EMPLOYMENT TRIBUNALS

Claimant:	**Mr Hama Marange**
Respondents:	**(1) Next Home Ltd** **(2) Mr David Stone**
Heard at:	**East London Hearing Centre (via CVP)**
On:	**19, 20, 21 and 22 November 2024**
Before:	**Employment Judge R Havard**
Members:	**Ms R Hewitt** **Ms G Forrest**

Representation

For the claimant:	In person
For the respondent:	Dr J Kerr, Counsel

RESERVED JUDGMENT

1 **The unanimous judgement of the Tribunal is that the Claimant's application for the Respondents' response to be struck out is refused;**

2 **The unanimous judgment of the Tribunal is that the Claimant's claim against the Respondents of discrimination arising from disability is not well founded and is dismissed;**

3 **The unanimous judgment of the Tribunal is that the Claimant's claim for the Respondents' failure to make reasonable adjustments is not well founded and is dismissed.**

REASONS

Introduction

1 By a claim form dated 30 June 2023, the Claimant indicated that he wished to pursue a claim in respect of:

1.1 Discrimination arising from a disability;

1.2 Failure by the Respondent to make reasonable adjustments, and

1.3 Unlawful deductions from wages.

2 The claim for unlawful deductions from wages was subsequently dismissed upon withdrawal of that claim by the Claimant.

3 The Respondents failed to file and serve a response within the requisite timescale and a preliminary hearing took place before Employment Judge Cowen on 24 October 2023 to consider whether it was appropriate to determine liability in accordance with Rule 21 of the Employment Tribunal Procedure Rules. Judge Cowen declined to do so and listed a preliminary hearing to decide the Rule 21 issue and, if appropriate, to determine remedy.

4 On 16 January 2024 the Respondents applied for an extension of time in which to serve their response and the application was allowed.

5 The Tribunal gave directions, allowing the Claimant to amend his particulars of claim and for the Respondent to provide an amended response.

6 The amended particulars of claim was dated 20 December 2023 and the amended response of both Respondents was accepted by the Tribunal in its letter of 11 March 2024.

7 At the preliminary hearing on 16 January 2024, a list of issues was agreed.

8 A further preliminary hearing took place on 28 August 2024.

9 At that hearing, concerns were raised by the Claimant with regard to disclosure of documents by the Respondents.

10 Whilst a Bundle of documents had not been prepared specifically for that case management hearing, the Respondents had provided the Claimant and the Tribunal with a Bundle running to 491 pages which the Respondents intended to serve as the hearing bundle. That Bundle had only been provided to the Claimant on the day of the preliminary hearing on 28 August 2024. Having been allowed further time to consider it, the Claimant accepted at that hearing that he was not seeking the disclosure of any further documents.

11 The Respondents were also seeking disclosure from the Claimant of his unredacted medical records for the period 20 February 2023 to date. The Claimant had declined to provide those medical records saying that the parts that were redacted related to personal information not relevant to the issues in these proceedings. The Respondents maintain that, as the case involved a claim for injury to feelings, the GP notes may contain information which was relevant.

12 It was agreed that the application for the disclosure of the Claimant's unredacted medical records covering the relevant period would be considered on the papers by an Employment Judge. The Claimant was required to provide

those documents to the Tribunal in a format which was not password protected by 12 September 2024 at which time an Employment Judge would be invited to consider the Respondent's application.

13 Unfortunately, this did not take place and the application was therefore listed to be heard on 4 November 2024. In advance of that hearing, the parties were informed that it would not be possible for the application to proceed on that day, and the parties were asked to provide their dates of availability over the next six months for that application to be considered.

14 Clearly, that was impractical as the final hearing had been listed to commence on 19 November 2024 and, therefore, that was one of three preliminary matters this Tribunal considered at the outset of the hearing.

Preliminary issues

Disclosure of unredacted medical records

15 In an email dated 13 February 2024, the Respondents' solicitors set out the reasons for their application for disclosure of the unredacted medical records relating to the Claimant.

16 On 23 February 2024, the solicitors who were then acting for the Claimant responded setting out the reasons why the Claimant objected to their disclosure. Further correspondence was exchanged but there is no requirement for the Tribunal to go into any detail about the merits of the application because, on discussion between the Tribunal, the Claimant and Dr Kerr, a resolution was reached which was acceptable to both the Claimant and the Respondents.

17 Having considered the unredacted medical records, the Tribunal understood the Claimant's concern about certain entries being discussed in public as a result of their personal sensitive nature. It was also questionable that such entries would have any bearing on the issues to be determined. However, there were other entries which may have some relevance.

18 It was agreed that the unredacted medical records would be disclosed to Dr Kerr who gave an undertaking that she would not disclose them to anyone else without the Tribunal's prior approval. Furthermore, if, in the course of the hearing, Dr Kerr intended to make reference to any part of the medical records which were potentially sensitive, she would refer to the date on which that entry had been made, and would have to explain the relevance of those entries to the issues to be determined before making specific reference to them.

19 Having agreed on the matter being dealt with in this way, Dr Kerr was provided with the unredacted medical records and was given time to consider them prior to the commencement of the hearing. Having done so, Dr Kerr confirmed that she did not anticipate that she would have to make reference to any part of the medical records which would give the Claimant any cause for concern.

Claimant's application for the response to be struck out

20 The Claimant set out the bases of his application in emails to the Tribunal dated 27 September 2024 and 11 October 2024.

21 The key issues identified by the Claimant related to:

(i) Misuse of personal data in that he claimed that the Respondents had attempted to include irrelevant personal information, including a photograph of his mother, in the hearing bundle;

(ii) Inconsistent statements regarding reasonable adjustments;

(iii) Duplication of information which he claimed led to increased and unnecessary delays and complications which had led to increased costs;

(iv) The Respondent falsely stated that the Claimant had opted out of the pension scheme, later admitting this was incorrect.

(v) Misrepresentation of evidence;

(vi) The relevance of supplementary evidence disclosed.

22 The Claimant maintained that this amounted to scandalous, unreasonable, and vexatious conduct on the part of the Respondents. He also made reference to paragraphs 21 and 22 of the witness statement of the Second Respondent which he maintained were incorrect.

23 Dr Kerr resisted the application stating that, so far as the misuse of data was concerned, the information intended to be included in the bundle was obtained from LinkedIn and the Claimant's social media and therefore it was already on a public platform.

24 As for issues with regard to disclosure and what documents should or should not be included within the hearing bundle, this sort of dispute was not uncommon in litigation of this sort.

25 Dr Kerr maintained that the Claimant had not presented anything which could amount to egregious behaviour on the part of the Respondent and the remedy that he sought was draconian.

26 Having considered the matter, the Tribunal concluded that the Claimant's application should be dismissed. The concerns that he had raised with regard to disclosure were not uncommon in proceedings of this sort and the remaining issues were matters which would be resolved on hearing all of the evidence. An order striking out a claim or a response can be, and has been, described as draconian and the Tribunal did not find that such a high threshold had been met.

