EMPLOYMENT TRIBUNALS

Claimant: K. Jaydon

Respondent: Threesixty Services LLP

Heard at: Manchester **On:** **17, 19-21, 24-26 March 2025; 6,7 and 9 May 2025; and (in chambers) on 16 and 17 July 2025.**

Before: Employment Judge Leach; Mrs C.Nield; Ms S Moores.

Representatives
For the claimant: In person
For the respondent: Ms A. Niaz Dickinson (Counsel)

JUDGMENT

The unanimous decision of the Tribunal is that:

a. The claimant's various complaints under the Equality Act 2010 fail and are dismissed.

b. The claimant was not constructively dismissed. The complaints of unfair and wrongful dismissal fail.

REASONS

A. Introduction

1. The claimant complains that, during their employment with the respondent, the respondent discriminated against them contrary to sections 15 and 19 Equality Act 2010 and failed to make reasonable adjustments contrary to sections 20/21 Equality Act 2010

2. The claimant also makes complaints that they were victimised, contrary to section 27 Equality Act 2010 and that they were unfairly, constructively dismissed.

3. The claimant also makes a claim for notice pay (wrongful dismissal).

B. This hearing

1. The final hearing was initially listed for 8 days beginning on 17 March 2025. Unfortunately for reasons beyond the control of this Tribunal and the parties, we were unable to sit on 18 March 2025. We did not begin to hear the claimant's evidence until 19 March 2025.

2. Ms Niaz Dickinson's cross examination of the claimant took 3 days. This was due in part to the significant number of complaints and detail provided. It was also because the claimant told us they found it very difficult to provide a yes or no answer to a question even where such an answer would have been sufficient. They told us when providing answers to questions, they needed to provide detail to explain their position. They told us that this was due to their autism and/or ADHD. We decided to provide the claimant with more leeway than we might have done with claimants who did not have the claimant's conditions. We sought to maintain proportionality, allowing the claimant more time to provide answers but also recognising the benefits to the parties of being able to reach a conclusion in the time available.

3. Discussions about the list of issues were necessary and continued over the first 4 days of the hearing. The main (but not the only) concern was that the unfavourable treatment for the purposes of the complaints under section 15 Equality Act 2010 had not been clarified in the list of issues drawn up at case management stage. There was simply a reference to the unfavourable treatment *"as set out in the ET1 statement from paragraphs 4 to 127 (but not paragraph 126 which is about the claimant resigning)."* The parties and the Tribunal recognised at the outset of this hearing, that was not specific enough for the respondent to understand the case it had to meet at this hearing or for the Tribunal to understand what it needed to make decisions about. 10 or so days before the hearing, Ms Niaz Dickinson sent to the claimant a list of the "unfavourable treatment" that she had identified from those paragraphs. The claimant attended the hearing indicating that they broadly agreed with the list.

4. Early in the morning of day 2 the claimant provided their own list of unfavourable treatments and on that morning we went through the list . Following these discussions the list was refined. There were some other changes to the list of issues and by the morning of day 4 the Tribunal was able to propose an updated list to the parties. Discussions on day 4 about the draft list were difficult at times but by the morning of day 5 we had an agreed list. s.

5. Whilst we recognised it not essential to reach agreement with both parties on a list of issues, the case management process had anticipated an agreed list of issues. We decided that it was important to take all reasonable steps at this final hearing stage, to arrive at an agreed list.

6. The claimant finished their evidence on the morning of day 5. We then heard from the respondent's witnesses. We heard from Katy Bird (claimant's line manager) (KB) on the afternoon of day 5 and on day 6. We started to hear from Laura Chuck (respondent's managing director) (LC) on day 7.

7. Late in the morning of day 7 the claimant told us that they were struggling with their health and needed a break. We took an early lunch break. The claimant did not return to the hearing room following the lunch break. A companion of the claimant told us that, because of poor health, the claimant was unable to return. We decided not to continue that afternoon and instead fixed more dates for the hearing.

8. Given the interruption, we required the claimant obtain supporting medical evidence from their GP or other clinician that had treated the claimant, which they did.

9. We resumed on 6 May 2025. By that stage the building normally occupied by the Manchester Employment Tribunals was closed for health and safety reasons and we needed to relocate elsewhere in Manchester to the Immigration and Asylum Tribunal centre.

10. Before the hearing resumed, the claimant asked for the May dates to be pushed in to June. There were no available dates in June. On the basis of the information provided, it was decided to continue with the dates in May.

11. On 6 May 2025, we continued with and concluded LC's evidence. We heard from Russel Facer (respondent's chief executive) (RF) on 7 May 2025. The parties were provided with an opportunity to make closing submissions on 9 May 2025.

12. We were provided with a main bundle of documents (1339 pages) as well as a supplemental bundle (273 pages). References to page numbers below are to the main bundle unless stated otherwise.

C. The Issues

13. The list of issues (agreed following the process described above) is annexed to this Judgment. It has guided our fact finding and decision making.

D. Findings of Fact

Introduction

14. The claimant began their employment with the respondent in October 2019. Their job role was compliance monitoring officer.

15. The respondent provides compliance and support services to independent financial advisers (IFAs). It was set up about 20 years ago. It has about 68 employees. For the past 10 years it has been owned by a large financial provider although operates with considerable independence from its owner.

16. The clamant was recruited to their role with relevant experience, particularly in defined benefit (DB) pension schemes. When working for the respondent, the claimant initially focussed on DB related work although it was planned that the claimant's work areas would widen and the claimant would gain additional financial qualifications to those they already had.

17. In September 2019 the claimant was diagnosed with Attention Deficit Hyperactivity disorder (ADHD) and was waiting for results of diagnosis tests for suspected autism. The respondent was told about this during the recruitment process. A formal autism diagnosis was eventually made in October 2021.

18. The respondent accepts that the claimant has these impairments and that they amount to a disability for the purposes of section 6 Equality Act 2010.

19. Throughout the time that she managed the claimant, KB was aware of the claimant's autism and ADHD diagnoses. This is what KB says at para 10 of her witness statement:-

> *"Kate had made myself and others aware that they believed they had Attention Deficit Hyperactivity Disorder. And was on the autistic spectrum. Kate was quite open about this. Kate had also made it clear that they did not wish any special treatment and wanted to be treated exactly like others. In fact there was no reason to treat Kate differently in any event, as there were no difficulties or issues with their work. To my knowledge, Kate did not request any specific support and nor were there any red flags suggesting that Kate needed any particular support."*

The claimant's employment with the respondent – up to early 2021

20. In this period the claimant focussed on DB work including participating in workshops about DB schemes that the respondent ran for its IFA clients. The claimant was managed by Lynn Howarth (LH). There was a good working relationship between the claimant and LH. The claimant's evidence is that when under the management of LH they felt "*in a safe place*" and that they felt they were a "*positive addition to the business*." The claimant says that during this time, they held their employer in high regard.

21. The respondent did not refer the claimant for a workplace or risk assessment, did not obtain external input in to managing the claimant at work or whether any adjustments should be made. The claimant has no criticism of their management in this period. They were managed effectively. Sometimes there were discussions with the claimant about their behaviour and allowances were made for the behaviour; the claimant was allowed to work from home more frequently than other employees (examples at pages 233 and 236).

Appraisal system

22. The respondent introduced a new appraisal system in 2020. Using this system, LH appraised the claimant in January 2021, about 14 months after the claimant's employment began. A copy of the appraisal form (which includes comments from the claimant) is at pages 265-276.

23. The appraisal provides grades or marks against certain defined competencies. Against each competency, the appraisal form sets out indicators for those competencies. The competencies are well defined. It is clear from the indicators what should be done to meet each competency. The competencies applicable to the claimant were as follows:

a. Communication.
b. Client focus.
c. Team player.
d. Analysis and problem solving.
e. Planning and organisation.
f. Drive to achieve results/continual improvement.

24. In addition, the appraisal looked at what were called *"performance statistics."* A print-out recorded the days worked and the different types of work carried out. Fee earning and non-fee earning activities could be distinguished from this print-out.

25. Another section of the appraisal form is headed "*Performance Development Plan*" enabling appraiser and appraisee to look forward and discuss whether the current role utilises the appraisee's capabilities, whether the appraisee has any suggestions for change and how they want to develop further. The claimant's comments include the following:-

> " *Since expanding more into other tasks such as writing articles, assisting in seminars and assisting other colleagues, especially with DB queries, I feel this utilises my knowledge and expertise more. I have only been working on DB cases since starting at threesixty and whilst I was recruited as a file reviewer, I do not think this alone fully utilises my capabilities.*
>
> *Ideally I would like a more hybrid role, but I need to fully grasp my CFR training first in order to ensure I have built good foundations to work from.*
>
> *I aim to look at process improvement, look for changes that I can make that benefit threesixty and my colleagues*."

26. Objectives were also set out. One of the objectives was to adhere to the procedural aspects of the role. Specifically mentioned were the requirements to log time (Time Logs) continuing professional development and passing annual knowledge tests.

27. The appraisal system scores against each competency using the following system:-

> Excellent (5)
> Good (4)
> Satisfactory (3)
> Needs some improvement (2)
> Unsatisfactory (1)
>
> Following the appraisal process in January 2021, the claimant was scored 3s against 3 competencies and 4s against the other 3 competencies.

<u>The claimant's employment – from around January 2021 to January 2022</u>

28. KB became the claimant's line manager from early 2021. LH continued to be involved in managing the claimant. Although LH's involvement declined as 2021 progressed, even by September 2021, LH retained some management responsibility for the claimant. We note the terms of an email dated 2 September 2021 from LH to KB (page 343):-

> *Hi I gave Kate feedback today on* [their] *session yesterday. In the main*, [they] *took it in good spirit – criticism (because that's how* [they] *sees it) is always difficult to swallow. I'll give you the highlights/ low lights when you've got a moment……."*

29. KB gave evidence that the claimant found it difficult to accept feedback on their work. By this email, LH (who the claimant regarded highly) corroborates KB's evidence on this point. We find that the claimant did find feedback difficult to accept, even though it was given to help the claimant. That is also apparent from other findings in this Judgment.

30. The claimant gained more finance qualifications and started to carry out a wider range of work than DB related instructions. They were being trained to carry out client file reviews which is a major aspect of a compliance monitoring officer's role at the respondent. These are reviews of files of IFA clients . Whilst the claimant had a lot of DB experience they had less experience in other financial products and services provided by IFAs and not experienced in the respondent's file review methods. Many file reviews were part of a retainer-based service the respondent provided to IFAs. The reviews are carried out to ensure that FCA requirements are being adhered to, that other compliance requirements are met, that the files are in order, that there are audit trails to show that suitable advice is being given and appropriate investments made.

31. The respondent generally expects file reviews for its retainer clients to be done in a day and its pricing model is based on that general expectation. Ad hoc reviews are file reviews for IFAs who are not supported by a fixed fee retainer agreement. These ad hoc reviews are usually (but not always) charged on an hourly basis for the work carried out.

32. Compliance monitoring officers have schedules of work. Instructions are added to an employee's schedule as they arise. A lot of work can be scheduled well in advance. IFA clients on retainer arrangements can have their reviews scheduled a year in advance. Other work such as workshops that the respondent runs for clients can (and generally is) added to a schedule well in advance of the workshop itself.

33. Ad hoc work on the other hand by its nature might be required at short notice. Ad hoc instructions are added to the schedule of an employee who has gaps in their schedule; the employee with most capacity at the relevant time. Capacity was not just measured in terms of file reviews. It took in to account other work in a schedule of a compliance monitoring officer.

34. At all relevant times, the respondent had a target for a full-time compliance monitoring officer (CM) to carry out an average of 3.5 reviews a week. That means 3.5 days of a 5-day week is expected to be covered with client work, leaving the employee with another 1.5 days on average for other tasks such as admin work (emails and so on) and CPD training. We have not been provided with any evidence that the aim for employees to complete 3.5 a week on average was a strict requirement or applied with any rigour. We accept the respondent's evidence that, considering the claimant's work particularly:-

a. work other than the file review work was factored into the expectations of their working week. In other words, the claimant did not just carry out file reviews for retainer clients. For example, they ran workshops, they carried out DB related work.

b. During the first half of 2022, the claimant was still considered an employee who had only recently started regular file reviews (i.e. reviews on files that was not DB work). The respondent looked for the claimant to become more efficient in this work but did not impose any undue pressure on the claimant to achieve this. Many of the complaints are based on an assertion that undue pressure was placed on them. Having considered all of the evidence we conclude that might have been the claimant's perception but it was wrong. We provide more detail below.

35. The evidence of the respondent's witnesses (particularly KB and LC) is that the respondent does not apply a long hours culture, that a working day is expected to be 7 hours and that employees can choose between a working day of 8am - 4pm or 9am - 5pm . We asked whether this might be a theoretical intention only whereas in practice employees were expected to work longer hours. We accept the evidence provided in response to these questions, that the respondent's expectations were for its employees to work 7-hour days and generally that is what they did because the workload expectations placed on employees allowed that.

36. We also accept that at relevant times, particularly from April/May 2022, the claimant often worked for longer than 7 hours although did not expect to.

37. As we note further on in this Judgment, by mid-2022 the claimant had raised a grievance against KB, claiming that they had been belittled and bullied, pressurised and harassed by KB. The claimant says that it must have been clear to the respondent (and particularly KB) from late 2021 that they needed help in the form of reasonable adjustments to enable them to carry out their work. The respondent's position is that the claimant was performing well in work and, until April/May 2022, they were not aware that the claimant was struggling. We have focused on what is in contemporaneous documents such as email exchanges, messages as well as the appraisal form in January 2022.

38. We were referred to a note compiled by KB in preparation for a meeting with the claimant on 26 November 2021 (pages 375-6). It evidences appropriate preparation by a manager who is in the process of assisting an employee. At this stage the claimant was still training into the CM role. The note was written by KB to help her provide feedback to the claimant. Some of the feedback was about the extent of commentary/detail the claimant had provided on a review and the time spent. Having read the document and heard from KB we are satisfied that KB was trying to help the claimant become better at the role that the claimant was being trained into. We also find that the claimant did not welcome the feedback provided. They regarded it as negative, as excessive criticism of them, even though it was not. This was consistent with how the claimant had received feedback in the past. LH also had difficulty

giving positive feedback (see above). Understandably, KB considered carefully and prepared for her discussion with the claimant.

39. We have also seen emails around this period by which the claimant requested time to be set aside for admin time, for medical appointments, for time working at home – all without any issue or objection from KB or others within the respondent. (examples at pages 378, 364,379,380,400).

40. It was not known to anyone at the respondent that during this same period, the claimant expressed high emotion and anger about their work in personal messages to their wife Laura Jaydon (LJ). We have been taken to messages in which the claimant makes very offensive comments about KB, indicating the claimant had a deep dislike of her. (for example messages on or around 11/12/21 from 1324). The messages also indicate that the claimant was at the time, deeply dissatisfied with their work. For example *"I'm just a fucking commodity and heaven forbid you'd need to find some time somewhere to actually do some reading on something between review days."* and "*There are 20 working fucking days in Feb and I'm fully booked up 8hrs day on 15 of them with the four Fridays having at least 4 hours of meetings. I have 2hrs of prep work and 3hrs of write up work. That leaves me 26hrs total in Feb. For all admin training everything. There are 140 hours and they're accounted for 114 of them. Fuck my life. Without accounting for any emails or phone calls or queries."*

41. But these messages indicating the claimant's deep dislike for KB, the respondent business and their work were all to their wife/wife to be. The respondent was not aware at that time of this unhappiness.

42. We are satisfied from reading internal correspondence and documents from that same time, that the claimant put forward a different picture to colleagues and managers than the messages to their wife.

