EMPLOYMENT TRIBUNALS

Claimant: Mr J R Phillips

Respondent: Financial Ombudsman Service Limited

Heard at: Newcastle **On:** 17 – 19 November 2025

Before: Employment Judge Childe

REPRESENTATION:

Claimant: In person

Respondent: Ms Ismail (Counsel)

REASONS

Summary

1. The respondent provides an informal complaints resolution procedure in the UK financial services industry.
2. The respondent employed the claimant as an Investigator (working remotely) in its Edinburgh hub from 20 November 2023 until 5 September 2024, on which date it dismissed him during his extended probation period for unauthorised absence.
3. In brief, the claimant's case is that he had ADHD, and that to work and perform successfully during his probation period he needed numerous auxiliary aids which were either provided late or not at all, as well as additional ADHD coaching sessions tailored for neurodiverse people to help them in employment.
4. The claimant says his unauthorised absence was something arising from his disability and therefore that the dismissal was discrimination arising from disability.
5. The respondent denies the claims.

Introduction

6. The claimant brings claims for:
    a. failure to make reasonable adjustments contrary to sections 20 and 39(5) Equality Act 2010 ("the Act");

b. discrimination arising from disability contrary to sections 15 and 39(2)(d) of the Act).

7. The claimant didn't attend the first day of the hearing in person as he was required to do. I agreed to proceed on the first day with the claimant attending the hearing remotely. The claimant agreed to attend the hearing in person on the second day and did do so.
8. I asked the parties at the outset of the hearing whether any reasonable adjustments were required to enable them to participate fully in the hearing. The claimant said that he would need extra breaks. We agreed that the claimant could simply ask for a break when he required one and I would allow him to take a break.
9. On the first day of the hearing, I decided:
    a. To set aside the decision to dismiss the claim under rule 38 because I considered it was in the interests of justice to do so. A separate case management order has been sent to the parties confirming this decision. That separate notice informs the parties that should they wish to have written reasons for this decision, they should request those reasons within 14 days of the case management order being sent to them.
    b. To refuse the respondent's application to strike out the claimant's claim. A separate judgment has been sent confirming this decision and explaining how the parties may request written reasons for this decision.
10. I had access to an agreed tribunal bundle which ran to 922 pages.
11. Witness evidence was provided by the claimant himself. Prior to the morning of the first hearing the claimant had told the respondent he would not provide a witness statement in his case and this formed part of the basis for the

respondent's strike out application. However, during the morning of the first hearing the claimant changed his mind and provided a pre-written witness statement for the first time. I allowed this witness statement to stand as the claimant's evidence in chief, despite it being exchanged very late in the day because I considered it was in the interests of justice to do so as there was sufficient time in the afternoon of the first day of the hearing for the respondent to prepare their cross examination of the claimant and for the hearing then to commence on the second day, as planned.

12. The claimant agreed in cross examination that he was aware of the issues in this case (as referred to in paragraphs 68 to 85 below) ("the Issues") before producing his witness statement. The Issues had been drawn up at the case management hearing on 1 May 2025 and have been provided to the parties on 22 May 2025. Employment Judge Tinnion had discussed the Issues with the claimant. The claimant also agreed he had reviewed the respondent's witness statements as they had been exchanged in advance of the final hearing, and he knew everything the respondent wanted to say about the Issues in this case before exchanging his witness statement. The claimant also agreed in cross examination that his witness statement contained all the evidence on the Issues that he wished to give to the tribunal.

13. From the respondent, I was provided with witness statements from Zoe Kearns, Employee Relations Partner in the respondent's HR Employee Relations Team and Claire Greene, Ombudsman Manager and the claimant's line manager from April 2024.

14. At around 12:55 PM on the first day of the hearing, after I had made the decision set out in paragraph 9 above, I had a discussion with the claimant about him

preparing for cross examination of the respondent's witnesses, the following day.

