NCN: [2024] UKUT 449 (AAC)

IN THE UPPER TRIBUNAL **Appeal No.** UA-2023-001922-HS
ADMINISTRATIVE APPEALS CHAMBER

On appeal from the First-tier Tribunal (Health, Education and Social Care Chamber)

Between:

DJ

Appellant

- v –

The Proprietor of Wellington College

Respondent

Before: Upper Tribunal Judge Freer

Hearing date: 15 May 2023

Representation:
Appellant: Mr O Persey, Counsel
Respondent: Ms C Hadfield, Counsel

ORDER

Pursuant to rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008, it is prohibited for any person to disclose or publish any matter likely to lead members of the public to identify the Appellant in these proceedings.

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal made on 20 February 2023 under number EH8672200013 was made in error of law. Under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007 I set aside the decision on the issue of section 15 of the Equality Act 2010 only and remit that matter to be reconsidered by a fresh tribunal in accordance with the following directions.

Directions

1. **This case is remitted on the issue of section 15 of the Equality Act 2010 to a wholly different tribunal panel of the First-tier Tribunal for reconsideration at an oral hearing.**

2. **These Directions may be supplemented by later directions by a Tribunal Judge in the Health, Education and Social Care Chamber of the First-tier Tribunal.**

REASONS FOR DECISION

Introduction

1) This is an appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Health, Education and Social Care Chamber) ("the Tribunal") dismissing the Applicant's claims of breaches of section 15 and section 20 of the Equality Act 2010.

2) Upon an application being made by the Appellant, anonymity was granted to the Appellant and a restricted reporting order made under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698). Given the Appellant's age, disability issues and the alleged circumstances recounted in the Tribunal decision, anonymity is appropriate. Anonymity was not granted with regard to the Responsible Body. That application was opposed by the Appellant. The participants will not be named within this decision and although it may not be difficult to determine who they are by reference to the name of the Responsible Body, this decision is very unlikely to make any findings or conclusions relating to their personal conduct such that an Article 8 issue arises.

Background Summary

3) The essential background to this matter is that at the time of the hearing before the Tribunal DJ was 17 years old.

4) For the purposes of these proceedings it was accepted that DJ was a disabled person at the material times for the purposes of section 6 of the Equality Act 2010 with a diagnosis of attention deficit hyperactivity disorder ("ADHD"), and it is noted that there were also established diagnoses of dyslexia and dysgraphia and that he appeared to have difficulties with attention and focus. It was also not in dispute that the responsible body knew of the ADHD diagnosis.

5) From September 2018 DJ attended Wellington College ("the College"), an independent school. DJ's Year 11 report noted that he needed to be more disciplined with his work and that he needed prompting to remain on task.

6) In June 2020, regrettably DJ was the subject of an assault outside the College and which resulted in him sustaining serious injuries. Criminal charges were brought against those responsible for the assault and DJ was required to give evidence in court.

7) After the incident DJ had a decline in his mental health and demonstrated symptoms associated with post-traumatic stress disorder.

8) In August 2021 DJ passed his GCSE's based on teacher assessment grades, but the College staff were concerned that he would not cope with the more rigorous requirements of an A Level course.

9) Following a discussion with the College, DJ was asked to sign a performance contract requiring him to commit fully to the work in his chosen subjects and if he did not meet those requirements it would be necessary to consider his future in the sixth form. The College considered that the contract should be seen as a support to DJ in his studies and to maximise his chances of success. Specific requirements of the contract were that DJ should work to improve his academic standards and to develop his learning. He was required to attend supervised study and academic support when directed. He was also required to attend workshops and to achieve grades which reflected significant levels of improvement. He was also required to comply with the disciplinary policy.

10) In the event it was considered DJ had not met the contractual requirements, the College reserved the right to withdraw him from examinations and review his position.

11) DJ and his mother signed the agreement.

12) A letter from the College dated 12 October 2021 stated that DJ was not to be allowed to return to the college following multiple breaches of the performance agreement. DJ's mother was informed that if the College did not receive confirmation by 15 October 2021 of her intention to remove him from the College, he would be permanently excluded on the grounds of repeated breaches of the performance contract following a final written warning. As a result, DJ's mother withdrew DJ from the College.

