of performance and quality in providing the service; and

1.9.2 To test an applicant's ability to advise/diagnose or signpost undiagnosed conditions under time pressure in emergency medical situations.

Failure to make reasonable adjustments.

1.10 It is not in contention that the Respondent applied a practice that applicants for IUC Pharmacy roles and Clinical Adviser roles were required to attend an interview-based assessment.

1.11 Did that practice place the Claimant at a substantial disadvantage in comparison with people who did not share her disability? The Claimant contends that because of her disability she experienced difficulty with processing verbal communication/instructions which made her less likely to perform to her best in an interview situation.

1.12 Did the Respondent know, or could it be reasonably expected to know, that the Claimant would be placed at that substantial disadvantage?

1.13 If so, did the Respondent fail to take such steps as it was reasonable to take to avoid the disadvantage?

1.14 The steps that the Claimant contends alleges ought to have been taken was for the Respondent to:

1.14.1 Allow the Claimant to be assessed in whole or in part on her work to date without attending an interview;

1.14.2 To allow the Claimant extra time to answer questions during an interview;

1.14.3 To provide the Claimant with the scenario-based interview questions in advance; and

1.14.4 To allow the Claimant to attend with written notes and a crib sheet.

Procedure, documents and evidence heard

11. This was an in-person hearing. The first day, Monday 2 December 2024, was set aside for the Tribunal to read into the case.

Day 2 of the Final Hearing

12. The parties attended on Tuesday 3 December 2024. The Tribunal confirmed with the parties that the following reasonable adjustments for the Claimant had been agreed before EJ Heap at the preliminary hearing in June 2023:

- a. Being afforded the time that she needs to consider and process a question before she answers;
- b. Being allowed to use text that she has incorporated into the body of her witness statement;
- c. That questions may need to be repeated and that there be no criticism of her if that was the case;
- d. Use of her laptop to make notes of the hearing and to access and navigate an electronic bundle and witness statements. The Claimant

agreed that that would only be the existing bundle and statements and that she would not be creating anything as a crib sheet or the like; and
e. Allowing breaks when required

Those adjustments were put in place for the Claimant for the entirety of the final hearing.

13. In addition to the reasonable adjustments set out above, the Claimant made an oral application at the start of the hearing that the Respondent's representative, Mr Malcom, provide her with his topics of cross-examination in advance. Upon clarification, it transpired that effectively the Claimant sought to have advance notice of the cross-examination questions. Mr Malcom objected. He drew the Tribunal's attention to the fact that, at the preliminary hearing before EJ Heap in October 2023, the Claimant had indicated she wished to have cross examination questions provided to her in advance. It was made clear to the Claimant by EJ Heap at that hearing that if she sought any Order regarding further adjustments, she must an application by no later than 1st November 2023. In addition, any application was to be supported by clear medical evidence. She had not done that.
14. After hearing from both parties the Tribunal decided that as a further reasonable adjustment Mr Malcom should, where possible, indicate to the Claimant in advance what issue he was about to ask questions in relation to. Although the Claimant had not complied with the Orders of EJ Heap to provide medical evidence, the Tribunal felt that such an adjustment did not place the Respondent at any real disadvantage, accorded with the overriding objective and also took into account that, at this stage in the proceedings, the Claimant was a litigant in person.
15. When checking with the parties whether the Tribunal had the correct versions of the witness statements, the Claimant was unable to confirm that the first supplementary witness statement in her possession was the same as the one the Tribunal had before it. She was given a break of 45 minutes in order to check that. Following the break the Claimant confirmed that it was. Prior to taking that break, the Tribunal pointed out to the Claimant that, on numerous occasions in both her initial Witness statement and first supplemental statement, she had not referred to the relevant pages in the bundle despite purporting to do so. She was asked to address us on that point following the break.
16. After the break the Claimant stated that she was not aware she needed to refer to the relevant page numbers and, in any event, felt the Respondent should have assisted her with her statements. She asked for a further break of approximately two to three hours to correct her statement. That was refused as it was readily apparent to the Tribunal that she had been made aware from previous Case Management Orders of the need for witness statements to cross-refer to the bundle e.g. paragraph 7.2 of Employment Judge Clark's Orders of 18 January 2022. In addition, the witness statements in question were the same as those produced for what was intended to be the commencement of the final hearing before Employment Judge Welch on 17 May 2024. Even acknowledging that the Claimant is a litigant in person with dyslexia, a reasonable individual would have taken steps to add in the relevant page numbers to their witness statement following the hearing before Employment Judge Welch. There appeared to be no good reason why the Claimant had

failed to do so.

17. The Claimant then applied to have additional documents added to the bundle. We should observe that the contents of the bundle has been a thorny issue between the parties and that there had most recently been an urgent preliminary hearing to finalise the bundle before EJ M Butler on 22 November 2024. We refused the majority of documents that the Claimant sought to introduce and gave oral reasons for our decision at the time. We did however allow Version No. 3.4 of the Respondent's Recruitment, Selection and Compliance Procedure to be added to the bundle at pages 420 to 442.
18. After the lunch break, the Claimant stated that she was still not happy with the contents of the bundle. When she was asked to specify why, she stated that the copy of her grievance letter, which appeared in the bundle between pages 146 to 147, was in a different format to the version she originally sent to the Respondent and so was more difficult to read. The Claimant was assured by the Tribunal that we had been able to read her grievance letter. We also informed her that if she was asked questions about that document and struggled to read it, she need only indicate and we would ensure that the letter was read out to her. The Claimant started giving evidence at 3.10 pm on Day 2. As a reasonable adjustment, the Claimant was allowed to take her laptop into the witness box when giving evidence and she had access to the bundle and statements as electronic documents via that device.

Day 3 of the Final Hearing

19. On Day 3, Wednesday 4 December 2024, the Claimant was not present at the agreed start time of 10am. She eventually arrived at approximately 10.20am. She said that she had been to see her GP, indicated that she did not "feel 100%" but that she could carry on. As the Claimant made no application to postpone the hearing and so the hearing proceeded. She was however again reminded she could request a break when required and we also factored in extra scheduled breaks to assist the Claimant. The Claimant then applied again to admit additional documents into the bundle. That application was refused and oral reasons provided at the time. In brief however, the Claimant sought to revisit questions about documents which the Tribunal had already decided should not be included in the bundle. Cross-examination of the Claimant eventually resumed at 10.50am.

Day 4 of the Final Hearing

20. On Day 4, Thursday 5 December 2024, the Claimant was again not present at the agreed start time of 10am. She eventually arrived at approximately 10.10am. Her cross-examination concluded on that day at approximately 11.35am. After a short break, Mr Graham commenced evidence at approximately 11.43am. It was not possible to conclude the Claimant's cross-examination of Mr Graham within the original trial window and so the case was relisted for two additional days, Monday 27 January 2025 and Tuesday 28th January 2025.

Day 5 of the Final Hearing

On Day 5, Monday 27 January 2025, the Tribunal reconvened. The Claimant was now represented by Ms Mallick of Counsel. Unfortunately, the witness

statements and bundle of documents for the witness box had been mislaid by the Tribunal's administration team. The parties were informed of this at the start of the day and a break was taken at 10.45am in order to copy the relevant documents. The Tribunal suggested that the parties might wish to consider discussions to see whether any settlement might be achieved. At 11.43am the Tribunal informed the parties that we were ready to recommence. A message was passed to us from the parties informing us that discussions were still ongoing between the parties and that both parties wished to have additional time to explore settlement. Additional time was granted on more than one occasion and at 2.55pm the parties informed the Tribunal that they had reached a settlement. As a consequence of that, the hearing day of Tuesday 28th January 2025 was vacated and an Order in the following terms:

Terms of settlement having been agreed between the parties, the claim is stayed against the respondent. Liberty for the claimant to restore within 22 days of the date of this order and if no application is received by that date, the claim is dismissed against the respondent upon withdrawal by the claimant.

21. On 28 January 2025 the Claimant wrote to the Tribunal as follows:

"Dear sirs and madam,

I am writing to you regarding the above dated hearing. I am making an application under case management powers under rule 29 and the overriding objective to ensure fairness and justice under rule 2

In this application I am seeking for the liability to be relisted for an urgent one day hearing.

This matter was previously part heard and was due to be heard on the 27th and 28th of January. The Tribunal had stayed the proceedings whilst the settlement was finalised. I understand that the claim has not been dismissed and will not be until I inform the ET of a legally binding settlement. I will not be confirming a settlement of this matter.

At the commencement of the hearing, whilst the tribunal looked for the bundles, the tribunal suggested that the parties discuss possible settlement. Therefore my Counsel did engage with the Respondent but I was unable to appreciate the nature of the discussions because of my mental health.

