



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr N Ali

**Respondent:** Pennine Care NHS Foundation Trust

**Heard at:** Manchester

**On:** 19-21 December 2022  
and 18 January 2023  
(in chambers)

**Before:** Employment Judge Slater  
Mr P Stowe  
Mrs S Humphreys

## Representation

Claimant: Ms L Kaye, counsel

Respondent: Ms I Bayliss, counsel

# RESERVED JUDGMENT

The unanimous decision of the Tribunal is that:

1. The complaint of direct disability discrimination is not well founded.
2. The complaint of discrimination arising from disability is well founded.
3. The complaint of failure to make reasonable adjustments in relation to the provision, criterion or practice of the respondent's employees taking calls in front of colleagues is well founded.
4. The other complaints of failure to make reasonable adjustments are not well founded.
5. There will be a remedy hearing on 11 July 2023.

# REASONS

## Claims and issues

1. The claimant brought claims of disability discrimination. Although he had ticked a box claim form to indicate he was also claiming for “other payments” Ms Kaye confirmed that his only complaints were of disability discrimination. He brought complaints of direct discrimination, discrimination arising from disability and failure to make reasonable adjustments.
2. The respondent conceded that the claimant was disabled at relevant times because of a speech impediment and that they had knowledge of this disability.
3. At the start of the hearing, both representatives agreed that the issues remained as recorded by Employment Judge Dunlop in the annex to the record of the preliminary hearing held on 4 October 2022. During the course of the hearing, the judge suggested that an issue about knowledge of disadvantage may have been omitted in error from the draft list of issues in relation to failure to make reasonable adjustments. Both parties agreed that the issue should be inserted into the list.
4. The list of issues, including the additional issue about knowledge of disadvantage in relation to the complaints of failure to make reasonable adjustments, is set out in the annex to these reasons.

## Evidence

5. The Tribunal heard evidence from the claimant and from Paul Byrne, Head of Information Governance & Data Protection Officer, and Victoria Kerley, Head of Workforce, for the respondent. There were written statements for all the witnesses. There was an electronic bundle of documents of about 200 pages.
6. During the claimant’s evidence, it appeared from his answers to questions that he had made contemporaneous notes of conversations which he had not disclosed. A document was provided to the respondent during a break, but this was, we were told, a document which looked as if it was a statement prepared for the claimant’s solicitors. The claimant did not waive privilege and this document was not shown to the Tribunal.
7. An Equal Opportunities Policy was added to the documents the Tribunal was to consider on the second day of the hearing.

## Adjustments

8. At the request of the claimant, we took breaks around every 20 minutes when he was giving evidence.

**Summary**

9. The claimant claims that he was subjected to unlawful disability discrimination when an offer of employment as a Subject Access Coordinator within the respondent's Subject Access and Freedom of Information Department was withdrawn.

**Facts**

10. The respondent Trust provides mental health and learning disability services to people across Greater Manchester.

11. The respondent has a recruitment and selection policy (p.168). Under this policy, the decision to appoint is stated to sit ultimately with the Recruiting Manager (p.183). The policy states that they will need to ensure that a health clearance process has been completed and advice sought from all the relevant departments such as HR, Occupational Health provider and Health and Safety in relation to ensuring that all reasonable adjustments have been fully considered and, where appropriate, can be put in place.

12. The policy includes the provision (p.183) that:

“No applicant should be refused employment on health grounds unless

- Occupational Health advice has been sought.
- The applicant has had the opportunity to discuss issues raised with an occupational health professional.
- The recruiting manager has given full consideration of the facts.
- For medical posts the Responsible Officer (RO) report from previous Trust must be obtained.”

13. Reasons to withdraw an offer include “false representation by the candidate” (p.183).

14. The claimant has a speech impediment. He stammers and this is worse when he is under stress. It is worse when he is speaking in front of people he does not know well.

15. The claimant applied for the job of Subject Access Coordinator within the respondent's Subject Access and Freedom of Information Department. On his application form, he indicated that he was disabled. The job advertisement and description included an express equal opportunities statement. A logo at the bottom of the advertisement indicated that the Trust was a “Disability Confident Employer.” (p.91). The only reference to Disability Confident Employer status which we can find in the Respondent's policies we have been shown is at paragraph 4.8 of the Recruitment and Selection Policy (p.177). This deals with the mandatory shortlisting of a disabled candidate for interview where they meet all of the essential criteria. We did not hear any evidence as to any other implications of, or requirements to be, a Disability Confident Employer.

16. At the time the claimant applied for the role, he was working for the Stockport NHS Foundation Trust at Stepping Hill Hospital in their medico legal team. This Trust deals with acute conditions. The claimant had been in that position from

September 2011. At the time of this hearing, he was still working there. Although he told his employer he was going to leave when offered the job with the respondent, he remained working there when the respondent withdrew their job offer.

17. The claimant was attracted to the post with the respondent for a number of reasons. The post with the respondent would have involved working much closer to home, enabling him to walk to work, saving fuel and parking charges. The post was in a higher band than his existing post, giving higher income and benefits.

18. The Stockport NHS Foundation Trust has made adjustments for the claimant because of his speech impediment. When he started in the Department, an arrangement was made so that the amount of calls he was expected to handle was limited and gradually increased over time as he grew in confidence. He works in a small open plan office. At most, there have been six people in the team. When calls come to the Department, they are directed to a central number but are then allocated electronically by the telephone system to the different members of the team. Initially, the claimant's desk phone was not included on the system, so he did not automatically receive any incoming calls. However, if another of the desk phones rang and the relevant member of staff was not present, the claimant would be able to pick up the phone. In recent years, as the claimant has become more comfortable and confident in the working environment and relaxed working and speaking on the telephone around his colleagues, his desk phone has been included in the electronic allocation system. When making this change, the claimant's managers made it clear that if he was not comfortable to take a particular call at any given time he need not do so, and it would be picked up by someone else. The adjustments are still available to the claimant if he needs them. The claimant, in the last few years, has spent about 60% of his time on the telephone. As late as January 2022, the claimant was still able to take calls in a private space away from his colleagues. The respondent has argued that the claimant's witness evidence at paragraph 18 is inconsistent with what he said to the respondent and in his disability impact statement about adjustments being made. We do not consider there to be an inconsistency. We find that the adjustments remain in place in case needed by the claimant, but he rarely needs to use them. The witness evidence and other evidence is consistent with this finding.