43. KB and others found that the claimant was sometimes a challenging employee to manage. But KB and LC regarded the claimant as an employee with considerable ability and knowledge who needed guidance and assistance as they developed into a wider role.

44. KB's management style required accuracy. She was precise with her language and expected the same of others. This is evidenced by the terms of an email dated 26 November 2021, from KB to the whole of the team being managed by her. It noted the importance of eliminating typos from reports and also provided this instruction:-

> *Finally, for the record and the avoidance of doubt:*
>
> *Client – one person*
>
> *Clients - more than one person*
>
> *Client's - signifies single person ownership. For example; Mr Smith's attitude to risk is cautious, could also be written as; the claimant's attitude to risk is cautious.*

Clients' – signifies the ownership of more than one client. For example: Mr and Mrs Smith have a joint GIA worth £100,000, or the clients' GIA is worth £100,000.

45. Whilst (1) directed at the whole team and (2) provided in the pursuit of excellence, feedback such as this was also received negatively by the claimant. Negativity built up to the extent that the claimant expressed their feelings as they did to their wife on 11 December 2021 (para 40 above). This continued in to 2022.

Appraisal – January/February 2022

46. We have noted above, the appraisal method used by the respondent and the 3 parts of the appraisal form. This claim includes complaints about the appraisal process itself as well as the way that the claimant says KB treated them in the process of February 2022. The claimant complains that the aspects of the appraisal process had no quantifiable measures, required subjective assessment and as such disadvantaged them as a disabled person. They say that changes to the appraisal process should have been made as reasonable adjustments to overcome disadvantages that their disabilities brought.

47. We have reviewed the appraisal documentation from February 2022 and read the claimant's comments made under each competency. Having done this and considered other evidence provided, we find that the claimant was able to understand what was required against each competency, and to explain their own assessment of their performance against that competency.

48. The issue for the claimant is that they disagree with comments that KB said/wrote during the appraisal process and with KB's own appraisal of the claimant. The claimant thought they should have received some higher scores than KB gave.

49. In their evidence to the Tribunal the claimant indicated that there was significant conflict between their own assessment and KB's. We have gone through the draft appraisal form completed by the claimant and then with KB's comments added (pages 402-415).

50. In the documentation provided in September 2022 to support their grievance against KB, the claimant analyses written comments made by KB on this appraisal documentation. We find that the claimant has read into KB's comments, meanings that are just not there and consequences that simply did not arise (or would have arisen). Below we provide 2 examples.

51. Example One: Under the heading "client focus." Various bullet points describe what is to be considered under this competency including "develops long term relationships, evolving services as required to meet individual/organisational needs." The claimant provided herself with a score of 5 ("Excellent. **Always** demonstrates this competency").The claimant's narrative in the form seeks to justify this score – and gives some excellent examples of client focus.

52. In response, KB marked the claimant as a 4 (Good. Regularly demonstrates this competency) and adds the following comment: *"We are all client focused, all of the time, you haven't had the opportunity yet to consistently develop and deliver long-term client*

relationships, evolving services as required to meet individual/organisational needs. While you refer to the website, book web tours and suggest other areas, can you demonstrate that this is ALWAYS done" .

53. Example 2: Under the heading Team Player. As above, the claimant provided themselves with a score of 5. In response KB marked the claimant as 4. Various bullet points describing what is expected include "*Networks where appropriate with external colleagues to enhance own effectiveness."*

54. In response to the claimant's comments supporting the proposed score of 5 (Excellent) KB replied

> *"These descriptors are not about effort, they are about development. For me the two areas for you to work on are:*
>
> *• Proactively offers support and advice to colleagues. - Be in a position to do this across all areas, not just DB.*
>
> *• Networks where appropriate with external colleagues to enhance own effectiveness.*

55. Many employees may have accepted that, where they had not been in a particular role for long that it might be a fair point to note that more time was needed to be able to refer to relationships with clients as long term or to develop wider networks and areas of support. Other employees may have been willing to respond to their manager and demonstrate that they had achieved the areas the manager was questioning. That would assume a working relationship that was sufficiently open and mutually respectful. Whilst KB had no cause to understand how negatively she was viewed by the claimant at the time, it was apparent from what we have noted above, that by this stage the claimant had decreasing respect for KB.

56. We also note (because it is of direct relevance to some of the complaints raised) the claimant's comments at the bottom of page 403 "*I cannot claim to be perfect for managing time and schedules at all times however in my first year of fully managing my schedule I believe I have succeeded in my competency, without any major disruptions or issues or causes for concern*." (KB had amended the wording from "*a full schedule*" to "*my schedule*" noting that "*97 days of client delivery is not a full schedule. While there are no issues or causes for concern you need to be accurate in the statements made.)*

57. We have no criticism of KB's comments on this appraisal form. The comments correct statements that KB regarded as not quite accurate. The comments also seek out areas for development and further improvement whilst also acknowledging that the claimant's performance was good. We also note positive comments; particularly at page 409 when KB comments on the claimant's wording under the analysis and problem-solving competency "*You need to beef this section up more in here, you are good at this and take time to understand exactly what is required."*

58. Nor do we have any criticism of the appraisal system. Whilst some of the competencies are not capable of statistical measurements they are all relevant to the role being carried out; the appraisal system provides descriptions of the particular behaviours that are needed to

demonstrate a satisfactory, good or excellent rating against the competency. The vast majority of the claimant's comments on the appraisal form were accepted – not challenged – by KB. The claimant's comments demonstrate that they understood what was required to meet the competencies and were able to provide information and views (with which KB agreed in the main) that they performed well against them. If there was something that the claimant did not understand, the appraisal process provided for discussion.

January -March 2022

59. One of the complaints made (14.3) is that the claimant was "reprimanded" by KB for use of language and communications in emails between the claimant, KB and RF dated 26 and 27 January 2022. It is difficult to understand in the light of the evidence provided, what complaints the claimant can have surrounding this communication. Our findings are as follows:-

a. On 26 January 2022, RF emailed the claimant and KB asking whether they can schedule a DB training session for a client on 7 March 2022 (page 397).

b. The claimant responded to RF to say that whilst the session was not in their diary they could do it but also provided an explanation of their outstanding workload indicating that the scheduling would be tight.

c. RF replied to thank the claimant, stating that he would pick up with KB.

d. KB sent a message to the claimant (who was at the time mainly working from home and running a marathon every day – see below) to speak with them. According to KB, she wanted to tell the claimant that they did not need to take on tasks if they did not have the time to do them. KB's concern was that the claimant had not conveyed the message they may have wanted to – that they were too busy. According to the claimant KB wanted to reprimand them for going into the detail they did about their working schedule, that RF did not need to know that detail and that the claimant was being paid to work a 7-hour day. We prefer KB's recollection of this discussion.

e. The claimant saw the message from KB and wanted to have the requested conversation as soon as possible. Due to work schedules of both, it was not possible to speak on the same day. They did however speak the following day.

f. This issue was not raised again until the grievance meeting on 19 August 2022 and when the claimant provided what they called "Evidence File" during the grievance investigation process.

g. At the grievance meeting, the claimant complained of a "*sharp response*" from KB. The sharp response referred to was KB's request for the claimant to call her.

h. The claimant's complaint was that KB had asked for a call but that the claimant was initially training a client and then subsequently KB was unavailable. That made the claimant anxious.

i. The claimant also indicates that KB wanted to speak with them to reprimand them about the email. That was the claimant's inaccurate perception. KB was concerned that the claimant might in fact have been indicating they were too busy to take on the new task and wanted to speak with the claimant about this and tell them not to take on the task if it would result in them being too busy.

The claimant's marathon record

60. From late December 2021, the claimant embarked on a challenge of running 100 marathons in 100 days. The challenge was used by the claimant as a way of raising charitable funds. They exceeded the challenge, running 106 marathons in 106 days.

61. The respondent was supportive of this challenge. The claimant was provided with help in their fundraising and with their work.

62. In their evidence at this hearing the claimant had difficulty accepting that the respondent showed support for them during this time. We find they did. The claimant's working hours were changed, fundraising publicity was sent internally and to clients of the respondent, the respondent donated £1000 towards the causes that the claimant was raising money for.

63. We also accept the evidence provided by LC and KB that the claimant was given lighter duties during this 3.5 month period and that colleagues picked up some work that would otherwise have been allocated to the claimant.

64. It is also apparent from the evidence (from witnesses and contemporaneous documents) that during this period, the claimant was continuing to engage in accepting appointments and instructions – and making themselves available for additional tasks (see 59 above). But what is not demonstrated in contemporaneous documents provided is unhappiness in their work; any concerns or complaints about the workload. What we do see is evidence of constructive working relationships and supportive management in terms of work and marathon challenge.

65. Included in the bundle (pages 451-461) is a transcript of an episode on 28 March 2022, of a podcast called "The Financial Planner Life." The claimant took part in this episode in which they discussed their neurodiversity. An extract of the claimant's contribution is below:-

> *…..people don't always have the time and understanding to say ah, how can we include you, how can we make this work for you and for me. And the great thing about the current employer, it's the first time I have found an employer that said what can we do, what can we do as a company to bring out the best in you, for you and for us and they do, they find ways to make things work for me as an individual not just*

> *make me fit into a box and the positives, you know, particularly with, say for example with ADHD, ADHD thinkers tend to be very creative, will think outside of the box, will come up with genius solutions for problems, you know, you give a person with ADHD a problem not only will they have solved it within, you know, usually quite quickly, they will have come up with some really creative ideas that you might not have thought about otherwise and being on the Autistic Spectrum you know, you hear all these board meetings, they are always looking for bottom up thinking, you know, they are always looking for people who build upwards with their thinking processes rather than taking a vague concept and growing from there, you know, never taking anything at face value, analyse everything. In file review, if you have an analytical mind, if you are detailed and thorough, if you can remember all of that sort of stuff, so like I can tell you all sorts of areas in the FCA Handbook which is rules, which is guidance, I know where to find that information. Those sorts of resources as a business to draw on, are invaluable …*
>
> *But all too often you are seen as a problem first. You are seen as hard work, you are seen as asking too many questions, you are seen as too much of a challenge and the problem is people don't want to always accept that there might be challenges and there might be additional accommodations they might have to make for a person but the reward of that and I have seen that in my job now and honestly, I can say in sixteen years in the industry, it is the first time and I joined in 2019, it's the first time where I felt safe in a job, where I felt that a job really knows me. But that was late life diagnosis as well. I was, in 2019 I had the ADHD diagnosis and that was when they picked up that I was very likely on the Autistic Spectrum too and then the official diagnosis followed shortly after for that as well.*

April – June 2022

66. On 6 April 2022 the claimant reached their goal of running 100 marathons in 100 days (page 462) although then continued running more marathons, eventually stopping at 106.

67. The marathon challenge was swiftly followed by the claimant's wedding in late April/early May 2022. The claimant had invited some colleagues to the wedding and we are aware that the respondent's chief executive (RF) attended. Other colleagues may also have attended.

68. At about the same time, the claimant's workload started to increase. We note that 2 CM colleagues had just left and the respondent was trying to recruit replacements. Perhaps inevitably, in the short term the claimant and other colleagues who remained were affected by this although we also note from an email from LC dated 11 May 2022 that she was aware of the additional workload and reported that the respondent was turning down some work.

69. KB spoke with the claimant on 16 May 2022 and reported that discussion to HR (internal note at page 486).

> *Hello,*
> *I've just spent 15 minutes on the phone to Kate. She is very concerned about the extent of the work she is being booked in to do. She was very upset and says it is not sustainable.*

Comments along the following lines were made:
• Everyone will just work longer until some breaks and goes off sick.
• I'll break first.
• I always blamed myself but now I'm on the meds I know it's not me.

There are some issues with the way in which Kate works, and part of this is the approach that she takes to file review, however, this is not something that we can change. She has explained to me the way in which she approaches tasks and how this is different to way in which a neuro-typical person might approach the same tasks. As a team and a business I do believe that we benefit from this, especially in relation to her technical knowledge, but we do need to be aware of this and adopt an appropriate approach.

I am picking up 2 days of BBT file reviews this month that are in Kate's schedule, this will put me in a better position to understand the issues, gaps and help/training that may be needed.

70. We find KB was concerned about the claimant and wanted to support them. She spoke again with the claimant the following day (17 May) and followed up with this email later that same day.

"*Hi Kate,*

Further to our call today and yesterday, I appreciate that you are flagging your concerns regarding the sustainability of your current workload. I can confirm that this has been noted.

Following our conversation this afternoon about [XXXXX] *you seem to have today's file reviews under control, and you are managing the concerns that you have in relation to Thursday's file review. An email has been sent to the firm regarding the number of documents submitted for review, and they are aware that the number of documents provided will impact the number of cases reviewed.*

I believe that you should be up to date with scheduling and CPD, given the space that we created / blocked off in your diary over the last week or two; if this is not the case, please let me know.

Looking at the week ahead it appears that you will have enough time with some capacity on Friday for tidying up the week's work so you'll be in the best position possible for the week commencing 23 May which has 4 back-to-back file review days, and will be challenging. The weeks after this seems to have a bit more wriggle room, with a mix of file review and DB days, with the next set of 4 back-to-back review days being at the end of June.

Please continue to keep me in the loop so that we can address any issues as they arise and where necessary manage client expectations.

Thanks, Katy.

71. As noted in her email to HR (above) KB intended to take 2 days of file reviews out of the claimant's schedule and complete them herself. The claimant acknowledged this and thanked her (page 485). One of the complaints made by the claimant (14.5) is that on 16 and 17 May 2022, negative and hostile calls took place between KB and the claimant. That allegation is at odds with the tone and content of the emails of the same day. Having also heard from the claimant and KB our finding is that there were no calls that could reasonably fit this description.

72. Unfortunately KB's plan to take 2 file reviews out of the claimant's schedule and carry them out herself, did not go as well as KB had hoped. The work resulted in queries that KB needed to involve the claimant in. However KB's intentions were exactly as she described in her email to HR (quoted above).

73. At the same time, the claimant had adverse physical health issues. Towards the end of the marathon the claimant was using crutches when attending the office, something that LC witnessed and understandably was very concerned about. After the marathon challenge the claimant's condition did not improve and they attended a hospital appointment on 23 May 2022. Medical investigations continued and by 24 June 2022, the claimant was told that they needed an operation to include bone grafting and that they may never be able to run again (claimant's email at 509).

74. During the same period (June 2022) the claimant raised concerns to KB and also to Paula Terry (HR Manager) (PT) about their work and matters related to it.

75. KB emailed the claimant on 15 June 2022 (pages 521-2). The email followed a telephone discussion between them. In this email, KB suggested ways of trying to help the claimant in their work. Other emails followed, particularly on 21 June 2022 This is what we conclude from the emails and the surrounding evidence:-

a. The claimant was struggling to complete file reviews within the time allocated. The claimant's difficulties were in the main caused by them obtaining and addressing too much detail; more detail than the task needed.
b. The claimant had by this stage formed a view that the respondent was asking too much of its file reviewers. The claimant's view was that it was not just an issue for them but for everyone undertaking that work; that the respondent's business and costings were not fit for purpose.
c. KB was trying to help the claimant work more efficiently and was proposing different ways to do this.
d. KB proposed a meeting with the claimant on 23 June. This is how her email of 15 June ends *I think it would be a good idea for us to sit down and discuss how we can make this work moving forward and how we can support you in managing your workload. It's the Staff Day on 23rd June and there should be time at the end of the day for us to sit down. I have asked Laura to join us as I think that it would be helpful for all concerned.*

76. The claimant was negative about KB's proposal to ask LC to attend, although did not say as such to KB. Instead, the following day (16 June 2022) the claimant contacted PT and raised concerns about their work schedule and about KB. They also raised with PT the

proposal made by KB to arrange a meeting at which LC would attend. The claimant described it as humiliating to involve LC.

