EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**Respondents**
Ms S Burns	Gitpod GMBH (R1) Lets Deel Ltd (R2) Mr J Landgraffe (R3) Ms E Hyder (R4)

AND

JUDGMENT OF THE EMPLOYMENT TRIBUNAL
ON AN PUBLIC PRELIMINARY HEARIMNG

HELD AT Midlands West **ON** 20 – 21 November 2024

EMPLOYMENT JUDGE Harding

Representation
For the Claimant: Ms Spencer, Counsel
For R2: Ms Niaz-Dickinson, Counsel
For R1, R3, R4: Ms Bone, Counsel

REASONS

JUDGMENT having been sent to the parties on 26 November 2024, and written reasons having been requested at the end of the hearing on 21 November 2024 by Ms Bone for R1, R3 and R4, in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

Case Summary

1 The claimant was employed by the second respondent between 16 January 2023 and 13 June 2023. The first respondent is a German company which has a presence in 14 countries. In the UK it employs people via an Employer of Record (EOR), which is an organisation that is legally responsible for employment matters on behalf of R1. R2 is the EOR for R1. The third respondent is the CEO of R1 and the fourth respondent is R1's Head of People, who is based in the USA and employed by a US EOR. The claimant pursues claims of direct sex discrimination, discrimination arising from disability and a failure to make reasonable adjustments, albeit prior to this hearing there had no case management to clarify the claims properly and nor had it been ascertained which claims were pursued against which respondents.

2 This preliminary hearing had been listed to determine a number of preliminary issues;

2.1 Whether the claimant was disabled at the relevant time (the material time having been identified previously as 1 May 2022 - 30 June 2023), by way of ADHD and dyslexia.

2.2 The status of the claimant's document entitled further particulars of claim and in particular whether this amounted to an application to amend, and if so whether or not that application should be granted.

2.2 Whether the claims against R2 should be stayed, and

2.4 Whether the claims against R3 and R4 up should be struck out on the basis that no specific claims are pursued against them and the first respondent does not rely on the statutory defence.

3 In the event, we only had time to deal with the disability issue and case management (identification of the claims).

4 At a Case Management Preliminary Hearing on 3 May 2024 Employment Judge Gilroy KC had issued directions for a jointly instructed medical expert's report in relation to the disability issue. However, at a further Case Management Preliminary Hearing on 15 November 2024, Employment Judge Smith had, on the claimant's application, set aside the case management orders relating to the production of a joint expert's report. The respondents at the time took a neutral position on this application. The application was granted, in summary, on the basis that the claimant had now obtained medical reports of her own as part of the process of obtaining a new job in America, and also because of ill health and the travel that would be required to have a consultation with the expert.

The issues: disability status

5 The respondents accept that at the relevant time the claimant had two impairments; ADHD and dyslexia. The respondents further accept that there were some adverse impacts on normal day-to-day activities caused by these impairments and that these were long-term at the relevant time. The dispute between the parties is whether those adverse impacts were substantial at the relevant time.

Evidence and documents

6 I had a bundle of documents running to 356 pages. The claimant had also submitted a separate disability bundle but it was established, after some discussion, that this simply duplicated documents that were already contained in the main bundle. Also contained within the main bundle of documents was an 11 page disability impact statement from the claimant. The respondents did not produce witness statements.

7 Given the size of the bundle of documents I asked all parties to give me a list of the documents that they wished me to read, which they duly did. I read all of the documents to which I was directed. I explained to the parties that any documents that I was not asked to read would not be treated as being in evidence before me.

Findings of fact

8 From the evidence that I heard and the documents I was referred to I made the following findings of fact:

The claimant's ADHD

8.1 In June 2015 the claimant was diagnosed with ADHD, page 167, which is a lifelong condition. She was prescribed Dexamfetamine, at a dosage of 5 mg three times daily, page 181. I find, based on the claimant's oral evidence, that she has remained on Dexamfetamine since then. I accept the claimant's oral evidence because it was supported by the medical evidence. For example, a document headed confirmation of psychiatric assessment dated 28 February 2021 confirmed that the claimant had been treated with Dexamfetamine when she was diagnosed with ADHD, page 181, a shared care agreement form dated 12 April 2021 referred to "continuing with" Dexamfetamine, page 171, and GP records from 2024 confirmed that the claimant was on a repeat prescription for Dexamfetamine, page 190. Dexamfetamine is a stimulant that is used to treat ADHD. It helps people maintain focus/attention.

