Case Number: 2502754/2023

EMPLOYMENT TRIBUNALS

Claimant: **Mr Toheed Hussain**

Respondent: **Armstrong Watson LLP**

Heard at: **Newcastle** **On:** **6 - 10 October 2025**

Before: **Employment Judge Robertson**
Mrs P Wright
Mrs L Jackson

Representation
Claimant: In person
Respondent: Mr T Benjamin, counsel

JUDGMENT

1. This is the unanimous judgment of the Tribunal.

2. The claimant's complaint of unlawful disability-related discrimination under section 15 of the Equality Act 2010 is well-founded and succeeds.

3. The Tribunal will determine remedy at a hearing on 18 November 2025. Case Management Orders for that hearing are in a separate document.

REASONS

Introduction

1. The claimant, Toheed Hussain, was employed by the respondent, Armstrong Watson LLP, as a Tax Compliance Assistant for just under two months from 31 July to 27 September 2023.

2. In this case the claimant brings complaints of (1) unlawful disability-related discrimination and (2) failure to comply with the duty to make reasonable adjustments under, respectively, (1) sections 15 and 39(2) and (2) sections 20, 21 and 39(5) of the Equality Act 2010.

3. The Tribunal heard the claim over five days from 6 to 10 October 2025. The claimant represented himself and gave evidence. The respondent was represented by Mr T Benjamin, counsel, who called evidence from Ms K Clarke (Tax Compliance Manager), Ms T Cousin (Group Tax Compliance Manager), Mr

M Beauchamp (Head of People), Ms L Reay (Tax Compliance Manager) and Mrs C Bradley (Business Services Senior Manager). The Tribunal had before it an agreed bundle of documents of approximately 350 pages and considered documents from it which were referred to in evidence or submissions. References in these reasons to page numbers are to this agreed bundle of documents. The Tribunal announced its decision with brief reasons at the end of the hearing and these are the full written reasons.

The issues

4. There is an agreed List of Issues in the case (50-52). It reads as follows, omitting at this stage issues which relate only to remedy:

"Disability

1. The respondent has confirmed that they accept the claimant is disabled due to the pleaded impairment of epilepsy.

Discrimination arising from disability (Equality Act 2010 section 15)

2. Did the respondent treat the claimant unfavourably by:

2.1 From 31 July 2023 questioning the extra rime the claimant spent on tax returns;

2.2 Ignoring the alleged request by the claimant on 31 July 2023 for extra time to complete tax returns.

3. Did the following things arise in consequence of the claimant's disability:

3.1 The claimant needing to spend extra time preparing tax returns;

3.2 The claimant's alleged inability to comply with the respondent's alleged 80% efficiency target.

4. Was the unfavourable treatment because of any of those things?

5. If (which is not admitted) the respondent treated the claimant unfavourably because of something arising in consequence of his disability, was such treatment a proportionate means of achieving the respondent's legitimate aim of ensuring the timely and effective discharge of its professional obligations to its tax clients?[1]

6. The Tribunal will decide in particular:

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

6.2 Could something less discriminatory have been done instead;

6.3 How should the needs of the claimant and the respondent be balanced?

Reasonable adjustments (Equality Act 2010 sections 20 & 21)

7. A "PCP" is a provision, criterion or practice. Did the respondent have either of the following PCPs:

7.1 An 80% efficiency target;

7.2 A requirement for the claimant to complete each tax return within a period of around one hour.

[1] This wording (which is different from what appears in the agreed List of Issues in the hearing bundle) reflects paragraph 31 of the respondent's amended Grounds of Resistance. The parties agreed that it should appear in the agreed List of Issues.

8. If the respondent had either or both of these PCPs, did they put the claimant at a substantial disadvantage compared to someone without the claimant's disability?

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

9.1 Allowing the claimant to prepare tax returns with extra time;

9.2 Refraining from placing the claimant under time pressure while preparing tax returns.

10. Was it reasonable for the respondent to have to take those steps?

11 Did the respondent fail to take those steps?"

Findings of fact

5. The Tribunal's findings of fact are as follows. Where there has been any material conflict of evidence, the Tribunal explains at the relevant point how it has resolved it.

6. The respondent, Armstrong Watson LLP, is a substantial firm of chartered accountants. Part of its business is the preparation of tax returns and provision of tax advice to its clients.

7. The claimant, Toheed Hussain, has the impairment of temporal lobe epilepsy. The respondent admits that all material times, he satisfied the definition of disability in section 6 of the Equality Act 2010. At the time of his employment, the claimant experienced up to 20 focal seizures per day, of varying duration and impact on him, but mostly brief. These focal seizures (which the claimant also described as "absence seizures") sometimes had a significant effect on the claimant's memory, concentration and processing ability, resulting in him taking longer to undertake tasks. The impact on memory, concentration and processing skills meant that the claimant adopted the strategy of writing down or making notes of information, especially information conveyed orally, so that he could more readily retrieve it. The claimant also had seizures with more pronounced physical effects but less frequently and the focal seizures are the significant issue in this case.