77. The claimant also told PT that they wanted to raise a grievance against KB. PT proposed to the claimant that they attend the meeting with LC and KB and air the grievances there in the hope that a resolution could be found. It was agreed between them that PT would also attend that meeting.

78. LC was a founder director/partner of the respondent and its managing director. She could discuss the business model with the claimant. KB and PT also considered that KB needed help in managing the claimant. The hope was that the claimant might benefit from LC's involvement.

79. Whilst the respondent provided a witness statement for PT in these proceedings, she did not attend the hearing. PT is no longer employed by the respondent (although that does not of course prevent her attending as a witness). The claimant's evidence is that when speaking with PT on 16 June 2022, they raised a formal complaint about KB. The claimant's call with PT was a long one. The claimant recorded the call as lasting an hour and 50 minutes.

80. Having seen the claimant's own note of the call – page 1138 – as well as narrative from the 2 meetings that followed, we find that the claimant will have said a lot about the business model, about how it was not fit for purpose. The claimant also said in that call that they wanted to raise a grievance. That is not in dispute. PT acknowledged it in her written statement.

Meeting on 23 June 2022.

81. The attendees were the claimant, KB, LC and PT. The respondent has not provided a note of the meeting. The claimant secretly recorded the meeting. A typed transcript is in the bundle (pages 558-594). The accuracy of this transcript is not disputed. Neither party asked us to listen to any part of the recording itself.

82. One of the complaints raised by the claimant is a complaint that this meeting was held. Another complaint is about the way that the respondent handled the claimant's grievance. We have read the 36 or so pages of transcript. Having done that and received evidence from the parties, we note a number of relevant findings.

a. We have no criticism of the respondent's decision to hold the meeting. The claimant continued to express unhappiness particularly about the amount of work that they were expected to do. KB had tried to address the claimant's concerns and had not succeeded. She hoped that involving LC would help. The claimant had told PT that they wanted to raise a grievance about KB. PT regarded this meeting as an opportunity to for the claimant to air their concerns and hopefully for matters to be resolved quickly and informally.

b. The meeting enabled LC to explain the respondent's business model, to listen to the claimant's concerns and to explore ways to support the claimant,

c. The transcript contains comments of support to the claimant throughout.

d. Discussions included topics that are relevant to the various issues in this case. We note that assurances were provided to the claimant about the allocation of time for tasks. We note for example discussions about the allocation of time, acknowledgement that preparation time for new clients takes longer and a willingness to move clients around and provide more time (p574)

e. The claimant's concerns about the numbers of files being allocated to them appeared at times in the meeting to have been regarded by them (the claimant) as a short-term issue. Examples of comments by the claimant:- *"I think honestly if the whole year was exactly evenly split every single week it wouldn't be a problem but that's not the way it's been over the last month which is when this has become a problem…"* Reference to "the last month" was to a period of time when the respondent had fewer employees than it wanted (2 employees having just left).

f. The claimant commented on various occasions that they would be disciplined or fired – when there was no indication from the respondent either in this meeting or at other times, that this was being contemplated (references at 564 – being told not working smart enough and to a "disciplinary route" at page 571 – being fired – at 581, to disciplinaries and firing)

g. A concern that the claimant aired was that they would not know what the work would involve until a particular file was opened and they looked at it. (579/580)

h. The claimant had every opportunity to participate - including to air their grievances– and they did so. The claimant at times became emotional but that did not stop them telling the other attendees how they were struggling with their work and struggling with KB's management style. We note for example the claimant's candid explanation about how they perceived comments in emails from KB (page 562 and 563))

i. KB's evidence (which we accept) was that the claimant waved their arms about at times during the meeting. Whilst we have not heard any of the recording, we also find that the claimant raised their voice at times during the meeting. Also that they interrupted when other people were speaking. (See for example transcript at page 696). The claimant sometimes said things that were obviously unacceptable to the respondent – at times of high emotion. For example at the bottom of 696 when the claimant told the other attendees that they would "go back to logging 7 hours" for a day (even where they were working for longer); when the messages from LC particularly had been clear – that the claimant was to log the actual time they had worked.

j. Both KB and LC suggested methods to help the claimant and a willingness to continue to identify how the claimant could be helped. They asked the claimant to complete Time Logs accurately, so they could obtain a true picture of what

the claimant was doing which in turn would better enable assistance to be given to the claimant.

83. In summary, this meeting was between an employee (the claimant) who wanted to be successful in their role and the employer (LC and KB) who wanted to help the employee to succeed. Unfortunately the claimant perceived that questions about their workload and time were severe criticisms and ultimately was unable to accept as genuine the attempts to help. The claimant also remained of the view that the business model was an unresolved issue as was KB's management style. These were the claimant's central complaints.

84. The meeting ended before the discussion had reached a satisfactory conclusion. The claimant had to attend a medical appointment. However it appears from the transcript that the meeting ended on good terms.

85. Arrangements were made to continue discussions (see below) and LC arranged to meet the claimant on 8 August 2022.

Events between the meeting on 22 June and before the next meeting on 8 August 2022.

86. By email of 29 June 2022 (page 612) LC asked the claimant if they were able to meet up on either 1 or 8 August to continue discussions. That same email also made suggestions about how to assist the claimant and how they might assist themselves in scheduling work.

87. One of the claimant's complaints in these proceedings, concerns instructions from KB on 6 July 2022. The complaint is that, when the claimant cancelled 2 days annual leave later in July, KB told the claimant that she would schedule work for these 2 days.

88. This is what KB's email of 6 July says:

Hi Kate,

Paula has confirmed that it's ok to cancel your holidays, however, I will need to schedule work in for you. On our call you referenced that having the additional time would be beneficial to allow time to schedule CAPO calls etc. Can you please confirm what you need to do in order to get straight so that I can plan accordingly?

89. The claimant replied about 30 minutes later identifying outstanding tasks and noting that they had no time set aside for admin. A subsequent email from KB (11 July – page 627/8) provided an update to a schedule including (on 18 July) half a day set aside for admin, half a day for "auditor scheduling" and a further half a day (on 1 August) for admin.

90. The claimant was on leave during the last week of July.

Meeting on 8 August 2022

91. This meeting was between LC and the claimant. It was secretly recorded by the claimant. The transcript is at pages 649-742. The accuracy is not disputed. The recording included a significant amount of preamble to the meeting, when LC discussed and shared with the claimant very significant issues about her private life – not knowing that she was being recorded.

92. There is a lot of detail in this near 100-page transcript. As with the June meeting, the claimant's complaint about this meeting was that it was held, not specifically about anything said in the meeting. With that in mind and having gone through the transcript, applying proportionality, we limit our findings about this meeting.

a. The transcript shows that for large parts of the meeting, the claimant was talking, raising their dissatisfactions and that LC was listening. The claimant was able to air all concerns that they wanted to raise.

b. Near the start of the meeting the claimant and LC talked about a flexible working request recently made by the claimant, to move to a 4-day week. Whilst LC did not agree to the request in this meeting she was positive about it and about the respondent being able to make arrangements so that it could be agreed.

c. The main focus of the claimant's complaints was not the requirements of the role but about the way that they were being instructed and managed by KB. For example, at page 663 the transcript records the claimant as follows:

> *the reason that I've raised this whole thing in the first place to HR is because I was sick to the back teeth of being spoken to like trash. And and, there's only so long you can last like that and its constant, its relentless and it doesn't stop and something needs to be done about it to be honest with you.*

d. At page 676 the claimant refers to the problem being the management style and at various places refers to management of them as toxic. At page 691 the claimant says they feels like they are *"down some form of disciplinary route…"* because they feel they are being asked to log time so that they can be criticised for taking too long to complete a task rather than logging time to understand how long tasks take.

e. At page 735 the claimant made clear that their deep unhappiness was due to their being managed by KB and was not due to the job itself.

93. The claimant also raised concerns about the respondent's business model but those were secondary to their issues with KB.

94. LC continued in her attempts to provide reassurances to the claimant and to be willing to find solutions to help them. Towards the end of the meeting when the focus remained on the claimant's unhappiness with KB rather than the role or the respondent organisation, LC continued to find ways of addressing and resolving the claimant's complaints. LC recognised that the claimant was raising a formal grievance and told the claimant that the respondent had not dealt with a grievance before, she would need to be advised about the process.

95. As with the June meeting, the discussion appeared to end positively. LC was insistent that whilst the grievance was being looked at, the claimant was to ensure they stuck to a 7-hour working day, they took an hour for lunch. If that meant that they could only carry out a

certain amount of work in the time then they should let LC know, making clear it would not be an issue. LC also told the claimant that they should have a 2-week period to catch up and no further work should be allocated to them. (pages 734/5).

Claimant's grievance

96. On the morning of 9 August 2022 (the day after her discussion with the claimant) LC wrote to the claimant, referring them to the terms of the grievance policy contained in the respondent's handbook. The relevant parts are as follows:-

> *Introduction*
>
> *Where possible, you should try to settle minor, day to day, work-related issues informally. Please do this via your Line Manager. If the issue concerns your Line Manager, you can raise it with their Manager. We recommend discussing any concern promptly. This is often the best way to resolve matters speedily, effectively and without need for formality. For the avoidance of doubt, please note that this section of the handbook (section 17) is non-contractual and does not form part of your contract of employment.*
>
> *Our procedure*
>
> *Our formal grievance procedure allows you to express a complaint or identify a matter of concern still remaining unresolved. It provides an opportunity for us to consider issues you can't resolve informally. You can also use it where you believe an informal approach would be inappropriate. The procedure is open to you at any time and we always try to deal with issues fairly and consistently.*
>
> *If you wish to have a grievance formally investigated, please submit it to us in writing. Please provide full details of the matter and tell us about the solution you are seeking. This should normally be addressed to your line manager. They will arrange a meeting to discuss and consider it. If the grievance is about your manager, address it to their manager.*
>
> *Following the meeting we will confirm the outcome in writing.*

97. The claimant provided a detailed response to LC (pages 744-747) setting out their complaints about the way that KB had managed them, certain phrases that KB had used in the course of managing them that the claimant took against, as well as complaints that the respondent was imposing unreasonable demands on its file review employees and needed more resources. It is relevant to note that the claimant made no complaints about their disability in some way disadvantaging them in their work or in the workplace. The claimant's disability was not referred to. As before, the workload issues raised were ones that the claimant said applied to them and other employees.

98. LC asked the claimant what they wanted as an outcome to resolve the grievance. The claimant responded as follows:-

> *I am seeking an end to the behaviour detailed in my email. Whether this is through external unbiased training or whether this is through an apology I do not know.*

I do not wish for Katy to be pursued under a disciplinary necessarily as I would not like the idea of anybody suffering through a genuine mistake or things having escalated, but rather a genuine apology. If this is the case then I understand that we all make mistakes and that we can move on – it very much is as simple as being able to work in peace without the constant stress I'm experiencing with it all as it stands now. I am not sure what to suggest other than that really to be honest, I just know that for this to be taken seriously this needs to be raised as a formal complaint.

I just know that the relief knowing I do not need to engage with this anymore is at least a step in the right direction and that I need this to end.

99. There was also an exchange of emails on 11 August 2022 (pages 750-753) between LC and the claimant in which the claimant told LC again that they had raised a formal grievance with PT in June 2022 and it had not been dealt with. In their email of 11 August the claimant told LC about how upset they had been in discussions with PT and how, in June, they were at the *"final stage of being able to tolerate the actions of Katy."*

100. The claimant also referenced a figure of 117 file reviews, a figure that the respondent had provided to them in the meeting in June. the claimant understood this to be a reference to work that had been done, a figure that had not taken in to account the other types of work that had filled the claimant's diary and had been given by the respondent to demonstrate that they had not been working hard enough. The respondent's case is that was the number of file reviews that the claimant had in their diary for the following 12 months. It was a "looking forward" snapshot rather than one looking back. We prefer the respondent's explanation.

101. The claimant was invited to a grievance hearing with RF on 18 August (757). The claimant raised a concern about the unavailability of an HR representative on that day and it was therefore rearranged for 19 August 2022.

102. On 18 August, the claimant began a period of absence due to sickness. They remained absent until their employment ended on 30 January 2023.

<u>Grievance Meeting- 19 August 2022</u>

103. We have PT's handwritten notes (778-802) and a typed version (767-777). We have only read the typed notes. We also have the claimant's notes of the meeting (832-850). The claimant was accompanied by their wife.

104. We make the following findings about the grievance meeting:-

a. The claimant raised a complaint that KB should have been aware that, due to the claimant's disabilities of Autism and ADHD, the claimant would have been anxious when, in January 2022, KB sent a message to the claimant asking to speak with them (page 767).
b. The claimant complained that KB did not know how to manage people with ADHD and autism.(768). KB compared their experience with KB, with their positive experience with the previous manager Lynne Howarth.

c. The claimant accused KB of *"gaslighting"* – claiming that KB had engaged in a *"psychological play on power."*
d. The claimant described the long meeting on 8 August with LC as demoralising and frustrating and that after that meeting she realised that the "*systems and processes failed*" (claimant's notes at page 838).
e. The claimant told RF that they "*process things in an obnoxious level of detail."* (page 840).
f. When asked if they recognised that the cultural approach of the respondent was to make changes, the claimant replied that when they started their employment there it was positive and they hoped it would be different but it was a change of manager (to KB) that changed for the worse.
g. The claimant also repeated their complaints made previously about the respondent's business model being fundamentally broken. Sensibly in our view, RF stated that he wanted to avoid that conversation as it was a separate issue. What was by then clear was that the claimant's grievance was primarily about the way that they had been managed by KB.
h. The claimant and RF discussed in positive terms, the possibility of identifying a different role for the claimant.
i. The claimant told RF that they did not value the appraisal process. They were unable to understand how they received a 3% pay rise after joining and then only received a 4% pay rise following a year of doing everything they possibly could.
j. When asked whether the grievance was resolvable, the claimant said that would depend on RF's decision. By this the claimant meant that they wanted a finding that upheld the grievances and therefore (in broad terms) that found KB to have treated the claimant badly as alleged. Only once that finding was given could the claimant consider a resolution and way forward. The claimant made clear if that finding was not upheld, they would not continue working for the respondent (page 775 and 847).
k. The claimant told RF that they did not want him to rush the grievance process. There needed to be a full investigation (page 776, 849)
l. The claimant noted that they had raised a formal grievance in June and it had not been dealt with. RF apologised to the claimant for the delay. The claimant replied that the process had failed and that apologies were irrelevant.
m. RF asked the claimant what could be done to resolve the grievance. The claimant told RF that they wanted to know that they would be financially OK, for the respondent to address policies for dealing with people with protected characteristics, to take people seriously when they say there is a problem.
n. RF told the claimant that he wanted the respondent to be a safe place for people to work and to learn from the episode.

105. On 26 August RF wrote to the claimant to provide them with a copy of PF's notes of the grievance hearing and to ask the claimant to provide more information that they had said in the meeting they would provide.

106. The claimant did provide RF with very significant amounts of additional detail (pages 1086-1218). This was provided on or around 7 September 2022. Not only was the document 132 pages in length but many other documents were electronically embedded into it.

107. Shortly before then (5 September 2022) RF received an email from the claimant's wife (LJ). It is important to identify some messages in this email as it was followed by a request from RF to the claimant to have a "Protected Conversation" (see below). LJ did not in this email say to RF that it would be better for the claimant that they leave the respondent's employment. Far from it. But it portrayed someone who was deeply unhappy and increasingly poorly in the respondent's employment and made clear LJ's wish to protect the claimant.