19. The claimant's role at Stepping Hill Hospital was similar to the role he applied for with the respondent. His role at Stepping Hill included dealing with subject access requests and speaking on the telephone.

20. The claimant was interviewed for the role with the respondent on 13 January 2021. He was interviewed by Paul Byrne and Sonia Cain. Sonia Cain would have been his line manager. Paul Byrne is the Trust's Head of Information Governance and Data Protection Officer.

21. During the interview, it was clear to Mr Byrne and Ms Cain, from the claimant's speech, that he has a speech impediment. The claimant was not asked any questions about his disability. Towards the end of the interview, when invited to make any additional closing comments, the claimant raised the issue of him indicating on his application form that he had a disability, which he explained to be his speech impediment. The claimant expressed the view that the responsibilities

in the role were very similar to those in his current role and that he felt comfortable that he could fulfil the role in the same way as at Stepping Hill. The interviewers did not ask the claimant whether he would need any adjustments to take up the role and the claimant did not, at this stage, volunteer that he would need any adjustments. The interviewers did not ask whether he had any adjustments in place at Stepping Hill and the claimant did not volunteer this information. The notes (p.138) record, in relation to speech impediments: "Doesn't stop him; doesn't affect ability to do the job; doesn't cause any issues." We find these notes reflect the understanding of Mr Byrne and Ms Cain based on what they were told by the claimant at the interview. We find the claimant told them that his impediment is worse when he's nervous.

22. There is a dispute about whether Mr Byrne, at this stage, told the claimant it was a predominantly office based role. The claimant says this was at a later date. We find that Mr Byrne did say, at the interview, that the role was predominantly office based but there was also some discussion about home working in Covid times and the claimant's ability to work from home. This finding is supported by the note on p.133 about having an environment suitable for working.

23. On 14 January 2021, Sonia Cain telephoned the claimant and offered him the role which the claimant verbally accepted. The claimant knew that the offer was subject to a DBS check and acceptable references. The claimant gave evidence that Sonia Cain asked the claimant what his current notice period was and said the claimant should try and hand in his notice as soon as possible. Sonia Cain did not give evidence at this hearing. Paul Byrne said this was because, until the claimant's witness statement was received, the respondent did not know that he would give this evidence. It is not necessary, for our decision on liability, to make a finding of fact as to whether Sonia Cain said that the claimant should hand in his notice as soon as possible, so we make no finding about this in the absence of Sonia Cain as a witness. We find, based on the claimant's evidence, that Sonia Cain informed the claimant that he would be in the office full time to start with, for training and induction purposes, but, after that, was likely to work at least partly from home.

24. The claimant told his manager and team members at Stepping Hill that he would be leaving, but he stayed in that job after the respondent withdrew its job offer. We accept that the claimant found things awkward and embarrassing with his current employer, having to tell them that he was not going to move on after all when the respondent's job offer was withdrawn.

25. On 15 January 2021, the claimant emailed Sonia Cain (p.150). He mentioned that he had a long-standing commitment to his grandfather who required help when going to regular appointments on Friday afternoons, once every two weeks. The claimant wrote "I hope that I can continue to assist him and that would be acceptable to you. I am happy to do long hours during the 4 days and short Friday but of course I'm prepared to be flexible and meet the needs of the service when required."

26. The claimant also wrote:

“In my current role they avoid me using the phone in front of colleagues due to my speech impediment. Would you be able to support in this? I can assure this doesn’t affect me doing the role.

“I’m happy to discuss this on the phone if you wish to.”

27. Sonia Cain replied the same day, thanking the claimant for his honesty in letting them know. She wrote that she had forwarded his email onto Paul Byrne and it would more than likely be Monday when someone would give him a call to discuss this.

28. On 18 January 2021, Paul Byrne spoke to the claimant by telephone. Paul Byrne made some brief handwritten notes of this call (p.144). The claimant did not make any notes at the time. The call was 13 minutes long. Paul Burns’ notes include that the claimant explained that he gets nervous around other staff; this kicks off his stammer. The note indicates that this relates to new environments and situations and, once he got used to people, it was not a problem. Paul Byrne noted that he would speak to the team and HR and would phone the claimant back as soon as possible. The claimant said in evidence that he said, during this call, that he no longer needed flexible working arrangements on a Friday. We find that the claimant has confused the conversations he had with Paul Byrne and he did not say this until 20 January. This is supported by Paul Byrne’s notes and the reference by the claimant to the “day before” in his email of 21 January (p.154).

29. We find that there is an inaccuracy in the claimant’s witness statement at paragraph 38; the claimant did not, in this call, make it clear to Paul Byrne that the accommodation would only be likely to apply at the very start of him working for the respondent. The claimant’s witness statement is not consistent with his oral evidence in this respect.

30. Paul Byrne discussed the matter with Sonia Cain and with the other subject access co-ordinator, and (in a separate conversation) with HR on 18 January. He made some handwritten notes of the conversations (pp 140 and 142). The notes of the conversations with Sonia Cain and the other subject access coordinator include reference to concerns about distribution of work and the other subject access coordinator’s mental health. The notes indicate that they were considering whether they could use Mr Byrne’s office and a mobile phone for the claimant and that covering phones in the office was an issue. There was reference to whether the Corporate Service redesign was something which should be considered. Mr Byrne asked HR if a trial period was an option. They told him the Trust does not operate probationary periods. It appears from the note that HR did not advise Mr Byrne to take advice from Occupational Health.

31. Paul Byrne decided to withdraw the job offer. He did this without any further discussion with the claimant about what adjustments might be needed. He did not seek advice from Occupational Health before withdrawing the job offer or give the claimant the opportunity to discuss issues raised with an occupational health professional. Mr Byrne thought he had enough information to say what the respondent could and could not do to accommodate the claimant. We find that Mr Byrne did not give thought at the time to whether Occupational Health advice should be sought before a decision was made and it is not necessary for us to make a finding as to whether he was aware at the time of the provision in the

Recruitment policy relating to doing so. We accept the evidence of Mr Byrne that this decision was based on the “here and now”, despite the reference in the notes to future offices. Mr Byrne agreed in evidence that he withdrew the job offer in part because the claimant needed adjustments they did not feel they could offer.

