EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000745/2025

Held in Glasgow on 13, 14, 15 & 16 October 2025

Employment Judge O'Donnell

Ms L Dillon	**Claimant** **In Person**
Mears Limited	**Respondent** **Represented by:** **Mr G Cunningham - Counsel [Instructed by Mears Group plc]**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claimant's claims under the Employment Rights Act 1996 and the Equality Act 2010 are not well-founded and are hereby dismissed.

REASONS

Introduction

1. The claimant has brought complaints of detriment relating to a public interest disclosure under the Employment Rights Act 1996 and claims of discrimination under the Equality Act 2010. The respondent disputes all the claims.

2. The claimant relies on the protected characteristic of disability in relation to the claims of discrimination (specifically, the conditions of ADHD and autism) and the respondent has accepted that she was disabled as defined in the 2010 Act.

3. An agreed list of issues was prepared by the parties and this appears at pp55-58 of the file of productions. In summary, the claimant pursues the following claims:-

    a. She alleges that she was subject to a detriment (that is, the conduct of a meeting on 23 January 2025) because she made a public interest disclosure in her grievance of November 2025.

b. She alleges that she was subject to direct disability discrimination (that is, not being invited to social events, specifically the Christmas night out in 2024).

c. She alleges that she was subject to discrimination arising from disability in being excluded from social events (again, this being a reference to the Christmas night out).

d. She alleges that the respondent failed in their duty to make reasonable adjustments. She alleges that the duty was engaged by the application of the following provision, criterion or practices:

    i. A requirement to use a standard headset.

    ii. A requirement to work in an open plan office.

e. She alleges that she was subject to the following harassment related to her disability:

    i. Being excluded from social events (again, a reference to the Christmas night out).

    ii. Being impersonated.

    iii. The conduct of the meeting on 23 January 2025.

f. She alleges that she was victimised for carrying out two protected acts (that is, her grievance of November 2024 and an email of 22 January 2025). The alleged victimisation was the conduct of the meeting of 23 January 2025 and damage to her car on 20 January 2025.

g. She alleges that she was constructively dismissed on the basis that she had lost trust and confidence in the respondent as a result of the following matters:

    i. A failure to instruct an Occupational Health (OH) report at the start of her employment.

    ii. A failure to make the reasonable adjustments recommended in the OH report of December 2024 at the start of her employment.

    iii. A delay in instructing the OH report until December 2024.

    iv. A failure to implement all of the adjustments recommended in that report.

    v. The conduct of the meeting on 23 January 2025. This was said to be the “last straw” triggering the claimant’s resignation on 24 January 2025.

Evidence

4. The Tribunal heard evidence from the following witnesses:

    a. The claimant.

    b. Natalie Slowey (NS), the claimant's line manager.

    c. Paul Timmons (PT), the respondent's head of operations.

    d. David Morgan (DM), the respondent's general manager for the office in which the claimant worked.

5. There was an agreed file of documents prepared by the parties running to 404 pages. A reference to a page number below is a reference to a page in that file.

6. Evidence-in-chief was given by witness statements. The respondent's counsel was given permission, there being no objection by the claimant, to ask a short supplementary question of each of the respondent's witnesses.

7. The Tribunal also heard an audio recording made by the claimant of the meeting between her, PT and DM on 23 January 2025. Although there were transcripts of the recording in the file, the claimant sought to play the recording because she considered that the Tribunal needed to hear the manner in which PT and DM were alleged to have spoken to her at that meeting. There was no objection by the respondent and the Tribunal considered that given the importance of this meeting (that is, it was the sole or primary detriment in a number of the claims as well as the "last straw" in the constructive dismissal claim) the claimant should be permitted to introduce the recording into evidence.

8. The claimant also sought to play a video recording made after she submitted her resignation to establish that the respondent had removed her access to their systems. The respondent objected to this on the basis of relevancy. There was no alleged act of discrimination about this matter and the claimant could not identify why this was relevant other than to say that it meant that she could not download emails and messages which might have supported her case. The Tribunal could not see the relevance of this video to the issues to be determined and did not consider that it was in keeping with the Overriding Objective to devote time at the hearing to introducing irrelevant evidence. The claimant's request to play the video was, therefore, refused.

9. A significant proportion of the facts in this case were not in dispute but there were some matters where the evidence of the claimant and those of the respondent's witnesses was diametrically opposed. In particular, there were alleged to be comments made or conduct by the respondent's witnesses

which they wholly denied. The Tribunal, therefore, had to decide whose evidence to prefer.

10. The Tribunal did not find the claimant's evidence to be wholly reliable and credible. The claimant had formed a very strong view about the respondent as an organisation which had clearly affected her perception of events. It was the claimant's assertion, given in evidence, that the respondent (as an organisation as opposed to any individual manager) engaged in the practice of recruiting disabled people such as her with the deliberate intention of setting them up to fail so that they would later leave the respondent. The suggestion that any business would go to the time and expense of recruiting people, training them, supervising them and paying them, all with the intention of ultimately forcing them to resign is outlandish on the face of it and would require very compelling evidence in support. There was no evidence of this at all.

11. Unfortunately, the claimant having come to this view (and the Tribunal accepts that she genuinely believes this to be true) has perceived everything that happened to her through this prism. As a result, the Tribunal considers that she has misinterpreted the intentions of her managers and, in some instances, has ascribed conducts or motives that have simply no evidential basis. For example, she alleged that, when asking her to have the discussion on 23 January 2025, PT had deliberately approached her from behind in order to frighten her because he had read, in her Occupational Health report (at p305), about a previous event in her life. This entirely ignores the fact that, by that time, the location of the claimant's desk and the partitions put round it (as part of the adjustments being made for her) meant that she could only be approached from behind.

12. A particularly significant example of how the claimant's perception of events was not consistent with other objective evidence was in relation to the meeting of 23 January 2025. The claimant made repeated assertions that PT and DM had *"bullied, harassed, goaded and tried to break me down"* and that they had been aggressive towards her stating that PT was "leaning over the desk, baring his teeth at me like an animal".

13. However, when the audio recording was played it disclosed no aggression by either PT or DM at all. They spoke to the claimant calmly without any raised voices. In fact, it was the claimant who became agitated; she interrupted PT and DM on a number of occasions, spoke over them and it was her who raised her voice. The recording did not support the claimant's evidence at all.

14. The Tribunal also notes that in a message exchange with another unknown employee of the respondent on the evening of 23 January (pp353-355) the claimant asserted that she was the one shouting and that she had stormed

out of the meeting, slamming the door. The claimant sought to suggest that the message about storming out was a reference to PT and DM saying that she had done so but that was not the natural reading of the message in question which does not mention PT or DM at all.

15. Similarly, the claimant asserted a number of times that NS had stated that getting an OH report was pointless because it would only recommend home working which could not be accommodated. NS denies making such a statement. The claimant's assertion is at odds with the respondent's repeated offers of an OH referral to identify what adjustments might assist the claimant, the fact that the OH report set out a significant number of possible adjustments (none of which were home working) and the fact that the respondent agreed to implement almost all of those adjustments.

16. Overall, the Tribunal considers that the claimant was reluctant to answer certain questions in cross-examination and instead sought to make assertions that bore no relation to the question being asked. The Judge had to intervene on a number of occasions to direct the claimant to answer certain questions.

