EMPLOYMENT TRIBUNALS

Claimant: **Mr A Hussain**

Respondent: **Home Office**

Heard at: **Leeds by CVP**

On: **2-6 October and (deliberations only) 27 November 2023**

Before: **Employment Judge Maidment**
Members: **Ms Y Fisher**
Mr J Howarth

Representation
Claimant: **In person**
Respondent: **Ms S Cummings, Counsel**

RESERVED JUDGMENT

1. The claimant's complaint of victimisation in respect of his conversation on 9 November 2022 is well founded and succeeds.

2. The claimant's remaining complaints of victimisation, all of his complaints of harassment and his complaints of a failure of the respondent to comply with its duty to make reasonable adjustments fail and are dismissed.

3. A remedy hearing will be listed with a time estimate of 3 hours.

REASONS

Issues

1. The claimant was at the time of the acts complained of in the respondent's employment and remains so. His complaints arise out of his application for an internal promotion. It is accepted that he was at all material times a

disabled person by reason of him suffering from dyslexia, epilepsy and ulcerative colitis (including IBS). The issues for the tribunal to determine, as clarified during the case management process and agreed with the parties at the outset of this hearing, are set out in an annex to these reasons.

2. The claimant attended a first interview for a HEO position on 27 June 2022. As the vacancies were for project support officers, the Portfolio and Project Delivery directorate ran the recruitment campaign with administrative assistance from the Home Office Resourcing Centre. The claimant contends that there was a failure to make reasonable adjustments in the respondent refusing to provide him with interview questions at least 24 hours prior to the interview and failing to provide him with additional time to complete the interview. His dyslexia and epilepsy are said to have put him at a substantial disadvantage. He then maintains that he was disadvantaged in terms of his ulcerative colitis and IBS by the respondent failing to provide him with rest breaks.

3. The claimant was unsuccessful at that first interview. On 3 August 2022 the claimant made a complaint about the recruitment process and then raised a grievance on 26 October 2022. Both are accepted by the respondent to be protected acts. The claimant ultimately accepted an offer of a second interview for the position he had originally applied for.

4. He then complains that on 9 November 2022, Mr Shah, having initially been happy to speak to the claimant about the role he was applying for, then directed the claimant to speak to the Home Office Resourcing Centre ("HORC"). This is said to have been an act of victimisation and/or harassment.

5. The claimant next says that during a messaging conversation on 21 November 2022 between himself and Ms De Serville, he was told by her that she had been directed by Ms Daley not to speak to him about the forthcoming interview. This is again said to have been an act of victimisation and/or harassment.

6. The claimant was interviewed for a second time on 28 November 2022 and complains that there was then a failure to make reasonable adjustments in him not being provided with interview questions at least 24 hours prior to the interview to alleviate the disadvantage caused by his dyslexia and epilepsy. He alleges also that the failure to do so amounted to an act of harassment and/or victimisation.

7. The claimant was unsuccessful in his application following the second interview. Whilst he has at times in this hearing referred to that failure being connected to his disabilities, there is no complaint of discrimination (or harassment/victimisation) in respect of his non-appointment to a HEO role.

8. The tribunal may then have to consider whether it has jurisdiction to determine any complaints due to them being out of time. Those arguments arise in particular in respect of the first interview and the conversation on 9 November 2022.

Evidence

9. Having identified the issues with the parties, the tribunal took some time to read into the witness statements exchanged between the parties and relevant documentation contained within an agreed bundle of documents consisting of in excess of 1173 pages.

10. The claimant gave evidence first and relied in addition on written statements submitted by Ibrar Hussain and Tania Hussain. On behalf of the respondent, the tribunal heard from Mr Heenal Shah, capability resource support manager in Portfolio and Project Delivery ("PPD"), Mr Sean Press, chief of staff to the international strategy, engagement and devolution directorate and Ms Maarit Virenius-Varela, deputy head of the programme office in the new plan for immigration (Sovereign Borders) programme. The claimant was briefly recalled (and interposed in Ms Virenius-Varela's evidence) to give evidence on a note he had taken of his first interview, before her evidence was completed. The tribunal then heard from Ms Delrose Daley, resourcing delivery manager within HORC, Ms Gabriella Huege De Serville, senior executive officer in PPD and Ms Heather Fogg, business management lead in the Home Office cyber security team of the Digital, Data and Technology directorate. The respondent also relied on the written witness statement of Ms Titilayo Francis, capability resource manager in PPD. The written statements, where the witness was not present to be cross-examined, were accepted into evidence with the caveat that significantly reduced weight could be placed upon them in circumstances where the witness had not been present to be cross-examined on their evidence.

11. During proceedings there was some limited additional disclosure, including on the claimant's request, which included additional messaging conversations. All additional documents produced were accepted into evidence by agreement of the parties. The claimant has at various stages requested additional documents which the respondent maintains do not exist or are no longer in its possession or retrievable. The tribunal is not in a position to doubt the veracity of the respondent as regards the available documentation and has no basis from drawing an adverse inference, as the claimant has suggested it should, which might affect the credibility of the respondent's witnesses or otherwise.

12. The hearing has been conducted on the basis that there would be regular breaks and the claimant was able to ask for any additional break whenever required by him. Furthermore, questions were to be asked at an appropriate

pace with passages of documents referred to being read out to the claimant as an arrangement, he agreed, to enable his full participation in the light of his dyslexia. The tribunal is clear that the claimant has been able to process and understand what was being said in the course of this hearing and has been able to formulate his responses and to mount appropriate challenges to the respondent's witness evidence.

13. The tribunal heard oral submissions on behalf of the respondent. The claimant's submissions were made with reference to a written statement read out, at the claimant's request, by Mr Ibrar Hussain, described by the claimant as his carer, albeit with the claimant supplementing such statement orally.

14. The tribunal is aware, in particular, of common disadvantages and impairments suffered by those with dyslexia, including in guidance in the Equal Treatment Benchbook. It has made its findings as to credibility and inconsistencies in the claimant's evidence fully mindful of its need to take appropriate care not to come to such conclusions arising out of any impairment suffered by the claimant.

15. Having considered all relevant evidence, the tribunal makes the factual finding set out below.

Facts

16. The claimant is employed by the respondent as an executive officer in the asylum and immigration directorate. He decided to go for a promotion to become a portfolio and project delivery HEO.

17. The claimant applied for a role as a HEO project support officer on a standard application form. In response to a question, asking whether he felt that he met the minimum job criteria and would like to apply under the Disability Confident Scheme, he answered in the affirmative. He gave a similar answer to a question asking whether he required a reasonable adjustment during the interview or assessment stages. The form provided that, if he did require an adjustment, the recruitment team would get a notification that he needed support and would try to arrange it for him. The next question asked what reasonable adjustment might help him. In response the claimant stated: "I need longer time in interviews and may need resist (sic) online tests if my condition fluctuates or if I have a seizure". The application process for this role did not require the completion of any online tests.

18. The claimant told the tribunal that he had also included on the form reference to him suffering from dyslexia. On further questioning, the claimant said that he had "intended" to include additional information. The tribunal concludes that no additional information was included. When the

Home Office Resoucing Centre ("HORC") provided the Portfolio and Project Delivery ("PPD") directorate with documentation for interviews on 23 June, this included a section on reasonable adjustments for a number of candidates, including the claimant. The recruitment was being led by PPD as the project management profession sat within it, albeit any recruits would be placed across the respondent working on a disparate range of projects. Against his name was copied and pasted exactly what he had put on his application form, including the typographical error. The claimant then agreed that the application form did not mention his exact disabilities. The tribunal notes that the communication from HORC asked the interviewers to ensure that any reasonable adjustments were adhered to throughout the interview.

19. The tribunal has evidence from the claimant that, during his period at school and college, he was provided with 25% extra time in exams due to him being slow in processing information. The claimant agreed that the emphasis in his educational adjustments was that he needed more time to do things. He said also that in college he had been given one-to-one support as well and allowed to re-sit an exam on an open book basis which involved taking potential questions which might be asked into the exam. He then expanded (unconvincingly) that for some exams he'd been given the actual questions. When taken to his Personal Independence Payment assessment, the claimant agreed that it had been assessed that he could express and understand verbal information unaided. He agreed that his dyslexia assessment recorded him having a relative strength in his verbal ability with lower visual ability, working memory and processing speed.

20. It was arranged that the claimant would attend an interview at 11:15am on 27 June 2022. The claimant was notified at 7:02pm on 23 June 2022. The claimant replied at 7:09pm to project delivery capability resourcing, Ms Francis and Ms Virenius-Varela, who were to interview the claimant, stating: "I'm querying my reasonable adjustments which I've not got in place for the interview which was interview questions to be given to me before my interview as I have dyslexia. I also require additional time at the interview." The tribunal notes that no specific amount of time was requested in terms of having the questions in advance of the interview. The claimant told the tribunal that he had heard nothing about adjustments and that this was simply a follow-up request. He agreed that there was no reference within that to him requiring any breaks. When put to him that this was the first time he had raised a need for questions in advance, he said that this had also been mentioned by him on his application form. As already found, it had not.

21. Having received no immediate response, the claimant messaged Ms Francis through the respondent's internal Skype messaging service at 7:34pm. She replied at 7:36pm saying she had received his email and had passed it on to her manager, the PPD's head of resourcing who would be in touch the following day, a reference to Mr Martin Mak.

22. At 9:21am on Friday 24 June, the claimant messaged Ms Virenius-Valera saying that he wanted to ask if she was aware "of my reasonable adjustments of getting the interview questions beforehand due to my dyslexia?" She responded at 9:22am: "I don't have them yet – but could you get in touch with PPD – Martin Mak for that?" The claimant responded that he would message him.

23. The claimant messaged Mr Mak at 9:25am about the interview the following Monday. He said he'd spoken to both Ms Francis and Ms Virenius-Valera and they had told him that Mr Mak would handle his reasonable adjustments prior to his interview, referring to him getting the interview questions before his interview due to his dyslexia.

24. Mr Mak responded at 10:05am saying that Ms Francis had provided a brief overview of his requests and asking if he was free for a call. A telephone subsequently took place between the claimant and Mr Mak from 10:30am until 11:17am. The claimant's evidence was that, during that conversation, Mr Mak had agreed to provide the claimant with the exact interview questions in advance of the interview and that he had asked what disabilities the claimant had. His evidence was also, however, that Mr Mak had said that it would be "unfair to normal candidates".

25. If Mr Mak was of the view that it would be unfair to provide the exact questions to the claimant, it is unlikely, the tribunal concludes, that he agreed to do so. The subsequent Skype messaging conversation between them does not suggest any such agreement. The claimant messaged Mr Mak at 12:13pm asking if it was possible for him to email "some sort of questions that are likely to be asked…". Mr Mak responded at 12:15pm saying that was not a problem and that he would send material to the claimant and supporting documents as discussed to help him with his preparation. The claimant messaged again at 12:18pm asking Mr Mak to simplify the questions when he sent them as "it can be difficult with my dyslexia".

26. At 12:51pm the claimant asked about the themes which might be covered, saying that he thought Mr Mak was going to send him some questions that were "similar" to what would be asked. Mr Mak responded saying he had provided "the platform and the general direction of how you should approach the interview… and the type of Qs to expect." The claimant thanked him. Mr Mak messaged at 1:05 PM saying he had just sent the information over and that they could have another call if the claimant had any questions.

27. This conversation does not suggest, as was the claimant's evidence now before the tribunal, that Mr Mak had previously agreed to provide the exact

questions and now reneged on that agreement. The claimant said that during their lengthy telephone call he was begging repeatedly for reasonable adjustments, but was refused them. His accounts are not consistent. The claimant's evidence was that he did not complain to Mr Mak or suggest a change in Mr Mak's position because of their difference in seniority.

28. Mr Mak emailed the claimant at 1:04pm with seven attachments including advice regarding success at interviews. He set out how the interview would be structured. He then gave some information about interview questions highlighting some of the key behaviours that would be useful for the interview. The first such area was delivering at pace with the types of behaviours the respondent would expect to have demonstrated to it at interview with evidence focussed as listed as operating at pace, delivering to deadlines and working with team members. The next behaviour highlighted was that of making effective decisions. Again, the claimant was asked to focus on how he went about the decision-making process, whether it was analysing/collating information, resistance he may have encountered and how his decision affected others working with him in order for him to deliver. The next theme highlighted was that of planning, with reference to what the claimant's approach was to planning for the job he was applying for and how it impacted on stakeholders/colleagues/customers. Finally, the theme of stakeholder engagement was raised with a link provided to the project delivery capability framework and the question raised as to how the claimant would identify and work with stakeholders to deliver and whether he had been in situations where his stakeholders were not aligned to the common goal. Mr Mak concluded that he was happy to discuss this if the claimant had any questions.