32. The team in which the claimant would have been working was a team of 7. There was Mr Byrne, Sonia Cain, who would have been the claimant’s line manager, a Senior Information Governance and Risk Officer, an Information Governance Assistant, an Information Governance Administrator and two Subject Access Co-ordinators (the position the claimant would have held, and the subject access coordinator already in post). Due to the pandemic, employees in the team were working from home, unless there was a need for them to work in the office. Of those who would have been working in the administration office, only the Subject Access Co-ordinators would be working in the office. This was because of the paper based nature of their work. The person who would have been the claimant’s predecessor in post had worked from home, but we accept Mr Byrne’s evidence that he had concluded that this was not working. There were difficulties in getting relevant papers to the person working from home, and the other subject access co-ordinator was having to deal with everything in the office. The subject access co-ordinator who had been working from home was due to return to office working but got a promotion. The other three administrative staff worked from home and the managers did a mixture of office and home based working. There were 2 or 3 people at any one time in the office. Mr Byrne might be working in the managers’ office but this might be free, if he was working at home. There was an expectation of moving headquarters at some point, but they did not know what the office environment would be like there.

33. Mr Byrne accepted that the job description for the claimant’s role (p.103) did not make it clear that telephone work was a significant part of work but Mr Byrne said that someone familiar with subject access requests would be aware there would be lots of telephone work. The claimant accepted that phone calls would be a key part of the role. We find that some of the phone calls which would be taken when working for the respondent would potentially be more challenging than those taken in the role at Stepping Hill. The requests the respondent was dealing with were for people who had, or had a history of, mental health difficulties and some had a long history of treatment by the respondent. The requests dealt with at Stepping Hill were in the context of treatment of acute medical conditions, which were unlikely to have the same long and complicated history.

34. Since the claimant had not heard back from Paul Byrne, he texted him in the afternoon of 19 January to ask if he had managed to speak to Sonia Cain. Paul Byrne replied that something had come up which had to take priority and he would call the claimant the following day.

35. The claimant rang Sonia Cain at 1.58 p.m. since he had not heard from Paul Byrne by that time. Sonia Cain told the claimant that Paul Byrne would call the claimant once he had spoken to someone in HR at the Trust.

36. Paul Byrne telephoned the claimant on 20 January 2021 at just past 5 p.m.. He informed the claimant that the job offer was withdrawn. The call was 15 minutes long. Mr Byrne’s notes of the conversation are brief and not verbatim (p.144). The claimant made no contemporaneous notes. We do not consider that either Mr

Byrne or the claimant can give reliable evidence as to precisely what was said. However, based on Mr Byrne's notes and the subsequent emails, we find that Mr Byrne said words to the effect that the claimant was not suitable for the role. He spoke about the claimant's speech impediment and not being able to make the adjustments in relation to phone calls which he understood the claimant would require. He also said he felt the claimant had misled them by not raising things at interview. We find the claimant told Mr Byrne, during this conversation, that he would no longer need time off on alternate Fridays. We do not find it necessary to make a finding about whether Mr Byrne used the words that the claimant would not fit in the team.

37. By an email dated 21 January 2021, the claimant asked the respondent to reconsider its decision (p.154). The claimant wrote that the respondent had made the decision based on his speech impairment and that he felt the claimant would not be suitable for the position. The claimant also wrote that, as he had explained on the phone the previous day, he would be happy to complete the full hours and would not need to leave early on Fridays. He wrote: "Please could you reconsider your decision as with my extensive experience I feel I would be suitable for the position and don't feel my speech impairment would have any bearing of [sic] me being able to do my job."

38. Paul Byrne replied by email the same day (p.152). He wrote:

"Just to be clear, the reason the offer was withdrawn wasn't the speech impediment itself, or the notion of the original ask to have regular time off to support a family member. The decision was made on the following basis:

"Firstly, at interview we had conversations about your speech impediment, and you assured us it would not interfere with your ability to work. The job description contains elements around communication, and there were questions on the interview that related to phone calls. Neither in answering the questions, nor in the conversation after the interview questions did you mention your current working restrictions.

"Neither did you mention the request for regular time off.

"Both these things came up in an email you sent to Sonia, post the verbal offer of the post. I appreciate the comments you made on the call yesterday about having now sorted out a potential solution regarding your hours, however we felt mis-led by this not being mentioned until after the post had been offered.

"With regards your speech impediment, again we felt mis-led once we received the email.

"The nature of the role involves using the telephone, and often with individuals with complex MH presentations. They are often challenging phone calls. I appreciate your comments about you not believing your speech impediment would not be an issue [sic], however that is not the implication from your email to Sonia, or from our calls, and therefore I cannot be assured that it would not have any bearing of [sic] your ability to do the job. We have looked at what reasonable adjustments we could make and I



do not believe we can make adjustments that are fair to you and also fair to the existing staff, and the complex needs of the patients that contact us, particularly during the current uncertainties with different ways of working during Covid - requiring a mix of office and home working, expectation of the role and post-holder, and also possible changes and expectations to provide cover to other Departments as part of the Corporate Redesign Programme.

“Taking everything into account, I do not believe it is in the best interests of yourself or the Trust to proceed with your application.”

39. The claimant sought legal advice.

40. By an email dated 28 January 2021 (p.151), the claimant wrote that he considered the withdrawal of the offer to amount to unlawful disability discrimination. He objected to the implication that he had misled the Trust in the earlier stages of the application process. He indicated that he wished to pursue a grievance and asked Paul Byrne to forward the message to whoever at the Trust was responsible for handling such complaints in the first instance or to provide him with the relevant contact details.

41. Victoria Kerley, Head of Workforce, acknowledged the claimant’s grievance by email dated 1 February 2021 (p.158).

42. In an email exchange on 1 February 2021, Victoria Kerley asked Paul Byrne whether they had another candidate appointable for the position or whether they were re-advertising the vacancy (p.158). Paul Byrne replied on 2 February (p.157) that they had gone back out to advert but, on advice, they had asked for the advert to be pulled for the time being. He wrote: “Carrying this vacancy is putting enormous strain on the team, however I appreciate processes need to be followed.” We accept the evidence of Mr Byrne that the advert was withdrawn in part because of the complaint and the possibility that the claimant might be appointed into the role but also in part because the Corporate Redesign might result in posts being subject to downgrading.

43. The respondent subsequently recruited for the post in October 2022. The employee recruited is 100% office based.

44. By an email to the claimant dated 18 February 2021, Victoria Kerley wrote that she would attempt to resolve the matter by Tuesday 23 February 2021 (p.163).