8.2 When the claimant relocated to the UK from the US in February 2021 she was reviewed by a consultant psychiatrist, Dr De Waal, who again confirmed that the claimant had ADHD and that she should continue with Dexamfetamine, at a dosage of 5 mg three times daily, pages 171 - 173. Dr De Waal wrote to the claimant's GP to say that she would need to be regularly reviewed by him and that he had scheduled the next review for 6 months time, page 171. I accept the claimant's evidence and find that she remained under Dr De Waal's care for the duration of her employment with the second respondent. I do so because this was consistent with what Dr De Waal had recorded in his "to whom it may concern" letter, at page 229, which was that the claimant had remained under his care for the duration of her employment with the respondent. It was also consistent with Dr De Waal having informed the claimant's GP that he would keep the claimant under regular review, see above.

8.3 The claimant was additionally asked to contact her GP at six monthly intervals to discuss her blood pressure, pulse, weight, mood and appetite, page 179.

8.4 I accept the claimant's evidence and find that as a result of her ADHD she is easily distracted/finds it very hard to maintain attention/concentration and attention to detail is difficult for her when carrying out tasks. This affects, in particular, activities which involve reading and writing, and reading/writing/editing long documents is especially hard for the claimant. She also finds it hard to follow lengthy verbal instructions.

8.5 I accept the claimant's evidence because this was consistent with the results of the IVA test carried out by Br Bryce Gibbs in May 2024. The IVA test is a computerised test designed to measure attention and response control by presenting visual and auditory stimuli to the subject, page 230. The claimant's full scale attention quotient was 51 which placed her in the "extremely deficient range", less than 0.1 of the 1st percentile. This was described by the doctor as being a level of difficulty which indicated significant deficits in both auditory and visual attention, page 230.

8.6 Her visual response control quotient was 73, on the 4th percentile, indicating difficulties focusing on visual stimuli and impulsive responses in reaction to visual stimuli, page 231. The claimant was described by the Doctor as having substantial challenges in maintaining attention and controlling responses whilst attempting to focus on visual stimuli, page 231, which, he opined, would significantly impact her ability to perform visually detailed tasks such as reading, writing and editing documents.

8.7 The claimant's score for her CAARS test, which is a self reported questionnaire that assesses ADHD in adults, was 90. Dr Bryce Gibbs explained that this was an "extremely high" score which reflected daily struggles with concentration, task completion, forgetfulness and disorganisation, page 231.

8.8 Of course, these tests were done in 2024, but I accept the claimant's evidence and find, for the avoidance of doubt, that the effects on her which have been detailed in this report have been constant throughout her life, and that, therefore, this is an accurate description of the impact on the claimant of her ADHD during the period of time that she worked for the respondents.

8.9 I accept the claimant's evidence and find that her ADHD leads to a great deal of forgetfulness. I do so not least because her evidence was corroborated by the CAARS test results, see above. She persistently loses personal items such as her keys and phone. She has repeatedly failed to remember to attend doctors appointments. She struggles to pay bills on time and as a result of this had an extremely bad credit rating whilst she was at college. She has had utilities shut off for non-payment of bills. She has forgotten to pay her US tax bill twice, once whilst she was working for the second respondent and on one occasion prior to this. This led to the US government withholding wages. She has on a number of occasions taken too much of her ADHD medication because she had forgotten that she had already taken it. During the period of time that she was working for the second respondent this happened between three and five times. Her forgetfulness also leads to difficulties with timekeeping and, on occasion, travel arrangements. Her ADHD in general makes her sensitive to rejection.

Dyslexia

8.10 On balance, I accept the claimant's evidence and find that she was first recognised as being dyslexic whilst she was at school. I find that throughout her life her dyslexia has significantly impacted her reading speed. On balance, I accept the claimant's evidence and find that her reading speed is between 4 to 8 times slower than the average person. I accept the claimant's evidence not just because her evidence was credible and consistent on this point but also because this evidence appeared to be broadly consistent with the results of the Nelson Denny reading test conducted by Dr Bryce Gibbs in May 2024. The claimant's reading rate score in this test was 65 (1st percentile), page 232, indicating, Dr Bryce Gibbs explained, "significantly slower" reading speed compared to same age peers.

