



EMPLOYMENT TRIBUNALS

Claimant: Ms N Forse

Respondent: F&I Online Limited t/a Carplus

Heard at: London Central (CVP)

On: 4-6 October 2023

Before: Employment Judge Woodhead
Members: David Kendall and Tom Harrington-Roberts

Representation

For the Claimant: Representing herself
For the Respondent: Mr Graham Jones (Consultant) with Mr Roman Danaev

WRITTEN REASONS

1. We delivered oral judgment in this claim on 6 October 2023 and, the written judgment having been sent to the parties that day, the Claimant then applied in writing for full written reasons on 17 October 2023 (within the time limit of 14 days) pursuant to Rule 62(3) of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 No. 1237 as amended).
2. These written reasons are issued pursuant to that request and explain why we found that the Claimant's claims of direct disability discrimination under Section 13 of the Equality Act 2010 were not well founded and should be dismissed.

THE ISSUES

3. This claim arose from the Claimant's employment with the Respondent between 7 April 2022 and 4 July 2022. The Claimant asserted that she had the disabilities of attention deficit hyperactivity disorder and autism spectrum disorder.
4. The Respondent disputed that the Claimant had these disabilities over the relevant period and disputed that it knew or could reasonably have been expected to know that the Claimant had those disabilities.

5. The Claimant asserted that she had been subjected to a number of acts of less favourable treatment because of her disability and as such brought a claim under section 13 of the Equality Act 2010.
6. Those acts of alleged less favourable treatment were clarified with the Claimant with Employment Judge Isaacson on 7 March 2023 at a preliminary hearing and she added further particulars to those acts of alleged less favourable treatment in a document that appeared in the bundle at pages 26 to 30.
7. At the start of the hearing, the Tribunal checked and the parties confirmed that there were no changes to the issues to be determined. The issues are attached as an appendix to this judgment without the additional details referred to above but we took account of the further particulars provided by the Claimant.

THE HEARING

8. At the start of the hearing we explained the tribunal process to the Claimant and asked if she had any questions or needed any adjustments in order to participate in the hearing. She agreed that she would ask for breaks as she needed them and we took short breaks as she required and longer breaks as needed.
9. Mr Roman Danaev was the CEO of the Respondent during the relevant period. He attended the hearing and agreed to keep his camera off when he was not giving evidence because the Claimant found seeing his face triggered her anxiety. She did not find this necessary when she was cross examining Mr Danaev.
10. The Claimant became upset at times during the hearing but was able to express herself clearly in cross examination. She also performed the task of cross examination of Mr Danaev well.
11. We were provided with a bundle that had been agreed between the parties of 203 pages. The parties also agreed to adduce into evidence the job offer that had been made to the Claimant totalling one page and we were provided with a witness statement bundle of 21 pages which included a personal statement of the Claimant, a witness statement of the Claimant, screenshots of WhatsApp conversations, a personal statement of a witness for the Claimant called Miss Paris Ayotunde and a witness statement for Mr Danaev.
12. With the agreement of the Respondent we took as the Claimant's evidence pages 2-9 of the witness statement bundle and we took as her disability statement a document at pages 46-49 of the bundle.
13. The witness statements did not include references to page numbers in the bundle. Whilst we were reading the documents on the first morning of the hearing the parties agreed to send in relevant page number references. We also explained the process of cross examination to the Claimant and said that she could spend the time while we were reading the papers preparing the questions that she would need to put to Mr Danaev when she was cross examining him. We reminded her of that need when we closed the first day of the hearing on 4 October 2023 so that she could continue her preparation that evening. She told us that she had already

started preparing notes. We explained that she could focus on points in the document at pages 26 to 30 of the bundle.

14. We reconvened the hearing at 13:30 on 4 October 2023 and heard the evidence of the Claimant for the remainder of the afternoon.
15. On the morning of 5 October 2023 we heard the evidence of Miss Ayotunde a and then heard the evidence of Mr Danaev which concluded after lunch. Mr Danaev was frustrated that allegations of discrimination had been raised some time after the Claimant's employment had ended and we had to remind him towards the end of his evidence to be respectful towards the Claimant when answering her questions.
16. We then gave parties the time they asked for to prepare their closing submissions. Mr Jones spoke for just over half an hour and the Claimant spoke for just short of 10 minutes. We explained our unanimous decision on the afternoon of 6 October 2023 and the hearing concluded at 15:50.

FINDINGS OF FACT

17. Having considered all the evidence, we found the following facts on a balance of probabilities.
18. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because we have limited our findings to points that are relevant to the legal issues.
19. The Respondent is an online car finance broker, working with a panel of lenders to provide cost-effective car finance for customers looking to buy a car.
20. The parties agree that the Claimant commenced her employment with the Respondent on 4 April 2022 (p 161) and her employment ended on 4 July of the same year. The Claimant started work as Senior Customer Support Specialist. With the following duties:

“process a high volume of finance payouts, to check customers and dealership documents and doing due diligence on new payouts, checking security and ID documents and any other associated papers, chasing missing documentation to ensure daily/weekly targets are met, liaising with our panel lenders for Payout updates, supplier due diligence, to be point of contact for internal queries regarding lending criteria, SQs and cancellations.”

21. ACAS received notice of early conciliation on 22 September 2022 and issued their certificate by email on 14 October 2022. The Claimant issued her claim in the Tribunal on 8 November 2022.

Recruitment, pay increase and change in duties

22. Mr Roman Danaev is the CEO of the Respondent and at the time of the Claimant's employment was responsible for approximately 40 employees in what was a young company.

23. The Claimant joined the Respondent from a company in a similar sector, Cazoo, after she was made redundant. Her salary at Cazoo was around £27,000 to £28,000. She negotiated a starting salary with the Respondent of £30,000. Her contract provided that if she passed her six month probation period then her salary would increase to £35,000.
24. Mr Danaev was impressed with the Claimant's work and her dedication to the Respondent's business. As such in June 2022 Mr Danaev agreed to increase her salary early, to £35,000. There was confusion between the parties as to whether this represented confirmation that the Claimant had passed her probation or whether it related to a promotion.
25. Around this time the Claimant's job title on her emails changed from Senior Customer Support Specialist to Customer Support Manager. The Claimant's position was that this represented a promotion and came with managerial responsibility for other staff. Mr Danaev said that there was no formal management responsibility and the Claimant's duties were more supervisory in nature. He did not see this as a promotion. We accept his evidence and accept that, as a small company with limited resources, questions such as this were not always documented as they might be in a larger organisation.
26. The Claimant put the Respondent in contact with Miss Paris Ayotunde from whom we heard evidence. Miss Ayotunde and the Claimant had worked together at Cazoo. Miss Ayotunde, following an informal recruitment process, began employment with the Respondent in May 2022 under the informal supervision of the Claimant who was more experienced than her.
27. In early June 2022 the Respondent interviewed someone called Chelsea Middleton. She was recruited that month by the Respondent to take on a dedicated complaints handling role. The Claimant had done some complaints handling work for the Respondent. The Respondent, being a small business, required employees to be flexible in covering tasks.

Claimant and Ms Ayotunde starting to feel disaffected with work at Respondent

28. Both the Claimant and Miss Ayotunde clearly became increasingly dissatisfied with working at the Respondent. The Claimant was unhappy about the pace of changes being made, the implications of those changes for her and other members of the Respondent's staff and the fact that she was not, in her view, being appropriately consulted on those changes (having previously taken a role for the Respondent in developing new processes). The Claimant and Ms Ayotunde were not the only ones who were disgruntled with the working environment at the Respondent during June 2022 and the early part of July 2022.

Knowledge of disability

29. On 10 June 2022 the Claimant was notified of an appointment for screening for autism spectrum disorder. This is not an appointment for diagnosis of that condition but for indicative purposes as part of the long journey that the Claimant has been on to understand challenges that she has faced in her health.