108. In her email, LJ told RF that the process was having a profound' adverse effect on the claimant; about the long hours that the claimant had worked over previous months, noting that the claimant would provide "*in excruciating detail, the evidence surrounding the grievance.*" LJ opined that the biggest issue for the claimant by that stage was not about the way they had been treated by KB but about the way that the grievance process had been handled. LJ also noted that the claimant had focussed on trying to set out in a document *"beyond a doubt, that she is in fact good at her job, that she does in fact work hard for you and that she has a right to expect to be protected from harm in her workplace"* We note that the respondent (by which we mean LH, KB and RF) did not doubt any of these things that the claimant was still trying to prove. We also note that they had on numerous occasions by that stage tried to reassure the claimant, that they knew they worked hard and that they were trying to help them.

Protected Conversation

109. RF was by this stage obtaining advice. The advisers told RF about an option of a protected conversation under the terms of section 111A Employment Rights Act 1996. That was a process that was not previously known to RF but he decided that it might provide a solution. On 6 September 2022 RF wrote to the claimant in the following terms

> *Hi Kate,*
>
> *Hope you are OK? I wanted to update you as to where I am up to with your grievance but also wanted to explore another way to move forward with matters.*
>
> *One of things I want to explore is whether we can have what is known as a "protected conversation" within the meaning of section 111A Employment Rights Act – the basic ground rules are that it is a discussion with a view to reaching an agreement on resolving all matters – and neither party is able to refer to the conversation in any future processes (eg grievances, tribunal claims etc) if we don't reach an agreement. The idea is that we are free to talk without the conversation being quoted back – so the meeting won't form part of the formal grievance process and won't be minuted. However I think such a discussion would be valuable.*
>
> *You are welcome to bring Laura or someone else on the call for support, but if you can let me know who that person is I would appreciate it.*

Are you able to meet with me at some point this week or next? I am suggesting that we have a call on teams. This week I can do anytime tomorrow morning or Friday morning, alternatively anytime on Monday 5th, Wednesday 14th.

Please let me know and I will send you an invite.

110. In a telephone call on 7 September 202 the claimant and RF discussed how to send and receive the very large evidence file that the claimant had put together. They also discussed the proposal for a protected conversation. The claimant followed this call with an email to RF confirming their willingness to attend but raising concerns about it (page 825).

111. Another exchange of emails took place on 9 September, before the protected conversation took place. We note the following from this email exchange.

a. RF explained the reason why he proposed the protected conversation.

"*I offered the possibility of a protected meeting as I had not received the information from you following the grievance hearing, was aware you are off sick and received an email from your wife Laura, the sum of which led me to believe that a protected meeting might help."*

b. The claimant's reply to this point

"And Now the response to my wife telling you how much she is struggling with all of this is to arrange a protected meeting so you can propose firing me seems an incredible imbalance of power. So don't even begin to try and put this protected meeting on me. I didn't propose it. YOU DID. You don't propose meetings like this without intending to terminate employment contracts. There's no issue with my performance, no issue with redundancies either. Why would I wish to have that as soon as possible? To no doubt have my notice period pay offered and a silencing. Isn't life just wonderful??? I've consulted a solicitor and am ready to have the meeting whenever now. So when's the soonest. Today? Might as well. Nothing left to lose anymore and she's at home today as am I. By indicating this meeting you've made clear you'd rather rid of me [for] *no doubt a pittance rather than sort anything or actually hear me or acknowledge any liability. So I'm ready to have it now since I've been guided on what I need to look out for and say etc. don't even think about acting like I was the one who wanted This. You suggested it and instigated it. As such I'm not going to ignore it. But you know I needed to seek further legal council given the risk this presents to me. The only protection in this type of meeting is for employers not for me. It just tries to get rid of me and silence via legal contracts. So let's get on with it. Before I have zero fight left in me and can't even send these emails anymore. When's the soonest today you can deal with it. 1pm?*

112. The protected conversation took place by telephone later on 9 September. It was followed up with an email dated 16 September 2022 (page 860) confirming a settlement proposal. There is no dispute between the parties that it was a conversation that was held pursuant to s 111A ERA (but of course that does not protect it from disclosure in proceedings under the Equality Act 2010). We do not have the details of the settlement proposal. The parties redacted those details from the copy of the email in the bundle.

113. The email at page 860 notes that the claimant had rejected the offer in the call of 9 September but, having set out the terms of the proposal in writing, asked the claimant to give the proposal some further consideration noting that it was available for acceptance for a few more days "until 5pm next Friday." (that was 19 September 2022).

114. We have considered RF's motive(s) in deciding to request a protected conversation and make a settlement proposal. These are our findings:-

a. In his statement to the Tribunal RF says that part of his reasoning was because he understood that the claimant was interested in setting up a coaching business and the settlement would provide the claimant with the opportunity to pursue something they wanted to.
b. The principal reason that RF decided to engage in a protected conversation is set out in an email from him to the claimant dated 9 September 2022 and quoted above.

115. On 22 September 2022 (page 860) RF sent another email to the claimant to ensure they had received his email of 16 September because he had not heard back from them and also to confirm that he was progressing the grievance, working through the information that the claimant had provided on the 9 September 2022.

116. On 28 September 2022, RF emailed the claimant to tell them that he had been told that an email from the claimant dated 14 September had been blocked by IT security, that he would open and respond on his return to the office on the following Monday. RF also told the claimant that he would conclude the grievance investigation which he had been working on, intending to send the outcome report by the end of the following week.

117. Over the following days the claimant sent long emails complaining about the way they perceived they were being treated and ignored by the respondent. We find that RF was doing his best; to maintain contact; to progress the grievance that involved going through the huge amount of information that the claimant had sent to him; to deal with the various questions and complaints that the claimant sent to him.

118. We have considered in some detail the email exchanges during this period because they are relevant to one of the claimant's complaints of victimisation. Other than on one point (when RF promised to respond to the claimant by a certain date but missed that date by 2 days) we have no criticism of RF's actions. We also note here the terms of an email from the claimant to RF dated 7 September 2022 (page 824) in which the claimant told RF not to contact him without prior notice, noting they did not trust anyone to help them.

Grievance outcome

119. RF sent a grievance outcome report by email dated 20 October 2022. The report and enclosures are at pages 904-942. RF had identified 3 grievances which he summarised as follows:-

> 1*) Grievance regarding KB behaviour to you detailed in email of the 9/8, with follow up email setting out your preferred solution. These were subsequently added to the supplementary summary grievance post the 19/8 meeting with RF.*
> *2) Following the meeting on the 19/8 supplementary grievances were raised regarding the behaviours of LC and additionally*
> *3) The HR function and the handling of the complaint.*

120. The grievance outcome was that none of the claimant's grievances was upheld. RF's conclusions also tried to look forwards, to put in place arrangements to help the claimant return to work . We note the following concluding remarks in RF's outcome report:-

> *" As we have highlighted all along, you are seen as a valued member of the team and we would like to welcome you back to pick up on what was started with the changes in looking at your schedules, time usage and recording. These approaches are to help us understand and support you with delivery and not as you interpret to position you in any negative light. Naturally, if you are not comfortable to return to work with KB / LC / PT or myself, we can find other members of the team who will work with you."*

Appeal

121. There are 2 complaints relating to the grievance process; (1) the time taken to deal with the grievance; (2) conducting the grievance in an unreasonable manner. Neither complaint specifically refers to the appeal although we have considered the appeal to be part of the overall grievance process.

122. Relevant findings regarding the appeal are as follows:-

a. The claimant was given a right of appeal and 14 days to appeal.
b. The claimant asked for more time to submit an appeal and that request was granted in that they were provided with another 4 days (a total therefore of 18 days) to submit an appeal.
c. Whilst the claimant received the grievance outcome and report on 20 October 2023 they asked for the investigation sources (notes from meetings with witnesses etc) and were sent these but not until on or around 2 November 2022.
d. The respondent instructed an external HR consultant to hear the appeal. The claimant asked for this (page 961). Given the seniority of the respondent's employees already involved at the grievance stage (particularly RF, its CEO) that request and approach was understandable.

e. The respondent appointed an external HR consultant called Debbie Sherrington (DS) who attended the Tribunal hearing and provided evidence.
f. The claimant met with DS on 5 January 2023 and was accompanied by their wife. DS provided a draft note of the meeting, which the claimant replied to with considerable additions.
g. DS reviewed the grievance investigation information and also spoke with RF and PT. DF provided the claimant with her outcome on 23 January 2023 (1031-1040)
h. The appeal was upheld in one respect, that comments made by the claimant thanking LC, had been taken out of context. In the appeal outcome, the context was properly explained. (page 1039).
i. DS made various recommendations to the respondent, to assist the claimant's return to work. These are set out below.

My recommendations to the business are as follows:

1. *Refer you to an independent occupational health specialist to assess your current long term sickness absence which will assist the business in supporting you and them in a return to work and assist in what that return to work will look like.*

2. Although the business has done everything needed in providing you with reasonable adjustments it is advised that the company seek specialist occupational health support in what, if any further reasonable adjustments can be put in place to support your ADHD and autism.

3. Following the occupational health assessments seek if it is required "Access to work" Access to Work can help you if you have a physical or mental health condition or a disability. The support you get will depend on your needs which you will need to apply for. Through Access to Work, you can apply for:

- *a grant to help pay for practical support with your work*
- *support with managing your mental health at work*

4. The company have already taken steps to obtain a deeper understanding of the medical conditions of autism and ADHD and how these conditions might be managed in the workplace. On the 11th January 2023 Laura Chuck attended a training course called "Virtual understanding autism in the workplace – strategies for managers and colleagues" delivered by the National Autistic Society Conference and Events team.

It is recommended that the Company continue to take steps to ensure that resource is available to deal with challenging cases such as mental health in the workplace and to gain an understanding of complex conditions around ADHD and autism in the workplace.

5 Once you are fit to return to work engage the support of an external mediator. A mediator is a neutral person who will help you and the senior team in building a workable relationship.

123. The claimant resigned a week later. Had the claimant remained in the respondent's employment we are satisfied that the respondent would have put those recommendations into effect.

Insurance claim – and payments made to claimant during absence.

124. The claimant's employment terms included cover by an income protection insurance policy. Whilst there may be a contractual obligation on the respondent to maintain the payment of insurance premia, the claimant does not dispute that payments under the policy are only due in the event that the insurer accepts the claim. That is confirmed anyway by a document to employees summarising the benefit (page 189).

125. Under the terms of the policy, payments can be made after the 13th week of absence.

126. Separately the claimant's employment terms provide full pay for the first 20 days of absence. The claimant's absence commenced on 18 August 2022. The strict 20-day entitlement would have expired on or about 17 September 2022 (assuming 20 working days and a 5 day working week).

127. The respondent decided to continue to pay the claimant their full pay for longer than the contractual terms required. RF wrote to the claimant on 5 October 2022 (page 876) to tell them that the respondent had paid full salary for the whole of September and would keep salary payments to the claimant under review.

128. In that same email RF referred to the income protection cover, stating:

> *It is unlikely that a claim will be possible through the income protection scheme, but we are investigating with the insurer to find out the scope of cover. If you wish to pursue a claim, it is expected that they will look for details of any treatment plan(s,).*

129. The next day, 6 October 2022 (page 879), PT wrote to the claimant telling them that full pay would continue for October and also pointing the claimant to the Income protection insurance, setting out the required process:

> *We have also been in contact with AVIVA, our Income Protection policy insurers, to start the claim process in case you do not feel well enough to return to work before 10th November which would be 12 weeks absence. We are starting the claim process now as it can take time and it would benefit both yourself and threesixty if we all know in advance if the claim will be supported.*

130. A claim was therefore submitted. The insurer's decision was to decline the claim on the grounds that the cause of absence was work related (a specific exclusion under the terms of the policy). RF sent an email to the claimant on 3 January 2023 to inform them of the outcome.

131. The respondent maintained full pay until 31 December and told the claimant that they would receive 50% of salary for the months of January and February 2023.

132. RF offered to proceed with an appeal against the insurer's decision. He did this because he understood that the claimant's medical condition causing their absence may not in the main be work related. The claimant's mental health had deteriorated to a very significant extent during the latter half of 2022 particularly. RF wondered whether, through medical records, an underlying cause of the claimant's illness other than work might be identified. The respondent was advised that as it was the policy holder, it needed to raise the appeal and to do so, to have sight of the claimant's medical records. The claimant did not accept that this was needed to advance an appeal and, in short, the appeal was not made.

133. In their response to the respondent's request for more information, the claimant told the respondent that they could not understand why more medical records were needed, that the information in the fit notes should be enough to mount an appeal but the exclusion for work related causes of absences appeared insurmountable and that the appeal was therefore pointless.

134. That response was sent to the respondent on 26 January 2023. The claimant then submitted notice of immediate resignation on 30 January 2023.

The reasons why the claimant resigned.

135. The letter of resignation is from pages 1046 – 1049.

136. The reasons relied on for the purpose of this constructive dismissal claim (listed in the List of Issues at paragraph 26) are consistent with the terms of this letter except that, in their constructive dismissal claim, the claimant does not rely on the protected conversation. As noted above, there is no dispute that the conversation was a valid pre termination negotiation for the purposes of section 111A ERA.

Other relevant findings of fact

137. Equal Opportunities policy. The respondent has an employee handbook. It is a standard format that has been drafted by a business called Moorepay Compliance Limited. It includes section on "equal opportunities and diversity." That section confirms disability to be a protected characteristic and notes that equal opportunities are applied from selection for recruitment onwards. There is no specific reference to the statutory duty to make reasonable adjustments to overcome substantial disadvantages to employees with disabilities.

138. References to "*aggressive."* There have been occasional references to an individual's behaviour being aggressive. These references have been made by the claimant and by the respondent's witnesses. We note for example references in the meeting in June 2023 Also the claimant refers to KB being aggressive (and of her "*aggressive micro management*" (see comments in email from claimant to LC dated 9 August 2022, pages 743-5).

139. References to aggressive behaviour in Employment Tribunals are quite common but often in our experience, refer to behaviour that might be more accurately described as challenging, inappropriate even, but often without aggression. In response to questions, KB accepted that might be a better description of the claimant's conduct in the hearing of June

2022. The claimant has referred to their own behaviour as sometimes being blunt or rude. As for the claimant's allegations of aggressive behaviour, we note from the grievance that the first example the claimant gives of aggressive conduct by KB was KB's email of 26 January 2022 (see above at para 59). That is a far cry from behaviour that can reasonably be described as aggressive and is a reflection of the claimant's mistaken interpretations of so much of what KB and LC particularly did or said.

140. The respondent used the term aggressive to describe behaviour which in the claimant's own terms was blunt or rude. That included behaviour such as a raised voice and arm waving. KB and LC used the term (1) to inform the claimant that their behaviour had become rude and was not helping the discussions (2) to describe that behaviour.

141. Mediator As noted above, one of the recommendations on appeal was for a mediator to help the claimant's return to work – when they were ready to return. A mediator had been suggested earlier. On 19 October (the day before the grievance outcome report was sent to the claimant) RF suggested a mediator. At that stage communications between RF and the claimant were not going well. RFs proposal was to try to improve those communications. This is what he wrote:-

> *The grievance review is drafted but the checking is taking it longer than I had hoped. It is still with the solicitors and I will forward as soon as it is returned.*
>
> *I'm sorry that my communication with you is not working as I hoped. I have copied in Laura as requested, but if would you prefer for me to find a mediator who specialises in this area, please let me know.*

E. Submissions

142. Both parties provided a written submissions document. These documents (and additional oral submissions) have helped inform our fact finding and decision making.

F. The Law

Time limits

143. Section 123 Equality Act 2010 (EQA) provides that complaints may not be brought after the end of 3 months "*starting with the date of the act to which the complaint relates"* (s123(1)(a) EqA). This is modified by section 140B – providing for early conciliation.