27 The Claimant's application was therefore refused.

Admission of Supplementary Statement

28 Dr Kerr submitted that, in the case management order of 16 January 2024, the parties were required to exchange witness statements by 16 April 2024.

29 At the case management hearing on 28 August 2024, it was ordered that the Claimant would send a copy of his supplementary statement to the Respondents by 25 September 2024, but he failed to do so. Not only was the service of the supplementary witness statement late, but it also contained material which was not relevant to the issues to be determined.

30 The Tribunal had considered the supplementary witness statement of the Claimant. It was not persuaded that the information relating to the electrical installation certificate ("EIC") had any bearing on, or relevance to, the claims being pursued by the Claimant and also it was served out of time.

31 As for the remainder of the supplementary statement, and the Claimant's further reference to what he considers to be the Respondent's failure to make the reasonable adjustments, and his observations on the statements served by the Respondents, his case was already comprehensively set out in his detailed statement of 15 January 2024 and he would also be able to challenge what the Respondents' witnesses have to say in the course of cross examination.

32 Therefore, the Tribunal determined that it would not allow the Claimant's supplementary witness statement into evidence.

Issues

33 It was understood by the Tribunal that the list of issues attached to the case management order of 16 January 2024 had been agreed between the Claimant and the Respondents.

34 There is a further list of issues attached to the case management order dated 28 August 2024. On considering that list of issues, it would appear to be the same list of issues as the one attached to the order of 16 January 2024 except that they are in a different order.

35 The Tribunal was not invited by either party to revisit the issues it was required to determine and it therefore adopted the issues attached to the order of 28 August 2024 which are reproduced below.

The Issues

36 The issues the Tribunal will decide are set out below.

1. Disability and knowledge

1.1 Disability is conceded.

1.2 Knowledge of coccydynia at all relevant times is conceded.

1.3 Did the Respondent know or ought it reasonably to have known of the Claimant's disability of dyslexia from 21 February 2023 and if not, at what point did they know or ought they reasonably to have known.

2. Discrimination arising from disability (Equality Act 2010 section 15)

2.1 The respondent dismissed the claimant on 20 April 2023.

2.2 Was the dismissal unfavourable treatment.

2.3 If so, was the unfavourable treatment as a result of something arising in consequence of the claimant's disability? The claimant says the *"somethings"* were:

2.3.1 Struggling to work efficiently and needing to work a slower pace arising from dyslexia and coccydynia.

2.3.2 Needing to take additional breaks throughout the working day arising from both dyslexia and coccydynia.

2.3.3 Becoming confused and fatigued when processing a significant amount of information, which arises from dyslexia.

2.3.4 Difficulties concentrating due to pain caused by coccydynia.

2.3.5 Difficulties concentrating and comprehending written information, which arises from his dyslexia.

2.3.6 Difficulties retaining written information, which arises from his dyslexia.

2.3.7 Requiring longer to process written information, which arises from his dyslexia.

2.4 If the answer to 2.3 is yes can the respondent show that the treatment was a proportionate means of achieving a legitimate aim?

2.5 Was the treatment an appropriate and reasonably necessary way to achieve those aims.

2.6 Could something less discriminatory have been done instead?

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

3. Failure to make reasonable adjustments (Equality Act 2010 sections 20(3))

3.1 A “PCP” is a provision, criterion or practice. Did the respondent have the following PCP: requiring the claimant to use the existing office equipment in the office?

3.2 Did the PCP place the claimant at a substantial disadvantage compared with persons without coccydynia? The claimant says the substantial disadvantages were:

3.2.1 sitting in a regular office chair causes pain.

3.2.2 a regular non-adjustable desk means the claimant would always have to be sitting to complete work which:

3.2.2.1 causes more pain as his range of work postures were limited, which due to pain caused by coccydynia, impacted his ability to concentrate; and

3.2.2.2 resulted in him having to take additional breaks to stand up and stretch due to pain caused by coccydynia, which impacted his performance and his ability to quickly deal with issues that arose during such breaks.

3.3 Did the PCP place the claimant at a substantial disadvantage compared with persons without dyslexia? The claimant says the substantial disadvantage were that it took the claimant longer to complete his work because he had to spend more time reading, writing, comprehending, retaining and processing information.

3.4 Did the respondent take steps as it is reasonable to take to avoid the disadvantage?

3.5 If so, from what date?

4. Failure to provide auxiliary aids (pursuant to section 20(5) EqA)

4.1 The respondent accepts that it did not provide the specific auxiliary aids as listed in the Access to Work report dated March 2023.

4.2 Would a disabled person, but for the provision of the auxiliary aids, be placed at a substantial disadvantage in relation to work in comparison with persons who are not disabled?

4.3 Would it be reasonable to provide the auxiliary aids?

5. Remedy

5.1 If the claimant's claim succeeds (in whole or in part):

5.2 What financial losses has the relevant discrimination caused the claimant?

5.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

5.4 If not, for what period of loss should the claimant be compensated?

5.5 What injury to feelings has the relevant discrimination caused the claimant and how much compensation should be awarded for that?

5.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

5.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

5.8 Should the claimant's compensation be reduced for contributory fault?

5.9 Should interest be awarded? How much?

Evidence

37 The Claimant gave evidence on his own behalf.

38 The Respondents called:

(i) Mr David Stone, Second Respondent and Director the First Respondent;

(ii) Mr Glenn Jacobs, Senior Manager at the First Respondent;

(iii) Ms Shannen Stewart, Accounts Manager at the First Respondent.

39 Those who gave oral evidence had provided witness statements. The Claimant had provided a witness statement dated 15 January 2024. He submitted a separate version of that statement having amended the paid references to reflect the pagination within a hearing bundle of 550 pages.

40 Unless otherwise stated, any page references in this Judgment refer to pages within the bundle.

Submissions

41 At the conclusion of the evidence, Dr Kerr provided written submissions which she supplemented with oral submissions. The Claimant provided oral submissions only.

Findings of Fact

42 The First Respondent is a small, independent family-owned estate agency incorporated in 2000, operating from offices in Leyton, London.

43 At the material time, it had six staff and provided property management services in respect of over 200 properties in an area covering primarily East London and Essex.

44 The Second Respondent was, at all material times, a Director of the First Respondent. Part of his responsibilities related to the management and recruitment of staff.

45 Mr Glenn Jacobs held a senior management position within the First Respondent and had worked for the company for approximately 11 years, working both in the office and externally with regard to the property management undertaken by the First Respondent.

46 Ms Shannen Stewart started at the First Respondent as a Property Manager on an apprentice scheme, but, from March 2012, had been employed by the First Respondent as Accounts Manager.

47 On 10 January 2023, Mr Jacobs contacted the Claimant to arrange an interview for the post of Property Manager. Mr Jacobs had based his decision to invite the Claimant in for an interview on what he had read in a CV submitted by the Claimant (page 326) in support of his application for the role. The CV was described by Mr Jacobs as impressive.

