



IN THE EMPLOYMENT TRIBUNAL (SCOTLAND) AT EDINBURGH

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**Judgment of the Employment Tribunal in Combined Case Numbers
4105691/2023 & 4107258/2023 Heard at Edinburgh before a full Tribunal on
2nd, 3rd, 4th, 5th, and 6th September 2024 with Deliberation on 31st October
2024**

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**Employment Judge J G d’Inverno
Tribunal Member Ms L Grime
Tribunal Member Mr T Lithgow**

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Ms T Ball

**Claimant
In Person**

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25 **Hexarad Group Ltd**

**Respondent
Represented by:
Mr L Wilson of Counsel
instructed by Ms G
Hunt, Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

35 The unanimous Judgment of the Employment Tribunal is:-

(First) By reason of concession by the respondent, that at the material time for the purposes of her complaints, that is in the period from 12th February to 18th August and to 8th September 2023, the claimant was a person
40 possessing the protected characteristic of Disability in terms of section 6 of

the Equality Act 2010 (“EqA”), by reason of the diagnosed conditions of Autism Spectrum Disorder (“ASD”) and Attention Deficit Hyperactivity Disorder (“ADHD”).

5 **(Second)** That at the material time for the purposes of her complaints, that is in the period from 12th February to 18th August 2023 and to 8th September 2023 inclusive, the claimant was not a person possessing the protected characteristic of Disability in terms of section 6 of the Equality Act 2010 (“EqA”) by reason of “Anxiety”.

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(Third) At the material time for the purposes of her complaints, that is the period 12th February to 18th August and to 8th September 2023, the respondent did not know that the claimant was disabled, in terms of section 6 of the EqA, by reason of ASD and or ADHD.

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(Fourth) In the period from 15th February 2024 up to and including the Effective Date of Termination of the claimant’s employment on 8th September 2023, the respondent ought reasonably to have known that the claimant was a person possessing the protected characteristic of Disability by reason of her diagnosed medical conditions (mental impairments) of Autism Spectrum Disorder (“ASD”) and Attention Deficit Hyperactivity Disorder (“ADHD”).

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(Fifth) The claimant’s complaints of Discrimination in terms of section 21(2) of the EqA (Breach of Duty, allegedly arising in terms of section 20, to make adjustments) are dismissed, for want of Jurisdiction (Time Bar) and separately on their merits.

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(Sixth) The claimant’s complaints of Victimisation in terms of section 27 of the Equality Act 2010 are dismissed, for want of Jurisdiction and separately, on their merits.

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(Seventh) The claimant's complaint of Automatic Unfair Dismissal in terms of section 103A of the Employment Rights Act 1996 is dismissed on its merits.

5 **(Eighth)** The claimant's complaints of Harassment in terms of section 26 of the Equality Act 2010 are dismissed for want of Jurisdiction (Time Bar) and separately on their merits.

10 **(Ninth)** All of the claimant's complaints having been dismissed and the claimant accordingly having no entitlement to the Remedies sought by her, her claims for Remedies are dismissed.

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**Employment Judge: J G d'Inverno
Date of Judgment: 14 November 2024
Entered in register: 14 November 2024
and copied to parties**

25 **I confirm that this is my Judgment in the case of Ball v Hexarad Group Ltd and that I have signed the Judgment by electronic signature.**

REASONS

30 1. This case called before a full Tribunal at Edinburgh, on 2nd, 3rd, 4th, 5th and 6th September 2024, for a Final Hearing to which there had been reserved for determination after the hearing of the evidence the Preliminary Issues of:-

35 (a) Jurisdiction, by reason of asserted Time Bar; and

(b) It being a matter of concession on the part of the respondents for the purposes of the Hearing that the claimant was, at the

5 material times for the purposes of her complaints, a person possessing the protected characteristic of Disability by reason of her diagnosed conditions of Autism Spectrum Disorder (“ASD”) and Attention Deficit Hyperactivity Disorder (“ADHD”), whether, at the material time, the claimant was a person possessing the protected characteristic of Disability in terms of section 6 of the Equality Act 2010, separately by reason of “Anxiety”.

10 Sources of Documentary and Oral Evidence

2. Parties lodged a Joint (Hearing) Bundle extending to some 1043 pages to which some supplementary and more legible copy pages were added, on the respondent’s application the claimant not objecting, at the outset of the
15 Hearing.

3. There was before the Tribunal an approved Agreed List of Issues, including Preliminary Issues, which set out, in numbered paragraphs and sub paragraphs, the issues of fact and mixed issues of fact and law requiring investigation and determination at the Final Hearing, including the reserved
20 Preliminary Issues of Jurisdiction, under the following headings:-

1. **DISABILITY STATUS**
2. **BREACH OF DUTY TO MAKE ADJUSTMENTS** (section 20/21 EqA)
- 25 3. **VICTIMISATION** (section 27 EqA)
4. **AUTOMATIC UNFAIR DISMISSAL** (section 103A ERA – principal reason for dismissal that the claimant made a protected qualifying disclosure in terms of sections 43A and 43B of the ERA)
5. **JURISDICTION** (section 123(1)(a) and 123(3) and 123(1)(b) of the
30 EqA)
6. **HARASSMENT** (section 26 of the EqA)
7. **REMEDIES.**

4. The claimant gave evidence on her own behalf under affirmation answering questions put in cross examination and questions from the Tribunal. For the respondent the Tribunal heard evidence from Louise Goodwright, their Operations Manager, Mr (Dr) Jaymin Patel, Director and Founder Member of the Respondent Company who investigated and determined the claimant's grievance and from C J Green, an external sub contracted Human Resources Officer instructed by the respondents in the Hearing and Determination of the claimant's Appeal against the outcome of her grievance, and in the without prejudice exploration with the claimant of possible terms of agreed termination of employment. All of the above witnesses gave their evidence on affirmation, answered questions in cross examination and questions from the Tribunal.

Findings in Fact

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5. On the oral and documentary evidence presented, the Tribunal made the following essential Findings in Fact restricted to those relevant and necessary to the determination of the issues before it.

20 6. The claimant was employed by the respondent between the dates 24th October 2022 and 8th September 2023, as an Acute Operations Administrator based at and working from home at her residential address in Edinburgh.

25 7. The respondent's offices are based at 163 Tower Bridge Road, London. The respondents employ a number of workers who undertake their roles and discharge their contracted for duties remotely.

30 8. The claimant lacked qualifying service such as to have acquired Title to Present a conventional complaint of Unfair Dismissal in terms of section 98 of the Employment Rights Act 1996.