17. In contrast, the respondent's witnesses were not reluctant to answer questions and would confirm when they could not recall events. Their evidence was consistent with other objective evidence such as contemporaneous correspondence or the audio recording.

18. There were instances where these witnesses were asked the same question multiple times but this was not because they were not answering the question but, rather, they were giving an answer with which the claimant did not agree or which she did not like.

19. For these reasons, the Tribunal preferred the evidence of the respondent's witnesses where there was a dispute between them and the claimant.

Findings in fact

20. The Tribunal made the following relevant findings in fact.

21. The claimant has autism and ADHD. These are lifelong conditions but the claimant was only diagnosed in 2023.

22. The claimant commenced employment with the respondent on 22 April 2024 as a planner (witnesses also used the job title "coordinator" and these two terms were used to describe the same job). The claimant worked in an open plan office. The duties of the role involve coordinating repairs on properties covered by various contracts. This involved taking calls from residents about repairs that were needed and coordinating with the staff who carry out the repairs to arrange these. There were three planners (including the claimant)

when she commenced employment but one of those left in July 2024 and was not replaced.

23. The claimant disclosed her disabilities to the respondent at the start of her employment. NS met with her on her first day to fill in a form about her disability (p166). The claimant declared that she had ADHD and autism; the form incorrectly records that she was diagnosed in 2024; it also discloses that the claimant stated that her conditions would not impact on her day-to-day activities as her medication helped but that it would affect her concentration at work.

24. In terms of adjustments, the claimant stated that she needed noise cancelling headphones. There was a misunderstanding in relation to this; NS understood that the claimant already had these and would use them when, in fact, the claimant did not have such headphones and only purchased a pair of noise cancelling ear plugs in June 2024. However, she had not raised the issue of headphones with the respondent before doing so and the issue of headphones was only raised later in the chronology of the case.

25. The claimant also asked for written instructions and NS agreed to this. The claimant was asked by NS if she required any further support and she did not identify anything at this stage.

26. The claimant's employment was subject to a probation period with reviews after a month, three months and six months.

27. The first review took place on 29 May 2024 and the record of this is at pp171-173. It notes that the claimant has settled in well with the team and that she was enjoying the job. She progressed to the next stage of her probation.

28. On or around 20 August 2024, the claimant approached NS and raised concerns about how two other employees were treating her. Specifically, she stated that she had noticed that they had been exchanging WhatsApp messages about her. During this conversation, the claimant told NS that she was not wanting to come to work every day and that it was affecting her mental health.

29. NS emailed the claimant on 20 August 2024 (p179) suggesting some form of discussion between the claimant and the other employees to clear the air. NS also suggested a referral to OH to see if there was anything which could be done to support the claimant. The claimant replied by an email of the same day (p178) stating that she was not comfortable with having a meeting with the other employees. She makes reference to the impact of her ADHD in the context of her interactions with these employees but makes no reference to the working environment. She states that she would be willing for an OH referral to be made but only if no-one else was aware of this. She

goes on to state that she does not see any point in this referral as she is set on leaving the respondent.

30. A further incident between the claimant and the other employees occurred on 21 August 2024. NS spoke to DM and he agreed that the claimant could use one of the break-out rooms to work in. DM's intention was that the claimant could use this room if she felt overwhelmed but it later came to his attention that the claimant would use the room constantly and he became concerned that this meant she was not integrating into the team. As a result, the claimant was informed by DM on 10 September 2024 that she should not be using the room all the time but only when she needed some protected time.

31. The claimant emailed PT and DM on 10 September 2024 (pp180-181) complaining that a reasonable adjustment had been removed from her (a reference to DM informing her that she should not be in the break-out room all the time). The claimant makes reference to being at a disadvantage because of her disabilities but does not set out any detail of what this is. She also makes reference to reasonable adjustments but gives no detail of what adjustments she is seeking. The claimant asserts that she could suffer burn-out and need to go off sick.

32. In response to this email, a member of HR, Maria Woods, met with the claimant on or around 20 September 2024 to discuss her concerns. The claimant was offered an OH referral but declined this. No reason was given by the claimant at the time. for declining this offer.

33. In September 2024, the team moved to a different office in the same building. None of the witnesses could recall the precise date but it was before the claimant's second probation review on 16 September 2024.

34. The claimant's second probation review should have taken place in July 2024 but was delayed because NS had been on leave. It took place on 16 September 2024 and is recorded at pp187-189. It sets out NS's view that the claimant was meeting the required standard but identified a few areas where improvement is required. It records the claimant stating that she was struggling with the working environment, specifically the lights and noise in the office and that the claimant was working in an office on her own to assist with this and her anxiety about relationships with other colleagues. The claimant was to integrate back into the main office. NS offered the claimant an OH referral at this meeting but the claimant declined this. Again, no reason was given by the claimant at the time. for declining this offer.

35. In October 2024, the respondent moved to a new phone system. Again, no witness could recall the precise date. The move was sudden for everyone because the team working on the change turned off the old system (which

was a landline using traditional telephone handsets) without warning anyone and all staff had to very quickly starting using the new system which was through their computers.

36. As a result, all staff had to use a headset supplied by the respondent (am image of which is at p349) to answer calls. This was plugged into their computer and were controlled by an in-line controller that had buttons to answer/end a call and control the volume. The headset was noise cancelling.

37. The claimant did not find the headset to be comfortable to wear. She also struggled to get use to the in-line controls for answering calls.

38. On 17 October 2024, the claimant supplied a letter from her GP dated 8 October 2024 to NS. The letter sets out how ADHD and autism can affect someone and, specifically, set out that the claimant was experiencing sensory overload due to the working environment. The letter set out a need for the claimant to have a quiet place to use when she is feeling overloaded.

39. The claimant's final probation review was on 17 October 2024 (pp191-192) and she passed her probation. When asked how she felt she was performing the claimant stated that she felt "OK" but still found the lights intense.

40. By email of the same date (p197), the claimant emailed NS stating that she found she was struggling with the lights and noise. NS replied the same day (p196) asking if the claimant had looked into blue lights glasses and if her GP could recommend any other support or aids. NS asked the claimant to reconsider agreeing to an OH report to see if that could suggest any support. The claimant replied (p195) attaching the letter of 8 October from her GP and stating that she could buy glasses when she is paid. She did not reply to the request to agree to an OH referral.

41. On 18 October 2024 (p194), NS sent the claimant a form to give consent for the respondent to contact her GP. NS took this option to try to get more information because the claimant would not agree to an OH referral. The claimant confirmed by email the same day (p194) that she had sent the completed form to her GP.

42. By letter dated 25 October 2024, Maria Woods from HR wrote to the claimant's GP asking for any specific recommendations for anything that could be supplied to the claimant that would assist her. There was no reply to this letter.

43. The claimant commenced a period of sick leave on 4 November 2024. She provided fit notes from her GP covering her absence which gave the reason as "autism burn-out". The claimant had supplied a fit note stating that she was unfit until 16 December 2024 but subsequently decided to return to work

on 2 December 2024 for financial reasons (she had exhausted company sick pay and was receiving statutory sick pay at a lower amount). She had provided a fit note confirming that she was fit to return to work from 2 December 2024.