8.11 Dr Bryce Gibbs further reported that after taking her ADHD medication the claimant's reading rate score improved to 80 (9th percentile) but that this was still below average, page 232. This was indicative, he opined of "persistent difficulties" with reading despite pharmacological intervention, page 232. It is evident from this that there is a degree of overlap between the claimant's ADHD and her dyslexia here. However, given that "persistent difficulties" with reading speed continued even when the ADHD symptoms were being managed by medication this is supportive of the claimant's evidence that her dyslexia on its own has a significant impact on her reading speed.

8.12 Dr Bryce Gibbs reported that the claimant scored exceptionally well on the vocabulary subtest reflecting, in his opinion, her likely high verbal IQ and extensive word lexicon but he described her reading recall score (which was 84) as being below average, indicating difficulties with committing information she had read to intermediate memory. That, he said, was consistent with both dyslexia and ADHD, page 232. Her letter word identification score was on the 62nd percentile indicating that she had learned to sight recognise words but it was also recorded that when faced with words that she did not sight recognise her score fell to a level which indicated significant difficulties with word decoding skills, which was described as a hallmark characteristic of dyslexia, page 231.

8.13 These difficulties impact the claimant, I find, on a daily basis; she is very slow at reading books/emails and documents and she also struggles with timed tests and exams. Whilst she was at university she was given extra time to sit her exams, because she could not manage them within the allocated time, and she has also been given more time to complete selection processes when applying for jobs.

8.14 The claimant is, without doubt, a high achiever who is highly intelligent and articulate. She earned in excess of £200,000 a year with the second respondent, as she does in her current role. In the job that she did prior to working for the respondents she was occupying the role of Head of Engineering and running an entire engineering division. I do not find, for the avoidance of doubt, that there is any significant inconsistency, such as to undermine the claimant's case, in this level of professional achievement and the level of difficulty with reading and writing, attention span and forgetfulness that is described. She is someone who has deployed coping strategies, both in relation to her ADHD and her dyslexia, and she uses a combination of these plus her intelligence and hard work to get by, often working late into the night to get things done, for example.

8.15 Examples of coping strategies are that she has set up auto payments on as many bills as possible to avoid the issue of forgetting to pay them. She has an air tag attached to her keys to help her find them

around the home. If she is travelling somewhere she leaves herself multiple reminders about this. As mentioned above, she has learned to sight recognise many words which has improved her vocabulary and reading/writing skills in respect of these words. She has also hired a personal assistant to help her with her day to day life.

8.16 The claimant was described by Dr Bryce Gibbs as being a "partially compensated dyslexic", who has relied on intelligence, education and drive to memorise how to pronounce and spell common words, page 232, and who uses sight memory and verbal intelligence to comprehend written information. Dr Bryce Gibbs opined, however, that despite having compensated for her dyslexia by sight memorising words, the claimant would "likely falter" and be "significantly impaired" as a result of her diagnosed conditions (i.e both the ADHD and dyslexia) when faced with a high volume of new information or performing tasks that required sustained attention, precise reading and error-free written communication. He also stated that she would struggle with reading rate even after taking her medication, pages 232-233.

Non epileptic seizure disorder

8.17 The claimant also suffers from non-epileptic seizure disorder. She was diagnosed with this in 2015. When having an episode the claimant may become unresponsive or have periods of altered consciousness. There was, however, no evidence before me to suggest that the claimant's seizure disorder could cause problems with reading, memory or attention span (other, of course, than when she was having a seizure). Consequently, I accept the claimant's evidence and find that her seizure disorder is very different from her ADHD, with different symptoms.

The Law

9 Section 6(1) of the Equality Act defines a disabled person as a person with a physical or mental impairment which has a substantial and long term adverse effect on her ability to carry out normal day to day activities. The issue of whether there is or was a disability as defined by the statutory scheme is one for the tribunal rather than for doctors; **Abadeh v British Telecom plc [2001] IRLR 23**. The onus is on the claimant to prove that, in the relevant period, she was disabled for the purposes of the Act.

10 In determining whether a claimant is disabled I am required to consider the 2011 statutory Guidance relating to the definition of disability, where relevant.

11 The disability should be assessed at the date of the discriminatory act and not at the date of the Hearing; **Richmond Adult Community College v McDougall [2008] EWCA Civ 4.**

12 The case of **Goodwin v Patent Office [199] IRLR 4** is authority for the proposition that four questions fall to be considered when determining whether an individual is disabled for the purposes of the Act;

(a) Does the claimant have an impairment which is either physical or mental?
(b) Does the impairment affect the claimant's ability to carry out normal day to day activities and does it have an adverse effect.
(c) Is the adverse effect substantial?
(d) Is the adverse effect long term?