15. I provided the claimant with some guidance on how to approach cross examination. I explained to the claimant that it was very important that he challenged any part of the respondent's witness evidence that he did not agree with which were relevant to the Issues and that he put his case to the respondent's witnesses to give them the opportunity to respond to his case and to highlight to me key parts of his case. I also provided more general guidance on cross examination. I encouraged the claimant to ask questions and not make a statement, to focus his questions on where he disagreed with what the respondent's witnesses were saying, to avoid telling the respondent's witnesses what he thought and to ask one question at a time.
16. These written reasons have been provided following a request from the claimant.

Findings of fact

17. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point.
18. The respondent provides a quick, independent, and informal procedure (and alternative to the courts) for resolving certain complaints between complainants and providers of financial services.
19. The claimant was employed as a remote financial investigator engaged in the respondent's Edinburgh hub.

20. The claimant began employment with the respondent on 20 November 2023 and began a probationary period with a cohort of other remote financial investigators. The intention was that the cohort of investigators would attend an academy between November and March 2024 to learn how to do their role and would then graduate to carry out their role on a business-as-usual basis from March 2024.
21. The claimant worked in the consumer credit and motor finance area of the respondent's service.
22. The claimant's workload was reduced as a reasonable adjustment. For example, he had an un-viewed case target of 15, rather than the 20 to 25 which was ordinarily expected of investigators once they had passed their probationary period.
23. An access to work grant was made to the claimant on 5 December 2023 to provide the following equipment at the following cost, to the claimant:
    a. Adjustable Chair £149.23
    b. Grammarly £120.00
    c. iPad £379.99
    d. Motion £180.52
    e. Noise-Cancelling Headphone £249.00
    f. Rotating Foot-Stool £25.40
    g. Sensory Lighting £136.46
    h. Sitting/Standing Desk £119.99
    i. Stop-Clock/Timer/Alarm £9.99
    j. ADHD Coaching sessions - 52 Weekly Sessions + 12 Incidental Sessions @ £35.00 per session

24. Within the body of the access to work application from the claimant, he explained he had Attention Deficit Hyperactivity Disorder (ADHD) and had been diagnosed with this condition in August 2023.
25. On 4 January 2024 the claimant attended a meeting with Muhammed Latif, employee relations adviser, to discuss the implementation of the workplace adjustments identified in paragraph 23 above.
26. Muhammed Latif wrote to the claimant on 4 January 2024 to say that the claimant would be referred to Microlink, the respondent's Workplace Adjustment Support Provider, to discuss implementation of the proposed workplace adjustments.
27. Microlink met with the claimant and after that the following adjustments were made:
    a. An Adjustable Chair was purchased.
    b. ADHD coping strategy coaching x 4 sessions at 2 hours each.
    c. Software coaching x 3 hours.
    d. ClaroRead Plus assistive software.
28. Zoe Kearn's evidence, which was unchallenged and which I accept, was the claimant could have asked for more ADHD coping strategy coaching sessions at any point, and she would have approved the cost.
29. The claimant was told by Muhammed Latif in an email on 4 January 2024 that the Grammarly software could not be provided to him because it was incompatible with the respondent's IT systems.
30. In March 2024 everyone from the claimant's cohort of investigators graduated from the academy to carry out business as usual work, other than the claimant. The reason for this was that the quality of the claimant's work, his productivity

and his caseload management skills were not at an acceptable standard and the respondent believed the claimant needed further support to reach the required standard.

31. Niall Taylor, Ombudsman Manager and the claimant's initial line manager and Ciara Dixon-Payne Senior Investigator, both providing mentoring support to the claimant in March 2024 to support him to reach the required standard.
32. Claire Greene, Ombudsman Manager, became the claimant's line manager on 5 April 2024. Claire Greene was not a subject matter expert in consumer credit and motor finance area.
33. Claire Greene was aware of the claimant's ADHD when she took over as the claimant's line manager and was aware that adjustments have been put in place to assist the claimant in carrying out his role.
34. Claire Greene decided in April 2024 to refer the claimant to the respondent's occupational health provider to ensure that all the adjustments that the claimant needed to carry out his role and which were reasonable for the respondent to provide, were in place.
35. Claire Greene met with the claimant on 15 May 2024 and explained that she had concerns about the quality of the claimant's work, his productivity and his caseload management skills. Claire Greene's concerns were mainly based on the feedback she was receiving from Niall Taylor, who was the subject matter expert on the consumer credit and motor finance area of the respondent's work. Claire Greene decided to extend the claimant's probation and put in place a six-week performance improvement plan, which was designed to support the claimant to reach an acceptable level of performance.

