



EMPLOYMENT TRIBUNALS

Claimant: Miss S Ellis

Respondent:

Cranswick Foods Ltd

Heard at Leeds

On: 10, 11, 12, 13, 14, 17, 18, 19, 20 June and 16, 23 July (deliberations) 2024

Before

**Employment Judge Davies
Mr J Howarth
Mr Q Shah**

Appearances

For the Claimant:

In person with Mr Massingham for support

For the Respondent:

Mr M Hems (solicitor)

RESERVED JUDGMENT

1. The Claimant's complaints of:
 - 1.1 direct sex discrimination;
 - 1.2 harassment related to sex;
 - 1.3 failure to make reasonable adjustments for disability;
 - 1.4 disability-related harassment in respect of comments made by Mr Andrew at the disciplinary hearing; and
 - 1.5 discrimination arising from disability in respect of the reduction in her sick payare not well-founded and are dismissed.
2. The Claimant's remaining complaints, of:
 - 2.1 unfair dismissal;
 - 2.2 victimisation;
 - 2.3 disability-related harassment in respect of statements provided by Mr Briggs, Mrs Mackereth and Mr Townsend; and
 - 2.4 discrimination arising from disability in respect of her dismissalare well-founded and succeed.

REASONS

Introduction

1. These were complaints of unfair dismissal, discrimination arising from disability, harassment related to sex and disability, direct sex discrimination, failure to make reasonable adjustments for disability and victimisation brought by the Claimant, Miss S Ellis, against her former employer, Cranswick Foods Ltd.
2. The Respondent was represented by Mr M Hemi (solicitor) and Claimant represented herself. The Claimant has dyslexia, ADHD and autism. The Tribunal discussed with her what adjustments were needed at the hearing. We offered her regular breaks and encouraged her to request a break if needed. When she gave her evidence, she was supported by an advocate to help her with the documents if required and to help to alert the Tribunal if the Claimant needed more explanation or more time. The Claimant became distressed and agitated at times during the hearing. In discussion with her, we agreed that sometimes it was better to press on rather than take a break, and we did so. On occasions when she was distressed, the Claimant directed criticisms at the Respondent, its witnesses and representative, sometimes in strong or offensive terms. The Tribunal approached this on the basis that the Claimant sometimes lost her composure because of the circumstances of the Tribunal, coupled with the nature of her disabilities. The Tribunal did not take issue with this each time it occurred because that would have been counterproductive and made it harder for the Claimant to participate in the hearing. The Tribunal took time to allow the Claimant to regain her composure. We proceeded on the basis that the Respondent understood that the Claimant's behaviour on these occasions was linked to her dyslexia, ADHD and autism and that it was necessary for the Tribunal to make allowances for that. The Respondent did not make any application during the course of the hearing or raise any concern that the Claimant's conduct was affecting the witnesses' ability to give evidence or the Respondent's ability to present its case. The Respondent then made an application to strike-out the claims because of the Claimant's conduct during the hearing in its closing submissions. That is dealt with in a separate judgment.
3. There was a lengthy file of documents, and the Tribunal considered those to which the parties drew our attention. The Claimant had raised concerns at a late stage about the way the file had been put together and about documents being missing. I had made a case management order prior to the hearing refusing her permission to produce her own file of documents, but requiring the Respondent to ensure that all of the Claimant's documents were included. We therefore had a single file of documents, partly as originally arranged by the Respondent (by topic), and partly with a large number of documents provided by the Claimant (in chronological order). We ensured that enough time was given to find any document that was required during the hearing. We also admitted a small number of additional documents provided by the Claimant, by agreement.
4. For the Respondent the Tribunal heard evidence from: Mr M Briggs (Site Director, Yorkshire Baker); Mrs L Mackereth (HR Manager Yorkshire Baker); Mr J Townsend (Group HR Controller); Miss M Spencer (Group HR Director); Mr D Andrew (Operations Director) and Mr S Glover (Company Secretary and Group Legal Advisor). The Claimant gave evidence, and on her behalf we heard evidence from Mrs C Blackstone (an Operations Manager for a different organisation); Mr S Ellis (the Claimant's father and a retired Operations Manager); and Mrs A Bentley (former employee of the Respondent). Ms C Rankine had produced a witness statement on the Claimant's

behalf but she was not called to give evidence. We explained to the Claimant that this would affect the weight that could be given to her evidence.

Issues

5. The issues for the Tribunal to decide were identified in draft by EJ James at a preliminary hearing on 27 November 2023 and agreed by the parties afterwards. The list of agreed issues is annexed to this judgment. At this hearing, the Tribunal made clear that we would only decide:
 - 5.1 those issues relevant to liability;
 - 5.2 the question whether there is a chance that the Claimant would have been fairly dismissed in any event;
 - 5.3 the question whether the Claimant caused or contributed to her dismissal by culpable and blameworthy conduct; and
 - 5.4 the question whether any uplift should be applied to compensation because of unreasonable failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures.

In the event, the Tribunal has left the last of those issues – the question of any ACAS uplift – to be dealt with at the remedy hearing, so that the proportionality of the whole award can be taken into account as appropriate.

Findings of fact

Disability

6. The Claimant has dyslexia, ADHD and autism. The Tribunal has to decide whether she met the definition of disability in the Equality Act 2010 because of those conditions. The Respondent accepts that she meets the definition as a result of ADHD. It accepts that she has the other two conditions, but not that she meets the definition of disability as a result.
7. The Respondent's cross-examination of the Claimant in relation to disability was extremely limited, amounting to a handful of questions. The Respondent did not ask any questions about the impact of the disabilities on the Claimant's ability to do normal day to day activities. It did not ask questions about the impact of the disabilities on the Claimant's behaviour with reference to the alleged misconduct for which she was dismissed. The Tribunal accepted the Claimant's unchallenged evidence about those matters, which was also broadly consistent with the medical evidence. While the Claimant's disability impact statement was researched and cross-referenced, it also contained detailed information about the impact of her conditions on her, with specific examples.
8. The Tribunal therefore makes the following findings:

Dyslexia

- 8.1. The Claimant was diagnosed with dyslexia at university. She obtained a formal dyslexia report for the purposes of the Tribunal in April 2024. The author confirmed that the Claimant has difficulties in phonological awareness (manipulating the sounds and structure of language), verbal memory (holding and manipulating information) and verbal

processing speed (rapidly retrieving familiar information from memory). This impacts her reading accuracy, reading efficiency and spelling, all of which do not match up to her capabilities in verbal language and reasoning. The author confirmed that the Claimant experiences challenges with working memory. She explained that this is the ability to hold and manipulate verbal or visual information. It is underpinned by short-term memory and the ability to sustain attention. The author confirmed that the Claimant finds planning, prioritising and organising information from different sources difficult without extra time. When using multi-processing systems, such as those involved in reading and writing, the Claimant finds it hard to absorb or recall large volumes of information quickly. She benefits from it being broken down, key points highlighted and information summarised with bullet points. She takes longer to organise presentations and to hold information in her mind, sift out key ideas, and efficiently transfer them to paper. She needs time to organise and respond to questions and benefits from concise questions using familiar language and straightforward structure.

- 8.2. The author also confirmed that the Claimant's reading skills are notably inconsistent with her verbal abilities. Her scores in those areas on standardised tests are in the below average category. Reduced processing speeds and difficulties decoding complex words affect her reading accuracy and speed and create many pauses in her reading. She may need to read more than once to gain full understanding.
- 8.3. In her disability impact statement, the Claimant sets out the impact of her dyslexia in her own words. She has difficulty reading and may have to read a document many times to check that she has read and understood it correctly. It could take her much longer than somebody without dyslexia to read a bill or an email. She finds it difficult to read out loud. Numbers with more than 2 digits are difficult for her. The Claimant has difficulties with spelling and grammar. Her handwritten notes are often not legible, even to her. Her accuracy decreases when she is in a stressful situation.

ADHD and Autism

- 8.4. The Claimant was referred for an ADHD assessment in June 2021 and was formally diagnosed with ADHD in November 2021. She has been taking medication since March 2022, except during periods where it has been unavailable because of shortages.
- 8.5. The Claimant's autism was formally diagnosed in May 2023. It had been under investigation for some time by then. In November 2022 Unity Occupational Health advised the Respondent to approach the Claimant for practical purposes as though she did have autism.
- 8.6. The Claimant included a redacted version of the autism assessment report in the Tribunal file. She said that the redactions related to personal information about her history and family. The Respondent did not make any application for an unredacted version to be provided. The Consultant Psychiatrist confirmed a diagnosis of autism.
- 8.7. There is an overlap between ADHD and autism and their effect on day-to-day activities. The Claimant explained the impacts on her in her disability impact statement.

- 8.8. Executive dysfunction and working memory are a challenge for the Claimant. For example, she may struggle to remember a task that is communicated to her verbally. If somebody asked her in the corridor to forward an email to them, she might forget to do so by the time she has walked back to her desk. She loses things, for example her key fobs for the office.
- 8.9. The Claimant has struggles with impulsivity. She may have difficulty delaying a response or withholding a response. She may say what she thinks without stopping to consider whether it might offend someone. This is helped by her ADHD medication.
- 8.10. The Claimant is able to “mask” her behaviour, to some extent. This takes significant energy.
- 8.11. When stressed or anxious, the Claimant may freeze or become nonverbal, struggling to speak at all. She has no control when experiencing a freeze response.
- 8.12. The Claimant works best in a structured environment. Change without notice can be a challenge. For example, change to a meeting agenda can cause distress, frustration and even cause an autistic meltdown.
- 8.13. The Claimant experiences challenges with emotional regulation. This is one of the most challenging symptoms she has to manage. Sometimes she struggles to control powerful emotions and they are visible to others, with the Claimant crying or being visibly distressed. Sometimes her outward appearance is calm and emotionless but she is experiencing a freeze response.
- 8.14. During excessive periods of stress or anxiety the Claimant experiences physical symptoms, such as itchy skin, rashes, hair and weight loss and inflammation.
- 8.15. The Claimant can hyperfixate on things that are of interest to her. This can be beneficial – enabling her to work for hours on a project, develop a detailed knowledge and understanding and complete work to a high standard. It can also be a negative. She may get stuck on a project and unable to move past it. She can become so focussed that she loses track of time or fails to prioritise other important things like self-care – showering, eating, drinking, using the toilet.
- 8.16. The Claimant has high justice sensitivity. She may generally perceive injustice more frequently and intensely and show stronger emotional and behavioural responses to it than someone without ADHD and autism. She tends to think in a binary, black and white way.
- 8.17. Social rules can be a challenge for the Claimant. She can be literal in her understanding. She speaks in a way that may be seen as blunt or rude by a non-autistic person. She states what she regards as facts without considering whether that might cause offence or upset.
- 8.18. The Claimant is sensitive to layered noise, i.e. more than one noise at the same time. Some smells, touch and food textures can trigger feelings of disgust and even vomiting.

She cannot bear to be touched if she is having a meltdown. She finds it physically uncomfortable to be seated close to people she does not trust.

Background

9. The Respondent is a public limited company and is a leading provider of fresh food products in the UK. Its revenue is over £1 billion and it has more than 10,000 employees.
10. The Claimant started employment with the Respondent in May 2018. At the time of the events in this claim she was Commercial Controller at the Respondent's Yorkshire Baker site. She reported to the Site Director: originally Mr Meyer but, from April 2022, Mr Briggs. She was a senior employee. Her salary was around £95k, and she had a range of other benefits including private healthcare, a company car allowance and a discretionary bonus scheme. That package reflected her level of seniority and value to the company.
11. The principal events in this claim happened following an incident at work in August 2022. The Claimant was unhappy with the way that was dealt with. She raised a formal grievance about the incident, the way it had been handled, and other matters. She appealed against the outcome of the grievance. While her grievance appeal was outstanding, she was suspended. Her grievance appeal was not upheld and she was put through a disciplinary process and dismissed. Her appeal against dismissal was not upheld. Some of the matters referred to in the grievance are raised in this claim as complaints of harassment or direct sex discrimination. Some of them happened before the incident in August 2022, but the Claimant did not complain about them until she raised her formal grievance. We deal with events in the order that they happened, to make it easier to follow the narrative.
12. The Claimant had been diagnosed with dyslexia before she started work at the Respondent. She did not tell them she had it in her medical questionnaire when she started work, but Mrs Mackereth confirmed that the Claimant told her about it verbally early in her employment. The Claimant did not provide any detailed report or information and the Respondent did not seek any.
13. The Claimant was diagnosed with ADHD in November 2021. She had a period of coming to terms with the diagnosis and understanding what it meant for her. At around the same time, she had been working with Mrs Mackereth in managing one of her direct reports. There was a plan to put that person on a performance improvement plan, which was delayed initially. There is a dispute about the circumstances in which it arose, which we do not need to resolve, but the individual told Mrs Mackereth that she had some issues with the way the Claimant communicated with her and supported her. That led to a meeting with the Claimant, Mr Meyer and Mrs Mackereth in February 2022. It was confirmed at the start of the meeting that the individual had not said that they were being harassed by the Claimant. The general message from Mr Meyer was that the individual felt that they received lots of negative feedback from the Claimant and no positives. The individual evidently had concerns about the way the Claimant managed them, and found the Claimant difficult to work with. The Claimant requested specific examples and there was a further meeting to discuss them. That lasted more than 2 hours. At that meeting, the Claimant said that she needed some general support in how to performance manage someone, and she needed to look at her ADHD diagnosis, how that impacted her and what support she needed. Mr Meyer suggested that the Claimant speak to the Respondent's in-house Occupational Health ("OH") Nurse, Ms Gray.

14. The Claimant did meet Ms Gray. There was no formal OH referral to Ms Gray by a manager or HR, asking for advice from Ms Gray on supporting or managing the Claimant or making adjustments for her. The Claimant simply went to see Ms Gray to see if she could provide any helpful input. No doubt because there was no formal referral, the Respondent did not address the question whether the Claimant consented to an OH report being provided to her manager, HR or anybody else in the business. Mrs Mackereth referred to a report that Ms Gray produced. In fact it was an email to Mrs Mackereth. Mrs Mackereth assumed that the Claimant had been provided with a written report from Ms Gray. The Claimant said that she had not, and the Tribunal accepted her evidence. So, the Claimant spoke to Ms Gray. They had a fairly general discussion about ADHD. Ms Gray told her that she was not an expert in ADHD and was not able to provide any real assistance to her. That was the last the Claimant heard from Ms Gray. Unknown to the Claimant, Ms Gray provided an email report to Mrs Mackereth. It was subsequently shared with a number of other people in the business. The Claimant did not see it until the disclosure process in these Tribunal proceedings. In the email Ms Gray confirmed that she had told the Claimant that this was not her area of expertise. She noted some topics that they had discussed. The email included some fairly general recommendations that Ms Gray had made to the Claimant. It did not include advice or recommendations to the Respondent.
15. Mr Briggs became Site Director at Yorkshire Baker and the Claimant's line manager in June 2022. He was aware of the Claimant's dyslexia and ADHD.

Complaint about SM shouting

16. The Claimant's first complaint is about a failure by Ms Maxwell or Mr Brisby to offer her meaningful support in April 2022 following a report that she had been shouted at by SM, who worked for one of the Respondent's clients. The Claimant's evidence was that on 14 April 2022 SM shouted at her and called her "stupid" in a phone call lasting about 20 minutes. The Claimant told Ms Maxwell and Mr Brisby. Ms Maxwell called to check what the issue was but did not take any action. Mr Brisby responded more than two weeks later, to see if there had been "any other noise." The Claimant contrasted this with events in August 2022 when she told Mr Briggs that SM had been rude about a different, male, colleague, Mr Hogarth. She says that Mr Briggs left the room and called Mr Hogarth. She infers this happened because Mr Hogarth called and messaged her out of the blue for the first time in her 4 years at the business. She did not answer or return his call, so she never confirmed the reason he was contacting her. Mr Briggs had no recollection of this when he gave evidence. Mr Hogarth was not asked about it (at the time of the Claimant's grievance) and did not give evidence to the Tribunal.

Meeting with Mr Brisby

17. The next complaint concerns a meeting with Mr Brisby in June 2022. The Claimant had wanted to meet Mr Brisby for some months. He emailed her on 16 June 2022 requesting a catch up. He was not anticipating a presentation, but the Claimant prepared one about the projects the team had been working on. These covered factory investment projects that she had been working on for months before Mr Briggs became Site Director a few weeks earlier. Mr Briggs was cc'd into the meeting request and attended the meeting. The Claimant's perception was that as she started to present her slides, Mr Briggs took over the conversation. Mr Briggs and Mr Brisby continued to talk. At one point she felt that she might as well leave the room, nobody would notice. She

attempted to regain control of the meeting by standing and moving to the presentation on the large screen. Mr Briggs then stood up himself and joined the Claimant by the screen. He again started speaking to Mr Brisby about the projects the Claimant had been working on. She felt that she might as well not be in the room and sat back down feeling humiliated.

18. During her lunch break, the Claimant scrolled through Instagram and, on the site of a surf shop in Scarborough that she followed, she saw an image of Mr Brisby collecting a new surfboard. She felt that this was likely to be the reason for his visit to the vicinity, and felt stupid. The Claimant mentioned all of this in a message she sent a colleague in September 2022. That was in response to comments from the colleague about all the credit for something she had done being given to someone else, with the suggestion that this would not have happened to a man. In cross-examination the Claimant said that she would have had no difficulty with Mr Briggs being in the meeting and joining in the conversation. It was him taking over that she objected to. In cross-examination Mr Briggs recalled the meeting, but he did not remember talking to Mr Brisby without involving the Claimant or standing up and joining her at the screen when she stood up. It was put to him that he would not have done this if she had been a man. He said that if he felt that a member of his team was under pressure or being challenged, it would be normal for him to step in to support them and that he would not have treated a man any differently.
19. The Tribunal found that the meeting in August 2022 did proceed in the way the Claimant described. Mr Briggs attended, involved himself in the conversation to the extent that the Claimant felt side-lined, and positioned himself at the presentation when the Claimant went to stand by it. In reaching that conclusion, the Tribunal took into account that the Claimant gave a clear account of the meeting and her reactions in her evidence. She also referenced it in her message to a colleague at the time. By contrast, Mr Briggs did not deny the Claimant's account; he said that he could not remember and he gave explanations for why he might behave in that way. The Tribunal therefore found that he did. The Tribunal further found that Mr Briggs's conduct was unwanted by the Claimant.

August 2022: Incident with PR and informal investigation of it

20. There had been an ongoing issue involving one of the Claimant's male colleagues, PR, who was one level junior to her. His job role was being changed by a different colleague and there were problems with that. In that context, the Claimant appointed a new employee whose work would overlap with PR's existing team. A meeting took place on Friday 5 August 2022 involving PR, the Claimant and Ms K Adams to discuss PR's new role, job title and ways of working going forward. During that meeting PR accused the Claimant of appointing the new employee without asking him (something she disputes). The Claimant sent some follow-up notes on the morning of Monday 8 August 2022. One of the actions was for a third employee to move locations in view of the new starter. PR said that the third employee was no longer happy to do so. After another meeting on Monday 8 August 2022 the Claimant therefore asked PR for a quick chat, to see whether he had managed to resolve the situation with the third employee. He said that he had.
21. They were in a room with the door shut. The Claimant says that there came a point when she said to PR that he did not seem happy and she asked him what was wrong. He told her that he was not happy about the situation with the new employee and that the Claimant should not have appointed him. He (PR) needed to know exactly what the new employee was earning and what his

package was. The Claimant told PR that he could always talk to her. He told her that he was “done talking to you. I’m going to talk to [Mr Briggs].” He stood up. At that stage she was seated behind the desk and he was standing. She told him he was behaving unprofessionally and to stop shouting. She says that during the discussion PR was not shouting and screaming, but raised his voice and was aggressive. He banged his pointed finger down on the table repeatedly, demanding to know the new employee’s salary and package. The situation ended with PR leaving the room saying again that he was “done talking to” the Claimant.

22. We note at this stage that the Claimant had previously been subject to domestic abuse. She believed this affected the way she reacted to PR’s conduct. Mrs Mackereth knew that the Claimant had been in a relationship with a violent partner. The Tribunal does not need to resolve the question whether Mrs Mackereth understood or should have understood that this meant the Claimant had been subject to domestic abuse.
23. The Claimant spoke that day to Mr Briggs about what had happened and he spoke to PR. Mr Briggs then spoke to the Claimant by telephone in the evening. She says that during their conversation he appeared more concerned about the fact that PR was upset. She told him that there were two issues, getting PR back to a good place but also the fact that the way PR had behaved towards her was unacceptable. He then commented, “You know what chefs are like.” She burst into tears and said that she had been shouted at. Mr Briggs paused and then said that she was right and that he would deal with it tomorrow. In cross-examination, Mr Briggs could not remember whether the Claimant had told him there were two issues, nor whether he had said, “You know what chefs are like.” However, he said that there was a “significant element of distress” from the Claimant. He reflected on it overnight and decided that it warranted a follow-up conversation. The Tribunal noted that the Claimant referred to the comment, “You know what chefs are like” when she spoke to Mr Briggs the next day – Mrs Mackereth made a note of it - and we accept her evidence that he made it.
24. Mr Briggs therefore spoke again to the Claimant the next day, 9 August 2022. Mrs Mackereth was present and took notes. The Claimant does not accept that Mrs Mackereth’s notes of this or subsequent meetings are complete and accurate. There is no dispute that Mr Briggs told the Claimant that he had decided to investigate the previous day’s events. She had not raised a formal grievance and her understanding was that this was an informal investigation. In evidence at the Tribunal Mr Briggs and Mrs Mackereth confirmed that. There was at the time, however, subsequently some confusion (see below). The Claimant described some of the background about PR’s job, and his feeling of getting mixed messages from her, Ms Adams and Ms Maxwell. She expressed the view that what had gone wrong was that they had not all sat down together and talked about it. The Claimant then gave her account of what had happened on 8 August 2022. She said that she had remained calm throughout. She said that she thought PR was mad at “Jim” and Ms Maxwell, but he stood there after the earlier meeting, shook Jim’s hand and did not say anything to Ms Maxwell. Then, because he thought he could get away with it, he had a go at the Claimant. The Claimant said that, in terms of outcome, PR needed to acknowledge his behaviour and that it was not appropriate.
25. Mr Briggs and Mrs Mackereth then spoke to PR on the same day. They told him that there had been an allegation of serious misconduct in the workplace. PR agreed that he was frustrated about the situation with his job. They spoke about the third party and then the Claimant asked what was wrong with him. PR said that the Claimant, “kept smirking at me all the way through as if it was

funny.” He said that he asked why she was smirking and she said that she was not. She then told him that he was getting aggressive and intimidating. He said that it was just “passion.” He got up and said that he was going to speak to Mr Briggs and she told him to come back and follow the correct procedure. He did not sit back down but stood and leaned on top of the chair. When she told him again that he was being aggressive and intimidating he sat down. PR said that he had not been aggressive, but that his voice “may have increased in volume but that was just passion.” He said that he was “emotional.” It was “pure frustration.” PR said that the Claimant was smirking and that he perceived that she was goading him and winding him up.

26. Mr Briggs and Mrs Mackereth held further conversations with the Claimant and PR the next day, 10 August 2022. Mr Briggs began the conversation with the Claimant by asking whether she felt that she did anything in her body language that could have been misinterpreted by PR. She talked about matching his body language. Mr Briggs then asked her whether she had any nervous ticks or facial changes, unconscious or conscious. There is a dispute about precisely what was then asked and answered. There is no dispute that Mr Briggs asked the Claimant whether she had smirked at PR. Mrs Mackereth’s notes record Mr Briggs telling the Claimant that PR had said that she was smirking and that made him feel that he was not being taken seriously. He asked the Claimant, “Could that have happened? Could that have impacted how he was feeling?” The Claimant answered, “Yes, I have facial expressions so it could have happened.” The Claimant says that the question she was asked was whether, consciously or subconsciously, she could have smirked at PR. She says that there was only one possible answer to this, because if it was unconscious, she could not say it had not happened. Therefore, her answer was to the effect, “If you are asking me whether I subconsciously may have smirked, I have a face so the only answer is yes.”
27. The meeting was not recorded. Mrs Mackereth made typed notes during it. In her witness statement she said that she made 30 hours of meeting notes that week. She types notes and uses shorthand that might not make sense to other people, but she has “very strong recall” and can easily go back and make sense of her notes. She always gets others in attendance to cross-check them too. The content does not change but the legibility does. She was asked about the notes of this part of the meeting in cross-examination. The Claimant put to her that her note – that the Claimant said “Yes, I have facial expressions so it could have happened” – could have been in the shorthand what the Claimant says her answer actually was, “If you are asking me if I have a face and it might have made an unconscious expression the only answer I can give to that is yes.” Mrs Mackereth then said, “No, I don’t use shorthand in my minutes. I try to capture things verbatim.” The Claimant reminded her that in her own witness statement she said that she did use shorthand when making her notes. She gave a number of answers, including, “I use shorthand in the meeting but not in the published meeting” and finally “I use shorthand when taking initial minutes. I’m very confident that is what was said.” The Claimant also asked Mrs Mackereth about the evidence in her witness statement that she always gets others in attendance to cross-check the meeting notes. The Claimant put to her that she had not asked the Claimant to cross-check these notes. Mrs Mackereth then said that her witness statement was “misrepresentative.” She meant that she asked the hearing manager to check her notes.
28. Mrs Mackereth’s evidence about this, as about a number of matters, appeared to the Tribunal designed to support a particular case, rather than being an accurate recollection. Her initial answer to the Claimant, that she did not use shorthand, did not reflect her own witness statement. The Tribunal also noted that in her witness statement, Mrs Mackereth said that when questioned by Mr Briggs, the Claimant had answered, “I have a face so I may have smirked” and

said that she may have done this because she was nervous. The quoted answer is not the same as Mrs Mackereth recorded the answer in her notes. The notes also do not refer to the Claimant saying she may have done it because she was nervous. This suggests that Mrs Mackereth's recall is not as precise as she believes. It appeared to the Tribunal inherently unlikely that Mrs Mackereth could remember precisely what was said during 30 hours of meetings when she came to type them up. It also appeared to the Tribunal that the series of questions and answers as recorded by Mrs Mackereth in her notes at the time was not fundamentally different from how the Claimant recalled the discussion. The Tribunal found that the thrust of the question and answer was Mr Briggs asking the Claimant whether she may have smirked unconsciously and the Claimant answering that if that was the question, the only answer she could give was yes, she may have smirked. It also seemed to the Tribunal that the giving of a literal answer in that way was consistent with the Claimant's autism.

29. Mr Briggs and Mrs Mackereth also spoke to Ms Spivey, who was in the adjacent room when the incident between the Claimant and PR took place. In his witness statement for the Tribunal, Mr Briggs said that the only other person who was nearby "heard muffled voices" in the other room, so there was nothing factual to corroborate either side. In cross-examination, the Claimant showed him the notes of his discussion with Ms Spivey. Ms Spivey told Mr Briggs at the time that there were "raised voices" in the board room. The male voice "sounded more agitated" and, if it were her being spoken to like that, she would "feel very uncomfortable." She could not hear the words, but it sounded "quite heated," and she would have "felt uncomfortable." Mr Briggs insisted in cross-examination that his evidence that there was nothing factual to corroborate either side because Ms Spivey "heard muffled voices" was correct because, "she says she couldn't hear the words."
30. Mr Briggs's evidence was that the statements from the Claimant and PR were aligned, in that they had the same content, but not in the actions and behaviours. Mr Briggs felt that they were both credible in their recall and were both reciting their true recollection and perception of events. They could not factually prove the Claimant's complaint one way or the other, so they could not uphold it.
31. One of the Claimant's complaints of sex discrimination is about Mr Briggs asking her whether she had smirked at PR and whether that could have caused his response. Mr Briggs did not address that allegation in his witness statement, beyond saying that he did not "try to make excuses for PR's behaviour." The Claimant asked him about it in cross-examination. He accepted that he had asked the question, heavily caveated. He said that he had done so because PR had told him that the Claimant was smirking at him and goading him. PR had indeed told him that. The Tribunal found that this was the reason Mr Briggs asked the question that he did and that he would have asked the same question if the Claimant had been male. Mr Briggs obtained initial accounts from the Claimant and PR and then he explored those accounts. We accepted his evidence that this is why he asked the question.
32. Mr Briggs and Mrs Mackereth decided to give the Claimant and PR the outcome at the same time in the same meeting. That was to take place on Friday 12 August 2022. The Claimant was told about the meeting in a telephone call from Mrs Mackereth. Mrs Mackereth did not tell the Claimant that PR would be present. When the Claimant went to the meeting room, Mrs Mackereth was there but not Mr Briggs. Mrs Mackereth told the Claimant that he had gone to get PR. That was the first the Claimant knew about PR being in the meeting. The Claimant's evidence

was that the prospect of being required to attend a meeting with PR, who had recently shouted and behaved aggressively towards her, with no idea if she had any support from the company, panicked her and she left the site. Mrs Mackereth made a note that the Claimant said that she felt “hijacked” as she left the room.

33. In answer to a question from the Tribunal, Mr Briggs gave evidence that he considered at the time whether to give the Claimant advanced warning of the joint meeting. He did not want to give her a period of time to dwell on it and cause distress. He wanted to read the outcome to them both at the same time, to ensure that they were clear that the message was delivered fairly. He could have given them time to prepare but that could have “created speculation.” He wanted to make sure they were given the same message. He was asked why making sure they were given the same message required the Claimant not to be given advanced notice. He said that he did not want her speculating around what the outcome would be and being distressed. When asked if he had reflected on the Claimant’s ADHD and its possible impact, he said that he, “did not want to give the uncertainty.”
34. The Tribunal was struck by what Mr Briggs told Mr Townsend about this (see below). Mr Townsend asked why Mr Briggs wanted to get them both in a room at the same time. Mr Briggs told him that it was “because they were both of the same level, and team, we wanted the message to be consistent, and show that there was no leniency on either side.” In cross-examination, it was put to Mr Briggs that the Claimant managed PR, and that she earned £98k and he earned £63k. He was asked why he had told Mr Townsend that they were at the same level. He said they had “the same level of experience.” The Tribunal found that an unconvincing explanation. They were clearly not at the same level, and worked in different fields. We also note at this stage that the Claimant asked Mr Briggs in cross-examination why he was referring to “no leniency on either side” when she was not under any investigation in relation to her behaviour. He said that they “had statements on both sides and wanted to be clear they wanted a zero tolerance approach to poor behaviour.” He confirmed that the Claimant was not being investigated, only her original concerns about PR.
35. When Mr Briggs found that the Claimant had left the site he telephoned her. She put to him in cross-examination that he was quite agitated and annoyed she had left the site. He was talking about how he was going to be late for Manchester. Mr Briggs said that he did not believe he was agitated, but he did make the point that he had come from Leeds to Malton so that the Claimant could have a resolution. There are notes of the call. Mr Briggs referred to them in cross-examination as “my note” but they appear to form a part of a series of notes prepared by Ms Mackereth on 12 August 2022 and it seemed to the Tribunal that they were her notes. They record a fairly lengthy conversation, with the Claimant saying repeatedly that she felt panicked and hijacked and that if she had had some advanced warning, even that morning, she might not have done. Mr Briggs said that they could have moved to a different room or changed the environment. He said that he heard what she said about feeling uncomfortable, but “don’t agree that means you need to leave the site. I’ve come in specially to try and resolve this for you both today. I’m supposed to be in Manchester.” The Claimant repeatedly said that the problem was with not having any advanced notice and feeling hijacked. Mr Briggs said at one point, “We can’t have a situation where you are premediating the outcome. That’s why we said this was a 12-midday meeting without being specific. We can’t pre-inform what the discussion is about before we get into it.” Shortly afterwards the Claimant said that she had felt uncomfortable and Mr Briggs said

“Then you left the site and we can’t do anything about it now.” In the light of the content of the notes, the Tribunal found that Mr Briggs was annoyed that the Claimant had left the site.

36. When Mr Briggs made the comment about being unable to do anything about it now, the Claimant offered to return to the site and she did so.
37. A meeting then took place in the boardroom at 12:48pm. Mr Briggs told the Claimant and PR that his findings were inconclusive because they had each interpreted the same situation very differently. Everyone was entitled to their own interpretation and a person’s truth was valid as to what they saw and heard. He was going to have a one to one with each of them straight after the session, to provide some additional feedback and advice to them. They might want to think about how their conduct was interpreted by other people and how they could both approach this differently in the future. He said that there was a very firm line that aggressive behaviour would not be tolerated and that he expected both the Claimant and PR to set an example. He concluded, “The main take away here is that any allegation like this will be taken seriously, and we will investigate to our full potential. Unfortunately, in this case we have an inconclusive finding. This is a firm line – aggressive behaviour is not tolerated and is unacceptable in the workplace.”
38. Mr Briggs then asked PR to leave the room, and continued the meeting with the Claimant present. Mrs Mackereth remained taking notes. The Claimant expressed her disappointment that Mr Briggs had sat on the fence. He asked her if she felt listened to and she said she would need to reflect. He turned the discussion to ideas for recovering trust, how to protect the Claimant in the workplace. He mentioned how she managed PR and said that he had some feedback for her about what could be done differently. During the discussion, Mr Briggs told the Claimant that he was “super disappointed” she had left the site. They could have dealt with it without her leaving site and it was “not the behaviour he expected.”
39. The Claimant’s evidence is that Mr Briggs told her that they needed to deal with her behaviour, like leaving the site, in her PDR. Mrs Mackereth’s notes of the conversation record the Claimant saying that it had been a while since they had had a PDR and they needed to go back and look at things that needed working on. The Claimant accepted in evidence that she may have spoken about her PDR during the conversation, but she said that Mr Briggs had used the phrase, “we need to deal with that behaviour in your PDR.” In cross-examination, it was put to Mr Briggs that this was what he had said to the Claimant. He said that he did not recall. He was asked whether he was saying that it did not happen, or whether he was saying that it might have or might not have, but he could not remember. He said that he could not remember. In those circumstances, the Tribunal accepted the Claimant’s evidence that Mr Briggs told her they would need to deal with her behaviour in leaving the site at her PDR.
40. The Tribunal found Mrs Mackereth’s evidence one-sided and designed to paint the Claimant in an unfairly negative light. She clearly feels that everything possible was done to support the Claimant and that whatever the Respondent had done, the Claimant would have said it was wrong. She says as much in her witness statement. Her evidence about the attempt to hold a meeting with the Claimant and PR without giving the Claimant any advanced warning was a striking example. She said that she thought it would have been worse if they had told the Claimant in advance that PR was going to be in the meeting. The Claimant and PR worked in the same room, and she had never said that was unacceptable. The procedure they followed was normal. The Claimant was treated no differently to anybody else. In a later meeting the Claimant said that she would like to have a

conversation with PR in the same room. She concluded, "This is just another example of [the Claimant's] contradictory nature and an example of why she would've always thought that any given approach was wrong." Mrs Mackereth, an experienced HR professional, knew at the time that the Claimant had ADHD. She knows now that she has autism. She knows that the Claimant's complaint at the time, and now, is not that she was asked to have a conversation with PR, but that it was sprung on her. She must know that the Claimant's subsequent grievance about this was upheld. Even if there were pros and cons of both approaches, there is obviously a risk in springing a meeting of this kind, in this context, on somebody with ADHD and autism. The Claimant did react badly to it. For Mrs Mackereth to characterise the Claimant's concern as being just another example of her contradictory nature, and an example of why she thought whatever they did was wrong, points to Mrs Mackereth not being able to be objective or fair about the Claimant.