13 Of course, in this case, as set out above, it was only point (c) that was in dispute between the parties.

Normal day to day activities

14 The Guidance states that day to day activities are things people do on a regular or daily basis such as (relevantly), reading and writing, paragraph D3. As was made clear in the case of **Paterson v Metropolitan Police Commissioner 2007 IRLR 763** and **Aderemi v London & South East Railway [2012] UKEAT 0316_12_0612** what a tribunal has to consider is the adverse effect on the claimant's ability to carry out normal day to day activities.

15 It has long been the case that normal day to day activities can include general work related activities, see the Guidance paragraph D3 and also, for example, **Paterson v Commissioner of Police of the Metropolis [2007] IRLR 763** in which the EAT held that taking examinations for promotions was a normal day to day activity for a police officer who had dyslexia. It was a normal day to day activity both on the basis that it would involve reading and comprehension (normal day to day activities in themselves) and because carrying out an assessment or examination could in any event properly be described as a normal day to day activity. To reflect these developments in the law, the Equality Act 2010 (Amendment) Regulations 2023 have inserted a new Section 5A into Schedule 1 of the Equality Act so that it now reads that references to a person's ability to carry out normal day to day activities are to be taken as including references to a person's ability to participate fully and effectively in working life on an equal basis with others.

Substantial

16 Substantial means more than minor or trivial, Guidance paragraph B1 and Equality Act section 212. The EAT in **Aderemi**, when discussing what was meant by this, commented that the Act does not create a spectrum running smoothly from those matters which are clearly of substantial effect to those matters which are clearly trivial, but instead it provides for a bifurcation: unless a matter can be classified as within the heading of trivial or insubstantial, it must be treated as substantial. There is, therefore, little room for any form of sliding scale between one and the other, paragraph 14.

17 More recently in the case of **Elliott v Dorset County Council UKEAT/0197/20** the EAT drew together a number of strands of guidance from different cases as to the approach to be taken. This guidance included that the focus is on what the disabled person cannot do or can only do with difficulty, **Goodwin.** It is wrong to conduct an exercise balancing what the person cannot do against the things they can do, **Ahmed.** The comparison, when comparing the effect on the individual of the disability, is with how the individual carries out the activity versus how she would carry out the activity if she did not have the disability, **Paterson.** The comparison is not with the population at large and how they might carry out the activity. Paragraph 43 **Elliott**; the principle to be derived from **Paterson** is that the adverse effect of an impairment on a person is to be compared with the position of the same person, absent the impairment. HHJ Auerbach in **Elliott** went on to note that it is true that in **Paterson** Elias LJ, stated that the comparison should be with how the individual carries out the activity compared with how he would do it if not suffering the impairment and if that difference is more than the kind of difference one might expect taking a cross-section of the population, then the effects are substantial (a passage cited to me by the respondents). But, as was explained in **Elliott**, that is not to be taken to mean one has to look across a cross-section of the population as a whole. Rather, to the extent a comparison is required it is with those people in the population who are broadly similar to the claimant but without a disability. A rough and ready cross-section of the population taken at approximately the claimant's level.

Coping strategies

18 As is set out in paragraph B7 of the Guidance, account should be taken of how far a person can reasonably be expected to modify her behaviour, for example by using a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. Guidance in relation to this was also provided in **Elliott**. It was said that it is important not to focus excessively on paragraph B7 but to also take into account the paragraphs that follow. If the coping strategy involves *avoiding* a day-to-day activity then, as the guidance makes clear, it is unlikely the person will fall outside the definition of disability because of that. Likewise if the coping strategy may *break down* in some circumstances, such as when a person is under stress, it is unlikely that person will fall outside the definition of disability, see paras B9 and B10. As was said in **Paterson** in some instances a coping strategy may prevent the impairment having adverse effects but only where that strategy can be relied on in all circumstances.

Measures

19 Paragraph 5 of Schedule 1 of the Equality Act 2010 states as follows:

Effect of Medical Treatment

(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if –

(a) measures are being taken to treat or correct it, and

(b) but for that, it would be likely to have that effect.

(2) Measures includes, in particular, medical treatment and the use of a prosthesis or other aid.

Submissions

20 Ms Bone, for R1, R3 and R4 submitted written submissions and supplemented these with oral submissions. I summarise the main points here. Ms Bone submitted that the medical evidence presented by the claimant was paltry and inadequate. She submitted that the claimant had failed to comply with the directions issued by Employment Judge Gilroy KC for obtaining a joint expert's report and that she had then, without any permission from the tribunal, obtained and served further evidence from her own doctors. None of the evidence that she had served, it was submitted, was from the material period.

