EMPLOYMENT TRIBUNALS

Claimant: Ms R Bell

Respondent: Ultima Furniture Systems Limited

Heard at: Southampton Employment Tribunal

On: 9-13 and 16 March 2026

Before: Employment Judge Self (sitting alone)

Appearances

For the Claimant: Ms S Harty – Counsel

For Respondent : Mr J Franklin – Counsel

RESERVED JUDGMENT

1. The Claim at 4.1.2 pursuant to section 15 of the Equality Act 2010 is well-founded and succeeds, 4.1.1 is not well-founded and is dismissed.

2. The Reasonable Adjustment claims are not well-founded and are dismissed.

3. The Harassment claims set out at paragraphs 6.1.5 and 6.1.6 are well founded and succeed. All other harassment claims are not well-founded and are dismissed.

4. The direct disability discrimination claims are not well-founded and are dismissed.

5. The Claim re Rest Breaks under the Working Time Regulations 1998 (as amended) is not well-founded and is dismissed.

WRITTEN REASONS

1. The Claimant seeks compensation for what she contends were acts of disability discrimination and breaches of the rest break provisions of the Working Time Regulations 1998 by her former employer Ultima Furniture Systems Limited (hereafter the Respondent).

2. The Claimant was employed between 6 September 2022 and 28 June 2024 and she was engaged as a Kitchen Planner. The Respondent is a kitchen manufacturer and online retailer employing just under six hundred staff. The Claimant entered Early Conciliation on 19 July 2024 and received her certificate on 30 August 2024. The Claim was brought on 4 November 2024. Any act or omission that took place before 24 June 2024 is potentially out of time subject to being part an act continuing over a period that concludes in time, and subject to consideration of a just and equitable extension of time.

3. The issue of disability was not conceded in full and a hearing was conducted by EJ Smail on 12 August 2025 to determine that. The conclusion (88) was that the Claimant was disabled at all material times on account of the following impairments:

   a) Attention Deficit Hyperactivity Disorder (ADHD)
   b) Autism Spectrum Disorder (ASD)
   c) Severe Anxiety
   d) Chronic Migraines

   Following that finding it was confirmed that the Respondent's position on knowledge was that they did not have the requisite knowledge in respect of ASD and the anxiety, nor in respect of any substantial disadvantage caused by the same.

4. The issues in the case were first determined by EJ Bax following the hearing on 18 March 2025. Those issues have since been supplemented by further particulars from the Claimant, statutory defences from the Respondent and further refinements that have taken place just before the evidence commenced and during the hearing. The final List of Issues (so far as liability is concerned) is as follows:

1. Time limits

1.1 The claim form was presented on 4 November 2024. The claimant commenced the Early Conciliation process with ACAS on 19 July 2024 (Day A). The Early Conciliation Certificate was issued on 30 August 2024 (Day B). Accordingly, any act or omission which took place before 24 June 2024 (which allows for any extension under the Early Conciliation provisions) is

potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint.

1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

1.3 Was the rest break claim made within the time limit in reg 30 of the Working Time Regulations 1998? The Tribunal will decide:

1.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the date on which the rest break should have been permitted. A new three-month time limit starts to run from each occasion on which the rest is not afforded (See Scottish Ambulance Service v Truslove and anor EATS 0028/11,Grange v Abellio London Limited [2017] ICR 287?

1.3.2 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

1.3.3 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

2. Disability

2.1 The Claimant was disabled at the relevant time by reason of

2.1.1.1 Autism Spectrum Disorder (ASD);

2.1.1.2 Attention Deficit Hyperactivity Disorder (ADHD)

2.1.1.3 Anxiety;

2.1.1.4 Chronic migraines.

3. Direct disability discrimination (Equality Act 2010 section 13)

3.1 Did the Respondent do the following things:

3.1.1 On or around 13 May 2024 and 15 November 2023, Ms Russell refused to explain to the Claimant her alleged mistakes because it would worsen her anxiety.

3.1.2 Dismissed the Claimant;

3.2 Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated. The Claimant has not named anyone in particular who she says was treated better than she was and therefore relies upon a hypothetical comparator.

3.3 If so, was it because of disability?

3.4 Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to disability?

4. Discrimination arising from disability (Equality Act 2010 section 15)

4.1 Did the Respondent treat the Claimant unfavourably by:

4.1.1 On or around 13 May 2024 and 15 November 2023, Ms Russell refused to provide the Claimant with detailed feedback about the mistakes she was accused of making because it would exacerbate her anxiety. This denied the Claimant the opportunity to prevent further mistakes;

4.1.2 Dismissed the Claimant

4.2 Did the following things arise in consequence of the Claimant's disability? The Claimant's case is that there was an increased likelihood of mistakes and increased anxiety.

4.3 Was the unfavourable treatment because of any of those things?

4.4 Was the treatment a proportionate means of achieving a legitimate aim?

4.4.1 The Respondent says that its aims were:

4.4.1.1 To reduce the level of errors, prevent customer complaints; and reduce the risk of unnecessary costs being incurred by the Respondent due to incorrect orders being generated or subsequently being rectified. ;

4.5 The Tribunal will decide in particular:

4.5.1 Was the treatment an appropriate and reasonably necessary way to achieve those aims;

4.5.2 Could something less discriminatory have been done instead;

4.5.3 How should the needs of the Claimant and the Respondent be balanced?

4.6 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

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

Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

5.1 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

5.1.1 A practice of arranging ad-hoc meetings without advance warning (ADHD/ASD/Anxiety) (PCP 1);

5.1.2 A practice of presenting instructions in an unclear format, by being typed into Microsoft teams in a way in which the information was sent together rather than in small parts (ADHD) (PCP 2);

5.1.3 …….,

5.2 Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that:

5.2.1 The Claimant suffered anxiety and was unable to request adjustments to the meetings in advance (PCP 1);

5.2.2 The Claimant had greater difficulty in processing information (PCPs 3);

5.2.3 ……;

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

5.4 What steps (the 'adjustments') could have been taken to avoid the disadvantage? The Claimant suggests:

5.4.1 Advance warning to be given of meetings to manage her anxiety and allow her to request any adjustments to the meeting in advance (PCP 1);

5.4.2 Instructions to be presented in bullet point format so that the Claimant could refer back to them (PCP 3);

5.4.3 Travel to the office and other sites to be limited (PCP 4);

5.4.4 Instructions to be accompanied by illustrations where possible (PCP 3);

5.4.5 Pictorial references with measurements to be provided for the kitchen units (PCP 3).

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

5.6 Did the Respondent fail to take those steps?

6. Harassment related to disability (Equality Act 2010 s. 26)

6.1 Did the Respondent do the following things:

6.1.1 In October 2023, Ms Russell stating that due to an error the Claimant had made, her performance would be monitored (Anxiety/ADHD/ASD);

6.1.2 In November 2023, Ms Russell shouting at the Claimant for not having her undivided attention (Anxiety/ADHD/ASD);

6.1.3 On or around 7 February 2023, Ms Russell isolating the Claimant from her colleagues by prohibiting her from ……. monitoring her messages with colleagues, and telling the Claimant that she was not allowed to meet up with her colleagues on a training day (ADHD/ASD);

6.1.4 On 12 December 2022, Ms Russell informing the Claimant in writing that she was not entitled to a 20-minute break during her eight-hour shift (ADHD/ADHD/Anxiety/migraine);

6.1.5 Ms Russell making only vague attempts to initiate support for the Claimant, after she had decided to monitor the Claimant's performance namely:

6.1.5.1 When the Claimant asked for things to be provided in bullet form, it was only done on one occasion (ADHD/ASD/Anxiety).

6.1.5.2 On or around 15 November 2023, the Claimant asked for the agreed OH assessment and performance review to be carried out online and not in person, explaining the difficulties of in-person attendance at the Respondent's HQ. Ms Russell explained that she would need to seek legal advice on the matter and accused the Claimant of making matters "unnecessarily complex", naming a list of non-disabled colleagues who had been able to attend face to face meetings with her (Anxiety/ADHD).

6.1.5.3 On or around 25 January 2024, the Claimant verbally requested graphics and measurements of units as a pictorial aid to help her process the information. Ms Russell agreed to provide this. On or around 13 May 2024, Ms Russell informed the Claimant that she should have prepare the documents herself (Anxiety/ADHD).

6.1.5.4 On or around 13 May 2024, Ms Russell told the Claimant that she had the same information as everyone else in response to repeated requests for checklist information to be presented in a format that was accessible (Anxiety/ADHD).

6.1.5.5 On or around 13 May 2024, Ms Russell directed the Claimant to utilise the Planner Teams chat room as an online continuous training tool in lieu of providing the formal or structured training the Claimant had requested (Anxiety/ADHD/ASD).

6.1.5.6 In a meeting on 24 June 2024, members of the Respondent's management team criticised the Claimant for asking questions to help her understanding (Anxiety/ADHD).

6.1.5.7 No OH assessment was carried out during the time of C's employment as she was dismissed before the scheduled assessment appointment (All conditions).

6.1.6 Mr Carabine's conduct during the dismissal meeting namely:

6.1.6.1 Informing her that her probationary period was unilaterally extended to two years.

6.1.6.2 He said, 'you're not a happy worker' and that the claimant was 'clearly depressed'.

6.1.6.3 Towards the end of the meeting said, "well, I've listened to all the evidence and I support Chloe's decision on this". Ms Haikings appeared shocked and had not contributed to the meeting at all. The Claimant asked what the decision had been based on and Mr Carabine said the Claimant "clearly doesn't have the skillset for this role". They had not discussed her skills in the meeting.

6.1.7 The Claimant asked Ms Haikings for her view, and Ms Haikings replied, "you ask too many questions", referring to the fact the Claimant had asked the same question twice because there was no formal training pack available. (The Claimant says she had only been in the job for two weeks and was finding it hard to adapt).

