EMPLOYMENT TRIBUNALS

Claimant:	Mrs. T. Preston
Respondent:	Teledyne FLIR
Heard at:	London South Employment Tribunal (hybrid)
On:	2nd, 3rd, 4th, 5th, 6th, and 9th February 2026
Before:	Employment Judge Sudra
	Sitting with non-legal members Ms. G. Mitchell and Ms. N. Christofi
Appearances:	
Claimant:	In Person (unrepresented)
Respondent:	Ms. R. Swords of Counsel

(References in the form [MB/XX] are to page numbers in the Hearing bundle, [CB/XX] are to page numbers in the correspondence bundle, and references in the form [XX/X] are to the paragraph of the named (by initials) witnesses' witness statement)

RESERVED JUDGMENT

The unanimous decision of the Tribunal is that the Claimant's complaint of,

(i) 'Ordinary' unfair dismissal is not well founded and is dismissed.

(ii) Direct disability discrimination is not well founded and is dismissed.

(iii) Discrimination arising from disability is not well founded and is dismissed.

(iv) Failure to make reasonable adjustments is not well founded and is dismissed.

(v) Harassment related to disability is not well founded and is dismissed.

(vi) Victimisation is not well founded and is dismissed.

REASONS

1. The Claimant began Acas early conciliation on 6 February 2024 ('Day A') and was issued with an Acas early conciliation certificate on 8 February 2024 ('Day B'). On 29 April 2024 the Claimant presented her ET1 claim form. The Respondent defended the claim by way of an ET3 and Grounds of Response on 14 June 2024 and an amended Grounds of Response on 3 September 2025.

The Issues

2. The Claimant's claim is for:

(i) 'Ordinary' unfair dismissal contrary to section 94 of the Employment Rights Act 1996 ('ERA');

(ii) direct disability discrimination contrary to section 13 of the Equality Act 2010 ('EqA');

(iii) discrimination arising from disability contrary to section 15 EqA;

(iv) failure to make reasonable adjustments contrary to sections 20 and 21 EqA;

(v) harassment related to disability contrary to section 26 EqA; and

(vi) victimisation contrary to section 27 EqA.

3. The parties had agreed a final List of Issues [MB/200-210] which is as follows (so far as material):

‘**B. <u>CLAIMS UNDER THE EMPLOYMENT RIGHTS ACT 1996</u>**

<u>Jurisdiction</u>

2. Did the Respondent dismiss the Claimant within the meaning of s.95 ERA 1996?

The Respondent’s position is that it did not dismiss the Claimant, the Claimant resigned on 18 October 2023.

The Claimant’s Position is that of Unfair Dismissal (Express)

<u>Unfair Dismissal contrary to s.94 ERA 1996</u>

3. Was the Claimant’s dismissal unfair within the meaning of s.98 ERA 1996? In particular:

a. Was the reason (or principal reason) for the dismissal a permitted reason within s.98(1) and (2) ERA 1996?; and

> The Respondent relies on Some Other Substantial Reason (see §39(A) of the Respondent’s Amended Grounds of Resistance (“GoR”)),

b. Did the Respondent act reasonably in all the circumstances in treating that reason as a sufficient reason to dismiss the Claimant?

C. <u>CLAIMS UNDER THE EQUALITY ACT 2010</u>

<u>JURISDICTION</u>

<u>Time</u>

4. Which, if any, of the Claimant’s complaints under the EqA 2010 are prima facie out of time, having regard to s.123(1)(a) and s.123(3) EqA 2010 and the ACAS Early Conciliation provisions in s.140B EqA 2010?

5. In particular:

   a. Was there ‘conduct extending over a period’ for the purpose of s.123(3)(a) EqA 2010?

   b. If so:

      i. What conduct; and

      ii. When did that period end?

6. In respect of any EqA 2010 complaints that are prima facie out of time, does the Tribunal nevertheless have jurisdiction to determine them, on the basis that it would be just and equitable to extend time (pursuant to s.123(1)(b) EqA 2010)?

Disability

7. The Respondent accepts that the Claimant was a disabled person within the meaning of s.6 EqA 2010 at the material time by reason of Attention Deficit Hyperactivity Disorder (“ADHD”) (see §40 GoR).

LIABILITY

Direct Disability Discrimination contrary to s.13 EqA 2010

8. Did:
a. Maria Cambria and following the Grievance and Appeal hearings, Craig Cooper, Ashlea Page, Michelle Hildyard and Hannah Wade, not afford the Claimant the opportunity to retract her resignation on 21 November 2023, 11 January 2024, 30 January 2024 and 28 February 2024 (see §41 of the Claimant’s Amended Particulars of Claim (“PoC”)).

b. Ms Cambria not afford the Claimant the opportunity to attend a Global Marketing Meeting on 14 - 16 November 2023 due to her notice period (see §20 and §42 PoC).

c. The Respondent fail to provide the Claimant with an exit interview (see §33 and
§43 PoC).

d. Ms Cambria ask Ms Tamber to investigate and report back on the Claimant's working practices (see §31 and §44 PoC).

e. Ms Cambria fail to notify or invite the Claimant to apply for an upcoming promotional opportunity (namely, the role of EMEA Marketing Director) (see §11 and §46 PoC).

9. If so, in doing any or all of §§8(a)-(e) above, did the Respondent treat the Claimant less favourably than it treated or would treat any actual and/or hypothetical comparator:

a. Who was not disabled by virtue of ADHD; and
b. Whose material circumstances were the same as the Claimant per s.23(1) EqA 2010?

The actual comparator relied on by the Claimant in respect of the Less Favourable Treatment alleged at §8(a) is Ms Misty Kalhani. The actual comparators relied on by the Claimant in respect of the Less Favourable Treatment alleged at §8(b) are Ms Kalhani and Ms Kelly Hosten. The actual comparators relied on by the Claimant in respect of the Less Favourable Treatment alleged at §8(c) are Ms Kalhani and Ms Malinda D'Amico. The actual comparator relied on by the Claimant in respect of the Less Favourable Treatment alleged at §8(e) is Ms Jay Tamber. The Respondent does not accept that the actual comparators relied on for §8(a), §8(b) or §8(e) are appropriate comparators, see §43, §44, and §47 GoR.

10. If so, was that because of the Claimant's ADHD?

11. If so, do any or all of the matters at §§8(a) - (e) above amount to a detriment within the meaning of s.39(2)(d) EqA 2010 or otherwise amount to a breach of s.39(2) EqA 2010?

12. What is the effect, if any, of s.212(1) EqA 2010?

Discrimination Arising from Disability contrary to s.15 EqA 2010

13. In respect of each of the allegations set out at §14 below, at the time any such treatment occurred:

a. Did the Respondent know that the Claimant was disabled by reason of ADHD;
b. If not, could the Respondent reasonably have been expected to know that the Claimant was disabled by reason of ADHD?

14. Did (see §48 PoC):
a. The Respondent dismiss the Claimant on or around 21 November 2023 and/or 31 January 2024;

b. Maria Cambria and following the Grievance and Appeal Hearings, Craig Cooper, Ashlea Page, Michelle Hildyard and Hannah Wade not allow the Claimant to retract her resignation at any time up to and including the dismissal of her grievance appeal on 28 February 2024?