29. When asked if the claimant had prepared for the interview as suggested and whether he had looked at the documents referred to, he said that he had seen the documents, but that the interview questions themselves were not provided.

30. Nevertheless, the guidance provided on behavioural questions referred to there being two different ways of asking questions: giving an example of exhibiting a behaviour or what the candidate might do in a situation. At the interview, the claimant was asked to give examples under each of the aforementioned behaviours. The claimant said that he was aware indeed simply from the job advert of the full behaviours which would be looked for, but said again that he was not given the questions. When asked if he had prepared examples, he said that he had not and there was not sufficient material provided to him to assist in his interview, the claimant saying that, with his disabilities, it took longer and that if he had received the questions in advance he would have passed the interview. When put that he could have easily anticipated the questions (a proposition with which the tribunal agrees), because he was simply asked to give examples, he said that he

could not and that he did not get the adjustments he asked for. If he had got the questions in advance, He would have had the exact examples ready.

31. At 8:23am on the morning of the interview, the claimant contacted Ms Virenius-Valera. He asked if she had five minutes to go through some questions he had about the role before the interview. She asked him to give her 15 minutes saying she was just preparing for the interview. She then responded at 8:29am saying: "I am not able to give you the questions but we will be able to give you more time to respond. But I am happy to talk through approach to strength and behaviour questions." The claimant responded that was something which Mr Mak had already assisted with. He then messaged saying: "I do require reasonable adjustments, I can do the job but with adjustments, I do not want to be at a greater disadvantage to others because of my disability."

32. Ms Virenius-Valera tried to call the claimant without success. He responded saying that he was sorry, but he was "having a little flareup hence was not on my laptop when you called." Ms Virenius-Valera said that she would call the claimant after a meeting. She messaged him however at 9:17am saying: "Apologies, Adnan, I was advised by Titi, speaking to her now, that you spoke with Martin Mak, who is the head of resourcing and he has already given you the interview structure and pointers. At the interview we will be giving you time as much as possible. Just try to relax now, I understand that you may be nervous but please try to focus on your application. I will need to prepare now and work other matters through before I go on a day of interview. It sounds like you are very nervous but try to relax."

33. Ms Virenius-Varela said that Ms Francis as chair of the panel (from the directorate responsible for managing this recruitment campaign) took the lead role in the interview and had overall responsibility for it, including in terms of reasonable adjustments. She worked in a different directorate to Ms Francis on a programme known as Sovereign Borders. Her directorate was hoping to be allocated some of the HEO project support officers appointed. In terms of the claimant's disabilities, she was aware of what he had put on his application form. There was no reference to epilepsy and the claimant's references to seizures did not cause her to consider that. She was not aware that the claimant's reference to needing more time was on account of dyslexia, but she had then received the claimant's email to Ms Francis of 23 June which referred to his dyslexia. She had no specific recollection of the email. She said that she would have assumed that PPD would respond. Ms Francis had certainly not discussed this email with her. Ms Francis had subsequently told her that the claimant had been in touch with her and she had referred him to Mr Mak. She did not know what the claimant had been querying. Her understanding was that Mr Mak had assisted the claimant, but she was unaware of the content of his communication with the claimant.

34. The claimant was duly interviewed through a Teams video call. The claimant believed (he recollected) that the interview had finished in 44 minutes and therefore he had not received any additional time. Ms Virenius-Varela believed that it had lasted close to 1 hour. The tribunal cannot say exactly how long the interview lasted. The claimant recalled that all of the questions in the interview script were put to him. The tribunal can conclude that the claimant was not time limited in the answers he gave. Whilst there were guidelines to interviewers on the time to be given for each question (from the point the candidate commenced their answer), they were not strictly applied and no cut off was imposed on any of the claimant's answers.

35. The claimant put to Ms Virenius-Varela that in the first few minutes of the interview he had mentioned the continuous flareup of his bowel condition and a need to go to the toilet. She said she was absolutely sure that she did not hear any of that. In then cross-examining her about the questions asked, he referred to a point, 7 minutes 4 seconds into the interview. The tribunal queried whether the claimant had a recording of the interview. He said that he did not. He accepted, however, that he was referring to notes he said he had made during the interview. An adjournment was allowed for the claimant to produce those notes to the respondent and they were subsequently provided to the tribunal, the respondent raising no objection as to their inclusion in evidence. Part of the note referred to telling the panel he may need to go to the toilet if he had a flareup and it been said that that would be okay. The tribunal is prepared to accept the accuracy of that particular note. The claimant nevertheless maintained that after the second question they had not allowed him to go to the toilet when he had specifically asked - a request which he had not recorded in his handwritten note. The claimant said that he had set a stopwatch when he had started answering a question to see how much time he had used up. A reference to 7 minutes 4 seconds in his note was how long it had taken him to answer a question. The claimant had previously suggested that the request for a toilet break came at the 7 minutes 4 second point of the interview, but the claimant was providing now a different account of the interview.

36. He accepted that he had been asked whether he was fit and well to complete the interview and about any reasonable adjustments. The claimant agreed that he had not asked for the interview to be rescheduled - he said that he had already told James Burkitt, HORC resourcing delivery manager for the customer services group, that he was unwell. His witness statement evidence was that he had received a phone call from Mr Burkitt on the morning of the interview and had told him that he was not well due to a flareup with his IBS. He said that Mr Burkitt advised him to tell the panel members. The claimant in cross-examination, however, said that Mr Burkitt had said that he would speak to the panel himself and that the claimant was to tell the panel if he had a flareup during the interview. The witness

statement evidence is more likely to reflect the claimant's recollection that his evidence in cross-examination.

37. Against all the evidence, the tribunal cannot accept that, as has been alleged by the claimant, that the claimant, at the interview, told Ms Virenius-Valera that he was experiencing a flareup of his IBS and that she told him that it was "just nerves". The claimant in his witness statement referred to Skype messages for evidence of the comment about his nerves. It is during a messaging exchange that the comment indeed was made, not at the interview and not in the context of the claimant raising his suffering from IBS or having a flareup. Certainly, Ms Virenius-Valera did not make the comment in response during the interview to any request the claimant made for a toilet break. The claimant confirmed in cross-examination that it was just during this Skype conversation alone where he had referred to being unwell and Ms Virenius-Valera had made a reference to nerves. It was put to the claimant that he had subsequently grossly misinterpreted what had been said to him. The tribunal does not disagree.

38. The claimant's contention is that he asked to go to the toilet after the second interview question had been asked. In his subsequent internal complaint he said that Ms Virenius-Valera responded to his request saying that it was just nerves and he had the Skype messages to prove this. Again, Ms Virenius-Valera's reference to nerves is taken out of context. Before the tribunal, the claimant said that, when he asked to go to the toilet, the interviewers just went on to the next question. He said that he was in a vulnerable position and did not want to be a nuisance. He was able to continue, but with pain from abdominal contractions. He said that he did not want to be embarrassed by asking for a toilet break again. The tribunal rejects the claimant's evidence. His account has been inconsistent and misleading. The tribunal accepts the evidence of Ms Virenius-Valera (despite her own difficulties in exact recollection) that she would have definitely recalled had a toilet break been requested and would have granted it. No such request was made during the interview.

39. The claimant achieved an interview score of 19 which was short of a pass. He did achieve a pass in both of 2 "strength" questions, where brief answers were sought. These were deliberately aimed at eliciting a natural response, rather than allowing a prepared response, with no right or wrong answer. The claimant was less successful on the 4 behavioural questions, where a more detailed example based response was being looked for. The panel felt that the claimant needed more interview practice and to use Situation Task Action Result ("STAR") interview methods to better structure his answers and the evidence based examples he was giving. Ms Virenius-Varela told the tribunal that the claimant did not appear to struggle to answer any of the questions or demonstrate difficulties in understanding them. The claimant had asked for some questions to be repeated, but her evidence was that that was quite normal in such interviews and she was accustomed,

in interviewing, to repeat questions, particularly the strength-based questions. The claimant was not penalised for any request.

40. She explained that questions could be repeated as many times as required. Ordinarily there was a 2 minute time limit in terms of the answer to strength-based question and a 5 minute time limit on the answers to behavioural and technical questions. However, these were guidelines and would not apply strictly. Some interviews did take longer than an hour if someone was struggling.

41. There was a question asked by the claimant about the workplace culture and in reply he was given information about one type of relevant placement in Ms Virenius-Varela's directorate, but with an explanation that other programmes were bidding for the resource of project support officers. Ms Francis's team was a resourcing team and her directorate was responsible for the project management profession, but different programmes within the respondent went to PPD for resources. The HEO project support officers were not being recruited to work within PPD but for people with project skills to be placed elsewhere within the respondent.

42. On 12 July the claimant emailed Ms Francis, Ms Virenius-Valera and Mr Mak saying that it was "great speaking with you last week" and thanking them for taking the time out to interview him. He said that he was excited about the opportunity and looked forward to hearing back from them. The tribunal accepts that the claimant values courtesy and had seen advice from a Tik-Tok video encouraging contacting interviewers after a job interview. The claimant maintains that, despite this communication, he knew as soon as the interview concluded that he had been discriminated against.

43. Following the interview, the claimant was informed that he was unsuccessful at the interview.

44. The claimant raised a complaint by email on 2 August to Home Office Recruitment at the Cabinet office. He told the tribunal that he spoke to the CAB in August and they said that he should complain firstly to the respondent and then take matters from there.

45. In his complaint, he said that he was disheartened with the result. He had noted that he had dyslexia and the feedback given stated that the panel felt that the claimant would benefit from interview practice and using STAR to structure his answers better. Whilst the claimant told the tribunal that he had no issue with using the STAR structure, he did not think his dyslexia had been taken into consideration properly. He said that he had received high scores on his personal statement, but did say that he was having a bad day on the day of the interview due to an outbreak of his ulcerative colitis. He

said he still went ahead, but felt he had not been given the correct score due to this.

46. The claimant said that he intended to give more information when his grievance was discussed, but he agreed that within this written complaint he did not refer to a lack of reasonable adjustments, needing questions in advance nor needing more time. Nor did he say that he had been refused a toilet break.

47. The claimant sent a further email on 19 August 2022 asking for an update on his complaint, saying it was appalling that no one had come back to him more than two weeks after he had raised his concerns.

48. The claimant had forwarded his complaint to Mr Mak on 5 August. He replied the same day saying that they had other candidates who had requested reasonable adjustments in relation to dyslexia and other impairments and that they had ensured that measures had been put in place prior to the interview. He said that the scores the claimant received for his personal statement were separate to the interview scores. He suggested the claimant should seek further meaningful feedback from the panel members to get a better understanding of how he performed for each area assessed, if he hadn't already done so. He gave some times when he would be happy to discuss, if the claimant had any questions.

49. The claimant replied thanking him for his prompt response and asking how he took the matter further. He said that he had Skype messages to show that he did message Ms Virenius-Valera on the day to say that he was having an outbreak of his ulcerative colitis. That statement was not accurate, as seen from the messages described above. The claimant told the tribunal that he was starting a dialogue and, due to Mr Mak's seniority, was still scared to raise all of the other issues he said he had concerns about.

50. Mr Mak responded saying that the claimant would need to await the response from Home Office Recruitment. He asked if he had sought feedback from the panel members, if he had requested for the interview to be stopped due to his ulcerative colitis and whether he had reached out to the panel members to obtain a better understanding of the scores that were given. Again, he offered to speak to the claimant if he had any questions.

51. The claimant responded saying that he had received feedback. He said that he had told the interview panel about his health (and indeed prior to the interview) and all he was told by Ms Virenius-Valera was: "you are nervous". When put to the claimant in cross-examination that again he had not mentioned requesting a toilet break, he said that he did not give all the detail. He wanted to speak to someone impartial and Mr Mak was not that

person. It was put to the claimant that what he said he was in direct response to Mr Mak asking whether he had requested for the interview to be stopped.

52. Mr Mak responded to the claimant's own replies. He said that he would like to understand why the claimant did not request the interview to be stopped or rescheduled in the light of his ulcerative colitis. The claimant replied, saying that he didn't ask for the interview to stop or be rescheduled because he was not aware that this was an option. He asked whether him being unwell, yet still going through with the interview, could be taken into consideration. He continued: "Also with adjustments you did assist before the interview and I thank you for that, but the point I'm raising is in regards to the interview day."

53. Still on 5 August the claimant emailed Mr Mak saying he wanted a resolution. He said he was raising concerns about how the interviews had been carried out and about how he had been scored and the feedback received. The claimant agreed that he was not raising at this point a failure to make reasonable adjustments. Mr Mak suggested a call with Ms Francis and Ms Virenius-Valera to give feedback, which he said he was happy to join himself.