30. The Claimant's case was that, on or about Monday 13 June or Tuesday 14 June 2022 she notified Mr Danaev and his wife Mrs Tamila Danaeva (People Director for the Respondent), of the appointment notice that she had received which we understand to have been for a date in August 2022.
31. The Claimant also alleged that, having sent that e-mail, Mr Danaev asked her on the open sales floor and gestured to his phone '*That message you sent, you ok?*'. The Claimant said that "*she wasn't going to divulge the ins and outs of her diagnosis in a passing conversation on an open office floor and that was the only time Mr or Mrs Danaev approached her or acknowledged her Autism screening/diagnosis*".
32. For complete accuracy, it is important to note that:
 - 32.1 at that time the Claimant did not have a formal diagnosis of autism; and
 - 32.2 because of strains on the system, at the time of the Tribunal hearing, she had unfortunately yet to complete that process.
33. We accept Mr Danaev's evidenced that he did not receive an e-mail from the Claimant notifying him of the screening appointment and that he did not gesticulate to the Claimant across the sales office floor in the way alleged. We also accept that the e-mail which the Claimant pointed to was not found pursuant to a data subject access request later made by the Claimant. We further accept Mr Danaev's evidence in cross examination that, had the Claimant made him aware of her autism screening appointment, he would have taken advice on what steps might be needed.
34. The Claimant herself acknowledged that she masked features which she attributes to autism and ADHD and we accept Mr Danaev's evidence that neither he nor his wife picked up on behaviour that might have indicated either of those conditions and that neither of them was alerted to this by any other employees. We also accept his evidence that:
 - 34.1 there was nothing in the Claimant's behaviour at work that should have prompted the Respondent to ask a question; and
 - 34.2 it would have been intrusive and unusual to have routinely asked employees if they had any health conditions that they needed to raise with the Respondent.
 - 34.3 he had responsibility for managing a large group of employees in a fast changing business and that he could not give as full attention to each employee as they might have wanted.

Chelsea Middleton takes on complaints role

35. On Wednesday 15 June 2022 there was a realignment of the roles with Chelsea Middleton taking on complaints. It is clear from the evidence of the Claimant that Chelsea Middleton starting work at the Respondent marked a negative change but this was not explained by her and is not central to the case.

Third party fraud against the Respondent

36. On Thursday 16 June 2022 the Respondent uncovered a fraud. In broad terms, what had happened was that an individual had made a fraudulent application for car finance, the funds had been released to them and the Respondent was liable for those funds, totalling £30,000.
37. This also created a serious problem for the Respondent because one of the lenders on which it relied paused its business with the Respondent over concerns about what had happened. We accepted Mr Danaev's evidence, which was unchallenged, that this posed an existential threat to the Respondent and the employment of its 40 employees. This was not because of the financial liability that had been caused to the business but because of the impact it had on the Respondent's relationship with one of its important lenders and therefore its ability to carry on its business.
38. We accepted Mr Danaev's evidence that this led to a highly intense period in which the Respondent needed to assess what had happened, put in place remedial measures and try to restore trust in the relationship with the lender. This also involved Mr Danaev personally underwriting and checking any loan over £10,000.
39. We accept the Respondent's evidence, which was unchallenged, that it was a mistake made by the Claimant which had led to this cost and impact on the Respondent's business. She had not followed the Respondent's procedures and had failed to complete an Open Banking check which would have prevented the fraud from taking place. In a document prepared by the Claimant at the end of July 2022 she commented (page 91):
- “Both Paris and myself questioned the documentation a couple of times and stated what we needed, which is noted on the system. I made a quick decision as I was pulled out of a meeting by Shaun which I should have thought about more, which I was honest about when I had the investigation meeting with Laura and Carl.”*
40. Mr Danaev accepted that at that time he was firefighting and “*probably did turn in to negative, horrific boss*” because he was trying to fix the relationship with the lender. We accept his evidence that he treated all his employees in the same way. Ms Ayotunde's evidence was also that everyone was affected by the fast changes and developing situation at the Respondent over this period and indeed such was the disaffection of the workforce that five members of staff withheld their labour as a joint protest and effort to disrupt the Respondent's business. The Respondent referred to this as sabotage. We were told that three of that number were dismissed as a result.
41. We also accept Mr Danaev's evidence that at this time he was not able to turn his attention to the Claimant and that, had she remained in employment, there may have been implications for her under the Respondent's disciplinary processes because of the impact of her not doing the required checks.

Late June / early July 2022

42. The following week the Claimant was in work from Monday 20 June 2022 to Thursday 23 June 2022, which was no doubt a period of intense activity for Mr Danaev.
43. The Claimant took annual leave on Friday 24 June 2022 and Monday 27 June 2022 and she was then off sick on the Tuesday 28 June 2022 and Wednesday 29 June 2022.
44. On 29 June 2022 there was the following exchange between Mr Danaev and the Claimant via WhatsApp:

Claimant to Mr Danaev at 17:40 (WS bundle page 9):

Hey, just seen my paycheck and doesn't look like I got my pay rise? Shall I pick this up with Ashley or can I leave it with you?

Mr Danaev to the Claimant at 17: 41

it should be £35,000

Claimant to Mr Danaev at 17:42

Yea this pay was £1800 after tax which i think is £30k

Mr Danaev to the Claimant at 17: 42

Should be £35,000 I'm pretty sure. Raise with Ashley and Tamila tomorrow please.

Claimant to Mr Danaev at 17:46

Will do, thanks

45. Mr Danaev was cordial and responsive but was under a lot of pressure at this time because of the Claimant's error.
46. The Claimant attended the office on Thursday 30 June 2022 and Friday 1 July 2022. After that weekend, Monday 4 July 2022 was the last day on which the Claimant attended work (pages 87-88).
47. We go into more detail in respect of events on and after 5 July 2022 for reasons that will become clear.
48. On 4 July 2022 at 12:40 the Claimant sent Mr Danaev the following message via WhatsApp (WS bundle page 9):

So we were unable to pay a deal on Saturday due to limitation on what we could spend Jewel has a customer who is deaf and went to get the car but we couldnt pay so i believe Maryam said we would arrange delivery/ collection Its looking to be £288, can you authorise this so i can get it booked?

49. It is clear that the Claimant was unhappy about not being able to speak to Mr

Danaev that day and the fact that he was spending a lot of time with Chelsea Middleton but we accept his explanation for this given the challenges he was grappling with.

50. On the morning of 5 July 2022 Ms Ayotunde sent Mr Danaev the following WhatsApp message:

Good morning Roman. I hope you're well today. I just wanted to let you know that I won't be in the office today as I feel like I need to take a day out to consider my options and decide if I want to continue in my role at Carplus as I'm not sure whether it is for me anymore. To be honest I probably won't be returning so I wanted to thank you for the opportunity and I wish you good luck for the future of Carplus and in your hopes of reaching your goal of being on Sunday Times 100 Best Companies to work for. I would like to offer some feedback and suggest that you listen to and value your staff and give them a bit more respect and recognition and I'm sure this will help you to reach that goal.

51. Mr Danaev replied to say:

Hi Paris, thank you for your time and I'm sorry this didn't work out. I accept your resignation. Thank you for your feedback and best wishes in your future too. Best wishes.

52. We accept Mr Danaev's evidence that he is not an HR or employment law specialist and understand why he did not make sure that Miss Ayotunde did intend to resign. In any event, it appears that this was her intention because she did not challenge his response.

53. On Tuesday 5 July 2022 at 7:29 the Claimant also sent Mr Danaev a message, via WhatsApp, (WS bundle page 9) which read:

Good morning Roman. I wont be in today. Im going to send you an email explaining things from my view but I am off in consideration of whether i want to continue on with my employment at Carplus

54. The Claimant then sent an email to Mr Danaev and Tamila Danaeva at 8:40 AM on Tuesday 5 July 2022 (Page 107-108) setting out a range of complaints about matters such as the changes and execution of changes being made to working practices, lack of engagement from Mr Danaev, changes in his attitudes to his employees (not just to the Claimant), unwillingness to listen to feedback, long working hours and pressure, lack of training, showing lack of sympathy about a bereavement she had suffered and mentioning she had had two panic attacks but had pushed through with her work. She closed the email saying:

I'm starting to feel like my effort is wasted at Carplus. I will return to the office tomorrow and we can follow up on this e-mail to chat about the points raised.