144. Section 123(1)(b) provides that claims may be considered out of time, provided that the claim is presented within *"such other period as the employment tribunal thinks just and equitable."*

145. As for the exercise of the power under section 123(1) we note the following passage from paragraph 25 of the judgment of Leggat LJ in **Abertawe Bro Morgannwg University Local Health Board v. Morgan [2018] EWCA Civ 640**

> *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.*

146. The EqA itself does not set out what Tribunals should take into account when considering whether a claim, which is presented out of time, has been presented within a period which it thinks is just and equitable. I note the following:-

a. **British Coal v. Keeble UKEAT 496/96** in which the EAT advised, when considering whether to allow an extension of time on just and equitable grounds, adopting as a checklist the factors referred to in s33 of the Limitation Act 1980. These are listed below:-

- the length of and reasons for the delay.
- the extent to which the cogency of the evidence is likely to be affected by the delay.
- the extent to which the party sued had co-operated with any requests for information.
- the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action.
- the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

b. **Rathakrishnan v Pizza Express (Restaurants) Ltd [2016] ICR 283 EAT.** This case noted that the issue of the balance of prejudice and the potential merits of the (in that case) reasonable adjustments claim were relevant considerations to whether to grant an extension of time.

c. In **Adedeji v. University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ. 23** noted that Tribunal's should not rigidly adhere to the Keeble checklist (above*). "The best approach for a Tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time including in particular … "the length of and the reasons for the delay". If it checks those factors against the list in Keeble, well and good but I would not recommend taking it as the framework for its thinking."* (from para 38 of the Judgment).

s.15 EqA Discrimination arising from disability

> *(1) A person (A) discriminates against a disabled person (B) if—*

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) 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.

147. Subsection 2 above does not apply to this case. The respondent now accepts it knew that the claimant had the disability. In **Secretary of State for Justice and anr v Dunn UKEAT 0234/16** the Employment Appeal Tribunal ("EAT") noted 4 findings to be made, for the claimant to succeed in a section 15 claim:-

a. there must be *unfavourable treatment;*

b. there must be *something* that arises in consequence of the claimant's disability;

c. the unfavourable treatment must be *because of* (i.e. caused by) the something that arises in consequence of the disability; and

d. the alleged discriminator cannot show that the unfavourable treatment is *a* proportionate *means of achieving a legitimate aim*.

148. In **Paisner v.NHS England (UKEAT/0137/15/LA)** the EAT provided guidance to Employment Tribunals when considering these claims which we summarise below.

a. The Tribunal should decide what caused the treatment complained of – or what the reason for that treatment was.

b. There may be more than one cause. The "something" might not be the sole or main cause but it must have a significant impact.

c. Motives are irrelevant.

d. The Tribunal should decide whether the/a cause is "*something arising in consequence of"* the claimant's disability. There could be a range of causal links under the expression *"something arising in consequence of…"*

149. When deciding whether a measure is proportionate in the context of the legitimate aim being pursued (s15(1)(b) EqA above) a tribunal must weigh the real needs of the employer against the discriminatory effect of the proposal. (see **DWP v. Boyers UKEAT/0282/19).**

150. One of the section 15 complaints is about the reduction of pay during long term sickness absence. We note the judgments in 2 Court of appeal cases: **Meikle v. Nottinghamshire County Council 2004 EWCA 859** (Meikle) and then in **O'Hanlon v. HMRC 2007 EWCA 283 (O'Hanlon).**

151. Both cases were decided under the Disability Discrimination Act 1995 (DDA) which did not include a section 15 equivalent. Consideration was given as to whether it would be a reasonable adjustment to extend contractual pay during extended periods of sickness.

1. We note paragraphs 67-69 of the judgment in **O'Hanlon**:

> *67. In our view, it will be a very rare case indeed where the adjustment said to be applicable here, that is merely giving higher sick pay than would be payable to a non-disabled person who in general does not suffer the same disability-related absences, would be considered necessary as a reasonable adjustment. We do not believe that the legislation has perceived this as an appropriate adjustment, although we do not rule out the possibility that it could be in exceptional circumstances. We say this for two reasons in particular.*
>
> *68. First, the implications of this argument are that Tribunals would have to usurp the management function of the employer, deciding whether employers were financially able to meet the costs of modifying their policies by making these enhanced payments. Of course we recognise that tribunals will often have to have regard to financial factors and the financial standing of the employer, and indeed s.18B(1) requires that they should. But there is a very significant difference between doing that with regard to a single claim, turning on its own facts, where the cost is perforce relatively limited, and a claim which if successful will inevitably apply to many others and will have very significant financial as well as policy implications for the employer. On what basis can the tribunal decide whether the claims of the disabled to receive more generous sick pay should override other demands on the business which are difficult to compare and which perforce the tribunal will know precious little about? The tribunals would be entering into a form of wage fixing for the disabled sick.*
>
> *69. Second, as the tribunal pointed out, the purpose of this legislation is to assist the disabled to obtain employment and to integrate them into the workforce. All the examples given in s.18B(3) are of this nature. True, they are stated to be examples of reasonable adjustments only and are not to be taken as exhaustive of what might be reasonable in any particular case, but none of them suggests that it will ever be necessary simply to put more money into the wage packet of the disabled. The Act is designed to recognise the dignity of the disabled and to require modifications which will enable them to play a full part in the world of work, important and laudable aims. It is not to treat them as objects of charity which, as the tribunal pointed out, may in fact sometimes and for some people tend to act as a positive disincentive to return to work.*

152. In Meikle it was regarded to be a reasonable adjustment to extend enhanced sick pay; There was a finding in that case that the employer had failed to make other reasonable adjustments and, had they been made, Ms Meikle would have returned to work without having to take a lengthy absence.

<u>Section 19 – Indirect discrimination</u>

153. This required the application of a PCP – see below.

154. There is a potential defence to a claim under section 19 – where the employer can show that the application of the PCP was a proportionate means of achieving a legitimate aim.

155. The EHRC Employment Practices Code 2011 (Code) provides guidance. In short, the aim pursued should be legal, should not be discriminatory in itself and must represent a real, objective consideration (see para 4.28 of the Code).

156. Although business needs and economic efficiency may be legitimate aims, the Code states that an employer simply trying to reduce costs cannot expect to satisfy the test (para 4.29).

157. As to proportionality, the Code notes that the measure adopted by the employer does not have to be the only viable way of achieving the legitimate aim; it is sufficient that the same aim could not have been achieved by less discriminatory means — para 4.31.

158. The following is stated at paragraph 4.30 of the Code.

> *'Even if the aim is a legitimate one, the means of achieving it must be proportionate. Deciding whether the means used to achieve the legitimate aim are proportionate involves a balancing exercise. An employment tribunal may wish to conduct a proper evaluation of the discriminatory effect of the provision, criterion or practice as against the employer's reasons for applying it, taking into account all the relevant facts.'*

Duty to Make Reasonable Adjustments

159. The claimant raises claims under s20(3) EqA. This imposes a duty on an employer *"where a provision criterion or practice of [the employer] puts a disabled person at a* substantial *disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage."*

160. We note that, for the duty to make reasonable adjustments to apply, a claimant needs to show that s/he has been put to a substantial disadvantage in relation to a relevant matter in comparison to persons who are not disabled.

PCPs

161. For a provision criterion or practice to be a valid PCP for the purposes of s20, it must be more widely applied (or would be more widely applied).

162. Chapter 4 of the Code, at paragraph 4.5 says this in relation to PCPs:-

> *The phrase provision criterion or practice is not defined by the Act but it should be construed widely so as to include for example any formal or informal policies rules practices arrangements criteria conditions prerequisites qualifications or provisions. A provision criterion or practice may also include decisions to do*

something in the future - such as a policy or criterion that has not yet been applied - as well as a one off or discretionary decision."

163. Whilst PCPs should be construed widely, there are limits. The word "practice" indicates some degree of repetition and where a PCP was identified from what happened on a single occasion, there must be some evidence of a more general practice. Paragraph 59 of the judgment in **Gan Menachem Hendon Limited v Ms Zelda De Groen UKEAT/0059/18:-**

So, while it is possible for a provision, criterion or practice to emerge from evidence of what happened on a single occasion, there must be either direct evidence that what happened was indicative of a practice of more general application, or some evidence from which the existence of such a practice can be inferred.

164. We must decide whether a PCP placed the claimant at a substantial disadvantage. We note the terms of section 212 EQA, that *"substantial means more than minor or trivial."*

165. Where we decide that a PCP puts the claimant at a disadvantage then we need to consider the issue of reasonable adjustments. We note that there is no duty to take measures that would impose a disproportionate burden on the employer.

Victimisation

166. Section 27 Equality Act 2010 is relevant here. It prohibits a person (the claimant) from being subjected to a detriment by another person (the respondent) because the claimant had done a "Protected Act."

167. A protected act is defined at section 27(2) which provides as follows.

"Each of the following is a protected act:

a. bringing proceedings under this Act.
b. giving evidence or information in connection with proceedings under this Act.
c. doing any other thing for the purposes of or in connection with this Act.
d. Making an allegation (whether or not express) that A or another person has contravened this Act.

168. The Code provides guidance on what is meant by a detriment.

9.8 'Detriment' in the context of victimisation is not defined by the Act and could take many forms. Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage. This could include being rejected for promotion, denied an opportunity to represent the organisation at external events, excluded from opportunities to train, or overlooked in the allocation of discretionary bonuses or performance-related awards.

9.9 A detriment might also include a threat made to the complainant which they take

seriously and it is reasonable for them to take it seriously. There is no need to demonstrate physical or economic consequences. However, an unjustified sense of grievance alone would not be enough to establish detriment.

169. In **Warburton v. Chief Constable of Northamptonshire Police** (**2022 EAT 22**) at paragraphs 49-51 particularly, the EAT provides useful guidance on the definition of detriment, referring to earlier binding authorities:

49. Detriment is a word to be interpreted "widely" in this context: Chief Constable of West Yorkshire v Khan [2001] 1 WLR 1947 per Lord Mackay at para 37 (cited in Shamoon at para 33).

50. The key test for present purposes is for the ET to ask itself: "Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment?". It is not necessary to establish any physical or economic consequence for this question to be answered in the affirmative. The requirement that this hypothetical worker is a reasonable person means, of course, that an unjustified sense of grievance would not pass this test. All of this is established by the judgment of Lord Hope (and other cases which he cites) in Shamoon at para 35.

51. Although the test is framed by reference to "a reasonable worker", it is not a wholly objective test. It is enough that such a worker would or might take such a view. This is an important distinction because it means that the answer to the question cannot be found only in the view taken by the ET itself. The ET might be of one view, and be perfectly reasonable in that view, but if a reasonable worker (although not all reasonable workers) might take the view that, in all the circumstances, it was to his detriment, the test is satisfied. It should not, therefore, be particularly difficult to establish a detriment for these purposes.

170. Where a claimant has shown that they have been subjected to a detriment, the Tribunal has to consider whether that detrimental treatment was because of the protected act rather than whether the treatment would not have happened "but for" the protected act. On this point, we note the Court of Appeal's comments in **Greater Manchester Police v Bailey [2017] EWCA Civ 425** particularly at paragraph 36.

171. The protected act need not have been the only reason for the detrimental treatment, but it must have been a significant influence, meaning that any influence that the protected act did have must have been no more than trivial (**Villalba v. Merrlil Lynch and Co UKEAT/0223/05).**

Burden of Proof

172. We are required to apply the burden of proof provisions under section 136 EqA when considering complaints raised under the EqA.

Section 136 states:

This section applies to any proceedings relating to a contravention of this Act.

(2) If there are any facts from which a court could decide in the absence of any other explanation, that a person (A) has contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection 2 does not apply if A shows that A did not contravene the provision."

173. We have also considered the guidance contained in the Court of Appeal's decision in **Wong v. Igen Limited [2005] EWCA 142**. This case concerned the test as set out in discrimination legislation that pre-dated the EqA but the guidance provided in there remains relevant. The annex to the judgment sets out guidance. (the amended Barton guidance)

174. Finally, on the issue of burden of proof, we are mindful of guidance from case law indicating that something more than less favourable treatment may be required in order to establish a prima facie case of discrimination; see for example **Madarassey v. Nomura International [2007] ICR 867,** where the following was noted in the judgment:

> "*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."*

Constructive Dismissal

175. The claimant claims (1) that their resignation amounted to a constructive dismissal and (2) that this dismissal was unfair under s98 of the Employment Rights Act 1996.

176. Dismissal for the purposes of s98 includes the circumstances stated at s95(1)(c). *" …..an* employee *is dismissed by his employer if…….the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."*

177. In considering the issue of constructive dismissal, an Employment Tribunal is required to consider the terms of the contractual relationship, whether any contractual term has been breached and, if so, whether the breach amounts to a fundamental breach of the contract (*Western Excavating (ECC) Limited v. Sharp* [1978] QC 761).

178. It is an implied term of every employment contract that the employer shall not without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. I refer to this term as "the Implied Term."

179. In considering the Implied Term, Browne-Wilkinson J in *Woods v WM Car Services (*Peterborough*) Limited* [1981] ICR 666, said that the tribunal must *"look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it."*

180. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a "last straw" incident, even though the "last straw" is not, by itself, a breach of contract: *Lewis v Motorworld Garages Limited* 1986 ICR 157 CA.

181. In the judgment of the Court of Appeal in *Omilaju v Waltham Forest London Borough Council 2005 1 All ER 75.* Dyson LJ stated as follows in relation to the last straw.

> *"A final straw, not in itself a breach of contract, may result in a breach of the implied term of trust and confidence. The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase "an act in a series" in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach although what it adds may be relatively insignificant."*

182. The Court of Appeal decision in *Kaur v Leeds Teaching Hospitals NHS Trust* [2018] IRLR 833, commented on the last straw doctrine. The judgment (particularly paragraph 55) includes guidance to Employment Tribunals deciding on constructive dismissal claims :-

> *In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:*
>
> *(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?*
>
> *(2) Has he or she affirmed the contract since that act?*
>
> *(3) If not, was that act (or omission) by itself a repudiatory breach of contract?*
>
> *(4) If not, was it nevertheless a part (applying the approach explained in* [LB Waltham Forest v. Omilaju [2005] ICR 481] *of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the* [implied term of trust and confidence]*? ……*
>
> *(5) Did the employee resign in response (or partly in response) to that breach?*
>
> *None of those questions is conceptually problematic, though of course answering them in the circumstances of a particular case may not be easy.*

183. We also note Ms Niaz Dickinson's reference to the more recent EAT decision in **Williams v. Governing Body of Alderman Davies Church in Wales Primary School 2020UKEAT/0108/19** in which the EAT commented on and applied Kaur.

184. Once a repudiatory breach of contract has been established, it is necessary to consider the part it played in the claimant's decision to resign. The following passage from the

judgment of the Court of Appeal in Nottinghamshire County Council v. Meikle [2004] IRLR 703, is helpful.