21 It was submitted that neither the evidence of Dr Bryce Gibbs nor the evidence of Dr De Waal should be treated by the tribunal as expert evidence. It was said that the evidence from the two doctors was unsound and ought not to be relied upon because it was all based on self reporting and self appraisal and lacked the rigour of a properly prepared expert's report which would have ensured the claimant was honest in her account. Ms Bone submitted that the medical evidence was "of little use". She submitted that the tribunal "cannot" accept the conclusions expressed in the reports in relation to the various test scores, as these were expert statements provided without due explanation and opportunity for interrogation. It was submitted that without the claimant's full medical records, including her GP notes, it was not possible for the tribunal to exclude other causes or to be sure that the conditions relied upon were the sole causes of the adverse impact alleged. It was said that the GP notes would have corroborated (or not) what the claimant had to say about the impact on her of her symptoms and that the absence of these notes was therefore significant.

22 It was pointed out that the medical evidence did not directly address the degree of severity of symptoms. The doctors had little to say, it was submitted, on daily impact. Whilst it was acknowledged that this was a case where the claimant's conditions would have had some impact day to day it was submitted that the impact was not such as to elevate the status of her conditions into disabilities. The claimant, it was said, had exaggerated the impact of her impairments on her. As to the results of the test in relation to reading speed, it was acknowledged there was plainly some impact on the claimant in this regard

but it was said that she also clearly had good coping strategies. It was submitted that any impact that there was was not on normal day-to-day activities but on high level/specialised activities that the claimant carried out in her job. The claimant was someone who had to operate at a high level with complex information in high pressure situations and experiencing difficulties in this scenario was not a guide to impact on normal day-to-day activities.

23 Ms Niaz-Dickinson, for R2, made oral submissions only. She submitted that the medical evidence in this case was scant and reminded me that I did not have the benefit of the claimant's GP notes which, she asserted, tribunals would normally see when determining the disability issue. The two medical reports, she submitted, should be excluded. Even if I considered I could rely on the reports she submitted that they did not support the claimant's evidence of adverse effect in any event. This submission was based on Dr Bryce Gibbs use of the word "suggest" when he wrote the findings "suggest substantial challenges in maintaining attention and controlling responses", page 231 and Dr De Waal stating that the symptoms she reports "are consistent" with ADHD, page 229. In relation to the claimant's dyslexia, Ms Niaz-Dickinson suggested that the claimant had barely touched on this in terms of adverse effects. She reminded me that the claimant was described as a "partially compensated" dyslexic person. Ms Niaz-Dickinson acknowledged that there was an adverse effect on the claimant in relation to her reading speed but submitted that I would need to consider carefully whether that was enough to meet the statutory test.

24 Ms Spencer, for the claimant, submitted written submissions and also supplemented these with oral submissions. I summarise the main points here. It was submitted that the claimant had set out in graphic detail the struggles that she faced with her normal day-to-day activities both in work and in her private life. Foremost amongst these, it was said, was a difficulty concentrating and a reading ability four times slower than that of a person without the claimant's disabilities. The claimant's ADHD, it was submitted, was managed with a highly controlled substance, namely Dexamfetamine. I was reminded that I would need to consider the level of the claimant's functioning absent this medication. Reading and comprehension, it was said, are a normal day-to-day activities in themselves. Likewise being able to concentrate was a normal day-to-day activity; there were very few jobs for which sustained attention (and reading) were not required. If you have a reading difficulty, it was submitted, this will considerably slow you down and the claimant met the criteria of substantiality on this basis alone. It was not necessary, Ms Spencer submitted, to have an expert to comment on issues such as inattentiveness, difficulty reading and a lack of concentration. In relation to the lack of a joint expert's report I was reminded that a judge had decided to revoke the orders in relation to the expert and so, it was said, this was not simply a case where the claimant had "skipped out of" this requirement. The claimant had persuaded a judge that there had been a material change in circumstance. Ms Spencer referred to the case of **Sobhi v Commissioner of Police** and submitted that the test to be applied in relation to

adverse impacts on working life was whether they hindered a person's ability to participate fully and effectively in working life.

