



EMPLOYMENT TRIBUNALS

Claimant: Ms Chenalee Bucknall

Respondent: Jet2holidays Ltd

Heard: via CVP in the North East Region

On: 22, 23 and 24 May 2024

Before: Employment Judge Ayre
Mrs S Dengate
Mr M Taj

Representation

Claimant: In person

Respondent: Joseph Bryan, counsel

RESERVED JUDGMENT

1. The claim that the respondent failed to make reasonable adjustments is not well founded. It fails and is dismissed.

REASONS

Background

1. The claimant has been employed by the respondent as a Travel Advisor since 30 January 2023 and her employment is ongoing. On 6 July 2023 the claimant presented a claim to the Employment Tribunal following a period of early conciliation

that started on 28 April 2023 and ended on 9 June 2023.

2. The claim is for disability discrimination. The respondent admits that the claimant is disabled due to Achromatopsia, Photophobia and Nystagmus, as a result of which she is registered blind. The respondent also admits that it had knowledge of the claimant's disability from the start of her employment on 30 January 2023.
3. A Preliminary Hearing took place on 10 January 2024 before Employment Judge James. At the hearing there was a discussion about the claim that the claimant is bringing and a list of issues was identified. Case Management Orders were made to prepare the case for final hearing.

The hearing

4. The hearing took place by Cloud Video Platform. There was an agreed bundle of documents running to 354 pages.
5. We were also provided with a Cast List, a list of Key Documents, two chronologies, and skeleton arguments by both parties, for which we are grateful.
6. We heard evidence from the claimant and, on behalf of the respondent, from:
 1. Jacquelyn Child, Contact Centre Manager ;
 2. Stuart Prosser;
 3. Michael Marsh, IT Service Desk Manager; and
 4. Anne Lundy, Contact Centre Manager.
7. At the start of the hearing we discussed what adjustments the claimant required in respect of her disability. She indicated that she would need regular breaks to give her eyes a rest from the glare of the screen, and we took breaks approximately every 50 minutes.

The issues

8. The issues that fell to be determined at this hearing were identified at the Preliminary Hearing on 10 January 2024. The parties confirmed at the start of the hearing that they remain the issues in the claim. They are as follows :

Reasonable adjustments

1. Did the lack of an auxiliary aid, namely a Desktop PC, two compatible and equally sized monitors and assistance from a suitably qualified or experienced individual to set the equipment up at her home, put the claimant at a substantial disadvantage compared to someone without her disability, in that her disability means that she needs to magnify text on screen to 18 font or higher to be able to read it? The laptop provided to the claimant had a different size screen which created difficulties for the claimant when trying to read the

text on both the laptop screen and monitor screen. Further the claimant struggles due to her visual impairment to ensure that IT equipment is connected together properly.

2. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
3. What steps could have been taken to avoid the disadvantage? The claimant suggests:
 - i. The provision of a desktop PC and two compatible and equally sized monitors; and
 - ii. Assistance from a suitably qualified or experienced person to assist the claimant to set up the second monitor correctly so it worked properly.
4. Was it reasonable for the respondent to have to take those steps and, if so, when?
5. Did the respondent fail to take those steps?

Remedy

6. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
 7. What financial loss has the discrimination caused the claimant?
 8. Has the claimant taken reasonable steps to replace lost earnings?
 9. If not, for what period of loss should the claimant be compensated?
 10. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
 11. Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
 12. Should interest be awarded? How much?
9. We agreed at the start of the hearing that we would deal initially just with the substantive question of whether the respondent failed to make reasonable adjustments. and that questions of remedy would be considered later. In light of our finding that the respondent did not fail to make reasonable adjustments however, there is no need for us to consider remedy.
10. On the final day of the hearing, shortly before starting oral submissions, the claimant

indicated that she believed she had a claim for 'health and safety discrimination'. It was explained to the claimant that the Tribunal does not have jurisdiction to hear complaints of 'health and safety discrimination' and that the only claim before the Tribunal, as identified at the Preliminary Hearing and confirmed by both parties at the start of the hearing, was a complaint of disability discrimination. If however the Tribunal were to consider remedy, then compensation may be awarded for injury to feelings including, potentially, for any personal injury suffered as a result of unlawful discrimination.

