



EMPLOYMENT TRIBUNALS

Claimant**Respondent**

Ms Nicole Hogger

v

Genesis PR Limited

Heard at: Cambridge

On: 23, 24, 25, 26 and 27 June 2025
20 August 2025 (Judgment)

Before: Employment Judge Tynan

Members: Ms B Handley-Howorth and Ms H Gunnell

Appearances:

For the Claimant: In person

For the Respondent: Ms K Barry, Counsel

JUDGMENT having been sent to the parties on 10 September 2025 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The Claimant was employed by the Respondent latterly as a PR Account Manager, from 18 October 2018 until 15 September 2023. Although the Claimant resigned her employment, she claims that she was unfairly constructively dismissed. She also pursues various complaints that she was discriminated against as a person with a disability, including by being constructively dismissed. It is common ground that the Claimant was disabled throughout her employment with the Respondent by reason of ADHD, a lifelong neurodivergent condition. She was only diagnosed with the condition on or around 6 July 2021. It is not suggested that the Respondent ought to have known of her disability before it was disclosed by the Claimant.

Evidence before the Tribunal

2. The Claimant has represented herself in the proceedings. She has made three statements in the proceedings: an impact statement regarding her disability, dated 11 June 2024; a subsequent statement directed in particular at time limitation issues, dated 1 August 2024; and a third more recent statement, dated 14 May 2025. The second statement provided the focus for the Claimant's evidence at Tribunal.
3. On behalf of the Respondent we heard evidence from:
 - 3.1. Alison (Ali) Straker who was formerly the Respondent's Director of PR & Content. Ms Straker was part of the company's senior leadership and line managed the Claimant over two separate periods of time.
 - 3.2. Emma Turner (referred to in various documents as Emma Hart) who was formerly the Respondent's Director of Business & Finance. Ms Turner was also part of the senior leadership.

The third member of the senior leadership team at the relevant time had a diagnosis of ADHD, indicating that neurodiversity is not a barrier to career progression at the Respondent.

4. There was a single agreed Bundle extending to 346 numbered pages. Any page references in the course of these reasons correspond to that Bundle.

The Issues

5. The issues in the case are set out in the records of two separate preliminary hearings which took place on 26 June and 7 August 2024.
6. As regards any time limitation issues that arise, the Claimant resigned her employment on notice. Her last day of employment was 15 September 2023. ACAS early conciliation ran from 28 November 2023 to 5 January 2024, with the claim being presented to the employment tribunals on the last possible day, namely 5 February 2024. Subject to there having been acts of discrimination extending over a period, any acts or omissions prior to 28 August 2023 are prima facie out of time.

The Facts

7. The Respondent provides strategic communication services to a wide range of clients. The Claimant joined the Respondent on or around 18 October 2018 as a Senior PR Account Executive, securing promotion to PR Account Manager in April 2020. She was responsible for leading client projects, managing communication campaigns and organising events. Ms Straker championed her promotion in April 2020. They evidently enjoyed a positive, friendly working relationship and this did not change after Ms Straker became the Claimant's line manager in 2021, even if there was a more formal aspect to the relationship, for example regular 1-2-1s.

8. The Claimant's 2021 Personal Development Review ("PDR") (pages 109 to 120) gives little indication of the difficulties that may come with ADHD. Her expertise, team working and results driven approach were all acknowledged as well as her personability, reliability and insights. The feedback is consistent with feedback the previous year, when we accept that the Claimant was described as an outstanding team player. There is reference in the 2021 review to the Claimant needing to ensure that clients, "see and value the results", that Account Directors are fully informed of progress, and that insights and results are shared. With the benefit of hindsight, these development points may have indicated communication or organisation issues potentially related to the Claimant's then undiagnosed ADHD, but they have to be considered in the context of other positive feedback, including that the Claimant had "excellent" communication skills. Overall, the review evidences that the Claimant had performed well in the role in the year following her promotion.

The Claimant's diagnosis with ADHD in 2021

9. At some point in 2021, possibly when she had yet to be diagnosed with ADHD or indeed even referred for assessment, the Claimant disclosed to Ms Straker that she sometimes struggled to prioritise work. It was agreed that they would meet weekly on a Monday morning to run through the Claimant's task list, with a view to identifying any workload or deadline issues that she needed to act upon or required support with. Regardless of whether this was before or following the Claimant's diagnosis with ADHD, it evidences to us that Ms Straker was a supportive manager who wanted the Claimant to succeed.
10. In late spring or early summer 2021, the Claimant told Ms Straker that she was seeking a referral through her private health insurance for an ADHD assessment. In due course, she was assessed by Dr Hossain, a consultant psychiatrist and a formal diagnosis followed on or around 16 July 2021. The Claimant shared her diagnosis with Ms Straker though, as we shall come back to, she did not provide Ms Straker with a copy of Dr Hossain's report. Although Ms Straker says she believes they talked about the matter as friends, there is no indication that is how the Claimant saw it. We think the distinction is an artificial one. In our judgement, it was first and foremost a disclosure by the Claimant of relevant information to her manager, however friendly their working relationship and even if it was implicitly understood between them that Ms Straker would respect the Claimant's confidence in the matter, particularly as she came to terms with the diagnosis.
11. Over the following weeks, the Claimant spoke to Ms Straker regarding certain difficulties she was experiencing with the medication she had been prescribed for her ADHD.
12. Dr Hossain's report is at pages 124 – 128 of the Bundle. As we say, the Claimant did not provide a copy to Ms Straker or indeed anyone else at the Respondent. The most likely explanation is that the report contained sensitive information about the Claimant and her family that she preferred not to disclose. It is unfortunate that she did not make the report available to the Respondent because it contains various helpful insights. For

example, in the third page of his report Dr Hossain wrote,

“There are problems with focus unless the pressure is on. Poor organisation, forgetfulness and difficulty getting started on tasks requiring significant mental effort. Maintaining attention and procrastination has always been a problem but on the other hand can often hyper focus in areas of interest that may be irrelevant to the task at hand. Is frequently forgetful and losing items. Projects and activities can often be started but not followed through. This has impacted in a variety of domains including education, work and home life.”

(page 125)

13. Perhaps because the assessment was not commissioned by the Respondent or with the Claimant's employment in mind, Dr Hossain's report does not indicate potential workplace adjustments that might benefit the Claimant. Nevertheless, it would undoubtedly have been beneficial for a copy of the report to have been provided to the Respondent, even if the sensitive information contained in it had been redacted. The Claimant's decision to effectively withhold the report from the Respondent reflects what we observe to be some tendency on her part not to be as open with others as she might be about her condition. Whether this is because she has learned to mask the effects of her condition we cannot say, since we did not hear evidence on the matter.
14. Ms Turner does not identify in her witness statement when she first learned that the Claimant had been diagnosed with ADHD. All she says is that she does not believe she was told immediately in July 2021.