44. The claimant lodged a grievance with the respondent on 4 or 5 November 2024. She sent an email to HR on 4 November 2024 (p152) stating that she intended to raise a grievance about a lack of reasonable adjustments. This was followed by a more detailed complaint at pp153-154; this document is undated but the invitation to a grievance meeting (p155) makes reference to a grievance dated 5 November 2024 and the Tribunal has taken this to be a reference to the document at pp153-154 as there is no other document setting out the claimant's grievance.

45. The grievance sets out the following relevant matters:

    a. The claimant asserts that no adjustments have been made at all except the earplugs she purchased herself. She states that she was given her own workspace (a reference to using the break-out room) but that she was told she needed to be in the main office or she would fail her probation.

    b. She complains that it has taken six months to obtain information from her GP; she states that she told NS of her disabilities when she started and made her aware of the difficulties she was facing but asserts that nothing has been done.

    c. She accepts that an OH referral was offered but that NS had told her this was pointless as all they would do is recommend working from home. She asserts that she would not have turned down the OH referral and that this should have been done from the start of her employment.

    d. She feels degraded and humiliated by the amount of information she has had to provide about her disability. She makes reference to the headset she has had to use, asserting that she was left to get on with it when she had said that she had she would not be able to use it. She does not give any reason why she considered she could not use the headset.

    e. She asserts that she has concluded that "one or more people" are making an effort to make her life at work so difficult that she has no option to leave. The claimant gives no detail as to who these people are.

46. PT was appointed to hear the grievance and invited the claimant to attend a hearing on 18 November 2024. A note of the meeting is at pp157-160; the claimant did not sign the note at the time and maintained that she did not believe it to be accurate. However, she did not give any evidence disputing the content of the note and the Tribunal accepts the note as an accurate (albeit not verbatim) record of what was discussed at the hearing.

47. The note of the hearing records the following relevant matters:

    a. PT stated that the grievance is against NS and DM; the claimant replied that it is not against anyone; that it is about how she has been at the company for six months, updated people with how she has been struggling and not seen any changes.

    b. She repeated her assertion that NS had told her that an OH referral was pointless because it would only recommend working from home.

    c. The claimant was asked what she wanted from the grievance and she replied that she wanted a transfer to another part of the business. PT stated that he would look into this but that the only other office was in Coatbridge and was noisier than the office in which the claimant worked. The claimant replied that it was not just the noise and that the office had become unbearable. She gave no detail of what she meant by this simply stating that she was struggling with numerous things.

    d. The claimant went to say that she had said a number of times that she could not cope and that she had been given a headset which she said she could not use. She made reference to her *colleague "huffing and puffing"* because the claimant could not answer the phone. She also stated that the job had got harder when someone had left and not been replaced.

    e. The claimant stated that she could not return to work with the same circumstances. PT asked her what changes she was seeking and she replied that she was not going to get into detail about her disabilities. PT asked again what adjustments could be made and the claimant replied *"you can put things over screens, you can do things with the lights, you can do stuff with the noise, provide equipment".*

48. PT issued his decision on the grievance by letter dated 25 November 2024 (pp161-163) which sets out the following relevant matters:

    a. PT stated that he had spoken to NS and that she denied stating that an OH referral was pointless.

b. An OH referral was not made at the start of the claimant's employment because there was nothing highlighted by her that needed such a referral.

c. He had looked into a transfer to the Coatbridge office but there were no vacancies at that time.

d. PT felt that an OH referral would provide advice about what support could be provided to the claimant. He noted what adjustments the claimant had suggested but felt that these were very broad with no detail as to what "things" could be done. He felt that OH could provide assistance with this.

e. He did not uphold the claimant's grievance but did make a recommendation that an OH referral is made and that a headset which would work for the claimant would be sourced.

49. In this instance, the claimant gave consent to a referral to OH and this was organised to take place on 6 December 2024.

50. The claimant returned to work on 2 December 2024. It was felt by management that the claimant should not return to the office environment until the OH report had been obtained. She was, therefore, given work which she could do at home.

51. The respondent had a Christmas night out in December 2024. Again, no witness could recall the precise date other than that it was before the Christmas holiday period. It was organised by DM several months in advance in order to secure a venue. The arrangements are discussed in the office but no individual invitations (either by email or any other format) are issued. DM books enough places for each member of the team and it is left to each employee to decide if they want to attend.

52. The OH report (pp302-309) was issued on 24 December 2024. Due to the Christmas period, it was not reviewed by NS until 6 January 2025.

53. The report sets out the following relevant matters:

a. The claimant was fit for work with adjustments in place provided those are reasonable for the business to make.

b. The report notes the symptoms which the claimant may experience at work can vary over time but would include:

i. Being distracted from task and focus. In particular, noise can be distracting.

ii. Being socially unaware.

iii. Difficulty with change, needing time and support to manage this.

iv. Struggling with prioritisation of longer term tasks or multitasking.

v. Getting into negative feedback loops, misreading intentions or assuming the worst meaning.

vi. Being adversely affected by gossip and conflict.

c. The report notes that the claimant can counteract some of these issues with learned behaviour and planned processes.

d. The report recommended the following adjustments to be made, some of which were fairly immediate and others longer term:-

i. Moving the claimant to a quiet spot in the office, near a window.

ii. A partition around her desk to reduce visual distractions and noise.

iii. Noise cancelling headphones.

iv. Additional training on the new telephone system.

v. A workplace assessment of her chair, keyboard and other ergonomic matters.

vi. An anti-glare screen.

vii. A desk lamp and quiet desk fan.

viii. A priority date added to work requests.

ix. Colour-coded trays or stickers to allow for prioritisation of tasks.

x. Additional time to complete tasks where feasible.

xi. Positive and supportive line management.

xii. Allowing time each week for the claimant to work in a quiet office space.

xiii. A mentor.

xiv. Consideration of a reduction in working hours.

xv. Encouraging the claimant to switch off at the end of working hours.

xvi. Ensure she takes allocated breaks and finishes on time.

xvii. The use of AI-transcribers or Dictaphones for meetings. This recommendation recognised that there may be data protection issues with audio recordings.

xviii. Consideration to the claimant not being required to attend staff meetings.

xix. Consider training for staff on working with people with neurodiversity and mental health issues.

e. The report went to state that the claimant and the OH adviser planned to follow up on whether there were any software packages that might assist the claimant.

54. NS met with the claimant on 7 January 2025 to discuss the report. The contents of this discussion were confirmed to the claimant by a letter from NS dated 10 January 2025 (pp314-318).

