



EMPLOYMENT TRIBUNALS

Claimant: Ms. S. Burns

Respondents: Gitpod GMBH (1)
Lets Deel Limited (2)

Heard at: Birmingham **On:** 12, 13,14,15,19,20, 21, 22 and
23 May 2025
In chambers 17,18 & 19 June 2025,
10 August 2025

Before: Employment Judge Wedderspoon (sitting alone)

Appearances

For the claimant: Mr. M. Engleharot-Sprack, counsel
For the respondent: Ms. L. Bone, counsel

JUDGMENT

1. The claim of direct sex discrimination is not well founded and is dismissed.
2. The claim of failure to make reasonable adjustments is well founded and succeeds.
3. The claim of discrimination arising from disability is well founded and succeeds.
4. There will be a remedy hearing on a date to be fixed with a time estimate of 3 days.
5. A Telephone Preliminary Hearing to determine directions and further case management for the remedy hearing on a date to be fixed with a time estimate of 90 minutes.

REASONS

1. By claim form dated 10 November 2023, the claimant brought complaints of sex discrimination, discrimination arising from disability and failure to make reasonable adjustments. The claimant entered ACAS conciliation on 4 September 2023 and received a certificate dated 16 October 2023.

2. Pursuant to the judgment of Employment Judge Harding dated 24 December 2024 (p.84-101) the claimant was found to be disabled from 1 May 2022 to 30 June 2023 by reason of ADHD and dyslexia.
3. On 14 March 2025 Judge Clarke identified the following claims and issues in the case :-

Direct sex discrimination s.13 (1) Equality Act 2020

- 3.1 Did R1 or R2 subject C to less favourable treatment? See relies on her dismissal as a less favourable treatment;
- 3.2 If so, was Rs conduct in doing so less favourable treatment because of sex? C relies on the following as actual comparators; ; Johannes Landgraf; Austin Prasad; Phillip Pietsch; Michael Aring; Christian Weichel and Kai Klasen. Further the claimant relies on a hypothetical comparator.

Discrimination arising from disability s.15 (1) Equality Act 2020

4. Did either of R1 or R2 treat the claimant unfavourably because of something arising in consequence of C's disability. C relies on her dismissal as the less favourable treatment.
5. C relies on the following as constituting the "something arising"
 - 5.1 That C was not a self-starter and finisher. She says that this is something that arises as a consequence of her ADHD because attention to detail and completing things are difficult for people with ADHD;
 - 5.2 That C did not make and meet agreements. She says that this is something that arises in consequences of her ADHD because attention to detail and completing things are difficult for people with ADHD;
 - 5.3 That C was unable to adapt to R1's written asynch culture. She says this is something that arises in consequence of her ADHD and dyslexia because the written asynch culture involves a huge amount of written correspondence and documents and given her slow reading speed and the fact that writing is more difficult due to her ADHD and dyslexia it was difficult for the claimant to keep up with their volume of written correspondence;
 - 5.4 Due to a general perception that she was a poor performer;
 - 5.5 That C was locked out of her room at a work event. This is something that arises in consequence of her ADHD because she is disorganised/forgetful as a result of her ADHD when it comes to matters such as keeping a set of keys on her.
6. If C proves any of the above unfavourable treatment can it be shown that it is proportionate means of achieving A legitimate aim ? R1 and R2 Rely on the following at a legitimate aim :

- (a) the need for businesses to be able to part company with underperforming senior team members in order to meet objectives and ensure the business and survival of the business that aim is particularly important in the context of a modest sized startup that has yet to make a profit and has recently reduced its headcount.

Duty on employers to make reasonable adjustments s.20 (3) EqA

7. Was R1 and R2 under a duty to make reasonable steps to provide an auxiliary aid to C, in the form of an ADHD/dyslexia coach to provide guidance on the difficulties with navigating the workplace for someone with ADHD/Dyslexia in that but for the provision of that auxiliary aid, C would be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled.
8. C's case is that the substantial disadvantage is that C was less able to meet and make agreements and comply with the written asynch culture.
9. If R1 and R2 was under such a duty, did R1 or R2 fail to take such reasonable steps ?

Auxiliary Aid – Software Tooling

10. Was R1 or R2 under a duty to take reasonable steps to provide an auxiliary aid to C in the form of providing software tooling, specifically a screen reader, in that but for the provision of that auxiliary aid, C would be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled?
11. C's case is that the substantial disadvantage is that it made it harder for C to concentrate and comply with the written asynch culture.
12. If R1 or R2 was under such a duty did R1 or R2 fail to take such steps as are reasonable to avoid to the disadvantage to C?

Auxiliary Aid- access to a PA

13. Was R1 or R2 under a duty to take reasonable steps to provide an auxiliary aid to C, in the form of failing to provide her with access to a PA, in that but for the provision of that auxiliary aid, C would be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled?
14. C's case is that the substantial disadvantage is that because of the volume of written documentation C was less able to meet and make agreements and comply with the written asynch culture without this support.
15. If R1 or R2 was under such a duty, did R1 or R2 fail to take such steps as are reasonable to avoid the disadvantage to C?

Reasonable adjustment : taking notes at meetings

16. Did the employer apply a provision, criterion or practise (PCP) of not taking notes during one to one meetings;

17. If so did this PCP put C at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, namely that C did not know what she had been told was expected of her as a result of her difficulties in concentrating and/or absorbing information caused by both her dyslexia and her ADHD?
18. If so, did R1 and R2 fail to take such steps as it is reasonable to have to take to avoid the disadvantage to C?

Reasonable adjustment : deadlines for work

19. Did the employer apply a provision, criterion or practise (PCP) in the form of an expectation that work would be done by a deadline or by an agreed time;
20. If so, did this PCP put C actually substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled namely that C regularly missed deadlines because it took her longer to read and absorb information and it was hard for her to remember deadlines?
21. If so, did R1 and R2 fail to take such steps as it is reasonable to have to take to avoid the disadvantage to C? See contends that she should have been given flexible deadlines and/or had deadlines extended.

Knowledge

22. The duty to make reasonable adjustments does not apply if the employer did not know and could not be reasonably expected to have known that C have the disability and that C was likely to have been placed at a substantial disadvantage by the employer's provision, criterion or practise or failure to provide an auxiliary aid.

The Hearing

23. The Tribunal was provided with a bundle of documents of 1168 pages and an additional bundle of pages 1169 to 1261.
24. The Tribunal heard evidence from the claimant. For the first respondent (R1) the Tribunal heard evidence from Talia Moyal, Head of Outbound Product, Mike Brevoot, former Chief Product Officer; Johannes Landgraf, the first respondent's chief executive officer; Eva Hyder, Head of People at the first respondent.
25. There was no dispute that both respondents were liable for any discrimination to the claimant.
26. Judge Meichen granted the claimant's application on behalf of her counsel to permit Mr. Sprack to work remotely as follows "Pursuant to Judge Clarke's order dated 14 March 2025 the trial was timetabled so that day 1 was a reading day for the Tribunal as well as dealing with preliminary issues. The preliminary issues included the claimant's application for specific disclosure; introduction of additional documentation; the respondent's application to adduce an additional statement from Eva Hyder and applications from members of the public and the press to have access of the witness statements and trial bundle".

27. The claimant's counsel did not join the link at 10am sending a message that he did not have the joining details (despite the Tribunal having sent this to the claimant's representative). Ms. Bone for the respondent stated she had spoken to Mr. Sprack and he had determined to change his travel arrangements and he was travelling by train today. Mr. Sprack joined the hearing at about 10.20 a.m. travelling by train in Germany wearing his headphones. It was not possible to hear what Mr. Sprack was saying because of the noise of the train and conversations that could be heard on the train. The Judge was informed he should have got off the train in 10 minutes. The Tribunal stood the case down for 20 minutes to give Mr. Sprack an opportunity to disembark the train and find a quiet space. Following the adjournment, Mr. Sprack joined the train with his headphones on and stated he was on another train and it was going to take 14 hours to get to Birmingham. He thought today was a short hearing day so would be ok to deal with it on the train. The Tribunal determined that it was unacceptable to conduct the hearing with a representative travelling on a train and deal with contested matters. Guidance sent by the Tribunal to parties is that remote hearings should be conducted from a quiet space. It was an expectation that a professional representative should be well aware of this. The case was adjourned to day 2 as it was simply impracticable and contrary to the interests of justice to conduct the hearing with Mr. Sprack on headphones on a train. The Tribunal determined to postpone the case to day 2 and stated that any application made for any wasted costs of the postponement would be heard by the Judge. The Tribunal has determined to defer the determination of wasted costs until the end of the case.
28. The Tribunal was provided with a chronology and cast list. Ms. Bone had prepared an Opening Note. The Tribunal determined not to read the Opening Note prepared by one party as the Judge preferred to hear the evidence herself keep an open mind on all issues.
29. On day 2 the claimant made an application for specific disclosure. This part of the hearing had to be heard remotely due to the closure of the Tribunal building following a power outage. The claimant's application was more extensive than originally thought; the claimant sought items 1,4,6,7,11,8,9,10,11,12 to 14 and 15 to 16 at page 1201 of the papers. The application was contested by the respondent.
30. Following submissions, the Tribunal determined the application (by separate order) taking into account the cases of **Sarnoff v YZ (2021) ICR 545**; **Santander UK plx v Bharaj (2021) ICR 580**; **Virgin Atlantic Airways Limited v Coverseed (2024) EAT 79** and taking into account of the fact that there are inherent difficulties in proving discrimination claims. In **West Midlands Passenger Transport Executive v Singh (1988) ICR 614** it was noted there were special features of discrimination cases, and the question is whether it may tend to prove the case.
31. The claimant was provided with reasonable adjustments of regular breaks and was permitted to write notes before answering questions under cross examination.
32. On the afternoon of day 5 of the hearing, the claimant applied to adduce some further evidence which had been provided to her by a former employee of the

respondent following the conclusion of her cross examination. The former colleague Mr. Geoff Huntley provided some photographs of the offsite in Portugal in November 2022 showing a group of men sitting at a table with a number of polaroid photographs (and a video; not viewed by the Tribunal because it was not introduced into evidence) of activity in a playground along with commentary of Mr. Huntley who described his colleagues at this event as “shit faced”. Ms. Bone objected to the inclusion of this material questioning the probative value of the same namely that the claimant’s allegations had concerned her alleged treatment at the offsite in April 2023 at a location in Austria (see paragraph 60 (a) at page 25); the photographs were of a November 2022 event. Further Ms. Bone suggested that she would need to take further instructions and that this could inevitably affect the trial window. Mr. Engelharot Sprack stated that the claimant also relied upon a hypothetical comparator and wished to rely upon the conduct at a previous event noting that the claimant’s pleaded case also referred to a call with a now ex-colleague see paragraph 58 at page 25 *“I find it kind of shitty that they threw the offsite against you..it feels like an excuse about it and I saw Chris and Johannes and everything be drunk and disruptive and loud before too.”* Further in the attachments to the second witness statement, Ms. Hyder had referenced a perception that there was drunkenness in Portugal at the offsite.

33. The Tribunal noted that there were intrinsic difficulties in proving discrimination claims as noted in the case of **West Midlands Passenger Transport Executive v Singh**; whether it may prove the case. The claimant had made a direct sex discrimination allegation about her alleged less favourable treatment at an offsite relying upon named actual and hypothetical comparators and referencing in her pleaded case a previous occasions when males have been drinking but apparently not dismissed. The photographs and one video of activities in a playground may assist the claimant in proving her case if she is correct that she was treated less favourably than a male hypothetical comparator and it could inform the Tribunal’s view of the males behaviour at another offsite event so that the Tribunal admits the photographs and the video of the playground. The Tribunal does not consider this will cause prejudice to the respondent; Ms. Hyder and Mr. Langdraf (who the respondent says were present at the time) are due to give evidence at this hearing. Ms. Hyder has already considered the Portugal event in her attachment document to her third witness statement and Mr. Langdraf had already commented that the situations were completely different stating that no one lost their keys or slept in a sauna. Both witnesses can deal with this in their evidence.
34. However, it was ordered following the case of **TYU v ILA Spa Limited UKEAT/0236/20** it was proposed that no male in attendance drinking in the photographs should be specifically identified.
35. However, the commentary of Mr. Huntley is hearsay. Mr. Huntley was not giving evidence and it could only amount to a written representation and his evidence had little value untested. The Tribunal was unwilling to allow his commentary to be included. It was excluded.
36. On the afternoon of day 5 the respondent provided another witness statement from Ms. Hyder. There was no objection to the inclusion of this statement.

37. On day 8 the respondent provided additional documents which it submitted were documents related to the offsite at Lofer. They included an information sheet including reference to the appropriate consumption of alcohol whilst offsite. The claimant objected noting that the document was extremely late and wanted to see the meta data as to the creation of the document. The respondent stated it had a continuing duty to disclose relevant documents and this had been shared with the participants at the time (including the claimant). The Tribunal determined to permit the respondent to submit this evidence; it appeared relevant to the claimant's case of direct sex discrimination relying upon a hypothetical comparator; allowing the claimant to cross examine on it and re-call the claimant to deal with it (if the claimant so wished). The claimant chose not to cross examine on it stating that it was an incomplete document it failed to contain the schedule of the shuttle transport and the claimant was not re-called to give further evidence. The Judge requested that the respondent provide the Tribunal and the claimant with the shuttle transport information.
38. On day 10, parties were permitted to make their oral submissions remotely having provided detailed written submissions.

Disability status Judgment

39. Before dealing with the facts of this case, I set out some extracts from Judge Harding's judgment following a contested hearing on disability status in November 2024. Judge Harding found that the claimant had been diagnosed with ADHD in June 2015 and with dyslexia since school age.
40. Judge Harding in her findings stated *"I accept the claimant's evidence and find that as a result of her ADHD she is easily distracted/finds it very hard to maintain attention/concentration and attention to detail is difficult for her when carrying out tasks. This affects, in particular, activities which involve reading and writing, and reading/writing/editing long documents is especially hard for the claimant. She also finds it hard to follow lengthy verbal instructions.*
41. *I accept the claimant's evidence because this was consistent with the results of the IVA test carried out by Br Bryce Gibbs in May 2024. The IVA test is a computerised test designed to measure attention and response control by presenting visual and auditory stimuli to the subject, page 230. The claimant's full scale attention quotient was 51 which placed her in the "extremely deficient range", less than 0.1 of the 1st percentile. This was described by the doctor as being a level of difficulty which indicated significant deficits in both auditory and visual attention, page 230.*
42. *Her visual response control quotient was 73, on the 4th percentile, indicating difficulties focusing on visual stimuli and impulsive responses in reaction to visual stimuli, page 231. The claimant was described by the Doctor as having substantial challenges in maintaining attention and controlling responses whilst attempting to focus on visual stimuli, page 231, which, he opined, would significantly impact her ability to perform visually detailed tasks such as reading, writing and editing documents.*
43. *The claimant's score for her CAARS test, which is a self reported questionnaire that assesses ADHD in adults, was 90. Dr Bryce Gibbs explained that this was an*

“extremely high” score which reflected daily struggles with concentration, task completion, forgetfulness and disorganisation, page 231.