45. The claimant did not hear anything by that date. He emailed Victoria Kerley on 4 March 2021 (p.163). He wrote that, if he did not hear from her with her substantive response to his grievance by the end of 5 March 2021, he would proceed the following week to notify ACAS of his complaint under the early conciliation process.

46. The claimant did not hear anything so began ACAS conciliation on 8 March 2021.

47. On 16 April 2021, Victoria Kerley emailed the claimant (p.162). She apologised for not replying sooner. She asked what the claimant wanted as an outcome to his complaint.

48. The claimant replied by email same day (p.161). He wrote that he had had no choice but to instruct a solicitor to pursue his complaint externally through ACAS in the first instance. He wrote: "without wishing to delay matters further, and without wishing there to be parallel and potentially conflicting tracks of communication, may I respectfully suggest that you confirm the Trust's position to the appointed ACAS officer and we take things from there." He wrote that, unless he received news very soon of a change of approach and clear statement of intent to resolve matters promptly and sensibly, he would have no hesitation in pursuing his claim further.

49. The early conciliation certificate was issued on 19 April 2021.

50. The claimant presented his claim on 26 May 2021.

51. No outcome outside anything sent to ACAS was provided to the claimant's complaint. In evidence, Victoria Kerley said it was provided to ACAS. The respondent claimed this was legally privileged and it was not disclosed to the claimant in these proceedings. Information gathered in the investigation is not in the hearing bundle and was not disclosed. On instructions, Ms Bayliss said her solicitors' view was the notes were privileged as information gathered for the purpose of discussion through ACAS. Ms Kaye disputed this in her closing submissions. We make no finding on whether or not the report or information gathered in the investigation is privileged from production since this issue was not identified as a matter for us to decide and we did not hear full submissions on this point. We accept Victoria Kerley's evidence that she understood the claimant wanted to cease communication with the respondent because he was going down the legal route.

52. We heard no evidence as to how the respondent deals with other grievances or complaints.

53. Mr Byrne had received training in relation to Equal Opportunities. However, he could not recall much of what he had been trained about. He could not recall whether he had read the Recruitment policy leading up to the interview and withdrawal of the job offer. He could not explain what a Disability Confident Employer is.

54. Although the claimant had asked for disclosure of the Equal Opportunities Policy and documentation about being a Disability Confident Employer, the Equal Opportunities Policy was not disclosed until a few working days before the hearing and no documents were provided in relation to being a Disability Confident Employer. The Equal Opportunities Policy was added to the bundle on the second day of the hearing. There is nothing in the policy about being a Disability Confident Employer. We would expect there to be some documentation in existence about the respondent's Disability Confident Employer status. We have had no explanation as to why this has not been disclosed, or, if there is no such documentation, on what basis the respondent uses this logo. We had no

explanation as to why the Equal Opportunities Policy was not disclosed until such a late stage.

55. Mr Byrne, on his own evidence, has not made an Occupational Health referral for years. However, other than in relation to the claimant's situation, we heard no evidence of circumstances relating to employees which might have made it appropriate for him to make such a referral.

56. When asked whether any of the 7 members of the team had a disability Mr Byrne said none had a physical disability. He had mentioned concerns about the mental health of one team member but did not say he believed she was disabled by reason of such a condition.

### **Submissions**

57. Ms Bayliss provided written submissions on behalf of the respondent and made some additional oral submissions. In summary, the respondent's submissions were as follows.

58. In relation to the direct discrimination complaint, the relevant hypothetical comparator would be a person without a disability, but who could not speak on the phone in front of colleagues. The claimant's job offer was withdrawn because he told the respondent he was going to have difficulties talking in front of colleagues and the fact that the respondent felt he had misled them. The respondent would have done the same to a hypothetical comparator.

59. In relation to the complaint of failure to make reasonable adjustments, the respondent did not accept that they had PCP1. The respondent accepted that they had PCP2 and that this put the claimant to a disadvantage in comparison with non-disabled people and respondent knew of this disadvantage. The respondent submitted that the proposed steps 1 to 3 were steps to enable the identification of reasonable adjustments but were not reasonable adjustments in themselves. Step four would not have alleviated the disadvantage. Steps 5 to 7 would have alleviated the disadvantage, but these steps were not reasonable. It did not apply PCP3. The respondent disputed that PCP4 applied and, in any event, submitted this was a complaint about claimant's treatment over a few days, not a wider policy, procedure or practice. In relation to PCP5, the respondent submitted that the process was not unusually long and it was not to the claimant's disadvantage. Ms Bayliss submitted that none of the proposed steps would have alleviated disadvantage.

60. In relation to the complaint of discrimination arising from disability, the respondent did not accept that the unfavourable treatment was because of something arising in consequence of disability. The respondent did not accept that it was when the claimant was obliged to speak in front of others he did not know well. Mr Byrne was clear that he was considering an ongoing situation. He was not basing his decision on whether the claimant had a problem in front of people he knew well. The respondent submitted that the withdrawal of the job offer was a proportionate means of achieving a legitimate aim. The legitimate aim was of employing a person to carry out the role of subject access coordinator in the specific environment and circumstances in which the respondent operates. This had to be a legitimate aim. The issue was one of proportionality. In carrying out the

balancing exercise, the tribunal had to consider the withdrawal of the role against a substantial adjustment which would be required. The respondent would have had to recruit another person alongside the claimant. Considering the needs of other staff members was a valid consideration.

61. Ms Kaye made oral submissions on behalf of the claimant. These were, in summary, as follows.

62. In relation to the complaint of direct discrimination, Ms Kaye submitted that the claimant had discharged the burden to establish discrimination. She relied on what she submitted were key pieces of evidence pointing to discriminatory motivation:

62.1. It was highly probable that the claimant would find himself alone in the office doing his work. The reality was the respondent could offer no logical explanation for withdrawing the offer. This points to the reason being disability.

62.2. The respondent's abject failure to involve occupational health and take occupational health advice in relation to disability and the potential reasonable adjustments. This was a breach of the recruitment and selection process.

62.3. The failure to engage in any meaningful conversation about disability.

62.4. Mr Byrne's failure to demonstrate an understanding of Equality Act duties.

62.5. A negative perception about employing disabled people in the team. There were no disabled members in the team. Mr Byrne had not made an occupational health reference for years. He made a comment suggesting the claimant could be a burden: "what else could come of this".