2022

15. In February 2022, one of the Claimant's colleagues, Tim Miller picked up that the Claimant appeared anxious, albeit in the context of capacity constraints, high workloads and possibly some financial pressures in her personal life. He flagged the matter to Ms Straker, who believes she would have followed the matter up with the Claimant. However, she cannot say that she definitely did so, let alone that she considered or discussed with the Claimant any potential link to her ADHD.
16. A couple of months later, the Claimant and Ms Straker met for her 2022 Personal Development Review. Unfortunately, the completed PDR form is not available to us, so we have no way of knowing whether there were any particular flags in terms of the Claimant's performance or development.
17. Around this same time, Mr Miller emailed Ms Straker with further concerns in relation to the Claimant. In an email to Ms Straker dated 14 April 2022 he wrote,

“I just wanted to flag that Nicole seems to be slipping behind with work again.”

He said that two clients had recently chased for work about which the

Claimant had failed to keep him informed. He said,

“She doesn’t seem to flag if she’s tight on capacity but instead just goes quiet.”

He said he was having to track all activity to ensure it wasn’t overlooked.

18. Whilst we do not consider that this ought to have prompted an occupational health referral, in our view it should have prompted a more focused discussion with the Claimant, given that mistakes, disorganisation and forgetfulness are all well documented symptoms of ADHD. Ms Straker did reach out to the Claimant. She emailed her on 20 April 2022 to say that she was aware the Claimant was having a tough time and asked if there was anything she could do to help. She did not specifically ask whether there was or might be any connection to the Claimant’s ADHD. Nevertheless, following their regular Monday morning meeting on 25 April 2022, she reallocated some of the Claimant’s work to a colleague and followed up the next day, telling the Claimant that she was there for the Claimant if she wanted to talk about anything.
19. Teams messages at page 144 of the Bundle evidence that the Claimant was appreciative of Ms Straker’s concern and support over this period. In a message sent on 27 April 2022, she said that it felt like a weight had been lifted. She also made reference to the fact Karen Byrland would shortly be joining the business and that this would allow Ms Straker to have oversight of the work allocation. She was evidently also buoyed by the news of a pay rise.
20. Around this time, the Respondent’s three Directors were in discussion regarding the proposed scores for their reports’ PDRs. It was identified that the Claimant should be scored ‘5’ for Skills because of the high standard of her work but receive a lower score of ‘3’ for Values, to reflect that she did not always keep colleagues up to date with progress and missed deadlines (page 140). Whilst a score of ‘3’ equates to “consistently meets expectations”, it was a lower rating than a number of the Claimant’s colleagues received that year and may have been lower than her previous year’s score, in which case it was a further potential flag which added to an emerging picture of communication and organisation issues impacting the Claimant’s work performance. However, in our judgement, it was still not at a level that ought to have prompted an occupational health referral.

Ms Byrland’s management of the Claimant, including the September 2022 occupational health referral and later Development Plan

21. Ms Byrland joined the Respondent in June 2022 as an Account Director and shortly thereafter became the Claimant’s manager. Ms Straker describes her as having a relentlessly positive approach, praising and encouraging at every turn.
22. Ms Byrland continued Ms Straker’s established practice of regular Monday meetings with the Claimant; see for example her email of 9 September 2022 which refers to “weekly notes below” (see page 161 of the Bundle). It is clear that Ms Byrland was aware of the Claimant’s ADHD relatively early on; for example, Ms Turner’s email to her of 25 August

2022 at page 151 of the Bundle makes reference to the Claimant's struggles, "particularly with her ADHD". It is equally clear from the email wording that Ms Byrland was by then already aware of the condition ie, that it was not being disclosed to her for the first time. The email is potentially significant for other reasons: firstly, it evidences that by 25 August 2022 the senior leadership were collectively of the view that the Claimant was struggling and not performing as strongly in the role as she had been; secondly, this had been escalated within the Group, certainly at least to the Group Director of People; and thirdly, over a year on from the Claimant's diagnosis with ADHD, it was seemingly documented for the first time that workplace adjustments would be required.

23. A couple of weeks earlier, on 10 August 2022, Ms Straker had reached out to the Claimant on Teams and asked her if she wanted to talk. She acknowledged that the Claimant was having "a hard time" (page 150). We infer that she did so because there was ongoing discussion of the Claimant's performance amongst the senior leadership. When the Claimant responded to Ms Straker, she apologised for missing her call and explained that having started earlier in the day she had taken an extended lunch break to go to the supermarket. This does not evidence to us, as was suggested, that the Claimant was in the habit of taking time out during the day for personal tasks but failing to keep her colleagues informed as to her whereabouts or availability. Be that as it may, the Claimant's reasonably detailed response to Ms Straker later the same day focused on the fact she was under investigation for potential psoriatic arthritis and that she was experiencing considerable shoulder, wrist and ankle pain. There was no mention of her ADHD or any issues related to it.
24. Given her evident understanding of HR issues and in the context of the Directors' ongoing concerns, the Group Director of People identified a potential need for an occupational health assessment in relation to the Claimant. This was relayed to the Claimant by Ms Byrland with the explanation that it would "help ascertain working environment, workload management etc. and better inform how best to support Nicole in the future" (page 153).
25. When Ms Byrland sought the Claimant's consent to the referral on 2 September 2022, the Claimant responded positively. Indeed, in the course of an email exchange with Ms Byrland and Ms Turner over the following days, she described the prospect of an assessment as "very exciting weirdly". In an email to Ms Turner on 7 September 2022 she wrote,

"I've never been able to cultivate a consistent way to 'do' daily life without feeling overwhelmed/anxious/on auto pilot – I'm really open and looking forward to learning some new tools ..."

Ms Byrland responded,

"We will all learn something no doubt."

(page 155)

26. As we shall come back to, we do not think that the learning points were in fact taken on board by the Respondent.
27. The following day, Mr Miller emailed Ms Straker, Ms Turner and two others with concerns regarding the Claimant's reliability, including her failure to keep him updated. When Ms Straker responded she did not refer to the Claimant's ADHD or even to personal issues potentially affecting her performance. Instead, her immediate comment was, "This is concerning", before going on to note that she had experienced similar issues herself. Whilst she did go on to say that the company was offering external support to the Claimant, she did not elaborate or suggest that allowances might need to be made whilst new ways of working were implemented. She asked Ms Byrnam to flag the issues with the Claimant in her supervision.
28. In her 9 September 2022 notes of their weekly meeting, Ms Byrnam noted:

"Nicole can struggle with planning; however, she has been looking at learning platforms, You Tube and LinkedIn to try and get some tips of how to get her emails into some sort of order so she can manage requests better and keep on top of tasks."

(page 161)

29. The occupational health referral is at pages 162 – 164 of the Bundle. It does not identify any specific issues of concern or in respect of which specific advice and guidance was being sought, rather that the Claimant was said to need help in finding ways to manage the effect that ADHD was having on her life, to enable her to maximise her ability to work efficiently and effectively in her role. There was therefore a missed opportunity to secure a report that focused on specific issues or areas of concern. The report itself is at pages 165 – 168 of the Bundle. It is dated 28 September 2022. Its author, Sam Page an Occupational Health Advisor, noted as follows:

"When referring Nicole you did not raise any concerns about her performance in her role and I understand that she is very good at her role."