36. During this meeting, the claimant said to Claire Greene that he couldn't think of any further adjustments, other than the ones that have been declined by the respondent, which would help in carry out his role. The claimant was invited by Claire Greene to complete a reasonable adjustment passport at this meeting, but the claimant did not do so. I have accepted Claire Greene's evidence on this point, which was clear, straightforward and honest and consistent with the contemporaneous typed notes that were taken of this meeting.
37. The claimant has given no evidence to the tribunal about which adjustments were declined by the respondent, as referred to in paragraph 36 above.
38. Doing the best I can with the evidence made available to me, I conclude that the only proposed adjustment that was declined by the respondent was the installation of the Grammarly software referred to in paragraph 29 above as this is the only piece of evidence I have on this point.
39. The claimant subsequently declined to engage with the respondent's occupational health provider to consider any further adjustments that might be necessary to perform his role.
40. During May and June 2024 Niall Taylor continued to provide extra technical support to the claimant to try to help him reach the required standard of performance in his role, while Claire Greene line managed the claimant.
41. On 1 July 2024, quality feedback from Niall Taylor was that the claimant's written work still did not meet the quality standard expected.
42. A probationary review meeting took place on 17 July 2024. Claire Greene chaired the meeting, Zoe Kearns attended alongside the claimant and his employee representative Georgie Arnott.

43. The claimant surprised Claire Greene at this meeting by suggesting that he needed more reasonable adjustments because he said he needed *something to stay organised*. This was a surprise because, as I have found in paragraph 36 above, the claimant had previously said all reasonable adjustments that he needed have been put in place, or alternatively in the case of the Grammarly software, had been declined for good reason.
44. During this meeting, the claimant himself agreed that he would use Excel as an aid to help him stay organised. I have accepted Claire Greene's evidence on this point, which was straightforward, clear and honest and consistent with the contemporaneous typed notes that were taken of this meeting.
45. During this meeting the claimant said he had his own noise cancelling headset and Zoe Kearns agreed to obtain an extra screen and footrest and agreed to look again at any further software that could be provided to the claimant. The extra screen and footrest were subsequently ordered, and steps were taken to install additional software onto the claimant's laptop.
46. During the meeting Claire Greene extended the claimant's probationary period until 16 August 2024.
47. A performance improvement plan was put in place from 22 July 2024 ultimately to 23 August 2024, as it was extended due to a subsequent period of illness from the claimant.
48. On 9 and 12 August 2024 the claimant was absent from work without leave. He didn't log on to his laptop, nor did he attend work that day or contact anyone at the respondent to explain why he was not at work.
49. Claire Greene and Zoe Kearns tried to contact the claimant on 12 August 2024 as they were concerned for his welfare. Claire Greene contacted the claimant's

emergency contact who said that the claimant was on the WhatsApp and so was okay.

50. The claimant finally contacted Claire Greene on 13 August 2024. The claimant said he had had a difficult few days as it was the anniversary of a triggering event and because of that issue he could not cope. The claimant said he had jumped into a car, checked into a hotel and ignored everyone. The claimant said he was now on his way home, but he could not work the rest of the week due to these circumstances.

51. On 19 August 2025 the claimant had a back to work meeting with Claire Greene. The claimant explained he was better and ready to return to work. He spoke about his triggering week for a personal reason and said he had taken medication at the wrong time. Claire Greene spoke about the requirements of the sickness absence policy and procedure and the need for the claimant to promptly let her know if he cannot work due to sickness. The claimant agreed he should have made contact, said he was grateful for Claire Greene's ongoing support, and it would not happen again.

52. Claire Greene decided to treat the claimant's unauthorised absence as sick leave on this occasion. Claire Greene considered that as the claimant was aware of the requirement to report his absence from work in line with the respondent's sickness absence policy and because he had promised to follow that procedure moving forwards, there would not be any repeat of him being absent without leave.