Findings of fact

11. The claimant is employed by the respondent as a Travel Advisor. She works entirely from home using equipment provided by the respondent.
12. The claimant has a visual impairment, as a result of which she is registered blind. She does have some vision but is only able to see documents on a screen if they are substantially magnified.
13. The claimant was offered her role with the respondent in January 2023 and began employment on 30 January. Shortly before she began employment she had a call with a member of the respondent's recruitment team. She was told what the role involved, and in particular that it involved looking at screens for most of her shift. She was asked if she needed any adjustments or support to allow her to perform the role. Her response was that she had a visual impairment and sensitivity and that in previous roles she had made employers aware there may be times she needs to get up, and that she can experience headaches and migraines. She said that she had done an Access to Work assessment and that anti – glare screens may be a possibility.
14. The claimant had by that stage already been provided by Access to Work with equipment including a rising desk and two anti-glare screens. The claimant did not identify any adjustments that may be required during the acceptance call. The claimant suggested during cross examination of one of the respondent's witnesses that she had been told during the acceptance call that she would be provided with two monitors. This had not been mentioned by the claimant at any time prior to her cross examination of the respondent's witnesses. We find that the claimant was not promised two monitors during the acceptance call and did not have any expectation that two monitors would be provided.
15. The claimant signed a contract of employment which contained a three month probationary period during which her employment could be terminated on one week's notice.
16. In preparation for the claimant starting work, the respondent sent to her the standard equipment used by homeworkers. That comprised a laptop, a separate monitor, a mouse, a headset, and a keyboard. This equipment arrived at the

claimant's house on 27th January. She was provided with a video explaining how to set the equipment up and was able to do so herself without any difficulty.

17. The claimant began work on 30 January. Her initial period of employment was training, and she reported to a trainer called Laura Harrison, who she described as being very supportive of her. The claimant told Laura Harrison on 30 January that she had a visual impairment and suffered from migraines due to light sensitivity. Laura Harrison asked the claimant how she was managing with the screens so far, and said that if she was struggling, she would look at the settings with her. She also said that she would send the claimant a DSE assessment form to complete to see if there was any equipment that may help the claimant. Ms Harrison asked the claimant to let her know if there was anything that she could help with.

18. On 31 January the claimant sent a message to Ms Harrison in which she wrote:

"I have been working from home for nearly 5 years now and theres [sic] this company called Access to Work and they do an assessment for propel [sic] with disabilities and provide all the equipment and software to use for work so I have all the equipment, customised work chair, personalised desk, foot rest, Zoomtext software etc. Its just that part of my disability is light sensitivity and that can cause migraines."

19. The claimant's communications with Ms Harrison led Ms Harrison to believe that the claimant had all the necessary equipment to support her disability. On 3 February Ms Harrison sent a message to the claimant in which she wrote, *"I know you mentioned you already have equipment to support your needs, but we do still need your DSE form completing."*

20. Ms Harrison sent the claimant a DSE assessment form to complete, and the claimant completed and returned the form on 3 February. The form contains the following words:

"If you wish to discuss your assessment any further, please contact Occupational Health...."

If you have a concern or you feel this assessment does not adequately assist you because of any extenuating circumstances, please feel free to get in touch and discuss this."

21. There are questions on the DSE assessment about the screen that was being used. One of those questions is 'Is your screen free from excessive glare from office lights', another is 'Is your screen free from excessive glare from natural light' and a third is 'are the characters clear and legible'. The claimant answered 'yes' to all of these questions, and there is nothing within the DSE assessment form to indicate that the claimant was having any difficulties with her equipment. Moreover, there was no evidence before us to suggest that the claimant had contacted occupational health, HR or her trainer to raise any concerns about the equipment.

