EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000875/2025

Held in Edinburgh on 27, 28, 29 & 30 October 2025

Employment Judge J McCluskey

Members P McColl and R Taggart

Ms A L McVey — **Claimant**
Represented by:
T Pacey
Counsel

Sky UK Limited — **Respondent**
Represented by:
M Leon
Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that:

1. The complaint of unfair dismissal is not well founded and is dismissed.
2. The complaints of direct disability discrimination are not well founded and are dismissed.
3. The complaints of discrimination arising from disability are not well founded and are dismissed.
4. The complaints of failure to comply with the duty to make reasonable adjustments are not well founded and are dismissed.
5. The complaints of indirect disability discrimination are not well founded and are dismissed.
6. The complaints of harassment related to disability are not well founded and are dismissed.
7. The complaints of victimisation are not well founded and are dismissed.

REASONS

Introduction

1. The claimant brings complaints of unfair dismissal, direct disability discrimination, discrimination arising from disability, failure to comply with the duty to make reasonable adjustments, indirect disability discrimination, harassment related to disability and victimisation. The complaints are resisted by the respondent.

2. The respondent concedes that the claimant is a disabled person by reason of autism at the time of the events the claim is about. The respondent does not concede that the claimant is a disabled person by reason of ADHD.

3. The final hearing was listed to determine liability and remedy. Witness statements had been ordered and exchanged between parties.

4. The claimant gave evidence. Her daughter Ms Kelsea McVey also gave evidence. For the respondent, the Tribunal heard evidence from Mr Nick Sarkissian - claimant's line manager; Ms Harley Smith – HR people consultant; and Ms Jessica Johnston – grievance investigation manager.

5. The witness statements exchanged by parties, including appendix 1 and appendix 2 to the claimant's witness statement, were accepted by the Tribunal as evidence in chief.

6. There was a joint bundle of productions extending to 607 pages. The Tribunal reminded parties at the outset of the hearing that it would only consider the documents to which it was taken in the witness statements or during oral evidence of witnesses.

Issues

7. The parties had agreed a list of issues in advance of the final hearing. Following discussion at the outset of the hearing the list was updated by representatives. The updated agreed list of issues is set out in the appendix.

Findings in fact

8. The claimant was employed by the respondent from 30 November 2015 to 31 December 2024 as a Solutions Architect. The claimant was provided with a contract of employment dated 16 November 2015. It did not contain duties or a job description.

9. The claimant was absent from work in around September 2022 with stress and anxiety. She returned to work. The claimant was absent from around January 2023 until around April 2023 with symptoms of stress, low mood and anxiety (page 170).

10. The claimant was assessed by occupational health (OH) on 2 May 2023 (first OH report). (page 169). The report proposed that the claimant work from home. This was implemented by the respondent.

11. Paul Tindle (PT) was the claimant's manager in 2022 – 2023. There were differences in professional opinion between PT and the claimant about the tool set /technical resources to be used by the team. These were decisions for PT as the manager to make and not the claimant.

12. Nick Sarkissian (NS) became the claimant's line manager in around September 2023. In the first few months after he joined, he made some changes to the general management of the team by reducing the number of team and one to one meetings for everyone. The claimant did not tell NS that she wished more one to one meetings.

13. NS and two members of the team attended a work event in London hosted by a third party. The team members had been working with the third party and NS attended as their manager. The claimant was not invited to attend as she had not been working with the third party.

14. The claimant's one to ones with NS were scheduled on a fortnightly basis. Sometimes the one to ones with the claimant and with others were rearranged by NS due to work demands. They were not cancelled.

15. The claimant was in Canada from around late January 2024 until around late February 2024. She was absent from work. The claimant had not had her absence approved by the respondent. The claimant was recorded as absent without leave. The claimant subsequently obtained a backdated fitness for work certificate from her GP for the period of absence. The claimant returned to work briefly. She was then signed off sick by her GP. She returned to work in around May 2024.

16. The claimant was assessed by OH on 21 May 2024 (second OH report). The second OH report recorded that the claimant had symptoms of affected mood and anxiety following a bereavement and had been prescribed anti-depressant medication. (page 165) The report referred to her "suspected ADHD and possible autism".

17. On 17 June 2024 the claimant emailed NS. She wrote "As we discussed last time, I've put together a list of the ways that my autism and adhd present to give you some idea of how my brain is wired. I am sure there are other things, but this is off the top of my head". (page 603)

18. In her email the claimant set out a list of six things which she called "traits". These were: time blindness; hyperfocus/object permanence; anxiety/ frustration; auditory processing issues; routines; autonomy. Under each trait she set out some bullet points about how she said each trait "manifests". There was nothing else written in the email. The bullet points setting out how each trait manifests did not suggest any adjustments to the claimant's role. The traits are also set out in a list in the file of productions and are referred to below as the traits at page 135. The claimant did not identify which were traits of adhd, which were traits of autism or which were traits of both.

19. The email on 17 June 2024 was the first time the claimant had made the respondent aware of these traits or how they manifest.

20. When the claimant came back from her period of absence in May 2024 she was not allocated less meaningful work, less challenging assignments or reduced work and responsibilities by NS. There was a business need for all the work allocated to her. She was allocated new project work when that arose. One such project was Polaris. The claimant wanted to have authority over all technical changes in the team. That was not something she had done immediately before her absence. The claimant was on a phased return to work. It was not practical to remove work from other team members to give to the claimant when she returned. Swapping individuals in and out of projects is not something typically done by the respondent as it makes it harder to manage projects.

21. The claimant did not request any adjustments or accommodations to her role on or after having sent her email of 17 June 2024.

Personal development plans (PDPs)

22. The claimant's manager from 30 November 2015 until around March 2022 was Calum Barker (CB). The claimant mainly enjoyed working for CB. The claimant got an overall score of 2 in her PDPs completed by CB.

23. The claimant's line manager from around March 2022 until September 2023 was Paul Tindle (PT). The claimant got an overall score of 2 in her PDP completed by PT.

24. The claimant's line manager from September 2023 until her employment ended was Nick Sarkissian (NS).

25. All employees of the respondent have a yearly Personal Development Plan (PDP). Objectives are set with the line manager at the beginning of the calendar year. The PDP is completed by the line manager at the end of the calendar year. The PDP scores are allocated by the line manager after discussion with the employee and taking account of feedback from peers, team members and others.

26. PDPs are scored between a 1-5. There is a score for "the What" achieved against the employee's objectives. There is a score for "the How" which is based on the "Sky values" (page 97). There is then an overall score.

27. A 3 is a good score and means the employee has fully met expectations for the year. A 2 means the employee has partially met expectations.

28. The PDP for calendar year 2022 was carried out by PT towards the end of 2022. The respondent did not know about the traits set out at page 135.

29. NS carried out the PDP meeting with the claimant for the year January – December 2023 towards the end of 2023 (page 158-159) He had been her manager since September 2023. He relied in part on feedback from peers and team members. The respondent did not know about the traits set out at page 135.

30. The claimant was given an overall score of 2 (partially meets expectations) by NS. The claimant was informed of her scores and overall evaluation in March

2024, at the same time as other employees. She did not challenge any aspect of the PDP.

31. Other line managers had carried out the same PDP exercise with the claimant in previous years. She received an overall evaluation of 2. She did not challenge any aspect of the PDPs at the time.

32. The PDP for calendar year 2024 was not used by the respondent for the purposes of pay or bonus or any other decision making as the claimant had left the respondent's employment by 31 December 2024.

33. The PDP overall score is linked to the employee's annual pay and any annual bonus award.

Redundancy consultation

34. On 8 October 2024 the respondent announced proposed redundancies. Given the numbers proposed, collective consultation was required. The claimant was affected by the proposals. The claimant was in a pool of 2 employees. The other employee was Emma Hay (EH). Both were Solutions Architects. The proposal was to reduce the Solutions Architects posts from two to one.

35. EH was in the post of Solutions Architect when NS joined the team as the manager. She was carrying out technical work and other work.

36. Collective consultation began on 15 October 2024 and ended on 12 November 2024. There were four collective consultation meetings. At the beginning of the collective consultation process NS read from a pre-prepared script, outlining the process. He did not deviate from that script. .