15. If so:

a. Was any such treatment unfavourable; and

b. Did such treatment constitute a detriment within the meaning of s.39(2)(d) EqA 2010 or otherwise amount to a breach of s.39(2) EqA 2010?

16. Did the following arise: (a) at all; and if so, (b) in consequence of the Claimant's ADHD (see §47 PoC):

    a. The Claimant's resignation email of 18 October 2024.

17. If so, did the Respondent:

    a. Treat the Claimant unfavourably as set out at §§14(a)-(b) above because of the Claimant's resignation email of 18 October 2024?

18. If so:

    c. Did any such treatment pursue a legitimate aim?

    d. If so, was such treatment a proportionate means of achieving that aim?

19. What is the effect, if any, of s.212(1) EqA 2010?

<u>Failure to Make Reasonable Adjustments contrary to s.20 and s.21 EqA 2010</u>

20. At the time the Claimant claims that adjustments should have been made:

    a. Did the Respondent know that the Claimant was disabled by reason of ADHD?

    b. If not, could the Respondent reasonably have been expected to know that the Claimant was disabled by reason of ADHD?

    c. Did the Respondent know that the Claimant was likely to be placed at the substantial disadvantage/s alleged at §23(a) – (c) and §25(a) below?

d. If not, could the Respondent reasonably have been expected to know that the Claimant was likely to be placed at the substantial disadvantage/s alleged at §23(a) – (c) and §25(a) below?

Section 20(3)

21. Did the Respondent have (and apply) the following Provision, Criterion or Practice (“PCPs”) (see §49 PoC (misnumbered 38.1.1 – 38.1.3):

a. That the organizational changes to the marketing team, in summer 2023, would take place without written communication being sent to Regional Marketing Managers identifying what the responsibilities and requirements of the role would be within the new structure (“Alleged PCP1”).

b. Introducing two new Vertical Business Teams, which consequently meant that remaining staff would be required to work on additional verticals (“Alleged PCP 2”).

c. That an employee’s line manager could decide how to respond to their purported resignation, without interrogating the intention/reasons or reporting the resignation to HR (“Alleged PCP 3”).

22. If so, when did the Respondent apply Alleged PCP 1, 2 and 3 to the Claimant?

23. Did the Alleged PCPs put the Claimant at a substantial disadvantage compared with persons who did not have ADHD? The Claimant relies on the following substantial disadvantages (see §50 PoC (misnumbered 39.1.1 – 39.1.3)):

a. In respect of Alleged PCP1: “Suffering increased levels of anxiety leading [the Claimant] to feel overwhelmed, over and above that which [a] non-disabled person would, due to the lack of clarity surrounding the change".

b. In respect of Alleged PCP2: "Because the Claimant already worked very long hours in order to perform in her role as a result of the impact of her ADHD, and so had even less time available to undertake additional work than non-disabled persons".

c. In respect of Alleged PCP3: "Because [the Claimant] was prone to act impulsively and sensitively, as a result of ADHD, so that her actions might be the product of these symptoms rather than being what was really intended, such that taking an email at face value might result in a misinterpretation of her intention and/or because HR held pertinent personal details about the Claimant's diagnosis which would have informed a proper interpretation or interrogation of the Claimant's actions".

24. If so, did the Respondent fail to take such steps as it is reasonable to have to take to avoid the disadvantage? The Claimant relies on the following adjustments (see §51 PoC (misnumbered 40.1.1 – 40.1.3)):

d. In respect of Alleged PCP1: "Timely provision of a new job description and/or written explanation of the requirements and responsibilities for the role of Regional Marketing Manager in the new structure".

e. In respect of Alleged PCP2: "Allowing the Claimant to work collaboratively with her American Counterpart on ITS across EMEA and America, with her counterpart working on Security in the same regions".

f. In respect of Alleged PCP3: "Not accepting the Claimant's "resignation" of 18 October 2023 as a genuine notice of resignation before interrogating the reasons for sending the same and/or seeking HR guidance".

<u>Section 20(5)</u>

25. But for the provision of a written step – by – step guide on the processes the Claimant was required to use in her role (such as Power BI, Marketo and Episerve), would the Claimant be put at a substantial disadvantage in relation to completing the tasks that she was required to undertake in comparison with persons who do not have ADHD, namely (see §52 PoC):

   a. The Claimant was disadvantaged by the virtue of her ADHD symptoms causing the Claimant to struggle with retaining and recalling information delivered in a '1 time' virtual training session meaning that the Claimant had to spend many more hours than colleagues trying to remind and re-education herself on the processes whenever they were called for.

26. If so, would it have been reasonable for the Respondent to provide the Claimant with a written step – by – step guide on the processes the Claimant was required to use in her role (such as Power BI, Marketo and Episerve)?

27. If so, when should the Respondent have provided the Claimant with a written step – by – step guide on the processes the Claimant was required to use in her role (such as Power BI, Marketo and Episerve)?

<u>Harassment Related to Disability contrary to s.26 EqA 2010</u>

28. Did (see §53 PoC (mistakenly numbered §42)):

   a. Ms Cambria respond to the Claimant's explanation as to what led to her resignation email of 18 October 2023 on 21 November 2023 in the manner alleged at §§22-23 PoC (see §53.1.1 PoC)?

   b. Ms Cambria adopt an exclusionary approach to the promotional opportunity afforded only to Ms Tamber (namely, the role of EMEA Marketing Director) (see §11 and §53.1.2);

   c. Ms Cambria not afford the Claimant the opportunity to attend a Global

Marketing Meeting on 14-16 November 2023 due to her notice period (see §20 and §53.1.3 PoC);

d. Ms Cambria send a ‘Happy Friday’ email to “her team” on 1 December 2023 (see §26 and §53.1.4 PoC)?

e. Ms Cambria ask Ms Tamber to investigate and report back on the Claimant’s working practices (see §31 and §53.1.5 PoC).

29. If so, did any or all of the conduct at §§28(a)-(e) above amount to unwanted conduct?

30. If so, was that conduct related to disability?

31. If so, did the conduct have the purpose or effect of violating the Claimant’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, having regard to all the circumstances and whether it is reasonable for it to have that effect, within the meaning of s.26 EqA 2010?

32. What is the effect, if any, of s.212(1) EqA 2010?

Victimisation contrary to s.27 EqA 2010

33. Did the Claimant do a protected act within the meaning of s.27(2) EqA 2010 by (see §54 PoC (mistakenly numbered §43)):

a. Making a formal grievance on or around 8 December 2023.

The Respondent accepts that this was a Protected Act.

34. Did the Respondent (see §§55-56 PoC (mistakenly numbered §§44-45)):

a. Not continue the Claimant's employment on or around 31st January 2024?

b. Make the DSAR Request Process unnecessarily challenging?

35. If so, in doing any or all of §§34(a)-(b) above did the Respondent subject the Claimant to detriment?

36. If so, did the Respondent subject the Claimant to any such detriment because she did a Protected Act (namely, made her grievance of 8 December 2023)?