6.2 If so, was that unwanted conduct?

6.3 Did it relate to the Claimant's protected characteristic, namely disability?

6.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

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

7. Rest breaks (reg 12 and 30 Working Time Regulations 1998

7.1 Did the Respondent on 12 December 2022 instruct the Claimant in writing that she was not permitted to take a 20-minute rest break during her 8-hour day?

7.2 Did the Respondent refuse to permit the Claimant to take a daily rest break on 12 December 2022?

7.3 Did the Respondent refuse to permit the Claimant to take a daily rest break for the days following 12 December 2022?

7.3.1 This will involve consideration of whether the Respondent proactively ensured working arrangements to allow workers to take daily rest breaks (see Grange v Abellio London Limited [2017] ICR 287)

7.4 Should an award be made to the Claimant pursuant to reg. 30(3) and (4), and if so how much?

5. The numbering within the List of issues above will be used for reference purposes during this Judgment. Witnesses will be generally referred to by their surname only after their first appearance for the benefit of brevity. This hearing had been listed to be heard with Lay Members but was switched to a single Employment Judge the day before the hearing on account of Lay Member unavailability. There was no challenge to that on the first morning of the hearing. The hearing was also due to be in person but was converted to CVP as there were going to be difficulties with some of the Respondent's witnesses attending and there was insufficient capacity to hold a hybrid hearing in the Southampton Tribunal Hearing Centre. Both parties consented to the whole hearing being by CVP. The first day was taken up as a reading day and was also required to facilitate the CVP link. It was considered that all evidence should be taken through the same medium.

6. The Tribunal heard oral evidence from the Claimant and her partner Mr Simon Perkins. For the Respondent we heard oral evidence from Mrs Anoushka Russell, Sophie Dobson, Chloe Haikings and Michael Carabine. There was insufficient time to give Judgment and so a Reserved Judgment has had to be drafted. This was not an easy hearing as the bundle was in all sorts or disarray and certainly did not present documents in a logical or chronological fashion and

the Claimant's statement was bereft of cross references despite being prepared professionally.

The Facts

7. On 30 August 2022 the Claimant sought a date when the updated contract might be ready from Chloe Haikings. In that email she explained that she had turned down another job and so was a ***"little anxious"***. The Tribunal does not consider that that was a sign to the Respondent that she was disabled on account of anxiety, but merely an indication that a specific situation was making her anxious.

8. The Respondent replied and in response the Claimant asked what the Respondent's process was for acknowledging that a worker was disabled and whether there were any further ***"forms or processes I need to review regarding reasonable adjustments I may require in the future."*** The Claimant asked the Respondent to plan out and explain the training she could expect.

9. The following day Haikings told the Claimant that the Respondent was ***"more of a learn on the job company"*** but that she would be there to support the Claimant and to help her learn the systems. She said, ***"in regard to your disability*****, are you able to give me some more information so I can seek advice for HR?"**

10. The Claimant responded as follows with the following views / information:

a) She considered that all contracts including hers should be amended so that it reflected that the Respondent recognised that she was registered disabled under the EqA, asserting that it was a legal requirement to do so. That appears to be a misunderstanding on the Claimant's part.

b) The Claimant had an employment coach who was qualified to answer questions on the Claimant's behalf and the Claimant provided an address that she could be contacted on.

c) The Claimant disclosed the following about her conditions:

i) She set out a number of physical disabilities and set out that the reasonable adjustment that she required was to have a five - minute exercise break each hour of the working day. She noted that her contract allowed only a 20-minute break during the day. She indicated that she took medication for pain relief which meant she may be ***"slightly slower"*** in completing tasks and she required a special seat whilst working at her computer.

ii) Migraine was disclosed as something she took medication for and she gave information about the lighting and coloured desk she needed. The Claimant was, of course, working from home.

iii) She disclosed that she had ADHD but said that it ***"doesn't affect my ability to do my job"***. She indicated that she processed instructions literally because of her condition and that ***"it can sometimes take longer to learn something as I write a list of bullet point instructions for processes so I can follow them daily***".

iv) The Claimant concludes by saying that ***"Any adjustments I may require, will be suggested by Cora Burke, my work coach and we can agree/discuss them as they arise"***.

11. Ms Coope, an HR manager, wrote back after advice on the contract issue and indicated, rightly in my view, that whilst there was no need to put anything into the contract as suggested above, but she recognised that the Respondent would be required to offer help and guidance under the Equality Act 2010. Coope had no issue with the five minutes per hour exercise regime for the physical disabilities and acknowledged the migraines and stated that ***"if this becomes an issue or you feel it is happening more frequently"*** then the Claimant should inform the Respondent immediately and they would see what could be done to help. The ADHD was noted and that instructions would be taken literally and stated that if the Claimant required more training then that might help.

12. On 6 September 2022 the final email was sent in this thread (or at least the final one available to me) where the Claimant thanked Coope for her ***"professional approach"*** towards her disabilities and remarked that some companies were still in the dark ages when it came to accommodating disabilities. The Claimant indicated that she was waiting on some notes from her work coach which would be forwarded later that day. The Claimant indicated that it would reference the importance of prior notice and routines in processes relating to her ADHD.

13. In the Claimant's witness statement, she refers to this correspondence (C-11) and indicates that she thought that the Respondent should have referred her for an OH assessment when she started. I note that that is not a suggestion she made at the time and indeed, she commends the Respondent for their written consideration of her various conditions. This criticism of not contacting OH was a recurring theme in the Claimant's case at this Tribunal.

14. My reading of the documents set out above is that the Claimant demonstrates a clear understanding of her medical conditions, the effects they have upon her, what she requires at that time, and the fact that she has got a specific advisor in tow, who will shortly be in communication with the Respondent. The primary message that the Claimant conveys is that her conditions are under control via drugs and/or other adjustments that she has made and in the future if there is a need for further adjustments she will bring those to the attention of the Respondent as and when required.

15. Coope, on behalf of the Respondent, responds positively and is commended by the Claimant for her approach. There is nothing within the correspondence which

would indicate any form of negativity towards the Claimant for raising the issues either at the time or moving into the future. Of course, the Respondent could have gone straight to OH with a referral but I do not consider that failing to do so at this point with a Claimant effectively telling them that despite her medical situation it is all under control was, in any way, unreasonable. There is no evidence at the time that would suggest that the Claimant thought they were being unreasonable either. It was left that the Claimant would via her coach let the Respondent know anything that she needed. That never happened. Finally at this point in time the Claimant did not mention her ASD or her anxiety at all and from this correspondence there was nothing that could have led the Respondent to consider those conditions were in place. In fact, by the assured nature of the Claimant's correspondence the Respondent could have been very well assured that she had let them know the totality of her medical impairments.

16. The Claimant was provided with a contract of employment and the salient points therein were:

a) The Claimant would be located at her home but may be required at the absolute discretion of the Respondent to work or relocate to such other place of work as directed. (Clause 3.1)

b) The first three months would be a probationary period. (Clause 4.1)

c) The Claimant would receive a minimum unpaid break of 20 minutes for every six hours worked and additional unpaid breaks would be taken at the discretion of the Respondent . (Clause 7.3)

d) Statutory sick pay was payable pursuant to the rules for the scheme for sickness absence and there was no company sick pay available. (Clause 9.3)

e) A disciplinary and a grievance policy was attached to the contract – non-contractual (Clause 13.1)

f) There was an employee handbook which provided further details of policies , procedures, and practices available for employees (Clause 15). In that handbook at 8.7 it states that if work is not maintained to a satisfactory standard , disciplinary action could result. There is no express provision in the policy for short circuiting the process in the event of service below two years.

17. The Claimant complained that the training that she received was inadequate at the outset and throughout her employment. It is clear that the Respondent held the view that individuals would best learn whilst undertaking the job and were inclined to take an iterative approach. If that is their model then it seems with a new person coming into the company errors especially at the outset are inevitable as systems and processes are explored.

18. There are a significant number of errors flagged up in the Claimant's early days. It is not clear who is bringing them to the Claimant's attention. At 420 there are

nine bullet pointed errors on the order which the Claimant replies by saying ***"that's terrible"*** and at 421 four bullet pointed errors are indicated the following day. The Claimant acknowledges that her performance is sub optimal on these occasions.

19. At 423 on 23 September it is pointed out to the Claimant that there are mistakes. Sensibly it is suggested that the Claimant go back through the basket and see if she can spot the errors, which is a perfectly acceptable learning process. The Claimant finally identifies most and in relation to one accepts that it is a ***"bad one"*** and that she was getting annoyed within herself on account of ***"stupid mistakes."***

20. As stated earlier, starting a new job with new processes is bound to be a steep learning curve and mistakes are inevitable. From the various pages of issues with the Claimant's work, it is clear that some were accepted by the Claimant, she had explanations for others and her colleagues were not hostile in their conduct towards her. The Claimant does not at this stage suggest that the mistakes she is making are linked to her disability at all.

21. On 28 November 2022 the Claimant sent a message saying that she was trying to work out a tick box approach for plan checks and that she had asked Kyle for some time to do it. Russell responded as follows (428):

> **"I remember Teams calling you on one of your first days with the company, as I wanted to make sure that I understood how we can support you with your ADHD and you mentioned that you were creating a tick list as this is something that helps when your attention drifts and that you required additional time when completing each task to go through the list. Have you not been compiling a list as you go and after each training session?"**

22. Russell indicated that she would clear the Claimant's work that morning so that the Claimant could work undistracted on a full check list which she could send over to Kyle for him to check and then he could add anything which he thought could help. She indicated that she and other managers were there to help and support the Team.

23. The Claimant responded that she had made notes but needed to get them into a better format. She indicated as she had done at the outset that the issue was one of speed of work and that with practice she would be fine. She commented that ADHD was all about working memory and that even if told something she would not necessarily remember it. The clear impression from this is that the Claimant was working on her own solution and the Respondent gave her time to complete it.