8. The claimant began his employment with the respondent as a Tax Compliance Assistant on 31 July 2023. The major part of his duties was the preparation of tax returns for clients. His employment was subject to a six-month probationary period, although the respondent retained the right to terminate employment during the probationary period. Ahead of starting employment, on 19 July 2023 the claimant completed the respondent's New Starter Form, in which he referred to his epilepsy and said that he would explain his health condition to his line manager on his first day (68).

9. In 2018, when the claimant was at university, a comprehensive Needs Assessment Report had been prepared which identified a range of equipment and adjustments which he needed to assist him in his studies. The Tribunal will return to this report ("the Broadbent report") later in these findings of fact. More recently, in August 2022 a further Needs Assessment Report (93-101) had been prepared by Access to Work People Plus ("the People Plus report") in connection with the claimant's previous employment with RMT Accountants. The claimant organised the transfer of his Access to Work support to the respondent and the respondent was advised of this by Access to Work on 20 July 2023 (89).

10. On 1 August 2023 the claimant sent a copy of the People Plus Report to Lucy Armstrong in the respondent's People Team (92). The Tribunal has seen a copy of the report. It included a description of the claimant's disability (94) identifying possible effects of fatigue and stress triggering seizures, and in a section headed "barriers and recommendations" (95) said, amongst other matters,

"Epilepsy affects memory and processing skills and as a result of this, tasks can sometimes take him longer"

and

"…. he struggles with memory and processing skills…and when taking notes and trying to keep up with the pace, he can become stressed".

The report made eight recommendations, including the provision of a Microsoft Surface Go tablet computer to assist the claimant in taking notes, and to enable him to be more efficient and help with time management. For context, the impact of the claimant's epilepsy on his memory meant that he relied on taking notes, and the Surface Go assisted him in doing this. There was no recommendation that the claimant be allowed more time to undertake tasks. The words quoted above were the only reference in the report to the time taken on tasks.

11. On 31 July 2023, his first day, the claimant met his line manager, Karen Clarke. They discussed the adjustments he required at work, but there is a conflict of evidence about whether he informed her that he needed extra time to undertake his tasks. The claimant says he did, Mr Clarke says he did not. There are no contemporaneous notes of the meeting but on 1 August 2023 (102), Ms Clarke emailed Ms Armstrong in the People Team and her line manager (Teresa Cousin) with a summary of what had been discussed and what adjustments were needed. In the email Ms Clarke said that the claimant had epilepsy and had told her that he could have seizures which usually occurred about two to three times per month. He needed his colleagues to be aware of this and what to do. She made no mention of a request for extra time but said that the claimant needed the Surface Go tablet to help him with his studying (which was soon coming to an end)[2]. She sought advice about what to do in the event of a seizure at work and "anything else we need to have in place". The Tribunal finds that if the claimant had asked for extra time at the meeting on 31 July 2023, Ms Clarke would have mentioned it in her detailed and almost contemporaneous email to her line manager, and finds as fact that the claimant did not make such a request on that occasion.

12. On 3 August 2023 Ms Armstrong and Ms Cousin met the claimant. By then the claimant had sent Ms Armstrong a copy of the People Plus report. The outcome was summarised in an email on 4 August 2023 (109-110) which discussed the necessary arrangements for what in the hearing were described as "first aid adjustments" (in the event the claimant experienced a seizure at work) but also mentioned discussion about the claimant managing his workload and having someone available to him to answer questions, to alleviate stress. (It appears from timesheets that such conversations did take place (198-206)). In the email Ms Armstrong asked the claimant if there were any other adjustments

[2] The claimant was studying for the Association of Accounting Technicians (AAT) qualification.

his previous employer had made for him. His response was that they had not made any.

13. Also following the meeting on 3 August 2023, the respondent prepared, in consultation with the claimant, a written risk assessment dated 9 August 2023 (121). In terms of avoiding stress, which was an issue for the claimant as stress could trigger seizures, the measures identified were a constant stream of work and the claimant reporting any concerns about stress to his line manager. On 14 August 2023 (105) the claimant emailed Ms Armstrong and the respondent's Head of People, Mark Beauchamp, to say

"I have read the risk assessment, I don't think anything needs amending or adding to it. If my condition changes, I will let a member of the People Team know".

Ms Armstrong replied that the risk assessment would be reviewed in three months' time.

14. The claimant, in common with all the respondent's employees, was required to complete a timesheet. This recorded, in six-minute "units", what he did in his working time, and included chargeable work (which would be charged to a client), practice management, practice development and training. (There may have been other categories, but these were the ones mentioned in evidence.) All employees were expected to achieve 80% of their time as chargeable time. The claimant described this in evidence as an "efficiency target", but the term used by the respondent in contemporaneous emails and in evidence was "utilisation target", and the Tribunal will use this term. It was a measure of how employees were using their working time, with the emphasis on chargeable time.

15. The time required to complete each tax return would vary. Each tax return had a budget, which would depend on the nature and complexity of the work, the fee agreed with the client and the amount of time an employee would be expected to spend on the job. If too much time was spent on the job, the work might end up being done at a loss.

