EMPLOYMENT TRIBUNALS

Claimant: Ms R Hussain

Respondent: The Brain Charity

Heard at: Liverpool

On: 24-28 November 2025
13-15 January 2026

9-10 February and 11-12 March 2026 (in chambers)

Before: Employment Judge Barker
Ms A Roscoe
Ms B Robinson

REPRESENTATION:

Claimant: Ms H Platt, counsel
Respondent: Mr A Foden, counsel

JUDGMENT

The unanimous decision of the Tribunal is as follows:

1. The respondent failed to make reasonable adjustments for the claimant (ss20-21 Equality Act 2010) by requiring employees to respond to questions in respect of disciplinary meetings with less than 24 hours' notice. The remaining complaint of failures to make reasonable adjustments fail and are dismissed.
2. The claimant was not discriminated against because of something arising in consequence of her disability (s15 Equality Act 2010). These complaints fail and are dismissed.
3. The respondent did not subject the claimant to unlawful harassment on the grounds of her disability, race or sex (s26 Equality Act 2010).
4. The respondent did not subject the claimant to direct race discrimination (s13 Equality Act 2010).
5. The respondent did not victimise the claimant (s27 Equality Act 2010).

REASONS

Background and issues for the Tribunal to decide

1. The claimant brought claims against the respondent for direct race discrimination, indirect race discrimination, harassment on the basis of sex, race and disability, a failure to make reasonable adjustments, discrimination because of something arising from disability and victimisation in a claim form dated 26 January 2024. The parties engaged in ACAS Early Conciliation between 22 December 2023 and 27 December 2023.

2. The claimant was employed by the respondent from 8 May 2022 until the expiry of her notice period on 21 January 2024, having been dismissed. The claimant was employed as an Information and Advice Officer at the respondent's premises in Liverpool. The respondent is a charity that provides practical help, emotional support and social activities to those who have a neurological condition, and their families and carers.

3. The respondent has a notably neurodiverse workforce. 40% of its workforce has a neurological condition or is neurodiverse, and 50% have a long-term health condition.

4. The claimant is British Asian. She has a long-term anxiety condition, was diagnosed with ADHD on 13 December 2023, and was diagnosed with autism spectrum condition in 2025. She also has a hearing condition. The claimant was asked at the start of the hearing what adjustments might assist her participating effectively in the hearing. Her counsel had taken instructions on this subject, which the Tribunal noted. The claimant needed breaks at times during her evidence, which were provided. At the final hearing, which was listed for 5 days from 24-28 November 2025 but then resumed for a further three days on 13-15 January 2026, the claimant was assisted by palantypists throughout.

5. There was a case management preliminary hearing on 26 September 2024 before EJ Shergill at which the claims were discussed and clarified. A list of issues was agreed, which we have used to set the parameters of the evidence and deliberations for this hearing. The claimant made applications for specific disclosure, which application came before EJ Slater in a hearing on 15 August 2025, followed by a day's deliberation in chambers. Some orders for specific disclosure were made by EJ Slater, but not all of the orders requested by the claimant.

6. The claimant was represented at the final hearing by counsel. The claimant was otherwise self-represented.

7. Issues concerning disclosure continued throughout the hearing and took up a considerable amount of hearing time. The first two days of this hearing were spent on case management issues, including disclosure applications. This had the consequence of requiring a resumed hearing outside of the original hearing

dates. The claimant told the Tribunal during the hearing, and as part of her answers to cross-examination questions, that she had not been sleeping and had not been eating in recent weeks and had been spending long hours and many days reviewing the evidence in this case. She submits that evidence has been fabricated by the respondent, and/or tampered with. We have found nothing to cause us to share these concerns during our conduct of these proceedings. The claimant acknowledges that she had spent, and continued to spend, what we would describe as an excessive and disproportionate amount of time considering the evidence and issues in these proceedings and this is reflected in the number and frequency of her applications for disclosure.

8. Whether partly caused by this, or whether partly causative of it, the respondent has not always complied in good time and in full with its disclosure applications. We note that the respondent is a small charity with limited resources, and the claimant's applications have been particularly numerous.

9. Taking the relative circumstances of the parties into account and in the interests of ensuring a fair hearing in the circumstances, we have not sought to apportion criticism or responsibility for disclosure issues between the parties and have taken the view that these issues could be managed by us as part of our conduct of the proceedings. There is a considerable amount of evidence before us already and we had the assistance of a number of witnesses for each side. Where a particular document or piece of evidence was relevant and necessary for us to see, we have discussed this with the parties with the result that any additional documents were disclosed voluntarily rather than the Tribunal having to order that they be produced. Adjustments were made for any disadvantage that such late disclosure may cause to either party, following submissions on the same from the representatives.

10. The claimant appears to consider that there are versions of certain documents that have not been disclosed to her that would make a material difference to the outcome of the proceedings. These are several versions of particular documents in the bundle. She has made repeated requests for more and different versions of such documents, and the metadata behind them. This is in support of allegations that certain evidence has been fabricated by the respondent. In relation to these applications, the Tribunal is of the view that it would not be proportionate to require the respondent to disclose such documents. They are not both relevant and necessary to the issues that we have to decide.

11. One of these documents is an "HR Log" used by Ms Hollywood of the respondent. Ms Hollywood told the Tribunal that this document is used by her as a digital notebook, where she records conversations that staff have had with her about HR matters. These were usually informal matters, and where matters are more formal, there are separate HR records, letters and emails of the same. This HR Log was in constant use by Ms Hollywood during the period to which these claims relate and not just in relation to the claimant. We expressed our view that the full contents of this log were not disclosable as it contained information not relevant to these proceedings. Furthermore, the metadata of this document would necessarily show that it was being constantly revised,

including at the time of key events in these proceedings also. This may have been in relation to the claimant, or in relation to any other staff managed by Ms Hollywood.

12. It is therefore not necessary or proportionate for the Tribunal to order disclosure of the full log, all versions of it and the metadata. Ms Hollywood appeared as a witness and provided a witness statement. She was cross-examined by the claimant's counsel and then recalled as a witness for further cross-examination. Other documents were available relating to key points in the chronology of events.

13. The claimant has also made a Data Subject Access Request to the Tribunal in early 2026 relating to the period August and September 2025. The claimant has continued to make applications to the Tribunal for these and other documents, including after the conclusion of the proceedings. We have indicated that we do not consider disclosure of these to be proportionate and necessary.

14. At the start of the final hearing, there was disclosure by the claimant of text messages between Katie Price, one of the respondent's witnesses and Margaret Dickson, a former employee of the respondent. The claimant's application to include these said that they were relevant to whether Ms Price was credible in relation to her complaints about the claimant and her conduct in the workplace, including Ms Price's assertion that she did not swear. However, the WhatsApp messages exchanged by Ms Price and Mrs Dickson are clearly personal in nature and unguarded, between Ms Price and someone she thought was a friend and colleague, on 19 November 2025. The claimant's explanation under oath about the source of these messages was that after she received the respondent's witness statements, she had had a conversation with a group that she described as "*my circle*" about who the respondent's witnesses were, and she was told that there were "*WhatsApps that would be useful*" to her.

15. They are a selection of messages from what is clearly an ongoing conversation between Ms Price and Mrs Dickson, and there is no way of verifying whether these messages are the entire conversation or a representative (or selective) sample of them. Furthermore, these messages have been sent over two years after the incidents that are the subject matter of these proceedings, the week before the first day of the final hearing. They are clearly written in anticipation of the hearing and what might transpire during it. They are therefore to be approached with a degree of caution.

16. The claimant applied to add these messages to the hearing bundle. We deliberated as a panel as to whether to do so or not. The decision was finely balanced, but we allowed them to be included. This appears to have had the consequence of Ms Price being too upset about their publication to attend to give evidence. This has deprived the Tribunal of the benefit of her evidence, which we consider would have been more helpful to our findings of fact than the contents of selected WhatsApp messages sent two years after the event.

17. One of the claimant's witnesses has requested that her name be removed from this judgment and she be referred to as GD. This has been granted, as GD provided evidence about her neurodiversity, mental health and the potential impact on her family life of being referred to in these proceedings. She also indicated that in her past career, which involved child protection, she had threats made against her and was concerned about potential identification. We considered the application and have decided that in the interests of justice it is not necessary to identify GD by any means other than as someone who knew the claimant and worked in the same workplace as her, and had similar concerns as the claimant in relation to changes in the respondent's workplace to make it less welcoming to neurodiverse members of staff.

18. When GD was sworn in to give her evidence, it became clear that the version of the witness statement that the Tribunal and the respondent had been served by the claimant, was entirely different from the version that the witness had endorsed. It was explained by the claimant's counsel that this was an error by the claimant, who had done all of the case preparation unaided by a legal representative. A discussion ensued, with the respondent's representative noting that even if the second version of the witness statement were served on the Tribunal and relied on by the respondent, he should still be given the opportunity to cross examine GD on the first statement.

19. The respondent suggested that the claimant had, in fact, written the first version for GD and it was not GD's words. The Tribunal expressed the view that it was understood that this was what had happened, and this was what GD sought to correct with the second version of her witness statement. GD confirmed in cross-examination that the whole of the first statement was written by the claimant, in the claimant's own words, and as this was not a statement she had written, she needed to amend it. She confirmed that by contrast, the claimant had no input into the second witness statement, which was entirely her own words. We allowed the respondent to put some brief questions to GD as to the origin of the first witness statement.

20. Several of the other witnesses for whom we had witness statements did not attend to give evidence. The Tribunal explained that less weight could be placed on a witness statement if the witness did not attend to answer questions on their statement. The claimant's counsel highlighted that Ms Sargent, the former CEO of the respondent, had not attended to give evidence which was particularly noteworthy as she had taken the decision to dismiss the claimant. However, it was clear that the relationship between Ms Sargent and the respondent had ended. A party is free to call any relevant witness or no witnesses, with the consequential impact that this may have on its ability to persuade the Tribunal to find in its favour. As noted above, Ms Price did not give evidence, for the reasons set out earlier.

21. The witnesses who did attend to give evidence were the claimant and GD on the claimant's account. For the respondent, Ms Hollywood, who was cross-examined and then recalled due to the disclosure of further evidence, Ms Johnson, Mr Dobson, Mr Meyer Lopez and Mr Waller-Flynn.

22. We note for the record that due to the volume of evidence that was before the Tribunal, it has not been possible to refer to all of the evidence which we heard; nor have we referenced all of the documents. We have only made findings of fact relevant to the issues in the case. The claimant's witness statements were particularly long. Her main witness statement contained 254 pages, 78 pages of which was her statement and the rest were schedules, tables, "case theories" and documents in which the claimant has sought to summarise relevant documents in the bundle in her own words. These documents of the claimant's own creation were not helpful to the Tribunal. We were grateful for the reading list provided to the Tribunal by the claimant's counsel, and we have read all that we were directed to read in that list.

23. The Tribunal is familiar with and has considered the Equal Treatment Bench Book in connection with these proceedings, particularly chapter 4. We are aware that the tribunal process may be particularly difficult for litigants in person with mental health conditions.

24. The claimant has clearly found these proceedings difficult and stressful, and she exhibited signs of anxiety and distress at times during her cross-examination, which was understandable given her disabilities, including her very recent diagnosis of Autism Spectrum Condition and the fact that she was immersed in the case. We were mindful throughout of the claimant's disabilities and were grateful for the assistance and interventions of the claimant's representative. The respondent's counsel was careful and respectful when questioning the claimant, in a manner which reflected that his approach was informed by guidance from the Equal Treatment Bench Book.

25. We find that the respondent's witnesses gave their evidence in a straightforward and convincing way and presented as credible and reliable. Their evidence was consistent with the documents, the evidence of the other witnesses, and was largely corroborative. Ms Hollywood and Mr Dobson were impressive witnesses. The claimant's evidence, taking careful account of her stress and her disabilities, was nevertheless inconsistent and not credible in parts. It is clear that the many hours she has spent on the case since her dismissal has had an impact on the accuracy of her recall of the events in the case. Her evidence when being cross-examined directly contradicted her contemporaneous accounts of incidents. Her evidence was also not consistent with answers given at earlier points in the cross-examination.

26. For example, in relation to when the claimant informed the respondent about her ADHD, the claimant said in her witness statement that she informed her line manager Mr Evans of this in detailed terms in January 2023. However, when asked why she did not mention this in her application for a flexible working request in June 2023, she answered "*I didn't think I had ADHD at the time of the flexible working request*." She also alleged in a number of her answers to cross-examination questions that several of the comments made by the respondent's employees about her behaviour were "false" or "made up" by Ms Hollywood and others. She was not able to explain why they may be false other than to say they are "*negatively framing my neurodiversity*".

27. The Tribunal notes that the list of issues was revised considerably during the course of the hearing by the claimant's counsel, in that concessions were made once evidence was heard. The remaining list of issues is recorded as an annex to this judgment. Those which are no longer being pursued by the claimant are marked as struck-through in the list. The Tribunal is grateful for the assistance given by the claimant's counsel to the Tribunal and the proportionate approach taken by her.

28. The Tribunal was greatly assisted by the closing submissions of the parties' counsel. The respondent's counsel included a copy of his hearing notes as an annex to his closing submissions. The claimant's counsel objected to the Tribunal being asked to rely on this. However, the claimant's counsel had included extracts from her notes in her closing submissions relating to what was said (apparently verbatim) during the hearing by the witnesses in answer to cross-examination questions. The parties are to take note that each member of the Tribunal panel took her own careful note of the evidence given during the hearing and these notes were used in our deliberations, not the notes of either party's counsel.

Findings of fact

The claimant's status as a disabled person (s6 Equality Act 2010) and the respondent's knowledge of the same

29. The respondent conceded that the claimant was a disabled person in correspondence on 20 November 2024. They did not concede the issue of knowledge of the same, or if such knowledge was acquired while the claimant was in employment, when it was acquired.

30. The Tribunal accepts that the claimant has a long-standing history of mental health difficulties relating to anxiety. This was a condition that she was aware of at the time she started work with the respondent in May 2022. However, she did not disclose this condition at the start of her employment with the respondent.

31. The claimant says that she disclosed to the respondent that she was a disabled person by reason of anxiety from May 2022. However, we do not accept the claimant's evidence in this regard. She told the Tribunal that she had a conversation before starting work at the respondent with an HR assistant called Jess, who was photocopying some of the claimant's documents in the office. The claimant told Jess that she was anxious about starting work. Jess sympathised with her and told her not to worry, that the respondent was a supportive working environment. The claimant submits that this conversation with Jess gave the respondent actual or constructive knowledge of the fact that the claimant was not merely anxious about starting a new job, but that her anxiety was a mental impairment that had a substantial, long-term adverse effect on her ability to carry out normal day-to-day activities, as per s6 Equality Act 2010 ("EQA").