13) At the time of the hearing the College had an established special educational needs policy. The staff were experienced in helping students with SEN. The College had over a thousand students of which 86 had a diagnosis of ADHD and 7 were autistic individuals. The College aims for all pupils to achieve high academic standards.

14) The College staff believed that DJ's negative reaction to the support offered and his continuing failure to produce satisfactory work on time demonstrated that he did not want to engage appropriately with his education.

15) In September 2020, it is alleged that DJ was found to have 'vaping' equipment in his room. In November 2020 a complaint was made by two female pupils that DJ had been part of a group of boys subjecting them to racist and sexist harassment. In March 2021, it is said that DJ had behaved aggressively towards the pupils who had complained about his conduct. Other reported incidents were where DJ had overslept and missed tutorials and support sessions.

16) The College argued that the decision not to allow DJ to proceed with his sixth form studies was made when it became obvious that he had no interest in engaging with those studies or the help offered and would have struggled to catch up with work he had missed.

The case put to the First-tier Tribunal

17) The Appellant made claims under section 15 of the Equality Act 2010 (discrimination arising in consequence of disability) and section 20 (a failure to makes reasonable adjustments).

18) There was no dispute that DJ was a disabled person at the material times but there was no concession by the College that DJ's behaviours relevant to the claims related to his disabilities.

The First-tier Tribunal's decision and reasons

19) At paragraphs 19 to 28 of its decision the Tribunal set out a summary of the evidence.

20) The Tribunal concluded that DJ's behaviours did not arise from his disability and dismissed the claim for that reason. Alternatively, the Tribunal concluded that, if it was wrong on that point, the College had proved that the decision to require DJ to be withdrawn was a reasonable and proportionate response to the circumstances. The Tribunal also concluded that aside from the requirement for DJ to enter into the contract, no other reasonable adjustment in the form of additional provision for him would have been either practicable or effective.

Proceedings before the Upper Tribunal

21) The Appellant's application for permission to appeal to the First-tier Chamber was refused by a decision dated 24 November 2023. The Appellant made a further application to the Upper Tribunal, where permission to appeal was granted on 22 February 2024.

22) The grounds of appeal advanced at the appeal hearing were:

Ground 1 – Misapplication of section of the15 Equality Act 2010;

Ground 2 - Misapplication of section of the 20 Equality Act 2010;

Ground 3 – Inadequate reasons;

23) The Equality Act 2010 creates head of claims in similar terms under both section 85 (schools) and section 91 (further education institutions):

> "The responsible body of such an institution must not discriminate against a student—
> (a) in the way it provides education for the student;
> (b) in the way it affords the student access to a benefit, facility or service;
> (c) by not providing education for the student;
> (d) by not affording the student access to a benefit, facility or service;
> (e) by excluding the student;
> (f) by subjecting the student to any other detriment.

> . . .
> A duty to make reasonable adjustments applies to the responsible body of such an institution"

Ground One

The Ground: Misapplication of section 15 of the Equality Act 2010.

24) Section 15 of the Equality Act 2010 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".

25) In its decision, under the heading "Disability", the Tribunal set out its conclusion on whether or not DJ's behaviours leading to the decision to require him to be withdrawn from the College arose as a consequence of his disability:

> "30. It is not an issue that [DJ] was disabled within the meaning of the EA 2010 because of ADHD. We have carefully considered the evidence of Dr Hymans but using our own expertise, we are not satisfied that all of [DJ]'s behaviours which are relevant to this claim were the consequence of his ADHD. It is possible that the condition and medication were, in part, the cause of some sleep problems but given the general history of [DJ]'s behaviours in school we do not accept that ADHD was the only or major cause of [DJ]'s behaviours or missing lessons. For example the letter from Oxford Centre in February 2021 (page 153 in the bundle) stated sleep was better.
>
> 31. In our judgement it is far more likely that [DJ] was finding the academic and discipline demands of the college too difficult, and he lost interest in his studies. The incident when he went home to attend a party, having said that he was unwell, shows a degree of determination to get his own way and avoid the consequences of his actions if he could.
>
> 32. We are satisfied that the incidents which occurred before the start of the sixth form involving serious breaches of the school discipline policy are relevant to demonstrate [DJ]'s, at times, unthinking behaviours towards others and a determination to vape. The second vaping incident described by Ms Brown occurred shortly after the beginning of the new term and we find that [DJ]'s conduct, taken as a whole, is not consistent only with the effects of ADHD as described by Dr Hymans.
>
> 33. Therefore, we are not satisfied that [DJ]'s behaviours did arise from his disability, and we would dismiss the claim for that reason".

