EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000403/2025

Hearing Held on 11-15 August 2025 with a day in Chambers on 21 October 2025

Employment Judge O'Donnell
Tribunal Member L J Taylor
Tribunal Member R McPherson

S Caughman	**Claimant** **In Person**
Echoes Ecology Ltd	**Respondent** **Represented by:** **Mr Franklin (Counsel instructed by NatWest Mentor Services)**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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

REASONS

Introduction

1. The claimant has brought complaints of unlawful discrimination under the Equality Act 2010 relying on the protected characteristic of disability.

2. The claimant relies on a number of conditions as meeting the definition of disability under the 2010 Act; ADHD; autism; complex post-traumatic stress disorder; agoraphobia. She argues that these have to be regarded as a whole in assessing where there is an adverse effect on her day-to-day activities. The respondent concedes that the claimant's ADHD meets the definition of disability but does not make the same concession in respect of the other conditions nor that these have to be regarded as a whole in terms of the effect.

3. The respondent resists the substantive claims and deny that they have subjected the claimant to any unlawful discrimination.

4. An agreed list of issues was prepared by the parties and provided to the Tribunal.

5. The hearing was conducted as a hybrid hearing with the claimant and her witness attending the hearing remotely by Cloud Video Platform whereas the Tribunal, the respondent's representative and the respondent's witnesses attended in person. This arrangement was agreed during the case management process as an adjustment for the claimant.

Evidence

6. The Tribunal heard evidence from the following witnesses:-

    a. The claimant.
    b. Lisa Caughman-Payne – the claimant's mother.
    c. Laura Carter-Davis (LCD) – one of the two directors/owners of the respondent.
    d. Heather Simpson (HS) – one of the two directors/owners of the respondent.
    e. Rosanna Hignett (RH) – an employee of the respondent.
    f. Matthew Errington (ME) – an employee of the respondent.
    g. Kay Paul (KP) – an employee of the respondent.
    h. Claire McKenzie-Sime (CMS) – an occupational therapist who carried out an occupational health assessment of the claimant.

7. Evidence-in-chief was given by way of witness statements which were taken as read by the Tribunal.

8. There was an agreed file of documents prepared by the parties running to 643 pages. A reference to a page number below is a reference to a page in that file.

9. During the course of the hearing, it became apparent that additional documents would be required. These were email correspondence between the claimant and ACAS as well as correspondence between the respondent and ACAS. Such correspondence is normally not admissible under the general principle that evidence about settlement of disputes is inadmissible under the "without prejudice" principle as well as the specific statutory provision under s18(7) of the Employment Tribunals Act 1996.

10. However, it was the claimant's case that she had resigned during the ACAS Early Conciliation process which the respondent denied on the basis that they had never been informed of any resignation until the claimant's ET1 was served on them. It was common ground that there was no direct communication between the parties at this time and so the communications to and from ACAS were essential in the Tribunal being able to make findings of fact as to what was said in that correspondence and determine whether there was a valid resignation by the claimant. Both parties consented to this correspondence being added to the bundle and spoken to in evidence. The relevant emails were added as pp644-668.

11. The Tribunal considers that all witnesses sought to be accurate and truthful evidence to the best of their recollection. This was not a case where there were significant disputes of fact and the contemporaneous correspondence broadly reflected the evidence of the witnesses. Any discrepancies were clearly as a result of the passage of time impacting on the recollection of the witnesses.

12. Other than in relation to the claimant's medical history and the impact of the alleged discrimination on the claimant, the Tribunal did not find the evidence of the claimant's mother to be particularly relevant. She could not give first-hand evidence of the events giving rise to the claim and a lot of her witness statement was her opinion on various matters rather than factual evidence.

13. Much of the dispute between parties were about how matters should be viewed or interpreted. The claimant clearly had very strong opinions and views through which she has interpreted events. This has, on occasion, meant that she has formed a view on matters which is not borne out by the facts. A particular example of this relates to the allegation that she was not paid an annual bonus; the consistent position from the respondent and all of their witnesses from the relevant point in time right up to the hearing was that no-one received a bonus; the claimant could produce no evidence that anyone was paid a bonus. Despite this, the claimant continued to insist on this allegation. Even in her submissions, where she accepts that she has no evidence to support this, the claimant does not withdraw the allegation and accept that no bonus was paid but, rather, that she could not prove the allegation *"because the Respondent's legal positioning has*

allowed the matter to avoid proper scrutiny". She does not explain what she means by this.

Findings in fact

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

15. The respondent is an ecological consultancy service providing a range of services such as species surveys, ecological impact assessments and site management reports. At the relevant time, there were eight people working for the business including the claimant. This number also included the two directors and owners, LCD and HS. Those working for the respondent split their time between working in the office and carrying out site visits. The respondent also allows staff to work from home.

16. The respondent has a small open plan office. The lighting is overhead lighting which is either on or off; there is no facility for the lights to be dimmed. However, it is possible for one side of the office to have the lights off and the lights on in the other side. There are windows which provide natural light but this can be limited especially in the winter months.

17. The hours of work for staff was 8.45-17.45 from October to March with varying start and finish times in April to September. This is due to the seasonal nature of the respondent's work. For example, certain species surveys (such as bats) require staff to do this at particular times of day due to the species' habits.

18. The claimant commenced work as a consultant ecologist on 3 April 2023. She was contracted to work 40 hours a week.

19. At the start of employment, all staff are asked to complete a medical questionnaire and the claimant's questionnaire is at pp302-304. In the questionnaire, the claimant discloses that she has attention deficit disorder (ADHD) which is managed through the use of planners and organisational tools. The claimant did not ask for any adjustments or support at that time.

20. Staff at the respondent use their mobile phones for work purposes although it is not a requirement. The mobile phone number is included on email signatures for clients to use. The claimant had two mobile phones; one she used for her personal life and one she used for business. She informed the respondent that she preferred to keep these parts of her life separate. It was the business phone number that was put on the claimant's email signature and used in the office WhatsApp group. The claimant did not raise any issue with using her business phone for work at any time during her employment.

21. The claimant used noise cancelling headphones when at work. She already owned a pair before starting to work for the respondent which she used. A number of employees would wear headphones at work for other reasons (such as listening to music) and there was no issue with this.

22. The respondent had made an adjustment for the claimant in relation to her ADHD in respect of meetings with LCD or HS. Any face-to-face meeting was held in private and the claimant was given notice of any such meeting to allow her to prepare for them.

23. In or around November 2023, the claimant indicated to the respondent that she was seeking a diagnosis of autism spectrum disorder. On 5 December 2023, the claimant messaged LCD (p414) to inform her that she had received a diagnosis of autism. This was followed by a letter from the NHS dated 11 January 2024 (p492) that confirmed that the claimant's presentation and clinical history was consistent with a diagnosis of *"ICD-11 6A02.0 Autism Spectrum Disorder without disorder of intellectual development and with mild or no impairment of functional language".*

24. The letter from the NHS did not provide the respondent with any further detail of how autism affected the claimant or what additional support she required at work.

25. The claimant did discuss her autism with LCD in a meeting that took place on or around 6 December 2025. The claimant explained to LCD that she had a sensitivity to light but did not raise any other issue in the workplace that was causing her any difficulty.

26. LCD and the claimant sat on the same side of the office (along with HS and KP). On 12 December 2023, LCD bought a desk lamp for her to use to allow for the claimant to turn off the lights on their side of the room. She found it difficult to work with only the desk lamp for light; she had had an operation on her eye in May 2023 and a further procedure in September 2023. As a result, she needed good light to prevent eye strain.

27. Certain of the tasks done by the respondent's staff need good lighting. For example, carrying out mapping on their computers requires a good source of light.

28. In December 2023, the claimant attended an optician's appointment and she contacted LCD to explain that the optician could add a blue tint to the claimant's glasses that would assist with her light sensitivity and working on the computer. LCD agreed that the respondent would pay for this. In May 2024, the claimant informed the respondent that the optician had applied the wrong kind of tint and that this had not helped her. The respondent offered to pay for the correct tint to

be applied to the claimant's glasses but the claimant did not return to the optician for this to be done. In her evidence, the claimant explained that she had not returned to the optician to get the correct tint and that she had had a *"meltdown"* at the opticians.

29. The claimant also gave evidence that the respondent had not paid for the tint but there was no evidence that she had queried this at any time during her employment.

30. In January 2024, the respondent updated their medical information for all staff and asked them to complete a night workers health questionnaire. The questionnaire completed by the claimant (pp313-314) answers yes to the question *"Have you had depression, "stress", nervous disorders, or other mental illness, alcohol or drug addition, in the past two years"*.