37. During collective consultation, EH was the employee representative for the pool containing her and the claimant. This was with the agreement of the claimant.

38. During collective consultation the proposed redundancy selection criteria were discussed. The claimant inputted her views through EH. A proposal was made to change the weighting of the last selection criterion (the PDP score for the last two years) from the selection matrix. This was because PT had carried out the PDP assessment two years ago for her and EH. This was the claimant's proposal. The claimant had not enjoyed working with PT. The

respondent accepted the proposal in part. The last selection criterion was changed to the PDP score in the previous one year only. The rationale was that the PDP assessment in the previous year had not been carried out by PT. The weighting remained as before. There were sixteen agreed selection criteria.

39. Following collective consultation, the respondent scored the claimant and EH against the agreed selection criteria. This was done by NS as the manager of the team and checked by Harley Smith (HS). The claimant had the lower overall score. Her post was identified as at risk of redundancy.

40. The claimant scored a 2 for the last selection criterion (PDP score in the previous year). This is because her overall PDP score in the previous year, from NS, was a 2.

41. If the last selection criterion had been removed this would not have resulted in the claimant receiving a higher overall score than EH in the redundancy selection criteria matrix. The claimant would have remained at risk of redundancy.

42. The claimant's opinion was that EH did not have the experience or skill set to be in the post of Solutions Architect. This was not an opinion shared by NS who was the manager of the claimant, EH and others.

43. On 18 November 2024 the respondent wrote to the claimant. It said that following collective consultation the proposal to reduce the Solutions Architect posts from two to one was continuing. It said that the claimant's post had been identified as at risk of redundancy. It said that the respondent would continue to try to identify ways in which redundancy could be avoided including the possibility of alternative employment to be discussed during individual consultation.

44. A Product Manager post was identified during collective consultation as a potential possibility of alternative employment. The respondent said that the claimant and EH could apply for it once it was posted.

45. The claimant attended individual consultation meetings with NS on 18 November, 26 November, 5 December, 9 December 2024. The proposed redundancy of the claimant's post was discussed with her. The claimant was given the opportunity to discuss the selection criteria and her scoring against the selection criteria. She did not wish to do so. The claimant did not raise any

concerns during individual consultation meetings about her proposed selection for redundancy. The claimant asked some questions about the redundancy payment to be made to her and other practical matters such as the tax treatment of the payment. The claimant told NS she was not interested in alternative employment with the respondent.

46. On or around 17 December 2024 the respondent was told that the claimant was posting messages in a Whatsapp group with colleagues about possibly deleting information on the systems before her departure. (page 455). The respondent was concerned about this. NS's line manager and HS discussed, and HS spoke to NS. It was agreed that NS would speak to the claimant, if necessary, about the messages. It was agreed that NS would firstly give the claimant the option of returning her equipment by the end of the week and going on paid leave until her termination date, without raising the Whatsapp messages with her. It was to be presented as an option because colleagues may not be available after the end of the week.

47. On 17 December 2024 NS spoke to the claimant. She was given the opportunity to return her equipment early due to the Christmas period. She was told this did not affect the termination date of 31 December 2024 or her holiday entitlement. The claimant agreed to returning her equipment by the end of the week and going on paid leave until her termination date (page 458).

48. On 19 December 2024 the respondent wrote to the claimant terminating her employment by reason of redundancy with effect from 31 December 2024.

Grievance

49. On 28 November 2024 the claimant raised a formal grievance. She made allegations of discrimination related to autism and ADHD by the respondent over a number of years.

50. NS did not know that the claimant had raised a grievance on 28 November 2024 until Ms Johnston contacted him in February 2025 when she was investigating the grievance.

51. The respondent acknowledged the claimant's grievance. On 11 December 2024 the respondent wrote to the clamant to confirm that steps were being taken to identify a suitable investigation manager. A suitable person was identified who confirmed they could carry out the investigation after Christmas and new year. It was not possible to resolve the claimant's grievance before

her employment ended, as the claimant requested. This was due to the length of investigation required and the availability of witnesses and staff.

52. After Christmas and new year, the appointed investigation manager was no longer available. Jessica Johnston (JJ) was appointed as the investigation manager on 24 February 2025. The respondent's HR investigation team investigate all grievances about discrimination. The respondent's grievance process does not permit complaints about PDP scores or about redundancy. These must be raised through the PDP or redundancy processes.

53. A grievance investigation meeting with the claimant took place on 11 March 2025. Investigation meetings with four witnesses took place thereafter. The claimant was sent the grievance outcome on 25 April 2025. The matters raised in her grievance were not upheld.

Observations on the evidence

54. This judgment does not seek to address every point upon which the parties gave evidence. It only deals with the points which are relevant to the issues the Tribunal must consider, to decide if the claim succeeds or fails. If a particular point is not mentioned, it does not mean that the Tribunal has overlooked it. It is not included simply because it is not relevant to the question of whether the claim succeeds or fails. Any references to page numbers are to the paginated bundle of productions.

55. The standard of proof is on a balance of probabilities. This means that if the Tribunal considers that, on the evidence, an event's occurrence was more likely than not, then the Tribunal is satisfied that it occurred. Likewise, if the Tribunal considers that, on the evidence, an event's occurrence was more likely not to have occurred, then the Tribunal is satisfied that it did not occur.

56. The Tribunal found the respondent's witnesses to be credible and reliable. There were several conflicts in the evidence. The Tribunal has resolved these mainly in favour of the respondent. The Tribunal did not regard the fact that it preferred the evidence of the respondent as tainting the claimant's overall credibility. These were differences in recollection and differences in perception.

57. The claimant's evidence was that she spoke to PT about her pre-diagnosis of autism during their first one to one conversation in March 2022. Her evidence was that she told PT about her symptoms and how they manifested and provided him with a follow up email that provided the details in writing. The

claimant did not have a copy of the email to PT and did not have a date when she said that she had sent it to him. The claimant's evidence was she had sent the traits set out at page 135 document, as an attachment to that email. The claimant's evidence was that she had sent the same traits set out at page 135 document as an attachment to an email to NS in November 2023. The claimant did not have a copy of the email to NS (para 32 and para 33 witness statement).

58. The respondent's evidence was that there was a retention policy for emails of four years. The emails which the claimant said she had sent could not be found. It would be expected that they could be found due to the retention policy. The respondent's evidence was that the claimant had sent the traits set out at page 135 for the first time in the body of an email to NS on 17 June 2024 (page 603). This was shortly after the claimant received a formal diagnosis of autism.

59. In the absence of the emails which the claimant said she sent to PT and NS, and the explanation about the email retention policy, the Tribunal concluded that it was more likely than not that the claimant had not sent either of the two emails. On the other hand, there was an email from the claimant to NS on 17 June 2024 showing that the claimant had sent the list of traits at page 135 in the body of an email to NS on 17 June 2024. The Tribunal was satisfied that the respondent first became aware of the list of traits on 17 June 2024.

60. The claimant's evidence was that she told PT in March 2022 and NS in November 2023 about her symptoms and how they manifest and followed up by email to both. The claimant relied on the same two purported emails she had referred to previously and which neither she nor the respondent could find. In the absence of the emails the Tribunal concluded that it was more likely than not that the claimant had not told PT or NS, in 2022 or 2023 about the traits. That was the evidence of NS, who had not seen the document before 17 June 2024, which evidence we accepted.

61. There was a dispute in the evidence about the work the claimant was allocated by NS. The claimant evidence was that NS allocated her less meaningful work, less challenging assignments and reduced work and responsibilities when he started as her manager in September 2023. NS evidence was that wasn't the case. His evidence was that in the period prior to her absence from around January – May 2024, as the new manager he was making some changes to the general management of the team by reducing the number of meetings. This was not specific to the claimant. The Tribunal accepted this and accepted that this was the sort of thing which happened when a new manager took over.

62. The claimant's main criticism of work allocation was in the period after she returned to work in around May 2024. NS evidence was that when the claimant returned after her absence in January – May 2024 she was on a phased return and it took time to build up her workload again. This was in accordance with the second OH report which recommended a gradual increase to workload. NS evidence was that when the claimant returned in May 2024, she was allocated work which was available, there was a business need for that work and that she was allocated new project work when that arose. The Tribunal accepted that evidence. The claimant's evidence was that staff were swapped in and out of projects regularly and that she ought to have been swapped into projects when she returned with other staff removed. The Tribunal accepted NS evidence that that was not something typically done. The Tribunal accepted NS evidence about the need to manage projects. It did not make business sense to take work away from individuals mid way through a project.

