



# EMPLOYMENT TRIBUNALS

**Claimant:** XY

**Respondent:** STONEX FINANCIAL LIMITED

**Heard at:** by CVP from the Central London Tribunal

**On:** 17, 18, 19, 20, 24, 25, 26 March 2025, 17, 18 and 20 June 2025 and 23, 24 and 27 June in chambers

**Before:** Employment Judge Woodhead  
Ms S Campbell  
Mr D Shaw

## Appearances

For the Claimant: Representing herself

For the Respondent: Mr L Davidson (Counsel)

## RESERVED JUDGMENT WITH REASONS

The unanimous judgment of the Tribunal is:

1. The complaints of direct sex discrimination are not well-founded and are dismissed.
2. The complaints of direct disability discrimination are not well-founded and are dismissed.
3. The complaints of unfavourable treatment because of something arising in consequence of disability are not well-founded and are dismissed.
4. The complaints of failure to make reasonable adjustments for disability are not well-founded and are dismissed.
5. The complaints of victimisation are not well-founded and are dismissed.
6. The Claimant was not doing like work with any comparator for the purposes of Section 65 of the Equality Act 2010 and, in any event, the Respondent has a defence of material factor under Section 69 of that Act.

## REASONS

7. We apologise for the delay in issuing this judgment and reasons to the parties. This has arisen because of the complexity of the claim, workload and the need to correspond with the parties on an application made by the Respondent for a restricted reporting order.

## THE HEARING

### ***Case management background***

8. This hearing was listed for 11 days (11-14, 17-20 and 24-26 March 2025) on 19 March 2024 at a case management preliminary hearing (which resulted in orders dated 15 April 2024) and at which an amendment application was granted in favour of the Claimant and the list of issues was agreed (**see the Appendix**). The listing allowed the Claimant four days to cross examine the Respondent's witnesses and the Respondent two days to cross examine the Claimant. As an adjustment for the Claimant the hearing had been listed to only sit on four days of any period of five working days. In the intervening period the number of Respondent witnesses increased by two, but their evidence was relatively short and on confined points.
9. A preliminary hearing for case management was held on 31 January 2025 by EJ Joffe for the purposes of [R1028]:
  - 9.1 Deciding an application for an anonymity order made by the Claimant.
  - 9.2 Deciding an application for an expert witness made by the Claimant.
  - 9.3 Deciding an application for the Claimant to use a device to record the final hearing.
  - 9.4 Reviewing the parties' progress in preparing their respective cases for the final hearing (with reference to the case management orders set out in the Case Management Order dated 15 April 2024).
  - 9.5 Making any necessary case management orders.
10. EJ Joffe's Case Management Orders recorded, amongst other things [RB1029]:

*8. To retain the hearing dates and accommodate the claimant's impairments, I accepted the parties' plan to produce separate bundles. I discussed with the claimant that it is usually not appropriate to include documents in the bundle which are not going to be referred to in evidence. The respondent said that the claimant was seeking to introduce thousands of pages of code. The claimant said she had just over 1000 pages of code. I queried whether the Tribunal was likely to be assisted by this material or much of it.*

### ***The application for permission to adduce expert evidence***

[...]

18. Claims in which issues are raised about job performance are extremely common in the Employment Tribunal and Tribunals are well used to deciding issues relating to disputes about performance without recourse to expert evidence. In this case, the claimant's performance comes into a number of issues; there are criticisms which the claimant alleges are discriminatory, the claimant was put on a performance assessment which she says was discriminatory and the claimant was subsequently dismissed, the respondent says due to her performance and conduct. The claimant makes complaints of sex and disability discrimination in relation to these matters. It will be relevant for the Tribunal to consider, amongst other issues, whether the respondent's views about the claimant's performance were materially influenced by her sex.

19. The claimant was seeking an expert opinion on work she had done for the respondent but also work done by others in her team. It is not apparent to me that an independent software engineer would, by reviewing large quantities of code out of context, be able to make any kind of meaningful evaluation of performance, even if, which was by no means apparent, that evaluation would assist the Tribunal with the issues in the claim. It appeared to be a wildly disproportionate exercise.

20. It was apparent from the long document produced by the claimant that she was asking for an expert to comment on the basis of a narrative which was not agreed with the respondent. It was difficult to see how the Tribunal could work with an expert's view on a complex contested set of facts, even if an expert could be found to give an opinion on the matters the claimant had set out.

21. It did not seem to me that the claimant's workplace interactions and what she was like to work with were matters for expert evidence of any sort. Insofar as they are relevant to the issues the Tribunal will need to decide, they fall comfortably within the ambit of matters which the Tribunal regularly considers and determines without such evidence.

22. Clearly the claimant's brother would not be a suitable expert in any event as not being in any sense independent of the parties and impartial. The claimant accepted that it would not be possible to get any other expert in the time available. The claimant's brother would not satisfy the Kennedy tests. In any event, I am satisfied that this evidence is not reasonably required. I therefore rejected this application.

### **The application to record the hearing**

[....]

32. I discussed with the claimant how important it is not to make any collateral use of the recording and, in particular, how serious a matter it would be if the claimant were to post the recording or parts of it online. I was conscious of the fact that the claimant had posted a blog containing details of her allegations against named employees of the respondent and her own mental health at a point when she told me she was in a suicidal

*state (September 2023). She said that she understood and that in any event she would not want to put a recording in which she might be recognisable online. She said that she was on medication which would mean she would not get into the state she was in when she posted her blog.*

*[...]*

*34. In all of the circumstances, I was satisfied that the claimant was at a significant disadvantage arising from her disabilities which could be ameliorated to a degree by the use of the recording and which could not be ameliorated in another way. The claimant must bear in mind that to use the recording for any inappropriate purpose would put her at risk of committing an offence under section 9 of the Contempt of Court Act 1981.*

*35. I accordingly made the following order.*

*35.1 The claimant has permission to make an audio recording of the public parts of the full merits hearing and to make a transcription of that recording. She may not share that recording or any such transcript with any other person and may not publish it in any way whether online or otherwise. Once the full merits hearing has been completed and a judgment promulgated, the claimant must delete any electronic copies and destroy any hard copies of the recording and any transcript and must confirm to the Tribunal that she has done so.*

11. In a reserved decision EJ Joffe made the following anonymity order [RB1039]:

*1. This is my reserved decision on the claimant's application for an order under what is now rule 49 of the Employment Tribunals Rules of Procedure 2024.*

*2. It is ordered that the identity of the claimant shall not be disclosed to the, public, by the use of anonymisation in the course of the hearing and documents used for the hearing and in its listing and in any documents entered on the Register or otherwise forming part of the public record.*

12. Regrettably the hearing could not start on 11 March 2025 as listed due to lack of judicial resource. The Parties were not able to agree a revised timetable before the hearing started on 17 March 2025.

### **Day 1 - 17 March 2025**

13. On the First Day, 17 March 2025 we were provided with 14 separate bundles which did not have continuous numbering (the page numbers restarted at 1 in each bundle or, in the case of the Claimant's bundles, had no numbering at all). There were six volumes for the Respondent and eight volumes for the Claimant. We were also provided with:

13.1 a [20] page **opening statement** from the Respondent;

13.2 a **cast list** which was not agreed (but which the Claimant agreed on the

first day subject to some amendments which were accepted by the Respondent);

- 13.3 a **chronology** which was not agreed but which the Claimant commented on during the first day (changing some of the dates of some allegations and way in which one allegation of discrimination was alleged to have occurred);
- 13.4 a bundle of witness statements totalling 341 pages comprising [WB]:
  - 13.4.1 the Claimant's witness statement and "background" document [WB/1-221] ("**CWS**")
  - 13.4.2 **Mr Ian Mahkonen** [WB/222-229] ("**IMWS**") - Global TA Business Partner for Technology and involved in the recruitment of the Claimant
  - 13.4.3 **Mr Jothibas Ramachandran** [WB/230-265] ("**JRWS**") - Engineering Manager and the Claimant's line manager
  - 13.4.4 **Mr Etimbuk Udofia** [WB/266-275] ("**EUWS**") - Software Engineer (acting Team Lead) and one of the Claimant's comparators
  - 13.4.5 **Mr Abdul Waheed Mhatey** [WB/276-284] ("**AWMWS**") - Solutions Analyst (project manager/scrum leader) and one of the Claimant's comparators
  - 13.4.6 **Mr Bodrul Choudhury** [WB/285-292] ("**BCWS**") - Software Engineer/Spoke Developer and one of the Claimant's comparators
  - 13.4.7 **Ms Laraine Cutmore** [WB/293-306] ("**LCWS**") HR Adviser
  - 13.4.8 **Mr Kevin Payne-Hanlon** [WB/307-318] ("**KPHWS**") Senior HR Business Partner
  - 13.4.9 **Mr Boris Levine** [WB/319-327] ("**BLWS**") - Chief Technology Officer
  - 13.4.10 **Mr Nadeem Humdani** [WB/328-340] ("**NHWS**") - Director of Technology – the manager who terminated the Claimant's employment
14. We therefore spent much of the first day reading and addressing the following questions:
  - 14.1 The practicalities of having so many bundles. The Respondent agreed to put the Respondent and Claimant bundles into two single PDF's. The Claimants [**CB**] totalled 5072 pages. The Respondent's [**RB**] totalled 2804 pages (including an additional page that the parties agreed should be added).
  - 14.2 Clarifying the list of issues to include the defences relied upon by the

Respondent in its amended grounds of resistance.

- 14.3 The order of evidence and timetabling (the Respondent ultimately accepted the Claimant's request that the Respondent's evidence be heard first (notwithstanding the advantages to the Claimant, that we explained to her, of her evidence going first and that it would be more normal in a case such as this for her evidence to go first, given the burden of proof).
  - 14.4 A specific disclosure application brought by the Claimant (which she ultimately withdrew before we had decided it).
  - 14.5 Practicalities with respect to the anonymisation order and the fact that documents had not been redacted and might need to be inspected by the public.
  - 14.6 A proposal by the Claimant that she would, as part of her cross examination, share her screen with videos of documents and audio with her questions. We trialled this approach and it was clear that it would be very time consuming. We made clear that the Claimant could play the audio of her question if she needed to but she would need to take us and the witness to the relevant page of the bundles. We made clear that we are not software engineers, do not understand computer coding and that cross examination would need to be framed in a way that we could understand.
15. We also sought to level the playing field for the Claimant by:
- 15.1 Explaining the Tribunal day;
  - 15.2 Explaining the process of hearing the evidence and cross examination, tribunal questions, re-examination and the need for the Claimant, when it came to her cross examination of the Respondent's witnesses, to challenge them on things that they say in their witness evidence which are relevant to the List of Issues and which the Claimant disputed. We made clear that, as such, the List of Issues should be a useful tool for the Claimant to focus her cross examination.
  - 15.3 Explaining that during her cross examination of witnesses she did not need to get the witness to agree with her – she just had to put her position to them. We encouraged her to plan and prioritise her cross examination.
  - 15.4 Explaining that if a witness is not challenged on the evidence in their witness statement the Tribunal is entitled to accept that evidence (take it at face value) and that if the Claimant did not challenge a witness on a material point relevant to the List of Issues then that could affect the Claimant's ability to establish her case.
16. The Claimant agreed to prepare a timetable (allowing for ET questions, re-examination and breaks) overnight to be presented to the Tribunal on the second morning. This was to allow for two days for the Respondent's evidence. We made clear that because of the large volume of reading and the time that had

been taken with preliminary matters that we would not be able to start to hear evidence until 14:30 on the second day.

17. We made clear that the Claimant could ask for breaks if she felt she needed them, particularly in light of her disabilities, but also made clear that anyone could ask for a break if they needed it.
18. We reminded witnesses under oath that they were not permitted to communicate with others about the case during breaks or adjournments while they were giving evidence under oath.

### ***Day 2 - 18 March 2025***

19. At the start of the day we explained the approach that we proposed to take to the anonymity order should a member of the public want to observe the hearing. The Parties agreed this approach.
20. The Claimant presented a timetable that did not allow any time for the Claimant's evidence to be heard. The Claimant had said that she would have a mental breakdown if she was required to cross examine the Respondent's witnesses and then be cross examined herself. We discussed the fact that if the hearing were postponed entirely it could not be relisted until May 2026. We explained the obligations we had under Rule 3, not only to the parties in this claim but to the many thousands of other Tribunal service users. We explained that if the claim went part heard, the earliest we could reconvene would be June 2025. The Respondent raised concerns about certain of its witnesses needing to fast during Ramadan.
21. We considered the options, the interests of justice, Rule 3 and the Claimant's needs given her health conditions (including Claimant Bundle F) and told the parties to agree a timetable between them that would allow for the Respondent's evidence to be concluded in just over four days (a little longer than had been envisaged a year ago at the March 2024 case management preliminary hearing). We agreed that the Claimant's evidence could be heard on 17 and 18 June 2025 with submissions on the morning of 20 June 2025.
22. Whilst the parties sought to agree the timetable, we continued our reading. The parties having agreed the timetable, in the afternoon we heard the evidence of Mr Mahkonen and gave the Claimant further guidance on how she could make more efficient use of her time in the way she was cross examining.

### ***Day 3 - 19 March 2025***

23. On the third day of the hearing we reiterated that anyone could ask for a break at any time. We reminded the Claimant that she would need to have completed her cross examination of Mr Ramachandran by 15:00. We guided the Claimant through the day on her cross examination technique and focus (including the importance of the list of issues and the form of allegations it sets out, the need to take us to a document or witness statement paragraph, allow us time to find it, take us and the witness to where on the page we were to look, ask a question of the witness (rather than seek to give evidence, make a speech or make submissions to the Tribunal), wait for and not interrupt the answer and then pause

before asking the next question). We reminded the Claimant that she did not need to repeat questions or get the witness to agree.

24. Owing to the fact that Mr Ramachandran was an important witness, because the Claimant said she needed more time and because of her disabilities, immediately after the lunch break we asked Mr Ramachandran if he could continue to give evidence until 1pm the following day. He agreed and we therefore extended the hearing to 1pm on Wednesday 26 March 2025. We made clear that the Claimant would need to have concluded cross examination of all the witnesses by 1pm on 26 March 2025 because we would need the afternoon of 26 March 2025 to make sure that we could prepare ourselves to ensure that we were ready to pick the case back up again promptly in June (given that more than two and a half months would have passed by then before we heard the Claimant's evidence).

#### ***Day 4 - 20 March 2025***

25. At the start of day four we agreed the ongoing timetable for witnesses, told the Claimant that she would need to have finished her cross examination by 11:30 (to allow for a break, Tribunal questions and re-examination of Mr Ramachandran).
26. The Respondent brought to light a new email which Ms Cutmore had found the previous day. The Claimant said that she did not want it to be admitted and the Respondent said that it was not relying on it so we did not admit it into evidence.
27. The Respondent referred to a link to a video that the Claimant had sent to the Tribunal the previous evening. This was a video of a meeting for which we had a transcript and we made clear that we would not watch the video, we would refer to the transcript.
28. The Respondent put the Claimant on notice that it intended to make submissions and ask the Tribunal to draw adverse inferences from the Claimant's cross examination style (referencing her interruptions of witnesses and the way she was framing questions). The Respondent also asked the Claimant to confirm that she understood the strict and very limited purposes of the Claimant having been allowed to record the hearing. The Claimant confirmed that she understood that she was only permitted to use the recording for the purpose of helping her follow and prepare for the hearing and that she was to maintain confidentiality of the recording.
29. The Respondent made clear that ADHD and dyslexia are accepted as disabilities as the relevant time but said that there is a dispute as to knowledge and also as to the effect of the disabilities.
30. We then continued to hear the evidence of Mr Ramachandran. The Claimant finished with Mr Ramachandran a little later than we had indicated but she completed her cross examination of him and Ms Cutmore that day. During the day we continued to guide the Claimant in how she might be able to frame questions and conduct her cross examination. We also asked her to think about strategies to help reduce the occasions on which she interrupted and explained why we were frequently asking her to pause.

### **Day 5 – 24 March 2025**

31. Before the fifth day of the hearing (on Thursday evening and Friday) the Claimant and the Respondent had sent in yet more disclosure. Neither party objected to the other's disclosure and it was agreed that it would be added as pages to the Respondent's bundle (RB2805-2806).
32. We then heard the evidence of Mr Choudhury, Mr Payne-Hanlon and Mr Levine. We continued to remind the Claimant of the need to focus on the list of issues and put a clear question or proposition to the witness to which they could reasonably be asked to respond. We gave the Claimant time checks and sought to help her break down composite questions or propositions. The Claimant's questions often focused on disputes over the appropriateness of particular coding decisions. Coding decisions or solutions may not be binary in any event. Our task was not to judge the technical disputes which were asserted by the Claimant as being 'facts' which proved her case. Our lack of technical expertise did not prevent us assessing what happened between the parties at the relevant times and how that related to the law.
33. After the lunch break the Claimant made clear that she had submitted an 84 page word document which, from her own description, appeared to be a commentary on why she said Mr Ramachandran's statement was factually incorrect. We refer to this document as the "**Claimant JR Commentary**". The Respondent gave a preliminary view on whether the document should be admitted at the end of the day but needed more time to consider it.

### **Day 6 - 25 March 2025**

34. On the morning of the sixth day nearly an hour was taken dealing with:
  - 34.1 the Claimant JR Commentary
  - 34.2 new disclosure by the Claimant of additional documents being:
    - 34.2.1 Core modules ("**ND1**")
    - 34.2.2 Batch insert tutorials ("**ND2**")
    - 34.2.3 Bullet point representations (submitted by the Claimant at 10am in the morning) ("**ND3**")
    - 34.2.4 Standup – google doc ("**ND4**")
35. Some of the time taken was in seeking to understand the nature of the documents and the reasons why they had been sent to the Tribunal when they had.
36. We concluded that the **Claimant JR Commentary** and **ND3** should not be admitted taking full account of the Claimant's status as a litigant in person and someone with dyslexia and ADHD.
37. In making this decision we reiterated the key elements to a fair process including (i) there being a clear list of issues at an early stage of proceedings so that each

party knows what the claim is about (ii) exchange of documents before the hearing (iii) exchange of witness statements (which should normally be simultaneous) before the hearing (iv) witnesses knowing before the start of the hearing the issues, the other witness evidence being brought and the documents being relied upon by the other party and having a fair right of reply to allegations put to them (v) the proceedings being managed proportionality as between the parties in the claim and the thousands of other services users of the Employment Tribunals. In this regard the Claimant suggested that the hearing might have extended to 20 or 30 days had she been given the opportunity to challenge all the factual disputes she had with the Respondent. However, that would not have been proportionate. We made clear that we could not forensically investigate every detail of what had happened in an employment relationship (in this claim or any other) and that the Claimant should continue to focus on the list of issues as being the points we were to determine.

38. In making our decision we took account of:

38.1 the volume of witness evidence already in front of us (341 pages).

38.2 the adjustments to the timetable that we had made for the Claimant (in particular affording her more time with Mr Ramachandran, who was clearly an important witness);

38.3 Mr Ramachandran's evidence had concluded.

38.4 The Respondent's submission (by an officer of the court) that the status of these documents was opaque (perhaps constituting submissions, evidence, a line by line dispute of Mr Ramachandran's witness statement and/or a plan for cross examination).

39. We made clear that to the extent that:

39.1 The status of the documents were submissions then they needed to be structured in line with the list of issues and made at the submissions stage. We made clear we would be imposing a page limit on submissions and that submissions must not misrepresent evidence that has been given or be an attempt to give new evidence.

39.2 If it was evidence then the Claimant had adduced it too late. It would be difficult to understand, in this claim, why the Claimant had not been able to address all of the issues in the 222 pages of witness statement she had submitted. Mr Ramachandran and others Respondent witnesses had by this point given evidence and been released. We made clear that we did not expect the Claimant to make an application for a supplemental witness statement and explained the challenges that any such application would face.

39.3 To the extent that the documents were comments on Mr Ramachandran's witness evidence, then they were too late.

40. We agreed to allow ND1 and ND2 as they were contemporaneous documents and the Respondent did not object to them being accepted by the Tribunal. The

Respondent paginated them so we could add them to the Respondent bundle as pages RB2847 to RB2868.

41. The status of ND4 was less clear and the Respondent needed more time over night to assess whether they agreed with the Claimant's characterisation of it. We asked the parties to work together on that to try to avoid time being lost on Wednesday 26 March 2025. The Claimant said that it was only relevant to Mr Humdani's evidence.
42. We heard the evidence of Mr Mhatey and Mr Udofia before the end of the day.

### **Day 7 – 26 March 2025**

43. At the start of the seventh day the Claimant confirmed that she did not want us to consider "ND3" and that she would use it as a personal aid to her cross examination of Mr Humdani. Again, during the Claimant's cross examination of Mr Humdani we guided the Claimant on the need to ask a question or put a proposition to the witness and not make a speech. We reminded her that she was spending significant time on issues (in particular **LOI 2.1 (n)**) that she had already spent a large proportion of her time on in cross examining Mr Udofia the previous day. We reminded her of the important allegations in the LOI that she would need to put to Mr Humdani. We extended the deadline for her concluding her cross examination of Mr Humdani to 12:04pm. After Tribunal questions and re-examination the hearing was adjourned at 13:14 until 17 June 2025. Before adjourning we asked the parties to think about the intervening period as if we were concluding at the end of a normal tribunal day, going home and waking up on the morning of 17 June 2025. We explained that we did not expect that there would be a need for further disclosure or documents or correspondence.
44. Before the hearing concluded the Respondent noted that the Claimant had been making posts on social media. The Respondent said that her posts, whilst purporting to be by reference to support the Claimant was giving a friend in another employment tribunal claim, clearly constituted reference by the Claimant to factual inaccuracies that she perceived in the evidence given by the Respondent's witnesses in her own claim and to complaints about the day to day case management decisions of the Tribunal in her own claim. The Respondent expressed concern that the Claimant would stew, in the period up to 17 June 2025, and might end up breaching the anonymity order that had been granted in her favour or breaching the terms on which she had been allowed to record the hearing. The Claimant made clear that she understood the anonymity order and the very limited use that she could make of her recordings. She said that some of her recordings had failed and we directed her to the fact that she could apply to the Tribunal for a transcript to be prepared at her cost.
45. We took time to consider what had been said. We did not want to see the Claimant's social media posts (she is entitled to her opinions and she had made clear to us in any event, for example, that she would have liked us to give her more time to cross examine). The Claimant having made clear that she understood the constraints on her, we did not consider it necessary to pass comment on what the Respondent had said.

### ***The Claimant's approach to cross examination***

46. We took full account of the Claimant's dyslexia and ADHD and the Equal Treatment Bench Book (ETBB) guidance on those conditions. In particular we noted that the ETBB states, on ADHD:

*Some experts believe the following symptoms are typical of ADHD in adults:*

- *Carelessness and lack of attention to detail.*
- *Continually starting new tasks before completing old ones.*
- *Poor organisational skills.*
- *Inability to focus or prioritise.*
- *Forgetfulness.*
- *Continually misplacing things.*
- *Restlessness and edginess.*
- *Difficulty keeping quiet and speaking out of turn. Blurting out responses and often interrupting others.*
- *Mood swings, irritability and quick temper.*
- *Extreme impatience.*
- *Inability to deal with stress.*

*The consequence of inability to focus can be that as a person is listening to a judge explain procedure or is trying to focus on cross-examination questions, entirely different thoughts on an entirely different subject uncontrollably interpose.*

47. We had to seek to achieve the appropriate balance between the Claimant's needs (including her ADHD, depression and dyslexia), trying to level the playing field for her so that she could conduct her cross examination, use her time effectively and focus on the important issues relevant to the LOI. However, we also had to try to ensure that the Respondent's witnesses knew what they were being asked to respond to and had a fair opportunity to respond with out being interrupted. Unfortunately the Claimant, notwithstanding that:

47.1 she is clearly intelligent;

47.2 had known the issues to be determined at this hearing for the best part of a year;

47.3 had had time to prepare for cross examination (even if witness statement exchange had been late);

47.4 had time during the hearing (in particular while we were reading and between 20 and 24 March 2025) to refine her cross examination;

47.5 had asked for the Respondent evidence to go first (we pointed out the advantages to her of her evidence going first);

47.6 had been guided repeatedly on what was needed (with suggested strategies to achieve that (e.g. short written questions, focus on the list of issues and the specific nature of the allegations in it))

appeared unable to follow our guidance and continued to interrupt the Respondent's witnesses and give speeches. The Claimant also had a tendency to paraphrase evidence heard previously in a way that was not accurate. The Claimant was often insistent that she had 'proved a fact' in circumstances where it appeared to us that there was clearly just a difference of opinion. An answer having been given that the Claimant did not agree with, she would frequently (and notwithstanding our repeated guidance) make a series of sweeping and unclear statements and then try to move on to a new question without giving the witness an opportunity to reply. The Claimant was also often insistent on proving a dispute over a piece of software code and what the correct approach to a coding software problem might be and, despite our guidance, took a disproportionate amount of time doing so. It was clear to us that the Claimant did not appreciate that frequently there may not be one single approach or solution to a problem, that people may differ in their opinions on the best approach to a problem and that managers have to make decisions that others may not ultimately agree with but which subordinates have to accept and get on with.

***Day 8 – 17 June 2025***

48. When we reconvened third parties sought to observe the hearing. When given details of the anonymity order one did not then join and the other was known to the Claimant and confirmed that they understood the anonymity order. We heard the Claimant's evidence. Her answers were frequently lengthy and, making allowance for her disabilities, we often had to remind her to answer the question asked, speak slowly and not interrupt the question. We gave a further explanation to the Claimant about the submissions stage of the hearing.

***Day 9 – 18 June 2025***

49. On day 9 we continued the Claimant's evidence and during the day repeated the guidance we had given her on Day 8. The Respondent finished its cross examination just after the time limit imposed. The Claimant did not use the re-examination stage for the proper purpose that we explained. We explained the submissions stage again and set the parameters for that stage.

***Day 10 – 20 June 2025***

50. We read written submissions provided to us in the morning and then heard oral submissions. This took all day. At the end of the day the Respondent raised an application in respect of confidentiality and we asked the Respondent to put it in writing. We warned the parties about the delay that might arise in us deliberating and then reaching and preparing a written decision.

**FINDINGS OF FACT**

- 51. Having considered all the evidence, we find the following facts on a balance of probabilities.
- 52. The Claimant may be dissatisfied with the level of detail in our findings and the fact that we have not made findings on whether she or another person was correct or incorrect in respect of any particular technical contention related to the coding and other work that the Claimant carried out. In that respect the parties will note that:

- 52.1 We made clear that, not being software engineers, we would not (and did not need to) determine technical coding matters and agreed entirely with EJ Joffe's consideration of the question of whether we should hear expert evidence;
- 52.2 We have needed to apply Rule 3 (the overriding objective and in particular considerations of proportionality) in the amount of time we have spent on determining this claim and the detail we have gone into in our findings of fact. We owe the duty to spend a proportionate amount of time on this claim not just to the parties in this claim but also to the thousands of other parties who want decisions to be made for them (taking into account the stretched and finite resources of the Employment Tribunals). Time spent on this claim is time not available to other parties who are involved in Tribunal litigation.
- 52.3 Not all the matters that they told us about are recorded in our findings of fact and we have focused on what we consider to be the most important points relevant to the list of issues.