> *It has been held by the EAT in Jones v Sirl and Son (Furnishers) Ltd [1997] IRLR 493 that in constructive dismissal cases the repudiatory breach by the employer need not be the sole cause of the employee's resignation. The EAT there pointed out that there may well be concurrent causes operating on the mind of an employee whose employer has committed fundamental breaches of contract and that the employee may leave because of both those breaches and another factor, such as the availability of another job. It suggested that the test to be applied was whether the breach or breaches were the 'effective cause' of the resignation. I see the attractions of that approach, but there are dangers in getting drawn too far into questions about the employee's motives. It must be remembered that we are dealing here with a contractual relationship, and constructive dismissal is a form of termination of contract by a repudiation by one party which is accepted by the other: see the Western Excavating case. The proper approach, therefore, once a repudiation of the contract by the employer has been established, is to ask whether the employee has accepted that repudiation by treating the contract of employment as at an end. It must be in response to the repudiation, but the fact that the employee also objected to the other actions or inactions of the employer, not amounting to a breach of contract, would not vitiate the acceptance of the repudiation.*

185. In the event that an Employment Tribunal decides that the termination of a claimant's employment falls within s95(1) the employer must show the reason for dismissal and that the reason for dismissal was a potentially fair one under s98(1) and (2) ERA. We note here that the respondent does not try to deny that any constructive dismissal was fair.

186. A delay in resigning may indicate that the employee has affirmed the contract, so losing the right to claim constructive dismissal. In TE Western Excavating case, Lord Denning stated that the employee *'must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged'*

187. In the recent case of Leaney v. Loughborough University 2023 EAT 155, the EAT holds that the correct approach is for a Tribunal to focus on what conduct there was during the relevant period that might or might not have amounted to an express or implied communication of affirmation.

G. Discussions and Conclusions

188. We set out below our conclusions to the various complaints and issues identified.

JURISDICTION:

3. *Are any or all of the Claimant's discrimination complaints presented out of time for the purposes of section 123(1)(a) of the Equality Act 2010?*

4. *If so, do the acts complained of amount to a continuous course of conduct extending over a period of time within the meaning of 123(3)(a) of the Equality Act 2010?*

5. *In respect of any alleged act of discrimination that are out of time, would it be just and equitable to extent time to allow for the presentation of these claims under section 123(1)(b) of the Equality Act 2010?*

Conclusions

189. We find that the claimant's complaints under the Equality Act 2010 are all outside of the primary time limit.

190. The claimant has provided evidence of poor health during 2022. That included a period of hospitalization. There is no evidence that the claimant's poor health caused or substantially contributed to the delay in presenting a claim about complaints that predated 18 August 2022 (the date that they became absent from work). There is no evidence that the claimant's poor health accounts for the whole of the delay between 18 August 2022 and the date when the claim was finally presented, being 1 June 2023. We note the claimant's willingness and ability to engage with the respondent for large parts of the time between 18 August and the end of their employment. We also note the claimant's reference to having instructed a solicitor, certainly at around the time of the settlement proposal made in October 2022. Finally we note that by the date they attended the grievance hearing with RF, they had decided that their rights under the Equality Act 2010 were being breached.

191. Notwithstanding that many complaints are outside of the primary time limits, we have made relevant findings of fact (and reached conclusions) in respect of all complaints.Set out below are our conclusions to each complaint and the jurisdiction (time limit) issue against each complaint. We find that it is not just and equitable to extend time in some of the complaints.

DISABILITY – SECTION 6 EQUALITY ACT 2010:

6. *The Respondent has conceded that the Claimant had the disabilities of Autism Spectrum Condition and ADHD at the relevant times of November 2021 – 30 January 2023.*

7. *The Respondent has not conceded the third alleged disability of anxiety and/or depression. The parties agree that this disability is not relevant to the complaints themselves although evidence about these impairments may be relevant to remedy.*

8. *XXXX*

9. *XXXX*

192. No conclusions required.

INDIRECT DISABILITY DISCRIMINATION – SECTION 19 EQUALITY ACT 2010

*10. Did the Respondent apply any of the following provision, criterion or practices (**PCP**):*

10.1 Targets set daily, weekly, monthly and yearly for file reviews (Targets PCP).

We set out below our conclusions against each PCP, in terms of whether such PCP was applied and, if it did, whether it put the claimant at the particular disadvantages stated in 12 (below) and if so, whether the application of a PCP was a proportionate means of achieving a legitimate aim.

193. Conclusion to Targets PCP

a. The respondent did have a target for its file reviewers of 3.5 file reviews per week on average. This translated in to an annual target of 150. Neither weekly nor annual figure was a strict requirement and the evidence is that allowances were made and other work types factored in. But those targets were an ingredient of the respondent's business model.
b. We do not accept that the targets put the claimant at a disadvantage because of a reduced reading, writing and information processing speed. There is no evidence that the claimant's reading, writing and processing speeds are adversely impacted by their impairments.
c. It is accepted that on dates relevant to this claim (the end of 2021 and 2022 particularly), the claimant did need to review all information before proceeding. That was what was more time consuming for the claimant when carrying out file reviews. There is no evidence that the claimant would not have been able to improve in undertaking file reviews after more practice and experience. We do not accept, from the evidence we have, that the claimant's impairments make it impossible for them to become more efficient at these types of work tasks (including file reviews) with appropriate support, time and experience.
d. The respondent is a commercial entity. Applying the targets that it did, had worked for the respondent over many years. Ensuring that work is carried out for an appropriate amount of revenue from paying clients is a legitimate aim. Treating these as targets (not strict requirements), being flexible with a target and maintaining an understanding (through Time Logs) of the work that employees carry out, ensure that the respondent is applying proportionate means to achieve that legitimate aim.
e. The claimant raises a separate complaint about a failure to apply reasonable adjustments to overcome any disadvantage that the Targets PCP caused. We address that separately.

10.2 appraisal process including various outcomes assessed with no quantifiable measures (Appraisals PCP).

194. Conclusion to Appraisals PCP

There was a PCP of an annual appraisal. However, we do not find that the outcomes assessed had no quantifiable measures. The appraisal process was applied in such a way

that the claimant was provided with explanations as to why a grade was given and what to do to maintain or improve that grade. This PCP was not applied.

10.3 Allocation of ad hoc cases to whoever has the least regular client file review days (Ad Hoc Cases PCP).

195. Conclusion to Ad Hoc cases PCP.

a. Ad Hoc cases were allocated to those employees with most capacity. However capacity was not just measured in terms of client review days. Other work can (and did) fill a diary. See findings at paragraph 32. Accordingly this PCP was not applied.

b. As for an alternative PCP of allocating Ad Hoc cases to employees with most capacity:-

i. Ensuring that a client's work is completed is a legitimate aim;
ii. Asking an employee with capacity to carry out that work is a proportionate means of achieving that legitimate aim.

10.4 The structure of non-client fee paying work having no formal time set aside for this including the expectation that employees use do not disturb or out of office replies to avoid interruptions (Non-Client work PCP).

196. Conclusion to Non client work PCP.

Time was allowed for non-client work. The target (as noted above) that the respondent looked for from its Client Monitoring Officers was 3.5 days a week of fee earning time (generally file reviews but other fee earning tasks too) . Time was purposefully built into a working week for non-client fee paying work. In addition the respondent showed a willingness to work with the claimant to identify times (setting time aside) for the claimant to catch up with client and/or non- client work. This alleged PCP did not apply.

10.5 The use of time logs for non-client facing staff to log all tasks for the day (Time Logs PCP).

197. There was a requirement to maintain time logs – to accurately record time. See paragraph 25 above.

198. The use of time logs did not put the claimant at a disadvantage. Whilst they perceived they did, they allowed the respondent to better understand the time that the claimant was taking to complete tasks and to try to provide support to help the claimant.

199. Further, using time logs achieved the legitimate aim of ensuring the proper management of time and that employees were not constantly working additional hours. The time logs provided the respondent with information about how long tasks were taking. Asking employees to keep a record of time taken was a proportionate (possibly the only) was to achieve this.

10.6 Allocating a maximum of 60 minutes to complete preparatory work and 60 minutes for write up with the expectation that spare time from this task type is used for continuing professional development or other admin points (Time Allocation PCP).

200. There was an expectation that some time would be taken up in preparing for a file review and writing up a report following a file review and a guide of 60 minutes was given. But it was also noted for example that new clients would take more time. There was no evidence that a maximum was applied. This PCP was not therefore applied.

10.7 No policy which covers reasonable adjustments or neurodiversity in the workplace (No Policy PCP).

201. There was an equal opportunities and diversity policy but it did not expressly refer to either reasonable adjustments or neurodiversity. However given the protections under the Equality Act 2010 itself, the claimant was not put to any disadvantage.

11. If so, did the PCP put (or would put) those with the Claimant's disability at the following particular disadvantages when compared to other persons who not have that disability? (Additional details are contained in the Claimant's Further and Better Particulars)

11.1 The Targets PCP - The claimant's disabilities mean that their writing, reading and information processing speeds are impacted. The targets are used as KPIs for appraisals which can impact on pay rises and disciplinary action. The Claimant would have to work longer hours to meet the targets.

11.2 The Appraisals PCP - The appraisal process containing subjective elements is difficult to navigate for individuals with autism making it harder to achieve a pay rise. Assessing organisation, planning and communication skills puts individuals with ADHD and/or autism to a disadvantage as such skills may be impaired by their conditions.

11.3 The Ad Hoc Cases PCP - Being allocated ad hoc cases involved carrying out multiple tasks and processes at the same time, which is more difficult for individuals with ADHD and/or autism due to the impact on their ability to remain focused and to switch tasks. Individuals with ADHD and/or autism may be assessed as performing at a lower level or be required to work additional hours.

11.4 The Non-Client Work PCP - Not providing set time for admin tasks increases the likelihood of individuals with ADHD and/or autism becoming distracted with admin tasks. Individuals with ADHD and/or autism may be assessed as performing at a lower level or be required to work additional hours.

11.5 The Time Logs PCP - The use of time logs for non-client facing staff for non-fee-paying work impacts on individuals with ADHD and/or autism due to needing longer to complete tasks and means they have less time to spend on file reviews. This results in scrutiny that they are inefficient or not meeting targets. This causes additional stress and negatively impacts upon mental health resulting in absences.

11.6 The Time allocation PCP - The allocation of 60 minutes for preparatory work and 60 minutes to write up the work, negatively impacts individuals with ADHD and/or autism as such individuals can take longer to read, write and process tasks. This negatively impacts their ability to meet targets and KPIs.

11.7 The No Policy PCP - Individuals who are neurodivergent do not have a policy setting out a pathway of support that could allow them to remain or return to the workplace with adjustments. This can result in higher absence level, have a negative impact on mental health and see such individuals are unable to remain in the workplace.

12 Did the PCPs set out under paragraph 10 put the Claimant at the disadvantages identified under paragraph11?

13 If so, can the Respondent show it to be a proportionate means of achieving the following legitimate aims:

13.1 The Targets PCP - the legitimate aim of ensuring an appropriate output of work to enable it to deliver a satisfactory service level to its clients.

13.2 The Appraisals PCP - the legitimate aim of ensuring the proper management of employee job performance and their career progression.

13.3 The Ad Hoc Cases PCP - the legitimate aim of ensuring the allocation of work is based on who has the most capacity.

13.4 The Non-Client Work PCP - the legitimate aim of providing flexibility when non-client work can be completed, ensuring that client work is prioritised.

13.5 The Time Logs PCP - the legitimate aim of ensuring the proper management of time and that employees are not consistently working additional hours.

13.6 The Time Allocations PCP - the legitimate aim of ensuring the proper management of work allocation and required resource levels.

13.7 The No Policy PCP - the legitimate aim of providing assistance on a case-by-case basis without the need for a formal and rigid policy.

Conclusions to 11-13.

202. See comments under issue 10 above.

DISCRIMINATION ARISING FROM DISABILITY – SECTION 15 EQUALITY ACT 2010

203. When noting our conclusions below to the various sub paragraphs of issue 14, we also (where appropriate) deal with issues 15 and 16.

14 Did the Respondent subject the Claimant to the following treatment:

14.1 From November 2021 to August 2022; KB placing increased emphasis on time taken to complete tasks through additional meetings, emails and calls, in an over bearing, critical and negative manner without corresponding support or adjustments (WS p18, ET1 9.11-13). This was as a consequence of taking longer than expected to complete both fee and non-fee paying tasks. (16.2; 16.3)

204. No. The claimant was not subjected to the treatment described. There was a learning process going on, in May, June and July 2022. The claimant had raised concerns that they were struggling with what they saw as the demands being put on them. The respondent was trying to work with the claimant to help them be more efficient but also to help ensure that the tasks being given to them did not require that they work excessive hours. The claimant did not receive feedback well; was convinced that it was overbearing and negative. But it was not. We are supported in this finding by our own review of the emails and meeting notes (particularly the June and August meetings) as well as LH's comments about the claimant's reaction to feedback in 2021.

205. Time limit issue. We find that this complaint was made outside of the primary time limit and it is not just and equitable to extend time. We have made findings based on the evidence

provided. However this complaint includes ways that KB spoke to the claimant (or how the claimant perceived KB spoke with them) in every day management tasks that KB had. It is not reasonable to expect KB to have a long-term memory of her day-to-day workplace interactions with the claimant over a 9 month period that ended some 9 months before the claim was issued. Further, our findings lean heavily on what is documented. But given this complaint is about so much more than what is documented, (particularly in the early part of the period) we have decided that it would not be just and equitable to extend time to allow the complaint.

14.2 From November 2021 throughout the remainder of the claimant's employment, Repeated dismissal of concerns over workloads when discussing schedules being told "you don't even have a full schedule" as the figures used did not include all parts of role in work completed. The claimant's concerns went ignored over 2022 by KB, PT (HR) and LC when raised, inferring their workload should be achievable (despite not including all fee-paying work completed). 16.2)

206. No. The claimant's concerns were not ignored. Our conclusion under 14.1 is relevant here too.

207. Time limit issue. Our conclusion under 14.1 is also relevant and we apply it to complaint 14.2. It is not just and equitable to extend time.

14.3 On 26 and 27 January 2022 KB reprimanded the claimant for the apparent use of language and communication in emails between the claimant, KB and RF on 26 and 27 January 2022 AND in a telephone call between the claimant and KB on 26 and/or 27 January 2022 regarding booking a DB workshop. A request to call the claimant was then dismissed. The unfavourable treatment was time lost to the meeting, as well as the negative perceptions of KJ's communication deeming a meeting necessary, which KB refused to carry out until the next day despite urgency noted. Requests for clarity and vague agenda sent out upfront had been ignored. The phone call meeting the next day was overly critical despite there being no concerns raised by RF. (16.4)

208. No. The claimant was not reprimanded. See our findings at paragraph 59 above.

209. Time limit issue. Our conclusion is the same as under 14.1 and 14.2.

14.4 On 16 May 2022 and continuing through June 2022, having taken 2 days of CFR reviews from the claimant's schedule in exchange for 2 DB workshops, KB then:-

Took up 3 hours of the claimant's time with queries and questions regarding the cases that KB had taken from the claimant.

Used the files allocated to the claimant to demonstrate that the claimant took longer time to complete file reviews.

Used the files allocated to the claimant in order for KB to compare her work with the claimant's.

(16.2;16.3)

210. Issue 14.4 describes a period that KB tried to (1) better understand the claimant's working and the time that tasks were taking and ought to be taking and, in so doing, (2) help the claimant to manage their work. See our findings at 69-72 above). Specifically:-

a. KB did need to ask the claimant some questions about the work she had taken from the claimant (see our findings at 72).

b. KB did not take the work from the claimant so she could demonstrate that they took too long to complete file reviews and./or to compare her own work with the claimant's. Her motive for undertaking the 2 file reviews was as KB had explained in the email to HR of 16 May – to help understand the issues, gaps and help/training that may be needed.

211. KB's attempts to assist the claimant was not unfavourable treatment of them.

212. Time Limit issue. This complaint also requires recollection of workplace discussions dating back more than a year before the claim was issued. Our conclusions are the same as under 14.1.