63. There was a dispute in the evidence about whether the claimant was the only qualified Solutions Architect in the team. The claimant's evidence for the period when NS became her manager can be summarised by what the claimant says in her witness statement (para 185)."In my last year at Sky I was allocated almost nothing technical. Considering Ty had left Sky I should have been given authority over all the technical changes as I was the only person on the team who had the requisite experience and technical skills. I was the only qualified Solutions Architect on the team".

64. The Tribunal was satisfied that there were two Solutions Architects in the team, the claimant and EH. EH was in the role of Solutions Architect when NS joined the team as the manager. The Tribunal was satisfied that NS was entitled to rely on decisions made before he arrived in the team to move EH into a Solutions Architect role. NS evidence, which the Tribunal accepted, was that EH was well able to perform the Solutions Architect role. That was reflected in the redundancy scoring for EH. The Tribunal did not accept that the claimant was the only qualified Solutions Architect. Accordingly, the Tribunal did not accept that the claimant should have been given authority over all technical changes as she asserted or that there had been a removal of such an authority from her. She had not had authority over all technical changes in the team immediately prior to her absence.

65. There was a dispute in the evidence about whether NS had excluded the claimant from work meetings. The claimant's evidence was that before NS was her manager she participated in at least two or three calls a day. After NS started this was one call a day and the one to ones. NS evidence was that

he reduced the number of calls which everyone on the team had to attend. This was part of general management changes and was not specific to the claimant. The Tribunal preferred NS evidence. He was the new manager and was entitled to make changes. The claimant's evidence was that she was excluded from a work trip to London. NS evidence was that the London trip was hosted by a third party who invited two members of the team working with the third party to attend. NS also attended as the manager. Many other team members did not attend. The Tribunal accepted NS evidence that the claimant was not specifically excluded from the trip to London.

66. There was a dispute in the evidence about whether NS cancelled one to ones with the claimant. The claimant's evidence was that if a one to one did not go ahead it had been cancelled. NS evidence was that there were occasions when the one to one meetings need to be rearranged due to work demands. His evidence, which the Tribunal accepted, was that they were rearranged and therefore they were not cancelled as the claimant said. The Tribunal accepted the respondent's evidence that work demands would sometimes mean that the one to ones were rearranged.

67. There was a dispute in the evidence about whether NS has deviated from the script he read out at the announcement about proposed redundancies. NS said that he was nervous about the announcement and had stuck to the script. The Tribunal was satisfied that he had stuck the script for this reason. It was an important announcement and not one where he was likely to deviate from the message.

Relevant law

Unfair dismissal

68. Section 94 ERA provides that an employee has the right not to be unfairly dismissed. It provides that for a dismissal to be fair, the employer must show the reason for the dismissal and that it is one of the potentially fair reasons set out in section 98 (1) or (2) ERA. The respondent relies on section 98 (1)(b) ERA "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held", specifically an irretrievable breakdown in the employment relationship between the claimant and the respondent.

69. The reason for dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee (**Abernethy v Mott, Hay and Anderson 1974 ICR 323**)

70. In terms of section 98(4) ERA, if the Tribunal is satisfied that the respondent has established a potentially fair reason for dismissal, it must then determine the question of whether the dismissal was fair or unfair having regard to the matters set out in section 98(4) (a) and (b): whether in the circumstances (including the size and administrative resources of the employer), it acted reasonably or unreasonably in treating the reason as a sufficient reason for dismissing the employee, and the equity and substantial merits of the case.

71. The test in determining the application of section 98(4) ERA is whether the dismissal fell within the "band of reasonable responses", a test which reflects the fact that inevitably there may be different decisions reached by different employers in the same circumstances (**British Leyland (UK Limited) v Swift 1981 IRLR 91**).

72. In applying section 98(4) ERA, the Tribunal must not substitute its own view of the matter for that of the employer but must apply an objective test of whether the dismissal was, in the circumstances, within the range of reasonable responses open to a reasonable employer (**Iceland Frozen Foods Limited v Jones [1982] IRLR 439; HSBC Bank plc (formerly Midland Bank plc) v Madden [2000] IRLR 827CA**).

73. Where dismissal is due to a breakdown in a working relationship it is necessary, before deciding whether or not the dismissal was fair, to ascertain whether the employer had taken reasonable steps to try to improve the relationship; and to establish the dismissal was not unfair, the employer has to show not only that there has been a breakdown but that the breakdown was irremediable (**Turner v Vestric Ltd [1980] ICR 528**).

Time limits – EqA

74. Section 123 (1) EqA provides*: "Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of – (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the employment tribunal thinks just and equitable".* For the purposes of subsection (a), conduct extending over a period is to be treated as done at the end of the period.

Disability status

75. Section 6(1) EqA provides that a person has a disability if they have 'a physical or mental impairment; and the impairment has a substantial and long-term adverse effect on the person's ability to carry out normal day to day

activities.' The statutory definition of 'substantial' in section 212(1) EqA is 'more than minor or trivial'.

76. Supplementary provisions for determining whether a person has a disability are found in part 1 of schedule 1 to the EqA. For example, schedule 1, paragraph 2 provides that the effect of an impairment is long-term if it has lasted at least 12 months, is likely to last for at least 12 months or is likely to last for the rest of the life of the person. Further if the impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day to day activities, it is treated as continuing to have that effect if it is likely to recur.

77. Schedule 1, paragraph 5(1) EqA provides that an impairment is treated as having a substantial adverse effect on the ability of the person concerned if measures are taken to correct it and, but for that, it would be likely to have that effect.

78. The Government has issued 'Guidance on matters to be taken into account in determining questions relating to the definition of disability' (the Guidance) under section 6(5) EqA.

79. Appendix 1 to the EHRC Employment Code states that 'there is no need for a person to establish a medically diagnosed cause for their impairment. What is important to consider is the effect of the impairment, not the cause' — para 7. This endorses the decision in **Ministry of Defence v Hay 2008 ICR 1247, EAT,** where the EAT held that an 'impairment' under the antecedent legislation could be an illness or the result of an illness, and that it was not necessary to determine its precise medical cause. The statutory approach, said the EAT, "is self-evidently a functional one directed towards what a claimant cannot, or can no longer, do at a practical level".

80. Day to day activities are things people do on a regular or daily basis and include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern (Guidance, D3).

81. The Appendix to the Guidance sets out an illustrative and non-exhaustive list of factors which, if they are experienced by a person, it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities. This includes persistent general low motivation or loss of interest in everyday activities; persistently wanting to avoid people or significant difficulty taking part in normal social interaction or forming social relationships, for example because of a mental health condition or disorder; and persistent distractibility or difficulty concentrating.

82. The leading case on the examination of whether a person is disabled is the EAT decision of **Goodwin v Patent Office [1999] ICR 302**. While that case concerned the predecessor legislation to the EqA, the four questions identified in Goodwin remain appropriate: (1) The impairment condition: Does the claimant have an impairment which is either mental or physical? (2) The adverse effect condition: Does the impairment affect the claimant's ability to carry out normal day-to-day activities, and does it have an adverse effect? (3) The substantial condition: Is the adverse effect (upon the claimant's ability) substantial? (4) The long-term condition: Is the adverse effect (upon the claimant's ability) long-term?

83. The time at which to assess the disability (i.e. whether there is an impairment that had a substantial adverse effect on the ability to carry out normal day to day activities) is the date of the alleged discriminatory act (**Cruickshank v VAW Motorcast Ltd [2002] ICR 729, EAT**). This is also the material time when determining whether the impairment has a long-term effect.

Disability discrimination

84. Section 13 EqA provides*: "Direct Discrimination (1) A person (A) discriminates against another (B) if, because of a protected characteristic, (A) treats (B) less favourably than (A) treats or would treat others".*

85. Section 23(1) EqA provides that on a comparison for the purpose of establishing direct discrimination there must be *'no material difference between the circumstances relating to each case'.* The comparator required for the purpose of this statutory definition must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class (**Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL**).