(page 165)

30. Notwithstanding this potential misunderstanding on Ms Page's part, she went on to say that the Claimant had reported that she had been struggling to manage her work and had cited problems with communication and organisation. The Claimant's return to the office following the Coronavirus pandemic was identified as an issue, as the Claimant was noted to struggle with an office environment in comparison to her home office. Social contact, noise, lighting and heat were all reported to contribute to sensory overload. Prioritisation of tasks, switching between tasks and motivation were also identified as issues for the Claimant.
31. The report is in a narrative format. We have identified the following

recommended adjustments within the report:

- 31.1. Time should be allocated daily for the Claimant to go through her emails and respond as appropriate, or allocate further time for the matter;
 - 31.2. Regular informal meetings with her manager to ensure she remained on track;
 - 31.3. A reduction in the number of unnecessary meetings, albeit the report does not clarify what unnecessary meant in this regard;
 - 31.4. The Claimant should be permitted to block out time during the day when she would not be disturbed, including by turning her phone off;
 - 31.5. Reallocation of certain responsibilities with a view to catering to her identified strengths;
 - 31.6. Increased home working, namely just one day per week in the office;
 - 31.7. An allocated work space for those days the Claimant was in the office.
32. Towards the end of her report, Ms Page referred to ADHD coaching which she said allows employees to build their own collection of strategies for success in their workplace. She noted that the costs could potentially be funded by the Access to Work scheme and included a link to a factsheet for employers, as well as a further link to a welfare pack for ADHD at work. There is no evidence that Ms Turner or others followed these matters up.
33. Ms Turner confirms that she was in possession of a copy of Ms Page's report by 28 September 2022. Ms Byrland's notes of her weekly meeting with the Claimant on 3 October 2022 evidence that she had yet to see the report but that the Claimant was managing her time and priorities more effectively.
34. On 26 October 2022, Bernadette Mooney, a Senior Account Manager highlighted that the Claimant had "gone quiet again" and was failing to keep her updated about various tasks in relation to a client event. The exchange of emails between Ms Byrland, Ms Straker and Ms Turner, at pages 171 – 173 of the Bundle evidence a collective lack of understanding and insight on their part. Whilst we do not know whether Ms Byrland and Ms Straker had by then seen Ms Page's report, they certainly knew that the Claimant had been referred for an assessment. Ms Mooney may potentially have been in the dark, but at the very least the Claimant's failure to provide an update and to follow up would have been understood by Ms Byrland and Ms Straker, to be consistent with an ongoing pattern of communication and organisation issues said to be linked to ADHD.
35. Ms Straker's immediate response to Ms Mooney's email was:

"Not acceptable. If she was due in to help and hasn't turned up or

contacted the account team that's not good enough."

(page 173)

36. Ms Byrmand wrote:

"Oh dear, not good enough on such a critical project ... Not acceptable to stay silent and not let you know."

(page 174)

37. Neither seemed to give any thought to the matter in the context of the Claimant's ADHD. Ms Straker shared the exchange with her fellow Directors, "FYI".

38. Some weeks later, Ms Byrmand crafted a Development Plan for the Claimant which was intended to give effect to the recommendations in Ms Page's report and sent it to the Claimant on 1 December 2022 (pages 174 – 176). There is no obvious explanation for this delay. We have not thought it necessary to replicate the recommended actions from the draft Plan in full in these reasons, but note in this regard that the first two actions were:

- Daily(weekly?) task list, to be shared with Karen Byrmand, Account Director
- Further detailed planning to include overview of time spent (this could also include "time-out" if needed)

We have seen no evidence that a daily or weekly task list was implemented or discussed with the Claimant. Likewise, there is no evidence of further detailed planning to include an overview of time spent by the Claimant on tasks.

39. The draft Plan provided for the Claimant to have a greater level of communication with colleagues but it gave no indication as to what success might look like, nor did it specify a timescale by which this might be achieved. The same observation can be made regarding the stated need for "plenty of opportunities to share client updates".

40. Although the draft Plan envisaged that the Claimant would be in the office once a week to allow for face to face engagement with colleagues, the Respondent seems not to have enforced weekly office attendance, thereby tolerating or even sanctioning the Claimant's increased absence and the loss of opportunities for face to face supervision and interaction.

41. The draft Plan included provision for an investigation of the Claimant's strengths and weaknesses, in light of her job responsibilities and career ambitions. We have seen no evidence that there was any such investigation or evaluation. Likewise, there is no evidence of structured feedback from the Associates and Directors of clients managed by the Claimant, as the draft Plan envisaged.

42. In summary, although the draft Development Plan was a well-intentioned,

reasonably well drafted tool, there is little, if any, evidence that it was taken forward. For example, there is no evidence that it was finalised in discussion with the Claimant, or that it provided the structure for Ms Byrland's and the Claimant's ongoing weekly meetings. We note in particular that the Action Plan on the second page of the draft Development Plan was left uncompleted.

43. The only further evidence of the Claimant's and Ms Byrland's interactions during this period are brief notes of a weekly call on 13 January 2023 (page 178). They make no mention of the draft Development Plan. We disagree therefore with Ms Barry when she submits that it was patently untrue that there was no further discussion of Ms Page's recommendations after the Development Plan was drafted. We regret to say that Ms Byrland's relentlessly positive approach may not have translated into focused, concrete action on her part.
44. Ms Byrland has not made a witness statement and did not attend Tribunal to give evidence. We hesitate to criticise someone in their absence but we are left with the firm impression that she failed to progress the draft Development Plan. The Claimant's circumstances called for a pro-active, structured approach. In our judgement this did not happen whilst she was being managed by Ms Brynland.

The Claimant's 2023 PDR

45. Ms Straker resumed responsibility for managing the Claimant in or around mid-March 2023.
46. The Claimant was absent from work due to stress and anxiety from 14 February 2023. She was expected back at work on 13 March 2023. Ms Straker messaged her in advance to let her know that she would conduct her return to work interview. This followed an earlier call and emails between the Claimant and Ms Turner on 7 March 2023, when the Claimant had highlighted her GP's recommendation of a phased return to work. She was by then a few weeks into a revised medication regime for her ADHD. The Claimant told Ms Turner that she continued to feel up and down, and apologised for any inconvenience. When she and Ms Straker met by Teams on 13 March 2023, they discussed an agreed phased return to work, including that the Claimant would work on smaller, less complex and pressured projects rather than return to work on the accounts she had been struggling with in the period leading up to her sickness absence. Unfortunately, these arrangements were not documented, including the time period over which the Claimant's return would be phased. We do not intend this as a criticism of Ms Straker but in giving the Claimant the space she believed the Claimant needed, she perhaps failed to grip the issue as she might have done, effectively leaving it to the Claimant to essentially manage her own return. Regrettably and quite unintentionally, this merely served to exacerbate the Claimant's feelings of stress and anxiety.
47. The Claimant's 2023 PDR took place on 26 April 2023. The previous week, the Claimant had sought an increase in her ADHD medication dosage as she was experiencing increased anxiety. There is no suggestion that Ms Straker was aware of this. Ahead of their meeting, Ms

Straker had prepared some proposed objectives for the year ahead. We do not think she can be criticised for this since there needed to be some starting point for their discussion. Indeed, Ms Straker's suggested objectives stand in marked contrast to Ms Byrnannd's failure to flesh out objectives as part of an agreed Action/Development Plan.