55. In terms of the recommended adjustments, NS confirmed the following to the claimant:

a. The claimant would be moved to a desk at the bottom corner of the office that is beside a window. Partitions would be provided to reduce noise and other distractions. This adjustment was made shortly after the meeting and the claimant used this desk until she resigned.

b. New noise cancelling headphones would be provided. A new headset was provided to the claimant but she found that this headset did not work for her as it vibrated when there was a call. She provided some examples of what she considered to be suitable headsets to DM by email on 16 January 2025 (p320) and he confirmed by email the same day (p319) that NS would raise a ticket with IT to source these headsets or an equivalent. This was still in progress when the claimant resigned.

c. Training on the phone system was provided to the claimant.

d. A workplace assessment was carried out (pp339-348).

e. An anti-glare screen was ordered. This was still awaited when the claimant resigned. During the workplace assessment, she was shown how to lower the brightness of her computer screen.

f. It was agreed by the claimant that a lamp and desk fan were not required given that her desk was beside a window with natural light and air.

g. The claimant's duties were not task based and so a priority date was not required. However, if it was needed then this would be given.

h. Given that the office was paperless, it was not considered that colour-coded trays or stickers would be needed but these were ordered for the claimant to use if needed.

i. Additional time would be offered where feasible and the claimant was asked to discuss whenever she had an issue with completing a task.

j. Annual performance reviews would be carried out and 1-2-1 meetings would be held quarterly.

k. It was agreed that the claimant could have a room to use as a quiet space for an hour a week.

l. The claimant was given the option of PT or DM as a mentor.

m. Any reduction in working hours should be made as a flexible working request and would be considered as part of that process.

n. The claimant was to leave her laptop at the end of every day. It was confirmed to her that there was no need for overtime or additional working outside her contracted hours.

o. It was confirmed with the claimant that she knew her start/finish time and her allocated lunch break.

p. The respondent could not agree to the recording of meetings because of data protection issues. If required further information would be provided.

q. In terms of staff meetings, there was a requirement to attend these but the claimant would be given notice of these in order to prepare.

r. The potential use of software was noted and that there may be a further recommendation about this.

s. NS would look into staff training and speak to HR and the e-learning team about this.

56. The claimant parked her car in the office car park. On 20 January 2025, when leaving work, she noticed damage to her car which had not been there when she left home in the morning.

57. On 22 January 2025, the claimant emailed DM (p337) asking if there had been any updates on the adjustments. She refers to the provision of a headset, reduced hours, time for using a quiet space, a mentor and a screen cover.

She goes on to make reference to financial difficulties she has faced as a result of being off sick and the damage to her car.

58. PT decided to discuss these matters with the claimant and asked her to come to speak to him and DM on 23 January 2025. He went to the claimant's desk to ask her to come to his office. Due to the partitions that were in place, the claimant could only be approached from behind.

59. The claimant covertly recorded the discussion with DM and PT. Transcripts of the discussion are at pp392-398 (respondent) and pp399-404 (claimant). These are broadly similar although not word-for-word identical. The Tribunal also heard the audio recording of the discussion.

60. The transcripts and the recording set out the following relevant matters:

    a. PT explained that the meeting was to discuss the email the claimant sent to DM.

    b. He explained that they have ordered a further set of headphones for her and that it was taking a bit of time as this was a special order through the procurement portal.

    c. It was explained to the claimant that any flexible working request had to be made formally and the claimant replied that she had not known that.

    d. There was a discussion about using the quiet room. PT said that the respondent could be flexible about this but the claimant said she preferred a specific time and date. PT replied that she could pick the time and day then come back to them with this.

    e. He stated that the claimant's financial difficulties were not a concern for the respondent. The claimant replied that she thought they had a duty of care. PT stated that there was no duty of care, the claimant interrupted to ask if there was no duty of care and PT went to say that there was not in terms of managing her finances.

    f. There is then a conversation about whether the claimant's wages had been processed correctly with PT insisting that they have. During this conversation, the claimant alleges that PT had lied to her previously which he denied. The conversation continued with the claimant stating that she had emails to show it (a reference to the allegation that PT lied to her). He replied "well on you go" and the conversation continued with the claimant again alleging he had lied and PT denying it.

g. The discussion turned to the claimant's car. DM stated that there was no proof it had happened in the car park. The claimant replied that there was because her car had not been like that in the morning. The claimant stated that the police were coming out to investigate because it looked like her car had been keyed. DM asked if the claimant was accusing them of keying her car and she replied that she was not accusing anybody of anything but she was not ruling anything out.

h. The conversation about the car continued with the claimant asking if they were saying she was lying and making things up. PT denied that they were saying this. The conversation went back and forward in the same terms with PT and DM saying there was no proof where the damage had happened and the claimant insisting there was.

i. The conversation continued with the claimant confirming that she was to work at home the next day due to the storm that was due.

j. The discussion then turned back to adjustments with PT stating that all the other adjustments had been made and the claimant denying this. PT asked what was outstanding and there was a discussion of the mentor with DM and PT explaining that it was for the claimant to pick one of them. The claimant asked if they thought she had had a minute to do this since she had returned.

k. The discussion returned to the issue of the headphones with the claimant complaining about these not being provided and PT explaining that they were sourcing alternatives for her.

l. There were multiple references during the discussion that DM would follow up with an email.

61. Having heard the audio recording, the Tribunal finds that PT and DM spoke calmly throughout the meeting. They did not raise their voices nor speak in an aggressive manner. The claimant did raise her voice during the discussion. She also interrupted and spoke over both PT and DM on more than one occasion.

62. DM followed the meeting by sending an email dated 23 January 2025 (p336) noting that the claimant had been provided with an alternative headset but that she did not find this comfortable and so an alternative had been ordered as had the screen covers. He explained that these would take longer to procure as they were ad hoc items. He confirms that the claimant had the offer of either him or PT as a mentor and asks her to confirm her preference. In relation to reduced hours, he explains that this should be dealt with by a formal flexible working request and sends her the policy. He explained that he was happy to be flexible about when the claimant takes time in the quiet

room. In terms of the claimant's financial difficulties, he sets out what assistance the respondent has provided and explains that there is no more they can offer.

63. After the meeting, the claimant had a text message exchanged with an unnamed fellow employee which appears at pp353-355. This exchange records the claimant as saying that she *"stormed out a meeting"* with PT, that she *"stormed out and slammed the door"* and that she was *"full shouting at him and calling him a liar".* The claimant also sends a message stating *"the level of anger and aggression he displayed towards me was so wild like that as a closeted gay man right there".*

64. On 24 January 2025, the claimant emailed DM (p350) to state that she was resigning due to health and disability reasons. She believed she had to give 4 weeks' notice and so gave her last day as 21 February 2025. She stated that she could not continue at work without a risk to her health.

65. DM wrote to the claimant by letter dated 24 January 2025 (pp351-352) to accept her resignation. He explained that she was not required to give 4 weeks' notice, only 1 week, and so her last day would be 31 January 2025.

Submissions

66. Both parties produced written submissions. For the sake of brevity, the Tribunal does not intend to set out the submissions in details. These have been noted and the Tribunal will refer to any point raised that requires to be specifically addressed in its decision below.

67. There is one specific comment which the Tribunal will make arising from the claimant's submissions. Those submissions make comments about claims which are not before the Tribunal as set out in the list of issues. For example, in relation to direct discrimination, the claimant submits that she was treated less favourably than her comparator because allowance was made for the comparator being late on a regular basis whereas no adjustments were allegedly made for the claimant. The only act of direct discrimination set out in the list of issues is an allegation that the claimant was not invited to social events and that is the issue which the Tribunal is determining. There are further examples of the claimant's submissions make comments and assertions about matters which are not part of her claim as set out in the list of issues and, in some instances, about which no evidence was led.

