



EMPLOYMENT TRIBUNALS

Claimant: Mr J Hunter

Respondent: SmartFrame Technologies Ltd

Heard at: London Central by cloud video platform

On: 6 to 10, 13 to 17 and 22 October 2025

Before: Employment Judge Nash

Representation

Claimant: In person

Respondent: Mr Caiden of counsel

RESERVED JUDGMENT

1. The respondent did not constructively dismiss the claimant.
2. The respondent did not breach the claimant's contract or make unauthorised deductions from his wages contrary to section 13 Employment Rights Act 1996 in respect of sick pay.
3. The respondent did not directly discriminate against the claimant contrary to section 13 Equality Act 2010.
4. The respondent did not subject the claimant to discrimination arising from disability under section 15 Equality Act 2010.
5. The respondent did not fail to comply with a duty to make reasonable adjustments under sections 20 and 21 Equality Act 2010.
6. The respondent did not harass the claimant contrary to section 26 equality Act 2010.
7. The respondent did not victimise the claimant contrary to section 27 Equality Act 2010.

REASONS

The Hearing

1. Following ACAS early conciliation from 15 March to 26 April 2024, the claimant presented his claim to the employment tribunal on 26 May 2024.
2. There were case management hearings on 24 September 2024 and on 9 January 2025, which finalised the list of issues.
3. This hearing was listed to be liability only.
4. At this hearing, the tribunal heard from the claimant on his own behalf.
5. On behalf of the Respondent, it heard from
 - a. Ms Nicky Duggan, the claimant's line manager and the respondent's product owner for Salesforce;
 - b. Mr Luke Vines COO, Ms Duggan's line manager; and
 - c. Ms Isabella Lourenz the respondent's People and Culture Director.

The Claims

6. The claimant brought the following claims to the employment tribunal
 - a. constructive unfair dismissal s 98 Employment Rights Act 1996
 - b. breach of contract & unlawful deduction of wages s 13 Employment Rights Act 1996, in respect of sick pay
 - c. direct disability discrimination s13 Equality Act 2010
 - d. discrimination arising from disability s15 Equality Act 2010
 - e. failure to make reasonable adjustments ss20 and 21 Equality Act 2010
 - f. harassment related to disability s 26 Equality Act 2010
 - g. victimisation s27 Equality Act 2010.

Preliminary Issues

7. The tribunal had ordered a reasonable adjustment that the claimant receive breaks when necessary. The tribunal at the beginning of this hearing told the claimant he might request breaks as and when necessary, but if he preferred a structure whereby breaks were scheduled, he could request this as well or instead. On a number of occasions during the hearing, the tribunal reminded the claimant that he might request breaks either on an ad hoc or a scheduled basis if this would assist

his participation in the hearing. In the event, the tribunal took regular breaks and the claimant requested and received a number of ad hoc breaks. During the claimant's evidence and the evidence of Ms Duggan the witnesses became distressed, and the tribunal allowed them a short break to compose themselves and checked back in with them before further questioning.

8. The tribunal also provided more time for the claimant. For instance, the tribunal ordered the respondent to provide written submissions to the claimant by 9am and the claimant was given until 12pm to consider his submissions. Submissions were provided at 9.30am and at 12pm the claimant said he was unable to make submissions. The tribunal offered the claimant until 3pm to reconsider whilst emphasising that he was not under pressure to make submissions if he preferred not. In the event the claimant made oral submissions at 3pm.
9. The hearing was originally listed for 11 days before a full tribunal. However, it was converted to a judge alone hearing with the consent of the parties due to tribunal resource issues the day before the hearing. The hearing was also converted to a 10-day hearing for the same reasons and then extended for an extra one day.
10. There were a number of procedural issues which materially delayed the hearing. Despite the two case management hearings, the case had not been fully prepared.
11. There were significant problems with the claimant's witness statement which was served very late. The witness statement did not comply with the tribunal orders in that it was not in chronological order or in numbered paragraphs. The claimant stated that he had been unable to do anything other than rely on a chronology he had prepared previously and his particulars of claim. In his statement he stated:-

"To the best of my knowledge, recollection, and to the absolute best of my current ability, I believe that these two core documents cover all of the key facts in this claim. I therefore adopt the contents of these two documents as my written evidence-in-chief."
12. The tribunal advised the claimant that there were difficulties in this approach. The claimant accepted that, save for a few introductory paragraphs, his witness statement had been drafted prior to any discussion of the list of issues. Whilst the statement did appear to address a number of the issues it lacked particulars and details. By relying on two separate documents, a chronology and the particulars of claim both of which covered mainly the same period, the claimant's case would be rendered confusing. It would put a burden on both the tribunal and the respondent - as well as the claimant –and increase the length of time needed for the hearing.
13. Accordingly, the tribunal ordered the claimant to prepare a consolidated document whereby he cut and paste the paragraphs from one document into the other document so that it was clear which paragraph in one document related to which paragraph in the other document. It was difficult to ascertain whether and where the same matter was being discussed in both the chronology and the particulars of claim. However, on the morning of the second day of the hearing the claimant said

that he had been unable to do this. The tribunal therefore proceeded with the witness statement as drafted.

14. The tribunal raised with the claimant the fact that he had stated in his witness statement that he did not see how any fair trial could go ahead. Nevertheless, there was no application to postpone the hearing. The claimant stated that he preferred to proceed notwithstanding issues with his witness statement, in part due to the delays already incurred in this case and the further delays that would be created by the postponement. The respondent stated that it took a pragmatic position and believed it would be better to proceed with the hearing rather than incur a further delay, probably of one year. Accordingly, the tribunal proceeded with the hearing.
15. The Claimant accepted in cross examination that he had used artificial intelligence to assist in drafting the chronology and particulars of claim. He said that it had not been used for substantive drafting but as editing only.
16. The claimant's witness statement also referred to and quoted from various documents. The tribunal explained that if he wanted to rely on any document quoted in the statement, he needed to ensure it was contained in the bundle or draw the fact that it was not in the bundle to the attention of the tribunal.
17. Upon reading the claimant's witness statement, the tribunal did not read a number of pages as it became concerned that the statement included without prejudice matters. Neither party had brought this matter to the tribunal's attention. When the tribunal raised this with the parties, after discussion the parties agreed on redactions from the claimant's witness statement and provided the redacted pages which were inserted into the original statement in place of the original pages. In total five pages were replaced. The tribunal explained in full to the claimant the operation of the without prejudice rule and that any part of the statement should not be redacted unless both parties agreed that it was without prejudice. By the morning of the third day of the tribunal hearing, there was an agreed redacted witness statement for the claimant. Both parties wished the tribunal to proceed on this basis.
18. After the parties had informed the tribunal there were no further preliminary matters, the claimant emailed a request for further information and a request for specific disclosure to the tribunal during the first day of the hearing. After questioning by the tribunal at the beginning of the second day, the claimant stated that these were outstanding interrogatory applications that had not yet been dealt with by the tribunal. After lengthy discussion with the parties, the tribunal accepted that, although the position on the file was not entirely clear, it was more likely than not that the application for specific disclosure had not been determined and had been put over to this final hearing. The position was less clear in respect of the request for further information as it appeared it had not come before any the tribunal. The claimant's position was that he accepted it was not proportionate to pursue the application for specific information, but he did pursue the application for specific disclosure.

19. The tribunal accordingly determined the application for specific disclosure. In respect of the great majority of the documents, the respondent's position was either that these documents had already been disclosed or that having conducted a proportionate search the respondent had been unable to locate these documents and believed they did not exist. In respect of a number of outstanding matters the tribunal rejected the application on the basis that it was either disproportionate or in effect a fishing expedition with two exceptions. Full oral reasons were given for this decision during the hearing.
20. At the tribunal's instruction, the claimant provided a reading list. The reading list received from the claimant contained a number of lengthy automatically generated and unedited transcripts of meetings which were extremely difficult to read or to make sense of. The claimant accepted that the transcripts were often difficult to understand. The tribunal informed the parties that it was not proportionate for it to read these documents, and it would therefore not take the contents of the transcripts into account unless it was taken to specific sections of the transcripts by the parties either in cross examination, evidence in chief or submissions.
21. The tribunal reminded the parties during witness evidence that if a witness contended that something in a transcript went to the issues or if they wanted to draw it to the attention of the tribunal, the party must specifically take the tribunal to the relevant section of the transcript and give the other party an opportunity to give evidence and make submissions on that part. This was particularly important due to the poor quality of the transcripts.

The Issues

22. The list of issues was finalised at the January 2025 case management hearing and appended to the case management order. The list is appended to this judgment.
23. There were two amendments to the original list of issues as follows.
24. At issue 2.3 the respondent relied on some other substantial reason as a potentially fair reason for any dismissal
25. At issue 8.1.3 the protected acts relied upon were the claimant's emails to respondent on
 - a. 21 April 2024
 - b. 26 April 2024
 - c. 29 April 2024

The Facts

Background

26. The tribunal heard extensive evidence. It has had regard to all of it. It is not for the tribunal to recite an exhaustive history or to resolve every evidential conflict. The facts which it is necessary to record, either agreed or proved on a balance of probabilities, are as follows.
27. The respondent is a start-up software company employing between 41 and 50 staff. It provides image protection technology. It has employees based in four countries including the UK and Poland. During the claimant's employment, the respondent was in "start-up mode" in that it was seeking to grow its client base, rather than maintain existing clients, with a goal of selling the business. Its business model was accordingly investing capital into the business in the hope and expectation of an eventual return. This was a fast-moving environment where priorities could change quickly and without warning and where all employees had to be flexible as to their duties.
28. The claimant started work for the Respondent as a developer working on the Salesforce computer application on 31 January 2022, working remotely although the offer letter stated that the location was home/London with travel as required. He lived two and a half hours travel from the respondent office. The claimant was one of two workers who worked remotely, and many worked hybrid.
29. The claimant was part of the UK based operations team and worked very closely with the development team in Poland.
30. The claimant's job spec including as essential criteria, "The ability to work in a fluid, fast-paced, entrepreneurial and results-oriented culture", "Superb organisational and interpersonal skills" and "The ability to juggle a number of things at once and deliver to tight deadlines".
31. The claimant was the only Salesforce developer. He worked in a two-person unit under his line manager Ms Duggan, who had fewer technical skills than him.
32. At first all seemed to go well. Ms Duggan was very pleased with the claimant's skills and performance, and he passed his probation on 1 May 2022. There was excellent feedback from the claimant's colleagues. The tribunal had sight of friendly messages between the two, referring to their personal lives as well as work matters. Both agreed the relationship was friendly. The claimant later took a very different view of Ms Duggan and other respondent employees.
33. From early 2023 most internal respondent communications were over Slack, a communications system allowing either for communication within a specific group or one to one, either by message or audio calls. Employees were included in different discussion groups (known as channels) and could opt in and out of these groups. The Slack channels operated not unlike WhatsApp groups with employees being included in a number of different groups or channels. The respondent code

of conduct provided a framework for how employees used Slack. The code said that employees should use DND status on Slack to avoid interruptions (which would silence notifications and calls) or Busy status (which does not silence notifications and calls). The claimant was unsure if these statuses muted calls.

ADHD Diagnosis

34. The claimant received a diagnosis of ADHD from a private provider on 10 June 2022. On 21 June 2022, the claimant emailed HR informing them of this, having already told Ms Duggan. He told HR that there was no need for any extra support or adjustments that had been identified as yet. He said that starting treatment had been very helpful for him.
35. According to the claimant, ADHD is an executive functioning disorder substantially impairing his working memory, attention, and ability to self-regulate. His difficulties with time management included what he described as time blindness, frequently being late and missing appointments and deadlines travelled arrangements and schedule events, problems with task initiation, planning and organisation and engaging in goal-directed activities and expense challenges of processing can retaining complex auditory information following extended verbal conversations.
36. Ms Laurenz of HR acknowledged the diagnosis. She said that if he needed adjustments or if there were issues, to ask her. The claimant received this as a positive message and acknowledged it as such to Ms Laurenz at the time.
37. From June to September 2022 the Respondent was considering a return to the office following the pandemic. Ms Duggan told the claimant that there was no pressure for him to come in, and occasional visits would be acceptable. According to Ms Duggan, staff were given a fair degree of choice as to how often they came into the office. The claimant remained one of only two wholly remote employees.
38. In July, the claimant provided “360 feedback” about Ms Duggan to Mr Vines saying, “...Nicky, she’s up there with the very best [line managers]. I wasn’t sure what to expect by blurting out I’d been diagnosed with ADHD one day during a catchup call, but Nicky did everything right. She listened to what I was saying, she was curious and asked questions, she offered support if I needed it, and most of all I felt that it didn’t change her view of me at all.”
39. However, the claimant in his witness stated Ms Duggan appeared dismissive and disregarded any attempts to discuss his needs. She justified this as generational difference. This was not put to Ms Duggan, and her evidence was that she was sympathetic and open to helping. The tribunal preferred the contemporaneous evidence that certainly in July 2022 the claimant was happy with his line manager.
40. According to the claimant’s witness statement, after stating his diagnosis, between July and September 2022 he received unnecessary administrative tasks, years’ worth of unused integrations and miscellaneous low value work. He felt prevented from performing his role and was blocked by other teams by lack of communication, last-minute priority shifts and deadlines and in managing the

incessant calls and disruptions by Ms Duggan. However, few details or examples were provided of this. In evidence the claimant said that Ms Duggan often rang him without warning having sent a message on Slack.

41. The claimant contended that in October 2022, he felt that he could not ask for support because the respondent's continued reminders of its financial hardship and his relentless workload.
42. The tribunal was not taken to any evidence that this was the claimant's view at the time. There were no references by the claimant to "incessant calls and interruptions" or indications that this was happening. The tribunal did not accept this characterisation of this period.

Access to Work

43. The claimant contacted Access to Work. On 31 October 2022 Access to Work granted a total of £3,874.19 of adjustments including IT equipment, 10 hours of coaching sessions. This was confirming in a letter to Ms Duggan, who overlooked it.
44. The tribunal saw a Slack exchange where the claimant told Ms Duggan that he was given a desk, a smartpen/digital notepad and transcribing software and he had refused other options. The claimant said at the time that Access to Work told him that unlike some employers, the respondent was completely fine with the assessment. Ms Duggan sent an email stating that it looked as if the respondent had to pay upfront and then claim funding back and would the claimant be happy to talk to her and Mr Vines about this. The claimant replied that he would speak to Access to Work and did not object to speaking to Mr Vines.
45. However, according to the claimant's witness statement, Ms Duggan questioned and obstructed his Access to Work support request at every opportunity. He stated that she engaged in unnecessary involvement and undermined his access to support. He stated that he had explicitly repeated that Access to Work cover all funding so Ms Duggan should have understood. Before the tribunal he said that he thought it insensitive that Ms Duggan had asked if he would be happy to speak to Mr Vines about Access to Work. He told the tribunal it was "horrible" that the respondent was so concerned about the money. Ms Duggan told the tribunal she did not have the authority to sign off on the "spend" if it was upfront and therefore had to go to Mr Vines. The respondent was a start-up and cashflow was an issue.
46. The claimant stated that as a result of Ms Duggan's continued questioning, he was unable to obtain all of the AtW equipment he needed, that he only received a standing desk, and they were "actively obstructing the process". In oral evidence, he could not provide any details of this or what equipment he was unable to obtain and said that the respondent should have been more sympathetic. He did not explain how the respondent hindered him. He said that he chose to buy other equipment from his own funds which was superior. The claimant asked AtW to exclude Ms Duggan from emails.

47. The tribunal found that there had been confusion about logistics on the grant and when it appeared the respondent would have to pay up front it was necessary for Mr Vines to be involved. Once it was confirmed that AtW would pay up front, there were no issues from the respondent.
48. The claimant raised with Ms Duggan a year later the possibility of further AtW equipment as the respondent was still entitled to free equipment if its headcount remained below 50, and this changed if the respondent expanded. Ms Duggan said that if the respondent later had to pay (because it grew its headcount) then she and the claimant should speak to Ms Laurenz. The claimant stated that he had always wanted an iPad and AtW might pay. The tone of the exchange was friendly and relaxed. It was in no way consistent with the respondent causing any difficulties with AtW.

Trip to Krakow

49. The claimant went on a respondent company trip to Kraków from 30 November to 2 December 2022. All the respondent employees attended. The purpose was to align and motivate the company and it served as the respondent's Christmas party.
50. The claimant was upset that the respondent imposed a very tight budget and that he felt guilt at his travel needs, which were publicly shared. The claimant's view was that consideration should have been made to him for his disability, but he made no request at the time or said what needed to be done.
51. The claimant and Ms Duggan went into town after they arrived and returned to the hotel for dinner. The claimant said that Ms Duggan's behaviour on arrival was deeply uncomfortable. He was pressurised to attend a Christmas market with her despite his clear reluctance. He felt coerced to accompanying his colleagues to bars. He said he suffered extreme distress and could not sleep three nights. This was a real danger to his health, and he was unsafe, although he did not explain what the risk to his safety was. He stated he suffered from extreme exhaustion was asked to engage in long walks in winter weather.
52. During the first day of the conference, respondent employees were broken up into breakout groups. The claimant was in a group with the respondent's Chief Executive Officer. The claimant presented the group's findings to plenary. Ms Duggan thought that the claimant was very uncomfortable doing this. The claimant could not be found at lunchtime and there was a discussion as to whether he should be given some time to himself. Ms Duggan messaged him to check he was all right. The claimant found Ms Laurenz telling him that she understood, to be confusing and humiliating. In the evening, the claimant accompanied his colleagues out. The claimant did not take part in the group activity the next day and travelled back to the UK with the group.
53. Ms Duggan said she had not put the claimant under any pressure to socialise whilst in Krakow and he had not expressed any reluctance.