41. That discussion had taken place on the afternoon of Friday 12 August 2022. Mr Briggs accepted in cross-examination that he expected the Claimant was feeling disappointed about the outcome of the investigation. At 05:26am on Monday 15 August 2022 he emailed her, "Morning, Are you submitting your appraisal/PDR notes via the Core? Best, ..." That seemed to the Tribunal consistent with his prioritising addressing the Claimant's behaviour, even though it was she who had raised concerns about PR's behaviour, which Mr Briggs had investigated. The Claimant's evidence was that Mr Briggs came into the office she shared with John that morning. He spoke to John and did not speak to the Claimant, then left. In cross-examination, Mr Briggs said, "That could have been a version of events." The Tribunal took that to mean that he accepted he had gone into the Claimant's office and not spoken to her. The Claimant replied to Mr Briggs's PDR email at 10am to say that she would do it tonight so he could review it tomorrow, if that was ok. Mr Briggs did not reply. At 12:30pm she asked him if he had time to follow up from Friday that afternoon. He said that he did, and they spoke. The Claimant told Mr Briggs about her experience of domestic abuse during their discussion. She said that she felt listened to by him and felt that he was quite emotional himself during the conversation.
42. Mr Briggs evidently then took advice. He emailed the Claimant the following day – 16 August 2022 – asking her to submit the issues she had raised with him in writing, so that he could consider all her outstanding points. The Claimant did not provide a written list, but she did meet Mr Briggs and Mrs Mackereth the next day (17 August 2022) and went through her outstanding concerns with them. In fact, she made a written list for her own record, which the Tribunal found was broadly reflected in the discussion the next day.
43. Mrs Mackereth made notes of the discussion on 17 August 2022. They were not seen or approved by the Claimant. Mr Briggs asked the Claimant to recap their conversation from the previous day. The Claimant referred to a number of points, and the notes include the following:
 - 43.1. The Claimant questioned whether anyone apart from PR and the Claimant had been spoken to in the investigation of events on 8 August 2022.
 - 43.2. The Claimant questioned whether Ms Adams had been spoken to, to explain her view of PR's conduct in the meeting on 5 August 2022. Mr Briggs then agreed to do so. The Claimant confirmed that she was saying there was a breach of acceptable behaviour from PR on that occasion too, namely the way he spoke to the Claimant in front of Ms Adams.
 - 43.3. The Claimant told Mr Briggs that she had written everything down as he requested, and shown it to her partner. He had advised her that if she handed it over it would basically be like handing her notice in.

- 43.4. The Claimant expressed concern that the outcome of the process did not reflect reality, and about how she would move forward with PR.
 - 43.5. She said that if Mr Briggs had not agreed to speak to Ms Adams she would be seeking legal advice because she was not happy with the process.
 - 43.6. Mrs Mackereth asked the Claimant whether she thought mediation with PR and Mr Briggs might help and she said that she thought there was no other way.
 - 43.7. Mr Briggs mentioned that the Claimant had raised a concern yesterday about her ability to manage the rest of the team. She said that it was that people knew something was not right with her and PR. She was not speaking directly to him at the moment. She thought she might email him.
 - 43.8. The Claimant also mentioned a colleague called W. She said that she felt like she disproportionately had to put effort in with members of the team, and her perception was that it was because she was a woman. W's behaviour was dismissive and unhelpful. Mrs Mackereth asked for some specifics. The Claimant gave a detailed example in relation to pork pricing, and asked the question whether Mr Briggs or other male colleagues would get the same response if they asked W for help.
 - 43.9. The Claimant had messaged Mr Briggs earlier that day asking to cancel her PDR meeting and they had cancelled it. Mr Briggs said in the meeting with Mrs Mackereth that this was "disappointing". He had seen it as an opportunity to work with her and challenge her on some ways of working. He did not feel her position was fraught or endangered. Not to have her PDR was disappointing.
 - 43.10. The Claimant commented that she was trying to understand whether her feedback was because she had to put disproportionate effort in to get stuff done, or if it was something behavioural in her. She mentioned her ADHD.
 - 43.11. The Claimant returned to the PR situation. She said that she felt he was showing a complete lack of ownership, and was asking why he was allowed to do it. Mr Briggs asked the Claimant whether she thought PR was owed an apology. She said that he was owed one from the business but not from her. She had done what she was asked in recruiting the new person.
 - 43.12. Mr Briggs repeatedly challenged the Claimant on how she had managed PR.
 - 43.13. Mr Briggs asked the Claimant more than once to put her outstanding issues in writing, so that he could be sure he had addressed everything.
44. After the meeting the Claimant sent her PDR preparation documentation and meeting minutes from Friday 5 August 2022 to Mr Briggs. The Claimant's PDR documentation included a section on feedback for her manager (i.e. Mr Briggs). She had written that he should be "start" being more specific with his feedback and "continue" listening and trusting her to do her job. She wrote that when she discussed things with Mr Briggs she always felt like he was really listening and hearing what she was saying. This had helped with frustrations she had around site culture. She gave an example of Mr Briggs showing genuine understanding and flexibility to get the best out of her, and she said that she had very much appreciated his management style. In cross-examination, she said that she had written the document on the evening of 15 August 2022, after they had just had the conversation in which she felt listened to by Mr Briggs. She felt dejected when she then got his email but did not amend the notes.
45. The Claimant showed Mr Briggs in cross-examination what he subsequently said to Mr Andrew in her disciplinary hearing (see below) about their conversation on 15 August 2022. He told Mr

Andrew, "She came storming into my office with about 20 issues. Following discussion [Mrs Mackereth] asked her to put these in writing. She refused to put these in writing. Entirely fabricated." She asked him how he could describe this as her "storming into his office" when they had arranged a meeting in advance. He said that it was a reflection of her body language when she came in. Having regard to the fact that (1) the conversation on 15 August 2022 was a planned meeting; (2) the Claimant met Mr Briggs and Mrs Mackereth the following day and talked through her issues; (3) Mr Briggs said more than once that the reason he wanted it in writing was to ensure for the Claimant that everything was covered off; (4) the Claimant provided an oral explanation of why she had not provided a written list; and (5) no evidence was given of 20 fabricated complaints raised by the Claimant on 15 August 2022, it did not seem to the Tribunal that Mr Briggs's characterisation of these events when speaking to Mr Andrew was fair or balanced. That was one, typical, example of what appeared to the Tribunal to be a tendency on Mr Briggs's part to seek to portray the Claimant in an unfairly negative way.

19 August 2022: Allegation of comment made by Mr Briggs

46. A female member of the Claimant's team was dealing with a tender process. On 18 August 2022 the Claimant emailed Mr Briggs following a discussion with the team member. She told Mr Briggs that the tenders had been returned. For one product there was no saving and for the other it was less than 0.5p, so not currently worth moving. They spoke about it the next day. The Claimant says that Mr Briggs did not accept that they were unable to get a better price and asked the Claimant, "Is she [the female colleague] replying straightaway, lads, lads, not good enough, go again?" The Claimant's evidence to the Tribunal was that she found Mr Briggs's assumption that they were not able to get better prices "off the lads" insulting, rude and derogatory. She pointed out that one of the people they were negotiating with was also a woman. Mr Briggs's evidence to the Tribunal was that he did not believe he used any phrase that alluded to the fact only men can negotiate. He did not deny that he used the word "lads" at work, but he denied the "insinuation" that he used the word with repetition or to present gender bias. He said that it was a colloquial term he might use interchangeably with other non-gender words like "team" or "squad." In cross-examination, Mr Briggs said, "To my knowledge I didn't use the repetition of lads, but I may have used it once. It was not a gendered use of the word. I used "lads" meaning "team" or "squad."" Mr Briggs said that he would not treat a man differently. The Claimant's evidence was that Mr Briggs used the word twice. She accepted in cross-examination that "possibly" he was using it as a collective colloquialism, like squad or team. She accepted that he sometimes used the word "team" but not "squad." She described listening to Mr Briggs's comment and thinking, "Has he seen the profit and loss? Does he think I don't know how to negotiate?"
47. The Tribunal had no doubt that the Claimant genuinely believed that Mr Briggs used the word "lads" twice. Mr Briggs accepts that he used it once and the Tribunal accepted his evidence that he did not believe he had used it twice. However, the Tribunal preferred the Claimant's evidence that he used the word twice. Her account was clear and consistent. Mr Briggs did not have a clear recollection. He said that he "may have" used the word once, but the Tribunal found that he knew that he had done so - there was a marked contrast with his denial in relation to the later occasion (see below). In those circumstances, the Claimant's account was preferred. The Tribunal also found that this use of language was unwanted by the Claimant, given her account of how it made her feel at the time, and that it was related to sex. While Mr Briggs may say that he used the word as a general term for a group of people, it is nonetheless a gender specific word for a group of

male people. The Tribunal found that asking whether a (female) negotiator had gone back to the client to say “lads, lads, not good enough, go again” did carry with it the implication that the people negotiating would be male, and that the female colleague was not being tough enough with them. The Tribunal noted that the Claimant had referred to being given the complimentary nickname “the inflation queen.” However, her lack of objection to that, complimentary, use of gender specific language does not mean that she did not or could not object to other, non-complimentary, use of gender specific language.

48. The Claimant then went on holiday for two weeks.

5 September 2022: Allegation of further comments made by Mr Briggs

49. On 5 September 2022, after the Claimant’s holiday, there was a meeting to prepare for a customer meeting. Mr Briggs and several members of the Claimant’s team were there. The Claimant says that during the meeting Mr Briggs asked, “Should I attend [the customer meeting] so they know we are serious if someone important is there?” The Claimant said that she felt embarrassed in front of her team and said something like, “I’m going” to make the point that she was important. She believed that Mr Briggs would not have made such a comment if she were a man. She said that in the same meeting Mr Briggs also referred again to getting a “better price off the lads” when discussing bacon prices. This annoyed her. She wanted to shout that women can negotiate too. Mr Briggs’s evidence in his witness statement was that he had not referred to “getting on at the lads somewhere” with reference to bacon pricing. This was a discussion between the Head of Procurement and a company he had had no dealings with, in his time at Yorkshire Baker. Further, the account manager there is female. In cross-examination, Mr Briggs again said that he not referred to getting a better price from the lads at this meeting. He agreed that he had said something about going to the meeting so that somebody important was there. He said that they were trying to secure a new client and were aware that the client felt that its incumbent contractor did not spend enough time there. His view was that if he went that would show enough presence to overcome this weakness. He did not accept that the implication was that the people already there were not important enough. He said that he wanted as many people there as possible, regardless of gender. It was put to the Claimant in cross-examination that this was Mr Briggs’s reason for talking about somebody important being at the meeting. She said that if it was it would have been helpful if he’d shared that at the time. She did not think that was what he was doing. She said that Mr Briggs had made the reference to getting a price off “the lads.”
50. The Claimant made this allegation about Mr Briggs referring to getting a better bacon price “off the lads” for the first time in her written grievance in October 2022 and has consistently maintained it since. Mr Briggs vehemently denies using the expression on this occasion, and indeed says that the Claimant has deliberately and maliciously invented the allegation. The Tribunal preferred the Claimant’s evidence. We noted Mr Briggs’s evidence that he uses the expression “lads” as a colloquial expression for a group, alongside the words “team” and “squad.” If that is right, it seems to the Tribunal that there is no particular reason why he would remember whether or not he used the expression in a particular meeting. To him, it is a neutral expression. Likewise, the fact that the account manager at the client was female would be equally irrelevant. Given the Claimant’s clear and consistent recollection since October 2022, the Tribunal preferred her evidence that Mr Briggs referred to getting a better bacon price “off the lads” on this occasion. As with the previous use of the word “lads”, the Tribunal found that this was unwanted by the Claimant at the time, and that it was related to sex.

51. After the meeting, one of the Claimant's colleagues, BC, told her that she had felt uncomfortable in the meeting because she felt that if Mr Briggs asked questions, it came across as accusatory rather than teasing out an answer. The Claimant asked if BC was happy for her to discuss this with Mr Briggs at her next one to one and BC agreed. In the event, the Claimant developed a migraine and was unable to attend the client meeting, which took place on 12 September 2022. We return to this below.

7 September 2022: Conclusion of the informal investigation

52. The Claimant was due to have a one to one with Mr Briggs on 7 September 2022. Mrs Mackereth changed the meeting to "grievance outcome." At the meeting, Mr Briggs had a letter headed "Grievance outcome". It referred to the Claimant attending a grievance hearing on 9 August 2022, set out Mr Briggs's conclusions and then told the Claimant that she had the right to appeal against his decision within 5 working days.
53. Mrs Mackereth made notes of the meeting. Again, they are not agreed notes. They indicate that Mr Briggs began the meeting by telling the Claimant that she had been invited to a meeting for an update on the grievance they had been investigating. He said that they had not found anything unprofessional in PR's behaviour on Friday 5 August 2022 that could be proven. Ms Adams had not identified any inappropriate or unprofessional behaviour. The Claimant asked why Mr Briggs was referring to a grievance when she had not raised a formal grievance. Mrs Mackereth said that Mr Briggs had dealt with the issue very seriously, as he would a formal grievance. The Claimant expressed her disappointment at the outcome and there was a discussion of that. Mr Briggs repeated that there were two versions of events, and he could not find one way or the other what had happened. There was also a discussion of how to move forward. Mr Briggs then asked the Claimant if she wanted him to go through the outcome letter and she asked him to read it to her so that she did not read it wrong. The letter referred to the Claimant not being accompanied. She pointed out that she had not been asked if she wanted a representative with her. The Claimant again said that she had not raised a formal grievance and had not been told that a formal grievance process was being followed. After going through the letter, Mr Briggs turned to a discussion of what would happen next. The Claimant agreed that it would be best for everyone to sit in a room together to talk about it and move on. Mr Briggs and Mrs Mackereth agreed to make some changes to the wording of the letter and reissue it.
54. The Claimant had by this stage read the Respondent's grievance procedure. She was aware that the first stage involved an attempt to resolve matters informally. If that did not succeed, or where the gravity of the grievance required it, employees could raise a formal grievance. When that happened, employees had a right to be accompanied at any stage. The grievance was to be raised in writing. There would be a formal investigation meeting. Further investigations might be carried out. The employee would receive a written outcome. The employee had a right to appeal if they were dissatisfied. That was to be done "within one week of being informed of the outcome."
55. It appeared to the Tribunal that Mrs Mackereth and Mr Briggs had either become confused about the process, or had believed that they could simply move to the formal stage of the process. However, the Claimant had not raised a formal, written grievance. Rather, Mr Briggs had decided to investigate the concern she had raised. Under the policy, if the Claimant was dissatisfied with

the informal outcome, she was entitled to raise a written grievance. She could have that dealt with under the policy and would then have the right to appeal against the outcome. Mrs Mackereth and Mr Briggs were clearly proceeding at this stage as though the Claimant had already raised a formal, written grievance. That is why the outcome letter they had drafted was headed “grievance outcome”, referred to being accompanied at meetings, and referred to a right to appeal against the outcome. In cross-examination by the Claimant, Mr Briggs and Mrs Mackereth confirmed that they had not been following the formal stage of the grievance process but were at the informal stage. However, they do not appear to have acknowledged this before the Tribunal hearing, nor to have accepted that the Claimant’s criticism that they were not correctly following the grievance process was justified.

56. In his witness statement, Mr Briggs said, “The Claimant states that I did not follow the grievance process, but I felt I listened to HR’s advice and followed due process. It was raised informally to me, but as part of our grievance process it can be escalated and I was clear in the opening discussion that after two informal discussions the previous day that this would be a formal process which was acknowledged by the Claimant.” Mr Briggs appeared even at that stage to be suggesting that his investigation had been carried out under the formal part of the grievance process, with the Claimant’s agreement. In cross-examination, Mr Briggs eventually accepted that it remained at the informal stage of the process throughout his involvement.
57. In her witness statement, Mrs Mackereth appeared not to appreciate that the Claimant’s criticism was that she had not yet raised a formal grievance but was being presented with a formal grievance outcome. She seemed to think that the Claimant’s criticism was essentially that her concern was not taken seriously enough. She went on to criticise the Claimant for “disputing every line of the letter” when Mr Briggs went through it in the meeting on 7 September 2022. This, of course, included disputes about the heading of the letter and about the reference to being accompanied at meetings. The Claimant’s criticisms were valid in this respect. In cross-examination, Mrs Mackereth confirmed that the informal part of the grievance process was followed. Of course, that meant that what the Claimant should have been told on 7 September 2022 was that she was entitled to raise a written grievance under the policy, not that she was effectively now at the final stage of the process and had 5 days in which to appeal.
58. It seemed to the Tribunal that their failure to understand that the Claimant was rightly questioning whether the grievance policy had been complied with also contributed to Mr Briggs’s and Mrs Mackereth’s increasingly adverse view of the Claimant.
59. Dealing with the substance of Mr Briggs’s decision, he had by this time spoken to Ms Adams. Mrs Mackereth’s notes of that meeting record that Ms Adams accepted that she had not handled the job situation with PR well. She said that when they were discussing the new hire, “there was no aggression used but I could tell that he [PR] was pissed off.” She said that she could feel the tension, but it was not inappropriate. PR kept coming back to the salary of the new hire. She thought that it had “calmed down a little bit” but PR said to her in the car park again about the new hire’s salary. Ms Adams said that PR was not unprofessional or inappropriate on the Friday, but that it was tense and she could tell there was more to it. When she found out that he had not spoken to the Claimant on Monday morning, was when she realised “he was more angry than she thought.”

60. Mr Briggs's conclusions, as set out in the "grievance outcome" letter, were that initially he found that no evidence could be found corroborating the Claimant's or PR's version of events on 8 August 2022, so the outcome was inconclusive. Mr Briggs also felt that the way PR's job role had been communicated to him was inadequate and that this "may have led to him having an emotional response" when the Claimant asked him how he was feeling. Having spoken to Ms Adams, that remained Mr Briggs's view. Further, he found that PR did not display inappropriate or unprofessional behaviour on 5 August 2022. That was based on what Ms Adams had said.
61. The Claimant went home from work and developed a migraine. That developed into an episode of severe emotional distress, with meltdowns, uncontrolled crying and violent shaking. She was able to access psychotherapy through her private healthcare package. She was off work from 8 September 2022.

12 September 2022: Feedback from the Claimant before the client meeting

62. As mentioned above, the client meeting for which preparation had taken place on 5 September 2022 took place on 12 September 2022, but the Claimant was not able to attend. The evening before, the Claimant messaged Mr Briggs to say that she would not be in tomorrow. She had some feedback from the team that she had planned to share in her one to one which did not happen, but her advice would be that the team knew what they were doing with the client meeting and her recommendation was that he might be best to leave them to it, though if he wished to attend it would not be an issue. Mr Briggs replied to say that he would attend the meeting to ensure the team had support and the client had the comfort of a senior presence. He asked the Claimant whether it would be helpful for him to know the feedback before the meeting and, if so, whether she was comfortable sharing it with him. He offered to speak in person or receive the feedback over WhatsApp. He said that he was there to support the team, so if there was something that would be helpful to know beforehand, he would appreciate if she could share. The Claimant then replied that there had been a few comments around how he changed the dynamic of the room and lowered the energy. One person had specifically requested her to try to get him not to attend. Another had said that when they were questioned it came across as accusatory. The Claimant felt that Mr Briggs being there would have the opposite effect, as the team would feel additional pressure. If he insisted on going, she recommended that he car share to build relationships on the journey and make people feel relaxed.
63. The Tribunal noted that during the grievance process (see below) BC confirmed that at that time she had experienced questions from Mr Briggs not as teasing out information but as being challenged. She said that after the car journey and the client meeting, Mr Briggs explained his communication style and they all understood each other now and had a good working relationship. The Claimant also provided the Tribunal with copies of WhatsApp messages she had sent to two team members on the morning of 12 September 2022. She let them know that Mr Briggs was coming to the meeting, wished them luck and encouraged them to keep their confidence high with the client. The messages were encouraging and supportive and evidently intended to ensure the client meeting went as well as possible. They were consistent with a manager trying to support colleagues who had raised concerns about Mr Briggs.
64. In his witness statement, Mr Briggs was critical of the Claimant for the WhatsApp messages she sent him in the evening of 11 September 2022. He said that he perceived the Claimant's sharing of negative feedback as "a deliberate act to destabilise my confidence given the way the message

was presented as opposed to it being constructive criticism.” He said that throughout his interactions with the Claimant from this point onwards he perceived there to be a malicious undertone, which was distressing. We have referred above to the fact that Mr Briggs appeared to have developed a negative perception of the Claimant, and this evidence was consistent with it. In cross-examination, the Claimant showed him the WhatsApp messages she had sent the team that morning, and asked whether he still felt that she was being malicious. He said yes, then expressed doubt about whether the Claimant wanted to deliberately destabilise him. Given his somewhat confused answer, he was asked again whether, having seen the messages, he was still of the view that the Claimant was acting maliciously rather than to secure the best result for the team. He said that he was not sure. He said that it had created a crisis in his home that evening. The Tribunal noted that the Claimant’s initial message simply mentioned feedback and encouraged Mr Briggs not to attend the meeting. It was only when he sought to persuade her to provide the specific feedback that she did so. The feedback she then provided appears to have been short and factual. Her messages to other team members the following morning are consistent with her trying to ensure the meeting went as well as possible. Further, she did not know until late on 11 September 2022 that she would not be well enough to attend work the next day. We note, too, that a direct style of communicating is a feature of the Claimant’s autism. The Tribunal found that the Claimant was not acting maliciously when providing the feedback. She was trying to ensure that the important client meeting went well for the team. Mr Briggs was the Site Director. His reaction to these two short messages seemed to the Tribunal to be disproportionate (based on what he knew at the time). There appears to have been no reflection since on the Claimant’s ADHD and autism as a part of the context. As he said in his own statement, Mr Briggs evidently perceived malicious intent in the Claimant from this point onwards. That inevitably affected his approach to her.

Initial sick absence

65. The Claimant informed Mr Briggs that she would be absent from work on 8, 9 and 11 September 2022. She produced doctor’s notes after her self-certification period ended. Mr Briggs exercised his discretion to pay the Claimant her full contractual salary when her sick absence started. A series of fit notes signed her off work with work related stress. On 17 November 2022, she was signed off until 30 December 2012.
66. Mr Briggs’s evidence was that the Respondent supported the Claimant during her absence by scheduling welfare meetings, but that the Claimant was not always open to engaging in the welfare process. In cross-examination he accepted that he had just tried to organise one welfare meeting, not multiple meetings. Further, the Claimant showed him their WhatsApp exchange in October 2022, in which she was offering a range of dates and times for the meeting. It was arranged for 2 November 2022. The Claimant asked how she was “not engaging in the welfare process.” Mr Briggs said that she had said that she did not want him to contact her. That had happened on 27 September 2022. When Mr Briggs had asked if more contact from him would be beneficial, she had answered to say that on medical advice she did not think it was beneficial for Mr Briggs or Mrs Mackereth to contact her currently. It was clear from the subsequent WhatsApp exchanges that the Claimant had continued to send her sick notes to Mr Briggs and to engage with him about her absence, including attempting to schedule a welfare meeting with him, after that. The Claimant lodged a written grievance on 31 October 2022 (see below). As a matter of courtesy she emailed Mr Briggs on 1 November 2022 to let him know that she did not agree that the issues he and Mrs Mackereth were aware of had been handled correctly and that she had now submitted

a formal grievance. She asked whether he still wanted to go ahead with the welfare meeting. Mr Briggs replied saying that they should postpone the meeting. Again, Mr Briggs's evidence – that the Respondent supported the Claimant by scheduling welfare meetings and that she was not always open to engaging in the welfare process - appeared not to be a fair characterisation of what happened.

31 October 2022: Grievance

67. The Claimant decided to raise a written grievance. She had evidently spent significant time going through all her emails and messages before doing so. It seemed to the Tribunal that this was consistent with her autism, in particular her high justice sensitivity, and with her ADHD, in particular her tendency to become hyperfixated on issues.
68. The grievance started by stating expressly that the Claimant had not previously raised a grievance. She referred to her dyslexia and ADHD. The letter set out the background events in detail, and then set out 20 specific numbered grounds of complaint. The grievance was detailed but it was clear and well-structured. It included complaints of discrimination and mistreatment, so it inevitably made criticisms of individuals, but it was written in measured terms. In summary, it covered:
 - 68.1. Concerns about the handling of PR's job change by senior managers, giving rise to the situation that occurred on 8 August 2022.
 - 68.2. The events of 8 August 2022.
 - 68.3. The Claimant's belief that she was scapegoated for PR's actions, including by Mr Briggs suggesting they were a consequence of poor management on her part. Victim blaming by Mr Briggs, with questions about whether she had provoked PR by "smirking."
 - 68.4. A lack of support from managers and peers after 8 August 2022.
 - 68.5. Mr Briggs and Mrs Mackereth attempting to ambush her on 12 August 2022 by bringing PR into a meeting with her.
 - 68.6. A failure to take into account that she was a domestic abuse survivor in that context.
 - 68.7. Mr Briggs indicating that leaving the site on 12 August 2022 was a performance failing on her part.
 - 68.8. Mr Briggs rushing his investigation and failing to take into account all the points she had raised.
 - 68.9. Mr Briggs and Mrs Mackereth seeking retrospectively to dress up their process as a grievance process, despite the fact that she had not been told that a grievance process was being followed, and was not given the right to be accompanied at meetings.
 - 68.10. Being told that she was not allowed to discuss what had happened with anybody.
 - 68.11. The Claimant's belief that she had been treated unfairly as a woman and that PR had been protected, his feelings prioritised, and his behaviour not properly dealt with.
 - 68.12. Mr Briggs consistently using the word "lads" when communicating how being assertive, direct and combative is required to get better prices when negotiating. The Claimant said that this was inconsistent with other feedback but also insulting to her as a woman.
 - 68.13. Mr Briggs had undermined her in front of her team by saying that he would come to a meeting with a potential customer, so that they knew they were serious if someone important was there.

- 68.14. Mr Briggs contacting Mr Hogarth when the Claimant reported what SM had said, when the Claimant had received no support when SM shouted at and insulted her.
 - 68.15. Mr Briggs and Mrs Mackereth providing cryptic and inconstant feedback, despite her ADHD.
 - 68.16. A general lack of support for her ADHD, exemplified by the OH nurse's failure to provide any material assistance and what the Claimant referred to as Mrs Mackereth's admission that she had not heard the word "neurodiverse" before.
 - 68.17. Double standards. When the Claimant was promoted, PR incorrectly spread rumours that the Claimant was sleeping with the boss and no action was taken, whereas Mr Briggs had told the SLT that any conversations or gossip about a relationship of Mrs Mackereth's must be shut down immediately.
69. The Claimant concluded her grievance by asking who would deal with it and suggesting that it needed to be somebody independent of, and no less senior than, the people complained about. She also asked for confirmation of the likely timescale for concluding the process. She sent her grievance by email to Miss Spencer on 31 October 2022. She did so because Mrs Mackereth was named in it. Miss Spencer is the Group HR Director. Miss Spencer was on annual leave when the grievance arrived. She emailed the Claimant on 2 November 2022. She thanked the Claimant for her email, explained that she had been on annual leave and told the Claimant that she would respond to her requests at the end of the letter by the end of the week. She said that it would need some considered thought to arrive at a timescale. The Claimant felt that Miss Spencer's response was dismissive. She explained in cross-examination that she had sent a long and serious grievance. When she had previously raised a concern, Ms Maxwell had called her. Her expectation was that Miss Spencer would pick up the phone. She felt that Miss Spencer's final sentence had an undertone that the grievance was very long. She wanted Miss Spencer "to be better." Miss Spencer's response was not warm or empathetic, but the Tribunal did not think that it was, objectively, dismissive. It was business-like.

November 2022 to December 2022: events before the grievance hearing

70. Miss Spencer appointed Mr Townsend to investigate and determine the grievance. He is a group HR Controller, reporting to Miss Spencer. He is junior to Mr Briggs.
71. Mr Townsend wrote to the Claimant on 4 November 2022 inviting her to a grievance meeting to discuss her grievance "in relation to her experiences at work and around Mr Briggs/Mrs Mackereth." The Claimant replied on 8 November 2022. She provided a gmail address because she was off work. She clarified that her expectation was that they would discuss all work experiences raised in the grievance, including in relation to PR and Ms Maxwell. She said that, with respect to Mr Townsend, she could not have confidence that somebody junior to Mr Briggs and Ms Maxwell would feel able to find against them. She explained that it was her understanding that the person hearing the grievance should be sufficiently senior to uphold it if appropriate. She said that she was signed off sick, but requested that the hearing go ahead on the proposed date. She asked to be accompanied by BC, with whom she had already made arrangements. She asked to be provided with any documents Mr Townsend wanted to discuss, in advance, and also with copies of the notes taken by Mrs Mackereth on 9, 10 and 17 August and 7 September 2022. She referred to reasonable adjustments for ADHD and dyslexia, requesting a written agenda and list of questions in advance.

72. Mr Townsend replied on 9 November 2022. He said that the scope of the grievance was taken from the Claimant's letter, and that consideration would also be given to anything new that was raised verbally. However, what he was "not going to reconsider" were any points that had been previously ventilated and determined in any previous grievance process. If she had "new points" to raise in relation to PR and Ms Maxwell, he would of course investigate and determine those.
73. Pausing there, as he accepted in cross-examination, Mr Townsend's approach at this point was wrong. Precisely what the Claimant had feared would happen had happened – Mr Townsend was approaching matters as though she had already raised a formal grievance in relation to the PR events and that had been determined. That was, itself, one of the complaints in the grievance. Mr Townsend did, ultimately, deal with those matters too. But there appears to have been no express acknowledgment at the time that his initial view was incorrect and that the Claimant was right to challenge that (see below).
74. Returning to Mr Townsend's response, he told the Claimant that he had delegated authority to reach a decision, regardless of the job title of those named in her grievance. He provided Mrs Mackereth's meeting notes. (The Tribunal found that this was the first time the Claimant saw them. Mrs Mackereth's oral evidence that she "believed she would have sent them" to the Claimant was wholly unconvincing. If she had done so, the Tribunal would have expected to see an email trail. Further, the Claimant's correspondence about the notes would have made no sense.) Mr Townsend said that he would not normally provide a written agenda and list of questions, but asked whether the Claimant would consent to an OH report to advise on these and any other adjustments.
75. The Claimant replied the following day. She thanked Mr Townsend for his email "most of which was very constructive and helpful." She said that she was comfortable taking it as read that he would not feel intimidated about making critical findings about those senior to him. She consented to an OH referral. She then went on to say that Mr Townsend had undermined her confidence in the process by telling her that he was not going to reconsider points that had previously been ventilated. She quoted from his letter and underlined that sentence. She said that, never having previously raised a grievance, she naturally thought that Mr Townsend was referring to the informal investigative process carried out by Mr Briggs and Mrs Mackereth, about which she had specifically complained in her grievance. She set out the relevant parts of the grievance, including her explicit complaint that Mr Briggs and Mrs Mackereth had sought to retrospectively dress up the process they had followed as a grievance. She explained that Mr Townsend's letter had made her think that either he had not read her grievance yet or that he had already decided that he was not prepared to consider her arguments about the earlier process, thereby pre-determining the outcome of part of the grievance. The Claimant asked for a response "as soon as practicable".
76. Mr Townsend replied on Friday 11 November 2022. He said that the points the Claimant had raised would be considered and responded to after the grievance meeting and that it would be inappropriate and improper of him to comment further on the merits of her grievance before having met her. Again, we pause to note that Mr Townsend was not addressing the Claimant's concern. Her concern was not simply about the merits of her grievance, but about the scope of it. Mr Townsend had already told her that he would not consider certain aspects. That both narrowed the scope and appeared to prejudice the outcome to certain complaints (i.e. whether or not there had been a formal grievance). Mr Townsend proposed that the Claimant should be seen

by Ms Gray and suggested that the grievance hearing be postponed until an OH report had been obtained.