9. The material time for the purposes of the claimant's complaint of Discrimination because of the protected characteristic of Disability is the period 12th February to 18th August and to 8th September 2023.
- 5 10. The respondent admits that at the material time the claimant was a person possessing the protected characteristic of Disability, in terms of section 6 of the Equality Act 2010 by reason of her diagnosed conditions of Autism Spectrum Disorder ("ASD") and Attention Deficit Hyperactivity Disorder ("ADHD").
- 10 11. At the material time the claimant was not a person possessing the protected characteristic of Disability by reason of her additionally relied upon medical condition of "Anxiety".
- 15 12. At the material time the respondents did not have actual knowledge that the claimant was disabled in terms of section 6 of the EqA and in the manner in which they subsequently have accepted she was.
- 20 13. At the material time the respondents ought reasonably to have known that the claimant was disabled in terms of section 6 of the EqA by reason of her impairments (medical conditions) of ADHD and ASD.
- 25 14. In the course of her employment the claimant asked the respondents to enable a Bluetooth capability on her computer to allow her to use a set of noise cancelling headphones which she had purchased at her own initiative in circumstances where she anticipated she was likely to experience noise from building works to be carried out by a neighbour living above her. The request that her work computer have Bluetooth enabled on it was not made by the claimant by reference to any impairment or condition.
- 30 15. At the time of her making the request for Bluetooth enablement the respondent had already provided the claimant with noise cancelling (operational staff headphones) which operated by a plug in wire connection to her computer.

16. The claimant's desire to use a different set of earphones, which she had herself purchased, through the operation of Bluetooth rather than the earphones provided by the respondent which required to be plugged into her computer, was a matter of personal preference not related to her disability.
17. The respondents were advised by their third party IT providers that the enablement of Bluetooth on the work computer of the type used by the claimant was not practically deliverable. The respondents were reasonably entitled in the circumstances, to rely upon that technical advice from their IT providers.
18. In the circumstances, the taking of steps to ensure that the claimant was provided with a work computer which could be and was Bluetooth enabled would not have been a step which, in the circumstances, it was reasonable for the respondents to take in order to prevent the claimant being placed at a disadvantage, let it be assumed that her conditions of ADHD and ASD so placed her at a disadvantage for the purposes of section 20 of the Equality Act and further, let it be assumed that the respondents knew or ought reasonably to have known of the same.
19. The PCP given notice of by the claimant as relied upon for the purposes of her section 21 EqA complaint of Discrimination is that of "*the requirement for employees to undertake their role, i.e., to perform the work and services in accordance with their contract of employment*". That PCP did not apply to the claimant when she was not at work that is to say in periods where she was absent from work due to illness and accordingly no duty to make adjustments under section 20 arose at those times.
20. In the period prior to 12th February 2024 the respondent did not know nor ought it reasonably to have known that the claimant was disabled in terms of section 6 of the Equality Act 2010 and thus no duty under section 20 could have arisen prior to that date.

21. From the 15th of February 2023 until the Effective Date of Termination of her employment, the claimant was not at work but rather was absent from work due to ill health on sick leave. The relied upon PCP was not applied to the claimant from the 15th of February 2023 onwards.
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22. The material time for the purposes of the section 20/21 EqA complaint of breach of duty to make adjustments is the 3 day period 12th, 13th and 14th February 2024.
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23. The 12th of February was a Sunday on which day the claimant was not at work. Although the respondents operated on a 24/7 basis the claimant was not rostered to work on the 13th or on the 14th of February 2023. The earliest date upon which a section 20 Duty to Make Adjustments could be said to have arisen was the 12th of February 2023.
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24. Let it be assumed that the PCP relied upon did place the claimant at a substantial disadvantage by reason of either her ADHD or ASD, which the Tribunal has not so found, the PCP was not being applied to the claimant on either of the 12th, the 13th or the 14th of February 2023 and thus a failure to provide the claimant with either of the 2 adjustments contended for at Issue 2.1.1 (the enabling of Bluetooth capability upon her work computer) or at Issue 2.1.2 – the provision of a new work phone/SIM and personal computer for use in performing work duties and for continued communication after the claimant's access via her existing equipment had been restricted by the respondent in February 2023, would not have constituted a breach of that duty.
- 20
25. The restriction of the claimant's access, in February 2023, after she had ceased to be at work, to the respondent's databases and systems via her work computer and telephone was not a matter which was in any way related to the claimant's disability.
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26. The imposition of the said restrictions was a direct response to the claimant's expressed concerns, albeit wholly unsubstantiated, that she believed that her
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personal computer had been hacked and that it was likely therefore that the respondent's work computer which she used when at work had also been hacked, thus putting the respondent's held patient data at risk.

5 27. The claimant did not require to use her work computer or a work telephone/SIM when not at work for continued communication from 15th February 2023 onwards from which date she ceased to be at work, remaining on sick leave until the Effective Date of Termination of her employment 08 September 2023.

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28. The claimant had various personal telephones and telephone numbers and various personal email addresses which she used, throughout the period from 15th February to the Effective Date of Termination of her employment on 8th September 2023, for the purpose of communicating with the respondent.

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29. Following the claimant's intimation to the respondents of her belief, albeit unsubstantiated, that the security of her work computer had been breached, the respondents instructed the claimant not to use the computer, or her other devices provided by the respondents, including her work telephone, and asked that she make arrangements to return her computer and other provided work devices to the respondents to enable them to be health checked by their IT providers for viruses, and or evidence of breach of security and, if appropriate, for the taking of necessary remedial action. The claimant declined to comply with that request.

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30. The respondents subsequently reiterated their request and then instructed the claimant, on numerous occasions, to not use the equipment and separately to return it to enable it to be "health checked". The claimant refused to do so.

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31. The explanation, which the claimant for the first time provided in the course of giving her oral evidence, for her continued refusal was her, apprehension, albeit unsubstantiated, that because she believed that her employers were conspiring with her neighbour to spy upon her if she were to return the

equipment and were the IT providers to identify that it had in some way been hacked, the respondents were likely to cover up such findings in order to protect their own reputation in relation to data security.

- 5 32. At a “staff huddle”, a remote meeting of a routine type at which the respondents engaged with the employee base for varied purposes including; provision of feedback on performance, reminders of the requirement to maintain data security, general health and wellbeing etc, the respondent’s Manager Sue McKiernan made reference to the purpose of the huddle, which
10 had been rearranged from its original date to maximise participation of employees, was to focus upon issues of health and wellbeing in the workplace, recognising, as the respondents did, that at that time the workforce was operating under considerable pressure.
- 15 33. The claimant perceived the remarks made by Sue McKiernan as being remarks directed specifically against herself and relating in some way to her mental impairments of ASD or ADHD.
- 20 34. The claimant lodged a grievance which included a grievance about that perception.
- 25 35. The respondent investigated the grievance and, upon investigation concluded that there was no evidence that went to establish the claimant’s perception as one of fact.
- 30 36. Following several unsuccessful attempts to fix dates for and once commenced to successfully conduct a grievance hearing with the claimant, and with a view to progressing matters in those circumstances, the respondents offered the claimant as a matter entirely for her decision, the option of their continuing to investigate her grievance and produce an outcome without her being required to attend and participate in a grievance hearing.