54. Ms Duggan stated that she was concerned, the claimant had found the experience stressful and suggested it be discussed at the AtW co-coaching session they were planning.

13 January 2023 Call

55. The claimant and Ms Duggan had a heated call on 13 January 2023. The claimant alleged that he had raised his concerns about what he felt was Ms Duggan's disruptive management style and the difficulties he had had in Krakow, but he provided no details.
56. The claimant and Ms Duggan disagreed about what work the claimant should do. Ms Duggan wanted to switch the claimant's priorities. The claimant alleged that there was a flash of rage from Ms Duggan, stating, I am your manager, not Mr Vines or Ms Laurenz. According to Ms Duggan, the claimant was rude to her and then said he was "done talking to me.". Both parties agree the claimant ended the call, that is, he hung up on Ms Duggan. Ms Duggan's evidence was that she did not link this to the claimant's ADHD at the time.
57. The claimant and Ms Laurenz messaged each other with the claimant saying that he had cleared the air with Ms Duggan and that Ms Duggan had caught him at the wrong time and it was extremely rare that he had lost his cool as he did. He thought he had overreacted and was experiencing some difficulties with recognising his diagnosis of ADHD.
58. According to the claimant, on January 16 2023, having told Ms Duggan he preferred a written agenda or a warning of a call, she emailed him, saying, are you free for a quick call. The claimant said that instead of giving proper notice of any communication Ms Duggan would just ask if he was free for a quick call and then pressurise him into receiving a call and that they would speak at least three times a week in calls lasting half an hour to over an hour. The claimant said it was clear that his mental health was deteriorating, but the respondent failed to investigate. He did not provide any details or evidence showing this at the time.
59. Ms Laurenz and Ms Duggan messaged each other on 18 January saying that the claimant had apologised to Ms Duggan, and that she was "a bit uncomfortable about managing him will all just have to see how things go." Ms Laurenz said it could be hard and frustrating, and they agreed to meet.
60. According to Ms Duggan, after this it became difficult to ask the Claimant for updates on his work. He would become abrupt and defensive.

2023 Review

61. Ms Duggan conducted the claimant's performance review on 6 February 2023. Ms Duggan was very positive about the claimant's contribution. His quality of work and output were very good, as was his teamwork. He needed to work on his confidence that is speaking up and maintaining focus and not getting sidetracked. It was said that this was somewhat symptomatic of his recent ADHD diagnosis.

62. Ms Duggan described the claimant as a great Salesforce developer and a great asset to the company. During this process Ms Dugan advised that the claimant needed to focus more on goals and manage disruptions. She agreed that this in part referred to the fact that she had been calling him, and he found this distracting. Ms Duggan proposed that the claimant do Salesforce certification to help with his confidence
63. The claimant said that it had been difficult working with Salesforce development due to lack of structure. He felt he was getting sucked into firefighting, avoiding avoidable, fixing avoidable problems and things had been difficult in August. Under “biggest challenges”, he said he did not want to mention his ADHD diagnosis “for the umpteenth time” but it was exciting at the time. He viewed getting in more structure as “the key thing”.
64. Mr Vines contributed feedback from colleagues which was generally very positive. Constructive criticism was the claimant learning to say “no” and balancing priorities. He needed to maintain focus and not getting sidetracked which is “somewhat symptomatic of his recent ADHD diagnosis and we are here to support him on that journey as well.”

Access to Work Coaching Sessions

65. Access to Work funded 10 hours of ADHD workplace coping strategy coaching sessions. The sessions started at the end of February 2023. According to the claimant, Ms Duggan targeted each session by fabricating urgency to distract or hold him captive in private calls specifically around events in the work calendar preventing the claimant from receiving any benefit from the coaching session. The claimant said that Ms Duggan had engaged in a pattern of targeted disruptions prevented him from effectively engaging with the coach.
66. The only detail given of this allegation was that he said that Ms Duggan had contacted him during his second coaching session even though it was marked on his calendar. He therefore altered his work calendar to “private”. Ms Duggan said this was a mistake and she had not disturbed his coaching sessions except by mistake.
67. The respondent operated an open calendar practice whereby each member of staff’s Google work calendar is set to public. First thing the next morning, Ms Duggan noticed the claimant’s calendar had been set to private and she asked him to swap it back. He told her that he had done this in error.
68. On 27 February after the claimant’s first coaching session, Ms Duggan messaged the claimant saying that if he found a better way of working via the coaching, please to let her know and she was happy to change the way they worked together to suit him.
69. According to the claimant, the coaching sessions highlighted his declining ability to cope with the respondent workplace.

70. The coach arranged a joint coaching session with the claimant and Ms Duggan for 15 May 2023. She emailed both participants an agenda, with four points – set up; neurodiversity awareness; current role (what’s working well, what’s not working well, how could it be better); plan moving forward.
71. According to the report of the session created by the coach, the purpose was to “think about what’s working well and how things could be better, creating strategies to support [the claimant]”.
72. The claimant used his transcription tool to make a written record of the meeting without informing Ms Duggan. The tribunal had sight of a very poor-quality transcript at p320 which was difficult to understand.
73. According to the claimant, Ms Duggan disregarded his clear distress of workload and strategies suggested by the coach and humiliated, undermined, and sought further vulnerabilities from him during the sessions. However, he did not provide details of this or point to any evidence.
74. According to Ms Duggan her father was gravely ill at hospital, so she had to join the session on her phone in a car park. There was poor Internet connectivity during the session, meaning she had to rejoin on the phone and a delay on the call meant she may have spoken over the claimant or the coach at times. There were references in the transcript to Ms Duggan having network issues during the call. The claimant contended that Ms Duggan had deliberately talked over him and dismissed efforts to understand his difficulties.
75. Amongst other matters, the claimant stated he found prioritising difficult between the many requests he received. There was discussion of how to balance priorities using for instance time blocking.
76. According to Ms Duggan, she sought to prevent other developers approaching the Claimant directly about new work when they should have followed the proper procedure - because the claimant had found this difficult and had complained about it. According to Ms Duggan the correct procedure for asking the Salesforce team to pick up a new task was to raise a ticket on the respondent’s internal system and put a notification on the correct Slack channel. This would allow Ms Duggan to have visibility of what the claimant was doing and to ensure he was not overloaded. Ms Duggan said that she was reinforcing standard processes. She said the claimant would be “nice” and not make people follow procedure. The claimant said that he did not ask or need Ms Duggan to do this, and Ms Duggan was isolating him from his colleagues. He did not say or indicate this at the time, including to his coach.
77. Ms Duggan said that the claimant did not need to respond immediately to Jira tickets (requests for help from colleagues). She said that she used to interrupt the claimant a lot but had realised that was not a good way to work with him, so she now messaged before calling. The claimant told the tribunal that in fact she was continuing to interrupt him and this continued. However, during the meeting he

said that Ms Duggan was probably the only person in the respondent to has shifted to accommodate him about interrupting.

78. There was discussion about how Ms Duggan and the claimant worked together. The claimant was unhappy that Ms Duggan messaged him to see if he was free. Ms Duggan's view was that it was better to message him rather than interrupting verbally. The claimant said that he was struggling with the lack of structure. The claimant felt that Ms Duggan was criticising his attempts to create a structure. Ms Duggan stated that as a start-up it was difficult to maintain structure due to the number of times they had changed directions. It was hoped a few months' time that this would become easier. But unfortunately, at times it was necessary to pull the claimant from one task and put him onto another one. According to Ms Duggan, due to the startup nature of the respondent work priorities changed suddenly and frequently.
79. Ms Duggan proposed that the claimant block out periods to concentrate. The claimant told the tribunal that in a start-up environment it was inevitable that there would be changes which could not be planned for.
80. Ms Duggan stated that she struggled with how best to give feedback to the claimant, as being too direct did not work well.
81. When asked by the coach if anyone had anything further to add, Ms Duggan referred to the Claimant's difficulties during the trip to Kraków. She said that the claimant did not cope very well with that and - if the respondent had another companywide meeting - what strategies could be put in place so it would be easier for the claimant.
82. The claimant in his witness statement said that Ms Duggan brought it up although she knew that the claimant had complained about her. However, this was not put to Ms Duggan, and her account was that she was trying to help. The coach thought Ms Duggan's was a good idea – to identify how the claimant could cope better in these events.
83. Ms Duggan said that claimant should not be afraid to ask her if something was not working for the claimant or if was stressed out.
84. When asked what was working well about the role, he said he enjoyed the autonomy and not having to "stay in his lane" and he "got on well enough" with Ms Duggan which was fantastic.
85. The claimant told the tribunal that he felt restricted as to what he could say in the session before his line manager. However, tribunal found that notwithstanding any reluctance to criticise his manager, he volunteered specific praise and therefore was reliable. There was no evidence of the claimant telling the coach in his private sessions of difficulties with Ms Duggan.

86. The coach spoke at some length about the concept of neurodiversity. This was a separate part of the co coaching session and distinct from the “problem-solving” part of the session.
87. The claimant stated that Ms Duggan had left the call abruptly. Ms Duggan denied this. The transcript did not show this, and the claimant was unable to point to evidence that she did leave abruptly.
88. The claimant told the tribunal that he praised almost everything Ms Duggan did when she was present.
89. Ms Duggan later that day sent a message the claimant, “hope it wasn’t too bad having me on the call today! I want to schedule a session with you on the challenges of using Jira-I was thinking Friday afternoon might be good time for it as Fridays already messed up with the back end and preplanning calls-what you think? Does that work for you?” The claimant replied, “not at all, it was more worried you’d feel it was a time waste, hope it was a little valuable at least. Yeah, absolutely, probably the best day for it to not much focused work gets done on those days!”
90. The claimant’s case was that Ms Duggan’s was an insensitive message because she had embarrassed him during the call when speaking about Krakow a few minutes before.
91. The coach provided a report (p365) which stated that Ms Duggan respected the claimant’s way of working.
92. It was the claimant’s case that the purpose of the sessions was “neurodiversity awareness”. The plan for the sessions from the coach listed neurodiversity awareness as one of four topics. He contended that Ms Duggan had in effect hijacked the sessions to deal with ways of working rather than neurodiversity. He accepted that neither he nor the coach had sought impliedly or explicitly to bring the sessions back to what he considered to be the purpose. He also accepted that neither he nor the coach had raised this between the two co-coaching sessions. The tribunal did not accept the claimant’s case on this point because it ran contrary to the coach’s explanation as to the purpose of the co-coaching sessions. Further it ran contrary to the report provided by the coach.
93. Ms Duggan, the claimant and the coach had a further joint coaching session on 14 June 2023. This session had to be rescheduled due to work deadlines in a busy time. The claimant again created a transcript of this session without informing Ms Duggan, but it was not easy to read or decipher.
94. The claimant said that Ms Duggan criticised his communication style. The transcript showed that Ms Duggan said that the claimant could be too nice or apologetic on calls and it was necessary to have more focus on solutions as he struggled with being concise. The claimant needed not to fix every problem but communicate the problem to bring other into the solution. Ms Duggan went into some detail about communicating with, for instance, different respondent teams in different countries, for instance using more private or more public methods of

communication depending on the topic. The claimant told the tribunal that he did not feel able to disagree with Ms Duggan. The claimant said that this criticism was inaccurate because during his probation review in May 2022 colleagues had praised his communication style. The coach on more than one occasion said that Ms Duggan's suggestions or input were helpful.

95. Ms Duggan said that she and the claimant had getting got better at communicating priorities and the claimant had improved in terms of his organisation, focus and ability to manage his workload. Ms Duggan gave an example of the claimant taking on a piece of work that was not his responsibility which had resulted in his being overloaded.
96. The claimant's case was that Ms Duggan admitted she was aware that her behaviour was detrimental to his performance but did not provide any details evidence of this in the transcript.
97. In the view of the tribunal the Claimant fundamentally disagreed about the purpose of the co coaching sessions. He saw them as educating Ms Duggan about ADHD, rather than also looking for solutions. He felt it was inappropriate and rude for Ms Duggan to say what he needed to do better in front of the coach whom he saw as a "safety blanket". He felt insulted that Ms Duggan was criticising him and she was intentionally embarrassing him in front of his coach.
98. The coach told the claimant and Ms Duggan that the aim of co coaching was to develop awareness and greater understanding as well as produce a plan to address areas of need.
99. The claimant said that Ms Duggan dismissed discussion of his career objectives. Ms Duggan denied this. The transcript recorded Ms Duggan urging the claimant to put personal development formally on his goals and to ensure he made space for this, and she had not always achieved this herself. The claimant made no allegations in his chronology that Ms Duggan dismissed the discussion of the career objectives.
100. The claimant said he could get overwhelmed and forget his good habits. Ms Duggan said that there was a tight deadline with long hours for many people and it was intense. The claimant's statement stated that she dismissed his struggles with work life balance and the impact of long hours for his well-being and health. This appeared to refer to the discussion about the claimant having been working extremely hard working late and at weekends. There was a reference to how when matters were urgent it could be necessary to "jump" on it.
101. He also contended that she held him to a different standard by taking time off herself while instructing him not to. He provided no details of these allegations. The claimant said that she "admitted" that he excelled in his absence, and he said this suggested she was aware that her behaviour was detrimental to him. This referred to Ms Duggan praising the claimant when he was doing well and keeping it all together when she was absent.

102. The claimant said that Ms Duggan wanted to inhibit the role of his coach and to avoid suggested adjustments but did not point to any evidence of this. The claimant contended that the meetings exemplified an escalating pattern of harassment.
103. The session ended with a nearly ten-minute one-to-one between the coach and the claimant without Ms Duggan.
104. At the end of the coaching sessions, a report was generated. This stated that the rationale for coaching and topics to cover were, to think about what's working well and how things could be better, creating strategies to support the claimant.
105. Following on from the sessions, the claimant and Ms Duggan discussed how to use the respondent's case management tool. Ms Duggan said it was agreed that the claimant would put less tasks on the case management tool. However, Ms Duggan did not think that this had been implemented due to pressure of work.

HTML work

106. In May 2023, the respondent was launching a new site for a client. Ms Duggan and the claimant were creating an onboarding process. They participated in the onboarding Slack channel for this part of the work.
107. One element of the work was creating email templates coded in HTML, a coding system used primarily by web developers. Although the respondent had the skill set within its development team, they were not available. According to Ms Duggan, this was not a core skill of either the claimant or herself. Mr Vines stated that most developers have a decent grasp of HTML and can do it if necessary.
108. The claimant stepped in to see if he could iron out some difficulties on the HTML work. According to Mr Vines, this was above and beyond his other tasks and was particularly helpful. This work turned out to be more time-consuming than expected and Ms Duggan was concerned that the claimant was struggling with the volume of work which was keeping him from other duties. Mr Vines evidence was that the senior technical support engineer had more HTML experience whereas the respondent wanted the claimant to concentrate on other functions where his Salesforce expertise was needed. The tribunal accepted the evidence of Mr Vines, that as is common in start-up businesses, employees have to get involved in projects and tasks that are broader than their roles and it is not unusual for the task to be then reallocated to somebody with the core skills.
109. The claimant agreed that he voluntarily took on the HTML work as there was no one else. At this time there was no other Salesforce work and Ms Duggan was trying to isolate him and prevent his doing congenial work by removing the HTML work from him publicly. It required him to work in his evenings. After the HTML work was removed, he was left with "meaningless work".
110. Ms Duggan was due to go on leave from 19 June. Ms Duggan messaged the claimant on 16 June saying she wanted him to stop the HTML work to free him up for other work. She told the claimant not to "give in" on accepting HTML work whilst she was

away, and she would send an all email to this effect. The claimant replied, “that suits me”. Ms Duggan messaged the claimant that she would tell Mr Vines that the claimant would not do this work for another client and the claimant said he could guide but no more. The claimant emailed Ms Duggan that he had tried his best as he was not a web developer or a specialist marketer.

111. Ms Duggan emailed management including the following:-

“Josh has ended up having to write some of them from scratch in HTML in Salesforce so that they render correctly in Outlook on a PC... There have been several cycles of changes and although the changes have only appeared minor, they have actually taken up a lot of his time to do...Josh is not a web developer and HTML is not in his skillset but he took up the challenge here as everyone has of course been incredibly busy. However, we really need to move him on to other critical Salesforce projects that are currently being delayed by this. Going forward, please can we confirm who will own the HTML email creation...”