### ***Claimant's disabilities and their effects***

53. We were provided the Claimant's disability impact statement at RB185-187 which was not disputed by the Respondent in cross examination and which we accept. It read as follows:

*"Disability: ADHD and Dyslexia*

*Diagnosis: 12/02/2013*

*Treatment: Methylphenidate (past)*

*ADHD and how it impacted me in the past and continuing.*

*Attention-Deficit/Hyperactivity Disorder (ADHD) is a neurodevelopmental disorder characterised by persistent patterns of inattention, hyperactivity, and impulsivity that interfere with functioning or development. These are the symptoms I experience day to day and they still affect me.*

*A. Academic Performance/ Workplace performance:*

*a. Concentration Difficulties: Individuals with ADHD often struggle to maintain attention on tasks or instructions, which can lead to incomplete or poorly executed assignments.*

*b. Organisation Challenges: Difficulties in organising tasks and materials can result in missed deadlines and overlooked assignments.*

*c. Memory Issues: Working memory deficits can hinder the ability to follow multi-step instructions and recall important information.*

*i. Challenges with retaining new information, affecting learning and work performance*

*d. Difficulty sustaining attention on tasks, especially for prolonged period*

*e. Frequent distractions and tendency to be easily distracted by external stimuli,*

**B. Workplace Functioning:**

*a. Productivity. Inattention and distractibility can reduce work efficiency and productivity.*

*b. Time Management: Problems with time perception and prioritising tasks can lead to procrastination and missed deadlines.*

*c. Interpersonal Relationships: Impulsivity and difficulty in regulating emotions may lead to misunderstandings and conflicts with colleagues.*

**C. Social Relationships:**

*a. Communication Difficulties: Impulsivity can result in interrupting others, talking excessively, or struggling to wait for one's turn in conversations.*

*b. Social Skills: Inattention may affect the ability to pick up on social cues, leading to misunderstandings or social isolation.*

*c. Emotional Regulation: Intense emotional responses can strain relationships with friends and family.*

*i. Difficulty managing emotions, leading to frequent mood swings*

*ii. Increased susceptibility to stress and frustrations*

*iii. Struggles with self-esteem and feelings of inadequacy due to ongoing challenges*

*I was born and raised in [Redacted For Confidentiality] till I was 13. I attended public school and there, learning disabilities are not heard of. As a child teachers used to cane me because I couldn't sit still and I used to make lots of "careless" mistakes and was academically mediocre. Unlike my fellow classmates, I struggled with social cues and friends and teachers assumed I was a special child.*

*After moving to the UK, due to cultural differences and lack of language knowledge, my hyperactivity turned inwards. My mind is constantly busy and I get distracted easily. Because things are connected differently, I do not stay in a topic as in my mind, all things are related. I did my GCSE's, A-Levels in the UK and during that period of time I struggled with time blindness, waiting until the last minute to finish assignments or even study for exams. I often get distracted while doing assignments or*

*homeworks. I got diagnosed as an adult, because my flatmate noted my symptoms and suggested I should see a specialist. Since being diagnosed, knowing more about my disability, throughout the years I found coping mechanisms to address the issues mentioned above. I need to be in perfect mental health for it to be effective.*

*I struggle with expressing myself so that the other person can understand it, so often when there are conflicts, I tend to write my thoughts on paper so that I can reread it and present to the others in question.*

*I stopped taking methylphenidate in 2020 as I felt I was able to cope with my ADHD with strategies I developed in the past to hope with my work. I stopped taking the medication as I felt like my heartbeat was raised and often, I get headaches/migraines. I used to take the medication while I was working but again, migraines meant I often had to cover hours in my spare time. I learned the coping mechanisms mentioned below to function while on medication and routine and predictability helped me to function quite well.*

*I still suffer from sleep wake phase disorder. At the time of discrimination, I was taking quetiapine 75mg which has now increased to 100mg along with Mirtazapine 45mg. New dose should help me with my sleep and anxiety according to the psychiatrist. Side effect of these medications is low metabolism so increased weight gain.*

*These are:*

*1. Spending time with managers or product managers to clarify requirements.*

*2. Concentration:*

*a. If there is something new which I need to look into for work, I tend to spend my evenings researching it so that I will have plenty of time to learn.*

*b. Concentration is difficult for me when there are so many distractions such as a workplace with people talking or moving around. So, I need to plan my week in advance to avoid such situations.*

*c. Having set mini goals throughout the day helps me with concentration*

*3. Time management:*

*a. Structured routines to help establish consistency and predictability. Without structured routines, I struggle with time blindness and get easily distracted.*

*b. This is often a big issue for me when there is no clear goal*

*clarified by managers or last minute tasks which require additional research or learning.*

*c. Again, I tend to have timers and I often keep checking the progress when the timers run out to see if I have deviated from my tasks.*

*4. Memory issues:*

*a. I tend to finalise the requirements and ask the manager or product manager to give clear written instructions on tasks so that I do not miss any crucial information.*

*5. In order to compact procrastination at work, I developed a few strategies which helped.*

*a. Setting small deadlines throughout the day to achieve goals*

*b. Setting allocated time box for research and learning*

*c. Writing requirements clearly so that there is no confusion in expectations.*

*d. Setting allocated time to read and learn*

*6. Since, I am not good with picking up social cues, I tend to avoid networking, office chitchats and tend to answer my colleagues professionally.*

*7. I am not a violent person, however I do struggle with emotional regulations. In the event of unfair accusations, I tend to react and send emails to the management explaining my side of the story with evidence. When there are conflicts, I tend to write my thoughts down in chronological order to state my side of the story. Otherwise, if I were to have a conversation, I end up changing topics and the other person will be left confused.*

*a. When I complete tasks on time as I predicted, I get good satisfaction which improves my mood.*

*This helps me to function somewhat normal as I trained myself to have small goals throughout the day to motivate me and keep going.*

*8. I requested a mac, since I am used to working with terminals and other shortcuts in mac. I struggled using Windows.*

*All of the above are from workplace situation, in my personal life ADHD impacts me greatly this includes*

*Basic hygiene*

*Taking my dog out for walks*

*Food preparation*

*Doing household tasks such as cleaning, laundry*

*Dyslexia*

*As for dyslexia, I suffer from moderate dyslexia. This means I need more time to read things and process them.*

*Usually, I tend to spend my own time reading such things since I like to learn things in depth.*

*I often misread the words and have to read a paragraph several times to understand the content. My reading speed is very slow compared to someone who does not have dyslexia. My writing speed is slow, but this does not impact me at work since I can type very well. English is my second language and prior to moving to the UK, I wasn't good. I studied in [Redacted For Confidentiality] so it takes me longer to read English text compared to [Redacted For Confidentiality] which is my mother tongue. Even as a child, I made careless mistakes in [Redacted For Confidentiality], often not being able to spell things correctly.*

*Current Situation*

*At the moment I am diagnosed with severe depression, anxiety and adjustment disorder. My coping mechanisms I learned in the past no longer work and I am waiting to be seen by the secondary health care team for my ADHD. GPs can no longer prescribe ADHD medication. I was diagnosed with diabetes and high cholesterol level after I stopped taking ADHD medication and since it's a stimulant, it might not be suitable for me to be on. I cannot see ADHD specialist till I am discharged from current mental health care due to my low mood, anxiety and suicidal tendencies. I feel like I am in a catch 22 situation and I am not sure if my condition can be helped even with ADHD medication as it might not be suitable for me.*

*Due to my severe depression and anxiety, I cannot take care of myself such as meal preparation, taking my dog out for a walk and doing laundry and taking regular showers etc. I have social anxiety at the moment. I have been assessed by DWP and they have concluded I have limited capability for work and work related activity (LCWRA)."*

### **Claimant's dates of employment**

54. The Claimant was employed by the Respondent between **11 April 2023** and **8 August 2023** when she was summarily dismissed with payment in lieu of her two week notice period [RB2808, RB1911].

### **The Respondent and its technology team**

55. The Respondent is a global financial services business. It uses software and

technology to deliver services to its clients.

56. **Mr Boris Levine** is Chief Technology Officer (CTO) for the Respondent and has a PhD in Computer Technology/Computer Systems. He has worked in the software engineering industry for about 30 years. He is responsible for all development and operational support of all applications and the development and performance of the infrastructure for the information technology part of the Respondent's organisation worldwide. He oversees hundreds of active projects and tens of different teams in multiple locations. At the time the Claimant commenced employment with the Respondent Mr Levine was just starting in his new position as CTO, spending most of his time getting an overview of the existing teams, offices and projects, collecting information and starting a big restructuring process.
57. **Mr Nadeem Humdani** is the Director of Technology. He has extensive experience in the technology and financial services sectors. He specializes in applications development, focusing on building financial systems covering external and internal systems for both clients and internal use. He reports to Mr Levine. Mr Humdani is responsible for delivering on key business technology objectives and leads multiple teams comprising of over 100 technologists. He provides overall technical direction to those teams. Mr Jothibas Ramachandran reports to Mr Humdani as do a number of other managers at Mr Ramachandran's level of seniority.
58. **Mr Jothibas Ramachandran** is an Engineering Manager for the Respondent. His role involves managing software development projects. The business will tell his team what its operational requirements are for a particular piece of software that they want the Respondent to develop and his role is to translate those requirements into technical tasks. He puts together teams of software developers and guides them with the architecture they work on. He is responsible for making sure that the work of the software engineers is high-quality and that projects are delivered on time. At the time of the Claimant's employment Mr Ramachandra led a team of 10 people (including himself) comprising software engineers, quality assurance engineers and one solution analyst. We accept Mr Mhatey's evidence [AWMWS4.5] that Mr Ramachandran was always busy and his calendar was always booked or double booked. It was not always easy for anyone to get time from him but he did his best to make time if asked.
59. **Mr Etimbuk Udofia** is a Technical Lead for the Respondent . He commenced employment with the Respondent as a Software Engineer. He was officially promoted to the role of Technical Lead in January 2024 but was working towards that and performing the duties of acting team lead in 2023 during the Claimant's employment.
60. **Mr Abdul Waheed Mhatey** is a Solutions Analyst for the Respondent. He was the project manager for the team in which the Claimant worked and Mr Mhatey reported directly to Mr Ramachandran. As referenced below, 'scrum master' is a management framework that teams use to self-organise and work towards a common goal. The team in which the Claimant worked had scrum meetings every morning to discuss what team members had done the previous day and

what they would be doing that day. Mr Mhatey had scrum master and also solutions analyst responsibilities. He works with various teams on different projects. As a solutions analyst, part of his responsibility is to convey the requirements of the business to the technical teams. The business will tell him its requirements which he relays to the team. He has to listen to the technical team before relaying any technical risks and concerns back to the business. As such he is an intermediary between the business and the technical team. Mr Mhatey supported Mr Ramachandran with managing the Oils Brokerage team and the delivery of their projects.

61. **Mr Bodrul Choudhury** is a Senior Software Engineer for the Respondent. He joined the Respondent as a Software Engineer (also known as 'Spoke Developer'). Mr Choudhury was promoted to Senior Software Engineer in 2023. The software engineers in the team do not report to him but he assesses what they are doing in terms of effort and project movement and he reports back to Mr Ramachandran.
62. **Ms Laraine Cutmore** is now a Senior HR Adviser but at the time of the Claimant's employment she was an HR Adviser. She gave some advice to the Respondent about managing the Claimant and attended a number of meetings with the Claimant and her managers.
63. **Mr Kevin Payne-Hanlon** is a Senior HR Business Partner. He started working for StoneX in April 2023.
64. **Employee A:** was a Senior Software Engineer who worked in the same team as the Claimant. His employment started in 2022 [RB2720-2724]. His probation was extended on 9 March 2023 to 19 June 2023. He resigned before this extended period [R2753].
65. **Employee C:** is an experienced software developer who has been working in finance for many years.

## Glossary of terms

66. Mr Ramachandran set out [JRWS1.11] a summary of some of the terminology used in the workplace to which this claim relates which was not challenged and which we adopt as follows:
  - 66.1 **Code Smells:** some issue or problem within the code developed which is highlighted by the code analysis software - in this case SonarQube.
  - 66.2 **Commit:** adding a piece of code to the source code repository.
  - 66.3 **EPro** - a trade booking system that Mr Ramachandran's team developed. The Invoice Manager depends on this system to get data about trades.
  - 66.4 **Jira:** the name of the Respondent's tracking software system.
  - 66.5 **Oils Dev:** the name of Mr Ramachandran's software development team group that supported the Oils Brokerage part of the business.
  - 66.6 **POC:** proof of concept. When a new technical solution is provided Mr

Ramachandran's team usually do a 'proof of concept' to make sure the design is feasible before they do full-fledged development work.

- 66.7 **PR: Peer Review** - any code a developer writes needs to be reviewed by two peers and approved before it can be added to the codebase.
- 66.8 **PR ticket**: a peer review task, created when a developer has written some code.
- 66.9 **Scrum**: a management framework that teams use to self-organise and work towards a common goal, usually involving a set of meetings, tools, and roles for efficient project delivery. **We add that Scrum meetings were held every morning to discuss what team members had done the previous day and what they would be doing that day.**
- 66.10 **Spike ticket**: any work done is defined in a tracking system called Jira. There are different types of 'tickets' created i.e. Story, Task, Bug, Spike, etc. Spike is a ticket created when the developer doesn't know how to do a specific task and creates a time boxed ticket to try out their technical solution. No more than 2 days are allowed for a Spike ticket in general.
- 66.11 **Sprint**: a fixed, staged period of time within a longer project. In the case of Mr Ramachandran's team, sprints are two weeks long. Mr Ramachandran's team do the planning for tasks on the project that can be done in two weeks and demonstrated to business at the end of that two-week sprint so any deviations from the requirements can be caught early by the business team. This provides a regular and constant feedback loop making the development cycle more efficient.
- 66.12 **Tech stack**: an all-encompassing phrase that generally indicates the programming languages used, database, infrastructure - on premises or cloud, messaging systems etc.
- 66.13 **Ticket**: a ticket created in Jira that defines a piece of work to be done.

## The Respondent

67. We accept the evidence of Mr Humdani that the Respondent operates in a highly regulated sector (finance) and that even minor security risks must be treated seriously.

## Recruitment of the Claimant and salary bandings

68. We accept the Respondent's evidence (including that of Mr Mahkonen [IMWS2.3]) that:
- 68.1 the Respondent has Senior Software Engineer roles and Software Engineer roles.
- 68.2 The salary band is higher for Senior Software Engineers but there is an overlap in the salary bands.
- 68.3 At the time of the Claimant's employment, the Software Engineer band

was £60,000-£85,000 and the Senior Software Engineer band was £80,000 to £105,000.

- 68.4 The role title alone does not determine an individual's salary – a Senior Software Engineer could be paid £80,000 whilst a Software Engineer might be paid more than £80,000 (e.g. for retention purposes or if they stand out in one particular area but not in all areas required for the more senior role).
69. We accept Mr Mahkonen's evidence [IMWS4.2- 4.19] that in March 2023 the Respondent advertised a vacancy for a Senior Java Developer.
70. The Claimant saw the advert on 'CV Library' and applied for it via that platform and the Respondent received her details also via a recruitment agency.
71. The Claimant indicated in her application that her salary expectation was £60,001- £80,000.
72. The Claimant was first interviewed on 16 March 2023 by Mr Ramachandran. The Claimant had a second interview on 20 March 2023 with Mr Udofia. Both interviews were conducted on Microsoft Teams ("Teams"). Both interviews were set up via Teams as being interviews for the level of Senior Software Engineer.
73. In the interview with Mr Udofia he set the Claimant a simple coding problem. The Claimant gave her answer and Mr Udofia asked if she could improve on it in any way. The Claimant said no and asked Mr Udofia if he had any thoughts on that. Mr Udofia suggested an improvement which the Claimant did not agree with but she did not make this clear to Mr Udofia because it was an interview setting and she wanted the role.
74. On 21 March 2023, after the Claimant's second interview, Mr Mahkonen spoke with the Claimant by telephone [RB1147-1148] and then fed back to Mr Ramachandran by email [RB1144]. This email correspondence had the subject Senior Software Engineer.
75. On 22 March 2023, in the morning, the Claimant called Mr Mahkonen and explained that she had received another offer and was now getting a bit of pressure.
76. Mr Mahkonen therefore chased Mr Ramachandran for a reply to his earlier email. Mr Ramachandran's response was [RB1143]:

*I was ill yesterday and couldn't discuss about [Claimant's] offer.*

*The discussion I wanted to have with Nadeem was inline with her skillset, she is good for her experience but there are a few things she hasn't got any experience, like she hasn't worked with RDBMS backed systems just NoSQL ones.*

*If she got another offer did she give any reason why she is still interested in ours?*

77. Mr Mahkonen therefore spoke to the Claimant again and then provided feedback to Mr Ramachandran via email [RB1143] saying:

*Thanks for sharing. I've passed the feedback onto [Claimant] and she is confident that these are areas that she could pick up quickly whilst focussing on her professional development.*

*Equally when I asked her why she hasn't accepted this other role and why she is waiting to hear from us before making a decision this was her response:*

*Prefers StoneX. Generally like the way they carried the interview, everyone she met was very informative and knowledgeable of software and their jobs, she got a good sense of what it would be like to work here, the environment and the way in which everyone collaborates with each other. She is trying to break into Finance having done a couple of projects and the other offer isn't within Finance. but overall, the process has been quick, she appreciates and take on board the feedback that she was presented with after each stage of the process and identifies these are areas of development and that she is confident that StoneX will give her a lot of exposure and opportunity to work alongside equally passionate people.*

*Let me know your thoughts,*

78. We accept Mr Mahkonen's [IMWS4.9] and Mr Ramachandran's [JRWS2.3-2.4] evidence that Mr Ramachandran asked Mr Mahkonen to proceed with the Claimant's recruitment on the basis of Software Engineer instead of Senior Software Engineer. We accept that this was because the Respondent assessed that the Claimant did not meet the level of a Senior Software Engineer (not having any previous experience of working in a financial services environment and lacking some of the technical experience the Respondent had been looking for the Senior role).
79. Mr Mahkonen had a further call with the Claimant on 22 March 2023 and amongst other things told her that there were some areas of software development where she did not meet the standard the Respondent was looking for in the Senior Software Engineer role. We accept that he explained that the Respondent was in a position to proceed on the basis of a Software Engineer rather than a Senior Software Engineer role at the top salary in the range being sought by the Claimant. Mr Mahkonen followed up with an email the same day, 22 March 2023 [RB1153] and the Claimant accepted the terms that he outlined [RB1155]. His email specified the roles as being Software Engineer. We do not accept what the Claimant appeared to argue that this was merely a reference to a generic role encompassing Senior Software Engineer.
80. Mr Mahkonen then created a new starter form [RB1150-1151] specifying the change of role from Senior Software Engineer to Software Engineer. This job title was also reflected in a further email to the Claimant on 23 March 2023 [RB1287] which sent her a dashboard link through which she accepted the offer

of Software Engineer. The Claimant's corresponding employment contract used the Software Engineer job title.

81. Mr Ramachandran fairly accepted in cross examination that his use of the job title "Senior Software Engineer" in an email to the Claimant of 26 July 2023 was simply human error on his part [CB1025]. The Claimant was appointed at the top of the Software Engineer salary range and the bottom of the Senior Software Engineer range. The Claimant did not challenge her job title at the time.
82. The Claimant subsequently appeared to take a rigid view of the hierarchy in the Team and, notwithstanding their greater experience and, in the case of Mr Udofia his de facto higher status as acting Tech Lead, did not appear to be able to take suggestions, guidance or instructions from more experienced team members who she considered to be of the same seniority as her (in particular Mr Choudhury and Mr Udofia).
83. We accept Mr Ramachandran's evidence [JRWS2.3] that in his interview of the Claimant he explained to her that every developer would be given a Windows laptop and that he explained the tech stack used in the project on which the Claimant would be working. We accept his evidence that the Claimant did not give any indication that she could not work with a Windows laptop.

### ***The Claimant***

84. At the Hearing and notwithstanding repeated guidance the Claimant frequently:
  - 84.1 interrupted the Tribunal, counsel for the Respondent and the witnesses.
  - 84.2 Sought to speak over others;
  - 84.3 Gave speeches rather than putting or replying to questions;
85. These are not uncommon mistakes of litigants in person but the Claimant's conduct in the Hearing was extreme in this regard. Whilst seeking to make appropriate allowance for the Claimant's conditions the Judge frequently had to interrupt the Claimant and reiterate the need for her to comply with the guidance that was given to her on numerous occasions. This was necessary to ensure that the Claim did not consume a disproportionate length of time and to ensure fairness to the Respondent and its witnesses.
86. However, the way the claimant behaved in the hearing did not influence us in exercising our judgement on all the evidence before us. We recognise that giving evidence in your own claim and representing yourself in a Tribunal hearing is a stressful and unusual situation to be in, and is not representative of the pressures or tasks entailed in day-to-day employment as a software engineer.
87. We find that the Claimant, during her employment with the Respondent:
  - 87.1 Rated highly her own capabilities as a software engineer but at the same time demonstrated an excessive need for managerial input.
  - 87.2 This need for managerial input, in particular that of Mr Ramachandran, did not materially dent her self-assuredness, it only enhanced her sense that

she was not being given the input that she considered was reasonable to perform her role and that others' were inadequate (either in (i) their own skills or (ii) their ability or willingness to explain the Respondent's needs for her);

- 87.3 Would take some steps to try to resolve issues but, having not succeeded, wanted to be given the answer by others, in particular Mr Ramachandran. As we will explain: (i) The Claimant, in the event required Mr Ramachandran to provide her with a step by step set of instructions on how to complete the IM task [CB1089, CB1120. RB1508- 1510]. Given the skills that the Claimant professed to have, she should not have needed this level of guidance. (ii) When the Respondent gave the Claimant a further opportunity to demonstrate her capabilities through what the Respondent called an "Assessment Task", the level of guidance sought by the Claimant was tantamount to being given the answer.
- 87.4 Found it very difficult to take instruction or guidance from those in her team that she saw as her peers (in particular Mr Udofia, Mr Choudhury and Mr Mhatey). She saw all of those individuals as being at an equal level of seniority - they all reported to her manager, Mr Ramachandran. The Claimant was not able to understand that they nonetheless were more senior than her, even if that seniority was not recorded in a formal job title/higher grading (Mr Udofia being acting Tech Lead, Mr Choudhury being more experienced in the Respondent's ways of working and Mr Mhatey in his role as Solutions Analyst). In her witness statement the Claimant even asserted, and we quote: "*1.6.3. If I was hired as a junior software engineer, [Mr] Ramachandran only had to say that I should listen to [Mr] Udofia as he is a senior software engineer instead of lying about [Mr Udofia's] role*". The Claimant clearly did not understand that Mr Udofia could have a position of seniority (as acting Tech Lead) without being a Senior Software Engineer.
- 87.5 Could be confrontational in group meetings, often persisted with a point that was not significant when viewed in the context of the broader project and which a software engineer should in any event be able to resolve themselves and stalled progress in discussions [BCWS4.6].
- 87.6 Had a tendency to view work related decisions in binary terms (either right or wrong) and had difficulty acknowledging that decisions are not always so clear cut and that a manager (or someone such as Mr Udofia or Mr Mhatey) had the right to make a decision that the Claimant did not agree with based on their own assessment. The Claimant had a tendency to unreasonably take personally and be affronted by decisions that were contrary to her own views or which might imply criticism of her own work.
- 87.7 When her progress and performance was called into question (as it was at an early stage) the Claimant did not take responsibility for it and sought to blame others. One of the factors that the Claimant blamed (and on which **Issue 2.1 (b)** is focused) is that she said that she had had fewer calls with Mr Ramachandran. She had pulled data showing the number of calls that she and other team members had had with him. What she extrapolated

from that was not reasonable and overlooked the fact that (i) she was working on a simple project and had been told to get guidance from Mr Udofia (amongst others) rather than Mr Ramachandran, (ii) she did not know what the calls with other team members were about (iii) other team members were working on two other projects which were more complicated and were delayed (iv) call numbers are only part of the picture of interactions with team members. In evidence the Claimant went as far as to assert that she had been recruited by Mr Ramachandran and then deliberately set up to fail by him so that the IM project was delayed and thereby mitigating the pressure on Mr Ramachandran arising from the fact that two other more complex projects were running behind schedule. This assertion was implausible and it did the Claimant no credit to suggest that Mr Ramachandran might have wanted a third project to struggle and set her up to fail.

### Commencement of employment

88. We accept Mr Ramachandran's evidence that on her recruitment the Respondent wanted the Claimant to develop an Invoice Manager software solution ("IM"). As he explained (see [JRWS1.5] which we accept in its entirety) the aim was for this software to handle invoice generation for clients on a monthly basis getting trade data from the Respondent's booking system (known as "EPro") on a daily basis and using that data to generate invoices based on the client configuration. This should have been a simple task for the Claimant as a software engineer paid at the level she was paid [EUWS2.2]. In evidence the Claimant accepted that conceptually the task was simple, albeit she said that the fact that Mr Ramachandran directed that the IM be generic (rather than specific to Oils Dev was a complicating factor and that generating credit notes was not so simple). In this regard the Claimant accepted in evidence that the IM needed to:

88.1 receive information about transactions and then generate an invoice which was accurate and up to date as at the date of generation;

88.2 be user friendly (accessible), secure, efficient; and

88.3 be comprehensible (i.e. the operating code) to other users and developers so that it could be developed and used.

89. We accept Mr Ramachandran's evidence [JRWS3.2] that the Claimant had an induction which involved her completing several courses, including training on Data Protection, Anti-Bribery and Corruption, Sanctions, Anti Money Laundering, Bribery and Corruption, Conflicts of Interest, Fraud Prevention and Cyber Security [RB2218]. Mr Ramachandran also introduced the Claimant to the team, its members, the team's projects and the technology that they used [JRWS3.4]. In contrast to the majority of software engineers who join Mr Ramachandran's team, the Claimant had not already used some of the technology that was used by the team. The whole of the Claimant's first week of employment was therefore spent trying to get her up to speed with the Team's work. Team members spent that week helping her to set up her computer and use the relevant software.