22. The respondent operates an IT Service Desk which is managed by Michael Marsh. The respondent's IT support model is to provide help and assistance remotely, by telephone and email. Employees are able to contact the IT Service Desk by telephone or email. 95% of queries raised to the Service Desk are resolved remotely during the first contact with the Service Desk.
23. The Service Desk is supported by a team of field based engineers, who go out to do work on site. Most of their work is on projects, some of which are overseas due to the nature of the respondent's business, and some of which are allocated to the team at short notice. In the five years that Michael Marsh has been working for the respondent, no service engineer has been sent to visit any homeworking employee other than the claimant.
24. In February 2023 the claimant experienced some difficulties with the laptop that had been provided and contacted IT about this. A new laptop was sent to her, and Ms Harrison offered to help the claimant set it up if she needed any assistance.
25. The claimant worked with the equipment that was initially provided for her without raising any concerns during the early weeks of her employment. On 10 February she told Ms Harrison that she could feel a migraine coming on but did not suggest that it was due to any issues with her IT equipment.
26. On 20 February the claimant experienced another migraine and on this occasion she was unable to work. The following day a return to work interview was conducted by a manager called Tom Roberts. During the interview the claimant provided Mr Roberts with details of her visual impairment and migraines. Mr Roberts asked her *"Do you require any equipment to help your migraines"*. She replied *"Happy with the current setup. Access to work done in last job, they did an assessment. Been working at home 5/6 years, they provided equipment"*. Mr Roberts also asked her *"Any support required from Jet2"* and the claimant replied *"No"*. She also told Mr Roberts that she had been born with migraines.
27. Notwithstanding what the claimant said during this meeting Mr Roberts said he thought it would be beneficial to refer the claimant to occupational health, for them to provide advice on how the respondent could best support her.
28. On 23 February 2023 the claimant was assessed by a Senior Occupational Health Advisor with the respondent's Occupational Health team, who recommended that the claimant be provided with a second monitor, so that she could work using a laptop and two monitors. After the assessment on 23 February the Occupational Health Advisor sent an email summarising what had been discussed. She referred to the claimant's visual impairment and migraines, and in relation to equipment wrote that:
- "Chenalee has had equipment provided previously by Access to Work. She has an electronic height adjustable desk which allows her to stand to work at times when this is better for her eyes due to lighting. She has a customised office chair and was*

provided with two anti-glare monitor filters, one of which she is using on her current monitor....she is happy with her current workstation set up but would benefit from a second monitor and I have requested this from IT Procurement today. “

29. The second monitor was delivered to the claimant's home address on 28 February 2023. She was unable to connect it to her laptop herself and contacted the IT Service Desk on 1 March to inform them that the second monitor would not work. A member of staff tried to resolve the matter remotely by using the respondent's normal trouble shooting steps but was unable to do so.

30. The claimant sent a message to Ms Harrison on the 28 February in which she wrote:

“Hi Laura, forgot to mention, the outcome of the Occupational health meeting. I have been sent the second monitor because it was a bit of a struggle looking at the laptop screen and the monitor as the laptop screen is smaller in size in comparison to monitor, especially when using the magnifier, so it was discussed to send another monitor same size as the other monitor and work with the 2 monitors instead of the laptop and monitor. I was planning to set it up for tomorrow and see how it goes. But it does mean that my camera would be off throughout as the laptop would be closed....” This was the first time that the claimant told anyone within the respondent's management that there was any issue at all with her existing equipment. Prior to that message she had given the clear impression that she was happy with the equipment the respondent had provided, and that it was not causing her any issues.

31. On 2 March 2023 a different HDMI cable was sent to the claimant to try and resolve the issue of connectivity of the second monitor. It did not resolve it, so a different type of 'dock' was sent to the claimant, arriving on 9 March. The respondent's evidence, which we accept, is that it is not uncommon for the wrong cable or adaptor/dock to be sent initially and for the team to diagnose and correct this afterwards.

32. On 7 March a member of Service Desk staff telephoned the claimant to try and get the second monitor working. The attempt was unsuccessful although the claimant was still able to work using the laptop and one monitor, as she had been doing successfully since the start of her employment.

33. On 14 March the claimant was contacted by the IT Service Desk again to request a contact number to deliver new equipment. The claimant replied asking if this was to deliver an 'HDMI splitter' and indicating that she needed to get the second monitor connected as *“it has been a struggle to use laptop and monitor”*. A member of the IT Service Desk contacted the claimant again the following day to provide her with an update. On 16 March another member of the Service Desk sent an email to the claimant to inform her that they had ordered a HDMI splitter which should be delivered to the claimant the same day.