44. *Of course, these tests were done in 2024, but I accept the claimant’s evidence and find, for the avoidance of doubt, that the effects on her which have been detailed in this report have been constant throughout her life, and that, therefore, this is an accurate description of the impact on the claimant of her ADHD during the period of time that she worked for the respondents.*
45. *I accept the claimant’s evidence and find that her ADHD leads to a great deal of forgetfulness. I do so not least because her evidence was corroborated by the CAARS test results, see above. She persistently loses personal items such as her keys and phone. She has repeatedly failed to remember to attend doctors appointments. She struggles to pay bills on time and as a result of this had an extremely bad credit rating whilst she was at college. She has had utilities shut off for non-payment of bills. She has forgotten to pay her US tax bill twice, once whilst she was working for the second respondent and on one occasion prior to this. This led to the US government withholding wages. She has on a number of occasions taken too much of her ADHD medication because she had forgotten that she had already taken it. During the period of time that she was working for the second respondent this happened between three and five times. Her forgetfulness also leads to difficulties with timekeeping and, on occasion, travel arrangements. Her ADHD in general makes her sensitive to rejection.*
46. In respect of the claimant’s impairment of dyslexia Judge Harding found that the impairment significantly impacted on the claimant’s reading speed and the claimant’s reading speed is 4 to 8 times slower than average. Judge Harding further found as follows :

“These difficulties impact the claimant, I find, on a daily basis; she is very slow at reading books/emails and documents and she also struggles with timed tests and exams. Whilst she was at university she was given extra time to sit her exams, because she could not manage them within the allocated time, and she has also been given more time to complete selection processes when applying for jobs.
47. *The claimant is, without doubt, a high achiever who is highly intelligent and articulate. She earned in excess of £200,000 a year with the second respondent, as she does in her current role. In the job that she did prior to working for the respondents she was occupying the role of Head of Engineering and running an entire engineering division. I do not find, for the avoidance of doubt, that there is any significant inconsistency, such as to undermine the claimant’s case, in this level of professional achievement and the level of difficulty with reading and writing, attention span and forgetfulness that is described. She is someone who has deployed coping strategies, both in relation to her ADHD and her dyslexia, and she uses a combination of these plus her intelligence and hard work to get by, often working late into the night to get things done, for example.*
48. *Examples of coping strategies are that she has set up auto payments on as many bills as possible to avoid the issue of forgetting to pay them. She has an air tag attached to her keys to help her find them around the home. If she is travelling somewhere she leaves herself multiple reminders about this. As mentioned above, she has learned to sight recognise many words which has*

improved her vocabulary and reading/writing skills in respect of these words. She has also hired a personal assistant to help her with her day to day life.

49. *The claimant was described by Dr Bryce Gibbs as being a “partially compensated dyslexic”, who has relied on intelligence, education and drive to memorise how to pronounce and spell common words, page 232, and who uses sight memory and verbal intelligence to comprehend written information. Dr Bryce Gibbs opined, however, that despite having compensated for her dyslexia by sight memorising words, the claimant would “likely falter” and be “significantly impaired” as a result of her diagnosed conditions (i.e both the ADHD and dyslexia) when faced with a high volume of new information or performing tasks that required sustained attention, precise reading and error-free written communication. He also stated that she would struggle with reading rate even after taking her medication, pages 232-233.*
50. In respect of the claimant’s non-epileptic seizure disorder, referred to in evidence at the final hearing as a panic disorder, there was little information about this before Judge Harding or at the final hearing. At the final hearing, the claimant did state that she required reasonable adjustments in respect of this impairment as well but it was not relied upon as a disability in the case at trial and the claimant did not identify what reasonable adjustments were required. Judge Harding found as follows :
51. *“The claimant also suffers from non-epileptic seizure disorder. She was diagnosed with this in 2015. When having an episode the claimant may become unresponsive or have periods of altered consciousness. There was, however, no evidence before me to suggest that the claimant’s seizure disorder could cause problems with reading, memory or attention span (other, of course, than when she was having a seizure). Consequently, I accept the claimant’s evidence and find that her seizure disorder is very different from her ADHD, with different symptoms.*
52. Judge Harding concluded *“Turning then to what the claimant has proved, she has proved that throughout her life, including of course the relevant period, her dyslexia has meant that her reading speed is 4 to 8 times slower than the average person. Under the reading rate test carried out the claimant was on the 1st percentile, indicating in Dr Bryce Gibbs’ view, “significantly slower” reading speed compared to same age peers. Reading, of course, is, in itself, a normal day-to-day activity. It affects various different aspects of day to day life both in work and outside of it; reading a book, reading emails and reading documents to name but a few. As I commented above there is clearly some overlap between the claimant’s ADHD and her dyslexia here because we are told that when the claimant took her ADHD medication her reading rate improved, paragraph 8.11 above, although it still remained “below average” which was indicative of “persistent difficulties.” I deal with the combined effects of the claimant’s ADHD and dyslexia below.*
53. *The claimant does not, on the evidence before me, have a coping strategy in place which helps her deal with her slow reading speed day-to-day other than sight memorising familiar words, which is a coping strategy which breaks down*

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

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

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

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

57. *On the evidence before me there were no coping strategies in place when it came to difficulty maintaining concentration whilst carrying out daily tasks such as writing or reading documents; the claimant’s evidence, which I have accepted, was that she would take longer to do these tasks, often having to work into the night, and double or triple checking what she had done.*

58. *I consider and conclude that the claimant has proved that her difficulties in maintaining concentration and persistent forgetfulness, and the impacts this had on her day to day activities, were adverse effects which were substantial. I do so*

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

59. Judge Harding also considered the combined effect and concluded *"In any event, even if I was wrong on that and the claimant had not proved that the adverse effects on her ability to carry out normal day-to-day activities as a result of her ADHD and dyslexia were substantial in their own right, Paragraph B6 of the Guidance makes it clear that where a person has more than one impairment any one of which alone does not have a substantial adverse effect then account should be taken of whether the impairments together have a substantial adverse effect on normal day to day activities.*
60. *Taken cumulatively, a slow reading speed (dyslexia) when combined with difficulties in maintaining concentration (ADHD) would make it significantly harder to read, and would make reading much slower, particularly when it came to reading anything of any length. It would also make writing/editing documents/emails much slower, again particularly when it came to any document of any length or a document which needed to be accurate. Reading, including reading something lengthy or detailed, is a normal day to day activity, I conclude, as is writing/editing a lengthy or detailed email or document - many of us read/write lengthy emails daily for example, or read books. Indeed, the interaction between the claimant's ADHD and dyslexia so far as reading was concerned was illustrated by Dr Bryce Gibbs' report, in which he said that the claimant's reading rate score in the Nelson Denny test was 65 (1st percentile) initially, paragraph 8.10 above, but that after taking her ADHD medication her reading rate score improved to 80 (9th percentile), although this was still below average and indicative of persistent difficulties, paragraph 8.11 above.*
61. *Was this (combined) adverse effect on normal day to day activities substantial? Of course, if measures are being taken to treat or correct the adverse effect I must consider what the claimant would be like absent those measures. In this case we know what the claimant would be like in terms of her reading speed without the Dexamfetamine, because Dr Bryce Gibbs tested for this. We do not know what the claimant's difficulties in maintaining concentration would be like – no evidence was led on this at all, and accordingly I can reach no conclusions about that. Without Dexamfetamine the claimant's reading rate would be 65, on the first percentile, paragraph 8.10. We know that this equates to a "significantly slower" reading speed than same age peers. Accordingly I conclude that the claimant has proved that in combination her dyslexia and ADHD caused a significantly lower reading speed, paragraph 8.10, and substantial challenges in maintaining attention, paragraph 8.6, which in combination had a substantial adverse effect on her ability to carry out normal day to day activities, namely reading/writing, in particular detailed reading/writing or reading/writing anything of any length. I conclude the claimant has proved the effect was substantial because a significantly slower reading speed and substantial challenges in maintaining attention is more than trivial.*

62. *Moreover, whilst it is true that the claimant has coping strategies in place to help with her understanding of written information, on the evidence before me these coping skills would likely break down in relation to tasks that required sustained attention, precise reading or error free written communication, paragraph 8.16 above. As set out above, and as was said in Paterson, if a coping strategy is liable to break down this must be taken into account. Moreover, In Dr Bryce Gibbs' view once these strategies broke down the claimant's abilities would be "significantly" impaired.*
63. *The respondents submitted that tasks that required sustained attention, precise reading or error free written communication were not normal day to day activities but were specialist, work related activities which were an aspect of the claimant's very high pressure, complex job. I reject this submission. Whilst tasks that require reading documents in detail or reading lengthy documents might not crop up in every job it is easy to think of many examples of jobs where this is required. Being a teacher, a researcher, a lawyer, virtually any kind of academic, a journalist and doctors to name but a few. Exactly the same can be said of producing lengthy and accurate written work. These are not specialised activities but activities that can be found in a wide range of jobs, and accordingly these are normal day to day activities, I conclude.*
64. *In the alternative therefore, I would have concluded that the combined effects of the claimant's ADHD and dyslexia had a substantial adverse effect on the claimant's ability to carry out normal day to day activities, namely reading and writing, including reading/writing detailed documents/emails and reading/writing lengthier documents/emails/books, and producing accurate written work.*

Facts

65. The findings of fact made are based on the balance of probabilities from the evidence read, seen and heard. Where there is a reference to certain aspects of the evidence that have assisted in making findings of fact this is not indicative that no other evidence has been considered. The findings are based on all of the evidence, and these are merely indicators of some of the evidence considered in order to try to assist the parties understand why the findings have been made. The Tribunal does not make findings in relation to all matters in dispute but only on matters that are considered relevant to deciding on the issues before the Tribunal.
66. The first respondent operates a software developer platform company providing a cloud-based development environment to enable software developers to write their code more easily. Its workforce is entirely remote. At the time of the claimant's dismissal in June 2023 it had 53 staff; the claimant and two other employees were based in the U.K and worked from home. All UK staff were engaged through the employer of record Lets Deel Limited, the second respondent. The second respondent issued UK contracts and administered payroll and taxes whilst the first respondent remained the operating employer for all other purposes.
67. The first respondent ("R1") operates as a fully remote organisation with team members working across approximately 22 countries and 14 different time zones so that asynchronous communication was required. Most communication is

written. Team members primarily work from home offices, collaborating across continents without requiring simultaneous availability.

68. The “People” operation at the first respondent consists of one person Eva Hyder, Head of People.
69. In the industry the claimant has enjoyed a successful career. The claimant progressed from working in software as an account executive through to engineering and to more senior roles including Head of Engineering posts. In December 2013 the claimant founded Hacking for Women, an initiative to provide support for women to enter the tech industry through learning how to code. In June 2016 the claimant became Slack’s first developer relations community manager and was promoted to the role of Engineering Manager. Although the claimant suggested in her witness statement that she had in fact been promoted numerous times at Slack, the Tribunal found this evidence to be exaggerated accepting Mr. Brevoot’s evidence (who sat on the promotions board) that the claimant was actually only promoted on one occasion. The claimant went on to work successfully at Flatfile and then, Universe.
70. The claimant described thriving in her employments with Slack, Flatfile and Universe because of the reasonable adjustments made for her in the workplace. The adjustments included a coach and access to mental health professionals and removal of restrictions on time off for sickness and holiday at all three employers; Universe and Flatfile paid for software tooling required as well as providing top of the line equipment for Home Office and pay for access to a co-working space; Slack provided office space and allowed flexibility to work from home when needed; Universe and Slack both provided access to executive assistance within the company to assist the claimant with administrative tasks and Slack set up a network to support under-represented groups including women and people with disabilities and created a safe online space for those groups.
71. The claimant also developed some coping strategies namely note taking at meetings to assist with memory and communicating. The Tribunal did not find that the claimant was as open as she suggested in her witness statement to disclosing disabilities or asking for assistance and accommodations as a matter of course during initial conversations or meeting new co-workers at all levels whilst employed by the respondents.

Recruitment of the claimant

72. On 24 August 2022 Mr. Brevoot, Chief Product Officer of the first respondent contacted the claimant about a vacancy at R1 (see pages 174 and 249). He had joined the first respondent in August 2022 as Head of Product. Mr. Brevoot had previously worked with the claimant at Slack and considered that the claimant had done a good job in respect of working on the internal tools. The vacancy was for a Head of Engineering and was a senior role with responsibility for the performance of the team.
73. In September 2022 the claimant told Eva Hyder that she had ADHD and dyslexia (see page 40) in the context that she had overcome these issues. Although the claimant stated that she had informed Ms. Hyder that she required

accommodations; she said in evidence *“I would have said I needed to take notes and would be grateful for reminders”* and thought she had informed Mr. Landgraf and Mr. Brevoort she had ADHD; the Tribunal was not satisfied that this was the case. Ms. Hyder did not recall the claimant had ever raised accommodations and Mr. Landgraf and Mr. Brevoort were certain the claimant did not raise her ADHD. On the balance of probabilities, the Tribunal found that the claimant did not state that she required any accommodations and only informed Ms. Hyder during the interview about ADHD and dyslexia in the context she *“had overcome issues”* in her career.

74. The claimant was interviewed over a lengthy period of about 20 hours by several individuals in the first respondent's organisation and was overall an impressive interviewee. The claimant did not inform anyone else about her ADHD or dyslexia. The claimant had also been diagnosed with a panic/stress disorder at this time. The claimant did not share this disability with anyone at the respondent at any time. Further, the claimant created an *“impressive document”* titled *“Shannon's Async”* which outlined the claimant's approach to remote collaboration and leadership. The claimant accepted in her evidence that this gave the impression that she could work in an async culture and had done so in her previous career successfully. References provided from the claimant's former colleagues at Slack (when the claimant also had been diagnosed with conditions of ADHD, dyslexia and stress disorder) did not mention any reference to the claimant's disabilities. Furthermore, the claimant sought an exemption to page 321 because she was writing a book at the time but did not assert at this stage she required any accommodations.
75. There were many employees at Gitpod with neurodivergence and a history of mental health conditions who were thriving. The leadership team consisted of multiple individuals with ADHD. One senior employee has a psychiatric diagnosis of severe recurring depression, anxiety disorder, PTSD and OCD.
76. The claimant had asserted in her witness statement that she had an interview with Shannon Kenney. However, this was incorrect. The claimant stated in cross examination that she had taken notes of her interviews on a device, but the device was destroyed, and she could not recall when she destroyed the notes.
77. The respondent's expectation was that the claimant would work remotely and work across different time zones; async required a heavy reliance on written communication. During the interview process the claimant was made aware that there was no overlapping working hours of the team.
78. During the recruitment process the claimant shared her concerns about meeting with Chris and having a technical interview as she had not had time to refresh her technical knowledge about Slack (page 177). The claimant's concerns were about the unknown (not her technical ability).
79. During the recruitment process the claimant argued for an increased status and salary; so to be appointed with the title of Vice President. Her salary was £220,000 with £78,000 bonus per annum. The claimant accepted in evidence she had successfully argued for this package. The package was approved by Mr. Landgraf. Although Mr. Brevoort suggested in his evidence that the claimant had negotiated a higher salary, this was not entirely correct; the claimant was

paid in accordance with the advertised rate for the job namely £220,000 per annum. The claimant did negotiate the title of Vice President and a bonus of £78,000. The claimant's job description for Head of Engineering at page 213 did not change with the name change. However, at this level of seniority and salary/bonus there was an expectation that the claimant would be fairly self-sufficient in the role following a 90 day onboarding period. There was an expectation that the claimant's leadership would be at the highest level. The claimant was placed in the organisational chart (page 958) just below the senior leaders of the company.

80. On 9 December 2022 the claimant accepted an offer of employment pages 245-8,9. The claimant did not indicate in this document that she was disabled or that she required any accommodations. Eva Hyder confirmed that the claimant had a budget of equipping her office and the claimant had available to her a policy about equipping her office (see pages 247 and 264) The policy stated that the claimant had a budget of £1000 to set up her office and if she had any doubts she could ask permission. The claimant joined the business in January as the respondent needed someone as soon as possible. The respondent was made aware of the claimant's planned honeymoon in April to May well before she was actually hired.
81. By November 2022 Mr. Brevoort had been promoted to the role of Chief Product Officer ("CPO") which included the responsibility of the engineering function.

The claimant's role

82. The claimant's role (see the job description at page 213) with the respondent included responsibilities for recruiting, growing, developing and managing a high calibre engineering staff of engineering manager and individual contributors. At the time of her recruitment the respondent had made a number of layoffs so that there was no requirement to recruit, and she was managing and developing the skills and abilities of staff in the business. The claimant was expected to lead the engineering function and be responsible and accountable for engineering execution including scheduling, staffing, managing new development maintenance of the existing product service offering and service quality and availability. The claimant directly reported to Mr. Brevoort.
83. There was a technical component to the claimant's role at the first respondent requiring understanding of the technology of the product so that competence and familiarity with coding was required. The claimant was also required to provide organisational leadership and quality assurance of the software. The claimant had responsibility for strategic direction. The claimant was also required to be an external representative of the respondent to partners and customers and to have executive presence in the sense that she should act as a representative of the business acting as an ambassador reflecting her seniority in the business. There was an expectation with the seniority of the claimant's position that she was expected to act autonomously and manage her own time (see the time off guidelines page 271) but keep the leadership team informed and in particular logging time allocation on the calendar.
84. The claimant as Vice President of Engineering was responsible for the execution and timely delivery of a project named "Dedicated Beta". This project aimed to

deliver an initial rebuilding of the existing product and using a new infrastructure that allowed larger companies more security and control over their developer environments. This was a major undertaking and would be the claimant's main focus as Vice President of engineering until the product was successfully launched.