Whilst I appreciate I was legally represented, I have been unwell for a few days due to severe stress, anxiety and depression coupled with my dyslexia. This impaired my cognitive abilities to understand what was being said as a result I feel that I was unable to give effective instructions to my counsel. Whilst counsel did her best to negotiate a settlement, she did not appreciate the level of my difficulties and detachment. Therefore did not realise that I did not have the capacity to agree settlement.

I will forward a medical report to the ET within the next 7 days and I would ask that this matter is relisted urgently for a one day hearing for liability to be determined as it should have been and as I would have wanted. I realise that the Respondent witness may have spoke to others about his evidence but that is a disadvantage to me that I am willing to forbear. (sic)

I would appreciate if this is given urgent attention.”

No medical evidence was provided but, in any event, the matter was relisted for a further 2 days by the Tribunal.

Days 6 and 7 of the Final Hearing

22. The final 2 days of the hearing were Wednesday 16 July 2025 and Tuesday 17 July 2025. The Claimant was again represented by Ms Mallick. On the first of those days the cross-examination of Mr Graham was concluded. Unlike at the earlier hearing days, Ms Mallick now undertook the cross-examination of Mr Graham rather than the Claimant. On Tuesday 17 July 2025 the parties provided their oral submissions which were limited to 30 minutes each. The Tribunal reserved its decision and undertook further deliberations on Monday 1 September 2025 and Tuesday 2 September 2025 .

The evidence

23. The Claimant gave evidence on her behalf. Only Mr Daniel Graham gave evidence on behalf of the Respondent. Both witnesses attended in person and either affirmed or gave evidence under oath.
24. The Claimant had produced three witness statements. The first ran to 313 paragraphs. The Claimant's first supplemental witness statement ran to 11 paragraphs and her second supplemental witness statement ran to 28 paragraphs.
25. Mr Graham had produced two witness statements. The first ran to 24 paragraphs and his supplemental statement ran to 18 paragraphs.
26. The Tribunal had also been supplied with a copy of Ms Michelle Gerrard's witness statement running to 17 paragraphs. This was the statement Ms Gerard relied on when she gave evidence before EJ Clark on 18 January 2022. As Ms Gerard did not attend before us, we placed no reliance on the contents of that statement. However, we should also record that we were bound by the findings of fact made by EJ Clark in his judgment dated 18 January 2022, which he later reconsidered on 7 June 2023.
27. In terms of the witness evidence, we found the Claimant to be an unreliable witness. Throughout her cross-examination she was evasive when answering questions. She had to be reminded on several occasions to address the question that was put to her. Even then, her answers were vague and ambiguous.
28. The Claimant's evidence also contradicted itself. In her first witness statement at paragraph 15 she stated that in October 2018 she declined the offer of being appointed to the 111 Clinical Advisor role due partly to her dyslexia. However, in her disability impact statement, she stated that she had not received her diagnosis of dyslexia until September 2019 (page 55 of the bundle). It appears to the Tribunal that she cannot have turned down the role of 111 Clinical Advisor because of her dyslexia in October 2018 as at that point in time she did not know that she was dyslexic.

29. We also found Mr Graham to also be an unreliable witness. In addition, he was on occasion curt when answering questions under cross-examination and sometimes struggled to recall events. However, we are satisfied that he attempted his best to assist the Tribunal.
30. It is perhaps not surprising that both witnesses were unreliable due to the time that has elapsed since the events in issue in this matter. Given the unreliability of both witnesses' memories the Tribunal had regard to the principles enunciated in **Gestmin SGPS S.A. v Credit Suisse [2013] EWCA 3560** at paragraphs 15 to 22. Leggatt J, as he then was, stated:

...the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.

31. There was a Tribunal bundle of approximately 442 pages. The Claimant also provided written submissions running to 84 paragraphs.

Findings of Fact

32. The Tribunal has not sought to set out every detail of the evidence which we heard, nor to resolve every difference between the parties, but only those which appear to us to be material. Our material findings are set out below in a way that is proportionate to the complexity and importance of the relevant issues before the Tribunal. References to page numbers are to the main hearing bundle.
33. On 17 August 2018 the Claimant was offered the post of IUC Pharmacist with the Respondent. At the same time, she was also successful in an application for the post of Clinical Advisor but she instead chose the IUC Pharmacist role. In terms of the IUC Pharmacist role, she commenced her employment on 6 October 2018. The role was to be a 2-year fixed term contract, and the expectation was that the Claimant would work 15 hours per week during which time she would also study for and obtain relevant qualifications. The Claimant was part of, together with approximately 8 other individuals, what was known as the IUC Pharmacist "Pilot Scheme". All individuals on the Pilot Scheme started work for the Respondent at roughly the same time but each had their own individual 2-year long fixed term contract with individual start and expiry dates. The Respondent also employed Permanent Pharmacists alongside those working on the Pilot Scheme.
34. The Claimant was supplied with a written statement of Particulars of Employment (pages 104 to 110). This stated that the Claimant's employment was temporary and was expected to continue until 5 October 2020. It also made

clear that the Claimant's employment commenced with the Respondent on 6 October 2018. Clause 9 of the written statement provided as follows, "Your standard working hours are 15 hours per week exclusive of breaks. You will be required to work evenings, weekends and bank holidays. Your work schedule will vary around the needs of the service and will be notified to you via the team rota. You may be required to work such hours as the Company requires outside of the team rota, however, the Company will endeavour to keep such requirements to a minimum..."

35. Contrary to what the Claimant asserted, we have not been supplied with sufficient evidence which leads us to conclude that there was any ongoing pay dispute with another group of permanently employed Pharmacists that created any additional demand for work for IUC Pharmacists.
36. On 16 September 2019 the Claimant attended an assessment with an Educational Psychologist and was diagnosed with dyslexia. A copy of the Educational Psychologist's report appears in the bundle between pages 111 to 123. After reading the entirety of the report, the Tribunal finds that this report was primarily intended to assist the Claimant obtain adjustments to written academic work at the University she attended. We reached that conclusion as the report makes reference to the University attended by the Claimant on its front page (page 111), directs the Claimant that Student Support at her University will be able to identify appropriate resources (page 112) and recommends that the Claimant contact Student Support at her University in order to discuss potential support (page 119). The report concludes as follows:

"Shazia sought the current assessment due to a history of attainment ability discrepancy. Analysis of her cognitive profile indicates that she has more advanced abilities in non-verbal domains of her intellectual functioning compared to verbal domains. Her performances on the working memory and processing speed skills tasks indicate arrears of specific cognitive weakness.

Analysis of Shazia's reading profile indicates high average skills in single word reading, average phonological processing and comprehension, and below average reading speed. Examination of her writing indicates high average spelling skills, however, her rate of writing falls below the speed expected of a student in higher education.

The evidence from the current testing in collaboration with congruent anecdotal information and observations leads me to the view that Shazia has dyslexia with underlying weaknesses in processing speed and a working memory. This represents a specific learning difficulty and is likely to be affecting her academic functioning. I am of the view, therefore, that she requires support to compensate for this difficulty." (page 118).

37. On 14 January 2020 the Claimant informed the University of Derby of her dyslexia diagnosis for the purposes of obtaining 25% extra time in her examinations (page 124). As the University had had sight of the Claimant's Educational Psychologist's report, the Claimant's request for additional time in her examinations was granted.
38. The Tribunal finds that at some point around January 2020 the Claimant informed Mr Graham, who at this time was the Claimant's Clinical Lead, that

she had been diagnosed with dyslexia. The Tribunal does not find, however, that at any point she supplied either Mr Graham or the Respondent with a copy of her Educational Psychologist's report.