26) The Appellant argues simply that the Tribunal fell into error in stating that it did not accept that "ADHD was the only or major cause of [DJ]'s behaviours or missing lessons".

27) The Appellant replies upon *Hall -v- Chief Constable of West Yorkshire* [2015] IRLR 893, as confirmed in *Risby -v- London Borough of Waltham Forest* UKEAT/0318/15 in which the Employment Appeal Tribunal held:

> "42. It seems to me that the tribunal made three errors. Firstly, it appeared to consider that it was necessary for the claimant's disability to be the cause of the respondent's action in order for her claim to succeed. Secondly, it made a contrast between the cause of the action and a background circumstance. This leaves out of account a third logical possibility, which, it seems to me, is present on the looser language of s.15(1); ie a significant influence on the unfavourable treatment, or a cause which is not the main or sole cause, but is nonetheless an effective cause of the unfavourable treatment. …"

28) The Appellant argued that the error displayed by the First-tier Tribunal by its reference to 'only or major cause' followed the same error identified in *Hall* and *Risby*.

29) It was argued on behalf of the Respondent that, in essence, the conclusions made by the Tribunal should be seen in the context of how the case had proceeded and the evidence under consideration. The Appellant had argued that sleep difficulties assumed much greater significance at the hearing. The evidence of Dr Hymans in his report in support of the Appellant's claim stated that: "ADHD pervades every aspect of [DJ]'s functioning, including his learning, communication and behaviour". As a consequence the Tribunal was invited by the Appellant to draw from this general statement that every breach of the performance agreement was in consequence of the Appellant's ADHD condition. The Respondent argued that this evidence was summarised at paragraphs 21 and 22 of the Tribunal's decision and the decision should be considered as a whole. The reference to 'all' was a response to the submission that all behaviours were linked to ADHD; "it is possible" was the Tribunal weighing evidence when faced with competing allegations; and that "far more likely' was the Tribunal weighing the possibility of the effect of sleep on the one hand and DJ simply not being engaged on the other. Therefore the reference to 'only' should be considered in that context.

30) The principle contained in the decisions in *Hall* and *Risby* was also confirmed in *Pnaiser -v- NHS England and Anor* [2016] IRLR 170. After considering a number of authorities including *IPC Media Ltd -v- Millar* [2013] IRLR 707 EAT, *Basildon & Thurrock NHS Foundation Trust -v- Weerasinghe* UKEAT/0397/14 and *Hall* (above), the EAT provided guidance on the approach to determining whether there had been a *prima facie* breach of section 15. It concluded at paragraph 31(b) "… just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it".

31) I have considered, as I must, the Tribunal's conclusions in the context of the decision as a whole and also remind myself of well-established authorities on adequacy of reasons as highlighted under Ground 3 below. However, I am unable to draw the construction ably argued on behalf of the Respondent.

32) In its conclusion the Tribunal clearly discounts that "all" of DJ's behaviours "relevant to this claim" were the consequence of the ADHD condition. The Tribunal reflects that it "is possible" that the condition and medication were in part, the cause of some sleep problems, but reaches a final conclusion, which in my view is impermissible under the authorities cited above, that it did not accept that ADHD "was the only or major cause" of DJ's behaviours or missing of lessons.

33) I consider that any room for doubt is removed by paragraph 32 where the Tribunal confirms its view that "we find that [DJ]'s conduct, taken as a whole, is not consistent *only* with the effects of ADHD as described by Dr Hymans" (my emphasis).