48 Under the heading “Key Skills” the Claimant’s CV stated as follows:

- Successfully analyses and resolves complaints, in line with processes and procedures.
- Builds good rapport with tenants to better understand their needs.
- Handles check in and check out reports including repairs required inspections.
- Utilises strong analytical problem-solving skills and time management.
- Practiced in project management methodology to improve on teamwork.
- Draws tenancy agreement including legal compliance of property maintenance.
- As a quick learner allows for the adaptation in different environments.
- Significant complaint handling toolset & systems knowledge i.e., Teams, Word, Excel, PowerPoint, Zoho Desk, Westlaw, LexisNexis, Google etc . . .

49 In the section headed Career History, the Claimant listed a number of employers from 2015 to the present time, much relating to the handling of complaints but also as a Property Manager.

50 On the basis that Mr Jacobs concluded that a number of those key skills would be relevant to a role within the First Respondent, he invited the Claimant to attend an interview on 13 January 2023.

51 On 13 January 2023, the Claimant was interviewed by Mr Jacobs and Ms Stewart. The role for which he was being interviewed was a Property Manager. The Claimant did not take issue with the job description that was provided as set out in paragraph 8 of the Second Respondent's statement and paragraph 8 of the Grounds of Resistance (pages 165-6). It was described as a senior role requiring a high level of competence and ability to prioritise and self-manage, to include the following tasks:

(a) Discussing repairs with a tenant which I considered reasonable and justifiable and obtaining the landlord's authorisation;

(b) Accepting income maintenance reports, register details and note on the system/maintenance Buzz Tree;

(c) Ensuring any repairs reported and authorised by the landlord are carried out correctly in a timely manner;

(d) Logging the system and ensuring all completed jobs are invoiced and passed to accounts;

(e) Overseeing the maintenance of properties to the clients' satisfaction;

(f) Developing business relations with clients to maximise the company's cross-selling opportunities;

(g) Ensuring properties in the portfolio that become available are listed with the lettings team and liaise with the letting department;

(h) Introducing themselves to the tenants when a property is let and check them in and deal with any issues that may arise;

(i) Ensuring that all regulations and guidelines are adhered to in all working practices;

(j) Making sure that all gas safety, EICR, property licences and EPCs are up-to-date and served on the tenant in the correct fashion;

(k) Implementing renewed property inspection structure and ongoing on a scheduled basis.

52 At the interview on 13 January 2023, Mr Jacobs and Ms Steward were sufficiently impressed to invite the Claimant in for a second interview which involved the Second Respondent. In the course of the first interview, the

Claimant had not made reference to any disabilities or any requirement for reasonable adjustments to be made to enable him to fulfil the role.

53 However, on 14 January 2023, the Claimant sent an email to Mr Jacobs (page 256) indicating his interest in the role. He acknowledged that, if offered the position, he would have to train up on the First Respondent's systems and processes, following which he would introduce himself to tenants and clients, indicating his ability to strengthen relationships and handling any complaints.

54 He also indicated that he had some understanding of how he may be able to help the clients of the First Respondent who are investor landlords and which may deliver tax advantages.

55 The Claimant attached a copy of his certificate to confirm that, with effect from 3 December 2022, the Claimant was an NRLA Accredited Landlord having completed successfully his Agents Fundamentals Assessment.

56 In the next paragraph, the Claimant stated:

> *"what's the catch with me, I have pain of the coccyx/tailbone (disability) so a special chair is needed for long periods of sitting down in the office. Whilst I can skim read well, I find it more efficient to listen to long reports using Narrator. I recently discovered the latter when using my Mac Book."*

57 The Claimant went on to refer Mr Jacob to a link to the Government's "Access to Work Factsheet for Employers" ("ATW") which showed how to obtain free grants at no extra cost, saying, "(*don't hate me for this)*".

58 On 18 January 2023 the Claimant attended the First Respondent's office for a second interview attended by the Second Respondent, Mr Jacobs and Ms Stewart. The Claimant was successful in his application and he was offered the role of Property Manager with a start date of 1 February 2023.

59 Indeed, the job offer was contained in an email dated 27 January 2023 from Ms Stewart to the Claimant (page 270) and it was confirmed that this would be subject to him successfully completing a three-month probationary period.

60 A job description is outlined together with details of his salary and hours of work. As for payment in respect of car and travel allowance, that was to be discussed.

61 On the same day, the Claimant replied (page 272). He does not immediately accept the offer because he had received an offer from another organisation but he makes reference to attending a one day landlord tax course with the NRLA and he also indicated that he found the directness of the Second Respondent refreshing, "after having worked in the corporate world for so long."

62 At the conclusion of his email, he made reference to his medical condition mentioned in his email of 14 January 2023, namely coccydynia, and suggested contacting ATW regarding a free grant to pay for reasonable adjustments; he

had included a link to the relevant site together with a screenshot indicating that ATW would consider paying grants of up to 100% for people who had been working for less than six weeks when they first apply for ATW.

63 The Claimant subsequently accepted the role with the First Respondent and his first day at work was 20 February 2023. He entered into a contract of employment which is signed on 20 February 2023 attached to which is a statement of main terms and conditions (pages 236 to 253).

64 The Tribunal was satisfied that the First Respondent offered the Claimant a position of employment as Property Manager in the knowledge that he suffered from a disability, namely coccydynia. However, at the time of his appointment, the Tribunal found that the Claimant had not made the First Respondent aware of his dyslexia in either his emails in January 2023 or at the time of the interviews he attended. There was nothing in his CV or his emails to suggest that he was dyslexic, let alone that it amounted to a disability.

65 This is despite a document from Waltham Forest Dyslexia Association dated 9 February 2023 addressed to, *"To whom it may concern*" describing the Claimant's dyslexia as moderate or severe (page 274).

66 In advance of him commencing his employment, the Claimant informed the First Respondent and in particular Mr Jacobs and Ms Stewart, that, *"a special chair is needed for long periods of sitting down in the office.*" The First Respondent's reaction was that this would not pose any difficulty. The Respondent was content to employ the Claimant in the knowledge of this requirement. Indeed, there were a number of chairs from which the Claimant could choose. In particular, on 20 January 2023, an order was placed with a company called Herman Miller for an ergonomic office chair. It was initially purchased to assist the Second Respondent's wife who suffered from back problems, but she had subsequently left the First Respondent. The Tribunal had been shown photographs of not only this chair but a number of other non-standard chairs which were available in the office at the time that the Claimant commenced his employment.

67 The Claimant was first diagnosed with the condition of coccydynia in 2015. In the medical records disclosed by the Claimant there are four references to the Claimant's condition. On 6 November 2023, there is an entry saying *"Examination: received an email from old workplace which patient left April. Asked for reasonable adjustments for dyslexia and coccydynia"*. Later on the morning of the same date the entry records as follows: *"has seen physio for coccydynia back in 2015 post steroid injection – had normal MRI prior to treatment. Last spoke to GP re pain 1/1/23. No other entries between 2015 and December 2022 for this issue*."