62.6. The email withdrawing the job offer because of disability (p.152). The statement in paragraph 14 of the grounds of resistance not being true.

62.7. The way the respondents dealt with the complaint of disability discrimination. The claimant was provided, for the first time, at the hearing with information about what happened. The claimant had not been provided with an open outcome.

62.8. The equal opportunities policy was only disclosed the week before the hearing.

62.9. The respondent's outrageous assertion that the outcome of the investigation and notes attractive privilege. The claimant does not accept that they are privileged.

63. The claimant submitted that the evidence did not tend to suggest that a comparator without the disability would have had the role withdrawn.

64. In relation to the complaint of discrimination arising from disability, the claimant submitted that there was unfavourable treatment. The something arising was speech difficulties. These were exacerbated by new people and situations. Also arising from disability was the need for adjustments. The respondent had assessed the claimant as having excellent communication skills. The only thing which had changed was that the claimant asked for adjustments. The only issue was whether the withdrawal of the offer was a proportionate means of achieving a legitimate aim. There was no real need to have the claimant working in the office. The respondent had other spaces which could be used. Calls could be diverted. It was not proportionate to withdraw the offer in circumstances where office working was not required of all those in the team, due to limitations of people and social distancing. The practical reality was that the claimant was either in the office alone or with one other employee. This was never explained to the claimant. The respondent should have had a dialogue with the claimant which would have alleviated the claimant's concerns.

65. In relation to failure to make reasonable adjustments, the claimant submitted in relation to PCP1 that this was a requirement from the effect of the respondent's decision-making. The claimant could not remove his speech impediment and was at a disadvantage. The only issue in relation to PCP2 was the reasonableness of the adjustment. In relation to PCP3, managers were not adequately trained on policies or processes. The disadvantage was that, if the recruitment process had been run properly, on the values as purported, the job offer would not have been withdrawn.

66. Ms Kaye accepted that she could not sensibly argue PCP4, although she had no instructions to withdraw the complaint relating to this PCP.

67. In relation to PCP5, Ms Kaye submitted that one could glean this was a practice relating to resourcing, Covid 19 and holidays. The claimant was at a substantial disadvantage because it caused him unnecessary stress. The respondent could have provided updates to the claimant and given him an open outcome.

68. Ms Kaye submitted the adjustments sought were reasonable.

## **Law**

69. The law relating to disability discrimination is contained in the Equality Act 2010.

### Direct discrimination

70. Section 13(1) EqA provides: "A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others". Disability is a protected characteristic.

71. Section 23(1) EqA provides that "on a comparison of cases for the purposes of section 13...there must be no material difference between the circumstances relating to each case."

### Discrimination arising from disability

72. Section 15 EQA provides:

“(1) A person (A) discriminates against a disabled person (B) if –

(a) A treats B unfavourably because of something arising in consequence of B’s disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.”

73. Considering whether something is a proportionate means of achieving a legitimate aim requires an objective balancing exercise between the reasonable needs of the respondent and the discriminatory effect on the claimant: a test established in the context of indirect discrimination in **Hampson v Department of Education and Science [1989] ICR 179 CA**.

#### Failure to make reasonable adjustments

74. The provisions relating to the duty to make adjustments are included in section 20 EQA and Schedule 8 to that Act. Schedule 8 imposes the duty on employers in relation to employees. Section 20(3) imposes a duty comprising

“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.”

75. “Substantial” in this context means “more than minor or trivial”: s.212(1) EQA.

76. For there to be a provision, criterion or practice (PCP), there must be an element of repetition, actual or potential. In **Ishola v Transport for London [2020] ICR 1204**, the Court of Appeal said that all three words “provision”, “criterion” and “practice”

**“..carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again.”**

77. Paragraph 20 of Schedule 8 provides that an employer is not subject to a duty to make reasonable adjustments if the employer does not know and could not reasonably be expected to know that the employee had a disability and was likely to be placed at the relevant disadvantage.

78. For an adjustment to be reasonable, it is sufficient that there is a prospect of it alleviating the disadvantage: **Leeds Teaching Hospital NHS Trust v Foster EAT 0552/10**.

79. Consulting an employee or arranging for an Occupational Health or other assessment of the employee’s needs is not in itself a reasonable adjustment because such steps do not remove the disadvantage: **Tarbuck v Sainsbury’s Supermarkets Ltd [2006] IRLR 664, EAT; Project Management Institute v Latif [2007] IRLR 579 EAT**.

80. The authorities are not unanimous as to whether a trial period can be a reasonable adjustment. In **Smith v Churchills Stairlifts PLC [2006] ICR 524** the Court of Appeal upheld a decision that a trial period would have been a reasonable adjustment. However, the EAT suggested in **Environment Agency v Rowan EAT 0060/07** and in **Salford NHS Primary Care Trust v Smith EAT 0507/10** that trial periods could not in themselves be reasonable adjustments.

#### Proving discrimination

81. Section 136 EqA provides:

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

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

82. The tribunal makes findings of fact, having regard to the normal standard of proof in civil proceedings, which is on a balance of probabilities. A party must prove the facts on which they rely. A claimant must prove they suffered the treatment alleged, not merely assert it.

83. Once the relevant facts are established, the tribunal must apply section 136 in deciding whether there is unlawful discrimination.

84. The Court of Appeal in **Ayodele v CityLink Ltd and another [2017] EWCA Civ 1913**, reaffirmed that there is an initial burden of proof on the claimant; the claimant must show that there is a prima facie case of discrimination which needs to be answered. The Court of Appeal concluded that previous decisions of the Court of Appeal, such as **Igen Ltd v Wong [2005] IRLR 258**, remained good law and should continue to be followed by courts and tribunals. The Supreme Court in **Efobi v Royal Mail Group Limited 2021 ICR 1263** held that the enactment of section 136 EqA did not change the requirement on the claimant to prove, on the balance of probabilities, facts from which, in the absence of any other explanation, the employment tribunal could infer an unlawful act of discrimination.

85. The effect of the authorities is that the tribunal must consider, at the first stage, all the evidence, from whatever source it has come, in deciding whether the claimant has shown that there is a prima facie case of discrimination which needs to be answered.