112. Ms Duggan’s evidence was that her intention was to pay tribute to the claimant doing the work when this should not be part of his role and to ensure that someone else picked up the work and freed the claimant to get on with his core duties. However, the claimant viewed this as highlighting his lack of experience to force a handover of his work to his peers.

113. The claimant had private coaching session on 23 June 2023, and the report stated

“We spoke about the email templates – HTML – taking much longer than you anticipated after you saying that 'it was easy' – made out a competency that you don't have it. Dropped yourself in it. If you had more confidence, you feel you would have gone back and shared that you'd 'underestimated it and can't do it' but felt you needed to prove yourself. There was no reference to the claimant being displeased that the HTML work had been removed from him.”

114. The tribunal preferred Ms Duggan’s account to the claimant’s. In cross examination the claimant said that this was a busy period. The claimant said in cross examination that the person who took over was equally inexperienced in HTML but did not say this in his witness statement or in his sworn evidence. The tribunal did not accept that Ms Duggan was removing the client from HTML when he had little other work because she emailed the claimant a list of priorities for the next five days. Further, it was an inherently unlikely allegation. Everyone appeared to agree that the claimant was making a positive contribution to the HTML work, and her department would gain credit if it was seen as helping out other areas of the business. It was more plausible that Ms Duggan wanted to put a stop to her department being used for tasks outside its remit at a busy time.

115. The claimant told the tribunal that he and Ms Duggan had discussed this on 14 June, but he was unable to take the tribunal to any such reference. The claimant wrongly stated that Ms Duggan had not consulted with him about the email, when she had informed him of what she was going to do. The claimant’s evidence was that he

was trying to prove himself with the HTML work. In the view of the tribunal, the claimant was focused on his raising his profile in the business rather than on what his manager wanted him to do. He accepted he was quite upset at this period for personal reasons. The claimant was viewing this through his lens of personal animosity to Ms Duggan.

116. Ms Duggan went on five days annual leave from 19 June 2023. There was no explanation from the claimant as to how why he was prevented from going on leave.

117. The senior technical support engineer in Poland took over the email template work.

June work event

118. The respondent sent an all-hands invitation to attend a work social event on 19 July 2023. (This was mistakenly referred to in the list of issues as being on 20 June.)

119. Ms Lourenz emailed the claimant on 23 June saying that she had sent out an invite to the social event “everyone required.” She said that she knew social events could be quite challenging for him and he should do what he needed to feel comfortable, and she would totally understand if he did not attend. The claimant replied thanking her and saying that he would attend and he appreciated her asking.

120. According to the claimant, HR of its own motion excluded him from the social event and no other member of staff, because he had “challenges”. He felt insulted and humiliated. The claimant told the tribunal that Ms Lourenz specifically excluded him from the event. He said that he was “so insulted”, and it was, “audacity”.

121. The tribunal did not accept that the claimant was excluded and found that the respondent was pre-emptively exploring making an adjustment for him. The claimant was unable to accept in evidence what the respondent and he had said in the messages. The claimant told the tribunal that the email told him not to attend because he had ADHD, when it did not do so. The tribunal did not accept that there was any attempt to exclude the claimant and that the purpose of this message was to explore adjustments and to support the claimant. The evidence was also consistent with the claimant describing this as supportive at the time.

Training budget

122. Following the discussion that the claimant do a Salesforce certification, he asked his manager in July 2023 if he could use the respondent’s training budget to fund this. According to Mr Vines, the respondent’s training budget policy was £500 per employee allocated annually. According to Ms Duggan, Ms Lourenz said it would be better to wait to incur this cost, due to budgetary constraints. According to Mr Vines, in July 2023 the company held about £118,000 cash with a “burn rate” of approximately £335,000 per month.

123. Ms Duggan passed this refusal onto the claimant, who expressed his disappointment but said that he thought money might be tight. The respondent

had made six grants of training budget that year including a grant of £150 at around the same time. The claimant did not refer this matter in his chronology.

Use of Slack Channels

124. On 19 July 2023 Ms Duggan asked the claimant not to place questions on Salesforce processes on the slack channel relating to email templates. According to Ms Duggan, the claimant posting a message about Salesforce on this channel had caused confusion. Ms Duggan in effect jumped into the claimant discussing a matter on the widely shared channel (outside the Salesforce team) saying that it was not to be discussed in that channel. She then asked the claimant to message her on Salesforce processes and not using the public channel and gave an explanation. The claimant then deleted the first message.
125. Ms Duggan then told the claimant that they did not need a slack channel for discussions between the two of them and initial questions he had on Salesforce processes should come to her first and then they would decide if they needed a wider audience. This part of the message was not disclosed by the respondent until during the hearing. The claimant did not include this matter in his chronology.

July to October 2023

126. Ms Lourenz's evidence was that she was interested in speaking to the coach and the tribunal saw an email from Ms Duggan to her enclosing the coach's details and a reply from Ms Lourenz suggesting that she check with the claimant before contacting the coach and Ms Duggan agreed.
127. On 27 July M Lourenz sent a message to Ms Duggan enclosing an image that they must start "given instructions and meeting notes in in writing rather than verbally". Ms Lourenz added, "and if he questions why we can say we have been doing our research and found this to be beneficial". The tribunal found to be evidence that Ms Duggan and Ms Lourenz were both concerned about the respondent communicating with the claimant.
128. The claimant said that in October 2023 Ms Duggan was vindictive and monitored his work. For example, he stated that on 10 October 2023. Ms Duggan spent the day disrupting his work. Just before he left work when she knew he had a personal commitment, she demanded resolution for a non-critical work issue and sent harassing messages, demanding an update on his way to the event. On 11 October she questioned whether he was at work because he had not been active on Slack for 15 minutes. She repeatedly asked if he had seen her messages the evening before. He provided no evidence going to this.
129. The claimant alleged that Ms Duggan had access to or had actively subjected his private coaching sessions to surveillance. He provided no evidence of this. The claimant said that Ms Duggan asking him not to post on a public channel was an example of oppressive surveillance.

130. The claimant stated that on 16 October 2023 over the phone Ms Duggan revealed she had been closely monitoring his online status and break times, noticing he had sometimes taken extra minutes, and she knew he would make up the hours. She questioned if he was happy at work. The claimant viewed this as surveillance and over intrusive monitoring. In oral evidence the claimant said that he had some minor issues with starting work on time particularly towards the end of his employment when his health declined. The claimant took the tribunal to messages showing that Ms Duggan had referred to the claimant making up the hours when he started late. Although the claimant had disclosed over 700 pages of Slack messages, he provided very few other messages going to these allegations. Ms Duggan's evidence was that she did no more than notice when the claimant was logged on. He worked entirely remotely and therefore she had no direct oversight of his working hours.

November London hotel booking

131. Around November 2023 some of the respondent employees from Poland came to visit the London office.
132. Ms Duggan said she spoke with the claimant on 10 October 2023 about the London visit. The claimant's case was that this did not occur. However, in his witness statement the claimant referred to the event having been recently announced by 13 October. The tribunal therefore preferred the contemporaneous documents and found that the claimant had known of the event shortly before 13 October.
133. On 13 October Ms Duggan cancelled the claimant's hotel booking in London for this visit. Her evidence was that she did so because the claimant requested her to do so. The claimant denied that he had told her to cancel his booking and contended that she did this unilaterally.
134. Ms Duggan emailed Mr Vines on 13 October saying the claimant did not want to stay over in London because of his dog. Ms Duggan emailed HR "just wanted to check if you have booked Josh a hotel room for the London visit on Nov 13-15th If you did it needs to be cancelled as just spoken to Josh and he would prefer to travel in each day because of his dog If you didn't - no worries!"
135. Ms Duggan and the claimant discussed this matter by message. She said that if the claimant changed his mind, they could try to re-book. The claimant thanked her for cancelling the visit and explained why he did not want to stay over in some detail.
136. The tribunal preferred Ms Duggan's version of events because it was consistent with the contemporaneous evidence which strongly indicated that the claimant did not want a hotel room because he did not want to stay in London.
137. During messaging between Ms Duggan and Ms Lourenz about the claimant travelling to London, she said "as I said before its's good to document those meetings because it shows how much we have accommodated the work for his needs." Ms Duggan said that she should have documented the meetings but admitted that she had "totally ignored" the suggestion.

SearchPortals Project

138. The claimant said that in early December 2023 Ms Duggan actively sabotaged his efforts on a business-critical project, which the tribunal understood to be the SearchPortals project.
139. SearchPortals was a respondent project to create a new system. The claimant said that he was assigned ownership of this by Ms Duggan between 13 and 14 November 2023 and this was to be his priority for the upcoming months. On 27 November 2023 Ms Duggan informed the claimant that she would now also be involved in this project. The claimant says that she did administrative tasks and requirements unrelated to the project, questioned the claimant's decisions and expertise in lengthy unscheduled private calls, provided suggestions that undermined the claimant's ability to effectively manage the project such as not providing written agenda/group meetings, and other disruptions causing disruption to the claimant's work. The claimant did not provide evidence going to this allegation, although he had disclosed over 700 pages of Slack messages.
140. The claimant and Ms Duggan needed to refresh some of the Salesforce software over the holiday period. Ms Duggan advised that the claimant start the refresh process before Christmas and activate upon return in the New Year. The Claimant however believed that the refresh and activation could be done before the Christmas holiday period and Ms Duggan allowed this. The claimant let the team know on 6 December. The refresh process started on 7 December. However, he ran out of time to complete the matter before he departed on Christmas leave on 20 December.
141. The claimant agreed that he did not have to do the activation before Christmas. However, he later sought to resile from this. As the claimant's evidence was inconsistent and Ms Duggan's evidence in early January 2024 was robust and consistent that she had not asked him to do the activation, the tribunal preferred Ms Duggan's version of events.
142. The claimant said that on 18 December before he was due to go on a two-week leave, she informed him that an existing task was now time critical which would take 3 to 5 days. The claimant accordingly rushed to complete the task on 19 December.
143. Ms Duggan contacted the claimant on 21 December when he was on leave to assist when a colleague could not log onto Salesforce.

Meetings in January 2024

144. The claimant and Ms Duggan had a scheduled one-to-one meeting on 2 January 2024. In his witness statement the claimant said that Ms Duggan mentioned a suspicion of foul play concerning an email concerning share agreements. He also alleged that there might be fraudulent systemic practices at the respondent. These points were not put to Ms Duggan, and no details were provided.

145. The claimant said that Ms Duggan criticised him about SearchPortals on 2 January but, despite giving details about this meeting in his witness statement, did not include this. The tribunal did not accept that there was criticism about SearchPortals on 2 January for this reason.
146. The respondent informed the claimant on 3 January that his pay was increased. The respondent had just obtained some investment and prioritised retaining staff by pay rises. The respondent also provided further share options to staff, including the claimant at that time.
147. According to the claimant HR contacted him rudely of in respect of signing off the share option agreement. He believed that Ms Duggan had contacted HR, and this was done deliberately to make him frustrated. Again, this was not put to Ms Duggan.
148. Ms Duggan and the claimant spoke on the telephone on 5 January. This became heated. They discussed the SearchPortals project. Ms Duggan's account was that she was chasing up and monitoring progress. According to Ms Duggan, the claimant blew up at her. He was very rude and said he was pissed off with her, and she was not respecting his boundaries. He ended the call. According to Ms Duggan, she was very shocked and upset. According to the claimant Ms Duggan raised the errors and delays resulting from last-minute priority changes and disruptions particular relating to the SearchPortals project and was hostile. She hostilely questioned why he was helping another engineer for at least five minutes. The claimant accepted he had lost his cool and said that she had no respect for his boundaries. He said that the SearchPortals work was incomplete due to an error caused by him because Ms Duggan had rushed the work the day before his Christmas leave. He was already frustrated in his first week and he was pissed off with Ms Duggan, and he needed a breather. The tribunal was satisfied that the claimant had acted in a rude, unprofessional and emotional manner during this call.
149. The claimant's case was that Ms Duggan's subjected him to oppressive surveillance of his work activities and timekeeping. Ms Duggan's view was that as a manager, she needed to check on his work and allocate and manage tasks. In her view, the claimant had raised during the coaching sessions that he was struggling with prioritisation and therefore he needed more management.
150. Ms Duggan stated that after the call she spoke to Ms Laurenz about her difficulties managing the claimant and how he spoke to her. She was concerned because the SearchPortals project was going live shortly.
151. Ms Laurenz and Ms Duggan agreed to use a catch-up meeting already in the claimant's diary to discuss this on 8 January 2024. Ms Duggan thought that the difficulties in the 5 January meeting were linked to the claimant's ADHD. She accepted before the tribunal that she did not know if she was correct in this, but it was the judgment she made at the time.

152. The tribunal had sight of an automatic transcript of the 8 January meeting, which was not reliable, and was difficult to read. The claimant did not inform Ms Duggan or Ms Laurenz that he was transcribing the meeting. The claimant denied that he knew he was transcribing the meeting. The tribunal did not accept this as he relied on the transcript and there were only transcripts of a few meetings.
153. On 8 January, the claimant apologised to Ms Duggan for his behaviour on 5 January. Ms Duggan told the claimant she wanted Ms Laurenz to join the call and the claimant agreed. Ms Duggan said she did not tell the claimant in advance because she did not wish to worry about HR being added to a meeting at the last minute.
154. Ms Duggan said, "I just felt I'm not qualified to deal with some of your ADHD sides" and that she wanted to learn better how to support and that perhaps she was not supporting him enough as a manager based on the meeting on 5 January. The claimant said that he was provided about one minute's notice of HR attending and implied he did not feel able to refuse. However, he wanted Ms Laurenz to be there.
155. Ms Laurenz asked the claimant what his difficulties were, and what would be the best way of working with and communicating with him.
156. Ms Duggan accepted she became emotional and frustrated during the meeting. She stated she felt the claimant wasn't taking any responsibility for the breakdown in communication. She said that she put up with a lot in how the claimant had spoken to her and that he has been really rude on Friday. He was not respecting her as his manager. She said she did not feel confident enough to want to manage the claimant. She referred to having taken so much into account on how the claimant was trying to work. She had gone above and beyond she was trying to work with someone with the claimant's disability, and felt that the claimant had thrown it right back in her face. She felt that she could not win because everything would be said to be her fault.
157. The tribunal found that Ms Duggan behaved in a rude, emotional and unprofessional way in this meeting.
158. As the Ms Duggan appeared to be crying, the claimant suggested it was too emotional for both of them, and that they should come back later. However, Ms Laurenz said they should continue as Ms Duggan was expressing how she felt. Ms Duggan said she was expressing how she felt as the claimant had expressed how he felt on the Friday. Ms Laurenz said that both she and Ms Duggan had done some research as to the best way to manage him and the best way to work with him in respect of his ADHD.
159. The claimant said that he felt frustrated with Ms Duggan, and he felt they had not been working together well for some time. Ms Duggan said she was surprised by this.
160. The claimant felt that the call was an ambush, and he was subjected to manipulation and abuse from both Ms Duggan and Ms Laurenz. He told the tribunal

it was a calculated effort to provoke an emotional reaction. He said they blamed his ADHD -related sensitivities with communication issues and were stereotypical. He objected to the fact that they had been researching ADHD.

161. Ms Laurenz told the claimant that the respondent had tried to accommodate him and have a different way of working with him. She said that it was difficult to manage someone if you were standing on eggshells and it would made her feel insecure. She suggested both of them set out how they wanted to communicate with each other and what their boundaries were. She said they have been trying not to put him under pressure due to his ADHD, and Ms Duggan needed to message him repeatedly to get his attention. The claimant said that this was Ms Laurenz trying to antagonise him.

Claimant's Sick Leave

162. The claimant went on sick leave that afternoon. He messaged Ms Lourenz that day thanking her for getting involved in the discussion. He said that there was "a lot to unpack in the call". He said he was ill, and that and he appreciated Mr Lourenz stepping in to mediate.
163. Ms Duggan emailed Ms Lourenz with a list of what appeared to be action points and what she and the claimant were doing in respect of them. Ms Duggan asked if she should document the meetings with the claimant.
164. The claimant continued on sick leave for the rest of the week. Ms Laurenz messaged the claimant on 9 January asking how he was doing. He said he was not well enough to work that day. He said he had some real concerns or comments about the day before and he wanted to seek external advice. Ms Lourenz recommended he do so and offered her help if needed. The said he appreciated it and finished with a smiley emoji.
165. At the time, the SearchPortals project had started, on which the claimant would have been heavily involved. The respondent discussed if it would be possible to find other people to help with this project in the claimant's absence. According to Ms Duggan, they were hopeful the claimant would return and so did not take any positive steps. Ms Duggan sought to delay some elements of the SearchPortals project.
166. On 10 January Mr Vines emailed the claimant saying he was sorry he was off sick. He stated, I absolutely don't want to put any pressure on you at all to speak, but simply wanted to let you know that if you want to have a chat, either on, or off-the-record at any point this week my door is very much open and I am happy to listen. The claimant replied that he was not well enough to talk but would be opened hearing any suggestions as to how the situation might be resolved informally.
167. The claimant's evidence was that he was highly suspicious of this email and did not engage. However, he emailed a reply saying it was genuinely nice to hear from Mr Vines and he appreciated the care with which they had handled the situation. He had the utmost respect for Mr Vines and was truly grateful. However, he was not

well enough to take up Mr Vines's offer. He was open to suggestions as to how to resolve the situation informally. Due to the detail in his email to Mr Vines, the tribunal did not accept that the claimant was suspicious of the email and at the time he thought Mr Vines was acting in good faith.