55. She did not return to the office and the Claimant made no reference in her email to autism or ADHD or complain that she had not been treated appropriately with respect to those conditions. The bereavement that the Claimant mentioned in

her email was not to a blood relation but to a close relation (WSB p6-7). We accept that Mr Danaev at the time did not appreciate how close the Claimant was to that person.

56. Mr Danaev (Tamila Danaeva on copy) replied as follows on Tuesday 5 July 2022 at 11:27am (Subject Re: Absence today – explanation):

Hi Natasha

Thank you for the points raised.

I wasn't aware that your family member died. Chelsea mentioned this to me today and I think you did mention it yesterday but it was a difficult day with the AC fixes, so I may not have understood it, I'm sorry about this one and please accept my deepest condolences. Not that I was made aware that you had a panic attack.

Let me clarify some of the points you raised:

- I didn't ignore you, the points you've sent to me last week were in my inbox and I was planning to discuss those with you at the 1:1 which was scheduled for tomorrow;*
- attitude wise- a lot of people take my kindness as weakness, being late, not putting hours in, not dialling, etc;*
- I'm not taking inspiration from Buyacar or Cazoo. I'm taking inspiration from bigger companies operations wise and hence I have I've started addressing issues such as constant absences, latenesses, etc,. We do not pay salaries for attendance. The business requires everyone to put maximum effort;*
- Your salary at Cazoo was £27 or £28k when you came to Carplus. You were offered 30k and increased to 35k but you're still unhappy, well please find a company that will pay you more;*
- I never asked or expected you to work extra hours. The policy is that you do Saturday shift and get a day off in lieu;*

The issues I wanted to raise with you on 1:1:

- your organisation of the workflow wasn't effective;*
- your team members in particular Paris failed several deals, your acceptance of that deal caused the Company a £30,000 fraud, where you and I had numerous discussions that anything above £15K needs Open banking;*
- All the checks we do are part of the standard check that a lot of companies/ brokers do so adding on HPI and MOT isn't a huge change;*

- *I took away unwinds and complaints from you and your team and Chelsea is handling those brilliantly, so you, Paris and Jess were responsible for only checking new deals;*
- *I understood that you could not run a team of two and organise your own time effectively;*

I understand your position and I think that this job is not for you. I thus except your resignation. I wish you all the best in your future career and endeavours and really sorry this didn't work out.

Are you going to be back to work your notice and do a handover please?

Thank you

Roman

57. As we have mentioned, on 5 July 2022 it had also come to Mr Danaev's attention that around 5 other employees had decided to, in the Respondent's terms, sabotage the business by co-ordinating withholding of their labour. Given the messages that he had received from the Claimant and Ms Ayotunde that morning it is understandable that he suspected that they too might form part of that group.
58. The fact that the Claimant and Ms Ayotunde were not coming to work that day was a significant problem for the Respondent because they constituted two of the three members of the team responsible for payouts and checking new finance deals.
59. We find that the Claimant's email, in contrast to Ms Ayotunde's WhatsApp message, did not constitute a resignation and that she was therefore dismissed by the Respondent without due process.
60. However, the Claimant did not strongly challenge this and we consider that it is unlikely that she would have returned to work at the Respondent (in particular she did not respond to Mr Danaev's question as to whether she would work her notice period and did not attend work again).
61. Mr Danaev fell into the error of conflating the position of Ms Ayotunde with that of the Claimant but we accept his evidence that they sent him similar messages. However, the Claimant's did not constitute a resignation.
62. In the circumstances and, given that Mr Danaev had brought the Claimant's employment to an end, it was reasonable for Mr Danaev to then cut the Claimant's access to the Respondent's online systems. We accept that this is also good practice in the finance sector. This meant that the Claimant did not receive Mr Danaev's email response of 5 July 2022 until he sent it on to her on 6 July 2022 to her personal email address.
63. There was a further WhatsApp exchange between them on 6 July 2022 and into 9 July 2022 dealing with the return of the Claimant's laptop, the email the Claimant had not been able to access, Mr Danaev apologising for not having

heard the Claimant mention the death in her family on 4 July and offering condolences and investigation into the issue of potential sabotage.

64. The Claimant did not mention autism or ADHD or complain about alleged treatment in that regard. Her focus was on Mr Danaev not having acknowledged the death of a family member and she sent a rude message to him. For example she said:

I worked my fucking arse off for you while Sais fucked up the whole of your system and you ignored me when i needed help I stuck by you, i didnt leave the office.

65. There was no suggestion at the hearing that a reference to needing help in these messages was to anything other than the work matter she had wanted to speak to Mr Danaev about on 4 July and the family bereavement.

66. The next day, on Wednesday 6 July 2022, there was a WhatsApp exchange between Mr Danaev and the Claimant:

Mr Danaev:

*Hi Natasha, I've accepted your resignation yesterday and sent you a reply via email. Can you please drop of the laptop to Said this week. Thank you and best wishes in your future endeavours.
7:20 AM.*

Claimant:

Yes thats fine. Sorry i havent been in touch about coming in today

Shame you wont open up a conversation about it. But it is what it is

And i came into your office in the morning and told you about the death in my family so you 100% were aware. Im not going to argue though

All the best, its going to be a tough road ahead of you 1:16pm

You have disabled my gmail without giving my the chance to read your email

Please reactivate it, i want to have my evidence of your repy and my email to you

I dont think its good practise to stop me from being able to read your email accepting my resignation. What an awful experience its been working for you recently

Without this, I have not resigned 1:37 PM

Mr Danaev to the Claimant:

*Thank you. I genuinely may not have heard or you may have said but I didn't pay attention as was doing something when you said that so I do apologise. My condolences again. Hope you're ok.
1:40PM*

Claimant to Mr Danaev:

Im not Roman, im really disappointed in you and how the last few weeks have been

But you dont want to listen to that so I just want my email access back so i cant take my evidence for my records and forget about Carplus 1:42 PM

Mr Danaev to the Claimant:

Please give me your personal email I will forward it. 1:42 PM

Thank you. 1:42 PM

Due to ongoing investigation where you and other 6 people are involved, company has suspended your and other 6 peoples access until investigations is over. 1:43PM

Claimant to Mr Danaev:

What? I didnt leave the office the other day, why am i under investigation? 1:44 PM

What nonsense is this Roman? 1:44 PM

*I worked my fucking arse off for you while Sais fucked up the whole of your system and you ignored me when i needed help
1:44 PM*

I stuck by you, i didnt leave the office 1:45 PM

Mr Danaev to the Claimant:

I cannot carry on our conversation here, please give me your personal email i will send my communication there. 1,45 PM

67. The Claimant sent Mr Danaev her personal email address at 1:45 by email and Mr Danaev then sent the following messages to the Claimant via WhatsApp:

Here what I suggest we do. Let me finish investigations and I will talk to you please. 1:45 PM.

Also will forward the email. 1:45 PM

Thanks 1:46 PM .

68. Also on Wednesday 6 July 2022 (page 106) Mr Danaev sent the email

correspondence above on to the Claimant's personal email address (and in doing so sent it to Tamila Danaeva). On 8 August 2022 the Claimant sent this correspondence on to her union representative at Unite the Union. In his email of 6 July 2022 to the Claimant's personal email address Mr Danaev said at 13:59 (Subject Fwd: Absence today – explanation):

Hi Natasha

This is the e-mail I sent to you at 11:27 AM yesterday. At around 4:00 PM I revoked your access from AC/ pipefy and e-mail due to a launched company investigation where 6 team members were involved in sabotaging the company's operations. The allegation is that you joined the group after work and agreed not to show up at work the next day to disrupt the operations.

I cannot comment on anything else until a formal investigation has been completed.