D. REMEDY

37. To what declaration(s), if any, is the Claimant entitled?

38. To what compensation, if any, is the Claimant entitled, in respect of financial loss?

In particular:

a. Has the Claimant acted reasonably in seeking to mitigate her loss?

b. Should any compensation awarded to the Claimant be reduced to reflect a risk that the Claimant would have been dismissed and/or subjected to any detriment even in the absence of any unfairness or discrimination?

c. Should any compensation awarded to the Claimant be reduced to reflect the Claimant's contributory fault?

39. To what compensation, if any, is the Claimant entitled, in respect of injury to feelings?

40. What is the effect, if any, of s.207 of the Trade Union and Labour Relations

(Consolidation) Act 1992?'

Preliminary Matters

4. At the outset of the Hearing, we discussed the List of Issues with both the Claimant and Respondent; they agreed that the List of Issues accurately captured the Claimant's claims.

5. The Tribunal also explored timetabling with the parties and was content that the evidence and submissions would be completed within the allotted Hearing days.

6. The Claimant notified us that she would require (as reasonable adjustments): The use of clear language, and avoidance of legal terms; time to process information; patience from the Tribunal and Respondent; and frequent rest breaks. These adjustments were granted and the parties were encouraged to notify us if further adjustments were required. The Claimant confirmed that she did not need scheduled breaks but would mention when she was in need of a break.

Specific disclosure Application

7. The Claimant made an application for specific disclosure on 13 January 2026 [CB/6-9] requesting that the Respondent be ordered to provide her with:

    (i) Sample documents relating to the period between August 2023 to January 2024 evidencing work undertaken with the Security Vertical; and
    (ii) *'Emails relating to the termination of Maria Cambria particularly with reference (but not limited to) where [the Claimant's name] is specifically mentioned.'*

8. On 16 January the Respondent objected to the application, via email, stating that the documents requested were not relevant to the issues to be determined and that they were *'not necessary for reasons of proportionality and the fair disposal of proceedings in accordance with the overriding objective.'*

9. After hearing that the Respondent was not contesting that the Claimant had indeed done the work evidence by the 'security vertical' documents she had requested, the Claimant confirmed that she no longer sought those documents. In respect of the documents at paragraph 7(ii) *(supra)* the Claimant stated that they were necessary to assist with her unfair dismissal claim and that they had previously been requested several times. The Respondent submitted that the Claimant's request was too onerous, the documents were irrelevant to the issues to be determined and were not necessary for a fair trial.

10. After deliberation, we accepted that the documents were not pertinent for us to fairly determine the issues and they were not relevant. Therefore, we refused the Claimant's application.

<u>Submission of Late Witness Statement</u>

11. On 28 November 2025, the Claimant had applied for a Witness Order in respect of Sarah Wilson – an extant employee of the Respondent. This Tribunal granted the Claimant's application and on 26 January 2026 made a Witness Order compelling Ms. Wilson (AIS marketing director) to attend all days of this Hearing and any adjourned Hearing.

12. The Respondent applied for the Witness Order to be varied as Ms. Wilson would be called as a witness for the Respondent (if allowed), her attendance *every* day of this Hearing was disproportionate and would entail extensive travel time, and that if the Witness Order was not varied the Respondent would in effect have to cross-examine an existing employee with whom it enjoyed good relations. Therefore, the Respondent submitted that the Witness Order should be varied to excuse Ms. Wilson's attendance until she was required to give

evidence and to allow a short witness statement (which had been recently prepared for Ms. Wilson) to be adduced so she could proffer evidence as a witness for the Respondent.

13. The Claimant had no objections. Due to a material change in circumstances, we granted the Respondent's application to vary the Witness Order as requested and allowed Ms. Wilson's witness statement to be admitted into evidence.

Closing Submissions

14. At the close of play on the fourth day (circa 4.00pm) the Tribunal discussed closing submission by the parties and it was agreed that they would send to the Tribunal, and each other, written submissions by 10.00am the following day and, as suggested by the Respondent, make oral submissions at 11.00am to give the Tribunal an opportunity to read written submissions for the Claimant to finalise her oral submissions.

15. The Respondent sent to the Tribunal and Claimant its written closing submissions on 6 February 2026 at 9.21am. At 10.12am the Claimant sent the following email to the Tribunal and Respondent:

> *'Dear Sirs,*
>
> *I have been struggling throughout the night to amend my closing submission, and in doing so under pressure, I do not feel my document is one I would want to submit at this point.*
>
> *I think the time pressure from the lost day, and other minor incidences that resulted in my having to speed up the witness cross examination and the subsequent effect on producing this document in conjunction with the difficulties I have in managing under pressure have impacted my being able to produce the document as I would have wanted it to read*
>
> *Can you please advise on how best to proceed, as this has now left me in a highly anxious state that is impacting any ability to respond to the deadline*
>
> *Sincerest apologies, I am hopeful a compromise can be found.*
>
> *Please also advise if the 11am start time for oral submission should still be adhered to as at this stage I would not feel ready or able to give an oral submission either*

Many thanks,

Toni Preston'

16. We assured the Claimant that we would give her additional time to prepare her submissions and confirmed that we would resume at 13:30; which we did. Ms. Swords also submitted that the Claimant's cross-examination of the Respondent's witnesses was not 'sped-up' and that she was *'confident the Tribunal was fair to the Claimant*'.

Procedure and Documents

17. We had before us:

(a) An agreed Hearing bundle consisting of 732 pages;
(b) a correspondence bundle of 39 pages; and
(c) an opening note from the Respondent's Counsel.

18. We also had written witness statements and heard live evidence from:

<u>For the Claimant</u>
(i) The Claimant;

<u>For the Respondent</u>
(ii) Ashlea Page;
(iii) Sarah Wilson;
(iv) Jeyanthi Tamber; and
(v) Michelle Hildyard.

19. The Claimant and Respondent provided written, and made oral, closing submissions at the conclusion of the evidence.

20. We notified the parties at the outset of the Hearing that we would <u>only</u> read documents that we were specifically referred to and would only read documents referred to in witness statements insofar as they were <u>relevant</u>.

Relevant Findings of Fact

21. The following findings of fact were reached by us, on a balance of probabilities, having considered all of the evidence given by witnesses during the Hearing, including the documents referred to by them, and taking into account our assessment of the witness evidence.

22. Only findings of fact relevant to the issues, and those necessary for us to determine, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. We have not referred to every document we read and/or were taken to in the findings below but that does not mean it was not considered if it was referenced to in the witness statements/evidence and considered relevant.

23. The factual matrix is largely agreed. Therefore, in the interests of proportionality and in keeping with the Overriding Objective, we have confined our findings of fact to matters in dispute and those relevant to reach a fair determination of the complaints.

<u>Employment</u>

24. The Claimant was employed by the Respondent, as a temporary regional marketing manager, on 6 December 2021. On 23 May 2022, Sarah Wilson (Strategic Marketing Director) made the Claimant a permanent member of staff in the role of regional marketing manager EMEA. The Claimant's employment terminated on 31 January 2024 following her resignation on 18 October 2023. The Claimant is diagnosed with Attention Deficit Hyperactive Disorder ('ADHD') and the Respondent does not dispute the Claimant was, at the material times, disabled under s.6 EqA with that impairment.