68. The list of issues was prepared during the case management process with the input of the claimant setting out the case she has pled and giving the respondent fair notice of the case they have to answer. The claimant's pled case cannot be changed on a whim and requires a formal application to

amend the case granted by the Tribunal. No such application was made by the claimant.

69. In these circumstances, the Tribunal is determining the case as set out in the list of issues and the comments made by the claimant in her submissions regarding claims not before the Tribunal have not been taken into account.

Relevant Law

70. The Equality Act 2010 protects individuals from discrimination on the grounds of various protected characteristics. These include, for the purposes of this case, disability.

71. The definition of direct discrimination in the 2010 Act is as follows:

> ***13 Direct discrimination***
>
> *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.*

72. These provisions do not stand on their own and any discrimination must be in the context of the provisions of the Act which makes it unlawful to discriminate in particular circumstances. The relevant provision in this case is:-

> ***39 Employees and applicants***
>
> *(2) An employer (A) must not discriminate against an employee of A's (B)—*
>
> *…*
>
> *(c) by dismissing B…*
>
> *(7) In subsections (2)(c) …, the reference to dismissing B includes a reference to the termination of B's employment—*
>
> *(a) …*
>
> *(b) by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice.*

73. The circumstances in which an employee is entitled to terminate their contract by reason of the employer's conduct is set out in the case of *Western Excavating v Sharp* [1978] ICR 221. The Court of Appeal held that there required to be more than simply unreasonable conduct by the employer and that had to be a repudiation of the contract by the employer. They laid down a three stage test:

a. There must be a fundamental breach of contract by the employer

b. The employer's breach caused the employee to resign

c. The employee did not delay too long before resigning thus affirming the contract

74. A breach of contract can arise from an express term of the contract or an implied term. For the purposes of this case, the relevant term was the implied term of mutual trust and confidence.

75. The test for a breach of the duty of trust and confidence has been set in a number of cases but the authoritative definition was given by the House of Lords in *Malik v Bank of Credit and Commerce International SA* [1997] IRLR 462 that an employer would not, without reasonable or proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

76. The "last straw" principle has been set out in a range cases with perhaps the leading case being *Lewis v Motorworld Garages Ltd* [1985] IRLR 465. The principle is that the conduct which is said to breach trust and confidence may consist of a series of acts or incidents, even if those individual incidents are quite trivial, which taken together amount to a repudiatory breach of the implied term of trust and confidence.

77. The "last straw" itself had to contribute something to the breach even if that is relatively minor or insignificant (*Kaur v Leeds Teaching Hospitals NHS Trust* [2018] IRLR 833).

78. The *Kaur* case also set out practical guidance for the Employment Tribunal in addressing the issue of whether a claimant had affirmed the contract in the context of a "last straw" case:

"(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 Omilaju v Waltham Forest LBC [2005] IRLR 35) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation ….)

(5) Did the employee resign in response (or partly in response) to that breach?"

79. In order for there to be a discriminatory constructive dismissal, there must be discriminatory conduct which "sufficiently influenced" the repudiatory breach but that does not mean that all of the conduct which is said to amount to a repudiatory breach (including any "last straw") has to amount to unlawful discrimination (*De Lacey v Wechseln Ltd* [2021] IRLR 547, EAT).

80. The burden of proof in claims under the 2010 Act is set out in s136:

136 Burden of proof

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

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) 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.

81. The burden of proving the facts referred to in s136(2) lies with the claimant. If this subsection is satisfied, however, then the burden shifts to the respondent to satisfy subsection 3.

82. Although the test for direct discrimination forms a single question, the caselaw indicates that it is often helpful to separate this into two elements; the less favourable treatment and the reason for that less favourable treatment.

83. In order for there to be less favourable treatment, the claimant must be subjected to some form of detriment. The question of whether there is a detriment requires the Tribunal to determine whether "by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work" (*Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 HL).

84. A claimant can rely on an actual or hypothetical comparator for the purposes of establishing less favourable treatment. There must be no material difference in the circumstances of the claimant and comparator (s23 of the Equality Act 2010). In deciding how a hypothetical comparator would have been treated, the Tribunal is entitled to have regard to the treatment of real individuals (see, for example, *Chief Constable of West Yorkshire Police v Vento* [2001 IRLR 124).

85. However, a difference in treatment and a difference in protected characteristic is not enough to establish that the difference in treatment was caused by the difference in protected characteristic; "something more" is required (*Madarassy v Nomura International* [2007] IRLR 246). The Tribunal needs evidence from which it could draw an inference that race was the reason for the difference in treatment.

86. It is important to remember that unreasonable or unfair behaviour is not enough to allow for an inference of direct discrimination (*Bahl v The Law Society* [2004] IRLR 799).

87. It is a well-established principle that Tribunals are entitled to draw an inference of discrimination from the facts of the case. The position is set out by the Court of Appeal in *Igen v Wong* [2005] ICR 931 (as approved by the Supreme Court in *Hewage v Grampian Health Board* [2012] IRLR 870).

88. Any detriment does not have to be solely by reason of the protected characteristic; if any protected characteristic has a 'significant influence' on the treatment of a claimant then direct discrimination is made out. (*Nagarajan v London Regional Transport* [1999] ICR 877, HL; *Villalba v Merrill Lynch and Co Inc and ors* 2007 ICR 469, EAT. In *Igen* (above) Lord Justice Peter Gibson clarified that for an influence to be 'significant' it does not have to be of great importance and is something more than trivial.

89. The definition of discrimination arising from disability in the 2010 Act is as follows:-

> ***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.*
>
> *(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.*

90. The duty to make reasonable adjustments is set out in s20 of the Equality Act with s21 making a breach of the duty an unlawful act. The relevant provisions of s20 are:

> ***20 Duty to make adjustments***

> *(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.*
>
> *(2) The duty comprises the following three requirements.*
>
> *(3) The first requirement is a requirement, where a provision, criterion or practice (PCP) 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) …*

91. In relation to the duty to make adjustments, the degree to which any adjustment would overcome the disadvantage to the claimant is relevant to whether the adjustment is reasonable (HM Prison Service v Johnson [2007] IRLR 951). Further, the duty is intended to integrate disabled people into the workplace and this is also relevant to whether any adjustment is reasonable (*O'Hanlon v Revenue and Customs Comrs* [2007] IRLR 404).

92. Paragraph 20 of Schedule 8 of the Equality Act provides that the duty is not engaged if the employer did not know, or could not be reasonably expected to know, that the disabled person has a disability and was likely to be placed at a disadvantage.

93. The duty to make reasonable adjustments is engaged once the employer can take reasonable steps to avoid the relevant disadvantage (*Abertawe Bro Morgannwg University Local Health Board v Morgan* 2018 ICR 1194, CA). Where an employee is absent from work and is seeking adjustments on their return then the duty to make adjustments is not triggered until there is a date for the employee to return to work (*NCH Scotland v McHugh* EATS 0010/06; *Doran v Department for Work and Pensions* EAT 0017/14).

94. Harassment is defined in s26 of the Equality Act 2010:-

> ***26 Harassment***
>
> *(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.

(2) …

(3) …

(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.

(5) The relevant protected characteristics are—

…

disability;

…

95. In *Hartley v Foreign and Commonwealth Office* UKEAT/0033/15 (27 May 2016, unreported) it was held that the question whether there is harassment must be considered in the light of all the circumstances of the case. Where the claim is based on things said it is not enough only to look at what the speaker may or may not have meant by the wording.