32. We do not accept that the conversation was sufficiently factual or specific to convey that information to Jess and thereby the respondent, to put them on notice that the claimant was a disabled person at the time. When the claimant completed a declaration form as part of her application for employment at the respondent, on 14 March 2022, she did not say that she was disabled. In answer to the question "*do you consider yourself to have a disability*" the answer the claimant gave was no. When asked why she answered this question in this way, the claimant told the Tribunal "*I didn't class myself as disabled, I wasn't sure of it. I didn't understand this to be a disability*".

33. The parties agree that the claimant then had the misfortune to have been stalked by a service user in 2023. This, plus the emotional impact of her other cases, affected her mental health in a detrimental way. The respondent was aware of this at the time, from January 2023, but the claimant did not disclose at the time that this was because of an underlying and long-standing mental health condition, as opposed to short-term work-related stress and a reaction to her adverse circumstances. The respondent was informed that the claimant had "mixed anxiety and depressive disorder" in a fit note from her GP on 12 May 2023, 22 May 2023, 9 June 2023 and 14 June 2023. On 8 June 2023 the claimant informed Ms Hollywood that she considered that her mental health may amount to a disability.

34. We find that the respondent knew that the claimant was disabled by reason of anxiety from 22 May 2023, when the respondent had constructive knowledge via the claimant's GP's fit notes, and information from the claimant. The respondent ought to have made further enquiries from the claimant about this issue.

35. In relation to her ADHD, the claimant received a verbal diagnosis on 13 December 2023 and told the respondent that she had received a diagnosis on 14 December 2023.

36. In relation to whether the respondent had knowledge of her ADHD prior to her diagnosis, she relies heavily on the fact that she told some of the respondent's staff that she was "*on the ADHD pathway*" prior to her formal diagnosis.

37. Even though the claimant may have been able to point to some traits of ADHD prior to diagnosis, the condition of ADHD is complex and (as shown by the extensive diagnostic report of 21 December 2023 before us in evidence) requires a clinician to take a detailed history of the claimant from childhood onwards. There are a number of other adjacent conditions that may explain some of the traits the claimant identified as being suspected ADHD, such as impulsivity and anxiety, without amounting to ADHD, such that it is possible that an individual may be "on the pathway for ADHD" but then not be diagnosed with it after a clinical assessment.

38. Indeed, the claimant's GP wrote to the respondent on 22 November 2023 to inform them that the claimant "*displays multiple symptoms and signs of*

Attention Deficit Hyperactivity Disorder and has been referred to a specialist for further assessment of this."

39. This is also noted by the consultant psychiatrist, Dr Sessa, in his report of 21 December 2023 where he writes

> *"At the beginning of the appointment, I informed her that I had read the forms and familiarised myself with the difficulties as detailed in the forms. I also explained to her that I would try to put these difficulties in context, in order to answer whether they are due to ADHD, and whether there are other factors that may contribute to (or better account for) these difficulties."*

40. The claimant argues that being "on the ADHD pathway", plus her behaviours such as impulsivity and difficulties with her being able to "*learn in a noisy busy environment and perform admin tasks*" (as was described in her OH referral form of 29 September 2023) together amount to putting the respondent on constructive notice that the claimant had ADHD. We do not accept that this was the case. There was not enough clear information communicated to the respondent by the claimant to fix the respondent with knowledge of ADHD any earlier, given the nature of ADHD and its diverse range of symptoms, and its diverse presentation in individuals.

41. The respondent knew that the claimant had a diagnosis of ADHD only from 14 December 2023 onwards.

<u>The respondent's workforce and attitudes to neurodiversity and disability.</u>

42. As has been noted above, the respondent's workforce is unusually neurodiverse, with 40% of the workforce having a neurological condition. A number of the claimant's close colleagues in the Information and Advice team were neurodiverse, and a number of others had other long-term health conditions or physical disabilities. By the nature of its work, the respondent's service users largely present with neurological conditions, although the respondent supports family members and carers for those with such conditions. The respondent told the Tribunal that there are approximately 600 neurological conditions in its service users, staff and volunteers.

43. Our observations of the respondent's witnesses were that they had an accommodating and positive attitude towards those who are neurodiverse or have neurological conditions, as well as those who are disabled in other ways. They were clearly very used to accommodating diversity as a routine workplace issue and it was, we find, a commonplace and everyday matter. Ms Johnson, an external HR advisor engaged by the respondent to conduct an investigation into the claimant's conduct, was asked whether neurodivergent people were more likely to have complaints against them. Her answer was "*yes, in large corporate environments. But the respondent was understanding and responsive to neurodivergent staff. It was a smaller environment, more accepting and there were more adjustments."*

44. However, we find that the respondent's staff are also mindful that, if such a diverse workforce is to be accommodated, individual members of staff must play a part in that by taking responsibility for their behaviours, and staff with neurodiversities are encouraged to develop self-awareness of the impact of their conditions and how they relate to their colleagues. Otherwise, we are of the view that the respondent's highly neurodiverse workforce would become impossible to manage. In the words of Ms Johnson while being cross-examined, "*just because you are neurodiverse doesn't mean you can't also be rude and obnoxious."* It is not unreasonable of the respondent to ensure that its neurodiverse staff take responsibility for their impact on others in the workplace.

<u>The claimant's work history prior to the end of August 2023</u>

45. The claimant commenced work in May 2022. As noted above, she had a highly unfortunate series of incidents in March 2023 when she was stalked and harassed by a service user of the charity. The claimant understandably found this distressing, and she was anxious as a result of it. The respondent, we find, took steps to safeguard the claimant during this time. The claimant is critical of the respondent's actions, but these events are not part of the complaints the claimant makes to the Tribunal.

46. The claimant was off sick as a consequence of her anxiety from 19 April 2023 until 29 August 2023, when she began a phased return to work. We found that the respondent ought to have known that the claimant was disabled by reason of anxiety from 22 May 2023.

47. It is clear from the claimant's supervision with her team leader, Mike, on 21 June 2023 (during this period of absence) that the claimant's difficulties with the workplace, stress in relation to her work and relationships with her colleagues were present prior to her return to work.

48. The supervision note refers to "*tension….around comments on cliques*". Mike wrote in his minutes "*the full magnitude of the problem is clear from the length of the sick note – not primarily focussed on [name of stalker]*"

<u>The events of September and October 2023</u>

49. During her phased return to work, the claimant and her colleagues Sue, GD and Alistair, who are all neurodiverse by reason of autism spectrum condition, expressed their view that the atmosphere at the respondent had changed and not for the better. They complained about this to their team leader, Mike, who is also neurodiverse.

50. There had been a new Chief Executive, Ms Sargent, and the claimant and GD expressed the view that the ethos of the respondent had become less tolerant as a result. The claimant was very unhappy at the suggestion that the respondent introduce the "Bradford factor" method of monitoring sickness absence, for example. We find that the claimant had a tendency to try to be at the centre of workplace disputes and had an enthusiasm for raising issues in

the workplace on behalf of others, without any indication that the individual in question wanted her to advocate for them.

51. For example, during her phased return to work the claimant discovered that a colleague, Jamie Bonser, had been promoted without any of their colleagues being given the opportunity to apply for the promotion. Jamie is a white British woman, and Mike is of mixed racial heritage. The claimant expressed concerns about this on a number of occasions, that Mike had not been given the opportunity to apply for the promotion, and questioned whether this was "legal" or whether this could be said to be discrimination based on the ethnic origin of Mike. There was no evidence before us that Mike was involved in the decision to raise this issue with the respondent. However, the evidence gathered by the respondent for the claimant's disciplinary investigation described that the colleagues of the claimant and her friends found their comments about this to be unpleasant and unprofessional, as they also involved many conversations about Ms Bonser's lack of ability and lack of suitability for the job. The evidence indicates that several staff found that this made the atmosphere in the office unpleasant, and they tried to avoid the claimant and made requests to, for example, work from home more.

52. The respondent's witnesses Mr Dobson and Ms Hollywood explained that Ms Bonser had been appointed in this way because the respondent was in immediate danger of losing considerable funding. The respondent had become aware that a funder who had contributed a six-figure sum, thought by Mr Dobson to be between £100,000 and £200,000, was considering ending his relationship with the respondent. He told the Tribunal that this was the biggest donation the respondent had ever had. As the charity has an annual income of approximately £1 million, this would have been a considerable sum to lose. We accept his evidence in this regard.

53. Ms Bonser was considered by the respondent to be the best fit to build a relationship with the donor, despite others having more prior experience. Her appointment had been made quickly following a discussing between Ms Sargent and Mr Dobson, because of the need to act quickly to make the changes required to shore up the respondent's funding. Mr Dobson gave evidence that he had been impressed by how Ms Bonser conducted herself in her role, as she was forthcoming in wanting to take on more responsibility and had a broad understanding that made her a good fit. Given that Mr Dobson and Ms Sargent appear to have been behind the decision to appoint Ms Bonser without advertising the role first, it is relevant that Mr Dobson's evidence was that he was not aware of Mike's race at the time these decisions were made. He also was not aware that the claimant had alleged that the selection process was potentially discriminatory against Mike.

54. On 29 September 2023, the claimant involved their union representative, Ms Bibi, in these discussions. She raised concerns to Ms Bibi about the promotion of Ms Bonser, about the perceived unfairness to Mike and about discrimination. She asked Ms Bibi whether Ms Bonser's promotion was "legal".

55. Ms Hollywood's evidence, which we accept, was that on 2 October 2023 a member of staff, Katie Price, who is partially sighted, asked to speak to Ms Hollywood as she was upset. She said that on 28 September, the claimant, Alistair and Sue had been "*saying not nice things*" about Ms Bonser, Mr Dobson and Ms Hollywood and asking Katie for her opinion. Katie reported to Ms Hollywood that this "*went on all day*" and they talked about Mr Dobson's character and Ms Bonser's promotion in a very negative way. She told Ms Hollywood that when she left the room to call clients she felt as though they had been talking about her behind her back and although she loves working at the respondent, she "*didn't think her child would act in this way*".

56. It came to the attention of Ms Hollywood two days later on 4 October 2023 that a member of staff, Emma, had asked to speak to Ms Bibi the staff representative as she was very anxious. She was concerned about the claimant intervening in Emma's departure from the respondent's workforce without Emma's consent. Emma, who is disabled by reason of cerebral palsy, had been on a temporary contract. After a trial period and lengthy discussions between Emma and the respondent, the respondent had not been able to accommodate the adjustments Emma required in the role she had been doing. Emma had informed the team (including the claimant) that she was not able to stay at the respondent, and while she was sad about this, she understood why the respondent had not been able to make the role work for her.

57. However, Emma raised concerns with the staff representative Ms Bibi that the claimant may try to advocate for her with the respondent's management, which was something that Emma did not want the claimant to do. Mr Dobson's evidence, which we accept, was that he understood that Emma had been particularly upset by what the claimant had done. He disputed that it was simply a case of the claimant advocating on behalf of her as a disabled person, given how upset Emma had been. He told the Tribunal that Emma had "*a quiet demeanour, she was a very easy-going character, and quiet. It was unusual that she was going to go out of her way to speak to someone because of an upset that she'd had*." This caused him, we find, to have concerns that there was something seriously amiss in the conversations that had taken place between the claimant and Emma.

58. On 5 October 2023, Mr Dobson emailed the claimant and asked her if she wanted a meeting with him to discuss Emma. Before she accepted the invitation, she emailed Ms Bibi the same day and said "*I received an email from Jon [Dobson] this morning referencing a discussion I had with my team and Mike but have not had with you. Please could you let me know when you are available to discuss?"*

59. On 5 October 2023 the claimant met with Ms Bibi and made a covert recording of their conversation. We consider this to be an unusual step to take. We can find no explanation for this in the evidence of either party, and conclude that the claimant's actions in doing so suggest that she was taking a somewhat combative stance to her relationship with the management at the respondent.

60. The claimant's transcript of the recorded meeting begins with the claimant asking Ms Bibi:

    "So tell me when did this conversation happen, what happened? I got this email from Jon this morning concerning conversation about Emma's role "I believe that you want to discuss with me, Emma's probationary role, when would you like to meet? And cc'd Steph [Hollywood] to it and obviously this will impact on HR and whatever" I was immediately I haven't asked anyone to speak to him? I have had some preliminary discussions in the team and the last mention that I had was with Mike on Tuesday, so I checked with Mike to ask how was I getting this email from Jon, and he (Mike) says that he had received a text from Jon, I hadn't said anything, that's the way we left it, he (Jon) says that you've taken it forward as a staff rep, so I'm interested to know on what basis because I haven't had any conversation with you? Have I?"

61. Ms Bibi replied that

    "…Emma felt that her probation ended and that was been discussed she thought or heard you saying she assumed that you were going to take this to Jon or to HR she felt that you wanted to have a discussion with Jon about her and she wasn't happy with that……She's fine with me saying I have spoken to her directly and asked her about how she is feeling….she says she's got no hard feelings; what support could have been given to her has been given…..She feels that she is worried there might be a conversation within the Info office where people feel the need to advocate for her any areas, she doesn't need the advocating, she feels quite positive about the way things have come through."

62. The claimant asked Ms Bibi why Mr Dobson had become involved, and Ms Bibi told the claimant that Emma had asked her to warn Mr Dobson that he may be criticised about Emma's departure and Emma wanted Ms Bibi to make it clear that this wasn't coming from her. The conversation continued for a while longer and concluded by Ms Bibi offering to speak to Mr Dobson on the claimant's behalf that the issue had amounted to "miscommunication" but the claimant declined the offer and said "*No, I'd like to talk to Jon that's okay*" and confirmed that she would talk to him on her own.

63. On 5 October 2023 Ms Hollywood became aware that Ms Bibi was very upset at being approached by the claimant and was becoming increasingly upset by the lack of accountability staff are taking for their actions. Ms Bibi told Ms Hollywood that there was "*lots of complaining about what [she] considered to be low level normal office issues and impacting both her own role and wellbeing"*

64. Ms Hollywood decided to speak to the claimant, Sue and Alistair about this on 6 October 2023. From the notes made by Ms Hollywood at the time, it is clear that all three members of staff were asked the same questions by her about the atmosphere in the office and the impact of gossip and negative comments on others. For example, her records of her conversation with Alistair state the following:

"SH was aware a small group of people are talking very negatively in the office and impacting other staff. SH aware of some of the misleading information that staff had been feedback regarding A's extended probation and an example of that was that staff think his probation has been extended because he was late by 3 minutes when in fact it was 8 hours worth of lateness over a short period of time. SH will correct incorrect info in future if confidential HR matters are relayed to staff in a misleading and damaging way by the staff member involved. SH advised A some other comments he has made have upset staff unnecessarily and if he could take a moment to consider what he is saying to colleagues. AB was offended by this and advised that's something he has a problem with doing due to his condition and can not think what he is about to say before he does so. SH advised that nevertheless, in fairness to other staff and how they feel and are impacted by AB's comments she should and would still flag it to him as it wouldn't be fair on them if she didn't. AB nodded in agreement and sarcastically advised he would 'do as he's told' before asking if SH was done and he could leave the room. Advised he wasn't being told to do anything but just take other peoples feelings into consideration if possible".