68 On 18 January 2023, the medical records state the following: *"backpain symptoms – located in both upper and lower back. Has had coccydynia for a while. Awaiting desk assessment with Occupational Health."*

69 Lower down, it states *"fit note done – is fit for work, but suggested amendments such as more cushioned desk chair."*

70 On 20 February 2023, the Claimant attended the offices of the First Respondent for his first day at work. He was given a tour of the office and was shown where he would be working, which was primarily in the back office, as opposed to the front office where clients and customers would attend. The office as a whole was not large and, in the back office, the Claimant would be seated close to the other employees to include the Director, The Second Respondent, Mr Jacobs and Ms Stewart. In the course of being shown around the office, the Tribunal accepted the evidence of Ms Stewart and found that the Claimant was shown the stationery cupboard and its content which was located very close to where the Claimant would be working. The stationary cupboard included headsets which were available for use by the Claimant.

71 On the same day that the Claimant commenced his employment with the First Respondent, he also submitted an application to ATW at the Department for Work and Pensions enquiring about the availability of a grant for certain equipment although the nature of that equipment is not clear from the email exchanges with Wilkinson Bracken of ATW on 20 February 2023 (pages 275-6). However, this application had been lodged by the Claimant with ATW without informing anyone at the First Respondent.

72 On 21 February 2023, the Claimant was travelling in the car with the Second Respondent who was taking him on an introductory tour of the area. During this journey, Mr Wilkinson of ATW called the Claimant. The Second Respondent confirmed that Mr Wilkinson explained who he was and Mr Wilkinson asked if the Claimant had disclosed his disabilities, making reference to dyslexia and at that point the Claimant "went quiet" and did not wish to discuss the matter any further. At this stage, on 21 February 2023, no one at the First Respondent, to include the Second Respondent, had any prior knowledge of the Claimant having made contact with ATW or of his dyslexia.

73 The Second Respondent indicated that it would have been more helpful if there had been an open and honest conversation between the Claimant and him about the issues that were being raised. The Tribunal accepted the Second Respondent's evidence that he had no problem with ATW trying to assist the Claimant.

74 On 23 February 2023, the Claimant completed an assessment with ATW to determine what ATW considered necessary by way of reasonable adjustments. This assessment was undertaken by a person from ATW observing the area in which the Claimant was working by the Claimant walking around the office using the video on his phone as opposed to anyone from ATW attending in person. It is described by ATW as a *"Remote assessment via webinar".*

75 Based on that assessment, a "Needs Assessment Report" from People Plus was prepared (pages 277 to 284). It sets out a series of recommendations with regard to equipment the Claimant may require although there is no mention within the Needs Assessment Report of the equipment and measures already in place at the First Respondent.

76 On the following day, 24 February 2023, the Claimant attended training organised by the First Respondent at an outside agency called Estates IT. The Claimant confirmed that he found this training, which was provided by a Mr Weller, useful in terms of understanding the practices and processes undertaken at the First Respondent.

77 It was made clear to the Claimant that if he needed any further support, he was able to contact Estates IT at any time.

78 At this stage, even though the Needs Assessment Report is dated 23 February 2023, the Claimant had not informed anyone at the First Respondent that an assessment had been undertaken.

79 On 6 March 2023, Mr Wilkinson sent an email to the Claimant indicating that ATW had approved his application for a grant. This was based on a decision using the information the Claimant had given but, at this stage, no one at the First Respondent had been contacted by ATW nor had ATW been informed of the equipment and support already available to the Claimant. In the email dated 6 March 2023 sending the report to the Claimant (page 285), it confirms that the equipment would cost £6,760.37. Whilst in the first part of the email, it states that ATW will cover the full cost, later in the email, it states that ATW would contribute a maximum of £3,760.37.

80 On 6 March 2023, the Claimant forwarded the email and report to Ms Stewart.

81 On 7 March 2023, Ms Stewart asked the Claimant for more information about his needs, but he would not discuss it with her, indicating that she should contact ATW direct. On 8 March 2023, Ms Stewart duly wrote to Mr Wilkinson who said that he could not discuss it with her without the Claimant's consent.

82 It was only on 17 March 2023, when the Claimant forwarded to Ms Stewart and the Second Respondent the email from Mr Wilkinson of 6 March 2023 with the report, that the Claimant consented to the First Respondent having direct contact with ATW. This was some three or four weeks after the discussion with Mr Wilkinson in the car with the Claimant and the Second Respondent on 21 February 2023.

83 On 24 March 2023, the Claimant sent an email to Ms Stewart copied to Mr Jacobs and the Second Respondent confirming that ATW would reimburse the First Respondent for the reasonable adjustments recommended in the report. It was then suggested by the Claimant that Ms Stewart had indicated that the First Respondent would not be able to implement reasonable adjustments during his probation period. This was disputed by Ms Stewart and her evidence was consistent with that of Mr Jacobs and the Second Respondent that there was already equipment within the office which, whilst not identical to the equipment recommended in the ATW report, would accommodate the Claimant's disabilities of both coccydynia and dyslexia.

84 The Tribunal accepted the evidence of Ms Stewart, Mr Jacobs and the Second Respondent that the Claimant had a choice of office chairs available to him, to

include the ergonomic chair which had been purchased on 20 January 2023, almost exactly one month before he started work at the First Respondent.

85 However, the Claimant refused to make use of, or even try, any of the alternative chairs, to include the Herman Miller ergonomic chair purchased by the First Respondent in January 2023, preferring to sit on a standard office chair despite saying that he required more specialist support. He indicated that he was only prepared to use the non-standard chair described in the Needs Assessment Report. The Tribunal had been shown email exchanges between the Claimant and Herman Miller in which the Claimant makes enquiries of the company regarding the suitability of its chairs and their *"impact on the tailbone"*. However, the Tribunal noted that this exchange took place in January 2024 and is, in any event, inconclusive.

86 The Second Respondent also confirmed that there was a sofa in the office and that it could be used by the Claimant if necessary. This was not challenged by the Claimant.

87 With regard to the recommendation of a *"standing desk",* the Tribunal found that a standing desk was already available to be used by the Claimant. It had been purchased for the Second Respondent's wife, but she no longer worked at the First Respondent. Ms Stewart stated that the standing desk was the desk that she used day-to-day but, in fact, she did not use its facility as a standing desk and it was available for use by the Claimant. It was suggested by the Claimant that the desk had not been made available to him. He then said that no one had told him how to use the standing desk. This evidence was contradictory and the Tribunal did not find it persuasive. The Tribunal found that the standing desk already located within the back office was available to him.

88 In the Needs Assessment Report, it was suggested that the Claimant would require not one but two standing desks because the Claimant had informed them that he also spent time working in the front office. Mr Jacobs was not challenged when he said that the Claimant would only spend very little time in the front office. Mr Jacobs described the Claimant as a member of the back-office staff. However, on occasion, on Saturdays, if there were a lot of viewings, the Claimant would *"pop out the front from time to time as opposed to being located there."*

89 As for taking regular breaks, the Claimant accepted, and the Tribunal found, that the Second Respondent allowed the Claimant to take breaks whenever he wished. The Second Respondent also recommended to the Claimant various walks that he could take, for example in local parks where he could take a stroll whenever he wished.