39. On 12 August 2020 the Claimant had an appraisal with her Line Manager, Mr Graham (pages 345 to 353). The appraisal indicates at page 345 that there had been some issues with the work previously submitted by the Claimant but Mr Graham commented overall that, "Shazia has continued to develop as a Clinician and exercises due care and diligence, as she progresses this will hopefully continue and she will be able to deliver to greater variety of case presentations. (sic)" (page 351).
40. In September 2020, it was made clear to the staff employed via the Pilot Scheme by Mr Graham that there was to be a change in the formality of the process going forwards. In the past, the Respondent had simply rolled staff over from temporary IUC Pharmacist contracts onto permanent contracts. Mr Graham informed all relevant staff that the practice that had previously existed whereby staff on temporary contracts would simply be moved onto permanent contracts would now no longer apply. Mr Graham also made clear that all those employed on the Pilot Scheme would need to apply for a defined number of permanent vacancies in order to be appointed as a permanent IUC Pharmacist. There would also be a formal selection process.
41. We find that that the Claimant was not happy with the Respondent's decision to subject all individuals on the Pilot Scheme to a competitive interview and selection process before they would be employed on a permanent basis.
42. As previously stated, we do not conclude that there was any substantial ongoing pay dispute with another group of permanently employed Pharmacists that created a demand for additional work amongst IUC Pharmacists around this point in time. We do, however, find that around September 2020 the issue of pay for IUC Pharmacists was being considered by the Respondent. Discussions regarding pay were being held and these discussions eventually led to an increase rate of pay for IUC Pharmacists from around 2020 onwards. This increase in pay to IUC Pharmacists meant that the Respondent had to reconsider how many IUC Pharmacists employed on the Pilot Scheme would be employed on a permanent basis in the future.
43. We accept Mr Graham's evidence contained at paragraph 6 of his supplemental witness statement and find as a fact that the Respondent had to fill 120 hours per week with staff working a minimum of 15 hours a week. We find that the effect of this would mean that approximately 8 individuals would need to be recruited to permanent IUC posts from the current cohort of those on the Pilot Scheme.
44. Upon being informed by Mr Graham in September 2020 that they would need to apply for permanent positions, the Claimant and her fellow colleagues on the IUC Pharmacists Pilot Scheme had concerns that their temporary contracts would expire before any sensible selection process could be completed by the Respondent.
45. The Claimant's contract was due to expire on 5 October 2020 and she also had concerns about being required to work for the Respondent without the benefit of any indemnity cover being in place. To counter the risk of being sued for

clinical negligence, whilst undertaking work for the Respondent, the Pharmacists employed on the Pilot Scheme benefitted from an Indemnity under their Contracts of Employment. The Claimant, however, had a concern that if she continued to work beyond the expiry of her fixed term contract, she would not be covered by the Employer's Indemnity. As a consequence of this she asked the following questions of the Respondent in an email dated 11 September 2020, "What date does my contract end? If our contract has ended and we are still on the rota to work where do we stand from a point of view of Indemnity Cover? With regard to the new rotas will they be as sent earlier or some other arrangement? Will the terms and conditions of pay be the same or will they be amended?"

46. In an email reply dated 11 September 2020 the Head of NHS 111 HR, Michelle Gerard, replied saying, "Your contract expires on 5 October. The permanent roles will be advertised and notified to you including pay rates. Even if a contract expires, if the employee continues to work it is considered to be an extension of their contract, so indemnity is not affected. As soon as we have more information, we will be in touch again."
47. On 25 September 2020 the Claimant was sent the job advertisement and job specification for the permanent IUC roles (pages 127 – 132). The Respondent's intention at this point in time was that any employee who continued to be employed by it as part of the IUC Pharmacist Pilot Scheme would be offered an interview for a permanent position and, if they were deemed appointable, appointed to a permanent position.
48. On 5 October 2020 the Claimant's temporary contract as an IUC Pharmacist on the Pilot Scheme came to an end. On that same date, she submitted her application to be a permanent IUC Pharmacist. However, as she was no longer a current employee of the Respondent, there was no requirement for the Respondent to offer her an interview in respect of what the parties call the Internal Application Process in the List of Issues.
49. The Claimant undertook no further work for the Respondent after 5 October 2020. The Tribunal also finds that for a number of weeks following the 5 October 2020 Mr Graham had no awareness that the Claimant's Contract of Employment had come to an end and that she no longer wished to work for the Respondent at that point in time. As a consequence, Mr Graham continued to roster the Claimant for IUC Pharmacist work. He was under the mistaken impression that the Claimant was willing to undertake additional work as part of the Pilot Scheme and thereby have her Pilot Scheme contract extended.
50. On 8 October 2020 the Claimant emailed Mr Graham as follows:

"Hi Dan, just to clarify what we discussed on the phone earlier today.

My contract as a Trainee IUC Pharmacist ended on the 5th October.

There has been an offer to extend the contract from HR to the end of the month, however, at this present moment in time I am unable to commit to the 15 hours that were on the original contract, for various reasons. Also, there is a possibility that I am unable to work this coming Saturday.

For that reason, I would like to reduce these down to 7.5 hours. I know this

is a busy time so I will try and help out on some days by picking up additional shifts, if I am able to manage that.” (page 262)

51. As detailed earlier, the Claimant undertook no further work for the Respondent after 5 October 2020. The Tribunal finds that the reasons for this are because she was not content with Michelle Gerard's email to her of 11 September 2020 and failed to take onboard that she would be covered by the Employers Indemnity despite Michelle Gerard's written reassurance. In addition, the Claimant was not willing to work weekends which was when the Respondent had the greatest need for Pharmacists to attend work. Finally, the Claimant was not willing to commit to working 15 hours per week for the Respondent, as her role required, and now only wished to work 7.5 hours per week.
52. Any occasions on which the Claimant was placed on the rota and failed to work after 5 October 2020 were recorded by the Respondent as "Did Not Attend" (DNA). This was because Mr Graham was, at this point, unaware that the Claimant was unwilling work as part of the Pilot Scheme and so continued to roster her.
53. On 20 October 2020 Mr Graham wrote to Michelle Gerard and Asif Khan. His email stated:

"Just needing to confirm what communications this lady has received in relation to her contract extension, she had a number of DNA's on her record.

I have had conversation with her in relation to this. She is claiming that she hasn't received any communications stating that her contract was extended, even though she says she has applied for the position advertised.

I am inclined to believe that she has received the communications, how else would she have known to apply for the position but need to confirm this before progressing any actions with regards to the DNA.(sic)" (pages 287 to 288)

54. On 23 October, Michelle Gerard emailed Daniel Graham by way of reply and also included Asif Khan in the correspondence. Her email stated:

"I sent Shazia the info on the advert and rates but didn't extend her contract. Her contract expired on 5 October. However, if she has attended for some shifts, but not others, you can still speak to her about this. If she has attended none, then we would consider that her contract has ended.

I can extend to 31 October, but you would need to establish first she had continued or not.

Regarding the other pilot people who have applied, do you think you will have completed the interviews by 31st October? If you have and have offered, I can then send out offer letters and contracts. If not, we will have to think about extending again for a short period." (page 287)

55. On 26 October 2020 at 15.05, Daniel Graham replied by means of email to Michelle Gerard and Asif Khan. He also copied in Emily Edwards, Bethany

Wheatley and Jenny Doxey. His email stated:

"I am not too concerned that Shazia's contract was not extended beyond the 05/10/2020. I was not aware that she had not been extended like the other IUC Pharmacists on the pilot, however, I will need to get the rota updated as she is still booked in for shifts.

With regards to getting the applications processed for the IUC Pharmacists and the other applicants by the end of the week, then I do not feel that this is achievable or realistic. I have annual leave and other commitments pending this week.

I also believe that Bhavika Lad missed the deadline to apply for the post, she has sent her CV to me, I feel strongly that she should be interviewed. Shanaz Mahruf is in a similar position and would be worth interviewing.

At this point I have no idea who has applied on a named basis and how to address the potential gaps in the rota.

Would it be possible to get the names of the applicants and someone who could lead on arranging the interviews please." (page 286)

56. Michelle Gerard replied shortly after at 15.32 by means of an email to Daniel Graham and Asif Khan. Emily Edwards, Bethany Wheatley, Jenny Doxey and Laura Rose were also copied into this email. The email read as follows:

"We just need to check if Shazia has decided not to continue. Has she not turned up for any shifts since 5 October? She was one that we thought had already applied, I think?

Beth, is the Ad still running? If not, could you resurrect internally only to give Shanaz and Bhavika time to apply. Dan will need the Pilot Pharmacist applications in full as they may specifically meet rota requirements and will continue on a perm contract. The other external applications should stay as blind shortlist for now.

Dan, you will need to check with Asif and Cary what shifts are still available on the weekend and how the hours will be split and what hours they will need to work – I think the perm are now all completed, but have copied Laura in to check so that Carrie knows what is left.

I'll extend the pilot pharmacists who have applied to mid-November which will hopefully give you time to conclude the process. If you can let me have a final list of who has applied – let me know if this is long enough? The rest, if they haven't, will end employment on 31 October in line with the extended contract date.

Beth, Laura can help with the applications in terms of the names of the Pilot Pharmacists." (page 285)

57. Later that same day, i.e. 26 October 2020, at 21.07 Daniel Graham replied to Michelle Gerard's earlier email copying in all relevant individuals as follows:

"Shazia leads me to believe that she has applied for the position, however,

she has essentially refused to work from 5 October onwards as she has stated she had not received any notification about her contract having been extended and she also believed she would not have any indemnity. I was not made aware that her contract had not been extended until 23 October 2020 and hence she has a number of DNA's on Injixo. Had I known her contract had finished I would have removed her from the rota. This has now been completed. With regards to pursuing her for the role I do not feel she is productive enough or competent to continue. So I am happy with the status quo.