16. On 30 August 2023 Ms Clarke provided feedback on a tax return the claimant had prepared for her approval (129). She raised a number of matters about the content but noted specifically that the claimant had spent 4.3 hours on the return and asked why he had spent 1.4 hours on what was described as "passing missing information to KC" when she knew that the information had been minimal. In evidence, Ms Clarke told the Tribunal that 4.3 hours was significantly more than she would expect an employee of the claimant's experience to take (as he had undertaken similar work with his previous employer and was well on with his AAT studies).

17. The next day, 31 August 2023, Ms Clarke held a scheduled probation review meeting with the claimant. The Tribunal has a copy of the online note of the review (137). The claimant was rated as good on everything except efficiency, for which the grade was "requires improvement". The areas for improvement were identified as

"Efficiency and organisation to be improved – time/costs, note-keeping etc."

Ms Clarke told the Tribunal that the issues were about ensuring the claimant recorded time against clients rather than using non-chargeable categories and

kept his notes in one place rather than on “scraps of paper or post it notes” (and she provided him with a notebook for the purpose). The claimant agreed that he needed to work on his efficiency but did not ask for more time or question the 80% changeable time expectation. The claimant was able to make amendments to the online record of the meeting if he wished, but did not do so.

18. The review meeting on 31 August 2023 (and Ms Clarke’s email of 30 August 2023 which preceded it) were, as far as the Tribunal is aware, the first occasions on which the claimant’s efficiency was called into question. Ms Clarke knew that the claimant needed to make notes to assist in his work and commented on the way he did that. It will be recalled that the respondent had agreed to provide the claimant with a Surface Go tablet for his notes but delay and technical issues arose with that and instead the claimant was provided with a notebook in the interim. As to time-recording, Ms Clarke was encouraging the claimant to ensure he recorded time as chargeable where possible.

19. On 14 September 2023 Ms Clarke met the claimant and followed up the meeting with an email (144). The same day Ms Cousin emailed the claimant (142). In each case the issue was the amount of time the claimant had charged to clients on his timesheet. Ms Clarke reminded the claimant about the procedure for recording time and said:

“it’s looking at the total time it is taking to do a return and if that time is reflective of the work involved, and if not, understanding why it’s taking longer. If it’s regarding uncertainty on processes or if there are any other reasons you think work is taking longer, please flag up to us”.

Ms Clarke then explained what the respondent’s 80% utilisation target was:

“80% of your time should be chargeable”.

In her email to the claimant, Ms Cousin said:

“Given the length of time taken, are there areas where you are struggling and need extra support?”

20. In response to these emails, the claimant asked for a meeting with Ms Cousin. The meeting took place the next day,15 September 2023. The claimant prepared a briefing note for himself ahead of the meeting (146). In her evidence, Ms Cousin explained (witness statement, paragraph 20) that she told the claimant how long she would have expected the tax return to have taken – for her, 30 minutes, for anyone else, 30 to 42 minutes, but no longer than an hour, and it had taken the claimant two hours 42 minutes, and she asked what would help him. The claimant told Ms Cousin that due to his disability, he had created a checklist to remind him of the areas he needed to cover when preparing the tax return and he made notes of the information he obtained and copied then into the checklist, and he said that process meant it took him longer. Ms Cousin said that everybody followed the same process when preparing a tax return (even if they did not write it down on a checklist). On the claimant’s request for a structured stream of work, Ms Cousin said that she could give him three or four returns at a time but could not always predict what work would be available for any given week, and she asked him to make it known if he was about to run out.

21. The claimant replied the same day (149). He said:

“The time I spend can be attributed to the problems I have with my poor memory as a result of my

disability and the subsequent tax return process I follow. This is something I know will improve in time but I hope provided an explanation for the time charged to date."

The claimant also said that a list of work in advance would assist in reducing the time he charged to practice management.

22. Ms Cousin responded (148). She referenced the claimant's request for a list of work, and the issue of the amount of time being charged to clients, and continued:

"The time charged does need to be recoverable, as we cannot, as a business, continue to work in a way which is not profitable. You therefore need to be mindful that you are approaching the job correctly and efficiently so that you are not charging inappropriate amounts of time to the clients".

She concluded that this would be followed up by Ms Clarke in the claimant's next probationary review.

23. It is clear that in these communications, Ms Cousin was raising with the claimant her concern about the amount of time he was taking to complete tax returns. This was to be discussed in the next probationary review. She was asking him to record chargeable time against clients but to be mindful that the time charged needed to be recoverable. The claimant, on the other hand, had given her a disability-related explanation for why the work was taking him longer; but he did not offer any solutions to the issue except that it would help to have a list of work and he knew things would improve in time. He did not ask for the 80% utilisation target to be relaxed or removed or in some other way to be allowed more time to complete the tax returns.

24. The 80% target was the amount of an individual's recorded time which was required to be chargeable. The claimant accepted in evidence that if he spent more time than usual on a tax return, it might still be recorded as chargeable (in respect of achieving the 80% target) but equally if he had a seizure or was having to transfer information to his checklist, he could not record that time as chargeable. Ms Cousin observed in evidence that if the claimant's recorded time exceeded the budget for that task, by reference to the complexity of the work or the amount of time the work was benchmarked to take, the work might be done at a loss or might not be recoverable from the client, which would not be sustainable.