25. The Respondent is part of a large multinational manufacturing organisation and designs, develops, manufactures, markets, and distributes technologies that enhance perception and awareness, including imaging infra-red cameras. The Respondent does not accept that the Claimant was dismissed or discriminated against on grounds of disability.

26. The Claimant's employment began well and she performed to expected levels. She was initially line-manged by Ms. Wilson with whom she had congenial relations and the Claimant felt supported by her.

27. During the Claimant's first year in her permanent role she had concerns about her own ability and being able to manage her workload and as a result, was contemplating resignation. The Claimant informed Ms. Wilson of her concerns and Ms. Wilson re-assured the Claimant that she was performing well and agreed to re-distribute some work and provide any such support the Claimant needed. The Claimant's confidence was restored and she did not pursue resigning.

28. The Claimant usually sat next to Jeyanthi Tamber (marketing director) with whom she had a good relationship. The two would socialise outside of work and they were on friendly terms.

29. On 10 July 2023, the Respondent declared that organisational changes were necessary to its Solutions business unit to align the Respondent with its clients and streamline and increase ownership across its teams. This meant that everyone affected by the re-organisation would to be assigned to one of two vertical business teams. Another result of the re-organisation was that Maria Cambria (vice-president of regional marketing and interim director of regional marketing) assumed line-management of the Claimant. Whilst the Claimant was based in the UK, Ms. Cambria was based in the USA.

ADHD

30. In or around July and August 2023, the Claimant asked her colleagues, Ms. Tamber and Ms. Wilson to complete ADHD assessment forms which would assist the Claimant with a pre-diagnosis investigation process for ADHD. Ms. Tamber and Ms. Wilson duly completed the forms, in good faith, to the best of their knowledge regarding the Claimant.

31. On 11 August 2023 the Claimant was formerly assessed for ADHD and a report was subsequently produced which confirmed that the Claimant did, in fact, have the impairment. On 15 August 2023, the Claimant informed Ashlea Page (Senior HR Business Partner) about her diagnosis but stated that she was not comfortable with Ms. Cambria being informed of the diagnosis as the Claimant felt she had not built up a sufficient rapport with her.

Claimant's Concerns

32. The Claimant sent an e-mail to Ms. Cambria outlining concerns, about workload and having to meet another vertical, which she had post the re-structure. The Claimant requested a call with Ms. Cambria and in her email stated,

> *'I have listed below some of my concerns that I would like to discuss during the call*
> *• Concerns regarding my marketing experience and direction (When I joined FLIR it was mainly due to my strengths and experience in the Events and Tradeshows area, and I have had a lot of support from Sarah to build my Marketing skillset as this was something she understood was needed to also help with my confidence in managing the role- I would appreciate the opportunity to discuss this a little further)*
> *• It was agreed with Sarah that that we would engage with an external agency with experience in the industry to support the work I was doing in collaboration with the ITS team, particularly the Sales Director, Business Development, Manager, Product Managers and Sales Trainer. I think we have all invested heavily now in the branding and messaging we are working on together and I would like to discuss if this way of working (ie. utilising this external agency, who now have a keen insight into the ITS content and subject matter required) I would appreciate your thoughts on this*
> *• I know that there will need to be some org changes and that currently I only work with ITS and will still have some input into the events and tradeshows –*

> *but I have invested a lot of time learning and understanding about the ITS vertical regarding the products, customers, competitors, key messages etc. and therefore also have some areas of concern about possibly being moved to another vertical, and would again, just like to discuss that further in terms of it being a bit of an area of anxiety (though of course, fully understand that the business needs will take priority regarding any changes)'*

33. Ms. Cambria had a call with the Claimant on 8 August 2023 and discussed the Claimant's concerns with her, but the Claimant was not totally assuaged.

34. On 25 August 2023 Ms. Cambria sent a comprehensive email to her team (including organisational charts) to detail the new structure and the roles members of the team would perform. Ms. Cambria confirmed that Ms. Tamber had been promoted to Senior Regional Marketing Manager and set out the focus of the Claimant's role as she would be responsible for 'Security/ITS.' The Claimant perceived that Ms. Cambria had a reputation for being challenging to work with. This perception clouded the Claimants interactions with Ms Cambria and she felt, wrongly, that Ms Cambria had a hostile attitude toward her [TP/16]. The Claimant was particularly disheartened with the changes Ms Cambria had made because she did not want to work within the security vertical.

5th October 2023 Meeting

35. In early October 2023 Ms Cambria came to the UK for meetings with the UK based team. During a meeting on 5 October 2023, Ms Cambria made comments which the Claimant felt were inappropriate and this put the Claimant on a 'state of alert' so that she perceived Ms Cambria to be of an abrupt disposition. When there was a break in the meeting the Claimant approached Ms Cambria to discuss a change in verticals and Ms Cambria told the Claimant, robustly, that there would be no changes in the vertical. This upset the Claimant and she informed Ms Tamber that she believed that Ms Cambria had thought that the Claimant was making things up about ways of working and the splitting of verticals.

36. The Claimants state of upset was such that she was moved to tears which led to her retiring into a private office where she would be alone. Ms Tamber checked on the Claimant to see if she was okay and noticed that the Claimant was searching for jobs on her mobile telephone. After assuring herself that the Claimant was well Ms Tamber returned to the main meeting.

37. Noticing that the Claimant was not in the meeting Ms Cambria felt that there was something amiss and queried this with Ms Tamber. Ms Cambria asked Ms Tamber if she should speak with the Claimant and therefore, Ms Tamber messaged the Claimant. The Claimant responded to say that she was not sure what would be best and upon hearing this Ms Cambria decided not to speak to the Claimant as she did not want to cause her any further stress or upset. Eventually, the Claimant did return to the meeting and nothing else, of consequence, occurred at the meeting.

Spain and Resignation

38. On 17 October 2023, the Claimant travelled to Spain to attend a security sales meeting at which she would be giving a presentation. Ms Wilson was also at the meeting in Spain as she too was due to deliver a presentation.

39. Prior to the day the Claimant and Ms Wilson were due to deliver their presentations they enjoyed an evening meal together. During the meal the conversation turned to the presentations the Claimant and Ms Wilson would deliver. The Claimant outlined the content of her presentation to Ms Wilson and Ms Wilson responded that the work the Claimant had done toward the presentation was no longer part of her responsibility but that of the strategic director. The Claimant felt that her preparatory work for the presentation had been a waste of time and this again led to her becoming upset. Shortly after the meal ended the Claimant returned to her hotel room at around 23:00.

40. When the Claimant returned to her room she pondered over what Ms Wilson had said and this led her to becoming even more distressed. In her state of anguish the Claimant then tried to fall asleep. Despite her best efforts the

Claimant was unable to sleep and at around 02:30 the Claimant, having made up her mind to resign from her role, drafted the following e-mail,

> *'Hi Maria,*
> *I hope you are well.*
> *Whilst I appreciate that the timing is unfortunate I think I need to give notice on my position.*
> *As you will have witnessed from your time in the UK I am struggling to manage with many of the changes in conjunction with some additional issues from a personal perspective*
> *I believe I am contracted to offer 1 months notice, which would mean I terminate my employment on Friday 17 November'.*

41. The timing and circumstances of the Claimant's resignation is consistent with her evidence that ADHD affected her in a manner which induced impulsivity.