77. The claimant replied on Monday 14 November 2022. She said that she was glad to hear Mr Townsend say that it would be inappropriate and improper to comment on the merits of her grievance, and expressed the view that it was unfortunate that he had not considered that point before writing his previous email. She said that his statement that he was not going to reconsider points that had previously been ventilated was, by his own logic, inappropriate and improper. She told him that she would work on the assumption that he was now prepared to consider the points that were discussed in the informal investigation and had been inaccurately branded as a grievance procedure. The Claimant also said that it was not acceptable for her to be seen by Ms Gray. She pointed out that she had found Ms Gray unhelpful and had referred in her grievance to the fact that Ms Gray could not offer any help but had provided the unhelpful opinion that she was surprised about the Claimant's ADHD diagnosis. The Claimant agreed to the postponement of the grievance hearing, provided that it did not delay the process overlong. If there was likely to be a disproportionate delay, she requested instead that the grievance hearing simply go ahead with a written agenda and questions.
78. Mr Townsend replied on 15 November 2022 proposing an alternative OH provider, Unity. He offered two appointment dates – Friday 18 and Monday 28 November 2022. The Claimant chose the later appointment because her therapy appointments were scheduled on Fridays. She did not explain her reasoning at the time and was not asked about it.
79. Mr Townsend sent a draft OH referral to the Claimant on 16 November 2022. It referred to the Claimant's role and ADHD diagnosis. Then it said that the Claimant had been absent from work due to stress relating to an incident that happened at work. "This incident has been investigated as a grievance, and the complaint was not upheld. A further grievance has since been filed, and as part of an ongoing grievance investigation, [the Claimant] has asked for adjustments to be made to the process to accommodate her ADHD." Plainly, this brief OH referral repeated precisely the same issue that arose in Mr Townsend's initial letter. It said that the Claimant's concern had already been investigated as a grievance, when it had not and when that very point was one of the issues raised in her grievance.
80. The Claimant replied to Mr Townsend on 17 November 2022 to say that she did not agree for the draft to be sent to Unity "as it is factually incorrect." She said that she would send him an alternative which "hopefully we can both agree is factual." The Tribunal could see no difficulty with the Claimant's tone or wording in relation to this matter. The draft was factually incorrect. She had already made precisely this point to Mr Townsend. The point of sending a draft OH referral is so that it can be agreed and accurate.
81. The Claimant also said that she had reviewed Mrs Mackereth's meeting notes and that there were a lot of inaccuracies. This had led her to look at the version history, to try and make sense of the notes. She had noted that Mrs Mackereth's notes of the 17 August 2022 meeting, for example, had been created on 25 August 2022, with 14 subsequent revisions, the latest of which was 30 August 2022. In relation to the notes of 12 August 2022, all three documents had been created on 23 August 2022 and the most recent modifications had taken place on 11 November 2022, i.e. the date on which Mr Townsend had sent them to the Claimant. She asked to be provided with the original documents typed during the meetings and saved at the end of the meetings.

82. The Claimant added, finally, that she was now not well enough to return to work on Monday. She said that she was not well enough to communicate with Mr Briggs or Mrs Mackereth, and asked for an alternative HR contact, or whether Mr Townsend would take on the role.
83. Mr Townsend replied the same day, 17 November 2022. He asked for the Claimant's comments on the OH referral by no later than Tuesday morning [22 November 2022]. He said that he had asked Mrs Mackereth and had been told that there were no previous versions of the notes saved. He said that it was his role to investigate the grievance, not the Claimant's, and that he would undertake any further reasonable investigation once he had met her. He said that he had received no medical information suggesting that complying with the absence reporting procedure or liaising with Mr Briggs or Mrs Mackereth would subject the Claimant to any medical detriment. He was not going to pre-determine the grievance, so was unable to accept that at face value. Therefore, the Claimant remained obliged to follow the absence reporting procedure and keep Mr Briggs and Mrs Mackereth informed about her absence.
84. The Claimant replied on 18 November 2022. She suggested that it should not be difficult to recover Mrs Mackereth's original files. She also said that she would continue to raise relevant points and did not consider that to be unreasonable. She said that she had communicated her continued absence to Mr Briggs, triggering an anxiety attack, which she would discuss with her doctor.
85. On 18 November 2022 Ms Blackburn in HR wrote a letter to the Claimant to inform her that her company sick pay was being stopped and that she would be reduced to statutory sick pay with effect from Monday 21 November 2022. The Claimant received the letter, by post, on Saturday 19 November 2022. We return to this below. The Claimant was devastated to receive the letter. She wrote to Mr Townsend on 22 November 2022. She told him about the sick pay situation and explained that the financial consequences and stress would be severe. She said that her sickness absence was caused by the matters complained of in her grievance and was fundamentally linked to her disabilities. She asked that the company consider extending her company sick pay. She also suggested that this at least be deferred until after her OH appointment, and suggested that the OH appointment could be widened to consider adjustments to facilitate a route back to work.
86. Mr Townsend replied the following day, 23 November 2022. He told the Claimant that he would consider her comments about sick pay along with her substantive grievance. In the meantime, he still awaited her comments on the OH referral, "which are now late." He gave her a new deadline of 4pm that day (4 hours away). The Claimant replied by 2pm attaching her proposed draft OH referral. She said that she had been waiting for his response as to whether he agreed to the scope of the referral being widened, but so as to avoid missing the deadline she had simply included those points too.
87. The Claimant's proposed draft was neutral and sensible. She referred to her dyslexia as well as ADHD. She also mentioned that she was now being referred for an autism assessment. She identified her two proposed adjustments and included (from the original draft) the Respondent's objections to making them. She identified two matters for advice –adjustments to be made for the grievance meeting and adjustments to facilitate the Claimant's return to work.
88. The Claimant sent Mr Townsend a further email on 25 November 2022, expressing disappointment that he had not replied to hers of 23 November 2022. She asked for confirmation

about whether or not the Unity appointment would also consider her return to work and to be provided with a copy of the OH referral as sent to Unity. The Claimant said that she had continued to communicate with Mr Briggs, but that he had not replied to her last three messages. Mr Townsend replied with a copy of the OH referral and confirmation that it was the same as the one she had sent him.

89. The Claimant was seen by Unity on 28 November 2022 as planned. They wrote a report the same day. They confirmed that the Claimant's current distress was associated with an unresolved workplace situation and that it would be beneficial to arrange any formal meetings as soon as reasonably practicable. They reported that the Claimant was anxious to return to work as soon as possible as she found being at home unhelpful for her mental health, but suggested that it might be beneficial to redeploy her temporarily or facilitate her working from home. The advisor suggested that Access to Work be contacted to advise and support in relation to dyslexia. They said that it would be practicable to consider the Claimant as being on the autistic spectrum while she was awaiting her formal diagnosis. Simple, generic adjustments were proposed. The advisor expressed the view that the Claimant would be covered by the Equality Act disability provisions in relation to her neurodiversity. The report recommended: documentation be provided in advance of the grievance hearing; providing a written outline of the process that would be followed and a general overview of the questions; and allowing the Claimant to be accompanied by an advocate to support and aid clarification, give assistance should she become overwhelmed, and also act as a reader and scribe in relation to her dyslexia. The meeting room should be of appropriate size to accommodate adequate spacing between those attending and should be on site.
90. On Thursday 1 December 2022, the Claimant emailed Mr Townsend to follow up on the OH report. She asked to be advised of the new grievance hearing date as soon as possible. She also asked whether he had now reconsidered the contractual sick pay issue, given the confirmation that her neurodiversity was covered under the Equality Act. The Claimant sent a further email at 3:37pm on Friday 2 December 2022 asking for a reply before the weekend because of her stress and anxiety.
91. On 2 December 2022 Mr Townsend wrote to the Claimant, inviting her to a grievance hearing to take place on 14 December 2022. Mr Townsend set out the adjustments that would be made and the plan for the grievance hearing. In relation to the Claimant's return to work, Mr Townsend said that there was no business need to accommodate the Claimant's role at an alternative location and provided a list of current company vacancies. He said that, on his reading of the OH report, a return to work would only be possible once the grievance process had concluded.
92. The Claimant replied to the second part of the letter on 5 December 2022. In light of the hearing date of 14 December 2022, she said that waiting another 9 days for her full wages to be restored would exacerbate her mental health. She said that if her choices were to return to work without adjustments but be paid, or to remain off work on SSP, she wished to return to work immediately. She asked to be advised of the return to work procedure immediately. On 6 December 2022 the Claimant emailed Mr Townsend again, asking him to call her or reply to her email. She said that it was extremely stressful not knowing if she was to return to the office that day or not.
93. The Claimant did attend work at about 9am on 6 December 2022. She went to HR and asked for a return to work meeting. Her unchallenged evidence was that she had on a previous occasion returned to work earlier than the date she had been signed off until by her GP. Mr Corbett,

General Manager, came and told the Claimant that “they were all in a meeting at Crane Court about her” and that Mr Townsend would call her later. She left the site.

94. Mrs Mackereth gave evidence to the Tribunal that when the Claimant went to the HR office on 6 December 2022, the team asked how she was and she said, “fucking shit.” She then told Ms Blackburn that she knew that she had not written the letter terminating the Claimant’s company sick pay. Mrs Mackereth gave evidence that neither she nor her team appreciated the language the Claimant used and that Ms Blackburn “felt intimidated” by the Claimant’s comment. Mrs Mackereth was not herself present that day. The Tribunal noted that in a written report Mrs Mackereth sent to Miss Spencer at the time, she did not say that the team did not appreciate the Claimant’s language, she wrote that she, Mrs Mackereth, did not feel that it was appropriate language. She also did not say that Ms Blackburn felt “intimidated”; she said that she felt “uncomfortable.” The Claimant agrees that she told the HR team that she felt “fucking shit” and she agrees that she told Ms Blackburn that she knew that she had not written the letter terminating her company sick pay. The Tribunal also noted that it was very clear from the documentation and evidence before the Tribunal that there was a culture of swearing at the Respondent. By way of a simple example, we noted that Ms Maxwell, senior to the Claimant, referred to PR being “pissed off” in the investigation meeting Mr Briggs held with her. We also noted what Mr Andrew said about this in the disciplinary outcome (see below).
95. Mr Townsend emailed the Claimant at 10:40am on 6 December 2022, after he had caught up with events. He said that he had been made aware that she had attended work that morning and had been “quite rightly” turned away. She was signed off by her GP as unfit and the Respondent did not permit people to work in those circumstances. Mr Townsend told the Claimant that if she obtained a note from her GP signing her as fit to return, she must provide it to Mr Briggs before returning. Mr Townsend told her that she had failed to follow procedure by attending work without telling Mr Briggs in advance and that repeated failure to follow procedures might lead to formal action against her. The Claimant sent a response that day. She told Mr Townsend that she was feeling suicidal. She explained that her GP had told her that she did not need a fit to work note, but that Mr Corbett had told her on site that morning that she did. She said that Mr Briggs had not contacted her or responded to her since 17 November 2022, despite her contacting him on 4 occasions. Mr Townsend replied. He said that he was very concerned to hear that she was feeling suicidal and encouraged her to access support. He told her that the Respondent could not allow her to work while signed off sick. He told her that he would address her company sick pay as part of her grievance. The Claimant sent Mr Townsend an email on 7 December 2022 with a timeline of some of the above events. She asked for confirmation whether she was being offered a binary choice of returning to work without any adjustments (if her GP advised it) or staying on sick leave; and for confirmation about what the return to work procedure was, and who she needed to contact about her return to work – Mr Briggs, Mr Townsend or someone else? Mr Townsend replied on 8 December 2022. He said that the Claimant’s position would be considered as part of her grievance and that her questions either had been answered or would be answered as part of the grievance procedure. He told her that if her GP decided she was fit to return to work she should let Mr Briggs know.
96. On 8 December 2022 the Claimant emailed Mr Briggs asking for the return to work procedure. He replied providing a copy of the Absence Notification Procedure. The Claimant’s partner’s grandmother had passed away at around this time and her funeral was the week of the grievance hearing. The Claimant decided to wait until the hearing to discuss returning to work again.

97. The Claimant emailed Mr Townsend about the grievance meeting on 12 December 2022. She confirmed that she would attend and that BC would be her company witness and Mrs Brackstone her advocate.
98. Before dealing with the grievance hearing itself, we turn to Mr Townsend's evidence about the above events. In his witness statement he said that prior to the grievance hearing he felt that the Claimant was at times direct, abrupt and rude, along with trying to make things difficult for him. He referred to her questioning his authority to hear the grievance, underlining words in her emails, and being "passive aggressive" in correspondence. He felt that she was trying to manage the grievance process. Mr Townsend also said that there did not seem to be any urgency to return to work initially by the Claimant and that her attitude changed when she was informed her company sick pay would be ending. He felt that this was at odds with her previous communication and the reasons for being off work. At this point, she started to become impatient in awaiting responses to her emails. Mr Townsend had given the Claimant two dates to choose from for her OH meeting. She chose the later one. "This was prior to the removal of company sick pay." Mr Townsend said that they had used a third party OH provider because the Claimant "didn't like" Ms Gray. The Tribunal again found that this was an unfair and unbalanced characterisation of events. It pointed to Mr Townsend too having an unreasonably negative approach to the Claimant. In particular:
- 98.1. As already noted, the Claimant's email of 10 November 2022 raised an entirely valid concern. The Claimant had not previously raised a formal grievance about PR. Her written grievance raised concerns about PR's conduct and the Respondent's handling of it. One of her express complaints was that Mr Briggs and Mrs Mackereth had retrospectively dressed up an informal investigation as a grievance. She was entitled under the grievance policy to have that investigated and addressed. Mr Townsend was telling her he would not consider it. In none of the correspondence did Mr Townsend acknowledge that he had made a mistake. Indeed, the same mistake was repeated in the OH referral. Mr Townsend was asked in his oral evidence when he first realised that the Claimant was raising a legitimate concern. He said that it was "probably when I received the letter." He was not able to explain why he did not write to the Claimant confirming that she was correct, there had only been an informal process and he would investigate the grievance in full. Nor could he explain why his witness statement set out extensive criticisms of the Claimant's tone and correspondence, but made no reference to the fact that the context was a mistake on his part.
- 98.2. The Tribunal could see no difficulty with the Claimant quoting from Mr Townsend's letter and underlining the relevant sentence.
- 98.3. A concern about the person hearing a grievance being junior to the people being complained about appeared to the Tribunal to be entirely natural and commonplace. Employers generally do make efforts to ensure that people dealing with grievances are more senior than the people being complained about if possible.
- 98.4. It seemed to the Tribunal that the Claimant's correspondence from the outset sought to ensure matters moved swiftly. In her first response to Mr Townsend, she asked that the original grievance hearing date go ahead despite the fact that she was on sick leave. In her next, she requested a response as soon as practicable. She provided consent for an OH referral the day after it was requested. In her email of 14 November 2022, the Claimant explicitly said that she did not want the grievance hearing to be unduly delayed by an OH

referral, and requested that the hearing go ahead with modest adjustments rather than have that take place. The Claimant continued to press for responses after her company sick pay was stopped too. Mr Townsend was asked what the basis was for saying that “there did not seem to be any urgency to return to work” before the Claimant’s sick pay was stopped. He was not able to provide any plausible explanation. He said that the Claimant had accused him of radio silence at one point, and he said that in some of her later emails she was asking for responses within a day or so. It is clear from the correspondence referred to above that the Claimant was also asking for swift responses before 19 November 2022 as well.

- 98.5. Mr Townsend was not able to explain in his oral evidence why he had attributed a negative motive for the Claimant choosing the later OH appointment. He said that, to him, the gap of 10 days seemed significant, when the meeting could have happened on 18 November 2022. That simply begged the same question – why Mr Townsend had assumed that the meeting could have happened on 18 November 2022, rather than considering that the Claimant might not have been able to attend that day. The Tribunal noted that in her grievance appeal document on 4 January 2023, written before she knew that Mr Townsend was attributing this motivation to her, she wrote that, although it was not recorded in the minutes, she had told Mr Townsend at the grievance hearing about why she had chosen the later appointment.
- 98.6. Mr Townsend appeared not to have considered the impact of the Claimant receiving a letter out of the blue on a Saturday telling her that her pay would reduce from over £7k per month to something around £400 per month on the Monday. He was asked in cross-examination whether that gave him cause for concern. He said, “if that was the context, yes.” The Claimant had told him, at the time, that this was the context. He had told her he would deal with it in the grievance.
- 98.7. The Claimant explained to Mr Townsend why she did not want an OH referral with Ms Gray – because she had not found Ms Gray’s input helpful and had complained about that in her grievance. In cross-examination, she took Mr Townsend to the relevant correspondence, and asked what the basis was for saying in his witness statement that they used a third party because the Claimant “did not like” Ms Gray. Mr Townsend then said that he had used the wrong word. He eventually agreed that the Claimant’s issue was that she did not feel that Ms Gray was helpful. He was asked why his witness statement had not used neutral language like that, and he said that “it meant the same thing.” The Tribunal did not consider that it meant the same thing. We noted that Mr Townsend had been provided with a copy of Ms Gray’s email when dealing with the Claimant’s grievance. The Claimant had not consented to that, and she had not seen it herself. We also noted Mrs Mackereth’s evidence that the OH report was done externally because the Claimant “did not have a good opinion of [Ms Gray]” and Mrs Mackereth’s observation that this reminded her of a comment Mr Mayers had made that his impression was that if the Claimant did not rate the individual then she did not value the feedback. This suggested to the Tribunal that there was discussion about the Claimant and an adverse narrative at the Respondent. On the evidence before him, Mr Townsend had no basis for concluding that the Claimant did not like Ms Gray, and yet he gave evidence that she did not like her, just as Mrs Mackereth did.
- 98.8. Mr Townsend’s witness statement made no reference to the question whether any of the behaviour he was criticising – being direct and abrupt, and trying to manage the grievance process for example – might be linked with the Claimant’s ADHD and/or autism. The

Tribunal asked whether he had considered that at the time. He said, "I didn't take it to be to do with autism." He was asked specifically about someone having a direct and abrupt style of communicating. He said that in his view it was not linked with autism. "It wouldn't be something that was happening all the time." It appeared to the Tribunal that no proper consideration had been given, at the time, or since, to the question how the Claimant's conditions of ADHD and (suspected and then confirmed) autism might impact her approach to the grievance process, and what allowances should be made for that. This, again, fed an unfairly negative attitude towards her.

99. We note at this stage that the Claimant started ACAS Early Conciliation on 9 November 2022, although she asked for the Respondent not to be notified because she still hoped that matters would be resolved.

November 2022: stopping of company sick pay

100. Before turning to the grievance hearing itself, we return to the decision to stop the Claimant's discretionary company sick pay. That was Mr Briggs's decision. As we have noted, Ms Blackburn wrote a letter to the Claimant on the Friday and put it in the post, so it was received the next day. It told the Claimant that her discretionary sick pay would cease on the Monday. The Claimant had been given no warning that this might happen. Mr Briggs accepts that he instructed Ms Blackburn to write the letter. The Claimant's case is that this was unfavourable treatment because of something arising in consequence of disability. She says that the need for an OH report arose because of her disability, and that her sick pay was reduced because the need for an OH report meant that her sickness absence lasted longer. Mr Briggs said in his witness statement that discretionary sick pay was generally for 13 weeks and that he was treating the Claimant consistently with how others had been treated. No evidence was provided in support of the contention that discretionary sick pay was generally for 13 weeks or that others had been treated the same as the Claimant. The Claimant had been off work since 8 September 2022. That was between 10 and 11 weeks before her discretionary sick pay was stopped. Mr Townsend said in the grievance outcome (see below) that discretionary sick pay was generally for 12 weeks. In cross-examination, Mr Briggs was asked where the "reference point" for deciding that discretionary sick pay should be stopped at 13 weeks came from. He said that he had been through a number of discussions at the Respondent, "we look to support as best we can for as long as possible but at some point you have to make a decision." He said that he was not aware that the Claimant's grievance hearing had been delayed for an OH report after Mr Townsend refused to make the Claimant's two requested adjustments. He did not take advice on whether the Claimant was disabled for the purposes of the Equality Act and did not take that into account when reaching his decision. He was aware that the Claimant had raised a grievance against him. He said, "I felt I was unbiased in my judgment." He said that he was not aware of anything in writing about discretionary sick pay. Eventually, when asked about Ms Blackburn's letter, he agreed, "It's a very short time frame. The letter maybe could have gone earlier." That must have been obvious to Mr Briggs at the time. Mr Briggs's evidence about the circumstances in which company sick pay could be reduced was unconvincing. His decision to inform the Claimant on a Saturday (at best) that her pay would reduce from £7k per month to £400 per month on the Monday lacked any empathy and, in the absence of a clear policy and rationale, came across as vindictive. The Tribunal found that this is what it was. The Claimant has not brought a complaint of victimisation relating to the termination of her company sick pay but the Tribunal found that Mr Briggs and Mrs Mackereth

had formed an adverse view of the Claimant, in particular because she challenged their “informal” investigation process and lodged a formal written grievance criticising them. It seemed to us that the decision to terminate the Claimant’s company sick pay with no meaningful notice, in circumstances where there is a complete lack of clarity about what the policy for doing so is, was an opportunistic decision, motivated by that ill feeling.

101. The Tribunal found that the need for an OH report was something that arose in consequence of the Claimant’s disabilities. She was requesting adjustments for the grievance hearing because of those disabilities, and Mr Townsend wanted advice before making a decision about such adjustments.

14 December 2022: grievance hearing

102. We turn to the grievance hearing on 14 December 2022. Mr Townsend attended with a notetaker. The Claimant attended with BC and Mrs Brackstone. The Tribunal saw the notes taken by both BC and Ms Hardie Cross. There were discrepancies between them. We would expect that when people are taking live notes, rather than transcribing from a recording.
103. The meeting took place in a room made up of a large and small boardroom. Mr Townsend and Ms Hardie Cross sat down in the corner of the smaller room. The Claimant and her companions initially sat at the smaller table, but then moved to the bigger table in the bigger room. Mr Townsend said that the Claimant said that she needed to charge her laptop but did not do so. He regarded her move of table as a ‘power play’, to ensure that she could be seen through the glass walls. He said that it did not make sense, “given what she was saying in her emails.” The Claimant asked him about this in cross-examination. He said that it was strange because she had asked for no distractions and had then sat where people could see her. She asked why her being seen by others was a distraction and Mr Townsend said that people walking past would be a distraction. Mr Townsend did not ask the Claimant at the time where she would prefer to sit. The Tribunal’s attention was not drawn to any email from the Claimant requesting to sit in a small office or without distractions. We noted that part of the Unity OH advice about adjustments for the grievance hearing was that the room should be big enough to allow adequate spacing between participants. Unity did not advise that the room should be held in a room without distractions. They did provide generic advice that autistic employees should be asked about sensory distractions. Mr Townsend did not ask the Claimant about any sensory distractions she might experience. The Tribunal found Mrs Brackstone’s oral evidence about this compelling. She did not address the move of seats in her written statement, and it was evident that this issue came as a surprise to her. She was asked in cross-examination why they did not sit at the same table as Mr Townsend. She said that they did. Then someone came in and opened the bifold doors to the bigger room. There was a larger table and they all moved to it. She was asked who moved first and she said that they just all moved. Eventually it was put to her that the Claimant moved, and did so to exert control and be visible. Mrs Brackstone’s was evidently astonished and bewildered by the suggestion. She said that that never struck her. Everyone just got up and moved. She did not see it as any kind of status or power move. The Tribunal accepted that that was what happened. Mr Townsend perceived malice or ill-motive on the Claimant’s part, but she was simply moving to a larger table. The context was OH advice to allow a big enough room for adequate spacing between those attending, as an adjustment for the Claimant’s disability.

104. At the start of the meeting, the Claimant raised a concern that Mr Townsend was not impartial because he worked with Mrs Mackereth, and that he was not the correct level of person to chair the grievance hearing. The Claimant accused him of predetermining the outcome. He said in his witness statement that he found this odd, and that he felt that it was done to intimidate him, exert authority or make him feel uneasy. He referred to the Claimant's email on 10 November, confirming that she was reassured by his initial assurance that he would act impartially.
105. Ms Hardie-Cross's notes record the Claimant saying at the outset that she would like it noted that she did not feel that Mr Townsend was the correct level of person to undertake the hearing because the grievance had been raised against a Site Director and a Senior HR Manager. Mr Townsend worked with Mrs Mackereth and was not as impartial as she would like. The Claimant also felt that Mr Townsend had predetermined a conclusion. Mr Townsend did not ask her about that. He told her that he did not work closely with Mrs Mackereth and had been given authority to investigate.
106. It seemed to the Tribunal legitimate for the Claimant to continue to raise concerns about Mr Townsend's level of authority and impartiality. She had told him early on that she had been reassured, but there had been significant correspondence since then. That included Mr Townsend failing at any point to acknowledge that he had mistakenly written initially there had been a formal grievance and subsequently understood that the matter had only been dealt with informally. It also included the Claimant being asked to agree a draft OH report that included the same inaccuracy, after she had drawn Mr Townsend's attention to the fact that this was incorrect. In general terms, it is also usually good practice for the decision-maker to be more senior than the people being complained about if possible. If the Claimant had concerns about these matters, it seemed to the Tribunal that the start of the meeting was the appropriate time to raise them.
107. Mr Townsend went through each of the Claimant's grounds of complaints in turn. She says that the hearing lasted 4 hours. He said that it was about an hour and a half. The Tribunal found that it was 4 hours, given the length of the notes and the number of points discussed. Mrs Mackereth's evidence was also that the meeting lasted approximately 4 hours. During the hearing, the Claimant added detail to some parts of her written grievance.
108. The Claimant emailed Mr Townsend afterwards to thank him for the way in which he had conducted what was a difficult meeting.
109. Following the meeting, Mr Townsend raised a concern about something the Claimant said during the course of it. It was when they were discussing the section of her grievance about PR's behaviour. The Claimant had just referred to the fact that it was Ms Maxwell and Jim who dictated his salary, yet she had watched him shake Jim's hand outside, and he had told Ms Maxwell that he was happy, but then he behaved inappropriately towards the Claimant. Ms Hardie-Cross's notes record that the Claimant referred to PR banging on the table and shouting and then said, in that context, "He didn't do that to Jim, but he did to me. He didn't speak to [Ms Maxwell] like that – [Ms Maxwell] may present herself as more masculine and not stereotypically what would be classed as feminine, whereas I am. Why is it ok to speak to Victoria like that, and me, but not them?"
110. BC's note records that Mr Townsend told the Claimant that it was not acceptable for people to behave the way PR had behaved, if that is what happened. The Claimant then said that he did not

do it to Jim so why did he do it to her? He also did not do it to Ms Maxwell who was less traditionally feminine while the Claimant who dresses more feminine got that treatment.

111. Mr Townsend did not take any issue with those comments during the course of the meeting. In the grievance outcome, he essentially warned the Claimant not to make such comments again. Mr Townsend could not say when he had raised a concern internally about them. The Tribunal was not shown any email or document evidencing when Mr Townsend raised the concern. We did see a written statement he subsequently provided to Miss Spencer dated 3 January 2023. In that statement, Mr Townsend wrote that he was shocked to hear how the Claimant spoke about Ms Maxwell “in reference to her sexuality, at one point having mentioned [her] being more masculine and talking about how she dressed then commented about her being on maternity or paternity leave in a way I felt was incredibly derogatory. This comment was made in reference to female members of director level and her intimating that [Ms Maxwell] didn’t count as female.” He described the comments as “malicious.”
112. We return to this below in relation to contributory fault.
113. The Tribunal also noted that during the grievance hearing, both BC and Ms Hardie-Cross recorded that the Claimant said that she may have smirked during her interaction with PR. Ms Hardie-Cross noted that she said that it was not the trigger for PR’s behaviour. BC noted that she said it happened when she noted a change in PR’s behaviour after she started mirroring his behaviour and he then stood up, she realised he had lost control and she had not. Both noted that the Claimant also referred to her answer to Mr Briggs about this, and again indicated that she had questioned whether Mr Briggs was asking if she had made an unconscious movement.
114. Towards the end of the grievance meeting, Mr Townsend asked the Claimant about her issues with Mrs Mackereth’s meeting notes. She said that she wanted to know what was originally written. She did not want to supply Mr Townsend with her written concerns because she did not want Mr Briggs and Mrs Mackereth to sit and assess them. She said that there even appeared to be notes from a solicitor in some of the tracked changes and she questioned why they were being amended so many times, even on the day they were sent to Mr Townsend. She then worked through the inconsistencies she had noted – things that were missing from the notes, requests for her to put things in writing that were not made, the way the smirking conversation was recorded, the way Mr Briggs had said that things needed to be dealt with in her PDR.
115. At the very end of the meeting, the Claimant produced a letter from her GP that said that she could come back to work. Ms Hardie-Cross’s notes record that Mr Townsend told her that the OH report suggested that she should not come back until the grievance was concluded. That would need to be taken into consideration. She needed to discuss that with Mr Briggs.
116. The Claimant then went to find Mr Briggs. There is a dispute about what happened. Mrs Mackereth’s evidence was that the Claimant came through and spoke to her outside the Directors Office. There was a client on site that day and Mrs Mackereth believed that the Claimant used a raised voice in order to get their attention and cause disruption. When Mrs Mackereth asked her how she was, she said that she was “fucking shit” and said that she needed to do a return to work. Mr Briggs was already late leaving for an offsite meeting. He had been parked in by the Claimant (the Tribunal understood that this was commonplace in the carpark). Mrs Mackereth asked the Claimant if she intended to stay and work and the Claimant told her that she was going to take

Mrs Brackstone home then return. Mrs Mackereth told her that Mr Briggs would have left by then. Mrs Mackereth explained the Claimant's request to Mr Briggs. He gave the Claimant a return to work form to complete and said that he would review it the next day. In cross-examination, Mrs Mackereth said that the customer was in Mr Briggs's office at the time.

- 117. The Claimant says that she did not shout or swear in front of a customer and did not raise her voice to cause a scene or get the customer's attention.
- 118. We return to this dispute below. For the purposes of the Claimant's unfair dismissal complaint, what is relevant is not the Tribunal's consideration of what happened, but the reasonableness of the Respondent's approach.
- 119. We note that the Claimant exchanged some emails with Mr Briggs about a return to work. They were perfectly professional. She sent him her latest fit note. Her doctor had assessed her on 6 December 2022 and advised that she may be fit for work on a phased return, working from home some days and avoiding face to face contact with those she had raised a grievance with.

December 2022: grievance outcome

- 120. Mr Townsend conducted some further investigations on 15 December 2022. It does not appear that he requested or considered any further documentation. He spoke to BC, Mrs Mackereth, Mr Briggs, Ms Adams, Mr Robinson, Mr Mayer and Mr Thompson. None of the meeting notes is more than 3 pages, well-spaced, in length. The Tribunal noted that Mr Briggs apparently acknowledged that he may have said "lads" when discussing a price negotiation, but that "it would have been used as a colloquialism, not meant in a sexist manner." He accepted that he had made the comment about someone important being there, during the meeting on 5 September 2022. He denied referring to "lads" in relation to bacon pricing on a subsequent occasion. Mr Briggs explained about the feedback the Claimant had given him on 11 September 2022 and how it came about. He told Mr Townsend that he thought that the Claimant's suggestion about car sharing was a "great idea" and they did. He used the opportunity to address the team's concerns with them. However, he then told Mr Townsend that he felt he was being "gaslighted" not to attend the meeting and did not understand why.
- 121. Mr Townsend provided a written outcome to the Claimant's grievance on 16 December 2022. He provided copies of the notes of his meeting with her and with the six people he interviewed at the same time. We note the following aspects:
 - 121.1. Mr Townsend summarised and re-numbered her grievance, identifying 23 points. He then summarised the evidence in relation to those points (but not in numbered paragraphs) and then set out his conclusions in relation to those points (again not in numbered paragraphs). The Claimant's evidence was that this made it more difficult for her, both because of her dyslexia and her ADHD/autism. She did not feel that her complaints, as she identified them, had been addressed, and she found it difficult to follow Mr Townsend's letter.
 - 121.2. Mr Townsend upheld some aspects of the Claimant's grievance, for example – PR had accepted being involved in gossip about how the Claimant got her promotion; PR's promotion had been badly handled, as already identified in the informal investigation; part of the complaint about PR's behaviour was upheld – seemingly in relation to PR

- questioning the salary of a new recruit “in the way he did”. It is unclear what findings Mr Townsend made about what that behaviour was.
- 121.3. Mr Townsend upheld the Claimant’s complaint about being “ambushed” in relation to the joint meeting with PR. He said that he would be advising Mr Briggs about that.
- 121.4. In relation to the Claimant’s complaint that PR treated her this way because she was female, Mr Townsend did not uphold the grievance. He said that he had “spoken to all those mentioned” and nobody believed there was “a sexism problem”. The notes of Mr Townsend’s meeting with PR do not record him exploring with PR whether he treated the Claimant differently because she is a woman.
- 121.5. Mr Townsend said in the outcome letter that he did not agree with or find comfortable the Claimant’s comments about Ms Maxwell. He said that if the Claimant used language that called into question someone’s gender identity that was likely to cause offence and that if the Claimant did it in future it might be formally addressed under the disciplinary procedure.
- 121.6. Mr Townsend did not uphold the Claimant’s complaint that Mr Briggs favoured PR because he was male. He said that he could find no evidence of discrimination and that Mr Briggs had shared with him some personal information that caused him distress at the thought that he could be accused of discrimination. The notes of Mr Townsend’s meeting with Mr Briggs do not record him addressing this allegation with Mr Briggs.
- 121.7. Mr Townsend did not uphold the Claimant’s complaint about the informal process being dressed up as a formal grievance, but at the same time concluded that what had happened was “a mix between the formal and informal process.” He expressed the view that he had now remedied the matter by carrying out a formal grievance. The notes of his meeting with Mr Briggs do not record him discussing this matter with him.
- 121.8. Mr Townsend did not uphold the Claimant’s grievance about the stopping of company sick pay. He said that the discretionary entitlement was to 12 weeks’ full pay and that the company had supported her absence by paying her considerably beyond any legal requirement. He did not make any reference to the timescale by which the Claimant was informed about this. The notes of his meeting with Mr Briggs, the decision maker, do not record Mr Townsend asking him about his decision in relation to sick pay.
- 121.9. Mr Townsend did not uphold the Claimant’s grievance about the OH nurse being unable to support her. His finding was that she had given the advice that she felt comfortable to provide. There is no evidence of Mr Townsend having any discussion with the OH nurse. Mr Townsend had been provided with a copy of Ms Gray’s email to Mrs Mackereth – presumably by Mrs Mackereth. The Claimant had not.
- 121.10. Mr Townsend partially upheld the Claimant’s complaint about Mr Briggs’s reference to “someone important” going to the meeting. He accepted Mr Briggs’s explanation for wanting to attend, but believed that Mr Briggs should have said this separately to the Claimant, not in front of the team.
- 121.11. Mr Townsend did not uphold the Claimant’s complaint about Mrs Mackereth changing the meeting notes. He accepted Mrs Mackereth’s explanation about spell-checking them before sending them to him. His notes of his meeting with Mrs Mackereth do not record him asking her about a solicitor’s comments in track changes.
- 121.12. Mr Townsend did not uphold the Claimant’s complaint about Mr Briggs using the word “lads” when communicating about being assertive when negotiating. He said that Mr Briggs had no recollection of either of the two occasions she had mentioned. Further, from speaking to Mr Briggs and other team members, he found no reason to believe that

even if a comment was made using the word “lads” it was done in a discriminatory way. As indicated above, the notes of Mr Townsend’s meeting with Mr Briggs do not show that he had no recollection of either of the two occasions. On the contrary, he recalled both. Further, in relation to the first, he said that he could not recall the actual words used, but clearly acknowledged that he may have done so. In relation to the second, he gave a clear denial of using the word.