168. On 10 January the Claimant messaged Ms Lourenz (protected act 8.1.1) asking if the grievance and anti-bullying/harassment policies, which were available on the respondent intranet, were up to date and where to find them, and asked her if she would be comfortable in his filing a formal grievance. He asked about Ms Duggan's access to company emails.

169. Ms Laurenz emailed back that day stating that the respondent did not have to pay him any more than SSP after four days sick, but it was going to pay full pay that week to support him. She stated both policies were up to date. She would prefer to work informally but he could submit a grievance to her if he wished. She reassured him that Ms Duggan did not have access to her or Mr Vines's internal emails.

170. The claimant's contract of employment stated that he was entitled to statutory sick pay. The respondent operated a sick leave policy that outlined the company's provisions for employees who become sick and need to be absent from work. It applies to all employees who have been with the company for at least three [3] months." It stated

"Payment during sick leave

Sick days will be paid in full. Exceptions might apply in the case of:

long, continuous absence due to illness

frequent sickness requests

identifiable sickness patterns

In those cases, the company reserves the right to withhold pay for sickness days or action statutory sick pay (SSP) if the sickness is longer than four [4] consecutive days... "

171. The claimant was signed off sick on 11 January with low mood, stress and anxiety until 19 January. The subsequent fit notes up to the claimant's termination were for the same reasons as well as work related stress.

172. The claimant emailed the respondent on 14 January asking that further communications be in writing and stated that he would be absent sick the next week and would update when able.

173. Mr Vines, Ms Lourenz and Ms Duggan agreed that Ms Duggan would seek alternative resources as Ms Duggan could not deliver the SearchPortals project without a Salesforce developer. According to Ms Duggan, she wanted to take the

pressure off the claimant to return early from sick leave due to the urgency of this work. Ms Duggan wrote to their provider

“Our Salesforce Developer is currently on sick leave and may go onto Long-term sick leave and wanted to explore with you what options are available to get support from [you] to cover us during this period.”

174. The Respondent entered into a managed Services contract for 10 hours support a month for three months.

175. According to Mr Vines, the respondent only had £129,000 cash in January and did not have sufficient funds to cover February. The respondent therefore decided to pay the claimant statutory sick pay only from the next week. The respondent started drafting an email with this decision on 14 January.

176. Ms Lourenz emailed the claimant on 15 January at 13.07pm. She said that he would be paid full pay for the last week but from this week he would only receive SSP. She stated

“In the meantime, we're looking for a contractor to help with the SearchPortal project to avoid further delays. This is not to put pressure on you, but rather to support your return with as little stress as possible. We believe having extra help will give you the time and space you need to ease back into your activities.”

177. The respondent stated that it was surprised by the claimant’s reaction to the meeting on 8 January.

178. The claimant’s view was that in this email the respondent implied he was responsible for delays in the project which was now urgent and made baseless allegations about his performance and threatened his job security. He objected to the respondent asking him to state what were his boundaries and how he would like to be managed by Ms Duggan.

179. The claimant submitted a subject access request under data protection legislation to the respondent on 15 January 2024 at 17.23pm (protected act 8.1.2). He stated, ‘As you are aware, I am defined as a disabled person and thus protected under the Equality Act 2010. I have serious concerns about the entirely partisan and biased approached adopted by the company in response to one of the most recent and egregious incidents of what I believe to be an ongoing campaign of unlawful bullying, harassment and discriminatory abuse.’

180. The claimant informed the respondent that he would extend his sick leave by another week from 27 January 2024. According to Ms Duggan, this was an extremely busy period as the Salesforce unit was very busy on the SearchPortals project and the claimant as the Salesforce developer was absent sick.

181. On 17 January, the claimant emailed the respondent asking for the terms of the engagement for the Salesforce contractor and their experience. He also questioned the urgency of the project, stating he had evidence to the contrary. He asked the

minutes of the Monday, January 8 meeting but did not state that he had transcribed the meeting.

182. Ms Lourenz emailed the claimant on 19 January in reply. Ms Lourenz referred to “the accusations against the business contained in your DSAR” and stated that they had taken external advice.
183. She stated that the respondent was exploring options about the contractor and that nothing was agreed. It would be likely to be on a “as needed” basis. The intention was to take pressure off the claimant rather than put pressure on him. But if the claimant would rather not receive such updates, that would be fine, and he should let them know. She recounted the next steps from the meeting on 8 January which were the claimant to write down his boundaries, how he thought the business could support him, his expectations as to working arrangements and thoughts on how he would like to be managed by Ms Duggan. She stated that in the circumstances it was okay if those actions were slightly delayed. Her door was open if he wished to speak or share updates on his ill-health or discuss any ways in which they could make his return to work easier.
184. The respondent sent a separate letter asking for clarification on the subject access request. The claimant was particularly unhappy they had failed to provide minutes of the 8 January meeting.
185. The tribunal had sight all the respondent’s undated one-page minutes of the 8 January meeting (described as a mediation meeting) drafted by Ms Lourenz. It stated

“The purpose of the meeting was to address issues arising from perceived disrespect by Nicky and boundary concerns expressed by Josh and his reaction to this on the preceding Friday, the 5th. I explained the intention for the meeting was to mediate their relationship positively. ... discussion became confrontational, leading Nicky to saying that she thought she could no longer manage Josh, which Josh promptly replied saying he also didn’t want to be managed by her.”
186. The respondent also responded to the claimant subject access request asking for further details. It stated it was very likely to include a very large number of documents.
187. According to Mr Vines, the respondent suffered an issue with its bank, resulting in late payment of payroll. All employees including Mr Vines and the claimant were impacted and it was resolved the same day. The claimant’s stated that he received notification of insufficient funds for upcoming bills and had to transfer emergency funds. The claimant contended that the respondent had deliberately delayed his payroll.
188. According to the claimant’s witness statement, by 9 February he was profoundly disillusioned with the respondent.

189. The respondent replied to the subject access request on 16 February. It enclosed its data protection policy. The claimant stated that the respondent fabricated and or forged a data protection policy retrospectively dated 2 October 2023. There was no evidence going to this allegation.
190. The claimant consulted lawyers, and his best estimate was he did this about three weeks after 8 January 2024.
191. Ms Laurenz emailed the claimant on 21 February asking him if there was anything the respondent could do to support him. There was no reply. She emailed again on 7 March asking for an update on his health when he felt ready and comfortable.
192. On 14 March Ms Duggan emailed Ms Lourenz saying she was suddenly receiving CV's from a recruitment consultant on Salesforce developers which was "a bit weird" and "suspicious". Ms Duggan and Ms Lourenz were suspicious that the claimant was looking for another job.
193. On 15 March 2024, the claimant commenced ACAS early conciliation.
194. The claimant emailed on 20 March 2024 stating, While I appreciate the sentiment, given the circumstances, I do not feel it is appropriate to discuss my private health matters or recovery with the company at this time.
195. Ms Laurenz emailed the respondent claimant on 8 April 2024 acknowledging a sick note and stating
- "We are keen to do what we can to help you get back to work when you are ready. It would be good if we could catch up very briefly to discuss this and what you think your timing might be, and also what adjustments you might need. I am fine to do that on the phone if that is easier than face to face or on video."
196. The claimant emailed Ms Laurenz on 21 April (protected act 8.1.3). He stated he was subjected to discrimination and harassment on the grounds of his disability ADHD in the meeting on 8 January 2024. He said this meeting and the subsequent communications were the primary reason for his extended sick leave. He referred to his request of 10 January for the bullying and harassment policies. The claimant stated, I expect your full response to these matters by Friday, 26 April 2024 at 5pm. He also requested information about the company's prior practice as to failing to pay full sick pay and any reasonable adjustments that had been considered during his employment. He asked them to confirm that they would pay him full sick for the last 15 weeks. He also requested further documentation.
197. Ms Laurenz replied to the claimant on 25 April 2024. In respect of sick pay, she stated that the policy was not contractual, and his two-week absence was deemed a long continuous absence, and was the longest absence in the respondent's two-year history. Ms Lourenz's evidence was that the reason the claimant was not paid full sick pay was affordability.

198. The claimant replied to Ms Laurenz by email on 26 April 2024 (protected act 8.1.3). He stated that Ms Laurenz should have known - if she had researched ADHD - that failure to provide written notice or a clear agenda would put him at a significant disadvantage. He stated that the payroll explanation was inadequate and said he expected documentation to support this. He stated that the failure to pay full sick pay was retaliatory. The offer of reasonable adjustments was "far too late. "The company had an obligation to proactively engage in discussions relation to accommodations when I first disclosed my disability in June 2022".
199. He raised issues concerning Ms Laurenz's attendance on 8 January. He referenced the discriminatory nature of the discussion. He alleged that the respondent's response was evasive and dismissive and that it reinforced the pattern of gas lighting, manipulation and disregard for his well-being that had characterised his employment with the respondent. He said that attempting to minimise delay or deflect responsibility was morally reprehensible. He stated he expected clear and substantive answers to questions posed and if there was no reply by Monday, 29 April, he would grant them no further opportunity. In the absence of this, he would have no choice but to immediately resign and considered himself constructively unfairly dismissed and he would pursue "the appropriate action."
200. Mr Vines and Ms Laurenz prepared a response to the claimant. The email was signed by Ms Laurenz and sent to the claimant and copied to Mr Vines on 29 April. The email stated that they were pleased that the claimant to continue to engage with the respondent, and stated the respondent was not at all clear what the claimant wanted, but was really keen to resolve it in an amicable way. In respect of the 8 January meeting Ms Lorenz in effect stated that she did not understand the claimant's complaints which were very different from what had happened at the time of the meeting. In respect of the late salary payment in January, she provided a Slack message to everyone on the day informing staff of the late payment issue. In respect of sick pay, she stated there was no contractual right to full sick pay above SSP. The claimant's two-week absence would be a "long continuous absence" and was longer than anyone in the respondent had been on sick for over two years. She stated the decision to reduce full sick pay was unrelated to any concerns raised.
201. Ms Laurenz stated that she wanted to stress that the respondent remained open to discussing any ways at all, we can help you if you were to return to work and want to back. The organisation took any allegations of discrimination extremely seriously and suggested he raised a formal grievance. Ms Laurenz stated that the respondent would be happy to investigate any grievance and asked him to set out the details of the incidents, including when they happened, who was involved, et cetera. She said she would be more than happy to talk this through with the claimant.

Claimant's Resignation

202. The claimant resigned by way of a letter addressed to Ms Laurenz on 29 April 2024 (protected act 8.1.3). He accepted that he used AI to draft the letter. The claimant said that the letter contained his reasons for resigning.
203. He stated he had been on sick leave since the 8 January when he was subjected to an hour of discrimination and harassment on the grounds of his disability by herself and Ms Duggan. He stated he believed it would be futile to raise a formal grievance. He stated he had lost faith in the company's willingness to treat him fairly and comply with its legal obligations. The respondent had fundamentally destroyed the relationship of trust and confidence, making his continued employment untenable. He considered himself constructively unfairly dismissed as of 29 April 2024. He referred to the workplace as toxic. He stated the respondent would be responsible for collecting company equipment.
204. Ms Lourenz acknowledged the claimant's resignation on 2 May 2024. She stated in effect that the respondent did not accept the claimant's characterisation of the 8 January meeting. The letter ended:
- "We ask that you return all Company property in your possession, including keys, ID passes, security fobs, mobile phones and laptop computers, as well as any peripheral devices you have been provided, such as keyboards and mice. I will arrange for a courier to collect all Company property from you as soon as possible."
- The covering email asked him to advise the best day and time for collections of his laptop.
205. The claimant accepted that if the respondent had not responded to his resignation letter, he would probably have seen that as a detriment.
206. The claimant's contract stated the following in respect of respondent property
- "Any Company property in your possession and any original or copy documents obtained by you in the course of your employment shall be returned to your line manager at any time on request and in any event prior to the termination of your employment with the Company."
207. On 8 May Ms Lourenz emailed the claimant asking for the best time to arrange collection of his laptop. There was no reply. On 14 May Ms Lourenz emailed again, referring this and saying it was crucial to retrieve the laptop as soon as possible and asked for his co-operation. She asked for a convenient time for collection. The claimant replied the next day apologising for the delay and arranging times. There were various re-arrangements about the collection due to a bank holiday, but the laptop was successfully collected.
208. The claimant believed that the respondent's correspondence about the laptop was at least in part because he had made allegations of the discrimination.

209. On 15 May the claimant asked when his private healthcare would be terminated. Ms Lourenz then emailed the private healthcare provider to terminate the claimant's healthcare cover immediately. The tribunal accepted Ms Lourenz's evidence that she had overlooked the need to cancel the healthcare and that it was the claimant's bringing this to her attention that prompted her to act. The claimant's access to the respondent's private healthcare was terminated.

The law

s.95 Employment Rights Act 1996 Circumstances in which an employee is dismissed.

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

(c) the employee terminated 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.

s.13 Equality Act 2010 Direct discrimination

(1) 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.

s.23 Equality Act 2010 Comparison by reference to circumstances

(1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.

s.15 Equality Act 2010 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

s.20 Equality Act 2010 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 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.

s.21 Equality Act 2010 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person...

s.26 Equality Act 2010 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...

(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.

s.27 Equality Act 2010 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.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

Burden of Proof s.136(2)-(3) Equality Act 2010

(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

Submissions

210. The respondent provided lengthy written submissions. The claimant made oral submissions to which the respondent did not respond.

Applying the law to the facts

Harassment s26 Equality Act 2010

211. According to *Richmond Pharmacology v Dhaliwal* 2009 ICR 724, EAT (a case under the legacy race legislation) tribunals are advised to consider the three elements of a harassment claim : (i) unwanted conduct, (ii) the proscribed purpose or effect, and (iii) which relates to the protected characteristic.

212. As set out in paragraph 7.8 EHRC Employment Code, unwanted means unwelcome or uninvited. According to *Thomas Sanderson Blinds Ltd v English* EAT 0316/10, unwanted conduct is conduct that is unwanted by the employee.

213. The Court of Appeal in *Pemberton v Inwood* 2018 ICR 1291, CA gave guidance as to s26 as follows

‘In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider *both* (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) *and* (by reason of sub-section (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances — sub-section (4)(b). ... The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant’s dignity or creating an adverse environment for him or her, then it should not be found to have done so’.

214. Elias LJ in *Land Registry v Grant (Equality and Human Rights Commission intervening)* 2011 ICR 1390, CA, warned tribunals against distorting the language of the statutory definition of harassment,

‘when assessing the effect of a remark, the context in which it is given is always highly material...It is not importing intent into the concept of effect to say that intent will generally be relevant to assessing effect. It will also be relevant to deciding whether the response of the alleged victim is reasonable....Tribunals must not cheapen the significance of [the words in what is now s26(1)(b)]. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.’

215. According to *Richmond Pharmacology v. Dhaliwal*

“...not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. 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.”

‘one question that may be material is whether it should reasonably have been apparent whether the conduct was, or was not, intended to ... produce the proscribed consequences: the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt’.

216. In *Betsi Cadwaladr University Health Board v. Hughes* [2014] UKEAT/0179/13/JOJ, at [12], referring to the above two authorities:

“... The word “violating” is a strong word. Offending against dignity, hurting it, is insufficient. “Violating” may be a word the strength of which is sometimes overlooked. The same might be said of the words “intimidating” etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.”