31. On 21 March 2024, the claimant was having wisdom teeth removed under general anaesthetic. The respondent had agreed in advance that the claimant could have the day of the operation off, work from home the next day (which was a Friday) and return to work on the Monday. The claimant had not indicated to the respondent that she needed more time off until she sent an email to LCD and HS on 26 March 2024 (p317).

32. This email stated that she had been told by the hospital that she needed 7 days off but that she was not getting this. The Tribunal finds that the claimant never requested this and the respondent had not refused to give her this time off.

33. The email goes on to state that the claimant understands there is preference to have set hours and be in the office when not on site. She makes reference to recovering from surgery being different to reasonable adjustments but asks for a discussion about adjustments. The claimant makes a broad reference to being disadvantaged by the *"system currently in place"* without giving details of what it is that is causing her any disadvantage. She makes reference to making reasonable adjustments and provides links to internet resources but does not set out any adjustments being sought other than saying that it does not have to be a reduction in hours.

34. HS replied to this email on the same day (p319) explain that the respondent was not aware that the claimant had received a sick note and needed 7 days off to recover. She goes on to ask if the claimant needed more time off or, if she felt fit to work, the respondent was happy to allow her to work from home for the rest of the week. HS goes on to say that there is no frustration about the claimant's hours on the respondent's part.

35. On 22 April 2024, LCD attended an online course run by Scottish Women's Autism Network entitled "Supporting Autistic Wellbeing at Work". The course had been suggested by the claimant.

36. On 23 April 2024, LCD and HS met with the claimant to discuss a Wellness Action Plan (WAP) prepared by the claimant. The claimant had been working with Access to Work since her autism diagnosis and the WAP was a product of that process.

37. The WAP is at pp326-345 and is a pro-forma document that the claimant has completed. It records the following relevant matters:-

    a. The claimant prefers to work with less distractions. This can occur when there are a lot of people and this is when she puts in headphones (p339).
    b. She gets very stressed when things are not going to plan such as when she is off sick and not sure how work will get done in her absence. She finds it difficult to speak about what she is struggling with and to ask for support (p340 and 342).
    c. Signs that she is not coping are changes to her working pattern or that her space is disorganised (p341).
    d. In terms of support that might help her, she wants to understand what flexible or hybrid working or reduced hours would look like. She is looking for a sensory reduced side of the office and she has applied for grant for physical adjustments such as noise cancelling headphones, screen covers and software (p341). She also is looking for the respondent to speak to her discreetly when any of the signs that she is struggling are apparent (p342).
    e. The claimant finds it difficult to speak to people on the phone (p342).

38. A note of the meeting on 23 April 2024 was prepared by HS (p611) which records the respondent agreeing to make the following adjustments:-

    a. One-to-one meetings would be arranged with the claimant every other week to assist with prioritising tasks.
    b. Having a call with the claimant on any return to work after an unplanned absence to help reorganise her work load.
    c. Email template to use for handing over tasks that would include time allocation.
    d. The respondent would contact the claimant before changing the slides that contained the work schedule.
    e. There was discussion of the idea of the claimant taking an hour out of the day to reorganise task loads and set priorities.

f. Re-positioning the claimant's desk near the window. The respondent would look into dimmable lights and a sensory reduced corner.
g. The claimant could wear headphones to help with noise.
h. The claimant would have an option to work from home.
i. The respondent would look into a plan for flexibility depending on the claimant's mood on any particular day.
j. The claimant was seeking a further understanding of what would be involved in flexible working or reduced hours.
k. Teams meeting were the preferred means of client contact.
l. The signs that the claimant was stressed were discussed.

39. A new member of staff was due to start in May 2024 and the office was being re-organised to accommodate them. The respondent used this as an opportunity to move the claimant's work space as well. There was a discussion of different office layouts and the one agreed upon had been suggested by the claimant.

40. The reorganisation was done on 30 April 2024. HS oversaw this with the work being done by ME, KP and the claimant. There was a disagreement between the claimant and the other employees about how this should be done. ME and KP felt that, as the desks were all identical, it would be easier to move the drawers from one desk to another as well as anything on the desks rather than physically moving each desk which would require a manual handling risk assessment. The claimant insisted on the desks being physically moved. HS intervened to direct the staff to move the drawers and equipment rather than the desks. The claimant then left the office and worked from home for the rest of the day.

41. On 23 May 2025, LCD and HS had a further meeting with the claimant to follow up from the meeting on 23 April in terms of progress in making the various adjustments. It was at this meeting that the claimant informed the respondent that the wrong tint had been applied to her glasses. A note of the meeting is at p612-613 and records the following relevant matters:-

a. Most of the adjustments discussed at the previous meeting were in place.
b. In relation to the claimant's sensory issues, it was noted that the claimant's desk had been moved to a corner next to the window. LCD explained to the claimant that it was not possible to create a sensory reduced corner due to the fact that the lights could not be dimmed and the lights could not be turned off in one half of the room because of the impact on other staff in terms of eye strain. In evidence, LCD explained that there needed to be adequate light to comply with Display Screen Risk Assessments.
c. A colour coded matrix was agreed where the claimant could message LCD or HS with a colour that would indicate if she was struggling on any particular day rather than having to express any difficulties she was

having. The matrix is at p614 and runs from green (no concerns), yellow (heightened levels of stress where the claimant would need a check-in with LCD or HS to prioritise tasks), amber (struggling to deal with office environment) up to red (unable to work and the claimant would be recorded as absent from work). If there were more than a certain number of days with a particular colour above green then this would lead to a meeting between the claimant and LCD/HS to re-assess what was needed. The matrix also included reference to working from home which the claimant would be allowed to do with certain conditions (for example, informing the respondent of her working hours and being signed into Teams).

d. In terms of flexible working, it was confirmed that the claimant could work from home on amber days. The claimant also sought to reduce her hours without a reduction in pay or to work compressed hours. It was explained to the claimant that, as a small business, the respondent could not accommodate either of these matters; they required an ecologist to work 40 hours a week given the amount of work they had scheduled; they could not afford to pay someone for hours they did not work; the claimant had indicated that she was struggling to do 40 hours over 5 days and they were concerned that asking to work the same hours over less days would place additional pressure on her.
e. At the end of the meeting, the claimant disclosed to LCD and HS that issues in her personal life had been adversely affecting her mental health but did not disclose what these were.

42. In response to the claimant's disclosure of the issues with her mental health, the respondent suggested she take the next week off as paid leave. This was paid at full pay.

43. On 31 May 2024, the claimant messaged the respondent (p423) stating that her Access to Work adviser had recommended a further week off followed by a phased return to work. HS replied offering the time off as either sick leave on Statutory Sick Pay (SSP) or holidays. On 4 June 2024, the claimant confirmed she would take the week as SSP (p424).

44. On 7 June 2024, HS had a phone call with the claimant in which they discussed the phased return to work; it was agreed that the claimant would return for 2 days in week commencing 10 June 2024 increasing this by one day for each of the next two weeks until she was up to 4 days a week. The intention was to maintain 4 days a week. This was set out in an email from HS to the claimant on 19 June 2024 (p353) to which the claimant replied that it all sounded good. The claimant returned on 10 June 2024 as planned.

45. In week commencing 17 June 2024, the claimant continued at work but messaged HS on 19 June to say she was having an amber day (p426). HS replied asking if the claimant wanted to stay at 2 days a week and she agreed this as she was still feeling overwhelmed although she had enjoyed getting out of the house. The claimant was at work on 25 and 26 June. She had a red day on 27 June.

46. On 2 July 2024, the claimant was scheduled to carry out a dusk survey but messaged the respondent (p429) to say that she was not well enough to do this. The respondent was concerned about whether the phased return was working and contacted the claimant by message (p429) and email (p358) on 2 July 2024 to arrange a chat to find out how things were going for her. LCD emailed the claimant the same day (p359) to say that to ease pressure on her they would re-allocate her cases for the moment and that when she was able to come into the office then other work would be available to her.

47. On 3 July 2024, the claimant messaged LCD (p429) in response to the suggestion of a chat to say that this sounded good and that she was struggling with the phased return. In reply, LCD suggested that the claimant go on sick leave until she had sorted out her medication and felt able to cope. The claimant agreed to this suggestion and there was a discussion about the need for a fit note for SSP to be paid.

48. The claimant remained on sick leave for the remainder of her employment with the respondent.

49. On 10 and 11 July 2024, the claimant and LCD had a WhatsApp exchange (p430). The claimant indicated that she was happy to have a call or catch-up later in the week and LCD asks if she could come in for a meeting, bringing in her fit note and files she had at home. The claimant replied that this would make her too anxious. LCD replied asking how best to contact whilst she was off if there was anything to discuss. The claimant replied she could be contacted by post or by using her personal email or personal phone.