Terms and conditions

85. Pursuant to the respondent's policy (page 273) approval was required for periods of time off exceeding 10 days. If the claimant felt unwell, she was able to take time off.
86. The respondent had a Flexible Work Day Guidelines (page 269). It referred to the respondent offering autonomy to employees' schedules in exchange for high quality results. It further stated "*we trust that you know what you are responsible for and encourage you to make a schedule that is best for you.. you don't need to track these as time off just be sure to uphold any agreements that you've made and communicate your availability via slack and your Google Calendar*". Employees did not need to track how they spent their work day but employees were expected to organise their day to produce high quality work.
87. The respondent did have a commitment to employee well-being. All employees had access to the same Wellness stipends with documentation available in notion outlining the guidelines for using the benefits. Notion is an online workspace where documents can be posted and Git pods notion there is a document called Wellness stipends (page 282) explains what can be made available. The stipends of £1800 per year was available for physical health, mental health and professional development which employees could use at their complete discretion to support their well-being.
88. All hands is a weekly full company meeting where the respondent gives updates on what is happening across each of the functions. It is a sync meeting that happens with the entire company. Each function can give updates about what's happening in their world that week and was also where new highs of the business are announced.
89. New employees (including the claimant) were provided with a link to Equipping Your Office so that they can order a laptop or supplies for a home office (see page 264).

Redundancies

90. On 31 December 2022 R1 determined a number of redundancies in the business were required (page 754). Consequently, the claimant was responsible for 27 people with 5 direct reports. On 24 January 2023 the first respondent reduced its total workforce by 28% and 31% of the engineering workforce.

Commencement of employment

91. On 3 January 2023 Mr. Brevoort informed the claimant about the redundancies. The claimant determined she would still join the respondent's employment.

92. On 16 January 2023 the claimant started work (page 754). The claimant was provided with a contract of employment on 19 January 2023 p.305. The claimant joined the respondent the week before the layoffs were announced.
93. The claimant worked with Johannes and others on the leadership team to ensure that the layoffs went as smoothly as possible. After the announcements the claimant's scheduled a listening session for remaining employees to share their feelings be heard and use it as an opportunity to gather data and move forward together. This was a sensitive and thoughtful step by the claimant.
94. During the claimant's first three weeks at the company Mr Brevoort scheduled checkins with the claimant multiple times per week to provide support. Thereafter, the claimant had regular weekly 1:1s with her manager Mr. Brevoort. Mr. Brevoort was in the US so the claimant had an onboarding buddy Chris in Germany. There were also regular meetings which the claimant attended along with Mr. Brevoort which included State of Gitpod (a 60 minute leadership meeting); product synch meetings with product managers and designers; and Decision time; this included engineering managers product managers designers and Chris; weekly meeting with Mr. Landgraf and monthly goal meetings.
95. During the first half of 2023 the entire product engineering team was focused on the Gitpod dedicated initiative. Most of the day-to-day interactions the claimant had was with the core of her team which was in similar time zone and Chris who was based in Germany. Chris supported the claimant as an on boarding buddy to do with any questions guidance or support.
96. On 27 January 2023 (page 234) the claimant spoke to Eva about X she thought she could talk to Eva about personal and work issues. From 31 January 2023 page 759 the claimant discussed with Eva about financial issues. Similarly, on 7 March 2023 (page 1131) the claimant spoke to Eva about her anxiety spiking. The claimant accepted under cross examination that she could discuss needed adjustments with Eva if she so wished to. The claimant also accepted that she understood her conditions and had requested accommodations from her current employer (see page 1087).
97. The claimant had a good relationship with Mr. Brevoort and Eva Hyder from the start of her employment.
98. On 6 February 2023 Johannes messaged the claimant requesting her to join a new course offered by his executive coach, called The Great Decisions course Art of Accomplishment course (at a cost to the business of £2,000) which was a professional success course. The claimant was excited about the course and enrolled. The claimant requested from Mr. Brevoort time for prioritisation and the claimant had to decide priorities whilst doing the course (page 540).
99. The claimant was asked to attend a second art of accomplishment course called the connection course. The claimant contended in her evidence that this course used up her entire mental health stipend offered by the respondent page 282. The claimant stated she understood that this meant she could not use her stipend for any of the accommodations she requested on her own and the stipend earmarked for her choosing was used to pay for course which she was asked to take. The Tribunal found the claimant was not told she could not have

any further assistance via the stipend and this appears to be an assumption of the claimant which she failed to clarify with Eva or anyone else. The Tribunal also found the claimant exaggerated some parts of her evidence as to how poor the course was; the tribunal finds had it been as bad as the claimant explained in her witness statement and oral evidence this is a matter which the claimant would have raised and complained about.

Screen reader

100. On 19 January 2023 (page 700) the claimant sent a general message to all *“Does anyone have recommendations for listening to Notion documents like a screen reader for Notion?”* This claimant did not indicate in this message that she required a screen reader by reason of her disabilities.

Request for a coach

101. On 8 February 2023 page 780 the claimant messaged Eva Hyder stating *“is it possible to access a coach? Or is there any way we could explore an accessibility accommodation with some ADHD coaching? I came back from being on PTO for a couple of days and I'm so deeply overwhelmed with the sheer volume of information I need to catch up on and I'm desperate to figure out a system of managing all the different information flows I've got unless just say I've got a worrying level of anxiety at the moment.”* Eva responded that they can work on this asking the claimant whether she had a coach in mind or are you looking to be matched with one. The claimant stated she was looking for some recommendations but I'm not I'm just not certain that what cost is reasonable Eva stated *“let me know what the cost is and we can see”* asked the claimant if she could sort out the coach herself. The claimant agreed to pursue recommended coaches and obtain quotes. Ms. Hyder did not take the step to refer the claimant to occupational health at this point or in fact at any point or in fact at any follow up despite the claimant raising this again in May 2023.

The claimant's work

102. Johannes implemented the One thing prioritisation structure and informed every leader they needed to pick one thing that would be their focus with higher priority than anything else they needed to work on. As VP of engineering her *“One thing”* was the dedicated beta project. The claimant was told to prioritise this over anything else.
103. On 17 February 2023 there was a deadline for the claimant to produce an engineering structure document; the claimant prioritised the team one thing and did not complete it within the timeframe.
104. On 9 March 2023 (page 783) the claimant reported to Eva *“I have been working long hours pretty much since I started and I feel like I'm getting strong signals that I'm not keeping up. But I also don't feel like it's me? Like I don't feel like I'm doing the wrong things and I don't feel like I'm not getting things done.* The claimant related this to pressures of the job. Eva responded *I'm wondering have*

you had this convo with Mike and Johannes. I feel like there needs to be a conversation around expectations and how decisions are being made.

105. The claimant did express to Mr. Brevoort that she had had a hard time setting priorities and working through ambiguity. On 9 March Mr. Brevoort stated *“as a leader you need to help the team and the rest of the leadership team at understand your vision and plan for where you want to head with engineering. You need to bring people along on the journey and make them confident we are headed in the right direction.”* Mr. Brevoort stated this to the claimant in the absence of any personal knowledge as to the claimant’s disabilities.
106. On 13 March 2023 Johannes messaged the claimant about a document he wanted the claimant to produce for an issue Git Pod was having with an engineer, Alejandro who was thinking about leaving the company (page 784). Johannes requested the claimant to come up with a plan to stop Alejandro from leaving and overhauling the company to deal with this feedback. The claimant prioritised the one thing dedicated beta work above this task and messaged her manager Mike Brevoort *“I forgot I still have the Alejandro thing to bring out. Last I spoke with Chris I believe we decided this could be a tomorrow Shannon problem. Just sharing that with you that it's on my mind and on my list* (page 550). Mike fed back to the claimant about giving accurate dates of when she could deliver things (page 787); he explained to the claimant that she should communicate expectations as to when she expected things to be done, and if that changes, update stakeholders.
107. From 13 to 17 March 2023 (page 784) the claimant missed the target. Mr. Landgraf asked the claimant to prioritise the dedicated BETA project; the product the claimant was working on. The claimant accepted in cross examination that Mr. Landgraf could choose to run his business as he wishes.
108. On 15 March 2023 and 16 March 2023 the claimant attended sessions for the Art of Accomplishment course and described being required to share vulnerable and uncomfortable details about her personal life and being required to have her husband participate in an exercise on camera in front of the rest of the group. The claimant said it was a very distressing. The Tribunal has already stated above that some of this evidence was exaggerated by the claimant.
109. The claimant described that during AO coaching she felt vulnerable and uncomfortable, and she was having some personal problems at the time and did not escalate these to the respondent as coming to terms with them herself. The claimant accepted that the behaviour of the coach during the meeting should have been escalated to the respondent, but the claimant did not.
110. On 21 March 2023 (page 789) the claimant reported she had health issues due to her building work in her home. The claimant accepted under cross examination that absences from work between February and March 2023 were related to other things other than her disabilities.
111. Around this time Johannes messaged the claimant to state *“Just met with Joe (tutor on the course) in person who was saying that you are doing an outstanding job at the decision-making course”* (page 424).

The culture

112. Eva referenced a male dominated culture within the leadership team (page 820) even referring to it in the recap document stating *"I understand the feeling of not feeling sure about where you stand with your manager. It's especially hard when you sometimes need to match the intensity of male counterparts when that might not be your natural state"*.
113. The claimant described a tech bro culture at the respondent. The Tribunal found that was different from a male dominated culture. Both Eva Hyder and Talia Moyal along with Mr. Landgraf, disputed there was a tech bro culture. On the balance of probabilities, the Tribunal did not accept the description of "tech bro" as being applicable to the first respondent's organisation.

The claimant's performance pre- offsite

114. On 30 March 2023 Mr. Landgraf and Mike Brevoort discussed concerns about the claimant's performance namely that there was a lack of progress and how she could be helped; she was struggling to adapt to the async working style and failing to meet expectation of a VP level (p.787,790-2). The claimant failed to follow through on her commitments and needed to be coached (see page 784). Mr. Landgraf's opinion was that he would not hire the claimant again/indifferent and described the claimant as "not a superstar". These were views formed in the absence of any personal knowledge as to the claimant's disabilities. Although the claimant suggested in her evidence, she believed that Mr. Landgraf's view was based on information received from his executive coach (being a survivor of domestic violence and that she took steps to protect the engineers from the toxic culture of a tech Bros style hackathons) the Tribunal did not accept that; also, Mr. Brevoort, the claimant's manager was also voicing concerns.
115. At the meeting on 1 of April between the claimant and Mr Brevoort an indication of the deadline for beta project had to be given. The target date was provided. The claimant considered cancelling her holiday, but Mr Brevoort said it was in her hands and in fact wished her well when she determined to take the holiday (see below).
116. The claimant failed to share any update on Monday or Tuesday and Johannes messaged Mr. Brevoort (page 787). Mr. Brevoort shared feedback he had provided to the claimant about this recurring issue of saying that she was going to do something and then not doing it. At page 788, Mr. Brevoort reached out to the claimant. On Wednesday the claimant replied; the task she said would be done end of week; then Monday but delivered an update on Wednesday. The claimant had said at page 784 she had missed her target due to unplanned urgent issues and interruptions. The claimant was reporting at this time that she felt fairly ill often and would take time away. The claimant was undertaking a renovation of her home and was working from another location on occasions. The claimant referred to the fact that the renovation of her home was making her sick and that's why she took some time off at page 789. The claimant did not inform the respondent her sickness or delayed work was anything to do with disabilities.

The Off Site

117. Gitpod held an off-site team building event at Lofer, Austria between 2 to 6 April 2023.
118. On 2 March 2023 Eva asked the claimant if she would share a room at the off site with a colleague. The claimant accepted this stating she was happy to share (page 782). On 2 to 6 April 2023 p.20-22; 42-44, 794,795 the team were offsite at Lofer Austria. The claimant shared a room with Pauline and the claimant was happy to share although she would have preferred her own room (see page 782); and did not give the impression to Eva Hyder she was unhappy about this.
119. Prior to the offsite, Ms. Hyder circulated information to all delegates including a warning about the drinking of alcohol responsibly. The Tribunal found this memo to be unchallenged. This information was contained in the late disclosure of the respondent at the final hearing. The Tribunal had deemed it to be relevant to the claimant's reliance on a hypothetical comparator and in fairness to the respondent because the claimant had also disclosed late information including photos of a previous offsite in Portugal showing delegates drinking (also relevant to a hypothetical comparator). The claimant was given the opportunity to be recalled about Ms. Hyder's circulated memo about the alcohol warning but did not afford herself of this opportunity or in fact cross examine Ms. Hyder about it.
120. The claimant arrived in Munich on or about 1 April 2023 at about the same time as Mr. Brevoort. Mr. Brevoort, the claimant, Johannes and Chris shared a car from Munich to Lofer which was over 2.5 hour car journey. the claimant did not engage fully in the conversation and interjected occasionally during the car journey and was fixated on her phone in the course of the journey and didn't discuss strategy with her colleagues. The claimant along with the group retired to bed early on the first evening after dinner.
121. Mr. Brevoort the claimant, Eva and Chris met to discuss their plans for the offsite including the work required to complete the Dedicated Beta project. The claimant agreed it was her responsibility to come up with a target date. The claimant stated she might need to cancel her planned walking holiday in April. Mr. Brevoort said it was up to the claimant but was supportive of the claimant's decision to go.
122. One of the planned activities at the off site was a hackathon which is a long form coding exercise in person to achieve a specific goal. The exercise is generally thought of as a competitive one with there being one winning team who produces the best code. The average hackathon is a 24 to 48 hour event that is high stress and high stakes. Some engineers had contacted the claimant in confidence they were afraid that the hackathon would be used as a test for the next round of layoffs to judge who should be fired. The claimant raised this with Johannes *"getting some feedback from some EMs and ICs with some high anxiety and stress feelings towards the idea of a hackathon during the offsite"* (page 786). Johannes responded *"I find it concerning if the idea of sitting down with your team being creative and building whatever you want can be as simple as a slack workflow or a set of principles for your team or a GP T4 workflow causes high anxiety"* (page 786). The claimant replied *"for clarity I believe the anxiety is around the associated connotations with the hackathon format ex: competitive, time pressure, worry that they should be building a work feature that might be just an excuse to get more productivity out of folks who are already*

feeling pressure to deliver as fast as they can.. I don't believe the stress here is a reaction to the idea of being creative with one's team, but rather the idea of intentionally entering a time pressure/competitive atmosphere where many folks have been working long hours, woken up I managed a lot of change since losing many of their colleagues” (page 786). Johannes did agree to change the name of the hackathon to an explorathon, to create some distance from the typical high stress, highly competitive meaning of the word hackathon and to alleviate some of these concerns.

123. On or about Sunday 2 April, a leadership strategy session took place. During formal planning meetings the claimant's input as VP was expected but instead she deferred engineering decisions related to the dedicated strategy to Mr. Brevoort and Chris rather than providing the expected strategic direction.
124. The claimant was unable to articulate concrete timelines or define success metrics when asked to outline implementation specifics for her proposed initiatives. Mr. Brevoort had to jump in and add relevant context. The claimant's attention was diverted to her mobile phone during critical presentations.
125. On or about the morning of 4 April 2023 the claimant got locked into her room when the claimant's roommate Pauline locked the door behind as she left. The claimant attempted to contact her colleague but eventually found a way out of the room via the fire escape and exited through another employee's window.
126. During a meeting Johannes questioned Eva about her project of focusing on levelling up the engineering managers people skills and increasing productivity. Eva appeared shocked and offended and Eva responded saying that he was responsible for evaluating her background and experience when he hired her as Git pods head of people.
127. The discussion of the female members of the team during the evening on or about 3 April 2023 is in dispute. On the balance of probabilities, a group of women at varying levels of leadership congregated during the drinks reception at the off site; they were sat at the other side of the room in the breakfast area from where Johannes was situated in the bar. The women discussed having a safe space for a discussion. described different values required from the women and men. The claimant and Pauline led this discussion. The Tribunal rejects that Ms. Hyder used the phrase toxic male dominated culture in the leadership team and expressed concerns about her own treatment. This allegation by the claimant is unsupported by Ms. Hyder and Talia Moyal. On the balance of probabilities, the claimant talked about her feelings that she had lost the trust of Johannes without any reason and she didn't know how to regain his trust. The Tribunal finds this because this was similar to the conversation the claimant also had with Mr. Brevoort at the airport. Eva advised the claimant to be more confident. It was a supportive conversation amongst a group of women.
128. During day of 5 April 2023 the claimant facilitated meetings for her team supported her team in leading their own meetings.