Roman

69. Mr Danaev and the Claimant continued WhatsApp exchanges as follows on Friday 8 July 2022 (page 102 – 103):

Mr Danaev to the Claimant:

Natasha I really need the laptop back, please drop it off asap, it's company property. 11:12AM

Claimant to Mr Danaev:

I will on Saturday. I really need info on being accused of sabotage too

Thats a very serious accusation 11:44 AM

Mr Danaev to the Claimant:

The investigation is still ongoing, we're interviewing people which you can appreciate will take some time.

I cannot comment on this until it's done. 11:52 AM

Thanks for droppping the laptop. 11:52 AM

Claimant to Mr Danaev:

Well keep let me know when their done. My union are awaiting an update 11:54 AM

Mr Danaev to the Claimant:

Hi, can you please let me know what time tomorrow you will be in so that I could inform the team to grab the laptop from you. 6:05

PM

I'm also available for a face to face conversation next week wish you to discuss things. 6:06PM

If so you can bring it then 6:06 PM

Saturday (9 July 2022)

Claimant to Mr Danaev:

My anxiety is very high. I had a panic attack thinking about coming into work on Tuesday

I would appreciate you collecting the laptop as i have run out of my medication and cant call the doctors until Monday 9:42 AM

Id appreciate all conversations to be via zoom and with a representative present 9:43 AM

70. On Tuesday 19 July 2022 the Tamila Danaeva (People Director) sent the Claimant a letter as follows (page 112):

Dear Natasha,

I write further to your exchange of emails with Roman Danaev on July 5th, 2022 and setting out some administrative details below:

- *Your last day of employment - June 4th*
- *Company will pay your notice period*
- *Your holiday entitlement was 20 days + 8 days of bank holidays. Your entitlement was 7 days for months you worked, however you took 8 days (3 days + 5 as bank holidays), which means that you owe a company 1 day.*
- *We will make recalculations of your salary based on that.*
- *Please return the company's macbook that was provided to you by July 22nd, 2022*
- *Your final pay, if any, will be calculated and paid on the last day of the month, after holiday deductions and any incurred costs including sickness and not working your contractual notice period. This will be paid by the last working day of the calendar month along with your payslip and P45.*
- *I would like to remind you that for a period of 24 months after the end date of your employment you may not work for any relevant company in competition with the company or, directly or indirectly, induce or attempt to induce any employee from F&I Online LTD to work for any relevant business, This would be a breach of your contract of employment and we*

reserve the right to claim back any damages incurred as a result of any such breach.

Should you have any questions relating to the content above, please feel free to contact me directly.

Finally, we would like to thank you for your contribution to Carplus and wish you every success in the future.

71. The reference to the last day of employment should of course have been to 4 July 2022.
72. We accept Mr Danaev's evidence that between 5 July 2022 and 22 July 2022 he concluded that, the Claimant's employment having ended, there was little point in pursuing an investigation into the allegation of sabotage or taking formal action in respect of the error that the Claimant made that caused the Respondent to fall victim to a fraud. We accept his evidence there was then no reason for any delay in communicating this to the Claimant on 22 July 2022, other than that they were very busy and it took time to organise the sending by Lawdata of a letter on behalf of the Respondent on Friday 22 July 2022. That letter sent to the Claimant's personal email address (14:45 page 113, and 121) read as follows:

Good afternoon,

Please find attached a letter on behalf of our client F&I Online- Limited t/a Carplus.

Graham Jones who is dealing with this case is out of the office until Monday

Yours sincerely.

Denise Lunceford

73. This email attached a letter as follows:

Our Client: F&I Online Limited t/a Carplus

Our client has consulted us with reference to your recent correspondence the content of which is noted.

The company's position is as set out in its letter of 19th July 2022.

The last day you attended work was the 4th July 2022. It is unclear why you did not attend work on the 5th July but even if you were not well then you would not qualify for SSP as it was the first day of absence.

The company has agreed to pay you in lieu of your one week's contractual notice entitlement.

The company accepts that you worked half a day on Saturday 2nd July

but that you took a lieu -day on Friday. It does not accept that you worked on Sunday 3rd July.

Clause 4.3 of your Statement of Particulars of Employment confirms that "You shall not be entitled to receive any additional remuneration for work outside your normal hours unless otherwise agreed with the Company".

The non-contractual Grievance Procedure is set out in the Employee Handbook which you signed on the 13th April 2022. It does not provide for former employees to raise grievances.

The Company has not accused you of sabotage. It carried out an investigation into some concerns after it lost a substantial amount of money on some finance deals. You do not form part of any ongoing investigation.

Please make arrangements to return the company's Macbook that was provided to you by July 22nd, 2022

Your final pay, if any, will be calculated and paid on the last day of the month, after holiday deductions and any incurred costs including sickness and not working your contractual notice period. This will be paid by the last working day of the calendar month along with your payslip and P45.

74. On 26 July 2022 there was an exchange of emails between Lawdata Limited and the Claimant:

Claimant to Lawdata Limited 3:56pm

Good afternoon

Please be aware your letter has been received and is due to be reviewed by a Union representative.

Until then, please see email I am forwarding to you where Roman dearly states I was part of an investigation, plus the reasons why I had to take a day to consider my employment at Carplus.

Please also note, I was not in on 5th July due to Romans behaviour towards me and a clearly detailed reasoning was emailed to him the morning of (being forwarded). I also had a death in my family and I have whatsapp conversations proving that Roman ignored me when I made him aware.

Any further comments will be provided once my union has reviewed all of the evidence I have.

Thank you

75. On 28 July 2022 the Claimant sent her trade union representative a summary of a timeline that she had prepared (page 86-94). This made no reference to

autism or ADHD or complaint about the Respondent's treatment of her in that regard. It also did not reference the Claimant having told the Respondent about these conditions at the time she received notification of her autism screening appointment on 10 June 2022.

76. On 2 August 2022 at 15:55 the Claimant submitted a subject access request to the Respondent as follows (page 124):

02 August 2022

Dear Sir or Madam

Subject access request

Natasha Forse, also known as Tash or Tasha, including abbreviations such as NF but not limited to.

Please supply the personal data you hold about me, which I am entitled to receive under data protection law, held in:

- my personnel file;*
- emails between Roman Danaev and Tamila Danaev from March 2022 onwards*
- Emails between Roman Davaev, Carl (who acts as consultant or Sales Director to Roman) and Laura (Laura who manages compliance for Carplus) from April 2022*
- All details where my name is mentioned in any investigation, included but not limited to any mention of sabotage*
- Any mention about me on whatsapp, as this is used for work purposes within the business. This is not limited to Roman, Tamila, Carl or Laura but also all members of Carplus during the duration of my employment (since April 2022); this is also inclusive of*

LawData who are acting on behalf of Carplus

- All emails sent from [Claimant's email address] to Roman and Tamila*
- A copy of the 'Customer Support Tracker' I created*

If you need any more information, please let me know as soon as possible.

I am happy for this information to be provided to me electronically.

It may be helpful for you to know that data protection law requires you to respond to a request for personal data within one calendar month.

If you do not normally deal with these requests, please pass this letter to your data protection officer or relevant staff member.

If you need advice on dealing with this request, the Information Commissioner's Office can assist you. It's website is ico.org.uk, or it can be contacted on 0303 123 1113,

Yours faithfully

Natasha Forse

77. The Claimant then had a further email exchanges with Lawdata Limited on 2, 5 and 9 August 2022 suggesting, amongst other things that her employment had not ended. Whilst we have found that it was ended by the Respondent and not the Claimant, we do not consider that she can have been in any doubt that she was no longer employed after 6 July 2022. The Claimant was paid in lieu of one week's notice and was not entitled to payment for the entirety of July. We were not persuaded by her suggestion in this correspondence that the investigation somehow preserved her employment.
78. At 16:04 on 2 August 2022 the Claimant sent an email to Lawdata as follows (pages 119-120):

Good afternoon

It has been a week and I am yet to receive a response to my e-mail and I find this very distressing.