Conclusions

25 As set out above, it was not disputed by the respondents that the claimant has, relevantly, two impairments; ADHD and dyslexia. It was not disputed that any adverse effects of those impairments on normal day to day activities were long term at the material time, namely 1 May 2022 - 30 June 2023.

26 The dispute between the parties was whether, at the material time, the claimant had proved that any adverse effects on her ability to carry out normal day to day activities were substantial. The respondents acknowledged that there were, likely, some impacts on the claimant as a result of her impairments but submitted that the evidence was not such as to show that there was a substantial adverse effect.

27 The medical evidence produced by the claimant came under sustained challenge from the respondents, and there were also criticisms made of the claimant's conduct in relation to the joint expert's report. In relation to this latter point, whilst it may be the case that the claimant failed to comply with some of the earlier orders and directions issued in relation to the expert's report, it requires to be remembered, as Ms Spencer pointed out, that there was a judicial decision made that joint medical expert evidence was no longer required. That was a decision of Employment Judge Smith, on the application of the claimant, at the most recent case management hearing. This is not a case, therefore, where it can be said that the claimant has deliberately frustrated the process to the extent that a joint expert's report was, as a result, not obtained; the claimant took the view that such a report was no longer required and/or would be difficult to obtain, and, ultimately, a judge agreed with her.

28 Whilst it is correct that the medical evidence produced by the claimant does not date to the material time, the claimant's evidence, which I have accepted, is that the adverse impacts on her of her ADHD and dyslexia are constant, and have been for most of her life. Medical evidence provided before and after the relevant period in this type of scenario can, therefore, be very helpful in determining what the adverse effects were at the relevant time.

29 I agreed with the respondents submission that the medical reports produced by the claimant could not be treated in the same way as one would a report from a jointly chosen and instructed expert. Accordingly, I attach less weight to these reports than I would an expert's report. Had I had significant doubts about the cogency/credibility of the claimant's evidence about substantial adverse effects, for example, it may have been that these reports would not have been enough on their own to carry the day for the claimant. But the claimant's

evidence did not lack cogency or credibility and the reports simply supported what it was that the claimant had to say.

30 The respondents went so far as to say that I ought not rely on these reports at all.

31 I disagree. It has to be remembered that both of the reports were produced by medical professionals; Dr Bryce Gibbs is a licenced psychologist and Dr de Waal a consultant psychiatrist. Clearly, they both, therefore, have a level of expertise in their chosen field of mental health and would be well placed to report on the claimant's impairments. Accordingly, I considered some weight could, quite properly, be attached to these reports.

32 As to the test results produced by Dr Bryce Gibbs, it was said by the respondents that I *could not* accept the conclusions expressed on test result scores as these were expert matters provided without due explanation and opportunity for interrogation. Once again I disagree. Dr Bryce Gibbs explains in his reports what tests he carried out, he identifies each one by name, he explains that the tests are all standardised tests, he explains what each test is designed to measure and he explains the result of each test. For these reasons I considered this to be cogent evidence which could properly be relied upon.

33 It is true that some of what is contained in the reports is based on the claimant self reporting but that, of course, is often the case, particularly when it comes to impairments of this nature. It would be the same, for example, for someone who was suffering with anxiety and depression. I do not accept that the fact that some of the information contained in the reports was based on self reporting by and of itself undermines the credibility of the reports in their entirety.

34 I do not accept that use of the word "suggest" or the phrase "is consistent with" undermines the reliability of Dr Bryce Gibbs report, as the respondents submitted. His is a reasonably comprehensive and detailed report (it runs to 3.5 pages). Use of the odd word within it which may be less definitive than it could have been is not something from which an inference can properly be drawn, in my view, that there was some sort of question mark in the Doctor's mind about the test results or what the claimant was describing, which is in essence is what the respondents were implying. In any case, and perhaps more importantly, in other parts of the report the Doctor is definitive; for example he writes that her conditions "significantly impair her ability to perform tasks that required sustained attention, precise reading and error-free written communication", see above.

35 The respondents complain that the reports do not address the severity of the claimant's symptoms (in the sense of the impact of the ADHD and dyslexia on day to day activities). But to the extent that is true, I considered that to be an unsurprising feature of these reports. It is the claimant who is best placed to give evidence about the impact of her impairments on her day-to-day life. Medical

professionals may sometimes comment on this but the reality is that the best evidence on this particular issue will come from the claimant herself.