14.5 On 16 and 17 May 2022, KB speaking with the claimant in a negative and hostile way in phone calls between KB and the claimant concerning the time being taken by the claimant to complete their work. The calls arose as a result of concerns being raised over workload sustainability. The calls became negative and hostile due to [the claimant] *asking questions needing clarity as well as having concerns over ability to meet demands of increases in workload. (16.2;16.3).*

213. We do not find that KB spoke with the claimant in a negative and hostile way. Our finding is supported by the terms and tone of the correspondence on 16 and 17 May 2022 – see paragraphs 69 and 70 above - as well as KB's own evidence. Unfortunately by this stage of their employment, the claimant was seeing hostility and negativity when it was not present. We are supported in this by the dialogue in the June and August meetings.

214. Time Limit issue. Our conclusions and reasons are the same as above. The claim is out of time and it is not just and equitable to extend time.

14.6 Between May 2022 and August 2022, in emails, KB making negative references about the claimant being a difficult person, refusing to change. (16.3 and 16.4)

215. There is no evidence of negative references as described.

216. Time limit issue. Our conclusion and reasons are the same as above. The claim is out of time and it is not just and equitable to extend time.

14.7 On 23 June 2022 and on 8 August 2022, holding meetings with the claimant. (16.3)

217. These meetings were held with the claimant and with the intention of trying to help them. These meetings did not amount to unfavourable treatment.

14.8 On various dates subsequent to those 2 meetings, KB and LC falsely accusing the claimant of aggressive behaviour. The accusations of aggression, whilst untrue, were made as a result of the frustration and attempting to discuss the issues faced as a result of autism and adhd in taking longer to complete tasks, as well as communication issues. (16.4)

218. Our findings of fact at paragraphs 82h and 138-140 are relevant. The claimant accepts that their behaviour can come across as blunt or rude. The respondent did (but not in a

constant, overbearing way) pointed that out to the claimant by the use of the term "aggressive." Alerting the claimant to behaviour that was reasonably perceived as unhelpful is not unfavourable treatment. Providing an honest recollection of the claimant's behaviour (through this commonly used term, "aggressive") when required to do so in the course of a grievance investigation, is not unfavourable treatment. Unfavourable treatment might have occurred if the respondent had not alerted the claimant when their communication had become blunt or rude; or had the respondent not provided an honest recollection of events in the process of a grievance investigation.

219. Time Limit issue The meetings are, due to the claimant's covert recording of the meetings, well documented. However, we take a dim view of the claimants practice to covertly record these meetings. They did not seek consent. If they had been concerned that no or insufficient notes were being taken they should have raised it. As we reference in our findings of fact about the meeting on 8 August 2022, the claimant, knowing that they were recording the meeting, engaged in discussions with LC about topics that involved LC raising/disclosing issues of a personal nature, ignorant of the recording. We have decided that it is not just and equitable to extend time.

14.9 On various dates, KB using time logs as a source of information used to criticise the claimant about time taken to complete tasks. (16.2;16.3)

220. The time logs were used to help the respondent understand how long tasks took and therefore to help the claimant and ensure they were not given an excessive workload. They were not used as a source of information to criticise them.

221. Time limit issue. No particular dates have been given by the claimant in this complaint although we note that the topic of time logs was discussed in the June and August meetings particularly. However, once again the complaint is about discussions that KB (and to a lesser extent LC) had with the claimant over many months in the course of their daily work. For the same reasons given under 14.1 above, it is not just and equitable to extend time.

14.10 On 6 July 2022 (the claimant having cancelled annual leave for the purpose of catching up on outstanding tasks) KB asking the claimant how their time would be used and telling the claimant that she will need to schedule work in for the claimant to do (16.2)

222. Our findings of fact about the 6 July 2022 are at paragraphs 87 and 88. The claimant was not treated unfavourably.

223. Time limit issue The claim is out of time. It is not clear whether the claimant's complaint is only reliant on the email exchange as dealt with in 87 or 88. In so far as it only relates to the email exchange, it is clear from the terms of the emails that the complaint is bound to fail (potential merits being a relevant consideration in deciding whether just and equitable to extend time **– Rathakrishnan**) . If there is also reference to discussions separate to the email exchange then the same conclusions as under 14.1 apply. Whichever applies, it is not just and equitable to extend time.

15. If so, was the treatment unfavourable within the meaning of section 15(1) of the Equality Act 2010?

224. See conclusions above.

16. *Did the following 'something' arise in consequence of the Claimant's disability:*

16.1 *Slower reading and writing speeds due to ADHD and Autism.*

16.2 *Taking longer to complete tasks due to the slower processing of information caused by ADHD and Autism.*

16.3 *A need to understand the small detail first before seeing the bigger picture due to ADHD and Autism.*

16.4 *Communication style perceived as blunt, rude or short due to due to ADHD and Autism.*

225. The respondent accepts that the "somethings " at 16.3 and 16.4 arise in consequence of the claimant's disability.

226. As for 16.1 and 16.2, there is no evidence that the claimant has slower reading and writing speeds than others and no evidence that they are slower at processing information. See for example findings at 103e, the claimant's own words at 65. We also note that during May and June particularly the claimant did not perceive that they were any slower at file reviews than anybody else. The claimant's stated view was that it was the respondent's system that was broken, not that they needed assistance because they were slower at reading and processing.

17. *Did the Respondent subject the Claimant to the above unfavourable treatment because of any of the matters set out at paragraph 16 being something arising in consequence of their disability?*

227. No. See conclusions under 14 above.

18. *If so was such unfavourable treatment a proportionate means of achieving a legitimate aim? :*

18.1 *The legitimate aim of ensuring an appropriate output of work to enable it to deliver a satisfactory service level to its clients.*

18.2 *The legitimate aim of ensuring the proper management of employee job performance and their career progression.*

18.3 *The legitimate aim of ensuring the allocation of work is based on who has the most capacity.*

18.4 *The legitimate aim of ensuring that the allocation of work is fair between all employees.*

18.5 *The legitimate aim of providing flexibility when non-client work can be completed, ensuring that client work is prioritised.*

18.6 *The legitimate aim of ensuring the proper management of time and that employees are not consistently working additional hours.*

18.7 *The legitimate aim of ensuring the proper management of work allocation and required resource levels.*

18.8 *The legitimate aim of assisting employees of establishing effective ways of working.*

18.9 *The legitimate aim of ensuring employees on sick leave are able to rest and do not feel pressured to pre-emptively return to work.*

228. No conclusions required.

FAILURE TO MAKE REASONABLE ADJUSTMENTS – SECTION 20 EQUALITY ACT 2010

19. *Did the Respondent have any of the PCPs listed at paragraphs 10.1 – 10.7 within the meaning of section 20(3) of the Equality Act 2010?*

20. *If so, were any of those PCPs applied to the Claimant?*

21. *If so, did the application of the of such PCPs put the Claimant a substantial disadvantage compared to someone without the Claimant's disability? The relevant disadvantages are set out at paragraph 11. 1 – 11.7*

229. We set out our conclusions in relation to the PCPs under 10.1 to 10.7 above. We made findings that the following PCPs were applied:-

a. The Targets PCP (10.1)
b. The Time Logs PCP (10.5)

22. *Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at such disadvantage?*

Conclusions to issue 22

The Targets PCP

230. Yes although deciding from when the claimant knew (or could reasonably have been expected to know) that the claimant was likely to be placed at a disadvantage is not straightforward. For much of the dialogue in the period May to August, the claimant's position was that the respondent's business model was flawed, that others were also being disadvantaged by the Targets PCP. Whilst this may have been the main theme of the claimant's complaints at the time, KB did recognise that the claimant did work differently. We note particularly KB's email of 16 May 2022 (see para 69 above). In contrast we note that the claimant made no reference to having issues in the appraisal carried out in February 2022.

231. We conclude that by mid-May 2022 the respondent was aware that the Targets PCP might put the claimant at a disadvantage. However whether there was a disadvantage, why and to what extent was far from clear at that stage. It is also relevant to note that the claimant did not raise a complaint. The discussions in June and August focussed on the claimant's complaint that the respondent making too many demands of its file reviewing employees and about KB's management style.

232. Between May 2022 and the termination of the claimant the respondent tried to explore ways to assist the claimant including adapting the amount of work provided. We note particularly the following:-

a. a build-up of the claimant's work over many months.
b. The meetings of 23 June and 8 August 2022 and the attempts in these meetings to help the claimant.
c. RF's willingness to discuss with the claimant the possibility of identifying a different role for them (para 103h)
d. KB and LC identifying time for the claimant to catch up.
e. KB's concern on 26 January 2022 that the claimant should not take on another task if they did not have enough capacity.
f. The grievance outcome noting particularly the concluding remarks quoted at para 120. We conclude (having heard from RF, KB and LH) that the attempts made in the period May 2022 to the end of the claimant's employment were

genuine. The extract we quote at para.120 accurately summarises the respondent's position.

233. We also note (and conclude) that this is not a case in which a straightforward reasonable adjustment could have been identified. The respondent was navigating the complexities of the position and the claimant's complaints and making real attempts to find solutions to help the claimant (in other words, to make adjustments).

234. Time Limit issue It is relevant to the time limit issue to determine by when it would have been reasonable for the respondent to have made a reasonable adjustment to overcome the disadvantage from the application of the Targets PCP. One of the reasonable adjustments listed in issue 23 (below) had been made, particularly a reduction in workload. As for other potentially helpful adjustments, the time for these would have been when the claimant was ready - or almost ready – for a return to work. For example, change in role, support pathway to assist a return to work, informal return to workdays. RF had already raised and discussed with the claimant a possible change in role. The appeal outcome made clear that an external mediator could be appointed once the claimant was fit to return and referral to occupational health to consider further support. However, there was no indication that the claimant was fit (or close to being fit) to return to work as at their resignation date.

The Time Logs PCP

235. This PCP did not put the claimant at any disadvantage. On the contrary, the respondent wanted the claimant to use the Time Logs properly so that it could identify ways to assist the claimant and be informed about when assistance was needed.

23. *Did the Respondent fail in its duty to take such steps as it would have been reasonable to take in order to avoid that disadvantage? The Claimant says the following adjustments to the PCPs would have been reasonable:*

23.1 *Reduction of workload.*

23.2 *Changes to the appraisal process.*

23.3 *Change in role to reduce file review work and retain the pension and workshops work.*

23.4 *(withdrawn) ~~A change of team/department after raising a grievance.~~*

23.5 *A pathway of support to aid the return to work including therapy/counselling.*

23.6 *Informal return to work days.*

~~23.7~~ *(withdrawn) ~~An invite to the work Christmas party whilst absent due to sickness.~~*

23.8 *An assigned mentor to assist with the return to work.*

23.9 *A meeting to discuss the route to return to work.*

23.10 *Written guidance on how the usual return to work pathway works.*

Conclusions to issue 23

236. See response to the Targets PCP above.

VICTIMISATION – SECTION 27 EQUALITY ACT 2010

24. *The respondent accepts that the Claimant did a protected act in what they said in the formal grievance meeting on or around 19 August 2022 when they asserted disability discrimination and a breach of the duty to make reasonable adjustments.*

25. *Did the Respondent subject to the Claimant to any of the following detriments because of the protected act?*

25.1 *The claimant being invited to a meeting at which the termination of their employment was proposed (conducted under section 111A of the Employment Rights Act 1996) and/or what was proposed in the meeting on 7 September 2022.*

25.2 *The absence of contact from the respondent between that proposal (on 7 September) and the Claimant being discharged as an in-patient on 7 October 2022 (or shortly before) and/or the failure to respond to communications.*

25.3 *(withdrawn)~~The claimant being excluded from events and, in particular, not being invited to the Christmas event~~.*

Conclusions to the Victimisation complaint – issues 24 and 25.

237. Protected conversion detriment:-

a. The claimant was not subjected to a detriment in being given an option of leaving the respondent's employment on terms. The claimant was in no worse a position in rejecting the proposal than they would have been had the proposal not been made at all. In so far as the claimant concluded that being given a settlement option by the respondent, changed their position for the worse or put them at a disadvantage, that was not a reasonable conclusion on their part.

b. We recognise that there can be circumstances where making a settlement proposal in a protected conversation might be a detriment to the employee in receipt of the proposal. In reaching our conclusion that there was no detriment in this case, we took in to account the non-threatening way that the proposal was communicated, the fact that the claimant had by then obtained legal advice and assistance as well as the claimant's decision to go ahead with the conversation having been fully informed about protected conversations. These conclusions are supported by the terms of the emails exchanged on 6 and 9 September 2022 (see 109 and 111 above.). The combative terms of the claimant's email of 9 September 2022 (para 111) underline the good sense in providing the claimant with a settlement option that could be discussed with their solicitor and their wife and the potential benefit to the claimant that taking that option might have provided.

c. We do not find a causal connection between the protected act and the decision to provide the claimant with an option of settlement proposals. We are satisfied that the main reason why RF decided that putting a settlement option to the claimant was the "cry for help" from LJ's email and the fact that the claimant's

employment with the respondent was having such a negative impact on the claimant's health. Leaving employment on terms was a possible solution. That solution might also allow the claimant to to pursue other interests (reference was made to a coaching business).

CONSTRUCTIVE UNFAIR DISMISSAL

26. *Did the Respondent carry out any of the following acts or omissions?*

26.1 *Ongoing discrimination against the Claimant.*

26.2 *Failure to apply reasonable adjustments.*

26.3 *Taking an unreasonable amount of time to deal with the Claimant's grievance.*

26.4 *Conducting the grievance process in an unreasonable manner.*

26.5 *Lack of support to the Claimant to return to work.*

26.6 *(withdrawn as effectively within of 26.1 and 26.2)~~Hostility towards the Claimant over email during periods of absence~~.*

26.7 *Create a hostile working environment for the Claimant.*

26.8 *The emails exchanged between the Claimant and the Respondent's CEO and the Respondent's refusal to review the decision on payment of sick pay to the Claimant, the insurers having deemed the Claimant's sickness to be 'work-related' and the Respondent denying such and saying that the sickness was the Claimant's fault.*

27. *If so, did the actions and omissions contained at paragraph 26 individually or cumulatively breach the implied duty of trust and confidence?*

28. *Was there a "final straw" of the communication of the decision to decline the application for income protection?*

29. *Was the alleged breach a fundamental breach, being so serious that the Claimant was entitled to treat the employment contract as at an end?*

238. Conclusions to the Constructive unfair Dismissal complaint.

a. Conclusion to 26.1 - There was no ongoing discrimination against the claimant – see conclusions above.
b. Conclusion to 26.2 - There was no failure to make reasonable adjustments. The respondent was active in efforts to find ways to support the claimant – see conclusions above.
c. Conclusion to 26.3 - Whilst the claimant did tell PT in June 2022, that they wanted to raise a grievance, the respondent made real efforts, from June 2022 to resolve the claimant's grievances. We do not criticise the respondent from trying to do this through meetings with the claimant in June and August 2022. That approach did not work and the claimant was asked to set out in writing what their grievances were. The detail that the claimant wanted RF to consider, was sent to RF on 7 September 2025. It was voluminous. See 106 above. Given the extent of information provided, it was not surprising (and not unreasonable) that the grievance outcome report was not completed and sent until 20 October

2022. As for the appeal, which was made in early November, it was reasonable to have sourced and instructed an external HR consultant to deal with the appeal and we have no criticism of the appeal meeting not being arranged until just after the Christmas and New year holiday period (on 5 January 2023).

d. Conclusion to 26.4 – the grievance was not conducted in an unreasonable manner.
e. Conclusion to 26.5 – in the months leading up to resignation, the claimant was not well enough to return to work. However the respondent had set out proposals and options for the claimant o consider when ready for a return. See appeal outcome (para 122) as well as earlier discussions with RF (para 104) which included discussing an alternative role for the claimant.
f. Conclusion to 26.7. The respondent did not create a hostile working environment for the claimant.
g. Conclusion to 26.8 The steps taken by the respondent in paying the claimant during their extended period of absence went well beyond the contractual obligations. We conclude that the respondent did this because it wanted to maintain a relationship with the claimant in the hope that their health would improve and they would be able to return to work. Full salary had been paid for almost 5 months and with a further promise to pay the claimant 50% of their salary for the months that followed. As for the remainder of this alleged breach, had the claimant's absence been regarded as work related then the terms of the policy make clear that a claim would be refused. But the respondent did not know whether the claimant's illness was work related. The claimant's mental health was very poor indeed from September onwards. There may have been causes of the claimant's illness that were not work related. For the avoidance of doubt, there is no evidence of anyone at the respondent opining that the claimant's sickness was their fault. Sadly, the wording of this allegation continues a theme in this case; of the claimant's perception that senior employees were blaming them, when the intentions and actions of those senor employees were to try to help.