90 With regard to the Claimant's dyslexia, the Tribunal had found that the First Respondent was not aware of his condition until after he had commenced his employment. In the Needs Assessment Report, based on what had been said to them by the Claimant, it was suggested that a particular type of speech recognition software was required, namely Dragon.

91 Ms Stewart confirmed, and the Tribunal found, that the Claimant was encouraged to use the company's iPhone and business WhatsApp. Further, the Claimant was introduced to a colour-coding system in the course of his training with Estates IT to assist him in prioritising tasks and identifying clients. Finally, the First Respondent made available to the Claimant speech-to-text software available as part of the First Respondent's contract with Microsoft Word. Ms Stewart maintained that this would have been perfectly adequate for the Claimant's needs. Further, the recommendation made in the Needs Assessment Report would have entailed the installation of entirely different software for the whole office, which was considered unreasonable, particularly as Ms Stewart believed that there was an existing alternative which was perfectly acceptable for the Claimant to utilise. Ms Stewart was able to establish that the speech-to-text Microsoft Word system had been available since 2018 and had been used by other members of staff.

92 It was suggested by the Claimant that, during his training by Mr Weller at Estates IT, he informed Mr Weller that he had dyslexia and asked Mr Weller for a headset and also talk to text software. The Claimant suggested that Mr Weller informed him that such equipment was not available. However, this was first mentioned by the Claimant in his oral evidence and no mention is made of his conversation with Mr Weller in either his amended particulars of claim or his witness statement. Had it been so, then no doubt Mr Weller could have been asked to respond. The Tribunal was not satisfied that the Claimant's account was credible. It based this conclusion not only on the fact that neither his amended particulars of claim nor his detailed witness statement, which was a comprehensive document, made any mention of this information being made available to Mr Weller at the time of his training on 24 February 2023. The Tribunal also took into account the way in which the Claimant described himself in the CV that he submitted to the First Respondent in advance of his appointment and, indeed, the CV that he submitted to another potential employer following his departure from the First Respondent. The Claimant's suggestion that the description he provides in his CV was accurate only if reasonable adjustments were implemented was not considered credible. Even on his own account, he made no mention of his coccydynia and dyslexia in the initial interview. He had only made reference to coccydynia in his email of 13 January 2023 and his dyslexia after he had commenced employment.

93 On 4 April 2023, Ms Stewart wrote to the Claimant indicating that, after careful consideration, the view was that the items recommended in the ATW Report would not, *"have an impact or assist with the tasks required of you and therefore we will not be purchasing the list provided at this time."*

94 It was also not challenged by the Claimant that Mr Jacobs had telephoned ATW.

95 When Mr Jacobs spoke with ATW over the phone, he was unable to indicate the name of the person to whom he spoke but described the information he was provided with as "*wishy washy*". Mr Jacobs wanted to fully understand the funding arrangement with regard to the cost of the equipment and, for example, what would happen to the equipment, and the funding of it by ATW, if the Claimant left or was no longer working at the First Respondent. He did not

receive any definitive answers to his questions over the phone either in terms of having to refund any money paid or when delivery of the equipment may take place even though the Claimant referred to a document which suggested that delivery would take place within 10 days. Mr Jacobs' understanding was that ATW would pay for the equipment by way of a grant but there were caveats attached to it. Ms Stewart had also spoken with Mr Wilkinson but, as stated, he had indicated that he was not able to speak with her in any detail without the Claimant's permission.

96 By this time, Ms Stewart, Mr Jacobs and the Second Respondent were concerned that the performance of the Claimant did not match up to the description of the skills and experience the Claimant had outlined in his CV.

97 The Tribunal had listened carefully to the evidence of Ms Stewart to whom the Claimant reported. The Tribunal considered Ms Stewart to be a credible witness in that she readily accepted if her recollection was uncertain or if her evidence was not entirely clear. However, on the material issues, her evidence was clear and consistent. Furthermore, the Tribunal concluded that she was someone who was sympathetic to the Claimant's impairment of coccydynia as she herself suffered from back problems and she struck the Tribunal as someone who would be supportive. Nevertheless, Ms Stewart indicated that, from the beginning of March 2023, she was concerned that the Claimant was not fulfilling the role as anticipated. Ms Stewart described the concern as an issue with the Claimant simply not opening emails which were being received as opposed to any suggestion that the Claimant was opening, and then having difficulty with processing, emails he received. It led to appointments with tenants not being confirmed, leading to tenants being left without heating and hot water for longer than was necessary. Ms Stewart had to constantly monitor the Claimant's emails and had to encourage him to open them and take the necessary action.

98 Ms Stewart described an instance where a repair report concerning a tenant's boiler which had broken came in via email and no action had been taken. On making enquiries why it had not been dealt with, she discovered that no one had been allocated to the job until a day later as the Claimant had not opened the email.

99 On 20 April 2023, the Claimant attended a meeting with Ms Stewart and Mr Jacobs and the Claimant was informed that he would not be offered a permanent role following his probation period and he was given four weeks' notice, which he was not required to work, confirming that he would be paid up to 20 May 2023.

100 The reason the First Respondent reached this decision was that it had become clear that the Claimant's skills and experience as described in his CV were overstated.

101 When asked by the Claimant to provide an example of the concerns outlined above, the Second Respondent confirmed in his oral evidence that he had been sent to a property by the Claimant without ensuring that access would be made available by the Tenant. It was a three hour round trip to Harlow to deliver

a fridge and the Second Respondent went as an emergency because it had not been organised beforehand. This was despite the Second Respondent having spoken to the Claimant and receiving confirmation that contact had been made with the client.

102 In the course of the meeting on 20 April 2023, it was suggested by the Claimant that Ms Stewart and Mr Jacobs had made reference to the Claimant not having access to a car as representing an issue regarding the fulfilment of his role. It was accepted that the Claimant would be able to use public transport and also that he had said that he had access to his mother's car if necessary.

103 On 24 April 2023, the Second Respondent wrote to the Claimant confirming that it had been deemed that the Claimant was not of the experience level required and, *"that this has been made apparent on several occasions, our company and clients requirements are not being met."* The Second Respondent confirmed that the Claimant had not passed his probation and that the First Respondent was unable to offer him a permanent position.

The Law

104 The Equality Act 2010 ("EqA") protects employees from discrimination based on a number of "protected characteristics". These include disability (Section 6 EqA).

105 Section 39(2) EqA provides that an employer must not discriminate against an employee. It sets out various ways in which discrimination can occur and these include by dismissing the employee and by subjecting an employee to any detriment.