24. Neither the Claimant nor Russell refer to this conversation in their witness statements. That is particularly surprising from the Claimant as she asserted

in oral evidence that it was in this conversation that she told Russell about her conditions of ASD and Anxiety. Russell denies that she spoke about that at all. Taking into account the Claimant's failure to deal with this point in her statement, her failure to correct it or mention it in this Teams exchange I find that on the balance of probabilities the Claimant did not mention ASD or Anxiety just after she started to Russell.

25. On 12 December 2022 there is a conversation between Ms Anoushka Russell, one of the Claimant's managers and the Claimant, who had indicated that she had attended a doctor's appointment that day (216). In passing I note that it does not appear to have been with her GP as there is no note of an appointment that day (129). Russell had noted that the Claimant had mentioned a lunch hour and reminded the Claimant that she was not entitled to that. The Claimant indicated that she knew she only had 20 minutes, but the appointment had taken an hour. Russell then indicated that there was no lunch break of 20 minutes and asked who had told the Claimant and she said Chloe (Haikings) and other team members. The Claimant indicated that there was also a rota put up for remote workers to which Russell replied, ***"That is only for staff that work 10-hour shifts and not for staff that work 8-hour shifts"***. The Claimant's evidence was that from this time on she did not take a 20-minute break again in her employment.

26. There are further notes of errors that the Claimant made moving forwards into 2023. At 433 it is pointed out that a pelmet cannot be fitted with the design proposed by Haikings, at 434 that the plumbing was on the wrong side for a design to work and at 435 a substantial number of errors were discovered by Russell to which the Claimant responded that she had ***"no excuses"***. There has been no explanation or attempt to suggest that these errors were specifically on account of any of the Claimant's impairments, although Russell was aware that concentration issues could be an issue for the Claimant and knew that the Claimant had told her that could be a problem flowing from the ADHD.

27. On 14 October 2023 Russell wrote to the Claimant as follows:

"Quite a few of the errors that we have been getting through from the plan checks are from yourself. I am sending these over to you directly, as I do think that we need to start monitoring these now. Most do seem to be incorrect information advised, and not oversights, and therefore I don't feel that they are related to concentration".

A specific example about Edge Laminates was provided. There is no recorded reply available from the Claimant to Russell. The Claimant in her statement indicated that it triggered Rejection Sensitive Dysphoria which is common with those who have ASD and means that she got an ***"extremely painful emotional reaction to perceived or actual criticism and***

rejection". She states that it felt that Russell did not want her to succeed and that she was being set up to fail because of a failure to make reasonable adjustments.

28. Several points flow from this. It is clear from what is before me that the Claimant was making mistakes from time to time. I do not accept that Russell did not want her to succeed as there is nothing in the bundle at this point that demonstrates any sense of hostility to the Claimant. Life is a lot easier for a manager if an employee is working well. Russell's job is to manage. If mistakes are being made then it is perfectly reasonable to monitor the same in order to see if patterns can be identified. Russell indicated that it was primarily incorrect information being advised as opposed to oversights and, not unreasonably she concluded that did not appear to be a concentration issue.

29. On 7 November Russell raised an error which had cost the Respondent £400 because the mistake had led to a customer complaint. The Claimant apologised and said she recalled it had been a tricky basket. Russell's response was:

"Do you think we can organise for you to come in for some more training to run through some of the errors that you are making? I've just seen that you've posted a question in the showroom group which firstly is not something that the showroom should have to measure and secondly it is something that you really should know, or know how to work out by now"?

30. The Claimant responded that she was always up for more training and that the message in the showroom group was just something she was checking to be 100 per cent sure. The Claimant asserted that the medications she had for her migraines ***"made her dumb"***, slowed her down and made memory recall non-existent. The Claimant said she felt tired and rundown.

30. These exchanges in October and November 2024 are a watershed, in that the Respondent's position moved to feeling the need to address the mistakes the Claimant was committing and suggesting that more training maybe of some assistance and the Claimant for the first time was retreating to finding medical reasons for why she might be underperforming i.e., the medication she was taking.

31. On Wednesday 8 November (440) the Claimant was invited to the Yorkshire office on the following Monday for training and a review. The Claimant responded that was **"way too short notice"** but the reason given was not disability related but that she had her daughter to care for. The Claimant indicated that she would look into what days she could come up and would get back to Russell. Asking the Claimant to attend such a meeting was well within the auspices of what the contract allowed. At (270) the Claimant stated

that she was already very anxious and indicated that Russell knew that the anxiety hindered her ***"neurodiverse brain function and ADHD"***. I do not accept the Russell did know that.

33. The Claimant's mind set at this time is demonstrated in her What's App messages with her colleague and friend from working together previously, Bryony Dewhirst. The Claimant indicates on 8 November that she was stressed out by the fact that the Claimant wanted to see her and, again to her friend, she indicated she could not go up on 13 November because of child-care issues. There was nothing nefarious about the Respondent's request. To ask an employee who is making mistakes and who is underperforming to attend further training which might remedy the problem seems eminently sensible.

34. The following Tuesday the Claimant was asked to attend the Featherstone office on Monday 20 November (441). The Claimant replied asking the reason for her attendance, how many days it would be for, and again cited childcare as the reason for asking. She was told it was for only Monday and that the purpose was to conduct a Review and to discuss any reasonable adjustments that could have been required for a proposed future interview for a design role.

34. The Claimant pushed to see what the review would involve as she would wish to prepare and she wondered if it could be done by video because it was a very long drive, would need loads of petrol , overnight expenses and childcare. Again, the Claimant does not cite any disability related reasons for her preference for a remote meeting. Russell suggested that a review was better face to face as they would be going through certain errors and go through additional training as required (369). The Claimant then asked for a list of the errors that were going to be discussed so that she could prepare and Russell simply stated that all errors would have been documented on Teams. At the end of the day the Claimant wrote what appeared to be a conciliatory message saying that she looked forward to working things through with Russell and how it was lovely to have support and training offered. I am far from sure this was a true expression of her views.

35. On the next morning, the Claimant wrote to Jo Kent in HR to raise issues about having to travel to Yorkshire for the meeting and the expense and inconvenience of doing so. Clearly Russell was puzzled why the Claimant had done this when the conversation had seemed to end reasonably.

36. Russell queried why the Claimant needed to go to somebody else and the Claimant responded with a long message in which she set out the cost of travelling in detail and the inconvenience for her family and the fact that she was still suspicious of Russell's motives. Russell responded that she was surprised at the Claimant's responses to what she considered to be a

straightforward legitimate management instruction and indicated that she was going to take some advice (376).

37. Considering that correspondence leads to the following conclusions. Whilst it is understandable that the Claimant would want to avoid a long journey, the Respondent was equally reasonable in asking her to go. The Claimant was obliged to go under her contract. Whilst I understand that Russell would have been very busy, she could have identified five errors that she wanted to discuss with the Claimant and the Claimant asking for specifics was not unreasonable. I also can understand why Russell would have been surprised and puzzled by the Claimant going to a third party about the issue of the trip to Yorkshire thereby seeking to undermine Russell's authority. I can see no issue with Russell wanting to take advice on how to proceed in all the circumstances which were becoming increasingly tetchy.

38. The Claimant's mood at the time is exemplified in her discussions with Dewhirst. The Claimant sees the review meeting as being necessary as Russell ***"wanted her out"*** (250). Dewhirst suggests that if they are discussing further training for the Claimant then that did not sound too bad. The Claimant expressed the view that she wished she could trust the Respondent. When it is determined that the meeting will be remote the Claimant responds in a triumphalist manner gloating as to her perceived success before exclaiming that she had won. The thread is cut off at that point. The Claimant's position does appear to be unduly negative.

39. There was a meeting on 24 November on Teams and Russell attended with Catherine Rhodes. Later that day Russell sent to the Claimant a brief summary of the meeting and at the outset she states that she has made a request for information **"so we can explore how we are able to best support you with your condition ADHD".** Russell asked for documentation outlining the Claimant's official diagnosis and advice given which may assist the Respondent in understanding the Claimant's condition. There would be a follow up meeting on 30 November and Burke, the Claimant's employment coach was invited and Russell indicated her input would be welcomed. This is clear evidence that as from this meeting a link had been made by the Claimant between the performance issues and her ADHD at the very least and the Respondent was placed on notice that enquiry in the medical sphere would be required.

40. There was then a meeting on 30 November. There has been doubt about the date of the meeting but I have seen a recording of part of the meeting which was due to start at 10 am ,but started late, and the recording is marked as 30 November.

41. I have seen and heard part of the meeting up to the point when a heating engineer attended. The Claimant's sound quality is very unclear at points and

from that point alone a meeting face to face would have been far more effective and productive than a remote meeting. It becomes clear that the Claimant had not been fully forthcoming in relation to her diagnosis paperwork only providing a front page which although indicating that the Claimant had a diagnosis of ASD and ADHD provided very little information save for code numbers which meant nothing to Russell.

42. The Claimant had indicated that she had been told by Burke that she did not need to provide anything more due to medical confidentiality. That advice was unhelpful. It was in the Claimant's interest to try and provide information about her relevant conditions so as to inform the Respondent and possibly herself about any steps that may be required in the workplace. Russell describes that she feels she is being blocked in her attempts to understand the Claimant's medical position. I understand why she may have held that view as did the Claimant, who effectively laid the blame on her lack of disclosure on Burke.

42. The discussion continued and the form of it was Russell just explaining some of the concerns she had and a discussion arising in respect of them. The meeting up to this point is relatively constructive. The heating engineer attended and the Claimant leaves the meeting in a somewhat blasé way to deal with him leaving Russell waiting on the meeting. I am satisfied that Russell was irritated by the interruption to the meeting and the Claimant's assumption she should just go and deal with her personal matters. To some extent I can understand why there was irritation and can empathise with the reaction. The meeting restarts but then Russell asks for a brief time out presumably so she can discuss matters she considers of concern.

