

Judgment approved by the court

Neutral Citation Number: [2026] EAT 159

Case No: EA-2023-001348-NK

**EMPLOYMENT APPEAL TRIBUNAL**

Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 19 October 2026

**Before:**

**JOHN BOWERS KC**  
**DEPUTY JUDGE OF THE HIGH COURT**

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**Between:**

**MR KAMRAN HUSSAIN**

**Appellant**

**- and -**

**LONDON FIRE COMMISSIONER**

**Respondent**

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**Fergus McCombie** (instructed by Excello Law) for the **Appellant**  
**Safia Tharoo** (instructed by London Fire Commissioner) for the **Respondent**

Hearing date: 08 October 2026  
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**JUDGMENT**

**SUMMARY****Disability discrimination**

Where the Claimant had been employed for some 14 years by this point; he had not previously raised any concerns that he might be dyslexic nor were there any previous indications of any impact on day to-day activities despite the fact that he had been through a number of assessments during that period, the tribunal could decide that the employer had done all that was reasonable to discover whether he was disabled.

In a s15 Equality Act claim where the Claimant contended that the “something arising” was “refusing to give a statement” it was inappropriate for the tribunal to answer the question by reference to the Claimant’s mental illness as the “something arising” under the section. This matter alone would be remitted to the tribunal for reconsideration.

**JOHN BOWERS KC, DEPUTY JUDGE OF THE HIGH COURT:**

1. The Claimant brought a multifaceted claim for discrimination but this appeal concerns only relatively limited issues on the application of the principles of disability discrimination. The first point is the meaning of constructive knowledge and the second concerns whether the Claimant's case on s15 of the Equality Act 2010 was properly considered by the tribunal. The tribunal hearing was held 18 days on dates between January and April 2023.

**Failure to assess what the Respondent ought to have known**

2. The Claimant started work as a fire fighter in 2004. The Respondent accepts that they were aware of his dyslexia from 14 October 2019 and that this was a disability for statutory purposes. The first issue on appeal is whether the Respondent should have known about this from an earlier date and it arises specifically under the terms of Schedule 8 para 20 of the Equality Act 2010. The essential error identified by the Appellant is that the tribunal failed to assess what the Respondent's managers ought to have known. Instead, it is said that they only made findings about what the Respondent's managers actually knew and that this was insufficient in itself to address the relevant issue.

3. The date of knowledge had a material impact on the proceedings because the ET considered only two of the eight PCPs relied upon in the Claimant's claim for reasonable adjustments because they pre-dated the Respondent's knowledge.

4. The facts which it is necessary to set out to understand this contention are within a relatively narrow compass. On 29 November 2017, the checklist link of the British Dyslexia Association was sent to the Claimant by the Respondent's Learning Support. On 6 December 2017 the Claimant completed that checklist with his line manager (Ben Dewis) and returned it to Learning Support. The checklist shows "mild dyslexia".

5. Between December 2017 and July 2018 there were various management actions to gain a

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dyslexia screening (known as LADS) test for the Claimant. These detail of these steps are set out extensively in the Tribunal's Reasons. In July 2018 the LADS result showed a "low" probability of dyslexia. No further assessment was carried out and it was the Respondent's policy not to do so in the circumstances of the case. In March 2019 the Respondent's managers decided to review the Claimant's case during his long period of sickness absence and to arrange for a further assessment. This led on 14 October 2019 to an educational psychologist report establishing disability by reason of dyslexia. The ET found that the Respondent had actual knowledge of the dyslexia at that point but not before.

6. The degree to which inquiries should be made to establish disability was first considered at appellate level in the Court of Appeal decision in **Gallop v. Newport City Council** [2014] IRLR 211. The ET had held that Mr Gallop was disabled, but the employer's medical advice at the time had been that he was not. Rimer LJ stated the principle as being that the ET could not view the employer as being entitled to deny relevant knowledge "*by relying simply on its unquestioning adoption of OH's unreasoned opinions that Mr Gallop was not a disabled person*" (para.41).

7. In **A Ltd v. Z** [2020] ICR 199 at para.23 HHJ Eady QC set out the key principles amongst which are these sub paragraphs which are relevant to this case

(5) The approach adopted to answering the question thus posed by section 15(2) is to be informed by the Code, which (relevantly) provides as follows:

"5.14 It is not enough for the employer to show that they did not know that the disabled person had the disability. They must also show that they could not reasonably have been expected to know about it. Employers should consider whether a worker has a disability even where one has not been formally disclosed, as, for example, not all workers who meet the definition of disability may think of themselves as a 'disabled person'.

5.15 An employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should

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consider issues of dignity and privacy and ensure that personal information is dealt with confidentially."

(6) It is not incumbent upon an employer to make every enquiry where there is little or no basis for doing so (*Ridout v TC Group* [1998] IRLR 628; *SoS for Work and Pensions v Alam* [2010] ICR 665).

(7) Reasonableness, for the purposes of section 15(2), must entail a balance between the strictures of making enquiries, the likelihood of such enquiries yielding results and the dignity and privacy of the employee, as recognised by the Code.

8. I emphasise that what emerges from the authorities is that the key test is one of reasonableness which is essentially an issue for the judgment of the tribunal which has heard the evidence.

9. Here the Claimant's case was based upon

a. The Respondent's administrative delays in proceeding from his raising his dyslexia in November 2017 through to the educational psychologist's report.

b. The fact that the Respondent had no new information about the Claimant's condition between July 2018 (the LADS assessment, ie Lucid Adult Dyslexia Screening) and March 2019 (the resumption of enquiries into his case). The Claimant's Counsel says that all that changed was that the Respondent decided to resume those enquiries.