- 121.13. Mr Townsend emailed the decision to the Claimant at 5pm on 16 December 2022. He concluded the letter by telling her that if she wished to appeal she must state her grounds of appeal to Miss Spencer in writing within 5 days of the date of the letter.
122. In cross-examination, Mr Townsend agreed that he had not interviewed Jim or Ms Maxwell in relation to the Claimant’s complaint that PR had treated her differently from the way he treated them. The Claimant pointed out that he had said in the outcome letter that he had spoken to “all those mentioned.” He initially said that this meant “all the people mentioned, i.e. all the people I did speak to.” Then he said that it meant all those people the Claimant mentioned in the grievance meeting. When she pointed out that she mentioned Jim and Ms Maxwell, he said that she mentioned them but not in a way that he could investigate how they interacted with her. She said that her complaint was about how they interacted with PR, not her. Then he said that from speaking to PR “and other witnesses” he treats everyone the same.
123. In relation to the complaint about Mr Briggs contacting Mr Hogarth when the Claimant reported SM’s comments, Mr Townsend confirmed that he had not spoken to Mr Hogarth. He was asked why not, and he said that he interviewed Mr Briggs. The Claimant suggested that the best way to find out what happened was to ask the third party, Mr Hogarth. Mr Townsend said, “I had no reason to believe Mr Briggs would have an interest. I spoke to Mr Briggs and believed his account.” The Claimant asked Mr Townsend how he had concluded that Mr Briggs’s version of events was correct. He said, because Mr Briggs had said that if that had happened, he would have dealt with it and I had no reason to suggest that was not the case. The Claimant asked whether Mr Briggs’s opinion held more weight because he was more senior than her. Mr Townsend said that it did not. She asked why Mr Briggs’s statement was taken at face value and not hers. Mr Townsend said that he had no reason to believe that Mr Briggs would not have investigated. The Tribunal then suggested to Mr Townsend that if the Claimant was saying something different had happened, then he did have a reason to question Mr Briggs’s account. He then said, “That was the conclusion I came to from speaking to Mr Briggs and speaking to you. I believed if he had been aware of it he would have dealt with it.” The Tribunal noted that the notes of Mr Townsend’s meeting with Mr Briggs do not record him asking Mr Briggs whether he had phoned Mr Hogarth.
124. In relation to Mr Townsend’s conclusion that Ms Gray had provided the advice she felt comfortable to provide, the Claimant asked Mr Townsend how he had reached that conclusion if he did not know whether she had seen Ms Gray’s email. He said, “I’ve got no reason to believe that what Ms Gray put in that email wasn’t what she would have spoken to you about. I’ve never had a reason to question. She’s worked in the business a long time.” Mr Townsend had not asked the Claimant about Ms Gray’s email or what advice Ms Gray had given her.
125. The Claimant asked Mr Townsend about the appeal deadline he had given her. She pointed out that, given the outcome letter was sent at 5pm on Friday, she effectively had three working days to appeal. He said that he saw his deadline as five working days, not five calendar days. She put to

him that, in any event, the grievance policy gave “a week” not five working days. The Tribunal reminded Mr Townsend that the policy says a week, and his letter said, “within five days of the date of this letter” not “within five working days of the date of this letter.” He was asked whether, with hindsight, he was able to accept that what he had written might not be consistent with the policy. He accepted that, “it could have been clearer.”

126. From the examples given above, both in relation to the investigation meeting notes, the timescale, and Mr Townsend’s cross-examination, it did not appear to the Tribunal that he had carried out a detailed or thorough investigation into the Claimant’s grievance. His role under the policy was not to review what Mr Briggs and Mrs Mackereth had done, it was to investigate and reach conclusions himself.
127. The events of 8 August 2022 were of fundamental importance. Mr Townsend’s investigation was apparently confined to a brief discussion with each of Mr Briggs, Mrs Mackereth and PR. There is no indication that he considered the notes of the various meetings with the Claimant and PR, or tried to identify any other potential witnesses. He did not speak to Ms Spivey, who was in the adjacent room. It is not apparent that he considered Mr Briggs’s notes of his conversation with Ms Spivey, or understood how or why Mr Briggs had concluded that there was no corroborating evidence when Ms Spivey had said that the male voice was “more agitated” and that she would have “felt uncomfortable” if spoken to like that. The general impression of Mr Townsend’s approach overall is that he accepted what Mr Briggs and Mrs Mackereth told him at face value, seeing “no reason not to believe” what they said. He did uphold some of parts of the grievance – but not on any issue that involved rejecting what Mr Briggs or Mrs Mackereth told him had happened. Mr Townsend does not appear to have grappled with the detail of the Claimant’s complaints.
128. As noted above, Mr Townsend came to raise concerns with Miss Spencer. He was very vague about how that happened. He said that he was on holiday around this time. In oral evidence he said that he had spoken to Miss Spencer on his own initiative, verbally, a short time after the grievance. He could not remember if it was before or after he went on holiday. He said that he did not know that Miss Spencer would be dealing with the grievance appeal. The Claimant was told that Miss Spencer would not deal with the grievance so that she could deal with an appeal if necessary. Mr Townsend said that he did not remember that. There was no note or record of any discussion between Mr Townsend and Miss Spencer about these matters.
129. Mr Townsend prepared a written statement dated 3 January 2023. That was after the Claimant had appealed against the grievance outcome, and after Miss Spencer had started dealing with it. He was asked in cross-examination how that was requested. He could not remember whether it was verbally or by email. He was asked what its purpose was. He said that it was based on the grievance hearing, where he thought that the Claimant had made some comments that were not appropriate. The statement dealt with far more than those comments. He was asked if he believed it to be relevant to the grievance process or a disciplinary process. He said that it was from his grievance outcome. It seemed to the Tribunal inappropriate for a Group HR controller to email the person charged with dealing with an appeal against their grievance outcome privately before that appeal had been dealt with, in the terms in which Mr Townsend did so.
130. Mr Townsend’s statement included the following:

- 130.1. Mr Townsend told Miss Spencer that he found the Claimant's communication patronising and condescending. He said that she was trying to intimidate him and manage the grievance process. He did not mention that he had wrongly told her in his initial communication that he would not consider certain aspects because there had already been a formal grievance when that was part of her complaint.
- 130.2. Mr Townsend told Miss Spencer that the Claimant had said at the outset and again at the start of the grievance hearing that she did not consider that he was sufficiently senior to deal with the grievance. He said that this was "malicious" and to "show me who was boss."
- 130.3. He made the accusation, repeated in his witness statement, that the Claimant showed no urgency to return to work until her sick pay was stopped and that the Claimant had opted for a later OH meeting in that context.
- 130.4. He referred to the comments he alleged the Claimant made about Ms Maxwell (as summarised above).
- 130.5. He said that he was not comfortable with how the Claimant spoke about others during the grievance hearing. He said that she had intimated that Mrs Mackereth had made a mistake, with a comment along the lines "I wouldn't expect any less from her." He said that the Claimant had discussed the version history of Mrs Mackereth's notes and went into data forensics, which he felt was an attempt to belittle him, not to mention "the insinuation that Mrs Mackereth would purposely falsify records." It was, of course, one of the Claimant's express grievance complaints that Mrs Mackereth had changed the meeting notes, and she had supported that by drawing attention to the numerous times on which they had been changed, including on the morning they were sent to Mr Townsend, and the reference even to track change comments from a solicitor.
- 130.6. He said that the Claimant had refused to let him have her notes of the discrepancies.
- 130.7. He said that the Claimant had made "malicious false allegations" about Mr Briggs, which he believed were designed to cause a situation where the Claimant would not be able to return to work.
- 130.8. Mr Townsend referred to the Claimant moving to the other side of the room at the start of the grievance hearing, which he said was done "to intimidate" him.
- 130.9. Mr Townsend said that, given that the Claimant's fit note was dated 6 December 2022, he found it "strange" and "calculated" that she had produced it at the end of the grievance meeting. He accused her of "impatiently" and "passively aggressively" saying that she would go to see Mr Briggs. He said that she was "trying to make a scene."
- 130.10. He expressed the belief that the Claimant's "behaviour, malicious allegations and antics were designed to get money out of the company."
- 130.11. He said that it "upset me that I had to put Mr Briggs through questions about D&I when he was clearly genuinely upset and distressed due to his own personal circumstances." He said that the investigation he carried out gave a "completely opposite picture" of Mr Briggs and Mrs Mackereth to the one he had been given. He did not record that that investigation comprised meetings with seven people, of whom Mr Briggs and Mrs Mackereth were two. Another was PR. Mr Townsend did not ask him about Mr Briggs and Mrs Mackereth's conduct. There were only three people who told Mr Townsend anything about Mr Briggs or Mrs Mackereth. Mr Mayer told him that he "was not sure that the Claimant respected Mrs Mackereth" and that she "had quite strong opinions of people." Mr Thompson told him that Mr Briggs did not display any gender bias and treated everyone the same. He said that he had not heard him use the word "lads." BC told him

that she had not experienced sexism herself. She said that if Mr Briggs had used the word “lads” she would not have picked up on it. When Mr Townsend asked her whether, if Mr Briggs had used the word, “it would be implied as a sexist comment” she said that she thought it would be friendly; Mr Briggs wanted them to be comfortable in his company and have banter. Mr Townsend also asked a leading question about Mrs Mackereth – “is she supportive?”. BC fairly replied that she had not needed to call on HR and could not comment. The last person Mr Townsend spoke to was Ms Adams. She apparently gave very careful answers to Mr Townsend’s questions about sexism. She said that it was a “hard question.” She had not experienced it herself but had heard people talking about things. As the board were predominantly white male it was “difficult to answer.”

130.12. Mr Townsend said that he found the Claimant’s behaviour “to be at odds with the medical advice we were receiving.” That was an apparent reference to the Claimant’s behaviour in moving tables after the bifold doors were opened, which was not contrary to any medical advice the Respondent had received. He referred to her “behaviour, malicious allegations and antics.”

130.13. He said that if he was looking to take any action against any employee in relation to the grievance it would be the Claimant and her “malicious” comments about Ms Maxwell. He did not mention that he had upheld parts of the grievance.

130.14. He concluded by asserting that the Claimant had “orchestrated a process to get money from the business by way of a settlement and in doing so had tripped herself up along the way by demonstrating some unpleasant behaviour and tactics which I believe to be far more serious than those that the grievance was raised for.”

131. The Claimant asked Mr Townsend why he had used such negative language about her in his statement. He said that it was for Miss Spencer, not the Claimant. She put to him that as an HR professional he must have known that if this was part of the grievance appeal or a disciplinary process, she would end up seeing it. He agreed, but said that he wrote the words down that he felt at the time. She put to him that it was deliberately done to harass her in relation to her autism. He disagreed. The Tribunal asked Mr Townsend whether he considered that the behaviour he was criticising might be caused in part by autism. He said that he did consider it.

132. Comments made by Mr Townsend in this statement were telling. Far from approaching the Claimant’s concerns about discriminatory treatment from Mr Briggs with an open mind, Mr Townsend was “upset” that he had to ask Mr Briggs the questions. Far from investigating the Claimant’s concerns about changes to the meeting notes with an open mind, Mr Townsend was evidently unhappy that the concern had been raised at all. Mr Townsend had evidently taken personal offence at the outset when the Claimant raised what appeared to the Tribunal to be entirely legitimate concerns about his level of seniority and his having prejudged matters in his initial correspondence. He, too, appears to have looked for malicious intention on the Claimant’s part at every turn, rather than considering whether her grievance and the issues she raised with him about how that was dealt with, were genuine concerns, and potentially well-founded ones. He appears not to have reflected at all, then or since, on whether dyslexia, ADHD and autism, might be part of how the Claimant perceives things and how she communicates and approaches matters. Mr Townsend’s involvement was supposedly confined to: his correspondence with the Claimant in advance of the grievance hearing, a lengthy meeting with her, and seven shorter investigatory meetings the next day. It is difficult to understand how, on the basis of those interactions, he had drawn the conclusions he reported to Miss Spencer. None of those interactions involved any

reference to the Claimant seeking a financial settlement and yet that was Mr Townsend's overriding conclusion. Mr Townsend's statement was written in far less measured and far more personally critical language than that for which he was criticising the Claimant.

21 December 2022: grievance appeal

133. We turn next to the Claimant's grievance appeal. She wrote to Miss Spencer on 21 December 2022. She said that she considered Mr Townsend's appeal timeframe entirely unreasonable, and said that she would expand on her grounds of appeal in due course. She asked for a full re-hearing of her grievance and asked that it be escalated to the company chairman. Her bullet point grounds of appeal were that:
- 133.1. Mr Townsend's investigation was insufficiently thorough;
 - 133.2. Mr Townsend did not adopt a sufficiently critical approach to the evidence given by witnesses he interviewed;
 - 133.3. He frequently asked the witnesses leading questions;
 - 133.4. Mr Townsend appeared insufficiently curious about the Claimant's allegations of sexism, for example by not following up the vague and ambiguous comments Ms Adams made.
 - 133.5. Mr Townsend had created his own list of the Claimant's complaints, resulting in him not addressing several of them and/or answering subtly different complaints from the ones she was making;
 - 133.6. Mr Townsend had serially misquoted her in his outcome letter and hearing notes and had used the misquotes to dismiss her complaints;
 - 133.7. Many of the conclusions were perverse or entirely unsupported by evidence;
 - 133.8. Mr Townsend's approach – creating his own list of complaints and then addressing those, providing an outcome in a large block of text without headings and sending the outcome at 5pm on a Friday appeared to be a deliberate attempt to make the process more stressful for her and to make it more difficult for her to access appropriate specialists to support her with it.
134. Miss Spencer responded on 22 December 2022. She told the Claimant that she would deal with the grievance appeal. She said that she was also adjusting the usual grievance process to conduct the appeal in writing. It had come to her attention that complaints had been received regarding the Claimant's conduct at work and her conduct of her grievance, which had several colleagues distressed and more than one in tears. She said that every colleague had the right to come to work in an environment free from harassment, bullying, aggressive or offensive behaviour. The Claimant was therefore instructed not to contact Mrs Mackereth, Mr Briggs, Mr Townsend or BC regarding her grievance process or appeal. The complaints Miss Spencer had received would be investigated and the Claimant would be contacted in due course. Miss Spencer told the Claimant that she must submit any further grounds of appeal or documents by no later than 4 January 2023. She was to do so in a single email, attaching relevant documents as appropriate.
135. The Claimant replied on 29 December 2022. She said that she was not aware of her conduct falling short of normal professional standards and would fully and robustly engage with any disciplinary process. She suggested that if the decision to conduct the grievance appeal in writing was because of concerns about the Claimant's conduct, a much less draconian approach would be conduct the hearing by Teams. Miss Spencer never responded to that suggestion.

136. The Claimant emailed Mr Briggs on 30 December 2022. She reminded him that her fit note expired that day and that she was due to return to work on Monday. She requested to take that day as a holiday. Mr Briggs agreed.

January 2023: suspension from work, grievance appeal and disciplinary investigation

137. The next the Claimant heard was a letter from Miss Spencer on 2 January 2023. That letter suspended her from work so that the company could investigate allegations of potential gross misconduct in relation to bullying and harassing behaviour towards colleagues and concerns of false/malicious allegations made by the Claimant towards colleagues. The Claimant was told not to contact her colleagues. Miss Spencer told her that she was required to provide a written statement by 5pm on 4 January 2023. She was not told of any specific complaint or allegation. Rather, she was required to provide her comments about her conduct (in person, verbal, written, messages and email) towards BC, Mr Briggs, Mr Townsend and Mrs Mackereth for the two-month period since 31 October 2022. She was told to include whether she felt that any of her conduct had been aggressive, applied pressure, or been intimidatory. She was also required to provide her comments on her working relationship with Mr Briggs, Mrs Mackereth, Ms Maxwell and Ms Adams and specifically whether it was possible for the working relationship to be repaired. She was told that her statement must be in a single email and that no extension of time would be given.
138. The Claimant replied on 3 January 2023. She expressed astonishment that rather than addressing her grievance and grievance appeal, the Respondent had now suspended her from work, and expressed the view that this was retaliation because of her grievance. She queried why it had not been deemed appropriate to suspend her on full pay before her sick note expired and asked when the allegations against her had been made. She pointed out that she had not been provided with any specific allegations, so she would have to address her interactions with all the colleagues throughout the period. Her access to her work email had now been suspended and Miss Spencer had set the same deadline that the Claimant already had to meet in relation to the written grievance appeal process. She said that it was not realistic to expect her to be able to prepare a response by the deadline set. She asked why no investigation meeting was being conducted and asked for an extension of at least a week. She asked for further details of the allegations to assist her to respond and she asked for access to her work email to enable her to do so. She then reminded Miss Spencer that she had ADHD and dyslexia and had been referred for an autism assessment. She asked, among other things, whether that had been considered in setting a 2-day deadline for responding and requiring a written response only. She also asked Miss Spencer to obtain expert medical evidence in relation to her conditions in the context of the allegations against her.
139. Miss Spencer replied on 4 January 2023 at 2:30pm. She made clear that she was conducting the disciplinary investigation as well as the grievance appeal. She asserted that they were separate process and that she would not conflate them. She told the Claimant that she was under investigation. It was Miss Spencer's role to ask questions and the Claimant had been instructed to answer them. She agreed to extend the Claimant's deadline by 24 hours, to 5pm on 5 January 2023. She asked for permission to see the Claimant's OH report and said that she did not consider

it appropriate to send the Claimant for a further OH assessment before she had seen it. She did not subsequently send her for a further assessment.

140. The Claimant provided her grievance appeal document at 5:01pm on 4 January 2023. She said that because this had been so time consuming, she had not been able to start on the disciplinary statement. Miss Spencer had told her that afternoon that she could have an additional day. She repeated her request for a week. In relation to Miss Spencer's reminder that it was her role to ask questions, the Claimant "gently observed" that her questions were aimed at better understanding the rationale underpinning what appeared on the face of it a wholly unreasonable and unfair approach from the Respondent. She confirmed that she was more than willing to answer clear and specific questions if given a reasonable timeframe. Instead, she had been given an extremely broad request for a statement dealing with a variety of vaguely defined points in an unreasonably short timeframe. She gave consent for Miss Spencer to see the Unity OH report.
141. The Claimant's grievance appeal document was lengthy and detailed, but it was well-structured and set out clearly and comprehensively her concerns. She explained, with appropriate cross-references, how she considered that Mr Townsend had re-framed some of her grievances. She set out all of the evidence on which she relied. Among other things: She pointed out issues on which Mr Townsend had reached conclusions without apparently asking Mr Briggs or Mrs Mackereth about them in his investigatory meetings with them. She pointed out that Ms Maxwell had not been interviewed and that Mr Townsend had not asked any follow-up questions of Ms Adams's response about sexism. She said that nothing she had said about Ms Maxwell could be construed as questioning her gender identity. She was pointing out that Ms Maxwell conducted herself professionally in a manner that was more masculine. She pointed out that in rejecting her complaint that Mr Briggs would have approached the PR situation differently if she had been male, Mr Townsend made reference to "the complaint" PR had made about her, when no complaint had been made by PR or investigated. She pointed out that Mr Townsend had rejected her complaint about the termination of her company sick pay without speaking to Mr Briggs or Mrs Mackereth about it. In relation to her complaint about Mrs Mackereth's meeting notes not being accurate, she pointed out that Mr Townsend had simply asked Mrs Mackereth and accepted her explanation. She set out the 15 numbered points BC had recorded that she raised in the grievance meeting, including the suggestion that a solicitor had made comments on them. In relation to Mr Briggs's use of the word "lads" she pointed out that she had no reason to doubt that Mr Briggs was unaware of his unconscious bias, but that that was not necessarily the issue. She expressed her view that "lads" like "guys" was non-inclusive language. She gave another example of a site director referring to "lads in the office and girls on the line," and suggested that constant use of non-inclusive language perpetuated sexist culture. The Claimant then identified a number of further concerns that had arisen since she had raised her grievance. These included criticisms of changes made to the grievance process and the decision to suspend her. She identified numerous witnesses she said should be spoken to.
142. The Claimant sent a further email ten minutes later with her evidence attached. She asked Miss Spencer to let her know if she had missed anything she might need.
143. Miss Spencer did not extend the deadline for the Claimant's disciplinary document beyond the additional 24 hours she had given.

144. The Claimant sent Miss Spencer a written statement in relation to the disciplinary process at 4:45pm on 5 January 2023. She provided evidence of communications between herself and BC. She asked Miss Spencer to review all correspondence between Mr Briggs, Mr Townsend and Mrs Mackereth along with CCTV of the hallway and carpark. She offered to help if Miss Spencer needed a statement from Mrs Brackstone, who was present on 14 December 2022. The Claimant set out an account of various interactions she had had with the named individuals during the period in question. In doing so:
- 144.1. She said that she asked BC to accompany her during her grievance process when they went for a walk together on 10 October 2022. BC agreed, but the Claimant advised her to discuss it with a friend first. She provided a copy of their WhatsApp exchanges since. On 5 November 2022 she asked BC if she was still willing to accompany her to a meeting on 15 November 2022 and said that she would completely understand if not. BC said that she was. On 14 December 2022 the Claimant messaged BC immediately after the grievance meeting thanking her and apologising for involving her in it. She said that she felt bad for her having to hear it all. She asked if she was ok. BC replied telling her not to worry, that she was the one going through it all. BC told her that she had given very rounded views, the good along with the bad. On 16 December 2022 the Claimant messaged BC to tell her that her grievance had not been upheld. She said that she could feel how uncomfortable it was for BC on Wednesday and said again how thankful she was for her support. She apologised for putting BC in a difficult position. BC replied telling the Claimant not to be sorry and that she knew how much her support meant to her. On Monday 19 December 2022 BC messaged the Claimant to say that she was struggling feeling uncomfortable being so involved and needed to step back. She was really sorry. She said that she was still there as a friend for the Claimant. The Claimant replied, "I understand, which is why I asked you to really think about it before saying yes just wish you had said no sooner as I'm now in a position where I need you to support or at least confirm inconsistencies in [the Respondent's] meeting notes from last week v what was said. ..." BC replied to say that she had said yes because she was happy to be an impartial emotional support and to take notes, but she did not feel that she could give an opinion on inconsistencies as she did not feel that was the impartial bit. The Claimant replied to say that she did not mean she needed anything other than BC's opinion on the notes from last Wednesday's meeting in BC's impartial view and anything the Claimant had remembered wrongly. She added, "Don't worry, I will just try use the notes you sent to me. Hope you are feeling better. Xx"
- 144.2. In relation to the events of 14 December 2022, the Claimant volunteered that she saw Mrs Mackereth after the 4 hour long grievance hearing, when she was very distressed and upset. She stood in the door of the HR office and told Mrs Mackereth that she needed to do a return to work interview. She felt humiliated that she was having to beg to return to work, after the company had stopped her company sick pay with 2 days' notice. Mrs Mackereth told her that she would go and find Mr Briggs. She started to follow Mrs Mackereth down the corridor, but was stopped by lots of colleagues who were pleased to see her. Ms Bentley, a former employee of the Respondent who now worked for one of its clients, saw the Claimant and ran out of Mr Briggs's office to give her a hug. She returned to the hallway where Mrs Brackstone was waiting for her. Another colleague came to see her for a hug and to collect her belated birthday gift. Mr Briggs then brought her a return to work form to sign and said that he needed to leave. She thought that Mrs Mackereth might also have come down to the carpark to move her car, which was also blocking Mr Briggs's.

145. The Claimant sent Miss Spencer a further email on 5 January 2023, asking if her Teams app on her laptop could be unblocked just so that she could access her psychotherapy appointment the next day. Miss Spencer replied to say that her personal appointments were her own to organise and that Teams could be set up on personal devices if need be.
146. Miss Spencer did not ask the Claimant any follow-up questions in relation to her grievance appeal or ask her for any other evidence. She said in her witness statement that there were areas in the Claimant's document that needed explanation and some areas where information was missing. She accepted in cross-examination that she did not seek that explanation or information from the Claimant. She said that she had all the information that was required. She was asked how she could say that, if her own witness statement said that some areas needed explanation and some information was missing. She said that she "could not recall." She did not carry out any further investigation. She did not seek any expert advice about the Claimant's disabilities. She wrote to her with a written outcome on 9 January 2023. She went through each of the Claimant's points, explaining her conclusions in a sentence or two. She upheld or partially upheld a small number of points.
147. Ms Pearce then emailed the Claimant on Wednesday 11 January 2023 inviting her to a disciplinary hearing Monday 16 January 2023. The allegations identified in the letter were:
- "1. That your conduct during your grievance process and grievance meeting on 14 December 2023 was intimidating and unprofessional. Specifically, your conduct amounted to bullying/harassing colleagues and/or intimidating behaviour.
 2. That the nature of your communication with your accompanying person, BC, was intimidating.
 3. That the comments made about Ms Maxwell in the course of your grievance hearing were discriminatory.
 4. That the nature and content of the allegations against your colleagues, your conduct towards colleagues and management during the grievance process and your response to the grievance outcome have seriously damaged the relationship of trust and confidence between you and the company."
148. At no subsequent stage did the Respondent set out the disciplinary allegations against the Claimant in any more specific way, telling her what she was actually alleged to have said or done that was "intimidating", "unprofessional", "bullying/harassing" or "discriminatory."
149. The invitation letter was accompanied by the evidence relied on. It included statements from Mrs Mackereth, Ms Blackburn, Mr Townsend, Mr Briggs, Ms Maxwell, Ms Petterson, Ms Correia-Collinson and Ms Adams. The evidence from Ms Maxwell, Ms Petterson and Ms Correia-Collinson appeared wholly irrelevant to the allegations as set out in the letter. Ms Adams's statement expressed no concerns in relation to the Claimant.
150. Mrs Mackereth's statement was an email sent to Miss Spencer on 2 January 2023. It appeared to be a written commentary on the Claimant's grievance. It is not clear in what circumstances Mrs Mackereth was provided with a copy of the grievance, of which she was a subject, or asked to comment up on it. The statement began by expressing Mrs Mackereth's view that the Claimant had been "vexatious and inciteful" and that her allegations were "untrue" and motivated by

“imagined financial gain.” She volunteered the opinion, in relation to the build up to the PR incident, that it was “quite immature and unprofessional” for the Claimant to tell PR that she was being told one thing by him and another by Ms Adams and Ms Maxwell and did not know who to believe. One of the key themes of Mrs Mackereth’s statement was her view that the Claimant’s behaviour changed when the result of the informal investigation was “not the one she wanted.” She set out her arguments and responses to the Claimant’s grievances on the basis that they were simply motivated by the fact that the Claimant “did not like the outcome.” There did not seem to be any objective consideration of whether the Claimant’s concerns might be legitimate, nor of the fact that she was entitled to raise a formal grievance if unhappy with the informal process.

151. Mrs Mackereth did set out an account of what she understood had taken place on 6 December 2022. She also described what she witnessed on 14 December 2022. She said that the Claimant was standing outside the HR office in the main corridor outside the Director’s office. When Mrs Mackereth asked her how she was, she said, “fucking shit” in a loud voice. The customer then came out of the Director’s office, hearing the Claimant’s tone of voice. The Claimant said that she needed to do a return to work immediately. Mrs Mackereth said that she would ask Mr Briggs but he might not be able to do it because he was late for another meeting. The Claimant said that it needed to be today because she needed to start getting paid again. In Mrs Mackereth’s opinion the Claimant was shouting and said this very loudly so that the customer would hear and this would cause disruption. Mrs Mackereth asked her if she intended to stay on site and work. She said that she needed to take Mrs Brackstone home first. Mrs Mackereth said that Mr Briggs would not be on site by that point. The Claimant left after speaking briefly to Mr Briggs and did not return. Mrs Mackereth’s view was that she never had any intention of working the rest of the day, she just wanted to be obstructive in front of the customer and other employees, she tried to cause disruption and she did not handle herself professionally.
152. Mrs Mackereth attached a note she had made of events shortly after 14 December 2022. It did not fully align with the account in her statement to Miss Spencer. For example, there is no reference in the earlier document to the Claimant shouting, only to her speaking loudly. Her account written at the time noted that Mr Briggs told the Claimant that he would review the return to work form the next day if she sent it through to him completed. That, of course, might be relevant to why the Claimant did not return to work after dropping off Mrs Brackstone. That was not mentioned in the statement to Miss Spencer, despite Mrs Mackereth choosing to express the view that the Claimant never had any intention of returning to work and just wanted to be obstructive and cause disruption.
153. The Claimant put to Mrs Mackereth that the language she used about her in her 3 January 2023 statement – immature, unprofessional, malicious, vexatious, inciteful etc – was harassment relating to her disability. Mrs Mackereth said that it was her feelings about the Claimant’s behaviour at the time. She was asked about her awareness of the Claimant’s conditions and possible links between the Claimant’s behaviour and her conditions. She said that the document was “not written for” the Claimant. She was asked whether she knew it would be shared and she said that she did. She was asked the same question about harassment. She said that Miss Spencer asked her for her honest “opinion” and that to write anything else would be untruthful.
154. Ms Blackburn had provided a note of what happened on 6 December 2022. She mentioned the Claimant saying that she was “fucking shit” and she mentioned the Claimant telling her “Don’t worry, I know you didn’t write that letter.” She wrote that she told the Claimant she did write the

letter and the Claimant said, "Yeah I know, but I know it wasn't from you." The note contains no reference to Ms Blackburn feeling uncomfortable, intimidated or anything else in response to that.

155. We have referred above to the statement Mr Townsend provided.
156. Mr Briggs also provided a written statement apparently commenting on the Claimant's original written grievance. Again, it was not clear in what circumstances he had been provided with a copy of the written grievance, in which he was complained about. Mr Briggs explained that he had personal experience of someone with a need for reasonable adjustments and found it "distressing, upsetting and personally offensive to face into the accusation of a lack of reasonable adjustment and lack of support around someone with a disability." The Tribunal pauses to note that the fact somebody may have personal experience of something does not mean that they may not, whether consciously or unwittingly, discriminate against somebody else.
157. Mr Briggs's statement expressed his view that he had been impartial and thorough in investigating the Claimant's concern. He mentioned the Claimant's own failure to recognise the impact of her own actions. In relation to holding the joint meeting with PR, Mr Briggs expressed the view that if they had sent out a joint invitation or held a separate meeting, the Claimant would have claimed mismanagement of the process "because she was not satisfied with the outcome." The underlying theme of Mr Briggs's response was in this respect the same as Mrs Mackereth's. Likewise, Mr Briggs went on to say that it was this "impartial" decision about PR that had "driven [the Claimant] to try to cause as much disruption as she could for YB whilst also seeking to create a beneficial exit for herself." This language and sentiment is strikingly similar to that expressed by Mrs Mackereth. It paints the picture of discussions behind the scene between the Site Director and Site HR Manager about a grievance that named them both, and the presentation of a joint narrative in response, and the Tribunal found that this is what happened. There was no evidence that the Claimant was trying to engineer a generous financial exit, and that is the most likely explanation for Mr Briggs and Mrs Mackereth both coming to the same conclusion.
158. In his response dealing with the allegation that he used the words "lads", Mr Briggs focussed on his own perception/intention. He did not deal with the broader question whether a female colleague might reasonably take objection to the use of "the lads" to describe those generically involved in a negotiation process. Words can, of course, be harassing without that being the intention of the person using them. In relation to his suggestion that he attend the client meeting to show that there was somebody important there, Mr Briggs set out his explanation for doing so and suggested that his subsequent actions showed that the Claimant's allegations were "false." In the context that he did not dispute making the comment, and did not suggest that he had explained his rationale in the meeting, it is difficult to see how he could characterise the Claimant's complaint that he had made the comment and that she believed he would not have done so if she had been female as "false." The Tribunal noted that, by this time, Mr Townsend had upheld the Claimant's grievance to the extent that he said that Mr Briggs should have dealt with this privately, not in front of the team. Mr Briggs said that he believed that the allegation that he had used the word "lads" on a subsequent occasion was "entirely fabricated."
159. Mr Briggs expressed the view in his statement that the Claimant's complaints of discrimination against him specifically undermined the possibility of a future working relationship with the Claimant. He could not see a solution to working alongside her in the SLT and as a direct report.