50. On 15 July 2024, LCD contacted the claimant by email (p362) to remind her that she had said she would drop in files. LCD asked if the claimant could hand these in and offered to send someone to collect these. She explained that they were needed to complete a client report. In the same email, LCD also reminded the claimant that they need a fit note for the period after 30 June 2024 when the previous one expired. She informed the claimant that a scan or photo of the fit note could be provided.

51. The claimant replied on 16 July (p362) to apologise and explain she had not been leaving the house but would drop the files into the office that night on her way

home from Stirling. She explained that she could not find the new sick note and the doctor was going to mail a copy to her. On 17 July, the claimant emailed LCD (p361) to confirm that she had handed the files into the office and would email the sick note as soon as she had it.

52. In early August 2024, LCD asked the respondent's IT consultant to disable the claimant's access to the respondent's email and systems. She did this to reduce any potential stress to the claimant which might arise if she was looking at work emails. LCD considered that, when she was off sick, the claimant should not be looking at work emails. The respondent's Computer Use policy did not allow the email and other IT systems to be used for personal reasons (p300-301) and so LCD had no reason to assume that this would affect any personal correspondence. The claimant had asked the respondent to communicate with her using her personal email and phone.

53. By email dated 8 August 2024 (p368), the claimant raised a grievance with LCD. The grievance related to a *"build up of work stress and lack of reasonable adjustments".* The grievance is framed in broad terms and, other than changes to lighting, makes no specific reference to any adjustment which the claimant considers had not been made. Neither did the grievance set out what it was that was placing her at any disadvantage requiring adjustments. The grievance alleges that LCD described the training she attended in April 2024 as *"pandering to disabled people"*.

54. The grievance states that the claimant felt a pressure to make up her hours as a result of medical appointments (with specific reference to the claimant having her wisdom teeth removed). The Tribunal was not presented with any evidence of the respondent pressuring the claimant to make up hours; the correspondence (that is, emails and WhatsApp messages) show that, to the contrary, the respondent offered the claimant more time off if required and were flexible with her.

55. The grievance makes reference to providing doctor's notes but, beyond the claimant explaining that she was not leaving the house, she does not assert that this was causing any issue for her. The complaint in this respect was about being asked to have meetings in the office to discuss how she was feeling and the claimant explaining that she felt too anxious in the office and in having such meetings in person.

56. Finally, the grievance raises the issue of the claimant being locked out of her work email account.

57. On 9 August 2024, LCD emailed the claimant (p370) an invitation (p371) to a grievance meeting on 15 August 2024 to be chaired by HS. The meeting was to

be held remotely by way of Teams. The claimant was allowed to be accompanied by someone who was not a work colleague if she wished (p373) or by a trade union official.

58. The grievance meeting was held on 15 August 2024 as planned. Minutes of the meeting are at pp375-378 and record the following relevant matters:-

    a. The claimant explained that she had been struggling with burn-out as a result of how her disability showed up at work. There were a lot of personal things happening but work became stressful for her; she was spending a lot of energy in making the work environment comfortable; she could not cope with the demands of work whilst also dealing with the issues in her personal life.
    b. When asked which suggestions she had made had been rejected, the claimant replied that there was no set arrangement for working at home and the colour-coded matrix came too late. The claimant explained that it was not that suggestions had been rejected but that they had been delayed.
    c. The claimant explained that she felt the duty was placed on her to identify adjustments. She made specific reference to the lighting in the office and that she had thought it would be off but that it was explained to her by LCD on 23 May that this was not possible.
    d. When asked about the alleged comment that LCD had made about the training in April “pandering” to autistic people, the claimant could not give a date for this or what was said. She said it was more of an impression rather than something which had been said.
    e. In relation to feeling pressure to make up time, the claimant could not identify any particular comment and that she just felt a pressure to complete her hours.
    f. The claimant was asked to explain what matters in the Wellness Action Plan had not been implemented and she replied the issues with lighting and paying attention to stress cues. She states that she felt that none of the matters in the plan were met.
    g. In relation to her work email account, the claimant stated that this was linked to exploring health insurance and this was now sorted. She goes on to state that she appreciates not having access to work emails but it could have been better communicated.
    h. In terms of what outcome she was seeking, the claimant stated that she did not know and was just following ACAS advice on procedure. She stated that the respondent needed to take responsibility for her stress levels and that they had not fulfilled their duty of care to her mental health.

59. HS wrote to the claimant by letter dated 23 August 2024 (pp380-390) setting out her decision in respect of the grievance. The letter starts by setting out 14 points which HS understood the claimant was raising in her grievance and then goes on to address each of those in turn explaining HS's decision on each point in detail. HS does not uphold the grievance but does explain to the claimant that the respondent is going to look for an occupational health provider to carry out an occupational health assessment of the claimant.

60. The Tribunal does not propose to set out the content of the letter in full but notes the following matters which are relevant to the issues to be determined in this case:-

    a. In respect of the claimant's email access, HS explained that the respondent had not wanted to have unnecessary contact with the claimant to avoid creating anxiety and so had not contacted her about this. In hindsight, HS accepted that this was a mistake and apologised to the claimant.
    b. HS sets out what the respondent understood to be the effects of the claimant's disability on her at work and that this had changed over time. She sets out the information provided at the outset of the claimant's employment that indicated that there would be no impact on the performance of her duties and how this understanding evolved over time when, for example, the Wellness Action Plan was prepared by the claimant.
    c. HS also sets out what adjustments were put in place at different stages based on this evolving understanding.
    d. She explains why the respondent could not offer reduced hours without a reduction in pay; they are a small company and the cost of this was not something they could bear.
    e. HS sets out what it was not possible to create a sensory reduced corner given the size of the office and number of people using it. In particular, she explains why it was not possible to turn off the lights and use desk lamps; four employees did not have space for desk lamps; these would not illuminate other areas of the office such as the bookcases and filing cabinets; other staff had complained of eye strain when working with the lights off; adequate lighting was needed during the darker days of the year.
    f. LCD denied making any comment that the training she attended was about pandering to autistic people.

61. The claimant was offered a right of appeal but did not take this option.

62. In August 2024, LCD queried with the landlord of the respondent's office whether dimmer switches could be installed for the lights. The landlord replied by email

dated 29 August 2024 (p392) that this is not possible because the office has LED lights.

63. The respondent identified CMS as someone who could provide an occupational health report and arrangements were made during September 2024 for CMS to conduct meeting with the respondent and the claimant.

64. CMS produced a report dated 8 October 2024 (pp513-528) which sets out the following relevant matters:-

    a. The claimant was unsure if she wished to return to work for the respondent. She did not feel she could return full-time but was interested in part-time work or a phased return.
    b. The report stated that the claimant suffered muscle pain and fatigue, and was being screened for fibromyalgia. The claimant had not previously disclosed this latter issue to the respondent.
    c. In terms of recommendations, the report set out the following:-
        i. The claimant should be allowed flexible hours.
        ii. The claimant should engage with a phased return to establish agreements with the respondent on energy and pain management.
        iii. The claimant should be allowed to work from home as much as possible.
        iv. When in the office, the claimant should be provided with noise-cancelling headphones, a screen filter, time management apps, text-to-speech apps and text messages to be used for communication and dimmable lights or a desk in a lower lit area.
    d. The claimant was seeking exemption from team meetings and social gatherings in the sense of permission to miss these.

65. The respondent arranged a meeting to discuss the report with the claimant to be held on 25 October 2024 but this did not proceed at the claimant's request and was rearranged to 30 October 2024 (p432).

66. The meeting went ahead on 30 October and HS took notes of this (p617). The claimant stated that she thought the report was well written but she did not agree with all of the wording. For example, she did not consider that she was unappreciated just that she struggled with communication. There was a discussion of what a phased return to work would look like with the claimant suggesting a combination of working from home and days in the office, building up the office days over time. The claimant explained that she did not agree with the wording around exemption from meeting and social gatherings; she enjoys social gatherings and just wants a choice. The meeting concluded with the claimant suggesting that she was looking to return to work at the start of December.

67. On 15 November 2024, the claimant provided a further fit note for the period up to 2 December 2024.

68. On 17 November 2024, the claimant emailed LCD (p433) stating that she felt she would need a longer phased return than suggested in the report and that she was finding the idea returning in December overwhelming. The claimant suggested a further meeting to discuss her return. LCD replied by email dated 19 November 2024 (p444) that there was no pressure on the claimant to return and they could look at a later date if December was too soon. On 23 November 2024, the claimant replied by email (p443) suggesting a meeting at the start of the year. LCD replied on 2 December 2024 (p442) asking for a suitable date to meet in the New Year. There was no reply to this and LCD subsequently emailed the claimant suggesting 8 January 2025.