34) If submissions made on behalf of the Respondent are correct and this was simply the Tribunal refuting the contention by Dr Hymans that all behaviours were because of ADHD, the Tribunal failed to consider, or at least set out that consideration, whether the unfavourable treatment was in any way influenced by the something arising from disability such that it was an effective reason for or cause of it, in a sense that it was more than minor or trivial. If the Respondent's argument is correct, the Tribunal has not moved on to consider that point if its written deliberation was simply to discount Dr Hymans' main contention.

35) However, it is my conclusion that it was a misdirection.

36) The Tribunal moved on to consider proportionality in the event that its conclusion on unfavourable treatment arising in consequence of disability was incorrect.

37) The legitimate aim as found by the Tribunal was maintaining College standards and discipline and removing the considerable burden managing DJ placed on staff members.

38) The applicable approach is summarised in the Supreme Court decision in *Aster Communities Ltd -v- Akerman-Livingstone* [2015] UKSC 15 (see para. 28):
1) Is the objective sufficiently important to justify limiting a fundamental right?
2) Is the measure rationally connected to the objective?
3) Are the means chosen no more than is necessary to accomplish the objective? and
4) Is the impact of the discrimination disproportionate to the likely benefit of the measure?

39) The Appellant argues that the Tribunal failed to engage with the fourth element of the guidance in *Ackerman-Livingstone* and relies on the Employment Appeal Tribunal authority of *Secretary of State for Justice -v- Prospere* UKEAT/0412/14/DA and the Court of Appeal decision in *Birmingham City Council -v- Valin Stephenson* [2016] EWCA Civ.1029.

40) The Appellant cites the decision in *Prospere* where the EAT states:

> ". . . it is incumbent upon an Employment Tribunal to make a proper and clear assessment of the proportionality between the discriminatory effect of the challenged provision and the need of the employer to proceed in the way that that employer has. . . What is required when determining both issues is a critical evaluation of the relevant considerations".

41) The Respondent argues that the case law boils down to the question of whether the legitimate aim of the institution could have been achieved through a less onerous sanction and the Tribunal in this instance addressed this issue and concluded that it could not. The Respondent contends that the starting point is that it goes without saying that exclusion is a serious step. The question was always going to be consideration of whether all that could be have been done was done.

42) As part of its decision the Supreme Court in *Ackerman-Livingstone* confirmed that: "the role of the Court is not akin to judicial review. It has to undertake the proportionality exercise itself" (para. 31); "the Court should adopt a four stage structured approach" (para 64); and "Section 15(1)(b) of the 2010 Act requires the claimant to show that the eviction strikes a fair balance between its need to accomplish its objectives and the disadvantages thereby caused to the defendant as a disabled person" (para. 71).

43) The difficulty with the Tribunal's alternative approach is that in the absence of making any finding on what constituted the something arising in consequence of DJ's disability, the proportionality element of objective justification has no proper focus in respect of which the required balancing exercise can be undertaken. It may be that the Tribunal was accepting, in the alternative, that *all* DJ's behaviours were arising from his disability, or that no matter what the behaviours arising were, the justification analysis would hypothetically address them all. The decision is not clear in that respect.

44) I agree with the Respondent that exclusion is a serious step but that does not address the effect of the discrimination on the Appellant himself and provide a critical assessment of the proportionality between the discriminatory effect of the exclusion and the need for the Respondent to proceed in the way that it did.

45) In *MacCulloch -v- ICI* [2008] IRLR 846 the *EAT* set out legal principles with regard to justification, which have since been approved by the Court of Appeal in *Lockwood -v- DWP* [2013] EWCA Civ. 1195. For the purposes of this appeal the relevant principles are that the burden of proof is on the Respondent to establish justification (see for example *Starmer -v- British Airways* [2005] IRLR 862, EAT) *a*nd proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it (see *Hardy & Hansons plc -v- Lax* [2005] IRLR 726, CA.