As you can see, clearly detailed in the e-mail from Roman, sent to me on Tuesday 05th July that I was asked to complete a weeks' handover. This e-mail was forwarded to my personal e-mail address on Wednesday 06 July as my access had been suspended pending an investigation; I have WhatsApp messages to back this up also.

I was clearly under investigation, so I do not accept notice that my employment was terminated on 04 July. It is noted that my access was suspended THE SAME DAY (from 4pm to be precise. How can you deny this, or ignore me when it is very clear in writing.

To confirm, I did not take the time back from 02 July either, there's an e-mail trail between myself and Roman/Tamila where I ask if this day will be paid as overtime as there simply wasn't enough time for me to take it back that week (I was off Monday- Wednesday and Roman had make changes he hadn't thought through thoroughly so I was left sorting out his mess on these days and over the weekend, splitting into Monday too!). Therefore I am owed this time in pay. It has also been discussed that payouts would not take time back on Fridays as it's their busiest day of the week- likely just another conversation(s) that Roman ignored and forgot (it's quite the trend of what he 'remembers' and what he doesn't).

I have today submitted a SAR; Please ensure this is responded to and acknowledged as received.

I expect a response to this e-mail no later than 72 hours from when it is sent

Regards

Natasha

79. Mr. Jones of Lawdata Limited replied at 16:09 on 2 August 2022 saying:

Your e-mail of 26th July states “your letter has been received and is due to be reviewed by a union representative” and “any further comments will be provided once my union has reviewed all of the evidence I have”

As such it did not require response, on the contrary it indicated you would be writing to us again.

Whilst we note your comments below the business agreed to pay your contractual notice period of one week. As such it is unclear what, if any, further remedy you are seeking.

The subject access request was addressed to and will be dealt with by Carplus.

80. The Claimant replied the same day at 16:21 saying (page 118):

Hi Graham

I would like more comments on said investigation. The discussion with my union representative proved it unclear as to why my contract was terminated and negated to mention I was part of an investigation whatsoever. Please comment on this as it appears to have been brushed under the carpet.

I expect payment for the duration of said investigation and from my knowledge this is up until I received termination notice, as the as a minimum. Due to the stress of Roman ignoring me, claiming I was sabotaging his business and failing to communicate, I would ask that I am paid for entirety of July. I will not be seeking further employment for some time due to the stress levels incurred.

I'll await further correspondence regarding the SAR within the next calendar month- thank you for confirming this.

Regards

81. Mr Jones replied on Friday 5 August 2022 (9:57):

Dear Natasha,

I believe Roman's e-mail of 5th July 2022 at 11.27 AM was clear both in respect of the termination of your employment and the date of termination. As such I don't think there's any basis for Carplus to consider itself liable to pay you for the entirety of July. Regards

Graham Jones

82. The Claimant replied later that day on 5 August 2022 at 1228 as follows:

Hi Graham

Why have you failed to mention the investigation? Are you following instruction from Roman to ignore this point completely?

You "believe" it's clear doesn't convey certainty nor confirmation of any investigation against me for sabotage.

To remind you, the e-mail asks if I want to complete a handover and work my notice. Hours later my log in details are suspended due to being investigated for sabotage. Why are you ignoring these points?

The emails are not clear at all. Please provide comments on the investigation ONLY, then we can discuss the other points further.

Regards

Natasha

83. The Claimant chased Mr James again on 9 August 2022 on 23 August 2022 at which point on 23 August 2022 at 15:49 Mr. Jones replied to say: "we don't have anything further to add to previous correspondence. The subject access request will be addressed in due course."

Grievance

84. On 5 September 2022 the Claimant raised a grievance (pages 128-130) which she sent to Mr. Jones at Lawdata copying her Unite the Union representative. In that grievance she acknowledged that the Respondent had told her that its policy was that she could not take out a grievance against the business following the termination of her employment (p 113). The grievance said:

I am writing this grievance as advised by ACAS, who confirmed I should put this in writing despite you claiming that I cannot take out a grievance- against your business- following the termination of my contract.

Throughout the last 6 weeks of my employment with F&I Online T/A Carplus. I experienced many occasions of being ignored and my work load pushed to the extreme of being unmanageable. This appears to have been since I notified you of my Autism screening. I was given very little support regarding this and wasn't even offered a private 1-2-1 conversation in regards to how this may affect my role within the business. I was casually asked on the office floor if I was 'ok' and I didn't feel it appropriate to go into detail as to what this means for me. I have since had my screen which proved a positive result for not only Autism but also for ADHD. You have failed to provide me with the email confirming my appointment on 19 July sent to both Tamila and to Rumen from [Claimant's email address] as part of my SARs request which is 100% my personal information as it is my medical data. This further highlights that you were and still are treating me differently as a result of

being made aware of this.

Since my employment was 'terminated' (without any specific reason why nor any opportunity to discuss the decision) I have been admitted to A&E 3 times. I have been very unwell due to high stress levels and subsequently this has resulted in having to take anti-sickness medication on a daily basis. This is a continuation of the sickness I experienced when employed by Carplus, where I was of the belief that I had a stomach bug; this was in fact the first warning sign that I was burning myself out for my job because I had little to no support in my role. To add to the mis-treatment and being treated differently, I was offered no return to work, but I was expected to complete a return to work (without training) to my team members. I was actually scolded by Tamila for not completing Paris's return to work properly and I had to state that I had not been trained on any HR policies and that I couldn't do my job effectively if the company were not willing to provide the right tools to do so. Tamila then asks me at my desk to clarify, I confirmed I had no training nor a 121 since starting with the business, to which she replied she would go through the policies with me the following day (I had highlighted that no one had given me guidance on 121s and sickness/lateness etc several times in morning stand-up meetings and had asked 2 separate sales managers to also help - Adam only sent me his 121 forms on 04 July!).

I had a very poor experience on 04 July when I lost a member of my family, which I notified Roman about at the beginning of the day. He replied with I am sorry to hear that and said nothing further on the situation throughout the day. Whilst dealing with this stress. I also had to manage extreme stress levels from situations Roman had created through poor execution of process updates. Roman agreed on this day to meet me to discuss the complaints I was trying to manage from the weekend and he left the building without speaking to me. Roman then told me via whatsapp he was actually ignoring me when I told him about the loss to my family as he was busy looking at his computer - this is exactly the experience I had with Roman since I told him I was being screened for Autism and since Chelsea started within the business. Roman shows this in the email sent to me on 06th July where he was made aware of my manic attacks in the office and the loss of a family member 'because Chelsea told him'.

The following day I had a panic attack at the thought of coming into the office so I contacted Roman and explained I would not be in work and was in consideration of terminating my contract I was open to a discussion when I returned to the office (expected to be the following working day).

Wednesday 06 July I was informed that I was emailed to my work email account and that this would be forwarded to my personal email. The e-mail sent initially had been replied to stating he was accepting my resignation - how can this be when I did not resign? It also asked that I complete a handover and work my weeks' notice. Within the forwarded

email, I was then advised that my login was suspended following an investigation into an accusation of sabotage. I have yet to receive any further information about said investigation and both Roman and LawData representatives have ignored all questions regarding this. Being ignored following being accused of sabotage has been a significant cause for my high stress levels and I am currently unable to return to work on a full time basis. LawData have confirmed (23 August) that they are no longer willing to discuss anything with me.

If anything at the very minimum I am still owed pay from working half a day on Saturday 02nd July as I was unable to take this time in lieu, this will be evidenced by the email trails within my Carplus email account as I had specifically asked when I was expected to be able to take this time back. As the hours were worked and no lieu time taken I am still owed this pay. Yet another point you have disregarded, lied about and ignored.

It is obvious to me that you treat your staff poorly on a regular basis, as demonstrated by the significant number of staff who left throughout the duration of my employment.

I prepared most of my documents outside of working hours, yet Roman claims it wasn't an expectation. I wouldn't have been able to put any process documents together if I had not worked at home and when I advised Roman I was working at home after work he never once told me to take a break and that it wasn't an expectation. He did, however, mention that he would go over my responsibilities with me (more than once) and this never came to fruition.