86. A finding of less favourable treatment, without more, is not a sufficient basis for drawing an inference of discrimination at the first stage: **Madarassy v Nomura International plc [2007] ICR 867, CA**. In **Dedman v Commission for Equality and Human Rights and others [2010] EWCA Civ 1279 CA**, Lord Justice Sedley said that “the ‘more’ which is needed to create a claim requiring an answer need not be a great deal. In some instances it will be furnished by non-response, or an evasive or untruthful answer, to a statutory questionnaire. In other instances it may be furnished by the context in which the act has allegedly occurred.”

87. The fact that a claimant has been subjected to unreasonable treatment is not, of itself, sufficient as a basis for an inference of discrimination so as to cause the

burden of proof to shift: **Glasgow City Council v Zafar [1998] ICR 120 HL**. In that case, the House of Lords held that a tribunal had not been entitled to infer less favourable treatment on the ground of race from the fact that the employer had acted unreasonably in dismissing the employee.

## Conclusions

### Direct disability discrimination

88. The complaint is about the job offer being withdrawn. The initial burden is on the claimant to prove facts from which the tribunal could conclude that all elements of direct disability discrimination are made out.

89. Ms Kaye in her closing submissions went through a number of matters from which she suggested the tribunal could conclude that there was unlawful direct disability discrimination. We agree that some of these matters could point towards disability discrimination. The matters she relied on which we consider inferences could potentially be drawn from are as follows:

- 89.1. The respondent clearly acted in breach of its recruitment policy by not involving occupational health before withdrawing the job offer.
- 89.2. There was no meaningful discussion with the claimant about adjustments before the offer was withdrawn.
- 89.3. Mr Byrne did not demonstrate the level of knowledge we would have expected from a manager of his seniority and someone acting in the capacity of a recruiting officer about Equality Act issues and the respondent's own policies.
- 89.4. The failure of the respondent to provide an outcome to the complaint, other than to ACAS.

90. We do not consider the other matters to which Ms Kaye referred in her submissions to be matters from which we could draw any inference of discrimination. We did not find Mr Byrne's evidence about who would be working from home to have misrepresented what he considered to be the desirable position. We draw no inference from Mr Burns' lack of occupational health referrals in recent years since we had no evidence that there were situations in which it would have been appropriate for him to make referrals prior to the situation relating to the claimant. We draw no inference from Mr Byrne's lack of knowledge about Disability Confident Employer status. We do not consider that not having any disabled employees in a team of seven is statistically significant and a matter from which we could draw any inference of discrimination. We are not clear on the meaning of Mr Burns' comment made in cross examination "what else could come of this" but it appears to have been linked with the issue of alleged dishonesty by the claimant, so we do not consider it a matter from which we can draw any inference of discrimination. Ms Kaye referred to reasons for withdrawing the job offer not being true because the claimant could do the role with adjustments initially and was already doing a similar role and submitted that the respondent linked inability with disability. We are not clear in relation to this submission, what factual matters Ms Kaye relies on and it appears to us that these issues relate more to the



section 15 claim than to facts from which we could draw an inference of direct discrimination. We draw no inference from the late disclosure of the equal opportunities policy, although we had no explanation about this. There is nothing in the policy which would explain why the respondent would want to conceal it. Sadly, it is far from unusual for parties to disclose documents of this type at a late stage. We also draw no inference from providing an outcome to the complaint only to ACAS and Ms Kaye's argument that this was clearly not privileged. For the reasons given in our findings of fact, we make no finding as to whether or not privilege applied to the report and to the information gathered in the investigation.

91. Having regard to those matters from which we consider an inference of discrimination could potentially be drawn, we have concluded that these do not prove facts from which we could conclude that the claimant, by having the job offer withdrawn, was treated less favourably, because of his disability, than a hypothetical comparator in the same or not materially different relevant circumstances would have been treated. The claimant has to establish facts from which we could conclude that all the elements of direct discrimination are made out. We consider that the relevant circumstances of a hypothetical comparator would be that the comparator, for reasons other than disability, could not do all parts of the job without special arrangements being made. We have no evidence from which we consider we could conclude that there was less favourable treatment than would have been given to such a hypothetical comparator. Since we conclude that the burden of proof does not pass to the respondent, the complaint of direct disability discrimination is not well founded.

92. Had we concluded that the claimant had satisfied the initial burden of proof, we would have concluded that the respondent had proved that the withdrawal of the job offer was not because of the claimant's disability. The respondent had offered the job to the claimant, being aware, through the interviewer's own observation, as well as what was said by the claimant, of the claimant's speech impediment. The withdrawal of the job offer was triggered by the claimant writing about adjustments which he required to be able to do the job. The respondent formed the view that such adjustments could not be made and the claimant could not fulfil the job role and also that the claimant had misled the respondent. It was not because of the disability per se that the offer was withdrawn. It was withdrawn because the respondent considered the claimant could not do the job without adjustments which the respondent thought could not be accommodated and because of the view that the claimant had misled the respondent.

#### Discrimination arising from disability

93. This complaint is also about the withdrawal of the job offer.

94. There is no dispute that there was unfavourable treatment, being the withdrawal of the job offer.

95. The next question is whether this unfavourable treatment was because of something arising in consequence of the claimant's disability. The something arising is identified in the list of issues as being the speech difficulties exacerbated in circumstances where the claimant is obliged to speak in front of others he does not know well. Ms Bayliss sought to persuade us that the unfavourable treatment was not because of something arising in consequence of disability because the

claimant still needed adjustments by his current employer, even though he has been working there for a considerable period and those he works with are well known to him. We found that the claimant rarely needs to make use of these adjustments now. We found that the claimant does have more difficulty in speaking in front of people he does not know well; the difficulty reduces when he knows people better. We conclude that the unfavourable treatment was because of something arising in consequence of disability, being the something identified by the claimant in the list of issues.

96. The legitimate aim relied upon by the respondent is that of employing a person to carry out the role of subject access coordinator in the specific environment and circumstances in which the respondent operates. We conclude that this is a legitimate aim.