42. Whilst the Claimant was in Spain, Ms Cambria was back in the USA and therefore, they were working and operating in different time-zones. The circumstances in which, including the middle-of-the-night hour, the Claimant sent Ms Cambria her resignation email was affected by her ADHD. Ms. Cambria was unaware of the Claimant's ADHD at the time.

43. Soon after resigning from her employment, the Claimant set about applying for new roles and seeking alternative employment and attended a job interview on 23 November 2023.

44. The next day, 18 October 2023, Ms Cambria, knowing that the Claimant was unhappy with the re-structure and aware of her emotional reaction at the 5 October 2023 meeting, responded to the Claimant's resignation by sending her an acceptance e-mail which simply read,

> *'I'm sorry to hear that, Toni. You are a positive asset to the team. I understand that we must all take care of ourselves.*
> *I will let HR know.'*

As Ms Cambria was unaware of the Claimant's ADHD she would not have been alert to the fact that the Claimant's resignation *may* have been made in haste or an overreaction. On 19 and 23 October 2023, Ms Cambria emailed Ms Page asking for HR support in respect of the Claimants resignation.

Aftermath of Resignation

45. The Claimant returned to work in the UK office on 23 October 2023 and met with Ms Page to inform her that she had resigned. Ms Page was taken by surprise because she had not seen the e-mail Ms Cambria had sent her on 19 October 2023. Following her conversation with the Claimant on 23 October 2023, Ms Page responded to Ms Cambria advising that the resignation should be acknowledged unless the Respondent wished to consider retaining the Claimant. Ms Cambria, in turn responded to Ms Page confirming that the Claimant would not be retained. On 7 November 2023 Ms Cambria completed a replacement requisition form in preparation for the Claimant's exit.

46. On 31 October 2023 the Claimant emailed Ms Cambria regarding her leaving date which the Claimant had originally stated would be 17 November 2023. The Claimant explained that there was an event in Dubai which she was scheduled to attend and flights and accommodation had already been booked. The Claimant also set out reasons why she should attend the Dubai event and stated she would be happy to extend her leaving date so she could attend the event in the UAE.

47. Also, on 31 October 2023 the Claimant spoke to Ms Page informing her she was due to travel to Dubai and asked if there was a possibility of her to continue working beyond 17 November 2023 and postpone her leaving date until 30 November 2023. The Claimant did not ask Ms Page if she could retract her resignation.

48. On 1 November 2023, the Claimant followed up her conversation with Ms Page with an e-mail in which she stated that she would be grateful for an answer regarding the Dubai trip and querying whether Ms Page had spoken to Ms Cambria regarding it. The Claimant ended her e-mail by stating,

> *‘Again honestly don’t mind the outcome but would appreciate knowing if I will be leaving the business 17th or end November so that I am able to make my own plans Thank you’*

49. Following the e-mail traffic between Ms Page and the Claimant on 1 November 2023 the Claimant asked Ms Page if they could speak. Ms Page spoke with the Claimant and the Claimant asked if it would be possible to extend her notice period until the end of the year rather than the end of November so that she could complete a full handover.

50. On 2 November 2023, Ms Cambria confirmed to Ms Page that she was happy to extend the Claimant’s employment until 30 November 2023 and that she would advise on an extension until the end of 2023 in a few weeks.

51. Having had time to reflect upon her resignation, on 13 November 2023, the Claimant emailed Ms Page and asked whether it was possible to reconsider her resignation and retract it. In that same email the Claimant stated that the issue of retracting her resignation was just a question and she wanted to know that if it was possible, what the process would be. The Claimant also raised the possibility of her being eligible for any other roles with the Respondent. Although in her witness statement the Claimant states that she sent ‘*another’* e-mail requesting a meeting to discuss retracting her resignation it was in fact the <u>first</u> such email the Claimant had sent.

52. On 14 November 2023 Ms Page met with the Claimant, at the Claimant's behest, and the Claimant asked her again if she could retract her resignation; the Claimant was advised to speak with Ms Cambria in this regard. The same day, the Claimant emailed Ms Cambria and said she would like to talk to her about the possibility of retracting her resignation she also said that *‘Many factors led to my sending the resignation email that we have not really discussed and I would very much like the opportunity to discuss these with you*

further'. The Claimant also wrote that, as an alternative, she would like to remain in her role during December 2023.

53. Ms Cambria agreed to meet, remotely, with the Claimant and the meeting took place on 21 November 2023. The Claimant told Ms Cambria that a number of things, including stress and confusion, had led to her resignation and for the first time disclosed her ADHD to Ms Cambria. Ms Cambria told the Claimant that she was not aware of her ADHD and it would take a while to extend her notice period until the end of January 2024. The Claimant asked if that time would be used to consider retraction of her resignation and Ms Cambria was candid in her response and said that was '*unlikely'*. The Claimant pressed Ms Cambria on why her resignation could not be retracted and with equal candour Ms Cambria told the Claimant that when one resigns it means they are unhappy and as resignation is a decision taken seriously, she did not want to risk losing the Claimant soon after rescinding her resignation. Ms Cambria had already, prior to the meeting, decided that she would not be allowing the Claimant to retract her resignation.

<u>*Grievance (Protected Act)*</u>

54. On 7 December 2023, the Claimant emailed Ms Page asking her how she could go about submitting a grievance involving Ms Cambria. Nine-minutes after the Claimant had sent her email to Ms page, she responded advising the Claimant that she should try to resolve any matters informally in the first instance but if she wished to raise a formal grievance she needed to send it to HR. Ms Page forwarded the Claimant a copy of the staff-handbook to assist her.

55. The Claimant sent Ms Page a lengthy 12-page grievance on 8 December 2023 [MB/431-443] the nub of which was that she had *'been subjected to bullying, discrimination, and negligent and unfair treatment following a diagnosis of a neuro-divergent disability which the company was made fully aware of at the time of diagnosis.'*

56. Craig Cooper (financial controller surveillance and site lead) was appointed to investigate the Claimant's grievance.

57. Mr Cooper proceeded to investigate the Claimant's grievance and between 11 and 26 January 2024, Mr Cooper interviewed: The Claimant; Ms Wilson; Ms Tamber; Ms Cambria; Ms Page; and Stefaan Pinck (vice-president sales).

58. The Claimant attended her grievance investigation interview accompanied by her representative Tammy Coles. Mr Cooper asked the Claimant relevant questions in respect of her grievance and gave her a proper opportunity to respond and make submissions in support of her grievance. The other interviewees were interviewed after the Claimant so Mr Cooper had a full understanding of the Claimant's grievance and could ask probing questions of the other characters.