34. On 17 March the claimant contacted the Service Desk to say that she had received the HDMI splitter, but the second monitor was still not working.
35. During April 2023 the claimant had periods of annual leave, as a result of which she was only in work for 7 days, and for no more than 2 consecutive days at a time.
36. On 18 April Alex Frost from the IT Service Desk spoke to the claimant and asked her to send through a video of her equipment set up to try and identify what the problem was. The claimant was not able to take a video due to her visual impairment, but was able to take photographs of her workstation, which she sent through to Mr Frost. Mr Frost sent those photos to Mr Marsh. The following day he contacted the SMART team in the respondent's contact centre to inform them of the claimant's IT issues and to ask if the claimant's team leader could call the claimant to help her resolve these issues. The SMART team provides support to employees working in the contact centre and manages queries raised by employees.
37. The SMART team contacted the claimant's line manager and asked him to help with her equipment set up. Unfortunately the claimant's line manager told the claimant that he was not able to help and referred her back to the IT Service Desk.
38. On 20 April the claimant contacted the IT Service Desk and stated that the incident with her second monitor had not been resolved, and that she needed physical support to get it resolved. She stated that she needed a technician to physically help her to resolve the issues. *"This has been an ongoing issue since February and everything that has been sent to me is not working. Its either the laptop or myself that's the issue. If I'm doing something wrong, then I need a technician to physically help me do this."* The claimant also contacted the SMART team that day.
39. On 20 April 2023 Heather Fleming, a Team Leader in the respondent's SMART team, sent an email to Jacquelyn Child, informing Ms Child that the claimant had been on the telephone and was very upset. Ms Fleming wrote that:
- "...Spoke to her about her IT set up and advised it was unacceptable, asked her if she can buy another workstation from B&M. She has a vision impairment and has advised she can't move things on her own. She has advised she needs 2 screens. IT have tried to resolve this but still ongoing. OH have advised to use 2 screens – so far this hasn't been completed..."*
40. Ms Fleming asked Ms Child if she could reach out to the claimant, and Ms Child replied that she could. Ms Child also asked that the screens recommended by occupational health should be pushed through as soon as possible. Ms Fleming replied that the claimant had both screens but was struggling to set them up, and that she had told the claimant to contact IT again and provide them with a video of the issues that she was having.
41. Ms Child also contacted the claimant on 20 April and spoke to her. During the conversation the claimant said that she was struggling to set up the equipment and finding it difficult to work without the second screen. She told Ms Child that her

previous employer had sent an IT engineer out to her home to set up her equipment, and after the call Ms Child contacted the SMART team again to find out whether it would be possible to do the same and send an engineer to the claimant's home address.

42. The following day Ms Child sent a message to the claimant telling her that she would be put on fully paid leave until the issue with her IT equipment could be resolved. She did this with a view to supporting the claimant by ensuring that she did not have to work with equipment that she considered to be inadequate, yet did not suffer any financial penalty. The claimant was paid her full pay from then until her IT issues were fully resolved, but was not required to work during that period.
43. On 25 April 2023 the claimant raised two grievances. The first related to her team leader, Jason Mclaughlin. The second was headed 'Ongoing IT issues' and set out the claimant's concerns about the IT difficulties that she was experiencing. She wrote, in summary, that:
1. during the first two weeks of training she had told her trainer that she was struggling with the equipment;
 2. An occupational health assessment had been carried out on 23 February and it had been agreed that a second monitor would be provided;
 3. The second monitor was delivered on 28 February but was not working;
 4. She had called IT repeatedly since then and spent a lot of time on the telephone with them, but the monitor was still not working;
 5. The matters that had caused her to raise the grievance were incidents that occurred between 18th and 20th April;
 6. She had been told by Jaquelyn Child that she would not need to work and would still be paid, but she was recorded as being 'absent without leave';
 7. She had tried to resolve matters but was not satisfied with the outcome.
44. The issue was escalated to Michael Marsh, Head of the Service Desk. He has considerable expertise and experience in IT and believed that it still may be possible to resolve the claimant's issues remotely. He tried to call the claimant on 28 April but she did not answer the telephone. He left voicemails asking her to call him, but she did not return his call. Mr Marsh telephoned the claimant again on 2 May 2023 and spoke to her briefly, whilst she was on the school run. During this conversation the claimant said that she did not want any more remote help setting up the equipment as she had been trying since January.
45. Mr Marsh immediately arranged for a field service engineer to visit the claimant's home on the 12 May 2023, which was the first available date. At the time there were only three field engineers employed by the respondent, and one of those was working

in Turkey. The engineers were also involved in a major project at Birmingham airport. Sending a field service engineer to an employee's home address was also unprecedented in Mr Marsh's time with the respondent, and the 12 May was the first date that an engineer could be made available.