46) The Tribunal in this case did not undertake that review. I recognise that there may be some tension between the Tribunal adopting the four stage process with the

'critical review' as anticipated by *Ackerman-Livingstone* and the authorities recognising the decision making pressures on the expert tribunal. I note that this is addressed by the EAT in *Prospere*, citing the Court of Appeal in *Hardy & Hansons plc -v- Lax* (above):

> "33. As this court has recognised in *Allonby* [2001] ICR 1189 and in *Cadman* [2005] ICR 1546, a critical evaluation is required and is required to be demonstrated in the reasoning of the tribunal. In considering whether the employment tribunal has adequately performed its duty, appellate courts must keep in mind, as did this court in *Allonby* and in *Cadman*, the respect due to the conclusions of the fact-finding tribunal and the importance of not overturning a sound decision because there are imperfections in presentation. Equally, the statutory task is such that, just as the employment tribunal must conduct a critical evaluation of the scheme in question, so must the appellate court consider critically whether the employment tribunal has understood and applied the evidence and has assessed fairly the employer's attempts at justification.
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> 34. The power and duty of the employment tribunal to pass judgment on the employer's attempt at justification must be accompanied by a power and duty in the appellate courts to scrutinise carefully the manner in which its decision has been reached."

47) The lack of the necessary critical approach is demonstrated by the Tribunal's conclusion that: "it is possible that [the Head Teacher] might have considered ways in which the college could work more effectively with [DJ's mother] but objectively, his decision to require [DJ] to be withdrawn was, we find, reasonable and proportionate with the legitimate aim . . ."

48) It is an assessment of the decision as against the legitimate aim rather than balanced consideration of the discriminatory effect on the Claimant against the legitimate aim. What is missing from the Tribunal's approach is a critical review of whether the *impact of the discrimination* is disproportionate to the likely benefit of the measure.

49) This ground of appeal is successful.

Ground 2

The Ground: Misapplication of section of the 20 Equality Act 2010.

50) The part of section 20 of the Equality Act 2010 relevant to this appeal provides a requirement on a person for whom the duty to make a reasonable adjustment is imposed:

> ". . . 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".

51) The Appellant argues that the Tribunal did not make a clear decision on the applicable provision, criterion or practice ("PCP") from which the analysis of whether a reasonable adjustment duty has been breached could flow. It is also argued that there was no engagement with the expert evidence of Dr Hymans and the Tribunal failed to address the anticipatory and continuing nature of the reasonable adjustment duty. Therefore the finding that the Responsible Body left it too late to refer the Appellant for an ECHNA is not a defence, but confirms a breach of the anticipatory duty of section 20. Finally the Appellant argues that the Tribunal conflated an EHC Needs Assessment with obtaining an EHC Plan and had been inaccurate with the timescale.

52) The Respondent argues that the Tribunal's approach to the PCP was shaped by the Appellant's own approach to it during the course of the initial hearing and the Tribunal was entitled to hold the Appellant to the pleaded case. The Tribunal was also entitled to reject the evidence of Dr Hymans when considering the reasonableness of any adjustment. Finally DJ's conduct escalated so suddenly over the first term of available study that it was not possible to put in place mid to long-term strategies such as seeking an EHC Needs Assessment.

53) On the face of it there appeared to be a lack of clarity over the precise PCP adopted by the Tribunal and whether it was only the requirement to enter into the agreement, as set out in the Tribunal's conclusions at paragraph 37, or the requirement to comply with some or all of the terms of the agreement.

54) However, I am persuaded that the Tribunal was addressing the practice of implementing performance agreements, as explained by the Respondent, which encompasses both entering into the agreement and its performance.

55) The detriment was clearly DJ's inability to comply with the terms of the agreement and ultimate removal from College.

56) The Tribunal did engage with the expert evidence of Dr Hymans as paragraphs 21 and 22 show:

> "21. Dr Hymans prepared an independent psychological report dated 20.10.2022. This followed an interview with [DJ] but there was no discussion of the issues with college staff. The RB says that his opinion should be treated with caution because he had not entered discussion with staff members about their experience of ADHD and behaviour management, and that his data was flawed. It is said that Dr Hymans had not differentiated between reasonable adjustments and special educational provision delivered through the EHC plan.
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> "22. In his detailed report, Dr Hymans is highly critical of the college's approach to [DJ], and he suggests that ADHD affected all aspects of his functioning, so that his reported behaviours did arise from his disability".