54. On 15 August, the claimant emailed Ms Francis and Ms Virenius-Valera asking for a meeting with both of them to get further verbal feedback as well as written feedback as to why he did not get the job. Ms Francis responded saying that she would schedule a catch up later on in the week for both of them to verbally provide feedback. The claimant responded asking if he could also have the feedback in writing. Ms Francis responded saying that they had already provided written feedback issued through the Civil Service Jobs website. The purpose of the verbal feedback call would be to go through each behaviour/strength in more detail. She said that she would schedule the call for the Thursday. The claimant replied that he was aware of that feedback on the website and he just wanted to be clear that there was no other feedback. He said that he did not think a meeting was necessary "if that is the same feedback as you gave already to me on CS website. I do appreciate your replies and time Titi." In cross-examination, the claimant said that he now saw that they were saying they would give more detail, but he had not understood the communication that way at the time.

55. The claimant forwarded his 2 August complaint to Mr Burkitt. The claimant emailed Mr Burkitt on 7 September raising his call before the interview with Mr Mak and saying that he was constantly begging for the interview questions to be given to him. He also said that he had been rejected because he was a disabled person. The claimant agreed in cross-examination that this was the first time he had raised his complaint about

questions not being given ahead of time. He said that he had done so at this point because Mr Burkitt was independent.

56. It was put to the claimant that he told Mr Burkitt that he had asked for the interview questions one hour in advance of the interview. The claimant responded that he had asked Mr Mak during their call for the questions 24 hours in advance as he had also stated in his 23 June email. When reminded of the content of that email, he confirmed that it was his case he had only mentioned 24 hours during the telephone call with Mr Mak.

57. On 7 September, Ms Daley, as resourcing delivery manager overseeing a team which delivered recruitment campaigns for the respondent's corporate and delivery functions, received an email from her colleague in HORC, Mr Burkitt, attaching the claimant's complaint. In the context of this case, Ms Daley only then became involved in assisting PPD deliver its campaign to recruit people into the role for which the claimant applied. Mr Burkitt telephoned her asking her to investigate and respond to the claimant. She noted that the claimant had initially sent his complaint to the government recruitment service ("GRS") on 2 August but it had not been passed to HORC to be dealt with in the usual way. She emailed the claimant on 7 September to say what she was doing and apologised that the GRS had not passed it on sooner.

58. Ms Daley understood from his complaint that he had been unsuccessful at interview and was of the view that his dyslexia and ulcerative colitis had not been properly considered by the panel. As part of an investigation, she spoke to Mr Burkitt, who told her that the claimant had also verbally alleged to him that he had been prevented from having a toilet break during the interview and that he had requested the interview questions an hour in advance but they had not been provided to him. She spoke to Ms Francis who advised her that the claimant had confirmed at the beginning of the interview that he was fit to be interviewed and that he had not at any time during the interview requested a toilet break. She also said that when he had been asked for reasonable adjustments which might help, he had only provided information in the application that he needed a longer time in interviews and might need to re-sit online tests. On that basis the claimant had been provided with extra time during the interview and would have been allowed toilet breaks had he asked for them. Ms Daley said that at this time the claimant had provided limited evidence and that she had therefore made enquiries of Ms Francis, Ms Virenius-Varela and Mr Mak. No one mentioned to her anything about the claimant seeking questions 24 hours in advance. The decision on reasonable adjustments would have been made by the team in HORC on receiving the request in the claimant's job application. Typically, any such request would be run through GRS. Whilst investigating, she was unaware that the claimant had asked for any specific amount of time but rather simply for the questions in advance of the interview.

59. Ms Daley emailed the claimant on 12 September, attaching the response she received from Ms Francis, saying that she had been reviewing and investigating the concerns he had raised. She apologised that GRS had not forwarded his original email of complaint which had caused a delay. She noted that he had said in his complaint that although he was not feeling well, he still went ahead with the interview. She said that whilst not mentioned in the claimant's email, Mr Burkitt had said that the claimant had mentioned verbally that he was stopped from having a comfort break during the interview, the panel responding that "this was just nerves". The panel's position was that they had not heard such a request and would not have denied this if he had requested it. She continued that he had also raised verbally with Mr Burkitt that he had requested to have a questions one hour before but was not given them. She said that such request had not been received and quoted what he had been asking for in his application form. The panel been made aware of the adjustments sought, i.e. longer time in interviews and this had been given. Overall, she concluded that his reasonable adjustment was taken into consideration and she was satisfied that the panel had acted fairly and professionally.

60. The claimant responded on 14 September saying that there had been some misunderstanding as to the adjustments he had initially requested and what had been listed. He did not feel that all of his evidence in support of discrimination and prejudice had been considered and attached further evidence including relevant Skype messaging conversations. It was put to the claimant that he did not challenge the reference in Ms Daley's email to him asking for the interview questions one hour in advance. The chronology provided by the claimant did not refer to seeking questions any particular number of hours in advance of the interview. The claimant nevertheless maintained that he had told Mr Mak during the phone call on 24 June that he wanted them 24 hours in advance. The claimant put in quotes the adjustments he had requested which the told the tribunal he had copied from his application form. However, this in fact expanded on what was actually on the application form with now a request to see the interview questions before the interview, references to his dyslexia and him having difficulty giving examples in response to questions. The claimant conceded that what he had put here was a fair summary of what he had intended to say in the application form, but it was not actually on the application form submitted. The claimant's communication was certainly misleading. On balance, he certainly had not previously asked for the questions 24 hours in advance.

61. Ms Daley discussed the further information provided with Mr Weale, senior resourcing delivery manager at HORC. He emailed her on 30 September saying that in his application the claimant had identified that he required longer time in the interview. It was not clear when he had requested the questions in advance, but there seem to be clear evidence that this was

requested on 23 of June and on the day of the interview. Whilst Mr Mak's email of 24 June was regarded as helpful, Mr Weale said that it did not meet the reasonable request that had been made in the claimant's email of 23 June. He said that the failure to meet the reasonable adjustment requested left those involved open to a grievance complaint of disability discrimination and if the claimant chose to go to a tribunal he would probably be successful, as the interview, he said, was not conducted in a way which met the reasonable adjustments of the claimant. He said that as the interview was not conducted in a way which met the reasonable adjustments of the claimant, the claimant should be offered a fresh interview with the provision of questions prior to the interview. He also suggested giving an apology from HORC.

62. Ms Daley emailed the claimant again on 5 October having reviewed the claimant's further evidence. She said that it was clear that his request to have the questions in advance of the interview were not met. She apologised on behalf of the panel that the reasonable adjustment requested was not implemented and the impact this had had on him. She said that HORC had put in place a process of working closer with candidates needing reasonable adjustments and vacancy holders to ensure that they were implemented. The claimant was offered another interview ensuring that all his adjustments were taken into consideration as originally requested. She said that he would be given the interview questions one hour in advance of the interview along with extra time. For the purposes of fairness, a new panel would interview him consisting of one member of the PPD Directorate as well as an independent panel member.

63. The claimant responded on 6 October thanking Ms Daley for her efforts investigating his case. He suggested that it was clear from her response that he had been discriminated against due to his disabilities as reasonable adjustments were not implemented. He felt this was done intentionally by the panel and the respondent because they did not want to hire a disabled person who needed extra time in performing tasks. He said he felt extremely traumatised and this had had an extreme impact on his mental health and well-being such that he was now taking stronger antidepressant medication. He said he felt scared to apply for new jobs and this gave him nightmares and severe anxiety. He requested that it would be fair that he should be offered the job. Had he not been disabled, he would have got the job. He said he was not going to do another interview and felt the same would happen to him again – he would be experiencing the same traumatising and discriminating procedure.

64. When put to him that he had not referred to one hour not being long enough to have the questions in advance, he said that he did not intend to attend any further interview. He just wanted the promotion and was declining the interview.

65. Ms Daley responded on 12 October saying that she was sorry about the way he felt as a result of his interview experience. Unfortunately, he could not be offered a position on promotion unless he had been successful at interview. She repeated the offer of an interview with questions one hour ahead of the start and encouraged the claimant to reflect on the feedback provided when he prepared for any future interview.

66. The claimant emailed Ms Daley on 24 October. He said that he felt the resolution to this complaint was to be offered the HEO job role. He asked her to reconsider that as a resolution and for guidance on the next step of raising this as an official grievance. The claimant's case was that he received no reply.

67. On 25 October the claimant emailed Mr Weale, copied to Ms Daley, asking for an update in the absence of a reply from Ms Daley. He replied saying that Ms Daley had not ignored his email and on 24 October had forwarded the claimant's email of that date to himself. He would review the exchanges and aimed to send a substantive response the following day. Mr Weale did so on 27 October. He went through how the claimant's issues had been raised and investigated. He reiterated that it was not possible to simply offer the claimant the position and encouraged him to reconsider the opportunity of another interview.

68. The claimant submitted a grievance on 26 October to Mr Chris Anderson, Head of Project Delivery People Function against Mr Mak. Ms Virenius-Varela and Ms Francis. This referred to a failure to make reasonable adjustments at the first interview. The claimant said that he felt he deserved the position, but the panel knew he was disabled and he failed at interview because he required 25% more time compared to non-disabled candidates. He said that he had not had the resolution he wanted from HORC.

69. Ms Daley was given a copy of the claimant's grievance on 28 October.

70. On 31 October, the claimant emailed Mr Weale copied to Ms Daley saying that he had submitted a formal grievance, would like to give the respondent a chance to rectify their mistake of disability discrimination and therefore was accepting the offer to have a further interview. He said he would require the interview questions exactly 24 hours prior to the interview and would like to do a recorded interview on the launchpad video link. Furthermore, he would need to go to the toilet if he suffered an outbreak of his colitis/IBS during the interview. The claimant agreed that this was the first time he had put in writing the request for interview questions 24 hours in advance, although it was his case was that he had told Mr Mak and Mr Burkitt verbally previously.

71. Ms Daley was of the view that having the questions 1 hour, not 24 hours, in advance was a reasonable adjustment. She had consulted the respondent's diversity and inclusion team in GRS which had agreed. She had spoken to Joanne Moran of that team on 23 September, who had told her that in the circumstances usually questions 1 hour in advance was sufficient. She had also ran this past Mr Weale, who agreed. Ms Daley in cross-examination said that she had never heard of anyone being given questions 24 hours in advance although she could not speak for other teams. The usual practice in the event of it being a reasonable adjustment for questions to be provided in advance, was to give them between 30 – 60 minutes in advance.

72. The claimant chased a response on 1 November. Mr Weale replied on 2 November saying that he had asked Ms Daley to clear his proposed interview arrangements with the business and reply to the claimant. The claimant responded repeating the request to have questions 24 hours prior to the interview.

73. Ms Daley emailed Mr Mak on 2 November saying that the claimant had agreed to be interviewed, but was now requesting the questions 24 hours in advance and with the use of launchpad. She asked if he was happy to respond in a form drafted by Mr Weale. Ms Daley told the tribunal that she had to keep PPD in the loop as they were the vacancy holder. Mr Mak responded that he was happy with the response.

74. Ms Daley reverted to the claimant on the afternoon of 2 November saying she was pleased he had decided to proceed with interview. She said that she had cleared Mr Weale's proposed interview arrangements with the business (i.e. PPD) and so was responding in his absence. She said that whilst they were prepared to provide interview questions 1 hour in advance of the interview, they would not consider 24 hours in advance to be a reasonable adjustment. At least 5 days' notice would be provided of the interview, the panel would provide their questions 1 hour in advance and would set aside additional time should it be necessary for him to take a break during the interview.

75. The claimant responded on 3 November setting out the respondent's duty to make reasonable adjustments. He said it was reasonable for him to get the questions 24 hours prior to the interview due to his mental health, dyslexia and epilepsy. He still wished for the interview to be recorded but was okay to proceed if it could not be. In cross-examination, the claimant confirmed that by this stage he had accepted that he was not going to be given 24 hours advance notice of the questions – he said that: "I had to take what was given to me".

76. The claimant separately complains about an incident on 9 November 2022 involving Mr Shah and Ms Francis. This related to Mr Shah's alleged refusal to speak to him and to direct him instead to HORC. The claimant said that he now understood that HORC were the appropriate people to speak to in respect of any ongoing job application. He agreed that he had already dealt with HORC , for instance, Ms Daley in his application process.

77. The claimant had contacted Mr Weale in an email copied to Ms Daley on 9 November at 12:15pm asking for an update on the timing of his interview. He told the tribunal, when he made that contact, he did not know that the interview had been scheduled for 28 November.