69. The respondent had a Christmas night out in December 2024. LCD and HS decided not to invite the claimant to this to avoid creating further anxiety for her; they had noted what had been said in the occupational health report about the claimant suffering agoraphobia; they were also conscious that the claimant had described a return to work in December as *"overwhelming"*.

70. The respondent did not pay an annual bonus to any staff in 2024. This was because the company had committed to spending a considerable amount of money to hire survey equipment for the summer of 2025.

71. By email dated 27 December 2024 (p451-452), the claimant queried the fact that she had not received a bonus. She had received a pro-rated bonus in December 2023 and was querying if she had failed to meet any eligibility criteria. She also stated that she had realised that she had not received any invitation to a Christmas celebration.

72. LCD replied by email dated 6 January 2025 (p450-451) explaining that the bonus is discretionary and that this had not been paid to anyone this year. She went on to explain that they had not invited the claimant to the Christmas trip because the occupational health report mentioned that the claimant was suffering from agoraphobia and that she felt she could not return in December. LCD explained that they felt it would be insensitive and cause the claimant stress to invite her but apologised if they had misinterpreted the situation.

73. A meeting had been arranged for 9 January 2025 but the claimant emailed that day (p450) to say that she could not attend and that she felt it best to involve ACAS in all future discussions. The claimant had commenced ACAS Early Conciliation on 8 January 2025.

74. By 27 January 2025, the respondent had not heard from ACAS and so LCD emailed the claimant to explain this and to ask for an updated fit note.

75. On 12 February 2025, LCD contacted the claimant by email (p456-457) to arrange a meeting on 21 February 2025 to discuss her absence, get an update from her and discuss anything which could be done to facilitate a return to work.

76. On the same day, the claimant emailed the ACAS officer dealing with the early conciliation with a settlement proposal (p645-647). The proposal included a sum of money under the heading "Constructive Dismissal & Loss of Earnings".

77. On 13 February 2025, the ACAS officer emailed the claimant (p644) to confirm that she had provided the settlement offer to the respondent's representative and that they were taking instructions. However, there were some points that the respondent had asked the officer to convey to the claimant. One of these points related to the issue of constructive dismissal and that the respondent was not aware of any resignation.

78. The claimant replied to ACAS by email of the same day (p656) setting out why she considered that her employment with the respondent was untenable and why she considered there was a constructive dismissal. She states that if a formal resignation letter is required then she will provide this. The ACAS officer replied to this by email of 13 February (p655) explaining that ACAS is only concerned with trying to reach a settlement and was not involved in any internal processes. It was stated that any correspondence of this nature would have to be directly between the parties.

79. There was no direct communication of a resignation from the claimant to the respondent on this or any other date prior to the ET1 being served on the respondent. Neither was there any correspondence from ACAS to the respondent communicating a resignation on behalf of the claimant.

80. The claimant lodged her ET1 with the Tribunal on 18 February 2025. This included a claim of constructive dismissal. The ET1 was served on the respondent on 21 February 2025.

81. On 24 February 2025, HS emailed the claimant (p646) regarding the fact that the claimant had not attended the meeting of 21 February and that the respondent had received the ET1 containing a claim of constructive dismissal. HS stated that there had been no notification that the claimant had resigned and asking her to clarify the position.

82. The claimant replied the same day (p463-464) stating that she had resigned via ACAS on 12 February 2025.

83. HS replied on 25 February 2025 (p462-463) explaining that the claimant's contractual obligation was to inform the respondent, and not ACAS, that she was resigning. The claimant replied (p462) insisting that she had resigned on 12 February and setting out her reasoning for this. HS replied by email dated 26 February 2025 (p465) confirming that the date of termination would be recorded as 21 February 2025 and providing details of the amount of holiday pay due to the claimant along with when this would be paid.

84. In the email at p462, the claimant asked for all future communication regarding her claim to made via the respondent's legal representative.

85. On 27 February 2025, LCD email the claimant (p472) advising her that her possessions had been boxed up and asking how she would like these to be returned. She also asked the claimant to return the office keys. The claimant objected to this correspondence by email of the same date (p472) as she had asked for all correspondence about her claim to be made through the respondent's legal representative. LCD replied by email dated 28 February 2025 (p470) explaining that she did not consider that an email about returning property was about the Employment Tribunal proceedings.

Submissions

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

87. There is, however, one matter on which the Tribunal feels it is necessary to comment in relation to the claimant's submissions. As pointed out in the respondent's rebuttal, the claimant's submissions makes reference to a number of factual matters which were not spoken to by the claimant (or any other witness) in evidence. It is clear that the claimant was seeking to introduce new facts in her submissions and the Tribunal will not take account of any facts which were not spoken to in evidence.

Relevant Law

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

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

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

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

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

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

    a. There must be a fundamental breach of contract by the employer
    b. The employer's breach caused the employee to resign
    c. The employee did not delay too long before resigning thus affirming the contract

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

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

calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

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

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

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

> *"(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?*
> *(2) Has he or she affirmed the contract since that act?*
> *(3) If not, was that act (or omission) by itself a repudiatory breach of contract?*
> *(4) If not, was it nevertheless a part (applying the approach explained in Omilaju v Waltham Forest LBC [2005] IRLR 35) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation ….)*
> *(5) Did the employee resign in response (or partly in response) to that breach?"*

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

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

> ***136 Burden of proof***
>
> *(1) This section applies to any proceedings relating to a contravention of this Act.*

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

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

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

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

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

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

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

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

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

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

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

15 Discrimination arising from disability

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

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

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

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

108. Guidance as to how to apply the test under s15 was given in *Pnaiser v NHS England [2016]* IRLR 170, EAT:-

a. Was there unfavourable treatment and by whom?

b. What caused the treatment, or what was the reason for it?

c. Was the cause/reason 'something' arising in consequence of the claimant's disability?

d. This stage of the test involves an objective question and does not depend on the thought processes of the alleged discriminator.

e. The knowledge requirement is as to the disability itself, not extending to the 'something' that led to unfavourable treatment.

109. In terms of justification, the EAT in *MacCulloch v ICI* [2008] IRLR 846 set out four principles to be applied by the Tribunal. These have since been approved by the Court of Appeal in *Lockwood v DWP* [2013] IRLR 941:-

"(1) The burden of proof is on the respondent to establish justification: see Starmer v British Airways [2005] IRLR 862 at [31].

(2) The classic test was set out in Bilka-Kaufhaus GmbH v Weber Von Hartz (case 170/84) [1984] IRLR 317 in the context of indirect sex discrimination. The ECJ said that the court or tribunal must be satisfied that the measures must "correspond to a real need … are appropriate with a view to achieving the objectives pursued and are necessary to that end" (paragraph 36). This involves the application of the proportionality principle, which is the language used in reg. 3 itself. It has subsequently been emphasised that the reference to "necessary" means "reasonably necessary": see Rainey v Greater Glasgow Health Board (HL) [1987] IRLR 26 per Lord Keith of Kinkel at pp.30–31.

(3) The principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it: Hardys & Hansons plc v Lax [2005] IRLR 726 per Pill LJ at paragraphs [19]–[34], Thomas LJ at [54]–[55] and Gage LJ at [60].

(4) It is for the employment tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own assessment of whether the former outweigh the latter. There is no "range of reasonable response" test in this context: Hardys & Hansons plc v Lax [2005] IRLR 726, CA."

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

20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice (PCP) *of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*

(4) …

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

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

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

114. The case of *Smith v Churchills Stairlifts plc* 2006 ICR 524 confirmed that the test of reasonableness in relation to adjustments is an objective one and it is ultimately the employment tribunal's view of what is reasonable that matters.

115. A tribunal must identify with some particularity what 'step' it is that the employer is said to have failed to have taken in relation to the disabled employee (*HM Prison Service v Johnson* 2007 IRLR 951, EAT).

116. *Johnson* (above) also made it clear that it is insufficient for a claimant simply to point to a substantial disadvantage and then seek to place the onus on the employer to think of what possible adjustments could be put in place to ameliorate the disadvantage. The same was also said in *Project Management Institute v Latif* 2007 IRLR 579, EAT, where Mr Justice Elias (then President of the EAT) observed

"*The key point identified therein is that the claimant must not only establish that the duty has arisen, but that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. Demonstrating that there is an arrangement causing a substantial disadvantage engages the duty, but it provides no basis on which it could properly be inferred that there is a breach of that duty. There must be evidence of some apparently reasonable adjustment which could be made. We do not suggest that in every case the claimant would have had to provide the detailed adjustment that would need to be made before the burden would shift. However, we do think that it would be necessary for the respondent to*

understand the broad nature of the adjustment proposed and to be given sufficient detail to enable him to engage with the question of whether it could reasonably be achieved or not."