217. The tribunal firstly considered the acts of harassment set out at paragraph 6.1 the list of issues.

6.1.1 make "disparaging and offensive comments" during the Neurodiversity Awareness Sessions on 15 May 2023 and 13 June 2023. In terms of “disparaging and offensive comments” the Claimant specifically means

6.1.1.1 for 15 May 2023, Ms Duggan, did she:

g) Talk over the Claimant and dismiss efforts to understand his difficulties;

- h) Make adverse remarks about the Claimant's personality;
 - i) Criticise the Claimant's attempts to create a structure;
 - j) Admit to isolating the Claimant from peers;
 - k) Bring up his discomfort in Krakow between November-December 2022 in a way that humiliated the Claimant;
 - l) Abruptly leave the call and send (sic) an insensitive message.
218. Ms Duggan admitted to some extent that she had talked over the Claimant in the session and gave her reason as connection difficulties. The tribunal accepted this explanation as, despite the difficulties in deciphering the transcript, the transcript was consistent with Ms Duggan having delays and communications difficulties during the call. Further, the tribunal accepted Ms Duggan's evidence that she was in a hospital car park at the time and therefore there was a greater likelihood of connection difficulties. Whilst the tribunal accepted the conduct was unwanted by the claimant, there was a non-disability related reason for the conduct, and it was not related to the claimant's disability. Further, it did not come within the statutory definition of harassment.
219. The claimant did not provide evidence that during the coaching session of 15 May Ms Duggan dismissed efforts to understand his difficulties. One aim of the session was to assist Ms Duggan in understanding his difficulties. The coach led the discussion in which both the claimant and Ms Duggan participated to try to find solutions to his difficulties. The claimant did not point to any specific example of Ms Duggan dismissing his difficulties. Accordingly, the tribunal did not find that this allegation was made out.
220. The tribunal did not find that Ms Duggan had made adverse comments about the claimant's personality. The claimant did not rely on any specifics in respect of this allegation. There was no dispute that Ms Duggan had said the claimant was in effect being too nice and was being helpful to his colleagues and not making them follow procedures. The tribunal could not see this as adverse remarks about the claimant's personality. Ms Duggan was characterising her concerns that the claimant was not requiring his colleagues to follow procedures in terms that were positive about his personality, in that he was helpful and nice.
221. The claimant did not provide details of how he said that Ms Duggan criticised his attempts to create a structure. The Claimant said that he was struggling with the lack of a structure. The element that came closest to this was Ms Duggan stating that in a start-up it was difficult to maintain a structure. However, this was not criticising the Claimant's attempts to create a structure but explaining the difficulties inherent in a start-up culture, which the claimant accepted. Further, this was consistent with the Job Spec for the claimant's role. Ms Duggan suggested ways of creating more structure, for instance by requiring colleagues to follow correct procedures, and blocking out time on his calendar. Accordingly, the tribunal did not find that this allegation was made out.

222. The tribunal was not taken to any evidence showing that Ms Duggan admitted she was isolating the Claimant from his peers. In his witness statement the claimant referenced that Ms Duggan had said she had recently set up systems so that his colleagues should not come directly to him (it was unclear if he was referring to the May or June session). This referred to the discussion of Ms Duggan's putting in a structure whereby the claimant's colleagues should approach him via the respondent's procedures rather than on an ad hoc basis. This did not amount to admitting to isolating the Claimant from his peers. It was a plan for future working to try to put in place a structure to facilitate the claimant's work. Accordingly, the tribunal did not find that this allegation was made out.
223. There was no dispute that Ms Duggan brought up the claimant's discomfort in Kraków during the coaching session. According to the claimant's witness statement, she stated that the claimant did not cope very well with the trip. The question was whether she did so in a way which amounted to harassment under section 26. The claimant gave evidence that he experienced this as a humiliation. However, this was not how he approached the matter at the time. Nor was it how the coach interpreted Ms Duggan's reference to Kraków. The coach welcomed Ms Duggan's suggestion that they use the claimant's difficulties in Kraków as a learning experience and put in place structures that might protect him from a repeat.
224. The tribunal was not persuaded that Ms Duggan's reference to Kraków was unwanted at the time by the claimant. However, even if the reference was unwanted, the tribunal would not find that these comments amounted to a violation of the claimant's dignity or an otherwise proscribed environment. The tribunal accepted that Ms Duggan did not bring up the Kraków trip in order to upset or humiliate the claimant. Even if the claimant thought that she had dealt with the matter in a clumsy manner, it was not objectively reasonable for the claimant to experience this as an intimidating, hostile, degrading, humiliating or offensive environment. Ms Duggan's intent was to assist rather than to hurt. The express purpose of the coaching session was to identify things that were working well and not working well and to make plans for the future. Accordingly, this allegation did not amount to harassment.
225. The tribunal did not find that Ms Duggan abruptly left the call. Whilst the transcript was difficult to follow, there was no evidence within the transcript of her abruptly leaving the call. Inasmuch as the transcript might be relied on, there were a number of exchanges between Ms Duggan and the coach and the claimant before she actually left. There was no suggestion that the claimant or the coach had referenced this after she left. Further, difficulties in communication may have given the impression that connection was cut more abruptly at the claimant's side than at Ms Duggan's side. Accordingly, this allegation was not made out.
226. Following the 15 May 2023 coaching session, the tribunal considered whether Ms Duggan's message amounted to harassment:
- "hope it wasn't too bad having me on the call today! I want to schedule a session with you on the challenges of using Jira-I was thinking Friday afternoon might be

good time for it as Fridays already messed up with the back end and preplanning calls-what you think? Does that work for you?"

227. The claimant's case was that the message was insensitive and hence amounted to harassment because Ms Duggan had embarrassed him during the call when speaking about Kraków. The tribunal could identify nothing about the message that amounted to harassment. Ms Duggan expressed concerns about the claimant's experience on the call and immediately stated she wanted to put into practice the strategies identified in the session. At the time the claimant said that it was not at all bad having her on the call and hoped she hadn't thought it was a waste of her time. The tribunal therefore did not accept that the message was unwanted and further that it was not objectively reasonable for the claimant to find it violated his dignity or amounted to an otherwise proscribed environment.

228. The tribunal went on to consider the acts of harassment at the second co-coaching session on 14 June 2023.

6.1.1.2 for 14 June 2023, Ms Duggan did she:

- f) Criticise the Claimant's communication style;
- g) Dismiss discussion of the Claimant's career objectives;
- h) Disregard the Claimant's concerns about work-life balance;
- i) Hold the Claimant to different standards than herself regarding time off;
- j) Admit awareness that her behaviour was detrimental to the Claimant's performance;

229. As to Ms Duggan criticising the claimant's communication style, she said during the session that the claimant could be too nice and too apologetic and needed to focus more on solutions, and he struggled with being concise. He needed to not fix every problem. The claimant before the tribunal disagreed with this criticism relying on positive comments from his colleagues in his May 2022 probation review. However, he accepted that he did not challenge or express disagreement with Ms Duggan's comments during the coaching session.

230. It was difficult for the tribunal ascertain whether these comments were unwanted. There was no suggestion the time they were unwanted. There was no suggestion that the claimant had raised any issue about these comments with his coach. They had 10 minutes after the Ms Duggan left the meeting, and it was not raised. Even if the claimant contended that he was overwhelmed immediately following the June meeting, he had a further session with the coach and he did not contend that he had raised this matter with the coach at that point.

231. However, for the avoidance of doubt and if Ms Duggan's comments on the claimant's communication style were unwanted, the tribunal was not satisfied that the comments related to disability or that they amounted to harassment. The

claimant's impact statement as to the effects of his disability upon him did not suggest that his disability led him to be apologetic or too helpful to others or to lacking concision. In addition, Ms Duggan was using a co-coaching session specifically designed to analyse ways of working and identify better ways of working, to suggest how the claimant could work better. Ms Duggan's comments, the tribunal found that they were not intended to hurt. The comments did not violate his dignity or create a proscribed environment.

232. The tribunal could find no indication that Ms Duggan dismissed discussion of the claimant's career objectives. The claimant did not make this allegation in the chronology part of his witness statement, where he went into detail about the co-coaching sessions. Ms Duggan spoke at length about her own difficulties with prioritising her career objectives and, whilst this might have been inappropriate in the context of a session designed to resolve the claimant's difficulties, it could not be characterised as dismissing discussion of his career objectives. Ms Duggan did refer this back to encouraging the claimant to prioritise his career goals. She encouraged the claimant to make space to concentrate on his career objectives. Accordingly, this allegation was not made out.
233. The claimant did not provide details as to what he meant by Ms Duggan disregarding his concerns about his work life balance. This was not included in the chronology part of his witness statement. It was noticeable in the transcript of the 14 June co-coaching session, that Ms Duggan talked considerably more than the claimant. In the view of the tribunal this did not appear to be appropriate in a co-coaching session, but this was a matter for the coach to regulate and there seemed no indication that the coach had intervened. It was difficult to understand what the Claimant meant by Ms Duggan's disregarding his work life balance. There was discussion in the meeting of intense periods when everyone in the respondent had to work flat out. However, it was unclear what the claimant was referring to, and the tribunal did not find that this amounted to dismissal of the claimant's work life balance. Accordingly, this allegation was not made out.
234. The claimant did not provide any details of what he meant by Ms Duggan holding him to different standards than herself about time off. This was not contained in the chronology section of the witness statement. Accordingly, this allegation was not made out.
235. The tribunal did not find that Ms Duggan admitted awareness that her behaviour was detrimental to the claimant's performance. This referred to Ms Duggan stating that when she was away the claimant done a very good job. The claimant did not provide any other explanation as to how Ms Duggan had admitted that her behaviour was adversely impacting his performance. The comment was praise of the claimant and in no way suggested that Ms Duggan thought that her behaviour was undermining the claimant. Accordingly, this allegation was not made out.
236. The tribunal considered the allegation at paragraph 6.1.2 that the respondent excluded the Claimant from a social workplace event on 20 June 2023. The tribunal found this did not occur. Ms Lourenz reached out to the claimant to check that he

was not disadvantaged by the all-hands-required social invite. She did not seek to exclude. The Claimant himself appreciated at the time her reaching out to him. Accordingly, this allegation was not made out.

237. The allegation at paragraph 6.1.3 that the respondent denied the Claimant access to the company training budget on 6 July 2023 was not in dispute. Although the claimant did not express disappointment at the time, the tribunal accepted that a refusal was unwanted. However, there was no basis to find that this was related to the claimant's disability – the tribunal accepted the respondent's explanation that there were budgetary issues. Further, it was not objectively reasonable for the claimant to believe that this violated his dignity or created a proscribed environment for him. Even if the respondent's decision to suspend its training budget on a colleague rather than him was unreasonable, and was no evidence of this, this fell well short of the statutory definition of harassment. A sense of disappointment in these circumstances did not amount to a violation of dignity or a proscribed environment
238. The tribunal did not find that the allegation at paragraph 6.1.4, that the respondent publicly undermined the Claimant by highlighting his lack of experience to force a handover of his work to his peers on 16 June 2023, was made out. The respondent paid public tribute to the claimant having voluntarily stepped in to do the HTML work that fell outside of his role. The claimant knew that Ms Duggan was going to refocus him on Salesforce work rather than work outside of the unit and was going to send an email to that effect. He did not object.
239. He provided no explanation as to why he would be undermined by Ms Duggan stating that he was not an HTML expert, when there was no dispute as to this and he had told Ms Duggan this at the time. The tribunal had preferred Ms Duggan's account to the claimant's in accepting that it was a busy period and the Claimant's services were needed on Salesforce work, rather than on work outside of his department and his remit. He told his coach that he had lacked confidence and therefore did not tell the respondent that he had underestimated this task and could not do it, which was consistent with its being appropriate for Ms Duggan to re-focus his work. There was no suggestion that he had been humiliated by being removed from this task and re-focused on Salesforce work. Accordingly, this allegation of harassment was not made out.
240. It was not disputed, in respect of allegation 6.1.5, that Ms Duggan told the Claimant not to discuss a particular issue in a group Slack channel on 19 July 2023. However, Ms Duggan did not tell the Claimant to delete the message, and it was disputed that she then demanded that he communicate only through her.
241. In the view of the tribunal, Ms Duggan was clumsy in the way that she jumped into the public channel conversation. This could have been managed better. The claimant deleting the message was a reasonable response to Ms Duggan's intervention. However, there was no evidence or indication that this related to the claimant's disability. Ms Duggan took the view that he was discussing a matter that should remain between them amongst a wider group, which might create

confusion or extra work. This was not an unreasonable view for a manager to take. Ms Duggan provided an explanation to the claimant at the time, and he agreed with it. The tribunal did not find that it was reasonable for the claimant to feel that this violated his dignity or subjected him to an otherwise proscribed environment.

242. In respect of allegation 6.1.6 that the respondent unilaterally cancelled the Claimant's hotel booking for a work event on 13 October 2023, the tribunal found that this did not occur. The claimant had agreed to the cancellation.
243. The tribunal considered allegation 6.1.7, that the respondent subjected the Claimant to an ambush-style meeting on 8 January 2024 where his disability was inappropriately discussed. The tribunal found that the description of an ambush was somewhat exaggerated. The claimant knew he was going to have a meeting with Ms Duggan and Ms Duggan did give him some notice of the fact that Ms Lourenz would join. However, the claimant was given little warning, and it would be awkward for him to have objected in the moment.
244. The tribunal reminded itself that the test is whether this particular claimant with his personal characteristics reasonably experienced this as within the statutory definition of harassment, see *Reed and anor v Stedman* 1999 IRLR 299, EAT.
245. Ms Duggan and Ms Lourenz had planned this meeting between them without reference to the claimant. This was in circumstances where Ms Duggan and Ms Lourenz had been discussing Ms Duggan's difficulties in managing the claimant over the last several months.
246. The claimant tried to stop the meeting when Ms Duggan became emotional and explained how upset she had been by the claimant's behaviour on 5 January. However, Ms Lourenz insisted that the meeting continue and Ms Lourenz and Ms Duggan took the view that to some extent the claimant had subjected Ms Duggan to his views on 5 January, and it was Ms Duggan's turn to subject the claimant to her views.
247. Ms Duggan suggested that this meeting was a mediation. In a well-planned mediation situation, where both the claimant and Ms Duggan were aware of what was going to happen, allowing both Ms Duggan and the claimant to have their say might have been a useful strategy. However, this is not what happened. The claimant had had his say on 5 January. Then Ms Duggan had her say on 8 January. The claimant had raised a number of matters on 8 January but the meeting was ineffective as a mediation. That is not to say that most of the meeting was unconstructive. Ms Lourenz sought to encourage the claimant and Ms Duggan to work together and to produce useful strategies. The question was whether by permitting Ms Duggan to essentially "vent" at the claimant that this amounted to harassment.
248. The tribunal accepted that this element of the meeting was unwanted as the claimant tried to stop it at the time. The tribunal accepted that the claimant genuinely felt that his dignity was violated and that a proscribed environment was

created. The issue is whether or not it was objectively reasonable for the claimant in the circumstances to feel so.

249. This meeting came at the end of an extended period of poor communication between Ms Duggan and the claimant. The tribunal accepted Ms Duggan had tried to make adjustments to fit around the claimant's needs.
250. The tribunal found that the claimant was not reasonable in his view of the Respondent motives at this stage. For instance, he believed that the respondent wanted to exit him from the business when there was little evidence. The respondent had taken no steps in respect of performance improvement programme or giving the claimant any warnings or anything consistent with a wish to exit the claimant. When the claimant fell sick the fact that the respondent engaged a contractor was consistent with the fact that it needed his skills. He was the only Salesforce developer.
251. Further, the claimant believed that Ms Duggan had deliberately contacted HR about his share options. There was no explanation as to what motive she might have and the tribunal found this allegation entirely unfounded. In addition, the claimant believed that there was evidence of systemic fraudulent practice at the respondent without any evidence or explanation. Neither of these allegations were put to the respondent.
252. The tribunal found that the claimant had determined on a narrative of how the respondent behaved and interpreted events through that narrative. For instance, he believed that the respondent on 8 January had made a calculated attempt to provoke an emotional reaction. The tribunal found no evidence of this. The tribunal did not find that Ms Duggan was calculating in this meeting, rather the opposite. She became emotional. Ms Lourenz's conduct was far from consistent with a calculated attempt to provoke an emotional reaction. She on more than one occasion steered the meeting back to improving working arrangements between the claimant and Ms Duggan.
253. The claimant was certain that the respondent had cancelled his invitation to the social event in June when it done no such thing. He referred to himself as being so insulted and that the respondent had been audacious. The tribunal reminded itself of the claimant was giving evidence in October 2025 and the tribunal was having to analyse his thought processes and reactions in January 2024. However, the claimant relied on the 39-page chronology, in March 2024, relatively soon after the meeting in January. The tribunal therefore accepted it was a reasonably accurate reflection of his views and feelings in January.
254. The claimant stated in his chronology that the respondent had undermined and unnecessarily obstructed attempts to seek access to work funding. However, the contemporaneous evidence was consistent with the respondent supporting his access to work application.

