

## Burke v College of Law & Ors UKEAT/0301/10/SM

**Keywords: Reasonable Adjustments – Competence Standards - Qualifications Bodies - Adjusting Time Allowed for Sitting Exams**

The EAT upholds a finding that the College of Law was not required to adjust the time within which it required disabled persons to sit exams.

### FACTS

C, who suffered from Multiple Sclerosis, commenced a course at the College of Law. When sitting his exams the College gave him 60% more time and the assistance of an amanuensis<sup>1</sup>. Despite these adjustments C failed business accounts 3 times and was told that he had therefore failed the LPC.

C alleged that R had failed to adjust its requirement for exams to be (a) supervised and (b) completed within a time limit. He asserted that the exams should not have been timed and that he should have been able to take them at home, unsupervised. The ET held that the removal of supervision was not a reasonable adjustment as it would have resulted in a loss of credibility and integrity in the system and would not actually have helped a great deal. The ET held that the time limit was a competence standard and that there was no duty to adjust it. C appealed the finding that the requirement to complete the exam within a time limit was a competence standard.

### HELD

The EAT agreed with the ET's finding that the requirement to complete the exam within a particular time was a competence standard under s.14(A)(5) of the DDA 1995. There was evidence before the ET which showed that the ability to work at speed and under time pressure was a competence. For example the LPC Working Group had concluded that the assessments should mimic the sort of time-based pressures under which Trainee Solicitors find themselves having to deal with a client file. The ET was therefore entitled to find that the requirement for exams to be completed in a particular time was a competence standard which R was not required to adjust.

### COMMENT

This case is one of only a few that deal with the competence standards set by qualifications bodies. Cases concerning competence standards can be helpful in other cases since the principles can be applied to situations where an employer insists that an employee meet a particular standard of work<sup>2</sup>. The duty to make adjustments is not intended to require employers to accept a lesser standard of work and adjusting the standard of performance required of a disabled employee is not necessarily the correct option.

Interestingly the fact that R had actually adjusted the time limit on the exams by 60% was held to be irrelevant to the question of whether or not the time limit was a competence standard. R was entitled to change its own competence standards and the fact that the adjustment was made was irrelevant to whether or not the adjustment was required by the DDA.

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<sup>1</sup> a person to write down his answers for him.

<sup>2</sup> Cf: *Hart v Chief Constable of Derbyshire Constabulary* UKEAT/0403/07/ZT