37. The claimant chose the offered option and instructed the respondents to investigate and determine her grievance without a grievance meeting.
38. The claimant appealed against the grievance outcome. The respondent's Appeal Officer partially investigated the grievance appeal but was not able to fully do so because although arranging to attend and on occasion attending more than one meeting with the Appeal Officer the claimant variously cancelled those meetings part way through on the grounds that she believed that her upstairs neighbour was listening in to the meetings remotely and separately, in the course of such meetings wished to focus substantially on her concerns that she was being spied upon by her neighbour and or by the respondents rather than upon the grounds of appeal.
39. The respondents had agreed to provide the claimant with a retraining session in the use of "Portal". The training was to be delivered by Aarcha Visak and had been scheduled to take place in or about the second week of February. Aarcha Visak was unable to provide the retraining session on the date and at the time agreed due to the sudden occurrence of a personal family issue. The respondents did not rearrange to deliver the training in the period from 11th February to 15th February after which latter date the claimant became ill and did not attend work again. The 12th of February was a Sunday, a day upon which the claimant was not at work and available to be trained. Although the respondents operated on a 24/7 basis the claimant was not rostered to work on either Monday the 13th or Tuesday the 14th of February 2023.
40. From the 15th of February 23 until the Effective Date of Termination of her employment the claimant was not at work and available to be trained but rather was absent from work due to ill health on sick leave.
41. With the exception of the act of her dismissal, effective as at 8th September 2023 all other alleged acts or omissions of the respondent which the claimant gives notice of relying upon as variously constituting acts of harassment in terms of section 26, acts of detriment in terms of section 27 or otherwise

discriminatory acts, all in terms of the Equality Act 2010, were acts about which the claimant lacks Title to Present and the Tribunal lacks Jurisdiction to Consider, in terms of section 123(1)(a) and section 123(3) of the Equality Act 2010.

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42. On the evidence presented the Tribunal was unable to hold that it would be just and equitable in the circumstances to extend time so as to constitute its jurisdiction in terms of section 123(1)(b) of the EqA.

10 43. The principal reason for the respondent's admitted dismissal of the claimant, effective as at 8th of September 2024, was a mutual and irretrievable breakdown in the mutual confidence and trust necessary for the maintenance of the employment relationship; arising from the matters itemised in the respondent's letter of dismissal dated 8th of September 2023 which is
15 produced at pages 921 and 922 of the Hearing Bundle. Those matters included;

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(a) The claimant's frequent intimation of her inability to participate in or attend remote meetings with the respondents due to issues with her neighbour,

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(b) the cutting off of calls/remote meetings with the appointed Appeal Officer, at the claimant's hands in response to what she stated was disruption and hacking of the calls being caused by her neighbour,

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(c) concern as to the viability of the claimant being able to carry out the work required by her role with the respondent,

(d) failure and subsequent refusal by and on the part of the claimant to return company equipment to enable it to be health checked by the respondent's IT providers in light of the claimant's repeated assertions that she believed, albeit being unable to provide a basis for the belief, that her work computer

had been hacked either by her neighbour or by other persons,
and,

- 5 (e) the claimant's continuing assertions that her employers, the
respondent, were conspiring with and working together with her
neighbour to spy upon the claimant through her personal and
work computers and other equipment, and her insistence upon
that belief notwithstanding her inability to provide any evidence
substantiating it and the respondent's unequivocal denial of the
10 same.

The Applicable Law

15 44. In terms of her initiating Application ET1 the claimant bears to give notice of
complaints, under the Equality Act 2010 ("EqA"), of;

- (a) section 21(2) EqA Discrimination (Breach of a Duty said to
arise in terms of section 20, to make adjustments).
- 20 (b) Victimisation in terms of section 27 EqA because of her having
done a "protected act"
- (c) Harassment in terms of section 26 of the EqA
- 25 (d) A complaint, in terms of section 103A of the Employment
Rights Act 1996 ("the ERA"), of Automatic Unfair Dismissal
alleging that the reason, or if more than one the principal
reason for the respondent's admitted dismissal of her,
effective as at 8th September 2023, was that the claimant had
30 made a "qualifying protected disclosure" in terms of section
43B of the ERA assertedly contained in the email dated 12th
February 2023 sent by her to C J Green, the third party HR
Officer and copied to the respondent's Director Mr Jaymin
Patel.

45. In so making her complaints and in so giving notice of complaints of Discrimination, the claimant relies upon the protected characteristic of Disability said to arise individually and collectively from her medical conditions of, ADHD (“Attention Deficit Hyperactivity Disorder”) and ASD (“Autism Spectrum Disorder”) and “Anxiety”.
46. It is a matter of concession on the part of the respondent, for the purposes of the Hearing, that the claimant was a person possessing the protected characteristic of Disability at the material time for the purposes of her complaints, that is the period from 12th February up to and including 8th September 2023, but by reason only of her ADHD and or ASD but not by reason of “Anxiety” in respect of which no concession is made and the claimant is put to her proof.
47. Disability (the protected characteristic of Disability) is defined in terms of section 6 of the Equality Act 2010 which provides:-

“6 Disability

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(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

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(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(2) A reference to a disabled person is a reference to a person who has a disability.

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(3) In relation to the protected characteristic of disability—

(a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;

(b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.

5 (4) This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—

10 (a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and

(b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.

15 (5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).

(6) Schedule 1 (disability: supplementary provision) has effect.”

20 48. The circumstances giving rise to a duty to make adjustments, and discrimination resulting from a breach of that duty, are respectively defined in terms of sections 20 and 21 of the Equality Act 2010 which provide:-

“20 Duty to make adjustments

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

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(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in

relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage. .

5 (4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

10 (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

15 (6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

20 (7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

25 (8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

30 (9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

(a) removing the physical feature in question,

(b) altering it, or

(c) providing a reasonable means of avoiding it.

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(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

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(a) a feature arising from the design or construction of a building,

(b) a feature of an approach to, exit from or access to a building,

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(c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or

(d) any other physical element or quality.

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

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(12) A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.

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(13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.”

“21 Failure to comply with duty

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

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(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

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(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.”

15 49. Harassment is defined in terms of section 26 of the Equality Act 2010 which provides:-

“26 Harassment

(1) A person (A) harasses another (B) if—

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(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

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(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

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(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

- 5
- (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
- (b) the conduct has the purpose or effect referred to in subsection (1)(b), and
- 10 (c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

- 15
- (a) the perception of B;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect.