78. The claimant contacted Mr Shah by the Sykpe messaging system, a HEO involved in recruitment within the PPD directorate at 2:44pm. Mr Shah, who was managed by Ms Francis, had had no significant involvement in the claimant's application. His primary task was contract management supporting the short-term workforce team – he had an additional task to support the wider recruitment team, which ran recruitment teams for roles across the Home Office from time to time. He had never undertaken the role of project support officer, for which the claimant was applying. 3 or 4 members of staff in PPD had access to the inbox relevant to the HEO project support officer recruitment. He had not read the claimant's application form – he was simply aware of his name as a candidate who was being interviewed when he sent out the candidate packs to the interviewers. He had seen an email from HORC which referred to the claimant as being disabled and/or that the claimant was asking for reasonable adjustments. Mr Shah scheduled interviews and gave the interviewers a list of reasonable adjustments required. He was not aware of what the claimant's disabilities were until the claimant referred to dyslexia in the messages between them on 9 November.

79. The claimant messaged that he had a position coming up soon for "HEO project delivery and wanted to know what skills the role entails." Mr Shah checked which role the claimant was referring to. At 2:47pm, Mr Shah messaged asking the claimant how he had got his name. Mr Shah told the tribunal that he was intrigued "if all this was going on behind the scenes" and the claimant was dealing with Mr Mak and Ms Francis, why the claimant had decided to contact him in the first instance. He confirmed then that he was, however, at the time, unaware of the issues around the claimant's first interview. He said that the claimant was privy to what had happened, and that Ms Francis was his line manager and Mr Mak hers. Again, however, he had been unaware that the claimant had failed to pass his interview until he saw the tribunal bundle. He didn't know about the issues behind the scenes, but, he said, the claimant did. He was intrigued "now" why the claimant contacted him on 9 November – on the basis of what he "now" knew. The tribunal accepts his evidence on the basis of the messages

which followed that afternoon which disclose a lack of awareness on Mr Shah's part.

80. The claimant responded saying that he had dyslexia "so it's difficult so I thought maybe asking someone…". He said that he had found Mr Shah's name on the intranet while searching within the project delivery section. He apologised. Mr Shah effectively told him there was no need and said that he had come through to the correct team. The claimant responded that he wanted to ask someone "who is doing the same thing." The claimant said that he was nervous and Mr Shah responded that he worked in PPD Resourcing Team such that recruiting for PD roles was his job. Mr Shah asked if the claimant had applied for one of the HEO PSO roles within PPD recently. The claimant said that he had and he felt anxious about the interview. He asked if Mr Shah could keep the conversation private and confidential. He wondered if they could speak. Mr Shah said he would keep it private. The claimant then asked what time he would be working until. At 2:54pm the claimant then asked if he could call Mr Shah on his mobile

81. Mr Shah messaged Ms Francis at 2.54pm asking if the name Adnan meant anything to her.

82. At 2:57pm Mr Shah messaged the claimant: "just to clarify, you have a HEO PSO role within your team and you just want to know what skills/knowledge are required for the role." The claimant responded that that was correct saying that he was coming from the asylum team so it was all new to him. The claimant then at 2:59pm asked if he could call Mr Shah on Skype in 20 minutes.

83. Mr Francis responded to Mr Shah at 3pm for clarification as to the claimant's name and then asked why Mr Shah was messaging him. At 3:03pm Mr Shah messaged her that the claimant had asked for some help with the HEO PSO role so he was going to refer him to the PDCF. Ms Francis responded: "No pls don't engage him! … He's the candidate we've been having trouble with saying he asked to go to the toilet at his HEO PSO interview! He's been stressing myself/Maarit/Martin out! Do you remember I mentioned at the team mtg that we offered him another interview and he's declined it. Let me please give you a quick call." A 5 minute voice call then took place between Mr Shah and Ms Francis from 3:05 – 3:10pm. Mr Shah told the tribunal that Ms Francis' reference to the team meeting had not rung any bells with him at the time. The tribunal accepts that.

84. At 3:17pm on 9 November Mr Shah emailed Ms Francis and Mr Mak setting out his message exchange with the claimant. He said: "I recall from doing a little digging that he applied for an HEO PSO role through the PPD campaign. I understand from our recent IM exchange and call that I am not

to engage with Adnan further and will direct him to yourselves if any further contact is made.

85. At 3:24pm the claimant contacted Mr Shah again asking him to let him know when he had 5 minutes to talk.

86. Mr Shah messaged Ms Francis at 3:28pm saying that the claimant had asked for a quick call and asking if he could refer the claimant to Ms Francis. She replied that she thought he should tell the claimant to contact HORC, but asked him to hold on whilst she checked with Mr Mak. At 3:33pm she messaged Mr Shah: "Pls tell him you are unable to help and he should contact HORC instead." Mr Shah replied saying that he would do so.

87. When asked in cross-examination why he had contacted Ms Francis for advice, Mr Shah said that he wanted to get guidance from a more senior officer so that he gave the correct support and guidance which would not detrimentally affect any other candidate. He told her that he was going to refer the claimant to the PD framework ("PDCF") for information on the skills required for project delivery roles. This was available on the intranet anyway and something he would have expected any candidate for a role in project delivery to read. His evidence was that he was unaware that the claimant had made any prior complaint. He said that he was only aware in mid-January 2023 when Mr Press told him that the claimant had raised a grievance against him. He had only learnt of the claimant's August 2022 complaint when he had seen the tribunal bundle. Ms Francis' advice was that Mr Shah should tell the claimant that he was unable to help him and direct the claimant to HORC.

88. At 3:33pm Mr Shah messaged the claimant apologising and saying: "I am unable to help… are you able to contact HORC. They will be able to help". The claimant responded saying that he was just asking for his experience and Mr Shah reverted saying: "just am unable to support on this occasion". The claimant concluded the messaging saying: "no worries, thank you, I just wanted to know your experience that's all but not to worry." As far as Mr Shah was concerned, the conversation ended on a positive note.

89. In cross-examination, the claimant accepted that at no stage did Mr Shah agree to have a call with him - he said that Mr Shah had not said "no" either. He assumed he was happy to have a call. The claimant told the tribunal that he did not know that he ought to contact HORC so he contacted the people responsible for arranging the interview. He had contacted Mr Shah because he wanted to know about the role. He wanted to speak to someone who was actually doing the job. He did not know if there was anyone within HORC who would know about the role. He was not contacting Mr Shah to ask about his application but about the job role itself.

90. Mr Shah told the tribunal that he felt harassed by the claimant – not by the claimant's initial contact with him, but through their messaging chat. He did not feel that the claimant should have contacted him and that HORC should have been the first point of contact for any role. He felt pestered and uncomfortable.

91. The claimant accepted in cross-examination that his application was part of a bulk campaign to recruit around 50 people to a position which would exist within and across various departments. The campaign was not to recruit for a HEO role in PPD. Nevertheless, the claimant considered that, being in the PPD directorate, Mr Shah would know what the job would entail - he would understand the behaviours relevant to a project support role and Mr Shah's profile on the intranet referred to portfolio or project delivery. The claimant accepted that he was not applying for a role within Mr Shah's team. He said that he did not know if would be going to his team, but Mr Shah was in that type of role and had said that the claimant had come through to the right team. The claimant agreed that he did not raise this matter in his subsequent grievance saying he had intended to discuss it in more detail subsequently. Nor, he confirmed, was it part of the amendment to his tribunal complaint which she presented on 16 February 2023. The issue was raised at the first preliminary hearing in these proceedings on 28 March 2023.

92. The claimant chased Mr Weale for an update on the interview arrangements on 9 November and received a response from Ms Daley that day saying that the business was currently seeking the panel's availability to schedule his interview. She said that 5 days' notice of the interview date would be given. She continued: "… We would not consider providing the questions 24 hours in advance of the interview a reasonable adjustment. The panel will provide their questions 1 hour in advance of the interview and the panel will set aside additional time should it be necessary for you to take a break during the interview."

93. Ms Daley had no involvement in arrangements for the interview which were left to Ms Francis, including putting together an appropriate panel.

94. Ms De Serville was asked to be one of the panel members. She was working at the time within PPD, but not in the recruitment team. She had been trained on conducting interviews and had around 7 years' experience in interviewing. She saw Ms Francis on her first day back from a period of compassionate leave on 16 November. She had been aware in October of a possible interview for the claimant, but had then been told by Ms Francis that the claimant had declined the interview. Ms Francis now told her that the claimant had changed his mind about an interview and asked about her availability. She said that she had been told about the claimant's dyslexia – Ms Francis had said adjustments would be organised and that she would

be told what they were and what she had to set up. The invite to the interview said that the claimant would get the questions one hour in advance and extra time, as those were the reasonable adjustments. She was not, however, involved in deciding the appropriateness of those adjustments. Ms De Serville told the tribunal that it was not her job to look into the issue of adjustments, but rather up to Ms Francis to give specific information to the panel. She was not aware that the claimant had asked for the questions 24 hours in advance. Ms De Serville had been involved in another campaign where two candidates with dyslexia had asked for extra time, but not for the questions in advance. She had never heard of anyone getting questions in advance, nor seen the respondent's recruitment guidance which allowed for this possibility as an adjustment. Her understanding was that the adjustments made met the guidance given to Ms Francis by HORC. HORC, she considered to be best placed to judge the necessity of adjustments.

95. Ms De Serville said that, at this point, she was unaware of complaints the claimant had made or even the claimant's name. She was only aware that he was a candidate who needed adjustments. She said that she did not know that any adjustments required had not been met previously, simply that the claimant had dyslexia and the second interview was being arranged because his dyslexia needs had not previously been met. She agreed then it was fair to say that she was aware that a second interview was taking place, because there had not been reasonable adjustments in respect of his dyslexia.

96. The claimant emailed Mr Weale and Ms Daley about the interview date on 17 November.

97. Susan Maull emailed HORC on 18 November, copied to Ms Daley, asking how the additional interview time would be dealt with, whether it would be in the invitation to the interview and whether the timings ought to be amended.

98. Certainly, the claimant was then aware that the interview was scheduled at 11am on Monday 28 November from an email from Ms De Serville of 21 November. The email stated: "The interview overall will last for 1 hour – which will be 45 minutes along with 15 minutes extra time. I will forward you the interview questions an hour before the interview commences."

99. The claimant responded to this email (copying in Ms Fogg, the other interview panel member who had been copied into Ms De Serville's own email) in which he stated, despite already just having been told the same: "the reasonable adjustments are for interview questions to be sent to me prior to the interview an hour before and require additional time during the interview." This came after a statement that he had disabilities and required reasonable adjustments for the interview.

100. Ms Francis emailed Ms De Serville at 3:01pm on 21 November thanking her for agreeing to chair the interview saying that she had already sent a meeting invite to both her and the other interviewer i.e. the independent member of the panel, Ms Fogg, who had been asked if she would take on this role by Ms Francis. She copied in the claimant's name and email address and gave some wording to include when forwarding the Teams meeting invite to the claimant and Ms Fogg. This included a statement that the interview overall would last for 1 hour which would be 45 minutes along with 15 minutes extra time. It also stated that she would forward the interview questions an hour before the interview. Ms Francis suggested sending the questions at 9:55am to be on the safe side. She asked that Ms De Serville ask the claimant to confirm that he was happy to continue with the interview on the day and to feel free to inform them at any time if he needed the bathroom. Ms De Serville said that she had been awaiting this communication, understanding that the invitation to the interview had to be sent 5 days in advance. She thought that Ms Francis had been waiting for the appropriate wording from HORC to be put in the invite.

101. The interview invite for 11am on 28 November was sent at 3:48pm on 21 November to the claimant from Ms De Serville, with Ms Fogg copied in. The invitation did confirm that the interview would last for 1 hour which would provide the claimant with 15 minutes extra time and that she would forward the interview questions an hour before the interview commenced. Nevertheless, the claimant responded at 4:38pm that he wanted to let her know that he had disabilities and required reasonable adjustments those being receiving the interview questions an hour before the interview and additional time during the interview. Ms De Serville's evidence was that still at this stage she just knew that the claimant suffered from dyslexia. She had not been given a list of his disabilities. At 4:50pm, Ms Fogg emailed the claimant asking him to contact HORC with his reasonable adjustments request. She told the tribunal that she was giving the claimant guidance as a panel member and did not feel that this necessarily had to come from the panel chair.

102. The claimant also separately complains about an incident on 21 November 2022 when he had a Skype messaging conversation with Ms De Serville, who said she couldn't speak to the claimant about the interview and that Ms Daley had forbidden her from doing so.