With regards to the weekend shifts I would appreciate getting sight of these, I am concerned that the agreed shift pattern may compromise the level of service. I am sure I have seen a draft version sometime ago with no prescribing cover on the Saturday evening. I would also need some clarity on what shifts are remaining following the consultation with the pharmacists on permanent contracts. I would need this prior to conducting the interview process for the new roles.

Beth if you can open the advert as requested by Michelle and could you please let Bhavika Lad and Shanaz Mahruf know it has been opened again. Might also be worth telling them how to do an internal application or send a link. I have asked them to not write an expansive application as I already have their details on record from the previous recruitment. Hopefully HR should have passed this by Corporate HR.

Laura or Beth, if I could have the names of the pharmacists currently on the shortlist that were on the IUC Pilot that would be great and speed up the process of getting the current pharmacists processed quickly.

I would be inclined to extend the contracts of those Pharmacists who have applied for the new permanent positions till the end of November this will cover most eventualities.” (page 284)

58. On 27 October 2020 the Respondent extended the deadline for the existing IUC Pharmacists on the Pilot Scheme to apply. The deadline was extended for one week.

59. On 27 October 2020 Michelle Gerard emailed Bethany Wheatley and Daniel Graham, also copying in Emily Edwards, Jenny Doxey, Laura Rose and Asif Khan. Her email stated:

“Beth, can you check out if Shazia applied please.

I had already answered her questions on contract extension and confirmed that indemnity runs. As already mentioned, if people continue to attend after a temp contract expires, they are considered to have accepted the T & C's which I also told her. In any event, will confirm to Shazia in writing that her contract has now ended. Laura, can you draft a letter please. Dan, please prep leaver paperwork for her. Regarding DNA's, they should be picked up at the time but agree that this has been a bit messy.

Rotas are as Asif has provided. Laura, could you liaise with Carrie please and ask her to revisit based on what we now know re the permanent staff to see what Dan can offer and the way he can offer, I ie splitting 15 hours

shifts into 7.5 which suited some of the Pilot Pharmacists. Dan will need to know what hours they need to work within the availability window I presume?" (page 283)

60. On 29 October 2020 Mr Graham emailed Michelle Gerard and copied in Jenny Doxey and Bethany Wheatley. His email stated:

"Beth has confirmed the names of the current IUC Pharmacists that have applied for the new posts as advertised.

Adam Emmott, Shazia Hussain, Sarah Nicholls, Rebecca Norton, Ojali Yusuff, Usamn Mir, Manzar Maqsood.

Shazia Hussain will not be interviewed.

I believe that Shanaz Mahruf is in the process of applying but is having difficulties in accessing the online application.

Could we check if Shanaz Mahruf and Bhavika Lad have applied via the internal link.

Once we have confirmed if the remaining two Pharmacists have or have not completed an application form, could we please send all the applicants an email stating that their contract has been extended until the end of November. There is a great deal of confusion within the team as to if they are still under contract or if this has expired. They are unsure if they need to attend for the shifts currently in the rota. Some of them have no shifts logged in Injixo and believe that they are no longer employed by DHU. It would be advantageous if this could be sent today.

I have liaised with rota and will be giving the Pharmacists who do not appear in shift some assurance they are still under contract and arranging a shift.

Have spoken with Jenny D and she is just finishing off her shortlist.

I think we can interview the current IUC Pharmacists in a half hour and would be sensible to get them done first via Teams, then followed up with the new Pharmacists in a 45 min interview and 15 min to document and discuss. Happy to do this either via Teams or F2F." (page 281)

61. The Tribunal finds that Mr Graham's comment that "Shazia Hussain not to be interviewed" was made because he considered that only existing IUC Pharmacists employed on the Pilot Scheme should be interviewed via the Internal Application procedure. As he had now discovered that the Claimant's contract had terminated he formed the view that she was not eligible for an interview using that internal procedure. In the Tribunal's opinion, this was a reasonable conclusion for Mr Graham to reach. The Tribunal also finds that although Mr Graham's email indicated that he thought the interviews with current IUC Pharmacists could take half an hour, there was eventually no fixed time limit on the length of an interview with the IUC Pharmacists on the Pilot Scheme. Consequently, if an IUC Pharmacist on the Pilot Scheme required more than 30 minutes as part of their interview process, they would be afforded more time. The Tribunal accepts Mr Graham's oral evidence on that point.

62. Although the Respondent was under no obligation to offer the Claimant an interview via the Internal Application process, she was in any event interviewed on 16 November 2020. Her interview was conducted by Mr Graham and Jenny Doxey. Unfortunately, the interview notes of the Claimant's interview do not exist. Neither do the interview notes of a number of the other IUC Pharmacists engaged on the Pilot Scheme. We note that in the past this has led to protracted discussions between the parties as to the extent to which the Respondent has complied with its disclosure obligations. On balance, we are satisfied that the Respondent has complied with its disclosure obligations and that it disclosed all relevant paperwork in its possession prior to the commencement of this Tribunal Hearing. The Tribunal finds that the Respondent's approach to records management in relation to selection and recruitment at the relevant time was haphazard and poorly organised. We however do not conclude that any documents have been deliberately destroyed in order to avoid them being placed before the Tribunal. We also find that the manner in which the Respondent conducted the extension of contracts for IUC Pharmacists on the Pilot Scheme and the offering of interviews to those individuals, was haphazard and poorly organised.

63. As previously detailed, the Respondent's notes of the Claimant's interview are no longer in existence. However, the Claimant covertly recorded the interview and later had the recording transcribed. A copy of the transcription appears at pages 410 to 419 of the bundle. That transcript is not agreed between the parties, and the Claimant did not, at any point, supply the Tribunal with a copy of the recording upon which this transcription is said to have been made against.

64. In respect of the individuals on the Pilot Scheme who were interviewed for permanent positions, we find that the following were interviewed:

- 64.1. Ojali Yusuff,
- 64.2. Bhavika Lad,
- 64.3. Usman Mir,
- 64.4. Manzar Maqsood,
- 64.5. Sarah Nicholls,
- 64.6. Adam Emmott,
- 64.7. Rebecca Norton,
- 64.8. Shanaz Mahruf and,
- 64.9. the Claimant.

We base that conclusion on the contents of Mr Graham's email to Michelle Gerard of 29 October 2020 in which she outlined the names of all those individuals bar Shanaz Mahruf (page 281). However, we were also supplied with the interview notes of Shanaz Mahruf (at pages 226 to 230 of the bundle) which demonstrate to the Tribunal that Ms Mahruf must have been interviewed.

65. We are unable to reach any conclusion as to what a successful cut off score for appointment would have been. On the limited information we have we find that Shanaz Mahruf obtained an interview score of 33 (pages 226 - 230), Sarah Nicholls obtained an interview score of 33 (pages 231- 235) and Rebecca Norton obtained an interview score of 35 (pages 236 – 240). We accept the evidence of Mr Graham, contained at paragraph 17 of his supplemental statement, which demonstrates that the answers provided by the Claimant at interview reduced her interview score. We also accept Mr Graham's evidence

that because of her performance at interview the Claimant was not deemed to be appointable and so was not offered a permanent position.

66. We also find that the Claimant performed poorly at interview as she mistakenly assumed, on the basis of informal conversations with her colleagues, that the interview and application process in 2020 would be exactly the same as the interview and application process in 2018. In 2018 the Claimant had been tasked with preparing a presentation and she did not have to face any competency-based scenarios. Although she was successful in 2018 in her application for the Pilot scheme, she was poorly prepared to deal with the competency-based questions in November 2020 as she had done little preparation for the interview. She was poorly prepared because of her incorrect assumption that the process would be the same as in 2018. We reach that finding based upon the concessions made by the Claimant under cross examination by Mr Cameron.

67. On 21 December 2020 the Claimant was informed by Daniel Graham that she had not been successful in being appointed as a permanent IUC Pharmacist via the internal application route. We reach that conclusion as we accept the Claimant's evidence on this point, which appears at paragraph 85 of her first witness statement.

68. On 1 January 2021 the Claimant applied for the Clinical Advisor position. We make that finding as we accept the Claimant's witness evidence as is contained at paragraph 110 of her first witness statement.

69. On 4 January 2021 Mr Graham emailed the Claimant. He stated:

"I have gone through the interview template that Jenny Doxey and myself completed during the interview process. You must understand that the standard was very high with competition for places being very apparent. The quality of all the candidates was also very high.

The areas that brought your scoring down and ultimately resulted in an unsuccessful interview would be the responses to the questions around reflux in a child aged 3 months, request by a patient for LMWH and the request for EHC in a 13-year-old female.