90. We accept that the Claimant took longer than usual to complete her training. Having started employment on 12 April 2023, on 20 April 2023 she told Mr Ramachandran that she was still doing her training and still had three courses to complete [RB2225-22226]. It was at this time (19 April 2023 [RB2224]) that the Claimant said in a Teams message to Mr Ramachandran "*Hi Jothi, I am really struggling to use windows, I have checked into installing mac os, but that is not licensed. Do you think company can issue me a mac instead?*". She did not link her difficulties with her disabilities (which the Respondent did not know about at this stage). Mr Ramachandran agreed to check on the possibility of providing the Claimant with a Mac but he sought to temper her expectations as to her request. At this point the Claimant was only doing her training so she and Mr Ramachandran agreed to evaluate her request in a months time.
91. To help her Mr Ramachandran agreed to give the Claimant one day off per week to do training courses to try to bring her up to the necessary skill level. As such the Claimant had every Friday as a paid day off work to learn (including how to use Hibernate) and do the training courses she wanted to do [JRWS3.13].
92. We accept Mr Ramachandran's evidence that he gave the Claimant a full briefing on the work the Claimant would be doing including the IM project and the tech they used. He wrote notes to help on a whiteboard which the Claimant photographed [RB1107-1108].
93. Mr Choudhury was assigned as the Claimant's buddy. However, after about a month, Mr Choudhury told Mr Ramachandran that it was not going well and was taking up too much of his time. We accept Mr Ramachandran's evidence that even though Mr Choudhury was providing the Claimant with help her attitude to Mr Choudhury was "why do I have to listen to you?" [JRWS3.5]. We also accept Mr Choudhury's evidence [BCWS3.2-3.4] that he and the Claimant worked together on IM, there is often more than one way of doing something and discussions between colleagues can help a decision as to which option to take and that there was respect in the team for alternative opinions. However, if Mr Choudhury expressed a view contrary to the Claimant's she reacted as if he had done something wrong, her manner was often confrontational and condescending and she was very forceful with her views. There had not been this tension in the team before but, because of the Claimant's attitude, Mr Choudhury became nervous and anxious about coming to work.
94. On 25 April 2023 the Claimant and Mr Ramachandran had the following exchange on Teams: [RB2229-2235]:

**25 April 2025**

*C - Hi Jothi, When you come back from your break, can we please setup weekly catchups. I want to have clear milestones and deadlines agreed by you and I so that I can focus on it. For invoice manager, Waheed, you and myself need to have a meeting where we agree on alpha version deliverables.*

*JR: Why weekly there is a status call every day. Its a strange situation now that Waheed is off for so long unplanned. Have you finished looking*

*at the pdf generation and email logic/code?*

*If so then look at the sample invoice file/Invoice generation SP to come up with clear interfaces needed to invoke pdf generation service/class and the email generation code*

**C:** *Weekly milestone updates, specifically for invoice manager. I am not aware of any deadlines for invoice manner. I had taken look at the pdf generator code, however, for invoices the template would be different. I couldn't find the invoice pdf template in BRD*

**JR:** *Bodrul gave you invoice samples*

**C:** *Store procedures are using temporary tables. Waiting for access on invoice samples Specifically for sharepoint access to invoices*

**JR:** *Ask Bodrul he can give you a sample invoice pdf.*

**C:** *I need to have chat with invoice team on how they use the current invoice manager in order to come up with interfaces*

**JR:** *[Claimant] the last time I spoke to you, I explained we have all the details needed to start working on Invoice Manager. Not sure how talking to Invoice team is going to help you with creating interfaces.*

*Anyways*

*For now I will speak to Bodrul and get you samples*

*Invoice is generated by aggregating trades based on the split needed which Bodrul can tell you*

**C:** *Jothi where do invoice data comes from? Epro>*

*Does invoice manager make a call to EPro get this data?*

*Does it have to store this data?*

**JR:** *Do you have access to confluence yet?*

**C:** *I have read access to EMEAA page*

**JR:** *[Claimant] - speak to Bodrul and get the invoice samples. Out of the sample you should be able to come up with the data that's needed to generate the invoice PDF. You have access to old IM code which you are aware of and the SPs called.*

*This should. keep. you busy till Waheed comes back Wednesday morning*

**C:** *yes sure*

*I am not too worried, I thought I should give the team an update on my*

*progress and questions I have. Not sure if our team does this., so I apologize if I was direct*

*JR: Nothing to worry. Just that IM isn't something many have worked on or have knowledge of in the team. So didn't want you to wander off on some side chats*

**C:** I understand

95. It started to become clear to Mr Ramachandran that the Claimant's capabilities were not at the level they had anticipated [JRWS3.8]. We accept his evidence that she was taking up to twice as long as others might take to do the same thing and that having had a conversation with the Claimant one day he would find himself having to repeat the conversation the next day and start all over again. We accept Mr Ramachandran's evidence that the Claimant asked him to write down what she had to do in a day in a step by step process so that she could follow the steps. We accept that he did this where he could, but there are some tasks that Mr Ramachandran could not really write down. He therefore had to try to change the work he allocated to the Claimant work that was more suited to written instructions. Mr Ramachandran found himself having to do this on top of managing eight other staff members and two other projects that were more complex and running behind schedule.
96. The Claimant said that she did not think that Mr Ramachandran trusted the Claimant to work on the more complex project and that she should focus on delivering IM [CWS2.2.1.5]. IM was simple in comparison and given the difficulties that the Claimant was having with IM it is understandable that Mr Ramachandran did not trust the Claimant's technical skills [CWS2.2.1.6] on a more complex project.
97. We accept Mr Ramachandran's evidence that around a month into her employment he had a meeting with the Claimant and asked her how things were going. The Claimant said she wanted to learn a few things and wanted some more training courses so that she could do this. This meant that Mr Ramachandran had to reassign to other people a couple of the early tasks that had been allocated to the Claimant in the first month. The team also had to go back to the Claimant about work she had not done properly [JRWS3.12] .
98. We accept Mr Ramachandran's evidence that the Claimant was not keeping to regular office hours [RB2283-2284] and that the Claimant told him that she did not like working in the office and was more productive at home on her own. She told Mr Ramachandran that she worked at night and did extra hours outside normal working hours. However, Mr Ramachandran and others therefore found it difficult to help the Claimant to integrate into the team. We accept that if one person fell behind it affected the work of others. This is a reason for daily Scrum meetings and the need for close and collaborative team working and project management.
99. We accept Mr Ramachandran's evidence that the Claimant tended only to want to speak with him and not with others in the team or with Mr Udofia (Tech lead) or Mr Mhatey (as project manager).

### **3 May 2023 – Mr Ramachandran and Employee A exit interview**

100. We note here that on 3 May 2023 Employee A gave an exit interview having resigned (concerns having been raised about his performance and his probation period having been extended) [RB2753]. He criticised, amongst other things, management leadership, decision making, communication and feedback. He said that a manager, presumably Mr Ramachandran, would publicly admonish the team, could be very passive-aggressive, did not welcome collaborative decisions/suggestions, micro managed, and needed to be more democratic. He attributed this to inexperience of managing teams and lack of management training. Employee A did not give evidence for the Claimant and we prefer the evidence of the Respondent's witnesses, supported by the evidence of communications in the Bundle, that Mr Ramachandran:

100.1 Is extremely busy, has a demanding role and has calendar which is often double booked [AWMWS4.5] but does his best to make time for people if asked [AWMWS4.5] and often has to be chased [BCWS4.2];

100.2 has high standards and expects code to be written and delivered in a way to reduce the need for maintenance of the code [EUWS7.1];

100.3 can be assertive but was not seen to shout at the Claimant or anyone else [EUWS7.4, AWMWS4.8, BCWS4.5].

### **5 May 2023 Mr Ramachandran is alleged to have shouted**

101. A complaint in the Claimant's claim is that Mr Ramachandran shouted at the Claimant and told her to listen to Mr Udofia on 9th May 2023 [LOI 2.1 (d) (i)]. Through her comments on the chronology and her witness statement it became apparent that the Claimant said that this in fact took place on 5 May 2023. She said [CWS:1.6] that on Friday 5 May 2023 she and Mr Udofia had major differences in branching strategy and she asked Mr Ramachandran to join a call with them. She alleged that when she tried to explain her situation Mr Ramachandran shouted at her and told her to listen to Mr Udofia. She further commented "*If I was hired as a junior software engineer, Jothibasu Ramachandran only had to say that I should listen to Etimbuk Udofia as he is a senior software engineer instead of lying about Etimbuk's role.*". This was an example of the Claimant taking a strict and unrealistic view of the hierarchy of the team and overlooking the fact that Mr Udofia was in fact the Tech Lead (even if did not have the title of Senior Software Engineer) and had a leadership position. The Claimant failed to see that she should be accepting direction from Mr Udofia. Clearly Mr Ramachandran was not lying by saying that Mr Udofia was a Tech lead (by pointing that out he was not suggesting that Mr Udofia was a Senior Software Engineer). We accept Mr Ramachandran's and Mr Udofia's evidence that Mr Ramachandran did not shout at the Claimant on 5 or 9 May 2023. On the balance of probabilities we consider that he had to be forceful with the Claimant (because of the Claimant's confrontational approach to her colleagues) and had to emphasis to the Claimant that she should be taking direction from the more experienced Tech Lead, Mr Udofia [LOI 2.1(d)(i)]. There is no evidence to suggest that he would have acted any differently to a male colleague in the same circumstances. The Claimant did not complain about being shouted at the time and we consider, such is her strength of

character, that she would have done so.

**19 May 2023 Mr Choudhury makes “personal chatgpt” comment**

102. The Oils Dev team had its own Team chat group. This was used to communicate about work tasks but also to greet each other in the mornings (some days we worked from home) or to mention that someone had brought cakes to the office, for example [BCWS2.1].
103. Towards the end of the day on Friday 19 May 2023 Mr Choudhury posted a PR on the group Teams chat, to be reviewed by his colleagues as was normal [RB2483-2485]. The Claimant asked a couple of questions and then asked Mr Choudhury for a quick call. He declined explaining he was busy and indicating it could wait until Monday. The Claimant then, in the Teams chat, said *“sure, I left some comment but let me know if those are out of scope for this ticket, e.g logging on every method, ideally we should let the exception bubble up and log in caller, if we log every place then it would be too noisy”*. Mr Choudhury replied *“over-logging can be an issue in one sense yes., however with microservices architecture it's quite normal to be slightly more verbose in logging, arid agreed, in some areas we can allow exceptions to bubble, but in the scenarios i've written for this work Item, we need to handle the exceptions and return the appropriate responses since we're making s2s calls, etc. historically we've unfortunately been the opposite of logging, in the sense that we barely had any shipping, this is moving towards the ideal, and striking the perfect balance is an effort we all have to make, so much appreciated in your observations!”*.
104. At 18:05 the Claimant continued the Teams chat and it proceeded as follows:
- C: Added few comment, adding tests for whether we arc logging something us unnecessary in my opinion*
- BC: naturally i disagree on this- it depends on the context not everything is black and white [Claimant] lol*
- C: This Is the first time I am ever seeing it in tests i disagree with this but I guess this is for the wider team to decide*
- BC: a quick google will show you many examples and cases where this is happening..*
- C: purpose of logging is to ensure that we can debug. A unit test is smaller piece of code that can he tested logically. Unit tests should cover business functionality and expected behavior of the system. What if someone decide to remove the logging from the class, now the test needs to be modified too. Test should test the logic*
- BC: [LINK]*
- C: The article you shared docs not provide the reason why log needs to be asserted*
- BC: [LINK] would love to be your personal chatgpt on this but the*

*weekend awaits rne! happy reading, see you all next week*

*C: And they are testing for the class they written which is MemoryAppender*

*Yeah I am going to head home too! Have a great weekend!*

*BC: [LINK] another one if That wasn't appealing enough, all from mainstream sources too,, however I'll settle this debate by saying it's a preference - i won't reject your PRs if you're not unit testing these, it's neither here nor there*

*C: Yes context, which is here is asynchronous I.e main thread doesn't wait for the response for asynchronous call here they are logging, it should be metrics. In your test, you are just verifying whether logger is called, what does that supposed to test? Does it supposed to log a specific log event? in that case one need to write test covering it.*

*I am not rejecting your PR, just a general discussion on how things are done in this team, i am not sure whether we have "standards" documented somewhere*

*I am not too fussed or anything, just trying to understand the PR. Let's have a call on Monday so we can go through my question's together if needed*

105. We accept Mr Choudhury's explanation [BCWS2.3] that he was trying to communicate to the Claimant that 'overlogging' is not uncommon, was not a problem in this context, that the conversation was 'neither here or there', the matter was subjective and opinions differ on it as to what was best practice.
106. We accept that it was getting late on Friday evening, Mr Choudhury realised he and the Claimant were not going to agree and, in any event, the discussion was not business critical or urgent and did not need to be agreed upon. His way of trying to close the conversation and 'agree to disagree' in a light-hearted way was to make the reference to chatgpt above. In the context of the Claimant's persistence on a Friday evening and failure to see that it was not an important point it was a light hearted way to try to close off the conversation (albeit Mr Choudhury then made one further attempt to help the Claimant see his point). It was perhaps a slightly sarcastic comments but it was not condescending or offensive (in circumstances where the Claimant had been blunt in expressing her opinion). The Claimant replied in a light hearted manner. There is no evidence to suggest that Mr Choudhury would not have made that comment to a male colleague in the same circumstances. This is an example of the rigidity of the Claimant's thinking and in ability to see the context and that some things are not binary or as important as others. It is an example of the Claimant focusing her energy on a matter of relative unimportance and at the same time consuming the time and energy of a colleague.

***End of May – feedback to the Claimant on progress***

107. We accept Mr Ramachandran's evidence [JRWS4.5] that on 31 May 2023 (and before he knew about her disabilities) he expressed concerns to the Claimant about her progress with IM. In a blog published after her employment ended the Claimant acknowledged that this conversation had happened and that Mr Ramachandran had expressed concerns. In that blog the Claimant suggested that his motivation was to be able to blame the Claimant for the failure of the project (a project which was delivered successfully after the Claimant left the Respondent's employment). We consider this allegation to be illogical given Mr Ramachandran's responsibility for both hiring the Claimant and for delivering the IM project [RB1986-1987]. It is also improbable that he would seek to set the Claimant up to fail on a project and thereby have three rather than only two projects running behind schedule.

### **5/6 Jun 2023**

108. As part of the Claimant's claim she alleges that [LOI 2.1 (f)] "*On 5th June 2023, Mr Ramachandran discussed the claimant's work with Mr Udofia and then assigned additional work arising from that discussion to Mr Choudury instead of scheduling a meeting with the claimant to discuss feedback about it. Mr Ramachandran then discussed the claimant's workload with Abdul Waheed Mhatey instead of the claimant directly*". It is apparent from the Claimant's witness statement that she in fact alleges that this happened on 6 June 2023. She says [CWS44]:

*44.1. [Claimant] worked from the London office.*

*44.2. Jothibasuramachandran worked from the London office .*

*44.3. Standup*

*44.3.1. [Claimant] asked whether Jothibasuramachandran has any free time to go through the PR and he said he will "ping her" after the standup call.*

*44.3.2. [Claimant] was asked to leave the standup early and Jothibasuramachandran, Narendra, and Etimbuk Udofia continued with the stand up call.*

*44.4. Jothibasuramachandran and Etimbuk Udofia went through [Claimant]'s im-data-transformer service PR and made the decision to move the duplicate code to core-modules library.*

*44.4.1. [Claimant] was not asked to join this call.*

*44.5. 15:03 [Claimant] messaged Jothi asking when he has free time to go through the PR. [Bundle B, 341]*

*44.5.1. [Claimant] never received a response.*

*44.6. 15:26 Jothibasuramachandran asked [Claimant] to speak to Etimbuk Udofia regarding core modules. This was on the Oils-Dev-PR channel.*

44.7. *Etimbuk Udofia informed [Claimant] that he just created the task and he will update her shortly. [Bundle B, 484]*

44.8. *[Claimant] and Waheed Mhatley had a discussion about the next tasks she will be working on as [Claimant] was blocked by the outcome of the core-modules library.*

44.9. *[Claimant] informs Waheed Mhatley that she needs to speak to Jothibas Ramachandran to finalise the Database schema for ingest deal service.*

44.10. *Waheed Mhatley has instructed [Claimant] that before she begins work with invoice manager, she should speak to Jothibas Ramachandran and have the solution approved by him.*

44.11. *[Claimant] approached Jothibas Ramachandran and asked if she could speak to him to which Jothibas Ramachandran responded "not now, I have other things to attend to".*

109. We accept Mr Udofia's evidence that, whether this happened on 5 or 6 June, even as the Claimant describes it, this was a normal sequence of events for the team and there is no evidence that it had anything to do with the Claimant's sex [EUWS3.2] and the Claimant was not treated any differently because she is a woman. Mr Udofia, after all, was the technical lead for the project the Claimant was working on, Mr Mhatley was the project manager and Mr Ramachandran was their overall manager. We accept that it is normal when delivering a project that tasks are sometimes shared or moved around the team for efficiency. Here the team's delivery of the project was being delayed by the Claimant not delivering her task, there was a deadline, it needed to get done and Mr Ramachandran therefore re-assigned it to Mr Choudhury who promptly delivered [JRWS8.3]. For the avoidance of doubt we also accept Mr Udofia's evidence at [EUWS3.3]. There was no need to involve the Claimant in this discussion, it was a management decision that needed to be made. Further, it was entirely normal for Mr Ramachandran to have discussed the Claimant's workload with Mr Mhatley (as project manager) and there was no need to have done so with the Claimant. There is nothing to suggest that the treatment of which the Claimant complains in this regard would have been any different to that of a man in the same circumstances.

### **12 June 2023**

110. Part of the Claimant's claim is that [LOI 2.1 (c)] she "*had to chase Mr Ramachandran more often than her male colleagues for feedback and support on her projects*" and that specifically on 12 June 2023 the Claimant had to chase Mr Ramachandran "*multiple times to gain his approval on a project*". As we have said Mr Ramachandran had a very busy role and we find it entirely unsurprising that the Claimant had to chase him for responses. In any event we accept the Respondent's evidence that the Claimant relied too much on Mr Ramachandran and should have approached and accepted the guidance of other team members who were under the management of Mr Ramachandran. It is clear that the Claimant was not alone in needing to chase Mr Ramachandran

and that others, including those more senior to her who had a higher level of responsibility and experience, had to do so (Mr Mhatey AWMWS4.6, Mr Choudhury BCWS4.2-3). There was nothing in the events of 12 June 2023 that were surprising in a busy team and the Claimant's expectations as to Mr Ramachandran's responsiveness were unrealistic given the competing pressures on his time and attention and his (i) need to prioritise matters as he saw fit and (ii) reasonable expectation that his team members would collaborate with each other to find solutions and that the Claimant would accept the direction of her colleagues with more experience. The Claimant got input from Mr Ramachandran and others and we accept Mr Ramachandran's interpretation of the Teams evidence from this period ([RB2277-2283, RB2521-2522] [JRWS6.3]).

111. The Claimant's evidence on this in her witness statement at CWS48.8 acknowledges that she and Mr Ramachandran spoke at 12:08 and they had other communications that day and the next. The Claimant's assertions in her witness statement [CWS2.12.5] that she felt like Mr Ramachandran and Mr Udofia were purposely delaying her progress on tickets does not appear to have any base nor does it appear plausible to us. The Claimant says that "*after a long back and forth, Jothi called me and he told me to implement the missing classes in the core-modules library*". That she went on to conclude from this that she felt like Mr Ramachandran "*purposefully delayed [her] progress because he could stand a female developer being able to code*" and that she firmly believed "*he was jealous of [her] coding skills and he just wanted to chip away [her] confidence bit by bit*" is surprising and we cannot see any basis on which the Claimant would reach this conclusion.

## **22 Jun 2023 - Claimant migraine**

112. Part of the Claimant's claim is that on 22 June 2023, Mr Mhatey "*enforced a deadline on the claimant after she called in sick although he did not have this authority over her position*" [LOI 2.1 (g)].
113. This episode is captured in the Oils Dev group Teams chats from the day which read as follows [RB1454-1459]:

**C 9:19:** *I will skip the standup today, my update is to continue working on ingest deals service one my migraine goes away.*

**AWM:** *[Claimant] the standup isnt an optional meeting, is there a valid reason for you not to turn up?*

**C:** *Migraine*

**AWM:** *im sorry thats not a good enough reason*

**C:** *[posts link to NHS website on migraines]*

**AWM:** *I know what a migraine is Have you had a paracetamol or ibuprofen it should do the trick*

*or just put a cloth with rose water around the head*

*it does trick for me*

**C:** *I feel this comment is a bit condescending. I have taken meds and I have informed the team earlier about why I am skipping standup. [this was given a thumbs up by another team member]*

*Waheed, women menstruate, they might have period cramps, migraine/headache etc.*

**AWM:** *ok*

**C:** *So, in future if you would like to know the reason, please DM me*

**AWM:** *its fine as long you hit the target for friday as promised it should be ok !!!*

**C:** *Waheed, I cannot believe I am having this conversation with you in a team channel but here we go. I don't plan ahead in time when my period arrives, (some women have irregular periods). I cannot plan ahead in time when I will get migraines etc. If you have any issues with my performance, please raise it to Jothi whom I report to*

**AWM:** *hey [Claimant] i think your getting wrong end of the stick... all im saying is have a paracetamol for migraine pains no need to go into details i have no issues with you missing the standup*

*im just relaying the message to let you know that standups are not an optional meeting*

**C:** *Waheed, you asked me why I am missinh the standup*

**AWM:** *yes and you said migraine... i dont need to know anymore please*

*lets stop this here*

**C:** *I did say the reason why I am skipping the standup. I even informed the team that I will be working from home because I have a migraine.*

**JR:** *Guys its really saddening to see these conversations in our team chat. I will speak to @ both Abdul Waheed Mhatey and [Claimant]*

*But going forward keep the conversations professional at all times and be courteous to one another.*

**AWM:** *I apologise if i have said anything wrong!*

114. We accept Mr Mhatey's evidence that by this point he had sat next to the Claimant in the office for some time and had got to know her and was trying to offer her some advice that he thought might be helpful. He was also needed the Claimant's work on the IM project as they were reaching the end of a sprint (a check point in a project). The task that the Claimant needed to deliver had prolonged the project for several weeks and she had promised to deliver it

weeks before. He therefore wanted to hear her update at the Standup meeting as it had become urgent and if the Claimant was not going to deliver it on time it would impact the planning. We find that by this point Mr Mhatey had run short of patience with the Claimant and that his reply to the Claimant's post of 'migraine' as the reason for her non-attendance at the standup was dismissive. Migraines are experienced differently by people and can be very debilitating. Mr Mhatey could have shown more concern. Mr Ramachandran understandably stepped in to say that the exchange was saddening and Mr Mhatey said sorry "*if I have said anything wrong*". It was the Claimant that then referred to women menstruating and period cramps and who persisted in referring to those things in the group chat. It was surprising that the Claimant went on to post in the group chat: "*Waheed, I cannot believe I am having this conversation with you in a team channel but here we go. I don't plan ahead in time when my period arrives, (some women have irregular periods). I cannot plan ahead in time when I will get migraines etc. If you have any issues with my performance, please raise it to Jothi whom I report to.*". Mr Mhatey could have shown more understanding but it was the Claimant who then went on the offensive and volunteered more personal information than she needed to. Mr Mhatey was Scrum master but he did not enforce a deadline, he just referred to the deadline that had already been agreed "*its fine as long you hit the target for Friday as promised it should be ok !!!*" and the Claimant did not suggest that she could not meet that deadline.

### **28/29 June 2023 and 18 July 2023 requirement to post code in a public channel**

115. The Claimant's alleges that on either 28 or 29 June 2023 and again on 18 July 2023, Mr Ramachandran "*required the claimant to post her code in the public channel for approval from Mr Udofia on 28th June and 18th July 2023. The claimant claims that male colleagues were not required to do this*" [LOI 2.1 (d)(ii)].
116. There were two Teams channels used in the Oils Dev team, one for general communication and one was for PR review (both for the group of 10 team members). At most this allegation reflects a misunderstanding between the Claimant and Mr Ramachandran as to whether he was asking her to post her code in the general channel or in the PR channel. Either way the code would then be open to be reviewed by the team in the normal way [RD2557-2259]. There was no evidence that others were not required to use the PR channel for getting code checked and in any event all code has to be peer reviewed before it can be merged into the main body of code. There is no evidence of any different or adverse treatment of the Claimant in this regard (either on 28, 29 June or 18 July 2023). We accept Mr Ramachandran's evidence as to the allegation relating to 28 June 2023 [JRWS7.5, 7.6 and 7.7].

### **Mr Udofia allegedly dismisses feedback**

117. Another element of the Claimant's claim is that on either 28 or 30 June 2023, Mr Udofia "*dismissed claimant's feedback as he often had done before and was more receptive to the feedback and suggestions of his male colleagues*" [LOI 2.1 (h)].
118. The List of Issues records this as having happened on the 28 June 2023. When

the Claimant commented on the chronology she said it was 29 June 2023 and then at the end of submissions she said it was 30 June 2023.

119. The documents relevant to 28 June 2023 were at [RB2557-2559]. The documents relevant to 30 June 2023 were at [RB1717-1721]. On the balance of probabilities we accept that this complaint in fact relates to events on 30 June 2023. The Claimant provided her commentary on the following Teams exchanges at [RB1717-1721] which was part of an email she sent to Mr Humdani on 28 July 2023:

**Screen shot of EU Teams message:** *Hi [Claimant], following our discussion regards this PR before you abruptly hung-up the call, let's pack this for now for the following reasons*

- *We can build up all required parameters needed for DealSearchRequest in same class;*
- *Current POC, maintains these fields in RequestFilter , adds an additional step*
  - *Also, this means we will need to manually write validations when we could utilize annotations*
- *We can also properly annotate these fields in Swagger, which means Sam or any one can load up Swagger and see mandatory and optional fields;*
- *Having the Operand class means we will need to now manually write SQL operators when we already have CriteriaBuilder class*

*In summary, let's keep things simple and make sure it works before we add-on complex solutions.*

**Claimant subsequently comments in her email to Mr Humdani:** *So, Etimbuk and I had a call and before I could go through the code with him, he cut me off and said we have our own implementation of operand and criteria builder etc. Each time I tried to explain to him that this was not the case, he cut me off. So, I got angry and left the call abruptly. Please see this PR I was using criteria builder to build the actual query so his statement of manually writing operand class is wrong.*

**[screen shots of Java]**

**Claimant comments continue:** *As you can see from line 62, we are using criteria builders between operands. Maybe Etimbuk is not familiar with functional interfaces and got confused with what's happening here but if he had given me a chance to go through the code, I would have explained to him.*

**Screen shot of Claimant Teams message:** *Etimbuk, I am not supposed to work on the deal search service endpoint in the first place. I was given a task to write an end point which will be used by IM to fetch deals. That was the initial requirement and for that, we needed two things. List of account-ids and start and end date to get all the deals from a specific tradeDateTime column. Jothi then wanted not to fetch all the stuff like TradeLegs and basic deal solution is presented.*

*Now, we need to "document" that start and end date applies to tradeDateTime in deals table and so on.*

*To me, this filter option will grow and I don't like our approach of let's build something easy and later refactoring takes twice*

*IMDataManager is throwing exception because BrokerResponse is null. In which cases this can be null? When the TradeLegFunctional state is cancelled or when deal is onHold.*

*IMDatamanager now needs to pass this filter into it, additional two "filter options", I don't agree to your decision but since I am told that your are the team lead for this team, I have to do what you tell me to.*

**Claimant subsequently comments in her email to Mr Humdani:** *Discussion with Etibuk was one sided, he already made up his mind and had a call to inform me which he could have just posted it on a chat.*

*I got told off by Jothi because I did not come up with the poc solution when I started to work on deal-search-service.*

*Current POC maintains this fields in RequestFilter which is additional This is same as saying current DealSearch Request maintains the fields in its body and it adds additional step.*

*We need to manually write validations:*

*Yes, I agree to this to some extent, often we have to perform complex validations which cannot be done with annotation e.g. the start and end date fields are in certain format or whether account-ids start with LXO*

*As you can see, I have given my perspective of the solution, and Etimbuk just did not want to go through the code with me and give me a chance to explain.*

*Additional endpoint for Sam to use is still better than guessing which filters applies to which column on the table or developer to have extensive list of all available filters mapped to table columns in acceptance criteria.*

120. In her witness statement the Claimant said [CWS: 2.15.6. onwards]:

*During this call, Etimbuk claimed that I was rewriting the criteria builder. I contested this and asked Etimbuk whether I can go through the code with him to which he responded that he has already reviewed the code. I felt like Etimbuk has already made up his mind and he knew very well that I cannot take this to Jothi because he is the team lead.*

*2.15.7. I abruptly left the call as I was so upset and angry. I felt voiceless and felt like Jothi and Etimbuk used their seniority to make my life hell and paint me as incompetent, or gaslight me.*

*2.15.7.1. I have ADHD so in cases where I feel injustice, I remove myself from the situation to take a breather.*

*2.15.8. Etimbuk then posted the summary he prepared with things we did not even discuss [Bundle B, 1079].*

*2.15.9. Jothibas Ramachandran called me on Teams*

*2.15.9.1. Jothibas Ramachandran asked why I abruptly hanged up the call with Etimbuk Udofia*

*2.15.9.2. I explained that Etimbuk mentioned that sh wrote raw sql instead using criteria builder*

*2.15.9.3. I said I can walk through the POC work.*

*2.15.9.4. Jothibas Ramachandran agreed and I walked through telling him that I did not write raw sql.*

*2.15.9.5. Jothibas Ramachandran told me that he trusts Etimbuk's decision and he is more knowledgeable than me.*

*2.15.9.6. Jothibas Ramachandran tells me that when he did management training, HR instructed him to ask people to contact HR if they have a learning disability which he remembered now.*

*2.15.9.7. He shared the contact after that meeting with me.*

*2.15.10. I was left questioning my own sanity as I felt trapped.*

*2.15.11. I was not able to think clearly and I compared myself to the person before StoneX. I was able to complete far more complex tasks and now, I feel struggling to think clearly.*

121. We accept Mr Udofia's uncontested evidence at [EUWS 4.2] and that there were times when he accepted the Claimant's feedback, including in respect of an efficiency improvement to the approach they took to creating 'enums'. It is

entirely probable that the team would take on suggestions that made things faster or more efficient and helped the teams internal 'clients' at the Respondent.