25. Three comments need to be made here. First, the Tribunal did not receive a schedule or account of how much time the claimant recorded as chargeable against what was budgeted for the job. The Tribunal had only the two examples already mentioned. Second, the Tribunal was not told by how much the claimant fell short of the 80% utilisation expectation. Third, the claimant could not explain to the Tribunal why he did not record information directly on to his checklist rather than writing it on scraps of paper and transcribing it. But what is clear is that Ms Clarke and Ms Cousin were challenging the time he spent and his performance against utilisation and asking him for improvement.

26. The claimant attended a meeting with Ms Clarke and Mr Beauchamp on 20 September 2023. This was not a scheduled probation review meeting. Ahead of the meeting, Ms Clark prepared a list of concerns with the claimant's performance, under the headings of "efficiency, organisation and technical skills" (152), which the Tribunal will set out verbatim:

“Efficiency

- Large amounts of time to clients for relatively straight forward returns

- Time is split between client code and training so time spent is even more than expected

- We understand he is new to processes but CCH/PerTax isn’t new so would expect majority of tax return time to relate to actual work not new system/process issues

- No understandings around commerciality and costs need to be less than fees to make profit, been told on numerous occasions about this – stated that perhaps time should be on training instead of client but this just moves the time rather than addressing why it takes so long

- Certain amount of time charged earlier in the day then at end of the day this appears to have been topped up to reach correct number of working hours

- Time charged to discussing non-work-related things on timesheet – i.e. CTA discussion – this isn’t something that is relevant at this point in time and is a conversation that can be had but not really charged as doesn’t relate to current role

- Scanning – when things are scanned in no checks if scans successful or scanned correctly which is vital in a paperless work environment

- This week I note that he is asking how long things should take and now charging that but excess hours are being worked to get the right amount of time on timesheet but this isn’t the answer as not sustainable, especially when it gets to busier months and doesn’t answer the question of why things are taking so long

Organisation

- When asking questions verbally, then often info is written down but on scrappy bits of paper and post it notes and notes don’t appear to be organised into a notebook, when theses have been provided so at times questions are being asked repeatedly

- When tasks are explained and answer given, then noted that half an hour/hour later the same questions are being asked again – this comes back to organisation and note taking

- Doesn’t always seem aware of who conversations are held with and need reminding of members of team who have dealt with often – calling me wrong name, unsure of who Laura is and meeting with Teresa in third person

- Not listening to instructions – approaching wrong people and not doing as asked

Technical Skills

- Aware that he had primarily been dealing with medical clients but there is a lot of cross over knowledge to the kind of returns we do here so technical knowledge is very limited given where at in studies and after 2 years of experience – another team member at same place in studies and Toheed knowledge is brand new trainee

- Research time charged into same kind thing e.g. rental expenses

- Picking up on tasks outside of tax return preparation appear to be more challenging than they should be but this is part of the role so should be able to pick up additional tasks.”

Whilst some of the items in the list related to technical issues, the majority concerned the time being taken by the claimant, his recording of time and his efficiency – for example, the first entry under “efficiency” was:

“Large amounts of time to clients for relatively straightforward returns.”

27. As to the purpose of the meeting, Ms Clarke told the Tribunal that:

"There was a list of concerns that we felt we needed to address with the claimant to determine if it was feasible to continue to employ the claimant."

Mr Beauchamp decided that the meeting should be a "protected conversation" as a possible outcome was the termination of the claimant's employment. Before the meeting began, Mr Beauchamp told the claimant what that meant, that there were concerns around his performance and the probationary period, and

"We would be looking at the best way we could part ways if necessary".

He said Mr Clarke would be going through the areas of concern.

28. There were no notes taken of the meeting. The Tribunal found this surprising for an important meeting at which the claimant's employment might be terminated, but it may explain why neither the claimant not Mr Beauchamp or Ms Clarke explained in their witness statements what factually took place. However, when questioned about it, Mr Beauchamp and Mr Clarke described the events in detail in a way which was consistent with each other and explained subsequent events and which the Tribunal accepts.

29. As Ms Clarke began to explain the concerns to the claimant by going through the list, but, as Mr Beauchamp said in evidence, "before we had got a quarter of the way through", the claimant interjected and said that the problems were because he had not had reasonable adjustments made. He referred to the Broadbent report and said that, because of that report, he was requesting extra time. At that point Mr Beauchamp "closed down" the meeting and said that once he had received a copy of the report, as this was the first time he had known of its existence, he would schedule a probationary review meeting where the report and the issues about performance and possible adjustments would be explored. At that point the meeting ended.

30. The claimant sent a copy of the report to Mr Beauchamp on 25 September 2023 (155). In the covering email the claimant said that

"Reading this report will make a start at introducing reasonable adjustments to improve my efficiency in the role."