43. Unfortunately, there is no recording after that point. I am unable to come to a definitive view why that is, as both blame the other for it. There are some messages that again would indicate frustration from Russell about the delay to the meeting. The meeting had stopped at 1203 and Russell wanted to restart at 1212 but the Claimant was still dealing with her domestic issues until 1225. There was then a further 83 minutes of discussion over two calls. After those discussions there is an exchange of correspondence that appears normal in tone which takes place later that afternoon (445). The Claimant's final response is that she felt much better than after the previous discussion and remarked she had been unwell the previous week. The Claimant said she had discussed matters with Burke and that Burke would probably contact Russell the following Friday.

44. The Claimant feels as if any criticism was unfair because the meeting started about an hour and a half later than had been arranged. Taking into account the length of the meeting which was well over two hours the engineer would have arrived at some point during it anyway. I can understand the Respondent's frustration at the interruption and the delay especially when

there were other meetings to go to, the Claimant was meant to be at work, and the Claimant's blasé attitude. I will deal with the specific findings in relation to this discussion when addressing the specific allegation.

45. Later that evening Russell sent the following message:

"I've been thinking about what you were saying, in respect to your diagnosis and work situation all being new to you too. ***And as I am not medically trained in ADHD or autism or have the knowledge as to how to best support you, I would like to arrange an appointment with an occupational health therapist. This would be at the cost of the company and I arranged this within paid working hours. Please do not be worried about this or feel anxious about it. I just tried calling you to discuss as I don't want you to misinterpret anything I write. Don't be alarmed by this, this is for me to understand your needs and to help support you in whichever role you are doing within the company.***

I can send the occupational therapist a detailed job specification and how the team is structured and how we run on a day- to- day basis. We can tell them of any issues / struggles anything we feel that we need advice on. They can speak to you at the appointment and discuss with you your diagnosis and condition and then advise us both what measures we should look to put in place based on their professional opinion. Does that sound OK to you."

46. The Claimant responded that she would send over some notes when she got them all together. The Claimant also sent over a redacted copy of the medical report. I have a redacted copy in the bundle but was told that was not reflective of precisely what was sent over. Nobody provided precisely what was sent but I take the view that it likely that the report I have where it pertains to alleged disabilities was sent over.

47. The key points of the report and the surrounding circumstances seem to be as follows:

a) The Claimant seems to have been heavily driven towards getting the diagnosis of ASD by Burke. Indeed, the Claimant indicated that it was Burke who had paid for the report and the Claimant was then paying her back over time when the NHS process proved too slow.

b) On 24 November 2021 the Claimant was informed that a consultant psychiatrist was unable to identify a clear need for a formal ADHD assessment but did consider that an autism assessment was merited. The Claimant indicated in a previous letter dated 13 September 2021 that she was anxious that she would fail the assessment because she would not tick the boxes correctly ***"to score highly enough to qualify"***. That makes it appear as if her goal was to get a diagnosis

and it is also clear within the letter that she has been researching ADHD a lot of over the previous summer. The reason given why the diagnosis was sought (169) was that it would help the Claimant access support and to make friends with people who are also neurodiverse.

c) The report from RTN Mental Health Solutions contained the following information so far as can be gleaned from my redacted copy:

i) The Claimant scored just above the midpoint in the severe category for Anxiety. (106)

ii) During the diagnostic interview the Claimant recorded that she did not cope well with change and that she liked to plan in advance.

iii) It is recorded that in the interview it was noted that the Claimant had issues with concentration and questions needed to be repeated at times. The Claimant stated that she made careless mistakes by working too quickly and she struggled to read instructions from a manual or to work in a detailed way.

iv) The Claimant is assessed at 6A05.2 on ICD-11 which is deemed to be ADHD combined presentation which relates to clinically relevant in attentive symptoms along with hyperactive impulsive symptoms. The DSM-5 criteria description is the same as at ICD -11 but lists the inattention symptoms as being linked to "careless mistakes, difficulty sustaining attention, inability to listen, disorganised, loses things and easily distracted.

v) So far as the ASD classification under ICD-11 that is headed ASD without disorder of intellectual development and with mild or no impairment of functional language. The DSM-5 is similar.

This information was important as there is clarity that the careless mistakes etc may well be linked to the Claimant's medical condition.

48. On 2 January Russell messaged the Claimant to say that she was looking to book the OH therapist (452) and she had noted that the Claimant had some dates of holiday to take before the end of the holiday year and she wondered if the Claimant wished to book those dates at that time so there was no possibility of clashes with the future OH appointment.

49. The Claimant responded saying she would get dates of holidays to the Respondent shortly and in respect of OH simply said that she was fine about it, but that the Respondent needed to ensure that the OH provider were specialists.

50. On 18 January Sophie Dobson another of the Claimant's line managers asked when the Claimant could come up to Yorkshire for some further training and dates were mooted in March / April to tie in with school holidays and the Claimant could stay with her parents in Doncaster. The Claimant suggested dates in early April but they did not seem to be doable. (453).

51. On 23 January Russell again stated that she needed to get the OH dates booked in and that if the Claimant wanted to arrange around holiday dates she needed to get her holiday dates in. The Claimant indicated that she would take a look at booking holidays. Whilst all of this is facilitating of the Claimant is isn't actually getting done what is actually required which is an OH appointment and a plan of adjustments moving forwards.

52. On 25 January Russell indicated that she had been reading a lot about neurodiversity and been picking the brains of a friend who was a mental health nurse. The Claimant responded positively by saying (455) **"You should be complimented for taking the time to care and research it - it's a credit to you Noush x thank you x".** This is stark contrast to the Claimant's witness statement (para 71) where she states that Russell had said that she was talking to a mental health nurse about the Claimant, disclosing the Claimant's medical diagnosis and that she was concerned as to who else she was being discussed with. She wondered if she could trust Russell. The Claimant's statement does not accord with what is written in the bundle contemporaneously.

53. One of the issues the Claimant raised in evidence was that she would be able to work far better if she was able to access pictures of units as opposed to simply descriptions in manuals and other written instructions. The Respondent indicated that the Respondent's website provided not only pictures of the units (along with all of the specifications) but also technical drawings as well, such as at 473-475. I was easily able to access that information and pictures on the website and can see no reason why the Claimant could not have accessed that information either.

54| On 8 February Haikings brought an error to the Claimant's attention telling the Claimant that when adding doors to the end of an island the Claimant had wrongly ordered 895 doors as opposed to 715 doors with a plinth below. This simply seems to be a gap in the Claimant's knowledge of how the Respondent did things. A similar observation could be made about the error discussed at (458) re Radius Feature End Posts.

55. On 7 March 2024 the Claimant asked Dobson if she could come up for training the same day as Meg so that they could meet up and work together. Dobson pointed out that Meg was doing different training to the Claimant and that their training was going to be on 6th and 7th over the weekend but the Claimant was welcome to come up and meet them in her own time she was welcome to. Russell also indicated that she was not able to train both at the same time.

56. On 10 May Russell asked the Claimant (again) when she was going to be able to go to Yorkshire for a training day or two. She indicated that the OH appointment should probably be on a different day as she did not want the OH appointment to hold up the training.

56. On 13 May Russell wrote to the Claimant:

"With regards to your comments on mistakes. You do actually make more mistakes than other members of the planner team, we just don't flag everyone up to you as we are aware of your anxiety and try our best not to trigger this. However, there comes a point when this does need addressing…… You mentioned training but most of the errors that you make are not relevant to further training but are the basic requirements of your job role. Understanding customers' requirements and transferring the necessary instructions over to the quotation that you create….. They simply require attention to detail which is a fundamental part of the job.

With regards to the checklist. I believe you have access to the same checklist and information as the rest of the team. Anything else posted in the planner group chat is also used as a continuous remote training tool. To create a bullet pointed list of every single possible thing that you to look out for / check for every eventuality would effectively be training you remotely how to be a kitchen designer. This would not be effective and is the reason why you were employed based on your previous experience and ability to both design and check kitchen designs.

57. A lengthy text discussion then followed and after further discussion Russell indicated that she would give the Claimant the full shift on the Friday with no interruptions for the Claimant to compile/edit the check list and templates to best suit the Claimant's needs. Later in the conversation Russell suggests that if the Claimant does not think she would be able to complete the whole list on Friday she would be prepared to lower the number of tickets the Claimant had to deal with for the next month so as to enable the Claimant to use the extra hours a day to compile the checklists. Russell states she will put that in place

for the next 4 weeks (392) and then also get a date for the training up in Yorkshire. The Claimant agrees and states when the children return she can sort out her childcare to come up. That is some progress but training and OH involvement has now been discussed but not actioned for six months now.

57. On 24 May Russell raised the issue of discussing ADHD and Autism with her mental health nurse friend and suggested that removing distractions from the working environment may be of assistance. The Claimant agreed that might help and indicated that she had her templates on the screen which was helping (465).

58. On 6 June the Claimant asked Haikings if she could move to a 4 on 4 off shift and to move on to her team. She explained that she did not consider that she could work with Russell as they were clashing and it was affecting the Claimant's health. Haikings indicates that she does not really have a vacancy and suggests speaking with Russell. She indicated whilst Haikings and others made her feel relaxed and supported the opposite was the case with Russell.

59. The Claimant had been managing a specific order in relation to about twenty-five kitchens which were being fitted at around this time on a housing development. It is asserted that there were a large number of errors on what was a major job. Haikings records that the errors were of such magnitude and that it was clear the Claimant was not taking responsibility for those matters. Initially the view was taken that the Claimant would benefit from changing roles so as to be a Presales Phone Advisor (404), there would then be a training session about a month later and a view would be taken as to whether the Claimant could return to her previous role.

60. The Claimant was then invited to a Team meeting with Haikings and Mr Carabine on 26 June. I have the transcript of that meeting 406-415. At the outset of the meeting the Claimant was told it was a meeting about her performance. The Claimant expressed surprise as she considered that such a meeting was going to take place in early July and the Claimant indicated she had her work coach coming to that meeting.