46. On 9 May 2023 a grievance meeting took place between the claimant and Anne Lundy. Ms Lundy indicated to the claimant that her priority was to try and resolve the claimant's IT issues.
47. The claimant had taken photographs of her desk and IT set up at home. When the respondent saw the photos, it was concerned by the size of the desk that the claimant was using, which was very small to accommodate a laptop and two monitors. A decision was taken to order a desktop computer to replace the claimant's laptop, as this would take up less space. This was ordered not as a reasonable adjustment but rather because of the size of the claimant's desk.
48. On 9 May Michael Marsh sent an email to Connell Gilmartin, field service engineer, asking him to attend the claimant's home on 12 May and set up the claimant's kit. He told Mr Gilmartin that a desktop PC had been ordered, to work with 2 monitors. A desktop PC was ordered for the claimant promptly but had to be configured for her use. It was not possible to do this prior to the engineer's visit on 12 May, and the priority at that visit was to get the claimant up and working using the laptop and two monitors until the desktop could be delivered.
49. On 12 May a field service engineer attended the claimant's home address and was able to successfully resolve all of the outstanding issues and connect the second monitor. He took a photograph showing the claimant's workstation with the laptop and two monitors successfully connected. The engineer sent an email to Michael Marsh stating "*All done*" and that both of the monitors were working.
50. The claimant sent an email to Anne Lundy on 12 May stating that "*the engineer has connected 2 monitors and suggested that a bigger work station is required... However I think this station is fine if I use the laptop keyboard instead of the keyboard that we connect via USB...*"
51. On 17 May Ms Lundy told the claimant that the desktop unit was ready for her and asked her to contact Michael Marsh so he could arrange for it to be set up. On 23 May an engineer went back to the claimant's home address and successfully set up the desktop computer.
52. Ms Lundy contacted the claimant to check that the IT issues had been resolved. On 23 May the claimant sent a message to Ms Lundy stating that the engineer had visited and that everything was working fine.
53. The claimant returned to work on 23 May. She accepts that all IT issues were resolved to her satisfaction, and reasonable adjustments made from that date.
54. On 26 May Ms Lundy wrote to the claimant informing her of her decision on both

grievances. In relation to the grievance about the IT issues, Ms Lundy concluded that:

1. Once the issues had been escalated, all relevant areas of the business worked together to try and resolve the claimant's IT issues;
2. The claimant had been off work on full pay since 20 April 2023, and may have missed out on commission payments. She would therefore be paid an average commission for the period that she had been off on full pay;
3. The claimant should be supported via counselling sessions and given support on her return to work by the 'embedment' team .

55. Ms Lundy upheld the claimant's grievance because although she was satisfied that the claimant was provided with the correct equipment to be able to carry out her role, resolving the issue with the second monitor had taken longer than Ms Lundy would have liked. Ms Lundy's evidence to the Tribunal, which we accept, was that the respondent had not met its normally high standards of onboarding with the claimant. Ms Lundy said that the respondent normally sets up new starters and gets kit requirements right at the outset and she believed that they had not met their normal standards with the claimant.

56. On 10 May the claimant was sent information about the respondent's Employee Assistance Programme. Steps were also taken to arrange counselling for the claimant, and for the claimant's work schedule to be arranged around the counselling sessions.

57. Although the claimant's grievance was upheld by Ms Lundy, the claimant appealed it because she felt that the outcome letter just focussed on the fact that matters had been resolved, and not on the mistakes that had been made, such that the matter was dismissed.