48. The PDR followed a different format to previous years as the Respondent had adopted the Group approach to appraisal. Ms Straker does not particularly recall the meeting; her evidence is that it was not remarkable or exceptional in any way. By contrast, the Claimant's perception is that Ms Straker set demanding objectives without consideration of her ADHD, or recent mental health leave. As regards the latter, the sick leave had been of relatively short duration and the Claimant was verbalising to Ms Straker that she had made a full recovery.
49. Ms Straker assessed the Claimant as a 'Strong Performer' in terms of the quality of her work, in respect of new business and marketing, and for her strategic approach with clients. She was assessed as an 'Effective Performer' against a further seven metrics and 'Potentially Effective' in terms of Leadership, a proactive approach to clients, and self-improvement. Leadership in this regard means the ability to represent the organisation effectively to external audiences and to lead from the front internally, something that would self-evidently be impacted by communication and organisation difficulties. The 'Potentially Effective' rating meant that the Claimant did not meet the Respondent's expectations in these three areas but was close to the required standard, albeit a plan for self-improvement was required.
50. The Claimant's final overall rating was '2', namely 'Potentially Effective'. It seems to us that this was the only score she could logically be given. If she was performing strongly in certain areas, this did not alter or somehow cancel out the fact that she was not then fully meeting the Respondent's minimum expectations in three specific respects.
51. Ms Straker provided fairly detailed commentary in the manager commentary section of the review form. She wrote:

"Nicole continues to demonstrate very strong sector knowledge across her client accounts. She has a good grasp of clients, marketplace, stakeholders, context and challenges which exceeds others at the same level. The quality of her work is usually high and she demonstrates commitment to the quality of her work and to continued client satisfaction.

There have been a significant number of times this past year, times where client teams and indeed clients have been let down by work not being delivered to agreed deadlines. I think Nicole could avoid this if she is able to improve her client team communications and provide greater oversight of her work to account mangers/directors and manage her time effectively. The team will always want to pitch in and support one another, but senior team members must be aware of an issue in order to help effectively. It is essential communication is actively maintained and agreed deadlines are either kept or

renegotiated in good time.

I believe Nicole is able to further grow her account management skills and progress in her responsibilities at PLMR Genesis, if she can effectively manage herself and her own tasks. She is bright and able and, critically, thinks strategically and builds strong rapport with clients. But to operate to the required standard and deliver effectively, it is essential that issues of communication and time/task management are addressed.

Nicole's next steps should be firstly to address the issues around communication and time/task management. Secondly, to work with her line manager to build her confidence, take greater responsibility step-by-step and contribute to new business/proposals (her strong relationship building, presentation and analytical skills are a boon here).

As a strong talent with great potential, I hope to see Nicole thrive in the year ahead."

52. Whilst the commentary undoubtedly included a number of positive statements, it also includes critical feedback regarding the Claimant's communication and time/task management without acknowledging that these would be impacted by the Claimant's ADHD. Nevertheless, the Claimant signed the form on 12 May 2023 seemingly as confirmation that she agreed with it, including the objectives contained within it.
53. On 30 May 2023, the Claimant reported feeling unwell in the context of a stressful house move. Although Ms Straker was understanding and supportive, Ms Turner informed the Claimant that she would only be paid statutory sick pay for this further sickness absence. Prior to this, in the exercise of its discretion, the Respondent had maintained the Claimant on full pay during her sickness absences, with the result that she had been paid her normal salary notwithstanding she had taken 27.5 days of sick leave as against the five paid days provided for in her contract.

The alleged acts of harassment

54. The Claimant complains that she was subjected to two acts of harassment by Ms Straker on 19 June 2023 and 12 July 2023. We deal with each in turn.
55. It is not in dispute that during their regular weekly Monday catch up by Teams on 19 June 2023, Ms Straker raised with the Claimant that she had failed to turn up to an in-person client team meeting and said this could lead her colleagues to think she was disorganised or uncommitted. Ms Straker says that she had also raised with the Claimant that there were occasions when the Claimant's colleagues could not get hold of her and that she would later respond to say that she had been for a massage, to Starbucks or to the supermarket, and that she had offered this as a further reason why colleagues might think her disorganised or uncommitted. There is in fact very little evidence that the Claimant could not be contacted or that it was an issue. Whilst we find that the comment related

primarily to the Claimant's failure to turn up to a pre-arranged internal client team meeting being held at the Respondent's offices, nothing turns on the point. We find that the Claimant's confusion in relation to the meeting reflected disorganisation that arose from her ADHD. Notwithstanding the meeting had been scheduled for some time and spoken about in advance, the Claimant had become muddled about the matter and believed it would take place online. When she tried to dial into the meeting Ms Straker reminded her that it was an office based meeting. The Claimant drove to the office to join the meeting, albeit arriving approximately forty minutes late.

56. In our judgement, even if this was not intended, Ms Straker's comments on 19 June 2023 undermined the Claimant. They served to highlight her disorganisation without, however, suggesting any practical steps to avoid a similar situation arising in the future. This was equally the case if there was some perception that the Claimant was not keeping colleagues apprised of her whereabouts. There was little, if anything, that the Claimant could usefully do with the feedback. Ms Straker maintains that it was intended as constructive feedback. We suggest that a more constructive approach would have been to explore with the Claimant whether and, if so, what steps might be taken to raise awareness of her condition, and indeed other neurodivergent conditions, within the workplace, or at least amongst the Claimant's immediate colleagues. In our judgement such an approach, rather than, as happened, simply highlighting how she might be perceived by reason of her neurodiversity, would have been a more constructive response to the situation that had arisen.
57. On 12 July 2023, the Claimant arrived late to a client event, for which she had previously volunteered to be first on site. The event in question was the judging day for an awards event also run by the Respondent. The Claimant failed to contact Ms Straker or others to say that she was running late; instead, she arrived late with a coffee in her hand, which lent the unfortunate impression that she had prioritised getting a coffee over getting to the event on time. Ms Straker's principal concern, however, was how the Claimant presented. We accept her description of the Claimant as disheveled, that her hair was a mess, she had food stains on her top and was speaking in an odd sing-song manner, all of which was felt to be out of character. Ms Straker observed the Claimant's pupils to be dilated, something she checked with a colleague who agreed with her. Ms Straker was somewhat alarmed by this, but tried to manage the situation as best she could, given the difficult situation in which she found herself. The Claimant had arrived on site just as the judging was about to begin. Ms Straker continued to check on the Claimant throughout the morning, noting that her face was flushed, she was sweating and moving her limbs about a lot. It is a little unclear from her witness statement whether she considered at the time that the Claimant had taken proscribed drugs, or if this only subsequently occurred to her.
58. Ms Straker felt conflicted in terms of whether or not to send the Claimant home. We accept that she was sufficiently concerned for the Claimant that she thought it best the Claimant stay put so that she could keep an eye on her. At some point in the afternoon the Claimant informed Ms

Straker that she had been sick, at which point Ms Straker asked her if she ought to go home. Although the Claimant told her there was no need, Ms Straker made arrangements for someone to cover for the Claimant. At the end of the day, Ms Straker took the Claimant into one of the rooms and spoke with her in private. She told her that she seemed manic. We accept her evidence that she did not say to the Claimant that she seemed more manic than usual. We prefer Ms Straker's detailed, contextualised account to the Claimant's somewhat cursory evidence about the matter. The detail and context provided by Ms Straker enables us to be confident in what she says, added to which the Claimant was evidently and indisputably unwell, and accordingly less likely to fully appreciate how she had presented. That is further borne out by the fact that the Claimant became weepy during her discussion with Ms Straker and spoke at some length without necessarily making much sense. Ms Straker told the Claimant that she was worried about her and asked her if everything was okay with her meds. She had in mind previous conversations when the Claimant had reported feeling unwell whilst her GP was trying to identify the right medication and dosage for her. Again, we accept Ms Straker's evidence that she did not ask the Claimant if she had taken double her meds and further that by the end of their conversation the Claimant would or ought to have been in no doubt that Ms Straker's sole concern was for her wellbeing.