129. On the last evening of the offsite meeting, the claimant and Mr. Landgraf were both drinking alcohol. The claimant was slurring her words and poured herself a glass of wine before leaving the bar. Johannes was drinking but was not drunk (this is supported by the respondents' witness evidence). The claimant accepted under cross examination that her impairments were exacerbated by the consumption of alcohol. The claimant did consume enough alcohol to noticeably alter her behaviour: crying in front of other colleagues and looking drunk. The state of the claimant herself is corroborated by what she told Mr. Brevoort the next day at the airport. The claimant was experiencing a very difficult period in her life with significant problems in a personal relationship and a relation was unwell.
130. The claimant asked Mr. Landgraf "what is the biggest risk to the success of Git pod." He answered the skill level of the engineering managers. He said this in front of other engineers. He further stated that the idea that engineers at a start up would not be excited about a hackathon with all their co-workers was outrageous they should not be at a start up. He also asked the claimant to provide names as to who was nervous about the hackathon. The claimant refused to give up the names. He then said if anyone doesn't want to participate in hackathon the claimant should fire them. Both the claimant and Johannes had been drinking alcohol that evening. However, on the balance of probabilities the Tribunal does not find that Mr. Landgraf was intoxicated. The Tribunal makes this finding because Mr. Landgraf refutes any suggestion of intoxication which Ms. Hyder and Talia Moyal support.
131. The claimant went back to her room and found that the room was locked and she did not have a key and must have left the key in the room earlier that day. There was no receptionist on duty; her roommate had fallen asleep and was not answering her phone despite the claimant calling and messaging her on several occasions. Eventually the claimant gave up and went to sleep in the sauna (page 1133) at 6.36 am when the claimant had not been to bed.
132. The next day on 6 April 2023 the claimant kept the group waiting for the departure bus. The claimant had lost her iPod and iPad. The claimant had been locked out of the room.
133. At the airport the claimant sent a message to Mike Brevoort on Slack asking him to talk (page 794) stating there was a pretty intense conversation that Johannes had with me in front of a large group of PDE folks where he said *some pretty .. Not great.. Things that's got me in a not good state*. She met Mr. Brevoort at a restaurant in the airport. The claimant said she was upset about the conversation and drank another bottle of wine. She informed Mr. Brevoort that she had passed out on a bed in the sauna room. The claimant had lost her key for the second time on the away day. Mr. Brevoort told the claimant to speak to Johannes and work with it through but the claimant decided not to discuss this with Mr. Landgraf.
134. On 6 April 2023 page 795 Mike Brevoort discussed performance expectation with the claimant stating you are the Vice President of Engineering. You set the tone for the organisation. You raise the bar. You have to lead the team by example take the High Road and stay in control (a) I value team building. I like to hang out and joke and play and have a few drinks. But as a leader I have to be better.

People expect me to be better. Notice that I wasn't out well into the morning and I never had more than three drinks. It is important to me to stay in control and be ready the next day. (b) this is the burden of leadership. It is lonely (more for some than others). People expect you to be better expect you to have answers expects you to lead." He further stated "But there is also another perception you created by how you showed up- I heard comments from a few people (a) Locked (first time honest mistake) (b) lost iPad (c) late for transfer to the airport, Pauline having to cover for you and she looked pretty uncomfortable doing it (d) locked out of your room again in your own words got too drunk and slept in the sauna room (e) regular comments about too tired to think being brain dead too overwhelmed feel like I don't belong etc and yet up drinking well into the early hours.

135. Mr. Brevoort listed some expectations of the claimant namely *"transition from acting as a manager to a leader; lead in every direction (up and sideways); tell us what the priorities are for engineering; tell us what you need to be successful. Tell us what you plan to do and do it (or delegate it) and be accountable for deliverables, communicate expectations, ask for help when you need it."*
136. At page 795 the claimant expressed her thanks; finding it very helpful. The respondent decided to offer additional support to the claimant for 4 weeks.
137. Johannes contacted Mr. Brevoort at page 796 about the conversation. He shared with Johannes the message he sent to the claimant at page 797.
138. On 7 April page 1135 Talia sent the claimant a message to be a supportive colleague stating *"it is so crystal clear to me how amazing of a leader you are and the value you add to the team on a professional level as well as a personal level. I know this week was a bit challenging and I want to make sure you know how open my door is for you.. it's so hard stepping into a role like this especially with the task you've had at hand and I want to help in literally any way I can even if that's just us chatting daily to vent about what's happening or zooming while writing docs together to make them more fun because they take too long"*. The claimant messaged Talia on 7 April about Johanne's behaviour at the off site stating *"can I ask you for a bit of your time to talk through some executive leadership stuff and the emotional side of all that I had a really intense and honestly inappropriate convo with Johannes that impacted me pretty poorly on the last night"* (page 1138).

Post Offsite

139. Post offsite Mr. Landgraf had concerns about the claimant's lack of professional accountability and behaviours incompatible with executive responsibility. Johannes, Eva and Mr. Brevoort decided that Eva would spend 4 weeks assessing and offering additional support to the claimant in regularly scheduled sessions. Eva had experience in coaching and management. Eva would conduct a structured performance discussion with the claimant about leadership presence, expectations, communication responsibilities, project continuity planning and executive level accountability. At this time Mr. Brevoort was busy, focused on the dedicated beta project and ensuring that it was delivered on time and commitments were met to customers. Mr Brevoort was also coordinating the work. Although it was something he expected the claimant to do. The time zone

difference of seven hours between Mr Brevoort and the claimant was challenging so that it was not possible for Mr. Brevoort to dedicate as much time to the claimant and there was additional workload to manage

140. On 17 April 2023 there was a meeting whereby Johannes credited Mike with work the claimant had done and the claimant felt frustrated about it contacting Talia she said *“can I safely vent to you over text for just one moment totally OK to ignore this but wow I just got a bit frustrated seeing your hands thank Mike for doing the work I busted my ass to make happen it does help me see that maybe the issues I've been having are really more to do with not feeling valued”* (page 1146). Talia responded *“can you tell me more about what part of this is triggering is it more like wise might getting credit for something I did or is it feeling out of the loop on the piece that Johannes is highlighting”* (page 1147). The claimant replied *“the 1st and that Johannes is thanking me for aligning which feels passive and insignificant..”* (page 1148).

Meeting with Eva Hyder

141. On or about 18 April 2023 (page 798) the claimant met with Eva Hyder to discuss the events at Lofer. The claimant told Eva about what happened with Johannes at the off site and asked for advice. In the course of this conversation the claimant asked Eva how she can repair the trust with Mr. Langraf. Eva informed the claimant about the concerns there were about her performance and job security. The claimant was very grateful. The claimant accepted under cross examination she did not relate to being locked out of her room or sleeping in the sauna as anything to do with her disability. The claimant was informed that her conduct was to be at a higher standard than her direct reports. The claimant alleged in this conversation that Eva shared there had been past issue on off site with Johannes and others and how the claimant could stand her ground in a toxic male dominated environment. The Tribunal did not accept that Eva Hyder stated toxic male dominated environment because Eva denies it and Eva, Mr. Brevoort and Mr. Landgraf had concerns about the claimant's performance at this stage.

Holiday

142. On 24 April to 14 May 2023 the claimant commenced a three week walking holiday across the UK. The claimant prepared a document called time off plan page 799 detailing who was taking over what responsibilities. Under cross examination the respondent was highly critical of the claimant taking a holiday at a time when an important project which she had responsibility for was to be delivered. However, the criticism was unfair because the claimant had obtained consent from Mr. Landgraf prior to the commencement of her employment of this time off (albeit it was for a honeymoon) and Mr. Brevoort, her manager had not at any time discouraged the claimant to take the holiday. In summary the Tribunal found that the respondent did not raise concerns to the claimant that she was taking a period of holiday leave at this critical time. In fact following the meeting on or about 18 April (page 604) Mr. Brevoort stated to the claimant *“Have an amazing time on your walk. This is a once in a lifetime opportunity and you*

should treat it as such. Take it all in. Live in the moment. Breath..and don't hurry too much."

143. Following Lofer, a number of the claimant's direct reports raised concerns about the claimant's management at Lofer for example Cornelius Ludmann and Kyle Brennan stating that they would have preferred to discuss work at Lofer as opposed to doing excessive team building exercises organised by the claimant.
144. In May 2023 Mr. Landgraf, Mike Brevoort, Eva Hyder and Chris reviewed and discussed the claimant's performance and decided that Eva Hyder would conduct a structured performance discussion on the claimant's return to work.

Further Meeting with Eva Hyder

145. Following the claimant's holiday, she met with Eva on 15 May 2023 to discuss the claimant's performance. Ms. Hyder provided Eng Cap of feedback and expectations (see page 818 to 822). Eva stated to the claimant that she wanted her to be fully present in the meeting and therefore not to take notes of the meeting. The claimant accepted under cross examination that Eva wanted her to be clear about what Eva had to say. The claimant did not push back on this request at the time. Eva stated that the claimant should not have been drinking and the fact that the claimant was locked out of her room due to forgetting her keys was a concern and provided some feedback on improvements to be made to leading team meetings. The claimant agreed and assured Eva she would implement some changes in the near future. The claimant was sent the Eng Recap document after the meeting. The claimant could not identify in evidence any disadvantage by not taking notes on the day stating "*I have no comment on that*". The claimant stated her notebook broke and she had no back up for it. The claimant stated it took her by surprise that the respondent had concerns about her performance but accepted it was a supportive step of the respondent to allow the claimant to improve. At page 820 Eva asked the claimant how she could be supported in her interactions, and she informed the claimant that she needs to see improvement namely in three areas; boundaries as to what should and should not be shared; the claimant didn't raise any queries about that; not to overshare with juniors or equals. This did not mean that the claimant could not discuss with management her medical conditions. The document also set out that the claimant should find a rhythm for communicating progress and complete management onboarding.
146. The claimant was given 30 days to improve from 15 May The claimant did not mention that her disabilities impacted on her work performance.
147. At page 822 Eva concluded the claimant was receptive and took full ownership of the issues. The claimant stated she felt supported. Eva felt optimistic about the plan. They were to meet weekly over the next month to review.

Further meeting with Eva

148. On 23 May 2023 the claimant met with Eva Hyder again. The claimant denied knowledge that she was to discuss the Eng cap document with Eva. The claimant did not accept that from the time of being sent the ENG Cap document

on or about 15 of May 2023 to the next meeting 23 of May (8 days) that was sufficient time to read a three page document. At the last meeting the claimant did not raise with Eva that she had insufficient time to read it. The claimant knew that she had one month to improve on the three goals set. The Tribunal found that it was a reasonable expectation of the respondent that the claimant should have read the document and be prepared to discuss it on 23 of May. The claimant had not informed Ms. Hyder beforehand that she was unable to prepare by reason of any medical conditions but referred to this during the course of the meeting on the 23 of May stating she was catching up on reading and needed time to prioritise. The claimant's evidence at the final hearing that she had read the document before the meeting on the 23 of May to prepare differed from her paragraph 85 which stated she just read it on the 23 of May. The issue of the coach was discussed. Ms. Hyder reminded the claimant of their communication in February 2023 when the claimant said that she was sorting out coaches. Ms. Hyder did not suggest any referral to occupational health at this stage. The claimant had requested a co-working space because of construction work at her house. The claimant did not say at the time of the meeting that this was related to her ADHD but she did say so in her evidence. Eva said she could have a co-workspace but she would have to pay for it and the respondent would not do so but you could pay for it yourself.

149. The claimant did not attend a further course by art of accomplishment priced at £900. The claimant informed Talia to tell Eva that she was overwhelmed and couldn't attend. On 24 May 2023 (page 823) Eva asked the claimant about the course. The claimant did not say she was overwhelmed but said she was prioritising her work and the claimant recognised under cross examination that she should have been more proactive and have told Eva. The claimant did not raise with Talia or Eva that her inability to coordinate these commitments was disability related overload. In her evidence the claimant said attendance at the AO course may have meant she used up her mental health stipend. The claimant was actually awarded \$600.00 per year for her mental health, and she had not been told that ending the AO course would come out of that budget at page 283-4. This is something the claimant assumed and did not seek clarification on. Although the claimant stated it was not reasonable for Mr. Landgraf to look negatively on her for failing to complete the course, the Tribunal concluded that it was, taking into account the expense of the course to the respondent and the fact that the claimant did not raise at the material time concerns about her "distressing treatment" from the coach on the course.
150. In respect communications and boundaries, the claimant shared her inner circle (page 262) as to who would be her trusted advisors, key peers and direct reports. At page 263 the claimant referred to Talia as a trusted key peer. The claimant accepted that these boundaries were to share highly sensitive and matters not impacting on her personal life.
151. The claimant did not raise any query about the Engcap document or say her disability impacted at work in fact the claimant didn't reference her disability at all and going forward the claimant didn't relate any of her difficulties at work to her disabilities.
152. The claimant was also requested by Mr Langdruff to provide reports on Friday but these were late the claimant said she couldn't recall the task or the timing.

153. On 26 May 2023 Mike Bevroot, Eva Hyder and Chris had calls to discuss the claimant's performance. The claimant admitted in evidence that she was concerned about her job at the time.
154. During the period 29 May 2023 to 9 June 2023 there were three more scheduled 1:1s due to take place. On 30 May 2023 (p. 825) the claimant cancelled the 1: 1 scheduled with Ms. Hyder to discuss performance. The claimant sought only clarification of the timeline which was provided by Eva. The claimant stated she thought over the next month meant 30 days from their meeting (page 825) so when the dedicated beta target ship date began to look risky the claimant focused on this deferring work on the communication plan and boundaries list. Eva replied to the claimant stating that the claimant had said she would do it for the next week so Eva said her expectations had shifted. The two other meetings were cancelled by Eva.
155. The claimant had responsibility for the dedicated beta project. It was the claimant's responsibility to complete it and to comply with the work schedule (between the 12 of April the 12 of June) with an estimated due date of the 13 of June. It was important that the work was completed so that critical decisions about the project could be made. The claimant worked on the bank holiday (page 1136). The holiday period did have a negative impact on completion of the beta project which meant the customer use of onboarding was delayed until August 2023. Mr Brevoot took responsibility of the project whilst the claimant took her holiday.

Review of the claimant's progress

156. There was some discussion between Eva and Mr. Brevoot about the claimant's performance pages 822 and 824.
157. On 26 May 2023 Mr. Brevoot and Eva discussed the claimant's progress. Eva described she had a disappointing 1:1 with the claimant and Eva stated that the claimant did not do the things she said she would do.
158. On 30 May 2023 Chris shared with Mr Brevoot that the claimant was showing up in a coordinated way and could see a difference.
159. On 1 June 2023 Eva Hyder and Chris reviewed the claimant's performance progress (page 826). Chris stated he was seeing a lot more than a few weeks ago; it appeared the claimant was improving.
160. On 5 June 2023 Ms. Hyder and Mr. Landgraf and Mike Brevoot reviewed the claimant's performance and decided to end the claimant's employment p.827-828. Chris Weichel made some criticisms of the claimant's velocity and speed in picking things up and suggested that major improvements would be required long term. Following a conversation with Johannes and Mr. Weichel it was agreed that the claimant's employment should be terminated (see pages 827-828). Eva did not think that the claimant would get to a place within a reasonable where she was thriving.
161. Eva and Mr. Brevoot shared the details of discussion they had with the claimant pages 845 to 848.