122. The Claimant cross examined Mr Udofia at some length on this question. It appeared clear to us that there was a difference of opinion between the Claimant and Mr Udofia. Mr Udofia considered that the Claimant was reinventing the wheel by writing code (related to an 'operand class') for this particular task when there was preexisting code that had already been tested that she could use and was available in 'CriteriaBuilder'. The Claimant did not see it as a difference of opinion she saw the issue as one of fact. It is clear that Mr Udofia and the Claimant did not agree on the technical matter (or that the Claimant was not able to explain her point sufficiently clearly to Mr Udofia), there was a professional difference of opinion but, as Tech Lead, Mr Udofia was entitled to make the decision he did. Somewhat characteristically and unreasonably the Claimant took this personally and responded emotionally by leaving her call with Mr Udofia. She then begrudgingly and somewhat rudely acknowledged his leadership role in her message to him saying "*I don't agree to your decision but since I am told that you are the team lead for this team, I have to do what you tell me to*". There was no evidence, other than the Claimant's assertion, that Mr Udofia's decision had anything to do with the Claimant's sex. Mr Ramachandran was entitled to prefer the opinion of his more experienced Tech Lead, Mr Udofia, over that of the Claimant.

### ***Disclosure of disabilities***

123. There was some dispute as to when the Claimant told the Respondent about her ADHD and dyslexia. The Claimant suggested that it was at a meeting on 14 June 2023 [CWS 50.6] but she also suggested that she mentioned ADHD to Mr Choudhury at the start of May 2023 [CWS2.6.21]. Mr Ramachandran in his witness statement was not precise about the date [JRWS4.1]. It was clear to us that Mr Ramachandran was not experienced in such matters and needed the input of HR. This was clear from the events that followed.
124. On the balance of probabilities we consider that the Claimant mentioned dyslexia to Mr Ramachandran between 14 and 20 June 2023. Mr Ramachandran then spoke with Ms Cutmore on 21 June 2023 [LCWS4.2 and JRWS4.2]. We accept her notes of that meeting as being a summary of the topics discussed [RB1069 / 1453]:

*[Claimant] is a good tech lead but not focused and has difficult conversations with manager and colleagues. A lot of support is needed. Weekly catch ups are in place. Lot of instructions needed for each task. Sensitive to conversations and criticism, becomes defensive. Wants to know everything but is not completing their allocated tasks. Mid probation review due in early July. Will refer them to HR for discussion re support options.*

125. In the handwritten notes there was reference to OCH (which we take to be a reference to occupational health). It is this that indicates that the Claimant's dyslexia had been raised by the Claimant to Mr Ramachandran on 21 June 2023 and by him in turn to Ms Cutmore. The reference to the Claimant being a good tech lead in the handwritten and typed notes was an error in Ms Cutmore's

understanding and note taking of what Mr Ramachandran said [LCWS4.2]. Ms Cutmore suggested to Mr Ramachandran that he speak to the Claimant again to let her know that he had spoken to her and that Ms Cutmore was available if she wanted to have a conversation with a member of HR.

126. Mr Ramachandran and the Claimant spoke again on 30 June 2023 [CWS3.2 et al] and we consider, on the balance of probabilities and based on the documentary evidence, this this was the first occasion on which the Claimant mentioned her ADHD. It was this that prompted Mr Ramachandran to write to Ms Cutmore via Teams that afternoon and they exchanged the following messages [RB1470]:

**JR to Ms Cutmore 30 Jun 2023**

*Hi Laraine*

*Have spoken to [Claimant] and she will get in touch with you.*

*She has told me she is Dyslexic and suffers from ADHD as well and been diagnosed of those when she was child,*

**Ms Cutmore to JR**

*Hi Jothi, thank you for the update. I will wait to hear from her and then see if we can arrange the occupational health assessment*

**JR to LC**

*Ok [Claimant's name but we take it he meant Laraine] - let me know if you need any help from me.*

127. Very shortly afterwards the Claimant contacted Ms Cutmore via email saying [RB1464] *"I hope you are well. I was wondering whether we can arrange a meeting to discuss any additional support StoneX can provide for my learning disability. I am diagnosed with Dyslexia and ADHD"*. The same afternoon Ms Cutmore offered a meeting on Monday 3 July 2023 and they met that day via Teams. We accept Ms Cutmore's evidence [LCWS5.1-5.7] that:

127.1 the Claimant did not switch her camera on;

127.2 the Claimant's main focus was the fact that she did not like the Windows laptop that she had been provided with and she wanted a Macbook (she was struggling with commands and shortcuts on her laptop and the new operating system was causing distractions and she was interrupting others);

127.3 Ms Cutmore said that they could look at a referral to Occupational Health if the Claimant felt that would be helpful.

127.4 The Claimant did not ask for any other support.

128. On 4 July 2023 the Claimant confirmed that she would like to proceed with an

OH referral [RB1485,1492]).

#### **4 July 2023 Mr Udofia allegedly disbelieves the Claimant**

129. Another element of the Claimant's claim is that on 4 July 2023, *"the claimant informed Mr Udofia that she had tried all the relevant hibernate configurations for batch insert but he did not believe her and wanted her to go through all the configurations. The claimant claims that Mr Udofia trusted male colleagues' findings whereas he did not trust hers."* [LOI 2.1 (i)].
130. Key documents relevant to this issue were at [RB1489-1491, 2306-2319, 2573-2578] and [CB711-718] and this allegation related to 'batch inserts' under the IM project and the use of Hibernate (a library of reusable code that is well documented online). The Claimant covered the allegations principally at [CWS2.16.8 -2.16.29] and [CWS3.4.1- 3.4.20]. Mr Udofia dealt with it at [EUWS5.1-5.6] and we accept his evidence. We find that this was another instance of Mr Udofia discussing with the Claimant whether there was a ready made code that could be used as a solution in Hibernate, rather than code being written from scratch. He wanted the Claimant to do more research to see if they could avoid drafting new, untested code. Mr Ramachandran also sent the Claimant a link to a tutorial on batch inserts in Hibernate and Employee C offered input. The Claimant had herself accepted that she was not an expert on Hibernate [CB714]. We do not consider that there is a basis for concluding that Mr Udofia did not believe the Claimant, he was just trying to help the Claimant but was not able to give her the solution (which he needed her to find). There is no basis on which to conclude that he would have acted any differently towards a male software engineer in the same circumstance. There is also no basis for concluding, as alleged by the Claimant at CWS3.4.20, that Mr Ramachandran picked on and humiliated the Claimant or that he was a "narcissist and sadist who enjoyed torturing people mentally, humiliating them in front of others".
131. We note that in her blog [RB1997], commenting on Teams exchanges related to this issue, the Claimant said *"To be fair, I should have tested the versioning duplicates instead of taking [Employee C]'s opinion on it but I didn't have time. I didn't get feedback from Jothi whether I should continue investigating or whether I should stop."*

#### **5/6 July 2023 – post/stand up comment in respect of a tutorial**

132. Another element of the Claimant's claim is that on either 4 or 5 July 2023, Mr Ramachandran *"posted in a public channel that the claimant could not follow a simple tutorial. The claimant requested a call to discuss this feedback but was refused. The claimant claims that male colleagues were not treated in this way."* [LOI 2.1 (j)]. The List of Issues documented that this comment was made on 5 July 2023 but the Claimant changed the date, through comments in the chronology and in her witness statement [CWS2.17.3], to 6 July 2023. She also changed her position, alleging that Mr Ramachandran had made the comment in a standup meeting rather than in a public Teams channel. Online tutorials were used in the team to help solve coding problems. This issue is interrelated with the issue 2.1(i) and it appears that the Claimant wanted to be given the solution.
133. The Claimant did not put this allegation to Mr Ramachandran and we accept his

oral evidence in chief that he did not think he had made this comment and that if someone had not finished a task then he tends to ask why so that the team can offer help from someone with more experience. We consider that it is more probable that Mr Ramachandran asked the Claimant what problem she was facing and enquired about why a tutorial that had been suggested did not help. There is nothing objectionable about that and there is no basis for concluding that Mr Ramachandran would have treated a male software engineer any differently. We accept Mr Ramachandran's evidence at [JRWS10.1 -10.4]. Had Mr Ramachandran spoken in an inappropriate way to the Claimant we consider that she would have raised it with him at the time and note the following dialogue between them a few days later on 18 July 2023 [RB2350-2361]:

*JR to C 17:56: [Claimant] not sure why you are expecting me to give you step by step what to do. You are a software engineer who has been given a task to do and not really a complex one, You should look at what needs to be done and give me a technical solution or few solutions if you arent sure of it and ask me to help you decide which one. You cant just create a spike and write few paragraphs and expect me to go through them and give you a step by step instruction on what to do. I will be in office tomorrow lets have a chat in person and get this sorted.*

*C: I do not expect step by step instructions on what to do next. From my understanding, all of the proposed solutions needs to get ok signal from you. For the spike ingest-deal-design, I have updated it with a preferred solution, if you are fine with me going ahead of that solution then it's all good.*

*As for the spike for deal-search request taking too long to fetch for larger period of trade-date, I still need an okay decision from you to proceed to spend time on finding alternative solutions. As I mentioned in the Spike, Etimbuk do not want to use @Query annotation and he was very clear on this. Using EntityGraph, we managed to fetch with join children but for grandchildren fetch its N+1 query hence request taking too long to execute. As you mentioned, I am new to the team and I do not know a lot, I am dependent on you and Etimbuk to make these decisions. You have been firm on this and told me to follow what Etimbuk wants when it comes to Epro.*

*When I direct you to a ticket, it means it contains solution and I want to take a look at it and give feedback. I tend to update proposed solution in the ticket, so wider teams is also aware of it. It seems, you are misunderstanding my efforts.*

*I don't think the task is complex Jothi, but personally I feel like the bottle neck is you, that is you need to sign off on decisions or Etimbuk who are bombarded with so much of work. Hence, true estimate of how long things get done is affected by it. My suggestion is I can book a 15 mins meeting after standup and go through the problem and solution to the team and as a team we*

*decide on the approach.*

*I cannot make any decision on certain solutions when I do not know how scheduling supposed to work. You mentioned that I am wasting my time looking at cron-job scheduling, if that's the case, can you at least tell me what you want to happen? How can I give you an answer to whether retry of cron-job should take care of things when I don't know if there are limited functionalities into cron-jobs? At the moment, ingest happens in the background, if Cron job cannot be triggered after 30 mins failure then we need to make the ingest synchronous which I am not sure we should do. I have more questions because I don't know how you want things to be done. As I mentioned, if I had the freedom, I will have a Java program doing the scheduling and handling of things*

*We can discuss about this tomorrow.*

*I forgot to mention, but I think it's better to have another column in fetch-schedule which insets number of records inserted and deleted. This is way, in future we can use it to debug*

## **7 July 2023 - assessment plan**

134. On 6 July 2023 Ms Cutmore set up a meeting with Mr Ramachandran, Mr Humdani, and Mr Payne-Hanlon to discuss the Claimant. The meeting took place on 7 July 2023 and Ms Cutmore took notes which she dated 8 July 2023 in error. Her notes, which we accept as accurate, record [RB1069]:

*Meeting with manager & senior manager LV's performance is under par, very sensitive and standoffish to team and changing the work dynamics. Another month with support in place and then review. What does the employee need? Consider work buddy, move to quieter desk/floor. Send email to employee after each conversation to confirm details. Plan for work approach and send to HR. Need to increase output. Would still be some Windows based work. Had some days for training. Team wellbeing to be considered too, current issues are impacting on manager and rest of team.*

135. Ms Cutmore's written note of the same meeting [RB1511] also records:

*Would still be some Windows based work.*

*[in reference to the impact of the Claimant on the Team]: Need to increase output*

*Had some days for training etc. current issues are impacting on Jothi and the rest of the team.*

136. We also accept Ms Cutmore's evidence [LCWS7.2] that Mr Ramachandran and Mr Humndani expressed the view that the issues would not necessarily be improved by providing the Claimant with the Macbook computer and it was

agreed that they would ask the Claimant to work on a task that would enable them to assess other relevant abilities for a software engineer that did not require a laptop. We accept Ms Cutmore's evidence that the task they proposed to give the Claimant was not a performance improvement plan so much as a work structure to give the Claimant clarity and clear objectives.

137. On the day of the meeting Ms Cutmore sent Mr Ramachandran and Mr Humdani links to information about dyslexia and ADHD to help them understand and support the Claimant [RB517]. There were also a Teams exchanges between Ms Cutmore, Mr Ramachandran and Mr Humdani in relation to the Claimant's request for a MacBook which culminated in Mr Humdani commenting to Ms Cutmore [RB1470]: *"i would suggest you tell her we are looking at ways ti help her working environment with the technology we have and assess how that progresses before switching to a non standard computer"*.
138. On 7 July 2023 Mr Ramachandran sent the Claimant [RB1508] an email attaching a Visio document that set out in detail the steps he suggested that she follow on the IM project [RB1509-1510]. We accept the Respondent's submission that the only further thing that Mr Ramachandran could have done for the Claimant on that project was to do the work himself. His email cover (sent to the Claimant and Mr Choudhury and copied to the Oils Dev team) said: *"I have created this Visio doc which has the DB design and the DealFetch service details. Can you go through it and let me know if you have any questions. On Monday I want you to take me through this document to confirm you understanding and to make sure we are all on the same page. Others please go through this as well and let me know of any questions in particular @Bodrul Choudhury."*
139. On 14 July 2023 Mr Ramachandran sent Ms Cutmore and Mr Payne-Hanlon an email setting out his proposal for a task that the Claimant could work on that did not need a laptop. There was correspondence in which Mr Humdani said [RB1504]: *"@Laraine Cutmore @Kevin Payne-Hanlon – Please let us know if you have any input to below to ensure we are compliant for any disability discrimination consideration. After 4 weeks, we plan to use the assessment to decide if [Claimant] should stay in the team."* Ms Cutmore was on leave at the time but replied on 20 July 2023 as follows [RB1503]:

*Thank you for providing the work plan.*

*We cannot give a view on the technical specifics of the plan but would recommend that:*

- *The plan/expectations and outputs you require from [Claimant] are similar to what you'd expect from others completing similar/or the same role(s), and who are new to role – to ensure equity in approach*
- *You note any specific delivery dates across the 4 weeks*
- *Good that you've included some measures of quality (e. constructive discussions, adopt feedback, collaboration). Be*

*mindful of any generic statements however e.g. you say “well defined” – will [Claimant] know what this means /is there a Stonex or industry expected standard you can point to that would help [Claimant] understand what good looks like? The more specific you can be, the better.*

*As part of communicating these objectives, please:*

- *Meet with the employee to set them*
- *Arrange to meet them regularly during the 4 weeks – both to give feedback and check in on progress*
- *If there are concerns or where you see identify lower levels of performance tell the employee; any assessment at the end of the plan should not be a surprise to them*
- *Document the feedback you give as you go – a short email is fine*
- *Cover why the Macbook request can't be accommodated at this point, but also note what support you will offer (buddy in team, resources/reading to help knowledge e.g system design etc, regular feedback from Jothi).*
- *Has the employee flagged any training – is so, can we arrange this ie e-learning course*

140. Mr Payne-Hanlon also gave some further guidance as follows [RB1501]:

*As we've noted, this case is higher risk given the disclosed disability.*

*The overall message should be one of trying to support them and help her improve - the plan, and clear expectations is part of that.*

*We do need to give her an opportunity to respond to the feedback and demonstrate that she can improve her performance – so whilst one outcome is that you may decide to end probation at the end of the plan, you may also see improvement – in which case you can extend probation.*

141. The day before, on 19 July 2023 Mr Ramachandran had sent on to Ms Cutmore an email the Claimant had sent to him about the impacts of her impairments [RB1554-1555. 1551-1552]. It said:

*I have ADHD which means I need to have a clear plan on what needs to be done at least a sprint ahead. ADHD stands for attention deficit hyperactive disorder, main symptom I am affected by is:*

*Hard to focus, Too many thoughts*

*To maximize productivity for the day, I need to have a clear goal on what I am going to do*

*So, I can plan and have mini checkpoint reminders set up*

*My motivation comes from achieving the goals set for the day so this very important to my mental well being*

*I do not expect you to plan my day, I just need instructions on what you want to accomplish in the next sprint. These should be finalized by the middle of the current sprint so, for the next sprint planning I will be ready with task details etc.*

*Dyslexia*

*It takes me more time to read and write documentation, hence I need to have clear instructions from you and Waheed, e.g.*

*Clear and Simple User Story (From Waheed)*

*I want the system to fetch deals from Epro at 10pm every day.*

*As an invoice manager admin, when there are changes to deals, I want to fetch the latest records*

*Acceptance Criteria for user story*

*10pm deals for the day needs to be fetched*

*automated tests for counting results from Epro and what's in invoice DB*

*I expect ingest-deal-service to be written as distributed monolith in invoice manager project (From you)*

*Once a user story is well defined, I will discuss with you and create a technical task*

*Once approved by you, QA task will be created.*

*Project Manager or Solution Analyst do not need to update the acceptance criteria of the API or tech solution*

*Clear Epic/Project RoadMap so I can refer to it each sprint.*

*I believe in effective communication, and I understand that this is a first time you are managing someone with ADHD and struggles associated with it. I understand that we as a team are evolving and adapting to things as we go. Another concern of mine is logging the hours.*

*When I wait for decisions from you and I have nothing to do, I update the hours on the ticket or after confirming with you, I focus on my training. I know the CTO is watching the team performance and I am worried that my hours on training will be reflected badly. How can we make this transparent so that CTO or management above is aware of this? how do you want to log my hours when blocked?*

*Thanks and Regards,*

142. We accept Mr Ramachandran's unchallenged evidence [JRWS16.2] that to write daily step by step instructions for the Claimant on what to do as she suggested would have taken hours and that Mr Ramachandran would not have been able to get any other work done. We accept that it would have been quicker for him to have done Claimant's work himself which was clearly not feasible.
143. On 20 July 2023 Ms Cutmore updated the Claimant to say that the Respondent was looking at a way to help and assess her before providing a non-standard Mac computer.

#### **14 July 2023 – allegation that the Claimant is told to be quiet**

144. Part of the Claimant's claim is that on "14 July 2023, Mr Ramachandran told the claimant to be quiet in a team meeting when she attempted to answer a question posed by Mr Ramachandran to Mr Udofia who did not know the answer" [LOI 2.1 (k)]. Mr Ramachandran did not recall the alleged incident. In her witness statement the Claimant elaborated on the allegation saying that Mr Ramachandran had shouted at her to be quiet. We consider on the balance of probabilities that the Claimant did interrupt Mr Udofia in relation to a question that Mr Ramachandran had posed to Mr Udofia. We accept the Respondent's evidence that the Claimant:

144.1 would frequently be argumentative in meetings and that this made it difficult to work with her [JRWS11.3] (Mr Ramachan, on 26 June 2023, had needed to say in a Teams message to the Claimant "[Claimant] I have told you before - when I ask you a question please just answer dont make it in to argument. This is not a requirement but how to implement the given requirement." [RB2296]);

144.2 had a propensity to interrupt and talk over others [JRWS11.1];

144.3 would be very persistent with trying to get to a very specific thing that might be quite trivial in the big picture (things that the other software engineers would expect to figure out for themselves) [BCWS4.6].

144.4 with her manner she made people a little frustrated, created confusion and caused meetings not to reach a resolution to be taken off the key point [BCWS4.6].

145. We consider on the balance of probabilities that Mr Ramachandran did ask the Claimant to be quiet but that it was an appropriate thing for him to have said in the circumstances. There is no evidence that Mr Ramachandran would have

treated a male colleague in the same circumstances any differently. We accept the evidence of the Respondent's other witnesses that whilst Mr Ramachandran could be firm he did not shout at the Claimant or anyone else.

***OH referral and adjustments made for the Claimant***

146. As explained by Ms Cutmore, the OH referral did not progress because it was decided that the Respondent would first see what the Respondent could do by way of adjustments (the Claimant having been very clear on her requirements) before going to OH [LCWS7.13].
147. We will come on to explain the assessment task that the Respondent gave to the Claimant but note here some of the key things that the Respondent did to assist the Claimant as detailed by Mr Ramachandran [JRWS16]:
  - 147.1 Allowed her more time to complete the induction training courses.
  - 147.2 Assigned a buddy to the Claimant when she joined the team.
  - 147.3 Mr Ramachandran and other project managers had regular chats with the Claimant and repeated explanations already given.
  - 147.4 The team was responsive to the Claimant's high volume of questions about basic aspects of her work and the project.
  - 147.5 Allowed the Claimant one paid day off per week (each Friday) to undertake her training courses and accesses to the relevant materials.
  - 147.6 Mr Ramachandran allowed the Claimant variable office days to help her get a reduced train ticket cost and give her flexibility and as such she was not required to attend on the standard team office days.
  - 147.7 Accommodated late arrival and or finish times.
  - 147.8 Allowed the Claimant to work from home when she said she was not well enough to travel.
  - 147.9 Gave the Claimant additional time to complete her work tasks. We accept that the Claimant was only expected to work on the IM project for 36 hours per fortnight compared with the other software engineers who were expected to work on the project for 60 hours per fortnight. In practice this meant that for a task that the Respondent would allow 2 days Respondent gave the Claimant an allowance of roughly 3.5 days.
  - 147.10 Allowed the Claimant to take three afternoons off at short notice to prepare for her driving test meaning that there were tasks that the Claimant could not complete on time.
  - 147.11 Altered the work the Claimant was doing to try, where possible, to find tasks which were better suited to the provision of written instructions and gave the Claimant more detailed task definitions and diagrams (which would not usually be given to someone joining as a Software Engineer).

147.12 Allowed the Claimant to use her own MacBook while the Respondent looked into accommodating her request (which raised complicated practical issues owing to the nature of the work);

***The in line delete query issue***

148. We heard a considerable amount of evidence in relation to what was often called an “in line delete” issue. This relates most closely to Issue **2.1 (n)** (i.e. that on 8 August 2023, Mr Udofia abandoned one of the Claimant’s PRs without good reason). The Claimant claimed that he would not have done this to his male colleagues.
149. The Claimant was working on a piece of code and in the review of her code a security issue was identified in related code but on which the Claimant’s code depended. The Claimant had not created the code with the security issue but Mr Udofia determined that the issue needed to be fixed.
150. When the Claimant could not find an answer that she could make work (having been given, for example, a suggestion by Mr Ramachandran in respect of use of a ‘prepared statement’) she wanted to be given the solution (suggesting that it be picked up by someone else [RB1847-1848]).
151. The Claimant’s personal view was that the security risk with the issue was low and that her code should be approved. She was aggrieved at her code not being approved given the amount of work that she had put into it.
152. We find that the stance that the Claimant took was unreasonable. The Claimant could not accept that the security issue could not be overlooked and just dealt with later (forward fixing). She could not accept that the Respondent was not prepared to take that risk and she was aggrieved that it meant that code that she had worked hard on was not going progress at that stage [CB935-936].
153. We consider it surprising that, notwithstanding the Claimant’s relatively junior position within the Respondent (there were at least three levels of management above her within the technology team), the Claimant maintained in cross examination that the question of whether the IM code was sufficiently secure was a matter for her to decide not for the Respondent and that, as Mr Udofia suggested in cross examination, she wanted Mr Udofia to unsee a security issue that he had seen. She appeared to take this view because the IM was to be held on the Respondent’s intranet and not exposed to the internet.
154. The rejection of the Claimant’s code became a very big and emotive issue for the Claimant but there is no evidence that Mr Udofia would not have abandoned the code of a male employee in the same circumstances. The Claimant did not appear to grasp that, a security risk having been identified (even if it was in code that had already been merged), it could not just be overlooked and that the Respondent, including Mr Udofia who had a greater position of seniority than the Claimant, could legitimately decide that the security risk was too great. Mr Humdani was cross examined on this by the Claimant and gave compelling evidence in support of the decision made by Mr Udofia.

**20 July 2023 – assessment task presented to the Claimant**

155. On 20 July 2023 Mr Ramachandran, Mr Humdani and the Claimant met. Mr Ramachandran reiterated the concerns he had about the Claimant's performance and explained an assessment task that they wanted the Claimant to work on for a period of a month. They explained that if the Claimant was unable satisfactorily to complete the task then she might be deemed to have failed her probation and her employment might be terminated [CWS1.7, 2.23 JRWS12, 16.9, NHWS3].
156. We accept that the Claimant did not need to use a laptop to complete the task (she could present her design in any format – e.g. in a hand written diagram or on a whiteboard). She was asked to produce a low level technical design of a service and Mr Ramachandran gave her a high level architecture document with clear written instructions on the functionality, database design and application flow [RB1559-1563]. At the meeting she said it looked straightforward (in fact in her witness statement she said that she had already completed the task [CWS2.23.3]) but asked a lot of questions about what needed to be done which led to "back and forth". We accept that the instructions were clear and that if Mr Ramachandran had made them any clearer he would almost have been doing the task for her.
157. That day Mr Ramachandran sent her a follow up email with the task details in writing as follows [RB1559]:

*As discussed in the meeting: (Please go through this and lets have a chat Monday)*

*For this assessment program we would like you to start with produce the following.*

*Deal Ingestion Service:*

- Technical Design of this module with definition of major classes and attributes.*
- API definition for the 2 endpoints with the request and response payloads along with http methods to use.*
- Verify the DB design to make sure it caters for the different scenarios of these API end points and propose changes as necessary.*
- Error handling of various states during the API calls and how to handle these different scenarios.*
- Review the design for Deal Fetch cycle for different scenarios i.e., the fetch is invoked for the very first time, fetch is invoked at end of the month, fetch failures and retries and make*

*API authentication*

*Technical Design for implementing API authentication.*

*This should cater for both API to API call like Cron job call and user initiated API call i.e., from Invoice Manager UI. Liaise/Work with other team members to gather details of how they have implemented in their projects and use it in the technical design.*

#### **Goals**

*We are looking for ability to produce a Technical Design, given a well-defined requirement.*

*Ability to present the design/ideas to the team, have constructive discussions and accept and adopt feedback from the team.*

*Collaborate with the members of our team and adapt to the working style of the team.*

158. Given the Respondent's experience of the Claimant's confrontational manner it was important that she was able to present her design clearly and also have a constructive discussion about it. The following correspondence then followed [CB1025-1037]:

#### **25 July 2023 C to JR (and others)**

*Hi Jothi,*

*Could you please provide me with a good example of technical design documentation here at StoneX? As you mentioned in the task which I was given on 20th .*

*[...]*

*I was tasked to look at different fail case scenarios on the 18th, I created a spike and updated the ticket. I then informed you of the solution and after getting the approval, I proceed to work on this ticket. You mentioned that the assessment task was written a few days ago and since we had a solution approved and worked on, I can skip 2-5 points and focus on just point 1.*

*In the meeting we had with Nadeem, we agreed that I will focus on the PR getting merged (which got postponed because Etimbuk needs to approve it, even though the PR has two approvals from other members).*

*You mentioned that this service is not working but Bodrul managed to run it locally and it is working.*

*Could you please let me know which part is not working?*

*- you have to give more details that this service is not working*

*Now, on Friday itself I have sent a document of technical design for ingest-deal-service and asked for your feedback.*

[...]

*I never got a response from you, and I assumed everything was fine.*

*I moved onto the next task of authentication, and we agreed yesterday that I will focus on authentication (not worry about authorisation) tech design and, I created this ticket. There is not a lot I could add here because there needs to be POC done whether we can use spring security etc. Most times, you don't have time to discuss and you cut me off saying tech design does not need to have code etc. How can I give you a good answer without a poc?*

*Today, you mentioned you have given me a clear instruction of "tech design with major classes and attributes"*

*- could you please provide me with an example that I can follow. I keep asking for it and you ignore my requests*

*- You kept saying my tech design is not clear enough and you don't understand it, can you please provide me with example of good tech design that you understood?*

*- You provided me with an example of EPRO "tech design" and I have attached the content of some of the examples where I did not see any major classes and attributes.*

*Link to viscio docs*

[...]