61. Mr Carabine reflected that the Claimant had made a catalogue of errors and that in reality the Respondent had been incredibly lenient with the Claimant and within twenty-three minutes the Claimant had been dismissed. On 24 June 2024 a letter was sent indicating that the Claimant's employment was terminated on account of **"poor performance and making multiple mistakes costing the company significant sums of money which could lead to poor reputation".**

62. The overarching impression I have of this meeting that there was nothing the Claimant could have said that would have prevented her dismissal as that decision had been made previously. Indeed, Mr Carabine says as much when he indicates that having listened he is going to support the management decision not to continue the Claimant's employment. The purpose from the Respondent's perspective in getting Mr Carabine is elusive.

Conclusions

63. Before moving to conclusions upon specific allegations within the List of Issues, I shall make some wider observations / findings about the context of those allegations.

64. The Claimant came to the Respondent as an individual who had specific experience in the role that she was taken on for. Whilst no doubt each Company will have different systems and ways of working which will take time to navigate, the expectation was (not unreasonably) that the Claimant would be able to hit the ground running. The Respondent appears to be an organisation which expects individuals to learn on the job in an iterative manner. There was limited initial training and it was expected that queries would be ironed out on the various contact groups. That is a choice for the Respondent but it should be of no surprise if, certainly in the early days, mistakes are common for a new starter no matter what their level of experience.

65. The Claimant was certainly keen to ensure that from the outset the Respondent knew of her medical problems and that, so far as she was concerned, she was disabled. Having said that she did all she could to reassure the Respondent that it was not going to be an issue for her and that she had her own systems for compensating. The Claimant's advisor never surfaced within the proceedings at all despite apparently always allegedly being on hand. I am quite satisfied that the Respondent could reasonably have viewed the Claimant as an individual who was self-aware of her medical conditions and who was able to make the necessary amendments so as to ensure that her work was unaffected by her impairments. From what the Claimant had told the Respondent I do not consider that there was any need for Occupational Health involvement from the start.

66. I accept that the Claimant did regularly make mistakes and certainly for around the first year the Respondent was sanguine about them and the Claimant apologetic. The turning point in the relationship was the

meeting with the heating engineer. Prior to that and after a year of what the Respondent viewed as under achievement with numerous mistakes on the Claimant's part the Respondent determined that the Claimant required greater scrutiny and was sent a note to the Claimant on 14 October 2023.

67. I consider that that action was entirely justified and was a genuine recognition on the Respondent's part that the level of input they were giving the Claimant needed to be increased in order to bring the Claimant to standard. Up to then I do not accept that there had been any real dialogue about how to improve matters. The Claimant was upset by this course of action and took it as the start of an effort to remove the Claimant from the organisation and her bitterness is manifest in her communications with Bryony.

68. The Claimant then, for reasons I do not fully understand, placed hurdles in front of the attempt to provide her with more training. I am satisfied on the reasons she gave at the time that the primary focus was the general inconvenience of going up to Yorkshire, allied with childcare issues. I do not consider that the Claimant's disability was really a barrier in her attending for the training and certainly she does not put it that way at the time.

69. I think that Russell was irritated by the Claimant's attitude and I have some sympathy for her feeling that way. That was compounded by the meeting on 30 November when the heating engineer took priority. It was only at that time that the first seeds were planted that the Claimant may not be the person for the role. However, at that time (or just after) Russell realised that because of the Claimant's various conditions, and the evidence of the Claimant making mistakes reasonably regularly, there was in actual fact a need to refer to Occupational Health in order to see what could possibly be put in place to assist the Claimant. I am satisfied that Russell realised at this point onwards that the Claimant's health was a contributing factor and the provision of the medical report was confirmation.

70. What happened next is extremely puzzling or perhaps to be more accurate what did not happen is extremely puzzling. There was no OH report, no additional training and matters simply drifted until such time as the Respondent became so concerned at the level of the Claimant's errors in her main project and exited her from the organisation before she reached two years' service.

71. What is curious is what could be perceived as a lack of effort on both parts. It is right to say that the Claimant did not seek to jump on the opportunity of more training and/or push desperately hard for the Occupational Health report and, indeed, did put up certain barriers. I do find that surprising.

72. On the other hand, the Respondent were positively slovenly in their work at getting the Claimant more training and an OH referral. Whilst the Claimant did put up certain barriers the Claimant could have insisted that the Claimant attend at training and /or worked out a solution for an OH appointment. If the Claimant refused to go then there was a disciplinary route that could have been followed. Progress in these areas was within the gift of the Respondent and they quite simply failed to do anything constructive which meant that the status quo continued and nothing improved.

73. The first issue that I will deal with is on of knowledge of disability. It is clear to me and as confirmed by the Respondent's previous counsel's note that at this hearing the only issue of knowledge outstanding is related to ASD and anxiety as the other two conditions ADHD and migraines had been conceded at the 12 August hearing before EJ Smail.

74. The evidence I have heard persuades me that the point in time when the Respondent had sufficient information to have actual or at least constructive knowledge of ASD and anxiety was when Russell saw the medical report (albeit redacted in late November / early December 2023). For reasons given earlier I reject the suggestion that the Respondent should have had actual or constructive knowledge from the start of the employment.

75. In respect of when there was knowledge of the pleaded substantial disadvantages I will deal with those when considering the reasonable adjustment claims

Harassment related to Disability

76. Section 26 of the Equality Act 2010 reads, so far as is relevant to this case as follows:

(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.

(5) The relevant protected characteristics are….religious or philosophical belief.

77. In **Richmond Pharmacology v Dhaliwal [2009] IRLR 336**, the EAT stated that the approach to be taken to harassment claims should be broadly the same, regardless of the particular form of discrimination in issue and that, in each context, ***'harassment'*** is defined in a way that focuses on three elements:

(a) unwanted conduct;
(b) having the purpose or effect of either:
(i) violating the claimant's dignity; or
(ii) creating an adverse environment for him/her;
(c) on the prohibited grounds (that is, of sex, race, disability and so on).

That refers back to wording of the statute before the Equality Act 2010 and now the consideration needs to be whether it is related to the relevant protected characteristic which in this case is disability.

78. The EAT remarked that it would normally be a ***'healthy discipline'*** for tribunals to address each factor separately and ensure that factual findings are made on each of them.

79. In **Dhaliwal**, the EAT went on to make the following general points:

(a) Older case law decided before the modern statutory coverage is ***'unlikely to be helpful'***. Similarly, assistance is not to be sought from the ***'entirely separate provisions'*** of the Protection from Harassment Act 1997.

(b) The alternative bases in element (b) above of purpose or effect must be respected so that, for example, a respondent can be liable for effects, even if they were not his purpose (and vice versa).

(c) In each case, there is a proviso that means that, even if the conduct has had the proscribed effect, it must also be reasonable that it did so. There is of course a subjective element (***'… having regard to … the perception of that other person …'***) but ultimately the proviso can deal with cases of unreasonable proneness to take offence. Although ***'purpose'*** is not determinative, it can be a factor: ***'the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt'*** (at para 15 of the Judgment). Ultimately, this is all ***'quintessentially a matter for the factual assessment of the tribunal'***.

80. In **Pemberton v Inwood [2018] EWCA Civ 564**, the Court of Appeal took the opportunity to re-visit the guidance given in Dhaliwal, to address what was identified to be a subtle change in wording in the Equality Act 2010 s 26, as compared to the earlier formulation under the RRA 1976 s 3A. Although not considering that this gave rise to any difference of substance, Underhill LJ re-formulated the guidance to better reflect the language of the Equality Act, as follows:

81. "In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b))."

82. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for them, then it should not be found to have done so.

83. **Dhaliwal** concluded as follows:

84. "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."

85. The question of whether or not the conduct is unwanted requires an assessment of the Claimant's reaction to what has taken place. The Claimant has set out in the List of Issues the specific conduct that he asserts was unwanted and an assessment needs to be made if that is truly the case.

86. 'Conduct' can be physical or oral and can cover messages and images contained in documents or sent by email or distributed or displayed by other means. The conduct complained of as an act of harassment may be a dismissal. This was confirmed in relation to positive dismissals in **Urso v Department for Work and Pensions [2017] IRLR 304, EAT**.

87. Although a complaint of harassment carries the implication of conduct persisting over a period of time, there is no requirement that this be so. A single act, if of sufficient seriousness, can be enough. It is important to remember not to take each allegation as an isolated incident, but each successive episode has its predecessors, and the impact of successive incidents may accumulate, and the work environment created may exceed the sum of the individual episodes (**Reed v Stedman (1999) IRLR 299)**.

88. Harassment will be unlawful if the conduct had either the purpose or the effect of violating the complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them) hereafter the prescribed effect).

89. A claim based on "purpose" would plainly require an analysis of the alleged harasser's motive or intention. This may, in turn, require the Employment Tribunal to draw inferences as to what that true motive or intent actually was as the person against whom the accusation is made is unlikely to simply admit to an unlawful purpose. In such cases, the burden of proof may shift from accuser to accused, as it does in other areas of discrimination law.

90. Where the claim simply relies on the 'effect' of the conduct in question, the perpetrator's motive, or intention, which could be entirely innocent. is irrelevant. The test in this regard has, however, both subjective and objective elements to it and the EqA says that the following must be taken

into account: the perception of the complainant, the other circumstances of the case and whether it is reasonable for the conduct to have had the effect. The assessment requires the Tribunal to consider the effect of the conduct from the complainant's point of view; the subjective element. It must also ask, however, whether it was reasonable for the complainant to consider that conduct had that requisite effect; the objective element.

91. As a consequence of the objective element to the test of whether conduct amounts to 'effect' harassment, the fact that the claimant is peculiarly sensitive to the treatment accorded him or her does not necessarily mean that harassment will be shown to exist. In this regard, see the guidance given by the EAT in **Driskel v Peninsula Business Services Ltd [2000] IRLR 151**, which concerned the approach to be taken by employment tribunals, in determining whether alleged harassment constituted discrimination on grounds of sex. In Driskel the EAT held that although the ultimate judgment as to whether conduct amounts to unlawful harassment involves an objective assessment by the tribunal of all the facts, the claimant's subjective perception of the conduct in question must also be considered. That said, harassment giving rise to the defined effect may arise as a result of nicknames, teasing, name calling or other behaviour even when this is carried on without malicious intent.