31. The report, prepared by an independent assessment centre, Broadbent & Co, in November 2018, was very detailed (272-305). It dealt with recommended adjustments and arrangements to assist the claimant in his studies at Newcastle University. It did not address workplace adjustments. It recommended, in summary, access to specialist software, the provision of lecture notes in advance, the provision of a mentor, extension of coursework submission deadlines, a 25% extra time allowance for examinations and assessments, a separate room, adjustments to lighting and rest breaks.

32. On 26 September 2023 Ms Clarke wrote to the claimant inviting him to a probationary review meeting on 28 September 2023 (158) This was as foreshadowed by Mr Beauchamp at the meeting on 20 September 2023. At that point on 26 September 2023 when the letter was sent, Mr Beauchamp had "only glanced" at the Broadbent report and had not considered it in detail. The letter was a standard letter, a template letter, with information about the claimant inserted by the People Team. Mr Beauchamp saw it and approved it and

forwarded it to Ms Clarke who sent it out under her name.

33. The letter was as follows:

"When you commenced employment with Armstrong Watson on 31 July 2023 in the role of Tax Compliance Assistant you were informed that your employment was subject to a probationary period.

During our probation review meeting on 31 August 2023, I outlined my concerns in relation to performance including but not limited to, incorrectly recording time on your timesheets, efficiency, skills, technical ability and organisation.

However, due to the continuous and seriousness of the concerns I have raised, I would like to invite you to attend a formal probation review meeting on 28 September at 10h30, in the Newcastle office. I will chair the meeting and Mark Beauchamp will be in attendance via Teams as a People Team representative. The meeting will be recorded digitally and you will be provided with a copy of the recording.

During the meeting I will conduct a review of your employment to date however I must remind you, that in accordance with your contract of employment, and due to continued concerns around your performance to date, a possible outcome of this probation review meeting is your employment with Armstrong Watson may be terminated.

You have the right to be accompanied to this meeting by a colleague, a trade union representative, or an official employed by a trade union. If you wish to be accompanied by someone, please let me know the name of your companion by close of business on 27 September 2023 to me via email. Please confirm your attendance for the above meeting, by close of business on 26 September 2023 to me via email.

If you have any questions about this meeting, please don't hesitate to contact me or Mark Beauchamp from the People Team."

34. The letter referenced the concerns about the claimant's performance. It said that Ms Clarke would conduct a review of the claimant's performance but warned that because of the seriousness of the concerns, a possible outcome was that the claimant's employment would be terminated. The letter made no reference to the meeting on 20 September 2023 or to the Broadbent report or to the intention that the report and possible adjustments would be explored at the meeting.

35. The Tribunal finds that the letter of 26 September 2023 was worded as it was because the respondent did have performance concerns which were to be discussed at the meeting on 28 September 2023 and a possible outcome of that meeting could have been the claimant's dismissal. It was a standard letter for that scenario. The Tribunal finds that Mr Beauchamp did still intend to discuss the Broadbent report and any possible adjustments along with the performance issues at the meeting. The letter did not reflect any decision by him that the report or adjustments would not be considered. He had not yet reviewed the Broadbent report, only glanced at it. However, as already said, the letter made no reference to the meeting on 20 September 2023 or to the Broadbent report or to the intention that the report and possible adjustments would be explored at the meeting.

36. In evidence, Mr Beauchamp said that it had been made clear to the claimant that the report would be explored at the probationary review meeting, but he accepted "with hindsight" that it would have been better if the letter had said that. He commented that allowing more time to complete work might be a reasonable adjustment if that was what the Broadbent report had said, and the claimant's request would at least have been considered. But because the claimant resigned,

the meeting did not take place and the report and possible adjustments were not considered or discussed with him.

37. Having initially confirmed that he would attend the meeting, the following day, 27 September 2023, the claimant resigned by email with four weeks' notice in accordance with his contract of employment (162). He gave no reasons for his resignation. Ms Cousin wrote to him 30 minutes later to accept the resignation and advised him that he would be paid in lieu of notice. T

38. The claimant said in evidence, and the Tribunal accepts, that he resigned because he thought he was going to be dismissed and preferred to resign to avoid that. He believed from the letter that the respondent did not intend to make adjustments and he did not want to be dismissed.

39. Thus the claimant's employment ended. A month later, he wrote to the respondent raising a grievance about his treatment and seeking a good reference and compensation. It is unnecessary for the Tribunal to say anything about the grievance at this stage, except to record that the claimant was asked whether he wanted his job back and replied that he did not. The grievance and an appeal were unsuccessful and the claimant presented this claim to the Tribunal on 27 December 2023.

Submissions

40. The claimant and Mr Bemjamin provided the Tribunal with written and oral submissions for which the Tribunal is grateful. The Tribunal will refer to these as necessary in its conclusions which follow.

Relevant law

41. The Tribunal turns to the relevant law, beginning with the section 15 complaint. Section 15 of the Equality Act 2020 is in the following terms.

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.

42. No issue arises of knowledge under section 15(2). The respondent knew at all material times that the claimant had the disability of epilepsy.

43. Section 39 of the 2010 Act sets out when discrimination in the employment field (which includes section 15 discrimination) will be unlawful. As far as is relevant, it says as follows:

"39 Employees and applicants

(1) ….