97. The remaining issue is whether withdrawing the offer was a proportionate means of achieving a legitimate aim. Considering this question, we must do a balancing exercise between the discriminatory effects of the treatment on the claimant and the reasonable needs of the respondent. The discriminatory effects of the treatment on the claimant are clearly severe; he lost the opportunity of employment with the respondent, which would have reduced his travel costs and given him a higher income, and he suffered embarrassment when he had to tell people who he had told he was leaving his current work for a new job that he was no longer doing so. Considering the needs of the respondent, we conclude the respondent had a reasonable need for someone to do the role for which they were recruiting, including that person working mostly in the office. We do not agree with the submission on behalf of the claimant that there was no real need for the claimant to be in the office. The paper-based nature of the work meant that access to the files was required and this could not reasonably be done other than in the office. The respondent had tried having one subject access controller working from home and concluded that it had not worked. The respondent had genuine and serious concerns about the impact on the other, office-based, subject access controller, if the claimant was based wholly or mostly at home.

98. The claimant had done a similar job with the Stockport Trust although we accept there were some differences, including that some calls for the respondent would be more difficult because of the mental health context than calls for the Stockport Trust. Adjustments were still available to the claimant at the Stockport Trust but he did not often need to take advantage of these.

99. We do not consider that the respondent could reasonably conclude, without reference to occupational health, in accordance with its own recruitment policy, and discussion with the claimant, that the claimant could not do the job without adjustments being made which the respondent could not reasonably accommodate. As we conclude when dealing with the complaints of failure to make reasonable adjustments, we consider that a reasonable adjustment would have been having a trial period. Without trying the claimant in the role with such adjustments as should reasonably have been made, we conclude it was not proportionate to withdraw the job offer.

100. We conclude that the complaint of discrimination arising from disability in relation to the withdrawal of the job offer is well founded.

Failure to make reasonable adjustmentsPCP1: requiring employees to conduct calls with the public without a speech impediment

101. We conclude that the respondent did not have such a PCP. The respondent offered the claimant the post, knowing that he had a speech impediment.

102. We conclude that this complaint of failure to make reasonable adjustments is not well founded.

PCP2: employees taking calls in front of colleagues

103. We conclude that the respondent did have such a PCP. The respondent accepted that they applied such a PCP and that this put the claimant at a disadvantage. It was more difficult for the claimant, because of his speech impediment, to speak in front of others, than for others without that disability. The respondent also conceded that it had knowledge of this disadvantage.

104. We conclude that the duty to make reasonable adjustments arose in relation to this PCP. We, therefore, consider the adjustments which the claimant says should have been made, considering whether there was a chance the adjustment would have alleviated the disadvantage and, if so, whether it was reasonable for the respondent to take such steps.

105. In relation to the proposed adjustments of undertaking further enquiry with the claimant to explore ways in which his needs could be accommodated before withdrawing its offer and inviting the claimant to a meeting to discuss the impact of his condition and what adjustments might be required, we conclude, applying the legal authority of **Tarbuck**, that these were not adjustments in the nature of reasonable adjustments which could alleviate disadvantage. They were steps on the way to identifying what might be adjustments which would alleviate the disadvantage but they would not, in themselves, alleviate the disadvantage. We consider, therefore, that these two proposed adjustments were not reasonable adjustments which should have been made.

106. In relation to the suggested trial period in the role, there is conflicting legal authority as to whether this can be an adjustment alleviating disadvantage. We prefer the Court of Appeal authority of **Smith v Churchill Stair Lifts** which upheld a decision that a trial period was a reasonable adjustment. We conclude, in this case, that a trial period had a chance of alleviating the disadvantage. This would be an adjustment to the respondent's normal practice of not having a probationary period. We conclude that there was a chance that the claimant would have managed to make phone calls in front of the one other employee likely to be in the office without other adjustments or that, in practice, the claimant would have been able to find another office free where he could make calls, until he became sufficiently comfortable to make calls in front of the other employee. The claimant was managing to make calls in front of a number of employees at Stepping Hill hospital, only rarely needing to make use of the adjustments. Having gained confidence in his role at Stepping Hill hospital, there is at least a chance that he would have been able to overcome the difficulty of speaking in front of one other employee within a relatively short period. We conclude that it would have been

reasonable for the respondent to make the adjustment of having a trial period. It is the nature of a trial period that, if the arrangement is not working in practice, the employment can be terminated.

107. The next proposed adjustment is that of offering the claimant an enhanced induction/familiarisation process to introduce him to his colleagues and the environment in which he would be working before he was required to undertake telephone work (on the basis that the effects of his speech impediment are exacerbated when he is in unfamiliar surroundings and/or speaking in front of unfamiliar people). We conclude that this had a chance of success for the same reasons as relating to the proposed trial period and that it would have been reasonable for the respondent to make this adjustment.

108. The next proposed adjustment is reallocating duties to remove/reduce the requirement for the claimant to speak on the phone. In particular, to reduce/remove the requirement for him to do so during quiet periods in the office when his phone calls were more likely to be overheard by colleagues. We conclude that this would have had a chance of alleviating the disadvantage. However, we do not consider it would have been reasonable for the respondent to take this step. The claimant accepted that speaking on the phone was an important part of the role. The respondent needed someone to do the full job, including taking telephone calls. If this was not done, phones would go unanswered to a greater extent and/or a considerable burden would be put on the other person in the role. The respondent had concerns about this person's mental health and it would not have been reasonable to take any steps which might adversely affect that employee.

109. The remaining proposed adjustments are to enable the claimant to work from a private space within the office, either generally or when he was required to use the phone or, alternatively, to enable the claimant to work from an alternative location (including full-time remote working) to enable him to use the phone in a private space. To the extent that this suggests the claimant working within the same physical office as the other post-holder, we do not consider that the use of partitions, for example, would have alleviated the disadvantage. The claimant would still have been aware that he could be heard by the other employee. To the extent that it relates to the claimant working in another office, if one was free, to which the claimant could take the relevant physical files, we consider that this had a chance of alleviating the disadvantage and would have been a reasonable step for the respondent to take. Telephone calls could have been diverted to a mobile phone so the claimant could take the calls in another office. Whilst there was no guarantee that another office would always be available, we conclude that there was a reasonable chance that another office would be available on a sufficient basis for this adjustment to have a chance of alleviating the disadvantage. We conclude that full-time remote working would not have been a reasonable adjustment. Whilst this would have alleviated the disadvantage, it would not have been a reasonable step for the respondent to take. The full job could not be done remotely. This had been trialed with a previous employee and found not to work. The claimant would need access to the physical files if he was to do the full job and if additional burdens were not to be placed on the employee who was in the office. We conclude that the respondent did fail to make reasonable adjustments by not enabling the claimant to work in another office, if one was free.