57) The Tribunal did not set out in its decision its conclusions about individual elements of Dr Hymans' report. In my view it was not required and there was no

error of law in that respect. The Tribunal knew the contents of the Report, was aware of the criticisms Dr Hymans made of the Respondent's approach to DJ and noted the potential difficulties involved in relying on the Report. The Appellant quite rightly raised the authority of *Piglowska -v- Piglowski* [1999] 1 WLR 1360 in which the House of Lords emphasised that: "reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account". Although I have found that the Tribunal erred in respect of Ground 1 and the decision on discrimination arising from disability, that does not mean, by quite some measure, that the contrary has been demonstrated with regard to the reasonable adjustments claim.

58) The Tribunal put its mind to considering possible reasonable adjustments and the conclusions as set out in paragraphs 38 and 39 are in my view satisfactory.

> "38. The college clearly had knowledge of [DJ]'s disability, but we are satisfied that no other reasonable adjustment in the form of additional provision for him would have been either practicable or effective.
> 39. [DJ] clearly found discipline difficult and failed to engage with the opportunities he was given. It is very unlikely he would have responded positively to the provision of an individual tutor, and we are satisfied that even if his workload had been reduced, this would not have helped and would have adversely affected his ability to successfully complete the course".

59) The Tribunal has properly directed itself on the relevant law and explained the essential elements leading to its conclusion on why no reasonable adjustments could have been made. The parties knew why they had won or lost. The effectiveness of the right of appeal has not been impinged (see *Threlfall -v- General Optical Council* [2004] EWHC 2683)

60) I find that the Tribunal did consider the anticipatory nature of the reasonable adjustment in the form of an EHC Plan for the reasons set out in paragraph 40 of the decision:

> "It is most unlikely, in our judgement, that an Education, Health and Care Plan would have been a practicable solution since, in the circumstances, it is unlikely that the local authority would have agreed, and the process could have taken up to six months. Further, [DJ] is unlikely to have responded to or engaged with any special educational provision and the discipline issues would remain".

61) The Tribunal has recorded that by early October 2021, in the first term of A-level studies, matters had escalated such that DJ was not allowed to return to the College. Therefore it is not a matter of 'leaving it too late' to refer DJ for a needs assessment, but a reflection that in the context of an A-level course the period was too long to have been a practicable solution and a reasonable adjustment.

62) In my view it is immaterial whether the process would have taken 6 months (26 weeks) as stated by the Tribunal, or 21 weeks as contended by the Appellant. The point being made is that it would not have been an expedited process in the context of an A-level course.

63) This ground of appeal is unsuccessful. There is some overlap with Ground 3.

Ground 3

The Ground: Inadequate reasons.

64) The Appellant argues that the Tribunal failed to engage with the claim and that the decision particularly does not address adequately the written and oral evidence of Dr Hymans.

65) The Appellant relies on a number of authorities relating to the importance of adequate reasons including *R -v- Secretary of State for the Home Department ex p. Doody* [1994] AC 531, HL:

> "I think it important that there should be an effective means of detecting the kind of error which would entitle the court to intervene…".

66) *Threlfall* (above):

> "…the effectiveness of the right of appeal may depend on the giving of reasons by the Disciplinary Committee, in any case in which a decision is made to impose a disciplinary order (as defined in section 14 of the Opticians Act 1989) I think that Article 6 does require adequate reasons to be given by it in good time for the right of appeal to be exercised."

67) *Piglowska* (above).

68) It was argued that a key part of the Appellant's case was that the Head Teacher failed to address his mind to how the Appellant's disability contributed to the behaviour that led to DJ being removed. The Head Teacher asserted that much of the Appellant's behaviour was unconnected to his ADHD. The Responsible Body could and should have done much more before removing DJ. The Appellant argues that, although the Tribunal does not need to address every point in detail, failing to consider the expert written and oral evidence of Dr Hymans at all in relation to whether there were reasonable steps that could have been taken was a significant omission, which makes it difficult to ascertain whether the Tribunal has adopted a rational approach to the expert recommendations. The Appellant also argues that the Tribunal's failure to provide reasons frustrates the Appellant's right of appeal. The Tribunal rejected Dr Hymans' expert evidence in relation to disability at paragraph 30 of its decision and so reasons must be provided.