160. Mr Briggs set out an account of a conversation with BC on 19 December 2022. He said that she was visibly distressed and said that she felt harassed by the Claimant with regard to the requests she was making. She was emotionally stressed and it was affecting her sleep. Mr Briggs immediately escalated this to the group HR team. Ms Hardie-Cross spoke to BC and Mr Briggs believed actions were taken to stop further interactions between her and the Claimant. Mr Briggs expressed the view that to cause BC such distress was a contravention of the message he had given about a zero-tolerance approach to bullying in the workplace.
161. We note at this stage that the statements of Mr Briggs, Mr Townsend and Mrs Mackereth were subsequently provided to the Claimant as part of the disciplinary process. That is the basis of one of her harassment complaints. The Claimant pointed out in her evidence that when the statements were written the individuals knew that she had been suicidal before Christmas, and were in possession of OH advice telling them to ensure that any criticism of the Claimant as an autistic person was sensitive. Her level of upset about the language used was evident in the Tribunal. She was plainly upset, offended and insulted.
162. There was no clarity in the evidence before the Tribunal about who had complained to whom and when; how these matters had first come to Miss Spencer's attention; and how Mr Briggs, Mr Townsend and Mrs Mackereth came to write the statements they did on 3 January 2023. This was a grievance appeal and then disciplinary process being conducted by the Group Head of HR against a senior employee. There was no audit trail whatsoever and apparently nothing in writing before 3 January 2023.
163. Miss Spencer's evidence in her witness statement was that "it had come to her attention that a number of colleagues felt intimidated, upset and harassed" by the Claimant's behaviour, and that is why she decided to conduct the appeal in writing "to avoid this happening again." She said that she was "aware of concerns that [the Claimant] tended to show up to site unannounced while off sick and make herself loud and visible." We note that the Claimant had once attended site unannounced to Mr Briggs or Mrs Mackereth, although she had emailed Mr Townsend in advance.
164. Miss Spencer also said in her witness statement that BC "felt she was being harassed by the Claimant" and Miss Spencer "felt she was led to make decisions she did not believe to be true." The Claimant explored that with her in cross-examination. She showed her the exchange of WhatsApp messages with BC. Miss Spencer accepted that the concern BC was expressing was that she was not comfortable giving an opinion on inconsistencies between the two sets of notes, not that she was being led to make decisions she did not believe to be true. Miss Spencer then said that Mr Briggs told her this verbally. She had not made any note of that conversation. The Tribunal noted that there is no hint of that in Mr Briggs's written account of his conversation with BC made on 3 January 2023.
165. Miss Spencer also said in her witness statement that Mr Briggs and Mr Townsend both felt "personally assaulted" by the Claimant and what she had said and written about them. Mrs Mackereth felt that she had been "inappropriate" and felt uncomfortable with that. In cross-examination, Miss Spencer said that after Mr Townsend had concluded the grievance she had "had communication from a number of people regarding different aspects of that process that they felt intimidated, upset or harassed." She said that she speaks to Mr Townsend regularly and that he told her that he felt intimidated and not happy with some of the thing said during the grievance process. She also spoke to Mr Briggs and Mrs Mackereth post that process and they

indicated things that they were not happy with. She did not recall how that happened. She thought they “would have” contacted her. She recalled that Mr Townsend had raised a concern about the Claimant moving to the larger table and about her questioning his appropriateness to deal with the grievance. Mr Briggs had been “particularly upset” because he had been accused of discrimination. He “would not behave that way” and felt “particularly challenged”. Mrs Mackereth was upset about the fact that the Claimant had suggested that she had falsified the meeting notes and believed that the Claimant had not been entirely truthful in some of the things she said.

166. The Claimant put to Miss Spencer that those concerns raised by Mr Briggs and Mrs Mackereth were concerns about things she had raised in her grievance. They plainly were.
167. It appears from what he wrote on 3 January 2023 that after he spoke to BC on 19 December 2022, Mr Briggs contacted Group HR. That is where Miss Spencer is based. No doubt that is how she came to know about his concerns. Mr Briggs’s evidence in cross-examination was that he had written the statement because “a request was made.” He believed that was verbally, but he was not sure. He said that he believed it was a response to the Claimant’s grievance. He confirmed that he did not make any note of his discussion with BC. He said that BC was feeling harassed “to do with requests the Claimant was making” but she did not want to go into detail and he respected her wishes.
168. In her oral evidence, Mrs Mackereth confirmed that she had been given a copy of the Claimant’s complete grievance in the week that it was lodged. She was asked why she had sent her statement of 3 January 2023 to Miss Spencer and she said that she had “mentioned the disruptive behaviour” to Miss Spencer and she had asked her to record it. The Claimant put to her that this was not to do with the grievance appeal or a disciplinary but she was just providing a statement off the back of her views of the Claimant’s behaviour. She agreed. She was aware at that time that Miss Spencer was handling the Claimant’s appeal against the grievance of which Mrs Mackereth herself was a subject.
169. In cross-examination, Miss Spencer was asked about when and how complaints were raised with her. She said that she had spoken to Mrs Mackereth, Mr Briggs and Mr Townsend. She “thought” it was as part of the grievance appeal. She “did not know” why she chose to attach their statements to the disciplinary invitation. The Claimant suggested to her that her lack of clarity about whether this was part of the grievance process or the disciplinary process demonstrated that the two were not dealt with separately. She said that she was quite clear in her own mind that she was dealing with two separate processes.
170. Taking into account all the evidence above, the Tribunal had no hesitation in finding that there were “behind the scenes” discussions about the Claimant’s grievance and people’s views about that, and about her conduct, including between Mr Briggs and Mrs Mackereth, and between Miss Spencer and each of Mr Townsend, Mr Briggs and Mrs Mackereth. Miss Spencer participated in undocumented discussions and solicited written statements from each of them that set out not just a factual account, but opinions about the Claimant. This appears to have been ongoing. Miss Spencer was certainly involved in it from the point she received the Claimant’s grievance appeal.
171. Miss Spencer said in her statement that she decided to suspend the Claimant when she realised that she was likely to return to work. Given the nature of the complaints she had received about her, she considered that it would be “inflammatory” to allow her to return to work. Miss Spencer

said in her witness statement that the grievance was completely separate from the suspension. The suspension related to “completely different issues” and “it was because she behaved inappropriately.” She confirmed in her oral evidence that her view at the time she suspended the Claimant was that she had behaved inappropriately. Miss Spencer said that she did not suspend the Claimant because of her allegations of discrimination.

172. Miss Spencer said in her statement that, while the Claimant was suspended, she “gathered statements” as part of the investigation. The Tribunal saw that she emailed a number of people on 5 January 2022 asking about their working relationship with the Claimant and whether they had “any instances of relevance to share”. Many of the people contacted were not obviously able to assist with the apparent allegations of misconduct towards Mr Briggs, Mrs Mackereth, BC and Mr Townsend, nor were specific questions asked in relation to those allegations. Miss Spencer also conducted investigations with further witnesses. She did not speak to BC. She said that this was because the business was very concerned about her and she was “extremely upset and felt conflicted.” Miss Spencer “got the impression” she wanted to support the Claimant but did not like the way she was going about it. She decided that there was sufficient evidence to take the case forward for disciplinary action and passed it to Mr Andrew, a Site Director at a different site, to deal with.
173. Miss Spencer was asked in her oral evidence about the decision to conduct the grievance appeal in writing. She said that it was to respect the views of the people who had complained about the Claimant. The Claimant put to her that, on hearing complaints from people complained about in the grievance, she felt it necessary to conduct the appeal in writing. She agreed. The Claimant put to her that it was not reasonable to require a written response in two weeks over the Christmas period. She said that she thought this was reasonable. She considered the fact that it fell over Christmas. The Claimant asked her about her request to conduct the hearing by Teams to alleviate Miss Spencer’s concern. She said, “I don’t recall having answered that question.” Miss Spencer was asked whether she had taken into account that the Claimant has dyslexia in her decision to conduct the appeal in writing. She said that the Claimant was capable of communicating at length in writing. Miss Spencer was not able to say how she knew that the Claimant had dyslexia because she had not seen the Unity OH report by that stage.
174. Miss Spencer was asked about her decision to require a written statement about the disciplinary “allegations” in a two-day timescale, coinciding precisely with the deadline for the grievance appeal document. She said that the Claimant had had two full weeks to deal with the grievance appeal and that the two-day timescale did not give her any pause for concern, “there were two full working days for her to do it.” She pointed out that she had given the Claimant an additional day. When Miss Spencer resumed her evidence the following day, the Claimant returned to this topic. The Tribunal then asked Miss Spencer whether she had reflected on the fact that the Claimant had been given two weeks over Christmas to produce a written grievance appeal document; she had dyslexia, ADHD and autism; she had been told, out of the blue, that she was facing disciplinary allegations; and she was then given two days to respond to them, at the same time as producing the grievance appeal document. Eventually she said that on reflection, longer should have been given. It seemed to the Tribunal that that must have been obvious at the time.
175. The Claimant questioned Miss Spencer about whether it was appropriate to start a disciplinary investigation about allegations that the grievance contained false and malicious complaints, when the grievance appeal had not been concluded and Miss Spencer herself was dealing with it. Miss

Spencer was insistent that the grievance appeal and disciplinary process were “entirely different” and “shouldn’t be conflated.” The Tribunal sought to explore this with her. Miss Spencer was reminded that Mr Briggs’s complaint was that the Claimant was accusing him of discrimination. That accusation was being made in the grievance. Miss Spencer would have to decide in the grievance appeal whether it was well-founded or not. Before doing that, she was suspending the Claimant and conducting a disciplinary investigation into an allegation that the Claimant had made false and malicious complaints in her grievance. Miss Spencer was asked whether she still thought it was right to say that there was no overlap. She said, “I was following the grievance appeal process. I heard the issues that had been raised by others. I couldn’t ignore those.” She was asked why she had not simply delayed the disciplinary process until after the grievance appeal was concluded. She said that it was to protect the other people concerned. Even on reflection, she did not think it was inappropriate. She said that the dates overlapped, but the decision making did not.

176. The Tribunal did not accept that, in view of Miss Spencer’s own evidence, confirmed orally, that she concluded that the Claimant had behaved inappropriately at the time the complaints were raised with her and that is why she suspended her. The complaints raised by Mr Briggs and Mrs Mackereth were about things the Claimant was raising in her grievance. Miss Spencer had concluded that that behaviour was inappropriate before she had considered the grievance appeal about those same matters.
177. It was put to Miss Spencer that her decision to suspend the Claimant and to instigate a disciplinary process against her was both victimisation and disability discrimination. She said that this was “absolutely wrong.” It would go against all her professional conduct and the way she tries to behave. There would be no advantage to her in doing so. She was trying to hear the volume of information in the best way possible. The timings and crossover of dates was unfortunate but the decision making was not skewed in any shape or form. It was put to Miss Spencer that a number of features – for example the two-day timescale that was so obviously unreasonable, the overlap between the disciplinary allegations and the grievance appeal, not agreeing to conduct the appeal hearing by Teams – might suggest that Miss Spencer was cross and upset that the Claimant had complained and upset senior colleagues. Miss Spencer said that the Claimant was due to return to work, she was “doing it in a timely way to support her” and the Claimant had shown herself to be capable of corresponding in writing.
178. The Tribunal had no hesitation in finding that Miss Spencer’s decision to suspend the Claimant and her decision to instigate the disciplinary process that led ultimately to her dismissal were acts of victimisation, because in part they were caused by the Claimant’s complaints of discrimination by Mr Briggs. We took into account the following:
 - 178.1. Miss Spencer all but accepted in her evidence that this was part of her reasoning. As set out above, she said in her witness statement and confirmed in her oral evidence that at the time she suspended the Claimant, she believed that she had behaved inappropriately. Part of that inappropriate behaviour was making what Miss Spencer regarded as false allegations of discrimination about Mr Briggs. Those were the complaints of discrimination contained in the Claimant’s grievance (and not yet resolved in the grievance appeal.) The suspension was therefore, in part, because the Claimant had made complaints of discrimination about Mr Briggs. From Miss Spencer’s oral evidence, summarised above, it

is apparent that this was one of the items of alleged misconduct in relation to which Miss Spencer instigated the disciplinary process as well.

- 178.2. Miss Spencer's decision to conduct the grievance appeal in writing because of concerns raised about the Claimant's conduct that, again, included concerns about the allegations contained in the Claimant's grievance.
- 178.3. Miss Spencer's failure even to respond to the Claimant's request to conduct the grievance appeal by Teams, if her concern really were to protect colleagues from the Claimant's behaviour.
- 178.4. Miss Spencer's requirement that the Claimant provide her full written grievance appeal in relation to the written process that Miss Spencer had unilaterally imposed on her, within 14 days that embraced the Christmas and New Year period.
- 178.5. Miss Spencer's decision to suspend the Claimant only on 2 January 2023, when the Claimant was fit to return to work, rather than at the point Miss Spencer concluded that she had behaved inappropriately.
- 178.6. Miss Spencer's requirement that the Claimant provide a written response in the disciplinary process within two days and, furthermore, two days that coincided with the existing deadline for her to provide the written grievance appeal document. Her decision to extend that deadline by 24 hours only, in response to the Claimant's request, and her refusal to allow even a further week after that. The context for this being that Miss Spencer knew that the Claimant has dyslexia, ADHD and (likely) autism. She was telling the Claimant, out of the blue, that she faced serious disciplinary issues. She knew that the Claimant already had a deadline to produce a written grievance appeal document. The Claimant was telling her that she was struggling. This suggests a process designed not to be fair or to elicit a proper understanding of what had happened or the Claimant's version of events, but to bring about the termination of the Claimant's employment as soon as possible.
- 178.7. Miss Spencer's failure to identify when suspending the Claimant or at any subsequent stage proper, specific allegations of misconduct – what the Claimant actually did or said, when, and to whom – rather than generic labels.
- 178.8. Miss Spencer's failure to carry out any further investigation of the matters raised in the Claimant's grievance appeal, despite the obvious shortcomings in Mr Townsend's approach, concisely summarised by the Claimant in her initial appeal document, and despite her own evidence that there was missing information and points that needed explanation in the Claimant's written grievance appeal documentation.
- 178.9. Miss Spencer's decision to conduct the disciplinary investigation alongside the unconcluded grievance appeal, despite the obvious overlap between the two. Miss Spencer had to decide in the grievance appeal whether Mr Briggs had discriminated against the Claimant, but she was initiating a disciplinary investigation, into, among other things, the question whether the Claimant had made false allegations of discrimination against Mr Briggs.
- 178.10. Miss Spencer's failure to carry out a proper disciplinary investigation, by specifying actual allegations and then identifying the evidence that might be relevant to whether those things had happened, rather than inviting an apparently random selection of people to provide comments on the Claimant's behaviour.
- 178.11. The total absence of any proper explanation or audit trail from the Group Head of HR of a company such as the Respondent, explaining how she came to know of allegations made by Mrs Mackereth, Mr Briggs and Mr Townsend; how their written statements came to be

provided; and even whether those statements formed part of the grievance process or the disciplinary process.

- 178.12. Miss Spencer's tendency to portray the Claimant in an unfairly negative light in her witness evidence. For example, her inaccurate evidence that the Claimant had a tendency to arrive unannounced at work and to make herself loud and visible; and her inaccurate suggestion that the Claimant was trying to get BC to say things that she did not believe to be true.
- 178.13. Miss Spencer's failure properly to address the overlap between the grievance appeal and the disciplinary allegations or to identify any sensible rationale for not dealing with the grievance appeal first, so as properly to inform the consideration of whether the Claimant had committed misconduct, in particular by making false allegations of discrimination in the grievance.

January 2022: disciplinary hearing

179. We turn next to the disciplinary hearing. Ms Pearce wrote, in an email sent at almost 5pm on 11 January 2023, inviting the Claimant to a disciplinary hearing on 16 January 2023. The Claimant replied on 13 January 2023. She set out her belief that the allegations made against her were retaliation for her grievance. She raised a number of points, including:
- 179.1. A request that the company obtain medical advice both about adjustments for the disciplinary hearing but also about whether her ADHD, dyslexia or autism might affect her communication and behaviour, in relation to the substance of the allegations against her.
- 179.2. She asked for clarity about the allegations against her. She asked what specific complaints had been made, who had raised the complaints and to be provided with evidence of them.
- 179.3. She pointed out that she was locked out of the company IT system and had been since her suspension. She asked for access to her emails so that she could access evidence she might need to defend herself.
- 179.4. She asked for copies of the emails Miss Spencer had sent soliciting evidence statements, because she feared from the contents of the statement that Miss Spencer had decided to conduct a witch hunt against her because of the concerns she had raised.
- 179.5. She asked specifically for BC's statement or for an explanation why she had not been asked to provide one.
- 179.6. She said that, even if the company did not agree with her that it was vital to postpone the disciplinary hearing to obtain medical evidence, two working days and a weekend were in any event entirely insufficient for her to prepare a defence, particularly given the lack of clarity of the allegations, her lack of access to her emails and the extreme seriousness of the possible outcomes.
- 179.7. She volunteered permission for her Unity OH report to be viewed.
180. Mr Andrew replied telling the Claimant that she was welcome to bring any medical evidence she had with her. He had now seen her recent OH report and did not consider that a further report was required. Mr Andrew told her that he would reschedule the hearing for later next week. He confirmed that adjustments would be made, including permitting the Claimant to bring an advocate with her. Mr Andrew said that the Claimant had made a number of comments regarding

the allegations, evidence and how it was obtained. She was free to make those points at the disciplinary hearing itself. Therefore, he did not provide any further clarification about what the Claimant was actually alleged to have said or done, for which she was being disciplined. Mr Andrew said that if the Claimant had specific emails she wanted him to review, she should let him know the details and he would seek to recover them.

181. The disciplinary hearing was rescheduled for Wednesday 18 January 2023 at 1.30pm. There was some confusion about the new date, which was confirmed towards the end of the day on 13 January 2023.
182. The Claimant emailed Mr Andrew again, specifically returning to the question of medical evidence. She said that she did not think she had any relevant evidence herself and was unlikely to be able to obtain any in 3 working days. She made clear that the existing OH report did not address the substance of the disciplinary allegations and offered nothing to assist a disciplinary officer in properly understanding the extent to which the disciplinary allegations were a product of her disabilities and the extent of any mitigation. She asked him to reconsider. He replied on 16 January 2023 to say that he had reviewed her points but had already responded to them and saw no need to delay the hearing further.
183. The Claimant sent a further email on 17 January 2023 in the morning. She explained that she had been trying to organise an advocate, medical evidence and witness statements and to prepare evidence documents. The position was that she was unable to obtain any professional advice about her conditions and she was unable to get Mrs Brackstone to attend as her advocate at such short notice. She had found somebody else, but they were not available between 12noon and 3pm tomorrow. She therefore proposed four options. They included holding the hearing on Teams at any time the following day apart from 12noon to 3pm or holding it in person later in the afternoon. Her other options involved moving it to the following day, or to Monday 23 January 2023. She volunteered to take two days' holiday to avoid any suggestion that she was delaying for financial gain. She listed some emails that she wanted Mr Andrew to obtain for her, as well as CCTV footage and key fob times for 6 December 2022.
184. Mr Andrew replied at 16:51pm. He referred to his previous correspondence and said that he still saw no reason to delay the hearing. He said that at the hearing the Claimant would have ample opportunity to direct him to any evidence she wished to be considered.
185. In the evening of 17 January 2023, the Claimant sent a detailed written statement. In the absence of any clear disciplinary allegations, it responded to the substance of all the statements that had been provided to the Claimant with the disciplinary letter. The statement was therefore lengthy and detailed, but it was well-structured, clear and coherent. She also sent supporting evidence.
186. Mr Andrew's evidence in cross-examination included the following:
 - 186.1. The Claimant asked him why he did not agree to move the hearing when she emailed him on 17 January 2023 telling him that she could not obtain medical evidence or source an advocate. He said that it had been moved once and they had agreed 16 January 2023. He was asked what the basis was for his view that the Claimant had agreed 16 January 2023. He had evidently made an assumption; the Claimant had not agreed, she had simply been informed of the date. He was then asked again, thinking about the obligation to make

reasonable adjustments for disability, why he had not agreed to move the hearing. He gave a number of answers that did not make sense. The Claimant referred to the evidence in Mr Andrew's witness statement, that he "did get the impression that [the Claimant] was not averse to delaying the disciplinary hearing while she was on full pay"; this was a "common tactic"; and he believed the Claimant asking for another medical report was "a delaying tactic." There were "so many hoops they had to jump through" to arrange the meeting and this was "just another reason to delay the disciplinary appeal." The Claimant pointed out that she had offered him options to conduct the disciplinary hearing sooner than scheduled and asked how he could have come to the conclusion that she was trying to delay. He did not answer the question. He was asked again how he had reached the conclusion that this was a delaying tactic when the Claimant had offered him options earlier on the same day. He said, "I thought that we had had 16th and moved it to the 18th." When the Tribunal asked him to clarify if he was really saying that his view was that it had been moved once and he was not moving it again, he said that he was.

- 186.2. The Claimant asked Mr Andrew if he had provided any of the documents she had requested. He confirmed that he had not. He was taken to his witness statement, in which he said that he refused access to the IT system but that the Claimant was "not denied access to pertinent documentation as she was assured if she specified her documentation requirements this would be provided to her." He was asked how he could have given evidence that the Claimant was not denied access to documentation, when none of the documents she had asked for had been provided to her. Again, Mr Andrew gave answers that did not answer the question and it was repeated. Eventually, he said that he could not answer.
- 186.3. In his witness statement, Mr Andrew said that he refused to provide copies of the emails Miss Spencer had sent soliciting statements because she was the HR Director and he was fully confident she conducted the process in line with their procedures. He was asked about that in cross-examination. He said, "[Miss Spencer] is an HR Director. I'm not there to question how she has followed due process. I have no reason to question that she is following good practice." The Tribunal asked him whether, if an employee at a disciplinary hearing raised concerns that the investigation had not been done properly, it was his job to look into that. He said that it was. It was put to him that the Claimant had done precisely that – she was questioning whether Miss Spencer had followed a fair process. He said, "I would never have any reason to question the HR director of our business."
- 186.4. The Claimant asked Mr Andrew about her request that he obtain expert medical evidence about the possible impact of her ADHD, autism and dyslexia on the behaviour for which she was being disciplined. He said that he was "not aware" that a second report needed to be taken. Again, he gave a series of unconvincing answers. Eventually, the Tribunal asked him whether he had understood at the time that the Claimant was asking for a report to cover a completely different subject – not adjustments for the hearing, but whether, substantively, the Claimant's conduct might be caused by her ADHD, autism or dyslexia. He said that he had not.
- 186.5. Mr Andrew was asked about not providing the Claimant with clarification of what the allegations against her were. He said that having gone through the process and read through some of what happened, he "took it that there was enough." He was asked about how the Claimant was able to prepare her defence if she did not know what the allegations were. He said that he thought there was enough there, adding that the allegation about BC was clear. He was therefore asked, in relation to that allegation, what

it was that the Claimant had said or done for which she was being disciplined. He said, "We've tried to do this transparently. I take on board what you're saying."

187. The Claimant attended the hearing as scheduled on 18 January 2023. Her father attended with her to support her. The hearing took place at Head Office in a glass walled room. The Claimant was not familiar with Head Office. The Directors were all based there. The hearing lasted around three hours. Ms Pearce took notes. Mr Andrew's evidence was that he saw a different person at the hearing from the person "all" of the witnesses described. "This showed to me how the Claimant could turn this on and off." Mr Andrew did not explain how he had weighed the Claimant's autism and ADHD in reaching that conclusion, for example the likelihood of an autistic person having autistic meltdowns; the process of "masking" and what happens to the ability to mask when under stress; and issues of impulsivity and emotional control in relation to autism and ADHD.
188. The Tribunal noted the following in relation to the disciplinary hearing:
- 188.1. At the outset of the hearing, Mr Andrew asked the Claimant if she understood why she was there. She said that she did not really, it was not clear. Mr Andrew referred again to the four "allegations".
 - 188.2. Mr Andrew asked the Claimant about her conduct after the grievance hearing on 14 December 2022. She gave her account.
 - 188.3. Mr Andrew asked her about a small part of Mr Townsend's statement – the generic allegation that the Claimant's communication was patronising and condescending and that she was trying to intimidate him and manage the process; an allegation about a comment from the Claimant insinuating that Mrs Mackereth could not do her job and a comment about Mrs Mackereth not knowing what the term "neurodiverse" was; and the allegation that the Claimant said at the end of the meeting "impatiently" and "passively aggressively" that she would see Mr Briggs.
 - 188.4. The Claimant volunteered information about other parts of Mr Townsend's written statement - specifically with reference to questioning Mr Townsend's level of seniority and moving seats.
 - 188.5. Mr Andrew asked the Claimant whether her conduct during the grievance process and grievance meeting was intimidating, unprofessional, bullying or harassing. Apart from discussing the matters outlined above, he did not put any specific allegation of such conduct to her.
 - 188.6. In relation to allegation two, Mr Andrew confirmed that he did not have any statement from BC. He asked the Claimant about the WhatsApp exchange she had provided. The Claimant volunteered that she had contacted BC on 22 December to say that she was sorry and would not contact her again. Mr Andrew asked the Claimant why BC went to see Mr Briggs upset. The Claimant, rightly, said that she could not answer that. Mr Andrew repeated that line of questioning. He did not put to the Claimant anything that she was alleged to have said or done to BC for which she was being disciplined.
 - 188.7. In relation to the third allegation, Mr Andrew asked the Claimant about Mr Townsend's statement. He did not take her to notes from the grievance hearing detailing what she was alleged to have said. The Claimant said that she did not mention "sexuality" or comment on Ms Maxwell's "masculinity". She said that she had used the language about maternity and paternity leave. She explained what she had said and the context – that she was contrasting PR's behaviour towards Ms Maxwell with his behaviour towards her. She pointed out that Mr Townsend had originally said in the grievance outcome that if the

Claimant did something like this again, she would be disciplined and questioned why she was now being disciplined for the same thing. Mr Andrew asked if the Claimant was accusing Mr Townsend of lying. She said that he was turning something that was not an issue into one.

- 188.8. In relation to the fourth allegation, Mr Andrew asked the Claimant whether she had “any evidence to refute any of these statements”. He put to her that she had made malicious comments for financial gain. She disagreed. The Claimant discussed the informal investigation meeting. Ms Pearce recorded that she said, “Mr Briggs asked did I smirk at him, I said unconsciously, maybe yes. It was a stressful situation, and it is a ridiculous question.” Mr Andrew did not put to the Claimant anything specific that she was said to have said or done. He did not identify any specific allegation that he said was malicious or false. The Claimant said that Mr Briggs was not “a sexist person” but had unconsciously perpetuated a culture of unconscious bias. He did not understand that when he says, “lads, lads” it was unconscious bias, when the Claimant did a good job negotiating.
189. During the disciplinary hearing, Mr Andrew referred to the Claimant’s conditions as an “illness”. The Claimant did not cover this in her witness statement and was not cross-examined about it, but Mr Andrew does not dispute that it was said. In his witness statement, he apologised for doing so and said that he did not use the word with any ill intent. He said that he knew the Claimant was absent from work because of her conditions and that if you are not at work, it is normally because you are ill. We note that, of course, the Claimant was not signed off sick, she was suspended. In any event, in cross-examination the Claimant thanked Mr Andrew for his apology. She said that his comment had, however, had the effect of harassing her. The Tribunal found that Mr Andrew’s conduct in referring to the Claimant’s condition as an illness was unwanted by her and that it related to disability. She does not suggest that Mr Andrew intended it violate her dignity or create a harassing environment and the Tribunal found that it did not, in fact, have that effect on the Claimant. While she found it somewhat offensive, the Tribunal found that she did not perceive that it violated her dignity or created an intimidating, hostile, offensive, degrading or humiliating environment. It was a single comment during a long hearing, by someone with whom the Claimant did not generally have contact.
190. The Claimant emailed Mr Andrew the day after the hearing, providing answers to some of the questions that had been raised, and identifying witnesses who could confirm that she had not shouted and sworn in the corridor on 14 December 2022. These included Ms Rus in HR and the two clients. She pointed out that she had already provided a statement from Mrs Brackstone. She asked Mr Andrew to let her know if he needed anything else and to give her an opportunity to reply before reaching any decisions. She asked him, again, for the emails and other evidence she had requested before the disciplinary hearing. She sent further emails with evidence in response to the written statements from the individuals that had been provided to her.
191. After the disciplinary hearing, Mr Andrew did conduct further investigation meetings. In particular:
- 191.1. He met Ms Hardie-Cross and asked her what the Claimant had said about Ms Maxwell in the grievance meeting. Again, there does not seem to have been reference to the meeting notes. Ms Hardie-Cross’s brief verbal account was consistent with the Claimant’s.
- 191.2. Mr Andrew met Mr Briggs. The notes of the meeting are 1 ½ pages long in total. Mr Andrew did not ask Mr Briggs which of the Claimant’s allegations he said were false or malicious. There was a superficial discussion. In relation to Mrs Mackereth’s meeting

notes, for example, Mr Andrew said that the Claimant was alleging that the minutes were fabricated and Mr Briggs said that he was “very happy with” her output, personally agreed all minutes before they were sent out and that he rated Mrs Mackereth very highly. Mr Andrew did not probe that in any way – by reference to the Claimant’s specific criticism of the notes, for example, or by asking for copies of the email exchange in which Mr Briggs had approved these meeting notes. Mr Andrew asked questions that were leading and gave the impression of pre-judging matters. For example, he asked, in relation to 14 December 2022, “Was the abusive language in front of [client] colleagues loud enough to be heard?” Mr Andrew’s concluding remark was “You have inherited this if she was taken to task earlier on her behaviour and conduct we would not be in this place.”

- 191.3. Mr Andrew met Ms Blackburn. She did not express any personal concern about the Claimant’s conduct on 6 December 2022, e.g. suggesting that she had felt uncomfortable or intimidated.
- 191.4. Mr Andrew met BC. He asked her about Mr Briggs’s statement that he had been visibly distressed and she agreed. He then asked her the leading question, “Did you feel harassed?” and she said that she did. She mentioned that when she said that she did not want to continue the response was “not friendly.” Mr Andrew asked her what made her feel different about continuing to support the Claimant and she said that she had done what was asked and that to look whether the Respondent was lying was a step too far. Mr Andrew asked BC leading questions about the Claimant’s conduct during the grievance hearing. For example, he asked, “Was she difficult? Verbally loud? Derogatory?” and, again, “Was she difficult?”. In relation to Mr Townsend, BC said that after the first comment, and Mr Townsend saying that he was qualified, the Claimant did not push back or argue. Towards the end of the discussion, BC again said that she reconsidered supporting the Claimant when she was asked to go through the minutes. She was at work, it wasn’t right and she still worked there. Mr Andrew then suggested to her, “So you think the reason was to make sure the minutes were written in a way that the Claimant wanted?” BC agreed with that leading question, which was not an accurate summary of what she had said.
- 191.5. Mr Andrew met Ms Rus. She was in the HR office on 14 December 2022. She said that the Claimant said that she was feeling “fucking shit”. Mr Andrew asked the leading question, “Was this for everyone else’s benefit?” and Ms Rus said she thought so. Then the Claimant left the office and was waiting outside Mr Briggs’s office. Ms Rus did not hear her say anything else.

192. Mr Andrew did not provide the Claimant with any of the evidence she had asked for. He did not provide her with copies of his investigatory meeting notes to comment on and he did not seek any further input from her. He wrote to her on 27 January 2023, dismissing her for “serious misconduct.” His findings were:

- 192.1. Allegation 1 was upheld. Mr Andrew found that the Claimant had a “very combative and abrasive style of communicating.” She had not displayed it during the hearing, which indicated to him that she was “able, when required, to regulate and temper her communication manner and word choice.” He was persuaded by “the evidence of Mr Briggs, Mrs Mackereth and Mr Townsend” that she failed to do so in her dealings with them. He said that he was “extremely disappointed” about her language and word choice in the meeting with Mr Townsend. He quoted from Mr Townsend’s written statement (see above). He did not make a finding about what the Claimant actually said in relation to Ms

Maxwell nor in what context. He did not refer to the Claimant's account, Ms Hardie-Cross's account or the written notes and he did not explain how he had reached his conclusion. Mr Andrew also accepted Mr Townsend's evidence that the Claimant's communication was at times patronising, condescending and sought to intimidate him. Mr Andrew did not identify what the Claimant had said or done in those respects. He said that the Claimant had failed on multiple times to follow management instructions, including breaching the parameters of her suspension. We note that that was not one of the disciplinary allegations. In relation to 14 December 2022, Mr Andrew was not particularly concerned about the Claimant swearing – that was the type of industrial language they heard from time to time – but he was persuaded that she had elevated her voice to ensure that an important customer overheard her comments so that she could be paid “despite still being signed off sick” [she was not]. Mr Andrew said that he took into account that both Mr Townsend and Mr Briggs had been left in tears by how the Claimant had spoken to them. He had sought to balance the OH opinion and the Claimant's neurodiversity, but in his view Mr Briggs and Mr Townsend were experienced, senior and professional people who would not easily be reduced to tears. On reviewing their statements, Mr Andrew was persuaded that the Claimant's language, tone and conduct towards them and towards Mrs Mackereth, amounted to bullying, harassing and intimidating behaviour, even after affording a degree of licence for the Claimant's neurodiversity. Mr Andrew did not say what the Claimant had said or done and he did not make any reference to her statement, explanations or evidence.

- 192.2. Mr Andrew did not uphold allegation 2. He did not find that the claimant had behaved in an intimidating way towards BC.
- 192.3. Mr Andrew upheld allegation 3, which had also relied on in respect of allegation 1. He found that the Claimant's comments about Ms Maxwell were inappropriate. Again, he did not say what comments he found that the Claimant had made. He did not refer to any evidence.
- 192.4. Mr Andrew upheld allegation 4. He said that this was a very serious issue and that a number of statements, including Mr Briggs's, Mrs Mackereth's and Mr Townsend's, made reference to “compelling arguments” over the Claimant's “false allegations.” He found that the Claimant's allegations were “false.” He set out the evidence on which he relied. That comprised short extracts from the written statements of Mr Briggs, Mrs Mackereth and Mr Townsend, to which we have referred above. The only references to any concrete allegation said to have been falsely made within those extracts was: Mr Briggs's assertion that the Claimant had “maliciously and creatively added “lads” to alleged quotes to support a false narrative” and Mrs Mackereth's assertion that the Claimant's complaint that she appeared disinterested in supporting with her diagnosis her was false. Mr Andrew did not identify any specific allegation that he had concluded the Claimant had falsely made or how he had arrived at that conclusion. He did not refer to anything at all that the Claimant had said in her written statement or supporting evidence. He did not deal with any of the underlying material – meeting notes, correspondence and so on.
- 192.5. Mr Andrew explained that he had concluded that the Claimant should be dismissed with pay in lieu of notice. This part of his decision was plainly written with legal assistance and it recited that Mr Andrew had taken into account all of the Claimant's defences, mitigation, length of service, performance and clean disciplinary record. Mr Andrew said that he had weighed the Claimant's comments about her medical conditions and the OH report, but even with allowances for her neurodiversity, she had conducted herself in such

a way that he struggled to see how she could return to work. Her conduct had led to numerous complaints and two senior managers were in tears. The bringing of a grievance did not justify unprofessional behaviour towards colleagues. The statements of senior people, particularly Mr Briggs and Mrs Mackereth, persuaded him that it was untenable for the Claimant to return to work. If he had not dismissed her on conduct grounds, he would have dismissed her because of a breakdown in relationships, on the same basis. Mr Andrew said that he had considered whether the Claimant could move site or be given a final written warning, but had concluded that these were not appropriate “because of the reasons expressed above.”