53. In late August 2024 the claimant went absent from work without leave again. The claimant logged on late on 28 August 2024. The claimant then missed meetings scheduled that afternoon with Niall Taylor and Zoe Kearns and did

not return Claire Greene's call as promised. The claimant did not contact Claire Greene, Niall Taylor or Zoe Kearns to let them know that he was not going to attend those meetings and calls. The claimant was absent without leave on 29 and 30 August 2024 ("the Second Period of Absence"). He missed meetings with Zoe Kearns and failed to respond to attempts to contact him over this period.

54. The claimant was subsequently invited to a second probationary review hearing to discuss his conduct during his probationary period, in particular his failure to follow the sickness absence procedure during the Second Period of Absence, as well as performance concerns Claire Greene continued to have.

55. The second probationary review hearing took place on 2 and 3 September 2024. Claire Greene chaired the hearing, John Lonsdale provided HR support as employee relations partner and the claimant attended along with his employee representative Paula Lipkowska.

56. The claimant was asked why he was absent from work without leave on 29 and 30 August 2024. The claimant said he had initially had issues with his laptop on 27 August 2024, but then said he couldn't remember why he had been absent from work without leave on 29 and 30 August 2024. I have accepted Claire Greene's evidence about what the claimant said to her about the reason for his absence as this was clear and straightforward and was not challenged by the claimant.

57. It is also consistent with the evidence the claimant gave to the tribunal. The claimant gave no evidence in his witness statement to suggest that his ADHD played a part in his failure to report the Second Period of Absence.

58. When the claimant was asked by Ms Ismail in cross examination about the reason for the Second Period of Absence, he said he couldn't explain the reason.

59. I was careful, given the claimant is a litigant in person, to give the claimant an opportunity to clarify his evidence about the reason for his absence during the Second Period of Absence. I referred the claimant to the relevant part of the contemporaneous notes of the probationary review hearing and invited the claimant to reflect on these notes and explain the reason for his absence during the Second Period of Absence.

60. The claimant said in response to my question that the reason why he was absent during the Second Period of Absence and did not report that absence was because he was burnt out, lacked energy, was fatigued and was not with it. He said this explained why he was not in contact with the respondent during the Second Period of Absence.

61. I therefore conclude that the reason the claimant gave to Claire Greene at the time for his absence without leave during the Second Period of Absence was that he couldn't remember and the reason he gave at the tribunal was because he was burnt out, lacked energy, was fatigued.

62. Claire Greene decided, after the probationary review meeting to end the claimant's probationary period and dismiss him.

63. This decision was communicated to the claimant on 5 September 2024.

64. The reason the claimant was dismissed by Claire Greene on 5 September 2024 was because the claimant had failed to report the Second Period of Absence to the respondent.

65. I've accepted Claire Greene's evidence on the reason for dismissal which was clear, straightforward and consistent with the dismissal letter itself. As Claire Greene explained in evidence, her concern was that the respondent could not be sure whether absence without leave would be repeated by the claimant in the future, given the recent pattern of unauthorised absence without leave. Claire Greene reasonably formed the view that the respondent's team could not be run in a statutory compliant manner if the claimant was regularly not reporting for work without giving any reason. Claire Greene reasonably concluded that the respondent needed to know if the claimant was going to be absent at short notice, so that other arrangements could be made to respond to the parties or colleagues dealing with the claimant's cases.
66. Whilst Claire Greene continued to have concerns with the poor quality of the claimant's work, despite all the adjustments that have been made and the support the claimant was receiving, this was not the reason for the claimant's dismissal.

Issues

67. The respondent agreed that the claimant was a disabled person, for the purposes of the Act, because he had ADHD at the relevant time.
68. The agreed issues in this case are as follows:

Reasonable adjustments

Lack of an auxiliary aid

69. Did the lack of an auxiliary aid, namely:

    a. standing desk;

    b. noise-cancelling earphones/headphones;

    c. grammar assistance software;

    d. time management software;

    e. adjustable chair;

    f. rotating footstool;

    g. iPad for above software;

    h. lamp which had effect of damping light coming from screens.

    place the claimant at a substantial disadvantage compared to someone without the claimant's disability in that:

    a. The claimant had:

        i. difficulty with time management;

        ii. difficulty with document organisation.