59. The following day Ms Straker relayed what had happened to her co-Directors. There are no documents evidencing any communications between them in the matter or with the Group. In view of the fact the Claimant had been late the previous day without informing anyone in advance, and given the history of concerns around communication and organisation, they resolved to implement a Performance Improvement Plan ("PIP"). In Ms Straker's words this was intended to get the Claimant back on the right path, providing an even more clear and structured approach which laid out both the expectations of work and of behaviour. We simply observe that effective organisation and communication were already noted within the Claimant's 2023 PDR, and were to be addressed amongst other things through a weekly task list and monthly ongoing client and Director satisfaction around completion of tasks.
60. Ms Straker says that the PIP was also intended to demonstrate to two of the Claimant's colleagues that the company took their concerns seriously and was working to resolve them. We think her colleagues may well have re-appraised or re-thought their concerns and the Respondent's response to them had they known that the issues of concern were a central feature of the Claimant's neurodiversity.
61. At their regular weekly catch up on Monday 17 July 2023, Ms Straker explained to the Claimant that she believed it would be a good idea to put in place a PIP for her. She said this would allow for clear measurable shorter term objectives to support her progress. She went on to say that she would draft some objectives for the PIP over the coming week and then review these with the Claimant.
62. As the Claimant says, the focus on time/task management and communication with colleagues focused on issues where the Claimant's

ADHD had a particular impact on her perceived performance.

63. The following day the Claimant resigned her employment on notice. Her resignation letter, which is at page 216 of the Bundle, offers no clear explanation for her decision to resign. She simply said that she strongly felt it was time for her to take a new path and continue her professional development elsewhere. She went on to express her gratitude for the opportunity to be part of the company. Although her letter concluded with a statement that she would hold on to her positive memories and experiences of working for the organisation, she did not state that it had been a uniformly positive experience.
64. In our collective experience, employees rarely if ever leave secure employment without a reason. In this case we are satisfied that the Claimant did not have another opportunity in mind but resigned instead in response to how she perceived she had been treated by the Respondent. Three months later she set up a new company with a view to starting her own business. We are satisfied that this was in response to having resigned from the Respondent rather than evidence of some established plan on her part to leave the Respondent regardless of how she had allegedly been treated.

Law and Conclusions

The Section 20, 21 Equality Act 2010 complaints

65. Section 20 of EqA 2010 defines the duty to make adjustments as follows,

Duty to make adjustments

- (1) ...
 - (2) ...
 - (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
 - (4) ...
66. It is not necessary in this case for the Tribunal to have regard to the second or third statutory requirements.
67. In Smith v Churchills Stairlifts plc 2006 ICR 524, CA, the Court of Appeal confirmed that the test of reasonableness is an objective one and it is ultimately the employment tribunal's view of what is reasonable that matters. The Claimant does not have any burden in the matter, since the duty, once triggered, is an employer's. Whilst the Equality and Human Rights Commission's statutory Code of Practice on Employment includes examples of matters that a tribunal might take into account (see para 6.28), our focus is on the practical result of the measures that can be taken. In Burke v The College of Law and anor 2012 EWCA Civ 37, CA, the Court of Appeal made it clear that a holistic approach should be adopted when considering the reasonableness of adjustments in circumstances where it takes a number of adjustments, working in

combination, to ameliorate the substantial disadvantage suffered by a claimant.

68. In Leeds Teaching Hospital NHS Trust v Foster EAT 0552/10, the EAT confirmed that there does not necessarily have to be a good or real prospect of an adjustment removing a disadvantage for that adjustment to be a reasonable one. Instead, it is sufficient for the tribunal to find that there would have been a prospect of the disadvantage being alleviated, a point also made in Noor v Foreign and Commonwealth Office 2011 ICR 695, EAT. These decisions were endorsed by Elias LJ in Griffiths v Secretary of State for Work and Pensions 2017 ICR 160, CA, in which he observed:

‘It may still be reasonable to take the step notwithstanding that success is not guaranteed; the uncertainty is one of the factors to weigh up when assessing the question of reasonableness.’

69. The Claimant relies upon three PCPs as follows, two of which are closely related as they concern the Respondent’s approach to performance review:

a. Performance reviews that did not:

i. take account of the Claimant’s previously disclosed disability, and

ii. have structured objectives that were regularly reviewed

b. Not seeking prompt OH referrals.

The First PCP

70. As framed, the first alleged PCP seems to be a complaint about how the Claimant was treated rather than some wider practice at the Respondent. Of course, as Ms Barry reminds us in her submissions, the words “provision, criterion or practice” should not be construed in an overly narrow or limiting way. Particularly where a Claimant is unrepresented, tribunals should avoid an unduly technical approach to the wording of any PCPs so as to defeat a claim that is reasonably capable of being understood as long as the relevant PCP wording is not construed in an overly literal way.
71. In this case, we are satisfied that the Claimant’s first complaint is that her own experience reflects a wider practice at the Respondent of failing to have regard to previously disclosed disability when conducting its staff performance reviews. Be that as it may, the evidence in support of such a PCP is limited, in that the only documented PDR following the Claimant’s disclosure of her ADHD diagnosis in 2021, is the 2023 review. Although the review form does not include a section that specifically addresses how an employee’s performance may have been affected by health or other personal issues, in our experience that is not unusual. Indeed, highlighting an employee’s disability within an appraisal document without good reason might simply serve to create a hostile working environment for them. There is provision on the first page of the review form for the

person being reviewed/appraised to provide their comments and perspective ahead of their review, as well as provision for their manager to provide a narrative commentary after the meeting that reflects the matters discussed. It seems to us that the latter section in particular is where one might expect to see reference to and, as appropriate, allowance made for disability related performance issues. The Claimant does not suggest that she raised the issue of her ADHD ahead of or, more importantly, during the review meeting on 26 April 2023. Even if she believes that Ms Straker should have broached the subject with her, particularly given that she was identifying issues with the Claimant's communication and time/task management, we do not infer from this or conclude on the strength of this one form, that the Respondent has a practice of disregarding disclosed disability when conducting performance reviews with its staff.