92. Although the focus will be on the behaviour which is complained of as harassment, the conduct of the complainant themselves may not be entirely irrelevant. Tribunals will wish to be careful not to engage in 'victim-blaming', but the complainant's own behaviour and perspective will be part of the context in which the alleged 'harassment' will have to be seen.

93. There is no requirement for the complainant to put forward a comparator (hypothetical or real). The conduct must, however, be 'related to' a relevant protected characteristic. Ultimately, the protection is against harassment that is, itself, a form of discrimination. Bullying is, of itself, not discrimination, except in the unhelpful sense that it involves treating some individuals differently to others.

94. All that said, 'related to' imports a potentially very broad test, leaving the scope of the term largely to employment tribunals to apply on a case-by-case basis. Having established on the evidence what was the conduct of the particular individual or individuals in question, the employment tribunal has then to apply an objective test in determining whether it was 'related to' the protected characteristic in issue; the intention of the actors concerned might form part of the relevant circumstances but will not be determinative of the question the tribunal has to answer.

95. Whilst the view of the complainant that the conduct in question is related to the protected characteristic in question is a relevant matter, it is not

determinative. The Tribunal should articulate distinctly, and with sufficient clarity, what feature or features of the evidence or facts found have led it to the conclusion that the conduct is related to the characteristic as alleged. It may be "because of" the protected characteristic but case law dictates that related to is wider than just "because of".

96. Section 136 of the Equality Act 2010 deals with the burden of proof to be applied for both harassment and direct discrimination claims. That section reads as follows so far as is relevant:

97. 136 (1) This section applies to any proceedings relating to a contravention of this Act.

98. (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.

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

100. As discrimination is frequently covert and therefore can present special problems of proof, section 136 EqA provides that, once there are facts from which an employment tribunal could decide that an unlawful act of discrimination has taken place, the burden of proof 'shifts' to the respondent to prove a non-discriminatory explanation.

101. If a Claimant is unable to establish a clear case of discrimination, he or she can attempt to shift the burden of proof onto the respondent by establishing what is commonly known as a ***'prima facie case of discrimination'***. It is clear from S.136(2) that a prima facie case of discrimination is established if there are facts from which the court could decide, in the absence of any other explanation, that the Respondent has contravened the provision concerned (i.e. unlawfully discriminated against the Claimant).

102. The issue of what amounts to a prima facie case of discrimination lies at the heart of the shifting burden of proof. It will depend on what inferences can be drawn from the surrounding facts.

103. In **Madarassy v Nomura International plc 2007 ICR 867**, it was stated that: ***"The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could***

conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."

104. A failure of the Respondent to provide an explanation, without more, is not capable of shifting the burden of proof. Having said that Tribunals have been encouraged to retain a flexible approach when applying the burden of proof. In **Laing v Manchester City Council and anor 2006 ICR 1519** the EAT, emphasised that ***"the process of drawing an inference of discrimination is a matter for factual assessment and is situation-specific"***.

Conclusions on Harassment

105. I will deal with each of the harassment claims in turn:

Conclusions

a) 6.1.1 In October 2023, Ms Russell stating that due to an error the Claimant had made, her performance would be monitored (Anxiety/ADHD/ASD)

Factually this allegation is made out as Russell did indicate on 14 October 2023 that ***"Quite a few of the errors we have been getting through from the Plan checks are from yourself. I am going to start sending these over to you directly , as I do think we need to start monitoring these now. Most seem to be incorrect information advised and therefore I do not think they are related to concentration***".

I accept that Russell's intervention was unwanted. Many people do not like to have errors they have made flagged up and I accept that the Claimant was in such a group. I am satisfied that the purpose of the message was not to cause the prescribed effect but I am also satisfied that at the time the message did not violate the Claimant's dignity nor create one of the prescribed environments. In any event if it did have that effect (which is not borne out by the Claimant's response to the message) then I do not consider that a moderately worded indication that errors had taken place regularly and that monitoring would take place in the future could reasonably be taken as being harassing in nature. It is a central part of management. **Allegation 6.1.1 is not well-founded and is dismissed.**

b) 6.1.2 In November 2023, Ms Russell shouting at the Claimant for not having her undivided attention (Anxiety/ADHD/ASD)

Earlier on in this Judgment I recorded the fact that I considered that Russell was frustrated by the actions of the Claimant in that meeting and the way she prioritised the Heating Engineer. I can empathise with that

irritation. I think that it is likely on the balance of probabilities that the point was made that the Claimant was not giving her undivided attention but I am not satisfied that the Claimant was shouted at. The Claimant's contemporaneous reaction to being asked whether she felt better than after a previous meeting of a "thumbs up" emoji and then the message at 1658 on 30 November (447) is inconsistent with having been shouted at and feeling harassed.

The purpose therefore was not to create the prescribed effect and I reject the Claimant's evidence that it did create such effect. Even if it did it was a reasonable management intervention which I would not consider reasonable to create such an effect. **Allegation 6.1.2 is not well-founded and is dismissed.**

c) **6.1.3 On or around 7 February 2023, Ms Russell isolating the Claimant from her colleagues by prohibiting her from …….. monitoring her messages with colleagues, and telling the Claimant that she was not allowed to meet up with her colleagues on a training day (ADHD/ASD)**

This conversation was actually with Ms Dobson. I do not accept that the Claimant was prevented from meeting with her colleagues it was simply pointed out that training could not be done at the same time and that if she wanted to meet up, their training was going to be at a weekend and she could see them then. I am also satisfied that all staff could be monitored and there is no clear evidence of the Claimant being picked on in this regard.

I do not accept that Dobson sought to isolate the Claimant at all. The Claimant in fact at the time does not appear to be concerned at all by the conversation. I consider that this allegation fails on all elements of the statutory test. In particular I do not consider it to be unwanted, nor that it had the purpose of creating the prescribed effect or had the effect itself. Finally, even if it did it would not have been reasonable for it to be so. **Allegation 6.1.3 is not well-founded and is dismissed.**

d) **6.1.4 On 12 December 2022, Ms Russell informing the Claimant in writing that she was not entitled to a 20-minute break during her eight-hour shift (ADHD/ADHD/Anxiety/migraine);**

It is correct that that Russell did inform the Claimant that she was not entitled to a 20-minute lunch break. I am satisfied that this was unwanted in the sense that it was unwelcome news. I am not satisfied, however, that the Claimant took any notice of it. The Claimant was working from home

and the manner in which she prioritised her own matters over work when dealing with heating engineer satisfies me that the Claimant would have taken such breaks as were needed during her time with the Respondent including breaks of 20 minutes. From the Claimant's evidence I simply do not accept that she would have meekly accepted that instruction and not taken breaks when she wanted.

I do not accept that it was said with the purpose of causing the prescribed effects and nor that it did in actual fact have that effect. I do not consider in any event that it had anything to do with the Claimant's disability and in any event it was not reasonable for that comment to have the prescribed effect. **Allegation 6.1.4 is not well-founded and is dismissed.**

e) **6.1.5 Ms Russell making only vague attempts to initiate support for the Claimant, after she had decided to monitor the Claimant's performance namely:**
f) **6.1.5.1 When the Claimant asked for things to be provided in bullet form, it was only done on one occasion (ADHD/ASD/Anxiety).**
g) **6.1.5.2 On or around 15 November2023, the Claimant asked for the agreed OH assessment and performance review to be carried out online and not in person, explaining the difficulties of in-person attendance at the Respondent's HQ. Ms Russell explained that she would need to seek legal advice on the matter and accused the Claimant of making matters "unnecessarily complex", naming a list of non-disabled colleagues who had been able to attend face to face meetings with her (Anxiety/ADHD).**
h) **6.1.5.3 On or around 25 January 2024, the Claimant verbally requested graphics and measurements of units as a pictorial aid to help her process the information. Ms Russell agreed to provide this. On or around 13 May 2024, Ms Russell informed the Claimant that she should have prepare the documents herself (Anxiety/ADHD).**
i) **6.1.5.4 On or around 13 May 2024, Ms Russell told the Claimant that she had the same information as everyone else in response to repeated requests for checklist information to be presented in a format that was accessible (Anxiety/ADHD).**
j) **6.1.5.5 On or around 13 May 2024, Ms Russell directed the Claimant to utilise the Planner Teams chat room as an online continuous training tool in lieu of providing the formal or structured training the Claimant had requested (Anxiety/ADHD/ASD).**
k) **6.1.5.6 In a meeting on 24 June 2024, members of the Respondent's management team criticised the Claimant for asking questions to help her understanding (Anxiety/ADHD).**

l) **6.1.5.7 No OH assessment was carried out during the time of C's employment as she was dismissed before the scheduled assessment appointment (All conditions).**

I will take all of these as a composite whole to demonstrate the alleged limited attempts to monitor the Claimant's performance. The period covered is from the point in time that Russell was fully aware that the appropriate next step was an OH referral and to take matters from there. I acknowledge that there were times when the Claimant did not entirely help that process but Russell was the Claimant's manager and she could easily have made an appointment and directed the Claimant to attend either in Yorkshire or closer to the Claimant's home or remotely. Whilst there are aspects of the matters above where I understand the Respondent's point that to provide more details would be effectively to do the Claimant's job for her or there were just too many permutations to bullet point everything, really very little was done over the last six months of the Claimant's employment for the Claimant's betterment. The Claimant should have just been told to attend the training on a certain day, but she was not.