103. At 4:17pm the claimant Skype messaged her asking if he could call her for a quick informal chat about the job role. Ms De Serville was messaging Ms Fogg about arranging a pre interview meeting that week and Ms Fogg had responded with her availability. Ms De Serville messaged her: "I've just had an IM from the candidate – I've not opened it yet but have let Titi know…please let her know if he contacts you too." She told the tribunal

that she had been instructed by Ms Francis that if the claimant contacted them with something they couldn't answer, they should refer him to HORC. She contacted Ms Fogg because she had been instructed to let her know if she got a message from the claimant. She said she did not know why Ms Francis had given this instruction.

104. At 4:19pm Ms De Serville messaged Ms Fogg: "I'm going to try and shut him down because I don't have time to be hounded every day for a week." She told the tribunal that Skype alerts were going off indicating that the claimant was trying to continually message her. She said that she wanted to give the claimant a response "good enough to appease him and remain impartial." Ms Fogg responded to Ms De Serville asking why the claimant was contacting her. She replied that she was not sure, saying that she wanted to finish a task for a board meeting the following day before opening his message – she then pasted in the claimant's message for Ms Fogg to see. Ms Fogg responded at 4:33pm: "tell him to contact HORC". Ms Hogg told the tribunal that she always passed queries to HORC if a candidate contacted a panel member – the job advert referred to contacting HORC.

105. At 4:20pm Ms Francis emailed Ms Daley and Mr Weale forwarding the communications the claimant had had with Mr Shah suggesting, in terms of action to be taken by HORC, "perhaps a chat telling him to refrain from contacting our staff?" Ms Daley did not reply.

106. At 4:35pm Ms De Serville responded to the claimant saying that she had been advised by HORC to contact them with any questions he had before the interview. At 4:36pm the claimant replied saying that he was not aware of that and asking who she suggested he contact and also within the same message asking "why an informal chat is not allowed?".

107. At 4:37pm Ms De Serville responded saying that she would get him an email address, but had been told by HORC that he must contact them directly. She then sent the email address for HORC. At 4:47pm the claimant messaged asking: "do you have the individual's name who forbade you to speak to me kindly".

108. At 4:51pm Ms De Serville messaged Ms Hogg again saying: "I'm still being hounded. Mind blown." She told the tribunal that she made this comment because she had answered the claimant's question and he was still asking her questions. She maintained that she was trying to multi task and still busy preparing board meeting papers. She had then had to deprioritise that task as she had been approached by the Chief of Staff who was requesting some data to provide to the Home Secretary.

109. At 4:53pm Ms De Serville messaged to the claimant: “Delrose Daley”. Ms De Serville told the tribunal that when she gave Ms Daley’s name, she was replying to the claimant’s request for the name of someone in HORC to contact – she said that she was trying to be helpful. When she replied she said that she had not seen the claimant’s message asking who had forbidden her from speaking to him. She said that she had never met or spoken to Ms Daley before.

110. At 4:57pm the claimant emailed Ms Daley and Mr Weale asking what was going on. He said that he had tried reaching out to people for an informal chat prior to his interview and every person had told him that they were forbidden from communicating with him. He asked why. He referred to his attempts to speak to Ms De Serville and his messaging of Mr Shah. He said that he felt that HORC were intentionally trying to give him a bad name and said that this was “really upsetting me”.

111. Ms Daley said to the tribunal that when she received the claimant’s email she was “obviously flabbergasted” and contacted Ms Francis to ask what was going on. She asked Ms Francis why she was receiving the claimant’s email with these accusations and Ms Francis said that she would check and get back to her. Her recollection was that she had been told then that Ms De Serville had said that “it was a miscommunication”. She was absolutely adamant that she had never told Ms De Serville not to speak to the claimant. She said that she did not know Ms De Serville.

112. At 5:01pm on 21 November the claimant emailed HORC copying in Ms Daley and Mr Weale saying he had been informed by Ms Fogg (in an email from her at 4:50pm) to email this inbox. He said he was just letting them know that he had disabilities and required reasonable adjustments for the interview referring then to receiving questions an hour before and requiring additional time. He said that Ms Daley was aware of that and said that his disabilities were epilepsy, dyslexia, ulcerative colitis/IBS and sciatica “as previously stated to Delrose Daley.”

113. By around 5:30pm, Ms De Serville said that she had realised for herself that she had made an error in her communication with the claimant. She was adamant that Ms Daley had never told her not to speak to the claimant. That was not what she had intended to communicate to the claimant. She said that she was unaware that the claimant had made a complaint until the next morning. Ms Francis telephoned her first thing the following morning to tell her, but gave her no instructions. She decided herself that she should contact Ms Daley “apologising for an honest mistake.” The tribunal concludes that Ms De Serville did tell Ms Francis of her intention to explain what had happened – she asked Ms Francis if she should copy Mr Weale into her email to Ms Daley and Ms Francis said that

she should as the claimant had addressed his complaint to both her and Mr Weale.

114. The claimant messaged Mr Shah again on 22 November asking him who had told him not to communicate with him directly and get in touch with HORC. Mr Shah responded: "please accept my apologies I am no longer involved in this campaign." The claimant repeated his request and Mr Shah responded saying he was not in a position to confirm and asked the claimant to contact HORC directly for any campaign related questions. The claimant again asked what had changed Mr Shah's mind. Mr Shah responded asking the claimant to refer to what he had already said.

115. Ms De Serville emailed Ms Daley at 8:34am on 22 November 2022 saying that she would like to apologise "for the miscommunication on my end that has resulted in an email to yourself from the candidate I'm interviewing next week." She said that she was sharing a copy of the Skype chat "for openness and transparency and to explain why the fault is mine and not yours." She then pasted in the first section of her skype message with the claimant. She said then that the gap between the claimant asking for a call and her responding to say that the claimant should reach out to HORC, was due to her contacting Ms Francis and her fellow panel member, Ms Hogg, to let them know that she had been contacted by the candidate and get some direction as to how she should respond. She said that in this interim period the claimant had tried to call her, but she declined the call as she was in the middle of preparing for a board meeting, an information pack in respect of which needed distributing that night.

116. She then pasted in the remainder of the messaging with the claimant saying that she had not explicitly said that she could not have an informal chat and this was a conclusion the claimant reached for himself. She said that, not being the campaign manager, she was not in the best position to speak to the job advert. She had given the email address to contact HORC and whilst doing so had asked Mr Mak for the best person for the claimant to speak with without seeing the next question from the claimant come in, asking who had forbidden her from speaking to the claimant. The intention was simply to provide Ms Daley's name immediately after the generic email address as the person he could contact directly for questions. She said that due to letting Ms Francis and Mr Mak know each time the claimant was messaging her and then having the Chief of Staff come over and speak to her at the same time, she had not read the chat properly and missed the bit about being forbidden to speak to the claimant.

117. She then showed that the conversation had ended with the claimant wishing her a good weekend and saying that it had been nice talking to her referring to him seeing her then on Monday 28 November.

118. Ms De Serville then stated that she did have concerns that as he had got nowhere with her, the claimant would try to contact Ms Hogg stating: "we are an impartial panel to the situation but this is not a good first impression and there is a lack of respect for boundaries on his behalf. If this continues I feel this will need to be escalated higher up and with his line manager as this is very unprofessional behaviour. I do apologise for my response to his IMs and I hope this email is of some use to set the record straight in that you have categorically not spoken directly to me or forbidden me to speak to the candidate."

119. The claimant did not accept this as a genuine explanation. He suggested that Ms De Serville's ability to message Ms Fogg showed that she was not so busy with her ordinary work so as to make this mistake and that she was not rushing. In the claimant's view, Ms De Serville was not trying to help him but in fact trying to "shut me down". Ms De Serville's explanation is entirely plausible and her ability to quickly message others is not suggestive of her being under no pressure in terms of her ordinary workload.

120. On 22 November, Ms De Serville had a messaging conversation with Ms Francis during which Ms Francis said that Ms Daley had been a bit upset the previous day "when the candidate made all sorts of wild accusations…Sorry to put you through this but fingers crossed it'll be over this time next week".

121. At 4:44pm on 22 November Mr Weale responded to the claimant's email to himself and Ms Daley. He said that serious allegations were being made and whilst the claimant had referred to HORC "we take them personally and totally refute the allegations." He said that their role had been to examine the claimant's complaint and, having identified "the procedural error", they had engaged with the claimant on the reasonable adjustments and had asked the business area to arrange a fresh interview for him. Otherwise, they had not spoken to anyone about the previous interview. They categorically denied having forbidden anyone from contacting the claimant. They did not know Ms De Serville and had not emailed her.

122. At 4:51pm on 22 November, Mr Weale asked Ms De Serville if she would consider "clarifying the miscommunication" with the claimant. At 5:16pm Ms De Serville emailed the claimant saying that it had been brought to her attention that there had been a miscommunication between them that was her fault and which needed clearing up. She then included sections of the Skype messaging and provided an explanation similar to that which she had provided previously to Ms Daley. She said: "I must set the record straight in that Delrose in HORC has categorically never spoken directly to me or forbidden me to speak to you. I have informed HORC I'm aware of

your reasonable adjustments and as stated in the calendar invite yesterday I will send them to you an hour before your interview next Monday." Whilst the tribunal accepts that this was sent to the claimant, his evidence was that he had never received it.

123. She responded to Mr Weale at 5:19pm saying: "It is my mistake and an honest one at that. I have written to Adnan and set out a similar email to the one I sent you this morning but tailored it to him. I have been honest and said that as a result of my actions I have apologised to Delrose."

124. At 5:23pm Ms De Serville messaged Ms Francis that "HORC must truly hate me … because of Adnan's allegations … I don't really know what to do if Adnan tries to call me tomorrow…" Ms Francis asked her not to respond any more.

125. At 6:22pm the claimant emailed Mr Weale copied to Ms Daley, expressing his upset and saying that he felt bullied and personally attacked by Ms Daley forbidding others from speaking to him. The claimant asked for the matter to be investigated. Mr Weale responded on 25 November saying that if the claimant continued to believe that he or Ms Daley had acted as suggested it was for him to decide to follow the grievance procedure.

126. Ms De Serville decided to remove herself from the interview panel as she felt that she couldn't have an unbiased view of the claimant. She had found the experience overwhelming and withdrew also for the good of her health. At 10:11am on 24 November Ms De Serville messaged Mr Mak saying that she was sorry to let him down. He responded: "don't worry …. In a sense you have helped me already without realising." Ms De Serville told the tribunal that she did not know what he was referring to.

127. Mr Mak messaged her at 10:14am saying: "there's been a long history and since June and all sorts of allegations have been made, won't bore you with the details of it but the latest development means that HORC is now stuck in this endless loop. I advised them previously but they approached it differently. I leave it there!"

128. On 24 November, Ms De Serville emailed Ms Hogg saying that she had withdrawn as Chair of the claimant's interview panel. Ms Hogg responded that MsFrancis had already made her aware of that. Ms De Serville messaged: "I don't want the candidate to be able to use his excuse of me being turned against him by HORC. He emailed them making allegations that as I wouldn't speak to him that HORC had turned me against him." Ms Fogg responded: "oh gosh". Ms De Serville then messaged: "so for the panel to remain impartial and for him not to be able to use that excuse after the interview I removed myself." Hs Hogg responded: "I understand". Ms De Serville conceded in cross-examination that having, "out of

politeness", told Ms Hogg that she would no longer be on the panel Ms Hogg "probably did not need to know the rest." She denied trying to prejudice Ms Fogg. Ms Fogg said that other than from these communications, she had no knowledge of why Ms De Serville had withdrawn from the panel. She did not, she said, pay much attention to what Ms De Serville told her, appreciating her own need to remain impartial. She absolutely refuted the suggestion from the claimant that she had been angry when she learnt of Ms De Serville's withdrawal. She was surprised that Ms De Serville had withdrawn, but said that she absolutely understood her decision, Ms De Serville believing that it could seem that she was not impartial. Ms Fogg told the tribunal that if anything it made her more determined to remain impartial and professional. She denied that she had any unconscious bias against the claimant.

129. Ms Francis emailed Ms Fogg and Ms Foluso Oladunjoye, who replaced Ms De Serville as chair of the panel, on 24 November with the text of a message to be sent to the claimant informing him that "due to unforeseen circumstances" Ms De Serville had withdrawn and Ms Oladunjoye would be taking over as Chair. Information was given again about the interview including their awareness of his reasonable adjustments, that the interview would last for 1 hour rather than 45 minutes with the questions provided an hour before the interview commenced. Ms Fogg told the tribunal that this was the first occasion she was aware of the reasonable adjustments although in cross examination she was referred then to the claimant's communication at 16:38 on 21 November which referred to his reasonable adjustments which she said she could not recall particularly albeit, as has been seen, she had replied telling the claimant to go to HORC.