59. After completing his investigation Mr Cooper wrote to the Claimant on 30 January 2024 with his grievance outcome which was:

> *'In your grievance you alleged that you had been subject to 'bullying and discrimination' at the hands of Maria Cambria, Vice President, Demand Generation. After interviewing a number of employees, including you and considering all the evidence to hand, the outcome of the investigation is that your allegations have not been upheld and we propose to take no further action.'*

The Claimant was advised of her right to appeal Mr Cooper's decision.

60. In or around December 2023 or January 2024, Ms Cambria had asked Ms Tamber how the holiday management system in the UK worked and if the Claimant was on holiday. Ms Cambria's query was prompted as she had received an 'out-of-office' reply from the Claimant when she was unaware whether or not the Claimant was on annual leave. This was an innocuous query and not Ms Cambria asking Ms Tamber to report back to her vis-à-vis the Claimant.

Termination of Employment and DSAR Request

61. Following the Claimant's extended notice period, her employment terminated on 31 January 2024; following her resignation tendered on 18 October 2023.

62. Also on 31 January 2024, the Claimant submitted a Data Subject Access Request ('DSAR') in the following terms:

> *'I would like to request from you please all information relating to my entire employment period with Teledyne FLIR/FLIR (06/12/2021-31/01/2024)*
> *This is to include but is not exclusive to*
> - *Everything on my personnel/HR file*
> - *All communications that mention me during my employment with FLIR*
> - *Any file notes*
> - *Witness statements*
> - *Handover notes and documents*
> - *Emails, Microsoft Teams and Text messages'*.
>
> …

63. On 5 February 2024, Ms Page wrote to the Claimant explaining that due to the complex nature of her DSAR it would take longer than expected and therefore, the Respondent would respond within three-months as per the guidance of the Information Commissioners Office ('ICO'). Ms Page also asked the Claimant to provide her with further information so that the Claimant's request could be narrowed in scope. The Claimant failed to respond to Ms. Page until 11 April 2024. On the same day, Ms. Page responded to the Claimant explaining that although she had mentioned the names of certain individuals, her request was still too broad and would involve the Respondent reviewing communications of over three-hundred people.

64. Ms Page, again, wrote to the Claimant on 18 April 2024 informing her that although the Respondent had begun searching for the requested documents the Claimant's request was still too expansive and that for this reason, certain documents would be excluded. The Claimant responded to Ms Page on 30April 2024 stating that she found the Respondent's approach '*unsatisfactory'* and she would give the Respondent a further opportunity to comply before complaining to the ICO.

65. On 4 July 2024 Ms Page sent the Claimant 'ZIP' files with the documents the Respondent had recovered.

Grievance Appeal

66. On 6 February 2024, the Claimant appealed her grievance outcome to Michelle Hildyard (vice-president) whom, the Claimant had been informed, would deal with any appeal. Ms Hildyard had had no prior contact with the Claimant but she did know, and had worked with, Ms Cambria. However, Ms Hildyard had not spoken to or worked with Ms Cambria after the COVID-19 pandemic. Therefore, Ms Hildyard was a sufficiently impartial and neutral person to determine the Claimant's appeal.

67. To assist Ms Hildyard in her role, Ms Page sent her the grievance outcome, all supporting documents, investigation notes, handwritten notes, and the grievance outcome letter. After considering the material before her, Ms Hildyard was not satisfied that the grievance process was sufficiently thorough or that it addressed all of the matters raised within the Claimant's grievance.

68. Therefore, Ms Hildyard decided that the best course of action was to undertake a further investigation as part of the appeal process. Ms Hildyard interviewed: The Claimant; Ms Page; Ms Tamber; Ms Cambria; and Kelly Hosten (Marketing Specialist).

69. Following her investigation into the Claimant's appeal, Ms Hildyard produced an investigation report on 20 February 2024. Ms Hildyard's report was thorough and comprehensive and she concluded, inter alia, that:

    (a) Ms Cambria had not discriminated against the Claimant;
    (b) Ms Cambria's behaviour toward the Claimant (on 5 October 2023) was not a form of bullying;
    (c) communication regarding the re-organisation of the team was confusing and could have been clearer; and
    (d) Ms Cambria's reasons for not allowing the Claimant to retract her resignation were not malevolent but stemmed from Ms Cambria's lack of faith in the Claimant's commitment to the business.

    Ms Hildyard also made a few recommendations which are not relevant for the purposes of our fact finding.

70. On 1 March 2024 Ms Hildyard sent the Claimant an outcome letter regarding her grievance appeal. Ms Hildyard addressed all the points in the Claimant's appeal and confirmed that the appeal was not upheld. Ms Hildyard also informed the Claimant that she had made enquiries about alternative roles for the Claimant at the Respondent but, unfortunately, there were no suitable roles for the Claimant to return to.

Relevant Law

Time limits for EqA claims

71. S.123 EqA states:

    (1) Subject to proceedings on a complaint within section 120 may not be brought after the end of—

        (a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

…

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

72. In terms of case law:

i. For the "conduct extending over a period" to be relevant, something that is found to have been the relevant discrimination must be in time for it to render the out of time claims justiciable by virtue of "*conduct extending over a period*" (**South Western Ambulance Service NHS Foundation Trust v King** UEAT/0056/19 at [33]);

ii. with respect to the just and equitable extension arguments, it is for the Claimant to show discretion to extend time should be exercised and that there is no presumption to exercise the discretion – extension is the exception not the rule: **Robertson v Bexley Community Centre**[1] [2003] EWCA Civ 576, [2003] IRLR 434 at [25]

1. it is always necessary for tribunals, when exercising their discretion, to identify the cause of the complaint's failure to

[1] Indeed prior to this case the EAT already made clear that just because a fair trial is still possible it does not automatically to lead time being extended: **Newnham v Transco plc** EAT/125/00, EAT/126/00 & EAT/844/00 at [29]

bring the claim in time: **<u>Accurist Watches Ltd v Wadher</u>**[2] (EAT/102/09) at [15]

2. moreover, as the purpose of time bars is to ensure finality and certainty, it is difficult to see how a Claimant can discharge such a burden of showing that it is just and equitable to extend time if either (a) he/she does not explain the delay or (b) the explanation is disbelieved: **<u>Edomobi v La Retraite RC Girls School</u>** UKEAT/0180/16 at [31].[3]

Direct Disability Discrimination

73. S.13 EqA provides that (so far as material),

‘A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.’
…

74. Under s.23(1) EqA, where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.

75. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the Claimant’s protected characteristic is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence.

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[2] Langstaff J, without making any citation or reference to this case, equally reaches the same conclusion in **<u>Abertawe Bro Morgannwg University Local Health Board v Morgan</u>** UKEAT//0305/13 at [52] also stated that “*'The first question in deciding whether to extend time is why it is that the primary time limit has not been met*…”

[3] Indeed, the Court of Appeal in **<u>Abertawe Bro Morgannwg University Local Health Board v Morgan</u>** [2018] EWCA Civ 640; [2018] ICR 1194 accepted that whilst the test is broad with no specific list of factors to be considered, with lack of a good reason for delay not operating as an absolute bar, two factors that are always relevant: the reason for the delay and any prejudice caused to the other parties (at [18]-[20], and [24]-[26]).