Continuous changes were causing several issues within the business and resulted in taking my time away from managing my team. This also caused another member of the payouts learn to leave, as we were not being consulted on changes and if we voiced any challenges we were identified as 'negative'.

Overall, over the last 6 weeks of my employment with Carplus I was continuously ignored, I had no 121. I was provided with no job description either. I was expected to work outside of usual office hours with no additional pay and my job role (from what I could piece together) was set at an unachievable level. It is also very convenient that your company policy allows no grievance to be raised once a contract is terminated considering you terminated mine without significant reasoning; there is literally no reason for the termination in my letter as it states 'based on the emails between Roman and I'. I can only ask - what emails(?) – the ones that state I am being investigated for sabotage?

This whole situation has been detrimental in the deterioration of my mental health. I have advised that this has been making me unwell and you have failed to acknowledge this and I would state even purposefully agitated the situation by ignoring emails with very clear and concise questions (demonstrated by 2 emails being ignored that I sent to LawData yet a reply within 2 minutes of an email sent from my Union

representative).

Finally it is worth mentioning, I will be leaving a very honest review on Glassdoor about your business and my experience working for you

I expect a reply within the next 72 hours, if no response is received I will be back in contact with ACAS for them to mediate the situation.

85. This was also the first occasion on which the Claimant linked treatment she complained about in her employment with the allegation that she had notified the Respondent about her autism screening. However, here she attributed the treatment she complained of not just to having told the Respondent about her autism screening but also to the recruitment of Chelsea Middleton and she acknowledged that in her view the Respondent treated its staff poorly on a regular basis (which she said was demonstrated by the significant number of staff who left throughout the duration of her employment).
86. Notwithstanding that the Respondent had told the Claimant, via Lawdata on 22 July 2022, that it had a policy of not considering grievances post-employment, Lawdata continued to engage with the Claimant on this topic and suggested that her complaint would be considered in writing. However, it is clear that this was not the Respondent's intention and there was no further correspondence to the Claimant after 8 September 2022 (page 126).
87. The Respondent's grievance procedure provides:

Grievance procedure

6.28 grievance procedure is quite simply a way for all employees to discuss any problems, or air their views on any dissatisfaction that relates to their work. An informal discussion can often resolve matters, but if you wish to raise the grievance formally, it should be done in the following way.

6.29 Submit your formal written grievance to your Manager who will make every effort to hear your grievance within five working days. If you feel that you need help in putting your point of view across, you may ask a work colleague or an accredited trade union official to be present to help you explain the issue you are raising.

6.30 If you are not satisfied with the outcome of your meeting, tell the person who dealt with your grievance that you wish to take the matter further and intend to appeal against the outcome.

6.31 Submit your formal written appeal to the CEO within five days of receiving written confirmation of the grievance decision, including an explanation of why you are dissatisfied with the original decision. Every effort will be made to hear your appeal within five working days and you may ask a work colleague or an accredited trade union official to be present to help you. Although the Company will always be willing to try to resolve your grievance as amicably as possible, a decision reached at the appeal stage is final.

6.32 Please note that the Company reserves the right to call on a third party to assist in resolving grievances.

DSAR Response

88. The Respondent responded to the Claimant's data subject access request on 1 September 2022 through Lawdata saying:

Our Client: F&I Online Limited t/a Carplus

I write further to your subject access request of 2nd August 2022.

In response to your various requests we were advised as follows:

- 1. A copy of your personal file is attached.*
- 2. There are no emails between Roman Danaev Tamila Danaev containing personal information relating to you*
- 3. There are no emails between Roman Danaev, Carl or Laura containing personal information relating to you.*
- 4. The investigation took the form of meetings via video link. These necessarily involved other people who cannot be redacted from recordings and who have not given their permission for such recordings to be disclosed.*
- 5. Please see three Whatsapp messages attached.*
- 6. There are no emails from [Claimant email address] to Roman and Tamila containing your personal information. Emails about work related matters, customers and/or complaints are not personal information related to you.*
- 7. The customer support tracker does not contain personal information relating to you.*

Your sincerely,

Graham Jones

THE LAW

Direct Disability Discrimination

89. Section 39(2) of the Equality Act 2010 prohibits an employer discriminating against one of its employees by dismissing him or by subjecting the employee to a detriment. This includes direct discrimination because of a protected characteristic as defined in section 13.
90. Section 13 of the Equality Act 2010 provides that '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’.

91. Under section 23(1), where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.
92. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the Claimant’s protected characteristic is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence.
93. We must consider whether the fact that the Claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.
94. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the Claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of disability. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the ‘reason why’ the Claimant was treated as she was.
95. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. A two-stage process is followed. Initially it is for the Claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the Respondent, that the Respondent committed an act of unlawful discrimination.
96. At the second stage, discrimination is presumed to have occurred, unless the Respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the Respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the Claimant’s race. The Respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.
97. Guidelines on the burden of proof were set out by the Court of Appeal in ***Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258*** and we have followed those as well as the direction of the court of appeal in the Madarassy case. The decision of the Court of Appeal in ***Efobi v Royal Mail Group Ltd [2019] ICR 750*** confirms the guidance in these cases applies under the Equality Act 2010.
98. The Court of Appeal in Madarassy, states:

‘The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal ‘could conclude’ that on the balance of probabilities, the Respondent had committed an unlawful act of discrimination.’ (56)

99. It may be appropriate on occasion, for the tribunal to take into account the Respondent's explanation for the alleged discrimination in determining whether the Claimant has established a prima facie case so as to shift the burden of proof. (***Laing v Manchester City Council and others [2006] IRLR 748; Madarassy v Nomura International plc [2007] IRLR 246, CA.***) It may also be appropriate for the tribunal to go straight to the second stage, where for example the Respondent assert that it has a non-discriminatory explanation for the alleged discrimination. A Claimant is not prejudiced by such an approach since it effectively assumes in his favour that the burden at the first stage has been discharged (***Efobi v Royal Mail Group Ltd [2019] ICR 750, para 13.***)
100. In addition, there may be times, as noted in the cases of ***Hewage v GHB [2012] ICR 1054*** and ***Martin v Devonshires Solicitors [2011] ICR 352***, where we are in a position to make positive findings on the evidence one way or the other and the burden of proof provisions are not particularly helpful. When we adopt such an approach, it is important that we remind ourselves not to fall into the error of looking only for the principal reason for the treatment, but instead ensure we properly analyse whether discrimination was to any extent an effective cause of the reason for the treatment.
101. Allegations of discrimination should be looked at as a whole and not simply on the basis of a fragmented approach ***Qureshi v London Borough of Newham [1991] IRLR 264, EAT.*** We must "see both the wood and the trees": ***Fraser v University of Leicester UKEAT/0155/13 at paragraph 79.***
102. Our focus "must at all times be the question whether or not they can properly and fairly infer... discrimination.": ***Laing v Manchester City Council, EAT at paragraph 75.***

ANALYSIS AND CONCLUSIONS

Disability

What is the material time for assessing whether the Claimant was disabled?

103. We find that this was from 7 April 2022, when the Claimant's employment started to 8 September 2022 when correspondence between the Claimant and the Respondent on the issues concerned ceased (page 123).

Did the Claimant have a disability within the meaning of Section 6 EqA at the material time?

Was there an impairment? (pages 46-49 – disability impact statement)

104. We find, on the balance of probabilities, that there was an impairment of autism and ADHD given that we accept the Claimant's submission that these are life long conditions that are developed early in life and given that, whilst she has not had a formal diagnosis there is a clear indication of this in a G.P letter for 12 April 2023 (page 76) which says:

This is to confirm that she has a code for suspected autism in her medical records. This is based on an assessment carried out by a

MENCAP senior autism advisor - in August 2022 (copy of assessment in her medical records). She had been mentioning issues with difficulty since August 2021 and we had suggested referral for an autism assessment at that time - but unfortunately the service is not running due to the covid pandemic.