20 (5) The relevant protected characteristics are—

- age;
- disability;
- gender reassignment;
- race;

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- religion or belief;
- sex;
- sexual orientation.”

50. Victimisation is defined in section 27 of the Equality Act 2010 which provides:-

“27 Victimisation

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(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

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(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

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(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

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(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

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(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.”

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51. The complaint of Automatic Unfair Dismissal is advanced by the claimant in terms of section 103A of the Employment Rights Act 1996 (“ERA”) which provides:-

5 **“103A Protected disclosure.**

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.”

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52. The requirements of a qualifying and protected disclosure are set out in terms of sections 43A, 43B and, in the circumstances of the instant case, section 43C of the ERA which provide:-

15 **“43A Meaning of “protected disclosure”.**

In this Act a “ protected disclosure ” means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

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43B Disclosures qualifying for protection.

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(1) In this Part a “ qualifying disclosure ” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

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(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- 5 (d) that the health or safety of any individual has been, is being or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged, or
- 10 (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

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(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

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(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

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(5) In this Part “ the relevant failure ”, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

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43C Disclosure to employer or other responsible person.

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure —

(a) to his employer, or

(b) where the worker reasonably believes that the relevant failure relates
solely or mainly to—

(i) the conduct of a person other than his employer, or

(ii) any other matter for which a person other than his employer has
legal responsibility,

to that other person.

(2) A worker who, in accordance with a procedure whose use by him is authorised
by his employer, makes a qualifying disclosure to a person other than his
employer, is to be treated for the purposes of this Part as making the qualifying
disclosure to his employer.”

(f) The Tribunal’s Jurisdiction to consider complaints of Discrimination is
prescribed in terms of section 123 of the Equality Act 2010 which provides:-

“123 Time limits

(1) Subject to section 140B proceedings on a complaint within section 120
may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which
the complaint relates, or

(b) such other period as the employment tribunal thinks just and
equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the
end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

5 (b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

10 (a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

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(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

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(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.”

Parties' Submissions

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53. In compliance with the Tribunal's Orders, issued in furtherance of the Overriding Objective and with a view to placing the parties on an equal footing, the respondent's representatives had sent to the claimant, in advance of the Final Hearing, a skeleton of the propositions in law to be advanced on behalf of the respondent at the Final Hearing, the same to be supplemented in oral submissions in relation to the evidence once heard. That skeleton was before the Tribunal, in the possession of the claimant and relied upon by the respondent at the Hearing. The respondent's submissions are accordingly

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not rehearsed here at length. Read short, the respondent advanced the following propositions in fact and in law:-

- 5 (a) Firstly, that with the exception of the act of dismissal itself, all of the alleged acts or omissions of the respondents said by the claimant to constitute, variously, acts of Victimisation for the purposes of section 27, or acts of Harassment for the purposes of section 26, of the Equality Act 2010, were all acts or omissions in respect of which the Tribunal lacked Jurisdiction to Consider in terms of section 123(1)(a) of the Equality Act 2010 and section 123(3) of the Equality Act 2010.
- 10
- 15 (b) Secondly, that there was no evidence before the Tribunal upon which it would be entitled to find in fact and in law that it would be just and equitable to extend time such as to constitute its Jurisdiction to Consider the complaints though late, in terms of section 123(1)(b) of the EqA.
- 20 (c) Thirdly, separately and in any event, that no such proposition was advanced by the claimant in either evidence or submission despite the Tribunal's explanation to the claimant of the issue of challenge to its Jurisdiction by reason of alleged Time Bar and encouragement that she give consideration to whether or not there was evidence which she would wish to give in that regard, including in particular lack of any explanation as to why the complaints were presented late.
- 25
- 30 (d) Fourthly, and that accordingly, all of the complaints of section 20/21 Breach of Duty to Make Adjustments, of section 26 Harassment and of section 27 Victimisation, fell to be dismissed for want of Jurisdiction.
- (e) Fifthly, separately that there was insufficient evidence before the Tribunal and in particular medical evidence upon which the

Tribunal would be entitled to hold that the claimant was, at the material time for the purposes of her complaints, a person possessing the protected characteristic of Disability by reason of “Anxiety”.

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(f) Sixthly, that there was insufficient evidence before the Tribunal upon which it would be entitled to conclude that the respondents, at the material time, had actual knowledge of any of the 3 medical conditions founded upon by the claimant sufficient to constitute disability in terms of section 6 of the EqA.

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(g) That while it was accepted that from the 7th of February onwards the respondent was under a duty to take reasonable steps to inform itself as to whether the claimant was disabled, it had taken such steps sufficient to fulfil that duty but that due to the claimant’s reluctance to confirm the position or provide information or vouching of diagnosis, the Tribunal should also determine that the claimant had not established that at the material times the respondent ought reasonably to have known of the disability.

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(h) That absent actual knowledge, the complaints of victimisation and of harassment, of necessity, fell away due to the impossibility of establishing the necessary causal connection between the protected characteristic on the one hand and the alleged victimising or otherwise detrimental acts, on the other.

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(i) That separately and in any event neither of the alleged acts, given notice as relied upon by the claimant as constituting “protected acts” for the purposes of the section 27 EqA Victimisation complaint, fell to be regarded by the Tribunal, on the evidence, as constituting protected acts and, absent such, the complaints of section 27 Victimisation fell to be dismissed.

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5 (j) Separately and further, that the alleged protected disclosure of which the claimant gave notice as relying for the purposes of her section 103A ERA complaint of Automatic Unfair Dismissal was not possible, in its terms, of constituting a protected disclosure in terms of sections 43A and 43B of the ERA and that, in consequence, the complaint of Automatic Unfair Dismissal fell to be dismissed.

10 (k) That separately and in any event, let it be assumed that the claimant had discharged her onus of proof such as to establish that she had done either a protected act or had made a protected disclosure, both of which were denied, there was no evidence before the Tribunal upon which it could find in fact that the claimant had established the necessary causal connection
15 between the doing of the act or the making of the disclosure, on the one hand, and the alleged victimisation or dismissal on the other.

20 (l) Further, separately and in any event, that the evidence before the Tribunal supported a Finding in Fact that the principal reason for the claimant's dismissal was that set out in the letter of dismissal produced in the bundle, namely "a mutual and irretrievable breakdown in the mutual trust and confidence necessary for the maintenance of the employment relationship"
25 and;

(m) That for all of the above reasons all of the claimant's complaints fell to be dismissed.