*Could you please provide me with an example of tech design that other members of the team have completed in the past.*

*You mentioned that my assessment is because as a senior software engineer, I am not meeting the standards.*

*These are the requirements specified in the job description:*

[...]

*Could you please provide me with detail of which responsibility points I need to work on?*

*You have to provide me with examples where I did not meet these requirements, the feedback you have provided and how I did not reflect on your feedback.*

*You mentioned that you don't have time to read my documents or update on tickets, could you please provide me with how efficiently I can inform the findings?*

*From now on, can I ask my meeting with you to be recorded (for*

*requirements/prejects only) so that I can listen to it again and confirm the requirements. Maybe I am missing some of them.*

*ps @Laraine Cutmore Please let me know for the referral of occupational health assesment, maybe a doctor's notes might help with Jothi.*

**26 July 2023 JR to C (and others)**

*Hi,*

*To remind us of what we are trying to achieve let me repeat it here.*

*You have been with Oils team for just over 3 months now and you have had difficulty in delivering the tasks on time. (I will save the history of what's happened when and who said what etc for the final assessment report.)*

*The reason provided by you for the difficulty was : You aren't used to Windows machine as you are a Mac user. So we have devised this assessment with a sole aim of removing the company provided Macbook requirement while still doing the work as a Senior Software Engineer.*

*In the meeting Nadeem explained what I have briefed above in a lot more detail and then showed you the task definition in the big screen for you to go through and ask for any clarifications. You replied in your words "It all looks straight forward".*

*The only question you asked me was "Deal Ingestion Service" means end to end starting from Epro Deal Search Service to IM Transformer Service to IM Deal Ingest service. I confirmed yes it meant the same and I gave an additional information "the task was written few days ago so it states 2 end points but if you have done the functionality with single end point feel free to provide the design using 1 end point".*

*For API authentication you asked if anyone has ever done that as we never talked about before that point and we decided you can reach out to Sridhar from MONO team for guidance as they have already implemented it. At this point you were expected to go and work through the task and produce a Technical Design and come present it to me/Nadeem when done. And have regular catchups with me i.e., once a day for status updates/if you needed any more clarity on the task definition.*

*Friday was your allocated training day and Yesterday you had arranged 3 half hour meetings, few emails and a lot of chat messages and you have written a confluence page and declared you are waiting on me to provide your next step. So it seems to me it's a good time to define what's tech design document.*

*As Per : <https://uit.stanford.edu/pmo/technical-design>*

*A Technical Design Document (TDD) is written by the*

*development team and describes the minute detail of either the entire design or specific parts of it, such as:*

*The signature of an interface, including all data types/structures required (input data types, output data types, exceptions)*

*Detailed class models that include all methods, attributes, dependencies, and associations*

*The specific algorithms that a component employs and how they work*

*Physical data models that include attributes and types of each entity/data type*

*In short, the functional design specifies how a program will behave to outside agents and the technical design describes how that functionality is to be implemented in code. The Technical Design Document must be approved by the IT project sponsor before proceeding to the development/integration phase.*

*Please use the above as reference and check the confluence page you have written satisfies as a technical design document. You had asked for a template or an example done by other team members- but no other team member had any difficulty in working with the User stories assigned to them creating a technical design as needed by themselves or with minimal input from me. So there is no example that I can provide here but at the same time you can use any of the standard design documents you are familiar with e.g., UML class diagrams, Sequence diagrams, hand drawn diagram etc any format that you are comfortable with is fine as long as it satisfies the above definition of TDD.*

*When you have the technical design completed as requested above book a meeting with Nadeem and I to present it to us. In the meantime if you need any clarifications on the task please feel free to email me otherwise you can give your status update as everyone in the daily status call every morning.*

*Regards*

*Jothi*

**30 July 2023 JR to C (and others)**

*Hi Jothi,*

*I have updated the link to ingest-deal-service technical design with major classes and attributes.*

*I am attaching the template of Stanford technical design, and I see most*

*of the things mentioned there are out of scope for this service.*

*I never had to write a technical design as expected in Stanford University and I am struggling to map some of things they mentioned in the document to our particular case.*

*As you mentioned in your email but no other team member had any difficulty in working with the User stories assigned to them creating a technical design as needed by themselves or with minimal input from me.*

*Since Team has already created technical design documentation, could you please provide me with links to that documentation?*

*We had a discussion on 25th of July, specifically talk about Technical design of authentication. I mentioned I cannot provide you with a good solution unless I do some poc. I wasn't even aware that I was supposed to give a presentation about technical design of ingest deal-service. You asked me for it, and I did go through the document I shared above.*

*You asked me why there are no major classes and attributes, and I mentioned that I used Etimbuk's Epro visio as an example as you guided me. This is the guideline you given me on 21st of July.*

*[...]*

*From my understanding, I have completed the technical design because there is a sequence diagram of when ingest request life cycle. This is what happens in the background for both adhoc (REST) and scheduler.*

*You mentioned that the technical design documentation I provided wasn't clear enough and why are we returning FetchSchedule Id when calling the REST Endpoint. I informed you so that the UI or scheduler can query for the status of ingest which runs in the background. This is a good point I failed to mention, and I added it in the documentation.*

*I have also created the major class diagrams as you requested.*

*As for the Stanford technical design, some of the things are not applicable here. Again, I ask you this, can you please provide me guideline on technical design with agile practices in mind if the current updated documentation does not satisfy your expectations, please?*

*I am also attaching a Java technical design documentation I found online and how it vastly differs from Standford template. I just need a good technical design template specifically applicable to StoneX.*

*You said you have to go through the authentication technical design when I mentioned I have to do a poc but you never got back to me.*

*Here is the ticket for technical design for authentication*

*As mentioned in the template, I need to do a poc. I need to check if I can intercept the Request before it hits the controller and authenticate the user.*

*Sridhar's solution mentioned above might not be the best solution for us, since this means we need to refactor all the controller endpoints to pass HTTP Headers and pass that to the common library to authenticate.*

*I was told that the reason I am tasked with technical design is because I struggle with Windows so I am not expected to code but I cannot give you the best solution without doing a poc.*

*Please see this link for further information.*

*Is my goal for this assessment to give you the best solution in my opinion or a solution? Please clarify.*

*Thanks,*

159. We accept Mr Ramachandran's evidence that as regards the Claimant's email of 25 July 2023 he was surprised that the Claimant did not seem to know what a technical design document was and that he then reminded her that the assessment task had been clearly defined in his earlier email, that a link was not what he wanted and that if she had completed all of the points in the plan she should arrange a meeting to present her design. The Claimant by this time asked to record their meetings.
160. We accept that Mr Humdani also met with the Claimant on 26 July 2023 to provide her with guidance and assistance and that she also sent to him her technical design and asked for an example of another technical design to help her improve hers.
161. We accept that the Claimant should not have needed Mr Ramachandran's email of 26 July 2023 to set out further detail of what was required and that the task that she had been set was one that any software engineer ought to have been able to complete.

### **21 July 2023 – mention of the Claimant's assessment task in public channel**

162. Part of the Claimant's complaint is that on 21 July 2023 "*Mr Ramachandran informed the whole team in a public channel that the claimant was on a performance assessment. The claimant claims that when [Employee A] was put on a performance assessment, it was not announced to the whole team*" [LOI 2.1 (m)]. Mr Ramachandran's comments was at [RB2620]:

*C: Hello team, Does any of our applications uses api authentication?*

*JR: Not in Oils team*

*C: ah I see, I will DM you privately then*

*JR: For your assessment task when you are ready to look at authentication ping me.*

163. We accept Mr Ramachandran's evidence [JRWS13.3] that Mr Udofia, Mr Mhatey and Mr Choudhury knew about the assessment task because they needed to, given their roles in the team, so that they did not inadvertently do the task for her. Employee A was not given an assessment task because the nature of the concerns that the Respondent had about him were different (he was technically proficient but needed to produce code faster). We accept that everyone in the team also knew that he was on an extended probationary period. Others also needed to know that the Claimant was on an assessment task because it affected capacity in the team and therefore other people's work. We accept that Mr Ramachandran did not make the comment he made in the Oils Dev channel because the Claimant is a woman or because she is disabled and there is no evidence to support that contention (other than the Claimant's assertion and the fact of her protected characteristics).

### **28 July 2023 complaint to Mr Humdani**

164. On 27 July 2023 Mr Ramachandran sent the Claimant the following email [RB1655-1656]:

*Hi,*

*Have you worked on the TDD as per the email you sent this morning? I have received a lot of emails but none about you working on it or making progress with that.*

*And I am not going to play this "muddy the waters as much so no one knows what anyone's talking about" game.*

*But you cannot give false information and claim everyone else is wrong.*

*REG: "Here batch insert would have used version so the entity manager executes one batch query, I did tell Jothi that I can implement this the next day, but he told me not to and he will tell me exactly what to do. If we had gone for this solution we could have used hibernate properties, along with version to achieve the batch insert. I told him that I could test the insert part later, attached conversation for reference"*

*You wrote some code without really testing it properly and assumed all was good. I had to nudge you to test the scenarios where it will fail and you came back stating "it's not working as expected and we are back to square one".*

*You can see the chat history below*

165. Neither party took us to this email but it was quoted an email that we were taken to an it appeared just before it in the bundle [RB1669].
166. On 27 July 2023 Mr Ramachandran sent Ms Cutmore and Mr Humdani an email saying [RB1657-1658]:

*Could we please do something to stop this barrage of emails and expanding toxic finger pointing at everyone in my team? Please let me know if there is something I can do to end this nightmare.*

167. Beneath his email he sent on an email from the Claimant to Mr Udofia (JR and NH on copy) sent at 19:28 as follows:

*Here is the email from Jothi what he wanted.*

*We had a call today to discuss inline delete statement and why it's not a good practice to have one.*

*I mentioned this decision was made by Jothi; I had given him three flavors of potential solution, one with entity manager as such. Here batch insert would have used version so the entity manager executes one batch query, I did tell Jothi that I can implement this the next day, but he told me not to and he will tell me exactly what to do. If we had gone for this solution we could have used hibernate properties, along with version to achieve the batch insert. I told him that I could test the insert part later, attached conversation for reference.*

*[Screen shots of Teams messages]*

*I implemented exactly what Jothi wanted me to do on the ticket.*

*As for the potential SQL injection, same will happen in prepared statement of batch, as well as delete statement, so cherry picking SQL injection for delete is not a good idea.*

*Anyways, the potential for sql injection is pretty low, unless somehow data in deal table been corrupted and there is something malicious in the data, which is unlikely.*

*Just to clarify, the ingest deal service API does not expose DealFeed Repository directly from REST API for sql injection to happen hence I was fine with Jothi's decision since there is no way an attacker can call the ingest-deal rest api and execute a sql injection attack.*

168. The Claimant then sent a large number of further emails that evening including one that said (sent at 22:02 to Mr Ramachandran, Mr Udofia, Mr Humdani and Ms Cutmore which quoted Mr Ramachandran's email above [RB1655-1656]) [RB1669]:

*Again, I wasn't even sure why you wanted me to spend time on bulk insert when at most we will only get 100 record deals per day. Given the deadline of August 13th for invoice manager, this optimization could have waited. If deal search can live with N+1 query performance issue, then I am pretty sure O(n) insert is reasonable given the time frame.*

*I did what you told me do and you cannot come back and blame for your decisions Jothi.*

*[Quote of JR email: And I am not going to play this “muddy the waters as much so no one knows what anyone’s talking about” game. But you cannot give false information and claim everyone else is wrong.]*

*I don't claim everyone else is wrong, I am pointing out that I did what you told me to. You need to learn to take responsibility for your actions and decisions Jothi. That's the honest truth.*

*I have given you evidence and yet you pull up one comment without any context and say I did not inform you. I did and you chose not to listen or ignore.*

*[...]*

169. Another email sent just before this said [RB1668]:

*I want to CC HR into this email too.*

*I was tasked with batch-insert, even with hibernate properties annotation you pointed me to, the batch upsert would not have worked.*

*[Quote of JR Teams message: You wrote some code without really testing it properly and assumed all was good. I had to nudge you to test the scenarios where it will fail and you came back stating “it’s not working as expected and we are back to square one”. You can see the chat history below.]*

*You should have been clear from the beginning. I want you to come up with a solution to do batch upsert, if it is not possible, look into the best option. I cannot read your mind Jothi. Simple requirement that all parties can understand.*

170. The Claimant continued into the evening and in the early hours of 28 July 2023 (00:13) sent a lengthy complaint about Mr Ramachandran’s management style to Mr Humdani and Mr Levine (CTO) [RB1675 – 1690]. The email included screen shots of Teams messages and amongst other things:

170.1 Said “I feel like Jothi is discriminating against me after I disclosed my learning disability to him.”

170.2 Complained about having nothing to do while waiting for Mr Ramachandran’s feedback, Mr Ramachandran not calling her or ignoring her messages;

170.3 Queried why she, as a company resource, was being asked to spend time on the assessment task which would not benefit the company and said it amounted to bullying;

170.4 Suggested Employee A was a scapegoat for the Vertex project and now she was being made a scapegoat for IM;

170.5 Said “*This is the link to my TDD which I firmly believe explains the design very well.*”.

170.6 Said: “*As someone in the spectrum, I cannot take accusations easily and move on. I am a simple person, who is honest and upfront. I do my work and expect my colleagues to be professional and what benefits the company rather than internal politics. I had to have a closure for today and I emailed you evidences supporting my claims. You might accuse me of not doing work today, instead I spent writing these emails, but I had to tell my side of the story. I don't lie Nadeem, there is no need for me to. This has huge impact on me mental health wise hence I am sending this email at this hour. In addition, if I don't, then Jothi will not change his ways, and this will repeat wasting companies time and resources. Jothi doesn't even understand scrum processes. Oils Dev team is not a self-organizing team because we are dependent on Jothi to make every single decision. I genuinely believe that Jothi and my relationship are beyond repair. I did message you privately and you mentioned you will look into me moving to a different team. I am looking forward to to hearing from you regarding that.*”

171. The Claimant during the course of this day and into the start of August also sent Mr Humdani a number of Teams messages [RB1613-1620]. We accept Mr Humdani’s evidence [NHWS4.3] that he tried to reply and at one point made clear that he was looking at options and would come back to her asap. However, the volume of messages and emails ‘kept coming’ and he had other work that he had to do.

172. Early in the morning on Saturday 29 July 2023, having seen the escalation in correspondence from the Claimant, Mr Payne-Hanlon wrote to Mr Humdani as follows [RB1722-1723]:

*Following up on your email from yesterday.*

*Our duty as the employer means we need to demonstrate:*

- *we’ve explored (and listened) to the support that L needs*
- *we’ve considered any reasonable adjustments that we can make (given the company, size and resources at our disposal)*
- *that where adjustments cannot be accommodated, we’ve explained clearly why not*
- *that we then assess performance in light of any adjustments that we have made*

*I have read the emails and recommend the next steps:*

*Myself and Laraine meeting with L.*

*I’d like to understand more about her concerns, why she feels she is being bullied and listen / hear her pain points etc.*

*With your agreement, I will reach out to her over the weekend to set up a call / face to face with her Monday.*

*I'd also like to talk about the adjustments that Jothi has made and find out what, if anything (outside of the working relationship), would be helpful to support L.*

*We will try to use this meeting to help diffuse the situation and see if we can understand what may be driving the situation.*

*It will hopefully give some insights as to what helps L day to day in terms of being managed that you can use to brief an alternative manager (e.g. setting work, instructions, being clear on what needs to be done, allowing time for L to read/absorb)*

*I'll also try encourage L to think about her communication style (barrage of emails, the impacts and whether there is a better way of recording progress).*

*Will remind about the employee assistance programme and the formal route for raising a complaint (albeit encouraging this is solved via the informal route).*

*Your assistance please:*

*It would be helpful if you can provide me a short note of any adjustments we have made to date (outside of the plan to give clarity) to help L please?*

*Do you have any insight on the comments about Jothi ignoring L's updates or not having any work to do?*

*From the outputs you've seen to date – is L meeting standards (notwithstanding how she is approaching the communications with you and Jothi). It would be good to have your view/evaluation please. L is saying she's doing the work but not getting any feedback.*

*Separately, we will pick up with Jothi to check in on him, listen to him about the challenges, and see if he has any insight on any adjustments that he's made, what's working and what's not. Remind him about support e.g. the EAP etc.*

*In parallel please keep me posted on scope to move L to an alternative manager (same role, same workplan, but maybe an environment more suitable for L).*

*Following meeting L, I'll send a follow up note to document the conversation, including playing back the points around adjustments we've made so far, so we are recording where we've been reasonable and what else we can do / consider.*

*If you're supportive of the approach above, I'll also drop Boris a note to*

*tell him how we are proposing to manage etc – given that L has included him in the email trails.*

*Please bear in mind – anything in writing is discoverable so please guide Jothi to be careful what he puts down on email/teams. It should be factual only, and where possible with no emotion in any responses.*

*We should as you note, continue with the work plan – as an objective measure of performance.*

173. On Saturday 29 July 2023 (at 12:23pm) the Claimant complained about her code not being merged (see our findings on the inline delete query above) to Mr Humdani and cc'd Mr Levine as CTO [RB1724]. Her email said:

*Jothi has not given me a reasonable justification why this PR should not be merged. Focus on your assessment is the answer but he is not asking any other member of the team to look into it either.*

*In fact, I am more concerned about the deadline than he is.*

*[LINK]*

*I have tried my best to get this PR merged from my end. Please go through the comments to see.*

*It has two approvals from two members and justification Etimbuk gave me was that he doesn't want to merge a PR with inline delete statement. I do agree with his concern, but I did not make the decision of using inline delete statement, Jothi did.*

*This change went in prior to this PR and holding up a PR which is out of scope for the current is not efficient.*

*Blocking a PR for a concern of inline delete statement when we are in process of setting up invoice manager as whole is not effective in my opinion. Standard practice is to create a backlog ticket, some back to it when needed.*

*As I mentioned in the other email, possibility of sql injection is only possible if somehow the deal table in Epro is compromised and has corrupted data in the trade-leg.*

*I am getting pushbacks from the team for stating the obvious and usually get overridden because of seniority.*

*This is the first company I worked with where tech lead had argued about early optimization for returning `StringUtils.Empty`, please see this comment*

*We had a call to go through the PR comments, he told me that it is an early optimization to return `StringUtils.Empty` because we are not constrained by memory.*

*I suggested to use return StringUtils.Empty so what we don't create empty strings unnecessarily (java garbage collection).*

*What can I say to that Nadeem? Simple best practice of coding and now it's a display of power game.*

*I have experienced this many times with Etimbuk.*

*This is another comment where I had to explain to him about time complexity I had to explain to him about memory when we instantiate new objects*

*Etimbuk brings early optimization as an argument for anything he does not want to change. Since he is the team lead, you cannot have a constructive discussion with him, he just says get it done as final say. After a couple of interactions like this, I did not bother.*

*You were given feedback that I am defensive by the team, but even today when I read my comments, I feel like I have been professional and to the point.*

*Team Lead should have strong*

- architectural skills,*
- ability prioritize,*
- move the team along with deadlines*
- most importantly, no ego especially when it comes to technical side of things.*
- get back to another team member on time regardless of personal issues (I believe this is called being professional)*

*I will give you my honest opinion, invoice manager is not a generic service even though Jothi claims it to be.*

*I have given enough evidence to support the internal political game within the team.*

*Waheed lied to me and said invoice manager project will be scrapped by invoicing team because it's been going on for sometime and we haven't shown anything*

- I cannot perform miracles when there are no clear requirements*
- Waheed got angry and humiliated me in front of the team because his own agenda of promotion*

*Etimbuk needs to show his authority so that he can move into the next step on the career ladder.*

*Bodrul and Waheed spent nearly a year or maybe less going through the store procedures and gathering "requirements" of invoice manager.*

*Waheed got angry and Jothi was dissatisfied with the pace the invoice manager was going but how can they blame me for something when they have spent a year documenting store procedure.*

*They expected me to do overtime for their own benefit (Waheed hinted that I should work hard during my probation and then become lazy)*

*If Jothi has truly understood he is the bottleneck, then following comment would have been made by Jothi*

*[SCREEN SHOT OF TEAMS MESSAGES]*

*- I joined on April 12th .*

*- I started working on deal-search-service on May 5th without clear instructions*

*- The work got completed on 31st of May because of Jothi's decisions*

*- on the 9th I got this comment from Jothi, I cannot perform miracles Nadeem.*

*The honest truth is this, the team has taken a considerable amount of time to gather requirements, now there is a pressure from the top, so they are finding "scapegoats who don't perform" after getting most of the work done from those scapegoats. [Employee A] and now me.*

*I looked into what [Employee A] has done and I believe he has done a good job. He is technically more capable than Jothi.*

*This is the first company I worked for where the team lead told me to branch off from the feature branch instead of the main branch because it would be easier to copy paste. What team does the best is copy paste code, instead of creating core-libraries. I brought this up and Jothi decided to waste 10 days holding up a PR instead of thinking about refactoring later.*

*I don't claim to be a technical expert, but I am open to learning more without my ego getting in the way.*

*Funny thing is, yesterday Etimbuk offered to pair program with the new intern and so did Bodrul but he did not have time to come back to me with the PR.*

*They are choosing to ignore.*

174. On Saturday 29 July 2023 (at 3:03pm) the Claimant sent the following email with attachments [RB1728-1733] to Mr Humdani and Ms Cutmore [RB1727]:

*Subject: Performance*

*Dear Nadeem,*

*I am attaching emails as proof of evidence for the bullying I experienced in Jothi's team.*

*The team purposefully refrained from giving me assistance, feedback or taking too long to respond so that I wouldn't be able to merge things as quickly as possible.*

*Lack of requirements from Jothi, Etimbuk taking too long to get back all of this contributed to what Jothi claiming I cannot do.*

*I call this a form of bullying, so I hope you take appropriate action.*

*One should be given a fair chance to thrive, and I feel like under Jothi, all my efforts are dismissed and undervalued.*

*Thanks,*

175. At just before 10pm that evening, 29 July 2023, Mr Humdani replied [RB1734] “[Claimant] please allow us to review the emails and come back to you.”.

176. On Monday 31 July 2023 Mr Payne-Hanlon and the Claimant agreed to meet on 1 August 2023 [RB1782-1783]. The Claimant, in her email to Mr Payne-Hanlon said:

*[...] I feel like the team is ganging up on me when it comes to accusation and what they have seen or not.*

*I would like to request to have a call history record between Jothi, and his teammates individually with how often they had calls as evidence to prove favoritism. [...]*

177. The same day, 31 July 2023, the Claimant sent the following message to Ms Cutmore [RB1781]:

*Subject: call history between Jothi and his team member*

*[...]*

*I had the most interesting conversation with Bodrul today, in general I was talking about my experience in StoneX, especially with Jothi. Bodrul claimed that he had seen me have discussions and meetings with Jothi and most often the meeting only lasting a few minutes.*

*I can see there are internal unofficial talks are going on and I would like HR to request calls Jothi and his other team members had and how many times he has had calls with me.*

*Jothi and Etimbuk have calls every day and most of the time. He even has more calls with Narendra. Even [Employee C] was provided with*

*enough help. For me, most times the calls last a few minutes, where he tells me to implement something which I do or say he will get back to me and never do.*

*There should be CCTV footage of our interactions too as our company has cameras, so I would like this to be collected as evidence.*

178. That evening Mr Humdani sent Mr Payne-Hanlon and Ms Cutmore the following email forwarding on an email from Mr Choudhury expressing concerns about a conversation the Claimant had engaged him in [RB1785-1786]:

*Fyi = Bodrul is member of Jothi's team who reached out to following conversation with [Claimant] that made him feel very uncomfortable (details below).*

*She is looking for CCTV footage and asked me call history with Jothi.*

*Etimbuk also spoke to me on Friday voicing similar concerns.*

*This has to stop, [Claimant] cannot continue to cause disruption in the team and discuss confidential matters with the wider team. Please make this clear to her when you speak to her.*

**Mr Choudhury's email in this chain read:**

*Based on our phone call today, you have advised me to raise a summary of issues, please find them below – let me know if you need anything further.*

*I had a conversation with [Claimant] today, which started off normal, she initiated the conversation asking me which drawing tablet I use to create my diagrams for technical architectures etc. The conversation quickly turned into personal matters, I remained as neutral as possible and advised her to raise any issues regarding it further in-line with our HR policies. She then started asking very targeted and leading questions and making blunt statements, such as:*

*"C: Questioning Johti mean you get put in assessment period and he blames me that I don't come up with technical solution.*

*BC: well im sorry you feel that way, have you raised it using the proper escalation routes if you have these qualms? Because raising with a colleague is probably not the best route as im not clued up on the details of your issues*

*C: I mean, there should be call history records right?*

*BC: I'll be fair [Claimant], i haven't seen any favouritism in this team*

*[The screen shots of their Teams conversation continued but we do not need reproduce it here]*

*These questions and statements have made me feel incredibly uncomfortable (which I did mentioned to her as well).*

*I feel like I was being lead into conversations/topics which she could potentially use against me and/or others in a very unprofessional way – something that I have never encountered at this company with anyone in this company. She clearly mentioned trying to obtain technical evidence of conversations/interactions, this made me feel manipulated and vulnerable. However, I remained professional and repeatedly mentioned that she needs to raise her issues with HR, and not with me, or anyone else in the team as this is not professional.*

*I hope this matter will be attended to with some urgency. Thank you Nadeem for allowing me to come forward with this.*

179. Mr Choudhury understandably felt uncomfortable and his responses to the Claimant were professional and reasonable.

**1 August 2023 calls with Mr Payne-Hanlon and Mr Ramachandran**

180. On 1 August 2023 the Claimant and Mr Payne-Hanlon had their scheduled call. The Claimant took a covert recording of it and we were provided with a transcript [RB1802- 1828].

181. The same day the Claimant also had a call with Mr Ramachandran and Mr Ramachandran consented to the recording of that call. We had a transcript at [RB2119-2130]. In that call Mr Ramachandran asked the Claimant to take him through the tech design that she had said in correspondence that she had completed. However, notwithstanding what she had said in correspondence, she did not present her tech design and instead Mr Ramachandran gave the Claimant a good deal of further guidance on the assessment task.