106 Section 39 (5) EqA provides an employer has a duty to make reasonable adjustments for a disabled employee.

Disability Discrimination

107 As Baroness Hale explained in *Archibald v Fife Council [2004] UKHL32,*disability discrimination is different from other types of discrimination, as the difficulties faced by disabled employees are different from those experienced by people subjected to other forms of discrimination,"…[the Disability Discrimination Act 1995] is different from the Sex Discrimination Act 1975 and the Race Relations Act 1976. In the latter two, men and women or black and white, as the case may be, are opposite sides of the same coin. Each is to be treated in the same way. Treating men more favourably than women discriminate against women. Treating women more favourably than men discriminates against men. Pregnancy apart, the differences between the genders are generally regarded as irrelevant. The 1995 Act, however, does not regard the differences between disabled people and others as irrelevant. It does not expect each to be treated in the same way. It expects reasonable adjustments to be made to cater for the special needs of disabled people. It necessarily entails an element of more favourable treatment."

108 This element of more favourable treatment is reflected in the two types of protection that are unique to disability: Section 20-21 EqA (failure to make reasonable adjustments) which requires an employer to take action in certain circumstances and Section 15 EqA (discrimination arising from disability) which is focussed upon making allowances for disability.

Failure to make reasonable adjustments

109 Disability discrimination can take the form of a failure to comply with the duty to make reasonable adjustments (see Sections 20, 21(2), 25(2)(d) and 39(5) EqA).

110 Section 20 EqA imposes, in three circumstances, a duty on an employer to make reasonable adjustments. They include, at Section 20(3) EqA, circumstances where a provision, criterion or practice (PCP) puts a disabled person at a substantial disadvantage in comparison with those who are not disabled. The duty then requires an employer to take such steps as it is reasonable to have to take to avoid the disadvantage (Section 20(3) EqA).

111 Section 212(1) EqA defines "substantial" as "more than minor or trivial"; it is a low threshold. However, this exercise requires the Tribunal to identify the nature and extent of the claimant's substantial disadvantage in meeting the PCP, because of their disability (see *Chief Constable of West Midlands Police v Garner EAT 0174/11).*

112 The Claimant bears the burden of proving the PCP put him at a substantial disadvantage in comparison with non-disabled colleagues. (See the EAT's decision in *Project Management Institute v Latif [2007] IRLR 519)*

113 When assessing whether there is a substantial disadvantage, the Tribunal must compare the position of the disabled person with persons who are not disabled. This is a general comparative exercise and does not require the individual, like-for-like comparison applied in direct and indirect discrimination claims (see *Smith v. Churchill's Stairlifts plc [2006] IRLR 41 CA* and *Fareham College Corporation v. Walters [2009] IRLR 991 EAT).* The House of Lords confirmed in *Archibald v Fife Council [2004] UKHL 32* that an employer is no longer under a duty to make reasonable adjustments when the disabled person is no longer at a substantial disadvantage in comparison with persons who are not disabled.

114 There are supplementary provisions in Schedule 8 EqA. Paragraph 20 of that Schedule provides that the duty to make reasonable adjustments only arises where an employer knows (or ought reasonably to know) of both the disabled person's disability and that they were likely to be at that disadvantage.

115 The Equality and Human Rights Commission Code of Practice on Employment (2011) ("the EHRC Code of Practice") provides at paragraph 6.19:

> "an employer only has a duty to make an adjustment if they know, or could reasonably be expected to know, that a worker has a disability and is, or is likely to be, placed at a substantial disadvantage. The employer must,

> however, do all they can reasonably be expected to do to find out whether this is the case.
>
> What is reasonable will depend on the circumstances. This is an objective assessment."

116 Once the duty has arisen, the Tribunal must consider whether the respondent has complied with it by taking such steps as it was reasonable to have to take to avoid the disadvantage. The Equality and Human Rights Commission Code of Practice on Employment (2011) ("the EHRC Code of Practice") sets out a list of possible adjustments that might be taken by employers in paragraph 6.33. In many cases, the question of compliance with the duty will turn on whether a particular adjustment was (or, if not made, would have been) "reasonable". This is an objective test to be determined by the Tribunal and can be highly fact sensitive. It is a rare example of Tribunals being permitted to substitute our own views for those of the employer where we consider, in effect, that it ought to have reached a different decision. Lord Hope explained in *Archibald v Fife Council [2004] IRLR 651,* that sometimes the performance of this duty might require the employer to treat a disabled person, who is in this position, more favourably to remove the disadvantage attributable to the disability.

117 The Tribunal has also noted paragraphs 6.36 to 6.38 of the EHRC Code of Practice which relates specifically to the ATW Scheme.

118 It is important to assess whether a proposed adjustment would have avoided the disadvantage – in lay terms, whether it would have worked. The EHRC Code of Practice sets out some of the factors that may be taken into account when determining whether an adjustment was reasonable at paragraph 6.28. They include: whether the steps would be effective; the practicability of the steps; the financial and other costs of making the adjustment; the extent to which it would disrupt the employer's activities; the extent of the employer's financial or other resources; the availability to the employer of financial and other assistance to help make the adjustment (such as advice through Access to Work) and the type and size of the employer.

119 In Leeds *Teaching Hospital NHS Trust v Foster [2011] UKEAT/0552/10/JOJ* Keith J confirmed that it was not necessary for the Tribunal to find there was a "real prospect" of the adjustment removing the particular disadvantage; it was sufficient for the tribunal to find that there would have been "a prospect" of that.

Discrimination arising from disability

120 S15 Equality Act 2010 ("EqA") provides,

> 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.

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.

121 The first point to note is, if the employer can show they did not know, and could not reasonably have been expected to know that the claimant had a disability the s15 claim will fail.

122 Para 5.14 of EHRC Code of Practice explains

> "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'."

123 The next point to note in a s15 claim is that the tribunal does not need to compare the claimant's treatment to that of a comparator, real or hypothetical. The claimant must prove "unfavourable treatment", i.e. that they have been put at a disadvantage, and that this was because of something arising in consequence of the claimant's disability. The EHRC Code of Practice explains that arising in consequence includes anything which is the result, effect or outcome of the person's disability.

124 The claimant has to demonstrate unfavourable treatment: it is not enough to show they have been differently treated.

125 In *Pnaiser v NHS England and anor [2016] IRLR 170 EAT, Mrs Justice Simler* summarised the proper approach to determining s15 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 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,…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) Miss Jeram 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 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 Miss Jeram'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. 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."

Burden of proof

126 S136 EqA provides,

> (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.

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

127 S136 Equality Act 2010 establishes a "shifting burden of proof" in a discrimination claim. If the claimant is able to establish facts, from which the Tribunal could decide, in the absence of any other explanation that there has been discrimination, the Tribunal is to find that discrimination has occurred, unless the employer is able to prove that it did not. In the well-known *Igen Limited and others v Wong and conjoined cases 2005 ICR 931,* the Court of Appeal gave the following guidance on how the shifting burden of proof should be applied:

> It is for the claimant to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant that is unlawful. These are referred to below as "such facts".
>
> If the claimant does not prove such facts their discrimination claim will fail.
>
> It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of discrimination. Few employers would be prepared to admit such discrimination, even to themselves.
>
> In deciding whether the claimant has proved such facts, remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.
>
> It is important to note the word "could" in [s136 Equality Act 2010]. At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw.

Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of [disability], then the burden of proof moves to the respondent.

It is then for the respondent to prove that they did not commit that act.

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 grounds of [disability], since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.

That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that [disability] was not a ground for the treatment in question. Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.

128 However, it is also established law that if the Tribunal is satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious discrimination, then it is not improper for a Tribunal to find that even if the burden of proof has shifted, the employer has given a fully adequate explanation of why they behaved as they did and it had nothing to do with a protected characteristic (e.g. disability). (see *Laing v Manchester City Council 2006 ICR 1519)*

Analysis and Conclusions

129 Addressing each issue in turn, the Tribunal has carried out an analysis of the facts and, applying the legal framework, has reached the following conclusions.

(1) Disability and Knowledge

130 It had been conceded by the First and Second Respondents that the Claimant was disabled within the meaning of section 6 of the Equality Act 2010 with impairments of coccydynia and dyslexia.

131 As for the Respondents having knowledge of those impairments, the Tribunal had found that the Respondents were aware of the Claimant's impairment of coccydynia before he commenced his employment.

132 As for dyslexia, the Tribunal was not satisfied that the Claimant's emails of 13 and 27 January 2023 provided the Respondents with knowledge of that condition nor was it satisfied that the Claimant had made Mr Weller of Estates IT aware of his dyslexia during training on 24 February 2023. However, the Tribunal was satisfied that the Second Respondent became aware of the fact that the Claimant was dyslexic in the course of the telephone conversation on 21 February 2023 although the extent of that impairment was not known.

133 Nevertheless, it had been conceded by the Respondents that, by the end of the Claimant's probationary period, they were aware of both conditions.

134 Indeed, the Tribunal was satisfied that the Respondents were aware of the Claimant's dyslexia sometime before, taking account of the assessment report from ATW which had been brought to their attention on 6 March 2023 and the discussions that had taken place subsequently with regard to measures available to support the Claimant in relation to his dyslexia.

(2) Discrimination Arising From Disability (Equality Act 2010 section 15)

135 The Tribunal had found that the First Respondent had dismissed the Claimant on 20 April 2023 albeit providing four weeks' notice. The Tribunal was satisfied that the dismissal would amount to unfavourable treatment.

136 The Claimant has alleged that such unfavourable treatment was as a result of those "somethings" he raises at paragraphs 2.3.1 to 2.3.7 of the List of Issues.

137 The Tribunal considered that there was a considerable amount of overlap between the List of Issues at paragraphs 2.3.1 to 2.3.7. Much of it relates to a need for the Claimant to work at a slower pace, due to becoming fatigued, suffering pain from his coccydynia, and difficulties retaining and processing written information.

138 The Tribunal concluded that, in the absence of any explanation from the Respondents, it could be concluded that the Respondents had contravened section 15. It found that the Tribunal could have decided, in the absence of any other explanation, that discrimination had occurred and, therefore, the burden had shifted to the Respondents to prove that it had not acted in a discriminatory way in dismissing the Claimant.

139 Based on its findings of fact, the Tribunal was satisfied that, at no stage, did the Respondents criticise the Claimant for having to work at a slower pace as a result of either of his impairments. Indeed, the Second Respondent had confirmed that he had absolutely no issue with the Claimant taking regular

breaks throughout the day. Importantly, this was not disputed by the Claimant who also accepted that the Second Respondent had recommended to him walks that he could take in the local area whenever he needed to. This is a strong factual finding, accepted by the Claimant, to support a conclusion that he was not being placed under pressure by the Respondents to complete his work. Indeed, it is indicative of the opposite and an illustration of support being provided.

140 In any event, the Claimant had held himself out to be a person with the necessary skills and experience to undertake the role. The concerns of the Respondents were that the Claimant was not even opening emails in order to read them which led to appointments not being made, and journeys being undertaken which led to wasted and unproductive time by the Second Respondent and others. These mistakes by the Claimant had direct adverse consequences for the First Respondent's business but, on its findings of fact, the Tribunal was not satisfied that there was a causal link between those shortcomings and the Claimant's disabilities.

141 Consequently, the Tribunal was not satisfied that the Claimant's dismissal was as a result of the "somethings" listed at paragraphs 2.3.1 to 2.3.7. Furthermore, the Tribunal was satisfied that the Respondents had proved, on the balance of probabilities, that they did not act in a discriminatory way towards the Claimant as a result of his disabilities.

142 In reaching this conclusion, the Tribunal has considered each of the stated consequences of the disability and the reasons for the Respondent's decision to dismiss the Claimant.

143 Even if the Tribunal had concluded that the decision to dismiss the Claimant was as a consequence of one or more of the "somethings" as listed, it has considered whether the treatment, namely the dismissal, was a proportionate means of achieving a legitimate aim. In reaching its decision, the Tribunal noted that the List of Issues was silent as to the legitimate aim but, in her written submissions, Dr Kerr had referred to the size of the First Respondent as a business and that the Claimant would have been one of only six employees, all of whom, including the Second Respondent, played a very hands-on role. The Tribunal was satisfied that, taking account of the size of the business, the role of a Property Manager was an extremely important one to the success of the business.

144 It was evident from the accounts provided by those who gave evidence that the First Respondent was required to provide to its clients and customers an efficient and well-run service. It was apparent that, as a consequence of the Claimant's failure to fulfil his role as Property Manager, this had the potential to lead to a direct adverse effect on the service the business was able to offer and perform. It was not as if the Claimant was one of a number of Property Managers in a large business which may have enabled the Respondents to allow the Claimant more time to see whether his performance improved. It was also important to note that the Respondent had assumed that the Claimant would be able to perform the role taking account of the skills and experience he professed to have in his CV. The Tribunal was not persuaded by the

Claimant's submission that his CV provided an accurate description of his knowledge, skills and experience having taken account of the reasonable adjustments being implemented. Had that been so, the Tribunal would have expected the Claimant to have provided to the Respondents much more information in his CV and in interview regarding his dyslexia and what he believed was necessary to be able to perform at the levels he described. It would also have provided the Respondents with an opportunity to discuss with the Claimant the equipment already in place to assist him.

145 As a consequence, the Tribunal concluded that the Respondent's decision to dismiss the Claimant was proportionate to ensure that the First Respondent continued to provide an acceptable service to its clients and tenants. It was treatment which was both appropriate and reasonably necessary. There was not anything less discriminatory that could have been done instead. In reaching its decision, the Tribunal had assessed the needs of the Claimant and also the Respondent. It had also taken into account the failure of the Claimant to adopt the reasonable adjustments that had been offered to him by the Respondents as set out below.

146 For these reasons, the Tribunal found that the Claimant's claim against both Respondents of discrimination arising from disability was not well-founded.