117. This does not mean, however, that the claimant bears the burden of proof in showing how the employer had failed to comply with a reasonable adjustment (*Jennings v Barts and the London NHS Trust* EAT 0056/12).

118. The case of *Royal Bank of Scotland v Ashton* 2011 ICR 632, EAT, held that the focus in addressing the reasonableness of any adjustments has to be on the practical result of the measures that can be taken. This reflects paragraph 6.28 of the EHRC Employment Code which states that an employer may wish to consider when deciding what is a reasonable step to have to take is the extent to which taking a particular step would be effective in preventing the substantial disadvantage caused to the disabled person.

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

26 Harassment

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) …

(3) …

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

…

disability;

…

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

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

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

27 Victimisation

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

(a) B does a protected act, or

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

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

123. It is important to distinguish between cases where the alleged detriment has a connection to the protected act but is not *"because"* of it from those cases where the detriment is directly because of the protected act.

124. For example, in *Chief Constable of West Yorkshire Police v Khan [2001] IRLR 830, it was held that a refusal of a reference did not amount to victimisation on the basis*

that it was not refused because of the fact that the claimant had brought a race discrimination but because of the imminence of the hearing in the case and the respondent's desire to protect their position in the litigation.

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

Decision

126. The Tribunal will address each of the types of discrimination in turn (following the list of issues), dealing with the allegations made under each heading. The Tribunal will only deal with the issues of disability status and time bar if it finds any of the allegations to be successful as it is only then that these issues will come into focus.

Decision – discrimination arising from disability

127. The first allegation under this heading is that the claimant was locked out of her work email account from July 2024 when she went on sick leave. It is not in dispute that this occurred but the Tribunal does not consider that this meets the test for detriment set out in *Shamoon* (above) as a reasonable employee would not consider that this disadvantaged them.

128. At the time, the claimant was absent from work and had no reason to access her work email. It is difficult to see what disadvantage this caused the claimant and she did not identify any disadvantage in her evidence other than the simple fact that she could not use this email account. There was, however, no evidence that she needed to do so.

129. In the Tribunal's view, a reasonable employee would not consider they were being disadvantaged by not being able to access emails which they did not have to access and should not be accessing when absent from work for health reasons.

130. In her grievance to the respondent, the claimant makes reference to having accounts linked to her work email. There is no detail of what these were but it is not suggested that these were work accounts and so the Tribunal proceeds on the basis that these were some form of personal accounts. However, the respondent did not permit personal use of work email and so a reasonable employee would not have used their work email for personal purposes. They would not, therefore, be disadvantaged by the respondent's actions.

131. For these reasons, the Tribunal does not uphold this allegation.

132. The second allegation is that the claimant was not invited to the Christmas night out in December 2024. Again, it is not in dispute that she was not invited.

133. The Tribunal considers that this was because of "something" arising from her disability, that is, the fact that she was absent from work and the respondent's view that it would be insensitive to invite her in circumstances where they understood (mistakenly) that she would be unfit to attend and that, based on the OH report (at p524), she was seeking to be exempt from team meetings and social gatherings.

134. There was, therefore, discrimination arising from disability in respect of the exclusion from the Christmas night out. However, the Tribunal considers that this was objectively justified. The respondent clearly had the legitimate aim of seeking to avoid causing the claimant additional distress of inviting her to an event where it appeared that she did not wish to attend and would not be fit to do so.

135. The Tribunal accepts that it was not the claimant's position that she did not wish to attend the Christmas night but the Tribunal also accepts that it was the respondent's genuine belief that she did not even if this was mistaken. There was a factual basis for the respondent's belief in the content of the OH report and there was nothing to contradict this. For example, although the claimant gave evidence that she wanted the option to be exempt from social gatherings, the Tribunal can see how the respondent read the report in the way they did; the wording was, at best, ambiguous and could be read in the way the respondent read it; this was in the context of the claimant deciding that she was not fit to return to work in December 2024 when she had previously indicated that she was intending to return as well as informing the respondent that she was suffering from agoraphobia (which is commonly understood to be a condition where people are fearful of going outside or being in crowds).

136. The Tribunal considers that the respondent's decision not to invite the claimant was a proportionate means of achieving this aim. The claimant did not suggest any alternative means and anything else which the respondent could have done would have involved contacting the claimant with the potential to cause her the very distress that the respondent was seeking to avoid.

137. In these circumstances, although there was, on the face of it, discrimination arising from disability in respect of the Christmas night out, the Tribunal finds that this was objectively justified.

138. The third allegation is that LCD, during a discussion about adjustments, said to the claimant *"we can't make everyone uncomfortable for one person"*. The Tribunal is

not persuaded that this specific comment was made; the claimant asserts it in her witness statement but did not put it to LCD in cross-examination; LCD, in her witness statement at paragraph 45, accepts that there was a discussion on 23 May 2024 about reducing the lighting and that she explained that this could not be done due to the fact that it was not possible to dim the lights in specific parts of the office and the respondent needed adequate light for all employees. She did not, however, accept that she said the specific words alleged by the claimant.

139. In these circumstances, the Tribunal finds that there was a discussion about the fact that the respondent could not reduce the lighting in the office and that this was, in part, due to the impact on other staff even if the specific words alleged by the claimant were not used.

140. However, the Tribunal does not consider that this meets the test for detriment in *Shamoon*. An employer must be entitled to explain their decisions to an employee and a reasonable employee would not consider that being given such an explanation disadvantaged them even if they were unhappy with the decision and did not agree with it.

141. For these reasons, the Tribunal does not uphold the third allegation of discrimination arising from disability.

142. The fourth allegation is that "*Throughout her employment, and particularly in mid-2024, the Claimant experienced a marked decline in mental health resulting from the Respondents failure to provide adjustments or trauma-informed support*".

143. The Tribunal has set this allegation out as it appears in the list of issue because it has some difficulty in identifying what the act of discrimination is said to be. On the face of it, this is about the effect of the respondent's actions (specifically, the alleged failure to comply with the duty to make reasonable adjustments) rather than an act or omission by the respondent.

144. To the extent that this allegation is about the duty to make reasonable adjustments and that the respondent's alleged failure to comply with the duty was discrimination arising from disability then the Tribunal does not uphold this allegation; for reasons it will set out below, the Tribunal does not consider that the respondent failed to comply with this duty.

145. The same applies for the fifth allegation which relates to an alleged failure to provide the claimant with support when she sought to return to work in June and July 2024. The Tribunal considers that this is an attempt by the claimant to re-frame an alleged failure to comply with the duty to make reasonable adjustments and the Tribunal considers that there was no such failure.

146. For this reason, the Tribunal does not uphold the fifth allegation.

147. In these circumstances, the claim of discrimination arising from disability is not well-founded and is hereby dismissed.

Decision – direct discrimination

148. The first allegation of direct disability discrimination is the same as above, that is, the restricted access to work emails. For the same reasons as set out above, the Tribunal does not consider that this is a detriment and so does not uphold this allegation for that reason.

149. The Tribunal also does not uphold this allegation because there was no evidence that the claimant was treated differently from anyone else in the same or similar circumstances. The Tribunal agrees with the submission of the respondent that the appropriate comparator is another employee who was absent from work due to a different reason (for example, a different health condition) and did not have their emails restricted.

150. There was no evidence of a direct comparator in these circumstances; the claimant sought to rely on what happened when LCD was absent from work but the Tribunal does not consider that an owner and director of the company is in the same or similar circumstances as an employee given the different responsibilities involved. In terms of hypothetical comparator, there was no evidence from which the Tribunal could conclude that any other employee who was absent from work on a long-term basis would be treated differently.

151. For all these reasons, the Tribunal does not uphold the first allegation of direct discrimination.

152. The second allegation of direct discrimination is, again, the same as the second allegation above, that is, the exclusion from the Christmas night out.

153. There was no evidence that the respondent would have treated anyone else, whom they understood to be unfit to attend and wanting to be exempt from social gatherings, any differently. The Tribunal cannot, therefore, conclude that the comparator element of the test for direct discrimination is satisfied.

154. Further, the Tribunal has found the reason for the claimant's exclusion as set out above. This is "something" arising from her disability but it is not her disability in itself which is what is required for a claim of direct discrimination. The claimant's disability did not, therefore, have a significant influence on the respondent's

decision as the Tribunal considers they would have reached the same decision for anyone else about whom they held the same view regardless of whether that view was related to a different condition or any other cause.