- 192.6. Mr Andrew told the Claimant that she had five days from the date of the outcome letter in which to appeal. Again, the outcome letter itself was sent at close of business on that date.
193. In cross-examination, the Claimant asked Mr Andrew what specifically he was investigating about her conduct in relation to allegation 4. He said that it was the comments from Mrs Mackereth, Mr Townsend and Mr Briggs. She asked him specifically again and he said that it was the points in his outcome letter. The Tribunal asked Mr Andrew what it was that the Claimant had said or done that amounted to misconduct. He gave a series of “descriptive” answers. For example, he said that it was “the way she was treating Mr Townsend”. He was asked what about her treatment was misconduct. He said that it was “her questioning, her challenging, her behaviour.” He was asked what questioning, challenging or behaviour amounted to misconduct. He said that she was “undermining Mr Townsend. Not allowing him to deliver his role in the process.” The Claimant again pressed him to identify any specific thing that she had done that amounted to a malicious grievance. He identified one example only – “I strongly feel that she was malicious and created “lads.” He was asked whether it was his understanding that Mr Briggs had not used the term “lads” and he said that he thought it was “misconstrued” it was “how it was deemed to have been said.” The Tribunal asked some further questions about this at the end of Mr Andrew’s evidence. The Tribunal suggested that somebody could “misconstrue” something maliciously, or they could just misunderstand. He was asked about how he had concluded that the Claimant had “maliciously” misconstrued Mr Briggs’s use of the language “lads”. He said “I tried to be as balanced as I could. There was a picture that was being painted. It would be unfair and remiss of me to use that allegation.” He was asked whether that meant that this was not an example he took into account. He said that he “tried to be balanced.” He was asked whether, in considering whether the Claimant might have misconstrued, he took into account her autism. He said that from a medical perspective he did not know.
194. The Tribunal explained to Mr Andrew that the impression he was giving was that he had not gone through the grievance and identified which allegations the Claimant had made that were malicious or false; rather he had looked at this one step removed by basing his decision on the general assertions in Mrs Mackereth’s and Mr Briggs’s written statements. He said, “I’ve definitely taken their statements as part of my decision-making process.”
195. Mr Andrew said that he also felt that the Claimant’s relationship with the leadership team was severely damaged by the allegations that were raised. The Tribunal queried whether he was saying that it was misconduct to raise a grievance that might damage relationships and he said that it was not.

196. In cross-examination, the Claimant asked Mr Andrew about some of the documentary evidence she had provided. He did not remember some of it. Other items he said that he had not used. One of them was a document setting out what the Claimant had identified as the discrepancies in Mrs Mackereth's meeting notes. She said that it was relevant to the question whether her complaint about those meeting notes was false or malicious. She asked Mr Andrew how he had used the document in determining whether that allegation was malicious. He said that he did not use the document. He confirmed that he understood that one of the issues was whether the Claimant had maliciously and falsely accused Mrs Mackereth of altering the meeting notes but confirmed that he had not used the document.
197. The Claimant referred to evidence she had provided of incidents of sexist behaviour in 2021 and 2022. She asked how Mr Andrew had weighed it against Mrs Mackereth's evidence that there was no sexist behaviour. He said that he did not link them together.
198. The Claimant put to Mr Andrew that he had not investigated her evidence properly. He said that he had "investigated so much of it".
199. The Tribunal asked Mr Andrew whether he had considered, in deciding that the Claimant should be dismissed, whether her ADHD or autism might account for some of her behaviour. He said that he was "not medical." He tried to look at all the information. There were just so many challenges from so many people. Medically, he was "not able to say whether they did or they didn't." In the light of that evidence, it appeared to the Tribunal that the suggestion in the outcome letter that Mr Andrew had made allowances for the Claimant's neurodiversity should be treated with some caution.
200. The Respondent says in the agreed list of issues that its legitimate aim in dismissing the Claimant was "treating the Claimant in a manner consistent with other employees when investigating, disciplining and dismissing her/other employees for serious breaches of conduct and the company's equality/harassment policies." Mr Andrew did not refer to that in those terms in his witness statement. He included a section headed "discrimination arising from disability". He said, "In coming to my final decision, I did consider the Claimant's conditions, but I don't think that was the reason for coming to the outcome I did." That appeared to address issues related to direct discrimination rather than discrimination arising from disability. Mr Andrew's statement also included some "general comments." He said, "The bringing of a grievance did not afford [the Claimant] carte balance [sic] to behave in an offensive, dishonest or unprofessional manner, which I found that she had. I do think that she was lying about feeling offended by the conduct of others and was someone who sadly lacked perspective about how offensive she was being towards others. While I was sympathetic towards this, the medical information available to me did not excuse her being discriminatory, harassing, offensive or dishonest. That responsibility rests with her." As noted, Mr Andrew did not have relevant medical evidence available to him, because he had refused the Claimant's request to obtain it. While Mr Andrew referred in his evidence to taking into account the Claimant's neurodiversity, he did not expressly address issues of proportionality – whether he weighed the discriminatory impact of dismissal on the Claimant, and whether there was some lesser sanction that would have achieved the Respondent's aim.
201. The Claimant appealed against her dismissal in a letter dated 30 January 2023. She began by saying that she believed that this was a "witch hunt" against her after she had highlighted serious

issues in her written grievance and at the grievance hearing. She said that her dismissal was unfair and discriminatory. Her grounds of appeal included the following:

- 201.1. In relation to her conduct in the corridor on 14 December 2022, she pointed out that the three people whose evidence Mr Andrew had relied on were either subjects of the grievance, or charged with dealing with it. She said that all four of the other witnesses interviewed by Mr Andrew said that she was pleasant and professional. She also referred to Mrs Brackstone's statement. She said that this evidence appeared to have been dismissed by Mr Andrew.
 - 201.2. She pointed out that nowhere in any of the evidence provided to her was there any statement from Mr Briggs or Mr Townsend that they had been reduced to tears, or what exactly reduced them to tears. She asked for the evidence.
 - 201.3. She pointed out that allegation 3 was included within allegation 1, even though it was a separate allegation.
 - 201.4. In relation to allegation 3, she said that Mr Andrew himself had burst out laughing when discussing the language Ms Maxwell had used to describe her own parental leave at the disciplinary hearing. She pointed out that both the Respondent's and BC's notes of the grievance meeting make no reference to the Claimant mentioning Ms Maxwell's sexuality or her clothing choices or to her questioning Ms Maxwell's sexuality. She asked what the rationale was for finding Mr Townsend's statement reliable. She set out again her own account of what had been said on 14 December 2014.
 - 201.5. In relation to allegation 4, she suggested that the written statements from Mrs Mackereth, Mr Briggs and Mr Townsend were inaccurate and malicious and on occasions used "quite disgusting" language. She pointed out that Mr Andrew had not spoken to Mr Briggs or Mrs Mackereth. She said that she had provided evidence demonstrating the inaccuracies in the statements.
 - 201.6. She referred to her ADHD, dyslexia and possible autism. She set out the timeframes imposed on her by Miss Spencer, which she described as bullying and discriminatory.
 - 201.7. She outlined the timescales in relation to the disciplinary process and Mr Andrew's failure to move the meeting on the second occasion. She said that this, too, was a failure to make a reasonable accommodation for her conditions.
 - 201.8. She pointed out that Mr Andrew had not obtained medical evidence about how her neurodiversity might affect her communication and people's perception of her. Given that her dismissal was primarily based on other people's opinion of her and her communication style, she said that the process could not be considered fair. She repeated her request for expert medical evidence to be obtained.
 - 201.9. She pointed out that Mr Andrew had inappropriately referred to her neurodiversity as an "illness" as recorded in the meeting notes, and said that she was different, not ill.
 - 201.10. She identified outstanding issues that she said still had not been addressed.
202. The Claimant's appeal was dealt with by Mr Glover, the Company Secretary. They exchanged emails about the arrangements for an appeal hearing, and it was, by agreement, conducted by Teams on 22 February 2023. Mr Glover agreed that the Claimant could record the meeting. The Claimant offered her consent for Mr Glover to view her OH report, and he did so. The meeting lasted around 1 ½ hours and the Claimant talked through her grounds of appeal. Mr Glover's evidence was that he carried out a review, not a re-hearing.

203. After the appeal meeting, Mr Glover's evidence was that he reviewed "key witness statements", spoke to Mr Andrew and confirmed the position with Ms Hardie-Cross "regarding the Claimant's behaviour at some meetings." He was satisfied that all appropriate avenues had been explored.
204. Mr Glover wrote to the Claimant on 13 March 2023 with the outcome to her appeal. In outline, he upheld the Claimant's appeal in relation to allegation 1, but upheld Mr Andrew's conclusions on allegations 3 and 4. In outline he concluded:
- 204.1. Although he did not uphold allegation 1, Mr Glover said that the Claimant had told Mr Andrew that she did not swear in the corridor outside the HR office, but this was contradicted by the evidence of Mrs Mackereth and Ms Rus and he was persuaded that it did occur.
 - 204.2. Mr Glover acknowledged that neither Mr Briggs nor Mr Townsend referenced being reduced to tears in their statements. He did not address how Mr Andrew came to conclude that this had happened. Nonetheless, he said that both of their statements said that they were very upset by the Claimant's conduct and accusations, and he concluded that it was reasonable for Mr Andrew to accept that this was the effect on them.
 - 204.3. Mr Glover acknowledged that the Claimant was making a point that ACAS had advised her to make when referring to Mr Townsend's seniority, but said that it was unfortunately articulated in a way that was perceived by Mr Townsend to be intimidating. However, Mr Glover did not think that sufficient allowance had been made for the Claimant's neurodiversity in this respect. Likewise, Mr Glover acknowledged that the context for what happened outside the HR room on 14 December 2022 was the Claimant not being paid and concern about being able to return to work. Again, he thought that insufficient allowance was made for the Claimant's neurodiversity.
 - 204.4. Because of the failure to take appropriate account of the Claimant's neurodiversity, Mr Glover did not uphold allegation 1.
 - 204.5. In relation to allegation 3, Mr Glover found that it was reasonable for Mr Andrew to place reliance on the statement of a senior member of the HR team who conducted the meeting. He said that it was clear that there was a discussion during which the Claimant made comments about Ms Maxwell's personal life and appearance. Whilst there was disagreement about "the detail" of what was said, it was reasonable for Mr Andrew to accept that Mr Townsend considered the tone, implication and context to be discriminatory. Further, Mr Townsend expressly communicated this to the Claimant during the grievance meeting. Mr Glover said that this was not about Ms Maxwell being offended but about Mr Townsend being offended, which he had been and had expressly told the Claimant during the meeting. Even taking into account the Claimant's neurodiversity, Mr Glover found that the Claimant's conduct was discriminatory and not excusable.
 - 204.6. In relation to allegation 4, Mr Glover said that it was Mr Andrew's job to assess the evidence and make a judgment regarding its efficacy. Mr Glover was satisfied that Mr Andrew had adopted a reasonable approach following an assessment of the evidence presented to him. Mr Glover suggested that the Claimant's accusation that Miss Spencer had bullied and discriminated against her and was conducting a witch hunt "supported the view" that her response to colleagues whose view did not accord with her own was dismissive and likely to damage the relationship of trust and confidence.
 - 204.7. Mr Glover concluded that it was reasonable and proportionate for Mr Andrew to explore with Mr Briggs whether the relationship of trust and confidence had broken down, rather

than “reinvestigate” matters on which the Claimant said other witnesses were not credible.

- 204.8. Mr Glover said that the stress of the disciplinary process did not excuse making “false allegations” or prevent such conduct from damaging trust and confidence.
- 204.9. Mr Glover concluded that it was reasonable for the Respondent to rely on the Unity OH report because it was “reasonably proximate” to the disciplinary hearing.
- 204.10. Mr Glover said that his understanding was that when the Claimant asked for further time to prepare for the disciplinary meeting, this was provided.
- 204.11. Mr Glover shared Mr Andrew’s view that it was untenable for the Claimant to return to work, for the reasons articulated by Mr Andrew.
205. In cross-examination, the Claimant drew Mr Glover’s attention to the fact that the Respondent’s disciplinary policy provided seven calendar days for a disciplinary appeal, whereas she had been provided with five days (from the date of a letter that was sent at close of business). Mr Glover did not agree that the Respondent had failed to follow its policy. He was asked again, having regard to the specific timescales just referenced. He said that he did not have a detailed knowledge of the process followed prior to his involvement.
206. The Claimant asked Mr Glover where within the Respondent’s disciplinary policy he considered that “serious misconduct” fell. He said that it was gross misconduct. He was asked how he had concluded that Mr Andrew had made a finding of gross misconduct, when Mr Andrew had referred to serious misconduct. He said that his own view was that it amounted to gross misconduct.
207. The Claimant asked Mr Glover about his conclusion that she had sworn in the corridor outside the HR office on 14 December 2022, based on the evidence of Mrs Mackereth and Ms Rus. His attention was drawn to Ms Rus’s statement, saying that the Claimant had sworn in the HR office, then left the office and Ms Rus had not heard her say anything else. Mr Glover then said that his view was that there had been “swearing at some stage but not necessarily in front of everyone.” That was not what his outcome letter said.
208. The Claimant referred to Mr Glover’s reliance on comments made by Ms Hardie-Cross and pointed out that she had not been provided with any statement made by Ms Hardie-Cross. Mr Glover said that he spoke to her, and he saw a written confirmation as to her views. He “did not know” why that had not been provided to the Claimant.
209. The Claimant referred to Mr Corbett’s comment to her on 6 December 2022 that they (including Mr Townsend) were all in a meeting about her at Crane Court around 9.30am. She also referred to the fact that Mrs Mackereth had, at some unknown point, been provided with a copy of her written grievance despite being a subject of the grievance and had marked it up in track changes. She asked Mr Glover what he had done to investigate her case that Mr Briggs, Mrs Mackereth and Mr Townsend had all got together to discuss her even before her grievance had been heard, and that it was this that caused a breakdown of trust. Mr Glover said that he did not look into this at the time. He was aware that the Claimant was saying that there was a witch hunt and that a proper process had not been followed. It was not clear that he had carried out any investigations into that.

210. The Claimant asked Mr Glover about the statement in his outcome letter in relation to allegation 3 that Mr Townsend had told her in the grievance meeting that her comments were discriminatory. That statement was made 3 times in the appeal outcome letter. Eventually in cross-examination Mr Glover accepted that Mr Townsend had not said that in the grievance meeting. The Claimant pointed out that she was now being disciplined for offending Mr Townsend with her comments, when Mr Townsend had not said anything during the meeting, and indeed had expressly said in the grievance outcome that any further such conduct might give rise to a disciplinary process.
211. Mr Glover said that he looked at Mr Townsend's statement about what was said in the grievance hearing. There was clearly a dispute. He found Mr Townsend's recollection accurate. He was asked what he found the Claimant had said. He said that it was as Mr Townsend had described. He felt on balance that Mr Andrew relying on Mr Townsend's recollection was correct. He was pressed on what he found had been said. He gave generalised answers "comments about her personal life and appearance", "comments in relation to her sexuality", "references to maternity and paternity", "terms that were derogatory". He could not identify what it was that he, or Mr Andrew, concluded the Claimant had actually said at the grievance hearing. He was asked what his understanding was of the context of the comments. He said that "there were comments and issues the Claimant had with Ms Maxwell and the way she had behaved in terms of what the company did or did not accept as appropriate conduct." We note that that was not the context. The context was the Claimant complaining about PR treating her differently from the way he treated Jim and Ms Maxwell. Mr Glover was asked about Mr Townsend's written statement in re-examination. He said that his understanding about the discriminatory comments made by the Claimant was "the reference to maternity or paternity" and the reference that Ms Maxwell "didn't count as female."
212. This was one particular example, explored in some detail. It was clear that Mr Glover had not reached his own conclusion about what exactly the Claimant had said, and did not know what conclusion Mr Andrew had reached about that. He was relying on a general description from Mr Townsend and simply took the view that it was reasonable for Mr Andrew to rely on the statement from a senior HR person. Given that there were contemporaneous notes of the meeting, that Mr Townsend's statement was inconsistent with those notes, that the Claimant had given a different version of events and an explanation of the context, that there were other witnesses and notes, and that the Claimant disputed the accuracy of much of Mr Townsend's statement, it is not clear how Mr Glover could reasonably arrive at the conclusion simply that it was reasonable for Mr Andrew to rely on Mr Townsend's statement. Mr Glover's own understanding was clearly inaccurate, given his repeated inaccurate suggestion that Mr Townsend had told the Claimant during the grievance hearing that her comments were discriminatory.
213. The Claimant asked Mr Glover which of her grievance allegations he had concluded were malicious. He said that he had not "specifically opined" on that. He was asked again, and he said that he looked at the statements Mr Andrew had reviewed and the witnesses he had spoken to and whether it was reliable to place reliance on them. Mr Glover was pressed on which of the allegations the Claimant had made in her grievance Mr Andrew had concluded to be false and malicious. He was unable to give a clear answer. He referred to "an accusation that Mr Briggs was undercutting the Claimant" and accusations about him being "biased against women and reference to "the lads."" He was asked what the evidence was for those allegations being false or malicious. He said that Mr Briggs had given evidence and the Claimant had given evidence that was contrary. He was asked how he had concluded that it was reasonable for Mr Andrew simply to

rely on what Mr Briggs said. Eventually, he said that he discussed with Mr Andrew his findings on a couple of occasions and discussed with him his review of the conduct of the grievance procedure and questioned him on the reliability of the witnesses and his reliance on the statements by Mr Briggs. No note or record of any of those discussions was provided to the Claimant or the Tribunal and they were not referenced in Mr Glover's outcome letter or witness statement.

214. Mr Glover said that he had seen Ms Gray's report. He confirmed that he did not have written permission from the Claimant to view it. He said that it was probably provided to him by HR or the Respondent's legal advisors, who had advised him about the process and conduct of the appeal.
215. Mr Glover was asked about the short timescales that had been imposed on the Claimant. He said that he did look at the process and that it was "a relatively short timescale." Given that the Claimant was by now saying that this was a witch hunt to punish her for raising a grievance, Mr Glover was asked whether those timescales gave him any cause for concern. He said he did not think that there was any evidence that HR were controlling the process. He had worked a lot with them. He was asked specifically about Miss Spencer's deadlines. He said that they did not give him cause for concern, "two extra days were given." The Tribunal noted that, far from considering and investigating the Claimant's concern that Miss Spencer's approach was bullying and amounted to disability discrimination, Mr Glover relied on the fact that the accusation was made as evidence that the Claimant's response to colleagues whose view did not accord with her own was likely to be dismissive and damaging of trust and confidence. On any objective view, it seemed to the Tribunal that there were legitimate questions to be asked about Miss Spencer's approach.
216. Mr Glover was then asked about the Claimant's requests to rearrange the disciplinary hearing for a second time. He said that it was a "tight timetable" but accommodations had been made and "the timescale was important." It was pointed out to him that the Claimant had been offering options earlier or later on the same day. Eventually he said that it "did not trouble me in terms of the outcomes. I felt there had been a full process. I investigated thoroughly." Mr Glover was asked at one point whether he had actually looked at what it was the Claimant had been requesting and he said, "No." The Tribunal did not accept that Mr Glover had thoroughly investigated the Claimant's concerns about the fairness of the process, nor the implications of the way the process had been carried out for her complaint that this was a "witch hunt." Apart from asserting that when the Claimant asked for further accommodation to enable preparation for meetings, this was provided, Mr Glover did not deal with the Claimant's concerns about the process in the witness statement and his answers in cross-examination suggested that he had not given any proper or detailed consideration to the process that had been followed, whether there were shortcomings in it, and, if there were, what the implications of that were for the Claimant's concerns about victimisation.
217. Mr Glover was asked about the Claimant's concern that the disciplinary allegations were too vague to enable her to respond. He said that he "felt there was enough there". He was asked how the Claimant was to know what she was supposed to have said or done. He said that the allegations relating to Mr Briggs were "evident but not clearly spelt out." He was asked whether he had any concerns about the Claimant's ability to defend herself against the vague allegations that had been identified. He said, "I didn't think it was unfair. The view I took was that it would have been evident."

218. Mr Glover did not refer at all in his witness statement to the Respondent's "legitimate aim" in dismissing the Claimant, nor to issues relating to the proportionality of dismissing her. Mr Glover was asked in his oral evidence about his conclusions that there was some link between the Claimant's conduct and her neurodiversity. He was asked if he had considered, in that context, whether a sanction short of dismissal might have been appropriate. He said that he did not think that Mr Andrew's conclusion was unreasonable. Mr Glover is a lawyer. He confirmed that he understood s 15 of the Equality Act. He was therefore asked whether he thought about the possible discriminatory impact of a dismissal and whether something less discriminatory could have been done. He said, "I don't think reinstatement was a practical or helpful outcome."

Findings relevant to contributory fault and *Polkey*

219. In its closing submissions, the Respondent relies on "the conduct the Claimant displayed during employment, for which she was disciplined and dismissed" as being culpable and blameworthy conduct that should lead to a reduction in her compensation. She was ultimately dismissed for the comments she made about Ms Maxwell and for making false allegations. Those were the matters found by Mr Andrew and upheld by Mr Glover. The Claimant was cross-examined in relation to the comments about Ms Maxwell. She was not cross-examined in any detail about the making of false allegations, it was simply put to her that her grievance complaints about Mr Briggs discriminating against her were false. She disagreed. It was also put to her generically that she was offensive to Mr Townsend during the grievance hearing. Again, she disagreed. It appears that the Respondent specifically says that the Claimant's conduct on 14 December was culpable and blameworthy, both by making inappropriate remarks about Ms Maxwell, and in the way she behaved in the corridor after the grievance hearing had concluded.
220. Starting with the allegation that the Claimant made inappropriate remarks about Ms Maxwell, the Tribunal has referred to the parties' evidence above. The Tribunal found that the Claimant said two things about Ms Maxwell during the grievance hearing. The first was in the context of her complaint that PR did not treat her the same as he treated Ms Maxwell. He had told Ms Maxwell that he was happy, but had raised his voice and banged the table towards the Claimant. Given that Ms Maxwell is also female, the Claimant suggested that the difference between them as far as PR was concerned was that, "Ms Maxwell was less traditionally feminine while the Claimant who dresses more feminine got that treatment." The second thing was that the Claimant went on to explain that Ms Maxwell was unusual in her approach. She gave the example that Ms Maxwell had taken two periods of parental leave, one of which she [Ms Maxwell] had referred to as maternity leave, and one of which she had referred to as paternity leave. The Tribunal accepted the Claimant's account of what was said. In relation to the first comment, it was consistent with BC's notes (and broadly consistent with Ms Hardie-Cross's). The Claimant has been clear and consistent in her explanation of what she said and why. In relation to the second comment, it was not recorded in either set of notes. However, again, the Claimant has given clear and consistent evidence about what she said and why. By contrast, Mr Townsend has not given a clear account of what words he says the Claimant used. He appears not to have reminded himself about what the notes of the meeting record and he has given an account that appears to exaggerate and misrepresent what the Respondent's own notes record. Further, in his initial grievance outcome, he simply warned the Claimant not to repeat such behaviour, otherwise she might face disciplinary action, whereas by January he was asserting that she had committed serious misconduct. The Tribunal had no hesitation in finding that the Claimant did not make a derogatory

comment about Ms Maxwell's sexuality; she did not "imply that Ms Maxwell was not a woman" and she did not "imply that she was more of a man than a woman." It seemed to the Tribunal that the account Mr Townsend now gives is a wilful misrepresentation of what was said, and/or is symptomatic of a failure properly to engage with what her complaint was [PR had behaved inappropriately and would not treat Ms Maxwell that way] and why that might be [because the Claimant presented herself in a more traditionally feminine way than Ms Maxwell.] The Tribunal found that the Claimant's comments were not culpable or blameworthy. She was not being derogatory about or towards Ms Maxwell; she was explaining why she felt that PR treated Ms Maxwell better than he treated her. In doing so, she simply referred, factually, to their different ways of presenting themselves and she quoted the terminology Ms Maxwell herself had used to refer to her two periods of parental leave.

221. The Tribunal found that the way the Claimant spoke about Ms Maxwell during the grievance hearing arose in consequence of her autism, in particular her manner of communicating. She said that it was linked to her autism and referred to the fact that she was not being discriminatory towards Ms Maxwell, "just stating literally that it is a fact." As set out above, the Claimant's autism and ADHD mean that she may say what she thinks without stopping to consider whether it might offend someone; she can be literal in her understanding; she speaks in a way that might be seen as blunt or rude by a non-autistic person; and she states what she regards as facts without considering whether that might cause offence or upset. The Tribunal found that her comments about Ms Maxwell during the grievance hearing were a clear example of those aspects of her communication style. Someone without autism might have been more guarded and less direct about making such comments.
222. As to the suggestion that the Claimant was offensive towards Mr Townsend during the grievance hearing, the Tribunal found that she was not. We found that she raised legitimate concerns about his level of authority at the start of the meeting, but then moved on from that point. She answered his questions and attempted to explain her position. That included discussion of data forensics. That was relevant to the Claimant's grievance. It was not her fault if Mr Townsend was unfamiliar with the concepts and that did not make it offensive for her to put the points forward. She moved to a larger table when the bifold doors were opened without any ulterior motive. The Respondent did not draw attention to anything in Ms Hardie-Cross's notes of the meeting that it said demonstrated the Claimant being offensive toward Mr Townsend.
223. Turning to the events after the grievance hearing, we have referred above to Mrs Mackereth's account and to the Claimant's position. The Claimant did not deal with these events in her witness statement and they were not put to her in cross-examination. The only witness called by the Respondent who was present at the time was Mrs Mackereth. When the Claimant cross-examined her, she repeated her evidence that they were in the corridor between the offices when the Claimant told her that she was "shit." She said that she did so "in a loud tone." The customer was in Mr Briggs's office. They popped their head out. One of the customers on site was Mrs Bentley. She gave evidence on the Claimant's behalf. She said that she did not witness anything untoward when she was present on site that day. Ms Rankine, Mr Briggs, PR and another colleague had gone to the development kitchen. Mrs Bentley was finishing off a Teams call in Mr Briggs's office, then left to join the others in the kitchen. She encountered the Claimant in the corridor. They had a brief exchange, the Claimant told her that she had to leave, and they had a quick hug. The Claimant asked Mrs Mackereth whether she remembered Mrs Bentley giving the Claimant a hug when she came out of Mr Briggs's office. Mrs Mackereth did not remember that. The other person

present from the customer was Ms Rankine. Little weight is to be attached to her statement, because she was not cross-examined about it, but we note that her written evidence was that she did not remember anything either. Mrs Brackstone was in the next corridor along. Her evidence was that she did not hear any disturbance. When the Claimant and Mr Briggs came through, everyone was behaving professionally. The Tribunal also noted Ms Rus's written statement, that the Claimant swore in the HR office.

224. Weighing all that evidence, the Tribunal found that the Claimant did tell Mrs Mackereth that she was "fucking shit" when she asked her how she was. The Claimant has never denied doing so. It is not clear whether that happened in the HR office or the corridor. However, the Tribunal found that she did not do so with a deliberately raised voice so as to cause a scene or attract the client's attention. In keeping with the culture of swearing at the Respondent, and in the context of her ADHD and autism, she simply gave the answer that she did, most likely in a loud tone. Mrs Bentley, in Mr Briggs's office, did not hear her swearing. Mrs Bentley was a former employee of the Respondent and colleague of the Claimant. When she met her in the corridor, on her way to the development kitchen, she greeted her as an old friend and colleague. The Tribunal found that Mrs Mackereth's assertion that the Claimant was deliberately trying to cause a scene is another instance of her perceiving wrongdoing on the Claimant's part or imputing an adverse motive to her with no foundation for doing so. The Tribunal found that the Claimant did not commit misconduct in this respect. We noted that the Claimant was evidently very anxious to return to work by this stage, not least because she was worried about her accruing debt because of the termination of her company sick pay. There is nothing culpable about that. It was equally evident that the Respondent did not want her back. It seemed clear to the Tribunal that they were prevaricating and putting obstacles in the way of a return, rather than encouraging and facilitating it.
225. Finally, dealing with the contention that the Claimant made false allegations, as noted the Respondent did not put to the Claimant that any specific allegation was false or explore the evidence about that. It put to her the generic proposition that her complaints of discrimination about Mr Briggs were false. The Tribunal found that they were not. The complaints of discrimination about Mr Briggs were: that in investigating the PR incident, Mr Briggs had protected PR and had given his feelings priority over the Claimant's concerns; Mr Briggs consistently used the words "lads" when communicating how being assertive, direct and combative was required to get better prices when negotiating; Mr Briggs undermined the Claimant in front of her team by commenting that he would attend the meeting so they knew someone important was there; and Mr Briggs contacted Mr Hogarth about the comments by SM when the Claimant had received no support when SM shouted at her.
226. The Tribunal found:
- 226.1. The Claimant genuinely felt that Mr Briggs had prioritised PR's feelings (as a man) over hers (as a woman) in his investigation of the events on 8 August 2022. Further, there was a basis for that perception, e.g. in Mr Briggs's conclusion that there was no corroborating evidence to enable him to reach a decision either way, when Ms Spivey had told him that the male voice was the louder one and that she would have felt uncomfortable if spoken to that way and Ms Adam had talked about how angry PR was; in Mr Briggs's questions about whether the Claimant had provoked PR to shout at her and bang the table; and in the fact that PR had not made any complaint about the Claimant but the Claimant was

facing criticism for her behaviour. The Claimant's concern was genuine and her grievance about this was not false.

- 226.2. Mr Briggs accepted that he used the word "lads" on one of the specific occasions referenced by the Claimant and that this was language he used more generally. For the reasons explained above, the Tribunal accepted the Claimant's evidence that he used the expression "lads, lads" on that occasion and that he used the expression "lads" on a different occasion. We also accepted her evidence about how this made her feel. The fact that Mr Briggs tries to treat people fairly and the fact that he did not intend to discriminate or cause offence does not mean that such language might not be perceived in that way. The complaint was not false.
- 226.3. Mr Briggs did refer to going to a meeting so that the client knew someone was important there. The Claimant's grievance about that was upheld to the extent that this should not have been said in front of the team. The Tribunal accepted that the Claimant's genuine view was that Mr Briggs would not have said that if she had been a man. Her complaint was not false.
- 226.4. The Claimant genuinely believed that Mr Briggs had contacted Mr Hogarth about the customer's comments, and that this was different from the way Mr Brisby and Ms Maxwell had treated her when the same person shouted at her. That is actually a complaint of discrimination by Ms Maxwell and Mr Brisby. The Claimant's belief was genuine and her complaint was not false.

Legal principles

227. Claims of discrimination, harassment and victimisation are governed by the Equality Act 2010. Direct discrimination is dealt with by s 13, discrimination arising from disability is dealt with by s 15, failure to make reasonable adjustments for disability is dealt with by s 20 and 21, harassment is dealt with by s 26 and victimisation by s 27 Equality Act 2010. The Equality and Human Rights Commission's Code of Practice on Employment is relevant, and the Tribunal considered its provisions.
228. The burden of proving discrimination, harassment or victimisation is governed by s 136 Equality Act 2010. There is authoritative guidance about the burden of proof in *Igen Ltd v Wong* [2005] ICR 931. That guidance remains applicable: see *Royal Mail Group Ltd v Efofi* [2021] ICR 1263. In essence, the guidance outlines a two-stage process. First, the complainant must prove facts from which the Tribunal *could* conclude, in the absence of an adequate explanation, that the Respondent had committed an unlawful act of discrimination, harassment or victimisation against the complainant. That means that a reasonable Tribunal could properly so conclude, from all the evidence before it. The second stage, which only applies when the first is satisfied, requires the Respondent to prove that it did not commit the unlawful act. However, as the Supreme Court again made clear in *Efofi*, it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish the unlawful act. But they have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other.
229. The time limits for bringing claims of discrimination, harassment and victimisation are governed by s 123 Equality Act 2010. Under s 123(3)(a), conduct extending over a period is treated as being done at the end of the period. A distinction is drawn between a continuing act and an act that has

continuing consequences. Where an employer operates a discriminatory regime, rule, practice or principle, such a practice will amount to an act extending over a period: see *Barclays Bank plc v Kapur* [1991] ICR 208, HL. The concepts of policy, rule, practice, scheme and so on are examples of when an act extends over a period. However, the focus of the inquiry is not on whether there is something which can be characterised as a policy, rule, scheme, regime or practice, but on whether there was an ongoing situation or continuing state of affairs in which the group discriminated against, including the Claimant, was treated less favourably: see *Hendricks v Metropolitan Police Commissioner* [2003] ICR 530, CA.

230. In determining whether there is conduct over a period, the question whether the same or different individuals are involved in each alleged act will be relevant but not conclusive: *Aziz v FDA* [2010] EWCA Civ, 304. If any of the alleged acts relied on in asserting conduct over a period is not established on the facts or is found not to be discriminatory, it cannot form part of conduct over a period: *South West Ambulance Service NHS Foundation Trust v King* EAT 0056/19.
231. The definition of disability is contained in s 6 of the Equality Act 2010, supplemented by schedule 1. The Tribunal must also take into account the Government's "Guidance on matters to be taken into account in determining questions relating to the definition of disability" 2011 ("the Guidance") where relevant. A person has a disability if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. The Tribunal should consider four questions: did the person have the impairment; did it affect their ability to carry out normal day-to-day activities; was adverse effect substantial; and was the adverse effect long-term: *J v DLA Piper UK LLP* [2010] ICR 1052, EAT. The Claimant is not obliged to produce medical evidence; if they do not, the question will be whether their own evidence is sufficient to establish each of the four elements.
232. A substantial adverse effect is one that is more than minor or trivial, and the effect of medical treatment is effectively to be disregarded. The question whether the effect is substantial is approached by comparing the Claimant's ability to carry out normal day-to-day activities with the ability *the Claimant* would have if not impaired, not with a cross-section of the population: *Paterson v Commissioner of Police of the Metropolis* [2007] ICR 1522, EAT. Normal day-to-day activities are activities carried out by most people on a fairly regular and frequent basis, such as walking, driving, typing and forming social relationships. The reference to normal day-to-day activities includes reference to a person's ability to participate fully and effectively in working life on an equal basis with other workers: paragraph 5A schedule 1. The focus should be on what the person cannot do, or can only do with difficulty.
233. When a person has more than one impairment, the Tribunal should take into account whether the impairments taken together have a substantial adverse effect on normal day-to-day activities, even if the impairments in isolation do not: para B6 of the Guidance. The Tribunal should also take into account how far a person can *reasonably* be expected to modify their behaviour, to prevent or reduce the effects of the impairment on day-to-day activities: para B7. If it is possible that a person's ability to manage the effects will break down so that the effects will sometimes still occur, that must also be taken into account: para B10.
234. Under s 13, direct discrimination arises where (1) an employer treats a person less favourably than it treats or would treat others and (2) the difference in treatment is because of a protected characteristic.