(3) Failure to make reasonable adjustments (pursuant to Section 20(3)(EqA)

147 At paragraph 3.1 of the list of issues, the Claimant had defined the PCP as *"requiring the Claimant to use the existing office equipment in the office".*

148 It is then alleged that the PCP placed the Claimant at a substantial disadvantage compared with persons without coccydynia for the reasons set out at paragraphs 3.2.1 and 3.2.2. The Tribunal reminded itself that what amounts to a substantial disadvantage is something which would be defined as more than minor or trivial. The Tribunal was satisfied that, on the basis of its findings, if the premise of the PCP were to be accepted, the Claimant would have been put at a substantial disadvantage.

149 The Claimant provides the detail of what he describes as "*existing office equipment*" at paragraphs 3.2.1 and 3.2.2, namely a *"regular office chair"* and a *"regular non-adjustable desk".*

150 However, the Respondents dispute that they required the Claimant at any time to use the existing office equipment as he describes it.

151 Based on its findings, the Tribunal also concluded that the Respondents did not require the Claimant to use the "*existing office equipment"*, namely a *"regular office chair"* and a "*regular non-adjustable desk".*

152 At paragraph 3.2.1, the Claimant suggests that sitting in a regular office chair caused him pain. However, at no stage did the Respondents require him to sit in a regular office chair. He did so of his own volition, despite the fact that there was available to him an ergonomic chair which was capable of being adjusted.

Indeed, the Tribunal had found that he simply would not entertain sitting on any of the adjustable ergonomic chairs available in the office, choosing to sit in a regular office chair. As stated, the Tribunal was satisfied that the adjustable ergonomic chair had been made available to him as well as other types of chair such as a kneeling chair which, again, the Claimant was not prepared to countenance.

153 The Tribunal concluded that the Claimant had adopted the approach that he would not entertain, or even try, any type of chair other than a new chair as described in the assessment report from ATW.

154 That recommendation was based on an assessment which relied exclusively on the information provided by the Claimant and without any reference to the Respondents and the type of chairs already available within the office.

155 The Tribunal noted that the ergonomic chair was fully adjustable and provided much greater flexibility than, for example, the description of the chair the Claimant suggested he needed when he went to see his GP in January 2023 when the suggested amendments involved a *"more cushioned desk chair".*

156 At paragraph 3.2.2, the Claimant alleges that he was required to use a regular non-adjustable desk which meant that he would always have to be sitting to complete his work. He then describes the consequences of that at paragraphs 3.2.2.1 and 3.2.2.2.

157 The Tribunal had found that a standing desk was available to the Claimant to use. In making this finding, the Tribunal had accepted the evidence of Ms Stewart and the Second Respondent. The Tribunal noted that it was only in his oral evidence, as opposed to his amended Particulars of Claim and extensive witness statement, that he maintained that he had not been offered a standing desk and that when he had asked to use it, his request had been refused. This was not consistent with his complaint that no-one had showed him how to use the standing desk. The Tribunal did not consider that his assertion, which was disputed, that he had not been taught how to use the standing desk to be persuasive but, in any event, it was not consistent with his claim that he had not been offered a standing desk and when he asked to use the one in the office, his request was denied. The Tribunal was entirely satisfied that the Respondents possessed a standing desk, but the Claimant refused to use it on the basis that he would only use a new standing desk provided by ATW.

158 It was also indicative that the ATW assessment had suggested that the Claimant needed not one standing desk but two. This illustrated how the ATW assessment was based entirely on the information provided by the Claimant without the Respondents having any opportunity to contribute to outline, for example, the equipment already available to accommodate the Claimant's disabilities. It would also have been possible for Mr Jacobs, for example, to reassure ATW that there was no need for incurring at public expense the additional cost of a second standing desk at the front desk because the Claimant was not required to spend any amount of time there other than on the odd occasion.

159 Turning to paragraph 3.3, and whether the PCP placed the Claimant at a substantial disadvantage compared with persons without dyslexia, the Claimant says that the substantial disadvantage was that it took him longer to complete his work because he had to spend more time reading, writing, comprehending, retaining and processing information.

160 The Tribunal had found that the process of colour-coding may not have been specifically designed to assist the Claimant. However, according to Ms Stewart and indeed Mr Weller of Estate IT, it nevertheless was a process which would assist the Claimant in the course of his work.

161 Over and above the process of colour-coding, the First Respondent also made available to the Claimant Talk to Text software as part of its contract with Microsoft Word, Voice Notes, and headsets. The Tribunal had found that, whilst the availability of headsets had been raised for the first time by the Claimant in the course of his oral evidence, it preferred the evidence of Ms Stewart who said that on the very first day the Claimant attended work, he was shown around the office and shown the content of the stationery cupboard which included headsets which would be available to him. Indeed, her evidence was not challenged by the Claimant. The Tribunal did not accept the Claimant's evidence that he had requested a headset but was refused one.

162 Once again, the Claimant did not seem prepared to try out the Talk to text software already available, nor the iPhone or WhatsApp. He stated that only the Dragon software recommended by ATW would suffice. However, the Tribunal noted that, whilst not making any reference to dyslexia, the Claimant had indicated in his email of 14 January 2023 that, *"Whilst I can skim read well"*, he made use of alternative software, namely "narrator" which he had discovered when using his MacBook.

163 Over and above the equipment which was readily available to the Claimant, the Tribunal had found that the Respondents afforded the Claimant as much time as he required and as many breaks during the day as he needed to ensure that he was able to fulfil the tasks expected of him taking account of his coccydynia and dyslexia. The Tribunal considered that this was an important adjustment to support the Claimant in fulfilling his role.

164 Consequently, in its judgement, and based on its findings, the Tribunal was satisfied that the Respondents had taken such steps as were reasonable to avoid any disadvantages experienced by the Claimant and did so from the outset of his employment and once the Respondents became aware of his dyslexia.

(4) Failure to provide Auxiliary Aids (pursuant to Section 20(5)(EqA)

165 The Tribunal relied on its conclusions as set out above under issue 3.

166 It had been accepted by the Respondent that it did not provide the specific auxiliary aids as listed in the Access to Work Report (page 277) based on the information provided by the Claimant to ATW on 23 February 2023.

167 However, the Tribunal did not find that the Claimant would be placed at a substantial disadvantage. Having considered what was proposed by way of auxiliary aids in the ATW report, the Tribunal was satisfied that adequate alternatives were already available to enable the Claimant to carry out his role, taking account of the relevant skills, knowledge and experience required to fulfil the role.

168 The Tribunal was satisfied that it was simply not reasonable to expect the Respondents to receive auxiliary aids costing over £6,000, even though such expense may have been borne by public funds and not the First Respondent, for items which, while not exactly the same, were already in the possession of the Respondents and available for the Claimant to use.

169 For these reasons, the Tribunal concluded that the Claimant's claims against the Respondents under Sections 20(3) and 20(5) of the Equality Act 2010 are not well founded.

Employment Judge R Havard
Dated: 23 December 2024