70. Did the respondent know, or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

71. What steps could have been taken to avoid the disadvantage? The claimant suggests:

a. standing desk – the claimant will say this should have been provided by 27 November 2023.
b. noise-cancelling earphones/headphones – the claimant will say this should have been provided by 27 November 2023.
c. grammar assistance software – the claimant will say this should have been provided by 27 December 2023.
d. time management software – the claimant will say this should have been provided by 27 December 2023.
e. adjustable chair - the claimant will say this should have been provided by 27 December 2023.
f. rotating footstool – the claimant will say this should have been provided by 27 November 2023.
g. . iPad for software - the claimant will say this should have been provided by 27 November 2023.

72. Was it reasonable for the respondent to have to take those steps and when?
73. Did the respondent fail to take those steps?

Provision Criterion or Practice

74. Did the respondent apply the following provision, criterion or practice (PCP): the requirement for employees to perform the duties, tasks and responsibilities of their role.
75. If it did, did the PCP put the claimant to the following ADHD-related substantial disadvantages in comparison to his peers who did not have ADHD:
    a. difficulty with time management;

b. difficulty with document organisation.

76. If yes, did the respondent know – or ought it reasonably to have known – that:
    a. the claimant was disabled because of ADHD, and if so from what date;
    b. the claimant was put to those disadvantages, and if so from what date?
77. Would taking the following step have avoided or materially reduced those disadvantages:
    a. ADHD coaching sessions to assist the claimant in time management and document organisation.
78. If yes, did the respondent take those steps? The claimant accepts the respondent provided 8 ADHD coaching sessions but say he should have had 16 sessions because that was the recommended number of ADHD coaching sessions.
79. Did the respondent breach any duty to have to make any reasonable adjustments for the claimant?

Discrimination arising from disability

80. It is agreed that the respondent dismissed the claimant on 3 September 2024, which was unfavourable treatment.
81. Did the following arise in consequence of the claimant's disability:
    a. The claimant's absence from work;
    b. The claimant's poor performance at work related to his ADHD and/or need for reasonable adjustments?
82. Did the respondent dismiss the claimant because of his absence from work or poor performance?

83. Was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were:
    a. Meeting its statutory obligations under Financial Services & Markets Act 2000 to resolve financial complaints quickly and with minimum formality for members of the public. Employee must therefore be able to work the required quality standards and meet casework targets to fulfil that legal obligation.
    b. Ensuring that employees observe the terms of its HR policies around absence notification so that work can be organised effectively amongst casework colleagues in order to meet its statutory duties under Financial Services & Markets Act 2000. Absence notification also enables the respondent to ensure that communications from complainants and respondents are addressed even if the casework colleague is not at work, particularly where time critical.
    c. Applying policies and procedures fairly and consistently across the workforce.
84. The tribunal will decide in particular:
    a. was the treatment an appropriate and reasonably necessary way to achieve those aims;
    b. could something less discriminatory have been done instead;
    c. how should the needs of the claimant and the respondent be balanced?
85. Did the respondent know, or could it reasonably have been expected to know that the claimant had the disability? From what date?

Relevant Law

Burden of proof

86. The relevant parts of section 136 of the Act provide as follows:

136 Burden of proof

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

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

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

87. The claimant bears the initial burden of proof. The Court of Appeal held in **Ayodele v Citylink Limited and anor [2017] EWCA Civ. 1913** that *"there is nothing unfair about requiring that a claimant should bear the burden of proof at the first stage. If he or she can discharge that burden (which is one only of showing that there is a prima facie case that the reason for the respondent's act was a discriminatory one) then the claim will succeed unless the respondent can discharge the burden placed on it at the second stage".*

88. At the first stage, the tribunal does not have to reach a definitive determination that there are facts which would lead it to the conclusion that there was an

unlawful act. Instead, it is looking at the primary facts to see what inferences of secondary fact could be drawn from them.