Had the Respondent been more directive and the Claimant refused to attend they would be on far more secure ground than they are by doing nothing and just letting things drift until the two years is almost up and then knee jerking the Claimant out of the business. I find that the Respondent doing nothing was unwanted and whilst it did cause the Claimant to consider the environment to be a hostile one. I am satisfied that in the absence of any direction from the Respondent that harassment is made out in this allegation and that it was related to the Claimant's disability as the Respondent knew that matters had to change and there was a likelihood that some of the issue was to do with disability but they simply failed to act upon it adequately or at all**. Allegation 6.1.5 is well-founded and succeeds.**

m) **6.1.6 Mr Carabine's conduct during the dismissal meeting namely:**
6.1.6.1 Informing her that her probationary period was unilaterally extended to two years.
6.1.6.2 He said, 'you're not a happy worker' and that the claimant was 'clearly depressed'.
6.1.6.3 Towards the end of the meeting said, "well, I've listened to all the evidence and I support Chloe's decision on this". Ms Haikings appeared shocked and had not contributed to the meeting at all. The Claimant asked what the decision had been based on and Mr Carabine said the Claimant "clearly doesn't have the skillset for this role". They had not discussed her skills in the meeting.

n) **6.1.7 The Claimant asked Ms Haikings for her view, and Ms Haikings replied, "you ask too many questions", referring to the fact the Claimant had asked the same question twice because there was no formal training pack available. (The Claimant says she had only been in the job for two weeks and was finding it hard to adapt).**

I can deal with these matters comparatively briefly. In broad terms I have find below that the dismissal i.e., the outcome of the meeting as being discriminatory under section 15 of the EqA. A finding one way or the other in relation to harassment will make very little difference to compensation. I am quite satisfied that this was a sham meeting as a decision had already been made for the Claimant to be dismissed. The meeting was a poor attempt at providing a veneer of due process, but in reality Mr Carabine was simply pulled into pull the trigger for those who had already decided it was to be pulled Mr Carabine's evidence before the Tribunal can best be described as vague in the extreme.

There was a three-month probationary period. The period up to two years was not a probationary period but was deemed to be a period for unfair dismissal reasons where the Respondent would dispense **"without recourse to the disciplinary process"** and indeed that was so. I accept that the meeting was unwanted and I also accept that it created a hostile environment for the Claimant and that it was reasonable for the Claimant to feel that way. She was, as I found, about to be discriminated against and at this meeting it really made no difference what she said as the die was cast. I am satisfied that the meeting was harassing in nature and it was related to her disability because it was all about her lack of performance which I have already accepted arose at least in part from her disability. I accept as a whole Mr Carabine's handing of the meeting was harassing in nature and accordingly **allegation 6.1.6 is well founded and succeeds**.

Conclusions of Section 15 Discrimination Arising from Disability

269. **Section 15 Equality Act 2010** – This section of the EqA reads as follows:

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

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

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

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

106. The Employment Appeal Tribunal provided helpful guidance in determining such claims in **Pnaiser v NHS England (2016) IRLR 170**. First, the tribunal must identify whether the claimant was treated unfavourably and by whom. It must then determine what caused that treatment — focusing on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious thought processes of that person but keeping in mind that the actual motive of the alleged discriminator in acting as he or she did is irrelevant. The tribunal must then establish whether the reason was ***'something arising in consequence of the claimant's disability'***, which could describe a range of causal links. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

107. In **Sheikholeslami v University of Edinburgh 2018 IRLR 1090** the EAT said***, 'On causation, the approach to section 15 is now well established... In short, this provision requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) something? and (ii) did that something arise in consequence of B's disability? The first issue involves an examination of the putative discriminator's state of mind to determine what consciously or unconsciously was the reason for any unfavourable treatment found. If the "something" was a more than trivial part of the reason for unfavourable treatment then stage (i) is satisfied. The second issue is a question of objective fact for an employment tribunal to decide in light of the evidence.'***

i. **On or around 13 May 2024 and 15 November 2023, Ms Russell refused to provide the Claimant with detailed feedback about the mistakes she was accused of making because it would exacerbate her anxiety. This denied the Claimant the opportunity to prevent further mistakes.**

The Claimant raises this at paragraph 55 of her statement. The reason she gives as to why this was unfavourable treatment is because it meant that the Claimant was denied an opportunity to learn from her mistakes. I am quite satisfied that the Claimant considered it to be

unfavourable treatment when she was told about her mistakes. At 314 when the Claimant is speaking with her friend Bryony she indicates that she does not even believe that Russell did hold back on telling the Claimant her mistakes. I consider that to be the true position. Whilst I accept that this was said to the Claimant I do not accept that it amounts to unfavourable treatment of the Claimant because she would have preferred not to be told about them and also because she disbelieved Russell when she said it anyway. The claim at 4.1.1 is not well-founded and is dismissed.

Dismissed the Claimant

108. Of all the Claims it seems to me that this is one of the more straightforward to determine. The Claimant was dismissed and that is undeniably unfavourable treatment. The reason given for the unfavourable treatment is poor performance and making multiple mistakes which was said to have cost the Respondent significant sums of money and which could lead to poor reputation. It is abundantly clear that the Respondent acted when they did because they did not want the Claimant to get to two years' service and to deny her any unfair dismissal rights.

109. The issue to consider after that is whether or not the Claimant's performance was in any way affected by her medical conditions. I find that there is adequate evidence to say that her medical conditions ADHD allied with the Claimant's anxiety was likely to contribute to the mistakes that the Claimant was making, especially in terms of concentration and as set out in the medical report. In any event the Claimant had clearly flagged it up but the Respondent simply and inexplicably failed to take any steps via Occupational Health to get to the bottom of it and consider what other adjustments could be made to minimise the mistakes being made. Russell identified the issue that needed to be looked at when she said the following at the end of 2023:

> ***I can send the occupational therapist a detailed job specification and how the team is structured and how we run on a day- to- day basis. We can tell them of any issues / struggles anything we feel that we need advice on. They can speak to you at the appointment and discuss with you your diagnosis and condition and then advise us both what measures we should look to put in place based on their professional opinion.***

110. That was just never arranged. There was no reason at all why there needed to be any delay for the review. There was an under-performing

employee who was known to be disabled with a number of conditions and so it would make absolute sense to get an OH professional to say what help may assist her so that the performance levels rose and mistakes reduced.

111. The diagnostic report provided by the Claimant suggested difficulties with attention and concentration which was bound to affect outcomes in the Claimant's line of work and it was also noted that the condition causes her to make careless mistakes. I accept that the anxiety would have simply made matters worse. There is also evidence that the Claimant's work was also adversely affected by her migraines or medication that was used to prevent them.

112. I accept therefore on the balance of probabilities that the Claimant was dismissed for her performance i.e. an increased risk of mistakes and that arose at least in part because of her various conditions.

113. That takes me on to consider whether or not the Respondent has provided a legitimate aim and whether dismissal was a proportionate means of achieving that. The legitimate aim is pleaded as follows - "**To reduce the level of errors, prevent customer complaints; and reduce the risk of unnecessary costs being incurred by the Respondent due to incorrect orders being generated or subsequently being rectified".**

114. I accept that this is a legitimate aim, but I do not accept that the treatment given (dismissal) was an appropriate and reasonably necessary way to achieve those aims and I find that something less discriminatory could have been done instead. I have found that by November / December 2023 it was known that the Claimant was making more mistakes than others and Russell had put in place a plan whereby ways by which the Claimant could improve i.e., seeking expert advice from Occupational Health. That physician may have been able to offer steps that could be taken in order to address the situation and some of them, no doubt, could be implemented and be deemed as reasonable. On the other hand, the physician may have come back and said that there was nothing that might help. This simple and obvious step was never actioned and the adjustments that were suggested may well have allowed the Claimant's work to be arranged so that the legitimate aim was met with her still in employment. That would have been a less discriminatory course of action.

115. Instead, the Respondent identified what needed to be done, failed to do it over six months and then dismissed abruptly in order to rid themselves of an employee who was not performing to their standards but

without seeing whether or not she might be able to meet them. **The allegation at 4.1.2 is well-founded and succeeds.**

Direct Discrimination section 13 EqA

116. I need not spend much time on the direct discrimination claims, save to say that they fail. I am satisfied that the Respondent had no issue with those who were disabled who could undertake their job to the required standard. Their concern /objection was in relation to what they considered was an unsatisfactory level of performance. The issue the Respondent had in this case was what arose from the disability and was not because of the disability and I have dealt with that above under the section 15 claim.

Reasonable Adjustments (Equality Act 2010 ss. 20 & 21)

117. The reasonable adjustment claims are set out below.

Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

5.1 A "PCP" is a provision, criterion, or practice. Did the Respondent have the following PCPs:

5.1.1 A practice of arranging ad-hoc meetings without advance warning (ADHD/ASD/Anxiety) (PCP 1);

5.1.2 A practice of presenting instructions in an unclear format, by being typed into Microsoft teams in a way in which the information was sent together rather than in small parts (ADHD) (PCP 2);

5.1.3 …….,

5.2 Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that:

5.2.1 The Claimant suffered anxiety and was unable to request adjustments to the meetings in advance (PCP 1);

5.2.2 The Claimant had greater difficulty in processing information (PCPs 3);

5.2.3 ……;

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

5.4 What steps (the 'adjustments') could have been taken to avoid the disadvantage? The Claimant suggests:

5.4.1 Advance warning to be given of meetings to manage her anxiety and allow her to request any adjustments to the meeting in advance (PCP 1);

5.4.2 Instructions to be presented in bullet point format so that the Claimant could refer back to them (PCP 3);

5.4.3 Travel to the office and other sites to be limited (PCP 4);

5.4.4 Instructions to be accompanied by illustrations where possible (PCP 3);

5.4.5 Pictorial references with measurements to be provided for the kitchen units (PCP 3).

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

5.6 Did the Respondent fail to take those steps?

118. In so far as this claim is concerned I only need consider the first requirement which is where a provision, criterion, or practice (PCP) has been applied by the employer that places the disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled.