162. On 9 June 2023 (page 843) which was 4 days short of the 30 day point, the claimant admitted she had concerns about her job and there was a growing likelihood she would be dismissed. The claimant did not raise at that time that her issues at work were related to her disability. On or about 9 June 2023, the claimant (accepted under cross examination) requested direct reports to post words of thanks and appreciation for her because she felt that her job was at risk; including Cornelius Ludmann engineering manager and Kyle.
163. On 9 June 2023 (page 844) the claimant sent a message to Chris *"I can divert if the job is at risk"*. The claimant here was prioritising family over her work. The claimant accepted under cross examination her intention was to divert her attention away from work. The claimant felt there was a growing likelihood she would be dismissed by the respondent. Although the claimant denied under cross examination that it would have been imperative for her to raise with the respondent if she felt her performance was affected by disabilities, the Tribunal found in the context that she felt she would lose her job it was so imperative. The claimant did not take this opportunity to do so. It was suggested to the claimant that her attention was not properly on the use of her working time; the claimant disagreed but did not wish to expand on her answer. The Tribunal determined at this time the claimant's focus was elsewhere namely personal issues and not on her work.
164. On 12 June 2023 (page 849) 3 days before the end of the 30 day period. The claimant accepted that she did not at this stage refer to her disability as affecting her performance at work. The claimant sought to take ownership rather than seek an adjustment.
165. During the conversation (page 929-930) between Mr Brevoort and the claimant, the claimant did not raise her disability and did not suggest that she needed any adjustments. At page 929 the claimant said that she believes she did raise ADHD at the meeting. However, the claimant did not say that within her witness statement nor at page 930. The claimant was also asked in cross examination as to whether she had described any culture of tech bro or sexism to the respondent at this point; the claimant could not be recall. On the balance of probabilities, the Tribunal finds that that the claimant did not.

Termination meeting

166. On 13 June 2023 the claimant was called to a meeting with Eva and Mike. The claimant was informed that her employment was being terminated with immediate effect. It was stated that the decision was because the respondent had not seen enough progress to confidently believe that the claimant could get to a place where both the claimant and the respondent were thriving in a reasonable amount of time Mr Brevoort noted that the claimant had clearly been making an effort recently and had made a lot of progress in terms of engineering and management execution. However, he noted the way the claimant had showed up at the offsite which eroded trust and confidence in the leadership team and others at the company and that the support and mentorship that you need is unexpected at the Vice President level (see page 853). The terms of termination included 8 weeks severance pay (two weeks more than the claimant's contractual entitlement and health benefits until the end of June).

167. On 13 June 2023 page 856 the second respondent gave the claimant notice of termination of her employment.
168. Mr Brevoot did not inform the claimant she had been terminated for drinking. This presented a conflict in the evidence but the Tribunal preferred Mr. Brevoot's evidence because he was reading from a script (see page 853) and this did not mention that the claimant's drinking was a reason for dismissal.
169. The respondent had determined that the claimant was not meeting performance expectations at the Vice President level. The claimant did not consistently document progress; take initiative in the role or produce the expected value; she required substantial coaching and direction for prioritisation and peer interactions; she struggled to adapt to the git pod culture and lead a globally distributed team effectively showing a preference for synchronous interactions over the asynchronous communications necessitated by a globally distributed team. Further the claimant failed to take the advice initiative to rebuild trust and confidence with Johannes or the rest of the leadership team.
170. The claimant was not surprised by her termination.

Communications with staff

171. On 13 June 2023 (p.858-867) Johannes Landgraf send a slack message to the whole company plus external business partners, advisors and investors announcing the decision to dismiss the claimant. Johannes stated *"At git pod we expect VP's to own their charter, be empowered, self-starters and finishers, make and meet agreements, demonstrate executive presence, be able to adapt to our written async distributed culture, and make everyone and everything around them better. Based on the expectations we've set and reset and the investment in supporting Shannon success, we haven't seen enough progress to confidently believe that she can get to a place where she and git pod are both thriving in a reasonable amount of time at the VP level"* (page 859).
172. Mr Brevoot messaged the claimant's direct reports that message at page 858. Mr. Brevoot elaborated to the direct reports that Shannon's behaviour getting drunk and sleeping in the sunroom had eroded trust and confidence in her as a leader and that she had not followed through on her commitment to rebuild that trust in her relationship with the leadership team; see Eva's message at page 918. Later that day the claimant had a call with Pauline Narvas who told the claimant *"I find it kind of shitty that they threw the off site against you it feels like an excuse about it and I saw Chris and Janice and everything be drunk and disruptive and loud before too "* (page 973).
173. On 13 June 2023 (page 858) Eva sent a slack message to her direct reports explained the reason for the claimant's dismissal as *"ultimately the decision came down to trust with leadership, communication style and technical depth. Trust with leadership-we need a VP to finish what they start and keep agreements. Communication style - we need a VP to have preference for async and strong ability to report progress with consistency. Technical depth -we need a VP to understand, charter and own ecosystem of our products to help us accomplish our goals"*.

174. On 15 June 2023 Eva send a slack message to Mike and said Shannon was asking for her IP so she can continue writing her book on leadership (page 867). Mike responded "*are you joking*". Mike continued to joke about the claimant's request stating "Jeannie who has been along for the ride doesn't have a strong opinion at all (Jeannie is Mike's wife) and he stated Jeannie had said "*What in the actual fuck. Fuck her. Her notes : I'm working on communicating better and learning how to close loopholes and meet deadlines. Real fucking trailblazing it's a disservice to women leaders*" (page 867).
175. On 20 June 2023 (p.340/874-6) the claimant wrote to the respondent about her termination stating she wished to raise a number of serious concerns in relation to her employment. The claimant stated one of the biggest hurdles she faced from the start was that she felt a different set of rules and expectations were based on her gender including experience of intense questioning during the leadership goal setting meeting at the off-site, combined with a new appropriate critique of her team in a public setting, reinforced a troubling pattern of disregard for her role and input. The claimant described the incidents as demonstrating a culture which did not encourage inclusivity or respect towards diverse views. She also said there was a hostile environment characterised by instances of aggression and dismissiveness not conducive to fair treatment or her ability to effectively carry out her duties. Further the claimant raised serious concerns about the way her disclosed disabilities were managed and supported. The claimant stated she was open and honest from the start of employment about the unique challenges posed by her ADHD and dyslexia. The claimant stated that a request for reasonable adjustments were at times turned down or not fully supported including obtaining an ADHD coach; the onus was on the claimant interviewed the coaches and the claimant stated she simply did not have the time to complete the task. She stated an adjustment would have been to support her with that process or help her to take time during the work day to complete it. The claimant also raised a concern that her request for co-working was turned down and on occasions she was asked to take notes at a meeting despite that being a key adjustment for her disability. She stated that the respondent did not seek appropriate advice from occupational health to understand her specific disabilities or gain a professional understanding of what may be done to ameliorate the effect of them. The claimant stated that her performance and contribution would have been assessed against someone without disabilities which was unfair and discriminatory. The claimant also raised a concern about the offsite event in Lofer, Austria when she was told she was sharing a room with someone she did not know as a result she was locked out of her room and that she was unfairly blamed.

The Dedicated Beta Project

176. The dedicated beta project was not completed early as the claimant alleged. Although the claimant claimed victory early, the critical parts of the system were not functional. Customers could be onboarded. It was not until after the claimant's termination that the first customer was onboarded in August 2023.

Post termination

177. On 16 July 2023 the claimant emailed Eva (page 352) requesting personal data that the first respondent kept about her and additional information and documentation concerning the first respondent.
178. On 16 July 2023 (page 909) the claimant sent a DSAR.
179. On 19 July 2023 (page 344) it was confirmed to the claimant that her termination had been finalised on the Lets Deel platform and that some of her notice pay was included in the June payroll and she would receive a total of 6 weeks' notice pay.
180. On 21 July 2023 (page 937) the claimant sent disability questions to the respondent.
181. On 2 August 2023 (page 938) the first respondent replied to the disability questions.
182. On 2 August 2023 (page 941) the claimant sent a letter before action.
183. On 14 August 2023 the first respondent replied to the DSAR.
184. In September 2023 (page 1010) the first respondent made redundancies eliminating roles held by the claimant and her direct reports.
185. On 31 October 2023 (page 999) the claimant sent a second set of disability questions
186. On 6 November 2023 (p.1000) the first respondent replied to the questions.
187. On 8 November 2023 (p.1004) the claimant sent a third set of disability questions.
188. On 9 November 2023 (p.1007) the claimant sent a fourth set of disability questions.
189. On 10 November 2023 the claimant filed her ET1.
190. On 16 January 2024 (page 1022) the claimant received an offer of a full time employment from Cisco.

Submissions

191. Both parties provided very detailed written submissions and supplemented these with oral submissions. This section represents a summary of those submissions.
192. The respondent referred to the opening note identifying the sequence in preliminary hearings and list of issues. The respondent requested the Tribunal to consider what was the case brought by the claimant against R1. It submitted there was an inherent difficulty by the shifting in the claimant's case; the pleaded case and the case evidenced as presented. The Tribunal was cautioned to take the utmost care when considering whether the case actually corresponds to the evidence.

193. The respondent set out some background matters on disclosure and credibility; and submitted R1 had done all that it could to comply with requests for disclosure. On matters of credibility, it was submitted that the claimant was not credible. The respondent submitted that there were two central aspects of reliability of her recollection namely the difficulty to recollect her notes and the lost electronic notebook (that was damaged). In contrast it was submitted, R1 gave credible evidence; the evidence of the respondent's witnesses chimed with different words but with the same disappointment about the claimant's performance. Mr. Brevoort was a functional manager as a senior leader. In summary the claimant had a short period of unsuccessful appointment and has tried to stretch her shortcomings pointed out by R1 as related to her conditions to try to create a case.
194. In respect of dismissal this was a key area of dispute. The claimant relies upon the respondent saying that she failed to have "executive presence" as an alleged sexist remark. The case should be dismissed because the claimant simply has not made out her case. The respondent was genuinely disappointed at the level of the claimant's performance. The claimant was not equipped with the skills for the senior level role she was required to operate at.
195. In respect of the consumption of alcohol at the offsite there is a distinction to be made as to conduct related to being drunk and conduct by reason of her disability. Alcohol allegedly exacerbated the claimant's disability, but the claimant needs to show her disability was a relevant factor.
196. In respect of the claimant's sex discrimination case, it was submitted the case brought by the claimant was unclear. The claimant has identified three comparators drinking at Lofer ; see 65 and 69 see comparators 69.2 3 comparators drinking on that occasion. The reality is that the claimant was not dismissed for drinking. In respect of the three comparators there was no comparable conduct. The Tribunal was invited to accept the evidence of Mr. Langdraef about the events at Lofer; he had been socially drinking but was not drunk. His evidence about conversations at the bar were entirely appropriate. However, the claimant's conduct was of a different order. The claimant attempted to get back to her room at 6.30 am and passes out in a sauna and tells everyone. It was submitted that the claimant had committed egregious conduct as a senior and high earning manager in front of senior and junior colleagues.
197. It was submitted that the reliance on the Portugal event the previous year was not comparable because guidance was given in writing after the Portugal event and backed up by a video as to the respondent's expectations of alcohol consumption at offsite events.
198. It was submitted that there was an assessment of the claimant's lack of technical strength (see Chris appraisal). It was disputed that the respondent had any actual or constructive knowledge of any substantial disadvantage the claimant may have had in conducting her role taking account her performance at interview; failure to raise any concerns. Furthermore, it was submitted even if the reasonable adjustments had been made that the claimant now asks for it was not clear she would have stayed in work because the claimant suffers from a seizure disorder and to function at work, she requires adjustments. No

adjustment would have assisted the claimant who is not a self-starter. It was submitted that there was ample evidence the claimant's performance deficiencies were not related to her disability.

199. In any event it was submitted that any discriminatory treatment can be justified because the claimant was under performing and an employer must be able to remove under performing employees in particular where they are highly paid, responsible for the performance of 27 out of 52 employees in start up business which was not in profit at the time.
200. The Tribunal was invited to consider contribution and Polkey which was contained in the list of issues.
201. The claimant submitted that the conduct of the respondents in dismissing the claimant was influenced by consideration of the claimant's sex and that the respondent knew or ought to have known about the claimant's disabilities. The respondents were under a duty to make reasonable adjustments which the respondents breached. The claimant submitted that the conduct in dismissing the claimant was not justified as being a proportionate means of achieving a rationally connected legitimate aim. It was submitted that Polkey and contribution should be deferred to a separate remedy hearing because of the fact sensitive nature of the findings. Alternatively, there should be no findings of contributory fault, Polkey or failure by the claimant to follow the ACAS code at this stage. Further it was submitted the conduct of the respondents in dismissing the claimant was influenced by consideration of matters arising from the claimant's disability.
202. The claimant submitted that her direct sex discrimination claim should succeed because men who behaved in a similar way to the claimant in Portugal were not dismissed. The Portugal trip assists with the hypothetical comparator. In Portugal a member of the leadership team slept through the beginning of the work day. It is a matter of misconduct or gross misconduct not to turn up to work. The claimant's conduct was less serious and she was dismissed. The workplace was part of the tech bro culture. The claimant relies on Mr. Langraf as a male comparator at Lofer.
203. In respect of the alleged performance issues with the claimant and in particular technical strength Mr Weichel the engineering expert should have been asked his opinion about lacked technical strength – see page 824 – by 30 May 2023 she was actually improving; he didn't raise technical strength. At page 826 on 1 June 2023 Chris "sees a lot more" from the claimant; and there was an increase in presence now. On 5 June 2023 (page 828) Chris doesn't reference technical ability. It was submitted that the allegation that the claimant lacked technical depth was a sexist trope applied to her.
204. In respect of the respondent's knowledge about the claimant's disability, it was submitted that the latest date was 8 February 2023 when the claimant messaged Eva Hyder and asks for an ADHD coach when she says she has difficulties and back log and is overwhelmed. The claimant had already informed the respondent at interview about her ADHD and dyslexia.

205. It was submitted that by 8 February 2023 the respondent knew about the substantial disadvantage in the absence of reasonable adjustments. Eva is the person responsible for arranging an ADHD coach. The respondent must have known this substantial disadvantage could be minimised by the provision of reasonable adjustments. The claimant relied upon the findings of Judge Harding and the affect of the disabilities on her.
206. In respect of the justification defence it was accepted that there was a legitimate aim but there needs to be actual poor performance. The claimant submitted there were no significant performance concerns. Any poor performance arises from disability.

The Law

Knowledge of disability and substantial disadvantage

207. In the case of **Secretary of State for Work and Pensions v Alam (2010) ICR 665** two separate questions arose. First did the employer know both that the employee was disabled and that the disability was liable to put the employee at a substantial disadvantage ? If the answer to that question is no, a second question arises : namely whether the employer ought to have known both those things. If the answer to that question is also “no”, the statutory duty to make reasonable adjustments is not triggered.
208. In **Wilcox v Birmingham CAB Services Limited (2011) All ER 73** It was held “an employer is under no duty under (section 20 of the Equality Act 2010) unless he knows (actually or constructively) both (1) that the employee is disabled and (2) that he or she is disadvantaged by the disability in the way set out at in(section 20 (2)-(4) of the Equality Act 2010).
209. In **A Limited v Z (2019) 3 WLRUK 790** HHJ Eady (as she was then) summarised the relevant principles at paragraph 23
- “(1) they need only be actual or constructive knowledge as to the disability itself, not the causal link between the disability and its consequent effects which led to the unfavourable treatment, see **York City council v Grosset 2018 ICR 1492 CA at paragraph 39**;
- (2) the respondent need not have constructive knowledge of the complainants diagnosis to satisfy the requirements of section 15 (2); it is however for the employee to show that it was unreasonable for it to be expected to know that a person (a) suffered an impediment to his physical or mental health or (b) that impairment had a substantial and (c) long term effect, see **Donelien v Liberata UK Limited UKEAT/0297/14** at paragraph 5 and also see **Pnaiser v NHS England (2016) IRLR 170**.
- (3) the question of reasonableness is one of fact and evaluation, see **Donelien v Liberata UK Limited (2018) IRLR 535 CA** at paragraph 27; nonetheless such assessments must be adequately and coherently reasoned and must take into account all relevant factors and not take into account those that are relevant;
- (4) when assessing the question of constructive knowledge, and employees representations as to the cause of absence or disability related symptoms can

be of importance: (i) because in asking whether the employee has suffered substantial adverse effect, a reaction to life events may fall short of the definition of disability for EqA purposes (see **H Henry v Dudley Metropolitan Council 2017 ICR 610**, per HHJ Richardson citing **J v DLA Piper UK LLP (2010) ICR 1052** and (ii) because without knowing the likely cause of a given impairment “it becomes much more difficult to know whether it may well last for more than 12 months, if it is not (already done so) per Langstaff P in **Donelien** EAT at paragraph 31.