89. As was held in **Madarassy v Nomura International plc [2007] IRLR 246**, "could conclude" refers to what a reasonable tribunal could properly conclude from all of the evidence before it, including evidence as to whether the acts complained of occurred at all. In considering what inferences or conclusions can thus be drawn, the tribunal must assume that there is no adequate explanation for those facts.

90. If the burden of proof moves to the respondent, it is then for it to prove that it did not commit, or as the case may be, is not to be treated as having committed, the allegedly discriminatory act.

91. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the prohibited ground. That would require that the explanation is adequate to discharge the burden of proof on the balance of probabilities, for which a tribunal would normally expect cogent evidence.

92. All of the above having been said, the courts have warned tribunals against getting bogged down in issues related to the burden of proof – **Hewage v Grampian Health Board [2012] ICR 1054**.

93. In some cases, it may be appropriate for the tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, in the absence of a satisfactory explanation, would have been capable of amounting to a prima facie case of discrimination.

Failure to make reasonable adjustments

94. The relevant parts of section 20 and 21 of the Act provides as far as relevant:

20 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.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled,

to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

(a) removing the physical feature in question,

(b) altering it, or

(c) providing a reasonable means of avoiding it.

(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

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.

95. The duty to make reasonable adjustments is unique as it requires positive action by employers to avoid substantial disadvantage caused to disabled people by aspects of the workplace. To that extent it can require an employer to treat a disabled person more favourably than others are treated.

96. Turning now to substantial disadvantage. My task is to set out the nature, effects and extent of the alleged substantial disadvantage and assess it objectively. In other words, I must consider why the PCP or lack of auxiliary aid puts the claimant at the alleged disadvantage and ask myself what specific thing it is about the PCP or lack of auxiliary aid that puts the claimant at the alleged disadvantage.

97. There is no requirement in the Act for a strict causation test linking the disadvantage caused by the PCP to the claimant's alleged disability. All that is necessary is that the claimant prove facts from which a tribunal could infer that the PCP or lack of auxiliary aid simply put the claimant at either:

    a. a disadvantage compared to non -disabled people because they are a disabled person (rather than because of the disability); or

    b. that because the claimant was a disabled person, the PCP or lack of auxiliary aid, whilst causing a disadvantage to everyone whether disabled or not, put the claimant at a more severe disadvantage because they were a disabled person when compared to non-disabled people

Sheikholeslami v University of Edinburgh UKEATS/0014/17 [2018] IRLR 1090.

Discrimination arising from disability (section 15 Equality Act 2010)

98. Section 15 of the Act provides as follows:

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.

99. The approach to complaints of discrimination arising from disability was considered in detail by the Employment Appeal tribunal in **Pnaiser v NHS England [2016] IRLR 170**:

"(a) A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

(b) The tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The "something" that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or they did is simply irrelevant: see ***Nagarajan v London Regional Transport [1999] IRLR 572****. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises …*

(d) The tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'.

That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of s.15 of the Act … the statutory purpose which appears from the wording of s.15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

…

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

…

…

(i) As Langstaff P held in ***Weerasinghe****, it does not matter precisely in which order these questions are addressed. Depending on the facts, a tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability.*

……..

Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to “something” that caused the unfavourable treatment."

Analysis and conclusion

Reasonable adjustments

Lack of an auxiliary aid

Did the lack of an auxiliary aid, namely:

standing desk;

noise-cancelling earphones/headphones;

grammar assistance software;

time management software;

adjustable chair;

rotating footstool;

iPad for above software;

lamp which had effect of damping light coming from screens.

place the claimant at a substantial disadvantage compared to someone without the claimant's disability in that:

The claimant had:

difficulty with time management;

difficulty with document organisation.

100. Turning firstly to deal with the claimant's claim that the lack of an auxiliary aid placed him at a substantial disadvantage compared to somebody without his disability.

101. In the list of issues at paragraph 69 above, the claimant listed eight auxiliary aids which he said he didn't have, and which placed him at a substantial disadvantage compared to someone without the claimant's disability in that the claimant had:

a. difficulty with time management;

b. difficulty with document organisation.

102. I have found at paragraphs 36 and 38 above that the claimant said in May 2024 that all reasonable adjustments have been put in place and the only adjustment that was not put in place, because the software was not compatible with the respondent IT systems, was the grammarly assistance software.