65. On Friday 6 October 2023 Ms Hollywood and Mr Dobson met the claimant. Again, the claimant covertly recorded the conversation. The claimant's transcribed notes of the conversation are in evidence before us, including the claimant's annotations about the tone of the three people during the conversation and her emotional responses at the time.

66. During the conversation, the claimant was asked about the conversation with Emma. The claimant told Ms Hollywood and Mr Dobson that she had been told Emma was "*devastated*" at the news her probation had failed and that Emma had been sobbing, but the claimant hadn't personally been there to witness this. The claimant then told Emma that she had been thinking about reducing her days and if she was to reduce one day, Emma could have that. Mr Dobson asked the claimant several times what had happened to make Emma feel so anxious as to make her approach HR, as it clearly was not the conversation that was relayed by the claimant.

67. Eventually Mr Dobson verbalised the concern he had which was "*none of what you're saying is what I would understand as a cause of anxiety provoking. Implication of it was that maybe she felt that people thought that she shouldn't be taking situation lying down almost when the fact of the matter is that she thought people were going to advocate on her behalf*."

68. Ms Hollywood noted "*This is not a shock to Emma. Jamie and I have always had ongoing chats with her that have always been very positive... That she is absolutely devastated and it's a shock to her is a narrative that probably hasn't been fed by Emma*." This, we find, indicated that Ms Hollywood was concerned that the claimant and others in the office had been taking part in exaggerated and damaging conversations about Emma's circumstances.

69. Ms Hollywood then said to the claimant the same thing that she had told Alistair and Sue, which was that "*that there is a small group of people who are behaving and talking very negatively in the office and they are now having an impact on the wellbeing of other staff who are going home upset*."

70. The claimant denied being part of any negativity and said that she always tried to address matters positively and provide information to people. They went on to discuss Ms Bonser's promotion and Emma. Ms Hollywood told the claimant

    "Something that has come about is how unfactual most stuff that is getting talked about is. Going forward what we are asking staff to do is if you are going to discuss anything keep it factual because most of the complaints, I am hearing about gossiping and negative conversations, are based on stories that have lost all context aren't factual whatsoever creating a real sense of unease. You mentioned everyone feels uncertain and uneasy."

71. We find that Ms Hollywood was expressing a concern that the gossip was about matters that were untrue and that this was making staff feel very uncomfortable in the office.

72. The claimant told them that their conversation "*was a disciplinary. Are you disciplining me?"* Ms Hollywood said it was not, and moving forwards the claimant needed to be "*mindful of how conversation can impact other sta*ff." The claimant replied

    "Hand on heart I haven't witnessed a conversation that would make another person feel uncomfortable."

    Ms Hollywood replied

    "several members of staff would say otherwise but its not about that moving forward now."

    The claimant replied

    "Is it my humour or jokes?"

    and was told no, and Ms Hollywood told her

    "I am making you aware of the impact of staff when there are a small group of people who are having conversations"

73. The claimant became upset when she was told she was in this group of people. The clamant asked why was she the only one being spoken to. Ms Hollywood told her she wasn't, that others had been spoken to but it wasn't fair to do it in a group. Mr Dobson told her

    "Reflect on that and think how your active contribution to that and you won't go far wrong".

74. The claimant's annotation of the transcript noted her response to that as that she was:

    "(feeling patronised)"

75. Mr Dobson continued:

    "We know all the good work you're doing. We hear you on the phone and see you with clients. We know why you're here and all the fantastic work you're doing so I don't want you to feel discouraged on that basis. You're doing good work. I'm just saying if you're noticing there is an atmosphere think what you can do to add to that atmosphere.

76. We consider it important to our findings of fact to note the following, in relation to the respondent's approach to this issue. The claimant and her two colleagues were each spoken to about this issue. The claimant's colleagues who had a diagnosis of autism spectrum condition both told the respondent that their condition had made them more likely to say inappropriate or impulsive things at work. The respondent had nevertheless urged them to think about their impact on other people. The respondent's approach to people management and diversity is, we find, that in a neurodiverse workforce, it is not possible for neurodiversity to be a complete justification for behaviour that impacts negatively on colleagues.

77. The respondent was by this point aware that that claimant had been absent by reason of anxiety and knew that this was something that impacted on the claimant's day to day life. Nevertheless, as with Alistair and Sue, she was being urged to take responsibility for herself and was being encouraged to think and behave in a way that made a positive contribution to the workplace. We find that Mr Dobson in particular was very encouraging and pragmatic in speaking to the claimant. We find that it was appropriate for them both to speak to her and her colleagues about what was clearly a growing problem and one that threatened the harmony of the workplace, and they both did so in a sensitive and proportionate way.

78. The meeting was informal and an attempt was made to make the claimant aware of the issue so that she had an opportunity to adjust her approach. However, despite Mr Dobson and Ms Hollywood handling the matter delicately, the claimant considered Mr Dobson's praise as "*patronising*" and that they were "*angry*" with her. She did not welcome the feedback they gave her, or the way in which they did it. We find that the claimant was extremely sensitive to any feedback that was not universally positive. She was even highly sensitive to constructive criticism. She took this as hostile and patronising.

79. Ms Hollywood's evidence to the Tribunal was that after the meeting, the claimant went back to Ms Bibi to complain about being spoken to by them, and that she was upset with Ms Bibi. As a consequence of being spoken to by the claimant, Ms Bibi was so upset herself that Ms Hollywood told her to step back from being staff representative, which she did.

80. Following the meeting on Friday 6 October, on Tuesday 10 October, the claimant sent a series of text messages to Mike. She wrote

    "I have been crying all the way on the bus and hiding in the counselling room for the last half an hour trying to calm down.

    I guess I am still processing what happened last week. I need to stay well and take comfort from the warmth and positivity that I have been met with on my return and not allow myself to spiral because of the perception of a few…"

81. Mike, who had not been party to the informal conversation on Friday 6 October, expressed concern for the claimant and told her to speak to the respondent's workplace counsellor, Sharon.

82. On 11 October Mike messaged the claimant to ask how she was. The claimant's reply is not, we find, indicative of someone taking responsibility for her impact on her colleagues. She wrote:

    "I was very wobbly this morning but feel a lot stronger after hour with therapist. Thank God!

    As far as he is concerned this is a non-issue that should never have been brought to my attention – never mind the way it was done.

    I'm inclined to agree.

    He totally understands my bewilderment but thinks I need to step back from the nonsense and just watch – with or without [box of popcorn emoji]*"*

83. We find it surprising that the claimant considers what she was told on Friday to be "*nonsense*" that she should just "*watch*". The reference to watching with a box of popcorn indicates that the claimant considers what she was told to have been a source of entertainment, and quite possibly trivial. This is despite being told that she was part of a group of people who were having a negative impact on staff, that staff were going home in tears and that she had made Emma anxious enough for her to have involved their staff representative and Mr Dobson. The claimant's upset ("*crying all the way on the bus*") was not, it seems from this message, out of concern for whether or not her colleagues had been upset.

84. On Tuesday 10 October 2023, Ms Hollywood conducted Emma's exit interview. Emma told Ms Hollywood that the day before, Monday, the claimant had made what Emma felt was an insincere apology to her, that Emma found overwhelming and uncomfortable. Emma told Ms Hollywood that she felt that the apology was for the claimant's benefit and not hers. Emma told Ms Hollywood that this had made her change her mind about coming back to the respondent. She had said that she wanted to return if this was possible, but now she may not, because of the hostile environment in the office. We note that

the claimant's conversation with Emma took place shortly after Mr Dobson and Ms Hollywood's conversation with the claimant.

85. On 10 October, the claimant had a conversation with Katie Price in the office. During this conversation it is alleged by the claimant that Katie said that the claimant would "*play the mental health card to get her own way*" and that this is an instance of harassment on the ground of the claimant's disability. The claimant did not complain about this to anyone at the respondent at the time the comment was made. This was despite the claimant notifying Mike and Ms Bibi regularly about her issues or problems at work, as in the examples above.

86. On 11 October 2023 Katie had a supervision with Ms Bonser. During this supervision she told Ms Bonser that the claimant had made what she considered to be a very mean remark the previous day. Katie is blind in one eye and only has 10% vision in the other and worked with her husband as her support worker and also had a service dog. Katie alleged that the claimant said to her that her makeup was not "*blended*", which was something that made Katie feel very self-conscious. Katie said that due to the way that she had witnessed the claimant speaking negatively about other members of staff, she was reluctant to complain out of concern that she would be subjected to the same treatment. Ms Bonser told Katie that the comment about her makeup was "*shocking*" and she would be speaking to HR at the first opportunity.

87. Katie also reported that she was offended by a comment made by the claimant that the claimant would "*pull the mental health card*" to get what she wanted at work. She also complained that the claimant had fed her service dog despite Katie having expressly told her not to do so on a previous occasion. Katie asked Ms Bonser if she could work one day from home, to reduce the amount of time she was in the office, to avoid the claimant. Ms Bonser asked Katie to let her follow the matter up with HR first.

88. The record of the supervision was shared with Ms Hollywood the next day. It is alleged by the claimant that Katie made a complaint about her, but we accept the respondent's evidence that this was not what happened. She discussed matters with Ms Bonser, who referred the matter to HR. The record of the supervision was sent to the respondent's external HR provider, Privilege, who were asked to conduct an investigation. We find that Katie was reluctant to complain about the claimant and was fearful of repercussions from her. We find that she was well-founded in her fears because the claimant has since alleged that Katie has harassed her on the basis of her race and her sex, allegations that we find to be unfounded, for reasons explained below.

89. Ms Hollywood was asked in cross-examination why she did not have a further informal conversation with the claimant before the investigation started, to let her know allegations had been made about her and give her an opportunity to comment on them, especially as the respondent's disciplinary policy recommends dealing with matters informally. Ms Hollywood said, which we accept, that this was not a disciplinary initially but an investigation.

90. Ms Hollywood also noted that the prior conversation on 6 October had clearly upset the claimant a lot but without having any positive impact on the claimant's behaviour, so a further informal conversation would not have been to anyone's benefit. She also considered that the allegations were not small enough to have a minor chat with the claimant, and she felt like she had to contact external HR. We accept also that the conversation with the claimant on 6 October did not have the desired effect from the respondent's perspective, with the claimant by 11 October dismissing it as "*nonsense*" that she would simply sit back and watch. We accept that it was not unreasonable for the respondent to have had no further informal conversations with the claimant before progressing the matter to an investigation.

91. On 12 October 2023, the respondent's staff were emailed by Ms Bonser to thank them for their patience due to the upheaval to desk space caused by renovation and building work and to thank them for their understanding as this was at short notice. She explained that many of the desks in the office were out of service and explained what alternatives may be available. The claimant says that her things were moved during this time and that this was an act of harassment on the grounds of her disability, as she was made to not feel welcome.

92. The claimant alleges that on 12 October 2023 she was in the office with Katie and they discussed wearing the respondent's branded t-shirt, which was yellow. The claimant complained to Katie that the t-shirts were all too small, and the claimant alleges Katie encouraged her to wear one, saying "*stick your tits out for the doctors*" or elsewhere "*stick your tits out, we'll get more doctors over here*". The claimant alleges that this is sex-related harassment. The claimant also alleges that on the same day, Katie's support worker Kev was also wearing a yellow t-shirt. When Kev put his arm around the claimant, Katie is alleged to have said "*you look like a fucking bumblebee*" to the claimant. The allegation is reported in the claimant's grievance of 20 November 2023 as being that Katie said to both of them "*you look like fucking bumblebees*". Kev is white and the claimant is Asian, and the claimant alleges that this is an act of racial harassment.

93. The claimant's evidence under cross-examination was, when asked why this comment was hostile or offensive, said "*this was when taken into the context of the events. It may have fallen in a different way on a different day but because things had been lifted from my desk and the comments about a toxic clique, it was degrading and I was humiliated. Her husband put an arm around my shoulder and the bumblebee comment was an insult. She wasn't standing there taunting me, it was just a passing comment*." This directly contradicts the claimant's evidence of the "banter" and atmosphere in the workplace to Ms Johnson in the interview on 24 October 2023, which is dealt with below.

<u>The investigation process and the claimant's suspension</u>

94. The claimant was suspended from duty in a meeting on 16 October 2023, with Ms Hollywood which was confirmed in a letter dated 17 October 2023. The allegation was "discriminatory behaviour towards another member of staff." The

letter did not say what discriminatory behaviour, or which member of staff. The Tribunal understands that the allegation related to Ms Price, and the claimant's comments about her not having blended her make-up.

95. The respondent submits that suspension was a normal management action taken in response to workplace complaints and that it was a neutral act to safeguard the claimant while the investigation took place.

96. Ms Johnson was appointed by Privilege HR to conduct the investigation. Ms Johnson is neurodiverse. She conducted a series of interviews with the respondent's staff, starting with Ms Hollywood and finishing with the claimant. We do not consider her actions in approaching matters in this order to be unreasonable. It is not uncommon in industrial relations practice to interview the subject of the investigation last.

97. A number of staff were interviewed by Ms Johnson. She used an interview template and a standard series of questions. When she became aware that a member of staff had a particular neurodiversity, she adjusted her questions accordingly.

98. The claimant alleges that it is an act of disability-related harassment for Ms Hollywood to have commented in her interview with Ms Johnson that the claimant was part of a "*toxic clique*". The claimant alleges that this was action by Ms Johnson and Ms Hollywood to target neurodivergent employees and characterise them as being part of a toxic group, namely Sue and Alistair together with the claimant and that this was an act of harassment. However, we find that Mr Dobson and Ms Hollywood had discussed this issue carefully with the claimant on 6 October, along with Sue and Alistair, to allow them an opportunity to reflect on their part in any particular issues.

99. The claimant was invited on 23 October to an investigation meeting the following day. The claimant emailed Ms Hollywood on 23 October to ask that the meeting be postponed so that she could arrange representation and support, and that she needed to be given more information about the allegations against her. Ms Hollywood was on leave that day and responded at 9.40pm. Before Ms Hollywood responded, the claimant had contacted her to say that she would be at the meeting but was not sure who she could ask to accompany her. Ms Hollywood replied that the claimant would be given all the information in the meeting the next day with Ms Johnson. The claimant did not pursue her request for postponement or a companion. We note that it is not standard industrial relations practice to allow advance notice of investigation interview questions nor to allow a companion or representative at an investigation meeting.