The Second PCP

72. The second, related PCP is that the performance reviews did not include structured objectives that were regularly reviewed. Although we do not have the completed PDR for 2022, the template review form (starting at page 130 of the Bundle) contains an introductory statement that the review is intended, amongst other things, to identify development opportunities. Such opportunities are in the nature of objectives. The completed 2021 review form (starting at page 109 of the Bundle and which is in the same format as in 2022), identifies a number of development and continuous improvement opportunities for the Claimant. They are framed in the context of both the core skills for the role and the Respondent's stated values of 'Impact', 'Influence' and 'Inspire', thereby reinforcing that they are intended as objectives. The completed form is both backward and forward looking, insofar as it identifies key attributes and achievements, as well as what future success might look like. Even if the opportunities are expressed at times in slightly aspirational terms, we accept that they reflect a genuine attempt at objective setting, even if this does not extend to performance metrics of the sort used by many employers. There is a 'Notes & Actions' section and the completed 2021 review form also contains a personal KPI log against four identified areas, namely 'Client impact', 'Business development', 'Brand ambassador' and 'Internal support'. The log details the Claimant's activities over a full 12 month period with no indication that her performance had been reviewed over that period or that it would be reviewed over the following 12 months. There are certainly no other documents evidencing any review.
73. The 2023 review form (at pages 197 – 201 of the Bundle) is in a more familiar form. It includes a section for smart objectives including identification of objectives, measurement of achievements and any relevant time scale. The inclusion of a time scale supports not only that the Respondent moved to a more objective system of review but that the objectives were also intended to be kept under review. However, we find that this was not the position prior to 2023 and that the lack of regular or indeed even occasional review, was not unique or specific to the Claimant, but reflective of the Respondent's practice more generally. The Claimant and Ms Straker, and thereafter Ms Byrnam, may well have had weekly meetings but they do not evidence that the Respondent had in place a system for the ongoing regular review of staff objectives. On the contrary,

Ms Straker says at paragraph 12 of her witness statement, that the meetings were to run through the Claimant's 'to do' list. That cannot be equated with a strategic review that looked at whether the Claimant was on track in terms of her PDR objectives.

74. In our judgement the Respondent did operate or apply the second PCP in practice as the Claimant contends and in our further judgement, it placed her at a substantial disadvantage in comparison to others without ADHD or similar neuro divergent conditions, in that her difficulties in sustaining attention to tasks and activities, and with organisation and prioritisation, including her distractibility and forgetfulness, meant that she had greater difficulty remaining on track without structured objectives that were regularly reviewed and she was more likely therefore, to experience stress, anxiety and feelings of being unsupported as well as criticism of her work performance.
75. Regardless of the fact that an occupational health assessment was not secured until September 2022, and even then seemingly not made available to Ms Byrmand and possibly also Ms Straker until some time in October 2022, a reasonably limited online search would have revealed or confirmed to the Respondent that distractibility, disorganisation and an inability to finish tasks, are common features of ADHD and that clear instructions and help in planning and structuring tasks may be a helpful workplace adjustment. We do not, of course, lose sight of the Claimant's failure on occasions to open up and share relevant information about herself. If there was any uncertainty or lack of understanding in the matter, on the Respondent's part to which the Claimant may have contributed, by October 2022 the Respondent was on notice that the Claimant's condition meant that she struggled to manage her work and had issues with communication, organisation and prioritisation. In our judgement the Respondent knew or, by October 2022, ought reasonably to have known that the Claimant would be disadvantaged by its relatively informal, light-touch approach to performance management and review.
76. Whether by luck or by judgement, the Respondent did already have in place at least one, or part of one, of the adjustments recommended by Ms Page, namely regular informal meetings between the Claimant and her manager which were intended to ensure she remained on track in terms of her day to day activities. The pandemic had also brought about significantly increased home working which helped to address some aspects of the Claimant's distractibility and sensory issues.
77. A number of Ms Page's recommendations ultimately sat with the Claimant herself, even if she needed to know that she had the Respondent's support to block out time each day, to absent herself from certain meetings and to limit her days in the office. In our judgement, the fact that it largely or ultimately sat with the Claimant to implement effective strategies to manage the effects of her condition, supports that the Respondent ought to have pursued Ms Page's recommendation of ADHD coaching for the Claimant. Whilst there was a coaching or mentoring element to the weekly meetings, Ms Straker and Ms Byrmand had limited knowledge and understanding of ADHD, with the result that they were not in our judgement in a position to coach the Claimant effectively in

strategies that might enable her to successfully manage the effects of her condition.

78. We remind ourselves again that Leeds Teaching Hospital NHS Trust v Foster confirms that there does not necessarily have to be a good or real prospect of an adjustment removing a disadvantage for that adjustment to be a reasonable one, even if the likelihood or otherwise of success is a factor to weigh in the balance in assessing what is reasonable.
79. Ms Page suggested that grants available under the Access to Work Scheme meant that coaching support might be available at no cost to the Respondent. In the Tribunal's experience, whilst often generous, Access to Work grants rarely cover the full cost of the recommended aid or other measure, the balance of which has to be met by the employer. Nevertheless, there is no suggestion that the Respondent lacked the financial resources to support the provision of an ADHD coach, particularly if part or even the greater part of the cost would have been met through an Access to Work grant.
80. In our judgement, the Respondent breached its duty of adjustment in failing to provide the Claimant with an ADHD coach and, in so doing, that it discriminated against her. That is not the end of the matter since the further question arises as to whether any claim in the matter is out of time and if so, whether it would be just and equitable to extend time. We shall come back to this.

The Third PCP

81. The third contended for PCP is that the Respondent did not seek prompt occupational health referrals. This seems to be a complaint about the Claimant's treatment rather than about some broader practice at the Respondent. In any event, we do not consider that the Respondent delayed in referring the Claimant for an assessment. Her disclosure of her ADHD diagnosis in summer 2021 was not in and of itself a reason to refer the Claimant for an assessment. One may speculate whether, had she made a copy available to the Respondent, even with any sensitive personal and family information redacted from it, that might have prompted an earlier referral. In our judgement, the Claimant must accept that she chose to withhold Dr Hossain's report from the Respondent.
82. Other than the diagnosis itself, the only flags over the following year were in February 2022 when Mr Miller said the Claimant was feeling a bit anxious, in April 2022, when he reported she was slipping behind and failing to keep others informed and possibly, over the summer when communication issues were noted (see page 146 of the Bundle); though this has to be balanced against the Claimant's statement on 10 August 2022 that she was busy but coping and explanation that her joints were playing up.
83. If anything, it seems to us that the occupational health referral was a proactive step on the Respondent's part, even if it was prompted by the Group Director of People. It was not obviously in response to identifiable issues of concern, even if Ms Turner made reference to the Claimant's struggles with ADHD. It is essentially irrelevant whether other employers

might have sought an earlier referral, though this is not obviously indicated on the facts. In our judgement the Claimant has failed to establish that the Respondent has, or at the material time had a practice of not seeking timely occupational health referrals.

The Section 15 Equality Act 2010 complaints

84. Section 15 of EqA 2010 provides,

15 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.