103. The claimant did not give evidence himself to say which of the eight auxiliary aids were not given to him, or alternatively if they were given to him too late, when there were given to him.

104. I therefore conclude that the claimant has not discharged the burden of proof to establish facts from which I could conclude that any of the auxiliary aids, other than the grammar assistance software which is admitted by the respondent, was not provided to the claimant.

105. The claimant did not give any evidence about what the substantial disadvantage was said to be by the alleged failure to provide the auxiliary aids. Nor was I not told how those auxiliary aids would have alleviated any potential disadvantage the claimant might have due to his ADHD.

106. I have therefore concluded that the claimant has not discharged the burden of proof to establish facts from which I could conclude that the claimant was placed at a substantial disadvantage by the failure to provide the auxiliary aids.

107. The claimant provided more detail about auxiliary aids that were not provided at all, were provided late, or were only partly provided, in his written closing submissions. I attached little weight to this information because by this stage, the information had not been tested. Ms Ismail didn't have the opportunity to challenge the claimant's version of events because none of this detail was provided in his witness statement.

108. I would add that the claimant does not explain in his closing submissions (or indeed in his witness statement) how the alleged lack of these auxiliary aids at the relevant time placed him at a substantial disadvantage because of his ADHD. I needed to know exactly how the lack of each of these auxiliary aids placed him at a substantial disadvantage due to his disability to determine whether it was reasonable for the respondent to provide them. Just because access to work recommended them doesn't mean that it was reasonable in law for the respondent to provide them.

109. I therefore cannot properly conclude, based on the evidence available, that any of the eight auxiliary aids would have removed or materially reduced any disadvantage the claimant might have due to his ADHD.

110. Having reached this finding, I conclude that the claimant has failed to prove any facts from which, absent a reasonable explanation, the tribunal can conclude there has been a failure to make reasonable adjustments due to a lack of the provision of auxiliary aids. For this reason, this claim must fail.

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

111. Whilst I do not strictly need to make the finding on this question as I have already found this claim must fail, I have concluded at paragraph 3637 that the claimant told Claire Green on 15 May 2024 all adjustments he needed to carry out his role were in place. In paragraph 44 I have found that the only other disadvantage raised by the claimant was his ability to organise himself, and he himself said this disadvantage could be removed by him using Excel to help organise himself.

112. I have found at paragraph 39 that the claimant refused to engage with occupational health, which the respondent had suggested to the claimant enable them to understand whether any further adjustments were required.

113. I therefore conclude that the respondent did not know that the claimant was likely to be placed at a disadvantage due to his ADHD as he specifically told Claire Green that all adjustments were in place by 15 May 2024 and he had himself come up with a solution to help him organise himself by using Excel.

114. Given the claimant himself had refused to engage with occupational health and given he had himself said all reasonable adjustments have been made by 15 May 2024, it was not reasonable of the respondent in the

circumstances to make any further enquiries to know whether the claimant was likely to be placed at a disadvantage due to his disability.

What steps could have been taken to avoid the disadvantage?

115. Whilst I do not strictly need to make the finding on this question as I have already found this claim must fail, given I have found in paragraphs 113 and 114 above that there was no disadvantage, there were no further steps that the respondent could have taken to avoid a disadvantage.

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

116. No, it was not.

Did the respondent fail to take those steps?

117. No, they did not.

Application of a provision criterion or practice

Did the respondent apply the following provision, criterion or practice (PCP): requirement for employees to perform the duties, tasks and responsibilities of their role.

118. I find that the requirement that the respondent had for employees to perform the duties, tasks and responsibilities of their role did place the claimant at a substantial disadvantage due to his ADHD as the claimant had difficulty with time management and document organisation.

119. I've accepted the claimant's evidence that he had functional difficulty in time management and organisation which was evident from the access to work assessment and the medical evidence in the bundle. In reaching this conclusion I don't agree with Ms Ismail that the claimant has not provided evidence on how the PCP put him at a substantial disadvantage due to his disability.

120. The claimant's witness evidence referred to in paragraph 119 was not challenged by the respondent, and I find that the claimant was therefore placed at a substantial disadvantage due to his ADHD as the claimant had difficulty with time management and document organisation.