36 The respondents also pointed to the almost complete absence of GP notes from the documents put before me. This was something that concerned me. These notes would have been a contemporaneous record of what the claimant was reporting to her GP at the time (or alternatively would have provided confirmation that the claimant did not see her GP at the time). Their absence raised an element of doubt in my mind. But ultimately I concluded their absence did not undermine the claimant's evidence for the following reasons;
35.1 I am only required to find facts and decide issues on the balance of probabilities, which means that I can, perfectly properly, have an element of doubt, as I do here.
35.2 The burden is on the claimant to prove that she was disabled at the relevant time and fundamentally it is a matter for the claimant as to what evidence she uses to prove this.
35.3 This was not a case in which there was a complete absence of medical evidence. Had there been no other medical reports the additional absence of GP notes may well have raised very significant doubts about the claimant's evidence. But that was not the situation here; the claimant had obtained two medical reports, one from Dr De Waal and one from Dr Bryce Gibbs.

37 The respondents submitted, in particular, that without the GP notes it was not possible for me to be sure that the conditions relied upon were the sole cause of any adverse impact nor could I exclude other causes. But this sets the bar too high. I am not required to be sure, I am required to resolve matters on the balance of probabilities, and the claimant's oral evidence on this issue, which I accepted, was very clear, see my findings at paragraph 8.16 above.

38 Turning then to what the claimant has proved, she has proved that throughout her life, including of course the relevant period, her dyslexia has meant that her reading speed is 4 to 8 times slower than the average person. Under the reading rate test carried out the claimant was on the 1st percentile, indicating in Dr Bryce Gibbs' view, "significantly slower" reading speed compared to same age peers. Reading, of course, is, in itself, a normal day-to-day activity. It affects various different aspects of day to day life both in work and outside of it; reading a book, reading emails and reading documents to name but a few. As I commented above there is clearly some overlap between the claimant's ADHD and her dyslexia here because we are told that when the claimant took her ADHD medication her reading rate improved, paragraph 8.11 above, although it still remained "below average" which was indicative of "persistent difficulties." I deal with the combined effects of the claimant's ADHD and dyslexia below.

39 The claimant does not, on the evidence before me, have a coping strategy in place which helps her deal with her slow reading speed day-to-day other than sight memorising familiar words, which is a coping strategy which breaks down in

the face of unfamiliar words and is a coping strategy that has not improved her reading rate to anything other than “significantly slower” than same age peers. Primarily, what it would appear the claimant has done is sought accommodations or adjustments to help her with this; being given extra time to sit her exams at university is an example of this, or she has simply worked harder and taken extra time to complete a task.

40 I consider and conclude that the claimant has proved that this adverse effect was, by itself, a substantial adverse effect on normal day to day activities for two reasons. Firstly, reading speed is something that affects multiple aspects of a person’s daily life both in work and outside of work. The specific examples, given by the claimant were reading a book, reading emails and reading documents, all of which are activities done by many of us all of the time both in work and outside of work. Secondly, the claimant’s reading speed is significantly slower than the average person. The *severity* of the adverse impact taken in combination with the *extent* of it, in the sense of the wide range of daily activities it affects, mean, in my conclusion, that the claimant has proved that at the relevant time her dyslexia had a substantial adverse effect, which was long-term, on her ability to carry out normal day-to-day activities.

ADHD

41 Turning then to the claimant’s ADHD, the claimant has proved that throughout her life, including of course the relevant period, this has caused persistent difficulty maintaining concentration whilst carrying out daily tasks such as writing or reading. She has also proved that, more generally, she persistently suffers with high levels of forgetfulness and distractibility; repeatedly, for example, misplacing items at home and forgetting to pay bills. Writing and reading, being able to remember where you have put something and being able to pay bills on time are all, I conclude, normal day-to-day activities.

42 She has reasonable coping strategies in place to assist with some of this; she has automatic payments set up for as many bills as possible but that is, of course, not possible for all bills. Problems in this regard therefore persist, the most recent relevant example of this being the non payment of a US tax bill whilst working for the respondent, paragraph 8.9 above. She has an air tag on her keys to help her find these when she has misplaced them but that, of course, would not assist with the misplacement of other items around the home, or elsewhere. The coping strategies do not, therefore, prevent the effects of the impairment on normal day to day activities and only in some circumstances do they reduce these effects.

43 On the evidence before me there were no coping strategies in place when it came to difficulty maintaining concentration whilst carrying out daily tasks such as writing or reading documents; the claimant’s evidence, which I have accepted,

was that she would take longer to do these tasks, often having to work into the night, and double or triple checking what she had done.