86. The circumstances of the claimant and the comparator need not be identical in every way. What matters is that the circumstances which are relevant to the claimant's treatment are the same or nearly the same for the claimant and the comparator — para 3.23 EHRC Employment Code.

87. Section 15 EqA provides: *"15 Discrimination arising from disability (1) A person (A) discriminates against a disabled person (B) if—(a)A treats B unfavourably because of something arising in consequence of B's disability, and (b)A cannot show that the treatment is a proportionate means of achieving a legitimate aim".*

88. Section 19 EqA provides: *"19 (1)A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.(2)For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—(a)A applies, or would apply, it to persons with whom B does not share the characteristic,(b)it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,(c)it puts, or would put, B at that disadvantage, and (d)A cannot show it to be a proportionate means of achieving a legitimate aim".*

89. Sections 20 and 21 EqA provide: *"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 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...."*

90. *"21 Failure to comply with duty (1)A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.(2)A discriminates against a disabled person if A fails to comply with that duty in relation to that person...."*

91. Section 26(1) EqA provides "*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*."

Victimisation

92. Section 27 EqA provides *"Victimisation (1)A person (A) victimises another person (B) if A subjects B to a detriment because—(a)B does a protected act, or(b)A believes that B has done, or may do, a protected act.(2)Each of the following is a protected act—(a)bringing proceedings under this Act;(b)giving evidence or information in connection with proceedings under this Act;(c)doing any other thing for the purposes of or in connection with this Act;(d)making an allegation (whether or not express) that A or another person has contravened this Act.(3)Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith".*

Burden of proof

93. Section 136 EqA states: *"Burden of proof (2) If there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the tribunal must hold that the contravention occurred. (3) But this provision does not apply if A shows that A did not contravene the provision."*

94. The burden of proving the facts referred to in section 136(2) EqA lies with the claimant. If this subsection is satisfied, then the burden shifts to the respondent to satisfy subsection 136(3) EqA.

95. This is described in case law as a two-stage process. The claimant must first establish a first base or prima facie case by reference to the facts made out. If she does so, the burden of proof shifts to the respondent at the second stage. If the second stage is reached and the respondent's explanation is inadequate, it is necessary for the Tribunal to conclude that the claimant's allegation is to be upheld. If the explanation is adequate, that conclusion is not reached (**Igen v Wong [2005] IRLR 258; Madarassy v Nomura International Plc [2007] IRLR 246**).

96. 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**).

97. 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 (section 23 EqA). In deciding how a hypothetical comparator would have been treated, the Tribunal is entitled to have regard to the treatment of real individuals (**Chief Constable of West Yorkshire Police v Vento [2001 IRLR 124**).

98. 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 the protected characteristic was the reason for the difference in treatment.

99. 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**).

Submissions

100. The Tribunal carefully considered the submissions of both parties during its deliberations. The Tribunal has dealt with the points made in submissions, where relevant, when setting out the facts, the law and the application of the law to those facts in reaching its decision. It should not be taken that a submission was not considered because it is not part of the discussion and decision recorded.

Discussion and decision

Ordinary unfair dismissal

101. In considering the complaint of unfair dismissal the Tribunal had regard to the terms of section 98 ERA which sets out how to approach the question of whether a dismissal is fair. There are two stages: first, the respondent must show the reason for the dismissal and that it is one of the potentially fair reasons set out in section 98(1) and (2) ERA. If the respondent is successful at the first stage, the Tribunal must then determine whether the dismissal was fair or unfair under section 98(4) ERA. This requires consideration of whether

the respondent acted reasonably in dismissing the claimant for the reason given.

102. The parties agreed that the claimant was dismissed. The respondent says the reason was redundancy.

103. The Tribunal considered the case of **Abernethy v Mott, Hay and Anderson 1974 ICR 323** where it was stated that "A reason for dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."

104. The Tribunal had regard to the letter of dismissal. The reason for dismissal was stated to be redundancy. There had been collective redundancy consultation meetings and individual redundancy consultation meetings with the claimant prior to her dismissal.

105. The Tribunal was satisfied that the respondent had shown that the reason for dismissal was redundancy. This is a potentially fair reason falling within section 98(1) ERA.

Fairness of the dismissal

106. The Tribunal considered whether dismissal for the reason given by the respondent was fair or unfair. The Tribunal must ask itself whether the respondent acted reasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant. The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

107. The Tribunal considered whether: the respondent adequately warned and consulted the claimant; the respondent adopted a reasonable selection decision, including its approach to a selection pool; the respondent took reasonable steps to find the claimant suitable alternative employment; dismissal was within the range of reasonable responses.

108. The respondent announced a proposal to begin a collective consultation process. It arranged for employee representatives from each of the constituent groups to be appointed. EH was appointed as the representative for the constituent containing the claimant. There was collective consultation with the employee representatives about the proposal to dismiss twenty or more employees at one establishment within the relevant time period. There was consultation with the employee representatives about the proposed

selection criteria for the constituent groups. The respondent made changes to the selection criteria in response to feedback from the employee representatives. This included in the constituent group for the claimant. The claimant inputted on collective consultation through her employee representative. There were several collective consultation meetings with employee representatives for a period of over a month.

109. Turning to individual consultation, the claimant was invited to four individual consultation meetings. She was given the opportunity to ask questions about the selection criteria, her scoring against those criteria and any other questions about the proposed redundancy of the post which she held.

110. The claimant did not ask any questions about the selection criteria or her scoring against those criteria. The claimant did not raise any concerns in those meetings about her selection for redundancy. The claimant asked some questions about the redundancy payment to be made to her and other practical matters such as the tax treatment of the payment.

111. The Tribunal was satisfied that the claimant had been given an opportunity to make full representations to the respondent both during collective consultation and individual consultation.

112. The Tribunal considered whether the respondent adopted a reasonable selection decision, including its approach to a selection pool. The Tribunal was satisfied that it had. The claimant's evidence was that EH had been promoted to the post of Solutions Architect by NS and suggested that had been done artificially to impact on the redundancy process. The Tribunal accepted NS evidence that EH was already in the post of Solutions Architect when he joined the team as the manager in September 2023. Her promotion had not been done in order to impact on a redundancy situation over a year later.

113. The selection pool contained the two Solutions Architects in the team. During the collective consultation process proposed selection criteria for the pool were discussed. Those in the pool including the claimant were given the opportunity to input to the selection criteria, through the employee representative. The claimant did so and certain changes were made to the criteria following her input. There was a series of collective consultation meetings. The claimant and EH were scored against the selection criteria, changed after discussion during the collective consultation process. The scoring process was carried out by NS as the manager of the team and was

checked by HR. NS had been the manager of the claimant and of EH for over a year by the time he was carrying out the scoring exercise and was best placed to score both individuals.

114. The Tribunal considered whether the respondent took reasonable steps to find the claimant suitable alternative employment. It was satisfied that it had. During the individual consultation process the claimant told NS she was not interested in redeployment options within the respondent. The claimant said that she wanted to start her own business and was asking about support to do that. The claimant was directed to the outplacement package on offer. The claimant's evidence was that a Product Manager role was held back and only posted once the claimant left in December. The Tribunal was satisfied that the claimant knew about the Product Manager role from collective consultation. If she had been interested in applying for the role, she could have made the respondent aware of this at the time when she was handing in equipment on 18 December 2024 or thereafter. She did not do so. The Tribunal did not accept that the Product Manager role was held back to prevent her from applying for the role, as she suggested.

115. The Tribunal was satisfied that the respondent approached redundancy consultation with an open mind. The respondent had carried out collective consultation. The respondent had carried out individual consultation. The claimant told the respondent she was not seeking alternative employment with the respondent as an alternative to redundancy.