If yes, did the respondent know – or ought it reasonably to have known – that:

a. the claimant was disabled because of ADHD, and if so from what date;

b. the claimant was put to those disadvantages, and if so from what date;

121. The respondent agrees they had knowledge of the claimant's ADHD at all material times.

122. I find that the respondent was aware that the claimant was disadvantaged due to his ADHD because he had difficulty with time management and document organisation as this was evident from the issues identified with the claimant's performance by Niall Taylor and the adjustments that the respondent implemented to support the claimant.

Would taking the following step have avoided or materially reduced those disadvantages:

a. ADHD coaching sessions to assist the claimant in time management and document organisation.

123. As I have found in paragraphs 27 and 28 above, the claimant had already been provided with eight ADHD coaching sessions and could have asked for more sessions, which would have been provided by the respondent, had he chosen to.

124. As I have found in paragraph 36, the claimant agreed in evidence that during the meeting on 15 May 2024 with Claire Greene:

a. he didn't suggest any further reasonable adjustments that were required.

b. all reasonable adjustments had been put in place.

125. I conclude that no further ADHD coaching sessions would have avoided or materially reduced those disadvantages, because the claimant did not identify evidence to the tribunal how they would have done so. Nor did the claimant say to the respondent during his employment that further ADHD coaching sessions were required for any reason.

126. The claimant does say in his closing submissions that ADHD coaching sessions began late and were not provided to the full level recommended. Unfortunately, this evidence was not in the claimant's witness statement and therefore could not be challenged by Ms Ismail and I therefore attached little weight to it.

127. In addition, the claimant doesn't say how further ADHD coaching sessions would remove the disadvantage he suffered either in his evidence or his closing submission.

128. Having reached this finding, I conclude that the claimant has failed to prove any facts from which, absent a reasonable explanation, the tribunal can conclude further ADHD coaching sessions would remove the disadvantage he suffered and therefore that there might be a failure to provide reasonable adjustment. For this reason, this claim must fail.

If yes, did the respondent take those steps? The claimant accepts the respondent provided 8 ADHD coaching sessions, but say he should have had 16 sessions because that was the recommended number of

ADHD coaching sessions. Did the respondent breach any duty to have to make any reasonable adjustments for the claimant?

129. Whilst I do not strictly need to make a finding on this point, given my conclusion in paragraph 128 above, I conclude that the respondent did not fail to take those steps required to provide the ADHD coaching as a sessions were provided to the claimant and was therefore no breach of the duty to make reasonable adjustments for the claimant.

Discrimination arising from disability

130. As I have said in paragraph 80 above, the respondent has agreed that the claimant's dismissal on 3 September 2024 was unfavourable treatment.

Did the respondent dismiss the claimant because of his absence from work or poor performance.

131. As I've found at paragraph 64 above, the reason the claimant was dismissed by Ms Greene on 30 September 2024 was because the claimant had failed to *report* his Second Period of Absence to the respondent, not because of his absence from work or poor performance..

132. Applying **Weerasinghe** (as referred to in paragraph 99 above) I ask myself why the respondent dismissed the claimant to answer the question whether it was because of "something arising in consequence of the claimant's disability".

133. The key question for me therefore is whether the claimant's failure to report his Second Period of Absence to the respondent was something that arose *in consequence* of the claimant's ADHD (my emphasis).

134. As I have concluded in paragraph 61 above, the reason the claimant did not report his Second Period of Absence was because he was burnt out, lacked energy, was fatigued, which was not something that was said by the claimant in his evidence to have arisen in consequence of his ADHD.

135. I therefore conclude, based on the claimant's own evidence, that the claimant's failure to report his Second Period of Absence did not arise in consequence of the claimant's ADHD.

136. This claim therefore fails at this stage, as the reason for the claimant's dismissal was his failure to report his Second Period of Absence which did not arise in consequence of the claimant's ADHD.

137. I need not analyse the questions at paragraphs 83 above.

Approved by:

Employment Judge Childe

5 December 2025

Note

Public access to employment tribunal decisions

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