96. However, even where certain elements of the test for harassment are met (for example, unwanted conduct and the violation of the claimant's dignity), the Tribunal must still consider the *"related to"* question and make clear findings as to why any conduct is related to a protected characteristic (*UNITE the Union v Nailard* [2018] IRLR 730; *Tees, Esk and Wear Valleys NHS Foundation Trust v Aslam* [2020] IRLR 495, EAT).

97. The test for victimisation is set out in s27 of the Equality Act 2010:-

27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) 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.

98. The principles set out above in relation to detriment, "significant influence" and the burden of proof apply equally to a victimisation claim as they do to a claim for direct discrimination.

99. Section 47B ERA makes it unlawful for a worker to be subject to a detriment on the grounds that the worker made a "protected disclosure".

100. A disclosure is a protected disclosure if it meets the definition set out in s43A ERA read with ss43B-H:

43A Meaning of 'protected disclosure'

In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any sections 43C to 43H.

43B Disclosures qualifying for protection

(1) In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, [is made in the public interest and] tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) …

43C Disclosure to employer or other responsible person

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure …—

(a) to his employer, or

(b) …

101. In order to be a qualifying disclosure, any communication must have sufficient factual content capable of tending to show one of the matters listed in s43B(1) and a mere allegation is not enough (*Kilraine v Wandsworth LBS* [2018] ICR 1850).

102. The factual accuracy of the allegations is not determinative of whether one of the relevant failures listed in s43B has been or is likely to occur but can be an important tool in deciding whether the worker had a reasonable belief that the disclosure tended to show a relevant failure (*Darnton v University of Surrey* [2003] ICR 615). The term "likely" in this context requires more than a possibility or risk of a relevant failure (*Kraus v Penna Plc* [2004] IRLR 260).

103. Any belief on the part of the worker must be genuinely and reasonably held at the time at which the disclosure is made (*Kilraine*).

104. In determining whether any disclosure is in the public interest, the Court of Appeal in *Chesterton Global Ltd v Nurmohamed* [2018] ICR 731 set out factors which should be considered:

a. The number of people whose interests are served by the disclosure.

b. The nature of the interests affected and the extent to which they were affected by the wrongdoing disclosed.

c. The nature of the wrongdoing disclosed.

d. The identity of the alleged wrongdoer.

105. The EAT in *Dobbie v Felton t/a Feltons Solicitors* [2021] IRLR 679 summarised the position at paragraphs 27:

> *27 There are a number of key points I consider it is worth extracting from Underhill LJ's reasoning, and re-emphasising:*
>
> *(1) the necessary belief is that the disclosure is made in the public interest. The particular reasons why the worker believes that to be so are not of the essence*
>
> *(2) while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it – Underhill LJ doubted whether it need be any part of the worker's motivation*
>
> *(3) the exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest*
>
> *(4) a disclosure which was made in the reasonable belief that it was in the public interest might nevertheless be made in bad faith*
>
> *(5) there is not much value in trying to provide any general gloss on the phrase 'in the public interest'. Parliament has chosen not to define it, and the intention must have been to leave it to employment tribunals to apply it as a matter of educated impression*
>
> *(6) the statutory criterion of what is 'in the public interest' does not lend itself to absolute rules*
>
> *(7) the essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest*
>
> *(8) the broad statutory intention of introducing the public interest requirement was that 'workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers'*
>
> *(9) Mr Laddie's fourfold classification of relevant factors may be a useful tool to assist in the analysis:*
>
> *i. the numbers in the group whose interests the disclosure served*

ii. the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed

iii. the nature of the wrongdoing disclosed

iv. the identity of the alleged wrongdoer

(10) where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under s 43B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest.

106. The question of whether there is a detriment in respect of disclosure is the same test as set out above for direct discrimination by the decision in Shamoon.

Decision

107. The Tribunal will deal with each of the claims brought by the claimant in turn in the order that they are set out at paragraph 3 above. This is a slightly different order from that in the list of issues where the constructive dismissal claim is first but, given that this claim is brought under the Equality Act and is not a claim of unfair dismissal, the Tribunal has to be satisfied that there has been some form of unlawful discrimination which sufficiently influenced any repudiatory breach. It, therefore, makes more sense to determine whether there had been any unlawful discrimination as this will be an important consideration in the determining the constructive dismissal claim.

Decision – public interest disclosure detriment

108. The first question for the Tribunal in determining this claim is whether the claimant made a qualifying disclosure. The claimant relies on her grievance submitted in November 2024. The list of issues gives the date of the grievance as 28 November 2024 but parties all agree this is an error and no grievance was submitted on this date. Again, it is a matter of agreement that the claimant did submit a grievance and this was done on 4 or 5 November 2024; the claimant sent an email on 4 November to HR expressing an intention to raise a grievance (p152); there is then an undated document at pp153-154 setting the grievance; the letter of 12 November from PT inviting the claimant to a grievance meeting makes reference to a letter of 5 November 2024 raising a formal grievance (p155).

109. The Tribunal, therefore, finds that the claimant submitted a grievance on 5 November 2024 which was set out in the document at pp153-154 and that it is this document she relies on as a protected disclosure. This document will be referred to as “the grievance” below.

110. The Tribunal is satisfied that the grievance discloses fact rather than just assertions or allegations. It sets out what adjustments have been made (that is, the claimant providing her own earplugs) and describes the discussions which the claimant says had occurred in relation to making adjustments for her. It describes how her autism and ADHD affects her.

111. The Tribunal also considers that these facts show or tend to show that the respondent is failing to comply with a legal obligation in terms of s43B(1)(b), that is, the duty to make reasonable adjustments under the Equality Act. The Tribunal should be clear that it is not, at this stage, saying that the respondent had failed to comply with that duty and this will be addressed below. What is being said at this stage is simply that the facts which the claimant disclosed in her grievance showed or tended to show that the respondent was failing in that duty.

112. The difficulty for the claimant arises in relation to the question of whether the claimant had a reasonable belief that making the disclosure was in the public interest. The grievance is clearly related to her situation and her situation alone; it does not affect anyone else and any failure to comply with the duty to make reasonable adjustment impacts on the claimant alone.

113. The claimant gave no evidence about having any belief that she was making the disclosure in public interest and when it was put to her in cross-examination she accepted that this was a complaint solely about her circumstances.

114. In these circumstances, the Tribunal finds that the claimant did not have any belief, let alone a reasonable belief, that making these disclosures were in the public interest. They were made solely in her interest in trying to resolve what she perceived were problems with her working environment.

115. For these reasons, the Tribunal finds that the claimant's grievance was not a qualifying disclosure and dismisses the claim under s 47B of the Employment Rights Act as being not well-founded.

116. The Tribunal also dismisses this claim on the basis that the claimant was not subject to any detriment arising from the meeting of 23 January 2025 and on the basis that the grievance was not the cause of the meeting of 23 January nor how it was conducted nor did it have any influence, let alone a significant influence, on those matters. The Tribunal will set out its reasons for reaching these conclusions in more detail below in respect of the victimisation claim.