30 **The Claimant's Submissions**

54. The claimant's submissions were relatively brief but in essence focused upon her continuing belief, notwithstanding her honest acknowledgement in the

course of evidence that she was not able to bring before the Tribunal evidence of any real factual basis upon which to sustain that belief;

- 5 (a) that her upstairs neighbour, an individual with whom she had previously had a relationship, had and was continuing to hack not only her personal computer but also her work computer,
- 10 (b) that the respondents were conspiring with her upstairs neighbour to facilitate his doing so.
- 15 (c) Her belief, disclosed only in evidence for the first time, that if she were to return her equipment to the respondents, as her employers first asked and then directed her to do on a number of occasions, in order to have their third party IT providers satisfy both themselves and the respondents as to whether any of the equipment had been hacked in the manner in which the claimant was communicating concern, but which the claimant had repeatedly refused to do, that in the event that anything were to be discovered, in the course of such a check, which
- 20 substantiated her concerns, the respondents would “sweep that under the carpet in order to protect their own reputation”.
- 25 (d) Separately, that contrary to her employer’s directions and instructions her view that she required to retain the equipment in her possession; the same, notwithstanding the fact the equipment had been disabled by the respondents and she had been instructed not to use it, both for reasons of data security, as a direct response to the concerns (beliefs), albeit unsubstantiated, which she had communicated to the
- 30 respondent about hacking.

55. It was these genuinely held beliefs on her part which gave rise to her perception of the various acts/omissions of the respondents upon which she founds her complaint as either having a harassing effect for the purposes of

section 26 of the EqA or constituting victimisation in terms of section 27 of the Act.

56. The above were beliefs which she adhered to notwithstanding her own
5 inability to adduce evidence in the course of the Hearing which would go to support the establishment of these beliefs as matters of fact, or of the factual basis for them, and, the evidence of the respondent's witnesses, the majority of the credibility and reliability of which she did not challenge in cross examination;

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(a) that her upstairs neighbour was unknown to the respondent, and

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(b) that the respondent was not conspiring with that individual in any way,

(c) that the respondent was not spying upon the claimant in the manner in which she apprehended they might be.

20 57. In so far as the Tribunal were to find established any of the acts or omissions of the respondents upon which she founded, the claimant invited the Tribunal to attribute to the respondents a discriminatory motive for all such acts or omissions notwithstanding the fact that she was unable to point to any primary fact from which the Tribunal, in the absence of a contrary
25 explanation, might draw an inference as to that motivation and, notwithstanding the respondent's witnesses' explanations of what in their assessment were the true reasons for the various acts and or omissions such as they accepted had occurred.

30 58. As to the issue of Jurisdiction and Time Bar, the claimant advanced no proposition that notwithstanding the late presentation of the claims it would be just and equitable, in terms of section 123(1)(b) of the Equality Act 2010, that the Tribunal extend time to allow the complaints to be considered notwithstanding their lateness. Neither did the claimant provide in evidence

any explanation as to why the complaints had been submitted/raised with the Tribunal late. That remained the same notwithstanding the Tribunal's explanation of the requirements of section 123 and in particular 123(1)(b) of the EqA, its confirmation with the claimant of her understanding of that explanation and its commending to her that she give consideration, in the course of an adjournment, to whether she wished to give evidence in relation to any such matter, including as to the reasons for the late presentation of the claims.

59. Although in her Schedule of Loss the claimant gave notice of seeking to recover damages for personal injury, she placed no evidence before the Tribunal sufficient to establish such a claim nor did she make reference to it in submission.

60. In relation to the Preliminary Issue of whether she was, at the material time, a person possessing the protected characteristic of Disability by reason of "Anxiety", which is noted, as something with which the claimant presented, on some of her Fit Notes the claimant submitted that the Tribunal should hold that she was so disabled by reason of Anxiety, in addition to by reason of her medical conditions, of ADHD and ASD, which are the subject of concession on the part of the respondent. The claimant so submitted notwithstanding the fact that the evidence placed by her before the Tribunal, both medical and her own oral evidence, fell short of what would be required to establish the anxiety relied upon as giving rise to the protected characteristic of Disability for the purposes of section 6 of the Equality Act 2010.

61. Regarding the reason for her dismissal, the claimant invited the Tribunal to hold that the principal reason for her dismissal was the email of 12th February, which he had sent to C J Green, and copied to the respondent's Director Mr Patel in which she posed the hypothetical question which is set out in the document. She invited the Tribunal to hold that that email constituted a protected disclosure within the terms of section 43A and B of the Employment Rights Act 1996 and as one made by her to her employer in terms of section 43C of the Act, and separately the doing by her of a

protected act for the purposes of her section 27 EqA complaint of Victimisation.

- 5 62. The claimant was unable to point to any primary fact from which the Tribunal might draw an inference that the respondents had dismissed her because she had sent the email in question, let it be assumed that the email constituted the making of a protected disclosure or the doing of a protected act. In so far as that proposition appeared inconsistent with/were contradicted by the terms of the letter of dismissal, in which the reasons for her dismissal were set out, and which read short were the mutual breakdown in the confidence and trust essential to the sustaining of the employment relationship, the claimant invited the Tribunal to hold that such inconsistency or contradiction fell to be explained by the fact that the respondents were co-conspirators with her upstairs neighbour and were seeking to cover up that fact. The claimant was unable to point to any evidence from any source before the Tribunal which went to sustain such a proposition.
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Discussion and Disposal of the Issues

- 20 63. On the Findings in Fact which it has made and upon the submissions of parties before it, the Tribunal determined and, in turn, disposed of, each of the issues as follows.

Disability Status Issue Number 1.2

- 25 64. Was the claimant, at the material time for the purposes of her claims, that is in the period between 12th February and 18th August (8th September 2023) a disabled person in terms of section 6 of the Equality Act also and separately by reason of her medical condition of "Anxiety", an issue in respect of which the respondent makes no admission."
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Discussion

(a) The only medical evidence before the Tribunal in respect of the condition of “Anxiety” founded upon, was reference to it as the reason for absence from work in Fit Notes covering a total period of 5.5 months from 15th February to 6th July followed by a one month uncertified gap from 7th July to 8th August and a further one month certification potentially covering the period 8th August to 8th September 2023 of which latter 4 week period the claimant, from 10th August was engaged in looking for other employment which she took up on the 18th of August. The anxiety identified by the medical certification, and confirmed by the claimant in her own oral evidence was “Anxiety arising from work”. The claimant ceased working for the respondents on 8th September and from the 18th of August had commenced employment with another employer. Separately, let it be assumed that the medical condition of Anxiety relied upon in the circumstances, otherwise satisfied the requirements of the EqA, a matter which the Tribunal has not so found, the impairment (medical condition) was not an impairment which had a substantial adverse effect on the claimant’s ability to carry out normal day to day activities, and which had lasted for 12 months or was likely to last for 12 months. The last medical evidence of potential certification having expired on 8th September 2023 and the claimant took up, and continued to work at, various alternative employments from the 18th of August 2023 onwards. The Tribunal considered the claimant, with whom the burden of proof lay, had, on the preponderance of the evidence, failed to establish on the balance of probabilities that she was separately disabled by reason of the medical condition of “Anxiety”.