**2 August 2023 meeting follow-up and proposal to change C manager**

182. On 2 August 2023, following his call with the Claimant the previous day, Mr Payne-Hanlon sent Mr Humdani the following summary [RB1843 – 1845]:

*We spoke to the employee yesterday in detail and a summary of their concerns are noted below. We also teased out what support/adjustments would be most beneficial for them.*

*Let us know when it would be convenient to discuss the adjustments, to see what can potentially be accommodated.*

*As agreed, we've also just checked-in with the Manager.*

**Concerns raised by employee:**

*Inappropriate team comments in public forum(s)– “migrane”, “chatgbt” comments*

*Manager behavior:*

- *Telling them to be quiet*
- *Snapping at them*
- *Lack of contact with Manager, often brushed off, unable to secure time with them, lack of responses (Manager says they'll respond or 'ping' employee but doesn't)*
- *Perceives this triggered, post disclosing their disability*

*Environment:*

- *One way communication/updates from Manager, little chance to ask questions in team meetings, standups*
- *Feels dismissed/excluded, perceives that Manager spends more time with more established team members, either face to face or having longer check ins*
- *Doesn't get any regular follow up from Manager*
- *Buddy unfortunately was not available during induction (acknowledged that this was due to events outside of buddy's control)*

*Work management:*

- *Lack of specificity on tasks, e.g. which system, which task – not clear*
- *Some changing of requirements without discussion, or receives updates 2nd hand (via other team members, not Manager)*
- *Perception of hierarchical model of decision making (little discussion between colleagues on potential solutions)*
- *Approvals delayed, which impacts ability for their work / tasks to progress or speed of their output*

*Adjustments requested by employee:*

*Environment:*

- *Move manager*

*Systems:*

- *Mac-book – they continue to struggle with Windows as a different operating system*
- *Record any tech requirements (day to day) from 1:1s to ensure they've understood, or can refer to help guide them*

*Work allocation:*

- *Clear requirements and instructions of tasks/areas of focus – specifics required (e.g. focus on invoice manager service)*
- *Needs to understand the plan; what are the priorities / current focus*
- *What are the minimum requirements (employee needs to understand goal)*
- *If there are changes in requirements, to explain what these are and why (employee can manage this, but they plan out work and left field changes require them to re-plan)*

*Communication:*

- *Needs direct contact with Manager who is setting work, 1st hand and direct feedback*
- *Would like to have opportunity to challenge the status quo and put their points across (not just one way comms from Manager)*
- *Where feedback given, specifics would be helpful/are needed (eg. “that’s fine” – does that mean work is at the expected quality or are there changes / revisions needed”)*

*Manager catch ups:*

- *Regular catch ups with manager – to give certainty*
- *Ideally weekly, opportunity to ask Qs outside of formal meetings, standups etc*
- *Employee said with clear instructions and milestones, they can work to bring/find solutions*
- *Outcomes of setting a clear focus: ie employee to focus on xyz*
- *This is followed up in writing (employee offered to manage minutes of catch ups to not burden Manager)*

*Informal support:*

- *Providing buddy / informal support or route to ask Qs – to use / to understand Stonex approach, standards (e.g. design), processes*

*Their own communication style:*

- *They get frustrated if not able to speak, or are ‘cut off’*

*Focus area:*

- *Employee asked to work on projects they feel are valuable to the business – KPH noted on call that focus would be driven by department priorities/workstack*

*Actions from call with employee:*

- *Employee to note down current work stack and where issues/blockers that they cant solve – KPH to send to Nadeem (see email attached)*
- *Request to WFH or rest of this week whilst Nadeem considers options*
- *KPH asked employee for some time to work through requests on adjustments/support*

183. Later that day Mr Humdani replied to say that he would like to look at moving the Claimant to work under a different manager (this had been suggested by the Claimant) and proposed Employee B [RB1861]. Mr Payne-Hanlon prepared a briefing note for that purpose [RB1883] and he and Ms Cutmore had a call with Employee B on 3 August 2023 [RB1875-1876, KPHWS6.1-6.3]. Ultimately the Respondent concluded that moving the Claimant to be managed under Employee B was impractical because Employee B was in the USA (creating time zone problems), the environment in which the Claimant would be working under Employee B would still be challenging, there would be difficulties with the use of different coding languages and it would not be well suited to the Claimant [LCWS14.1 and KPHWS7.3].

184. The Claimant continued to be permitted to work from home [RB1882].

**7 and 8 August 2023 correspondence to CTO**

185. On 7 August 2023 the Claimant sent the following email to the CTO, Mr Levine [RB1886]:

*I work under Jothi and I am certain Nadeem have filled in you with current status. In some emails, I am bcc'ing you so that you are aware of why certain decisions by Jothi and Etimbuk leads to delay in completing a task. Etimbuk is the team lead and I have asked him several time to approve this PR. At this point it seems like a power game of I have the final say and such kind of toxic mentality will not help.*

186. It was entirely disproportionate and unnecessary for the Claimant in the circumstances to have sent this email to such a senior employee and, just beforehand, to have blind copied him on an email to Mr Udofia seeking to achieve Mr Udofia's approval (via PR) of her code relating to the inline delete query.

187. On 8 August 2023, the Claimant copied Mr Levine into another email that she sent to Mr Udofia in respect of her dispute about her PR being abandoned on

the inline delete matter. She also copied this email to Mr Ramachandran and Mr Humdani [RB1894-1896]. Her email (said to be a protected act [LOI 7.1 (e)]) included the following:

*Hi Etimbuk,*

*You have abandoned this PR due to inline delete query.*

*[screen shots]*

*As I mentioned in the standup, that previous commit to the develop branch contains the inline-delete query*

*[screen shots]*

*If in-line delete query is an major concern then, this commit needs to be reverted too, to which you responded in standup, it's fine as it is.*

*You still haven't given me a valid reason for abandoning the PR apart from in-line delete statement, evident from you PR comment as well as new task created.*

*I worked hard on working on that PR, the changes include,*

*- scheduler*

*- retrieving new records (edge cases)*

*I feel like the decision you made is a blatant display of power. Please provide me with the reason other than inline delete query for abandoning the PR.*

188. We have set out our findings on the in line delete query above. Mr Levine reached the conclusion that Mr Udofia's concern about the code was justified [BLWS4.7]. We accept his evidence that:

188.1 *"abandoning the PR ticket was an appropriate and absolutely normal response";*

188.2 It was *"certainly not a 'display of power"*.

188.3 It was *"nothing personal, just a Team Lead doing his job"*.

188.4 Instead of constructive conversation or discussion, the Claimant was angry because she wanted her PR ticket approved.

188.5 the Claimant's reaction was *"making a mountain out of a mole hill and she was responding in an unprofessional and disruptive way"*.

188.6 *"The Claimant's email was inappropriate and disruptive"* and her tone was not *"polite or professional"* and was *"unacceptable"*.

188.7 The fact that she had copied in three layers of management (in addition to

Mr Udofia) was unnecessary.

189. Mr Levine fairly accepted that it was fine for the Claimant to ask Mr Udofia what the issue was with her work and to have a technical discussion about it. However, the Claimant disproportionately escalated “*a very small technical decision*” and, as a junior and inexperienced software engineer, unreasonably refused to accept a reasonable decision of her Tech Lead.

190. We accept Mr Levine’s and Ms Cutmore’s evidence that Mr Ramachandran was at the point of resigning because of the difficulty of having to manage the Claimant. We also accept his opinion [BLWS4.12] that the Claimant was:

190.1 unhappy;

190.2 making other employees unhappy

190.3 not performing well; and

190.4 damaging the wellbeing and productivity of others.

191. We consider that Mr Levine also reached a reasonable conclusion after correspondence from the Claimant of 7 and 8 August 2023 that moving her to another team was unlikely to help because the situation would be likely to recur there “*if someone in that team did not agree with the Claimant about something, it was very likely that she would be unpleasant to them, escalate it inappropriately and allege that she was being mistreated*” [BLWS5.4]. He was also reasonable in concluding that, given the Claimant’s impact on the wellbeing and happiness of others and on productivity, and the risk the Claimant posed to the Respondent of losing loyal, productive and talented employees, he could not reasonably expect other colleagues and managers to accept and work alongside the Claimant in a new team [BLWS5.5].

192. Mr Levine therefore sent an email to Ms Cutmore as follows [RB1898]:

*“the tone of the email from [the Claimant] is unacceptable, specially involving in CC 3 layers of management. Especially the highlighted statement in red (see bottom of original email) is very strong and not appropriate in this type of discussions. [The Claimant] is not an expert in particular coding frameworks and instead of asking for help or training she allows very strong statement based on her personal judgements.*

*“...I feel like the decision you made is a blatant display of power. Please provide me with the reason other than inline delete query for abandoning the PR...”*

*I would leave it to HR to handle the case.*

*PS: Sorry not sure who in HR handles the case, please forward as appropriate.*

*Thank you very much.”*

193. This was a situation that the Respondent of course needed to address. Taking into account the evidence that we heard, the correspondence that we were taken too and the fact that Mr Levine is two levels of management above Mr Ramachandran, we nonetheless accept his evidence that Mr Ramachandran was one of the most polite people he had have worked with, is quiet, and has a lot of patience.
194. We consider that Mr Levine reached a reasonable conclusion, following discussions with Mr Humdani and HR, that dismissing the Claimant was the appropriate course of action because of her poor performance and behaviour.

### **8 Aug 2023 - dismissal**

195. The Respondent therefore arranged to meet the Claimant. Owing to the fact that she was not in the office Mr Humdani and Mr Payne-Hanlon arranged a call with her. The Claimant made a covert recording of the meeting and we had the transcript [RB1900-1905]. In the meeting the Claimant frequently talked over others and made, amongst others, the following comments:

*I need to have, uh collect evidences uh from the email, so I need to have access to the emails for at least a day or two.*

*[...]*

*I have presented my, um you know um, my evidences but it seems that StoneX is not listening to my side of the story, and uh it's not even addressing the issues that I have raised um which is quite shame, uh because it's pretty much discriminating someone based on their disability, sex and whistleblowing uh which I don't agree you know I'm not happy with but um thank you.*

196. We accept Mr Humdani's evidence [NHWS8.3-8.5] that he could not see the Claimant settling into employment at the Respondent and that he had to make a call about the wellbeing of the team, which was suffering immensely and in circumstances where the team's "morale was at an all-time low". We accept that the situation was deteriorating quickly and a number of managers had spent considerable time trying to deal with the Claimant's issues and trying to help her but regrettable the Claimant could not do her job and she obstructed others from doing theirs.
197. In dismissing the Claimant summarily as it did, the Respondent did not follow the ACAS code. However, the decision not to follow the code was reasonable in the circumstances taking into account the Claimant's performance, there being no legal obligation to do so and dismissal being a reasonable decision in the circumstances. There is no evidence that a man or a software engineer with the same capabilities and performance issues as the Claimant and who had behaved as she had but who was not disabled would have been treated more favourably than the Claimant in this regard.

### **9 August 2023 - Dismissal Letter**

198. Mr Payne-Hanlon confirmed the Claimant's dismissal by letter the following day which read, so far as is relevant, as follows [RB 1911-1915]:

[Cover email]

*Please see confirmation of yesterday's discussion held on 8 August 2023, where Nadeem Humdani confirmed termination of your employment within the probation period with StoneX with immediate effect.*

*Since this meeting, we have been made aware that you may have attempted to access Company information, today.*

*Kindly confirm by return email should this not be the case.*

*Please see the alerts attached – indicating you may have tried to delete Company information today 9 August 2023, between 13.55 to 13.57.*

*I would like to remind you that the obligations in your contract of employment, dated 23 March 2023, and signed by you, still remain in force:*

[Screen shots and relevant attachments]

[Dismissal confirmation letter]

*RE: Termination Letter*

*Further to your meeting held with Nadeem Humdani on 08 August 2023 and Kevin Payne-Hanlon, HR Business Partner, I write to confirm the decision of StoneX Financial Ltd (the "Company") to terminate your employment on 08 August 2023 (the "effective termination date").*

*As discussed with you, the Company has lost trust and confidence in your conduct and ability to perform the requirements of your role in your probation period despite making adjustments to try and support you.*

*Within our meeting we summarised our concerns outlining examples of where you did not meet the standards required.*

*For these reasons, the Company has made their decision to terminate your employment.*

*The Company confirms that your employment will terminate on 08 August 2023 ("Effective Termination Date"). Your notice period during your probation period (as per your contract effective 23 March 2023) is two (2) weeks which the Company will pay to you in lieu of notice.*

*You will receive your final salary payment up to 08 August 2023 including any outstanding holiday entitlement (6.75 days accrued but unused, rounded up to 7 days) plus two (2) weeks in lieu of notice, (less income tax at the applicable rate and employee National Insurance contributions) in the August payroll, on or around 27 August 2023.*

*The Company will provide you with your P45 on or after 31 August 2023.*

[...]

*You must return any Company property in your possession to the Company in good order. We will arrange a courier to collect all items from your home address and will contact you to confirm this arrangement. You are reminded that following the Termination Date you remain bound by certain terms of your Contract, including those relating to Confidential Information.*

[...]

199. We accept that Mr Humdani dismissed the Claimant because the Respondent had *"lost trust and confidence in [the Claimant's] conduct and ability to perform the requirements of [the Claimant's] role in [the Claimant's] probation period despite making adjustments to try and support [the Claimant]"* (see above and [RB1911-1912]).
200. On 9 August 2023 a number of employees noticed that items were being deleted from the Respondent's systems [RB1907-1910]. That day the Claimant sent the following email to Mr Payne-Hanlon [RB1916]:

*Hi Kevin, Yes I have deleted the pages I created. I was just cleaning up the mess since those documents were not worth being there. I can provide evidences for it.*

*I have however not deleted any important documents.*

*Pages I have deleted are:*

*My assessment notes on ingest-deal-search service which is particularly to assess my ability to create a tech design. I used confluence instead of Google Docs hence I deleted it. Jothi even suggested to a white board session which means this piece of work is particularly for me and not for the wider team.*

*The other one is for authentication and authorisation: again this is my rough sketch notes and again it's for my assessment and not for the wider team.*

*Generic Invoice Manager: General notes which I designed and Jothi rejected the solution. It's being there will raise even more confusion.*

*Other page all comes under Oils Dev Team which I created but Etimbuk told me not move pages from Epro. I didn't expect my termination to happen yesterday, so I didn't have a chance to clean it up.*

*I saw that admins can restore the pages and if they thought it was needed then please tell them to restore it.*

*I am just tidying up my desk and spaces. I have logged out of confluence after and I am sorry if this caused any problems.*

*I did not receive formal written notice of termination of my employment with the reason as of yet. Yesterday's meeting was a surprise because the meeting was about concerns I raised such as discrimination. It was a shock to me that my employment got terminated.*

*I wasn't told of the appeal procedure.*

*Please arrange someone to collect the laptop as it is ready.*

201. The Claimant then asked Mr Payne-Hanlon questions and he provided his responses [RB1924-1925].

### **Findings of fact in respect of provision of a MacBook**

202. We now set out our findings of fact in respect of the Claimant's request that she be provided with a MacBook laptop rather than the windows laptop provided as standard to members of the Claimant's team.

203. The Claimant of course started her employment on 11 April 2023. On 19 April 2023 she sent Mr Ramachandran a Teams messages saying:

*"Hi Jothi, I am really struggling to use windows, I have checked into installing mac os, but that is not licensed. Do you think company can issue me a mac instead?"*

204. During the hearing it became clear that it was the difference in shortcuts on a Mac (with which the Claimant was more familiar), as against those preprogrammed on a Windows laptop, which was the Claimant's main difficulty. We accept the Respondent's submissions that shortcuts can be reprogrammed on a Windows laptop. It is this that the Claimant referred to at [CWS3.6.3-3.6.5] when she said:

*"I am used to terminal based systems as well as IntelliJ shortcuts specific to Mac. This meant, for a simple search or hierarchical calls, I had to manually keep track of the visited code etc which made my development experience extremely difficult.*

*This took debugging or writing code much longer than what it will take me to work on a Mac.*

*I felt like StoneX or the HR did not want me to provide me with a suitable environment to thrive. Note positive/friendly/mutually helpful interactions with EU over these dates."*

205. The following exchanges then followed [RB2224-2229]:

**19 April 2023**

*JR - Morning [Claimant]*

*JR - I can check but wont hold my breath*

*C - Please check for me, I would appreciate it*

**21 April 2023**

*C - hello, Did you have a chance to speak to IT about mac?*

*JR - Yes I did - doesnt look like its going to be possible. What are you struggling with in using Windows? You gonna be using browser, Intelli J and DBeaver - dont think that's any different in using it in MAC vs Windows*

*C - WSL doesn't work on my laptop, terminal and general user experience, I feel like my productivity is decreased because of Window*

*JR - Whats WSL?*

*C - I usually use terminals a lot, Windows Subsystem Linux*

*JR - Am sure you will get used to it soon, lets evaluate again in a months time as so far you were just doing training and at the same time getting used to Windows*

*C - sure, let's evaluate in month's time*

206. At the end of June there was the sequence of events that we have recorded above in which the Claimant told Mr Ramachandran about her dyslexia and ADHD and in which Mr Ramachandran asked the Claimant to speak to Ms Cutmore. Ms Cutmore and the Claimant spoke on 3 July 2023 and after the meeting Ms Cutmore send the Claimant an email with details of it OH provision and saying [RB1485]:

*You do not have to agree to attending an occupational health assessment, however, it could be a good idea as it may help you to get any additional support you may need. We can also ensure that from a work perspective, you are supported in the right way and then we can plan the best course of action.*

*With your consent, we can arrange for you to speak with an OH practitioner and Everwell will send us a medical report once you have had the assessment*

207. On 5 July 2023 Ms Cutmore sent the following email to Mr Ramachandran:

*Subject: Macbook*

*Hi Jothi*

*Thank you for meeting with me yesterday.*

*As discussed, [Claimant] has notified us that she has neuro diverse health conditions, namely dyslexia and ADHD.*

*She is finding it difficult to work on her standard StoneX laptop and this is causing her some frustration and distress. She has requested to use a*

*Macbook as an alternative which she is more familiar and comfortable with and feels this change would enable her to complete her work quicker and more effectively reducing any stress she is experiencing.*

*We are aware that dyslexia is covered by the disability equality regulations and therefore we need to provide reasonable adjustments to support her at work. I will need approval from yourself and your division head in order to proceed with ordering the Macbook from IT.*

*Additionally, we will be referring [Claimant] for an occupational health assessment whereby a registered clinician will discuss her conditions with her and provide a report with their recommendations and advice for any further adjustments for us to consider. We will discuss the report with you when received so that we can agree the appropriate way forwards.*

*I will also send you some reading materials that give helpful background on dyslexia and ADHD for your information.*

208. On 4, 7, 17 and 18 July 2023 the Claimant followed up with messages to Ms Cutmore asking about progress with her request for a Mac laptop [RB1470-1471].
209. Over the same period [RB1470] there were the also the following exchanges between Ms Cutmore, Mr Ramachandran and Mr Humdani:

**5 July 2023 JR to LC**

*JR - Hi - I thought you were sending the email for Macbook request today.*

*LC - Hi Jothir this will be with you as soon as possible*

**7 July 2023 LC and JR**

*LC - Hi Jothi, thank you for your time*

*Please advise how to respond to LJ email - sounds like you are ok to provide the kit - Hi Laraine,*

*I hope you are well. I was wondering if you have any update on Mac laptop.*

*JR to LC - Sorry Laraine, its not with me - the approval needs to be from Exco. I think Nadeem said we will do other changes but not giving the laptop for now. But please confirm with him.*

**07 July 2023 LC and NH**

*LC to NH - Hi Nadeem, thank you for your time Please advise how to respond to LJ email - sounds like you are ok to provide the kit -I hope you are well. I was wondering if you have any update on Mac laptop.*

**NH to LC** - *Hi Laraine i would suggest you tell her we are looking at ways ti help her working environment with the technology we have and assess how that progresses before switching to a non standard computer*

210. We conclude, based on the correspondence between the Claimant and Mr Udofia [at CB500-501] that sometime before 13 July 2023 the Claimant was given permission to use her personal Mac laptop for work.
211. A week later, on 20 July 2023, the Claimant was given her assessment task for which, we accept, she needed neither a Mac laptop nor a Windows laptop but in any event she could, by this time, use her personal Mac for work.
212. On 2 August 2023 Mr Payne-Hanlon and Mr Humdani had the following exchange of emails [RB1861]:

**NH to KPH:**

*I would like to transition [Claimant] to the new manager [Employee B] but wanted to understand if you plan to have a call with [Employee B] to share background?*

*This move would be a continuation of the assessment phase.*

**KPH to NH:**

*Thank you for the update.*

*Yes, we can brief [Employee B] – please introduce us. Post this and assuming [Employee B] is comfortable, I can write back to the employee re the adjustments we will make (you can review this note before it is sent)*

*Re the mac-book – whilst I appreciate it’s a business cost, please do consider; removing as many barriers as we can now to help support the employee, will help a clearer assessment of performance. Given the resources, size of the company etc I would think this may be viewed as a reasonable adjustment.*

*In the event that probation is not passed, the mac-book can be reallocated to another department/who would take on the costs.*

*Note – we said to Jothi in our call this morning that we were exploring solutions with you (but didn’t go into detail), and that you’d keep him in the loop on any actions you decide to take.*

*Regards*

*Kevin*

**NH reply:**

*Hi Kevin*

*Its unlikely I will get approval for the MacBook at this stage. I am keen to seem how [Claimant] settles into the new team before bring the laptop into the picture.*

*I will make the intro with [Employee B]*

213. We accept Mr Levine's witness evidence [BLWS2.1-2.2] that:

213.1 Mr Humdani had raised the MacBook question with him;

213.2 A small number of people at the Respondent use a MacBook, but only those who work on very specific projects which require them to work with Apple eco-systems;

213.3 99.9% of employees work in Windows and the ability to work with Windows is a normal basic skill that is required for a software developer.

213.4 It would be very unusual for the Invoice Manager team to use MacBook's.

213.5 In order for the Claimant to use a Mac a number of things would need to be modified so that the Claimant could use it effectively and participate with the rest of the team.

213.6 Mac computers are more difficult to maintain and to provide with a consistent level of security patching.

213.7 It was unusual for the Respondent to allow the Claimant to use her own Mac and the Respondent had to arrange for a special encryption key to be issued to her so that she could access the Respondent's valuable code repository. This also had the effect of limiting the tasks which the Claimant could work on (the IM project and team was based on Microsoft Windows).

214. We accept Mr Ramachandran's evidence [JRWS15] that:

214.1 The Claimant's CV stated that Microsoft Windows was one of her skills.

214.2 At interview he had explained to the Claimant the tech stack used by the Respondent.

214.3 The Respondent did not reach a final decision on the provision of a MacBook because of the issue that arose with the Claimant, because she did not complete the assessment task (which did not require a laptop or the provision of a company MacBook) and because her employment was terminated.

214.4 Not having a company MacBook did not make it harder for the Claimant to complete her work to a good standard because (i) the software she was using did not work any differently in Windows (ii) the Claimant did not have a high workload and was allowed a lot more time than others to complete her work and (iii) the Claimant was given the assessment task not because

she said she needed a MacBook but because she was struggling to do her job more generally and things did not improve after she was allowed to use her own Mac.

### **The Claimant and her comparators – equal pay (like work)**

215. The Claimant graduated in 2013 and according to her CV then had a number of periods of employment of a year or less in roles with the job title Software Engineer or Senior Software Engineer [R2686-2687]. The Claimant compared herself to Employee A, Mr Udofia and Employee C.

#### **216. Employee A:**

216.1 We accept Mr Mahkonen's evidence [IMWS5.1-5.3] that Employee A was a Senior Software Engineer and that, based on his CV, this was the appropriate level for him (having 14 years' of commercial experience, having previously been employed as a senior developer and having financial domain knowledge and experience). We accept that he had had two years of team leading [JRWS19.5].

216.2 His employment overlapped with the Claimant's [RB2676 - R2677]. In contrast to the Claimant he formed a good rapport within the team but struggled with some aspects of the role and, in the Respondent's view, got "lost over thinking" and "looking at the tasks too wide and not breaking them down to smaller chunks that are easier to handle" [RB2722].

216.3 We accept Mr Humdani's evidence [NHWS3.4-3.5] that Employee A's performance issues were very different to those of the Claimant, that Employee A had demonstrated a willingness to learn and accept constructive feedback and that Mr Humdani had reason to believe that concerns about some areas of his performance could be resolved with more time (hence the extension of his probation period). Employee A had also indicated that he would accept a lower salary if he was not working at the required level [JRWS10]. Employee A was not given an assessment task because the concerns about him were different and the Respondent wanted to see if he could produce code faster. We accept that everyone in the team knew that his probation period had been extended [JRWS13.4].

216.4 We accept Mr Udofia's evidence [EUWS8.3] that Employee A was more experienced and technologically skilled than the Claimant. We accept Mr Mhatey's evidence [AWMWS4.4] that conversations with Employee A were more managerial and that the Claimant could not interact at the same level.

#### **217. Mr Udofia:**

217.1 We accept Mr Mahkonen's evidence (IMWS7.1-7.2) that Mr Udofia was originally recruited as a Software Engineer in 2022 and that when Mr Udofia was recruited he had a Masters Degree and about 11 years' experience in software engineering/software developing and had been a Senior Software Engineer in his previous role but had no finance experience when he joined StoneX.

217.2 We accept Mr Choudhury's evidence [BCWS5.3: 5.3] that he regarded Mr Udofia as senior to the Claimant, mainly due to his knowledge of Java and DevOps and that he had the most DevOps knowledge in the team (a software engineering methodology). As we have made clear Mr Udofia was acting Tech Lead at the time of the Claimant's employment and was formally promoted later. This meant that as well as doing software development he was also managing others, leading a project, working on infrastructure, supporting queries on projects and he and the Claimant were not comparable in the work they did [JRWS19.6].

**218. Employee C:**

218.1 We accept Mr Mahkonen's evidence [IMWS6.1-6.2] that Employee C's CV was very impressive. He had 19 years' experience, had held different roles in the software development lifecycle (not just in software engineering). There was great depth to his technical skills and experience and he also had a lot of finance experience having worked for twelve years at large banks. His CV suggested that he was an outstanding Senior Software Engineering candidate [R2678-R2681].

218.2 We accept Mr Udofia's, Mr Mhatey's, Mr Choudhury's and Mr Humdani's unchallenged evidence in respect of Employee C [EUWS8.2, AWMWS4.2, BCWS5.2, NHWS10.1]. Employee C was the most experienced and technically gifted software engineer in the team. He was able to work independently and was experienced, approachable, proactive, team orientated, unfrontational and willing to share knowledge. He rarely asked technical questions (and when he did it tended just to be to check his understanding) and did not need his held in the way that the Claimant did.

218.3 Employee C knew the programming languages the team used and was very familiar with its technical style and the work tools they used. He was much more experienced than the Claimant (hence the Claimant's need to do the training that she was undertaking) [JRWS19.4].

**219. Claimant:**

219.1 We accept Mr Choudhury's witness evidence [BCWS5.4-5.6] that the Claimant had very limited DevOps knowledge and, whilst she knew Java programming, her understanding was not as in-depth as that of Mr Udofia. We accept that the Claimant found it difficult to understand the requirements of the tasks that she was set and that, on the Claimant's dismissal, Mr Choudhury had to pick up three Java services which were partially implemented and he had either to fix or finish them. We accept his evidence that the Claimant was not working at the level of **Employee C** or Mr Udofia or a Senior Software Engineer generally.

**Salaries:**

220. Although not one of the Claimant's named comparators we accept and note that Mr Choudhury was also a junior software engineer at the time of the Claimant's employment, but knew the Respondent's systems well, as well as how they

interacted with each other. We accept that he understood the Financial Services sector lot better than the Claimant. We accept Mr Ramachandran's evidence at [JRWS19.8] and Mr Payne Hanlon's evidence at [KPHWS14.1]. This evidence on the salary, seniority and experience of Mr Choudhury over time runs contrary to the Claimant's case.

221. We accept the Respondent's submission at paragraph 50 in this regard.
222. We also accept the evidence of Mr Payne-Hanlon in respect of the salaries of the Claimant's comparators [KPH 14.1.1].

### **Claimant's post-employment blog**

223. After she was dismissed the Claimant published an extremely long public 'blog', largely focused on the batch insert issue and her work assessment, in which she used aggressive, insulting, shocking and obscene language to individually describe certain of her former colleagues. Her comments were entirely unwarranted and abusive. The Claimant also made a shocking and extremely hurtful reference to a recent personal tragedy suffered by one of her former colleagues. After she had finished cross examining that person she apologized and sought to mitigate her conduct by reference to her mental ill health. She did not apologise to other witnesses for her insulting comments. The Claimant's former team members were understandably upset and worried by her blog and it affected their wellbeing. One of the Respondent's witnesses saw the blog the day before their wedding day and we accept that their spouse was also upset by it.

224. We accept Mr Payne-Hanlon's unchallenged evidence [KPHWS13] in this regard:

224.1 He wrote to the Claimant explaining that her blog was unacceptable and breached her ongoing obligations with respect to confidential information.