235. In answering the first question the Tribunal must consider whether the employee was treated less favourably than an actual or hypothetical comparator whose circumstances were not materially different. That means that all the characteristics of the employee that are relevant to the way the claim was dealt with must also be found in the comparator: see *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337, HL. The second question entails asking why the employee received less favourable treatment. Was it because of a protected characteristic or was it for some other reason: see *Nagarajan v London Regional Transport* [1999] ICR 877, HL. Where the reason for the less favourable treatment is not inherently discriminatory, it is necessary to explore the mental processes of the employer, to discover what facts operated on his or her mind: see *R (E) v Governing Body of the Jewish Free School* [2010] IRLR 136, SC ("*JFS*"). It is important to note that the employer's motive is irrelevant: see e.g. the *JFS* case. It is not necessary for the protected characteristic to be the only or even the main cause of the less favourable treatment; it must be an effective cause: see e.g. *London Borough of Islington v Ladele* [2009] IRLR 154, EAT. It is not always necessary to answer the first and second questions in that order. In many cases, particularly where there is not an actual comparator, it is preferable to answer the second question, the "reason why" question, first. If the answer to that question is that the less favourable treatment was on a proscribed ground, then there will usually be no difficulty in deciding whether the employee was treated less favourably than others would have been: see *Shamoon*; *JFS*.
236. Neither the duty to make reasonable adjustments nor s 15 applies where the employer shows that it did not know and could not reasonably be expected to know that the person had the disability (and, in the case of reasonable adjustments, that it was likely to put the person at the relevant disadvantage).
237. Under s 15 it is unlawful for the employer to treat the employee unfavourably because of something arising in consequence of their disability, unless the employer can show that the treatment was a proportionate means of achieving a legitimate aim. There are three elements to the first part of the definition: (1) unfavourable treatment (2) done because of (3) something arising in consequence of the disability.
238. The question whether the unfavourable treatment was done because of the something arising in consequence will require consideration of the alleged discriminator's conscious or unconscious thought processes. The "something" need not be the sole or main cause of the treatment, it must be an effective cause, something with a significant or more than trivial influence: see *Pnaiser v NHS England* [2016] IRLR 170, EAT.
239. There is a separate question whether the something arises in consequence of the disability. That is an objective test and there may be a series of links in the causal chain, but there must be a connection between the "something" and the Claimant's disability: *iForce Ltd v Wood* UKEAT/0167/18 (EAT 3 January 2019, unreported). It is a question of fact to be assessed robustly by the Tribunal: *Pnaiser*.
240. In order to show that the treatment was justified, the employer must show that it has a legitimate aim, and that the means of achieving it are both appropriate and reasonably necessary. The EHRC Code advises that a legitimate aim is one that is legal, not itself discriminatory, and one that represents a real, objective consideration: paragraph 4.28. Consideration should be given to

whether there is non-discriminatory alternative. A balance must be struck between the discriminatory effect and the need for the treatment: see *Homer v Chief Constable of West Yorkshire Police* [2012] UKSC 15, SC. The Tribunal must undertake a critical evaluation, weighing the needs of the employer against the discriminatory impact on the employee, and the Tribunal must carry out its own assessment. In a case where the unfavourable treatment complained of is dismissal, the range of reasonable responses test in an unfair dismissal complaint and the proportionality assessment in a s 15 complaint will generally lead to the same result, but not inevitably: see *O'Brien v Bolton St Catherine's Academy* [2017] ICR 737, CA.

241. Under s 20 and s 21, a duty to make reasonable adjustments arises, for present purposes, when a provision, criterion or practice (PCP) has been applied by the employer that puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. The Tribunal must first identify the PCP applied by the employer, the identity of the non-disabled comparator(s) (where appropriate) and the nature and extent of the substantial disadvantage suffered by the Claimant: see *Environment Agency v Rowan* [2008] ICR 218.
242. While a one-off decision can amount to a practice, it does not necessarily do so and the term generally connotes some form of continuum, in the sense that it is the way in which things generally are or will be done. The function of the PCP in a reasonable adjustments context is to identify what it is about the employer's management of the employee or its operation that causes substantial disadvantage to the disabled employee. It is unlikely that the application of a flawed disciplinary procedure on a one-off basis will amount to a PCP: see *Ishola v Transport for London* [2020] ICR 1204 CA; *Nottingham City Transport Ltd v Harvey* [2013] EqLR 4; *Carphone Warehouse v Martin* [2013] EqLR 481.
243. The question whether the PCP puts the disabled person at a disadvantage in comparison with non-disabled people is a question of fact assessed on an objective basis and measured by comparison with what the position would be if the person did not have the disability: see *Sheikholeslami v University of Edinburgh* [2018] IRLR 1090, EAT.
244. There are three elements to the principal definition of harassment: (1) unwanted conduct; (2) that it has the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her; and (3) that the conduct is related to the protected characteristic: see *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336. The conduct must be "unwanted", which means "unwelcome" or "uninvited", and it must be unwanted by the employee: see *English v Thomas Sanderson Blinds Ltd* [2009] ICR 543.
245. The question whether conduct is related to a protected characteristic is one of fact for the Tribunal. Being "related to" a protected characteristic is not the same as being "because of" a protected characteristic. The test is a broader one. It is to be determined objectively on the evidence. The intention of the actors – the Claimant's view or the motivation of the perpetrator – may be relevant but it is not determinative. There must be some feature of the factual matrix that can properly lead the Tribunal to the conclusion that the conduct complained of is relevant to the protected characteristic: see *UNITE the Union v Nailard* [2018] EWCA Civ 1203 CA; *Tees, Esk and Wear Valley NHS Foundation Trust v Aslam* [2020] IRLR 495, EAT.
246. A person victimises another if he subjects her to detriment because she does a protected act or because the person believes she has done or may do a protected act. A protected act includes

making an allegation that somebody has contravened the Equality Act 2010. Again, the protected act need not be the sole or main cause of the detrimental treatment; it must be an effective cause.

247. Complaints of unfair dismissal are governed by the Employment Rights Act 1996. The right not to be unfairly dismissed is found in s 94 Employment Rights Act 1996.
248. It is well-established that in a claim for unfair dismissal based on a dismissal for misconduct, the issues to be determined having regard to s 98 are: did the employer have a genuine belief in misconduct; was that belief based on reasonable grounds; and when the belief was formed had the employer carried out such investigation as was reasonable in all the circumstances: see *British Home Stores Ltd v Burchell* [1980] ICR 303. The burden of proof has of course changed since that decision: *Boys and Girls' Welfare Society v McDonald* [1996] IRLR 129. Furthermore, the question for the Tribunal is whether dismissal was within the range of reasonable responses open to the employer. The range of reasonable responses test applies to all aspects of the decision to dismiss including the procedure followed: see *Foley v Post Office*; *HSBC v Madden* [2000] ICR 1293 *Sainsbury's Supermarkets v Hitt* [2003] IRLR 23.
249. We emphasise, therefore, that with respect to the unfair dismissal claim, it is not for the Tribunal to substitute its view for that of the Respondent. The Tribunal's role is not to decide whether the Claimant was guilty of the conduct alleged, but to consider whether the Respondent believed that she was, based on reasonable grounds and following a reasonable investigation.
250. The ACAS Code of Practice on Disciplinary and Grievance Procedures is relevant and the Tribunal has had regard to it.
251. As regards the remedy for unfair dismissal, a basic award is payable under s 122 and a compensatory award under s 123 of the Employment Rights Act.
252. Pursuant to s 122(2) and s 123(6), both the basic and compensatory awards may be reduced because of conduct by the employee. Under s 123(6) the relevant conduct must be culpable or blameworthy; it must actually have caused or contributed to the dismissal; and it must be just and equitable to reduce the award by the proportion specified: see *Nelson v BBC (No 2)* [1980] ICR 110 CA. By contrast, the basic award can be reduced where conduct of the Claimant before the dismissal makes that just and equitable. There is no requirement that the conduct should have caused or contributed to the dismissal.
253. Where the Tribunal considers that there is a chance that the employee would have been fairly dismissed in any event, then the compensation awarded may be reduced accordingly: *Polkey v A E Dayton Services Ltd* [1987] 3 All ER 974. Guidance on how to approach that issue is set out in the case of *Software 2000 Ltd v Andrews* [2007] IRLR 568.

Application of the law to the facts

254. The Tribunal's detailed findings of fact are set out above. We can deal with the issues much more briefly, because many of them turn on the findings of fact. We have not dealt with the issues in the same order as the parties' list of issues. We understand that this will have implications in relation to the Claimant's autism, but we still concluded that it was preferable to deal with the

issues as close to chronologically as we can. We have cross-referenced with the numbered list of issues, so that the Claimant can see where each issue has been addressed. However, in relation to the unfair dismissal complaint we have not dealt with each item of detail (for example, each complaint about evidence not disclosed during the disciplinary process). It was not necessary to consider each item of detail in order to reach a conclusion about whether the Claimant was unfairly dismissed.

Disability

255. We begin with the question of disability. As noted, the Respondent accepts that the Claimant is disabled because of ADHD. The Tribunal had to consider whether she was also disabled because of dyslexia and autism.
256. As set out in the findings of fact above, the Claimant has, to use the language of the Equality Act 2010, the “mental impairments” of dyslexia and autism. Those conditions have been diagnosed by appropriately qualified professionals.
257. In relation to dyslexia, again as set out in the findings of fact above, it has the following impacts on the Claimant:
- 257.1. Difficulty reading, including having to read a document multiple times to check that she has read and understood it correctly and taking a long time to read a bill or an email.
 - 257.2. Challenges with working memory – the ability to hold and manipulate visual or verbal information, leading to challenges with prioritising and organising information without extra time, and difficulty absorbing and recalling large volumes of information quickly. She needs longer to organise presentations, hold information in her mind, sift out key ideas and efficiently transfer them to paper and she needs time to organise and respond to questions.
258. Reading is a normal day-to-day activity. The Tribunal found that the adverse effect on the Claimant in this respect was more than minor or trivial, compared with the ability she would have if she did not have dyslexia. Having to read a document at work, a bill or an email multiple times to check that she has properly read and understood it is a sufficiently significant, day-to-day impact, that it is more than minor or trivial. It happens repeatedly throughout the working and non-working day, so that the time, effort and difficulty are more than minor or trivial. Processing information, preparing presentations and responding to questions are a normal day-to-day activity in working life. The Tribunal again found that the adverse effect on the Claimant was more than minor or trivial, compared with the ability she would have if she did not have dyslexia. The adverse effect is present throughout her working life and makes these activities significantly harder for her.
259. In relation to autism, as set out in the findings of fact, it has a number of impacts on the Claimant (sometimes in conjunction with ADHD), including:
- 259.1. Executive dysfunction and working memory, e.g. forgetting a verbal request and losing things.
 - 259.2. Impulsivity, e.g. speaking without stopping to think about the effect on somebody.
 - 259.3. Freezing or becoming nonverbal when stressed or anxious.
 - 259.4. Struggling with change without notice, e.g. a change to a meeting agenda might cause distress, frustration or even an autistic meltdown.

- 259.5. Challenges with emotional regulation.
- 259.6. Hyperfixation, sometimes leading to an inability to move past something and failure to prioritise self-care – showering, eating, drinking, using the toilet.
- 259.7. Challenges with social rules, including literal understanding and speaking in a way that may be seen as blunt or rude by a non-autistic person.
260. Following verbal requests, communicating and interacting with others, attending meetings or other structured activities and self-care are all normal day-to-day activities and the Claimant's autism (and ADHD) affect the Claimant's ability to do those activities in those ways. The Tribunal found that these adverse effects had a more than minor or trivial impact on the Claimant's ability to do those activities. The effects of her ADHD medication are to be disregarded. The fact that she is able to "mask" her social communication difficulties to some extent is relevant, but that ability is not perfect and it is not an ability to switch on or off the effects of her autism. Rather, it is a process that itself takes significant energy, remembering to try and follow "rules" that come naturally to others. The ability to mask sometimes breaks down, for example in stressful situations. That is not a choice. The Claimant is an able and intelligent person, with a successful career at a high level. Her ability and intelligence no doubt help her to overcome the challenges posed by her ADHD and autism and to mask the effects of her autism to some extent. However, that does not mean that the challenges are not present nor that their impact on her ability to do normal day-to-day activities should be underestimated. Those impacts are present all day every day. The Claimant is required to communicate with others, interact with them, respond to their behaviour, all day every day. Each interaction is more difficult for her because of her neurodiversity. That, alone, amounts to an adverse impact that is more than minor or trivial. The way the Claimant may respond to stressful or anxiety producing situations or changes in routine – e.g. with physical symptoms, freezing, or sometimes outbursts or meltdowns – is a more than minor or trivial impact on what are still normal day-to-day activities. Hyperfixating to the extent that she neglects her basic self-care is a more than minor or trivial effect.
261. There is no dispute that the adverse effects of dyslexia, ADHD and autism are long-term.
262. The Tribunal therefore found that the Claimant met the definition of disability because of dyslexia, and because of ADHD and autism combined.

Harassment related to sex and direct sex discrimination

263. Issue 6.1.1: This is a complaint about the conduct of Ms Maxwell and Mr Brisby in April 2022. The Claimant says that their failure to take meaningful action when she reported that SM had shouted at her was direct sex discrimination. The Claimant is contrasting the actions of Ms Maxwell and Mr Brisby when she reported SM shouting at her, with the actions of somebody else, Mr Briggs, when she reported SM being rude about Mr Hogarth some months later. On her own account, Ms Maxwell did call and speak to her straightaway. Mr Brisby responded a couple of weeks later, but not to take action supporting the Claimant. She says that Mr Briggs called Mr Hogarth straightaway, although she does not know what he said. The Tribunal found that she had not proved facts from which the Tribunal could infer that Ms Maxwell and Mr Brisby treated the Claimant any differently from the way they would have treated a man. Mr Briggs's subsequent conduct did not assist: he is a different person and there is a lack of clarity about what exactly he did in any event. The burden of proof does not shift and this complaint does not succeed.

264. Issue 5.1.1 and 6.1.2: As explained in the findings of fact, the Tribunal found that the meeting on 20 June 2022 proceeded as the Claimant described and that Mr Briggs's conduct was unwanted by her. The Tribunal started by considering whether the Claimant had proved facts from which we could infer that Mr Briggs treated her less favourably than he would have treated a man in the same situation. We found that she did not. The Claimant herself had not worked with Mr Briggs for long. She did not give any evidence about him treating men differently. We have accepted that he referred to "the lads" on more than one occasion, and there is no dispute that on one occasion he referred to going to a meeting so that the client would know there was "somebody important" there. These matters suggest a lack of tact and awareness by Mr Briggs, but not necessarily a different approach towards women. The Tribunal found that this was not enough to shift the burden of proof in the complaint of direct sex discrimination. In terms of harassment, the Tribunal noted that Mr Briggs's conduct was unwanted by the Claimant but, again, the Claimant did not prove facts from which the Tribunal could infer that his conduct related to sex. We had no doubt that the Claimant was genuine in describing her thought process – that she might well not be present – but what was missing was anything to suggest that Mr Briggs's conduct had anything to do with sex. Even if it had been conduct related to sex, it was not suggested to Mr Briggs that his purpose was to harass the Claimant, and the Tribunal would have found that his conduct did not have that effect. It did not meet the threshold of violating dignity or creating an intimidating, hostile, offensive, degrading or humiliating atmosphere. It was a somewhat tactless and insensitive "side-lining" of the Claimant, on a single occasion in a rare meeting with Mr Brisby.
265. Issue 5.1.2: As explained in the findings of fact, the Tribunal found that Mr Briggs did make the comment, "Lads, lads. Not good enough, go again" on 19 August 2022, and that this was unwanted conduct related to sex. It was not put to Mr Briggs that his purpose was to harass the Claimant and the Tribunal found that it did not have that effect. The Claimant was annoyed by it at the time. It made her feel that Mr Briggs was implying that she did not know how to negotiate, and that he thought that women were not tough enough negotiators. The Tribunal could understand how this casual use of gender-specific language, in the context of suggesting that a female negotiator on the Respondent side needed to go back to the client and try again, might well be perceived as patronising or implying that women were not tough enough negotiators, regardless of how Mr Briggs intended it. However, the Tribunal found that it did not meet the threshold of violating the Claimant's dignity, or creating an intimidating, hostile, offensive, degrading or humiliating environment for her. She did not in fact perceive it that way and it would not have been reasonable for her to do so. It was a lower level of conduct, involving the thoughtless use of a gender-specific word rather than anything more serious that might violate dignity or create that overall environment.
266. Issue 5.1.3: For the reasons explained in the findings of fact above, the Tribunal found that Mr Briggs did refer on 5 September 2022 to getting a better bacon price "off the lads" and that this was unwanted conduct related to sex. However, again, it was not put to Mr Briggs that his purpose was to harass the Claimant and the Tribunal found that it did not have that effect. Our reasoning was broadly the same as in relation to the 19 August 2022 discussion. We took into account that this was a repetition of the word "lads", but on the other hand it did not have the same context of implying that a female negotiator at the Respondent needed to go back and secure a better price. We found that it did not meet the required threshold for harassing the Claimant. The Claimant did not in fact perceive it that way and it would not have been reasonable for her to do so.

267. Issue 6.1.3: As set out in the findings of fact above, on 10 August 2022 Mr Briggs did ask the Claimant whether she had smirked at PR and whether that might have impacted how he was feeling. However, as explained above, the Tribunal accepted Mr Briggs's evidence that he asked the question because PR had told him that the Claimant had smirked and goaded him, and he was exploring the two different accounts to try and find out what had happened. He would have asked the same question if the Claimant had been a man in those circumstances.

Victimisation

268. Issue 8.1, 8.2, 8.3, 8.4: The Respondent accepts that the Claimant's grievance of 31 October 2022 amounted to a protected act, which it plainly did. There is no dispute that the Respondent subjected the Claimant to a detriment by suspending her and subjecting her to a disciplinary process, at the conclusion of which she was dismissed. The issue is therefore whether the Respondent's conduct was because the Claimant did a protected act. The Tribunal has dealt with this in detail in the findings of fact above. For the reasons set out in the findings of fact, the Tribunal found that the Claimant's protected act was an effective cause of Miss Spencer's decision to suspend her and her decision to subject her to the disciplinary process. The complaint of victimisation therefore succeeds.

Discrimination arising from disability

269. The Claimant makes two complaints of discrimination arising from disability: in relation to the reduction in her sick pay, and in relation to her dismissal. The first of those took place on 21 November 2022. At that stage, the Respondent knew that the Claimant had dyslexia and ADHD. It had a written email from Ms Gray about ADHD. It had commissioned an OH report about adjustments in relation to dyslexia, ADHD and suspected autism. If it needed information about the impact of the Claimant's conditions on her and whether they amounted to disabilities, it could have requested that in the OH report. By that date, the Tribunal therefore had no hesitation in finding that the Respondent knew or could reasonably have been expected to know that the Claimant had the disabilities.
270. Issue 4.1.1, 4.2.1, 4.3: As explained in the findings of fact, the Tribunal found that the requirement for an OH report in November 2022 was something arising in consequence of the Claimant's disabilities. The reduction in her sick pay was obviously unfavourable treatment. However, the Tribunal did not find that the reduction in the Claimant's sick pay was because of the requirement for an OH report. As explained above, it seemed to the Tribunal that the reduction in the Claimant's sick pay was in part because the Claimant had raised her written grievance and Mr Briggs and Mrs Mackereth had formed an adverse view of her as a result, in conjunction with the fact that company sick pay was discretionary and could be stopped when an absence was prolonged. While this might well be of concern for different reasons, it was unconnected with the requirement for an OH report. The Claimant had been absent from work for some time. The original grievance hearing date was 15 November 2022. That was put back to 14 December 2022 after Mr Townsend proposed a delay to obtain an OH report. However, the Claimant did not return to work on 14 December 2022 after the grievance hearing. When she tried to return in early January 2023 she was suspended. It appeared to the Tribunal that the Respondent did not want the Claimant back at work and that, if the grievance hearing had gone ahead on 15 November 2022 as originally intended, she would not have returned to work before her company

sick pay was ended. In those circumstances, it was not the requirement for an OH report that caused her absence from work to be lengthened and her company sick pay to be terminated. That means that the first complaint of discrimination arising from disability does not succeed.

271. Issue 4.1.2, 4.2.2 and 4.4: The Respondent treated the Claimant unfavourably by dismissing her.
272. The Tribunal found that the Claimant's communication style is very different from that of people without autism. Her manner of communicating is something arising in consequence of her disability.
273. The Tribunal further found that an effective cause of the Claimant's dismissal was her manner of communicating. Mr Andrew upheld allegations 1, 3 and 4. He dismissed the Claimant because of all of those matters together. Mr Glover upheld allegations 3 and 4 and upheld Mr Andrew's decision to dismiss. Allegations 3 and 4 were therefore ultimately the grounds on which the Claimant was dismissed. Allegation 3 concerned the Claimant's comments about Ms Maxwell during the grievance hearing. As explained in the findings of fact the Tribunal found that the direct and unguarded nature of those comments was part of the Claimant's different manner of communicating, including saying what she thinks without stopping to consider whether it might offend, and speaking in a way that may be seen as blunt or rude by a non-autistic person. One of the two allegations for which the Claimant was dismissed therefore concerned behaviour that arose in consequence of her disability (her different manner of communicating). It was clearly an effective cause of her dismissal.
274. The Tribunal therefore found that by dismissing the Claimant the Respondent treated her unfavourably because of something arising in consequence of her disability.
275. Issue 4.5 and 4.6: We turned to the question whether her dismissal was a proportionate means of achieving a legitimate aim. The legitimate aim relied on by the Respondent was "to treat the Claimant in a manner consistent with other employees when investigating, disciplining and dismissing her/other employees for serious breaches of conduct and the company's equality and harassment policies." Nobody gave evidence that this was, in fact, the Respondent's aim. The Tribunal also had doubts about whether the aim as articulated was a legitimate one. It may well be legitimate, for example, to seek to deal appropriately with serious breaches of conduct or the company's equality and harassment policies, to maintain appropriate standards or to protect other staff. But that was not the aim relied on. The aim relied on was, essentially, to treat the Claimant the same way as others. The Respondent was under a duty to make reasonable adjustments for disability and required to act in a proportionate way when dealing with conduct arising from disability. Those might require the Claimant to be treated in a different way from others. It therefore appeared to the Tribunal that the aim relied on was not a legitimate one.
276. However, the Tribunal went on to consider whether, in any event, the Respondent had satisfied the Tribunal that dismissing the Claimant was a proportionate means of achieving either that aim, or a more appropriate aim, such as dealing appropriately with serious breaches of conduct or the company's equality and harassment policies, maintaining appropriate standards and/or protecting other staff.
277. The Respondent had not satisfied the Tribunal of that. In particular:

- 277.1. As explained in detail in the findings of fact and in the findings relating to unfair dismissal below, the Tribunal found that the Claimant's dismissal was unfair. The investigation and disciplinary process followed were fundamentally flawed and no reasonable employer would have dismissed her. That is not determinative, but is a relevant factor.
- 277.2. In relation to allegation 3 specifically, Mr Andrew did not properly engage with the evidence and did not make any actual findings about what the Claimant had said and in what context. Mr Glover did not do so either, and he proceeded on the incorrect basis that Mr Townsend had expressed objection to the comments at the time, and that the context for the Claimant's comments was that the Claimant had issues with Ms Maxwell and the way she behaved. Neither was in a position to assess the possible impact of the Claimant's autism and ADHD on this allegation, because of the refusal to obtain OH evidence about it.
- 277.3. The Tribunal has made findings about what the Claimant in fact said and in what context. Those findings are not relevant in relation to unfair dismissal but they are relevant in relation to this complaint. The Tribunal's finding is that the Claimant made the comments as part of her explanation why she felt that PR treated her differently from the way he treated Ms Maxwell. The comments were not criticisms of Ms Maxwell and they did not question her sexuality or gender identity or suggest that she was more of a man than a woman. They explained that the Claimant thought that PR perceived her as a traditionally feminine woman and treated her less well as a result; he did not perceive Ms Maxwell in the same way, and that is why he treated her better. The Tribunal found that this was not misconduct when properly viewed in context.
- 277.4. In relation to allegation 4, Mr Andrew's fundamental conclusion was that the Claimant had made false and malicious allegations, but, apart from in relation to the "lads" allegation about Mr Briggs, and references to one or two other minor matters, he did not identify any. Mr Andrew did not properly assess the evidence or approach the allegation impartially and in appropriate detail. He simply accepted the assertions made by Mr Briggs, Mrs Mackereth and Mr Townsend. As explained above, the Tribunal found that the Claimant did not make false allegations. That is not relevant to her unfair dismissal complaint, but it is relevant to the s 15 complaint.
- 277.5. Dismissing the Claimant was not therefore an appropriate and reasonably necessary way to deal appropriately with serious breaches of conduct or the company's equality and harassment policies, maintaining appropriate standards and/or protecting other staff in those circumstances. Not was it an appropriate and reasonably necessary way to treat the Claimant consistently with others who committed serious breaches of conduct and the company's equality and harassment policies, if that were the aim.
- 277.6. The Respondent did not at the time properly weigh the discriminatory impact on the Claimant because, as he accepted in evidence, Mr Andrew was unable to say whether any of the conduct for which the Claimant was dismissed was caused by or related to her disabilities and he did not have any proper OH advice about that. That was not corrected at the appeal stage. The Respondent did not provide persuasive evidence to the Tribunal about whether something less discriminatory could have been done instead or about how the needs of the Claimant and Respondent should be weighed. We have dealt with the evidence of Mr Andrew and Mr Glover about this above. The high point seemed to be Mr Glover's answer that he did not think reinstatement was "a practical or helpful outcome."

Harassment related to disability

278. Issue 5.1.4: We have referred above to the statements provided by Mr Townsend, Mr Briggs and Mrs Mackereth to Miss Spencer:
- 278.1. Mr Townsend, among other things, described the Claimant repeatedly as “malicious.” He described her conduct in producing the fit note at the end of the grievance hearing “strange” and “calculated”. He referred to her “antics.” He (incorrectly) described her behaviour as being “at odds with the medical advice we were receiving.” He agreed in evidence that he knew the Claimant would end up seeing the statement, but he said that it was how he felt at the time. He did not consider whether any of the behaviour for which he was criticising her might be linked to her ADHD or autism.
- 278.2. Mrs Mackereth described the Claimant’s behaviour as “vexatious and inciteful.” She said that the Claimant’s behaviour was “immature and unprofessional” when she told PR that she was being told one thing by him and another by Ms Adams and Ms Maxwell and did not know who to believe. Mrs Mackereth denied that her comments were harassment related to the Claimant’s disability. She said that it was her feelings about the Claimant’s behaviour at the time. She accepted that she knew the document would be seen by the Claimant. She said that Miss Spencer had asked her for her honest “opinion” and to write anything else would be “untruthful.”
- 278.3. Mr Briggs also used the word “malicious” about the Claimant’s behaviour and allegations.
279. The Claimant was provided with copies of these statements as part of the disciplinary pack. The Tribunal found that it was clearly unwanted conduct by her. The Tribunal further found that the conduct related, at least in part, to disability. The Claimant’s behaviour in relation to her fit note and return to work seemed to the Tribunal to be linked to her autism and ADHD. She was approaching Mr Townsend’s assertion that this would be dealt with as part of the grievance literally and expecting it to be dealt with as he had said it would. Mr Townsend’s reference to the Claimant’s behaviour in moving tables as being “at odds with the medical advice” was related to disability, in that the medical advice related to the Claimant’s dyslexia, ADHD and autism. It was also factually incorrect. The Claimant’s communication style is direct, impulsive and literal. Mrs Mackereth’s description of her telling PR that she did not know who to believe as “immature” seemed to the Tribunal to be related to her disability. More generally, the way in which the Claimant articulated and prosecuted her grievance, with blunt criticisms, high focus on detail, and insistence/persistence, seemed to the Tribunal also to be related to her disability, including her communication style, high justice sensitivity and hyperfixation. The repeated descriptions by Mrs Mackereth, Mr Briggs and Mr Townsend of the Claimant’s allegations as being malicious; Mr Townsend’s criticisms of the way she approached the grievance preparation and hearing; and the unfounded, collective allegation that she was simply trying to manipulate a financially beneficial exit, seemed to the Tribunal to be in part conduct related to disability, because it stemmed from how the Claimant was articulating and pursuing the grievance because of her disability.
280. The Tribunal concluded that the purpose of Mr Townsend and Mrs Mackereth when writing their statements was to violate the Claimant’s dignity or to create an intimidating, hostile, degrading, offensive or humiliating environment for her. We noted their denials, but we did not accept them, for the following reasons: They are both experienced HR professionals. They both knew that the Claimant was going to see their statements. They were in possession of HR advice telling them to ensure that any criticism of the Claimant as an autistic person was sensitive. They knew that the

Claimant had been off work because of her mental health before Christmas. They knew that the Claimant had ADHD and suspected autism. The statements were unbalanced, unfair and unnecessarily personally critical. They made the unfounded allegation that the Claimant was simply after beneficial exit. They made no reference to respects in which the Claimant's concerns were incontrovertibly well-founded (for example Mrs Mackereth muddling up the informal and formal parts of the grievance process, Mr Townsend wrongly telling the Claimant and then the OH advisor that he was not going to consider her complaints in relation to the PR incident because they had already been considered in a grievance process). These were not professional, objective statements of evidence or fact, which the Tribunal would have expected senior HR professionals to produce if asked for statements in a disciplinary process. They were personal attacks on the Claimant, including in relation to aspects of her behaviour that were, or might be, linked to her ADHD and autism, written in the knowledge that the Claimant would see them. In Mr Briggs's case, the Tribunal found his statement somewhat more measured. It was more in the nature of a statement designed to defend himself against allegations and less in the nature of an attack on the Claimant. The Tribunal did not find that Mr Briggs had the purpose of harassing the Claimant.

281. Even if we had not concluded that the statements had the purpose of harassing the Claimant, we would have found that they had that effect. The Claimant plainly perceived them as upsetting, offensive and hostile and the Tribunal would have concluded that it was reasonable for her to conclude that they created an offensive and hostile environment for her. These were long statements, repeatedly personally critical of her, in ways that, in part, related to her disability. They were written by her manager and by two senior HR professionals in the company. That, it seemed to the Tribunal, meant that they generated an offensive and hostile environment for the Claimant.
282. Issue 5.1.5: This allegation of disability related harassment is dealt with in the findings of fact above. While Mr Andrew's comment was unwanted conduct related to disability, it did not have the purpose of violating the Claimant's dignity or creating the proscribed environment, and the Claimant did not, in fact, perceive it as having that effect.

Reasonable adjustments for disability

283. Issue 7.2: We started with the PCPs relied on by the Claimant. There is no dispute that the Respondent had a PCP of requiring satisfactory performance. The Tribunal found that the remaining PCPs (issue 7.2.2 to 7.2.5) are all about specific things that were done to the Claimant, usually outside of the standard practice, rather than provisions, criteria or practices of the Respondent:
- 283.1. There was no evidence that the Respondent has a practice of carrying out grievance investigations and holding grievance meetings without formally notifying the complainant that it is treating their complaint as a formal grievance. The only evidence was that this was done once erroneously in the Claimant's case.
- 283.2. There was no evidence that the Respondent had a practice of having the complainant and alleged discriminator in the same room when providing a grievance outcome. The only evidence was that this was done once in the Claimant's case.
- 283.3. There was no evidence that the Respondent had a practice of departing from the formal disciplinary and grievance procedures in the ways set out in issue 7.2.4. The only evidence was that this was done once in the Claimant's case.

- 283.4. There was no evidence that the Respondent had a practice of not setting out disciplinary allegations in clear and unambiguous terms. The only evidence was that this was done once in the Claimant's case.
284. The Tribunal found that the evidence of the approach taken in the Claimant's case did not meet the threshold of amounting to a provision, criterion or practice, applying the legal principles set out above. Indeed, the general impression was that these were specific decisions being taken only in the Claimant's case, and that they did not reflect how the Respondent would approach any other employee. They were one-off decisions, not reflective of any broader practice or how things generally were or would be done. The complaints of failure to make reasonable adjustments based on those PCPs cannot therefore succeed.
285. In relation to 7.2.1, the Claimant says that a requirement of satisfactory performance put her at a substantial disadvantage because she required management instructions to be clear, direct and unambiguous, otherwise they would not be properly understood and would increase stress and anxiety. The Tribunal was not persuaded that a requirement of satisfactory performance put the Claimant at the disadvantage alleged. Other PCPs – for example a practice of giving verbal management instructions, or a practice of giving unclear or ambiguous management instructions – might have put her at that disadvantage, but those were not the PCPs relied on. The Claimant did not establish on the evidence before the Tribunal a link between a requirement to perform satisfactorily and the substantial disadvantage of difficulty in understanding management instructions. This complaint of failure to make reasonable adjustments therefore cannot succeed.