119. By this provision, the employer falls under a duty to take such steps as it is reasonable to take to avoid the disadvantage in question. The first task is to identify the relevant PCP. The Claimant has set out the PCPs that she wishes to rely upon and withdrew one during the hearing.

120. An employer has a defence to a claim for breach of the statutory duty (and, in fact, is relieved of any legal obligation to make reasonable adjustments) if it does not know and could not reasonably be expected to know that the disabled person is disabled and/or is likely to be placed at a substantial disadvantage by the PCP. As set out earlier actual or constructive knowledge must be had of the disability and also of the likelihood that the disabled employee would be placed at that disadvantage. Accordingly, the question is what objectively the employer could reasonably have known following reasonable enquiry. But case law has established that employers do not have to make every possible enquiry in circumstances where there is little or no reasonable basis for so doing.

121. Although not defined in the statute, some assistance as to the meaning of provision, criterion or practice is afforded by the Equality and Human Rights Commission's Code of Practice on Employment ('the EHRC Employment Code'), which states that the term ***"should be construed widely so as to include, for example, any formal or informal policies,***

rules, practices, arrangements, criteria, conditions, prerequisites, qualifications, or provisions. A [PCP] may also include decisions to do something in the future — such as a policy or criterion that has not yet been applied", as well as a "one-off" or discretionary decision' (para 4.5).

122. Where a disabled person claims that a ***'practice'*** (as opposed to a provision or criterion) puts him or her at a substantial disadvantage, the EAT has held that the alleged practice must have an element of repetition about it and be applicable to both the disabled person and the non-disabled comparators (**Nottingham City Transport Ltd v Harvey EAT 0032/12**).

123. A flawed implementation of a workplace procedure was also held not to amount to a 'practice' in **London Borough of Haringey v Oksuzoglu EAT 0248/18**. There, the EAT overturned an employment tribunal's finding that the failure properly to apply the redeployment provisions in the employer's absence management policy entailed the application of a PCP such as to trigger the duty to make reasonable adjustments. In the EAT's view, what had occurred was no more than a one-off act done in error and the necessary element of general application or repetition was accordingly missing.

124. A one-off act can, however, amount to a practice if there is some indication that it would be repeated were similar circumstances to arise in the future (**Ishola v Transport for London 2020 ICR 1204**). In Simler LJ's view, the function of the PCP in a reasonable adjustment context is to identify what it is about the employer's management of the employee or its operation that causes substantial disadvantage to the disabled employee. The act of discrimination that must be justified is not the disadvantage, but the PCP. To test whether the PCP is discriminatory or not it must be capable of being applied to others. However widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. The words ***'provision, criterion or practice'*** all carry the connotation of a state of affairs indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. Simler LJ agreed that although a one-off decision or act can be a practice, it is not necessarily one.

125. A tribunal needs to be wary of overly technical arguments that a PCP has not actually been 'applied' to a disabled person to preclude an otherwise valid claim. In **Rider v Leeds City Council EAT 0243/11** the EAT was satisfied that the instruction to return to the previous post, repeated on a number of occasions, without any consideration of alternative posts, amounted to the application of a PCP.

126. Since all three requirements are couched in terms of putting the disabled person at a 'substantial disadvantage in comparison with persons

who are not disabled', it is clear that the concept of substantial disadvantage is a significant one. The EqA is defines 'substantial disadvantage': as something that is "***more than minor or trivial"*** (S.212(1) EqA). It is necessary to identify the nature and extent of the disadvantage to which the claimant is subjected with some degree of precision. And since substantial disadvantage must be established via a comparison ***of "persons who are not disabled"***, the duty to make reasonable adjustments will only be triggered if it is established that the relevant PCP causes greater disadvantage to the disabled claimant than it does to non-disabled people, not generally but in relation to persons to whom the requirement is applied.

127. The Claimant bears the burden of establishing a prima facie case that the duty to make reasonable adjustments has arisen and that there are facts from which it could reasonably be inferred — absent an explanation — that the duty has been breached. Once I am satisfied that the S.20 duty has potentially been triggered, I am obliged to consider what adjustments could and should have been made which will entail identifying. the 'step' or 'steps', if any, the employer could reasonably have taken to prevent the claimant from suffering the disadvantage in question. Again, the onus falls on the Claimant, not the employer, to identify in broad terms the nature of the adjustment that would ameliorate the substantial disadvantage. Having done so, the burden then shifts to the employer to show that the disadvantage would not have been eliminated or reduced by the proposed adjustment and/or that the adjustment was not a reasonable one to make.

128. It is crucial to bear in mind that the S.20 duty only arises in respect of those steps that it is reasonable for the employer to take to avoid the disadvantage experienced by the disabled person. The test of reasonableness in this context is an objective one. The reasonable adjustment provisions are concerned with practical outcomes and the focus must therefore be on whether the adjustment itself can be considered reasonable rather than on the reasonableness of the process by which the employer reached the decision about the proposed adjustment.

129. The EqA does not specify the factors that go to reasonableness in this regard, but considerable assistance can be drawn from the list set out in the Equality and Human Rights Commission's Code of Practice on Employment ('the EHRC Employment Code') and case law.. The courts have held that one factor above all others is crucial: the effectiveness of the proposed step or steps. It is most unlikely to be reasonable for an employer to have to make an adjustment that involves little or no benefit to the disabled person in terms of ameliorating the disadvantage to which he or she has been subjected by the PCP. There does not have to be absolute certainty, or even a good prospect, — of an adjustment removing a disadvantage in order for that adjustment to be regarded as being a reasonable one. It would be sufficient

for me to conclude, on the evidence, that there would have been a chance of the disadvantage being alleviated. I need to consider whether the adjustment would, or might, be effective in removing or reducing the disadvantage that the claimant is experiencing at work as a result of the disability and not whether it would, or might, advantage the claimant generally or, indeed, disabled people as a whole.

130. The PCP is narrowly drafted. An ad hoc meeting is a meeting that is arranged or done for an immediate specific purpose rather than planned in advance. It connotes a spontaneous gathering to discuss a specific issue as opposed to a regularly scheduled catch up. It was accepted in cross examination that Russell did not have regular 1 to 1s with the Claimant and I accept that the three meetings the Claimant focusses in on (23 and 30 November and 4 July 2023) could be described as ad hoc. Having said that the second half of the PCP is drafted as being "without advance warning". As the Claimant's counsel herself relates in her closing submissions the Claimant did get advance notice of two, four and one day (or days) notice for the meetings and so the second half of the PCP is not made out. This once again demonstrates the importance of the accurate drafting of PCPs.

131. In any event I do not consider that the substantial; disadvantage is made out on the evidence before me. I do not accept that the Claimant would be at a substantial disadvantage compared to a non-disabled person called into a meeting to discuss their performance. I find that any employee, for example, expecting a meeting on 4 July and having the meeting brought forward would ask why the Respondent was acting in that way and I am unable to detect any greater level of anxiety than I would expect for any employee whose performance was being challenged and being treated in the same way. **The Reasonable Adjustment claim at 5.1.1, 5.2.1 and 5.4.1 is not well founded and is dismissed**.

132. I find that the second PCP at 5.1.2 is not made out. The Claimant's counsel has sought to give it a level of cogency in her closing submissions but the base PCP itself is in my view not one that can be readily understood. It is not clear to me what instructions are being referred to in the first place and with that not being clear it is very difficult to even start to understand this Claim. There was discussion that the Claimant wanted to have a clear bullet pointed process to work through and she was provided with time to develop precisely such a process. There were so many different permutations I accept the Respondent's evidence that it would have been simply impossible for a process to be provided for each of those permutations. If the Claimant wanted pictorial representations I find the were readily available**. 5.1.2 is not pleaded in a way that I consider satisfactory and is not well founded and is dismissed.**

Working Time Regulations Reg 12 and 30

133. Paragraph 7.3 of the Claimant's contract (180) specifies that the Claimant would receive a minimum unpaid break of 20 minutes every 6 hours worked, to be taken at a time agreed with the Company.

134. On 12 December 2022 there was a discussion between Russell and the Claimant about the Claimant having taken an hour to go to the doctors. The Claimant had mentioned a lunch hour and Russell confirmed that there was no entitlement to a lunch hour. The Claimant responded that she knew that there was only an entitlement to 20 minutes thereby reaffirming her knowledge of her contractual entitlement. The Claimant reaffirmed that knowledge in her oral evidence.

135. Russell does state that the Claimant was not entitled to a 20-minute break and I am satisfied that information was incorrect. The Claimant's evidence was that ***she "did not take a break for the rest of her employment because I did not want to get into trouble"*** (para 18). I reject that evidence. Taking into account the causal way that the Claimant explains away her taking an hour in December 2022, the manner in which she acted when the heating engineer was present and the Claimant's general attitude to management as displayed in her many messages to Bryony, I do not accept that the Claimant did not take any breaks for the rest of her employment. She was working from home and I am quite satisfied that she would have taken breaks to which she knew she was entitled. If she was in any doubt she would have raised it further and she did not. **The Working Time Claim is not well-founded and is rejected.**

Time Limits

136. The acts that I have found are discriminatory end with the dismissal which is in time. The two acts of harassment deal with the Respondent's failings over a period from the point when they should have engaged OH, provided more training and knew or should have known that there was an impact on the Claimant's performance because of her health. I am satisfied that these can properly be described as all being part of a continuing act and so should be deemed in time. If I am wrong in that I find that it would be just and equitable to extend time as the balance of harm falls in the Claimant's favour. The Claimant would lose the chance to have claims considered which are important and the Respondent has been fully able to defend them and has suffered no material prejudice.

Final Comments

136. It follows therefore that the Claimant as been successful on a limited but important number of claims. The parties should seek to agree compensation between themselves, but a remedy hearing will be listed. The parties should indicate dates to avoid for the remainder of 2026 and send them to the Bristol office within 7 days of this Reserved Judgment.

Approved by
Employment Judge Self
Date: 11 June 2026

JUDGMENT SENT TO THE PARTIES ON
11 June 2026