Decision – direct discrimination & discrimination arising from disability

117. The Tribunal will address both of these claims together because they are said to arise from the same alleged detriment, that is, the claimant being excluded from social events.

118. Although the list of issues refers to "social events" in the plural, the claimant clarified in her evidence that this was a reference only to the Christmas night out in December 2024.

119. It was not entirely clear what it was the claimant said the respondent had done or not done in relation to this matter. There was no evidence led by the claimant that she was positively excluded from the event in the sense of there being a decision to prevent her attending. It was put to DM by the claimant in cross-examination that she had not been "invited" and the Tribunal accepts his evidence (there being no evidence to the contrary) that no employee was sent an individual invitation. If it was the claimant's case that she was not sent an individual invitation then the Tribunal finds that she was treated no differently than any other employee.

120. The evidence from DM was that the night out is organised well in advance of Christmas to ensure a venue can be booked. The Tribunal does not find this surprising as it is public knowledge that Christmas nights out have to be organised earlier before venues sell out. It was also his evidence that the arrangements for the night out are discussed in the office when the booking is made and accepts his evidence that he discussed this with the claimant.

121. It may well be the case that, given everything else which occurred and her focus being on those other matters, the claimant did not recall these discussions. The Tribunal notes that the claimant did not ask about a Christmas night out in the period leading up to Christmas and this may well be because her focus was on matters such as the OH report.

122. In these circumstances, the Tribunal does not consider that the claimant was excluded from the Christmas night out.

123. Further, there was no evidence that any treatment of the claimant was because of her disabilities. There was simply nothing from which the Tribunal could draw any inference that the events surrounding the Christmas night out were influenced to any extent by the fact that the claimant was disabled. If anything, the evidence indicates that the claimant was being treated in the same way as every other employee in her team.

124. The same applies to the claim of discrimination arising from disability. The "something" arising from disability relied upon by the claimant was the effects of her conditions on her memory processing and communication and there

was no evidence at all that these had any influence on how the respondent organised the Christmas night out.

125. For all these reasons, the Tribunal finds that the claims of direct discrimination and discrimination arising from disability are not well-founded and are hereby dismissed.

Decision - reasonable adjustments

126. The claimant relies on two PCPs as giving rise to the duty to make reasonable adjustments.

127. The first is that she was required to use a "standard" headset when using the phone. The Tribunal accepts that when the new phone system came into use at some point in October 2024, all employees were issued with a headset which they were required to use in order to answer or make phone calls. There was therefore a PCP of using a headset issued by the respondent.

128. However, the Tribunal does not consider that this placed the claimant at a substantial disadvantage as a disabled person. It is correct that the claimant had difficulty using the headset that was issued but there was no evidence that this had anything to do with her disabilities.

129. The claimant made two complaints about the headset issued by the respondent. First, she found it uncomfortable to wear but she did not link this to her disabilities in any way. Second, she found the in-line control on the headset difficult to use but, again, the claimant gave no evidence that any such difficulties were caused by or connected to her disability.

130. In these circumstances, the Tribunal does not consider that the duty to make reasonable adjustments was triggered by the first PCP.

131. The second PCP was that the claimant was required to work in an open plan office and that the lighting and noise in the office had an adverse impact on her as a result of her disabilities.

132. There was no real dispute between the parties that the claimant was required to work in an open plan office and the OH report produced in December 2024 provides evidence of how this affected the claimant, in particular that movement and noise would distract her and adversely impact her focus on tasks. Based on this evidence, the Tribunal is satisfied that the requirement to work in the open plan office placed the claimant at a substantial disadvantage as a disabled person.

133. There is then the question of when the respondent knew or could reasonably have known that the claimant was being placed at this disadvantage so as to trigger the duty. The evidence on this was less than clear; it was certainly

not at the very outset of the claimant's employment as she sought to suggest. The claimant's position was, in effect, that the respondent should have made adjustments as soon as she declared that she had ADHD and autism but this is a misunderstanding of the law; the duty is not engaged simply by the respondent's knowledge of the claimant having a disability and there must also be knowledge of something placing the claimant at a disadvantage.

134. There was no evidence that the claimant had raised any issue with her disability at the outset of her employment other than the need for written instructions (which NS agreed to) and the need for noise cancelling headphones (which NS had mistakenly understood the claimant already had). The respondent did not have, and could not reasonably have had, any knowledge at this stage that working in the open plan office would place the claimant at a disadvantage as a disabled person.

135. Although the claimant asserted that she raised the difficulties with the working environment on multiple occasions with NS, she did not give any detail of when she did so and did not put these matters to NS in cross-examination.

136. The claimant did raise issues about her mental health and not wanting to come into work when she spoke to NS on or around 20 August 2024. However, the emails exchanged between them indicated that these issues arose from how the claimant felt she was being treated by other employees and not the second PCP of having to work in an open plan office.

137. There is no doubt that the claimant was raising issues with the working environment by the time of the second probation review on 16 September 2024. Further, the GP letter of 8 October 2024 (received on 17 October 2024) set out the difficulties which the claimant faced in the working environment and so the respondent was aware by this stage.

138. However, the only adjustment which had been raised by this time was access to a quiet place when the claimant felt overloaded and, at this point in time, the respondent had made the adjustment of allowing the claimant to use a break-out room to work when she was finding that she felt overwhelmed. There was nothing to indicate that this was not removing the disadvantage until the claimant went off sick in November 2024.

139. In particular, the respondent did not have the degree of knowledge about the difficulties which the claimant faced and what adjustments were required until they received the OH report on 24 December 2024. The respondent could not have taken the steps outlined in the OH report until they were aware of these. The lack of knowledge at an earlier date was not something which was the fault of the respondent; they had suggested a referral to OH at earlier dates but the claimant had refused to engage with this.

140. The Tribunal does not consider that the claimant's explanation for this is satisfactory. The claimant gave different reasons at different times for this. During her employment (in particular, during the grievance process), she stated that NS had told her it was pointless. NS denied this and the Tribunal, for reasons set out above, the Tribunal prefers her evidence.

141. During her evidence, the claimant stated that she refused to engage with OH because she considered that the respondent would use it against her stating she had heard this being said about other employees. However, she gave no evidence of when she heard this, about whom or who said it. In these circumstances, the Tribunal does not accept that NS (or anyone else at the respondent) said or did anything which indicated that an OH report would be used against the claimant. It is notable that when the report was produced, it was used to try to help the claimant and not to force her out of her job.

142. In these circumstances, the Tribunal finds that the duty to make adjustments was not fully engaged until the OH report was received on 24 December 2024 because the respondent did not have full knowledge of the disadvantage to the claimant and what adjustments could be made until the report was received.

143. At this point, the Tribunal is satisfied that the respondent complied with the duty; they agreed with the claimant what adjustments could be made and either made those adjustments or took steps for them to be made.

144. It is correct that not all of the adjustments were in place by the time that the claimant resigned but these involved the procurement of equipment and this was in process.

145. However, the Tribunal also considers that the duty was engaged in or around August and September 2024 to the extent that the respondent was aware that the working environment was adversely affecting the claimant albeit not to the degree that they were aware once the OH report was received.