155. The Tribunal does not, therefore, uphold the second allegation of direct discrimination.

156. The third, and final, allegation of direct disability discrimination is that the claimant was not paid an annual bonus in 2024. This allegation can be dealt with in relatively short terms; no-one was paid a bonus by the respondent at this time and so the claimant has been treated in exactly the same way as every other employee of the respondent.

157. This allegation is based on the claimant's belief that a bonus must have been paid given the respondent's performance. However, it does not matter what the claimant thinks about what the respondent should have done, what matters is what they actually did and there is no evidence of any bonus being paid to anyone.

158. This allegation is wholly without merit and is, therefore, dismissed.

159. In these circumstances, the claim of direct discrimination is not well-founded and is hereby dismissed.

Decision - harassment

160. The first allegation of harassment relates to events on or around 30 April 2024 when desks were being moved in the office. It is not entirely clear what the unwanted conduct relied on by the claimant was said to be. The allegation, as set out in the list of issues, talks in very broad and vague terms of *"the tone and reaction from those present"* escalating but says nothing more. The claimant's witness statement says little more than this and goes on to state that she made a comment she could not recall then chose to go home. She does not set out any conduct by any other employee.

161. Based on the evidence of the respondent's witnesses, the Tribunal finds that a dispute arose between the claimant and other employees about whether desks should be moved or whether it would be easier to simply move the computers and other items on the desk as well as swap the drawers from one desk to another given that these were identical. The claimant insisted on the desks being moved whereas other employees (ME and KP) thought it would be easier and quicker to move the equipment and drawers. When it was decided to simply move the equipment and drawers, the claimant left and worked from home.

162. The Tribunal does not consider that this was in any way related to the claimant's disability. There is nothing in the evidence that the conduct of other employees was related to her disability but rather was about the easiest and quickest way to achieve the reorganisation of the office.

163. For these reasons, the Tribunal does not uphold the first allegation of harassment.

164. The second allegation of harassment relates to two comments.

165. First, a comment allegedly made by RH on 23 May 2024 of *"Could we not?"* when the claimant turned off the overhead lights. RH's evidence was that she was not in the office on 23 May 2024. She does, however, accept that there was an occasion (she could not recall the precise date) when she asked for the lights to be turned back on because she digitising maps and could not see what she was doing with the lights off. She does not accept that she used the words in question and the Tribunal accepts her evidence on this.

166. The Tribunal accepts that the request to turn the lights back was unwanted conduct and that it related to disability given that she turned the lights off because of the sensory issues caused by her conditions.

167. However, the Tribunal does not consider that this had the prohibited purpose or effect in terms of s26(1)(b) of the Equality Act. The clear purpose of the request was to allow RH to see the work she was doing. In relation to effect, the Tribunal does not consider that it was reasonable for the request to have the prohibited effect; the claimant had to accept that there were limits on what could be done in respect of the lighting in the office and that there would be circumstances where having the lights off would adversely affect her colleagues; a one-off request for the lights to be on whilst a colleague carried out a particular task would not reasonably have the effect of creating an intimidating, hostile, humiliating etc environment for the claimant nor violate her dignity.

168. The second comment was the comment from LCD addressed above in respect of discrimination arising from disability. For the same reasons, the Tribunal finds that LCD did explain to the claimant that the limits on what they could do in respect of the lighting in the office were, in part, due to the impact on other employees.

169. This explanation was related to disability but the Tribunal does not consider that it had the prohibited purpose or effect. The purpose of what was said about the impact on other employees was to explain to the claimant why there was a limit on what could be done about lighting not to violate her dignity or create the prohibited environment.

170. It was not reasonable for the explanation to have the prohibited effect. As stated above, an employer must be entitled to explain their decisions to an affected employee and, so long as this is not couched in terms which have the prohibited effect in themselves, doing so cannot reasonably have the prohibited effect even if the employee does not agree or does not like the explanation.

171. For these reasons, the Tribunal does not uphold the second allegation of harassment.

172. The third and final allegation of harassment is that the respondent contacted her directly during the ACAS Early Conciliation process and after her resignation despite requests for them not to do so.

173. The claimant gave no evidence of when she made such requests and what contact she considered amounted to harassment. An employer is entitled to contact one of their employees to discuss matters relating to work.

174. Prior to being served the ET1, the respondent was not aware the claimant had resigned and so they continued to contact someone they considered to be their employee about matters relating to work (for example, arranging a welfare meeting). There is nothing inherently wrong with this.

175. Once the respondent became aware that the claimant considered she had resigned then they were also entitled to clarify this with her and to then make arrangements relating to the end of her employment such as returning her belongings to her and getting any company property back.

176. None of this was done with the purpose of violating the claimant's dignity nor creating the prohibited environment. The purpose of the contact was to deal with work issues such as checking on the claimant's welfare and making practical arrangements for the return of property.

177. Further, it was not reasonable for any such contact to have the prohibited effect; the claimant had not asked the respondent to not contact her and not suggested any alternative means of communication. There were clearly matters which needed to be addressed in relation to the claimant's employment and its termination; none of this couched in terms which would reasonably create the prohibited effect.

178. The claimant did make a request on 25 February 2025 for future correspondence regarding her claim to be made via the respondent's legal representative. The only communications made after this related to the return of the claimant's possession and the respondent's property. This is not correspondence about the

claim (in the sense of legal proceedings) and so it would not be obvious to the respondent that the claimant did not want communications of this sort to be made directly. In any event, for the reasons set out above, the Tribunal does not consider that these communications would have the prohibited purpose or effect.

179. For these reasons, the Tribunal does not uphold the third allegation of harassment.

180. In these circumstances, the claim of harassment is not well-founded and is hereby dismissed.

Decision - victimisation

181. The claimant relies on seven matters as protected acts and the respondent concedes that four of these meet the definition of a protected act. The Tribunal does not consider it necessary to determine whether the other three meet the definition given its conclusion below that the claims for victimisation are not made out.

182. The claimant relies on the same three matters as amounting to victimisation as she does for direct discrimination; the restriction of her emails; exclusion from the Christmas party; no annual bonus being paid.

183. For the broadly the same reasons as set out above in respect of direct discrimination, the claimant dismisses the claims for victimisation:-

    a. The restriction of the claimant's email account did not amount to a detriment for the reasons set out above.
    b. The Tribunal has found the reason why the claimant was excluded from the Christmas night out in its conclusions on the claim for discrimination arising from disability and this was not because she had carried out any of the protected acts which she relies upon.
    c. There was no annual bonus paid to any staff in 2024 and this is why the claimant was not paid one rather than the fact that she carried out any protected act.

184. At paragraph 29a) of the list of issues, there is a further matter which is said to be a detriment. It is a long passage which makes reference to the former owner of the business and how he was referred to by the present staff as well as what the claimant says are the attitudes in the organisation to issues of neurodiversity. It goes on to say that the claimant is making reference to these matters in order to provide context to her perception of the workplace culture and that she is not relying on this as an act of discrimination.

185. The Tribunal does not understand why this paragraph has appeared in the list of issues as one of the alleged detriments in the victimisation claim if the claimant does not rely on this as an act of discrimination. In light of what is said in the list of issues and the fact that there is no allegation of any discrimination against the claimant set out in this paragraph, the Tribunal has not treated this as an issue it has to determine.

Decision – reasonable adjustments

186. There are two matters of broad application to the issue of reasonable adjustments which the Tribunal requires to set out before dealing with the specific claims made by the claimant.

187. First, it was clear to the Tribunal that the claimant had proceeded on the basis that the duty to make reasonable adjustments had been engaged simply because she had disclosed the fact of her various conditions (at different times). However, this is a misconception as to how the Equality Act operates; the respondent not only needs to have knowledge that the claimant is disabled but also that there is a PCP which places the claimant at a substantial disadvantage. It is only when the respondent knows, or could reasonably know, about both of these matters that the duty is engaged.

188. Much of the claimant's criticism of the respondent in respect of adjustments proceeds on the basis that they should have made adjustments in circumstances where, often, there was no evidence that they had the requisite knowledge to trigger the duty to make adjustments. The Tribunal will address this further below.

189. Second, the Tribunal agrees with the submission made on behalf of the respondent that the duty did not apply when the claimant was absent from work (*McHugh, Doran,* above). In particular, a number of the PCPs relied on by the claimant did not apply during her sick leave. This means that the respondent had no duty to make adjustments from the period July 2024 to the claimant's resignation on or around 21 February 2025. There being no duty applying during this period, the respondent cannot have failed to comply with it.