110. We conclude, for the reasons given above, that the complaint of failure to make reasonable adjustments in relation to PCP2 is well founded. The reasonable adjustments which the respondent failed to make were:

- 110.1. having a trial period;
- 110.2. offering the claimant an enhanced induction/familiarisation process to introduce him to his colleagues and the environment in which he would be working before he was required to undertake telephone work (on the basis that the effects of his speech impediment are exacerbated when he is in unfamiliar surroundings and/or speaking in front of unfamiliar people); and
- 110.3. enabling the claimant to work in another office, if one was free.

PCP3: operating its recruitment process in a way which was misaligned to its own portrayal of being an “equal opportunity and disability confident employer”

111. We are not satisfied that this was a PCP. In general, there must normally be some element of repetition for something to be a PCP. We had no evidence that the respondent routinely operates its recruitment process in this way, failing to follow its own policies. We conclude that there was no failure to make reasonable adjustments in relation to this PCP.

PCP4: not fully exploring the limitations of the claimant’s impairment

112. We conclude that this was not a PCP. It does not have the necessary element of repetition. We conclude that the complaint of failure to make reasonable adjustments in relation to this PCP is not well founded.

PCP5: the prolonged nature of the respondent’s grievance process in this case, including failures to provide responses and poor communication to the claimant

113. We conclude that this was not a PCP. The claimant is relying on what happened in this particular case. We had no evidence that there was a general practice of dealing with grievances in this way. The asserted PCP does not have the necessary element of repetition. We conclude that the complaint of failure to make reasonable adjustments in relation to this PCP is not well founded.

Employment Judge Slater  
Date: 8 February 2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON  
9 February 2023

FOR EMPLOYMENT TRIBUNALS

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## ANNEX LIST OF ISSUES

### DIRECT DISABILITY DISCRIMINATION

1. Did the Respondent treat the Claimant less favourably than a hypothetical comparator by discontinuing with the appointment of the role of Subject Access Coordinator?
2. Was the discontinuance of the appointment because of the disability of the Claimant?

### DISCRIMINATION ARISING FROM DISABILITY

3. Was the unfavourable treatment of discontinuing with the appointment of the Claimant to the role of Subject Access Coordinator because of something arising in consequence of the Claimant's disability of a speech impediment, (the something being the speech difficulties exacerbated in circumstances where the Claimant is obliged to speak in front of others he does not know well)?
4. If the unfavourable treatment did arise from the "something", did the Respondent have the legitimate aim of employing a person to carry out the role of Subject Access Coordinator in the specific environment and circumstances in which the Respondent operates?
5. Was it a proportionate means of achieving the legitimate aim to discontinue with the appointment of the Claimant?

**FAILURE TO MAKE REASONABLE ADJUSTMENTS**

**PCP 1**

- 6. Did the Respondent have a PCP that it required employees to conduct calls with the public without a speech impediment?
- 7. Did the PCP place the Claimant at a disadvantage in comparison to persons who are not disabled by resulting in the withdrawal of the claimant's job offer?
- 8. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

- 9. Should the Respondent have taken the following steps:

- 8.1 Undertaken further enquiry with the claimant to explore ways in which his needs could be accommodated before withdrawing its offer;
- 8.2 Invited the claimant to a meeting to discuss the impact of his condition and what adjustments might be required;
- 8.3 Offering the claimant a trial period in the role;
- 8.4 Offering the claimant an enhanced induction/familiarisation process to introduce him to his colleagues and the environment in which he would be working before he was required to undertake telephone work (on the basis that the effects of his speech impediment are exacerbated when he is in unfamiliar surrounding and/or speaking in front of unfamiliar people).
- 8.5 Reallocating duties to reduce/remove the requirement for the claimant to speak on the phone. In particular, to reduce/remove the requirement for him to do so during quiet periods in the office when his phone calls were more likely to be overheard by colleagues.
- 8.6 Enable the claimant to work from a private space within the office, either generally or when he was required to use the phone.
- 8.7 Alternatively, enable the claimant to work from an alternative location (including full time remote working) to enable him to use the phone in a private space.

- 10. Would those steps have avoided the disadvantage?

- 11. Was it reasonable for the Respondent to have to take such steps?

**PCP2**

- 12. Did the Respondent have a PCP that its employees take calls in front of colleagues?
- 13. Did the PCP place the Claimant at a disadvantage in comparison to persons who are not disabled by resulting in the withdrawal of the claimant's job offer due to the perception that he was unable to comply with the PCP?
- 14. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
- 15. Should the Respondent have taken the following steps:

Items 8.1-8.7 are repeated.

- 16. Would those steps have avoided the disadvantage?
- 17. Was it reasonable for the Respondent to have to take such steps?

**PCP3**

- 18. Did the Respondent have a PCP that it operated its recruitment process in way which was misaligned to its own portrayal of being an “equal opportunity and disability confident employer”
- 19. Did the PCP place the Claimant at a disadvantage in comparison to persons who are not disabled, in that the Claimant contends the respondent would not have withdrawn his job offer absent this PCP.
- 20. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
- 21. Should the Respondent have taken the following steps:

Items 8.1-8.7 are repeated.

- 22. Would those steps have avoided the disadvantage?
- 23. Was it reasonable for the Respondent to have to take such steps?

**PCP4**

- 24. Did the Respondent have a PCP of not fully exploring the limitations of the Claimant’s impairment.
- 25. Did the PCP place the Claimant at a disadvantage in comparison to persons who are not disabled by resulting in the withdrawal of the claimant’s job offer?
- 26. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
- 27. Should the Respondent have taken the following steps:

Items 8.1 and 8.2 above are repeated.

- 28. Would those steps have avoided the disadvantage?
- 29. Was it reasonable for the Respondent to have to take such steps?



PCP5

30. Did the respondent have a PCP of the prolonged nature of the respondent's grievance process in this case, including failures to provide responses and poor communication to the claimant?
31. Did the PCP place the Claimant at a disadvantage in comparison to persons who are not disabled by (1) subjecting him, as a vulnerable person, to an unnecessary level of stress and/or (2) not affording him the opportunity to remedy the discrimination which he had been subject to in the recruitment process.
32. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
33. Should the Respondent have taken the following steps:
  - 33.1. To undertake a proper grievance, compliant with the time frames set out in the respondent's grievance policy.
34. Would those steps have avoided the disadvantage?
35. Was it reasonable for the Respondent to have to take such steps?