255. The respondent offered employee share options in December 23 and January 2024 he believed the respondent was intentionally doing this to build frustration. In view of the tribunal by the time of 8 January, the claimant had imposed a narrative upon the respondent's actions and was unable unfortunately to see beyond this narrative. When the respondent engaged a contractor to protect its position during his sick leave and said in clear terms that were doing so to not put pressure on him, the claimant interpreted this as a threat.
256. The tribunal did not find that Ms Duggan and Ms Lourenz's telling the claimant that they had discussed and researched his ADHD in order to assist him with adjustments to amount to harassment. It was the claimant's case that the respondent had failed him because it did not proactively reach out to him when he was originally diagnosed with ADHD. It therefore could not be objectively reasonable for the Claimant to feel that his dignity was violated, or he was subjected to an otherwise proscribed environment when Ms Duggan and Ms Lourenz sought to reach out to him in January 2024 to make adjustments for his ADHD.
257. The tribunal did accept that Ms Lourenz allowing Ms Duggan in effect to vent at the claimant in her presence and with her active consent was unwanted and unpleasant. The claimant had "vented" at Ms Duggan on the Friday, but the meeting of 8 January was different. The claimant venting at Ms Duggan was a matter between the two of them and the tribunal accepted that it occurred without planning. Ms Duggan and Ms Lourenz to some extent planned the meeting on 8 January, even if they did not plan what actually occurred. Further, the presence of HR at the meeting lent some degree of authority to the idea that venting was an appropriate way to manage the situation. The 8 January meeting was not simply two employees "blowing up" at each other in private, it happened in the presence of HR who made an active decision to let it happen. This distinguished it from the Friday meeting.
258. The issue was whether this violated the claimant's dignity or made a humiliating or otherwise proscribed environment. The tribunal considered the matter and concluded that, unwise as the respondents' conduct was, it was not sufficient to bring it within the definition of harassment. Whilst the presence of HR on 8 January distinguished the meeting from the Friday, both the claimant and then Ms Duggan "vented" their frustrations with each other. Both were impolite and acted unprofessionally. The tribunal accepted that both were genuinely frustrated with each other and that employees at work do on occasion get angry and frustrated with each other.
259. Ms Duggan vented at the claimant partly because he had done the same to her. This was how the relationship was operating at this point. This came within "the other circumstances of the case" relevant to the determination of the reasonableness of the claimant's perception. The claimant knew that he had to some extent escalated the conflict with his line manager. He had at played a significant role in starting this chain of events in which he and Ms Duggan acted unprofessionally toward each other.

260. Further, the tribunal did not accept that the conduct, Ms Duggan being allowed to criticize the claimant as she did, was related to disability. Ms Duggan's criticism, and Ms Lourenz's permitting it to happen, was related to the claimant's treatment of her the previous working day, not to his disability. The tribunal found that Ms Lourenz was motivated by a misplaced sense of fairness and a belief that allowing staff to have their say without filter would be helpful, rather than, as it turned out, very unhelpful.
261. The tribunal did not find that the respondent's 15 January 2024 decision not to pay the claimant full sick pay - issue 6.1.8 - amounted to harassment. The tribunal did not accept that this was related to ADHD as there was no medical evidence that the claimant's sick leave at this point was related to his disability. However, were the tribunal satisfied that the decision was related to his disability, it would not have accepted that this amounted to statutory harassment. This was a decision by a start-up company with an unclear sick leave documentation not to pay full sick pay. The confusion was evidenced by a contract which did not entitle employees to sick pay and a sick leave policy which was vague and indicated that sick pay might be available. A decision in the circumstances not to pay full sick pay did not violate the claimant's dignity or subject him to an otherwise proscribed environment. The Respondent's interpretation of its sick leave policy was far from generous, in that two weeks is not usually considered to be a lengthy absence. However, an employer's ungenerous interpretation of its noncontractual sick leave policy in these circumstances did not amount to a creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.
262. As to issue 6.1.9 constructively dismiss the Claimant, the tribunal had not found that the acts of harassment were made out and the findings of fact in respect of the harassment allegations fell well short of a fundamental breach of the contract of employment by the respondent.

Direct discrimination s13 Equality Act 2010

263. Unless an act is inherently discriminatory, applying *James v Eastleigh Borough Council* [1990] IRLR 572), the Tribunal must look for the operative or effective cause of the act. This requires consideration of why the alleged discriminator(s) acted as they did. Although their motive will be irrelevant, the Tribunal must consider what consciously or unconsciously was their reason. This is a subjective test and is a question of fact.
264. The tribunal reminded itself of the guidance in *Nagarajan v London Regional Transport 1999 ICR 877, HL* (a case under legacy race legislation but relevant to section 13) as follows,
- 'Many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the evidence is

that, whether the employer realised it at the time or not, race was the reason why he acted as he did.'

265. It does not matter if the decision-maker was consciously or subconsciously motivated by a protected characteristic. The tribunal asks why they acted as they did.
266. The Tribunal also had regard to the comments of Lord Phillips, then President of the Supreme Court, in *R (E) v Governing Body of JFS* [2009] UKSC 15, also a case under legacy race discrimination. In deciding what were the grounds for discrimination, a Tribunal is simply required to identify the factual criteria applied by the respondent. This is simple shorthand for determining whether the proscribed factor operated on the alleged discriminator's mind. Whilst any discriminatory reason must be an effective cause of treatment, it does not have to be the only reason. The Equalities and Human Rights Commissions Employment Code states that the protected characteristic needs to be a cause of the less favourable treatment, but it does not need to be the only or even the main cause.
267. The House of Lords in *Najjaragan* stated that for discrimination to be made out "racial grounds" (the material test at that time), it must have a significant influence on the decision. According to *O'Neill v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School and anor* 1997 ICR 33, EAT (a legacy sex discrimination case relating to pregnancy), the discriminatory reason does not have to be the main reason, as long as it is an effective cause. See also the judgment of the *Employment Appeal Tribunal in Amnesty International v Ahmed* [2009] IRLR 884.
268. As to the burden of proof, the Tribunal directed itself in line with the guidance of the Court of Appeal in *Igen Ltd v Wong and Others* CA [2005] IRLR 258. At the first stage, the Tribunal has to make findings of primary fact. It is for the Claimant to prove on the balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the Respondent has committed an act of discrimination. At this stage of the analysis, the outcome will usually depend on what inferences it is proper to draw from the primary facts found by the Tribunal. It is important for Tribunals to bear in mind in deciding whether the Claimant has proved such facts that it is unusual to find direct evidence of discrimination. Few employers would be prepared to admit such discrimination and in some cases the discrimination will not be an intention but merely an assumption.
269. The Court of Appeal reminded Tribunals that it is important to note the word "could" in respect of the test to be applied. At the first stage, the Tribunal must assume that there is no adequate explanation for those facts. At this first stage, it is appropriate to make findings based on the evidence from both the Claimant and the Respondent, save for any evidence that would constitute evidence of an adequate explanation for the treatment by the Respondent.
270. However, the burden of proof does not shift to the employer simply on the Claimant establishing a difference in status and a difference in treatment. Those

bare facts only indicate a possibility of discrimination. “Could conclude” must mean that a reasonable Tribunal could properly conclude from all the evidence before it; see *Madarassy v Nomura International* [2007] IRLR 246. As stated in *Madarassy*:

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

If the Claimant does not prove such facts, the claim will fail.

271. If, on the other hand, the Claimant does prove on the balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the Respondent has committed the act of discrimination, unless the Respondent is able to prove on the balance of probabilities that the treatment of the Claimant was in no sense whatsoever because of her protected characteristic, then the Claimant will succeed.

272. The Tribunal also directed itself in line with *Hewage v Grampian Health Board* [2012] UKSC 37 that the burden of proof provisions will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. They have nothing to offer where the tribunal is able to make positive findings on the evidence one way or the other.

273. In *Laing v Manchester City Council* [2006] ICR 1519, the EAT stated that:

“No doubt in most cases it will be sensible for a Tribunal formally to analyse a case by reference to two stages. But it is not obligatory on them formally to go through each step in each case... An example where it might be sensible for a Tribunal to go straight to the second stage is where the employee is seeking to compare his treatment with a hypothetical employee. In such cases the question whether there is such a comparator – whether there is a prima facie case – is in practice often inextricably linked to the issue of what is the explanation for the treatment, as Lord Nicholls pointed out in *Shamoon* it must surely not be inappropriate for a Tribunal in such cases to go straight to the second stage. ... The focus of the Tribunal’s analysis must at all times be the question of whether or not they can properly infer race discrimination. If they are satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter. It is not improper for a Tribunal to say, in effect, “there is a nice question as to whether or not the burden has shifted, but we are satisfied here that, even if it has, the employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race.”

274. In *Chief Constable of Kent Constabulary v Bowler* EAT 0214/16 Mrs Justice Simler (then President of the EAT) stated that tribunals,

“...must avoid a mechanistic approach to the drawing of inferences, which is simply part of the fact-finding process. All explanations identified in the evidence that

might realistically explain the reason for the treatment by the alleged discriminator should be considered. These may be explanations relied on by the alleged discriminator, if accepted as genuine by a tribunal; or they may be explanations that arise from a tribunal's own findings.'

275. In this case the Tribunal was able to make positive findings on the evidence one way or the other. It was therefore not necessary to work mechanistically through the provisions of the law on the burden of proof. To put it another way, the Tribunal made findings on the reason why the Respondent had acted as it had.

276. The Tribunal also had regard to the disability specific law on comparators at s.23(2)(a). The Employment Code at paragraph 3.2(9) states:

'The comparator for direct disability discrimination is the same as for other types of direct discrimination. However, for disability, the relevant circumstances of the comparator and the disabled person, including their abilities, must not be materially different. An appropriate comparator will be a person who does not have the disabled person's impairment but who has the same abilities or skills as the disabled person (regardless of whether those abilities or skills arise from the disability itself)' — para 3.29.

277. It gives an example of a disabled man with arthritis who can type at 30 words per minute and who applies for a job including typing but is rejected because his typing is too slow. The correct comparator in a direct discrimination complaint would be a person without arthritis who has the same typing speed and the same accuracy rate.

278. The Tribunal also reminded itself of the Code at paragraph 3.5 that the worker does not have to experience actual disadvantage economic or otherwise for the treatment to be less favourable. It is enough that the worker can reasonably say they would have preferred not to be treated differently from the way the employer treated or would have treated another person.

279. The claimant relied at paragraph 4.1 of the list of issues, on the same facts in his direct discrimination claim as in his harassment claim.

4.1.1 "disparaging and offensive comments" during the Neurodiversity Awareness Sessions on 15 May 2023 and 13 June 2023. In terms of "disparaging and offensive comments" the Claimant specifically raised the following allegations in respect of 15 May 2023.

280. The tribunal had found that Ms Duggan talked over the claimant at times but not deliberately. The reason for the conduct was communication difficulties.

281. The tribunal had not found that Ms Duggan dismissed efforts to understand his difficulties, that Ms Duggan made adverse remarks about the Claimant's personality, criticised his attempts to create a structure, admitted to isolating him from his peers, abruptly left the call, or left an insensitive message.

282. The tribunal had found that Ms Duggan had brought up his discomfort in Krakow between November-December 2022. The tribunal went onto to consider whether her addressing Krakow in the co coaching session amounted to direct discrimination.
283. The tribunal had to construct a hypothetical comparator – a person with no material difference in circumstances. This would have been a person in the same circumstances as the claimant with the same effects as his ADHD, but not caused by ADHD. This would have been someone who had a dedicated coaching session to help with improving ways of working due to time blindness and the other characteristics the claimant relied on as things arising from his disability in paragraph 5.2 of the list of issues. This person would have been very uncomfortable during the Krakow trip and Ms Duggan would have said that same thing about them to the coach.
284. The tribunal found that Ms Duggan would have brought this up in the same way with a hypothetical comparator who had suffered the same difficulties in Poland. It was the claimant's evident discomfort in Poland which motivated Ms Duggan. The co coaching session was to explore and plan for better ways of working. There was accordingly no direct discrimination.
285. As to the coaching session on 14 June, the tribunal had not found that Ms Duggan dismissed discussion of the claimant's career objectives, disregarded the claimant's concerns about work life balance, held the Claimant to different standards than herself regarding time off, or admitted awareness that her behaviour was detrimental to the claimant's performance.
286. As to allegation 4.1.1.2(a), Ms Duggan said that the claimant could be too nice and too apologetic and needed to focus more on solutions, and he struggled with being concise and needed to not fix every problem. The tribunal was satisfied that the reason why Ms Duggan said this was that these were issues with the claimant's communication style. The Claimant himself accepted that he lacked confidence and was not good saying no and took on too much work. There was no reason to suspect that Ms Duggan would have treated a person in the same circumstances as the claimant with the same effects upon his behaviour as the claimant's but who did not have ADHD, in any other way. These were comments based on Ms Duggan's experience of working with the claimant and it was accepted they were broadly accurate. She would have made the same comments about a comparator.
287. The tribunal had not found that the claimant was excluded from a social workplace event on 20 June 2023 nor did Ms Duggan publicly undermine him by highlighting his lack of experience to force a handover of his of his work to his peers on 16 June 2023, nor unilaterally cancel his hotel booking on 13 October 2023.
288. The claimant was denied access to the company training budget on 6 July 2023. The tribunal found that the reason why was a shortage of ready funds. A comparator with the same characteristics as the claimant would have been treated the same.

The tribunal could not identify any indication that it was the claimant's disability that in any way influenced the respondent's decision.

289. It was not disputed that Ms Duggan told the claimant to stop messaging on a Salesforce topic in a public Slack channel. The tribunal found that the reason Ms Duggan told the claimant to remove the message from the public Slack channel was her belief that it was not appropriate for wider dissemination. This was consistent with her desire to introduce structure and to reduce interruptions from his colleagues. The tribunal found that Ms Duggan would have done the same with a comparator who had difficulties with context switching and problems with task planning and organisation, because this was a logical approach to such difficulties.
290. The tribunal found that the respondent would have revoked the discretionary sick pay of a comparator in materially the same circumstances. The comparator would have been signed off sick in the same way as the claimant for the same period. The tribunal accepted the respondent's case that the reason to not pay full sick pay was financial. It was a start-up with cash flow issues, and the respondent was concerned it might incur extra costs in covering the claimant's work. To put it another way, the reason why the respondent failed to continue to pay full sick pay was financial and was a logical, if not generous, response to the circumstances.

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

291. The Tribunal next considered the reasonable adjustment claim due to the requirement when considering justification under s.15 to consider the effect of reasonable adjustments, see *Archibald v Fife Council* [2004] UKHL 32.
292. The Tribunal applied the definition of a provision criterion or practice - a PCP - at para 4.5 of the ECHR Code as follows:-
- ‘The phrase... is not defined by the Act but it should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions’
293. The Tribunal had regard to *Ishola v Transport for London* 2020 ICR 1204, CA, that the words ‘provision, criterion or practice’ are not terms of art but ordinary English words which are broad and overlapping. However, it was significant that Parliament chose these words rather than ‘act’ or ‘decision’. A PCP ‘is to identify what it is about the employer's management of the employee or its operation’ that causes the disadvantage.
294. Paragraph 4.5 of the Code provides that a PCP can arise from a one-off or discretionary decision. The wording of the statute refers to a PCP that the employer applies or would apply to persons who do not share a Claimant's relevant protected characteristic. In *British Airways plc v Starmar* 2005 IRLR 863, the EAT held that an employer's refusal to allow one employee to work part time was capable of amounting to a PCP. The submission that this could not be a PCP because it was a one-off discretionary management decision was rejected even though the employer had not applied this provision to any other employee. *Starmar* was an

indirect discrimination case, but the same word used in different parts of a statute should – all things being equal - be interpreted as much as possible in the same way.

295. The EAT stated in *H Fox (father of G Fox, deceased) v British Airways plc* EAT 0315/14 concerning a “practice, “I would approach this term in the same way as did the EAT in *Nottingham City Transport Ltd v Harvey*; that is, as suggesting some degree of repetition.”
296. Accordingly, the words “provision criteria practice” suggest a state of affairs, indicating how an employer might or does generally treat similar cases if they arise. A PCP must be capable of being applied to others. Whilst a one-off decision can amount to a PCP, not all will do so. According to *Ishola* the one-off decision in *Starmer* could have been applied in future to a different employee in a similar situation. This was different to a one-off decision in an individual case where there was nothing to indicate that the decision would apply in future.
297. The tribunal considered whether the respondent had the alleged PCPs at paragraph 7.2 of the list of issues as follows:-
- 7.2.1 the requirement to work without regular, uninterrupted breaks.
298. The tribunal accepted that this was capable of amounting to a PCP. It was a state of affairs that could and - on the respondent’s case - was applied to other employees. There was a practice that the claimant was required to work at times without regular uninterrupted breaks. It was by no means a universal practice because the claimant was permitted considerable autonomy over his working conditions and times. He worked from home and there was flexibility when he started work and taking breaks. He told his coach that he appreciated his autonomy.
299. There was evidence of Ms Duggan and Ms Lourenz seeking to adjust the claimant’s working arrangements so he would have less interruptions. Ms Duggan urged him to block periods to permit him to manage his work. However, there was also evidence that she had interrupted him during periods which were blocked off, for instance the first coaching session.
300. The tribunal accepted that on a number of occasions the claimant was interrupted by Ms Duggan but also by his other colleagues. Therefore, there was a requirement to work without regular uninterrupted breaks although this was not a universal requirement and there were times when the claimant was able to schedule himself regular and uninterrupted breaks. The tribunal accepted that this happened sufficiently to amount to a practice in that there was an element of repetition and it was part, if not a common part, of the claimant’s working experience.

7.2.2 the expectation to respond immediately to unscheduled communications.

301. There was evidence in the bundle that this occurred. Again, it was not a universal practice, but the tribunal accepted that it occurred sufficiently often to amount to a practice.

7.2.3 the practice of holding long, unstructured private calls without clear agendas.

302. The tribunal was unable to find that this occurred as this was a very vague allegation without specificities.

7.2.4 the requirement to work in a reactive environment with frequent interruptions.

303. According to the respondent evidence, this was a practice at times at the respondent due to the start-up environment.

7.2.5 the practice of making last-minute changes to work priorities.