116. The Tribunal was satisfied that in determining whether the dismissal was fair or unfair having regard to the matters set out in section 98(4)(a) and (b) ERA (including the size and administrative resources of the employer) the dismissal fell within the range of reasonable responses open to the respondent

Conclusion

117. As set out above the Tribunal was satisfied the respondent had shown the reason for the claimant's dismissal was redundancy. The Tribunal has also carefully considered the procedure followed as set out above. The Tribunal reminded itself that the question it must ask is not whether it would have dismissed the claimant. Rather it must ask whether the respondent's decision to dismiss the claimant fell within the band of reasonable responses which a reasonable employer might have adopted (**Iceland Frozen Foods Ltd v Jones 1983 ICR 17**). The Tribunal decided that it did. The dismissal was fair.

118. The complaint of ordinary unfair dismissal is dismissed.

Disability status

119. The claimant relied on impairments of ASD, ADHD, Auditory Processing Disorder and Dyspraxia when providing her disability impact statement to the Tribunal on 27 June 2025 in response to a case management order. In the agreed list of issues, it was accepted by the respondent that the claimant was a disabled person by reason of autism at all material times. The only other impairment insisted upon by the claimant as a disability was ADHD. This was not conceded by the respondent.

120. The claimant has no medical diagnosis of ADHD and the claimant's medical records produced to the Tribunal refer to autism but not to ADHD. The Tribunal thereafter considered the evidence which the claimant has provided to the Tribunal by way of her own testimony about ADHD.

121. The Tribunal directed itself to the four questions set out in **Goodwin v Patent Office [1999] ICR 302,** namely: Did the claimant have a mental or physical impairment at the relevant time? Did the impairment affect the claimant's ability to carry out normal day to day activities? Was that effect substantial? Was the effect long term ie has lasted 12 months or is likely to last for at least 12 months or is likely to last the rest of the life of the person affected?

122. The Tribunal accepted that the claimant had a mental impairment of ADHD at the relevant time. It was her understanding that she had ADHD from the research she had carried out herself. She had told her GP and the occupational health clinicians that she thought she had ADHD and has been referred by her GP for an assessment for ADHD. The claimant's understanding was that she had experienced ADHD for many years including at the relevant time. The claimant is on the waiting list for an assessment for ADHD and does not currently have a diagnosis. Notwithstanding the lack of diagnosis, the Tribunal accepted the claimant's evidence having carried out her own research, that she had a mental impairment of ADHD and that she has had this impairment for many years, including at the relevant time.

123. Next the Tribunal asked itself whether the impairment of ADHD affected the claimant's ability to carry out normal day to day activities.

124. Appendix 1 to the EHRC Employment Code states that 'there is no need for a person to establish a medically diagnosed cause for their impairment. What is important to consider is the effect of the impairment, not the cause' — para 7. This endorses the decision in **Ministry of Defence v Hay 2008 ICR 1247,** EAT. The statutory approach, said the EAT, "is self-evidently a functional one directed towards what a claimant cannot, or can no longer, do at a practical level".

125. The Tribunal considered the claimant's disability impact statement produced by the claimant on 27 June 2025 in response to a case management order. The Tribunal considered what, if anything, the claimant said that she cannot do by reason of ADHD.

126. The claimant's responses in her disability impact statement set out in a general sense the steps taken to reduce the effects of various neurological conditions, including ADHD. The claimant did not identify or separate out the effects of ADHD in particular. She did not identify what she cannot do on a practical level by reason of ADHD. She did not identify the steps taken by her to reduce her symptoms of ADHD, specifically. She did not make any specific reference to ADHD, save to say that she did not yet have a diagnosis. The only reference to the effects of a specific impairment (as opposed to the effects of ASD, ADHD, Auditory Processing Disorder and Dyspraxia in a general non-specific sense) were about autism not to ADHD.

127. The claimant also relies on the contents of an Occupational Health report dated 21 May 2024. The report records that the claimant has been referred to a specialist for suspected ADHD and possible autism. The report records that the claimant says she has long standing symptoms associated with "neurodivergent conditions". The report does not differentiate between the symptoms associated with autism and ADHD. The burden of proof is on the claimant. The claimant relies on the impairment of ADHD as a separate disability from autism. The medical information either refers only to autism or does not differentiate between the effects of the two impairments on the claimant's ability to carry out day to day activities. The claimant has not discharged the burden of proving that ADHD specifically, affects her ability to carry out normal day to day activities.

128. Accordingly, the claimant has not proven that she is disabled under section 6 EqA by reason of ADHD.

Direct disability discrimination

129. The claimant asserts that she was allocated less meaningful work, less challenging assignments, reduced work and responsibilities. The claimant asserts that she was excluded from work meetings. The claimant asserts that her one to one meetings were cancelled.

130. As set out in the findings in fact, the Tribunal is satisfied that the claimant was not allocated less meaningful work or less challenging assignments or reduced work and responsibilities when NS joined the team as her manager. He made some general changes to management of the team by reducing the number of meetings for everyone. When the claimant returned from work after her period of absence from around January – May 2024 she was given work to do and assigned to new projects when they arose. This was work for which there was a business need. It may not always have been the work which the claimant wanted to do. The claimant wanted to have authority over all technical changes in the team. That was not something she had done immediately before her absence.

131. As set out in the findings in fact, the Tribunal is also satisfied that the claimant was not excluded from work meetings and that her one to one meetings were not cancelled.

132. Section 136(2) EqA provides that if there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the tribunal must hold that the contravention occurred. (3) But this provision does not apply if A shows that A did not contravene the provision."

133. The burden of proving the facts referred to in section 136(2) EqA lies with the claimant. If this subsection is satisfied, then the burden shifts to the respondent to satisfy subsection 136(3) EqA. The Tribunal directed itself to the guidance on the shifting burden of proof set out in, for example in **Igen v Wong [2005] IRLR 258** and **Madarassy v Nomura International Plc [2007] IRLR 246**.

134. The Tribunal was satisfied that the claimant had not established a first base or prima facie case by reference to the facts made out. No facts have been proven from which an inference of discrimination could be drawn. The burden of proof had not shifted.

135. If the Tribunal is wrong on that and the burden of proof has shifted, the Tribunal accepted the respondent's explanations. The claimant was not the only qualified Solutions Architect in the team on her return to work in May 2024. EH was also qualified and carrying out technical work. There was no need for the claimant to have authority over all technical changes in the team. Nor had there been a removal of such an authority from her. The respondent was assigning the claimant project work when it arose rather than swapping others out of project work to put her in. Swapping others out of project work was not typically done as it made project management harder. The Tribunal accepted the respondent's reasons for work allocation and assignments. Additionally, regarding reduced work and responsibilities, the second OH report recommended a gradual increase to workload. The Tribunal was satisfied that these were all non-discriminatory reasons for the treatment of the claimant.

136. The complaints of direct disability discrimination are dismissed.

Discrimination arising from disability

137. The respondent accepted that the claimant was a disabled person by reason of autism during the time that the claim is about. The respondent accepts that it had knowledge of the claimant's disability from 2 May 2023 when it received the first OH report.

138. There are ten acts of unfavourable treatment relied upon in the agreed list of issues. These are: giving the claimant a performance rating of 2 in 2021, 2022, 2023 and 2024; how it calculated what pay rise to award her in 2022, 2023 and 2024; how it calculated what bonus to award her in 2022, 2023 and 2024; allocating the claimant less meaningful work, less challenging assignments, reduced work and responsibilities; excluding the claimant from work meetings; cancelling the Claimant's 1:1s; selecting her for redundancy (in terms of how it scored the claimant); dismissing her; excluding her from the workplace early by making the claimant's last day of work 18 December 2024; not promptly and fully investigating her grievance.

139. There are four "something arising" issues relied upon in the agreed list of issues. These are: the traits set out on page 135; working from home; her attendance record; and her preference of communicating with others in writing e.g. by email or text message, as opposed to face-to-face or by telephone.

140. The agreed list of issues did not identify which asserted unfavourable treatment was because of which asserted something arising in consequence of the claimant's disability.

141. As set out elsewhere, the Tribunal was satisfied that the claimant had not been allocated less meaningful work, less challenging assignments, reduced work and responsibilities; she had not been excluded from work meetings or had one to ones cancelled; she had not been excluded from the workplace on 18 December 2024. The Tribunal was satisfied the claimant did not suffer a disadvantage and was accordingly not treated unfavourably in relation to these issues.