190. There are two practical effect that flow from this issue.

191. First, the claimant places a significant degree of reliance on the fact that the respondent did not make the adjustments suggested in the vocational rehabilitation report produced in October 2024. However, she remained absent from work at this time with no date for her return to work. The recommendations in this report would have been relevant to the question of what adjustments it was reasonable for the respondent to make on any return to work (given that the duty would be

potentially engaged at that point). However, until there was a date for the claimant's return to work, there was no duty on the respondent to make these recommended adjustments.

192. Second, if the Tribunal finds that there was a failure to make reasonable adjustments in respect of any matter, any failure to comply with the duty occurred on a date, or over a period, that was more than three months before the ET1 was lodged on 18 February 2025. Any claim would, therefore, be out of time and the Tribunal would need to consider whether to exercise its discretion to hear any such claim out of time.

193. However, as noted above, the Tribunal will only address the issue of time bar if it upholds any allegation of discrimination. The Tribunal will now turn to the question of whether the duty to make reasonable adjustments was engaged in respect of any matter and, if so, whether the respondent failed to comply with the duty.

194. The claimant relies on a number of PCPs as engaging the duty to make reasonable adjustments and the Tribunal will deal with each of these in turn.

195. The first PCP is that the claimant was required to work in an open plan office. It is not in dispute that this was correct.

196. The Tribunal accepts that this did place the claimant at a substantial disadvantage as a disabled person; it accepts the claimant's evidence that the effect of the overhead lighting and the inevitable volume of noise where people are in an open plan office had an adverse effect on her. It accepts her unchallenged evidence that her conditions meant that she could experience sensory overload from light and noise which at a minimum would impact on her ability to focus but which could cause her stress and discomfort.

197. It was not in dispute that the claimant had raised the issue of the lighting and noise in the office impacting on her with the respondent and the Tribunal finds that they knew that this was placing her at a disadvantage.

198. The duty to make reasonable adjustments was, therefore, engaged in respect of the first PCP.

199. The respondent did make adjustments for the claimant in relation to this PCP:-

    a. They paid for a tint to be put on the claimant's glasses in December 2023 to assist with the issue with lighting. It was not until March 2024 that it

became clear to the respondent that the wrong tint had been applied and they again offered to pay for the correct tint to be applied.

i. The claimant asserted at the hearing that no payment for the first tint had been made to her. There was no evidence that she had raised this with the respondent during her employment.

ii. The claimant did not return to the optician to get the correct tint applied. This is not something which is the fault of the respondent.

b. The respondent did permit the claimant to turn off the lights in the office as far as possible. The Tribunal will comment on this issue further below.

c. The claimant's desk was re-located to be near the window to provide natural light.

200. It was only shortly before the claimant went on sick leave that it became clear that these adjustments were not avoiding the disadvantage to the claimant. As pointed out above, the duty to make adjustments did not apply during the claimant's absence. In particular, there was no requirement to work in the open plan office whilst she was absent from work and so she was not being disadvantaged by this PCP while on sick leave.

201. The claimant asserts that the respondent failed to comply with the duty because they refused her lighting adjustments. The first point to make in relation to this is that the Tribunal accepts the evidence of the respondent's witnesses that the lighting in the office could not be dimmed or turned off only in certain areas. This was not disputed by the claimant.

202. This leaves the claimant's argument in the situation that she was seeking the adjustment of having the lights turned off completely, all the time. The Tribunal does not consider this was a reasonable adjustment; it would leave other employees in reduced lighting which could have adverse effects on their vision. There was a suggestion of desk lamps and this was tried but did not provide the necessary degree of light. LCD gave evidence that she already had problems with her sight (which required surgery) and using a desk lamp did not provide her with sufficient light. Staff needed sufficient light to carry out certain tasks and the Tribunal accepts the evidence of the respondent that desk lamps were not sufficient.

203. The claimant also makes reference to the provision of noise-cancelling headphones. The evidence of the respondent's witnesses was that the claimant used her own headphones at work and this was not disputed by the claimant. There was no evidence led by the claimant that she had indicated to the respondent that she needed anything further in terms of headphones.

204. In these circumstances, although the Tribunal has found that the duty to make reasonable adjustments was engaged in respect of the first PCP, it does not consider that the respondent failed to comply with the duty. In particular, they had made adjustments and, to the extent that these did not avoid the disadvantage to the claimant, there was no evidence of any further adjustments which it would have been reasonable for the respondent to have made.

205. The second PCP is set out in the list of issues as "*Communication and administrative procedures requiring timely responses, formal meetings, and constant verbal interaction*". The language used by the claimant is somewhat opaque but, based on what is said at paragraph 57 and 58 of the claimant's witness statement, the Tribunal has proceeded on the basis that this is a reference to the claimant finding it difficult to communicate in person when she is in an emotional state or under pressure as opposed to having to communicate with her managers, other employees or third parties as part of doing her day-to-day job.

206. However, the claimant led no evidence of when this PCP was applied in such a way as to place her at a substantial disadvantage. She simply asserts this but gives no instance when she was being required to communicate in person when upset or distressed.

207. Whilst the Tribunal accepts that the claimant may well have difficulties in communicating when upset or emotional, there needs to be evidence of an actual disadvantage to the claimant and it is not sufficient for this to be asserted in the abstract.

208. It was not in dispute that the respondent was aware of the claimant's issues with communications when upset or emotional.

209. In these circumstances, the Tribunal is not wholly persuaded that the duty to make reasonable adjustments was triggered by the second PCP. In particular, there was very little evidence of any actual disadvantage to the claimant in being required to communicate in person when upset or distressed.

210. However, even if the duty was engaged, the Tribunal considers that the respondent had complied with it.

211. The respondent made the following adjustments in respect of communication:-

    a. Face-to-face meetings with HS and LCD were arranged in private with the claimant being given notice in order to prepare.
    b. The respondent introduced a colour matrix where the claimant could send a WhatsApp message with a colour representing how she was feeling on a

given day rather than having to communicate this in words. Depending on the colours, actions set out at p614 would be taken to assist the claimant.

212. The claimant led no evidence that these adjustments did not avoid the disadvantage caused by the PCP. The evidence heard by the Tribunal was that the colour matrix was used with success.

213. The only adjustment suggested by the claimant (in her pleadings and not in evidence) was "*Meaningful engagement with Autism in Employment Training or sensitivity training, trauma-informed engagement*". The Tribunal heard evidence that LCD attended training from the Scottish Women's Autism Network in April 2024 and there was no evidence that she had not meaningfully engaged with that training.

214. The claimant led no evidence about what further training she considered would have avoided the disadvantage caused by the second PCP and how such training would have done so.

215. In the absence of any evidence about what training the respondent should have done and how this would, in practical terms, have avoided any disadvantage to the claimant, the Tribunal could not conclude that this was a reasonable step for the respondent to take.

216. In these circumstances, the Tribunal finds that, although the duty may have been engaged by the second PCP, the respondent had not failed to comply with it.

217. The third PCP relied on by the claimant is "*Rigid sick note policy requiring linear compliance with medical certification, without flexibility for fluctuating or executive functioning challenges*". Again, the wording is somewhat opaque and what is said at paragraphs 63-65 of the claimant's witness statement only provides limited assistance in understanding the claimant's case on this point. She does not, on the face of it, raise any complaint about the fact that she had to supply fit notes but only that the policy was rigid and lacking in empathy/understanding of what she was facing. She goes on to make reference to the fact that she was not leaving the house and why.

218. Based on this, the Tribunal has proceeded on the basis that this is an assertion that the respondent required her to hand in fit notes to the office which she could not do because she was unable or struggling to leave her house.

219. There was no evidence that the claimant was required to hand in fit notes. The claimant makes reference at paragraph 65 of her statement to being told *"its*

policy" but gives no context to this; she does not say who said this, what was "policy", when this was said and in response to what.

220. The only evidence of a discussion about the provision of sick notes is in an exchange of email correspondence between the claimant and LCD on 15-18 July 2024 (pp360-363). In an email of 15 July 2024 (p362), LCD reminds the claimant that her previous fit note expired on 30 June 2024 and that the claimant had said she was going to send a new one. LCD goes on to say that she can accept a scanned version or a photo. In an email of 17 July 2024 (pp360-361), the claimant confirms that she will email a copy of the new fit note.

221. There was no other evidence about how the claimant was being asked to provide her fit notes.

222. In these circumstances, the Tribunal does not consider that the claimant has provided sufficient evidence that the third PCP was, in fact, applied to her. Rather, the Tribunal finds, on the basis of the limited evidence available to it on this point, that the respondent did not apply a PCP requiring the claimant to hand in fit notes to the office and they were willing to accept electronic copies.