(2) An employer (A) must not discriminate against an employee of A's (B)—

(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

….

(5) A duty to make reasonable adjustments applies to an employer.

….

(7) In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment—

….

(b) by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice."

44. In this case the claimant says that he was subjected to a detriment (s.39(2)(d)). He says that he was treated unfavourably because of something arising in consequence of his disability and that unfavourable treatment amounted to detriment. He does not say that he was dismissed by the respondent in terms of section 39(7).

45. In **Pnaiser v NHS England [2016] IRLR 170,** the Employment Appeal Tribunal summarised the proper approach to determining section 15 claims, at paragraph 31:

"(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 section 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 she 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 section 15 of the Act (described comprehensively by Elisabeth Laing J in *Hall*), the statutory purpose which appears from the wording of section 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.

(e) For example, in *Land Registry v Houghton UKEAT/0149/14* a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The Tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

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

(g) [Counsel] argued that "a subjective approach infects the whole of section 15" by virtue of the requirement of knowledge in section 15(2) so that there must be, as she put it, 'discriminatory motivation' and the alleged discriminator must know that the 'something' that causes the treatment arises in consequence of disability. She relied on paragraphs 26 to 34 of Weerasinghe as supporting this approach, but in my judgment those paragraphs read properly do not support her submission, and indeed paragraph 34 highlights the difference between the two stages - the 'because of' stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the 'something arising in consequence' stage involving consideration of whether (as a matter of fact rather than belief) the 'something' was a consequence of the disability.

(h) Moreover, the statutory language of section 15(2) makes clear (as [counsel] accepts) that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of section 15 would be substantially restricted on [counsel's] construction, and there would be little or no difference between a direct disability discrimination claim under section 13 and a discrimination arising from disability claim under section 15.

(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."

46. The Tribunal must have regard to the Equality and Human Rights Commission's Statutory Code of Practice on Employment ("the Code of Practice") whenever dealing with one of these cases, as required by section 15(4)(b) of the Equality Act 2006.

47. The word "unfavourably" is not defined in the 2010 Act. The Code of Practice at paragraph 5.7 states that it means that the disabled person

" … must have been put at a disadvantage" …. Even if an employer thinks that they are acting in the best interests of a disabled person, they may still treat that person unfavourably."

48. Unfavourable treatment may be in consequence of a policy applying to everyone; it does not need to have been targeted at the disabled person. In **Williams v Trustees of Swansea University Pension and Assurance Scheme [2018] UKSC 65**, on the issue of whether Mr Williams had been treated unfavourably, Lord Carnwath said, at paragraph 27:

"In most cases (including the present) little is likely to be gained by seeking to draw narrow distinctions between the word "unfavourably" in section 15 and analogous concepts such as "disadvantage" or "detriment" found in other provisions, nor between

an objective and a "subjective/objective" approach. While the passages in the Code of Practice to which [Counsel} draws attention cannot replace the statutory words, they do in my view provide helpful advice as to the relatively low threshold of disadvantage which is sufficient to trigger the requirement to justify under this section…."

49. It is necessary to identify the relevant "treatment" before deciding whether it is unfavourable. Care needs to be taken to identify precisely what is said to be the unfavourable treatment. In **T-Systems Ltd v Lewis EAT 0042/15***,* the EAT noted that the tribunal had failed to define what the unfavourable treatment was alleged to be when the issues were identified. The EAT held that the unfavourable treatment was the claimant's dismissal, and the tribunal had erred in finding it to be "adding a factor (the claimant's inability to agree the new working pattern) to the balance in favour of dismissal." HHJ Richardson said:

"Unfavourable treatment is that which the putative discriminator does or says or omits to do or say which places the disabled person at a disadvantage. Here it was the dismissal. Unfavourable treatment is not the mental process which lead the putative discriminator to behave in that way."

50. It is no defence if the respondent did not know that the 'something' leading to the unfavourable treatment was a consequence of the disability. In **City of York Council v Grosset [2018] ICR 1492***,* the Court of Appeal held that dismissal for misconduct caused by disability could amount to section 15 discrimination even if the employer did not know that the disability caused the misconduct. The question of whether the "something" for section 15 purposes arises in consequence of the employee's disability is an objective matter. It is not possible to read into section15 a further requirement that the employer must have been aware of the link when choosing to subject the employee to the unfavourable treatment in question.

51. Under section 15(1)(b), the respondent will not be liable if it can prove that the unfavourable treatment was a proportionate means of achieving a legitimate aim. In many cases, the aim may be agreed to be legitimate but the argument will be about proportionality. This involves an objective balancing exercise between the reasonable needs of the respondent and the discriminatory effect on the claimant: see, in the related context of indirect discrimination, **Hampson v Department of Education and Science [1989] ICR 179 CA**.

52. Legitimate aims may include business needs, such as ensuring the business can meet its contractual obligations, although cost alone will not provide a justification for discriminatory treatment: **Woodcock v Cumbria Primary Care Trust [2012] ICR 1126, CA**. Legitimate aims are not limited to what was in the mind of the employer at the time it carried out the unfavourable treatment: **ICTS (UK) Ltd v Visram EAT 0344/15**.