I would suggest that for future interviews in urgent care setting you look at the legal, safeguarding and ethical aspects of medicines requests/supplies."
(page 142)

70. On 6 January 2021 the Claimant emailed Mr Graham stating, "I would be grateful if you could elaborate on specifically which aspects of my response were inappropriate." (page 143)

71. That same day Mr Graham replied in the following terms:

"Happy to give you some more detailed feedback.

In relation to the 3-month-old child, need and appreciation of the legal status of the product, who would have initiated this medication, need to check the child for red flags, feeling well, nappies wet as usual, nappies soiled as usual (blood mucus), abdo distention, feeding as usual. Ask when the

child's red book was last filled in and if the child was progression (sic) as per growth charts. Was the child born at term, birth NVD, the response to this question missed the majority of the aforementioned points. These points should then have been used to guide with the child's management.

Request for LMWH, failed to ask relevant questions and showed an appreciation of what the patient has been treated for, AF, PE, DVT, managing risk factors during a pregnancy, etc --- Again the management plan should have been guided by taking a thorough history and from here deciding the best outcome for the patient.

Request for EHC by 13-year-old child, needed to show an understanding of the safeguarding issues, the legal issues, Fraser competent, risk around unwanted teenage pregnancy, need to get txt as soon as possible." (page 143)

72. On or around 8 January 2021 the permanent position of IUC Pharmacist was opened up to external applicants. The parties call this the External Application in the List of Issues.

73. On or around 18 January 2021 the Claimant submitted her application for an IUC Pharmacist position via the External Application route.

74. On 19 January 2021 Emily Edwards, a Recruitment Lead for the Respondent, emailed the Claimant as follows:

"Thank you for your application for the above post.

I am sorry to inform you that on this occasion you have not been shortlisted for an interview for this position.

If you require further feedback, please get in touch and I will pass your request on to the hiring manager.

We wish you the best of luck with your future job search." (page 148)

75. We find the reason the Claimant was not shortlisted on this occasion was due to the Respondent's Recruitment and Selection procedure in force at the relevant time (pages 337 – 344). Paragraph 7.1 of that policy states, "Where an unsuccessful candidate had not reached the appointable standard for the role, they would not be able to apply for the same/equivalent role for 6 months."

76. Also, on 19 January 2021 the Claimant raised a grievance to Dr Aqib Bhatti of the Respondent. The Claimant describes this as a grievance about discrimination at work but there is very little mention of the Claimant's dyslexia in the document. The grievance is contained at pages 146 to 147 and the only reference to dyslexia appears in a paragraph on page 147 which reads as follows:

"I have experienced various unexpected challenges within my personal life which were compounded with the Coronavirus situation. I was assessed for my dyslexia and advised extra time for my assignments. I feel that the dyslexia has inevitably had an effect on my studies (IUC and non-medical prescribing courses) such that my progress was not as timely as that of my

colleagues. It seems that this is more likely the contributing factor to certain decisions.”

At no point in that grievance does the Claimant outline or specify what decisions her dyslexia has been a contributing factor to or indeed what the decisions concerned or by whom they were made. She does not specifically raise that her performance at the interviews to date was, or indeed, may have been affected by her dyslexia.

77. On 1 February 2021 the Claimant received a response from Dr Bhatti to her grievance. His response read as follows:

“I am writing regarding the grievance you have raised. I would like to point out that your employment with DHU ended on 5 October 2020 and we are not legally obliged to respond to your formal grievance, but I have given my responses below:

Your grievance was regarding discrimination at work and that your dyslexia was a contributing factor to certain decision.

After full investigation and due consideration of the facts, my findings are as follows:

You were employed on a fixed term contract from October 2018 to October 2020, and you were informed that your fixed term contract would not continue past this date. You were made aware that the Company was undergoing consultation with the pharmacists on a permanent contract and once the consultation process was completed, DHU Healthcare was going to advertise the pharmacy posts and invite anyone on to a fixed term contract to apply. Unfortunately, there were a number of applicants for the role, and you were unsuccessful at the interview stage. You were given feedback with regards to the recruitment process by the Lead Pharmacist and I am satisfied that this was thorough.

In conclusion I cannot find sufficient grounds to substantiate your grievance. This is the final decision, and you do not have the right of appeal.” (page 152).

78. On 1 February 2021 the Claimant emailed Susan Bartle of the Respondent stating:

“I submitted an application for the 111 Clinical Advisor role with DHU a few weeks ago (closing 2/1/21).

I have not yet heard anything from yourself, aside from your initial telephone call to confirm if it was definitely the 111 Clinical Advisor role and not the IUC Pharmacists role that I was applying for.

Could you kindly let me know if you have done the shortlisting for the above role and where I stand in relation to this?” (page 153)

79. On 2 February 2021 Susan Bartle, a Recruitment Assistant for the Respondent, emailed Michelle Gerard, the Respondent’s Head of NHS 111 HR, and stated:

“What am I to do with this... she is the one I spoke to you about – we interviewed her in September 2018 and was successful but then turned down the role – she then worked with Dan as an IUC Pharmacist on the trial but he didn’t take her on because she was difficult to manage apparently – is it worth an interview and see where we go with her?” (page 153)

80. Michelle Gerard replied to Susan Bartle shortly afterwards on that same day stating, “Just take her forward for interview. I need to speak to you about this one though.” (page 153)

81. On 4 February 2021 Philip Plumb, an 111 HR Administrator for the Respondent, emailed the Claimant stating:

“This is to confirm that we will be ringing you on Monday 15 February at 13.30 hours, to conduct a telephone interview for the post of Clinical Advisor. We look forward to speaking to you. Should you have any questions or cannot make the time please contact us.

I have attached a copy of the rota patterns that are available. Please have a look through them before the interview and choose the one that suits you the most we can. We can discuss this at the interview.” (page 256).

82. Later that same day the Claimant emailed Philip Plumb stating:

“May I thank you for your email and your call earlier this afternoon.

Thank you also for confirming the date and time of the interview.

I have had a quick look at the documents that are attached to your email; the explanatory information on the tables is limited so I would like to go through these with you to make sure I am understanding them correctly, before coming to a decision.

As I stated on my application and mentioned to you in our conversation, I have worked for DHU as a Trainee IUC Pharmacist. I was interviewed for the permanent contract for this role within the last 6 months. I would just like to say that I was also left a little confused about the Company policy you mentioned about not being able to interview people if they had previously been interviewed within the past 6 months. I wonder if you could let me know if you have a copy of this that I may look at to ensure that I meet the criteria.

The reason an end date was not stated for the above role in my application, was because I was unclear about my employment status. As you are part of the 111 HR Team, I am certain that you should be able to get all the necessary information that you may require.

In the meantime, if there are any issues, I will be happy to discuss these with yourselves otherwise I hope to speak to you and Sue on the agreed date.” (page 256)

83. Philip Plumb forwarded the Claimant’s email of 4 February 2021 to Susan Bartle on 7 February 2021 at 07.58 (page 255). The following day, 8 February 2021, Susan Bartle responded to Mr Plumb via email, stating “Oh heck... she

is going to be trouble – I take it she wasn't successful at the IUC interview on Friday? It will be the 6 months for the same post and not for two different posts." (page 254).

84. On 15 February 2021 the Claimant was interviewed for the Clinical Advisor role by Philip Plumb and Susan Bartle. The notes of Philip Plumb for that interview appear at pages 158 to 164. Susan Bartle's notes appear at pages 165 to 171. Both Philip Plumb and Susan Bartle gave the Claimant a score of 21. As the Claimant was asked 10 questions that equated to an average score of 2.1 per question. The scoring criteria, as shown on page 162, shows that a score of 2 in respect of an individual answer demonstrated that an individual provided a weak answer and that the individual only partly met the person specification requirements. As on average the Claimant provided weak answers, she was not appointed to the role.
85. On 24 February 2021 Emily Edwards emailed the Claimant stating, "Thank you for attending an interview for the above role on Monday 15 February 2021. I regret to advise you that you have been unsuccessful at this time. We wish you the best of luck in your future job search." (page 175). The Tribunal finds that Mark Winkly was the only individual appointed by the Respondent to the permanent post of Clinical Advisor.
86. Shortly after, the Claimant requested feedback from her interview.
87. On 2 March 2021 Susan Bartle emailed the Claimant and copied in Michelle Gerard. Susan Bartle stated:

"Thank you for attending your telephone interview on 15 February 2021. With regards to feedback as to why you were unsuccessful I will answer your query.