44 I consider and conclude that the claimant has proved that her difficulties in maintaining concentration and persistent forgetfulness, and the impacts this had on her day to day activities, were adverse effects which were substantial. I do so primarily based on the content of Dr Bryce Gibb's report. As already set out he described a CAARS score indicative of "severe difficulties" with inattention and memory problems and IVA test results consistent with "substantial challenges" in maintaining attention and controlling responses whilst attempting to focus on visual stimuli. In the context in which I am considering this issue, which is that if an adverse effect is not trivial it is substantial, that in my view was persuasive evidence that the adverse impacts were substantial.

Combined effect

45 In any event, even if I was wrong on that and the claimant had not proved that the adverse effects on her ability to carry out normal day-to-day activities as a result of her ADHD and dyslexia were substantial in their own right, Paragraph B6 of the Guidance makes it clear that where a person has more than one impairment any one of which *alone* does not have a substantial adverse effect then account should be taken of whether the impairments together have a substantial adverse effect on normal day to day activities.

46 Taken cumulatively, a slow reading speed (dyslexia) when combined with difficulties in maintaining concentration (ADHD) would make it significantly harder to read, and would make reading much slower, particularly when it came to reading anything of any length. It would also make writing/editing documents/emails much slower, again particularly when it came to any document of any length or a document which needed to be accurate. Reading, including reading something lengthy or detailed, is a normal day to day activity, I conclude, as is writing/editing a lengthy or detailed email or document - many of us read/write lengthy emails daily for example, or read books. Indeed, the interaction between the claimant's ADHD and dyslexia so far as reading was concerned was illustrated by Dr Bryce Gibbs' report, in which he said that the claimant's reading rate score in the Nelson Denny test was 65 (1st percentile) initially, paragraph 8.10 above, but that after taking her ADHD medication her reading rate score improved to 80 (9th percentile), although this was still below average and indicative of persistent difficulties, paragraph 8.11 above.

47 Was this (combined) adverse effect on normal day to day activities substantial? Of course, if measures are being taken to treat or correct the adverse effect I must consider what the claimant would be like absent those measures. In this case we know what the claimant would be like in terms of her reading speed without the Dexamfetamine, because Dr Bryce Gibbs tested for this. We do not know what the claimant's difficulties in maintaining concentration

would be like – no evidence was led on this at all, and accordingly I can reach no conclusions about that. Without Dexamfetamine the claimant's reading rate would be 65, on the first percentile, paragraph 8.10. We know that this equates to a "significantly slower" reading speed than same age peers. Accordingly I conclude that the claimant has proved that in combination her dyslexia and ADHD caused a significantly lower reading speed, paragraph 8.10, and substantial challenges in maintaining attention, paragraph 8.6, which in combination had a substantial adverse effect on her ability to carry out normal day to day activities, namely reading/writing, in particular detailed reading/writing or reading/writing anything of any length. I conclude the claimant has proved the effect was substantial because a *significantly* slower reading speed and *substantial* challenges in maintaining attention is more than trivial.

48 Moreover, whilst it is true that the claimant has coping strategies in place to help with her understanding of written information, on the evidence before me these coping skills would likely break down in relation to tasks that required sustained attention, precise reading or error free written communication, paragraph 8.16 above. As set out above, and as was said in **Paterson**, if a coping strategy is liable to break down this must be taken into account. Moreover, In Dr Bryce Gibbs' view once these strategies broke down the claimant's abilities would be "significantly" impaired.

48 The respondents submitted that tasks that required sustained attention, precise reading or error free written communication were not normal day to day activities but were specialist, work related activities which were an aspect of the claimant's very high pressure, complex job. I reject this submission. Whilst tasks that require reading documents in detail or reading lengthy documents might not crop up in every job it is easy to think of many examples of jobs where this is required. Being a teacher, a researcher, a lawyer, virtually any kind of academic, a journalist and doctors to name but a few. Exactly the same can be said of producing lengthy and accurate written work. These are not specialised activities but activities that can be found in a wide range of jobs, and accordingly these are normal day to day activities, I conclude.

49 In the alternative therefore, I would have concluded that the combined effects of the claimant's ADHD and dyslexia had a substantial adverse effect on the claimant's ability to carry out normal day to day activities, namely reading and writing, including reading/writing detailed documents/emails and reading/writing lengthier documents/emails/books, and producing accurate written work.

Case No:1307871.23
Signed by: Employment Judge Harding
Signed on: 18 December 2024