146. At this time, the respondent had made an adjustment of allowing the claimant to use a break-out room when feeling overwhelmed. There was nothing said to them at the time that this adjustment did not avoid the disadvantage to the claimant.

147. In these circumstances, the Tribunal considers that the duty to make reasonable adjustments in relation to the second PCP was triggered but that the respondent complied with the duty to the extent that they were aware of what adjustments were required over the period when they had the relevant knowledge.

Decision - harassment

148. The claimant relies on three matters as amounting to unwanted conduct as the basis of her harassment claim.

149. The first is being excluded from the Christmas night out. For the same reasons as set out above in respect of direct discrimination and discrimination arising from disability, the Tribunal finds that the claimant was not excluded from the Christmas night out.

150. The second is that the respondent "impersonated" her. The list of issues does not give any detail of this and the claimant made no reference to this in her witness statement. In cross-examination, she stated that on an unspecified date she walked past a room where she heard unnamed persons impersonating her. She gave no detail as to who these people were or what it was they were doing.

151. In these circumstances, the Tribunal considers that the claimant has not produced sufficient evidence for the Tribunal to make any findings that this occurred, let alone what occurred and whether it was related to her disability.

152. Third, the claimant relies on the meeting of 23 January 2025 at which she alleges she was verbally abused, bullied, goaded, humiliated and taunted by PT and DM. For reasons it will set out in more detail below in respect of the victimisation claim, the Tribunal does not find that there was any such conduct by PT and DM at the meeting on 23 January.

153. Further, the meeting of 23 January and the manner in which it was conducted did not have the prohibited purpose in terms of s26(1)(b) of the Equality Act. The clear purpose of the meeting was to discuss the claimant's email to DM of 22 January 2025. The claimant's assertions that the meeting was intended to scare her or "break" her have no basis in evidence.

154. Similarly, the Tribunal does not consider that it was reasonable for the meeting of 23 January and how it was conducted to have the prohibited effect in terms of s26(1)(b). Again, the Tribunal will set this out in more detail below but it does not consider that there was anything said or in the way anything was said that could reasonably have caused any offence, humiliation or intimidation to the claimant.

155. For all these reasons, the Tribunal considers that the claim of harassment is not well-founded and it is hereby dismissed.

Decision - victimisation

156. The claimant relies on two matters are protected acts. The first is her grievance of 5 November 2024 and the respondent concedes that this is

capable of amounting to a protected act. The claimant also relies on her email to DM of 22 January 2025 and the Tribunal considers that this is also a protected act in terms of s27(2)(c) of the Equality Act; it raises issues about the progress of adjustments and this is sufficient to fall within the broad category of *"doing any other thing…in connection"* with the Equality Act.

157. The claimant alleges two detriments amounting to victimisation.

158. The first is the damage to her car which allegedly occurred on 20 January 2025. The claimant led no evidence whatsoever as to who damaged her car; she did not even specify who it was she said caused the damage. The Tribunal notes that when this was discussed at the meeting on 23 January 2025, DM asked her if she was alleging that the respondent had damaged her car and she replied that she was not accusing anybody of anything.

159. There was also no evidence led by the claimant about why someone would seek to damage her car, in particular there was nothing from which the Tribunal could draw any inference that this was because of the grievance the claimant lodged with the respondent in November 2024.

160. There has been no evidence from which the Tribunal could reach any conclusion that someone had deliberately damaged her car because the claimant brought a grievance several months prior to when the damage occurred.

161. The second detriment is the meeting of 23 January 2025 and how it was conducted. The Tribunal considers that DM and PT were perfectly entitled to meet with the claimant to discuss her email to DM of the previous day. There is nothing inherently wrong in managers wanting to speak to their staff and they must be entitled to do so in order to ensure the organisation runs properly.

162. The claimant made much of the fact that one of the recommendations in the OH report said that she should have notice of any meetings in order to prepare and that she did not have notice of the meeting with PT and DM. However, that recommendation related to staff meetings and the Tribunal does not consider that it referred to every discussion between the claimant and her managers. Further, the meeting was to discuss an email she had sent and there was no evidence that she was not able to have such a discussion.

163. The claimant also alleged that PT had deliberately approached her from behind in order to frighten because he had read about a previous event in her life recorded in the OH report. There was no evidence to support this allegation whatsoever.

164. In terms of the conduct of the meeting, the Tribunal has read the two transcripts of what was discussed, listened to the audio recording and finds that there was nothing whatsoever said at the meeting or how it was said that any reasonable employee would find objectionable. As the Tribunal has noted above, both DM and PT spoke in calm and reasonable tones throughout the meeting even where the claimant was interrupting them, talking over them and raising her voice. They were not aggressive or shouting at the claimant as she alleges.

165. Whilst the claimant may have been unhappy with what she was told at the meeting, there was nothing said which comes anywhere close to amounting to the claimant being verbally abused, bullied, goaded, humiliated and taunted by PT and DM as she has alleged,

166. In these circumstances, the Tribunal finds that the claimant was not subject to anything which meets the test for detriment set out in Shamoon (above) in the holding and conduct of the meeting of 23 January 2025.

167. For all these reasons, the Tribunal finds that the claim of victimisation is not well-founded and is hereby dismissed.

Decision – constructive dismissal

168. The claim for constructive dismissal is brought under the Equality Act and so there requires to be some form of discrimination which had sufficient influence over any repudiatory breach of contract giving rise to the claimant's resignation.

169. For the reasons set out above, the Tribunal has found that the respondent did not discriminate against the claimant at all and so, even assuming that there had a repudiatory breach of contract by the respondent, there was no discrimination to have any influence, let alone a sufficient influence, over any alleged breach of contract.

170. This would be enough for the Tribunal to dismiss the claim for constructive dismissal but the Tribunal also considers that there was no repudiatory breach of contract.

171. Looking at the case as a whole, the Tribunal does not consider that the respondent acted in any way that undermined or destroyed the employment relationship. The claimant complains about there being no OH report made at the start of her employment and that this was delayed until December 2024. However, there was no reason for the respondent to seek OH advice at the start of the claimant's employment because she had raised no issue which required this. The claimant proceeded on the basis of a misconception that declaring that she had a disability placed some form of obligation on the

respondent to seek OH advice but it does not. The reason why no OH referral was made until December 2024 was because the claimant did not agree to this until the end of November 2024; an OH report cannot be obtained without the employee's consent.

172. Similarly, the reason why the adjustments in the OH report were not done at the start of the claimant's employment was because the respondent was not aware that these were required until the report was received. In particular, as dealt with above in relation to the claim about reasonable adjustments, the respondent had no obligation to make adjustments until they had the relevant knowledge that these were required. The Tribunal is satisfied that the recommended adjustments had been done or were in the process of being put into place when the claimant resigned.

173. None of this gives rises to a breach of the duty of trust and confidence and, rather, shows an employer willing to accommodate the claimant, preserving the employment relationship.

174. Finally, in relation to the "last straw", this is the meeting of 23 January 2025 and the Tribunal has already set out above its conclusion that the respondent did nothing in having this meeting and how it was conducted. In these circumstances, the Tribunal does not consider that this meeting caused, or even contributed, to a repudiatory breach of contract.

175. For all these reasons, the claim of constructive dismissal is not well-founded and is hereby dismissed.

Date sent to parties **28 October 2025**