224.2 The Claimant replied the next day to say "*No. You can take any legal proceeding you like*". She then sent a number of emails seeking to explain why she thought she could retain StoneX's confidential information/documents. She then wrote again on 22 September 2023 stating that she would not delete the account hosting the blog, but that she had deleted her posts as requested. She refused to sign the undertakings and did not accept that she had breached her employment contract.

225. We do not consider that the Respondent's witnesses' evidence was affected by the Claimant's blog (and it was not put to them by the Claimant that it had been). They responded to the Claimant's cross examination of them in a measured and polite way.

### **Post employment retention of Respondent's IP**

226. The Claimant did not dispute the Respondent's submission that, having been given access to the Respondent's systems on her personal laptop, she had downloaded a substantial amount of the Respondent's code (constituting IP and trade secrets) and that she has retained it despite repeated demands by the

Respondent that she return it/delete it. We found the Claimant's explanation for her actions at best unpersuasive as regards the code.

## THE LAW

### *Time limits – the EqA*

227. The relevant time-limit is at section 123 Equality Act 2010. According to section 123(1)(a) the tribunal has jurisdiction where a claim is presented within three months of the act to which the complaint relates.
228. The normal three-month time limit needs to be adjusted to take into account the early conciliation process and any extensions provided for in section 140B Equality Act.
229. By subsection 123(3)(a), conduct extending over a period is to be treated as done at the end of the period.
230. In **Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686**, the Court of Appeal stated that the test to determine whether a complaint was part of an act extending over a period was whether there was an ongoing situation or a continuing state of affairs in which the claimant was treated less favourably. An example is found in the case of **Hale v Brighton and Sussex University Hospitals NHS Trust UKEAT/0342/17** where it was determined that the respondent's decision to instigate disciplinary proceedings against the claimant created a state of affairs that continued until the conclusion of the disciplinary process.
231. It is not necessary to take an all-or-nothing approach to continuing acts. The tribunal can decide that some acts should be grouped into a continuing act, while others remain unconnected **Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548**; The tribunal in *Lyfar* grouped the 17 alleged individual acts of discrimination into four continuing acts, only one of which was in time.
232. Alternatively, the tribunal may still have jurisdiction if the claim was brought within such other period as the employment tribunal thinks just and equitable as provided for in section 123(1)(b).
233. It is for the claimant to show that it would be just and equitable to extend time. The exercise of discretion should be the exception, not the *rule* (**Bexley Community Centre (t/a Leisure Link) v Robertson [2003] EWCA Civ 576**).
234. The tribunal has a wide discretion to extend time on a just and equitable basis. As confirmed by the Court of Appeal in **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23**, the best approach is for the tribunal to *assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time. This will include the length of and reasons for the delay, but might, depending on the circumstances, include some or all of the suggested list from the case of British Coal Corporation v Keeble [1997] IRLR 36* as well as other potentially relevant factors.

235. Where the reason for the delay is because a claimant has waited for the outcome of his or her employer's internal grievance procedures before making a claim, the tribunal may take this into account (**Apelogun-Gabriels v London Borough of Lambeth and anor 2002 ICR 713, CA**). Each case should be determined on its own facts, however, including considering the length of time the claimant waits to present a claim after receiving the grievance outcome.
236. In the case of **Harden v (1) Wootlif and (2) Smart Diner Group Ltd UKEAT/0448/14** the Employment Appeal Tribunal reminded employment tribunals that we must considering the just and equitable application in respect of each respondent separately and that it is open to us to reach different decisions for different respondents

### **Discrimination under the EqA**

237. The Equality Act 2010 (EqA) protects employees and applicants for employment from discrimination based on or related to a number of 'protected characteristics' (section 4). These include disability (section 6) and sex (section 11).

### **Direct discrimination**

238. Section 39(2) of the Equality Act 2010 prohibits an employer discriminating against one of its employees by dismissing him or by subjecting the employee to a detriment. This includes direct discrimination because of a protected characteristic as defined in section 13.
239. Section 13 of the Equality Act 2010 provides that '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'.
240. Under section 23(1), where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.
241. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the Claimant's protected characteristic is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence.
242. We must consider whether the fact that the Claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.
243. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the Claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of disability. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the Claimant was treated as she was.

244. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. A two-stage process is followed. Initially it is for the Claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the Respondent, that the Respondent committed an act of unlawful discrimination.
245. At the second stage, discrimination is presumed to have occurred, unless the Respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the Respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the Claimant's disability. The Respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.
246. Guidelines on the burden of proof were set out by the Court of Appeal in **Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258** and we have followed those as well as the direction of the court of appeal in **Madarassy v Nomura International plc [2007] IRLR 246, CA**. The decision of the Court of Appeal in **Efobi v Royal Mail Group Ltd [2019] ICR 750** confirms the guidance in these cases applies under the Equality Act 2010.
247. The Court of Appeal in Madarassy, states:
- ‘The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal ‘could conclude’ that on the balance of probabilities, the Respondent had committed an unlawful act of discrimination.’ (56)
248. It may be appropriate on occasion, for the tribunal to take into account the Respondent's explanation for the alleged discrimination in determining whether the Claimant has established a prima facie case so as to shift the burden of proof. (**Laing v Manchester City Council and others [2006] IRLR 748; Madarassy**) It may also be appropriate for the tribunal to go straight to the second stage, where for example the Respondent assert that it has a non-discriminatory explanation for the alleged discrimination. A Claimant is not prejudiced by such an approach since it effectively assumes in his/her favour that the burden at the first stage has been discharged (**Efobi v Royal Mail Group Ltd [2019] ICR 750**, para 13).
249. In addition, there may be times, as noted in the cases of **Hewage v GHB [2012] ICR 1054** and **Martin v Devonshires Solicitors [2011] ICR 352**, where we are in a position to make positive findings on the evidence one way or the other and the burden of proof provisions are not particularly helpful. When we adopt such an approach, it is important that we remind ourselves not to fall into the error of looking only for the principal reason for the treatment, but instead ensure we properly analyse whether discrimination was to any extent an effective cause of the reason for the treatment.

250. Allegations of discrimination should be looked at as a whole and not simply on the basis of a fragmented approach **Qureshi v London Borough of Newham [1991] IRLR 264, EAT**. We must “see both the wood and the trees”: **Fraser v University of Leicester UKEAT/0155/13** at paragraph 79. Our focus “must at all times be the question whether or not they can properly and fairly infer... discrimination.”: **Laing v Manchester City Council, EAT at paragraph 75**.

### **Discrimination arising from disability - section 15 EqA**

251. Section 15 EqA provides: “(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”.
252. As to what constitutes “unfavourable treatment”, the Supreme Court in **Williams v Trustees of Swansea University Pension and Assurance Scheme and anor [2019] ICR 230** held that it is first necessary to identify the relevant treatment and it must then be considered whether it was unfavourable to the Claimant.
253. The Court said that little was likely to be gained by differentiating unfavourable treatment from analogous concepts such as “detriment” found elsewhere in the Act, referring to a relatively low threshold of disadvantage being needed. One could answer the question by asking whether the Claimant was in as good a position as others.
254. What caused the unfavourable treatment requires consideration of the mind(s) of alleged discriminator(s) and thus that the reason which is said to arise from disability be more than just the context for the unfavourable treatment. There need only be a loose connection between the unfavourable treatment and the alleged reason for it, and it need not be the sole or main cause of the treatment, though the reason must operate on the alleged discriminators’ conscious or unconscious thought processes to a significant extent (**Charlesworth v Dronsfield Engineering UKEAT/0197/16**).
255. By analogy with **Igen**, “significant” in this context must mean more than trivial. Whether the reason for the treatment was “something arising in consequence of the Claimant’s disability” could describe a range of causal links and is an objective question, not requiring an examination of the alleged discriminator’s thought processes.
256. Simler P in **Pnaiser v NHS England [2016] IRLR 170, EAT**, at [31], gave the following guidance as to the correct approach to a claim under **section 15 EqA**:
- '(a) *'A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.*
- '(b) *The tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in*

*the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The “something” that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.*

*(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see **Nagarajan v London Regional Transport [1999] IRLR 572**. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises.*

*(d) The tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'. That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of s.15 of the Act (described comprehensively by Elisabeth Laing J in Hall), the statutory purpose which appears from the wording of s.15, namely, to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.*

*(e) For example, in **Land Registry v Houghton UKEAT/0149/14, [2015] All ER (D) 284 (Feb)** a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.*

*(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.*

*(g) There is a difference between the two stages – the “because of” stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the “something arising in consequence” stage involving consideration of whether (as a matter of fact rather than belief) the “something” was a consequence of the disability.*

*(h) Moreover, the statutory language of s.15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the disability only, and*

*does not extend to a requirement of knowledge that the “something” leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of s.15 would be substantially restricted on Miss Jeram’s construction, and there would be little or no difference between a direct disability discrimination claim under s.13 and a discrimination arising from disability claim under s.15.*

*(i) As Langstaff P held in Weerasinghe, it does not matter precisely in which order these questions are addressed. Depending on the facts, a tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of “something arising in consequence of the claimant’s disability”. Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to “something” that caused the unfavourable treatment.”*

257. The burden of establishing a proportionate means defence is on the Respondent. When assessing whether the treatment in question was a proportionate means of achieving a legitimate aim, 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]. 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 objective assessment of whether the former outweighs the latter. There is no ‘range of reasonable response’ test in this context: **Hardys & Hansons plc v Lax [2005] IRLR 726, CA**.
258. In **Homer v Chief Constable of West Yorkshire Police [2012] UKSC 15** it was said, approving Mummery LJ in **R (Elias) v Secretary of State for Defence [2006] EWCA Civ 1293**, that what is required is: first, a real need on the part of the Respondent; secondly, that what it did was appropriate – that is rationally connected – to achieving its objectives; and thirdly, that it was no more than was necessary to that end.
259. It is also appropriate to ask whether a lesser measure could have achieved the employer’s aim – **Essop and Naeem v Home Office (UK Border Agency) and Secretary of State for Justice [2017] UKSC 27**.
260. A complaint of discrimination arising from disability will also be defeated if the Respondent can show that at the time of the unfavourable treatment, it did not know and could not reasonably be expected to know that the Claimant was a disabled person.

### **Reasonable Adjustments**

261. By section 39 (5) *EqA* a duty to make adjustments applies to an employer. By section 21 *EqA* a person who fails to comply with a duty on him to make

adjustments in respect of a disabled person discriminates against the disabled person.

262. *Section 20(3) EqA* provides that there is a requirement on an employer, where a provision, criterion or practice of the employer 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.
263. Section 21 of the Equality Act provides that an employer discriminates against a disabled person if it fails to comply with a duty to make reasonable adjustments. This duty necessarily involves the disabled person being more favourably treated than in recognition of their special needs.
264. The duty to make reasonable adjustments only arises where the employer has knowledge (actual or constructive) that its employee is disabled and likely to be placed at a substantial disadvantage as (Paragraph 20 (1)(b) Schedule 8 of the Equality Act 2010).
265. In **Environment Agency v Rowan 2008 ICR 218** and **General Dynamics Information Technology Ltd v Carranza 2015 IRLR 4** the EAT gave general guidance on the approach to be taken in reasonable adjustment claims. A tribunal must first identify:
- 265.1 the PCP applied by or on behalf of the employer
- 265.2 the identity of non-disabled comparators;
- 265.3 the nature and extent of the substantial disadvantage suffered by the Claimant in comparison with the comparators.
266. Once these matters have been identified then the tribunal will be able to assess the likelihood of adjustments alleviating those disadvantages identified. The issue is whether the employer had made reasonable adjustments as matter of fact, not whether it failed to consider them.
267. The phrase PCP is interpreted broadly. The EHRC Code of Practice on Employment (2011) ("**the Code**") says at paragraph 6.10:
- "[It] should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements or qualifications including one-off decisions and actions."*
268. The Code goes on to provide at Paragraph 6.24, that *"there is no onus on the disabled worker to suggest what adjustments should be made (although it is good practice for employers to ask); At paragraph 6.37, that Access to Work does not diminish or reduce any of the employer's responsibilities under the 2010 Act. At paragraph 6.28 the factors which might be taken into account when deciding if a step is a reasonable one to take:*

*Whether taking any particular steps would be effective in preventing the substantial disadvantage; The practicability of the step; The financial and*

*other costs of making the adjustment and the extent of any disruption caused; The extent of the employer's financial or other resources; The availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and the type and size of the employer.*

269. In **Lamb v The Business Academy Bexley EAT 0226/15** the EAT commented that the term “PCP” is to be construed broadly “having regard to the statute’s purpose of eliminating discrimination against those who suffer disadvantage from a disability”.
270. It is also generally unhelpful to distinguish between “provisions”, “criteria” and “practices”: **Harrod v Chief Constable of West Midlands Police [2017] ICR 869**.
271. There is no formal requirement that the PCP actually be applied to the disabled Claimant. The EAT said in **Roberts v North West Ambulance Service [2012] ICR D14** that a PCP (in this case, hot desking) applied to others might still put the Claimant at a substantial disadvantage.
272. There are some limits to what can constitute a PCP. In particular there has to be an element of repetition, actual or potential. A genuine one off decision which was not the application of policy is unlikely to be a “practice”: **Nottingham City Transport Ltd v Harvey [2013] All ER(D) 267 (Feb), EAT**. In that case the one-off application of a flawed disciplinary process to the Claimant was not a PCP. There was no evidence to show that the employer routinely conducted its disciplinary procedures in that way.
273. In **Ishola v Transport for London [2020] ICR 1204** the Court of Appeal said that all three words “provision”, “criterion” and “practice” “..carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again.”
274. The test of reasonableness imports an objective standard. The tribunal must examine the issue not just from the perspective of the Claimant, but also take into account wider implications including the operational objectives of the employer.
275. It is not necessary to prove that the potential adjustment will remove the disadvantage; if there is a “real prospect” that it will, the adjustment may be reasonable. In **Romec v Rudham [2007] All ER (D) 206 (Jul)**, EAT: HHJ Peter Clark said that it was unnecessary to be able to give a definitive answer to the question of the extent to which the adjustment would remove the disadvantage. If there was a 'real prospect' of removing the disadvantage it 'may be reasonable'. In **Cumbria Probation Board v Collingwood [2008] All ER (D) 04 (Sep)**, EAT: HHJ McMullen said that 'it is not a requirement in a reasonable adjustment case that the claimant prove that the suggestion made will remove the substantial disadvantage'. In **Leeds Teaching Hospital NHS Trust v Foster UKEAT/0552/10, [2011] EqLR 1075**, the EAT said that, when considering whether an adjustment is reasonable, it is sufficient for a tribunal to find that there would be 'a prospect' of the adjustment removing the disadvantage.

276. Schedule 8 EqA (Work: Reasonable Adjustments) - Part 3 limitations on the duty provides:

*S. 20. Lack of knowledge of disability, etc*

*(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know— (a) in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question; (b) [in any case referred to in Part 2 of this Schedule], that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement. Under Part 2 and an interested disabled person includes in relation to Employment by A, an employee of A's.*

277. If relied upon, the burden is on the Respondent to prove it did not have the necessary knowledge. The Respondent must show that it did not have actual knowledge of both the disability and the substantial disadvantage and also that it could not be reasonably have been expected to know of both the disability and the substantial disadvantage.

### **Victimisation**

278. Section 27 EqA provides: “(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. (4) This section applies only where the person subjected to a detriment is an individual. (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.”

279. The starting point is that there must be a clear allegation amounting to a protected act. Therefore an allegation that something might be discriminatory rather than is actually discriminatory, will not be sufficient ***Chalmers v Airpoint Limited and Others UKEAT/0031/19.***

280. In addition, if what the issue alleged by Claimant as amounting to a breach of the EqA would not be unlawful under the EqA, then it cannot be a protected act for example see ***Waters v Metropolitan Police Comr [1997] IRLR 589.***

281. We note Langstaff P in ***Durrani v London Borough of Ealing UKEAT/0454/2012:*** “*there must be something sufficient about the complaint to show that it is a complaint to which at least potentially the Act applies.* In that case the complaint being made was not of discrimination, but of unfair treatment generally and the ET had not erred in finding that was not a protected act.

282. In **Chalmers v Airpoint Ltd UKEAT 0031/19** the EAT upheld the ET's decision that an employee's comment in her grievance that the employer's actions "may amount to discrimination", and she had also not mentioned 'sex' was insufficient to be a protected act.
283. The employee must be subjected to a detriment, which has been decided to mean placed at a disadvantage **Williams v Trustees of Swansea University Pension and Assurance Scheme and anor [2019] ICR 230**. Unfavourable or less favourable treatment arguments are not in accordance with the correct statutory wording of section 27. Detriment is established if treatment is of a kind that a reasonable worker would or might take the view that in all the circumstances it was to their detriment: **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL**. Therefore, for detriment to be proven, it is for the Claimant to show that they were or would have been, in their subjective view, placed at a disadvantage and that it was objectively reasonable for them to have held that view.
284. Detrimental treatment of a Claimant will not be because of a protected act if the detrimental treatment is caused by the way in which the protected act is done or the behaviour of the Claimant whilst communicating the protected act or gathering information for it. For example see **Woods v Pasab Limited [2012] EWCA Civ 1578** and **Martin v Devonshire Solicitors [2011] ICR 352**.
285. The detriment relied upon by the Claimant, must be linked to the protected act. The same test for causation in direct discrimination, is therefore relevant to victimisation because the statutory wording is the same.
286. A detriment cannot be found to have been because of a protected act if there is no evidence that the person who allegedly inflicted the detriment knew about the protected act. The Court of Appeal decision in **Scott v London Borough of Hillingdon [2001] EWCA Civ 2005** was that knowledge of a protected act is a precondition of a finding of victimisation. In that case there was no positive evidence that the decision maker knew of a previous complaint of discrimination, and therefore no basis for a finding of victimisation. The knowledge of one person in an organisation of a protected act cannot be attributed to another; the protected act must operate on the mind of the decision maker: **Peninsula Business Services Ltd v Baker [2017] ICR 714, EAT**.

## **Equal Pay**

287. Section 64(1) EqA provides that the sex equality provisions of Chapter 3 of Part 5 apply where:

*"a person (A) is employed on work that is equal to the work that a comparator of the opposite sex (B) does".*

288. Section 65 EqA goes on to define "Equal work" as follows, so far as is relevant to the Issues:

(1) For the purposes of this Chapter, A's work is equal to that of B if it is—

(a) *like B's work,*

[...]

(2) *A's work is like B's work if—*

(a) *A's work and B's work are the same or broadly similar, and*

(b) *such differences as there are between their work are not of practical importance in relation to the terms of their work.*

(3) *So on a comparison of one person's work with another's for the purposes of subsection (2), it is necessary to have regard to—*

(a) *the frequency with which differences between their work occur in practice, and*

(b) *the nature and extent of the differences.*

[...]

289. Section 66 (Sex equality clause) EqA provides (as far as is relevant here):

(1) *If the terms of A's work do not (by whatever means) include a sex equality clause, they are to be treated as including one.*

(2) *Where this section applies by virtue of section 64(1), a sex equality clause is a provision that has the following effect—*

(a) *if a term of A's is less favourable to A than a corresponding term of B's is to B, A's term is modified so as not to be less favourable;*

(b) *if A does not have a term which corresponds to a term of B's that benefits B, A's terms are modified so as to include such a term.*

[...]

290. Section 69 ("Defence of material factor") provides, so far as is relevant:

(1) *The sex equality clause in A's terms has no effect in relation to a difference between A's terms and B's terms if the responsible person shows that the difference is because of a material factor reliance on which—*

(a) *does not involve treating A less favourably because of A's sex than the responsible person treats B, and*

(b) *if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim.*

(2) *A factor is within this subsection if A shows that, as a result of the factor, A and persons of the same sex doing work equal to A's are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A's.*

(3) *For the purposes of subsection (1), the long-term objective of reducing inequality between men's and women's terms of work is always to be regarded as a legitimate aim.*

[...]

(6) *For the purposes of this section, a factor is not material unless it is a material difference between A's case and B's.*

291. We accept the Respondent's submission with reference to **CSC Computer Science Ltd v Hampson [2023] EAT 88** where at [21] HHJ Tayler indicated, by analogy with direct discrimination, on an obiter basis that in a claim under the equal pay provisions "*there would have to be some evidential basis for any assertion of direct discrimination*".

## ANALYSIS AND CONCLUSIONS

292. Whilst we have we have structured our analysis and conclusions by issue, we were also careful to look at the evidence 'in the round' to determine whether it suggested that the Claimant had been subjected to the unlawful treatment of which she complains (this is particularly important when it comes to allegations of direct discrimination, and victimisation). Having done so we did not find cause to change our decisions on any issue or issues.

### Direct sex and disability discrimination

293. We find that the Claimant has failed to shift the burden of proof in respect of her complaints of direct sex discrimination. It was a false premise to point to the number of calls between team members and, beyond the bare allegations and the difference in the Claimant's sex to that of her team members, there was nothing to suggest that she had been treated less favourably because she was a woman. We accept the Respondent's submission that the treatment afforded to the Claimant is explained either by ordinary workplace practices or the Claimant's poor performance or conduct. We find that a man, in the same circumstances, would have been treated no differently. The comparators that the Claimant pointed to had materially different circumstances to the Claimant (i.e. Employee A, Mr Udofia; Mr Choudhury, Mr Mhatey and Employee C). We accept the Respondent's submission that they do not assist the Claimant in advancing her complaints because "*if they were treated differently, it was because the circumstances were materially dissimilar, i.e. they had different qualifications or had not behaved in the same way as the Claimant*" [JRWS19.1-19], [EUWS8.1-8.3], [AWMWS4.1-4.4], [BCWS5.1-5.6].

294. Nonetheless we go on to address each of the allegations:

- 294.1 **LOI 2.1 (a):** The Claimant was given a 'software engineer' contract instead of a 'senior software engineer' contract having been interviewed for the senior position in March 2023 because the Respondent fairly concluded that her experience and skill set did not match what the Respondent expected of a senior software engineer, including that the Claimant did not have financial services experience. The Claimant was nonetheless granted a starting salary that met the top of her own salary expectations and one that fell at the upper end of the salary band for software engineers and the lower end of the salary band for senior software engineers. The Claimant was recruited on a salary that was (i) substantially higher than Mr Choudhury who had established himself in the team and (ii) only marginally less than that of Mr Udofia who was both established and held a position of responsibility within the team.
- 294.2 **LOI 2.1 (b):** Mr Ramachandran spent a good deal of time with the Claimant, not least because the Claimant was reluctant to take guidance from other team members who she did not consider to be more senior than her and Mr Ramachandran had to explain the same thing numerous times to the Claimant. There is no evidence that the number or quality of the occasions on which Mr Ramachandran engaged with the Claimant was less or less valuable than it was with the Claimant's male counterparts because the Claimant is a woman. The Claimant's expectations of the time that Mr Ramachandran would or could afford her, taking into account the nature of the team and projects for which he had responsibility, was unrealistic. Employee A, a man, also complained in his exit interview about what he saw as insufficient communication from Mr Ramachandran.
- 294.3 **LOI 2.1 (c):** It is clear that the Claimant was not the only person who had to chase Mr Ramachandran. The chasing that the Claimant had to do was merely reflective of the Claimant being less self sufficient than other members of her team and less willing to take the guidance of those who she did not see as more senior than her and how busy Mr Ramachandran was. It has nothing to do with the fact that the Claimant is a woman. There was nothing in the events of 12 June 2023 that were surprising in a busy team and the Claimant's expectations as to Mr Ramachandran's responsiveness were unrealistic and she was over reliant on him.
- 294.4 **LOI 2.1 (d) and (d) (i):** There is no evidence that Mr Ramachandran favoured the claimant's colleagues' views on solutions to problems and ideas in the workplace because they were men. We accept the Respondent's submissions that Mr Ramachandran made his decisions on the views expressed by team members on merit. On the balance of probabilities we consider that, on 5 May 2023 Mr Ramachandran had to be forceful with the Claimant (because of the Claimant's confrontational approach to her colleagues) and had to emphasis to the Claimant that she should be taking direction from the more experienced Tech Lead, Mr Udofia but he did not shout at her and there is no evidence to suggest that he would have acted any differently to a male colleague in the same circumstances. We accept the Respondent's submission that in his exit interview, Employee A (one of the Claimant's male comparators) complained that Mr Ramachandran "*would publicly admonish the team, could be very passive-*

*aggressive*” [RB2756]. At the time the Claimant did not complain about being shouted at and we consider, such is her strength of character, that she would have done so.

294.5 **LOI 2.1 (d) (ii)** At most this allegation reflects a misunderstanding between the Claimant and Mr Ramachandran as to whether he was asking her to post her code in the general channel or in the PR channel. Either way the code would then be open to be reviewed by the team in the normal way [RD2557-2259]. There was no evidence that male colleagues were not required to use the PR channel for getting code checked and in any event all code has to be peer reviewed before it can be merged into the main body of code. There is no evidence of any different or adverse treatment of the Claimant in this regard.

294.6 **LOI 2.1 (e)**: We do not repeat our findings of fact on this issue, save to say there is no evidence to suggest that Mr Choudhury would not have made his ChatGPT comment to a male colleague in the same circumstances. This is an example of the rigidity of the Claimant’s thinking and her inability to see the context and that some things are not binary or as important as others. It is an example of the Claimant focusing her energy on a matter of relative unimportance and at the same time consuming the time and energy of a colleague at the end of a Friday afternoon. We accept the Respondent’s written submissions in this regard.

294.7 **LOI 2.1 (f)**: We do not repeat our findings of fact on this issue save to say that, whether this happened on 5 or 6 June, even as the Claimant describes it, this was a normal sequence of events for the team and there is no evidence that it had anything to do with the Claimant’s sex [EUWS3.2] and the Claimant was not treated any differently because she is a woman.

294.8 **LOI 2.1 (g)**: Again, we do not repeat our findings of fact on this issue save to say that, whilst dismissive of the Claimant’s migraine, Mr Mhatey did not enforce a deadline, he just referred to the deadline that had already been agreed. There is no evidence that he would not have treated a man in the same circumstances in the same way and, as we reference in our findings of fact, it was the Claimant that went on to refer to menstruation and period cramps.

294.9 **LOI 2.1 (h)**: We refer to our findings of fact in respect of this complaint and the date on which it is alleged to have occurred. This complaint focuses on a professional difference of opinion between the Claimant and Mr Udofia on which Mr Udofia, as Tech Lead, was entitled to make the decision he did. The Claimant took this personally and responded emotionally by leaving her call with Mr Udofia in circumstances where it was not reasonable for her to do so. There is no evidence, other than the Claimant’s assertion, that Mr Udofia’s decision had anything to do with the Claimant’s sex and Mr Ramachandran was entitled to prefer the opinion of his more experienced Tech Lead, Mr Udofia, to that of the Claimant.