65. The respondent's knowledge, Actual or Implied – Issue Number 1.3

5 (a) The Tribunal determined that the claimant had failed to establish on the balance of probabilities that the respondents in fact knew that she was disabled within the meaning of section 6 of the EqA by reason either of ASD or ADHD, at the material time for the purposes of her claims, that is the period 12th February to 18th August (and 8th September 2023). On the 7th of February 2024 the claimant, in answering a self certification medical questionnaire, answered the question “Do you consider yourself to be disabled” by indicating that she did. 10 The claimant however gave no further detail of either of the medical conditions upon which she now relies. On the 12th February 2024 the claimant made a Subject Data Access Request (SDAR) in which she asked the Tribunal to provide any 15 information which they held in relation to “*my diagnosis with Autism Initiative*”. Although no specific diagnosis, or link to a diagnosis was provided, the respondents were alerted by the reference to the possibility that the claimant may be disabled for 20 the purposes of the Equality Act 2010. The respondent arranged an HR investigation meeting with the claimant for the purposes of making enquiry such as to inform themselves on the subject of the claimant's possible disabled status. The meeting proceeded between Jaymin Patel the respondent's 25 Director, Tracy Ball the claimant, Louise Goodwright the respondent's Operations Manager, Fiona Haworth and Julie Louden (HR). The Microsoft Teams transcript of the meeting recording is at pages 679 to 692 of the Bundle. In the course of the meeting the respondents asked the claimant for information 30 about her earlier reference to mental health issues and in particular to autism. The claimant's sister (Julie Louden) made reference to autism and to the fact that she was still going through “titration for ADHD”. The claimant provided some answers in relation to medication but thereafter provided no

further information to the respondents about either medical condition or their diagnosis.

5 (b) The Tribunal considered that while the information provided by the claimant was insufficient to establish that the respondents actually knew that she had been diagnosed with either condition at the material times for the purposes of her complaints it was sufficient to give rise to a duty on the part of the respondent to take reasonable steps to inform themselves of whether the claimant was or was not disabled for the purposes of the Equality Act.

10 (c) While the respondent did make some enquiry directly of the claimant in the course of the meeting and obtained some information from her, they did not thereafter pursue the matter in circumstances in which, in the Tribunal's consideration, had they taken steps to do so they would have known, and therefore ought reasonably to have known, that the claimant was disabled in terms of section 6 of the EqA by reason of what they subsequently came to accept was her diagnosed mental impairments of ADHD and ASD, such as to give rise to a duty, if otherwise relevant, to make adjustments in terms of section 20 of the EqA.

25 **66. Breach of Duty to Make Adjustments (section 20/21 EqA) – Issue 2**

30 (a) The section 20 EqA Duty to Make Adjustments arises only in circumstances where the respondent applies a provision, criterion or practice to all of its employees which puts the claimant, as a disabled person at a substantial disadvantage in relation to the relevant matter in comparison with persons who were not disabled. The obligation in such circumstances is to *“take such steps as it is reasonable to have to take to avoid the disadvantage.”*

5 (b) The Provision, Criterion or Practice (PCP) given notice of as
relied upon by the claimant for the purposes of her section 20
EqA complaint, is that of the respondents requiring their
workers, including remote workers such as the claimant, to
perform their contractual duties as employees (carry out the
work they are contracted to do). The PCP was only applied to
the claimant when she was “at work”. Of the proposed
adjustments which the claimant asserts should have been made
10 by the respondents the earliest of these was not requested prior
to the 29th of January 2023. In making the request the claimant
made no reference whatsoever to any health issue nor to either
of the conditions upon which she now founds her possession of
the protected characteristic of Disability.

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(c) Separately, prior to the 12th of February 2024 the respondent
did not know nor ought it reasonably to have known that the
claimant was disabled in terms of section 6 of the Equality Act
2010.

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(d) From the 15th of February 2023 until the Effective Date of
Termination of her Employment the claimant was not at work
but rather was absent from work due to ill health on sick leave.
The PCP was not applied to the claimant from the 15th of
25 February 2023 onwards.

25

(e) The material time for the purposes of this complaint is
accordingly the 3 day period 12th, 13, 14 February 2024. The
12th of February was a Sunday on which day the claimant was
not at work. Although the respondents operated 24/7 the
claimant was not rostered to work on the 13th or 14th February
30 2023.

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- 5 (f) The earliest date upon which a section 20 Duty to Make Adjustments could be said to have arisen was 12th of February 2023. Let it be assumed that the PCP relied upon did place the claimant at a substantial disadvantage by reason of, her ADHD or ASD, which the Tribunal has not so found, the PCP was not being applied to the claimant on either the 12th, 13th or 14th February 23 and thus a failure to provide the claimant with either of the two adjustments contended for at Issue 2.1.1 and or Issue 2.1.2 would not have constituted a breach of that duty.
- 10
- 15 (g) Separately, there was no evidence before the Tribunal upon which it would have been entitled to find in fact that the PCP placed the claimant at a disadvantage as a person who was disabled by reason of either ADHD or ASD. Neither did the Tribunal consider that a failure to provide the claimant with the adjustments requested for a period of 48 hours following the earliest date upon which such a duty could be said to have arisen would have amounted, in the circumstances, to a breach of that duty.
- 20
- 25 (h) Further, as the Tribunal has found in fact on such evidence as was presented, the adjustment contended for at Issue 2.1.1 “the enablement of Bluetooth on the computer to allow for the use of noise cancelling headphones” could not reasonably be made, the respondent’s being advised by the 3rd party IT provider that the computers in question did not have and, on the balance of probabilities the computers, not having that capability.
- 30 (i) Separately and further, the respondent had already provided the claimant with noise cancelling headphones which worked by wire connection plugged into the computer. The desire to have alternative noise cancelling headphones which operated by Bluetooth rather than by wire connection was a matter of preference for the claimant. It was not an adjustment necessary

for or which would have had the effect of avoiding any disadvantage at which the claimant was placed by reason of her disability in circumstances in which she already had such plug in headphones. As such it was not an adjustment falling within the scope of the section 20 duty in the circumstances.

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67. In relation to the adjustment contended for at Issue 2.1.2, “the provision of a new work phone/SIM, and PC” to allow for the use of work and continued communication after the claimant’s access had been restricted by the respondent in February 2023;

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(a) the PCP relied upon i.e. the requirement that employees carry out their contracted for duties did not apply to the claimant from 15th February 23 onwards as she was not at work. The restriction of the claimant’s access in February of 2023, after she had ceased to be at work was not a matter which was in any way related to her disability. It was, rather, a direct response to the claimant’s expressed concerns, albeit wholly unsubstantiated, that as she believed her personal computer had been hacked and that it was likely that the respondent’s work computer which she used when at work had also been hacked, thus putting the respondent’s held patient data at risk.