Discrimination and victimisation time limits

286. Issue 9.1 and 9.2: The Claimant started early conciliation on 9 November 2022 and her certificate was provided on 21 December 2022. The parties confirmed that issue 9.3 had been resolved in the Claimant's favour by EJ James in a previous decision. The claim form was presented on 26 April 2023. That means that a complaint about something that happened on or before 26 January 2023 was not brought within the Tribunal time limit, unless it formed part of a course of conduct over a period.
287. The Claimant was dismissed on 27 January 2023. The complaints relating to the Claimant's dismissal, including the complaint under s 15 Equality Act 2010, were therefore brought within the Tribunal's time limit. The complaints of direct sex discrimination and harassment related to sex and the complaints of failure to make reasonable adjustments for disability, did not succeed.
288. That leaves the complaints of victimisation, which took place in early January 2023, and the successful complaint of disability related harassment, which took place in late December or early January 2023. The first question for the Tribunal to consider is whether there was conduct over a period, of which those events formed part, that ended on or after 27 January 2023.
289. The Tribunal found that there was plainly a course of discriminatory conduct over a period, which included the acts of victimisation and disability related harassment, and continued with the disciplinary process and dismissal. Indeed, this was a paradigm example of an ongoing situation or continuing state of affairs in which the Claimant was discriminated against/victimised.

290. For the reasons we have explained, the Tribunal concluded that Miss Spencer's decision to suspend the Claimant and her decision to initiate the disciplinary process that led ultimately to her dismissal were acts of victimisation. The obtaining and preparation of statements by Mr Briggs, Mrs Mackereth and Mr Townsend were at Miss Spencer's instigation and were part of that process. The victimising decision to instigate a disciplinary process led inexorably to the disciplinary hearing. It was Miss Spencer who carried out the "investigation" and decided that the matter should be referred for a disciplinary hearing. The dismissal itself was discriminatory.
291. Therefore, those complaints about victimisation and disability related harassment were presented within the Tribunal time limit.

Unfair dismissal

292. Issue 1.1: The Tribunal found that the reason for dismissal was conduct. Both Mr Andrew and Mr Glover genuinely believed that the Claimant had committed misconduct. It was not suggested that they did not.
293. Issue 1.2, 1.3, 1.4: The question is therefore whether the Respondent acted reasonably or unreasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant. The Tribunal considered that there was an overlap between the reasonableness of the investigation, the reasonableness of the grounds for believing in misconduct, the fairness of the process and the question whether dismissal was within the range of what was reasonable. We considered those matters in the round. Having regard to our detailed findings of fact above, the Tribunal had no hesitation whatsoever in concluding that the Claimant was unfairly dismissed and that no reasonable employer would have dismissed her in the circumstances. In reaching that conclusion, the Tribunal took into account, in particular, the following:
- 293.1. The Tribunal found that the disciplinary investigation conducted by Miss Spencer was flawed and unreasonable. Including:
- 293.1.1. Miss Spencer unreasonably failed to distinguish between the grievance appeal and the disciplinary process. It was unreasonable to initiate a disciplinary process to investigate allegations that, among other things, the Claimant had made false allegations in her grievance, when the appeal against the grievance outcome that would consider whether those allegations were false had not been determined.
 - 293.1.2. It was unreasonable of Miss Spencer not to provide the Claimant with specific allegations of misconduct to which she could respond, rather than asking her to give an account of her conduct towards four separate people over a two-month period, with no proper indication of what she was said to have done.
 - 293.1.3. Miss Spencer failed unreasonably to identify proper allegations of misconduct at any stage. The allegations set out in the disciplinary invitation letter on 11 January 2023 remained far too vague to enable the Claimant fairly and reasonably to respond.
 - 293.1.4. No doubt in part because of the failure to articulate proper, specific allegations of misconduct, Miss Spencer failed to identify and investigate relevant evidence, or to look for evidence that might be in the Claimant's favour. Inviting generalised comments from a range of people, a number of whom could not obviously provide any information about the matters that were apparently under investigation, did not amount to an adequate investigation of serious allegations

against a senior employee. There is no evidence that Miss Spencer investigated or explored the allegations made in the written statements from Mr Briggs, Mrs Mackereth and Mr Townsend, for example by asking for specifics or clarification, considering the underlying documentation, identifying and interviewing possible witnesses, or ascertaining the Claimant's version of events. This was unreasonable. No doubt it was in part because, as explained above, Miss Spencer had concluded by the time she suspended the Claimant, that she had behaved inappropriately. She cannot therefore have approached the investigation with an open mind.

293.1.5. The Tribunal has found, as explained above, that Miss Spencer's actions in suspending the Claimant and initiating a disciplinary process amounted to victimisation.

293.1.6. Insisting upon a written investigation response from the Claimant was unreasonable, particularly given the failure to provide proper allegations to which the Claimant could respond.

293.1.7. The timescale imposed by Miss Spencer for the Claimant's written response was strikingly unreasonable. Miss Spencer knew that the Claimant has dyslexia and ADHD and that autism was suspected. She knew that she had already required the Claimant to provide a written grievance appeal by 5pm on 4 January 2023, and yet she imposed on her a further requirement to provide written comments on unspecified disciplinary matters by the same deadline with two days' notice. She knew that the Claimant had recently been experiencing work-related stress and she knew that she was suspending the Claimant and telling her that she was being investigated for gross misconduct out of the blue. When the Claimant pointed out some of these matters, and asked for a modest extension of one week, Miss Spencer extended the deadline by 24 hours. That was plainly wholly inadequate and unreasonable.

293.2. The Tribunal found that the disciplinary hearing and outcome were flawed and unreasonable, in particular:

293.2.1. Mr Andrew unreasonably refused to obtain further OH advice. The Claimant requested on 13 January 2023 that he obtain OH advice about the effect of her disabilities in relation to the conduct for which she was being investigated. The Respondent did not have any such evidence. Mr Andrew refused to obtain any. The Claimant made clear that she was not able to provide relevant evidence in the timescale, and explained again what its relevance was. Mr Andrew still refused. As set out above, he clearly did not actually understand at the time that the Claimant was asking for evidence about whether her disabilities might have caused or contributed to her conduct. He thought she was asking for evidence about the conduct of the disciplinary process. The Claimant's disabilities were plainly relevant to the conduct for which she was being investigated. When Mr Andrew was asked in evidence about whether he had considered the impact of her disabilities on her behaviour, he repeatedly said that he was not medical or did not have the expertise to reach a conclusion. It was unreasonable to refuse a request for further OH advice without even taking the trouble to understand what the perfectly clear request was for. It was further unreasonable to refuse the request, given that this then prevented Mr Andrew from being able to take

into account the possible impact of the Claimant's disabilities on her conduct. Mr Andrew's conclusion that the Claimant could "turn this on and off" exemplified the importance of obtaining expert advice about her disabilities, so that he could, for example, properly understand the implications of the Claimant's managing to behave appropriately throughout the disciplinary hearing.

- 293.2.2. Mr Andrew unreasonably refused to change the timing of the disciplinary hearing in response to the Claimant's request on 17 January 2023. The Claimant explained that she was unable to obtain her own evidence and could not organise an advocate. These were matters going to the fairness of the hearing, and the adjustments that OH had recommended for the Claimant as a disabled person. There was no possible, reasonable basis for refusing the request. Mr Andrew's stated reason, that he saw no reason to delay the hearing further, was nonsense, given that the Claimant was offering options on the same day. Mr Andrew failed to grapple at all with the need to make adjustments for the Claimant or to ensure that a fair hearing took place.
- 293.2.3. It was unreasonable not to provide the Claimant with relevant documents she had requested, given that she had no access to her email or IT.
- 293.2.4. It was unreasonable for Mr Andrew not to question the adequacy of Miss Spencer's investigation and the circumstances in which she had obtained evidence, simply because she was the HR Director.
- 293.2.5. It was unreasonable for Mr Andrew not to identify or explain with any precision what the allegations against the Claimant were. She told him at the start of the disciplinary hearing that she did not understand why she was there and he did not then, or subsequently, provide her with proper clarity about what she was alleged to have said or done that amounted to misconduct. It was unreasonable for Mr Andrew not to put to the Claimant, with a few modest exceptions, any specific thing that she was said to have said or done.
- 293.2.6. Mr Andrew's further investigations were unreasonable: they were not impartial and were wholly inadequate. As explained in detail above, he asked leading questions and he failed to explore events in any detail. For example, he did not ask which allegations Mr Briggs was saying the Claimant had made that were false or malicious. His comment to Mr Briggs, "You have inherited this if she was taken to task earlier on her behaviour and conduct we would not be in this place" demonstrated that he was not approaching the matter impartially.
- 293.2.7. Mr Andrew's conclusions in relation to allegations 1, 3 and 4 were, in those circumstances, wholly unreasonable. They were not based on reasonable grounds. There was a total failure to engage with the Claimant's statement and supporting evidence. Mr Andrew made no reference to them in the outcome letter. He accepted in cross-examination that he had not looked at her evidence about discrepancies in Mrs Mackereth's meeting notes, even though he knew that one of the issues was whether the Claimant had maliciously and falsely accused Mrs Mackereth of altering them. It was clear that he had not looked at other, relevant elements of her evidence either. He had not put to the Claimant what comments she was alleged to have made about Ms Maxwell and he did not make any findings about that. His decision appears to have been little more than accepting Mr Townsend's generic assertions at face value. Mr Andrew did not refer to the Claimant's version of events, or to the context in which the

comments were made, and he did not refer to the Respondent's own notes of the meeting. Mr Andrew did not identify what the Claimant had done that was condescending, patronising or intimidating. He did not identify what the Claimant had done that was bullying, harassing or intimidating behaviour and he did not refer to her statement, evidence or explanations. Again, his conclusions appear to be based on simply accepting at face value the generic assertions in the statements of Mr Briggs, Mrs Mackereth and Mr Townsend.

293.2.8. Mr Andrew was wholly unable to articulate, even by the time of the Tribunal hearing, what it was that the Claimant had actually said or done that amounted to misconduct. The only concrete example he was able to give in evidence was a conclusion that the Claimant had made a false and malicious allegation about Mr Briggs's use of the word "lads." Mr Andrew's oral evidence about that, in the context of Mr Briggs's admission that he had used the word, was confused and telling. It demonstrated an unreasonable failure to engage with the substance of the allegations against the Claimant and to consider the evidence in relation to those matters. It was clear to the Tribunal that his conclusion that the Claimant had made false and malicious allegations did not entail identifying allegations in the Claimant's grievance that were false and malicious based on the evidence, but rather accepting the generic assertions made by Mr Briggs and Mrs Mackereth (the subject of the allegations) that false allegations had been made. That was unreasonable.

293.2.9. In short, Mr Andrew did not grapple with this process in an appropriate level of detail or with impartiality. He was presented with generalised allegations supported by generalised written statements and that was the level at which he approached the disciplinary process. With one or two exceptions, he did not identify specifics of what the Claimant had said or done wrong. That meant he could not and did not ask the Claimant about them or assess the relevant evidence to enable him to reach a conclusion about whether the Claimant had said or done the things alleged. His answers in cross-examination and the notes of his questioning of some of the witnesses point to his accepting the narrative that was being presented to him, rather than properly assessing and weighing the evidence, to reach balanced conclusions.

293.3. Despite asserting in the outcome letter that he had made allowances for the Claimant's neurodiversity, it was clear from his evidence to the Tribunal (that the Claimant could "turn it on and off" and that, in the absence of medical evidence, he was "not able to say" whether the Claimant's conditions did or did not account for some of her behaviour) that Mr Andrew did not and could not properly take into account any impact the Claimant's ADHD and autism had on the behaviour for which she was being disciplined.

293.4. In all those circumstances, dismissal was outside the range of reasonable responses. No reasonable employer would have dismissed the Claimant in those circumstances.

293.5. These matters were not corrected by the appeal process. In particular:

293.5.1. The Claimant was given less time to appeal than was provided for by the Respondent's policy.

- 293.5.2. The Claimant's appeal letter succinctly identified many of the shortcomings set out above.
- 293.5.3. Mr Glover did not carry out a re-hearing, so there was still no proper identification of allegations and relevant evidence, and balanced assessment of it.
- 293.5.4. Although Mr Glover did not uphold allegation 1, his conclusion that the Claimant had sworn in the corridor based on the evidence of Mrs Mackereth and Ms Rus, when Ms Rus said the opposite, pointed to a failure to engage properly with the detail of the appeal.
- 293.5.5. Mr Glover upheld allegation 3. In doing so, he, too, failed to identify what exactly the Claimant was alleged to have said and in what context. He did not consider the notes of the grievance hearing or the different versions of events and he did not explain why it was reasonable for Mr Andrew simply to accept Mr Townsend's statement, despite the shortcomings identified by the Claimant. Mr Glover wrongly believed that Mr Townsend had told the Claimant during the grievance hearing that he was offended by her comments and placed weight on that, when he said that the issue was that the comments had offended Mr Townsend, not that they had offended Ms Maxwell. Mr Glover wrongly believed that the context of the Claimant's comments was that the Claimant had issues with Ms Maxwell and the way she behaved, when in fact the context was that the Claimant was explaining why she thought PR treated her differently from Ms Maxwell.
- 293.5.6. Mr Glover upheld allegation 4. In doing so, he simply asserted that Mr Andrew had adopted a reasonable approach following an assessment of the evidence presented to him. That does not address any of the shortcomings identified by the Claimant, nor those set out above. Mr Glover accepted Mr Andrew's conclusion that the Claimant had made false and malicious allegations in her grievance without seeking to identify what those allegations were or assess the evidence about whether they were false.
- 293.5.7. Mr Glover held against the Claimant her assertion that Miss Spencer was conducting a witch hunt and had bullied and discriminated against her, rather than investigating whether those complaints were well-founded. The Claimant had drawn specific attention to the timescales imposed on her by Miss Spencer. Mr Glover did not deal with that. The Claimant had also specifically appealed on the ground that Mr Andrew had unreasonably failed to move the disciplinary meeting on the second occasion. Mr Glover's understanding was that when the Claimant asked for more time, it was provided. That was not correct. As noted, Mr Glover eventually accepted that he had not actually looked at what it was the Claimant had been requesting. Mr Glover did not give any proper or detailed consideration to the process that had been followed, whether there were shortcomings in it, and, if there were, what the implications of that were for the Claimant's concerns about bullying, discrimination and victimisation.
- 293.5.8. Mr Glover did not obtain OH advice about the impact of the Claimant's ADHD and autism on the conduct for which she was being dismissed.
- 293.5.9. Mr Glover held conversations with Ms Hardie-Cross and with Mr Andrew that were undocumented and were not shared with the Claimant. His conclusions in

respect of the Claimant's appeal against Mr Andrew's decision were, in part, based on private, undocumented conversations with Mr Andrew.

Polkey

294. Issue 2.1.4, 2.1.5: It is for the Respondent to satisfy the Tribunal that it would have fairly dismissed the Claimant in any event. For the reasons set out in the separate findings of fact relating to *Polkey* and contributory fault, the Respondent did not prove that the Claimant committed any misconduct. Neither Mr Andrew nor Mr Glover gave evidence about what would have happened if a different process had been followed. The question is always whether the Respondent would have fairly dismissed the Claimant in any event. The Respondent presented no evidence on the basis of which the Tribunal could conclude that it would have fairly dismissed the Claimant in any event. The Tribunal found that there was no chance that it would have done so. On the Tribunal's findings, the Claimant had presented a genuine and legitimate grievance. She had pursued it with persistence and insistence, an attention to detail and a direct style of communicating that were consistent with her disabilities of ADHD and autism. She did not commit misconduct during the grievance hearing and she did not commit misconduct in the corridor afterwards. She did not make false or malicious allegations about anybody. If there was a breakdown in relationships because the Claimant had made genuine complaints, including complaints of discrimination, the chance that the Respondent would have fairly dismissed her for that reason is nil.

Contributory fault

295. Issue 2.1.9, 2.1.10: For the reasons explained in the findings of fact above, the Tribunal found that the Claimant did not commit any of the alleged culpable and blameworthy conduct relied on by the Respondent.

Employment Judge Davies
21 August 2024

Notes

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings.

ANNEX A – LIST OF ISSUES

1. Unfair dismissal

Note - time limits/Acas Early Conciliation issues are considered below.

- 1.1 What was the reason or principal reason for dismissal? The respondent says the reason was conduct or some other substantial reason. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.
- 1.2 In the circumstances (including the size and administrative resources of the respondent), did the respondent act reasonably or unreasonably in treating that as a sufficient reason to dismiss the claimant? That question is to be decided in accordance with equity and the substantial merits of the case.
- 1.3 In a misconduct case, the Tribunal will usually decide, in particular, whether:
 - 1.3.1 there were reasonable grounds for that belief;
 - 1.3.2 at the time the belief was formed the respondent had carried out a reasonable investigation;
 - 1.3.3 the respondent otherwise acted in a procedurally fair manner;
 - 1.3.4 dismissal was within the range of reasonable responses.
- 1.4 The claimant relies on the following specific allegations of substantive and procedural unfairness.
 - 1.4.1 The Respondent's failure to allow the Claimant access to its IT system and emails to allow her to locate and produce relevant documentation in support of her case;
 - 1.4.2 The short time-frames given to the Claimant to prepare for hearings and appeal decisions (normal practice being to send her outcomes late on a Friday afternoon);
 - 1.4.3 The failure to source medical evidence focussed on the potential inter-relationship between the Claimant's disabilities and the alleged conduct for which she was dismissed;
 - 1.4.4 The failure to properly clarify to the Claimant the allegations against her that led to her dismissal (for example, she alleges that she has not been provided with the exact words the Respondent alleges she used in her supposedly discriminatory comments about KM);
 - 1.4.5 The distortion and misreporting of comments she made in the notes subsequently provided of the various hearings;
 - 1.4.6 The impact that was had on the Claimant (as a survivor of domestic abuse) of PR's behaviour towards her on 8 August 2022 and subsequent mishandling of this incident by MB and LM;
 - 1.4.7 The failure to source witness statements from all relevant witnesses. For example:

- 1.4.7.1 In relation to allegation 1, Amy Bentley and Catriona Rankine;
- 1.4.7.2 In relation to allegation 3, Carrie-Anne Brackstone, Beverley Campbell, who were not asked for specific comment regarding this allegation;
- 1.4.7.3 In relation to allegation 4. witnesses who the claimant says were able to provide evidence that her grievances were genuine were John Armstrong, Iain Scott, Clare Rowlands and Victoria Copley.
- 1.4.8 The failure to provide the Claimant with the following documentary evidence and clarification she specifically requested from the Respondent that she considered would be helpful to her case:
 - 1.4.8.1 The original unedited meeting notes taken by ML in meetings between the 9 August 2022 and 7 September 2022, first requested on 17 November 2022 after the claimant was provided with heavily edited ones which did not accurately reflect what was said in the meetings;
 - 1.4.8.2 The specific documents below, requested on the 17th of January 2023;
 - 1.4.8.2.1 An email send to the Claimant from LM on 12 October 2021 at 14.35 with attachments;
 - 1.4.8.2.2 The meeting notes LM refers to from 10 February 2022;
 - 1.4.8.2.3 Clarification as to precisely what LM meant by her comments in (background point 4) of her statement, previously requested in the Claimant's letter of 12 January 2022;
 - 1.4.8.2.4 The Yorkshire Baker staff survey results for 2022 including free text comments;
 - 1.4.8.2.5 An email sent to the Claimant from KM on 17 September 2021 replying to an email the Claimant sent her at 14.44 with the subject "Yorkshire Baker - Labour Inflation MSP's - inc Detail .xlsx";
 - 1.4.8.2.6 All CCTV footage of the Claimant on site at Yorkshire Baker from 6 December 2022 and 14 December 2022 (to include the main gate and car park, the main corridor outside the boardroom and the main office including corridor outside the HR & Site Directors offices);
 - 1.4.8.2.7 The Claimant's key fob times on the gate on 6 December 2022;
 - 1.4.8.2.8 The complete list of people who were asked to provide witness statements as part of MS's appeal process which led to the claimant's disciplinary hearing;

- 1.4.8.2.9 Emails MS sent to witnesses to obtain statements for the disciplinary hearing.
- 1.4.8.3 The resignation letter sent by Victoria Copley citing bullying by the chefs;
- 1.4.8.4 Who made specific complaints against the Claimant to MS to start an investigation, what dates these were received and what was contained in these complaints;
- 1.4.8.5 Why KM was asked for a statement and it was included in the disciplinary evidence pack when she had not contacted the Claimant since August 2022 and nothing in KM's statement related to the 4 bullet pointed allegations;
- 1.4.8.6 What LM meant by her comments in (background point 4) of her statement, "I was not aware of Sally's previous experience of domestic abuse. I was aware she had a relationship with a person from Arla foods which ended badly and involved violence", clarification as to which the Claimant requested:
 - 1.4.8.6.1 in a letter to the Respondent on 12 January 2022;
 - 1.4.8.6.2 in an email to the Respondent on 17 January 2023;
 - 1.4.8.6.3 verbally during the disciplinary hearing on 18 January 2023;
 - 1.4.8.6.4 in the Claimant's appeal letter on 30 January 2023;
 - 1.4.8.6.5 verbally during the Claimant's appeal hearing on 22 February 2023.

2. Remedy for unfair dismissal

- 2.1 If there is a compensatory award, how much should it be? The Tribunal will decide:
 - 2.1.1 What financial loss has the dismissal caused the claimant?
 - 2.1.2 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
 - 2.1.3 If not, for what period of loss should the claimant be compensated?
 - 2.1.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
 - 2.1.5 If so, should the claimant's compensation be reduced? By how much?
 - 2.1.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 2.1.7 Did the respondent or the claimant unreasonably fail to comply with it by (references below refer to ACAS Code of Practice on Disciplinary & Grievance Procedures):

Disciplinary Process

2

I. The disciplinary process did not promote fairness and transparency.

II. The respondent continues to refuse to be specific and clear in writing.

3. The formal action was not justified given all the circumstances.

4.

I. Issues were not raised promptly.

II. The respondent failed to carry out the necessary investigation.

III. The claimant was denied the opportunity of an investigation meeting before the formal hearing.

5.

I. The claimant was denied the opportunity of an investigation meeting before the formal hearing.

II. Relevant evidence was not collected in a fair and unbiased way and in some instances not collected at all despite specifically being requested.

9. The respondent has failed to provide sufficient information in writing about the alleged misconduct.

12.

I. At the disciplinary hearing it was not explained specifically what the complaints are?

II. The process did not allow any dialogue or questioning of witness statements.

16. The respondent refused to accommodate moving the date, location of my disciplinary hearing to allow my chosen advocate to attend.

19. No warning.

20. No warning.

21. No warning.

23. The process was not fair.

24. Not provided with an example of "serious misconduct" the reason that is quoted is that I was dismissed.

26. There was a significant delay before my appeal was heard.

29. There was a significant delay before receiving the outcome of my appeal.

Grievance Process A. (SE raised informally – retrospectively MB, LM & JT say that this was a formal grievance process)

- 33. Formal meetings not arranged, not even explained it was a grievance process.
- 35. Not offered a companion to any of the meetings.
- 36. Not offered a companion and was in fact told I was not allowed to speak to anyone.
- 37. Did not know to request as not made clear it was a grievance process as so I would be entitled to be accompanied.
- 40. First outcome was in person in a meeting including the person who complained about it without a pre-stated agenda or participant list. No formal written outcome received.
- 43. Appeal was heard by MB & LM, the same people as the initial grievance.
- 44. Not offered to be accompanied as I did not know it was a grievance hearing.
- 45. Original outcome not communicated in writing.

Grievance Process B. (SE raised in writing - 31st October 2022 to MW)

- 33. Delayed due to the respondents refusal to allow 2 reasonable and free adjustments.
- 42. Appeal hearing was denied though changing the process halfway through the grievance process.
- 43. The person "hearing" the written only appeal was not impartial and was in fact complained about in the grievance appeal statement.
- 44. No appeal hearing.
- 45. There was a delay.
- 46. Grievance and disciplinary processes running at the same time.

- 2.1.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- 2.1.9 If the claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?
- 2.1.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
- 2.1.11 Does the statutory cap of fifty-two weeks' pay or £93,878 apply?
- 2.2 What basic award is payable to the claimant, if any?

- 2.3 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

3. Disability

- 3.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:
- 3.1.1 Did she have a mental impairment: the claimant relies on dyslexia, ADHD and autism?
 - 3.1.2 Did the impairments have a substantial adverse effect on her ability to carry out day-to-day activities?
 - 3.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - 3.1.4 Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?
 - 3.1.5 Were the effects of the impairment long-term? The Tribunal will decide:
 - 3.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?
 - 3.1.5.2 if not, were they likely to recur?

4. Discrimination arising from disability (Equality Act 2010 section 15)

- 4.1 Did the respondent treat the claimant unfavourably by:
- 4.1.1 reducing her pay on 21 November 2022, during a period of sickness absence;
 - 4.1.2 dismissing her?
- 4.2 Did the following things arise in consequence of the claimant's disability:
- 4.2.1 A requirement by the respondent for an OH report before the respondent finalised its response to the claimant's grievance?
 - 4.2.2 The claimant's communication style is very different to people without the disability of autism?
- 4.3 Was the unfavourable treatment at 4.1.1 because of the something set out at 4.2.1?
- 4.4 Was the unfavourable treatment at 4.1.2 because of the something set out at 4.2.2?
- 4.5 Was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were:
- 4.5.1 to treat the claimant in a manner consistent with other employees of Cranswick when paying discretionary company sick pay, and separately in investigating, disciplining and dismissing her/other employees for serious breaches of conduct and the company's equality/harassment policies.
- 4.6 The Tribunal will decide in particular:

- 4.6.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;
 - 4.6.2 could something less discriminatory have been done instead;
 - 4.6.3 how should the needs of the claimant and the respondent be balanced?
 - 4.7 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?
5. Harassment related to sex or disability (Equality Act 2010 section 26)
- 5.1 Did the respondent do the following things:
 - 5.1.1 (notwithstanding and without prejudice to her contention that this was also an act of direct discrimination) On 20 June 2022, MB insisting to the Claimant that he be present during a meeting with **Jim Brisby (JB)** and, in that meeting, presenting the Claimant's work as if it were his own;
 - 5.1.2 On 19 August 2022, in the context of him explaining to the Claimant how to manage a direct report better, MB saying "is she sending an email straight back? Lads! Lads! This is not good enough, go again";
 - 5.1.3 On 5 September 2022, in the context of him talking about him negotiating a better bacon price, saying that he was going to "get on at the lads somewhere";
 - 5.1.4 The language used by the Respondent's HR members in their witness statements, which were received by the Claimant on 11 January 2023 (including the following descriptions of her, which the Claimant found offensive: "immature", "strange", "her behaviour to be at odds with medical advice", and (in relation to her behaviour) "malicious"; and
 - 5.1.5 On 18 January 2023, DA describing her neurodivergent conditions (e.g. her ADHD, dyslexia and possible autism) as "illness".
 - 5.2 If so, was that unwanted conduct?
 - 5.3 In relation to 5.1.1, 5.1.2 and 5.1.3 above, did it relate to sex?
 - 5.4 In relation to 5.1.4 and 5.1.5 above, did it relate to disability (namely ADHD and autism)?
 - 5.5 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
 - 5.6 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.
6. Direct sex discrimination (Equality Act 2010 section 13)
- 6.1 Did the respondent do the following things:

- 6.1.1 Did Kate Maxwell and/or Jim Brisby fail to offer the claimant any meaningful support in April 2022 following a report that she had been shouted at by Sue Maxwell. (Comparator – Marcus Hogarth)?
- 6.1.2 Did Max Briggs insist he was present at a meeting with JB on 30 June 2022 and/or did he present the claimant's work at that meeting as his own? (Hypothetical comparator – this is also pursued as an act of direct discrimination; if that claim succeeds, this allegation no longer needs to be considered – s.212(1) Equality Act 2010)?
- 6.1.3 On 10 August 2022, did Matt Briggs ask the Claimant whether she thought that she'd "smirked" and "whether that could have triggered Paul's emotional response". (The Claimant contends that, especially in light of MB's comment on 8 August 2022, "you know what chefs are like, we don't want him to leave" and his subsequent comment in the grievance investigation that "Sally and Paul are the same level", MB was trying to blame the claimant for PR's conduct which he would not have done had the claimant been male. (Hypothetical comparator)
- 6.2 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated (see the suggested comparators above).

There must be no material difference between their circumstances and the claimant's.
- 6.3 If so, was it because of sex?
- 6.4 If disputed - did the respondent's treatment amount to a detriment?
- 7. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)
 - 7.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?
 - 7.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:
 - 7.2.1 a requirement of satisfactory performance;
 - 7.2.2 carrying out grievance investigations and holding grievance meetings without formally notifying the claimant that it was treating her complaint as a formal grievance;
 - 7.2.3 when providing the outcome of a grievance, having the complainant and alleged discriminator in the same room;
 - 7.2.4 (departing from the wording of) formal grievance and disciplinary procedures by;
 - 7.2.4.1 allowing a person less senior than the person complained about in a grievance to conduct the grievance process;
 - 7.2.4.2 giving a person less time to appeal (the claimant says she had 5 days to appeal when she should have been given 7 days under the procedure);

- 7.2.4.3 considering grievance appeals in writing only, without a meeting;
 - 7.2.4.4 re-ordering and re-wording the grievance complaints in the written response to the grievance;
 - 7.2.4.5 requiring a written statement to the disciplinary hearing instead of holding a meeting with the employee.
- 7.2.5 in disciplinary procedures, not setting out the allegations in clear and unambiguous terms.
- 7.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that?
 - 7.3.1 In relation to 7.2.1 and 7.2.5, the claimant's neuro-divergent conditions require management instructions to be clear, direct and communicated in unambiguous language, otherwise they will not be properly understood and will increase stress and anxiety compared to an employee without those conditions.
 - 7.3.2 In relation to 7.2.2, the claimant expects formal rules to be followed rigidly; failing to do so causes her more anxiety and stress than others without her neurodivergent conditions;
 - 7.3.3 In relation to 7.2.3, due to the claimant's ADHD, she is more prone to suffer anxiety and distress due to such practices;
 - 7.3.4 In relation to 7.2.4.1, the claimant expects formal rules to be followed rigidly; failing to do so causes her more anxiety and stress than others without her neurodivergent conditions. Additionally expressing this rule not being followed has then been wrongly interpreted by the respondent as "amounting to bullying/harassing colleagues and intimidating behaviour"
 - 7.3.5 In relation to 7.2.4.2, 7.2.4.3 and 7.2.4.5, the claimant is disadvantaged by written processes, takes longer to provide a written response/appeal due to both dyslexia and autism and prefers a process of dialogue in a meeting; and due to ADHD, is more prone to increased anxiety and distress due to the shorter deadline;
 - 7.3.6 In relation to 7.4.2.4, a person with dyslexia finds it more difficult to understand the grievance outcome when the allegations have been re-ordered and re-worded.
- 7.4 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
- 7.5 What steps could have been taken to avoid the disadvantage? The claimant suggests:
 - 7.5.1 In relation to 7.2.1 providing the Claimant with clear feedback regarding her performance;
 - 7.5.2 In relation to 7.2.2, following formal processes correctly, in a clear and unambiguous way;
 - 7.5.3 In relation to 7.2.3, organising separate meetings for the alleged perpetrator and the person making the allegation; or at the very least, notification in advance of the meeting and who would be present, the

provision of an agenda for the meeting and allowing the person making the allegation to have a colleague with her;

- 7.5.4 In relation to 7.2.4.1, ensuring that someone more senior than the person complained about conducts the grievance procedure;
 - 7.5.5 In relation to 7.4.2.2, giving her more time to submit an appeal, not less;
 - 7.5.6 In relation to 7.2.4.3, and 7.2.4.5, holding meetings in which a process of oral dialogue can taken place;
 - 7.5.7 In relation to 7.2.4.4, sticking to the wording of the grievance submitted by the complainant;
 - 7.5.8 In relation to 7.2.5, providing the Claimant with clear feedback regarding her performance; and with disciplinary allegations in writing in unambiguous language and supported by relevant examples.
- 7.6 Was it reasonable for the respondent to have to take those steps and if so, when?
- 7.7 Did the respondent fail to take those steps?

8. Victimisation (Equality Act 2010 section 27)

- 8.1 Did the claimant do a protected act as follows:
 - 8.1.1 Submit a grievance dated 31 October 2022? The respondent accepts that this was a protected act.
- 8.2 The respondent accepts that it did the following things:
 - 8.2.1 suspended the claimant;
 - 8.2.2 subjected her to a disciplinary process at the conclusion of which she was dismissed.
- 8.3 (If disputed) by doing so, did it subject the claimant to detriment?
- 8.4 Did the respondent submit the claimant to the above treatment because she did a protected act?

9. Time limits/Acas Early Conciliation

- 9.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 27 January 2023 may not have been brought in time.
- 9.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 9.2.1 Was Acas Early Conciliation commenced within three months of the act to which the complaint relates?
 - 9.2.2 Further, was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 9.2.3 If not, was there conduct extending over a period?

- 9.2.4 In relation to any failure to do something, when did the respondent decide not to do that something; alternatively when did the respondent do an act inconsistent with doing that something; or if there was no inconsistent act, by what date might the respondent recently have been expected to do it?
 - 9.2.5 Was Acas Early Conciliation commenced within three months of the end of that period/decision/inconsistent act/date?
 - 9.2.6 Further, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period/decision/inconsistent act/date?
 - 9.2.7 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 9.2.7.1 Why were the complaints not made to the Tribunal in time?
 - 9.2.7.2 In any event, is it just and equitable in all the circumstances to extend time?
 - 9.3 Was it necessary to commence a further process of Acas Early Conciliation following the start of the disciplinary process in January 2023? If so, should the unfair dismissal claim be rejected?
10. Remedy for discrimination or victimisation
- 10.1 What financial loss has the discrimination caused the claimant?
 - 10.2 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
 - 10.3 If not, for what period of loss should the claimant be compensated?
 - 10.4 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
 - 10.5 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
 - 10.6 Is there a chance that the claimant's employment would have ended in any event? Should her compensation be reduced as a result?
 - 10.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 10.8 Did the respondent or the claimant unreasonably fail to comply with it for any reason identified in 2.1.7 above?
 - 10.9 If so is it just and equitable to increase or decrease any award payable to the claimant?
 - 10.10 By what proportion, up to 25%?
 - 10.11 Should interest be awarded? How much?