- You didn't appear to be aware of the DHU visions and values and guessed at what you thought they might be – this is something that is widely available on the DHU website and had you read them as part of your interview preparation you would have been aware of them – as you have previously worked here we would have expected you to have known them.*
- With regards to the scenario question about the patient presenting with MI symptoms but refusing an ambulance – you stated you would call an ambulance straightaway and/or refer this to the Clinical Lead for them to have to talk to the patient. This is not something we would expect a Clinical Advisor to do – we would expect you to be able to deal with the patient and their expectations and to act in your professional capacity in order to provide the most appropriate care for the patient. This question is aimed at looking for you to take professional accountability so referring them to a Clinical Lead is not accountability for your decision. An ambulance might not be the correct course of action but without getting more information we would not know this.*
- Similar when we asked about challenges in the Call Centre you quite rightly said the calls in themselves can be challenging and stated you would refer a patient with mental health problems through to a colleague – again this is something we would expect you to be able to deal with*

and again take professional accountability for. Therefore, this did not assure us that you would be able to deal with challenging patients who call our service.

- *Overall, your answers lacked depth to them and at times you came across as quite confrontational which is not what we would expect in an interview situation. An example of this is when I asked you what day you worked at West Midlands Ambulance your reply was, “What does it matter” and you refused to give me an answer – you then went on to say you did not want to give that day up despite me informing you that we would not want you to work at two NHS 111 sites at the same time due to conflict of interest when the contracts were up for renewal. You spoke about not breaching confidentiality and undermining Data Protection.*

I hope this has answered your questions and I wish you well in your future career.” (page 174)

88. On 3 April 2021 the Claimant replied to Susan Bartle and copied in Dr Aqib Bhatti. We do not intend to set out the contents of that email in full but note that the Claimant disagreed extensively with the feedback that Ms Bartle had provided on 2 March 2021. The Claimant accepted however that she was unable to list all the Respondent's values during the interview. Her email appears in the bundle at pages 172 to 173.

89. We also find that from the commencement of her employment on the Pilot Scheme to her last day of employment on the Pilot Scheme, i.e. 5 October 2020, the Claimant dealt with 1,056 telephone calls. That equated to dealing with approximately 1 to 1.5 calls an hour. That fell well short of the Respondent's expectation that IUC Pharmacists on the Pilot Scheme undertake 3 to 4 calls an hour. We reach that finding as we accept the oral evidence that Mr Graham gave in relation to this point before the Tribunal.

Law

Burden of proof

90. Section 136(2) and 136(3) EqA 2010 provide that the tribunal must take the following approach to the 'shifting burden of proof':

- 90.1. the initial burden is on the Claimant to prove facts from which the tribunal could decide, in the absence of any other explanation, that the respondent contravened the provision concerned (i.e. a 'prima facie case');
- 90.2. the burden then shifts to the respondent to prove that it did not contravene the provision concerned. If the respondent is unable to do so, the tribunal is obliged to uphold the claim.

91. The Claimant must show a probability, rather than a mere possibility, that the respondent has committed the unlawful act: **Igen v Wong [2005] ICR 931, CA**. As Elias P put it in **Laing v Manchester City Council and anor [2006] ICR 1519**, "it is for the employee to prove that he suffered the treatment, not merely to assert it, and this must be done to the satisfaction of the tribunal after all the evidence has been considered" (para. 64). As Mummery LJ said in **Madarassy v Nomura International plc [2007] ICR 867**, "[t]he bare facts of a difference in treatment only indicate a possibility of discrimination. They are not, without

more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination” (para. 56).

92. As was confirmed by the Supreme Court in **Efobi v Royal Mail Group Ltd [2021] ICR 1263**, the initial burden is on the Claimant to establish facts from which the tribunal could conclude, in the absence of an adequate explanation, that an unlawful act of discrimination, harassment or victimisation had been committed. In establishing the facts, the Claimant can rely on both primary facts and also inferences that can be properly drawn from those facts.
93. The approach was summarised by the EAT in **Qureshi v Victoria University of Manchester and another [2001] ICR 863** per Mummery J at 875C – H; “The process of making inferences or deductions from primary facts is itself a demanding task, often more difficult than deciding a conflict of direct oral evidence. In **Chapman v Simon [1994] IRLR 124**, 129, para 43 Peter Gibson LJ gave a timely reminder of the importance of having a factual basis for making inferences. He said, “*Racial discrimination may be established as a matter of direct primary fact. For example, if the allegation made by Ms Simon of racially abusive language by the headteacher had been accepted, there would have been such a fact. But that allegation was unanimously rejected by the tribunal. More often racial discrimination will have to be established, if at all, as a matter of inference. It is of the greatest importance that the primary facts from which such inference is drawn are set out with clarity by the tribunal in its fact-finding role, so that the validity of the inference can be examined. Either the facts justifying such inference exist or they do not, but only the tribunal can say what those facts are. A mere intuitive hunch, for example, that there has been unlawful discrimination is insufficient without facts being found to support that conclusion.*”
94. In **Leicester City Council v Parmar [2025] EWCA Civ 952**, the Court of Appeal confirmed that a tribunal can draw an adverse inference from a respondent’s failure to disclose information and take that inference into account when determining whether the burden of proof has shifted.
95. Where a Claimant compares his treatment with that of another person, “it is important to consider whether that other person is an actual comparator or not. To do this the Employment Tribunal must consider whether there are material differences between the Claimant and the person with whom the Claimant compares his treatment. The greater the differences between their situations the less likely it is that the difference of treatment suggests discrimination”: **Virgin Active Ltd v Hughes [2023] EAT 130**.
96. The burden of proof rule “*need not be applied in an overly mechanistic or schematic way*”: **Khan and anor v Home Office [2008] EWCA Civ 578, CA**.
97. An employment tribunal may consider all relevant evidence at the first stage of the burden of proof test: **Commissioner of Police of the Metropolis v Denby EAT 0314/16**.
98. If a tribunal can make positive findings as to an employer’s motivation, it does not need to make use of the burden of proof test at all: **Hewage v Grampian Health Board [2012] ICR 1054, SC**.

Direct discrimination (s.13 EqA 2010)

99. Section 13(1) EqA 2010 provides that: “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.”

100. The question of whether a person is treated less favourably is a question of objective fact that necessarily involves a comparison with others. The comparator can be either an actual comparator (where there is no material difference in the circumstances of the comparator to that of the Claimant) or as is usually the case, a hypothetical comparator.

101. The key issue in every direct discrimination case is the following question of fact: “why did the alleged discriminator act as he did? What, consciously or unconsciously, was the [alleged discriminator’s] reason?”: **Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] ICR 1065**, at para. 29, per Lord Nicholls. As Underhill LJ said in **Reynolds v CLFIS (UK) Ltd & others [2015] ICR 1010** (at para.11):

*“As regards direct discrimination, it is now well established that a person may be less favourably treated “on the grounds of” a protected characteristic either if the act complained of is inherently discriminatory (eg the imposition of an age limit) or if the characteristic in question influenced the “mental processes” of the putative discriminator, whether consciously or unconsciously, to any significant extent: we were referred in particular to the discussion in **Ahmed v Amnesty International [2009] ICR 1450**. The classic exposition of the second kind of direct discrimination is in the speech of Lord Nicholls of Birkenhead in **Nagarajan v London Regional Transport [1999] ICR 877; [2000] 1 AC 501**, which was endorsed by the majority in the Supreme Court in **R (E) v JFS Governing Body [2010] 2 AC 728**.”*

102. Once it is established that the treatment is because of a protected characteristic, unlawful discrimination is established and the respondent’s motive or intention is irrelevant (**Nagarajan v London Regional Transport [1999] IRLR 572 HL**).

103. The protected characteristic does not need to be the only reason for the less favourable treatment, or even the main reason, so long as it was an ‘effective cause’ of the treatment: **O’Neill v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School and anor [1996] IRLR 372, EAT**.

104. In **Network Rail Infrastructure v Griffiths-Henry [2006] IRLR 865, EAT**, Elias P (as he then was) said, “If there is a genuine non-discriminatory reason, at least in the absence of clear factors justifying a finding of unconscious discrimination, that is the end of the matter.”

105. In some cases it is necessary to consider and exclude subconscious or unconscious discrimination when deciding the reason why an alleged discriminator did a particular act – see, e.g. **Geller v Yeshurun Hebrew Congregation [2016] ICR 1028** – but “it does not follow from this that in every case an employment tribunal must expressly refer to the possibility of subconscious discrimination in its Reasons and consider this as a separate

matter": **Kohli v Department for International Trade [2023] EAT 82**, para. 48, per Linden J.

Reasonable adjustments

106. In relation to failure to make reasonable adjustments s.20 and 21 of the Equality Act 2010 state in part

Duty to make adjustments

(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.

21 Failure to comply with duty

(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.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

107. Paragraph 20 of Schedule 8 states in part:

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

108. The expression provision criterion or practice or PCP is not expressly defined in the legislation, but we must have regard to the guidance given by the EHRC, and its Code of Practice on Employment, to the effect that the expression should be construed widely so as to include for example any formal or informal policies, rules or practices, arrangements, criteria, etc.