Unfavourable treatment

142. The Tribunal accepted that giving the claimant a performance rating of 2 in 2021, 2022 and 2023 is unfavourable treatment. The EHRC Code of Practice on Employment gives guidance as to the meaning of 'unfavourably'. It means that the person must have been put at a disadvantage. The claimant's pay rise and bonus in each of those years would have been higher if she had got a higher performance rating. She was put at a disadvantage in the level of pay rise and bonus she received in 2021, 2022 and 2023 by a 2 rating.

143. The Tribunal did not accept that giving the claimant a performance rating of 2 in 2024 is unfavourable treatment. The performance rating for 2024 was not used by the respondent for the purposes of pay or bonus or any other decision making as the claimant had left the respondent's employment by 31 December 2024. The Tribunal was satisfied that the claimant was not put to any disadvantage by the 2024 performance rating.

144. The claimant was scored against sixteen redundancy selection criteria. The claimant's overall score was lower than that of EH. This is a disadvantage and is unfavourable treatment.

145. The claimant's selection for dismissal for redundancy (in terms of how it scored the claimant) is unfavourable treatment.

146. In so far as the claimant's dismissal is a separate act from that of her selection for dismissal for redundancy in terms of scoring, the Tribunal is satisfied that her dismissal is unfavourable treatment.

147. The claimant made complaints alleging discrimination on 28 November 2024. She received an outcome on 25 April 2025. The Tribunal accepted that the complaints she made, which she called a "grievance" were not investigated promptly. The claimant's complaints about her PDP scores and the redundancy were not investigated by the respondent under the grievance policy. This was because complaints about PDP scores and about redundancy were dealt with under a different procedure and not under the grievance policy. The Tribunal accepted that the complaints made by the claimant were not fully investigated under the respondent's grievance policy. The Tribunal was satisfied that not promptly and fully investigating her grievance is unfavourable treatment.

Something arising

148. The Tribunal next considered the four 'something arising" issues relied upon.

149. There was no evidence of the claimant's preference to communicate with others in writing as something arising in consequence of her disability. Her evidence was that she wanted to attend more meetings. The Tribunal was not satisfied that this was something arising in consequence of her disability.

150. There was no evidence that she had a higher level of sickness absence owing to disability related burnout or other disability related treatment. For example, the most recent period of absence in January – May 2024 was for stress following a bereavement. The Tribunal was not satisfied that the claimant's sickness absence was something arising in consequence of her disability.

151. The Tribunal considered whether the claimant's home working arrangement was something arising in consequence of her disability. The arrangement had taken effect after the first OH report which identified that that claimant had been absent for a period of 6-9 months due to stress and anxiety. In relation to home working the first OH report recorded that the claimant found "being in the office extremely challenging due to sensory overload from the environment and the requirement to be social. Andrea finds that this significantly exacerbates her symptoms of anxiety. (page 172)

152. A broad approach applies when establishing whether there is a causal connection. The thrust of the first OH report was that home working was recommended as working in the office exacerbated her symptoms of anxiety, rather than autism of ADHD. However, the question is not a binary one. There was a reference to office working being challenging due to sensory overload and the requirement to be social. There was reference to autism impacting

communication with others. There can be more than one causal connection for the something arising. The Tribunal was satisfied that home working arose in consequence of the claimant's disability.

153. The Tribunal next considered whether the traits at page 135 were something arising in consequence of her disability. The traits are time blindness; hyperfocus/object permanence; anxiety/ frustration; auditory processing issues; routines; autonomy. The claimant's email of 17 June 2024 said that these were the traits which were applicable to her for autism and ADHD. She did not separate out which were applicable to autism and which to ADHD or whether some applied to both.

154. A broad approach applies when establishing whether there is a causal connection. The question is not a binary one. There can be more than one causal connection for the something arising. The claimant provided very limited evidence about the asserted causal connection of each of the six traits. She relied on her email of 17 June 2024 where she said that these were the traits which were particular to her. Notwithstanding the limited evidence the Tribunal was prepared to accept the claimant's evidence that these were traits she experienced and that at least some of them arose in consequence of her disability of autism.

Unfavourable treatment because of the something arising?

155. The Tribunal asked itself whether the acts found to be unfavourable treatment were because the claimant was working from home. It was satisfied that it was not. The claimant moved to home working after the first OH report in May 2023. For those acts of unfavourable treatment which occurred before that date, they could not be because of the claimant's home working.

156. The Tribunal considered the acts of unfavourable treatment which occurred after May 2023, namely the 2023 performance rating, the selection for redundancy (in terms of how the respondent scored the claimant) and her dismissal and the handling of the grievance. Were any of those acts because of the claimant's home working? The home working need not be the main or sole reason for unfavourable treatment, but it must have at least a significant (or more than trivial) influence (**Pnaiser v NHS England [2016] IRLR 170, EAT**).

157. Was the 2023 performance rating of 2 and consequent pay rise and bonus sums because of the claimant's home working? The Tribunal was satisfied that it was not. The claimant got an overall performance rating of 2 each year from 2021 onwards. This included years before she was home working. This

included in 2021 and 2022 when she was working for CB. There was no evidence that the performance ratings were because of the homeworking.

158. Was the selection for redundancy (in terms of how the claimant was scored) because of her home working? There was no evidence that this was because of home working. The home working was an accommodation for the claimant to aid her performance in her work rather than hinder her performance.

159. Was the claimant's dismissal because of her home working? There was no evidence that she was dismissed because of home working. After scoring was completed, there were four individual redundancy consultation meetings with the claimant. During those meetings, at the claimant's request, the focus was on the practicalities of receiving the redundancy payment.

160. Was the respondent's handling of her grievance because of home working. There was no evidence to suggest that was the case. The Tribunal was satisfied that it was not.

161. Next, the Tribunal asked itself whether the acts found to be unfavourable treatment were because of the traits at page 135, those being one of the other 'something arising' relied upon.

162. Taking each in turn the Tribunal firstly asked itself whether the respondent treated the claimant unfavourably in the pay rise and bonus award in 2021 to 2023 inclusive because of the traits at page 135. The claimant sent the respondent an email listing the traits on 17 June 2024. The respondent only became aware of the traits at page 135 on that date and could not reasonably have been expected to be aware of them earlier. Accordingly, the Tribunal was satisfied that the unfavourable treatment of the performance rating for pay rise and bonus in 2021 to 2023 inclusive was not because of the traits at page 135.

163. The Tribunal asked itself whether the unfavourable treatment of selection for dismissal for redundancy (in terms of how it scored the claimant) was because of the traits at page 135. It was satisfied that it was not.

164. The claimant's evidence in cross examination was that of the first fifteen selection criteria, six of them assessed technical skills and nine assessed soft skills. Her evidence was that the last criterion, the 2023 PDP score, assessed a mix of technical and soft skills. Her evidence was that her scoring in the soft skills criteria was affected by her autism and adhd. The difficulty for the claimant is that she did not lead evidence about how her scoring against the soft skills selection criteria was because of the traits. In her evidence in chief in one of the appendices to her witness statement the claimant set out in

tabular form how she said she ought to have been scored. She did not lead evidence about how the respondent's scoring was because of the traits. The claimant in her witness statement said "I was obviously marked down due to my autism and traits related to it....." (para 251). The claimant did not say more. That was insufficient to allow the Tribunal to concluded that her scoring was because of the traits at page 135.

165. The Tribunal asked itself whether the unfavourable treatment of dismissal was because of the traits at page 135. It was satisfied that it was not. The respondent dismissed the claimant following a collective consultation process and an individual consultation process. The claimant participated in those processes. There was no evidence that the claimant was dismissed because of the traits at page 135.

166. The Tribunal asked itself whether the unfavourable treatment of the handling of the grievance was because of the traits at page 135. It was satisfied that it was not. There was an explanation for the delay in providing the claimant with her grievance outcome and why the PDP and redundancy aspects had not been considered under the claimant's grievance policy. The Tribunal accepted these reasons. The way in which the grievance was handled was not because of the traits at page 135.

167. The complaints of discrimination arising from disability are dismissed.

Failure to comply with duty to make reasonable adjustments

168. There are two PCPs relied upon. The substantial disadvantage to which the claimant says she was put by each of the two PCPs compared to someone without the claimant's disability was not identified in the agreed list of issues.