(5) the approach adopted to answering the question thus posed by section 15 (2) is to be informed by the code which relevantly provides as follows:

5.14 it is not enough for the employer to show that they did not know that the disabled person had the disability. They must also show that they could not reasonably have been expected to know about it. Employers should consider whether a worker has a disability even where one has not been formally disclosed as for example not all workers who meet the definition of disability may think of themselves as a disabled person.

5.15 an employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment. When making inquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.

(6) it is not incumbent upon an employer to make every inquiry where there is little or no basis for doing so (**Rideout v TC Group**) 1998 IRLR 628; **Secretary of State for Work and Pensions v Alam 2010 ICR 665**

(7) reasonableness for the purposes of section 15 (2) must entail a balance between these strictures of making inquiries, the likelihood of such inquiries yielding results and the dignity and privacy of the employee is recognised by the code.

210. The Tribunal should examine not only what it considers might have been the further steps the respondent could reasonably have been expected to take; it should also ask itself whether the respondent could then have reasonably have been expected to know of the claimant’s disability.
211. In **AECOM v Mallon (2024)** the EAT stated “we observe that what is necessary is not that the employer knows that the complainant is generally disadvantaged by their disability, but that it knows that they are likely to be placed at the disadvantage refer to in the first requirement, which is a specified in section 20 (3) a substantial disadvantage in relation to a relevant matter”. The question of knowledge was to be approached as “an important theme in the case law on this issue is that consideration of whether an employer reasonably ought to have known whether the claimant was disabled and at the relevant substantial disadvantage requires the employer to make reasonable inquiries of the employee. An employer cannot turn a blind eye. This is a point made clear in the EHRC employment statutory code of practise 2011 (the code of practise) which states are paragraph 6.19 that an employer must do all they can reasonably be expected to do to find out whether an applicant/employee has a disability and is

or is likely to be placed at a substantial disadvantage. In *Rideout* the EAT recognise that this is not of course an unlimited duty - the duty is only to make such inquiries as are reasonable and what is reasonable will depend on all the circumstances. There is no separate duty of proactivity beyond the legal principles we have already identified. As the code of practice makes clear (especially at paragraphs 16.39 and 16.49) in the context of employment (in contrast to some other areas of life covered by the EA 2010), the duty to make reasonable adjustments only arises once there is a specific disabled person who to the employee's knowledge requires an adjustment "an employer is not required to make changes in anticipation of applications from disabled people in general-although it would be good practice to do so."

212. In the recent case of **Glasson v Insolvency Service (2024) EAT 5** the EAT held that in determining whether the employer had no actual or constructive knowledge of this particular effect of G's disability, the tribunal was entitled to take into account G's general high performance at work, a previous similar interview process in relation to which he had not raised concerns, and his overall good performance at the interview.

Discrimination arising from disability

213. Section 15 of the Equality Act 2010 provides that

"A person A discriminates against a disabled person (b) if –

A treats B unfavourably because of something arising in consequence of B's disability and

A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) subsection (1) does not apply if A shows that A did not know and could not reasonably have been expected to know that B had the disability.

214. In the case of **Pnaiser v NHS England (2016) IRLR 170** the EAT gave the following guidance to the approach of a section 15 claim

(a) A tribunal must first identify whether there was unfavourable treatment and by whom: in other words it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

(b) the tribunal must determine what caused the impugned treatment or that was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required just as it is in a direct discrimination case. Again just as there may be more than one reason or cause for impugned treatment in a direct discrimination context so too there may be more than one reason in a section 15 case. There's something that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant or more than trivial influence on the unfavourable treatment and so amount to an effective reason for or cause of it.

(c) the tribunal must determine whether the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant; see **Nagarajan v London Regional Transport (1999) IRLR 572**. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie a case of discrimination arises..

(d) the tribunal must determine whether the reason/cause (or if more than one) a reason or cause is something arising in consequence of B's disability. That expression arising in consequence of could describe a range of causal links. Having regard to the legislative history of section 15 of the act (described comprehensively by Elizabeth Lang J in **Hall**) the statutory purpose which appears from the wording of section 15 namely to provide protection in cases where the consequences or effects of a disability lead to unfavourable treatment and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words more than one relevant consequence of the disability may require consideration and it will be a question of fact assessed robustly in each case whether something can probably be said to arise in consequence of disability.

(e) for example in **Land Registry v Houghton UKEAT/0149/14** a bonus payment was refused by a because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, the more links in the chain that there are between the disability and the reason for the impugned treatment, the harder it is likely to be able to establish the requisite connection as a matter of fact;

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator;

(h).. The statutory language of section 15 (2) makes clear that the knowledge required is of the disability only; and does not extend to a requirement of knowledge that the something leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so.

(g)... depending on the facts a tribunal might ask why a treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of something arising in consequence of the claimant's disability. Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to something that caused the unfavourable treatment.

215. The question of whether the treatment is unfavourable involves identifying the relevant treatment and asking whether that is unfavourable. If the relevant treatment involves conferring a benefit on a disabled person it is not unfavourable treatment to fail to treat them even more favourably in respect of that benefit; see **Trustees of Swansea University of Pension and Assurance Scheme v Williams 2019 1 WLR 93**.

216. The test of causation for the purposes of a section 15 claim requires the Tribunal to determine two questions namely (i) whether the claimant was treated

unfavourably because of an identified something and (ii) whether that something arose in consequence of B's disability. The first question requires an examination of the putative discriminator's state of mind; the second is a question of objective fact for the ET to decide in the light of the evidence; **Sheikholeslami v University of Edinburgh (2018) IRLR 1090**.

Justification

217. The employer bears the burden of establishing that the measure or measures employed were objectively justified (**Rainey v Greater Glasgow Health Board 1987 IRLR 26**). The Tribunal should apply a four stage test (a) does the measure have a legitimate aim sufficient to justify the limitation of a fundamental right; (b) is the measure rationally connected to that aim; (c) could a less intrusive measure have been used; and (d) bearing in mind the severity of the consequences the importance of the aim and the extent to which the measure will contribute to that aim, has a fair balance been struck between the rights of the individual and the interests of the community? **R Tigere v Secretary of State for Business Innovation and Skills (2015) 1 WLR 3820**. It may be evidentially more difficult for an employer to establish justification where there has been inadequate consideration of proportionality at the time (**MOJ v Obrien 2013 UKSC 6**). Evidence as to whether alternatives have been explored and the outcome of such exploration are likely to be important to the Tribunal's assessment of whether a measure is a proportionate means of achieving the legitimate aim in question; **Azmi v Kirklees MBC 2007 IRLR 484**

Failure to make reasonable adjustments

218. Section 20 of the Equality Act 2010 provides that :
- where this Act imposes a duty to make reasonable adjustments on a person this section, section 21 and 22 and the applicable schedule apply; and for those purposes a person whom the duties imposed is referred to as A.
219. The duty comprises the following three requirements.
220. The first requirement is a requirement where a provision criterion or practice of an organisation puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled to take such steps as is reasonable to have to take to avoid the disadvantage.
221. Paragraph 20 schedule 8 of the Equality Act 2010 provides that
- A is not subject to a duty to make reasonable adjustments if they do not know and could not reasonably be expected to know –
- (b) in any case referred to in Part 2 of this schedule that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first second or third requirement.

222. Guidance was given in **Environment Agency v Rowan 2008 IRLR 20** That in order to make a finding of failed to make reasonable adjustments there must be identification of :
- (a) the provision criteria or practise applied by or on behalf of an employer; or
 - (b) the physical feature of premises occupied by the employer;
 - (c) the identity of non-disabled comparators (where appropriate); and
 - (d) the nature and extent of the substantial disadvantage suffered by the claimant.
223. In the case of **Newham Sixth Form College v Sanders 2014 EWCA Civ 734** it was held “the nature and extent of the disadvantage, the employer’s knowledge of it and the reasonableness of the proposed adjustment necessarily run together. An employer cannot make an objective assessment of the reasonableness of proposed adjustments unless he appreciates the nature and extent of the substantial disadvantage imposed upon the employee by the PCP.”
224. In **Prison Service v Johnson 2007 IRLR 951** It was stated the tribunal must identify with some particularity what step it is that the employer said to have failed to have taken in relation to the disabled employee. The degree of specificity required in identifying the step depends on the facts of each case. In some cases, it may be sufficient for the tribunal to state for example that there were plenty of other suitable jobs the employee could have been moved to in others a more detail finding will be necessary.
225. The burden of proof is on the claimant. In the case of **Project Management Institute v Latif 2007 IRLR 579** it was stated “The claimant must not only establish that the duty has arisen, but that there are facts from which it could reasonably be inferred, absent an explanation that it has been breached. Demonstrating that there is an arrangement causing a substantial disadvantage engages the duty, but it provides no basis on which it could properly be inferred that there is a breach of that duty. There must be evidence of some apparently reasonable adjustment which could be made. We do not suggest that in every case the claimant would have had to provide the detailed adjustment that would need to be made before the burden of proof would shift. However, we do think that it would be necessary for the respondent to understand the broad nature of the adjustment proposed and to be given a sufficient detail to enable him to engage with the question of whether it could reasonably be achieved or not.
226. The focus of the Tribunal is on the practical result of the measures which can be taken. It is an error for the focus to be on the process of reasoning by which a possible adjustment was considered; see the case of **Royal Bank of Scotland v Ashton 2011 ICR 632**.
227. The concept of a reasonable adjustment is an entirely practical one. There must be an objective assessment of how the steps proposed would have been effective to enable the disabled person, or it is sufficient, if there was a prospect of the disadvantage being alleviated even if the adjustment would not have been properly effective; **FirstGroup Limited v Paulley (2017) IRLR 258**. The adjustment contended for need not remove entirely the disadvantage; TDA said

that the adjustment should prevent the PCP having the effect of placing the disabled person at a substantial disadvantage and section 20 of the Equality Act 2010 uses the phrase avoid the disadvantage. The duty to make adjustments is to enable employees to remain in employment or to have access to employment. It is admitted that an adjustment is not reasonable if it would not permit the employee to remain in employment.

228. The concept of a PCP carries the connotation of the state of affairs indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. It does not apply to every act of unfair treatment of a particular employee; **Ishola v the Transport for London 2020 ICR 1204**.
229. The function of the PCP in a reasonable adjustments context is to identify what it is about the employers management of the employee or its disabled person that causes substantial disadvantage to the disabled employee. What must be justified is not the disadvantage that the claimant suffers but the PCP under by or in consequence of which the disadvantageous act is done; **Ishola**.
230. The fact that a disabled and non-disabled person are treated equally and may both be subject of the same disadvantage when absent for the same period of time does not eliminate the substantial disadvantage suffered by the disabled person if the PCP bites harder on the disabled because the disability leads to disabled related absences that would not be the case with the able bodied; **Griffiths v Secretary of State for Work and Pensions 2017 ICR 60**.
231. For the purposes of limitation the duty to make reasonable adjustments arises as soon as there is a substantial disadvantage to the disabled employee from a PCP and failure to make the adjustment is a breach of the duty once it becomes reasonable for the employer to have to make the adjustment; see **Fernandes v Department of Work and Pensions 2023 IRLR 967**.
232. Even if there has been a failure to make reasonable adjustments at an earlier point in time there can come a time when it would not be reasonable to take the step proposed by the employee because it would have no prospect of removing the disadvantage complained of; **Parnell v Royal Mail Group (2024) EAT 130**.
233. The duty is to make adjustments not to investigate or consider them. The EAT in **Tarback v Sainsbury's Supermarkets Limited 2006 IRLR 664** made clear that a duty to consult is not of itself imposed by the duty to make reasonable adjustments. It was held question is objectively whether the employer has complied with his obligations or not. There is no separate and distinct duty to consult.
234. Tribunals should have regard to any relevant provisions of the Code of Practice on Employment issued by the Equality and Human Rights Commission which came into force on 6 April 2011 (“the code”).

Direct sex discrimination

235. Pursuant to section 13(1) of the Equality Act 2010

“A person A discriminates Against another B if because of a protected characteristic, A treats be less favourably than a treat or would treat others.”

236. The question to ask in every case is to ask what was the reason while the alleged discriminator acted as they did; consciously or unconsciously; chief constable of West Yorkshire Police v Khan (2001) UKHL 48.
237. The protected characteristic in question need not have been the sole reason for the conduct; see **Owen and Briggs v James (1982) IRLR 502** but whether it was an effective cause; **O'Neill v Governors of St. Thomas More Roman Catholic Voluntary Aided Upper School (1996) IRLR 372** and **O'Donoghue v Redcar and Cleveland Borough Council (2001) IRLR 615**.
238. All relevant circumstances between the complainant and comparative must be the same or not materially different (see paragraph 3.23 of the EHRC Employment code and **Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 UKHL 11**. Whether the comparison is sufficiently similar will be a question of fact and degree for the tribunal; see **Hewage v Grampian Health Board (2012) UKSC 37**.

Time limits

239. Section 123 of the Equality Act 2010 provides that
- subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of –
- the period of three months starting with the date of the act to which the complaint relates, or
- such other period as the employment tribunal thinks just and equitable.
240. Section 140B of the Act permits an extension of time where access early conciliation is undertaken in certain circumstances. HHJ Tayler in the case of stated “strictly speaking section 123 EqA does not set out a primary time limit that may be extended but a time limit of three months or “such other period as the employment tribunal thinks just and equitable”. Where the employment Tribunal decides that a period other than three months is just next well that is the time limit. Nonetheless the use of the term primary time limit for the three months period (with an extension for access early conciliation where appropriate) is a useful shorthand. It remains a common practise for those who assert that the primary time limit should not be extended to rely on the comments of Auld LJ at paragraph 25 of **Bexley community centre (t/a Leisure Link) v Robertson (2003) EWCA Civ 576**. The time limits in the Employment Tribunal exercise strictly in employment cases and that a decision to extend time is the exception rather than the rule as if they were principles of law. Where these comments are referred to out of context this practise should cease. Paragraph 25 must be seen in the context of paragraphs 23 and 24:
23. I turn now to the second issue. The decision by the employment tribunal not to exercise its discretion to consider the claim on just and equitable grounds. There are a number of basic propositions of law to which Miss. Outhwaite has referred us which governed the way in which this exercise has to be undertaken. If the claim is out of time there is no jurisdiction to consider it unless the tribunal

considers that it is just and equitable in the circumstances to do so. That is essentially a question of fact and judgement for the tribunal to determine as it here having reconvened for the purpose of hearing argument on it.

24. The tribunal when considering the exercise of its discretion has a wide ambit within which to reach a decision. If authority is needed for that proposition it is to be found in **Daniel v Hamilton Hospital Trust** in the judgement of Gibson LJ at Page 3 where he said

“the discretion of the tribunal under section 68 (6) is a wide one. This court will not interfere with the exercise of discretion unless we can see that the tribunal erred in principle or was otherwise plainly wrong.

25. It is also important to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So the exercise of discretion is the exception rather than the rule. It is of a piece with those general propositions that an Appeal Tribunal may not allow an appeal against the tribunal's refusal to consider an application out of time in the exercise of its discretion merely because the Appeal Tribunal if it were deciding the issue at first instance would have formed a different view. As I have already indicated such an appeal should only succeed where the Appeal Tribunal can identify an error of law or principle making the decision of the tribunal below plainly wrong in this respect.

241. HHJ Tayler went on to state that the propositions of law for which Robertson is authority or that the employment tribunal has a wide discretion to extend time on just and equitable grounds and that appellate courts should be slow to interfere. The comments of old LJ relate to the employment law context in which time limits are relatively short and makes the uncontroversial point that time limits should be complied with. But that is in the context of the wide discretion permitting an extension of time on just and equitable grounds.