109. The Claimant has to clearly identify the PCP to which it is asserted that adjustments ought to have been made. We must only consider the PCPs so identified by the Claimant. When considering whether there has been a breach of s.21 we must precisely identify the nature and extent of each disadvantage

to which the Claimant was allegedly subjected. Furthermore, we must consider whether there is a substantial disadvantage when the relevant alleged PCP is applied to the Claimant in comparison to when the same PCP is applied to persons who are not disabled. The Claimant bears the burden of establishing a prima facie case that the duty to make reasonable adjustments has arisen and there are facts from which it could reasonably be inferred that the duty may have been breached. If she does so, then we need to identify the step or steps, if any, which the respondent could have taken to prevent the Claimant suffering the disadvantage in question (including taking account of the Claimant's suggestions of possible steps). If there appear to be such steps the burden is on the respondent to show that the disadvantage would not have been eliminated or reduced by the potential adjustments and/or that the adjustment was not a reasonable one for it to have to had to make.

110. There is no breach of s.21 if the respondent did not know and could not reasonably have been expected to know that the Claimant had the disability. Furthermore, in relation to a specific disadvantage there is no breach of s.21 if the employer did not know and could not reasonably have been expected to know that the PCP would place the Claimant at that disadvantage.

Discrimination arising from a disability

111. In relation to discrimination arising from disability, s.15 Equality Act states:

15 Discrimination arising from disability

(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.

112. The elements that must be made out for the Claimant to succeed in a s.15 claim are that there must be unfavourable treatment, there must be something that arises in consequence of the Claimant's disability and the unfavourable treatment must be because of (that is caused by) the something that arises in consequence of the disability. The claim fails if the Respondent can show that either 15(1)(b) or 15(2) apply.
113. The word unfavourable in s.15 is not separately defined by the legislation and it is to be interpreted consistently with case law including taking account of the Equality and Human Rights Commissions Code of Practice. This section does not require the disabled person to show that his or her treatment was less favourable than that of a comparator. The fact that a particular policy has been applied to a disabled person or in circumstances in which the same policy would have been applied to a non-disabled person does not in itself mean that there has been no unfavourable treatment. In other words, a decision that adversely affects the Claimant could potentially still amount to treating the Claimant unfavourably even if the decision was based on a policy that applied to other people as well. However, it does not follow that there has been unfavourable treatment merely because a Claimant can prove that they genuinely believe

that they should have had better treatment.

114. The unfavourable treatment must be because of something arising in consequence of the disability, as opposed to being because of the disability itself. The latter might be a breach of some other part of the Equality Act, but is not a breach of s.15.
115. We must consider two separate steps in relation to causation: (a) Is “something” arising in consequence of the disability. That is an objective test; (b) Was the unfavourable treatment (if any) because of that “something”. That requires analysis amongst other things of the decision maker’s thought processes, both conscious and sub-conscious.
116. The unfavourable treatment does not have to have been caused solely by the “something” but the “something” must be more than a trivial reason for the unfavourable treatment.
117. In relation to s15(1)(b) and proportionality, it is not necessary for the respondent to go as far as proving that the course of action it chose to follow was the only possible way of achieving its legitimate aim. However, if less discriminatory measures could have been taken to achieve the same objective, then that might imply the treatment was not proportionate. It is necessary to carry out a balancing exercise taking into account the importance to the respondent of achieving its proposed legitimate aim and taking account of the discriminatory effect of the treatment on the Claimant. It is not necessary for the respondent to prove that it itself carried out the balancing exercise at the time of the unfavourable treatment; the exercise is one for the tribunal to do.
118. If a respondent employer has failed in an obligation to make a reasonable adjustment (as defined in the Equality Act 2010) which would have prevented or minimised the unfavourable treatment, then it will be difficult for the respondent to show that the treatment was a proportionate means of achieving a legitimate aim.
119. When considering what the respondent knew and/or what it could not reasonably have been expected to know, the relevant time is the time at which the alleged unfavourable treatment occurred. If there are examples of unfavourable treatment at different times, it is necessary to consider the respondent’s state of knowledge or constructive knowledge as of the date of each time it treated the Claimant unfavourably.

Non-attendance of witness

120. In appropriate circumstances, a Tribunal can (but is not obliged to) draw adverse inferences from the absence of a witness that a party has failed to call. It would not be appropriate to draw adverse inferences if there was a reasonable explanation for the witness’s non-availability. The mere fact alone that a witness had knowledge of a particular issue that the party’s other witnesses lacked would not be sufficient for an adverse inference to be drawn. The Tribunal would have to be satisfied that there was an important and relevant matter, and that it ought to have been obvious to the party that the witness could have given evidence about that matter, before deciding if an inference should be drawn.

Submissions

121. Mr Cameron made oral submissions on behalf of the Respondent. Ms Mallick provided the Tribunal with written submissions on behalf of the Claimant. Those ran to 84 paragraphs over 25 pages. We incorporate those submissions by reference here. The Claimant's written submissions were accompanied with oral submissions. The Tribunal carefully considered both parties submissions before coming to its conclusions.

Conclusions

122. In order to reach its conclusions, the Tribunal returns to the List of Issues. Those were the pertinent issues that fell to be determined. We adopt the numbering used by the List of Issues when considering it below. The Respondent accepts that the Claimant was a disabled person by reason of her dyslexia and also that it had knowledge of her dyslexia. Consequently, there is no need to deal with Issue 1.

123. Moving to the claim of direct disability discrimination, this first act relied on by the Claimant is,

1.3.1 The decision not to appoint the Claimant to the permanent post of IUC Pharmacist following her application and interview for the post on 16th/26th November 2020 ("The Internal Application").

In respect of this issue, the Tribunal notes that the comparators relied on by the Claimant are the following individuals:

- Ojali
- Bhavika
- Usman
- Manzar
- Rebecca
- Shanaz
- Dibesh
- Faraz
- Nagina

It appears to the Tribunal that although the Claimant has not provided surnames, or provided sufficient evidence of her comparators in her witness statement, she must mean:

- Ojali Yusuff,
- Bhavika Lad,
- Usman Mir,
- Manzar Maqsood,
- Rebecca Norton,
- Shanaz Mahruf.

Those individuals were interviewed for, and appointed to, the position of permanent IUC Pharmacists. The Tribunal therefore conclude that the Claimant was less favorably treated than those individuals. There is insufficient evidence before us that anyone called Dibesh, Faraz or Nagina

(or indeed any variation of those names) was interviewed or appointed to the position of permanent IUC pharmacist.

124. We accept that was less favorable treatment of the Claimant as opposed to comparators named above who were appointed. We conclude that Mr Graham and Ms Doxey were the relevant decision makers. The Tribunal was disappointed only to hear evidence from Mr Graham. We note that Ms Doxey is retired but that in, and of itself, is not a suitable reason not to attend Tribunal to give evidence. We have not however drawn an inference from Ms Doxey's non-attendance as the Claimant has not established a prima facie case of discrimination.

125. It is clear to the Tribunal that the treatment of the Respondent was for reasons other than her dyslexia. The reason the Claimant was not appointed to this role was because she was not suitable for the role and deemed not appointable. Several factors played into that decision. Those included the fact that the Claimant was not able to work weekends, which was when the Respondent had the greatest need for Pharmacists to attend work. The Respondent also took into account that the Claimant was unable to commit to working 15 hours per week as the permanent role required.

126. The Respondent also took into account the Claimant's poor performance at interview. That poor performance was because she mistakenly assumed, on the basis of conversations with her colleagues, that the interview and application process for the Internal Application process in 2020 would be exactly the same as the interview and application process that the Respondent had previously carried out in 2018. That is apparent from paragraph 77 of the Claimant's first witness statement. As the Claimant naively relied on what she had been informally told by fellow colleagues, she was poorly prepared to deal with the competency-based questions.

127. In addition, the Tribunal concludes that the Claimant's poor productivity whilst undertaking the role of IUC Pharmacist whilst on the Pilot Scheme also influenced Mr Graham and Ms Doxey decision not to appoint her to a permanent position. We base that conclusion on our finding that from the commencement of her employment on the Pilot Scheme to her last day of employment on the Pilot Scheme, the Claimant only dealt with 1,056 telephone calls. That equated to dealing with approximately 1 to 1.5 calls an hour which fell well short of the Respondent's expectation that IUC Pharmacists on the Pilot Scheme undertake 3 to 4 calls an hour.