223. To the extent that the claimant may also be seeking to argue that the respondent required her to provide fit notes by a rigid deadline, the limited evidence, again, does not support this. There was no evidence of the respondent taking any action against the claimant when there was any delay in a fit note being provided other than to send her a reminder that they need this (p362). This is not a substantial disadvantage and there is no evidence that the respondent would not have sent a similar reminder to anyone else who was absent on sick leave where there was a delay in providing a fit note.

224. Further, there was no evidence that the claimant was not paid sick pay or had this withheld when there was any delay in paying this when there was any delay in a fit note being provided.

225. There was also no evidence that the respondent, or could reasonably have known, that the claimant had any issue with providing fit notes. The Tribunal was not taken to any contemporaneous correspondence in which the claimant indicated to the respondent that having to provide fit notes was placing her at a substantial disadvantage. There is a brief reference to providing doctor's notes in the claimant's grievance of 8 August 2024 (p368) but this was a complaint about being asked to have a discussion about a return to work when handing in a fit note in July 2024 rather than a complaint about having to provide fit notes in a particular format or by rigid deadlines.

226. In these circumstances, the Tribunal finds that the third PCP was not applied to the claimant and, even it had, the respondent did not know nor could they reasonably have known this placed the claimant at a substantial disadvantage.

227. The fourth PCP is that the claimant had to work 40 hours a week; any reduction in hours would result in a pro-rata reduction in pay.

228. It is correct that the claimant's contracted hours were 40 hours a week. It is also not in dispute that the claimant sought to reduce her hours and the respondent informed her that this would lead to a pro-rata reduction in pay.

229. The Tribunal considers that the circumstances of the present case is analogous to those in the case of *Newcastle Upon Tyne Hospitals NHS Foundation Trust v Bagley* EAT 0417/11. In that case, the claimant sought a phased return on reduced hours but the Trust would only pay her for the time she actually worked during the phased return. The Employment Appeal Tribunal held that the PCP being applied was "*paying people for the work they do*". The EAT did not consider that this placed the claimant in that case at a disadvantage in comparison with someone who was not disabled but, rather, put her in the same situation as anyone else returning to work on a part-time basis regardless of the reason why they were moving to part-time hours.

230. The Tribunal considers that the fourth PCP in the present case is the same PCP as in *Bagley* and the claimant was not being treated any differently from any other employee of the respondent who sought to reduce their hours. In these circumstances, the Tribunal does not consider that the duty to make reasonable adjustments was engaged by the fourth PCP.

231. Further, as was the case in *Bagley*, the Tribunal does not consider that it would be a reasonable adjustment for the respondent to pay the claimant for hours she did not work. The respondent is a small business and the cost to them of paying someone for work they did not do is not reasonable. There is also the impact on other staff; whilst the duty to make reasonable adjustments does require a degree of positive discrimination, it is not difficult to envisage other staff perceiving that they are being treated unfairly particularly if they sought to reduce their hours at some point.

232. To the extent that the fourth PCP relates to a reduction in hours or flexible working generally rather than just the question of a consequent reduction in pay, the Tribunal notes that the respondent offered a degree of flexible working already permitting staff to work from home where this was feasible.

233. The question of reducing the claimant's hours was not raised until the meeting of 23 May 2024 and so the Tribunal does not consider that, if working full-time hours was placing the claimant at a disadvantage, the respondent had any knowledge of this (or could reasonably have had such knowledge) until this time. The respondent did not rule out some form of flexible working or reduced hours at this time, simply that the claimant would be paid for the hours she worked.

234. This issue was not taken further because the claimant went off sick shortly after that and, as set out off above, the duty to make adjustments did not apply during her absent. In particular, there was no PCP applied during her absence for her to work her contractual hours.

235. For these reasons, the Tribunal does not consider that the duty to make reasonable adjustments was breached in respect of the fourth PCP.

236. The fifth and final PCP is that the claimant was required to use personal devices for work. This is a reference to employees of the respondent using their personal mobile phones for work purposes. The claimant asserts that this placed her at a disadvantage because of "*Trauma-related anxiety around personal/work overlap*".

237. This issue can be dealt with relatively shortly. The claimant led no evidence from which the Tribunal could conclude that the respondent knew or could reasonably have known that using a personal phone caused the claimant any disadvantage. She certainly gave no evidence that she had informed the respondent that she had any issue with using her phone; all that she told them was that she had two phones, one for work and one for her personal life. Both HS and LCD gave evidence that the claimant raised no issue with using her phone and they were not aware that this caused the claimant any problem until they had sight of her claim. This evidence was not challenged by the claimant in cross-examination.

238. In these circumstances, the "knowledge" requirement was not satisfied in respect of the fifth PCP and so the duty to make reasonable adjustments was not engaged.

<u>Decision – constructive dismissal</u>

239. The claimant asserts that she resigned on 12 February 2025 in response to a repudiatory breach of contract by the respondent and that this amounts to unlawful discrimination.

240. The Tribunal does not consider that the claimant resigned on 12 February 2025. In order for one party to properly terminate the employment relationship, this must be communicated to the other party; an employer must communicate any dismissal

to the employee and, vice versa, an employee must communicate any resignation to the employer.

241. On 12 February 2025, the claimant did not communicate any resignation to the respondent. At most, all that she did on that date was set out a settlement proposal to ACAS that included an assertion that she could not return to work and was seeking damages for loss of earnings. This is not a resignation communicated to the respondent and it would have been clear to the claimant that the respondent did not understand the claimant to have resigned because ACAS replied to her on 13 February 2025 that the respondent was not aware of any resignation. The claimant does not then communicate a resignation to the respondent; all she does is set out to ACAS why she considers there has been a breach of contract and states that she is happy to provide the respondent with a formal letter of resignation but does not do so. ACAS replies that they do not get involved in internal processes and the claimant does nothing further to communicate her resignation to the respondent.

242. It is only when the respondent receives the ET1 on 21 February 2025 that they are aware that the claimant considers that she has resigned. They then contact her by email to clarify the position and she confirms that she is terminating her contract of employment. The Tribunal considers that it is only at this point that the claimant has communicated her resignation.

243. This raises the technical question of whether the claimant could competently raise a claim of constructive dismissal when she presented her ET1 given that there had not been any valid resignation at this point in time and so there could be no "dismissal". However, this point was not raised by the respondent at time during the case management process or during the final hearing. The Tribunal has, therefore, proceeded on the basis that there is no dispute as to whether the claim of constructive dismissal had been competently presented to the Tribunal.

244. In order for the claimant to succeed in her claim of constructive dismissal under the Equality Act, she has to prove that any repudiatory breach of contract was sufficiently influenced by unlawful discrimination. The Tribunal has found that there was no unlawful discrimination as set out above and so there was no discrimination at all which could have influenced any repudiatory breach, let alone any that could have sufficiently influenced the breach so as to bring it within the scope of the Equality Act. This alone would be sufficient for the Tribunal to dismiss this claim.

245. However, the Tribunal also finds that there was no repudiatory breach of contract by the respondent at all. Looking at the facts as a whole, the Tribunal does not consider that the respondent was acting in a manner calculated or likely to destroy

or seriously undermine the employment relationship. Rather, the picture that emerges is that the respondent was making every effort to accommodate the claimant and find ways to allow her to continue to work for them.

246. The claimant relies on a number of matters as amounting to a repudiatory breach on a "last straw" basis which she also relies on as acts of discrimination. For example, the non-payment of an annual bonus which the Tribunal has found was not any form of discrimination as set out above. There is also an allegation of a failure to make reasonable adjustments but the Tribunal has found that the respondent did not fail to comply with this duty as set out above.

247. Similarly, the "last straw" is said to be a "breach of ACAS boundary" which the Tribunal takes a reference to the alleged act of harassment about the respondent contacting the claimant. This is not something which can amount or contribute to a repudiatory breach; an employer must be entitled to contact their employees to discuss matters relevant to work or where the employee is absent from work, as the claimant was, check on their welfare. So long as they do this in a way which is not unreasonable (as was the case here) then this cannot go any way towards a repudiatory breach.

248. The claimant alleges other matters such as her grievance being "dismissed without meaningful consideration". However, the Tribunal considers that the respondent did properly consider the claimant's grievance; she may not be happy with the outcome or disagree with it but that does not mean, looked at objectively, there was no meaningful consideration of her grievance.

249. For all these reasons, the Tribunal does not consider that the claim of constructive dismissal is well-founded and it is hereby dismissed.

Date sent to parties **10 November 2025**