100. The claimant's investigation took place with Ms Johnson on 24 October 2023. She alleges that the manner in which this investigation was conducted was discriminatory. She alleges that the respondent's refusal to postpone the investigation to allow her to obtain representation and the fact that she was not given questions in advance was a failure to make reasonable adjustments

because she had difficulty processing and answering questions on the day of the meeting, which also caused her distress.

101. The clamant also says that her meeting with Ms Johnson was disability-related harassment, in that she was told that she made people feel uncomfortable about their departure from the business (this being Emma) and that she said she would "*pull the mental health card*".

102. She also alleges that being put through the investigation process at all was victimisation for having done the protected acts of raising the issue of Ms Bonser's promotion being potentially discriminatory and raising this issue again in the meeting of 6 October.

103. Ms Hollywood was asked in cross-examination by the claimant's counsel why this "informal complaint" from Katie into two issues (her make up and feeding her dog) was being added to by negative comments from her to Ms Johnson. Ms Hollywood's evidence was that the claimant had not been the only person questioning the decision to promote Ms Bonser, and that their attempts to raise the matter informally with the claimant on 6 October didn't resolve the issue, but made it worse.

104. It was put to Ms Hollywood that in her investigation meeting with Ms Johnson, she exaggerated the issues and mentioned more people who were allegedly affected, such that the scope of Ms Johnson's investigation was much wider than it might have been. Ms Hollywood's evidence was that she was passing on the information that she had been given by staff members such as Katie and Emma, and Ms Bibi. Ms Hollywood described in her investigation interview that she considered that the claimant, Ali and Sue together had turned a "*good atmosphere into a toxic environment*" and that "*there was a toxic clique*" the latter said in the claimant's grievance investigation. The claimant says that these comments are harassment on the grounds of her "neurodivergence".

105. The claimant alleges that Ms Bonser and Ms Bibi provided "false and negative statements" for the investigation, and that this is an act of discrimination because of something arising in consequence of her disability. There is no evidence provided by the claimant that Ms Bibi's statements were "false" and Ms Bonser's statements are said to be false and negative because Ms Price's Whatsapp messages sent two years later say that Ms Bonser "had it in for" the claimant.

106. However, Ms Bonser's statements to the investigation are corroborated by the evidence of others, including Emma and Ms Hollywood and Ms Price herself. We do not accept that they were "false" – we find that they were factual comments, based on Ms Bonser's understanding of what others had told her had happened. Furthermore, at the time these statements were made, Ms Bonser and Ms Bibi did not know that the claimant was disabled by reason of ADHD. In relation to the disability of anxiety, there is no evidence that reporting what others had told them was unfavourable treatment because of something

arising in consequence of her disability. Ms Bonser expressly stated in her interview records that she had not personally witnessed any of the behaviours.

107. At Ms Bibi's investigation interview, she reported what she had witnessed as staff representative. This was information that she had also given to Ms Hollywood in earlier discussions. There is no evidence of a causal link between these comments and the claimant's anxiety, in that there is no evidence that the claimant's anxiety (as distinct from any other mental health condition that she was later diagnosed with, such as ADHD and ASD) was the cause of the behaviour remarked on by Ms Bibi, such as that the claimant "*can be gossipy and create a negative culture*."

108. The claimant's case is that the scope of the investigation was unreasonably expanded by the respondent, particularly Ms Hollywood. It is alleged that Ms Hollywood told Ms Johnson who to interview, and this meant that the investigation was not impartial, as it was tainted by the view of Ms Hollywood. Ms Hollywood disputed this under cross-examination and said that Ms Johnson made a note of who to interview based on the HR issues described by Ms Hollywood in her initial interview. The decision was hers, not Ms Hollywood's. We accept her evidence in this regard.

<u>The claimant's disciplinary process</u>

109. At the claimant's own investigation meeting on 24 October 2023, she was asked a series of questions about the allegations that were made by other members of staff, including that the claimant had mocked a vulnerable service user who had attended the respondent's premises hungry. In the lunch queue in the café, the service user was told by the respondent's staff that they would find her a large baked potato because she was very hungry. The claimant had allegedly queued next to the service user and had teased her by saying that the claimant would take the largest baked potato. She was told by members of the respondent's staff that this behaviour was inappropriate because the service user would not understand that the claimant was being humorous. Ms Hollywood told the Tribunal that the incident had been witnessed by the respondent's safeguarding lead who took action on the day by spending 30 minutes with the service user reassuring her, but that the claimant should have realised that this behaviour could be seen as cruel and inappropriate.

110. When these allegations were put to her in the interview with Ms Johnson, the claimant's response was largely to deny them. The claimant now alleges that these allegations were instances of disability-related harassment.

111. However, she made a number of highly positive comments about the atmosphere and relationships in the team and the conversations they had. Ms Johnson's meeting minutes record the claimant has having said:

"Positivity from staff members and team and feel supported.

Good working relationships, interactions are friendly, confided in one another exchanged life stores Katie in particular shared birthing stories and trauma sons are similar in age.

I am absolutely astonished and do not know where this is coming from. If I have caused offence then I am not aware of this, physical touch, Katies husband had his arm around me yellow tops and she called us fucking bumble bees.

This banter we have it is important to discuss it and may come across as something wrong from outside of the team. It is reciprocated and in good humour.

Katie has made jokes about her brace, one day she was leaving early and said aren't you going to leave, and I said no as I work harder. Katies asked if Roxy was playing the race card as she plays the blind card.

Something that is accepted in the team.

People have made fun of the way in which the claimant speaks in her in Urdu and Punjabi -people in her team.

I was thinking maybe I have offended her through unbiased assumptions maybe she was offended that I have helped her as the cupboard was a mess, was only a small left and felt self-conscious and had said to me oh go on get your tits out we will get more doctors over. (is referring to Katie)

Katies uses a lot of colourful language and is blunt.

No one told me they are uncomfortable with a joke I have made or comments.

Everything from my weight, the way I look has been made fun of took in the spirit of which it was meant.

Think it is mutual.

We work with difficult subject areas child abuse death illness, and you know we must find humour in the darkest places.

As soon as somebody irrespectively of what is accepted, always check ins with new members and the moments someone has changed there is an apology. People are accepting of people boundaries.

Take the allegation against me very personally have worked in therapy in advocacy for 20 years and I have worked with all protected characteristics and most marginalised and vulnerable.

Never has my conduct and behaviour been brought into questions.

Was hoping to come in today and clear up these allegations and don't understand how they have been brought.

This is not something that I was aware of at the time, something that I have been though conversations with my therapist my awareness-the conversation around why I felt responsible for a member of staff no longer able to work, felt guilty about them having to leave- made me realise some of the conversations that were had with me were not appropriate given that I was returning to work regarding staff after being off.
Sharing about someone being really unhappy, I felt pressure."

112. The claimant informed Ms Johnson "*I am on the pathway for ADHD*" during the meeting. As we have indicated above, this statement of itself is not confirmation that the claimant was disabled for this reason, or that the respondent was on notice that she was so disabled at this time.

113. Ms Johnson's witness statement gave her opinion of the claimant's conduct in the meeting as "*when I interviewed the claimant, I found her to be patronising, at times aggressive and wanting to pass blame onto other people instead of accepting criticism, which is evident from the interview with her."*

114. The claimant told us during her cross-examination that she found it "*offensive, and it humiliates me, for it to be said that I make people feel uncomfortable*". When asked about the comments that had been made by Emma in her exit interview, it was put to the claimant by the respondent's counsel that Emma was encouraged to be truthful in her exit interview. The claimant responded *"…of course, yes. I haven't seen any contemporaneous evidence and there's nothing in the exit interview. It's hearsay from Steph Hollywood and Katie Price. I dispute that. If this person [Emma] did make that statement it would be fine. I made a kind, generous and inclusive gesture to her, but at the meeting on 6 October 2023 I was made to feel awful*."

115. We find that the claimant struggled to tolerate any feedback from the respondent, or its staff, that she may have needed to moderate her behaviour. We note that even the most well-intentioned gestures by an individual can be unwanted by the recipient and the recipient is under no obligation to tolerate unwanted conduct, even if well intended. While the claimant is able to acknowledge this if the principle is presented to her as a theoretical issue, she is unable to tolerate this when it involves her behaviour in the workplace. She seeks to minimise her intolerance of this by either dismissing it (referring to it, for example, as "*nonsense*") or by characterising it as fraudulent statements, made up by those she considers to be opposed to her, such as Ms Price and Ms Hollywood.

116. To this end, we find that this would inevitably have resulted in conflict in the workplace. However informally and tactfully the respondent attempted to address this issue, such as at the meeting on 6 October with Ms Hollywood and Mr Dobson, the claimant took great exception to it. With the passage of time and the inevitable stresses of contentious processes such as the disciplinary process and litigation, the claimant now characterises every action taken by Ms Bonser, Ms Price and Ms Hollywood as malign.

The claimant's disciplinary process and dismissal

117. Following the claimant's suspension, Ms Johnson's interviews continued with members of the respondent's staff, with the claimant being interviewed last on 24 October 2023. It was then decided by the respondent that there was a disciplinary case to answer, and the claimant was invited to a disciplinary hearing in an letter sent on 1 November 2023, with the hearing to take place on 3 November 2023. In the invitation letter, the list of allegations against the claimant had increased to "*disability discrimination towards a client, disability discrimination towards another employee, breach of trust, unacceptable behaviours not meeting the ethos and values of the organisation*."

118. The claimant was told that she could be accompanied by a trade union representative or a fellow employee, and that if the allegations are substantiated, they could be gross misconduct and that her employment may be terminated.

119. The claimant complained about the contents of her witness statement and asked that the hearing be postponed to allow her time to obtain representation. The hearing was postponed at the claimant's request and rescheduled to Tuesday 7 November 2023. The claimant alleges that Ms Hollywood and Ms Wells of Privilege HR pressurised her into attending the hearing on 3 November 2023.

120. On 3 November, Ms Hollywood wrote *"in order to reduce an further anxiety or stress, we would encourage you to attend the hearing planned and Joanne is happy to speak to you beforehand if that helps. Please let me know if you would like Joanne to contact you*."

121. The claimant submitted a sick note on 3 November 2023 and wrote on Saturday 4 November 2023 that she was not fit to attend the hearing on 7 November. The respondent's HR advisor Ms Wells replied, saying "*hopefully, over the next two weeks you will be able to rest and recuperate and then feel well enough to attend a rescheduled hearing*." Ms Wells also wrote that *"Submitting a sick note and then not attending the meeting only serves to prolong the process, which of course will add to any stress and anxiety already being experienced. I would therefore encourage you to continue with the process so that this doesn't happen*."

122. The claimant alleges that these two emails constitute harassment on the grounds of disability.

123. On 20 November 2023 the claimant submitted a grievance letter to the CEO Ms Sargent. She also made a Subject Access Request on the same date.

124. The claimant was invited to a rescheduled disciplinary hearing on 27 November 2023 by Mr Meyer Lopez of Privilege HR.

125. In the period between the submission of her grievance and the outcome of her grievance being sent to her, the claimant was in frequent contact with Mr Meyer Lopez, exchanging emails with him multiple times each week. She exchanged multiple emails with him over the subject access request and what she perceived to be the inadequacy of it.

126. She received the outcome of the grievance process by letter from Mr Meyer Lopez of Privilege HR on 13 December 2023. Although some of her points of grievance were upheld, the majority of her allegations were not. The claimant had chosen not to participate in a meeting with Mr Meyer Lopez on 27 November 2023 and her grievance was conducted by way of written representations. The claimant emailed Mr Meyer Lopez four times on 13 December 2023 requesting further information about her grievance points, and he provided a revised outcome on 14 December 2023.

127. The claimant informed him also on 14 December 2023 "*Just to update you I received my formal diagnosis for ADHD yesterday and I would like to appeal the conditions of my suspension in order to access peer support and information*".

128. The claimant appealed against the outcome of the grievance on 18 December 2023 to Ms Sargent in a detailed, seven-page letter, although at the conclusion of the letter the claimant wrote "*I raise the above as a new Grievance, which I would like to be investigated fully and fairly*".

129. The claimant was invited to an Employment Review meeting by Ms Sargent in an email sent on 19 December 2023 at 4.01pm. The meeting was due to take place on 21 December 2023. The claimant replied at 4.23pm the following day to say "*Unfortunately I cannot attend tomorrow's Employment Review due to my current state of mental health and my daughter is also off sick from school.*"

130. Ms Sargent replied to ask the claimant if she was not fit for work and should be considered to be off sick. The claimant replied that she was unfit due to "*ongoing mental health challenges related to work-related stress*" but that she would be able to participate in the process if questions were emailed to her. The Tribunal notes that in this series of email exchanges with Ms Sargent, the claimant did not notify her that she had been diagnosed with ADHD the previous week or request any adjustments for that condition.

131. The claimant wrote "*This situation is exacerbating my existing mental health concerns, making it difficult for me to participate in the meeting without experiencing severe distress*". Mr Waller-Flynn of Privilege HR, who advised Ms Sargent on the options available to the respondent in relation to the claimant, told the Tribunal that he could not say for certain that Ms Sargent was aware that the claimant had been diagnosed with ADHD, although he accepted that the respondent knew that the claimant had previously "*identified as having ADHD*".

132. Ms Sargent replied on 21 December at 10.35am "*You are currently suspended on full pay and unless you are unfit for work you are therefore required to be available for meetings. This meeting has been set up specifically to consider your relationship and employment with us. I believe attending a meeting will help to reduce the stress and anxiety you are experiencing. At your request we have postponed the meeting for today and we are giving you one further opportunity to respond. The meeting will be held at 9.30am tomorrow… if you fail to attend we will have to review the situation in your absence however we would prefer to meet with you and discuss this.*"

133. The claimant replied at 12.15pm the same day

"I regret to inform you that I am unable to attend the meeting scheduled for tomorrow morning. While I understand that you may perceive this as a way to alleviate my stress and anxiety, I've consistently been assured the same during previous meetings associated with this investigation, only to experience further distress.

Enclosed is a fit note confirming that although I am capable of participating in the meeting remotely via email, I am not able to attend in person. I hope that my request for reasonable adjustments can be accommodated in the ongoing process."

134. Ms Sargent replied at 5.07pm "*Thanks for your reply. Yes, we can accommodate you attending remotely, I will send you a Teams video conference link to join the meeting. Please confirm your attendance in advance. In preparation for the meeting, please have a think about these two questions:*

1. how do you envisage a return to work would be possible, bearing in mind the investigation and subsequent disciplinary?
2. do you accept that you have made mistakes and what is your learning from this?"