The Claimant's case was that the decisive October 2019 assessment could and should have been arrived at significantly sooner, because the enquiries that were eventually made should reasonably have been made earlier than they were.

10. The Respondent countered that they did undertake further enquiries as referred to by the tribunal extensively at paragraphs 69-72. In particular the Respondent sought further information from Mr Dewis about the Claimant's difficulties, and this led to his being offered a LADS test which ultimately took place in July 2018. The result of this test was that the probability of the Claimant having dyslexia was deemed to be low. The ET also addressed the Claimant's concerns

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about the delay between December 2017 and July 2018 at paragraph 76.

11. I consider that read properly the tribunal did make findings about the reasonableness of the enquiries made. This goes through many paragraphs which it would be inappropriate to set out here save to say that in terms they did not find that the Claimant's line manager's awareness that the claimant was struggling in December 2017 was enough to indicate that the Claimant had dyslexia. That is a matter for their judgment. What is vital is that at the end of paragraph 75 they conclude "We do not find that the Respondent ought to have known either at the time of that assessment or earlier that the Claimant's dyslexia was likely to have had a substantial adverse effect on his day to day activities" and in paragraph 80 "until 14 October 2019 the Respondent lacked sufficient information to know *or from which it ought to have known*, that the Claimant was a disabled person" (my italics). They in effect decided here the issue of reasonableness against the Claimant's interests.

12. This was supported by the facts that where those enquiries showed that the probability of dyslexia was low, it was not reasonable to expect the Respondent to make further enquiries of any kind, nor could the Respondent be criticised for doing so. The ET reasonably came to this view I believe on the basis that the Claimant had been employed for some 14 years by this point; he had not previously raised any concerns that he might be dyslexic nor were there any previous indications of any impact on day to-day activities despite the fact that he had been through a number of assessments during that period. Albeit that the Code of Practice says that "An employer must do all they can reasonably be expected to do to find out if a worker has a disability" I think it was reasonable of the Respondent to do what it did here and no more was called for.

13. More importantly than what I believe, that is what the tribunal believed. Indeed the principles set out above do say that "It is not incumbent upon an employer to make every enquiry where there is little or no basis for doing so". I agree with Counsel for the Respondent that where the enquiries showed that the probability of dyslexia was low, it was not reasonable to expect the

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Respondent to make further enquiries, nor could the Respondent be criticised for not doing so. He had not previously raised any concerns that he might be dyslexic nor were there any previous indications of any impact on day-to-day activities despite the fact that he had been through a number of assessments during that period.

14. Although I accept that the tribunal might have set the point out more clearly, I thus dismiss the appeal on the first ground.

**S15 Equality Act 2010**

15. The appeal point raised on s.15 Equality Act 2010 is quite different and indeed relates to a different disability relied on by the Claimant, which is anxiety and depression. The scope of a claim s.15 is very wide. A person discriminates against a disabled person if “A treats B unfavourably because of something arising in consequence of B’s disability”. There is then a justification defence. The Claimant here contends that the tribunal misunderstood the nature of his claim. The agreed list of issues is clear in stating that the “something arising” was “refusing to give a statement” (Issue 10.2.7). The unfavourable treatment was essentially a more senior firefighter berating the Claimant for not making the statement (Issues 10.3.6 and 10.3.7). The statement sought was about a potential safety issue which had occurred, that the Claimant himself had raised with his managers.

16. The Closing Submissions for the Claimant included this sentence “*It is submitted that it is entirely convincing for C to argue that his poor mental health made him want to avoid giving evidence against a colleague and that this therefore arose in consequence of his disability.*” The mental health issue here was as I have said the disability of depression and anxiety.

17. The tribunal’s conclusion at paragraph 316 was that they did not “find that treatment of the Claimant ...was consciously or unconsciously influenced by the ‘something arising’ namely the Claimant’s mental health” but in fact as pleaded and stated in the List of Issues, the “something

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arising” was clearly the failure to provide the statement. I think that the ET here failed to capture the essential distinction between mental health and its alleged consequence, namely the Claimant’s unwillingness to provide a statement (although to an extent I accept that they may have been thrown off the scent by the precise way this was put in the Claimant Counsel’s submission that “*his poor mental health made him want to avoid giving evidence against a colleague*”).

18. The formulation at paragraph 316 means however that the tribunal did not apply the test set out in **Pnaiser v. NHS England** [2016] IRLR 170 per Simler P at para 31. They did recognise at the end of paragraph 316 that “there may be several links in the chain of causation” but they concentrated on the Claimant’s mental health as the “something arising” rather than the failure to provide the statement which was itself the Claimant contended caused from his mental health.

19. What it comes down to is that I do not think the tribunal answered the question posed clearly in the List of Issues. Counsel for the Respondent valiantly sought to uphold this result by reference to their conclusion on justification but I do not think this can stand bearing in mind they made a mistake as to what had to be justified. It is unsafe.

20. The tribunal also made an error of law in concentrating on the motive of the manager Mr Bannon contrary to the conclusion of **City of York Council v. Grosset** [2018] IRLR 746 (CA) para.39 per Sales LJ).

21. I thus allow this Ground of Appeal. I think this whole question of this allegation under s15 should be remitted to the same tribunal for further consideration by reference to the List of Issues. I think the whole issue should be considered afresh by the tribunal.

22. I am grateful to the parties for the clear and moderate way in which they made their submissions both in writing and orally.