76. We must consider whether the fact that the Claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.

77. In many direct discrimination cases, it is appropriate for a Tribunal to consider, first, whether the Claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of disability. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the Claimant was treated as she was.

78. S.136 EqA sets out the relevant burden of proof that must be applied. A two-stage process is followed. Initially it is for the Claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the Respondent, that the Respondent committed an act of unlawful discrimination.

79. At the second stage, discrimination is presumed to have occurred, unless the Respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the Respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the Claimant's disability. The Respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.

80. Guidelines on the burden of proof were set out by the Court of Appeal in *Igen Ltd v. Wong* [2005] EWCA Civ 142; [2005] IRLR 258 and we have followed those as well as the direction of the court of appeal in the well-known case of *Madarassy v. Nomura International plc* [2007] IRLR 246, CA. The recent decision of the Court of Appeal in *Efobi v. Royal Mail Group Ltd* [2019] ICR 750 confirms the guidance in these cases applies under the EqA.

81. The Court of Appeal in *Madarassy*, stated:

> '*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal 'could conclude' that on the balance of probabilities, the Respondent had committed an unlawful act of discrimination.'* (56)

82. It may be appropriate on occasion, for the Tribunal to take into account the Respondents' explanation for the alleged discrimination in determining whether the Claimant has established a prima facie case so as to shift the burden of proof. (*Laing v. Manchester City Council and others* [2006] IRLR 748; *Madarassy*.) It may also be appropriate for the Tribunal to go straight to the second stage, where for example the Respondent assert that it has a non-discriminatory explanation for the alleged discrimination. A Claimant is not prejudiced by such an approach since it effectively assumes in his or her favour that the burden at the first stage has been discharged (*Efobi*).

83. We are required to adopt a flexible approach to the burden of proof provisions. As noted in the cases of *Hewage v. GHB* [2012] ICR 1054 and *Martin v. Devonshires Solicitors* [2011] ICR 352, they will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they may have little to offer where we in a position to make positive findings on the evidence one way or the other.

84. Allegations of discrimination should be looked at as a whole and not purely on the basis of a fragmented approach (*Qureshi v. London Borough of Newham* [1991] IRLR 264, EAT. This requires us to "see both the wood and the trees" (*Fraser v. University Leicester* UK EAT/1055/13 at paragraph 79).

Discrimination Arising from Disability

85. S.15 EqA provides that:

‘(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.’

86. Guidance as to whether treatment is because of something arising in consequence of disability is provided in *Pnaiser v. NHS England* [2016] IRLR 170, by Simler P (as she then was) at §31 and the correct approach to justification was summarised at §10 in *MacCulloch v. ICI* [2008] ICR 1334.

87. The principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it (see: *Hardys & Hansons plc v. Lax* [2005] IRLR 726 per Pill LJ at paragraphs [19]–[34], Thomas LJ at [54]– [55] and Gage LJ at [60]). The burden of proof is on the Respondent to establish justification (see: *Starmer v. British Airways* [2005] IRLR 862 at [31]).

88. In the context of S.15(1)(b) EqA, this means that a Tribunal must objectively balance whether the conduct in question is both an appropriate and reasonably necessary means of achieving the legitimate aim. It is for an Employment Tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own assessment of whether the former outweigh the latter.

89. In <u>*Birtenshaw v Oldfield [2019] IRLR 946,*</u> the EAT held that the Tribunal's consideration of that objective question should give a substantial degree of respect to the judgment of the decision-maker as to what is reasonably necessary to achieve the legitimate aim provided he has acted rationally and responsibly. To this end, the Explanatory Notes to the EqA explain at paragraph 70 that section 15 '*is aimed at re-establishing an appropriate balance between enabling a disabled person to make out a case of experiencing a detriment which arises because of his or her disability and providing an opportunity for an employer or other person to defend the treatment*.'

Reasonable Adjustments

90. S.20 of the EqA provides:

'20. ***Duty to make adjustments***
(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
(2) The duty comprises the following three requirements.
(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
…

21. ***Failure to comply with duty***
(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.'

91. No duty is imposed on an employer who does not know and could not reasonably be expected to know that that person has a disability and is likely to

be at the substantial disadvantage referred to in the first, second or third requirement. The EAT held in *Eastern and Coastal Kent PCT v. Grey* [2009] IRLR 429, in relation to a provision in similar terms in the DDA 1995, that this meant that an employer was exempt from the duty to make adjustments if *each* of four matters could be satisfied, namely that the employer: (*a*) does not know that the disabled person has a disability; (*b*) does not know that the disabled person is likely to be at a substantial disadvantage compared with persons who are not disabled; (*c*) could not reasonably be expected to know that the disabled person had a disability; and (*d*) could not reasonably be expected to know that the disabled person is likely to be placed at a substantial disadvantage in comparison with persons who are not disabled.

Harassment

92. Section 26(1) of the EqA provides (so far as material):

‘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.’*

93. A similar causation test applies to claims under section 26 EqA as described above to claims under section 13. The unwanted conduct must be shown ‘to be related’ to the relevant protected characteristic. The shifting burden of proof rules set out in section 136 of the EqA can be helpful in considering this question. The burden is on the Claimant to establish, on the balance of probabilities, facts that in the absence of an adequate explanation from the Respondent, show he or she has been subjected to unwanted conduct related to the relevant characteristic. If he or she succeeds, the burden transfers to the Respondent to prove otherwise.

94. Harassment does not have to be deliberate to be unlawful. If A's unwanted conduct (related to the relevant protected characteristic) was deliberate and is shown to have had the *purpose* of violating B's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, the definition of harassment is made out. There is no need to consider the effect of the unwanted conduct.

95. If the conduct was not deliberate, it may still constitute unlawful harassment. In deciding whether conduct has *the effect* of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, we must consider the factors set out in section 26(4), namely:

    (a) the perception of B;
    (b) the other circumstances of the case;
    (c) whether it is reasonable for the conduct to have that effect.

    The shifting burden of proof rules can also be helpful in considering the question as to whether unwanted conduct was deliberate.

96. In *Richmond Pharmacology v. Dhaliwal* [2009] IRLR 336, the EAT held 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.

97. In so far as the second of those matters is concerned, guidance was given by the EAT in *Betsi Cadwaladr University Health Board v. Hughes* [2014] 2 WLUK 991; per Langstaff P:

    > *'10. Next, it was pointed out by Elias LJ in the case of Grant v. HM Land Registry [2011] EWCA Civ 769 that the words "violating dignity", "intimidating, hostile, degrading, humiliating, offensive" are significant words. As he said:*
    >
    > *'Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being*

caught by the concept of harassment.'

11. Exactly the same point was made by Underhill P in Richmond Pharmacology at paragraph 22:

'...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.'

98. Consideration should also be given at this stage to the reasonableness of the effect. The test in this regard has both subjective and objective elements. The Tribunal is to look at the effect of the conduct from the Claimant's point of view, but must also ask whether it was reasonable of the Claimant to consider that conduct had that requisite effect (*Dhaliwal*). The context of the conduct in question is relevant to all stages of the test.

Victimisation

99. The test under s.27 EqA is as follows:

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

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

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

(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;…
(d) making an allegation (whether or not express) that A or another person has contravened this Act.