58. The appeal was considered by Stuart Prosser at an appeal hearing that took place on 14 June. On 28 July Mr Prosser wrote to the claimant to inform her of his conclusion in relation to the grievance. In summary, he concluded that:

1. A thorough and extensive investigation had been carried out into the claimant's grievance by Ms Lundy;
2. The grievance outcome did acknowledge areas for improvement which was an indication that the matter had not just been dismissed;

59. The appeal was not upheld.

60. The claimant remains employed by the respondent as a Travel Advisor.

The Law

61. The relevant statutory provisions are set out in sections 20 and 21 of the Equality Act 2010. Section 20 provides that:

“(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A

(2) The duty comprises the following three requirements.

(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.

(4) The second requirement is a requirement, where a physical feature 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 it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid....

(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.”

62. Section 21 of the Equality Act 2010:-

“(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with a duty to make reasonable adjustments...”

63. Part 3 of Schedule 8 to the Equality Act 2010 (“Work: Reasonable Adjustments”) provides, at paragraph 20 (“Lack of knowledge of disability, etc”) that:

“(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know...that an interested disabled person has a disability and is likely to be placed at the disadvantage...”

64. An employer is only required to make reasonable adjustments therefore if it has actual or constructive knowledge both of the claimant's disability, and that the claimant is disadvantaged by the PCP or failure to provide an auxiliary aid (**Wilcox v Birmingham Cab Services Ltd UKEAT/0293/10/DM**). The burden of proving disadvantage lies on the claimant, subject to the burden of proof provisions contained in section 136 of the Equality Act 2010, namely that:

“(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.”

65. Mr Bryan submitted, in relation to the question of knowledge of the disadvantage suffered by the claimant, that what is necessary is that the respondent knows of the disadvantage with a degree of specificity (**Glasson v The Insolvency Service [2024] EAT 5**). Further, the duty to make adjustments, he says, cannot arise (and cannot be breached) unless and until the employer has actual or constructive knowledge of the disadvantage (**Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] ICR 1194**).

66. The importance of a methodical approach to reasonable adjustments complaints was emphasised by the EAT in **Environment Agency v Rowan [2008] ICR 218** and in **Royal Bank of Scotland v Ashton [2011] ICR 632**, both approved by the Court of Appeal in **Newham Sixth Form College v Sanders [2014] EWCA Civ 734**. 65.

67. The following are the key components which must be considered in every case:

1. What is the provision, criterion or practice (“PCP”), physical feature of premises, or missing auxiliary aid or service relied upon?
2. How does that PCP/ physical feature/missing auxiliary aid put the claimant at a substantial disadvantage in comparison with persons who are not disabled?
3. Can the respondent show that it did not know and could not reasonably have been expected to have known that the claimant was a disabled person and likely to be at that disadvantage?
4. Has the respondent failed in its duty to take such steps as it would have been reasonable to have taken to have avoided that disadvantage?
5. Is the claim brought within time?

68. Paragraph 6.28 of the Equality and Human Rights Commission Code of Practice on Employment (2011) sets out factors which it is reasonable to take into account when considering the reasonableness of an adjustment. These include: -

1. The extent to which it is likely that the adjustment will be effective;
2. The financial and other costs of making the adjustment;
3. The extent of any disruption caused;
4. The extent of the employer's financial resources;
5. The availability of financial or other assistance such as Access to Work; and
6. The type and size of the employer.

69. There is no limit on the type of adjustments that may be required. An important consideration is the extent to which the step will prevent the disadvantage. It is almost always a good idea for the respondent to consult the claimant about what adjustments might be appropriate. A failure to consult the claimant makes it more likely that the employer might fail in its duty to make reasonable adjustments.

70. Once the duty to make reasonable adjustments arises, an employer will not be in breach of the duty until it has had a reasonable opportunity to make adjustments. What is a reasonable opportunity will depend on the particular circumstances of the case.

71. In Mr Bryan's submission, there can be no liability for failure to make reasonable adjustments where the adjustment claimed by the employee has been made before the claim is presented, because there is no cause of action for failing to make a reasonable adjustment in a timely manner. In support of this submission he relies upon ***Tarbuck v Sainsbury's Supermarkets Ltd [2006] IRLR 644*** which, he says, is authority for the proposition that "*The only question is, objectively, whether the employer has complied with his obligations or not.*"

Conclusions

72. The following conclusions are reached on a unanimous basis.

73. The first question we have considered is whether the lack of the auxiliary aides, namely the desktop PC, 2 compatible monitors and assistance from a suitably qualified or experienced individual to set the equipment up at the claimant's home, placed the claimant at a substantial disadvantage compared to someone without her disability, in that her disability means she needs to magnify text on screen to 18 font or higher to be able to read it, and that she was unable to set up the second monitor without assistance.