128. Finally, the The Tribunal concludes that Mr Graham had formed the view that the Claimant was difficult to manage which played a part in the decision not to appoint her. We make that conclusion based on the contents of Susan Bartle's email of 2 February 2021 where she stated:

"What am I to do with this... she is the one I spoke to you about – we interviewed her in September 2018 and was successful but then turned down the role – she then worked with Dan as an IUC Pharmacist on the trial but he didn't take her on because she was difficult to manage apparently – is it worth an interview and see where we go with her?" (page 153)

129. The second act relied on by the Claimant in respect of her direct disability complaint is,

1.3.2 The decision not to shortlist the Claimant for interview for the permanent post of IUC Pharmacist following her application for the post on 19th January 2021 ("The External Application"). The Claimant relies on actual comparators by the name of Sarah and Adam.

We have insufficient evidence that any individual by the name of Sarah or Adam was appointed to the permanent post of IUC pharmacist as part of the External Application process. We have therefore considered the position of a hypothetical comparator.

130. We find that the decision not to shortlist the Claimant was taken by Philip Plumb. We note that Philip Plumb is retired but again that in and of itself is not a suitable reason not to attend Tribunal to give evidence. We have not however drawn an inference from Mr Plumb's non-attendance as the Claimant has not established a prima facie case of discrimination.
131. We conclude the reason the Claimant was not shortlisted on this occasion was due to the Respondent's Recruitment and Selection procedure in force at the relevant time (pages 337 – 344). Paragraph 7.1 of that policy states, "Where an unsuccessful candidate had not reached the appointable standard for the role, they would not be able to apply for the same/equivalent role for 6 months."
132. The effect of this policy, is that a person without a disability who had also applied for the permanent position in November 2020 and been deemed non-appointable, would also not have been shortlisted for interview for the permanent position of IUC Pharmacist in January 2021. That is because the role being advertised on this occasion was clearly the same as that which the Claimant had not reached the appointable standard for in November 2020.
133. The third act relied on by the Claimant in respect of her direct disability complaint is,

1.3.3 The decision not to appoint the Claimant to the permanent post of Clinical Advisor following her application and interview in February 2021. The Claimant relies on an actual comparator by the name of Mark. She relies on an email dated 8th February 2021 which is said to confirm that it has been confirmed to an agency that Mark had passed the interview.

We conclude that Philip Plumb and Susan Bartle were the relevant decision makers in relation to this act. We accept that, due to her health, Susan Bartle has a valid reason to excuse her non-attendance at Tribunal. In any event, we have not drawn an inference from Susan Bartle or Philip Plumb's non-attendance as the Claimant has not established a prima facie case of discrimination.

134. Mark Winkly was appointed by the Respondent to the permanent post of Clinical Advisor. We accept that the Claimant was less favourably treated than Mark Winkly. We do not conclude the less favourable treatment was because of the Claimant's disability. We are satisfied that the reason the Claimant was not appointed was because of her poor performance at the relevant interview. We reach that conclusion as the notes of the interview process we have demonstrate that both Philip Plumb and Susan Bartle gave the Claimant a

score of 21. As the Claimant was asked 10 questions that equated to an average score of 2.1 per question. The scoring criteria, as shown on page 162, shows that a score of 2 in respect of an individual answer demonstrated that an individual provided a weak answer and that the individual only partly met the person specification requirements. As the Claimant, on average, provided weak answers she was not appointed to the role.

135. We also reach the conclusion that the Claimant performed poorly at this interview as she that she was unable to list all the Respondent's values during that interview in her email of 3 April 2021 (pages 172 to 173).

136. We now move to the discrimination arising from disability complaint.

Discrimination arising from disability – Section 15 Equality Act 2010

1.6 Did the Respondent treat the Claimant unfavourably because of something arising in consequence of her disability?

1.7 The alleged unfavourable treatment relied upon by the Claimant is:

1.7.1 The decision not to appoint the Claimant to the permanent post of IUC Pharmacist following her application and interview for the post on 16th/26th November 2020 ("The Internal Application"). The Claimant contends that the "something arising" in consequence of her disability is that she performed poorly at the interview because of a slowness in the mental processing of verbal information so that she could not formulate a detailed response.

1.7.2 The decision not to shortlist the Claimant for interview for the permanent post of IUC Pharmacist following her application for the post on 19th January 2021 ("The External Application"). The Claimant contends that the "something arising" in consequence of her disability is that the Respondent perceived her as being difficult to manage because she would require additional management time and support because she has dyslexia. The Claimant contends that she was not shortlisted because there was no intention to appoint her to the post.

1.7.3 The decision not to appoint the Claimant to the permanent post of Clinical Advisor following her application and interview in February 2021. The Claimant contends that the "something arising" in consequence of her disability is that the Respondent perceived her as being difficult to manage because she would require additional management time and support because she has dyslexia. The Claimant contends that the interview by the Respondent was a sham and there was no intention to appoint her to the post and/or that her scoring was deliberately skewed to ensure that she was not appointed.

137. In respect of issue 1.7.1 the Claimant has failed to provide sufficient evidence to the Tribunal that she performed poorly at the interview because of a slowness in the mental processing of verbal information so that she could not formulate a detailed response to questions. The Educational Psychologist report provided by the Claimant focuses primarily on the Claimant's difficulties in reading and writing. The Tribunal cannot conclude from that report alone that the Claimant has slowness in the mental processing of verbal information. That

report was written for the purposes of obtaining adjustments to written academic work at the University she attended.

138. In respect of issue 1.7.2, the reason the Claimant was not shortlisted was due to the Respondent's Recruitment and Selection procedure in force at the relevant time (pages 337 – 344). Paragraph 7.1 of that policy states, "Where an unsuccessful candidate had not reached the appointable standard for the role, they would not be able to apply for the same/equivalent role for 6 months." That was the reason for the unfavourable treatment and not because the Claimant was perceived as being difficult to manage.

139. In respect of issue 1.7.3, we accept that the Claimant was perceived as being difficult to manage. We do not however conclude that the perception that she was difficult to manage arose because she required additional management time and support because of her dyslexia. The reason why the Claimant was perceived as difficult to manage was because from October 2020 she refused to clarify to the Respondent what her intentions were with regard to undertaking any additional work for it. This was because she was not happy with the Respondent's decision to subject all individuals on the Pilot Scheme to a competitive interview and selection process before they would be employed on a permanent basis. She was also not content with Michelle Gerard's email to her of 11 September 2020 and failed to take onboard that she would be covered by the Employers Indemnity despite Michelle Gerard's clear written reassurance. In addition, the Claimant was not willing to work weekends did not wish commit to working 15 hours per week as her role required. As those were the reasons why the Claimant was perceived as being difficult to manage, we do not conclude that Respondent perceived her as being difficult to manage because she would require additional management time and support because she has dyslexia.

140. We now move to the failure to make reasonable adjustments complaint.

Failure to make reasonable adjustments.

1.10 It is not in contention that the Respondent applied a practice that applicants for IUC Pharmacy roles and Clinical Adviser roles were required to attend an interview-based assessment.

1.11 Did that practice place the Claimant at a substantial disadvantage in comparison with people who did not share her disability? The Claimant contends that because of her disability she experienced difficulty with processing verbal communication/instructions which made her less likely to perform to her best in an interview situation.

141. In respect of Issue 1.11, the Claimant has failed to provide sufficient evidence to the Tribunal that she performed poorly at interviews because she experienced difficulty with processing verbal communication/instructions. The Educational Psychologist report provided by the Claimant focuses primarily on the Claimant's difficulties in reading and writing. The Tribunal cannot conclude from that report alone that the Claimant has difficulties with processing verbal communication or instructions which made her less likely to perform to her best in an interview situation.

142. If we are wrong on that, the Tribunal concludes that the Respondent did not

know, and could not reasonably be expected to know, that the Claimant would be placed at that substantial disadvantage. We find and conclude that the Claimant never informed the Respondent that she would be placed at a substantial disadvantage by having to attend an interview-based assessment because of her dyslexia. Indeed, she accepted before Employment Judge Butler at the preliminary hearing of 22 September 2021 that she never mentioned potential reasonable adjustments prior to the interview of 16 November 2020. We also find that she never shared with the Respondent a copy of the Educational Psychologist Report undertaken for her University studies.

143. What the Claimant did do, was inform Mr Graham at some point around January 2020 that she had been diagnosed with dyslexia. We also find that she indicated on her application forms from that point onwards that she was dyslexic. However, we stress again that at no point did the Claimant make Mr Graham or anyone else aware that she would be placed at a suitable disadvantage by the requirement to attend an interview-based assessment.

144. The entirety of the claim is not well founded and is dismissed.

Approved by:

Employment Judge McTigue

24 September 2025

JUDGMENT SENT TO THE PARTIES
ON

.....30 September 2025.....

.....
FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the Claimants and respondents.

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

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