53. Factors to be considered in the balancing exercise may include whether a lesser measure could have achieved the employer's legitimate aim. The Code of Practice at paragraph 4.31 notes that the measure adopted by the employer does not have to be the only possible way of achieving the legitimate aim, but the treatment will not be proportionate if less discriminatory measures could have been taken to achieve the same objective.

Discussion and conclusions

55. The first issue which the Tribunal must consider is what was the unfavourable treatment for which the claimant contends.

56. As the claimant reminds the Tribunal at paragraph 4 of his submissions, paragraph 2 of the agreed List of Issues sets out two acts of alleged unfavourable treatment: (1) from 31 July 2023 questioning the extra time the claimant spent on tax returns and (2) ignoring the claimant's request, made on 31 July 2023, for extra time to complete tax returns.

57. The Tribunal has found that the respondent challenged the amount of time the claimant was spending on tax returns on 30 and 31 August 2023 and 14, 15, 20 and 26 September 2023 (see paragraphs 16, 17, 19 – 22, 26 - 29 and 32 - 36 above). The threshold of disadvantage is low, and on these occasions the respondent was questioning the standard of the claimant's performance. On 20 and 26 September 2023 the claimant was advised that dismissal was a possible outcome of reviewing his performance. The Tribunal finds that on these occasions the respondent subjected the claimant to disadvantage. It is immaterial whether the respondent may have had genuine business reasons for questioning the claimant's performance or, as Mr Benjamin contends at paragraph 11 iv of his submissions, may have taken every reasonable step to assist the claimant; those matters go to possible justification under section 15(1)(b).

58. The Tribunal has found that the claimant did not make a request for extra time until 20 September 2023. Until that date, there was no request to ignore. On the facts found, the respondent did not ignore the request on 20 September 2023. Mr Beauchamp ended the meeting that day, at which the claimant made the request, so that he could receive and consider the Broadbent report on which the claimant relied for the request. Mr Beauchamp would have considered the request before and at the meeting on 28 September 2023 (even if the letter of 26 September 2023 did not communicate that). In this respect, the Tribunal finds that the respondent did not subject the claimant to disadvantage.

59. The Tribunal must then decide what caused the disadvantageous treatment, and whether that arose in consequence of the claimant's disability. The claimant says that what caused the respondent's management (Ms Clarke, Ms Cousin and Mr Beauchamp) to question the time he was taking to prepare tax returns was that he needed longer to prepare the tax returns and he was unable to meet the respondent's 80% efficiency target. He contends that this was because of his disability which affected his memory, concentration and processing ability.

60. The Tribunal has accepted the claimant's evidence that because of his disability, he experienced focal (or absence) seizures which impacted his memory, concentration and speed of processing. The claimant's evidence as to this was corroborated by the Broadbent and People Plus reports. This impacted his speed of work, not only because of the seizures themselves but also because, for example, he needed to make notes and use a checklist when preparing tax returns in order to recall information. The Tribunal also accepts that the claimant could not achieve the 80% utilisation target because of the additional time necessary to make notes and retrieve information.

61. The evidence was unclear as to the extent to which the claimant took longer time to prepare tax returns or failed to meet the 80% target. However, it is clear that it was sufficient for the respondent's management to raise concerns and question the claimant's performance, to the eventual extent of considering his dismissal. The Tribunal accepts that there may been other contributory factors (for example, learning the respondent's systems), but finds without difficulty on

clear evidence that the effects of the claimant's disability were a significant cause of the treatment of the claimant in challenging the speed of his work. The claimant's consistent evidence, corroborated by the contents of the Broadbent and People Plus reports, that his disability was the cause was not challenged by the respondent in the hearing. He respondent's management (Ms Clarke, Ms Cousin and Mr Beauchamp) challenged the claimant because they believed the claimant was taking too long to carry out the work for which he was employed. The undisputed evidence was that the claimant required more time to undertake the preparation of tax returns and this was in consequence of his disability.

62. The Tribunal finds, therefore, that the claimant has shown that he was subjected to unfavourable treatment because of something arising in consequence of his disability. The issue then is whether, within section 15(1)(b), the respondent has shown that the disadvantageous treatment was a proportionate means of achieving a legitimate aim.

63. The respondent's pleaded legitimate aim, as set out at paragraph 31 of the amended response and the (consequently amended) paragraph 5 of the List of Issues, was to ensure the timely and effective discharge of its professional obligations to its tax clients. It is clear that when challenging the claimant about the time taken to complete tax returns, they were concerned with work being done efficiently and profitably. That included the work being done within an appropriate length of time and being chargeable to clients. The Tribunal finds that the respondent as a professional services business was entitled to have the aim that work preparing tax returns was done profitably and this was why it challenged the claimant about the time he was taking. The Tribunal finds without difficulty that the respondent has shown that it had the legitimate aim for which it contends.

64. The position as to proportionality is more complex. In this regard, although Mr Benjamin has not directly addressed in his submissions the question of proportionality within section15(1)(b), the Tribunal has considered and taken into account his detailed submissions on the claimant's sections 20 and 21 reasonable adjustments claim which raises similar considerations.