135. The claimant replied at 6.23pm "*Just to confirm as my email and fitnote state I am able to engage with the employment review process via email and therefore will not be attending a teams meeting. Also I believe your questions are inappropriate and unfair at this moment in time when there is an ongoing disciplinary process and grievance appeal. I feel I will be more able to answer these questions when the above processes have concluded and I've had some proper time to reflect. If this is not acceptable to you I would like to request tomorrow and the period over Christmas and New Year as annual leave please?"*

136. Ms Sargent replied at 7.27pm *"if you feel that you don't want to respond then this is your prerogative but an employment review meeting is not appropriate to be held via email. As per my initial letter the employment review meeting will go ahead in your absence*."

137. The meeting went ahead the following day without the claimant, conducted by Ms Sargent with Mr Waller-Flynn of Privilege taking notes. The

claimant was dismissed. The evidence of Mr Waller-Flynn was that he advised Ms Sargent that as the claimant had "short service", that is, less than two years' service, the respondent could use a short-term dismissal process if the respondent considered that trust and confidence had broken down between the parties.

138. Mr Waller-Flynn told the Tribunal that he provided Ms Sargent with advice as to the possible options available to her as the decision-maker, and he did not take the decision himself. His evidence to the Tribunal was that the proposed Employment Review Meeting was not a dismissal meeting, but its purpose was to look at options available to the respondent and the claimant. However, we find that Mr Waller-Flynn was inevitably part of the respondent's decision-making process and although Ms Sargent was not present at the Tribunal to give evidence, Mr Waller-Flynn was able to assist the Tribunal with the factors that he presented to Ms Sargent for her to consider.

139. To that end, Mr Waller-Flynn's evidence was that although he did not know why Ms Sargent did not postpone the final meeting on 22 December 2023, the respondent hoped that coming to an agreement about the claimant's employment would improve her health. Mr Waller-Flynn noted that the claimant's most recent fit note (which ran from 30 November to 17 December 2023) stated that the claimant was fit for work with adjustments, these being that she be allowed time to submit a written witness statement for the grievance hearing on 30 November and that this was to be reassessed in a follow up appointment.

140. Mr Waller-Flynn's evidence was that he understood that the claimant had asked to engage in the disciplinary process by email and that she submitted a fit note on 21 December at 12.15pm saying that she was fit to engage in the disciplinary process by email, then chose not to reply to questions provided to her by email. The claimant's case is that she was not given enough time to respond to the questions as they were only sent at 5.05pm the day before the hearing, but also that the questions were unfair as they related to her alleged conduct, which was the subject of her grievance, which was at that stage subject to an appeal.

141. Mr Waller-Flynn's evidence was that Ms Sargent was keen that she and the claimant were able to get clarity on the matter before the Christmas break as they were currently at an impasse. The disciplinary had been outstanding for ten weeks at this point, he said, which was an "*incredibly long time*" and was having an operational impact on the respondent's business and finances. He also noted that the claimant had actively engaged in her grievance, but had not engaged in the disciplinary, and appeared "*to put barriers up to some of the processes*".

142. The minutes of the meeting were provided to her with the respondent's dismissal letter the same day (22 December 2023).

143. The claimant appealed against the decision to dismiss her in an appeal letter dated 27 December 2023. Tim Walsh, a retired accountant and trustee of the respondent, was appointed to her the claimant's appeal against the outcome of her grievance, and her appeal against her dismissal. The claimant attended a hearing in person with Mr Walsh and her friend and representative Ali Herd on 25 January 2024. At the hearing, the claimant expressed her view that the original allegations against her were "*character assassination*" by Ms Hollywood and Ms Price.

144. Mr Walsh also interviewed Ms Sargent, Ms Hollywood, Mr Meyer Lopez, Mr Waller-Flynn and Ms Johnson as part of his investigation.

145. In the meeting on 25 January 2024, the claimant agreed that there were six points of appeal that she wished Mr Walsh to look into, which he did. He wrote to the claimant subsequently with the outcome of his deliberations. He did not uphold any of the claimant's grounds of appeal. The claimant raises no complaint about the appeal in these proceedings.

The Law

146. In determining whether or not a claimant was disabled at the relevant time to which the claims relate, Tribunals should not focus on the diagnosis of the impairments themselves, but rather on the effects of the impairments. (*Nissa v Waverly Education Foundation Ltd and anor EAT 0135/18*).

147. "Guidance on matters to be taken into account in determining questions relating to the definition of disability" (2011), issued by the Secretary of State (hereafter, "the Guidance") provides further information as to when an individual is said to be disabled under the Equality Act 2010. Paragraph A7 notes that it is not necessary to consider how an impairment is caused - what needs to be considered is the effect of an impairment.

148. Individuals with certain conditions are automatically entitled to protection in law from the point of diagnosis (the Guidance paragraph A9). The Guidance identifies those with cancer, HIV infection and multiple sclerosis as protected from the point of diagnosis, irrespective of the impact of their symptoms. Other persons are "deemed to be disabled" as set out in paragraph A10 of the Guidance if certified as blind or partially sighted by a consultant ophthalmologist.

149. As the Guidance notes at paragraph A11, anyone who has an impairment which is not covered by these exemptions will need to meet the requirements of section 6 Equality Act 2010 to demonstrate that they have a disability, that is that the condition is one that had a substantial adverse effect on the individual's ability to carry out normal day to day activities. ADHD and anxiety are conditions to which the general rule applies, therefore a diagnosis of itself is not enough, there must also be evidence that the condition is significant enough to amount to a disability for a particular individual.

150. An employer has a defence to a claim for failure to make reasonable adjustments (as per para 20(1) of Schedule 8, EQA) if it does not know and could not reasonably be expected to know that a disabled person is disabled and that the individual is likely to be placed at a substantial disadvantage by the PCP, physical feature or lack of auxiliary aid.

151. An employment tribunal is permitted to conclude on the evidence that the employer had constructive knowledge of the disability and of the likelihood that the disabled employee would be placed at a disadvantage. The question for the Tribunal is what, objectively, the employer could reasonably have known following a reasonable enquiry.

152. In bringing a complaint of discrimination arising from disability (section 15, EQA) a claimant must prove unfavourable treatment and that the treatment was because of something arising in consequence of their disability. If this is established, an employer will be liable unless they can show justification, namely whether the treatment was a proportionate means of achieving a legitimate aim.

153. An employer also has a defence to a claim of discrimination arising from disability if it did not know and could not reasonably have been expected to know that the claimant had a disability (s15(2) EQA). The burden is on a respondent to show that it did not have actual or constructive knowledge of the disability, as opposed to the “something” that is arising in consequence of it. In *City of York Council v Grosset [2018] EWCA Civ 1105*, the Court of Appeal held that it is not necessary for the employer to be aware of the specific causal connection between the disability and the 'something'. Sales LJ at paragraph 47:

> *"The risk of unfavourable treatment because of something that has arisen from the disability is cast onto the (employer) rather than the (employee). If the (employer) does not know that the (employee) suffers from a disability, he has a defence. But if he does know that there is a disability, he would be wise to look into the matter carefully before taking any unfavourable action."*

154. In relation to factors to consider as to whether the respondent had the requisite knowledge of disability for a claim under s15 Equality Act 2010, in *A Ltd v Z (UKEAT/273/18)* HHJ Eady KC summarised them in paragraph 23:

- There need only be actual or constructive knowledge of the disability itself, not the causal link between the disability and its consequent effects which led to the unfavourable treatment
- The respondent need not have actual or constructive knowledge of the precise diagnosis to satisfy the requirements of s15(2), but it does need actual or constructive knowledge of the facts constituting the disability (as per Simler J para 69 *Pnaiser v NHS England [2016] IRLR 70*.). This means, they must have knowledge that the individual is suffering from a physical or mental impairment which has substantial and long-term

adverse effects on his or her ability to carry out normal day-to-day activities.

- When assessing the question of constructive knowledge, an employee's representations as to the cause or absence of disability-related symptoms can be of importance, because in asking whether the employee has suffered substantial adverse effect, a reaction to life events may fall short of the definition of disability for Equality Act purposes. Furthermore, if a respondent does not know the likely cause of a given impairment, it becomes much more difficult to know whether it may well last for more than 12 months, if it has not already done so.

155. *A Ltd v Z* also posed the question about the extent to which the respondent must make enquiries about the employee's mental health in the absence of disclosure of information of the same by the employee themselves. It was held that the Tribunal had to take into account all relevant factors and balance the likelihood of inquiries of the employee about disability yielding results against the dignity and privacy of the employee.

156. *Sullivan v Bury Street Capital Ltd [2020] IRLR 953*, per HHJ Choudhury P - occasional references to mental health problems were not enough. It did not do more than demonstrate awareness of an impairment, as it did not demonstrate knowledge of substantial adverse effect and longevity. A mere assertion from an employee of disability will not suffice to establish disability - *Peninsula Business Services Ltd v Baker [2017] UKEAT/0241/16/RN*

157. *Stedman v Haven Leisure Ltd [2025] EAT 82* Where an ET had before it evidence of a clinical diagnosis of ASD or ADHD, accordingly, then (unless there was some reason to doubt the reliability of that clinical judgment), the ET must have taken that diagnosis into account not just as evidence that someone had a condition or impairment, but as evidence as to the impact of that impairment. The diagnosis meant that they had been judged by a clinician to have significant (i.e. clinically 'more than minor or trivial') difficulties with the areas of functioning covered by the diagnosis. It did not follow that the ET must have accepted the clinician's view as answering the disability question under the Equality Act 2010. The ET still needed to consider what it was that led the clinician to make the diagnosis in the appellant's case and to make findings about the appellant's ability to carry out day-to-day activities.

158. The burden of proof in discrimination cases is set out in s136 Equality Act 2010,

"(1) This section applies to any proceedings relating to a contravention of this Act.
(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
(3) But subsection (2) does not apply if A shows that A did not contravene the provision."

159. *Madarassy v Nomura International plc [2007] ICR 867* at paragraph 58 states:

"The absence of an adequate explanation for differential treatment of the complainant is not, however, relevant to whether there is a prima facie case of discrimination by the respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant. The consideration of the tribunal then moves to the second stage. The burden is on the respondent to prove that he has not committed an act of unlawful discrimination. He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim."

160. Where a Tribunal must assess an allegation of direct discrimination (s13 Equality Act 2010), it must consider whether the conduct in question amounts to (1) less favourable treatment of the claimant and (2) the reason for that treatment, that is, whether this less favourable treatment was on the grounds of a protected characteristic. *Glasgow City Council v Zafar* [1998] IRLR 36

161. Whether the conduct in question is capable of amounting to 'less favourable treatment' is for the Tribunal to decide (*Burrett v West Birmingham Health Authority [1994] IRLR 7, EAT*) but that the test for determining what constitutes less favourable treatment should not be too onerous and should not disregard the perception of the complainant (*R v Birmingham City Council ex parte Equal Opportunities Commission [1989] AC 1155, [1989] IRLR 173, HL* and *Home Office v Saunders [2006] ICR 318, EAT)*.

162. The burden of proof is on the claimant to show that she has been treated unfavourably in a claim under s15 EQA. The EHRC Code of Practice on Employment states that "unfavourable treatment" means where a person is put at a disadvantage. The Supreme Court in *Williams v The Trustee of Swansea University Pension & Assurance Scheme [2018] UKSC 65* agreed with the earlier judgment of Langstaff J in the EAT that 'unfavourable' must be measured against an 'objective sense of that which is adverse as compared to that which is beneficial'.

163. *Robinson v Department for Works and Pensions [2020] EWCA Civ 859,* approving the obiter comments of Underhill LJ in Dunn v Secretary of State for Justice [2019] IRLR 298, Bean LJ held:

> *"Both s 13 and s 15 use the same phrase "because of". One requires A to have treated B less favourably than a comparator would have been treated because of a protected characteristic (s.13), the other to have treated him unfavourably because of something arising in consequence of a disability (s.15). One difference between the sections is that s 13 explicitly involves a comparison between how the claimant and other persons without the protected characteristic are treated – "less favourable treatment" – whereas s 15 refers only to "unfavourable treatment". But both sections require the ET to ascertain whether the treatment (whether less favourable or unfavourable) was because of the*

protected characteristic and, as such, require a tribunal to look at the thought processes of the decision-maker(s) concerned."

164. Simler J in *Pnaiser v NHS England [2016] IRLR 170* held that the 'something' causing the unfavourable treatment need not be the sole, or even the main reason, but that it must have a significant (meaning more than trivial) influence on the unfavourable treatment such that it can be considered an effective cause of it.

165. s26 Equality Act 2010, Harassment:

(1) A person (A) harasses another (B) if—
(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of—
(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
[………]

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect.

166. In *Richmond Pharmacology v Dhaliwal [2009] IRLR 336 EAT*, commenting on the application of s26(4), which is a matter for the Tribunal to decide in all the circumstances of the case:

"We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."

167. Section 27 Equality Act 2010 provides that:

"(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."

Application of the law to the facts found

Knowledge of the claimant's disability – Anxiety/depression

168. Ms Hollywood accepted in cross-examination that the respondent knew of the claimant's anxiety and depression from 22 May 2023 onwards. On 22 May 2023, the claimant submitted a fit note from her GP which stated that she was not fit to work. Her GP records for that date state "*diagnosis: Mixed anxiety and depressive disorder*". The claimant asserts that the respondent knew about it earlier than this, and that she first informed the respondent via Ms Stanley, HR assistant, in May 2022.

169. We do not accept that the conversation with Jess Stanley notified the respondent that the claimant was disabled by reason of anxiety. The claimant had not notified the respondent in her pre-employment paperwork that she had a disability, despite being asked a direct question about the same. In her conversation with Ms Stanley, she said that she was nervous and anxious about starting work. She did not disclose that this anxiety stemmed from a long-term mental health condition and it was not reasonable for the respondent to have understood that this was what was being said to them, in the circumstances of this conversation, which was an informal chat at the photocopier in the office. It did not convey information that the claimant's anxiety was long-term, or that it had a substantial adverse effect on her ability to carry out normal day to day activities.

170. The claimant, understandably, had an adverse reaction to the stalker, and discussions prior to 22 May 2023 were largely in the context of her anxiety that had been generated because of these incidents. As per *A Ltd v Z*, without knowing the likely cause of a given impairment, it becomes much more difficult to know whether it may well last for 12 months or more, especially in circumstances where the claimant has also suffered a reaction to adverse life events. There was no communication from the claimant to the respondent that informed them that her anxiety arose from an underlying mental health condition and in the circumstances of the claimant being stalked, it was not reasonable for the respondent to have understood that her anxiety arose from anything more long-term than these incidents. This was the case until the respondent understood that the claimant had a diagnosis of an "anxiety and depressive disorder", by reason of the claimant's GP's diagnosis of the same in

May 2023, and communication to the respondent in the form of fit notes recording the same.