130. Ms Fogg said that her knowledge of reasonable adjustments was limited to what she had seen in the email correspondence. She didn't know why the claimant had requested the adjustments and her understanding was limited to what the claimant had referred to in his job application when she received the interview pack. She told the tribunal that she was aware that interview questions could be provided to a candidate in advance, but had not come across this adjustment being made in around 12 years of interviewing with the respondent. She did not think it was relevant for her to know about the disabilities. It was down to the business responsible for the recruiting to deem what adjustments were reasonable and would not prejudice the others who were being interviewed. Ms Daley had provided the answer as regards what were reasonable adjustments which was a matter the HR team looked at on a case-by-case basis.

131. The claimant's second interview for the position took place on 28 November. The claimant accepted that the interview questions were sent out to him 1 hour 10 minutes before the interview. He also agreed that the interview took place without any issue. He did not request any extra breaks

and accepted that he was given extra time to answer the questions. He also agreed that the interview questions were exactly the same as those at the first June interview, saying he gave the same responses as he had in June. When questioned as to whether he had used the additional hour, he said that he had, although he required more time to process the information. He told the tribunal that he still thought that having the questions 24 hours in advance would have been reasonable. He then said that he had looked at the feedback previously provided and made his answers better - the additional one hour he said had assisted him. Whilst he had given the same examples as in June, he had enhanced them. His view was that his performance had been better at the second interview than the first. However, he believed that the panel had colluded with Ms Francis to prevent his appointment. That was the reason for his lower score of 14 whereas he had been awarded a score of 19 after the first interview.

132. In cross-examination it was put to the claimant that his reasonable adjustment complaint was unsustainable, because he was now saying that he had given better answers to the questions than before and that the reason for him not passing was because of collusion. He agreed that the adjustments made at the second interview helped him to perform better and that he did perform better. He told the tribunal that he thought he had done "really well". The feedback that his examples would have benefited from greater detail and that he ought to have adopted the STAR method in answering was rejected by the claimant as illustrative of the collusion to prevent him from gaining promotion.

133. On 28 November 2022 the claimant had emailed Ms Oladunjoye and Ms Fogg saying that it had been great speaking with them that morning and thanking them for taking the time to interview him. He said that he was excited about the opportunity and confident he would be a great fit and could add value to the team.

134. The claimant was told on 2 December that he had not been successful.

135. On 12 January 2023 the claimant raised a second grievance. He listed his disabilities saying that he gave a good interview "but the panel knew I was disabled, did not give me reasonable adjustments and then failed my interview because I require 25% other time compared to normal candidates who…" He referred to Ms De Serville as being one of the original interviewers but that she had told him prior to the interview that she had been "forbidden" from speaking to him. These issues need to be dealt with formally "if the HEO position is not offered to me and the pay difference." It was put to the claimant that his case now was that he was not given the role because he was disabled and would be viewed as a nuisance. He agreed but maintained still that the respondent had not made adjustments. He had

performed very well yet had been disadvantaged in the interview. He complained that prior to the second interview he had been told by Ms De Serville that she had been forbidden by Ms Daley from speaking to him. Mr Shah had previously been forbidden from communicating with the claimant.

136. The claimant also emailed Ms Daley and Mr Weale on 12 January appealing in respect of the second interview as "incorrect" reasonable adjustments had again been given on this second occasion. He referred to questions not being given 24 hours prior to the interview and asked to be given a third interview with the questions given that period in advance as well as extra interview time, toilet breaks and the interview questions being put up on screen during the interview. The claimant told the tribunal that he wanted a fresh panel, noting that Ms Francis had been in touch with other panel members and told them about his issues and complaints. On 27 January, Mr Weale told the claimant that his email had been referred to Sean Press for consideration as part of his formal grievance.

137. On 18 January 2023, Mr Press, Chief of Staff of the international strategy, engagement and devolution directorate, was asked by HR to act as a decision-maker in respect of two grievances which the claimant had raised on 26 October 2022 and 12 January 2023. An investigation manager was appointed who provided a report to Mr Press on 3 July 2023 apologising for the delay, referencing her work commitments and the complexity of the claimant's grievance. Ms Daley, Ms De Serville, Mr Shah, Mr Mak Ms Virenius-Varela, Ms Fogg, Mr Weale, Ms Oladunjoye and Ms Francis had all been interviewed.

138. Mr Press decided to partially uphold the claimant's grievance in that he ought to have been provided with further adjustments prior to his first interview on 27 June 2022. He noted that Ms Daley had concluded that whilst the claimant had been provided with additional time and the opportunity to take toilet breaks if required, he had not been provided with the interview questions an hour in advance of the interview despite requesting that this adjustment be made for him. He concluded that Mr Mak and Ms Francis should have ensured that this adjustment was made. He found that the respondent had acted on Ms Daley's findings and rectified the situation by offering the claimant a second interview with adjustments deemed reasonable in place. He did not believe that receiving questions 24 hours in advance of the interview was a reasonable request on the basis that 1 hour was sufficient help to level the playing field for the claimant without prejudicing other candidates. He found no evidence that the claimant had been bullied, harassed or victimised in the recruitment process. Everyone had tried to support the claimant and he considered there had been simply an innocent miscommunication between Ms De Serville and the claimant regarding the claimant's assertion that he had been told that Ms Daley had prevented her from speaking to him. The grievance outcome was provided to the claimant on 25 August 2023.

139. Mr Press told the tribunal that he was aware of candidates being given interview questions in excess of 1 hour in advance, but decisions were made on a case by case basis in different areas of the business.

Applicable law

140. The duty to make reasonable adjustments arises under Section 20 of the Equality 2010 Act which provides as follows (with a "relevant matter" including a disabled person's employment and A being the party subject to the duty):-

> *"(3) The first requirement is a requirement where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage….."*

141. The tribunal must identify the provision, criterion or practice applied, the non-disabled comparators and the nature and extent of the substantial disadvantage suffered by the claimant. 'Substantial' in this context means more than minor or trivial.

142. The case of **Wilcox –v- Birmingham Cab Services Ltd EAT/0293/10/DM** clarifies that for an employer to be under a duty to make reasonable adjustments he must know (actually or constructively) both firstly that the employee is disabled and secondly that he or she is disadvantaged by the disability in the way anticipated by the statutory provisions.

143. Otherwise in terms of reasonable adjustments, there are a significant number of factors to which regard must be had, which, as well as the employer's size and resources, will include the extent to which the taking of the step would prevent the effect in relation to which the duty is imposed. It is unlikely to be reasonable for an employer to have to make an adjustment involving little benefit to a disabled person.

144. In the case of **The Royal Bank of Scotland –v- Ashton UKEAT/0542/09** Langstaff J made it clear that the predecessor disability legislation when it deals with reasonable adjustments is concerned with outcomes not with assessing whether those outcomes have been reached by a particular process, or whether that process is reasonable or unreasonable. The focus is to be upon the practical result of the measures which can be taken. Reference was made to Elias J in the case of **Spence –v- Intype Libra Ltd UKEAT/0617/06** where he said: *"The duty is not an*

end in itself but is intended to shield the employee from the substantial disadvantage that would otherwise arise. The carrying out of an assessment or the obtaining of a medical report does not of itself mitigate, prevent or shield the employee from anything. It will make the employer better informed as to what steps, if any, will have that effect, but of itself it achieves nothing." Pursuant, however, to **Leeds Teaching Hospital NHS Trust v Foster UKEAT/0552/10**, there only needs to be a prospect that the adjustment would alleviate the substantial disadvantage, not a 'good' or 'real' prospect.

145. It is not permissible for the Tribunal to seek to come up with its own solution in terms of a reasonable adjustment without giving the parties an opportunity to deal with the matter (**Newcastle City Council –v- Spires 2011 EAT**).

146. If the duty arises, it is to take such steps as is reasonable in all the circumstances of the case for the respondent to have to take in order to prevent the PCP creating the substantial disadvantage for the claimant. This is an objective test where the tribunal can indeed substitute its own view of reasonableness for that of the employer. It is also possible for an employer to fulfil its duty without even realising that it is subject to it or that the steps it is taking are the application of a reasonable adjustment at all.

147. The complaint of harassment is brought pursuant to Section 26 of the Equality Act 2010 which states:

> *"(1) A person (A) harasses another (B) if -*
> *A engages in unwanted conduct related to a relevant protected characteristic, and*
> *the conduct has the purpose or effect of—*
> *violating B's dignity, or*
> *creating an intimidating, hostile, degrading, humiliating or offensive environment for B…..*
>
> *(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
> *the perception of B;*
> *the other circumstances of the case;*
> *whether it is reasonable for the conduct to have that effect."*

148. Harassment will be unlawful if the conduct had either the purpose or the effect of violating the complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

149. A claim based on "purpose" requires an analysis of the alleged harasser's motive or intention. This may, in turn, require the tribunal to draw inferences as to what the true motive or intent actually was. The person against whom the accusation is made is unlikely to simply admit to an unlawful purpose. In such cases, the burden of proof may shift from accuser to accused.

150. Where the claimant simply relies on the "effect" of the conduct in question, the perpetrator's motive or intention – which could be entirely innocent – is irrelevant. The test in this regard has, however, both subjective and objective elements to it. The assessment requires the tribunal to consider the effect of the conduct from the complainant's point of view. It must also ask, however, whether it was reasonable of the complainant to consider that conduct had that requisite effect. The fact that the claimant is peculiarly sensitive to the treatment accorded him does not necessarily mean that harassment will be shown to exist.

151. Pursuant to section 27 of the Equality Act 2010:

> *"(1) A person (A) victimises another person (B) if A subjects B to a detriment because –*
>
> *B does a protected act; ….*

Sub-paragraph (2) of this section provides:

> *(2) Each of the following is a protected act –*
>
> *bringing proceedings under this Act;*
> *giving evidence or information in connection with proceedings under this Act;*
> *doing any other thing for the purposes of or in connection with this Act;*
> *making an allegation (whether or not express) that A or another person has contravened this Act*

152. In this case, there is no dispute that the claimant indeed did a protected act.

153. As regards the meaning of "detriment" the tribunal refers to the case of **Chief Constable of West Yorkshire Police –v- Khan [2001] 1 WLR** where it was said that the term has been given a wide meaning by the Courts and quoting the case of **Ministry of Defence –v- Jeremiah [1980] QB 87** where is was said that *"a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the*

circumstances to his detriment". The tribunal also refers to **Derbyshire & others –v- St Helen's Metropolitan Borough Council [2007] ICR 841** where the case of **Shamoon –v- Chief Constable of The Royal Ulster Constabulary [2003] ICR 337** was quoted with approval. In **Shamoon** Lord Hope stated as follows:

> *"… the word 'detriment' draws this limitation on its broad and ordinary meaning from its context and from the other words with which it is associated… the Court or Tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he has thereby been disadvantaged in the circumstances in which he had thereafter to work.*
>
> *But once this requirement is satisfied the only other limitation that can be read into the words is that indicated by Brightman LJ as he put it in the **Ministry of Defence –v- Jeremiah [1980] QB 87** one must take all the circumstances into account. This is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to 'detriment' ….."*

154. To succeed in a complaint of victimisation, the detriment must be "because" of the protected act. This requires knowledge of the protected act.

155. For guidance, the tribunal considers the words of Lord Nicholls in **Nagarajan –v- London Regional Transport [1999] IRLR 572** where he stated at paragraphs 18 and 19:

> *"Thus far I have been considering the position under s.1(1)(a). I can see no reason to apply a different approach to s.2. "On [racial] grounds" in s.1(1)(a) and "by reason that" in s.2(1) are interchangeable expressions in this context. The key question under s.2 is the same as under s.1(1)(a): Why did the complainant receive less favourable treatment? The considerations mentioned above regarding direct discrimination under s.1(1)(a) are correspondingly appropriate under s.2. If the answer to this question is that the discriminator treated the person victimised less favourably by reason of his having done one of the acts ("protected acts") listed in s.2(1), the case falls within the section. It does so even if the discriminator did not consciously realise that, for example, he was prejudiced because the job applicant had previously brought claims against him under the Act…. Although victimisation has a ring of conscious targeting this is an insufficient basis for*

excluding cases of unrecognised prejudice from the scope of s.2. Such an exclusion would partially undermine the protection s.2 seeks to give those who have sought to rely on the Act or been involved in the operation of the Act in other ways.

Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases as well as subtle distinctions, are better avoided so far as possible. If racial grounds or protected acts had a significant influence on the outcome discrimination is made out. Read in context, that was the industrial tribunal's finding in the present case. The tribunal found that the interviewers were "consciously or subconsciously influenced by the fact that the applicant had previously brought tribunal proceedings against the respondent"."