169. The first PCP is about the performance appraisals. As set out in the PCP what was relied upon by the claimant was the entirety of the 'what and how' criteria. The agreed list of issues identified three adjustments which the respondent ought to have made; adjusting her job description to ensure her duties were sufficiently challenging and stimulating; adjusting how line managers communicated with the claimant and assess performance (as more fully set out in the agreed list of issues; and undertaking weekly one to one meetings with the claimant.

170. The respondent accepted that the application of the 'what and how' criteria for the purposes of assessing performance was a PCP. The claimant's case relying upon the first PCP was difficult to follow. There was no substantial

disadvantage identified in the list of issues or in submissions with reference to any evidence led.

171. The first reasonable adjustment proposed is adjusting her job description to ensure her duties were sufficiently challenging and stimulating. There was no job description for the claimant in the file of productions. There was a contract of employment dated 16 November 2015 (page 100). This did not contain duties or a job description.

172. The second reasonable adjustment proposed for the first PCP is adjusting how the respondent communicated with the claimant and assess performance and her preference for one to ones and regular updates in non face to face format. There was no evidence led about the claimant's preferences about communication and a preference for non face to face format.

173. The third reasonable adjustment proposed for the first PCP is undertaking weekly one to one meetings with her. In the absence of any substantial disadvantage being identified the Tribunal was unable to conclude that there was a failure to comply with the duty to make reasonable adjustments as asserted.

174. In short, the Tribunal was unable to conclude that there had been a failure by the respondent to comply with any duty to make reasonable adjustments in relation to the first PCP.

175. The second PCP relied upon is the requirement for the claimant's performance to be marked against an Employee Scoring Matrix for the redundancy exercise. The PCP is the entirety of the scoring matrix for the redundancy exercise. The respondent accepted that this was a PCP to which the claimant was put. Again no substantial disadvantage to which the claimant says she was put by the second PCP compared to someone without the claimant's disability was identified in the agreed list of issues.

176. The adjustment proposed to avoid the unidentified substantial disadvantage of the second PCP is "discounting any disability related effects when assessing the claimant against the criteria". This was broad and unspecific. There were sixteen selection criteria.

177. The claimant's evidence in chief in one of the appendices to her witness statement set out in tabular form how she said she ought to have been scored. The claimant gave herself scores above 4 for all selection criteria. The claimant gave herself higher scores than those given by the respondent and a higher overall score than EH. There was no further explanation provided in

the table. There was no evidence about how the claimant's scoring of herself was said to have discounted any disability related effects.

178. In the absence of any identified substantial disadvantage the Tribunal is unable to conclude that the proposed adjustment of "discounting disability related effects" was a duty which it would have been reasonable for the respondent to have to take.

179. The complaints of failure to comply with the duty to make reasonable adjustments are dismissed.

Indirect disability discrimination

180. The two PCPs relied upon in the agreed list of issues are the same as for the section 20/21 complaints. The respondent accepted that it applied both PCPs to persons who did not have the claimant's disability and to the claimant.

181. The agreed list of issues did not identify the particular disadvantage which the PCPs put or would put those with the claimant's disability in comparison with those who do not share the claimant's disability. There was no evidence led about particular disadvantage. Accordingly, the Tribunal is unable to conclude that the claimant has suffered indirect disability discrimination.

182. The complaints of indirect disability discrimination are dismissed.

Harassment related to disability

183. The acts of harassment in the agreed list of issues are that the respondent: allocated the claimant less meaningful work, less challenging assignments and reduced work and responsibilities; excluded her from work meetings; cancelled one to ones with her.

184. As already stated, the Tribunal did not find that any of the asserted conduct had taken place.

185. The complaints of harassment related to disability are dismissed.

Victimisation

186. The protected act relied upon by the claimant in the agreed list of issues is the claimant's grievance on 28 November 2024. It alleges discriminatory treatment. The grievance is accepted by the respondent as a protected act.

187. The acts of detrimental treatment relied upon by the claimant in the agreed list of issues are: not investigating the grievance promptly and fully; and

excluding the claimant from the workplace early. The Tribunal asked itself whether either of these acts were a detriment.

188. The Tribunal reminded itself that if a reasonable worker (even if not all reasonable workers) might take the view that the conduct in question was detrimental then the test of detriment is satisfied (**Warburton v Chief Constable of Northamptonshire Police 2022 EAT 42**).

189. The Tribunal asked itself whether a reasonable worker might view the time frame taken to investigate the grievance and what was investigated as part of her grievance as detrimental. The claimant raised her grievance on 28 November 2024. It spanned a nine-year period and a number of individuals. There were a lot of allegations. It would take a long time to investigate these. The claimant asserted that the investigation ought to have been completed before her employment ended. That fell over the Christmas and new year period. Given the matters to be investigated a reasonable worker would not take the view that it was detrimental that the investigation was not completed before the employment ended. The claimant received an outcome on 25 April 2025. Notwithstanding the respondent's reasons for the time taken, the Tribunal was satisfied that a reasonable worker might take the view that the time taken to 25 April 2025 was detrimental. Accordingly, it is a detriment.

190. The claimant's discrimination complaints were investigated under the grievance policy. There were different routes to make a complaints about the PDPs scores or about the redundancy. This was communicated to the claimant. The claimant chose not to follow those routes. Notwithstanding these reasons the Tribunal was satisfied that a reasonable worker might view the fact that not all complaints were investigated under the grievance procedure as detrimental. Accordingly, it is a detriment.

191. The Tribunal asked itself whether the way in which the grievance was handled was because the claimant had done the protected act. There must be a causal link between the protected act and the detriment. The claimant must show that the reason why she was subjected to the detriment was 'because of' the protected act. It is insufficient to show that 'but for' the protected act she would not have suffered the detriment (**Chief Constable of Greater Manchester Police v Bailey 2017 EWCA Civ 425, CA**).

192. The Tribunal was satisfied that the time taken and the matters which the respondent investigated under the grievance policy were not because of the protected act. The respondent investigated the claimant's complaints in accordance with its grievance policy. The respondent provided an explanation for the timeline which the Tribunal accepted.

193. The other detriment asserted is that the respondent decided to exclude the claimant from the workplace early. As already found, the respondent asked the claimant if she wished to finish work on 18 December 2024 without that impacting on her leaving date or any payments and the claimant agreed. The Tribunal was satisfied that a reasonable worker would not view an earlier date to finish work, to which they had agreed, as a detriment.

194. The complaints of victimisation are dismissed.

Time bar

195. The effective date of termination is 31 December 2024. The claimant participated in ACAS early conciliation from 3 February 2025 to 17 March 2025. The claim was presented on 13 April 2025.

196. Any events which occurred before 4 November 2024 are potentially out of time, subject to ACAS early conciliation and subject to the provision of section 123 EqA.

197. As all of the complaints are dismissed, there is no requirement to determine whether any of the complaints are out of time.

Remedy

198. As all of the complaints are dismissed, there is no requirement to determine remedy.

Date sent to parties **17 December 2025**

APPENDIX - LIST OF ISSUES

1. Jurisdiction

1.1 Does the Tribunal have jurisdiction to consider the Claimant's claims of discrimination? *The Respondent's position is that any claims prior to the 4 November 2024 are out of time.*

1.2 If any of the discrimination claims the Respondent submits are out of time as specified at point 1 above are out of time, is it just and equitable for the claim to be admitted late or, and in the alternative, did the discrimination form as part of a continuing act which would mean the claims are in time?

2. Unfair dismissal

The parties agree that the Claimant was dismissed.

2.1 What was the reason (or if more than one, the principal reason) for her dismissal (Section 98(1)(a) Employment Rights Act 1996 ("ERA")?

2.2 Was it a potentially fair reason in accordance with s. 98 (1) and s.98(2) ERA? *The Respondent relies on redundancy under S.98(2)(c).*

2.3 If the Claimant was dismissed for redundancy, did the Respondent act reasonably in all the circumstances (including the size and administrative resources of the Respondent's undertaking) in treating it as a sufficient reason for dismissing the Claimant? (section 98(4) ERA).