242. In **Chief Constable of Lincolnshire Police v Caston (2009) EWCA Civ 1298** Wall LJ stated

24. Mr Rose placed much reliance on paragraph 25 of Auld LJ's judgement which reads as follows

...this paragraph has in turn been latched onto by commentators as offering guidance as to how the judgement under the just and equitable provisions of the Race Relations Act and DDA fall to be exercised. In my judgement however it is in essence an elegant preposition of well-established principles relating to the exercise of a judicial discretion. What the case does in my judgement is to emphasise the wide discretion which the ET has-see the dictum of Gibson LJ cited above and articulate the limited basis upon which the EAT and the court can interfere.

243. Sedley LJ stated

31. In particular there is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised. In certain fields (the lodging of notices of appeal at the EAT is a well known example) policy has led to a consistently sparing use of the power. That has not happened and ought not to happen in relation to the power to enlarge the time for bringing ET proceedings and Auld LJ is not to be read as having said in Robertson that it either had or should. He was drawing attention to the fact that limitation is not at large : there are statutory time limits which will shut out an otherwise valid claim unless the claimant can displace them.

244. Judge Tayler also referred to the case of **Abertawe Bro Morgannwg University Local Health Board v Morgan (2018) EWCA Civ 640** as follows :

17. The boards other grounds for appeal all seek to challenge the decisions of the employment tribunal that it was just and equitable to extend the time for bringing (a) the claim based on a failure to make adjustments and (b) the claim alleging harassment by Ms. Keighan. Before turning to those grounds the following points may be noted about the power of a tribunal to allow proceedings to be brought within such. As it thinks just and equitable pursuant to section 123 of the Equality Act 2010.

18. First it is plain from the language used (“such other period as the employment tribunal thinks just and equitable”) that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the limitation act 1980, section 123 (1) of the Equality Act 2010 does not specify any list of factors to which the tribunal is instructed to have regard and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. That’s although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33 (3) of the limitation act 1980 (see **British Coal Corporation v Keeble 1997 IRLR 336**), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account; see **Southwark London Borough Council v Afolabi (2003) ICR 800**, paragraph 33. The position is analogous to that where a court or tribunal is exercising the similarly worded discretion to extend the time for bringing proceedings under Section 7(5) of the Human Rights Act 1998; see **Dunn v Parole Board (2009) 1 WLR 728**.

19. That said factors which are almost always relevant to consider when exercising any discretion whether to extend time are : (a) the length of and reasons for the delay and (b) whether the delay has prejudiced the respondent (for example by preventing or inhibiting it from the investigating the claim while matters were fresh).

25. As discussed above the discretion given by section 123 (1) of the Equality Act 2010 to the employment tribunal to decide what it thinks just and equitable is clearly intended to be broad and unfettered. There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent

reason for the delay and the nature of any such reason are relevant matters to which the Tribunal ought to have regard.

Credibility

245. The Tribunal found that both parties embellished their evidence and there were some inconsistencies in their accounts.
246. The Tribunal found that the claimant was generally an honest witness and she made concessions in her evidence appropriately. However, at times she chose not to elaborate on an answer to a direct question and this did appear evasive. The claimant had not been fully candid to her employer about her disabilities in the way she sought to suggest. The claimant did not at any time reveal her disability of panic disorder and the information available to the respondent and the Tribunal is very limited. Nor did the claimant expressly inform employees of the respondent (excluding Eva Hyder) about her disabilities. The claimant alleged that witnesses who agreed to give evidence for her dropped out under pressure from the respondent. This included Cornelius who was rehired by the respondent and then dropped out from her list of witnesses. The Tribunal found this to be an embellishment but borne out of anxiety about her case rather than any dishonesty on the part of the claimant. The claimant had embellished and exaggerated some of her evidence including the number of promotions in Slack. Although the claimant suggested in her witness statement that she had in fact been promoted numerous times at Slack, the Tribunal found this evidence to be exaggerated accepting Mr. Brevoort's evidence that the claimant was actually only promoted on one occasion. There was no promotion path from the developer relations community manager role which was under the product organisation to the engineering organisation; Mr. Brevoort's evidence is that this would not have been considered a promotion. Mr. Brevoort has experience having sat on promotion boards. Nevertheless, the claimant was highly intelligent and successful. It is important to consider that from the early part of 2023 the claimant was experiencing a high level of stress from matters outside of the workplace. Without intruding on the claimant's private life, the Tribunal notes that the claimant was experiencing the breakdown of a close personal relationship and concern for the health of a relation.
247. Ms. Talia Moyal was generally an honest witness. She described having no experience of discrimination as a woman in the first respondent's workplace. She described a very positive experience as a female employee with the respondent and did not consider that gender was a factor as to how she was evaluated and valued. She felt she was supported by Johannes and Eva. There were elements of her evidence which were inconsistent. For example, during the course of the claimant's employment Talia expressed some sympathy and support for the claimant including contacting the claimant post offsite with a supportive message which indicated that the claimant had had a difficult time at the offsite (see message dated 7 April 2023 at page 1135). Talia had stated at paragraph 20 of her statement that she heard some of the conversation between Johannes and the claimant which showed "a misalignment of goal setting". Talia's email at page 1135 did not sit easily with the description she was giving in her statement to the interaction between the claimant and Mr. Landgraf.

248. The Tribunal found Mr. Brevoort to be generally a credible witness and appropriately made concessions in his evidence. However, his evidence was inconsistent in part because he stated categorically that the claimant was not dismissed for drinking but post termination did relay to the team the claimant's drinking at the offsite (see below). Post termination the character assassination of the claimant by Mr. Brevoort's wife which he chose to share with the respondent's leadership team was unbecoming of a senior manager.
249. Mr. Landgraf had high expectations of all his leadership team and his focus was the success and performance of the business. He did not recognise a tech bro culture in the organisation. The Tribunal found that Mr. Landgraf was very passionate about Gitpod and at times this left him unwilling to accept his approach may not be the best and he could be insensitive about how his decisions may affect others or impact others (that is conducting a "hackathon" and suggesting those who did not wish to participate should be sacked).
250. Ms. Eva Hyder was diligent but stretched as the only Human Resources professional in the organisation. She did not appear to recognise the significance of the claimant's disclosure of her disability during the interview or where the claimant raised a concern about being overwhelmed and wanting a ADHD coach (on two occasions) that a referral to Occupational Health for an assessment of required reasonable adjustments may be preferable.

Conclusions

The Employer's Knowledge of Disability

251. When assessing whether an employer has constructive knowledge the provisions of the Employment Statutory Code of Practice (see paragraphs 5.14 and 5.15) are relevant. An employer does not have to make every enquiry where there is little or no basis for doing so and reasonableness for the purposes of section 15 of the Equality Act 2010 entails a balance between the strictures of making enquiries the likelihood of such enquiries yielding results and the dignity and privacy of the employee (see **A Ltd v Z**).
252. The claimant disclosed her disabilities of ADHD and dyslexia in the course of the interview process with Eva in the context of evidencing how she had overcome issues. However, she did not assert that she required any accommodations/reasonable adjustments to assist her to conduct her role. The claimant did not inform anyone else as to her disabilities including her line manager, Mr. Brevoort. Eva Hyder did not inform any other colleague about the claimant's ADHD and dyslexia disclosure for confidentiality reasons and so to avoid any unconscious bias; the claimant accepted in her evidence it was appropriate at the interview stage for Eva not to have divulged this information to others.
253. The claimant is a highly intelligent person with a proven track record in the industry. During the course of the recruitment process the claimant underwent approximately 20 hours of interviews but she did not raise her disability save as set out above to Eva. Save for Eva Hyder no other individual in the respondent's

organisation was aware of the claimant's disability diagnosis. The claimant did not inform anyone else and Eva Hyder did not divulge the claimant's diagnosis to anyone else in the organisation. The Tribunal finds that when the claimant was asking about a coach to Mr. Brevoot she did not identify that she was seeking a ADHD coach.

254. The claimant performed well at interview and had produced a written document async evidencing a high ability and understanding of the role she was performing. At this stage, pre-employment the Tribunal finds that there was nothing to alert the respondent to the fact that the claimant was at any substantial disadvantage by reason of ADHD and dyslexia. The Tribunal does not consider that it was incumbent upon the respondent to make every inquiry where there is little or no basis for doing so (**Rideout v TC Group**) in the context that the claimant had disclosed that she had a disability to demonstrate how she had overcome issues; further the respondent was entitled to take into account the claimant's general high performance during extensive interviewing and producing an excellent written document; this was a very challenging and long interview process to which the claimant was subject to and successful and the claimant had not raised any specific concerns (see **Glasson v Insolvency Service**).
255. However on 8 February 2023 the claimant raised with Eva about obtaining a coach as follows *"..is it possible to access a coach? Or is there any way we could explore an accessibility accommodation with some adhd coaching? I came back from being on PTO for a couple of days and I am so deeply overwhelmed with the sheer volume of information I need to catch up on and I'm desperate to figure out a system of managing all the different information flows I've got and lets just say I've got a worrying level of anxiety at the moment."* The Tribunal determined that email from the claimant to Eva notified the respondent that her ADHD was having a substantial adverse effect on the claimant's capacity to carry out her work after a few days of leave in particular her statement that she was *"struggling with the sheer volume of information"* and wished to have some ADHD coaching. Further, Eva Hyder accepted in evidence that the phrase "accessibility accommodations" was a term arising from the Americans with Disabilities Act and Eva Hyder's own evidence was that she/ the second respondent were responsible for compliance in the UK which must include reasonable adjustments.
256. By 8 February 2023 the respondent acting as a reasonable employer had either actual or constructive knowledge of the claimant being at a substantial disadvantage by reason of her ADHD/dyslexia and should have taken reasonable steps to investigate with the claimant and obtain an occupational health assessment to clarify the needs for adjustments for the claimant. The Tribunal finds that at this time the respondent should have been aware that the claimant was likely to be placed at a disadvantage in relation to a relevant matter (see **AECOM v Mallon**). This should have placed the respondent on notice that it should at the very least send the claimant to Occupational Health for an assessment of needs. Although it is not incumbent upon an employer to make every enquiry where there is little or no basis for doing so, here there was a significant basis; the claimant stated she was struggling and was requesting a ADHD coach. Albeit the claimant was given the option to source a coach herself for which she accepted that in the Tribunal's view did not absolve the respondent

as the claimant's employer of investigating how if at all the coach could assist the claimant or in fact whether she may require any further adjustments. The fact that the claimant was a senior individual in the organisation with a stipend does not mean that an employer does not need to take steps to investigate disability and how that individual may be disadvantaged in the workplace. The Tribunal finds that had a referral to Occupational Health for an assessment (a reasonable step) been taken then the respondent would have become aware that the claimant required significant adjustments in order to carry out her role by reason of her ADHD and dyslexia because the claimant would have engaged in this process **A Limited v Z (2019) UKEAT/0273/18**. The claimant did inform Eva Hyder about her diagnosis at the interview stage; the claimant did flag she was overwhelmed and struggling on 8 February 2023 and required an ADHD coach and raised an ADHD coach again with Eva Hyder in May 2023; the Tribunal finds that the claimant was raising these issues with the HR professional and would have engaged in an occupational health assessment for reasonable adjustments had one been arranged. The Tribunal also takes into account that the claimant has had reasonable adjustments in previous employment and in her present employment following assessments by Occupational Health so that she is willing to engage in these processes. In the circumstances by early February 2023 the Tribunal finds that the respondent knew and/or reasonably expected to know that the claimant had disabilities and was reasonably expected to know that the claimant was likely to be placed at a substantial disadvantage as a result.

257. However, the Tribunal concludes on the balance of probabilities that any such assessment would not have revealed the other disability the claimant had at that time (not relied upon in this litigation) namely a panic disorder which the claimant failed to disclose to the respondent at any time and the claimant was unlikely to reveal it to an occupational health specialist at any assessment arranged by the respondent (see **A Limited v Z (2019) UKEAT/0273/18**). The claimant accepted in cross examination that she required accommodations/adjustments for this impairment as well but the nature of those required adjustments were not identified. The claimant did not inform the respondent at any time about the disability of panic disorder and the effect that this had on the claimant's conduct or performance is unknown.

Discrimination arising from disability s.15 (1) Equality Act 2020

258. Did either of R1 or R2 treat the claimant unfavourably because of something arising in consequence of C's disability. C relies on her dismissal as the less favourable treatment.

The Tribunal finds that it was Mr. Landgraf who decided on 5 June 2023 that the claimant should be dismissed. His reasons for her dismissal are those he communicated to Mr. Brevoort who then circulated this to the direct reports namely *"At git pod we expect VP's to own their charter, be empowered, self-starters and finishers, make and meet agreements, demonstrate executive presence, be able to adapt to our written async distributed culture, and make everyone and everything around them better. Based on the expectations we've set and reset and the investment in supporting Shannon success, we haven't*

seen enough progress to confidently believe that she can get to a place where she and git pod are both thriving in a reasonable amount of time at the VP level” (page 859). The Tribunal finds that the reference to executive presence was related to the claimant being locked out of her room at the offsite, being late for the shuttle bus on departure and her conduct of crying and sleeping in a sauna as a result of consuming too much alcohol on the last evening. The Tribunal finds these were matters which fed into the view of lack of executive presence because Eva Hyder met with Mr. Landgraf and Mr Brevoot in May 2023 to discuss the claimant’s performance; at the meeting on 15 May 2023 between the claimant and Eva, Ms. Hyder stated that the claimant should not have been drinking at the offsite and that she was locked out of her room due to forgetting her keys “was a concern”.

259. C relies on the following as constituting the “something arising”

259.1 That C was not a self-starter and finisher. She says that this is something that arises as a consequence of her ADHD because attention to detail and completing things are difficult for people with ADHD;

The Tribunal relies upon the claimant’s evidence and Judge Harding’s findings namely that as a result of the claimant’s ADHD she is easily distracted/finds it very hard to maintain attention/concentration and attention to detail is difficult for her when carrying out tasks. Further by reason of the claimant’s ADHD she has a great deal of forgetfulness. The claimant struggles with maintaining concentration and persistent forgetfulness which impacts on her day-to-day activities and these were adverse and substantial effects. The Tribunal found it established on the evidence and that on the balance of probabilities that not being a self-starter and finisher arose because of the claimant’s disability of ADHD.

259.2 That C did not make and meet agreements. She says that this is something that arises in consequences of her ADHD because attention to detail and completing things are difficult for people with ADHD;

The Tribunal relies upon the claimant’s evidence and Judge Harding’s findings that the claimant struggles with maintaining concentration and persistent forgetfulness which impacts on her day-to-day activities and were adverse and substantial effects; this affected the claimant’s ability to make and meet arrangements; this arose from the claimant’s disability of ADHD. The respondent sought to make a distinction between not meeting a deadline (to which it asserted the claimant was not criticised) and not communicating that a deadline would not be met. The Tribunal finds that in the case of the claimant’s disability it is likely on the balance of probabilities that the claimant failed to communicate a deadline would not be met to others by reason of her ADHD because of her concentration and forgetfulness.

259.3 That C was unable to adapt to R1’s written asynch culture. She says this is something that arises in consequence of her ADHD and dyslexia because the written asynch culture involves a huge amount of written correspondence and documents and given her slow reading speed and the fact that writing is more difficult due to her ADHD and dyslexia it was

difficult for the claimant to keep up with their volume of written correspondence;

The claimant indicated in her email to Eva Hyder dated 8 February 2023 that she was struggling with written information and required a ADHD coach. Further as identified by Judge Harding the claimant's reading speed was 4 to 8 times slower than the average person. The Tribunal finds that the claimant's inability to adapt to the first respondent's written async culture was something which arose in consequence of her ADHD and dyslexia.

259.4 Due to a general perception that she was a poor performer;

The claimant was not viewed as a great performer as was hoped. Mr. Langdgraf in March 2023 (page 790) stated that he would not hire/be indifferent to hiring the claimant again and did not consider her "a super star" (nor did Mr. Brevoot). The criticisms of the claimant were that she was not self-motivated; she was not leading proactively and needed to be managed; there was a failure to understand shortcomings; unwilling to delegate and unwilling to ask for help; not taking a charter and owning it; not leading it or driving it or managing it or improving it. Mr Brevoot had concerns about the claimant transitioning from being a manager to being a leader; the claimant was not leading in every direction; she needed to tell the respondent what her priorities should be and what she needs to be successful; what she planned to do or delegate and be accountable for deliverables and communication expectations. The Tribunal finds that the perception of the claimant as a poor performer was in part because the claimant was struggling from the transition of being a manager to being a leader, Vice President; that was not something arising from the claimant's disability. However, the other factors as set out above which fed into the view that the claimant was a poor performer and should be dismissed were matters which arose from the claimant's disabilities (as already stated).