Knowledge of the claimant's disability – ADHD

171. Workers with disabilities are not always automatically entitled to protection in law from the point of identifying that they have, or may have, a physical or mental condition. As noted in the Guidance, only a small number of conditions are given the status of automatic protection by reason of a diagnosis. Anyone who has an impairment which is not one of these limited conditions will need to meet the requirements of section 6 Equality Act 2010 to demonstrate that they have a disability, that is, was the condition one that had a substantial adverse effect on the individual's ability to carry out normal day to day activities (Guidance paragraph A11). ADHD is a condition to which the general rule applies, therefore a mere diagnosis is not enough, there must also be evidence that the conditions are significant enough to amount to a disability for this particular claimant.

172. Therefore, when the respondent was told by the claimant about possible ADHD on several occasions, or being "*on the pathway for ADHD*", this was of itself not enough for the respondent to be on notice that the claimant was a disabled person without further information from the claimant. An appointment to assess someone for a diagnosis is not the same as a diagnosis, even though to be sent for assessment we accept that there was some suspicion on the part of the claimant and her GP that the claimant may possibly have ADHD.

173. For the first time on 2 June 2023 the claimant formally indicated that she considered herself to have a disability, when she completed an application form for a flexible working request and answered "yes" to the question "*Are you a disabled/neurodivergent person whose request for flexible working is related to your disability*". This prompted a question from Ms Hollywood in a return email, and a reply from the claimant on 8 June 2023 who said

"I was diagnosed with epilepsy / NEAD as a child.

I also identify as HSP ["highly sensitive person"] *and am currently on the pathway for ADHD via Psychiatry UK. Please let me know if you need any further information or evidence?*

In addition my mental health may be considered a disability - I'm happy to discuss this in person."

174. As stated above, the claimant's evidence under cross-examination was that she did not think she had ADHD at this time.

175. The claimant was referred to occupational health, and on 29 September 2023 she completed a referral form. The form contained the following information which the claimant asked to be saved against her medical records, as some of it had not yet been disclosed to the respondent:

> *"1. Roxy has a hearing problem. She struggles to hear in a crowded room, in telephone conversations and when there is background noise*
>
> *2. Roxy is on the pathway for ADHD. This impacts on her ability to learn in a noisy busy environment and perform admin tasks*
>
> *3. Work-related stress. This was an issue leading up to Roxy's sickness absence. Need for external clinical supervision has been recommended by Roxy's therapist with aim of preventing a repetition of the sickness due to complex, emotionally charged cases.*

176. The claimant disclosed to Ms Johnson that she was "on the ADHD pathway" during the investigation interview on 24 October 2023.

177. On 27 October 2023 the claimant attended a telephone assessment by an occupational health advisor. The record of that assessment was before the Tribunal in evidence. The claimant's description of her circumstances under the heading "C*urrent Situation*" makes no reference to ADHD or any associated symptoms of the same.

178. In her lengthy grievance documents, including that of December 2023, which provides more detail in relation to the grievance letter of 24 November 2023, the claimant makes only one reference to ADHD contributing to her "*impulsiveness*" and "*need to people please*" in relation to her offer of giving a working day to Emma, even though the document is 20 pages long and contains a detailed account of the claimant's recall of the events since her return to work in September 2023 until December 2023.

179. To what extent did the respondent have an obligation to make further enquiries of the claimant as to how ADHD impacted her ability to carry out normal day to day activities? What further information might further enquiries have yielded from the claimant? The respondent had arranged for the claimant to be seen by occupational health for an assessment in October 2023, but the assessment was not completed due to the claimant's reported stress on that occasion.

180. Had the respondent made further enquiries prior to the claimant's formal diagnosis of ADHD in December 2023, we do not accept that the claimant would have been able to provide the respondent with enough information about the impact of ADHD on her functioning to provide the respondent with constructive knowledge of the same. The claimant shared that she was on a diagnostic "pathway" because she may have ADHD. She had provided the respondent with a considerable amount of information about her anxiety, but all she was able to say about her symptoms were that she was affected by difficulties in her "*ability to learn in a noisy busy environment and perform admin tasks"* and that it caused her "*impulsiveness*" and "*need to people please*" in relation to her offer of giving a working day to Emma. This information on its own was not sufficient

to show that the claimant met the definition of disability in s6 Equality Act in relation to ADHD.

181. The respondent had a limited amount of information available to it because, we find, the claimant herself was not able to clearly state whether or not she had ADHD and what symptoms were attributable to it. ADHD is a condition with a wide range of symptoms which cause a considerable variation in impact and behaviour in different people and overlap with other psychological conditions. Indeed, the claimant herself subsequently received a diagnosis of autism spectrum condition in 2025.

182. The claimant was diagnosed with ADHD on 13 December 2023 and informed the respondent via Mr Meyer Lopez on 14 December 2023. We consider this to be the date from which the respondent knew, via Mr Meyer Lopez, that the claimant was disabled by reason of ADHD, although at this stage the respondent was not provided with any further information about what adverse effect this condition had on her ability to carry out normal day to day activities, or what adjustments may be required, arising from this condition. Had the respondent made further enquiries, the claimant would have been able to provide the respondent with full details, as of the publication date of the detailed diagnostic report on 21 December 2023.

183. In the period between 14 December and 21 December, applying *Stedman v Haven Leisure Ltd* the respondent ought to have concluded that the diagnosis indicated that some aspects of the claimant's ADHD had the potential to have a substantial adverse effect on her ability to carry out normal day to day activities. As per Sales LJ in *Grosset*, paragraph 47 "*if [the employer] does know that there is a disability, he would be wise to look into the matter carefully before taking any unfavourable action*."

<u>Discrimination because of something arising in consequence of disability (s15 EQA)</u>

184. Was there unfavourable treatment by the respondent of the claimant? Was the following conduct by the respondent unfavourable, assessed by means of an objective sense of that which is adverse as compared to that which is beneficial (as per *Williams v The Trustee of Swansea University Pension & Assurance Scheme [2018] UKSC 65*)?

a. Inviting her to an investigation meeting on 6th and 16th October 2023, which ultimately led to suspension and then dismissal.
b. Dismissing the Claimant on the grounds of a breakdown in trust and confidence.
c. Ms Bonser and Ms Bibi making "false and negative statements" to the investigation
d. Making unreasonable and unfounded assertions about the Claimant's character in the dismissal letter of 22nd December 2023?

185. Inviting the claimant to an investigation meeting on 6 October 2023 was not an act of unfavourable treatment. We do not accept the claimant's characterisation of this meeting as an "investigation" meeting. It was not part of

any formal process. It was, we find, an opportunity for a discussion with Mr Dobson and Ms Hollywood about relationship difficulties in the workplace. Therefore, we find that this cannot be said to be adverse, as opposed to beneficial, when assessed by an objective sense of that which is adverse. The invitation to the meeting on 16 October 2023 was, for the same reason, not adverse treatment. It would have been possible for such a meeting to convey the decision that the respondent had chosen to take no action against the claimant. The act of suspension at that meeting was adverse treatment, in that it conveyed to the claimant the seriousness of the allegations against her and caused her concern. She was not dismissed at this meeting, or as a consequence of this meeting, despite her assertion of the same in the list of issues.

186. The claimant has not demonstrated on the balance of probabilities that Ms Bonser and Ms Bibi provided false statements to the investigation in October 2023. Those statements were negative about the claimant, however, and are unfavourable treatment of her.

187. The claimant was treated unfavourably by being dismissed and by assertions being made about the claimant's character in the dismissal letter of 22 December 2023.

188. Of those matters above said to be unfavourable treatment, were any because of something that arose in consequence of the claimant's disabilities? The respondent did not know that the claimant was disabled by reason of ADHD until 14 December 2023. They knew of her anxiety condition as of 22 May 2023.

189. Those matters prior to 14 December 2023 can therefore only relate to the claimant's disability of anxiety. In relation to ADHD, the respondent did not know (as per *Sullivan v Bury Street Capital Ltd*) enough about substantial adverse effect and longevity in relation to the reported symptoms. A mere assertion of disability is not enough (as per *Peninsula Business Services Ltd v Baker*).

<u>Unfavourable treatment - suspension and then dismissal on the grounds of a breakdown in trust and confidence.</u>

190. The claimant's case is that the "something arising" in consequence of her anxiety was the need for processing time, anxiety and impulsivity. Was the suspension because of this, that arose in consequence of the claimant's anxiety and depression? We find that it was not. The claimant's suspension was motivated, we find, by the respondent's need to investigate a number of incidents which arose in a short period of time during the claimant's phased return to work. These included a report from Emma that she no longer wished to work at the respondent due to the behaviours of the claimant and her co-workers, Ms Bibi ceasing to act as staff representative because of the same, Ms Bonser being the subject of critical comments by the same group of people, and Ms Price reporting having been subject to unwanted comments and

behaviour from the claimant. There was also a report of the claimant having behaved insensitively towards a disabled service user.

191. The respondent's evidence, particularly that of Ms Hollywood, was clear and consistent that the respondent has a duty to all of its staff and service users, to ensure that the workplace is one in which colleagues' behaviour is respectful and appropriate and to act on reports of concerns from members of staff. It is for the Tribunal to consider what motivated the respondent to act as it did. We find that the respondent was accustomed to managing a neurodiverse workforce and was alert to differences in behaviour that may be a result of neurodiversity. However, it was also aware that any difficulties that arose should be communicated to individuals, to allow them the opportunity to reflect on their conduct, whether they are neurodiverse or not. Hence, all three individuals identified as being the source of possible gossip and difficult behaviours were spoken to by Ms Hollywood, being Ali and Sue and the claimant. It is acknowledged by the respondent that Ali and Sue are neurodiverse. We find that the respondent did not take steps to discipline these three individuals straight away but brought the concerns of others to their attention, so that they may reflect on this.

192. Was the "something arising" in consequence of her anxiety, which the claimant says was the need for processing time, anxiety and impulsivity, a cause of, or a factor contributing to, her dismissal due to a breakdown in trust and confidence? Was the "something arising" in consequence of her ADHD, said by the claimant to be that she is impulsive and makes actions or comments without thinking, a factor contributing to her dismissal?

193. To consider this, it is necessary to consider what was in the mind of the individuals responsible for the dismissal, namely Ms Sargent and Mr Waller-Flynn.

194. The respondent was prepared to discuss and manage interpersonal problems including those that may have arisen because of neurodiversity, but with the expectation that members of staff took account of feedback on their impact on those around them. We find that the claimant refused to do so and took a dismissive approach (as evidenced by the reference to comments being "*nonsense*" and spectating with a box of popcorn). Unwanted comments were made by the claimant on a number of occasions to a number of different people, suggesting that this was not impulsivity or anxiety, but was a considered pattern of behaviour. The claimant had taken a somewhat combative approach to those of her colleagues who she did not consider to be in her group of friends, and to the respondent's management, including recording meetings covertly. There is no evidence before the Tribunal that this arose out of impulsivity or anxiety. Rather, it would appear to arise out of a need to be right at the centre of workplace conflict and disputes, whatever the consequences for her colleagues.

195. We accept the respondent's evidence that the reasons for her dismissal was the impact of her actions on her colleagues, combined with her unwillingness to consider her role in the same, as well as the fact that the parties

had reached an impasse by which mutual trust and confidence had broken down. Even on the claimant's evidence, this is not something arising in consequence of her anxiety or ADHD. This was not because of impulsivity, making actions or comments without thinking, her need for processing time or her anxiety.

- Unfavourable treatment - negative witness statements from Ms Bonser and Ms Bibi

196. The respondent had a responsibility to investigate concerns raised by other members of staff about the reported issues. As part of that investigation, several witnesses made negative remarks about the claimant. The claimant has not established on the balance of probabilities that the "something arising" from her anxiety had a more than trivial influence on the unfavourable treatment. Ms Bonser and Ms Bibi as part of their evidence, reported what they had seen and what others told them, as they were entitled to do as part of an investigation.

- Unfavourable treatment - the comments made about the claimant's character in the dismissal letter of 22 December 2023

197. The first of these comments is that Ms Sargent commented that the claimant had "*chosen not to attend the meeting*" on 22 December 2023. The claimant's fit note, which was not before the Tribunal in evidence, noted that she was only fit to engage in the meeting via email. The reasons given by the claimant for non-attendance were that she was unwell and also that her daughter was unwell and off school. In the claimant's email to Ms Sargent of 21 December at 18.23, she also says that her non-engagement with the questions were because of the ongoing "*disciplinary process and grievance appeal*" and that she wanted time to reflect. She therefore asked for annual leave, to start on 22 December, and to continue until the new year.

198. Mr Waller-Flynn's evidence was that Ms Sargent considered that it was not appropriate to conduct the employment review meeting by email, given that she had hoped to engage in a discussion with the claimant about her continued employment by the respondent. We accept that it was reasonable to conclude that the meeting could not be conducted by email in the circumstances.

199. We find on the balance of probabilities that the claimant's requirement for additional time to reflect on questions in advance of hearings, and her need for a postponement due to anxiety, were not the reason for Ms Sargent's comments that she had "*chosen not to attend the meeting*". Rather, we accept Mr Waller-Flynn's evidence that the reason for reaching these conclusions was that the claimant had engaged extensively in the grievance process but had appeared to put barriers up to engaging in the disciplinary process. We note that the claimant emailed Mr Meyer Lopez four times on 13 December 2023 requesting further information about her grievance points and appealed against the outcome of the grievance on 18 December 2023 to Ms Sargent in a detailed, seven-page letter.

200. He also noted that her reasons for non-attendance were also to do with her child being ill, and wanting to in effect wait until the disciplinary and grievance appeal process had concluded. They reasonably concluded that these were choices being made by the claimant as to what she participated in and when.

201. The second assertion in the letter complained of by the claimant is that Ms Sargent wrote "*throughout this process, the claimant has shown little insight into, nor willingness to reflect on, the issues raised and specifically her role in them. Her behaviour has had an impact on other employees. Some employees have stated that Roxy has made them feel very uncomfortable and patronised*." The claimant asserts that this is discrimination because of something arising in consequence of her disability. The "something arising" is the claimant's impulsivity and her making actions and comments without thinking, which arises from her anxiety and ADHD. We accept that the respondent was primarily concerned by the claimant's lack of insight and unwillingness to reflect on what had been raised with her, as opposed to the behaviours themselves. A lack of willingness to engage with feedback is not, we find, a result of impulsiveness and doing or saying things without thinking. It is evidence of an inflexible attitude to workplace relationships.