3. Disability status

The Respondent accepts the Claimant is disabled within the meaning of the Equality Act 2010 owing to her autism and accepts it was aware of the Claimant's autism from 2 May 2023 [date of OH]. The Claimant's position is the Respondent was aware of her autism from around April 2021 when she received a preliminary diagnosis from her doctor and informed her then line manager, Calum Barker of the same.

3.1 Does the Claimant's ADHD amount to a disability pursuant to Section 6 of the Equality Act 2010 ("EA")? In answering this question, the Tribunal will need to consider the following:

3.1.1 Does the Claimant have a physical or mental impairment, namely ADHD (section 6(1)(a) EA)

3.1.2 If so, does the impairment have a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities? (section 6(1)(b) EA)

3.1.3 If so, is that effect long term? In particular when did the impairment start and has the impairment lasted for at least 12 months? If not, is, or was, the impairment likely to last at least 12 months? (section 6(1)(b) EA)

3.1.4 Are any measures being taken to treat or correct the impairment? But for those measures would the impairment be likely to have a substantial adverse effect on the Claimant's ability to carry out normal day to day activities?

3.1.5 If so, did the Respondent have actual and/or constructive knowledge of such disability/disabilities at the relevant period?

4. Direct Discrimination Equality Act 2010 Section 13 (Disability)

4.1 Did the Respondent do the following things:

4.1.1 allocate the Claimant less meaningful work, less challenging assignments, reduced work and responsibilities;

4.1.2 exclude her from work meetings; and/or

4.1.3 cancel the Claimant's 1-2-1s

4.2 If so, was this less favourable treatment within the meaning of section 13(1) EA?

4.3 Was the Claimant treated less favourably than a hypothetical comparator would have been treated in circumstances that were not materially different to those of the Claimant?

4.4 Was the less favourable treatment because of the Claimant's disability?

5. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

5.1 What PCP does the Claimant say that the Respondent applied to her?

The Claimant relies upon the practice of applying the What and How criteria for the purposes of assessing performance.

As a further PCP the Claimant relies upon the requirement for her performance to be marked against an Employee Scoring Matrix for the redundancy exercise ("Second PCP").

5.2 Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability?

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

5.4 If so, did the Respondent fail to take reasonable steps to avoid the disadvantage? The Claimant suggests the following steps should have been taken:

a. adjusting her job description to ensure her duties were sufficiently challenging and stimulating and work sufficiently varied to sustain the Claimant's attention and assist her with performing well in her role;

b. line managers to adjust how they communicated with the Claimant and assess her performance to take into account the impact of her disability (particularly when scoring her in performance management reviews). The Claimant's preference on communication was 1:1 and regular updates in a non face-to-face format;

c. undertaking weekly 1:1 meetings with her; and/or

d. in respect of the Second PCP, discounting any disability related effects when assessing the Claimant against the criteria.

5.5 Was it reasonable for the Respondent to have to take those steps?

5.6 Did the Respondent fail to take those steps?

5.7 If so, did the Respondent fail to take reasonable steps?

6. Discrimination Arising From Disability (Section 15 EQA 2010)

6.1 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date? *The Respondent accepts it was aware of the Claimant's autism from May 2023.*

6.2 If so, did the Respondent treat the Claimant unfavourably in any of the following alleged respects:

(a) By giving the Claimant a performance rating of 2 in 2021, 2022, 2023 and 2024;

(b) In how it calculated what pay rise to award her in 2022, 2023 and 2024;

(c) In how it calculated what bonus to award her in 2022, 2023 and 2024;

(d) By allocating the Claimant less meaningful work, less challenging assignments, reduced work and responsibilities;

(e) By excluding the Claimant from work meetings;

(f) By cancelling the Claimant's 1:1s;

(g) By selecting her for redundancy (in terms of how it scored the Claimant);

(h) By dismissing her;

(i) By excluding her from the workplace early by making the Claimant's last day of work 18 December 2024; and/or

(j) By not promptly and fully investigating her grievance.

6.3 Did the above arise because of something arising in consequence of the Claimant's disability?

The "something arising" relied upon by the Claimant here are: the traits set out on page 135 that she displayed as a disabled person; her working from

home (an adjustment made for her owing to her disability); her attendance record (in having a higher level of sickness absence owing to disability related burnout and the Respondent's treatment of her as a disabled person); and her preference of communicating with others in writing e.g. by email or text message, as opposed to face-to-face or by telephone.

6.4 If so, was the treatment a proportionate means of achieving a legitimate aim? *The Respondent says that its aims were:*

(a) ensuring employees performance is monitored and maintained to the required standards of the job role so the Respondent can meet its business needs and ensuring tis workforce is operating at the appropriate level and receiving appropriate remuneration;

(b) the Respondent has a uniform way of assessing remuneration for its employee's salary reviews;

(c) the Respondent has a uniform way of assessing employees bonus eligibility and value;

(d) the Claimant was talking to her colleagues about deleting the Respondent's databases and therefore in order to protect the Respondent's data the decision was made to revoke her access to the Respondent's system immediately and ask for the Respondent's equipment to be returned; and

(e) namely selecting the most suitable employee to be retained to meet the Respondent's business needs for the role.

6.4.1 The Tribunal will decide in particular:

(a) was the treatment an appropriate and reasonably necessary way to achieve those aims;

(b) could something less discriminatory have been done instead; and

(c) how should the needs of the Claimant and Respondent be balanced?

7 Indirect Discrimination (Section 19 of the Equality Act 2010)

7.1 Did the Respondent apply the following provision, criterion or practice ("PCP"s) of:

7.1.1 assessing its employees performance when issuing performance ratings using what and how criteria. *The Respondent does not dispute this and accepts it did*; and

7.1.2 the Employee Scoring Matrix used to select the Claimant for redundancy? *The Respondent disputes this was a PCP it applied.*

7.2 If so, did the Respondent apply this PCP to the Claimant? *If the Tribunal concludes yes to clause 7.1.1 and/or 7.1.2 above, the Respondent accepts it applied both 7.1.1 and 7.1.2 to the Claimant.*

7.3 If so, did the Respondent apply these PCP's to persons who did not have the Claimant's disability? *The Respondent accepts that it did.*

7.4 If so, did this PCP put, or would it put those with the Claimant's disability at a particular disadvantage in comparison to a non-disabled employee?

7.5 If so, did the PCP put, or would it put, the Claimant at that disadvantage?

The Claimant's case is that she was disadvantaged in terms of: the performance rating she received; her annual salary review; her annual bonus; and the fact she scored less than her non-disabled colleagues and so was selected for redundancy ultimately leading to her dismissal.

7.6 If so, can the PCP be shown to be a proportionate means of achieving a legitimate aim?

The Respondent relies on the following legitimate aim: having an objective and uniform way of evaluating its employee's performance for the purposes of performance ratings and salary and benefits appraisals

8. Harassment related to disability (Equality Act 2010 section 26) (disability)

8.1 Did the Respondent do the following things:

(a) allocate the Claimant less meaningful work, less challenging assignments, reduced work and responsibilities;

(b) exclude her from work meetings; and/or

(c) cancel 1 2 1's with the Claimant.

8.2 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant within the meaning of section 26(1)(b) EA?

8.3 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

9. Victimisation (Equality Act 2010 s27)

9.1 Did the Claimant do the following protected acts?

The Respondent accepts that the Claimant raised a grievance that fails within the meaning of section 27(2)(d) EA

9.2 Did the Respondent do the following acts?

(a) not investigate the grievance promptly and fully; and/or

(b) decide to exclude her from the Respondent's workplace early.

9.3 By doing so, did it subject the Claimant to detriment?

9.4 If so, was it because the Claimant did a protected act?

10. Remedy for unfair dismissal

10.1 What basic award is payable to the Claimant, if any?

10.2 What is the amount of the compensatory award that is just and equitable to award in all the circumstances, having regard to the loss sustained by the Claimant in consequence of the dismissal in so far as that loss is attributable to action taken by the Respondent?

10.3 Would it be just and equitable to reduce the Claimant's compensatory award and, if so, to what extent?

The Respondent relies upon Polkey v AE Dayton Services Limited.

11. Remedy for discrimination or victimisation

11.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

11.2 What financial losses or other losses has the discrimination or victimisation caused the Claimant?

11.3 Should interest be awarded? If so, how much?