ADHD - during the assessment in August 2022 - she also scored higher with ADHD self-assessment scores, making an additional diagnosis of ADHD a strong possibility.

Referral- we have thus referred for a more formal assessment for autism/ADHD (referral made in September 2022) but are aware of very long NHS waiting lists (1 to 3 years).

Anxiety/ panic disorder- there are records of panic attacks/ anxiety since 2017 when we have trialled an anti-anxiety medication (citalopram – 2017) as well as referral for psychological support/therapies. At present, she uses occasional diazepam 2mg - for emergency use if very stressed / anxious.

105. The MENCAP autism service screening results report (23 August 2022 (pages 71-72)) says:

Ms Forse explains she had always been an outsider and has often been told by others that she does not communicate well. She has always been a very anxious person and has experienced panic attacks in the past. She has had difficulties at work where she struggled to progress and she found it hard to express herself.

When Ms Forse was young she didn't have many friends, she felt more comfortable with the teacher than her peers. She was called weird by her friends and they said they did not get her. She has also been told she has no filter, is blunt or too honest and can behave inappropriately. She struggles to read between the lines and understand jokes and sarcasm, as has a very literal interpretation of conversations and takes people at face value.

Ms Forse is more comfortable in a one to one situation and if she is in a big group she can easily feel overwhelmed and finds excuses to leave the group, like going to the toilet, for a cigarette break etc. If she is in a group context at work and cannot leave she needs to cover her ears to cope. In these situations she feels very anxious and experiences intrusive thoughts later on in the day. At work Ms Forse has learnt to interact and feels confident once she has a script she can use in her interactions with clients.

Ms Forse needs to have a routine in place, she plans ahead and if there are events like family holidays she asks multiple questions as needs to know all the details. She dislikes changes, make her feel frustrated and anxious. Ms Forse is always busy and jumping from one thing to another

and multitasking.

Regarding sensory issues, Ms Forse is a fussy eater, dislikes many textures and smells. For example she dislikes the texture of a banana but can eat it if blended.

Ms Forse is very anxious, she has often had sleepless nights that increased her risk of panic attacks the following day.

Ms Forse presents social and communication difficulties, rigid thinking and sensory issues which are indicative of her having autism. Please consider referring her to the Maudsley for formal autism assessment.

During the interview, she expressed many difficulties common in people with ADHD. We carried out the adult ADHD self report scale and she obtained a positive result (5/6, cut off: 4). Please consider referring her to the adult ADHD clinic for formal diagnostic assessment.

Client's AQ/50 result: 37

AQ-50, if the score is 32 or higher it is an indicator that the patient may be on the autistic spectrum

AQ/10 if the score is 6 or higher it is an indicator that the patient may be on the autistic spectrum

What were its adverse effects on normal day-to-day activities (the 'adverse effect condition')?

106. We accept the Claimant's evidence that she is impacted as referenced in these reports and as described in her disability impact statement (pages 46-49) by her autism and ADHD, in particular where she refers to:

Difficulty with work meals, which I didn't attend as it was too overwhelming.

Unable to eat the food bought in for staff, such as muffins or pizza, due to food intolerances.

Executive dysfunction - difficulty with staying organised or being overwhelmed with lots of tasks. This is heightened with high stress levels and can result in having a panic attack or a 'meltdown'. The physical feeling of a panic attack can stick with me for days as my 'fight or flight' mode has been activated and sends a high surge of adrenaline through my system; this results in feeling very drained afterwards. This can also be challenges with keeping up with household tasks, for example.

Emotional dysregulation - difficulty regulating my emotions. Having to take time off work and use a mix of annual leave and unpaid leave to tackle difficult emotional times. For example, social relationships with work colleagues, this becomes harder over time as I either let my Autism/ADHD mask slip or run out of scripted conversations/do not interact socially like most colleagues do; I can be too energetic; I can be a perfectionist with work

tasks and get frustrated when others do not have the same desire for perfection.

Survival Mode - I live everyday in 'survival mode'. This is my body's stress response to this on-going situation. This means that I am on high alert all of the time, it affects my ability to sleep, which I think is where it impacts me most. If I lack sleep, I am at an increased risk of having a panic attack. An increase in insomnia frequency has been significant since taking on this case.

107. We did not accept that there was sufficient evidence to conclude that the Claimant's gastroenteritis problems were a feature of her Autism / ADHD.

Were they more than minor or trivial (the 'substantial condition')?

108. We consider that the impacts the Claimant described were more than minor or trivial – they were substantial.

Was there a real possibility that they would continue for more than 12 months (the 'long-term condition')?

109. We consider that at the material time they had lasted more than 12 months and there was a real possibility that they would continue for more than 12 months. We accept that the Claimant's Autism and ADHD are life-long conditions that are developed early in her life.

Knowledge of disability

110. The next question is whether the Respondent knew or could reasonably have been expected to know of the Claimant's disability. If the Respondent did not know of the Claimant's disability, could they nonetheless reasonably have been expected to know of her disability?

111. We note that the ECHR Code, which deals with constructive knowledge in relation to Section 15 EqA claims at paras 5.15 to 5.13 at page 70, says:

"Employers should consider whether a worker has a disability even where one has not been formally disclosed, as, for example, not all workers who meet the definition of disability may think of themselves as a 'disabled person'. An employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially."

112. The same approach is adopted in relation to the duty to make reasonable adjustments as can be seen from paras 6.19 of the EHRC Code.

113. As we have explained we accept the Respondent's evidence that it did not know and could not reasonably have been expected to know that the Claimant was disabled and had ADHD or autism spectrum disorder. The Respondent first

knew about this when the Claimant raised it in her grievance on 5 September 2022 (pages 127-130). However, we nonetheless go on to briefly comment on the less favourable treatment which the Claimant alleges that she was subjected to.

Alleged less favourable treatment

114. As regards comparators, the Claimant's further particulars said (page 29):

Sales Managers were treated differently to myself, more inclusive decision making or meetings to at least discuss changes; I would be told about changes at the same time as my team, or "off the cuff" at my desk conversations where I had no input.

Sales Managers were provided training and support on HR policies such as return to work meetings and 121's with team members. I was made to feel like I wasn't doing enough, even when I asked several times for support; I asked for someone to go over the 121 process, I was only sent the 121 form on my last day in the office from one of the Sales Managers (I had been in the role for over a month at this point). Tamilla also came up to me on my last day after I replied to an email saying I cannot be expected to do the correct job without the correct tools. She was asking me if I had been trained on HR policies, despite me mentioning this more than once in the morning stand up meetings where she had been present. The reason she came over to me is because I had to complete a return to work with Paris; Roman didn't know the process for return to work meetings, so I said I would email details of the conversation to Tamilla, to which Tamilla replied stating she felt I had not done enough/ followed the correct process. In reply to her email I said I cannot do the right job if the company is not willing to give me the tools to do so; this is the reason she approached me at my desk, in front of my team, to confront me about my training. I repeated that I had had no training and she said she would get this arranged (I had been in the job role for a month at this point and shouldn't have had to mention it as many times as I had before getting this arranged). Further to this point around return to work meetings - I was told to complete one for Paris when she was off, but no return to work was completed for me, but the company still deducted pay from my wages for the time I had off.