65. The Tribunal has sought to carry out the required objective balancing exercise between the reasonable needs of the respondent and the discriminatory effect on the claimant of being challenged about the time he was taking. The Tribunal has looked at the treatment as a whole and as it developed and has had regard to the information the respondent sought from the claimant and what information he provided during the employment. The relevant factors in the Tribunal's view are these:

(a) The respondent knew from the beginning of the claimant's employment that the claimant was disabled. The respondent worked with the claimant in the early stages of his employment on implementing the reasonable adjustments recommended in the People Plus report and on preparing a risk assessment;

(b) The People Plus report stated that the claimant might sometimes take longer to complete tasks and might become stressed when trying to keep up with note-taking, but made no recommendations about the claimant being allowed more time. The Tribunal does not consider that the respondent should have realised from the report that the claimant might need more time for tasks;

(c) Despite having several opportunities to do so, the claimant did not request (until 20 September 2023) more time to complete tax returns. The respondent's management raised with the claimant their concern about the time he was taking on tax returns and repeatedly asked what they could do or what he needed to assist him. Although there is no obligation on an employee to identify reasonable adjustments, the claimant might reasonably have advised the respondent's management that he needed more time and why he needed it when the issue of his efficiency and the time he was taking was raised with him;

(d) The respondent had a clear and legitimate business need to ensure work was done efficiently and in a way which could be charged to clients at a profit;

(e) On 14 and 15 September 2023 the claimant specifically advised Ms Cousin that he adopted a process because of his disability that took more time. However, he did not at that point request more time;

(e) On balance, the Tribunal considers that the treatment of the claimant up to and including 15 September 2023 in challenging the amount of time the claimant was taking whilst explaining the need for work to be undertaken profitably and properly recorded and asking the claimant if there was any explanation for the time or help they could provide was proportionate within section 15(1)(b);

(f) The Tribunal is not persuaded that it was proportionate to arrange a meeting on 20 September 2023 at which the claimant was told he might be dismissed without a further attempt to explore why he was taking too much time and what might be done to address the issue. The Tribunal accepts that the respondent had genuine concerns about the claimant's performance, but by that stage, Ms Clarke and Mr Beauchamp should have been aware of at least the possibility that some of the performance issues as to time utilisation were disability-related. However, at that meeting the claimant, for the first time, requested extra time, by reference to the Broadbent report. Until then, the respondent was unaware of the existence of that report. Mr Beauchamp's response that once he had seen the report, the respondent would consider the claimant's performance and what adjustments might be made in the light of its contents was, it seems to the Tribunal, a proportionate response;

(g) However, on 26 September 2023 Ms Clarke invited the claimant to a probationary review meeting. The letter was produced by the respondent's People Team and approved by Mr Beauchamp. The letter referenced the concerns about the claimant's performance and advised him that because of their seriousness, the outcome of the review might be his dismissal. The letter made no reference to the meeting on 20 September 2023 or to the Broadbent report or to the intention that the report and possible adjustments would be explored at the meeting;

(h) The claimant interpreted the letter to mean that the respondent would not make any reasonable adjustments and that he would be dismissed at the meeting. Whilst the Tribunal has accepted Mr Beauchamp's evidence that he still intended to discuss the report at the meeting, the letter did not say that and the Tribunal accepts that the claimant could reasonably interpret the letter as he did. It conveyed the impression that notwithstanding the Broadbent report and his request for more time, the claimant would (or might be) be dismissed.

(i) The Tribunal finds that the respondent has not justified sending the letter in those terms to the claimant who had requested a disability-related adjustment in the form of more time. The Tribunal rejects Mr Beauchamp's assertion that the claimant should have known that the report and possible adjustments would be discussed at the meeting as it had been made clear on 20 September 2023, when the letter did not say that and conveyed a different position. The letter could and should have made clear what would happen at the meeting and that, in particular, reasonable adjustments would be discussed. It did not say that. The letter was a part of the disadvantageous treatment of the claimant and it led to the claimant's resignation. The respondent's action in sending that letter was not proportionate, and the Tribunal unanimously decides that the claimant's complaint under section 15 succeeds. The claim will now be listed for a remedy hearing, and Case Management Orders for that hearing will be given separately.

66. In light of the findings in respect of the section 15 claim, the Tribunal considers that it is neither necessary nor proportionate to reach a decision on the claimant's complaint of a failure to comply with the section 20/21 duty to make reasonable adjustments. That complaint relates to exactly the same matters as the section 15 complaint and is an alternative way of asserting that the respondent acted unlawfully in regard to those matters. The Employment Appeal Tribunal commented in **Carranza v General Dynamics Information Technology Ltd [2015] ICR 169** that cases brought as reasonable adjustments complaints are sometimes better analysed using section 15. This is such a complaint and is better expressed and dealt with under section 15, and to make findings under section 20/21 would add nothing in terms of outcome and possible remedy and would be a disproportionate use of the Tribunal's time.

Approved by: ***S D Robertson***

Employment Judge Robertson

13 October 2025

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: www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/