202. The claimant further asserts that this comment is unfair as she was not given the opportunity to show insight into her conduct or reflect on her behaviour. We do not accept the claimant's assertions in this regard. We accept that the meeting of 6 October 2023 with Mr Dobson and Ms Hollywood was a clear opportunity for the claimant to reflect on her behaviour and on the issues raised. The claimant's reaction to this conversation is documented above and did not include any willingness to reflect on what was raised with her.

203. At the investigation meeting with Ms Johnson the claimant again did not demonstrate insight or willingness to reflect on what was raised with her. The claimant's comments to Ms Johnson in the meeting were that she was "*hoping to come in today and clear up these allegations*". Ms Johnson's evidence to the Tribunal was

> "*I believe the claimant came in [to the meeting] very self-aware, very in my face. I had to move back from the table, I told her I was neurodivergent and I need a bit of space, she was very in my face. She was very animated, focussed on Katie Price. Every time the claimant was asked a question she kept deflecting to Katie Price and what she was doing wrong."*

204. When it was put to her that the claimant's neurodiversity might explain the animation, Ms Johnson's evidence was *"she said she thought she was neurodiverse and was waiting to get on the pathway. I thought she was aggressive and not necessarily because of ADHD*."

205. We do not accept that the "something arising" in consequence of the claimant's disabilities was any part of the reason why Ms Sargent made these

comments in the meeting minutes. The respondent is aware of the claimant's neurodivergence as an organisation and is aware that a number of other members of their staff are neurodivergent. However, all members of staff are required to take responsibility for their impact on others, whether neurodivergent or not. The reason for Ms Sargent's comments, we find, is not that they originated from the claimant's neurodivergence, or could have done, but because of the claimant's unwillingness to consider whether any of the issues raised with her may have been valid.

206. The third comment said to be discrimination because of something arising in consequence of disability is "*Roxy has not fully engaged in the internal processes. She has been offered multiple opportunities and a variety of formats to discuss matters formally and informally with the organisation and has chosen not to take up these offers. Furthermore, Roxy has suggested that one of these discussions was a cause of harassment*." It is submitted on behalf of the claimant that this statement is untrue and misleading, but we disagree with that submission.

207. It is, we find, factually correct to say that the claimant had not fully engaged in the internal processes. It is also correct to say that the claimant had been offered a variety of opportunities and formats in which to engage with the respondent. It is also correct that the claimant alleged that she was harassed in the process. The claimant submits that she was not well enough to engage with the process. That was established by her fit notes. However, as has been discussed above, the respondent's view was that the claimant had engaged extensively with the grievance process but then appeared to put barriers up to engaging with the disciplinary process. This was, we find, the reason for the comments by Ms Sargent, and not anything arising in consequence of her disability. Save for the claimant's request to conduct the entire Employment Review by email, when the claimant asked for an adjustment (postponements, remote hearings, questions in advance), these were granted.

Failure to make reasonable adjustments (ss20-22 EQA)

208. Two allegations of a failure to make reasonable adjustments relate to the investigation meetings. The list of issues records the PCP as "Requiring employees to attend investigation meetings and disallowing postponements" and "failing to give employees lists of questions in advance, when subject to an investigation process." Ms Johnson's evidence to the Tribunal was that at the start of the investigation interviews, employees were asked whether they needed reasonable adjustments or support. The claimant did not ask for a list of questions in advance of the investigation meeting, nor did she ask to be accompanied. Therefore the respondent did not know, and could not reasonably be expected to have known, that the claimant was put at a substantial disadvantage by the arrangements. We find that this would not have been something that the respondent should have known, in the circumstances of what was known about the claimant's anxiety condition.

209. Furthermore, we do not accept that the claimant has demonstrated that she was at a substantial disadvantage at the investigation hearing when

compared with other employees, by not having representation and by not seeing the questions in advance. The purpose of an investigation meeting is to record an individual's answers to questions, and the answers given will usually dictate where the rest of the conversation goes to. This was Ms Johnson's evidence. It is therefore not often possible to provide a complete list of questions in advance. There was no indication from the claimant that she required a representative in order to participate effectively in the hearing, or how this related to her disability.

210. The respondent failed to make reasonable adjustments for the claimant (ss20-21 Equality Act 2010), by requiring her to respond to questions in respect of disciplinary hearings with less than 24 hours' notice. The Tribunal accepts that the claimant was unable to respond to the questions as she needed time to reflect, particularly as at the time she was provided with these questions she had recently been diagnosed with ADHD and only received the diagnostic report of this on 21 December 2023.

211. The claimant has established that the respondent had a practice of inviting her to employment review meetings with less than 24 hours' notice, as this happened on 19 December and twice on 21 December 2023. When Ms Sargent complied with the claimant's request for questions in advance, she was only given those questions less than 24 hours before the final date for that meeting, which was 22 December 2023. Although there was only one occasion of the claimant being given questions with less than 24 hours' notice, this was only curtailed because the claimant was dismissed in her absence on 22 December 2023. As per *Ishola v Transport for London* [2020] ICR 1204, a one-off decision or act can amount to a practice, if there is *'some form of continuum in the sense that it is the way in which things generally are or will be done'* (paragraph 38, per Simler LJ.) Once Ms Sargent took over conduct of the claimant's employment review meeting, it was clear that short notice to the claimant was the way in which things generally were or would be done.

212. The respondent's actions in failing to allow the claimant more time to respond to questions in advance of the Employment Review meeting, and holding the meeting in her absence on 22 December 2023, was a failure to make reasonable adjustments. We find that this arose in consequence of her ADHD, which had recently been diagnosed on 13 December 2023, and was communicated to the respondent on 14 December 2023. The respondent should have considered the impact of the claimant's recent diagnosis and should have allowed the claimant time to consider whether any adjustments would have been needed for her to participate in the meeting. It did not do so.

213. The claimant suggests that the meeting should have been postponed to allow her to review the questions in advance, and the claimant should have been given the opportunity to obtain an Occupational Health report to understand the nature of her disabilities and the support required. We find that the needs of the claimant were not clear by 21/22 December 2023, in that the claimant would have needed time to digest the diagnostic report and consider what information in it would have been helpful in relation to the ongoing process at work. We consider that obtaining an OH report would have been a

reasonable adjustment in the circumstances. Put simply, we find that the claimant did not clearly know at this time what work-related needs arose out of her ADHD, and she should have had the opportunity to obtain some more information.

Disability related harassment (s26 EQA)

214. The claimant alleges that she has been subjected to a number of incidents of disability-related harassment, as set out in the list of issues.

(i) On 24th October 2023, during the investigation, the claimant was told that she made people feel uncomfortable about their departure from the business and accused her of saying she would pull the mental health card.

ii) Stephanie Hollywood and Joanne Wells pressurising the claimant to attend her disciplinary hearing on 3rd November 2023, despite her submitting a fit note on 2nd October 2023 citing stress and anxiety and knowing that her Occupational Health Report, dated 27th October 2023 stated that she was unfit for work.

iii) Stephanie Hollywood commenting in the investigation meeting minutes that the claimant was part of a "toxic clique".

iv) The claimant's items were moved into another office on 12th October 2023, and she was made to feel as though she was not welcome.

v) Katie Price stating that the claimant will play the mental health card to get her own way.

215. In relation to the allegations (i), (iii) and (v), there is contemporaneous evidence, that we accept, that the claimant is reported to have said to Ms Price that she would "*play the mental health card*" to get her own way. It is recorded in Ms Hollywood's contemporaneous HR log as having been reported as offensive by Ms Price. It is also recorded in Ms Price's contemporaneous supervision notes from 11 October 2023 (as the claimant having said that she would "*pull the mental health card*" to get her own way).

216. As we have accepted that there is evidence that the claimant was reported to have made this comment, it was reasonable that this allegation was put to her for comment in the investigation. We accept that the claimant's evidence was that she did not make the comment, but that is a separate issue from investigating others' reports that she did.

217. There is also evidence that Emma had told the respondent that the claimant had made her uncomfortable about her departure from the business, and so again it was not unreasonable that this was put to her for comment in the investigation.

218. Likewise, it was reasonable of Ms Hollywood to refer to a "toxic environment" in her investigation meeting with Ms Johnson. The respondent had legitimate concerns about the disruptive behaviour of the claimant and her two colleagues.

219. Given that these were all matters raised during an investigation, it was not reasonable for these comments, raised in the context of the investigation itself, to have the effect on the claimant of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. The respondent was giving the claimant an opportunity to comment on these matters. This was fair and reasonable in the circumstances, as part of the investigation.

220. In relation to the “toxic clique” comment, there is also nothing on the face of that comment, or in the context in which it is made, to link it to the claimant’s protected characteristic of disability. (section 26(1)(a) EQA). It is to do with the behaviour of her and her colleagues. That they were a group of neurodiverse employees is co-incidental. There is nothing to indicate that the comment was related to their neurodiversity, or the claimant’s.

221. That the claimant’s items were moved into another office on 12 October 2023 was, on the evidence before us, clearly because of building work being carried out in the claimant’s usual office. There was no evidence whatsoever to suggest it was in any way connected with the claimant’s disability. The claimant was informed of the building work along with the rest of the respondent’s staff, by Ms Bonser, at the time this was happening. She was not singled out, and the building work affected a number of the respondent’s staff. It is not reasonable in the circumstances for the claimant to consider that this was done on this basis or to consider that it was related to her disability.

222. Finally, the claimant alleges that she was harassed for reasons related to her disability of anxiety by Stephanie Hollywood and Joanne Wells pressurising her to attend her disciplinary hearing on 3rd November 2023. The claimant says that this was particularly egregious because the respondent knew that she had submitted a fit note on 2nd October 2023 citing stress and anxiety and knowing that her Occupational Health Report, dated 27th October 2023 stated that she was unfit for work. We find that the comments by Ms Hollywood and Ms Wells were nonetheless accurate, which were to remind the claimant that not attending meetings serves to prolong the process which then adds to the claimant’s stress and anxiety. This is correct. The stress and anxiety was being reported by the claimant to have been significantly worsened as a result of the process itself.

223. We do not doubt that the comments of Ms Wells and Ms Hollywood caused the claimant to feel increased pressure to attend. However, the claimant was involved in a disciplinary investigation, and we find that some degree of discomfort and pressure was inevitable in the circumstances and it would not have been possible for the respondent to make adjustments to avoid these feelings. We find that this was the purpose of the comments made by Ms Wells and Ms Hollywood. Consequently, we do not accept that it was in all the circumstances reasonable for the comments to be considered as having the effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

<u>Direct race discrimination and harassment on the grounds of race and sex (s13, s26 EQA)</u>

224. The claimant is a British Asian woman. She submits that she was treated less favourably than those who do not share her race and colour. She also alleges that she has been harassed due to her sex and her race. The claimant relies for direct discrimination purposes on Katie Price who is white British and on a hypothetical white British comparator.

225. The allegations of direct race discrimination are,

- that Katie Price stated "*play the race card like I would play the blind card*" and also
- that Katie Price told the claimant that she looked like a "*fucking bumblebee*".
- Suspending the claimant on the grounds of discriminatory behaviour and failing to suspend other employees (Katie Price) in respect of discrimination allegations.
- Investigating the claimant on the grounds of discrimination allegations and failing to investigate other employees.

226. When the claimant was interviewed by Ms Johnson on 24 October 2023, she told Ms Johnson that Ms Price had said these things to her. However, the claimant's comments to Ms Johnson are overwhelmingly that she was not offended these comments, nor more generally by what she described as the "banter" in the team. She described how the banter "*may come across as something wrong from outside the team. It is reciprocated and in good humour…. something that is accepted in the team…. We work with difficult subject areas, child abuse, death, illness and you know we must find humour in the darkest places.*"

227. The claimant made no complaint to the respondent about either of the comments by Ms Price at the time they were made, nor did she raise her objections to these comments in her interview with Ms Johnson. On the contrary, she told Ms Johnson that these comments were "*reciprocated and in good humour*." This was despite Ms Johnson's evidence in answer to cross-examination questions that the claimant was very focussed on Ms Price during the interview. She first raised complaints about these same comments in her grievance on 20 November 2023, once she had seen the investigation statements from Ms Price and others, and once she had understood that Ms Price's allegations about the claimant's comments about her make-up, and feeding Ms Price's service dog, were the causes of the investigation and her subsequent suspension.

228. We therefore conclude that the claimant did not consider these comments to be less favourable treatment at the time they were made. She believed, and explained to Ms Johnson, that comments were made in the context of the supportive workplace culture. She only came to consider them to be less favourable treatment, because she considered that it was unfair that

she was being suspended for having made discriminatory comments when others had also made discriminatory comments, including Ms Price. This is not the same as being offended because the comments were made on the grounds of a protected characteristic of hers.

229. The investigation statements indicate that a number of other members of staff made a number of potentially discriminatory comments to one another and the claimant, but the claimant chose not to complain about those, because the originators of the comments were not the perceived cause of her suspension.

230. Furthermore, the comment about the bumblebees was on the claimant's own contemporaneous evidence made to the claimant and also to Ms Price's husband, Kev, who is white. Both were wearing yellow t-shirts and standing next to one another. Ms Price is blind, having only 10% sight in one eye. We find that Ms Price said that they both looked like bumblebees. As Kev is white, the reason why Ms Price said this was not, on the balance of probabilities, because the claimant is Asian.

231. Both of these allegations are also allegations of racial harassment. There is also an allegation of sex-related harassment, that that Katie Price told the claimant to "*stick your tits out*" for the doctors.

232. There is no evidence that these comments were made with the purpose of harassing the claimant. Conduct shall be regarded as having the effect of harassing an individual only if, having regard to all the circumstances, including in particular the perception of the victim, it should reasonably be considered as having that effect (s26(4) EQA).

233. We find that the perception of the claimant at the time the comments were made was not that they had the effect of violating her dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. On the contrary, her comments to Ms Johnson in the investigation interview indicated that the culture was shared, reciprocated and exchanged "*with the best intentions of defusing hard situations, meant in a positive way not to make people feel uncomfortable and harmful in any way*".

234. The claimant has not established on the balance of probabilities that Ms Price's comments had the purpose of violating her dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her, on the grounds of her race or sex.

235. The claimant also alleges that she was subjected to direct race discrimination because she was suspended and investigated on the grounds of discriminatory behaviour, but Katie Price was not so suspended or investigated, nor were other employees.

236. We do not accept that Ms Price is an appropriate statutory comparator for the direct discrimination allegations. To be a statutory comparator, there

must be no material difference in the circumstances of the case of the claimant and the comparator, and that is not the case in relation to the claimant and Ms Price. It was the evidence of Ms Hollywood and Ms Johnson that the decision to suspend the claimant and investigate her was taken because of the number of people who raised issues with her behaviour; this was not the case with Ms Price. Also, Ms Hollywood considered it significant that she and Mr Dobson had a conversation with the claimant on 6 October about these issues, to give the claimant an opportunity to reflect, but the problem continued after that conversation had happened, indicating that the claimant had not taken what was said to her into account. This did not happen with Ms Price.