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(b) The claimant did not require to use her work computer or a work telephone/SIM when not at work for continued communication from 15th February 2023 onwards on which date she ceased to be at work. The claimant had various personal telephones and telephone numbers and various personal email addresses which she used throughout the period from 15th February to the Effective Date of Termination of her Employment 8th September 2023 for communicating with the respondent.

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(c) The Tribunal unanimously determined that the claimant had failed to discharge her onus of proof in respect of either of the

alleged breaches of duty to make adjustments or such as to establish that the respondent had discriminated against her in terms of section 21(2) of the Equality Act 2010 and that those complaints fell to be dismissed on their merits.

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68. **Victimisation** – section 27 of the EqA Issue Number 3.1

“Did the claimant do protected acts on 7th February 23 when completing a self certification certificate which she submitted online to the respondent’s HR Department regarding the “security of her work” while at the same time informing them that she suffered from unspecified mental health conditions?”

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(a) The claimant relies upon section 27(2)(d) – “*Making an allegation (whether or not express) that A or another person has contravened this Act.* The document relied upon is to be found at pages 711 to 713 of the Joint Bundle (paragraphs 2(a) to 2(c) cannot apply to the document on its face). The document contains no allegation; Rather, it bears to be an explanation of why the claimant felt it necessary to take a half day’s sick leave on the 7th of February. It is couched in the passive tense and is predicated on a statement that her “*Laptop had a remote access Trojan which I found last week ... the hacker’s completely wiped my laptop and deleted the OS rendering completely disabled.*” The laptop in question, to which the claimant refers, is her personal laptop not the work PC provided by the respondent. The Tribunal unanimously considered that in completing and submitting the Self Certification Certificate which is relied upon, the claimant did not do a “protected act” for the purposes of section 27 of the EqA.

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69. **Issue Number 3.2** – “*Did the claimant, on 7th March 23, in lodging her grievance [in which she alleged that the respondent had breached/were breaching the terms of the EqA] do a protected act for the purposes of section 27 of the said Act.*”

- (a) The second document founded upon for the purposes of the section 27 complaint is to be found at pages 735 to 746 of the Joint Bundle.
- 5 (b) Notwithstanding the wording of the issue viz “... *her grievance in which she alleged that the respondent had breached/were breaching the terms of the EqA*”, a consideration of the terms of the grievance disclosed no such allegation. The grievance contains no allegation, whether express or implied, that the
10 respondent, or any person for whom the respondent has responsibility, had or were committing a breach of the terms of the Equality Act 2010. Rather, as is made clear, in the first sentence of the covering email [P735] the grievance is characterised entirely by the claimant and is wholly concerned
15 with “workplace bullying”.
- (c) The Tribunal were satisfied that this was not as a result of any error or misunderstanding on the part of the claimant. When she first raised with the respondent the possibility of the lodging
20 of a grievance the respondent provided her with the two potentially relevant policies, these being their “Workplace Bullying Policy” and their “Equality and Diversity Policy”, the focus of which is the Equality Act 2010. The claimant had the opportunity to raise her grievance under either or both policies.
25 Having given the matter consideration she opted to raise her grievance specifically under the Workplace Bullying Policy. Applying to the terms of the grievance the normal rules of construction and according to the words used their normal English language meaning, the Tribunal unanimously
30 considered that in framing and in lodging her grievance in the terms used by her, the claimant did not consider, and was not communicating, that the respondents, or any other person for whom they are responsible had contravened the Equality Act 2010. The grievance contains no such complaint. The Tribunal

unanimously considered that the claimant had failed to discharge her onus of proof in establishing that in lodging her grievance on 7th March 2023 she had carried out a protected act for the purposes of section 27 of the EqA.

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70. **Issues Number 3.3.1 to 3.3.6 – alleged detriments.** The claimant having failed to establish that either of the acts founded upon by her were protected acts for the purposes of section 27, no issue of the claimant having suffered the detriments itemised at the Issues numbered above arises, and the whole complaint of Victimisation falls to be dismissed. For completeness sake however, the Tribunal records:-

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(a) that in the course of her evidence the claimant withdrew her reliance upon the alleged detriments at 3.3.3.1 (backdating the grievance procedure to 10th March 2022) and 3.3.3.6 (contacting and hiring PEL Consultancy Services to cover up any evidence).

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(b) that with the exception of the alleged acts founded upon as detriments at paragraphs 3.3.2.1, 3.3.2.3, 3.3.3.2, 3.3.3.4 and 3.3.6 which the Tribunal found in fact had occurred or parts of which had occurred, the Tribunal considered that the claimant had not discharged her burden of proof such as to establish that the remainder of the acts given notice of as founded upon as alleged detriments had in fact occurred

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(c) that of those acts which the Tribunal found had occurred, or had occurred in part, the Tribunal unanimously considered that only that specified at 3.3.2.3 "*the alleged comments made by Sue McKiernan at the huddle of 9th February 2023*" had the potential to amount to a detriment

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(d) separately and in any event, that in respect of none of the alleged acts given notice of as founded upon as detriments

had the claimant established the necessary causal link between one, other or both of the alleged protected acts on the one hand, and the alleged detriment on the other.

- 5 (e) that all of the alleged acts given notice of as potential detriments were matters in respect of which the claimant lacked Title to Present and the Tribunal Jurisdiction to Consider, in terms of section 123 of the Equality Act 2010.

10 71. **Dismissal due to a Protected Disclosure (section 43 Employment Rights Act 1996) Issue Number 4.1** – *“Did the claimant make a qualifying and protected disclosure in terms of section 43A and 43B of the Employment Rights Act 1996, specifically (and limited to) when she emailed C J Green, the third party HR Officer cc Jaymin Patel and asking the following question of C J Green –*

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‘May I ask what would happen to a company that put patient’s at risk by exposing a colleague to a customer’s persistent hacking and remote access Trojan’s by Bluetooth? Also, invading their employee’s privacy with cameras, ? working, and constant data breaches. A and constant harassment with hazing, bullying, mocking about their life and disabilities?’