74. In relation to the monitors, the claimant says that she was at a disadvantage because the laptop had a different size of screen to the single monitor that she was provided with, and that a second monitor would have enabled her to work from two screens (the monitors) on which text could have been magnified to the same size. It is in our view telling, however, that the claimant made no complaint about the different size of screen until Occupational Health suggested a second monitor. She was able to work successfully with one monitor and the laptop for many weeks.
75. Not only that, but when specifically asked by Laura Harrison how she was managing with the screens, she did not raise any issues or suggest that she was struggling. In the DSE assessment she replied 'yes' to the question about whether the characters on the screen were clear and legible. On 20 February when she spoke to Tom Roberts, in response to his question about whether she needed any equipment to help, she specifically said, "Happy with the current set up" and that no support was required from the respondent.
76. Occupational Health, in its report, recorded that the claimant was happy with the original set up, but would 'benefit' from a second monitor. It was notable that, even during the Tribunal hearing, the claimant struggled to explain what the disadvantage was of not having a second monitor.
77. The claimant was able both to install the initial equipment supplied to her (a laptop and just one monitor) and, it appears, to work successfully with that equipment from 30 January until 20 April. There was no evidence before us to suggest that the claimant was not able to perform her duties successfully, or that there was any criticism of her performance. We recognise however that that alone does not mean she was not at a disadvantage.
78. The claimant told the Tribunal that the reason she did not raise the issue of needing a second screen was because she did not want to disclose the impact the original set up was having on her as she was still within her probationary period. We find her evidence on this issue not credible. She was clearly comfortable discussing her disability both prior to the start of her employment, when she disclosed it during the 'acceptance' call, and during the early days of her employment. She discussed it with her trainer, Laura Harrison, on the very first day that she started work, and described Ms Harrison as being supportive of her.
79. Moreover, the claimant was comfortable and confident enough to raise two grievances within the first three months of her employment, and to insist that an engineer visit her at home to install the second monitor.
80. There was nothing the respondent did to cause the claimant to fear for her employment if she raised the issue of additional equipment. Rather the respondent took considerable steps to support her. Laura Harrison specifically asked her if her screens were OK and arranged the DSE assessment. Tom Roberts asked whether she needed any equipment or help from the respondent and, even when she said 'no', suggested a referral to Occupational Health. The respondent responded very positively when the claimant discussed her health conditions. Michael Marsh even

arranged for an engineer to visit her twice at home – the only time this had happened during the course of his employment with the respondent.

81. The respondent submits that the claimant has not discharged the burden of proving that she was suffering a substantial disadvantage because of the lack of the auxiliary aids. Whilst 'substantial' is not a high burden for a claimant to discharge, in light of the definition in section 212 of the Equality Act, "*more than minor or trivial*", we find that the claimant has not discharged the burden of showing that the failure to provide two compatible monitors placed her at a substantial disadvantage. She was able to work without two monitors and to assure her managers that all was well and that she didn't need any further equipment. We find that, as Occupational Health commented, the claimant would benefit from a second monitor, but we do not find that the delay in providing it placed the claimant at a substantial disadvantage.
82. We turn next to the question of whether the failure to provide the desktop PC until May 2023 placed the claimant at a substantial disadvantage in comparison with someone without her disability. We find that it did not. The suggestion of the desktop PC came about once the respondent saw the size of the desk that the claimant was working on, and after the claimant indicated that she did not want to get a larger desk. It was designed to better manage the limited space available in the claimant's workspace. The respondent suggested that the claimant work from a bigger desk, to resolve the space issues, but the claimant preferred not to. Any disadvantage therefore arose from her preference to use her existing desk, not from her disability.
83. The last of the auxiliary aids that the claimant relies upon is assistance from a suitably qualified or experienced individual to set the equipment up at her home. We accept that, whilst the claimant was able to complete the initial set up of the equipment, she was not able to set up the second monitor and that this did place her at a disadvantage which was more than minor or trivial.
84. We have then considered the question of knowledge. The respondent admits that at all material times it knew the claimant was disabled. The question we have had to consider therefore is whether the respondent knew or could reasonably have been expected to know that the claimant was placed at a disadvantage by the failure to provide the auxiliary aid in question, namely the engineer to come out and install the monitor at the claimant's home.
85. We accept Mr Bryan's submission that an employer cannot make reasonable adjustments unless and until it has knowledge of the substantial disadvantage caused by the failure to provide the auxiliary aids. In ***Newham Sixth Form College v Sanders [2014] EWCA Civ 734*** the Court of Appeal held that "*An employer cannot ... make an objective assessment of the reasonableness of proposed adjustments unless he appreciates the nature and the extent of the substantial disadvantage imposed upon the employee....*"
86. We also accept that, even if an employer has knowledge of an employee's disability, as the respondent did in this case, if there is nothing to alert the employer to the fact that the employee may be at a disadvantage, then the employer cannot be criticised