304. According to the respondent evidence, this was a practice at times at the respondent due to the start-up environment.

7.2.6 the expectation to multitask and switch between tasks rapidly.

305. According to the respondent evidence, this was a practice at times at the respondent due to the start-up environment. The claimant's job description expressly stated that it was essential that the candidate had the ability to juggle a number of things at once.

7.2.7 the practice of inconsistently, or failing to, apply formal company policies, particularly in relation to sickness absence, disability / equality, and disciplinary / grievance procedures.

306. The tribunal did not find that there was any such practice. The tribunal did not find that the respondent had inconsistently applied its sickness policy. The respondent gave unchallenged evidence that it had not had a sickness absence of two weeks before and therefore there was no indication of inconsistency. The respondent had applied its sickness policy as it made decisions expressly under the policy.

307. The tribunal was not taken to any evidence going to any disability or equality policy. The tribunal could not find that there was a PCP in respect of the application or otherwise of any such policy. There was no evidence of a failure to apply the grievance procedure or apply it inconsistently.

308. The tribunal went on to consider whether any of the PCPs put the Claimant at a substantial disadvantage compared with someone who was not disabled. According to the Court of Appeal in *Griffiths v Secretary of State for Work and Pensions* 2017 ICR 160, CA, a tribunal should ask itself if, "the PCP bites harder on the disabled, or a category of them, than it does on the able-bodied".

309. The PCPs which were made out were:-

- a. a requirement to work without regular uninterrupted breaks,
- b. an expectation to respond immediately to unscheduled communications,
- c. a requirement to work in a reactive environment with frequent interruptions
- d. making last minute changes to work priorities and
- e. the expectation to multitask and switch between tasks rapidly.

310. The tribunal accepted that these put the claimant to a substantial (that is, more than trivial) disadvantage compared to someone without his ADHD based on the evidence in his disability impact statement including:

“The effort required to initiate a task, to sustain my attention, and to follow-through to completion, is at times excruciating. The anticipation is often worse. My ability to concentrate is fundamentally impaired. Interruptions are particularly disruptive. When my concentration breaks, I lose my entire train of thought... After any interruptions, I would spend long periods unable to reconnect with my previous thought process, and unable to recall what I was doing. The mental effort required to resume work is often overwhelming, and I would often have to pace around, remove myself from my home office, and re-gather myself for ten or more minutes at a time before feeling able to return.”

311. The tribunal also found that the respondent knew or could reasonably have been expected to know that the claimant was likely to be placed at the disadvantage. Ms Duggan attended two co-coaching sessions with the claimant which dealt with the claimant’s difficulties at work. She was actively involved in discussions about putting in place procedures to mitigate or remove these difficulties.

312. Therefore, the tribunal found that the duty to make reasonable adjustments was triggered.

313. According to the EHRC code at paragraph 6.28

The following are some of the factors which might be taken into account when deciding what is a reasonable step for an employer to have to take:

- whether taking any particular steps would be effective in preventing the substantial disadvantage;
- the practicability of the step;
- the financial and other costs of making the adjustment and the extent of any disruption caused;
- the extent of the employer’s financial or other resources;

- the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and
- the type and size of the employer.

314. The tribunal reminded itself that the duty to make reasonable adjustments may involve treating a disabled employee more favourably than others, see *Griffiths v Secretary of State for Work and Pensions* 2017 ICR 160, CA. One important factor is whether or not the adjustment would have been effective. As set out in *Smith v Churchills Stairlifts plc* 2006 ICR 524, CA, the test of reasonableness is an objective one and it is the view of the Tribunal that matters. The tribunal should focus on practicable outcomes. Applying *Leeds Teaching Hospital NHS Trust v Foster* EAT 0552/10 there does not have to be a good or real prospect of an adjustment removing the disadvantage, is it sufficient to have a prospect of the disadvantage being alleviated. According to the Court of Appeal in *Griffiths*:-

‘So far as efficacy is concerned, it may be that it is not clear whether the step proposed will be effective or not. 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.’

315. The question of effectiveness, which goes to reasonableness, has to be answered on the basis of the evidence available at the time when it was, or was not, implemented (see *Brightman v TIAA Ltd* EAT 0318/19.) Another way of considering this is that the tribunal should include the likelihood of the adjustment being effective in its analysis of the reasonableness of the adjustment.

316. The claims set out suggested steps to avoid the disadvantage at paragraph 7.5 of the List of Issues as follows:

- 7.5.1 allowing flexible working hours and regular breaks, without check-ins;
- 7.5.2 allowing the Claimant to manage his time and work autonomously.
- 7.5.3 providing advance notice of any changes to tasks, deadlines and/or priorities, in writing;
- 7.5.4 providing clear time frames for responding to messages or quests, or using less disruptive means of communication, such as sending an email;
- 7.5.5 scheduling calls and meetings in advance with clear written agendas;
- 7.5.6 supporting the Claimant's Access to Work application, and implementing any recommendations;
- 7.5.7 referring the Claimant to occupational health or a suitable professional;
- 7.5.8 actively consulting with the Claimant regarding potential adjustments;

- 7.5.9 implementing a grace period before immediately revoking discretionary full sick pay, e.g. gradually reducing pay over multiple months.
317. The tribunal found that the respondent had implemented reasonable adjustments in respect of the PCPs. It had allowed the claimant flexible working hours and regular breaks without check ins when possible. However, it was not always possible for the claimant to have regular and uninterrupted breaks. This was a start-up environment when it was necessary to react quickly at times to developments. The job spec stated that that it was an essential criterion to be able to work in a fluid, fast paced culture and that to be able to juggle a number of things at once. The claimant had been given considerable flexibility to manage his time and work autonomously, and he paid tribute to this in the coaching session. He was one of only two entirely home working respondent employees. Ms Duggan, all witnesses agreed, did not have the necessary technical know-how to manage the claimant in detail and had to leave a good deal of his work for him to regulate. She encouraged him to block off periods of time.
318. At times it was necessary for the claimant to respond immediately to unscheduled communications. This was an unavoidable part of a start up business working in the IT sector. Things go wrong. Documents in the bundle showed that colleagues raised urgent issues, sometimes justifiably, sometimes not. Ms Duggan suggested ways to reduce and control this – by making colleagues use the respondent’s procedures and structures rather than allowing them to bypass this and go directly to the claimant. Ms Duggan herself changed her practice and contacted the claimant in writing asking him if he was free, rather than expecting him to respond immediately, say, to a telephone call.
319. The requirement to work at times in a reactive environment with frequent interruptions, of making last minute changes to work priorities and the expectation to multitask and switch between tasks rapidly were an unavoidable part of working in the respondent’s business. These were expressly stated to be essential criteria in the job specification. This was a start-up business where priorities changed suddenly and without warning. Employees were expected to switch to different tasks, such as to working on HTML from Salesforce to help out when more suitable employees were unavailable. The respondent was developing projects such as SearchPortals which involved unexpected issues as the project unrolled. The claimant’s colleagues frequently interrupted him outside of respondent procedures. Ms Duggan encouraged the claimant to require these colleagues to follow procedures to reduce the number of interruptions and multitasking, but this led to the claimant being displeased as for instance when Ms Duggan required him to deal with requests for help through the respondent system rather than on an ad hoc basis.
320. Unfortunately, it was not possible to avoid the disadvantages in the PCPs at all times. The nature of the respondent’s business prevented this.

321. The tribunal had found that the respondent did support the claimant's AtW application, which helped identify adjustments to assist the claimant and respondent.
322. Referring an employee to Occupational Health is not a reasonable adjustment under s20 Equality Act, see: *Tarbuck v Sainsbury Supermarkets Ltd* [2006] IRLR 664 (EAT) and *Spence v Intype Libra Ltd* EAT 0617/06. In any event it was very unlikely that this would have helped. The parties had already had the assistance of a specialist coach who had worked with the claimant and Ms Duggan and suggested adjustments and ways of working. The same rationale applies to consulting with the claimant himself about adjustments.

S15 Equality Act 2010 discrimination arising from disability

323. In a section 15 case, in order to shift the burden of proof to the respondent, a claimant must show

- (i) that he or she has been subjected to unfavourable treatment
- (ii) that he or she is disabled and that the employer had actual or constructive knowledge of this
- (iii) a link between the disability and the 'something' that is said to be the ground for the unfavourable treatment and
- (iv) some evidence from which it could be inferred that the 'something' was the reason for the treatment.

If that case is established the burden of proof then shifts, and the employer must show either

- (v) that the reason for the treatment was not the 'something' arising in consequence of the claimant's disability, or
- (vi) that the treatment was justified as a proportionate means of achieving a legitimate aim.

324. As per *Pnaiser v NHS England and anor* 2016 IRLR 170, EAT, and *Sheikholeslami v University of Edinburgh* 2018 IRLR 1090, EAT, there are two distinct causative issues in s15. Firstly, did the employer treat the employee unfavourably because of an identified "something"? The Tribunal focuses on the reason in the mind of the alleged discriminator. What consciously or subconsciously was the reason for any unfavourable treatment? If the "something" more than a trivial reason, the test is satisfied. The key question is whether the "something arising in consequence of the disability" operated on the mind of the discriminator - is it an effective cause? According to *City of York Council v Grosset* 2018 ICR 1492, CA, there is no requirement that the employer must have been aware of that link when subjecting the employee to the unfavourable treatment.

325. The other causative step is - whether the “something” arose in consequence of the disability. This is a question of objective fact for an Employment Tribunal in light of the evidence and does not depend on the thought process of the alleged discriminator. The Tribunal should take a broad approach when establishing whether there is a cause or connection of some kind. There might be more than one link in the chain of consequences, but there must be a connection.
326. For treatment to be “unfavourable, the Equality and Human Rights Commission’s Code of Practice on Employment states that the disabled person ‘must have been put at a disadvantage’ (see para 5.7). There is no need for any comparator, and the treatment does not need to be “less favourable”. There is no need for the treatment to be aimed at the employee as long as they are affected.
327. According to the Supreme Court in *Trustees of Swansea University Pension and Assurance Scheme and anor v Williams* 2019 ICR 230, SC, there is little distinction between unfavourable treatment and detriment in the Equality Act. In respect of the definition of detriment, the Tribunal again directed itself in line with *Shamoon v the Chief Constable of the Royal Ulster Constabulary* 2003 ICR 337, that a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to their disadvantage. An unjustified sense of grievance cannot amount to a detriment but the question of whether a Claimant has been disadvantaged is a subjective one. Applying *Derbyshire and ors v St Helens Metropolitan Borough Council and ors* 2007 ICR 841, HL and *Warburton v Chief Constable of Northamptonshire Police* 2022 EAT 42, for a detriment to be made out, it is enough that a reasonable person in the claimant’s situation might take the view that they were put at a disadvantage. However, a claimant’s own perception that they have suffered a detriment is not on its own sufficient. The test of reasonableness is both objective and subjective.
328. The tribunal firstly considered whether the respondent had treated the claimant unfavourably as set out at paragraph 5.1.
- 5.1.1 subjecting the Claimant to oppressive surveillance of his work activities and timekeeping.
329. The tribunal did not find that the respondent subjected the Claimant to oppressive surveillance of his work and timekeeping. The claimant worked from home and was therefore not under the immediate supervision of the respondent. This meant that it was necessary for his line manager to monitor his working remotely. Accordingly, Ms Duggan needed to keep an eye on his pattern of working online and review his performance. The claimant stated that Ms Duggan had chased him on occasions when he did not log onto work on time. A line manager checking when their report starts work, especially if the report is working entirely remotely does not amount to oppressive surveillance.
330. It was unclear if the claimant relied on Ms Duggan messaging him and asking if they could talk as oppressive surveillance. For the avoidance of doubt the tribunal did not find that this amounted to oppressive surveillance. Further the tribunal did not

accept Ms Duggan's managing the claimant by checking his work allocation and directing him as to work priorities could amount to oppressive surveillance. There was no evidence of Ms Duggan's surveilling the coaching sessions and the tribunal did not find that this had happened.

5.1.2 criticising the Claimant for errors or delays resulting from last-minute priority changes and disruptions, particularly during the Search Portals project from November 2023 to January 2024.

331. The tribunal had not found that the respondent criticised the Claimant for errors or delays - however resulting - in particular from the SearchPortals project between November 2023 in January 2024. The tribunal was not taken to anything amounting to such criticism. The claimant accepted he had not provided any details of this allegation in his witness statement.

5.1.3 removing the Claimant's job responsibilities and/or handing his work over to his peers, notably on 16 July 2023.

332. The tribunal was taken to no evidence of the claimant's job responsibilities or work being handed over to his peers save the HTML work on 16 July 2023. However, the tribunal did not accept that the handover of the HTML work was unfavourable treatment. The claimant's evidence on whether he wanted to do the HTML work was inconsistent. With his coach he discussed that the work was too much and had caused his stress. However, in oral evidence he said that he wanted to do the work and was unhappy when it was removed.

333. In his witness statement he said that he was publicly undermined by Ms Duggan stating that he was not a HTML specialist and she forced a handover of his work. However, there was no dispute that the clamant was not a HTML specialist – he had generously volunteered to help out when the respondent was short of resources. Ms Duggan's and the respondent's handling of this did not undermine the claimant and they paid tribute to the work he had done. It could not be unfavourable treatment to pay tribute to an employee picking up work outside of his role to help out and then later refocusing him on his role. Accordingly, the tribunal found that removing the claimant from the HTML work and refocusing him on his role could reasonably have been seen in the circumstances as being to his disadvantage.

5.1.4 placing the Claimant on Statutory Sick Pay (SSP) without warning or justification on 15 January 2024.

334. The tribunal understood this to refer to the claimant losing full sick pay and receiving only statutory sick pay. Take into account that the claimant was not represented the tribunal accepted it should treat this allegation as the fact that the claimant was no longer paid full sick pay. There was no dispute that this occurred.

5.1.5 denying the Claimant access to the company training budget on 6 July 2023.

335. There was no dispute that this occurred.

- 5.1.6 excluding the Claimant from a social workplace event on 20 June 2023.
336. The tribunal had found that this did not occur.
- 5.1.7 subjecting the Claimant to an intrusive and discriminatory meeting on 8 January 2024.
337. The tribunal found that the meeting on 8 January was not well managed. It was unpleasant for the claimant when HR permitted Ms Duggan to express her frustration with the claimant in an emotional manner.
- 5.1.8 constructively dismissing the Claimant.
338. The tribunal did not accept that the respondent had constructively dismissed the claimant. The claim for discrimination arising from disability did not succeed, as explained below. There was nothing in the treatment found by the tribunal that amounted to a fundamental breach of contract permitting the claimant to treat himself as constructively dismissed.
339. Accordingly, the unfavourable treatment found by the tribunal was
- a. Removing full sick pay from the claimant in January 2024
 - b. Denying the claimant access to the training budget; and
 - c. Subjecting the claimant to Ms Duggan's expressing her frustration in an emotional manner on 8 January
340. The tribunal accepted that the following things arose in consequence of the claimant's disability as set out at paragraph 5.2, based on the evidence in the claimant's disability impact statement:
- 5.2.1 difficulties with 'time blindness' and need for regular breaks;
 - 5.2.2 difficulties with context switching;
 - 5.2.3 the need for structure and consistency to manage his symptoms effectively;
 - 5.2.4 challenges in processing or retaining complex auditory information, or following extended verbal conversations;
 - 5.2.5 problems with task initiation, planning, and organisation;
341. However, the tribunal did not accept that there were (as per issue 5.2.6) perceived negative assumptions about his ability to work autonomously. The claimant was permitted to work autonomously in areas where he was technically the expert. He told his coach that he appreciated his autonomy and not having to "keep to his lane."

342. The tribunal did not accept (issue 5.2.7) that the claimant's sickness absence directly resulted from the disability discrimination and harassment he experienced on 8 January 2024. The tribunal did not accept that there was a link between the sickness absence and the claimant's disability. The reasons given at the time were not related to his ADHD but to stress. (However, for the avoidance of doubt, the tribunal went on to consider what would have been its decision if it had found the necessary link between the claimant's sick leave and the things arising from his disability, below.)
343. The tribunal went on to consider if there was the required link between the unfavourable treatment and the "something arising in consequence of the disability". Did the things the tribunal found arose in consequence of the disability operate on the mind of the decision maker when they imposed the unfavourable treatment? Were the things arising an effective cause of the unfavourable treatment – being the claimant's losing full sick pay in January 2024, denying the claimant access to the training budget, and subjecting the claimant to Ms Duggan's expressing her frustration in an emotional manner on 8 January
344. The tribunal did not find that any of the things arising from disability operated on the minds of the decision makers when deciding to stop full sick pay after two weeks on 15 January 2024. The reason was that the respondent wanted to save money when cash was tight. They had not had such a sick leave situation before. Their decision was ungenerous but not linked to the things arising from disability.
345. As stated above, the tribunal went on to consider what it would have decided if it was satisfied that there was the necessary link between the claimant's sick leave and his disability. Had the tribunal fallen into error and the sickness absence did arise from the claimant's disability, there would have been no question that the necessary link was made out. Therefore, the tribunal would have gone on to consider justification.
346. The tribunal would have found that the respondent's aims were legitimate – not paying more than statutory sick pay as the respondent was a start up with a very confined budget and had to deal with all employees fairly.
347. It would therefore have gone on to consider if paying only two weeks full sick pay was a proportionate way of achieving that legitimate aim.
348. The tribunal would have applied the Court of Appeal's decision in *Hardy & Hansons plc v Lax* 2005 ICR 1565, CA, that it is necessary to evaluate the evidence critically and weigh the needs of the employer against the discriminatory impact on the employee. A tribunal must make its own decision, and the band of reasonable responses test does not apply.
349. The tribunal accepted the respondent's evidence that this was the first absence of such a length in the respondent's experience. The respondent gave cogent, if not detailed evidence of its cash flow difficulties. There was evidence consistent with this in that wages were paid late at the time. Further, earlier in 2023 the evidence

suggested that the respondent had underspent its training budget. Further, Ms Duggan had been concerned when she mistakenly thought that the respondent would have to pay for the claimant's AtW costs up front and claim them back. This was consistent with a business with long term cash flow worries.