259.5 That C was locked out of her room at a work event. This is something that arises in consequence of her ADHD because she is disorganised/forgetful as a result of her ADHD when it comes to matters such as keeping a set of keys on her.

The claimant had in fact lost her keys on two occasions at the offsite work event; once in the morning when the claimant had not consumed any alcohol and later in the evening when she had to crash in the sauna. The claimant had consumed quite a lot of alcohol on one night of the offsite when she got locked out of her room. However, being disorganised and forgetful maybe features of ADHD as identified by Judge Harding in her findings. The Tribunal found that losing her keys on the first occasion and being locked out was likely to be something arising from her forgetfulness, a feature of the claimant's ADHD. However, drinking alcohol is likely to have played a part of being locked out later in the evening. The claimant confirmed in her evidence that drinking alcohol can exacerbate symptoms of her disability of ADHD. Insofar as the claimant was criticised for being locked out in the evening the tribunal finds that this was likely in part to be

as a result of the combination of her alcohol consumption and her forgetfulness which is a something arising from her disability of ADHD.

260. The Tribunal finds established that the claimant was subject to less favourable treatment, dismissal by reason of something arising from her disabilities.
261. If C proves any of the above unfavourable treatment can it be shown that it is proportionate means of achieving A legitimate aim ? R1 and R2 Rely on the following at a legitimate aim :
- (b) the need for businesses to be able to part company with underperforming senior team members in order to meet objectives and ensure the business and survival of the business that aim is particularly important in the context of a modest sized startup that has yet to make a profit and has recently reduced its headcount.

The Tribunal was satisfied that the claimant had been subject to unfavourable treatment for something arising out of her disability. The Tribunal then assessed whether the approach was objectively justified.

The Tribunal finds that the respondent's aim was a potentially legitimate aim. The respondent was a new business, and it was not in profit at the time of the claimant's dismissal. It had to take the difficult decision to make redundancies in January 2023 and reduce its workforce. It was critical that the business should succeed. However, the Tribunal is not satisfied that the dismissal of the claimant was proportionate in June 2023 in the context that the respondent had failed to discharge its duty to make any reasonable adjustments (the duty having arisen at the beginning of February 2023). The claimant had an onboarding period of 3 months. The claimant had been given reasonable adjustments in previous employments and in her current employment. The claimant had thrived in her former employments where reasonable adjustments were provided by employers. By end of May 2023 Chris commented that the claimant was showing some improvement. Balancing the factors there was discrimination arising from the claimant's disabilities and the measure adopted of dismissal of the claimant in June 2023 in the absence of making any reasonable adjustments was not a proportionate means of achieving a legitimate aim.

The section 15 claim is well founded and succeeds.

Duty on employers to make reasonable adjustments s.20 (3) EqA

Auxiliary Aid-ADHD/Dyslexia Coach

262. Was R1 and R2 under a duty to make reasonable steps to provide an auxiliary aid to C, in the form of an ADHD/dyslexia coach to provide guidance on the difficulties with navigating the workplace for someone with ADHD/Dyslexia in that but for the provision of that auxiliary aid, C would be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled.

263. C's case is that the substantial disadvantage is that C was less able to meet and make agreements and comply with the written asynch culture without this support.
264. If R1 and R2 was under such a duty, did R1 or R2 fail to take such reasonable steps ?
265. On 8 February 2023 the claimant raised with Eva *"..is it possible to access a coach? Or is there any way we could explore an accessibility accommodation with some adhd coaching? I came back from being on PTO for a couple of days and I am so deeply overwhelmed with the sheer volume of information I need to catch up on and I'm desperate to figure out a system of managing all the different information flows I've got and lets just say I've got a worrying level of anxiety at the moment."*. Eva responded. The claimant said she was fine to source one. The claimant's evidence was that she was disadvantaged by not having an ADHD coach to provide guidance about navigating the culture and the workplace. In evidence at the final hearing, the claimant was unable to identify a task that the ADHD coach could have assisted her with in the workplace. However, at the relevant time the claimant was stating that a coach could assist with the sheer volume of information and the Tribunal determined that a coach could have assisted the claimant so to provide guidance on the difficulties with navigating the workplace and assistance with the amount of written documentation which was intrinsic to the async culture of the respondent. The Tribunal finds that from the beginning of February 2023 the respondents were under a duty to provide an auxiliary aid to the claimant, in the form of an ADHD/dyslexia coach. The claimant raised in her email dated 8 February 2023 to Eva Hyder that she was struggling and requested some ADHD coaching. This request was repeated to Eva Hyder (on her evidence) in May 2023. The employer does not discharge its duty to make reasonable adjustments by asking an employee if they can make arrangements. The Tribunal finds that the claimant with ADHD would be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled namely the claimant was less able to meet and make agreements and comply with the written asynch culture without this support.
266. The claimant gave evidence (which was accepted) that a coach in the past assisted her (and removed any disadvantage). The Tribunal considers it is unlikely to be at a considerable expense and Eva raised no concerns about the claimant sourcing one; she just wanted her to come back with a price. The adjustment was reasonable.
267. The respondent failed in its duty to make reasonable adjustments. This failure impacted the claimant's ability to succeed in this role which led to the respondent's decision to dismiss her.

268. Was R1 or R2 under a duty to take reasonable steps to provide an auxiliary aid to C in the form of providing software tooling, specifically a screen reader, in that but for the provision of that auxiliary aid, C would be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled?
269. C's case is that the substantial disadvantage is that it made it harder for C to concentrate and comply with the written asynch culture.
270. If R1 or R2 was under such a duty did R1 or R2 fail to take such steps as are reasonable to avoid to the disadvantage to C?
271. At the commencement of the claimant's employment, the claimant was given a budget to fill her office. The claimant did not request any office equipment. Although the claimant stated she had asked for a screenreader at page 1223. What the claimant actually asked Victor, Jimmy and Asif who were junior members of staff employed by the respondent was for any recommendations for a screen reader. The Tribunal finds that this was significantly different from requesting from HR/Eva Hyder or her manager a screen reader by way of a reasonable adjustment/accommodation. The claimant alleged that she did ask Mike Brevoot for a screenreader but there was no contemporaneous document about this and Mr. Brevoot denied it. On the balance of probabilities, the Tribunal found that the claimant was mistaken, and she did not raise it with her manager, Mr. Brevoot. At best the claimant enquired with Mr. Brevvot about whisper AI in a slack message.
272. In any event under cross examination the claimant was asked how not being able to use of the programme disadvantaged her. The claimant stated that she read 4 to 8 times slower so the screen reader sped up her reading so that every time she needed to read the screen reader would have benefitted her.
273. The claimant disputed that she was writing a book using the respondent's software. The claimant stated she had some notes stored on a notebook at page 872 which were notes on the respondent's systems. The claimant disputed that she gave the impression they were adequate for their purposes.
274. At the time of interview the respondent was aware of the claimant's ADHD and dyslexia; the claimant informed Eva. However, the Tribunal finds had the respondent acted reasonably upon the claimant raising on 8 February 2023 the fact she was overwhelmed and needed a ADHD coach (already having been told by the claimant she had ADHD and dyslexia during the recruitment process), the respondent would have referred the claimant to Occupational Health. Such an assessment would on the balance of probabilities likely to have identified the claimant's slow reading speed and noted that it was harder for the claimant to concentrate and comply with the written asynch culture and thereby recommended a screen reader.
275. The claimant was at a substantial disadvantage in respect of writing and reading compared to others without a disability. A screen reader was likely to obviate or mitigate the disadvantage. In the circumstances that other employees used a screenreader it was likely to be inexpensive.

276. In the circumstances the respondent failed in its duty to make reasonable adjustments. Part of the reason to dismiss the claimant was that she failed to make and meet arrangements and did not adapt to the asynch culture. The Tribunal finds that these criticisms were due to the claimant's disability namely the difficulty in concentrating and complying with the written asynch culture. The failure to make a reasonable adjustment (by failing to provide a screen reader) affected the claimant's performance and led to the respondent's decision to dismiss her.

Auxiliary Aid- access to a PA

277. Was R1 or R2 under a duty to take reasonable steps to provide an auxiliary aid to C, in the form of failing to provide her with access to a PA, in that but for the provision of that auxiliary aid, C would be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled?

278. C's case is that the substantial disadvantage is that because of the volume of written documentation C was less able to meet and make agreements and comply with the written asynch culture without this support.

279. If R1 or R2 was under such a duty, did R1 or R2 fail to take such steps as are reasonable to avoid the disadvantage to C?

280. The claimant stated that a PA was provided to her at another employer, a bigger company than the respondent. At page 1072 it was not stated that Slack knew about the claimant's ADHD and dyslexia. However, the Tribunal accepts the claimant's evidence that she did mention her dyslexia and ADHD to Slack and was part of the disability group meetings at Slack. The claimant needed a PA for 2 to 3 hours per week but suggested she did not know when she would need one so could book a virtual PA or borrow PA assist from another executive. The Tribunal accepted the claimant's case that because of the volume of written documentation the claimant was less able to meet and make agreements and comply with the written asynch culture without this support.

281. At the time of the interview the claimant had informed Eva that she had ADHD and dyslexia. Further, if the respondent had done a workplace assessment via occupational health it is likely that the respondent would have received some guidance that she required a PA. Mr. Landgraf has use of a PA. The claimant was suggesting that she could have had use of this PA on occasions. In the circumstances this would have been a reasonable adjustment (with little additional cost) for the respondent to take and would likely have removed the asserted disadvantage.

Reasonable adjustment : taking notes at meetings

282. Did the employer apply a provision, criterion or practise (PCP) of not taking notes during one to one meetings;

283. If so did this PCP put C at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, namely that C did not know what she had been told was expected of her as a result of her difficulties in concentrating and/or absorbing information caused by both her dyslexia and her ADHD?

284. If so, did R1 and R2 fail to take such steps as it is reasonable to have to take to avoid the disadvantage to C?
285. The claimant identified only one meeting when she was asked not to take notes. This was the meeting with Eva Hyder on 15 May. The claimant did not challenge Johanne's evidence that it was a standard practice to take notes in meetings. The claimant did not identify the disadvantage by being told by Eva not to take notes; the claimant simply disagreed under cross examination that she was not disadvantaged without articulating why.
286. Eva said she would have made the same request to another employee in similar circumstances so that the Tribunal did find that there was a PCP applied for not taking notes where the respondent wished to ensure during a one to one that the employee was fully concentrating (see **Ishola**); it was not simply a one off.
287. However, the claimant did not establish on the evidence any disadvantage she suffered by reason of not taking notes on this particular date. This claim fails.

Reasonable adjustment : deadlines for work

288. Did the employer apply a provision, criterion or practise (PCP) in the form of an expectation that work would be done by a deadline or by an agreed time;
289. If so, did this PCP put C at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled namely that C regularly missed deadlines because it took her longer to read and absorb information and it was hard for her to remember deadlines?
290. If so, did R1 and R2 fail to take such steps as it is reasonable to have to take to avoid the disadvantage to C? C contends that she should have been given flexible deadlines and/or had deadlines extended.
291. The claimant was unable to state under cross examination which deadlines were not extended by the respondent. At paragraph 49 and 50 of the claimant's witness statement the claimant identified one deadline she had missed. When the claimant missed the deadline, it was agreed that Mr. Brevoort give feedback to the claimant to ensure that she kept parties up to date if a deadline could not be met. It was the claimant's understanding that not making an arrangement meant she did not make deadlines.
292. The Tribunal found from the evidence that the concern for the respondent was that the claimant would change a deadline (or an arrangement) and then not communicate that this new deadline or arrangement was actually not possible to keep. The Tribunal finds that the respondent's concern about the claimant's conduct was related to her ADHD/dyslexia; the claimant can be forgetful (as identified by Judge Harding) and the claimant takes longer to read documents. These features of the claimant's disability on the balance of probabilities would have affected the claimant's ability to meet deadlines per se and also inform others that she was not able to meet a further deadline.
293. The Tribunal did not consider on the facts that the claimant had made out this allegation. The claimant could only identify in her evidence one deadline that was missed. The claimant had extended it to another date; failed to meet the

new date and failed to inform others she would not be able to make the new date. In the circumstance the claimant had identified in her evidence only one deadline which she missed; she extended it and then did not make it. The Tribunal does not consider the claimant's allegation is made out.

Direct sex discrimination s.13 (1) Equality Act 2020

293.1 Did R1 or R2 subject C to less favourable treatment? See relies on her dismissal as a less favourable treatment;

294. If so, was Rs conduct in doing so less favourable treatment because of sex? C relies on the following as actual comparators; Johannes Landgraf; Austin Prasad; Phillip Pietsch; Michael Aring; Christian Weichel and Kai Klasen. Further the claimant relies on a hypothetical comparator.
295. The way that the claimant's case was summarised at the hearing was that part of the reason to dismiss her was the fact that she was intoxicated at the offsite. Males were also intoxicated at the offsite including Mr. Landgraf. Further that during a previous offsite in Portugal a number of males were intoxicated but not dismissed.
296. The claimant relies upon Mr. Landgraf as an actual comparator who it is alleged was intoxicated at Lofer but not dismissed. The Tribunal rejects that Mr. Landgraf was intoxicated at the offsite in Lofer. There is a dispute of evidence between the claimant and Mr. Landgraf and the Tribunal prefers the evidence of Mr. Landgraf which is corroborated by Eva Hyder and Talia Moyal; he was not drunk.
297. The Tribunal does not find that the claimant was dismissed for actually being drunk at Lofer; the claimant was dismissed for a number of reasons (set out above) and for her behaviour because she was drunk; namely crying; sleeping in the sauna; turning up late for the shuttle bus on departure of the hotel. These behaviours lacked professionalism from a senior member of the leadership team and fell short of the executive presence expected of the claimant as a Vice President. The Tribunal has already noted that the claimant was under significant personal stress at the time which was likely to have affected her behaviour on that evening. The Tribunal rejected that Mr. Landgraf was intoxicated at the Lofer offsite and nor did he cry, sleep in the sauna or turn up late for the shuttle bus. Mr. Landgraf is not an actual comparator.
298. There is no dispute that a number of men were intoxicated at the previous offsite in Portugal. The photographs disclosed show that during certainly one night of the offsite a number of bottles of alcohol were consumed and raucous behaviour took place inside the hotel room; a male individual doing kickflips; males playing in a children's playground in a public place near the hotel and the Tribunal finds that one male was so intoxicated he missed the next days' work activities. The claimant relies upon the Portugal offsite and the conduct displayed there as part of her "hypothetical comparator" direct sex discrimination claim.
299. The Tribunal determines that the attendees in respect of Portugal (the previous offsite) were not hypothetical comparators. The males and the behaviours they displayed were in the context of not having been warned about excessive

drinking pre the off site. After Portugal and prior to the off site, Eva Hyder had sent a notice warning attendees about not drinking excessively (this is unchallenged evidence which the Tribunal accepts). That is a significant difference between the Portugal offsite and the Lofer one which the claimant attended.

300. The Tribunal rejects the claimant's case that she has established a prima facie case of sex discrimination. In any event the claimant was not dismissed for being drunk but dismissed in part for her behaviours by reason of being drunk; she displayed a lack of professionalism namely lack of executive presence as a Vice President; that had nothing whatsoever to do with the fact that the claimant is a woman.
301. The claim of direct sex discrimination is dismissed.

Remedy

302. Judge Clarke identified in the list of issues that remedy might be considered if appropriate. The Tribunal declined to determine issues of Polkey and contribution at this stage deciding that it was not appropriate. The findings made are fact specific and may require further consideration by the parties in respect of remedy. The Tribunal was also concerned that there was an incomplete picture concerning the claimant's panic disorder and how this might impact on her continued employment. In the circumstances a further case management hearing will take place for directions to list the case for a separate remedy hearing.

Employment Judge Wedderspoon
Date: 10 August 2025