NOTICE PAY

30. *In the circumstances, was the Claimant entitled to receive notice pay?*

239. The claimant resigned from their employment with immediate effect. They were not constructively dismissed. No pay for (or in lieu) of a notice period is due.

Employment Judge Leach

Date: 21 August 2025

JUDGMENT SENT TO THE PARTIES ON

1 October 2025

AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE

ANNEX ONE

IN THE MANCHESTER EMPLOYMENT TRIBUNAL **Case Number: 2406283/2023**

BETWEEN:

MX K JAYDEN

Claimant

and

THREESIXTY SERVICES LLP

Respondent

LIST OF ISSUES

CLAIMS:

ANNEX ONE

1. **The Claimant seeks to bring to following claims:**

1.1 Disability discrimination:

1.1.1 Indirect discrimination;

1.1.2 Discrimination arising from disability;

1.1.3 Breach of duty to make Reasonable adjustments; and

1.1.4 Victimisation

1.2 Constructive unfair dismissal

1.3 Notice pay.

2. In respect of each of the above claims, the issues to be determined by the Tribunal are set out below:

JURISDICTION:

3. Are any or all of the Claimant's discrimination complaints presented out of time for the purposes of section 123(1)(a) of the Equality Act 2010?

4. If so, do the acts complained of amount to a continuous course of conduct extending over a period of time within the meaning of 123(3)(a) of the Equality Act 2010?

5. In respect of any alleged act of discrimination that are out of time, would it be just and equitable to extent time to allow for the presentation of these claims under section 123(1)(b) of the Equality Act 2010?

DISABILITY – SECTION 6 EQUALITY ACT 2010:

6. The Respondent has conceded that the Claimant had the disabilities of Autism Spectrum Condition and ADHD at the relevant times of November 2021 – 30 January 2023.

7. The Respondent has not conceded the third alleged disability of anxiety and/or depression. The parties agree that this disability is not relevant to the complaints themselves although evidence about these impairments may be relevant to remedy.

8. XXXX

9. XXXX

INDIRECT DISABILITY DISCRIMINATION – SECTION 19 EQUALITY ACT 2010

10. Did the Respondent apply any of the following provision, criterion or practices (**PCP**):

10.1 Targets set daily, weekly, monthly and yearly for file reviews (Targets PCP).

10.2 An appraisal process including various outcomes assessed with no quantifiable measures (Appraisals PCP).

10.3 Allocation of ad hoc cases to whoever has the least regular client file review days (Ad Hoc Cases PCP).

10.4 The structure of non-client fee paying work having no formal time set aside for this including the expectation that employees use do not disturb or out of office replies to avoid interruptions (Non-Client Work PCP).

10.5 The use of time logs for non-client facing staff to log all tasks for the day (Time Logs PCP).

10.6 Allocating a maximum of 60 minutes to complete preparatory work and 60 minutes for write up with the expectation that spare time from this task type is used for continuing professional development or other admin points (Time Allocation PCP).

10.7 No policy which covers reasonable adjustments or neurodiversity in the workplace (No Policy PCP).

11. If so, did the PCP put (or would put) those with the Claimant's disability at the following particular disadvantages when compared to other persons who not have that disability? (Additional details are contained in the Claimant's Further and Better Particulars)

11.1 The Targets PCP - The claimant's disabilities mean that their writing, reading and information processing speeds are impacted. The targets are used as KPIs for appraisals which can impact on pay rises and disciplinary action. The Claimant would have to work longer hours to meet the targets.

11.2 The Appraisals PCP - The appraisal process containing subjective elements is difficult to navigate for individuals with autism making it harder to achieve a pay rise. Assessing organisation, planning and communication skills puts individuals with ADHD and/or autism to a disadvantage as such skills may be impaired by their conditions.

11.3 The Ad Hoc Cases PCP - Being allocated ad hoc cases involved carrying out multiple tasks and processes at the same time, which is more difficult for individuals with ADHD and/or autism due to the impact on their ability to remain focused and to switch tasks. Individuals with ADHD and/or autism may be assessed as performing at a lower level or be required to work additional hours.

11.4 The Non-Client Work PCP - Not providing set time for admin tasks increases the likelihood of individuals with ADHD and/or autism becoming distracted with admin tasks. Individuals with ADHD and/or autism may be assessed as performing at a lower level or be required to work additional hours.

11.5 The Time Logs PCP - The use of time logs for non-client facing staff for non-fee-paying work impacts on individuals with ADHD and/or autism due to needing longer to complete tasks and means they have less time to spend on file reviews. This results in scrutiny that they are inefficient or not meeting targets. This causes additional stress and negatively impacts upon mental health resulting in absences.

11.6 The Time allocation PCP - The allocation of 60 minutes for preparatory work and 60 minutes to write up the work, negatively impacts individuals with ADHD and/or autism as such individuals can take longer to read, write and process tasks. This negatively impacts their ability to meet targets and KPIs.

11.7 The No Policy PCP - Individuals who are neurodivergent do not have a policy setting out a pathway of support that could allow them to remain or return to the workplace with adjustments. This can result in higher absence level, have a negative impact on mental health and see such individuals are unable to remain in the workplace.

12. Did the PCPs set out under paragraph 10 put the Claimant at the disadvantages identified under paragraph11?

13. If so, can the Respondent show it to be a proportionate means of achieving the following legitimate aims:

13.1 The Targets PCP - the legitimate aim of ensuring an appropriate output of work to enable it to deliver a satisfactory service level to its clients.

13.2 The Appraisals PCP - the legitimate aim of ensuring the proper management of employee job performance and their career progression.

13.3 The Ad Hoc Cases PCP - the legitimate aim of ensuring the allocation of work is based on who has the most capacity.

13.4 The Non-Client Work PCP - the legitimate aim of providing flexibility when non-client work can be completed, ensuring that client work is prioritised.

13.5 The Time Logs PCP - the legitimate aim of ensuring the proper management of time and that employees are not consistently working additional hours.

13.6 The Time Allocations PCP - the legitimate aim of ensuring the proper management of work allocation and required resource levels.

13.7 The No Policy PCP - the legitimate aim of providing assistance on a case-by-case basis without the need for a formal and rigid policy.

DISCRIMINATION ARISING FROM DISABILITY – SECTION 15 EQUALITY ACT 2010

14. Did the Respondent subject the Claimant to the following treatment:

14.1 From **November** 2021 to **August** 2022; KB placing increased emphasis on time taken to complete tasks through additional meetings, emails and calls, in an over bearing, critical and negative manner without corresponding support or adjustments (WS p18, ET1 9.11-13). This was as a consequence of taking longer than expected to complete both fee and non-fee paying tasks. (16.2; 16.3)

14.2 From **November 2021 throughout the remainder of the claimant's employment**, Repeated dismissal of concerns over workloads when discussing schedules being told "you don't even have a full schedule" as the figures used did not include all parts of role in work completed. The claimant's concerns went ignored over 2022 by KB, PT (HR) and LC when raised, inferring their workload should be achievable (despite not including all fee-paying work completed). 16.2)

14.3 **On 26 and 27 January 2022** KB reprimanded the claimant for the apparent use of language and communication in emails between the claimant, KB and RF on 26 and 27 January 2022 AND in a telephone call between the claimant and KB on 26 and/or 27 January 2022 regarding booking a DB workshop. A request to call the claimant was then dismissed. The unfavourable treatment was time lost to the meeting, as well as the negative perceptions of KJ's communication deeming a meeting necessary, which KB refused to carry out until the next day despite urgency noted. Requests for clarity and vague agenda sent out upfront had been ignored. The phone call meeting the next day was overly critical despite there being no concerns raised by RF. (16.4)

14.4 On **16 May 2022 and continuing through June 2022**, having taken 2 days of CFR reviews from the claimant's schedule in exchange for 2 DB workshops, KB then:-

14.4.1 Took up 3 hours of the claimant's time with queries and questions regarding the cases that KB had taken from the claimant.

14.4.2 Used the files allocated to the claimant to demonstrate that the claimant took longer time to complete file reviews.

14.4.3 Used the files allocated to the claimant in order for KB to compare her work with the claimant's.

(16.2;16.3)

14.5 On **16 and 17 May 2022**, KB speaking with the claimant in a negative and hostile way in phone calls between KB and the claimant concerning the time being taken by the claimant to complete their work. The calls arose as a result of concerns being raised over workload sustainability. The calls became negative and hostile due to KJ asking questions needing clarity as well as having concerns over ability to meet demands of increases in workload. (16.2;16.3).

14.6 Between **May 2022 and August 2022**, in emails, KB making negative references about the claimant being a difficult person, refusing to change. (16.3 and 16.4)

14.7 On **23 June 2022** and on **8 August 2022**, holding meetings with the claimant. (16.3)

14.8 **On various dates subsequent to those 2 meetings**, KB and LC falsely accusing the claimant of aggressive behaviour. The accusations of aggression, whilst untrue, were made as a result of the frustration and attempting to discuss the issues faced as a result of autism and adhd in taking longer to complete tasks, as well as communication issues. (16.4)

14.9 **On various dates**, KB using time logs as a source of information used to criticise the claimant about time taken to complete tasks. (16.2;16.3)

14.10 **On 6 July 2022** (the claimant having cancelled annual leave for the purpose of catching up on outstanding tasks) KB asking the claimant how their time would be used and telling the claimant that she will need to schedule work in for the claimant to do (16.2)

15. If so, was the treatment unfavourable within the meaning of section 15(1) of the Equality Act 2010?

15. Did the following 'something' arise in consequence of the Claimant's disability:

15.1 Slower reading and writing speeds due to ADHD and Autism.

15.2 Taking longer to complete tasks due to the slower processing of information caused by ADHD and Autism.

15.3 A need to understand the small detail first before seeing the bigger picture due to ADHD and Autism.

15.4 Communication style perceived as blunt, rude or short due to due to ADHD and Autism.

16. Did the Respondent subject the Claimant to the above unfavourable treatment because of any of the matters set out at paragraph 16 being something arising in consequence of their disability?

17. If so was such unfavourable treatment a proportionate means of achieving a legitimate aim? :

17.1 The legitimate aim of ensuring an appropriate output of work to enable it to deliver a satisfactory service level to its clients.

17.2 The legitimate aim of ensuring the proper management of employee job performance and their career progression.

17.3 The legitimate aim of ensuring the allocation of work is based on who has the most capacity.

17.4 The legitimate aim of ensuring that the allocation of work is fair between all employees.

17.5 The legitimate aim of providing flexibility when non-client work can be completed, ensuring that client work is prioritised.

17.6 The legitimate aim of ensuring the proper management of time and that employees are not consistently working additional hours.

17.7 The legitimate aim of ensuring the proper management of work allocation and required resource levels.

17.8 The legitimate aim of assisting employees of establishing effective ways of working.

17.9 The legitimate aim of ensuring employees on sick leave are able to rest and do not feel pressured to pre-emptively return to work.

FAILURE TO MAKE REASONABLE ADJUSTMENTS – SECTION 20 EQUALITY ACT 2010

18. Did the Respondent have any of the PCPs listed at paragraphs 10.1 – 10.7 within the meaning of section 20(3) of the Equality Act 2010?

19. If so, were any of those PCPs applied to the Claimant?

20. If so, did the application of the of such PCPs put the Claimant a substantial disadvantage compared to someone without the Claimant's disability? The relevant disadvantages are set out at paragraph 11. 1 – 11.7

21. Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at such disadvantage?

22. Did the Respondent fail in its duty to take such steps as it would have been reasonable to take in order to avoid that disadvantage? The Claimant says the following adjustments to the PCPs would have been reasonable:

22.1 Reduction of workload.

22.2 Changes to the appraisal process.

22.3 Change in role to reduce file review work and retain the pension and workshops work.

22.4 (withdrawn) ~~A change of team/department after raising a grievance.~~

22.5 A pathway of support to aid the return to work including therapy/counselling.

22.6 Informal return to work days.

~~22.7~~ (withdrawn) ~~An invite to the work Christmas party whilst absent due to sickness.~~

22.8 An assigned mentor to assist with the return to work.

22.9 A meeting to discuss the route to return to work.

22.10 Written guidance on how the usual return to work pathway works.

VICTIMISATION – SECTION 27 EQUALITY ACT 2010

23. The respondent accepts that the Claimant did a protected act in what they said in the formal grievance meeting on or around 19 August 2022 when they asserted disability discrimination and a breach of the duty to make reasonable adjustments.

24. Did the Respondent subject to the Claimant to any of the following detriments because of the protected act?

24.1 The claimant being invited to a meeting at which the termination of their employment was proposed (conducted under section 111A of the Employment Rights Act 1996) and/or what was proposed in the meeting on 7 September 2022.

24.2 The absence of contact from the respondent between that proposal (on 7 September) and the Claimant being discharged as an in-patient on 7 October 2022 (or shortly before) and/or the failure to respond to communications.

24.3 (withdrawn)~~The claimant being excluded from events and, in particular, not being invited to the Christmas event~~.

CONSTRUCTIVE UNFAIR DISMISSAL

25. Did the Respondent carry out any of the following acts or omissions?

25.1 Ongoing discrimination against the Claimant.

25.2 Failure to apply reasonable adjustments.

25.3 Taking an unreasonable amount of time to deal with the Claimant's grievance.

25.4 Conducting the grievance process in an unreasonable manner.

25.5 Lack of support to the Claimant to return to work.

25.6 (withdrawn as effectively within of 26.1 and 26.2)~~Hostility towards the Claimant over email during periods of absence~~.

25.7 Create a hostile working environment for the Claimant.

25.8 The emails exchanged between the Claimant and the Respondent's CEO and the Respondent's refusal to review the decision on payment of sick pay to the Claimant, the insurers having deemed the Claimant's sickness to be 'work-related' and the Respondent denying such and saying that the sickness was the Claimant's fault.

26. If so, did the actions and omissions contained at paragraph 26 individually or cumulatively breach the implied duty of trust and confidence?

27. Was there a "final straw" of the communication of the decision to decline the application for income protection?

28. Was the alleged breach a fundamental breach, being so serious that the Claimant was entitled to treat the employment contract as at an end?

29. If so, was the alleged fundamental breach of contract the reason for the Claimant's resignation?

30. Did the Claimant affirm the employment contract before resigning, either through words or conduct?

31. If the Claimant was dismissed, was it for a fair reason, namely capability?

If so, was the Claimant's dismissal otherwise fair within the meaning of section 98(4) of the Employment Rights Act 1996?

NOTICE PAY

32. In the circumstances, was the Claimant entitled to receive notice pay?

REMEDY

33. If the Claimant succeeds in any of their claims, what remedy (if any) should they be awarded?

34. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

35. If so, did the Respondent comply with it?

36. If so, is it just and equitable to increase or decrease any award payable to the Claimant?

37. If so, by what proportion?

38. Should interest be awarded?

39. If so, how much?