350. A less discriminatory approach would have been to pay the claimant a limited amount of sick pay, perhaps a week or two more. However, the tribunal balanced this with the respondent's need to control its budget and to treat all employees fairly. Paying for more than two weeks full sick pay risked setting a difficult precedent. Further, the respondent was reasonably concerned that it would incur costs in covering the claimant's work during his absence. Whilst the decision was ungenerous it would have been proportionate. Further, the benefit for the claimant would have been limited.

Victimisation

351. The Respondent accepted that the protected acts fell within s27(2) EqA 2010, save for the first protective act - 8.1.1 on 10 January 2024, requesting a formal grievance and anti-bullying and harassment policies from Ms Lourenz and asking if she would receive his grievance.

352. The tribunal did not find that the 10 January 2024 Slack message at 10:28 was a protected act for the following reasons. The relevant part of the message was as follows-

"In the meantime, could I double check a few things with you?- Is the anti-harassment and bullying procedure up to date in confluence, or where best to find this?- Is the grievance policy up to date, and would you be comfortable with me filing a formal grievance to your to begin."

353. The tribunal determined that the relevant subsection would be Section 27(2)(c) - acts for the purposes of or in connection with the Equality Act. The tribunal considered *Aziz v Trinity Street Taxis Ltd and ors* 1988 ICR 534, CA, a case under legacy discrimination legislation referring to the test of an act done 'by reference to' the act, was an act done which related to the legislation 'in the broad sense, even though the doer does not focus his mind specifically on any provision of the Act'.

354. The claimant simply requested the harassment and bullying procedure and indicated he might be bringing a grievance. Whilst it might be reasonable to assume that any grievance would relate to harassment or bullying, there was no reference to discrimination or disability. The tribunal considered the context in which this Slack message was sent. The message related to the bullying and harassment policies. There was no reference to disability or to discrimination. The claimant accepted that he had not mentioned or made allegations in respect of discrimination up to this point. There was no reference in Ms Lourenz's reply that same day to discrimination or disability.

355. Accordingly, the first protected act which occurred was 8.1.2, the claimant's email of 15 January 2024.
356. As to causation, the Tribunal directed itself in line with *Nagarajan v London Regional Transport* 1999 ICR 877, HL and *Villalba v Merrill Lynch and Co Inc and ors* 2007 ICR 469, EAT that the protected act does not need to be the only reason the Respondent acted as it did - it only has to be a significant influence in the sense of a material and not trivial influence. Also see the Equality and Human Rights Commission's Code of Practice on Employment (2011) para 9.10.
357. In respect of the definition of detriment the Tribunal again directed itself in line with *Shamoon*, that a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to their disadvantage. An unjustified sense of grievance cannot amount to a detriment but the question of whether a Claimant has been disadvantaged is a subjective one. Applying *Derbyshire and ors v St Helens Metropolitan Borough Council and ors* 2007 ICR 841, HL and *Warburton v Chief Constable of Northamptonshire Police* 2022 EAT 42, for a detriment to be made out, it is enough that a reasonable person in the claimant's situation might take the view that they were put at a disadvantage. However, a claimant's own perception that they have suffered a detriment is not on its own sufficient. The test of reasonableness is both objective and subjective.
358. The tribunal went onto consider each alleged act of victimisation.
359. As the first act of victimisation - 8.2.1 - occurred on 10 January 2024, before any of the protected acts, none of the protected acts can have had any influence upon it.
360. The tribunal had also found that the respondent had started to draft the email of 15 January 2024 (act of victimisation 8.2.2) on 14 January 2024. Further, because the respondent's email of 15 January was sent before the claimant's email of 15 January, the email cannot have been sent because of any protected act.
361. The tribunal went on to consider the five acts of victimisation at 8.2.3, Ms Lourenz's conduct between 21 and 29 April. The claimant accepted that this related to two emails, on 25 April 2024 10.48 and on 29 April 2024 at 17.34.
362. The tribunal accepted the respondent's submissions that the remarks in *A v Chief Constable of West Midlands Police* UKEAT/0303/14 were relevant to the complaints of victimization based on how respondent reacted to the claimant's complaints.
- [21] "the right to complain of victimisation is designed to protect those who genuinely make complaints. ... The effect of the section is, as it were, to place complainants in a protective bubble. ... The response of the person to whom the complaint is made may not be such as to treat the person adversely. ... *The purpose of the victimisation provision is protective. It is not intended to confer a privilege upon the person within the hypothetical bubble ... for instance by enabling them to require a particular outcome of a grievance* ... It cannot in itself create a duty to act

nor an expectation of action where that does not otherwise exist. (emphasis added).

[22] It follows that in some cases - and I emphasise that the context will be highly significant - a failure to investigate a complaint will not of itself amount to victimisation. ... where the protected act is a complaint, to suggest that the detriment is not to apply a complaints procedure properly because a complaint has been made, it might be thought, asks a lot and is highly unlikely. The complaints procedure itself is plainly embarked on because there has been a complaint: to then argue that where it has not been embarked on with sufficient care, enthusiasm or speed those defects are also because of the complaint itself would require the most careful of evidential bases."

363. For the avoidance of doubt, the respondent did not submit that it sought to take advantage of the protection enjoyed by respondents in victimisation claims who are taking reasonable steps to defend themselves in litigation (see *British Medical Association v Chaudhary* 2007 IRLR 800, CA).
364. The tribunal considered act of victimisation 8.2.3.1 that Ms Lourenz "Claimed the Respondent takes discrimination complaints seriously, *"but we don't know what you want us to look at,"*, ignoring the Claimant's clear written complaints of disability discrimination and harassment she was directly replying to.
365. Ms Lourenz wrote on 29 April, "we would be more than happy to investigate any grievance...If you do decide to raise a grievance, it would be helpful if you could set out the details of the incidents you want us to investigate, including when it happened, who was involved, and the specific conduct, you believe was discriminatory. We take it seriously and we want to help, but we don't know what you want us to look at."
366. The tribunal did not accept that this amounted to a detriment. It was a request that the claimant put in a grievance which could be responded to. The respondent told the claimant the information that would be required in a grievance. Whilst the claimant had provided some details of his complaints in his email of 21 April, for instance, the conduct of the meeting on 8 January 2024 it was unclear what he was complaining about concerning the meeting, save that Ms Lourenz was invited without warning. He had made a generalised assertion of discrimination and harassment but provided little detail. If the respondent was to engage with any grievance, it would require details as requested.
367. The tribunal considered act of victimisation 8.2.3.2 - "admitted to not providing any reasonable adjustments, asserting that the claimant did not request any in June 2022, sharing a screenshot of his first email in which he shared his diagnosis, and that is why they had not provided any".
368. The tribunal did not consider that this amounted to a detriment. It was unclear on what basis the claimant contended this amounted to a detriment. It was a statement of fact that the claimant had not requested any reasonable adjustments

in June 2022. However, the respondent did not admit to not making any adjustments. It stated that to date, he had not made any requests for adjustments. Further, the general tone of this email was not detrimental to the claimant. Ms Lourenz accepted there had been challenges in the relationship between the claimant and Ms Duggan recently, but her tone was positive. Ms Lourenz pointed out that the claimant did not engage with her request to help with how the respondent might help the claimant. She stated that the respondent was open to discussing any way they could help the claimant if he were to return to work.

369. The tribunal considered the act of victimisation 8.2.3.3 Further misrepresented the meeting of 8 January 2024, "I had no reason whatsoever, at the time, to think my presence was anything but welcome. Indeed, at the time, you thanked me for my involvement in the meeting, and sent me a Slack message shortly after the call ended".
370. The claimant was contending that it was a detriment that he received a reply from the employer that did not accord with his own view of the meeting on 8 January 2024.
371. The tribunal did not find that this statement amounted to a detriment. Ms Lourenz was in a measured way setting out her version of events. The fact that her version did not accord with the claimant's version of events did not mean that the claimant might reasonably consider he was put at a disadvantage in a victimisation claim. Ms Lourenz and the claimant disagreed about her conduct on 8 January. Such differing views are not unusual in a workplace following a meeting. This comment did not amount to pressure on the claimant or indicate any reason that he might think that the respondent was going to treat him less favourably.
372. The next detriment was 8.2.3.4 Attempted to justify the revoking of the Claimant's full sick pay on 15 January 2024 by contending that the Claimant's four and a half days of absence constituted a "*long, continuous absence*".
373. Not providing the claimant with full sick pay amounted to a disadvantage. But the tribunal could not find that the respondent setting out its reasoning for so doing amounted to a detriment. The respondent was providing the claimant with an explanation, albeit one that did not meet with his approval.
374. The tribunal did not find that the respondent had failed to investigate or take any action; (8.2.3.5). Ms Lourenz expressly explained to the claimant how he might start the grievance process and invited him to put in a grievance. The claimant's allegation was premature, had he grieved and then the respondent had failed to investigate his grievance, this would have been a different matter. The respondent was waiting on the claimant in respect of any investigation.
375. The next set of detriments were at paragraph 8.2.4 - between 29 April 2024 and 24 May 2024:

8.2.4.1 On 2 May 2024, Ms. Lourenz in her acknowledgment of the Claimant's resignation letter:

Ignored the Claimant's clear written complaints of disability discrimination and harassment;

further misrepresented previous events and communications;

Failed to investigate or take any action.

376. The tribunal did not find that the reply ignored the claimant's complaints. It engaged with these in terms, for instance stating, "The way you have now characterised the events of 8 January 2024, and our subsequent communications, simply does not match our records and recollection of events." The reply addressed the claimant's complaints, just not in a way that the claimant wanted.
377. The tribunal made the same finding about the "further misrepresented previous events and communications" as above. The respondent set out its view of events. The claimant disagreed with this. This was not a detriment. The respondent was entitled to set out its version of events.
378. The response in terms stated that any grievance would have been taken seriously. The letter did fail to investigate as the claimant had not asked for an investigation. His resignation letter stated in terms that he had not put in a formal grievance.
379. The victimisation claim in respect of the claimant's correspondence with the respondent came within the scenario described in *A v Chief Constable of West Midlands Police*. The claimant's protected acts put him in a protected bubble, to use the language of Langstaff J. They did not act to confer a privilege on him that the respondent reacted to his complaints as he would wish. Ms Lourenz's tone remained measured, professional and open. She did not make threats or seek to pressure the claimant, and her letters engaged with the content of the claimant's letters.

8.2.4.2 Between 2 May 2024 and 24 May 2024, Ms. Lourenz made repeated requests for the 'critical' return of the company laptop at short notice, despite the nature of the Claimant's resignation.

380. The tribunal found this did not amount to a detriment. The respondent had a right to the return of its property. It did not hurry the claimant and only repeated its requests when the claimant failed to comply. The respondent covered the cost of the return. It was not reasonable for the claimant to object to this or feel that he was disadvantaged.

8.2.5 On 15 May 2024, Ms. Lourenz terminated the Claimant's access to private healthcare without warning or justification.

381. The tribunal did not accept that this was a detriment. There was no suggestion that anyone other than employees were entitled to coverage under the respondent's private healthcare scheme. The claimant had been covered for some time when he was not so entitled following his exit. As Ms Lourenz frankly acknowledged, it was only when the claimant brought this to her attention, that she did what should

have done when he resigned, and terminated his access. In any event, the cause of the cancellation was the respondent's practice and policy of only providing healthcare to its employees.

Unauthorised deduction from wages s13 Employment Rights Act 1996 / breach of contract

382. The burden of proof in a claim for breach of contract is upon the party that asserts the breach, in this case the claimant.
383. Under the written contract of employment, the claimant was not entitled to full sick pay, only statutory sick pay as follows: –
- “INCAPACITY” [7.3] “Subject to your satisfying the relevant requirements you shall receive Statutory Sick Pay (SSP). Your qualifying days for SSP purposes are Monday to Friday.”
384. The sick leave policy was not consistent with the written contract in that it referred to a right to full sick pay.
385. Both the contract and the sick pay policy was silent as to whether or not the sick pay policy was contractual. The only reference to the contractual nature of any policy within the employment contract was to the disciplinary grievance policy which was expressly stated to be noncontractual. There was no reference to sickness policy at all in the contract of employment. The tribunal considered if the sick pay policy had acquired contractual effect.
386. The tribunal did not accept that the provisions in the sickness policy for sick pay were apt for incorporation on the grounds they were not clear and precise. Unlike the staff handbook in *Sparks and ors v Department for Transport 2016 ICR 695, CA*, this policy did not set out how to apply the absence procedure. Its terms were vague in that there was no indication or definition of a long absence, which was the bone of contention in this case. The view of the tribunal, even if the term was incorporated into the contract it would be void for uncertainty. Further, there was no evidence of any custom and practice in the respondent that the sick policy was treated as contractual or that the respondent understood that it was required to comply with it. The respondent's unchallenged evidence was that the situation had never arisen before in their history.
387. Accordingly, the tribunal found that the respondent did not breach the claimant's contract of employment when it failed to pay him full sick pay during his sick leave absence.
388. As no sum was due under the contract of employment, the claimant for unauthorised deduction from wages under section 2013 Employment Rights Act 1996 must also fail.

Constructive unfair dismissal

389. The tribunal did not find that the respondent had breached any express cause of the claimant's contract. The decision to stop paying the claimant's full sick pay on 15 January did not amount to a free-standing breach of contract.
390. Therefore, the claim relied on a breach of the implied term of mutual trust and confidence. The tribunal had not found that the conduct set out as the fundamental breach (according to issue 2.1.1.2) in the claims for direct discrimination, discrimination arising from disability, a failure to make reasonable adjustments and victimisation amounted to unlawful discrimination.
391. The tribunal finally considered if the conduct relied on in the Equality Act claims together (which included the decision to stop paying full sick pay) otherwise amounted to a breach of the implied term of mutual trust and confidence implied into all contracts of employment.
392. Following *Western Excavating (ECC) Ltd v Sharp* 1978 ICR 221, CA, a resignation can only amount to a constructive dismissal if there is a significant breach going to the root of the contract showing that the employer no longer intends to be bound by the essential terms of the contract. According to the House of Lords in *Malik v Bank of Credit and Commerce International SA (in compulsory liquidation)* 1997 ICR 606, HL, it was an implied contractual term that an employer 'will not, without reasonable and proper cause, conduct his business in a manner likely to destroy or seriously damage the relationship of trust and confidence between employer and employee'. A breach of the duty of mutual trust and confidence is a fundamental breach, see *Morrow v Safeway Stores plc* 2002 IRLR 9, EAT.
393. Whilst the tribunal had not found any unlawful discrimination in this case, it had identified some poor behaviour. The claimant should not have been exposed to Ms Duggan's emotional expression of her frustrations on 8 January and HR were at fault for failing to stop this. It was not a constructive way to approach the relationship between the claimant and Ms Duggan. However, it had to be viewed in the context of the claimant expressing his frustrations with Ms Duggan on 5 January.
394. This treatment did not go to the root of the relationship between employer and employee. The "venting" by Ms Duggan formed only a relatively short part of a near hour long meeting. A considerable amount of the meeting focused on establishing better ways of working. Ms Lourenz framed the meeting as intending to understand the claimant and the best way of working and communicating. She explained that the heated call on 5 January was not the first time the claimant had expressed frustration with communication with Ms Duggan, so it was important to understand how to make this work. The claimant was given considerable time to express his difficulties and his frustration with Ms Duggan. Ms Lourenz on more than one occasion sought to refocus meeting on how to establish the best ways for the respondent to communicate with the claimant and for the claimant to work with Ms Duggan.

395. Unfortunately, the meeting had the opposite effect of what was intended in that the claimant went off sick never to return, rather than working arrangements being improved. However, this did not equate with the respondent’s conduct during the meeting amounting to a fundamental breach of the contract.
396. Accordingly, the claim for constructive unfair dismissal must be dismissed.

Approved by
Employment Judge Nash
Date 14 November 2025

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
27 November 2025

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FOR EMPLOYMENT TRIBUNALS