156. In the **Khan** case Lord Nicholls put forward that the "by reason that" element *"does not raise a question of causation as that expression is usually understood. Causation is a slippery word, but normally it is used to describe a legal exercise. From the many events leading up to the crucial happening, the court selects one or more of them which the law regards as causative of the happening. Sometimes the court may look for the "operative" cause, or the "effective" cause. Sometimes it may apply a "but for" approach. For the reasons I sought to explain in* ***Nagarajan –v- London Regional Transport****, a causation exercise of this type is not required either by section 1(1)(a) or section 2. The phrases "on racial grounds" and "by reason that" denote a different exercise: Why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact."*

157. It is again clear from the authorities that a person claiming victimisation need not show that the detrimental treatment was meted out solely by reason of the protected act. If protected acts have a "significant influence" on the employer's decision making, discrimination would be made out. It is further clear from authorities, including that of **Igen Limited –v- Wong [2005] ICR 931**, that for an influence to be "significant" it does not have to be of great importance. A significant influence is rather *"an influence which is more than trivial. We find it hard to believe that the principle of equal treatment would be breached by the merely trivial."* The

tribunal refers to such case also as regards how the burden of proof operates in complaints of discrimination and victimisation.

158. It is recognised that employees may lose protection from victimisation because the detriment is inflicted, not because they have carried out a protected act, but because of the manner in which they have carried it out - see the principle established in **Martin v Devonshires Solicitors 2011 ICR 352** where it was said that there may be a feature of the protected act which can properly be treated as separable, such as the manner in which the protected act was carried out. It was recognised there that the distinction made is subtle, but such fine lines have to be drawn, as per Underhill J, "if the anti-victimisation provisions, important as they are, are to be confined to their proper effect and not to become an instrument of oppression".

159. Section 123 of the Equality Act 2010 provides for a three month time limit for the bringing of complaints to an Employment Tribunal. This runs from the date of the act complained of and conduct extending over a period of time is to be treated as done at the end of the period. A failure to comply with a duty to make reasonable adjustments is an omission rather than an act. A failure to do something is to be treated as occurring when the person in question decided on it. This may be when he does an act inconsistent with doing it. Alternatively, if there is no inconsistent act, time runs from the expiry of the period in which the person might reasonably have been expected to implement the adjustment. The tribunal has an ability to extend time if it is just and equitable to do so, but time limits are strict. The person seeking an extension should provide an explanation for the delay but regardless of that there will, fundamentally, be a balance to be conducted between the parties in terms of the interests of justice and the risk of prejudice.

160. Applying the legal principles to the facts as found, the tribunal reaches the following conclusions.

Conclusions

161. The tribunal deals firstly with the complaints alleging a failure to comply with a duty to make reasonable adjustments. Disability status is accepted and the respondent does not maintain that at any material time it lacked the knowledge of disability for that duty to potentially arise.

162. The first PCP of the respondent not providing interview questions 24 hours in advance of the interview is accepted. It is, however, disputed that the claimant was put at a substantial disadvantage by that practice in comparison to a non-disabled candidate in that he either needed time in order to prepare in advance his response to questions and needed more

thinking and processing time in the interview. The respondent's position is certainly arguable in circumstances where the claimant was assessed very highly in his PIP assessment in terms of communication skills. His dyslexia assessment also recognised a relative strength in his verbal ability. However, at the same time, it recognised that he had lower abilities in terms of working memory and processing speed. His results did indicate the need for him to receive "additional support, instruction and compensation in the workplace". He was assessed as being likely to find it significantly harder than others to remember verbal instructions or information provided in the moment and that he might find it harder to follow the thread of a discussion or meeting. He might take longer to absorb new information. Against that evidence, the tribunal concludes that the claimant was disadvantaged in that in any interview he would need more time than someone with whom he did not share his disability of dyslexia in order to prepare his responses to questions and that he would need more thinking and processing time during his interviews.

163. The tribunal has no evidential basis, however, for concluding that the claimant was disadvantaged in his memory, attention to detail, processing and problem-solving by him suffering from epilepsy. In his evidence, the claimant maintained that this could be an issue if something happened, such as a form of seizure, during his interview. In his application form a potential difficulty in having to sit online tests was identified in the context of epilepsy. There were no such tests in this particular process.

164. The claimant's disadvantages are ones which anyone aware of a diagnosis of dyslexia might reasonably have been expected to know or certainly be on notice as to the requirement to explore the question of reasonable adjustments further.

165. The question for the tribunal is then what steps the respondent ought reasonably to have taken to have removed or alleviated the disadvantage. In this regard, Ms Cummings, on behalf of the respondent, accepted that the tribunal was not limited in its consideration to whether interview questions ought to have been given a full 24 hours in advance, but rather any period in advance it considered reasonable.

166. The tribunal considers fundamentally that it was reasonable for the claimant to have been allowed extra time during the interview. That is the (only) adjustment the tribunal has evidence of having been made whilst the claimant was in education. The claimant would need more time than a non-disabled candidate to think questions through, potentially write the questions down, formulate a response and check that it was on point. This is indeed relevant to the second PCP relied upon by the claimant of the respondent holding time limited interviews. Again, that practice was adopted by the respondent. However, the respondent timetabled into the claimant's

interview an additional 25% of time so that his interview might last 1 hour instead of the standard 45 minutes. Whilst the respondent did have an ordinarily prescribed amount of time in which to allow a candidate to answer questions, those were only ever viewed by all of the relevant interviewers as guidelines rather than strict cut-off points. The claimant was the only person at the first interview who used a stopwatch. Clearly, in any interview, there would have to be some cut-off point to answer questions and indeed some limit as to the overall length of interview. However, the claimant was never cut off in his responses. His time was not restricted. Questions were repeated for his benefit and without any penalty in terms of timing or how he was scored. That allowed him the additional time for considering his responses – more thinking and processing time. The respondent ought reasonably to have provided more time to complete his first and second interview. It did so and complied with its duty to make reasonable adjustments in this respect.

167. The claimant seeking the interview questions in advance, however, needs to be considered against that adjustment being in place. In all of the relevant circumstances of the first and second interview, the tribunal considers that additional time, together with the claimant more specifically not being time-limited in the answers he gave to the questions and being allowed to pause to consider and reflect on his answers and have questions repeated for him, alleviated the disadvantages and created the level playing field he sought.

168. Those circumstances include Mr Mak's provision of further information regarding the structure of the interview and the skills/behaviours which any candidate was being asked to demonstrate. Anyone could have accessed the general information if they took the effort prior to the interview, but it was helpfully provided directly to the claimant a significant time in advance of his first interview. It was extremely helpful information which enabled any candidate to anticipate what would be examined at the interview and prepare for it. The pack included specific questions which might be asked, including a request for examples of how the key behaviours being look for by the respondent had been demonstrated by the candidate in his work or any other context. It gave sample answers using the STAR (situation/task, action, result) model. The claimant was told that, with the behaviour questions, there were only two alternative ways of exploring them, either by asking the candidate for an example or asking what they would do in a particular situation. Strength questions were recognised as being different in circumstances where the respondent was looking for an unrehearsed natural response, where there was no right or wrong answer. The claimant achieved pass marks against both of the strength questions asked of him at the first interview.

169. The general information provided by Mr Mak was, however, significantly enhanced by his covering email of 24 June 2022 where he set

out very succinctly in just over a page of text the full structure of the interview with an explanation of the strength questions and how best to answer them followed by four behavioural areas which might be explored giving again key areas which would be useful to demonstrate and highlighting, again very succinctly, themes for the claimant to focus on which were highly relevant and of extreme value in preparing examples to use in response to likely questions.

170. The tribunal is mindful of the risk of the provision to the claimant of a significant amount of information being potentially counter-productive in the context of his disability, but believes that the information provided here was put together in a form which could be readily understood by the claimant and gave him ample opportunity to prepare for the interview with a significant degree of forewarning as to what the likely questions would be. Mr Mak, it could be said, almost went as far as providing advance disclosure of the questions without actually setting them out. It appears that the claimant did not take the opportunity to prepare as well as he might have for the interview, perhaps as a result of his general anxiety, but at least in part in circumstances where the tribunal considers that he was overly focused on/blinkered by his request to have the exact questions disclosed to him. Anything less was regarded by him as inevitably unsatisfactory. Saying that, the claimant only complained when he was aware that he had been unsuccessful and his initial complaints were somewhat different to the allegations ultimately pursued before the employment tribunal.

171. The provision of this assistance in advance of the interview was, however, a reasonable adjustment which had the prospect of alleviating the disadvantage and certainly would have, if the claimant was ever going to be capable of performing the role he applied for and had spent his time wisely in his interview preparation.

172. In terms of reasonableness, this was an application for a higher executive officer role where there would be (reasonable) expectations upon any individual performing such role in terms of their ability to, for instance, read reports, assimilate information and provide responses. The respondent had to ensure it could identify candidates capable of performing the role. The integrity of the selection process would be undermined, to the unreasonable disadvantage of other candidates, if a candidate in the claimant's position was spoon-fed the questions and answers, which is what at times it appears the claimant expected to have happened. In any event, the steps the respondent took amounted to a virtual spoon-feeding. The obligation to make reasonable adjustments did not extend to providing the claimant with interview questions in advance or a particular period in advance of the interview.

173. Of course, the claimant did receive advance disclosure of the questions an hour prior to the second interview. This was in circumstances where the claimant had already been through the first interview, had made notes of his own during and just after that interview and had then received helpful feedback on where he had fallen short and how he needed to improve his responses and examples given. The claimant was given the exact same questions at this second interview as had been posed at the first. The claimant believed that he had performed well rather than that his performance had been hampered by the lack of any reasonable adjustment. The claimant did worse at the second interview, despite having the the advantage of questions in advance. In essence, the tribunal must conclude that, at this second interview, the respondent, in allowing the provision of questions 1 hour in advance, went well beyond the steps it had a duty to take to make reasonable adjustments for a candidate disadvantaged in the way the claimant was. The claimant had not, of course, when he initially requested the questions in advance, suggested that he needed them 24 hours in advance.

174. The claimant's argument at this stage was that he ought to have received the questions far longer (24 hours) in advance than the one hour granted. He maintained separately that the respondent refusing to do so was an act of harassment or victimisation. The tribunal can find no factual basis upon which it could reasonably conclude that anyone from the respondent declined to provide the interview questions further in advance for reason related to the claimant's disability. In providing the questions an hour in advance it was of course making (more than) a reasonable adjustment. This was a step the respondent reasonably concluded (including on the basis of expert internal advice) was certainly sufficient to level the playing field between the claimant and other candidates. The respondent was not seeking to disadvantage the claimant by not giving him more time. The refusal to provide questions longer in advance of the hearing was not unwanted conduct and, again, was in any event unrelated to disability.

175. Furthermore, it was completely unrelated to the claimant having complained of unlawful discrimination. The way in which the first interview was conducted had already been adjudged internally by Ms Daley as problematical given that the claimant had asked for interview questions in advance and this time had not been given. The provision of questions one hour in advance was considered generally to be a reasonable time period and consistent with similar time is granted to other candidates in other processes more generally. This was determined after advice from a special unit within the recruitment service which dealt with the issue of reasonable adjustments in interviews. The claimant was not provided with interview questions more than one hour in advance because that was not considered to be necessary to alleviate his disability-related disadvantage at the

interview. In no sense whatsoever was that related to the claimant having made a complaint of unlawful discrimination.

176. The final complaint alleging a failure to make a reasonable adjustment related to the respondent not holding rest breaks during interviews. That is accepted in the sense of the respondent not scheduling breaks. However, breaks would be allowed in any interview. The tribunal accepts that the claimant was disadvantaged by his ulcerative colitis and IBS in that he had an increased need to go to the toilet and might experience abdominal pain, body aches or spasms. It is said as a reasonable adjustment therefore that the respondent should have permitted the claimant to take toilet breaks and/or rest breaks during the first interview.

177. The claimant complaint in this regard must be viewed against the tribunal's factual findings. The claimant did raise his flareup at the commencement of the first interview and was told the breaks could be given if needed by him. He did not, however, ever during that interview ask for a toilet break or any other break. No such request was ever refused. The tribunal accepts the evidence from the respondent that if such a request had been made, a break would have been allowed. The claimant's allegation that he requested a toilet break and was ignored is inaccurate. The respondent did not at the first interview fail to make any reasonable adjustment in this regard.

178. The claimant's next complaint is one of harassment and/or victimisation arising out of his messaging with Mr Shah during the afternoon of 9 November 2022 and the involvement of Ms Francis. The tribunal has been through the timeline of the various messages and conversations during the relevant period in its factual findings with care. It has also reminded itself of the authorities on what constitutes an act of detriment. In the overall context of content of the conversation with Mr Shah, the tribunal cannot avoid the conclusion that there was detrimental treatment in that an employee in the claimant's position could reasonably conclude that he was being treated unfavourably. Mr Shah having indicated a willingness to at least speak with him and give him some information about the role applied for, then after a little gap referred the claimant elsewhere and would not engage with the claimant further.