69) The Respondent argues that the Tribunal's reasons were sufficient in that they told the parties in broad terms why they have lost, outlined the circumstances of the claim, summarised the Tribunal's basic conclusions and set out why it reached the conclusions it had. The reasons need only allow the parties to understand why they have won or lost, against the background of the evidence that was given and without all of the evidence being rehearsed in the decision.

70) In addition to the cases cited by the parties I have referred myself to other well-established authorities relating to adequacy of reasons. The principles are consistent and universal across jurisdictions.

71) The purpose of the reasons provided is to tell the parties in broad terms why they have won or lost, as the case may be, and also be sufficient to enable an appeal court to judge whether any question of law arises. The test is one of adequacy: the decision "must contain an outline of the story that has given rise to the complaint, a summary of the tribunal's basic factual conclusions, and a statement of the reasons which have led them to reach the conclusion which they do on those basic facts" (*DC -v- Ealing LBC* [2010] UKUT 10 AAC). "The duty to provide adequate reasons must be seen in the context of the proceedings of the case as a whole. So the parties' prior knowledge of the nature of the dispute and the relevant contentions on appeal will be relevant in deciding whether the reasons are adequate" (*LS -v- Oxfordshire County Council* [2013] ELR 429).

72) Also, in *Secretary of State for the Home Department v AH (Sudan)* [2007] UKHL 49, giving guidance in the context of specialist tribunals Lady Hale stated:

> "This is an expert tribunal charged with administering a complex area of law in challenging circumstances. . . They and they alone are the judges of the facts. It is not enough that their decision on those facts may seem harsh to people who have not heard and read the evidence and arguments which they have heard and read. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law."

73) In *Shamoon -v- Chief Constable for the Royal Ulster Constabulary* [2003] UKHL 11, [2003], Lord Hope said:

> "It has also been recognised that a generous interpretation ought to be given to a tribunal's reasoning. . . An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it. . . The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him. An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable".

74) In *ASLEF -v- Brady* [2006] IRLR 576 the EAT stated: "it is not necessary for the Tribunal to make findings on all matters of dispute before them nor to recount all the evidence".

75) Having regard to the relevant authorities, save where detailed under Ground 1 above, the Tribunal's reasons were adequate and displayed no error of law. The conclusion that the Tribunal fell into error on that account does not, of course, mean that the rest of the reasons are flawed or are inadequate.

76) The Tribunal clearly considered Dr Hyam's evidence. It had the medical report, considered the content, understood the position of Dr Hymans and the potential problems highlighted by the Respondent. It should be assumed that the Tribunal

have taken that into account in its decision making. It is not required for the evidence to be set out in detail nor topic by topic or to make findings on all matters of dispute. The weight to be placed upon the evidence is a matter for the Tribunal, it need not all be discussed in the judgment and the validity of the findings is not dependent on the presentation of a balanced account.

77) The Appellant stated in submission that a key part of the claim was that the Head Teacher failed to address his mind to how that Claimant's disability contributed to the behaviour that led to him being removed. However, the issue for the Tribunal ultimately was whether the proportionality issue was satisfied in the section 15 analysis and whether any reasonable adjustments were required to avoid disadvantage in the section 20 analysis. Those are matters based on the actual facts, whether or not the Head Teacher addressed his mind to them. A person may not address their mind to issues impacting upon their decision making and comply with their legal obligations, another may significantly consider those matters but fall short.

78) The submission that the Responsible Body should have done much more before removing DJ is again a matter of fact and balance for the Tribunal when applying the relevant law to the facts.

79) The issue is whether the reasons provided by the Tribunal are adequate and it is my conclusion that save for the misdirection and consequences in Ground 1 they were.

80) This ground of appeal is unsuccessful.

81) Therefore the appeal is successful on Ground 1 only and after considering representations by the parties the matter shall be remitted to a wholly different tribunal panel of the First-tier Tribunal for reconsideration at an oral hearing of the section 15 issue only. That is the most appropriate course of action given the matters for consideration and the potential time scales involved.

A Freer

Judge of the Upper Tribunal

Signed on the original/authorised for issue on 05 August 2024

(Amended under rule 42 of the Tribunal Procedure (Upper Tribunal) Rules 2008 on 31 October 2025)

Mark West
Judge of the Upper Tribunal