for failing to provide an auxiliary aid. This is particularly so in this case where the respondent repeatedly asked the claimant if she needed any assistance or equipment and was told that she didn't.

87. This is not a case in which the respondent made it difficult for the claimant to discuss her disability, or in which it failed to make reasonable enquiries as to whether any adjustments were required. When the claimant first disclosed her disability to the respondent, during the acceptance call, the respondent's response was to ask the claimant whether any adjustments were required. The claimant's reply was that adjustments had already been provided by Access to Work, and there was nothing at that stage to suggest that further adjustments may be required.
88. When the claimant disclosed her disability to Laura Harrison, she was asked how she was managing and whether there was anything the respondent could do to help, and replied that she had everything she needed. When Mr Roberts asked her if she needed any equipment or help, she replied 'no'. The claimant repeatedly assured the respondent that she had everything she needed.
89. The first time the claimant told the respondent that she needed help in person with setting up the second monitor was on 20 April when she contacted the IT Service desk and said that she needed a technician to physically help her install the second monitor. We therefore find that the respondent had knowledge of the disadvantage caused to the claimant by not having assistance from a suitably qualified person on 20 April 2023. It was on that day that the duty to make reasonable adjustments arose.
90. The respondent provided the adjustment on 12 May 2023, when an engineer visited the claimant and successfully set up the second monitor. The adjustment was therefore provided within 3 weeks and 1 day of the duty to make reasonable adjustments arising.
91. This was not an unreasonable time period. There was limited resource available at the time, given that there were only three field service engineers and two substantial IT projects underway, one in Turkey and one at Birmingham airport. In addition, Michael Marsh made a final attempt to resolve matters remotely by telephoning the claimant on 28 April and 2 May. When the claimant told him on 2 May that she did not want any more remote help setting up the second monitor, Mr Marsh arranged for an engineer to visit her just 10 days later. Meanwhile the claimant was not required to work but was receiving full pay.
92. Even if we had been required to consider whether the delay in arranging a home visit between 28 February, when the claimant sent the email referring to a 'bit of a struggle' using the laptop and one monitor, and 12 May was unreasonable, we would have found that it was not, given all the steps that were being taken to try and support her and resolve the issue. It was entirely reasonable for the respondent to try and resolve the issue initially using its normal approach of remote support, which has been very successful in resolving IT issues.

93. The respondent took considerable steps to try and support the claimant. This is not a case in which the respondent did not enquire about the claimant's disability or the question of reasonable adjustments, nor can it be said that the respondent did not try to find a solution once the claimant raised issues with it.
94. As the claimant told us, her disability is a rare one. As a result, it was not obvious what adjustments were required, and it was reasonable for the respondent, having made the enquiries that it did, to rely upon the claimant's assurances in the early days of her employment that no further adjustments were required. An employer should not make assumptions about what a disabled person can and cannot do.
95. For the above reasons, the claim that the respondent failed to make reasonable adjustments is not well founded. It fails and is dismissed.

Employment Judge Ayre

Date: 18th June 2024

REASONS SENT TO THE PARTIES ON

Date: 21st June 2024

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FOR THE TRIBUNAL OFFICE

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