- 294.10 **LOI 2.1.(i)**: We accept the Respondent's submission that this complaint is "*a mischaracterisation of a good faith attempt to assist the Claimant to do her work effectively and efficiently, with a recommendation which Etimbuk Udofia would have made to any software engineer in the Claimant's position*". This was another instance of Mr Udofia discussing with the Claimant whether there was a ready made code that could be used as a solution in Hibernate, rather than code being written from scratch. He wanted the Claimant to do more research to see if they could avoid drafting new, untested code. Mr Ramachandran also sent the Claimant a link to a relevant tutorial. There is no basis for concluding that Mr Udofia did not believe the Claimant, he was just trying to help the Claimant but was not able to give her the solution (which he needed her to find). There is no basis on which to conclude that he would have acted any differently towards a male software engineer in the same circumstances. As we note in our findings of fact, the Claimant later acknowledged that she should have tested the versioning duplicates instead of taking Employee C's opinion.
- 294.11 **LOI 2.1.(j)**: This complaint fails on our findings of fact. We consider that it is more probable that Mr Ramachandran asked the Claimant what problem she was facing and enquired about why a tutorial that had been suggested did not help. There is nothing objectionable about that and there is no basis for concluding that Mr Ramachandran would have treated a male software engineer any differently.
- 294.12 **LOI 2.1 (k)**: We consider on the balance of probabilities that Mr Ramachandran did ask the Claimant to be quiet but that it was an appropriate thing for him to have said in the circumstances (as set out in our findings of fact). There is no evidence that Mr Ramachandran would have treated a male colleague in the same circumstances any differently. We accept the evidence of the Respondent's other witnesses that, whilst Mr Ramachandran could be firm, he did not shout at the Claimant or anyone else (as she subsequently alleged). We accept the Respondent's submissions in this regard.
- 294.13 **LOI 2.1 (l)**: Whether or not the assessment task that was assigned to the Claimant on 20 July 2023 was an assessment task or a performance plan, we accept the Respondent's submission that it was plainly a legitimate step for the Respondent to have taken in light of the Claimant's performance. We accept that it was "*towards the more generous end of the range of options reasonably open to the Respondent*" and that other employers might have dismissed the Claimant given the difficulties that she was creating in the team and her lack of productivity and need for one day off each week to do training. We accept the Respondent's submission that there is no evidence that the Claimant was treated any less favourably than a man would have been and that Employee A, for the reasons we have explained, was not in a comparable position, given the performance issues related to him. As regards the same complaint made as one of direct disability discrimination [**LOI 4.1 (l)**], whilst the Claimant had by this point disclosed her disabilities, the Respondent had before then offered the Claimant flexibility and this was another opportunity for the Claimant to

prove herself in a way that sought to avoid the adverse effects of her disabilities. There is no evidence that (i) this constituted less favourable treatment of the Claimant or (ii) that a software engineer with the same capabilities and performance challenges as the Claimant, but who did not have her disabilities, would have been treated more favourably than she was in this regard.

294.14 **LOI 2.1 (m)**: We do not repeat our findings of fact on this issue save to say that there were good reasons for team members to know of the Claimant's assessment task and the team had also known about Employee A's extended probation. The Claimant's assessment task was not "announced" in the public channel, it was referred to in a public channel (nor was it referred to as a performance assessment). There is no evidence that Mr Ramachandran made his comment in the Oils Dev channel because the Claimant is a woman or that he would not have made the same comment about another software engineer with the same capabilities and performance challenges as the Claimant, but who did not have her disabilities [**LOI 4.1 (m)**].

294.15 **LOI 2.1 (n)**: We do not repeat our findings of fact save to say that there is no evidence that Mr Udofia would not have abandoned the code of a male employee in the same circumstances. The Claimant did not appear to grasp that, a security risk having been identified (even if it was in code that had already been merged), it could not just be overlooked and that the Respondent, including Mr Udofia who had a greater position of seniority than the Claimant, could legitimately decide that the security risk was too great. On 8th August 2023, Mr Udofia abandoned one of the claimant's PRs without good reason. We accept the Respondent's submissions in this regard and in particular that *"Even if the Claimant is correct that [Mr] Ramachandran had earlier said that the inline delete query "is not a big issue and we can fix it later" [WB/180], all that means is that he took a different view as to procedure: [Mr] Ramachandran was prepared to allow the code to be merged on the basis that it would be fixed later; [Mr] Udofia, once he saw the code, was "not comfortable with it" [C/220] and took a more robust approach. Either way, even on the Claimant's case, both were clearly not satisfied with the code given the security issues. The code would be reverted [RB1854]"*.

294.16 **LOI 2.1 (o)/LOI 4.1(o)**: As regards the Claimant's complaint that because she was disabled or because she is a woman on 8 August 2023 she was invited to a meeting and dismissed without the ACAS Code of Practice being followed (i.e. without following any disciplinary procedure, not pre-warning the claimant that the meeting was a dismissal meeting and not allowing the claimant to be accompanied), there is no evidence that a man or a software engineer with the same capabilities and performance issues as the Claimant and who had behaved as she had but who was not disabled would have been treated more favourably than the Claimant in this regard. Employee A is not a valid comparator because he resigned and was not dismissed and the decision not to follow the code was reasonable in the circumstances (there being no legal obligation to do so and dismissal being a reasonable decision in the circumstances).

294.17 **LOI 2.1 (p)/4.1 (p)**: Again, there is no evidence to suggest that on 8 August 2023, the Claimant was dismissed by Mr Humdani because she is a woman or because of her disabilities. We accept that he dismissed the Claimant because the Respondent had “*lost trust and confidence in [the Claimant’s] conduct and ability to perform the requirements of [the Claimant’s] role in [the Claimant’s] probation period despite making adjustments to try and support [the Claimant]”* [RB1911-1912]. We accept the Respondent’s submission in this regard in that the Claimant’s dismissal followed:

*“months of unprofessional behaviour and poor performance; despite the Respondent’s efforts to assist the Claimant to improve, matters had in fact deteriorated. During an assessment whose explicit goals included “...have constructive discussions and accept and adopt feedback from the team” and “Collaborate with the members of our team and adapt to the working style of the team” [CB1017], the Claimant gave the clearest possible demonstration that she was incapable of doing either. Copying in three levels of management (including the Chief Technical Officer) compounded the seriousness of the unwarranted reaction. By 8 August 2023, the Respondent felt it had no choice but to dismiss with immediate effect, which it was entitled to do.”*

**Discrimination arising from disability**

Things arising in consequence of disability

295. The Claimant says that the following arise in consequence of her disabilities:

295.1. The claimant’s lower than desired performance.

295.2 The claimant’s method of making complaints / raising issues i.e. writing long emails, using screenshots and gathering evidence.

295.3 The claimant requesting reasonable adjustments.

The Claimant’s lower than desired performance

296. There were a number of elements to the Claimant’s lower than desired performance including her lower than desired:

296.1 Volume of work output;

296.2 Ability to problem solve herself;

296.3 Ability to work in a collegiate way.

The claimant’s method of making complaints / raising issues i.e. writing long emails, using screenshots and gathering evidence

297. We consider on the balance of probabilities and taking into account the Claimant’s impact statement that this did arise in consequence of the Claimant’s disabilities.

The Claimant requesting reasonable adjustments

298. We also accept that the Claimant's requests for reasonable adjustments [LOI 6.4 (a) – (d) and LOI 6.8], taking into account in particular her impact statement, arose in consequence of her disabilities.

Alleged unfavourable treatment

299. **LOI 2.1 (l) (performance plan)/5.1(a):** We accept the Respondent's submission that this was not unfavourable treatment, rather it was designed to assist the Claimant by giving her an opportunity to demonstrate her abilities and avoid failing her probation period. However, if we are wrong in that regard and it amounted to unfavourable treatment then we accept that that it was implemented by the Respondent because of something arising in consequence of the Claimant's disabilities (namely her lower than desired performance). Nonetheless, we find that it was a proportionate means of achieving the legitimate aim of maintaining adequate levels of performance from the Claimant in order to meet the needs of the business. We refer to our findings in this regard in respect of the Claimant's direct discrimination complaint.
300. **LOI 2.1 (m) (informed the team of performance assessment)/5.1(b):** We note the force of the Respondent's submissions in respect of whether this amounted to unfavourable treatment but are prepared to accept the Claimant's position that it was unfavourable for the team to know that she was under performance assessment. However, there is no evidence that this was made known to the team because of any of the things said to arise in consequence of the Claimant's disabilities. Even if it was, it was clearly necessary for the team to know that the Claimant was under performance assessment (for the reasons we do not repeat) and was plainly a proportionate means of achieving a legitimate aim, namely to give team members information relevant to their own work.
301. **LOI 2.1 (o) (dismissal meeting without the ACAS code)/5.1(b):** We find that the failure to follow the ACAS code was unfavourable treatment. However, the Respondent did not dismiss the Claimant without following the ACAS code because of any of the things said to arise in consequence of the Claimant's disability. It did so because it had no legal obligation to follow the code with the Claimant in the circumstances and deciding not to follow the code was a proportionate means of achieving the legitimate aim of quickly restoring performance in the team to meet the needs of the business and without the Claimant further undermining that performance.
302. **LOI 2.1 (p) (dismissal)/5.1(b):** Plainly the Claimant's dismissal was unfavourable treatment and it was linked to the Claimant's lower than desired performance. However, this complaint fails because in the circumstances the Claimant's dismissal was a proportionate means of achieving a legitimate aim, as pleaded by the Respondent, namely to maintain adequate levels of performance from employees in order to meet the needs of the business.

**Failure to make reasonable adjustments**

303. We accept, and indeed the Respondent sensibly accepted that it applied the PCP of expecting employees "*to carry out tasks and responsibilities of the role*

*as per instructions given by line managers and to do so in the timescales they gave”.*

Completing work slower than expected due to difficulty managing time, motivation and goals (primarily due to ADHD) [LOI 6.2(a)].

304. We accept that the Claimant’s disabilities led to her completing work slower than expected due to difficulty managing time, motivation and goals and that this amounted to a disadvantage in comparison with persons who did not have her disabilities. However, it is clear that the Respondent made all adjustments that were reasonable in the circumstances (many before the point at which it could reasonably have been expected know that the Claimant was likely to be placed at that disadvantage (the end of June 2023 but more particularly by 19 July 2023 through the Claimant’s email of that date)).

305. To the extent that could reasonably have been expected the Respondent gave the Claimant:

305.1 significant guidance and input (to the point that the Claimant was an undue drain on the team’s resources and Mr Ramachandran’s time);

305.2 leeway on the timescales within which she was asked to complete tasks (to the extent that the IM Project was delayed);

305.3 clear tasks that were broken down and when it became clear that the Claimant needed more detailed instructions they were given to her (for example, the IM project was explained to her a number of times and when that was still not enough, on 7 July 2023 Mr Ramachandran sent her an even more detailed breakdown in his Visio document) meeting what could reasonably be expected of the Respondent in regard to LOI 6.4 (c) and (d).

305.4 time for training (every Friday off);

306. We do not consider that the Respondent could reasonably have been expected to do more than it did to remove the disadvantage in the circumstances taking into account, as the Respondent submitted, the Respondent’s legitimate interest in having employees perform their tasks to an acceptable standard and on time. As the Respondent submitted (and for the reasons submitted), any such additional steps would not have avoided the disadvantage so as to keep the Claimant in employment.

Completing work to a lower standard than expected due to needing more time to read and write documentation but needing to complete work to a deadline (a combination of struggles due to dyslexia and ADHD)

307. We accept that the PCP put the Claimant at this substantial disadvantage in comparison with persons who did not have the Claimant’s disabilities. However, for the reasons set out in respect of [LOI 6.2(a)] there was no failure on the part of the Respondent to make reasonable adjustments as alleged.

Being put on to a performance plan due to the above (a combination of struggles due to dyslexia and ADHD)

308. We do not accept that the assessment task was a substantial disadvantage to which the Claimant was put by the PCP in comparison with persons who did not have the Claimant's disabilities. The assessment task was designed to assist the Claimant by giving her an opportunity to demonstrate her abilities and avoid failing her probation period. However, if we are wrong, for the reasons set out in respect of [LOI 6.2(a)] there was no failure on the part of the Respondent to make reasonable adjustments as alleged and, as regards the assessment task itself, it was (to the extent reasonable) given an appropriate deadline, set out in clear and detailed instructions with an appropriate level of guidance (balanced reasonably to accommodate the effects of Claimant's disabilities without undermining the legitimate purpose of the task).

Being dismissed for low performance as a result of the above (a combination of struggles due to dyslexia and ADHD)

309. We accept that the PCP put the Claimant at this substantial disadvantage in comparison with persons who did not have the Claimant's disabilities. However, for the reasons set out in respect of [LOI 6.2(a)] there was no failure on the part of the Respondent to make reasonable adjustments as alleged. There were no further steps that the Respondent could reasonably have been expected to take to avoid the disadvantage and to keep the Claimant in employment. We accept the Respondent's reasoning in this regard.

Auxiliary aid - Mac laptop

310. When the Claimant first requested a Mac the Respondent did not know of her disabilities or of any substantial disadvantage in being required to use a Window's laptop. We accept that the Claimant made her request early in her employment and that this suggests that it was something she thought would be helpful to her. However, we do not consider that there is sufficient evidence (taking into account (amongst other things) that the Claimant is a software engineer who included reference to Windows skills on her CV, shortcuts on a Windows laptop can be reprogrammed, and the manner in which the Claimant raised the request (both initially and when she subsequently linked her request to her disabilities)) that the failure to provide a Mac by the Respondent could be said to have put the Claimant at a substantial disadvantage when compared with those who do not have the same disabilities as alleged by the Claimant [LOI 6.6]. In any event, if we are wrong on this, the Respondent took all steps that could reasonably have been expected of it within the timescales that could reasonably be expected:

310.1 the Claimant was granted permission to use her personal Mac for work (and the necessary steps were taken to facilitate);

310.2 the assessment task was designed such that she could either use her own Mac to prepare it or, indeed, use no computer at all.

311. We also accept the Respondent's submissions at 39 (a)-(d).

**Victimisation**

312. The Respondent accepted that the Claimant did the protected acts as alleged at

[LOI 7.1.a-d] and it was prepared to accept that requesting the CCTV footage and call histories was in connection with the Equality Act 2010, given that the Claimant was seeking evidence of alleged acts of discrimination. We agree that the following amounted to protected acts:

312.1 Requesting reasonable adjustments from Laraine Cutmore on 30th June 2023.

312.2 Requesting reasonable adjustments from Mr Ramachandran on 19th July 2023.

312.3 Complaining of sex and disability discrimination from Mr Ramachandran and several other members of the team, to Mr Humdani on 27th July 2023, including asking to move teams; and when she followed up this complaint by email on 28th, 29th and 31st July 2023.

312.4 Requesting CCTV footage and call histories from Ms Cutmore and later Mr Humdani on 31st July 2023.

313. The Respondent disputed that [LOI 7.1(e)] “complaining to Mr Humdani of sex discrimination / bullying from Mr Udofia on 8th August 2023” amounted to a protected act. For ease of reference that email said:

*Hi Etimbuk,*

*You have abandoned this PR due to inline delete query.*

*[screen shots]*

*As I mentioned in the standup, that previous commit to the develop branch contains the inline-delete query*

*[screen shots]*

*If in-line delete query is a major concern then, this commit needs to be reverted too, to which you responded in standup, it's fine as it is.*

*You still haven't given me a valid reason for abandoning the PR apart from in-line delete statement, evident from you PR comment as well as new task created.*

*I worked hard on working on that PR, the changes include,*

*scheduler*

*retrieving new records (edge cases)*

*I feel like the decision you made is a blatant display of power. Please provide me with the reason other than inline delete query for abandoning the PR.*

314. We accept the Respondent's submission (para 42) that this was not a protected

act and that the only allegation which is made is of a “*blatant display of power*”, which does not engage the Equality Act 2010. We also accept the submission that Mr Levine in cross-examination emphasised that what concerned him about that email was that it was “*sent to three levels of management talking about technical questions and strong language*”.

315. In any event, even if we are wrong and the 8 August 2023 email did amount to a protected act, we do not accept the Claimant’s submission that the Respondent subjected the Claimant to the alleged detriments because she did any of those things:

315.1 **LOI 2.1 (l)/7.3(a)**: The assessment task was not a detriment it was a task designed to assist the Claimant by giving her an opportunity to demonstrate her abilities and avoid failing her probation period. Even if it was a detriment it is clear that the Respondent did not assign it to the Claimant because of any of the earlier alleged protected acts. It assigned it to give her the opportunity to avoid her failing her probation period in circumstances where she was clearly and significantly underperforming.

315.2 **LOI 2.1 (o)/7.3(b)**: Whist not following the ACAS code was a detriment to the Claimant, the Respondent did not decide against following the Code because of any of the alleged protected acts. It did so because there was no legal obligation for it to follow the code and because it needed to act quickly to stabilise the team.

315.3 **LOI 2.1 (p)/7.3(c)**: Again, there is no evidence to suggest that on 8 August 2023, the Claimant was dismissed by Mr Humdani because of any of the alleged protected acts. We accept that he dismissed the Claimant because the Respondent had “*lost trust and confidence in [the Claimant’s] conduct and ability to perform the requirements of [the Claimant’s] role in [the Claimant’s] probation period despite making adjustments to try and support [the Claimant]”* [RB1911-1912].

### **Equal pay (like work)**

316. We accept the Respondent’s submission at para 43 and we agree with the Respondent’s submission that the level of the Claimant’s work was substantially different to her comparators (Employee A, Etimbuk Udofia and Employee C) in respect of the tasks they were able to undertake and also the increased level of responsibility that they had and the skills and experience that they were able to bring to their work. We accept that these factors amounted to material factors that objectively justify the differences in pay.

317. However, as the Respondent submitted, the Claimant’s salary was significantly higher than some male colleagues with whom she should have been doing like work and it was in the top range for Software Engineers and within the bottom range of that for Senior Software Engineer in circumstances where the Claimant’s work performance was significantly short of that of a Senior Software Engineer. As the Respondent submitted, the Claimant did not challenge the Respondent’s evidence in cross-examination, or point to any evidence that her skills, experience or output were comparable to that of the male software engineers who earned more ([JRWS19.9, KPHWS14.1.1-4, JRWS19.1-9

EUWS8.1-3 AWMWS3.1-4, BCWS5.1-6]).

- 318. We further accept the Respondent's submission in respect of the Claimant's assertion that she was given a lower position than the one she applied for in order to give her less money. The salary the Claimant was offered was at the very top of the range she sought. However, the Claimant did not in fact have the competence to warrant the salary that she was awarded on recruitment as was demonstrated by her underperformance in role.
- 319. As the Respondent submitted, the Claimant's male comparators in contrast (some of whom were earning less) were delivering far more in return for their salaries. The best comparator for the Claimant was Mr Choudhury. It was not tenable for the Claimant to suggest that Respondent promoted him and determined his salary in order to be able to use him as a comparator in this case.

**Time limits**

- 320. As the complaints are not well founded we have not gone on to consider the question of time limits under the Equality Act 2010.

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**Employment Judge Woodhead**

6 October 2025

Sent to the parties on:

15 October 2025

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For the Tribunals Office

Appendix

**AGREED LIST OF ISSUES**

**1. Equality Act 2010 (“EqA”), section 123: Time limits**

1.1 Given the date when the claim form was presented and the dates of early conciliation (8 August to 19 September 2023), any complaint about something that happened before 8 May 2023 is prima facie out of time.

1.2 In respect of any such complaints:

- a. Are they deemed to be in time because they are part of the same conduct extending over a period which is in time?
- b. If not, would it be just and equitable to extend time?

**2. EqA, section 13: Direct discrimination on the ground of sex**

2.1 Did the respondent subject the claimant to the following treatment?

a. She was given a ‘software engineer’ contract instead of a ‘senior software engineer’ contract having been interviewed for the senior position in March 2023, and it being reconfirmed repeatedly during her employment, including on 26th July 2023, that she should be performing the role of a senior software engineer.

b. Jothi Ramachandran engaged with the claimant less than her male counterparts i.e. spent less time on calls with her, offered her less calls and meetings, and provided less instruction and support.

c. The claimant had to chase Mr Ramachandran more often than her male colleagues for feedback and support on her projects, specifically, on 12th June 2023, the claimant had to chase Mr Ramachandran multiple times to gain his approval on a project.

d. Mr Ramachandran favoured the claimant's male colleagues' views on solutions to problems and ideas in the workplace, and, specifically:

i. Mr Ramachandran shouted at the claimant and told her to listen to Etimbuk Udofia on 9th May 2023 [in the Chronology the Claimant said this was 5 May 2023].

ii. Mr Ramachandran required the claimant to post her code in the public channel for approval from Mr Udofia on 28th June and 18th July 2023. The claimant claims that male colleagues were not required to do this.

e. On 19th May 2023, Bodrul Choudhury commented on the public channel that he did not want to be the claimant's personal chat GPT.

f. On 5th June 2023, Mr Ramachandran discussed the claimant's work with Mr Udofia and then assigned additional work arising from that discussion to Mr Choudhury instead of scheduling a meeting with the claimant to discuss

feedback about it. Mr Ramachandran then discussed the claimant's workload with Abdul Waheed Mhatey instead of the claimant directly.

g. On 22nd June, Mr Mhatey enforced a deadline on the claimant after she called in sick although he did not have this authority over her position. The claimant claims that he did not do this to male colleagues.

h. On 28th June 2023, Mr Udofia dismissed claimant's feedback as he often had done before [in the Chronology the Claimant said this was 29 June 2023]. The claimant claims that Mr Udofia was more receptive to the feedback and suggestions of his male colleagues.

i. On 4th July the claimant informed Mr Udofia that she had tried all the relevant hibernate configurations for batch insert but he did not believe her and wanted her to go through all the configurations. The claimant claims that Mr Udofia trusted male colleagues' findings whereas he did not trust hers.

j. On 5th July 2023, Mr Ramachandran posted in a public channel that the claimant could not follow a simple tutorial [in the Chronology the Claimant said this was on 6 July 2023 and it was said during a standup (not on the public channel)]. The claimant requested a call to discuss this feedback but was refused. The claimant claims that male colleagues were not treated in this way.

k. On 14th July 2023, Mr Ramachandran told the claimant to be quiet in a team meeting when she attempted to answer a question posed by Mr Ramachandran to Mr Udofia who did not know the answer. The claimant claims that Mr Ramachandran did not treat male colleagues this way.

l. On 20th July 2023 the claimant was put onto a performance plan by Mr Humdani and Mr Ramachandran but was only given 3 weeks to improve her performance before being dismissed. The claimant claims that Employee A was given a considerable amount of time to improve. It is agreed that Employee A's probationary period was extended by 6 months. **[Also direct disability discrimination and victimisation]**

m. Mr Ramachandran informed the whole team in a public channel that the claimant was on a performance assessment. The claimant claims that when Employee A was put on a performance assessment, it was not announced to the whole team. **[Also direct disability discrimination and discrimination arising from disability]**

n. On 8th August 2023, Mr Udofia abandoned one of the claimant's PRs without good reason. The claimant claims that he would not do this to his male colleagues.

o. On 8th August 2023, the claimant was invited to a meeting where she was dismissed, by Mr Humdani, and the ACAS Code of Practice was not followed [i.e. not following any disciplinary procedure, not pre-warning the claimant that the meeting was a dismissal meeting and not allowing the claimant to be accompanied]. The claimant claims that when Employee A was put on a performance plan, the ACAS Code of Practice was followed. **[Also direct disability discrimination, discrimination arising from disability and**

**victimisation]**

p. On 8th August 2023, the claimant was dismissed by Mr Humdani. **[Also direct disability discrimination, discrimination arising from disability and victimisation]**

2.2 Was this less favourable treatment i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others in not materially different circumstances? The claimant compares herself with male colleagues in the same or similar role who were in the same team/office as her i.e. Employee A; Mr Udofia; Mr Choudhury; Mr Mhatey; and **Employee C**.

2.3 If so, was this because of the claimant's sex?

**3. EqA, section 6 & Schedule 1: Disability**

3.1 Was the claimant a disabled person within the meaning of section 6 EqA at all relevant times because of the effects of (i) dyslexia; and/or (ii) ADHD?

3.2 If so, did the respondent know or could it reasonably have been expected to know that the claimant was a disabled person and from what date?

**4. EqA, section 13: Direct discrimination on the ground of disability**

4.1 Did the respondent subject the claimant to the alleged treatment set out above at paragraphs 2 (l), (m), (o) and (p)?

4.2 Was this less favourable treatment i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others in not materially different circumstances? The claimant compares herself with other colleagues in the same or similar role who did not have the same disabilities: including Employee A; she also relies on a hypothetical comparator.

4.3 If so, was this because of the claimant's disability/ies?

**5. EqA, section 15: Discrimination arising from disability**

5.1 Did the respondent treat the claimant unfavourably? The claimant relies on the following:

- a. Being put on a performance plan on 20th July 2023.
- b. The alleged treatment set out above at paragraphs 2 (m), (o) and (p).

5.2 Did the following things arise in consequence of the claimant's disability? The claimant relies on the following:

- a. The claimant's lower than desired performance.
- b. The claimant's method of making complaints / raising issues i.e. writing long emails, using screenshots and gathering evidence.
- c. The claimant requesting reasonable adjustments.

5.3 Was any unfavourable treatment that is proven, done because of any of those

things?

5.4 Was the treatment a proportionate means of achieving a legitimate aim? The Respondent relies on the legitimate aim of maintaining adequate levels of performance from employees in order to meet the needs of the business.

**6. EqA, sections 20 & 21: Failure to make reasonable adjustments**

6.1 Did the respondent have the following PCP?

a. The expectation to carry out tasks and responsibilities of the role as per instructions given by line managers and to do so in the timescales they gave.

6.2 If so, did this PCP put the claimant at a substantial disadvantage in comparison with persons who did not have the claimant's disability/ies in that the claimant:

- a. completing work slower than expected due to difficulty managing time, motivation and goals (primarily due to ADHD);
- b. completing work to a lower standard than expected due to needing more time to read and write documentation but needing to complete work to a deadline (a combination of struggles due to dyslexia and ADHD);
- c. being put on to a performance plan due to the above (a combination of struggles due to dyslexia and ADHD);
- d. being dismissed for low performance as a result of the above (a combination of struggles due to dyslexia and ADHD).

6.3 If so, did the respondent know or could it reasonably have been expected to know the claimant was likely to be placed at any such disadvantage?

6.4 If so, were there steps that were not taken that could have been taken by the respondent to avoid any such disadvantage? The claimant relies on the following:

- a. spending more time with the claimant, specifically giving more detailed and clearer instructions for tasks;
- b. allowing longer for deadlines;
- c. giving the claimant smaller tasks with individual deadlines instead of one big task / project and / or giving the claimant checkpoint goals within one big task;
- d. giving the claimant clearer instructions in writing in relation to her performance plan.

6.5 Did the respondent fail to provide an auxiliary aid for the claimant, namely a Mac laptop?

6.6 Did this put the claimant at a significant disadvantage when compared with those who do have the same disability/ies, namely:

- a. it made it harder for the claimant to complete her work to a good standard

and on time as her dyslexia made it extremely difficult to adjust to a new laptop layout;

b. increased the claimant's stress levels due to overstimulation of

a different laptop layout as well as high workload;

c. resulted in the claimant being placed on a performance plan and subsequently dismissed.

6.7 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at that disadvantage/s because of her disability?

6.8 Would the provision of the auxiliary aid have alleviated these disadvantages?

## 7. EqA, section 27: Victimisation

7.1 Did the claimant do a protected act? The claimant relies on the following:

a. Requesting reasonable adjustments from Laraine Cutmore on 30th June 2023.

b. Requesting reasonable adjustments from Mr Ramachandran on 19th July 2023.

c. Complaining of sex and disability discrimination from Mr Ramachandran and several other members of the team, to Mr Humdani on 27th July 2023, including asking to move teams; and when she followed up this complaint by email on 28th, 29th and 31st July 2023. The respondent agrees that this amounts to a protected act.

d. Requesting CCTV footage and call histories from Ms Cutmore and later Mr Humdani on 31st July 2023.

e. Complaining to Mr Humdani of sex discrimination / bullying from Mr Udofia on 8th August 2023.

7.2 Did the respondent subject the claimant to any of the treatment set out above at paragraph 2 (l), (o) and (p).

7.3 Was this because the claimant did a protected act?

a. The claimant relies on 7.1 (a) and (b) in respect of 2 (l).

b. The claimant relies on 7.1 (a) to (e) in respect of 2 (o) and (p).

## 8. EqA, section 66: Equal pay (like work)

8.1 Was the claimant doing like work (within the meaning of EqA, section 65) with: **Employee A**, Etimbuk Udofia or **Employee C**.

8.2 If so, was any difference in pay due a material factor which is neither directly nor indirectly discriminatory on the grounds of sex (as per EqA, section 69)? The Respondent relies on the following as material factors:

8.2.1 different levels of experience; and

8.2.2 different levels of skills.