179. The tribunal is troubled by the claimant adopting a scattergun approach in his contact with individuals in an apparent attempt to get the answer he wanted and find someone who might "slip up" or give him information which might help him. Ultimately, Mr Shah did the right thing in referring the claimant to HORC and it was entirely normal and established practice to funnel requests regarding job applications to the professional recruiters. Such considerations might be relevant in the context of remedy,

but it would be wrong for the tribunal not to analyse the complaint of victimisation by looking at the component parts of such a complaint in order.

180. There is no dispute that the claimant had made protected acts complaining of unlawful discrimination. The tribunal cannot then escape the conclusion that when Mr Shah directed the claimant to HORC, he might and did reasonably consider that to be unfavourable to him in circumstances where there had been an early indication from Mr Shah that he would engage with the claimant's enquiries. The claimant reasonably considered that Mr Shah may have some information helpful to his job application or understanding of the role he was applying for. That is regardless of Mr Shah not being in a post into which the claimant might himself have been recruited. The situation might have been different had Mr Shah simply stated at the outset that he was not intimately involved with the process and that in any event the integrity of the process required that the claimant queries be directed to HORC. However, he did not. Mr Shah caused the claimant to reasonably believe that Mr Shah would assist him.

181. That then leads the tribunal to have to consider whether Mr Shah's direction that the claimant speak to HORC and his decision that he was not a person who could discuss the claimant's application was in any sense whatsoever because of the claimant having complained of unlawful discrimination. Mr Shah changed his approach on the instruction of Ms Francis. The tribunal is required to consider what was in her conscious or unconscious mind.

182. The tribunal does then have the benefit of seeing the exact messages which she sent to Mr Shah, albeit not the content of their separate 5 minute telephone conversation before the claimant was referred to HORC. Her response suggests some urgency and concern, even without the exclamation marks it contains. Mr Shah is told not to engage with the claimant and that he was the candidate they had been having trouble with interviewing. This referred to an element of the claimant's earlier complaint. The claimant is said to have been stressing out Ms Francis and the others subject to the complaint. Ms Francis referred to having mentioned the claimant at a team meeting. Certainly, the content of the communication is sufficient to shift the burden to the respondent to show that the treatment of the claimant was in no sense whatsoever because of his protected acts. The respondent is then in difficulties. Ms Francis has not been called to give evidence and has not been cross-examined on those points. The tribunal has considered and given due weight to her written witness statement, but it does not address those messages in any detail. Ms Cummings is correct that it might have been argued that a distinction ought to be drawn between the claimant's complaints themselves and the manner in which he had raised them including, for instance, the inaccurate allegation regarding the refusal of a toilet break. Those distinctions can in appropriate cases be made on the facts, but only with care and on an evidential basis which the

tribunal does not have before it. In such circumstances, the tribunal must conclude that the respondent has not discharged the evidential burden on it and the claimant's complaint of victimisation in respect of the 9 November messaging conversation is upheld (subject to the issue of jurisdiction arising out of the applicable time limits). Ms Cumming's suggestion that the claimant's protected acts were in bad faith is rejected – the claimant's allegations may not have been entirely accurately framed but the hurdle of bad faith is not surmounted.

183. The tribunal rejects that complaint as also an alleged act of harassment. No facts have been shown from which the tribunal could reasonably conclude that the respondent dealt with the claimant in this manner because he was a disabled person or related to his disability. On the basis of the shifting burden of proof, the tribunal has concluded that the reason for the treatment was not his disability status but his complaints of discrimination. Absent that conclusion, the basis for the respondent's treatment of the claimant was the claimant contacting all and sundry eliciting information, not straightforwardly to assist him in his job application, where it was appropriate to refer the claimant to the body within the respondent with responsibility for the administration of job applications.

184. The claimant complains of the involvement of Ms Daley and Ms De Serville in the events of 21 November 2022 when in another messaging conversation it appeared on the face of the messages that he was being told by Ms De Serville that she had been told that she could not speak to the claimant by Ms Daley. The claim must fail on the tribunal's factual findings that Ms Daley never gave any such advice or direction to Ms De Serville. The tribunal's findings are that there was a genuine mistake by Ms De Serville in the messaging conversation and that she was providing the name of Ms Daley as the appropriate specific point of contact within HORC. Ms De Serville did not know Ms Daley and had had no previous contact with her. It is clear that Ms De Serville recognised the mistake she had made and was upset at having created an impression that Ms Daley was working to disadvantage the claimant, which was completely unfounded. Her explanations and genuine apologies for the mistake were believable and corroborated by near contemporaneous documentation. This was no attempt to disguise the discovery of a conspiracy as the claimant would maintain. The complaint about the events of 21 November 2022 fail as ones of harassment or victimisation. This was a mistaken communication to the claimant not one related in any sense whatsoever to his disability or him having brought complaints of discrimination. A wider complaint than that pleaded about Ms De Serville's referral of the claimant to HORC would likewise have failed. Ms De Serville was expecting to interview the claimant and did not therefore wish to compromise her impartiality by having a detailed discussion with him. She thought HORC to be the appropriate people for a candidate in the claimant's position to speak to. She felt pressurised by the claimant and this made her wish to terminate any

messaging exchange. She was aware of an issue with the claimant contacting people and a need to report any contact to Ms Francis, to refer any questions he could not answer to HORC, but not of the complaints the claimant was pursuing. Ms Hogg had suggested that she refer the claimant to HORC. The tribunal does not accept that she reacted for a reason related to the claimant's disability (or his ongoing issue with adjustments) or him having complained about the earlier process.

185. On the tribunal's findings the only claim which might succeed is that of victimisation arising out of his conversation with Mr Shah on 9 November 2022. This claim was only raised by the claimant on 28 March 2023 and had not been part of the initial amendment application he had made on 16 February 2023. The claimant took part in ACAS early conciliation from 26 October until 7 December 2022. His claim was submitted on 12 December 2022. Any claim in respect of the 9 November conversation ought to have been made, the respondent contends, by 7 March (on the basis of the clock being stopped from the date of the incident through to the end of early conciliation) but in fact was only raised, therefore, 21 days out of time.

186. The claimant considered, unsurprisingly, all the treatment he had received up to and including his rejection after the second interview, to be part of a continuing course of conduct. He has struggled to particularise his complaints and it would be wrong/artificial for the tribunal to completely disregard his disability impairment in that context. A delay of 21 days ought to be viewed as a short delay against a background of the claimant's struggles to particularise his claims. The key factor for the tribunal to consider is the balance of prejudice. The respondent has not been prejudiced by any delay in terms of the quality of the evidence it could provide in respect of this allegation. The messaging conversation with Mr Shah is documented exactly within the disclosed printouts of the instant messages. Mr Shah's evidence was not impinged on any ultimately material issue by any passage of time. The tribunal has not heard from Ms Francis, but it is not the respondent's case that she could not have been called to give evidence or any reason has prevented her and no plea of prejudice is made in that regard. The tribunal did have the benefit of her written witness statement. She dealt with her own involvement in the 9 November conversation in that. In all such circumstances, the balance of prejudice is in the claimant's favour where otherwise he would be unable to pursue a complaint about a problematic conversation where he reasonably concluded that he had been treated unfavourably. Time is extended to allow the tribunal jurisdiction in this complaint, which therefore succeeds.

Employment Judge Maidment

Date 4 December 2023

ANNEX - LIST OF ISSUES

1. Time limits

1.1 Given the date the claim form was presented, and the dates of early conciliation, it would appear that the complaint in respect of the interview on 27 June 2022 may not have been brought in time. The Respondent's position is that the complaint in respect of the events of 9 November 2022 (which was the subject of an application to amend) may also not have been brought in time, with the Respondent suggesting that time expired at latest on 7 March 2023 whereas the application to amend was first raised on 28 March 2023.

1.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

TABLE A – FACTUAL COMPLAINTS			
	People involved	What was said or done C = the claimant R = Home Office	Type of disability discrimination complaint
27 June 2022	Ms Titilayo Francis Ms Maarit Virenius-Valera (interviewers – 1st interview)	1st interview: a) R refused to provide C with the interview questions at least 24 hours prior to the interview (dyslexia and epilepsy) b) R failed to provide C with additional time to complete the interview (dyslexia and epilepsy)	Reasonable adjustments

TABLE A – FACTUAL COMPLAINTS			
	People involved	What was said or done C = the claimant R = Home Office	Type of disability discrimination complaint
		c) R failed to provide C with rest breaks (ulcerative colitis and IBS) [R agreed to extend C's interview time by 15 minutes. However, C states that his interview finished earlier than the allotted time.]	

9 November 2022	Mr Heenal Shah (HEO – Projects Team) Ms Titilayo Francis (interviewer – 1st interview)	Skype conversation at 2.44pm between C and Mr Shah. C states that at this point he was not aware of any future interviews. C states that he messaged Mr Shah asking for conversation to disc the projects team and how projects work in the projects team. C states that Mr Shah was happy to have the conversation until at 3.33pm when C said to her that he was applying for the job and I was coming from the Asylum department. Within a few minutes, C states that Mr Shah asked C to speak to the Home Office Resourcing Centre (HORC) Recruitment rather than her. C states that Mr Shah works in the same team as Titilayo Francis (who interviewed C in June 2022).) C believes that Ms Francis told Mr Shah about C's previous complaint and this was why she told him to speak to HORC Recruitment.	Harassment Victimisation
21 November 2022	Delrose Daley (HR officer) Gabriella Huege De Serville (interviewer – 2nd interview)	C states that there was a conversation between him and Gabriella Huege De Serville at 4.16pm on 21/11/22. Ms Huege De Serville said she could not speak to C about the interview and C asked her who said that. She said it was Delrose Daley (HR officer).	Harassment Victimisation
28 November 2022	Gabriella Huege De Serville	2nd interview: R refused to provide C with the interview questions at least 24 hours prior to the interview (dyslexia and epilepsy)	Reasonable adjustments
TABLE A – FACTUAL COMPLAINTS			

	People involved	What was said or done C = the claimant R = Home Office	Type of disability discrimination complaint
	Mr Foluso Oladunjoye Gabriella Huege De Serville (interviewers – 2nd interview)	[C was provided with the interview questions one hour before interview. He was also permitted to go to the toilet and take rest breaks during the interview.]	Harassment Victimisation

2. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

2.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

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

2.2.1 not providing interview questions 24 hours in advance of the interview;
2.2.2 holding time-limited interviews
2.2.3 not holding rest breaks during interviews.

2.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that:

2.3.1 Dyslexia:
2.3.1.1 the claimant needed time in order to prepare his responses to questions; and
2.3.1.2 the claimant needed more thinking and processing time in the interview;

2.3.2 Epilespy -
2.3.2.1 the claimant's memory, attention to detail, processing and problem solving ability was affected by his epilepsy;

2.3.3 Ulcerative colitis and IBS –

2.3.3.1 the claimant had an increased need to go to the toilet;
2.3.3.2 the claimant experienced abdominal pain, body aches or spasms.

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

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

2.5.1 Dyslexia and epilepsy – the respondent should have provided the claimant with the interview questions at least 24 hours in advance of both interviews;

2.5.2 Dyslexia and epilepsy – the respondent should have provided the claimant with additional time to complete the first interview;

2.5.3 Ulcerative colitis and IBS – the respondent should have permitted the claimant to take toilet breaks and/or rest breaks during the first interview.

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

2.7 Did the respondent fail to take those steps?

3. Harassment related to disability (Equality Act 2010 section 26)

3.1 Did the respondent do the things set out in Table A that the claimant says were harassment?

3.2 If so, was that unwanted conduct?

3.3 Did it relate to the claimant's disability?

3.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

3.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

4. Victimisation (Equality Act 2010 section 27)

4.1 Did the claimant do a protected act when he:

4.1.1 made a complaint regarding the recruitment process on 3 August 2022;
4.1.2 raised a grievance on 26 October 2022

4.2 Did the respondent do the things set out in Table A which the claimant states are victimisation?

4.3 By doing so, did it subject the claimant to detriment?

4.4 If so, was it because the claimant did a protected act?

5. Remedy for discrimination or victimisation

5.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

5.2 What financial losses has the 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 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 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

5.8 Did the respondent or the claimant unreasonably fail to comply with it?

5.9 If so is it just and equitable to increase or decrease any award payable to the claimant?

5.10 By what proportion, up to 25%?

5.11 Should interest be awarded? How much?