Issue 10(a) – with reference to Issues 7(a) and (b)

85. The Claimant complains that the Respondent failed to take steps to manage her high workload and to organise a risk assessment, waited until September 2022 to arrange an occupational health assessment and thereafter failed to implement the recommendations in Ms Page's report (Issue 10(a) with reference to Issue 7(a)). She also complains that the Respondent failed to implement a phased return and take other supportive action when she returned from sick leave in March 2023 (Issue 10(a) with reference to Issue 7(b)).
86. Putting aside for a moment whether the Claimant was treated as she alleges, in order for the Claimant's s.15 complaints to succeed, the unfavourable treatment in question must be because of something arising in consequence of disability. Here, the 'things' said to arise were challenges with ADHD, specifically difficulties with time management, task prioritisation and coping with a high pressure work environment. Whilst we agree that these things all arose in consequence of the Claimant's ADHD, none of the treatment complained of can be said to be because of those things. For example, the Respondent's alleged failure to take steps to manage a high workload was not because she could not cope with a high pressure work environment, and its alleged failure to organise a risk assessment was not because she had difficulties with task prioritisation. She attributes its alleged failings to its organisational and managerial shortcomings rather than to anything arising from her disability.
87. Conceptually, the complaints do not work. It is not our task as a Tribunal to rewrite the claim or the List of Issues to rectify these difficulties and shortcomings. The Claimant's complaints about these matters cannot succeed in terms of how they have been pursued.

Issue 10(b)

88. As regards the Claimant's complaints in respect of Ms Straker's comments on 19 June and 12 July 2023 (Issue 10(b)), for the reasons we shall come to, her s.26 complaint in respect of the 19 June 2023 comments succeeds.

In which case, s.212(1) of the Equality Act 2010 provides that the unwanted conducted conduct complained of cannot also amount to a detriment, Parliament having determined that a complainant is not entitled to two remedies in respect of the same act of discrimination except in the further limited circumstances in s.212 that do not apply here.

89. As regards her complaint regarding Ms Straker's comments on 12 July 2023, in our judgement no reasonable worker would have regarded those comments as being to their detriment, even if they were prompted by conduct or behaviour that arose in consequence of the Claimant's disability. In any event, even if we had been satisfied that comments amounted to unfavourable treatment of the Claimant, we consider they were a proportionate means of achieving a legitimate aim. We accept that the Respondent had the legitimate aim of ensuring that its staff attended work on time and that any medication taken by them did not negatively affect their ability to perform their duties. Ms Straker's enquiries and comments on 12 July 2023 were appropriate and proportionate in the context of those aims given the Claimant's late arrival and how she presented both when she arrived and over the course of the day.

Issue 10(c)

90. We uphold the Claimant's s.15 complaint in respect of the Respondent's decision to implement a PIP in relation to her on 17 July 2023.
91. In our judgement, a reasonable worker in the Claimant's situation might regard such a step as being to their detriment, even where their employer intends it as a supportive measure. Many, indeed if not most, employees would regard a move to a performance management process, even if expressed as being informal, as disadvantaging them both in terms of how they are perceived by their senior leadership team (particularly if their work performance has previously been satisfactory or even good) but also because it leaves them at increased risk of further formal action up to and including dismissal for incapability.
92. The PIP was triggered by something arising in consequence of the Claimant's disability, namely, on Ms Straker's evidence, the Claimant's communication and time/task management issues. In our judgement the PIP represented a disproportionate approach even if the Respondent undoubtedly had the legitimate aim of effectively managing employee performance. Ms Byrmand failed to progress or implement the draft Development Plan over a period of several months; to her credit, Ms Straker then sought to get matters back on track. However, in our judgement, she and her senior colleagues became impatient with the Claimant and escalated matters prematurely when in fact the events of 12 July 2023 and indeed any other issues of concern, were eminently capable of being addressed more informally through the mechanism of her established 2023 PDR. SMART objectives were in place and had been signed off by early May 2023. Having regard to the parties' respective needs and interests in the matter, including the Respondent's duty of adjustment, a more proportionate or less impactful and less discriminatory approach would have been to double down on the objectives in the PDR, adding to them as necessary and ensuring that the Claimant's

performance against them was kept regularly under review over a reasonable period of time during which she had access to an ADHD coach.

The Section 26 complaints

93. Section 26 of the Equality Act 2010 provides,

- (1) A person (A) harasses another (B) if-
 - (a) A engages in unwanted conduct related to a relevant protected characteristic; and
 - (b) the conduct has the purpose or effect of-
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
 - (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect.

94. In Governing Body of Windsor Clive Primary School & Anor v Forsbrook & Anor [2024] EAT 183, the EAT has recently considered the question of how tribunals should approach the question of whether unwanted conduct is “related to” a relevant protected characteristic. His Honour Judge Beard said:

“29. ... It is clear that “related to” is a broad concept, as set out in *Haringey v O'Brien*. However, the concept cannot be so broad as to be meaningless. I am of the view that, as Ms Roddick argues, the conduct must relate to the protected characteristic, here disability, in some clear way. It is for the ET to spell out that relationship between the conduct and the disability. It will be necessary, therefore, for an ET to identify with some clarity the precise conduct which creates the prohibited environment. This will also be true in deciding whether that conduct is unwanted in the sense that the statute applies to it.”

The case concerned correspondence issued by the employer in the context of its attendance and wellbeing policy. HHJ Beard went on to observe:

“38. It seems to me that the difficulty with the lack of reasons in respect of unwanted conduct may relate to a reluctance for the ET to describe the use of the absence process as unwanted conduct. In my judgment, properly constructed, the statute provides that unwanted conduct is based on the subjective view of the claimant. It is only in the unlikely circumstances that the “purpose” of the use of the

absence procedure is to create the prohibited environment that a claim could succeed without more. In dealing with the “effect” of the conduct the claimant’s perception is subjected to the test of reasonableness pursuant s.26(4). It is through that subsection that the effect of unwanted conduct is to be viewed.”

95. As to the effect of s.26(4), in Richmond Pharmacology v Dhaliwal [2009] ICR724 it was observed,

“A respondent should not be held liable merely because his conduct has had the effect of producing a prescribed consequence; it should be *reasonable* that that consequence has occurred... overall the criterion is objective because what the Tribunal is required to consider is whether, if the Claimant has experienced those feelings or perceptions, it was reasonable for her to do so. Thus if, for example the Tribunal believes that the Claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for the Claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the Tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question. One question that may be material is whether it should reasonably have been apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the proscribed consequence): the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt...”

...dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and Tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.”

96. There is little we can add as regards Ms Straker’s comments on 12 July 2023. The comments were undoubtedly related to the Claimant’s disability. However, as Mr Justice Langstaff said in Warby v Wonder Group Plc, context is everything. Any remarks do not stand on their own, rather in the context that the Claimant was late, disheveled and sweating, had dilated eyes and seemed not to be speaking entirely coherently and later in the day reported that she had been sick. All of which behaviour was out of character. In that context we question whether it can really be said that Ms Straker’s careful and sensitive enquiries and observations were unwanted.
97. Even if we were persuaded that the Claimant did not welcome them, in our

judgement it would be unreasonable for her to consider that they had the effect of creating an adverse environment for her. Ms Straker's comments were plainly not intended to cause offence, but instead to signal her concern and support.