115. As such, the Claimant did not provide details of a valid living comparator(s) for the allegations she raised. We nonetheless considered what information we had about others who were employed by the Respondent. We also considered whether she had been treated less favourably than we considered a hypothetical comparator would have been treated. In this case a hypothetical comparator would be someone who was not disabled but who otherwise had no material difference in their circumstances to those of the Claimant. We concluded that there was no less favourable treatment. In any event, there could not have been less favourable treatment because of disability until the Respondent knew of the Claimant's disabilities. As we say above, the Respondent first became aware of that on 5 September 2022 when the Claimant raised her grievance (most of her claims, as we explain postdate this grievance).

a) being ignored

116. We find that the Claimant was treated no less favourably than other employees or a hypothetical comparator and we accept Mr Danaev's evidence that the nature of his role, the fast changing nature of the business, the issues he was having to grapple with at the time and the number of people he was managing meant that he could not give everyone the attention that they might have needed. He did not ignore the Claimant but equally he could not engage with the Claimant and others at times. In this regard he treated her no differently to others and when he could not engage with her it was just because of the pressures on his time.

b) being left out of meetings

117. We accept Mr Danaev's evidence that the Claimant was kept involved in matters as appropriate given the issues that he was dealing with and we find that the Claimant was not treated less favourably than others or a hypothetical comparator. Mr Danaev had to be selective in who he involved in meetings given the pressures on his time.

c) being set up to fail

118. We accept Mr Danaev's evidence that the Claimant was not set up to fail and that it would not have been in his or the Respondent's interests for that to be the case. The Respondent had finite resources to train its employees. Mr Danaev had acknowledged the contribution that the Claimant was making and awarded her a pay increase sooner than anticipated. We accept that everyone in the Respondent's business was having to grapple with fast paced changes and the Claimant was treated no differently to others or a hypothetical comparator.

d) a clear change of behaviour towards her after telling them she had an autism assessment.

119. For the reasons we have explained, we do not consider that the Claimant told the Respondent about her health challenges until she raised her grievance on 5 September 2022. We also do not accept that the Claimant was in any event treated differently to anyone else and we do not consider that she was treated less favourably than a hypothetical comparator. Mr Danaev accepted that his behaviour did change in June 2022 but we accept that his behaviour towards the Claimant was no worse than it was to others and that his change in behaviour was because of the number and extent of the issues he was having to deal with over that time and, in particular from 16 June 2022, addressing the problems cause by the Respondent falling victim to fraud (as a result of the Claimant not carrying out necessary checks). We consider that it would have been hard working for the Respondent, and Mr Danaev in particular, over this time and it is clear that the Claimant was certainly not alone in that experience.

e) not being given an opportunity to discuss how autism affected her role

120. For the reasons we explained, we accept Mr Danaev's evidence that the Claimant did not raise her autism screening appointment with him and he did not have cause to raise it with the Claimant.

f) email sent on 5 July to try to address issues but instead the Respondent dismissed her by allegedly accepting her resignation

121. We agree with the Claimant that her email of 5 July 2022 did not amount to a resignation. However, the reason why Mr Danaev, then dismissed her (by treating her correspondence as a resignation) was because she and Ms Ayotunde had indicated that they were dissatisfied with working for the Respondent and had chosen not to come into work that day. Mr Danaev treated the Claimant and Ms Ayotunde in the same way (albeit we accept that Ms Ayotunde was clearer in her intention to resign). This was unfavourable treatment of the Claimant but we do not agree with her that it amounted to less favourable treatment because of her disability. We also note that others were dismissed for withholding their labour in protest at the working environment at the Respondent. We do not consider that it was less favourable treatment than would have been afforded to a hypothetical comparator. Mr Danaev was grappling with a number of serious issues at the time including:

121.1 the difficulties he faced with two of the three members of the team responsible for payouts and checking new finance deals declining to come into work (namely the Claimant and Ms Ayotunde);

121.2 the problem caused by the Claimant with one of the Respondent's key lenders; and

121.3 a number of other staff refusing to attend work in protest.

122. Mr Danaev was not right to have concluded that the Claimant had resigned but in light of the circumstances his mistake was understandable and was not less favourable treatment of the Claimant because of her disability.

g) not being told until 19 July 2022 of the formal position

123. As we have explained in our findings of fact, there was no reason for any delay in communicating with the Claimant other than that the Respondent was very busy. We do not consider that there was an actual comparator who was in materially the same circumstances and do not consider that the Claimant was treated less favourably than a hypothetical comparator.

h) ignoring her grievance dated 9 September 2022

124. The grievance was dated 5 September 2022 and, notwithstanding the confusion which Lawdata then subsequently created (which we find was without the Respondent's agreement) with regards to whether the grievance would be dealt with in writing, the Respondent had already made clear via Lawdata on 22 July 2022 that the Respondent's policy did not cater for former employees to raise a grievance. The Respondent then acted in accordance with its policy (albeit the written policy does not expressly state that former employees are precluded from raising a grievance). We are not persuaded that the Claimant was treated less favourably in this regard.

i) ignoring further correspondence

125. The Claimant's employment having ended, the Claimant having indicated such strong disaffection with working for the Respondent and the decision having been made that the Respondent did not want to progress with the Claimant an investigation into fraud or sabotage, we do not consider that Mr Danaev's decision to stop engaging with the Claimant amounted to unfavourable or less favourable treatment. This did not change once the Claimant raised her grievance and made reference, for the first time, to disability and we do not find that, from that point, it amounted to less favourable treatment of the Claimant.

j) not fully complying with her SAR

126. We accept Mr Danaev's evidence that the DSAR request was complied with and accept the Respondent's submission that they were not aware of any ICO complaint having been raised. We do not consider that the Claimant was treated unfavourably or less favourably than an actual or hypothetical comparator and in any event the Respondent's response predated the Claimant raising with them her health conditions.

k) Roman only speaking to her on 4 July unless someone else was present.

127. We have explained in our findings of fact that Mr Danaev was preoccupied with other work related matters and we do not find that he refused to talk to the Claimant without someone else being present. We accept Mr Danaev's evidence, which went unchallenged, that he was due to have a 1:2:1 with the Claimant on 6 July 2022. We do not consider that the Claimant was treated less favourably.

l) The way the sabotage investigation was carried out including- how it was notified to her, not being given the details of the allegations, not being given the opportunity to respond and give her side of the story, not being informed of the progress of the investigation, not being sent a copy of the report.

128. Owing to the fact that the sabotage investigation did not progress as regards the Claimant we find that it was not necessary for the Respondent to give the Claimant the details of the allegations, an opportunity to respond or to provide her with a copy of any report. We accept that the Respondent was in a very busy period and that is why the Claimant was not updated before 19 July 2022. We do not find that the Claimant was treated less favourably than an actual or hypothetical comparator.

Employment Judge Woodhead

Date 19 December 2023

Sent to the parties on:

19/12/2023

For the Tribunals Office

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

Appendix

LIST OF ISSUES

Further particulars were provided by the Claimant and taken into account by the Tribunal but those particulars are not included below. They were at pages 26-30 of the bundle.

1. Time limits

- a. The Respondent does not dispute that the claims have been brought in time.

2. Disability

- a. Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:
 - i. Did they have a mental impairment: The Claimant says her mental impairment is: Autism and ADHD?
 - ii. Did it have a substantial adverse effect on their ability to carry out day-to-day activities?
 - iii. If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - iv. Would the impairment have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures?
 - v. Were the effects of the impairment long-term? The Tribunal will decide:
 1. did they last at least 12 months, or were they likely to last at least 12 months?
 2. if not, were they likely to recur?

3. Direct disability discrimination (Equality Act 2010 section 13)

Did the Respondent do the following things:

- a. being ignored
- b. being left out of meetings
- c. being set up to fail
- d. a clear change of behaviour towards her after telling them she had an autism assessment.

- e. not being given an opportunity to discuss how autism affected her role
- f. email sent on 5 July to try to address issues but instead the Respondent dismissed her by allegedly accepting her resignation
- g. not being told until 19 July 2022 of the formal position
- h. ignoring her grievance dated 9 September 2022
- i. ignoring further correspondence
- j. not fully complying with her SAR
- k. Roman only speaking to her on 4 July unless someone else was present
- l. The way the sabotage investigation was carried out including-
 - i. how it was notified to her,
 - ii. not being given the details of the allegations,
 - iii. not being given the opportunity to respond and give her side of the story,
 - iv. not being informed of the progress of the investigation,
 - v. not being sent a copy of the report.

4. Was that less favourable treatment?

- a. The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's.
- b. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.
- c. If so, was it because of disability?