237. We therefore conclude that an appropriate comparator for these purposes is a hypothetical white employee who had also been spoken to by Ms Hollywood and Mr Dobson on 6 October, and against whom further allegations were made after that meeting. The question for the Tribunal is, would the respondent have suspended and investigated white employees in the same circumstances? We find that they would. There is nothing more before the Tribunal other than a difference in the claimant's race and ethnic origin and a difference in treatment. There is no evidence of any causal link between the two. On the contrary, there is credible evidence from the respondent, which we accept, as to why the claimant's circumstances were different to those of Ms Price.

238. In terms of the other employees who had discrimination allegations made against them but were not investigated, the Tribunal understands that this is referring to Katie Price also. We repeat the conclusions that we have come to in the paragraphs above, in relation to this allegation also.

Victimisation (s27 EQA)

239. The claimant asserts that she did protected acts. It is accepted that she did the protected acts alleged by her, which were raising concerns on 29 September 2023 about discrimination in respect of Ms Bonser's promotion opportunity, by asking Ms Bibi if it was "*legal*". She referred to this again in her meeting with Ms Hollywood and Mr Dobson on 6 October 2023. She complained of harassment in her grievance which was sent to the respondent on 20 November 2023 and complained again of harassment in her grievance appeal dated 20 December 2023.

240. The claimant alleges that because she did these protected acts, she was put through a suspension, investigation and disciplinary process and dismissed on 22 December 2023.

241. There is no evidence before the Tribunal from which we could conclude, in the absence of an explanation from the respondent, that the claimant's dismissal was caused or in any way influenced by her protected acts (s136 EqA). Ms Johnson and Ms Hollywood's evidence was accepted by the Tribunal to be that their concerns over the claimant's discussion of Ms Bonser's promotion was not because the claimant questioned the recruitment process

but that the claimant and her colleagues appeared repeatedly to gossip about Ms Bonser's lack of suitability for the post and her lack of experience. This created an unpleasant atmosphere in the office, which other members of staff struggled to tolerate.

242. The claimant's complaints of harassment in her grievance and grievance appeal did not, we find, influence the respondent in relation to her disciplinary or dismissal. The claimant was dismissed because of a breakdown in the relationship of trust and confidence, and because she had failed to reflect on her involvement in the matters raised with her. As we have noted in relation to the harassment allegations, these were not raised with the respondent at the investigation meeting but only once the claimant understood who had made allegations against her. This, we find, significantly undermined the claimant's credibility in relation to her motivation for making complaints of harassment. It did not cause or contribute to her dismissal.

Time limits and jurisdiction

243. The claimant began ACAS Early Conciliation on 22 December 2023, and it ended on 27 December 2023. She issued proceedings on 26 January 2024. Any allegations prior to 23 September 2023 would only have been in time if we had found there to be continuous course of conduct or allowed the claimant an extension of time on a just and equitable basis. As only the allegation of a failure to make reasonable adjustments in December 2023 has succeeded, we have not considered the issue of time limits but note that the first allegation of disability discrimination is also in time, this arising on 6 October 2023. As none of the allegations of race or sex discrimination have been successful, it is not proportionate to consider whether these were in time on a "just and equitable" basis, or as part of a course of discriminatory conduct.

Remedy and remedy hearing

244. We have not provided the parties with a date for any remedy hearing, or any case management orders for the same. This is on the basis that we think it highly likely that the claimant will appeal against our decision. Should the parties wish for the Tribunal to list such a hearing, and make case management orders for this, they are asked to contact the Tribunal with their request.

Approved by:

Employment Judge Barker

28 April 2026

Judgment sent to the parties on:

26 May 2026

For the Tribunal:

…………………………………

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at https://www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

Annex
Complaints and Issues

As set out by the claimant and not objected to at the CMH and as amended by the claimant following the claimant's evidence:

Disability

1.1 Was the Claimant disabled within the meaning of Section 6 of the Equality Act 2010 at any material times.

1.2 In particular, at the material time: -

1.2.1 Did the Claimant have a physical or mental impairment?

1.2.2 The Claimant says her impairments are anxiety and depression and ADHD.

1.2.3 Did the impairments have a substantial adverse effect on her ability to carry out day to day activities?

1.2.4 If not, did the Claimant have medical treatment, including medication or take any measures to treat or correct the impairment?

1.2.5 Would the impairment have had a substantial adverse effect on her ability to carry out day to day activities without the treatment or other measures?

1.2.6 Was the effect of the impairment long term?

1.2.7 The Tribunal will decide: -

1.2.7.1 Did they last at least 12 months or are they likely to last at least 12 months.

1.2.7.2 If not, were they likely to reoccur.

2 Time Limit

2.1 The Claimant commenced ACAS Early Conciliation on 22nd December 2023, with her certificate being issued on 27th December 2023. The Claimant issued a claim on 26th January 2024.

2.2 Have the Claimant's claims been brought within the relevant time period of three months starting with the acts/omissions to which the claims relate?

2.3 If not, do the alleged acts or omissions which the Claimant refers to in her claim form constitute a continuing act of discrimination?

2.4 If not, are there any grounds on which it would be just and equitable to extend time?

3 Discrimination arising from disability under s15 EqA 2010

3.1 Did the Respondent treat the Claimant unfavourably by doing any of the following: -

(i) Inviting her to an investigation meeting on 6th and 16th October 2023, which ultimately led to suspension and then dismissal.

~~(ii) Katie Price stating in the investigation meeting notes on 17th October 2023 that she had to leave the room as the Claimant was still being mean about Jamie. This was a false statement.~~

~~(iii) Emma Staples making a comment that "it's an inclusive workplace for other disabilities but knew other staff would use Jamie's promotion to make a negative impact and used as a tool for their own gain."~~
~~(iv) Stephanie Hollywood referring to the Claimant as 'toxic' in a meeting on 6th October 2023.~~
~~(v) False (anonymous) witness statements provided on 19th October 2023 implying that the Claimant discriminated against a service user.~~
~~(vi) An anonymous witness statement dated 20th October 2023 stating that the Claimant was jealous of Jamie being promoted and questioning the recruitment process.~~
~~(vii) Jamie Bonser and Anita Bibi providing false and negative witness statements for the investigation.~~
~~(viii) Failing to allow the Claimant more time to respond to the questions raised and holding the Employment Review Meeting in her absence on 22nd December 2023.~~
(ix) Dismissing the Claimant on the grounds of a breakdown in trust and confidence.
(x) Making unreasonable and unfounded assertions about the Claimant's character in the dismissal letter of 22nd December 2023.

3.2 If so, did those things arise in consequence of the Claimant's disability?

(i) The something arising is the Claimant's requirement for additional time to reflect on questions in advance of hearings.

(ii) The Claimant is impulsive and makes actions or comments without thinking.

(iii) The Claimant has concerns about the impact of elevating issues.

3.3 Was the unfavourable treatment because of anything arising in consequence of the Claimant's disability?

3.4 Did the Respondent do any of (i) to (x) because of something arising in consequence of the Claimant's disability?

3.5 If so, can the Respondent show that the treatment was a proportionate means of achieving a legitimate aim? Respondent to confirm legitimate aim.

3.6 The Tribunal will decide in particular:

(i) Was the treatment an appropriate and reasonably necessary way to achieve those aims.

(ii) Could something less discriminatory have been done instead.

(iii) How should the needs of the Claimant and the Respondent be balanced.

4 Disability related harassment under s26 EqA 2010

4.1 Did the Respondent subject the Claimant to unwanted conduct that had the purpose or effect of violating her dignity or creating an intimidating, hostile or offensive environment for her, considering her perception and other circumstances of the case in respect of the following allegations?

(i) On 24th October 2023, during the investigation, the Claimant was told that she made people feel uncomfortable about their departure from the business and accused her of saying she would pull the mental health card.

(ii) Stephanie Hollywood and Joanne Wells pressurising the Claimant to attend her disciplinary hearing on 3rd November 2023, despite her submitting a fit note on 2nd October 2023 citing stress and anxiety and knowing that her

Occupational Health Report, dated 27th October 2023 stated that she was unfit for work.

(iii) Stephanie Hollywood commenting in the investigation meeting minutes that the Claimant was part of a "toxic clique".

(iv) The Claimant's items were moved into another office on 12th October 2023, and she was made to feel as though she was not welcome.

(v) Katie Price stating that the Claimant will play the mental health card to get her own way.

4.2 In determining this, the Tribunal will assess whether it was reasonable for the conduct to have such effect, considering all the circumstances of the case.

5 Failure to make reasonable adjustments under s20/21 EqA 2010

5.1 Did the Respondent apply the following Provision, Criterion or Practice (PCP) to the Claimant?

(i) Requiring employees to respond to questions in respect of disciplinary meetings with less than 24 hours' notice.

(ii) Requiring employees to attend investigation meetings and disallowing postponements.

(iii) Failing to give employees lists of questions in advance, when subject to an investigation process.

5.2 If so, was the Claimant placed at a substantial disadvantage by the application of such PCP in comparison to her non-disabled colleagues?

5.3 If so, what was the substantial disadvantage?

(i) The Claimant was unable to respond to the questions as she needed time to reflect. As a result, she was not permitted by the Respondent to attend her Employment Review Meeting on 22nd December 2023 and was subsequently dismissed.

(ii) The Claimant was not given the opportunity to postpone the meeting and arrange representation which caused distress in the meeting.

(iii) The Claimant could not review the questions in advance, which caused difficulty processing and answering questions on the day of the meeting. This also added to the Claimant's distress.

5.4 Was the Respondent under a duty to make reasonable adjustments to alleviate the alleged disadvantage?

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

5.6 Did the Respondent fail to take such steps as it was reasonable to have to take to avoid the disadvantage?

5.7 The Claimant says the Respondent could have taken the following steps to avoid the disadvantage:

(i) Given the Claimant an opportunity to attend the Employment Review Meeting via written submission at a later date (postponed the meeting).

(ii) Obtained an Occupational Health Report to understand the nature of her disabilities and the support required.
(iii) Allowed the Claimant an opportunity to postpone the investigation meeting to permit for representation.
(iv) Allowed the Claimant to review questions in advance so that she could process them accordingly.

6 Direct race discrimination under s13 EqA 2010

6.1 Was the Claimant treated less favourably than those who do not share her disability by:

(i) Katie Price stated, “play the Race card like I would play the blind card.”
(ii) Katie Price telling the Claimant that she looked like “a fucking bumblebee.”
~~(iii) Not being informed of promotional opportunities and promoting White/British employees (Jamie Bonser).~~
(iv) Suspending the Claimant on the grounds of discriminatory behaviour and failing to suspend other employees (Katie Price) in respect of discrimination allegations.
(v) Investigating the Claimant on the grounds of discrimination allegations and failing to investigate other employees.
(vi) ~~Failing to take the Claimant’s grievance seriously.~~
(vii) ~~Implying that the Claimant had not taken allegations against her seriously and shown little willingness to reflect on issues raised.~~
(viii) ~~Stating that the Claimant had not fully engaged in the investigation and disciplinary process.~~
(ix) ~~Failed to allow the Claimant an opportunity to provide written submissions in respect of her Employment Review Meeting, including failing to postpone the meeting.~~
(x) ~~Dismissing the Claimant for a breakdown in trust and confidence.~~

6.2 Who is the correct comparator? The Claimant compares herself to Katie Price, Stephanie Hollywood and Jamie Bonser who are all White/British and were treated more favourably than her.

6.3 If those comparators are not suitable, can the Claimant rely on a hypothetical comparator of an employee of a similar standing to the Claimant, but does not share the Claimant’s race and was therefore not treated less favourably?

7 ~~Indirect race discrimination under s19 EqA 2010~~

~~7.1 Did the Respondent have the following PCP:~~

~~(i) Failing to inform employees of promotional opportunities.~~
~~(ii) Subjecting employees to investigation and disciplinary processes for raising concerns.~~

~~7.2 Did the Respondent apply the PCP to the Claimant?~~

~~7.3 Did the Respondent apply the PCP to persons with whom the Claimant does not share the characteristic, or would it have done so?~~

~~7.4 Did the PCP put persons with whom the Claimant shared the characteristic with at a particular disadvantage when compared with persons who the Claimant does not share the characteristic in that:~~

~~(i) They were not given the opportunity to progress within the workplace.~~
~~(ii) They were told their behaviour was inappropriate and subsequently dismissed.~~

~~8~~ Race related harassment under s26 EqA 2010

~~8.1~~ Did the Respondent subject the Claimant to unwanted conduct that had the purpose or effect of violating her dignity or creating an intimidating, hostile or offensive environment for her, considering her perception and other circumstances of the case in respect of the following allegations?

(i) Katie Price stated, "play the Race card like I would play the blind card."
(ii) Katie Price telling the Claimant that she looked like "a fucking bumblebee."

8.2 In determining this, the Tribunal will assess whether it was reasonable for the conduct to have such effect, considering all the circumstances of the case.

9 Sex related harassment under s26 EqA 2010

9.1 Did the Respondent subject the Claimant to unwanted conduct that had the purpose or effect of violating her dignity or creating an intimidating, hostile or offensive environment for her, considering her perception and other circumstances of the case in respect of the following allegations?

(i) Katie Price told the Claimant "Stick your tits out for the Dr's".

9.2 In determining this, the Tribunal will assess whether it was reasonable for the conduct to have such effect, considering all the circumstances of the case.

10 Victimisation under s27 EqA 2010

10.1 Did the Claimant do the following protected acts:

(i) On 29th September 2023, she raised concerns about discrimination in respect of a promotion opportunity she was not provided.
(ii) The Claimant raised concerns regarding discrimination during an investigation meeting on 6th October 2023.
(iii) The Claimant complained of harassment in her grievance raised on 20th November 2023.
(iv) The Claimant complained of discrimination in her grievance appeal dated 20th December 2023.

10.2 Did the Respondent do the following things:

(i) The Claimant was put through suspension, an investigation process and disciplinary hearing.
(ii) The Claimant was dismissed for a breakdown of trust and confidence on 22nd December 2023.

10.3. By doing so, did it subject the Claimant to a detriment?

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

11 Remedies

11.1 What financial losses has the discrimination caused the Claimant?

11.2 Has the Claimant taken reasonable steps to replace loss of earnings, for example, by looking for another job?

11.3 Did the ACAS Code of Disciplinary and Grievance Procedure apply?

11.4 Did either party unreasonably fail to comply with it?

11.5 If so, is it just and equitable to increase the award of any pay to the Claimant, by what proportion such as 25%?

11.6 Should interest be awarded and how much?

11.7 What injury to feelings has the Claimant sustained?