98. By contrast we consider that it was reasonable for the Claimant to feel that her dignity had been violated and that an adverse environment had been created as a result of the comments on 19 June 2023. As we have said already, the comments were undermining, as they merely served to highlight a negative aspect of the Claimant's disability. We uphold the Claimant's complaint about that matter.

Constructive Dismissal

99. Section 94 of the Employment Rights Act 1996 ("ERA") provides,

94. The right

- (1) An employee has the right not to be unfairly dismissed by their employer.

100. Section 95 ERA 1996 provides,

95. Circumstances in which an employee is dismissed.

- (1) For the purposes of this Part an employee is dismissed by his employer if ...

- (c) 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.

101. Section 13 of EqA 2010 provides:

13. A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

14. The Claimant claims that she resigned by reason of the Respondent's conduct. The Claimant relies upon the matters referred to in paragraphs 31(a) – (d) of the List of Issues (as amended) as breaches of the 'Malik' implied term of trust and confidence. The last in time matter identified by her in that regard is the introduction of a PIP on 17 July 2023.

15. It is an implied term of all employment contracts that the parties will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between them - Malik v Bank of Credit and Commerce International SA [1997] UKHL 23. .

16. A claimant must have relied upon the conduct complained of in resigning their employment. Furthermore, it is not every breach of contract that will justify an employee resigning their employment without notice. The breach or the matters collectively complained of must be sufficiently

fundamental that it or they go to the heart of the continued employment relationship.

17. We are satisfied that the Claimant resigned her employment for the reasons set out in paragraph 31 of the List of Issues, even if the Claimant's letter of resignation did not specifically reference those matters. It is immaterial that the Claimant resigned on notice since section 95(1)(c) of the Employment Rights Act 1996 provides that resignation on notice will still constitute dismissal for the purposes of the Act if the employee was entitled to resign without notice by reason of the employer's conduct. It is also immaterial in this regard that we have not upheld all of the Claimant's complaints. The question is whether the three matters we have upheld were individually or collectively destructive of essential trust and confidence. For the reasons we shall come to, in our judgement, they were.
18. In Michael v Nottinghamshire County Council [2004] 4 ALL ER 97, the Court of Appeal held that the employer's failure to implement reasonable adjustments was a breach of the implied term of trust and confidence. In our judgement, the Respondent ought to have been following up on the suggestion of an ADHD coach by October 2022. We shall come back to the question of whether time should be extended in respect of this complaint. However, even if it could be said that the Claimant affirmed the relationship by remaining in the Respondent's employment, then in accordance with the last straw doctrine she would have been entitled to rely upon the breach as one of three matters relating to her treatment as a disabled person, namely in addition to Ms Straker's comments on 19 June 2023 and the proposal of a PIP on 17 July 2023. Alternatively, in our judgement, Ms Straker's comments on 19 June 2023 and thereafter the proposed PIP were of themselves destructive of trust and confidence and the Claimant was justified in resigning in response to these matters and did not delay in doing so. For the avoidance of doubt, in our judgement trust and confidence was breached even if Ms Straker was merely starting a conversation with the Claimant on 17 July 2023 since the process itself was not up for discussion even if the content of the PIP may have been.
19. The Respondent acted in these matters without reasonable and proper cause. It discriminated against the Claimant by: failing to make a reasonable adjustment; subjecting her to an adverse environment on 19 June 2023; and taking a disproportionate approach to performance issues in July 2023. In the circumstances we uphold the Claimant's complaint that she was unfairly dismissed and her further complaint that her constructive dismissal was also an act of unlawful direct discrimination in so far as it was in response to contraventions of the Equality Act 2010.
20. At this stage we offer no view as to what would or might have happened had the Claimant not been treated unfairly and discriminated against. We shall want to hear further evidence and the parties' respective submissions in this regard, having regard to the well-established principles in Polkey v AE Dayton Services Ltd 1988 ICR 142, HL that a Tribunal may make a just and equitable reduction in any compensatory award under s.123(1) of the Employment Rights Act 1996 to reflect the likelihood that the employee's employment would still have terminated in any event. The

principles in Polkey are equally applicable in discrimination cases - Chagger v Abbey National plc [2009] EWCA Civ 1202, CA.

Time Limits

21. Although the Equality Act 2010 complaints are pursued under four different sections, we regard them as conduct extending over a period; not simply because they are all acts of discrimination but because there is a common thread to the claims. Ms Straker was involved throughout and, more significantly, in each case they concern the Respondent's perception and treatment of the Claimant as someone who experienced communication and time/task management difficulties by reason of her disability, ultimately culminating in her resignation. If, as we conclude, her resignation/constructive dismissal, which took effect on 15 September 2023, was the culmination of conduct extending over a period, then her complaints were all brought in time.
22. In any event, even if the acts were to be regarded as discrete acts, in our judgement it would be just and equitable to permit the s.15, s.20/21 and s.26 Equality Act 2010 complaints to be brought out of time. It is for the Claimant to establish that discretion should be exercised in her favour. She has well documented difficulties with focus and time/task management. In September 2022 she wrote of having "never been able to cultivate a consistent way to 'do' daily life without feeling overwhelmed/anxious/on auto pilot". Dr Hossain wrote of problems with focus, poor organisation, forgetfulness and difficulty getting started on tasks requiring significant mental effort, as well as projects and activities often being started but not followed through. As regards her s.15 and s.20/21 complaints we also have regard to the fact that the Claimant was on sick leave from 27 July 2023 with stress and anxiety and we accept only returned to work in August 2023 in order to use her accrued annual leave as a means of securing an income for herself. Even if any ongoing ill health was not strictly entirely disabling in terms of the Claimant's ability to draft and submit a claim sooner than she did, it is a factor to which we have regard and weigh in the overall balance, particularly given the Claimant's other well documented significant difficulties as a result of her ADHD. The Claimant says that her sense of loyalty and commitment to the Respondent made both the decision to resign and initiate legal proceedings particularly difficult. We accept this was a further factor even after the Claimant had resigned her employment. There is no suggestion that the Claimant was being legally advised in this matter, even if an internet search might have indicated potential time limits for bringing any claim. Of course, the time limits in discrimination cases are not straight forward, as the Claimant's misunderstanding in paragraph 12 of her witness statement of 1 August 2024 attests to.
23. There is no forensic prejudice to the Respondent in permitting the s.15, s.20/21 and s.26 complaints to be pursued out of time since its management of her condition and performance is reasonably well documented and understood, and Ms Straker's comments on 19 June 2023 are not disputed. Ms Straker and Ms Turner have been able to provide detailed witness statements which address the Claimant's various complaints, not just those we have upheld.

24. In our judgement the Claimant would experience a real injustice if she was precluded from securing a remedy in respect of three well founded discrimination complaints which, assuming they are not in fact to be regarded as conduct extending over a period, would respectively be approximately 10 months, 10 weeks and 6 weeks out of time, having regard to the date that the claim was presented to the Employment Tribunals. In so far as it may be necessary to do so, we exercise discretion in her favour and extend time for bringing the claims to 5 February 2024.

Approved by:

Employment Judge Tynan

Date: 6 November 2025

Sent to the parties on

7 November 2025

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For the Tribunal office

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>