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- 25 (a) (Qualifying protected disclosures are prescribed by section 43B of the Employment Rights Act 1996 reference the above).
Read short, the qualifying requirements are:-

- i That there be a disclosure of information
- 30 ii That it be made by the worker in the reasonable belief that it is made in the public interest

- iii That it shows or tends to show one of the circumstances set out at sub paragraphs (a) to (f) inclusive; and
- 5 iv Is made by a worker to his employer, or otherwise in terms of sections 43C to 43H
- (b) In the circumstances of the instant case the claimant requires to rely upon section 43C – Disclosure to Employer or other Responsible Person.
- 10
- (c) On an application of the normal rules of construction to the terms of the email of 12th February 2023 which is relied upon and according to the words used their normal English language meaning, the Tribunal unanimously concluded that the email did not constitute a disclosure of information, it being, in its terms, a hypothetical question, a matter accepted by the claimant in the course of evidence. The Tribunal separately unanimously considered that the content of the email did not tend to show that one or more of the circumstances set out in sections 43B(1)(a) to (f) inclusive had occurred or was occurring. The Tribunal unanimously determined that the claimant had failed to discharge her burden of proof such as to establish that she had made a qualifying protected disclosure in terms of section 43B of the Employment Rights Act. In consequence the claimant had failed to establish Title to Present and the Tribunal lacks Jurisdiction to Consider her complaint of section 103A Automatic Unfair Dismissal which claim falls to be dismissed for want of Jurisdiction.
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- (d) Separately and in any event the Tribunal considered that the claimant had failed to establish, on the preponderance of the evidence and on the balance of probabilities, that the reason, or if more than one the principal reason for her dismissal was that

5 she had sent the email on 12th February 2023 to C J Green (cc Jaymin Patel). The Tribunal unanimously determined that the reasons, or if more than one the principal reason for the respondent's admitted dismissal of the claimant, were/was those/that set out in the letter of dismissal at pages 921 and 922 of the bundle.

- 10 (e) The complaint of Automatic Unfair Dismissal in terms of section 103A of the Employment Rights Act 1996 accordingly falls to be dismissed.

15 **72. Jurisdiction Issue Number 5.1** – *“Has the claimant Title to Present and the Tribunal Jurisdiction, in terms of section 123(1)(a) and 123(3) of the EqA, to consider the claimant's complaints of Discrimination, which failing is it just and equitable in the circumstances that the Tribunal extend time so as to constitute its Jurisdiction in terms of section 123(1)(b) of the EqA.*

- 20 (a) With the exception of the act of dismissal, all of the contended for reasonable adjustments, all of the alleged acts which the claimant asserts constituted detriment for the purposes of her section 27 Victimisation complaint and all of the alleged acts which the claimant asserts constituted qualifying unwanted conduct for the purposes of her section 26 EqA Harassment complaint, occurred outwith the primary statutory period, prescribed in terms of section 123(1)(a) of the EqA, and as
25 extended by the operation of the Early Conciliation Regulations, during which the claimant could, of right, have raised those complaints with the Employment Tribunal.

- 30 (b) Such of the acts which the Tribunal has found in fact occurred did not and, by reason of their separation in time in character and nature, could not have formed conduct extending over a period for the purposes of section 123(3) of the EqA.

5 (c) Separately and in any event, the only one of the said acts which fell potentially within the primary prescribed statutory period was the act of dismissal which the Tribunal has found was not a discriminatory act thus, let it be assumed that such acts as were found in fact to have occurred were instances of conduct extending over a period, the last of those potentially discriminatory acts did itself occur outwith the primary statutory period.

10 (d) No case was advanced by the claimant in terms of which she proponent that it would be just and equitable in the circumstances for the Tribunal to extend time so as to constitute its Jurisdiction to Consider the complaints although late, in terms of section 123(1)(b) of the EqA. The Tribunal, notwithstanding gave consideration to that proposition. The
15 Employment Judge explained the provision and its requirements to the claimant including the need for the Tribunal to give consideration, in any exercise of its discretion, to the reasons for the late presentation of the complaints, and confirmed with the claimant, her understanding of that explanation. He urged
20 the claimant to give consideration to whether or not she wished to give evidence about those matters. He did so prior to an adjournment commending to the claimant consideration of whether she wished to give any evidence about such matters with a view to confirming her position when the Tribunal next sat
25 prior to concluding her evidence in chief.

30 (e) When the Tribunal reconvened the claimant confirmed that having given consideration to the matter she did not wish to give any further evidence in relation to section 123 EqA including in respect of reasons for the non timeous raising of those complaints. In the circumstances the Tribunal was unable to conclude that it would be just and equitable to extend time such as to consider the claimant's otherwise time barred complaints

5 although late. In addition, therefore, to the complaints of section 20/21 EqA Discrimination (Breach of Duty to Make Adjustments) section 26 EqA Harassment and section 27 EqA Victimisation falling to be dismissed on their merits, all of the said complaints separately and in any event, fall to be dismissed for want of Jurisdiction (Time Bar).

73. **Harassment** (section 26 EqA) Issue Number 6.1

10 (a) Of the alleged actings of which the claimant gives notice of founding as constituting section 26 Harassment, the Tribunal held only that the claimant had discharged her onus of proof in establishing the occurrence of the acts itemised at Issues Number 6.1.2, 6.1.3.2 and 6.1.3.3, and partially established the actings set
15 out at Issue 6.1.3.1 of the above.

(b) The Tribunal unanimously determined that it was only that set out at Issue 6.1.2 “dismissing her etc” in respect of which it was reasonable in the circumstances for the claimant to perceive the
20 same as conduct which had the effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her for the purposes of section 26(1)(b), let it be assumed that the reason, or principal reason for her dismissal was found to be because she had made a protected disclosure or had
25 carried out a “Protected Act”; or was related to her protected characteristic of Disability.

(c) As it has already set out, however, the Tribunal unanimously determined that the respondent’s dismissal of the claimant while,
30 no doubt unwanted conduct, was not conduct which related to the claimant’s protected characteristic of Disability and thus not conduct habile for the purposes of constituting Harassment in terms of section 26 of the Act.

5 (d) In relation to the other instances of conduct which the Tribunal found established or partially established, in the context of the other circumstances of the case, including in particular the respondent's explanations as to why they had so acted, which the Tribunal accepted truthful, reasonable and logical explanations, the Tribunal unanimously considered that it was not reasonable for the conduct to have the effect perceived by the claimant, of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

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(e) Separately, and in any event, all of the alleged acts whether found established as having, or having partially occurred by the Tribunal, being acts in respect of which the claimant lacked Title to Present and the Tribunal Jurisdiction to Consider complaints, by reason of Time Bar, fall to be dismissed for want of Jurisdiction.

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Remedies – Issue Number 7.1

20 74. None of the claimant's complaints having succeeded the claimant is not entitled to any of the remedies in terms which she seeks in terms of her updated Schedule of Loss at pages 1032 to 1037 of the Hearing Bundle.

75. The claimant combined Claims Numbers 4105691/2023 and 4107258/2023 are dismissed.

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30 **Employment Judge: J G d'Inverno**
Date of Judgment: 14 November 2024
Entered in register: 14 November 2024
and copied to parties

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I confirm that this is my Judgment in the case of Ball v Hexarad Group Ltd and that I have signed the Judgment by electronic signature.