100. *Martin v. Devonshire* [2011] ICR 352, set out at §22:

> *'The question in any claim of victimisation is what was the "reason" that the respondent did the act complained of: if it was, wholly or in substantial part, that the Claimant had done a protected act, he is liable for victimisation*".

Conclusions and Analysis

Credibility of Evidence

101. We find that the Claimant's evidence was cogent but that she, at times, during cross-examination, attempted to try and explain away irregularities in her pleaded case to support her complaints. We were also concerned that at a Preliminary Hearing before Employment Judge Tueje on 11 June 2025 (to determine an application to amend the Claimant's claim) the Claimant had misinformed the Judge. The Claimant informed Employment Judge Tueje that many of the matters which she sought to add to her claim only came to her attention after she had received documents via a DSAR request. The contemporaneous documents did not support the Claimant's position. However, we were alert to remind ourselves that the Claimant's misinformation before Employment Judge Tueje may well have been unintentional and did not, necessarily, vitiate her evidence before us.

102. We found the Respondent's witnesses' evidence to be credible, consistent, and corroborated by the documentary evidence. Where there was a dispute, we preferred the evidence of the Respondent witnesses.

‘Ordinary’ Unfair Dismissal

103. The Claimant resigned from her employment on 18 October 2023. It was not the first time the Claimant had resigned from employment and she was aware of the effect of resignation. We do not accept the Claimant’s evidence that her resignation email was not genuinely a resignation but an attempt to alert the Respondent that she was encountering difficulties in her role.

104. At the time the Claimant resigned she *wanted* to resign but later came to regret her action. Therefore, she subsequently framed her resignation as a ‘shot across the bows.’ The Claimant’s evidence was that the wording and timing of her resignation email should have alerted the Respondent to the fact that she did not in actuality want to resign. However, a resignation does not have to be formally or intricately worded (*Johnson v. Monty Smith Garages Ltd* EAT 657/79). The Respondent was aware that the Claimant was not entirely happy in her role and were entitled to treat her resignation as a true resignation.

105. The EAT set-out the legal position in *Omar v. Epping Forest District Citizens Advice* [2024] ICR 301 at §97. Thus, the Claimant’s unfair dismissal complaint fails.

Direct Disability Discrimination

106. **LoI 8(a):** In her oral evidence the Claimant accepted that Ms Page and Ms Wade were not decision-makers in her grievance and grievance appeal hearings, and this allegation cannot succeed against these individuals. The Claimant also accepted, in cross-examination, that at the time the Claimant asked that she be allowed to retract her resignation (which Ms Cambria did not allow) Ms Cambria was unaware of her ADHD diagnosis. It then follows that Ms Cambria could not have treated the Claimant less favourably because of her disability as she was not informed of the Claimant’s impairment.

107. Mr Cooper (who investigated the Claimant’s grievance) found that Ms Cambria’s decision not to allow the Claimant to retract her resignation was a

sound decision and did not interfere with it. By upholding Ms Cambria's decision Mr Cooper did not treat the Claimant less favourably because of her disability. Equally, Ms Hildyard (who head the grievance appeal) did not disturb Ms Cambria's decision as she found there was no basis on which to reverse it.

108. **LoI 8(b), (c), (d) and (e):** On day three of the hearing, circa 14:04, the Claimant fairly accepted – in her oral evidence – that these acts or omissions were not because of her disability and conceded that the allegations were defunct. Even if the Claimant had not made the concessions, and we were impressed with the Claimant's pragmatism in doing so, the evidence did not support the allegations.

109. On the balance of probabilities there were no facts from which we could infer that the Claimant was treated less favourably because of her protected characteristic and she has not raised a prima facie case of a difference in treatment because of disability or at all. This complaint has not been made out and is not upheld.

Discrimination Arising from Disability

110. The Claimant had described to Dr. Sani (who had assessed her for, and diagnosed her with, ADHD) that she: Interrupts people and *'cannot control the impulses and urges to do so'*; *'would put things off and would then be rushing to get things done which leads to careless mistakes'*; and had *'problems with hyperactivity and impulsivity.'* Dr. Sani stated that, having assessed the Claimant against the five criteria for a diagnosis of adult ADHD based on DSM V, the Claimant was assessed as having '…5/9 symptoms for hyperactivity/impulsivity in adulthood…' We also heard live evidence from the Claimant about the effects ADHD had on her decision to resign and send an email at an irregular hour.

111. Therefore, we accept that the Claimant's resignation email was something arising in consequence of her disability.

112. The Respondent was aware of the Claimant's ADHD and Ms. Cambria became aware of it from 21 November 2023.

113. **LoI 14(a) and (b)**: The Respondent did not dismiss the Claimant (see paragraphs 103 to 105 (*supra*)) and thus could not have dismissed the Claimant because of something arising from her disability.

114. Mr Cooper and Ms Hildyard could not have allowed the Claimant to retract her resignation as from 8 December 2023 the Claimant no longer wanted to retract it. However, at any point between 21 November 2023 and 8 December 2023 Ms. Cambria *could* have allowed the Claimant to retract her resignation. The Claimant's resignation was something arising from disability and not allowing her to retract it, was discrimination arising from disability and unfavourable treatment. Whilst we accept that the Claimant's s.15 EqA complaint is made out it is out of time (see paragraphs Xx to XX below) and is therefore, dismissed.

<u>*Failure to Make Reasonable Adjustments*</u>

115. The Claimant relies upon three alleged PCP's:

> ***'a. That the organizational changes to the marketing team, in summer 2023, would take place without written communication being sent to Regional Marketing Managers identifying what the responsibilities and requirements of the role would be within the new structure ("Alleged PCP1").***
>
> ***b. Introducing two new Vertical Business Teams, which consequently meant that remaining staff would be required to work on additional verticals ("Alleged PCP 2").***

c. That an employee's line manager could decide how to respond to their purported resignation, without interrogating the intention/reasons or reporting the resignation to HR ("Alleged PCP 3").'

116. Under cross-examination the Claimant accepted that her alleged PCP's were de facto not PCP's. Even if the Claimant had not made the concessions, we do not accept that the PCP's relied on are genuine PCP's; they are business decisions and in respect of PCP 3, Ms Cambria's response to the Claimant's resignation. At the time PCP 3 applied to the Claimant Ms Cambria had no knowledge of the Claimant's disability or that there was any substantial disadvantage to the Claimant.

117. The Claimant's failure to make reasonable adjustments complaint is not well founded and is dismissed. If we are wrong about this the complaint is out of time and therefore, cannot succeed (see paragraphs 127 to 128 below).

Harassment Related to Disability

118. When considering the allegations of harassment, we reminded ourselves that the burden is on the Claimant to establish, on the balance of probabilities, facts that in the absence of an adequate explanation from the Respondent, show she has been subjected to unwanted conduct related to the relevant characteristic which has the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. We were mindful of the need to take account of the Claimant's perception, the other circumstances of the case, and whether it was reasonable for the conduct to have that effect. We further reminded ourselves of the sage words of Elias J in *Grant* not to cheapen the significance of the s.27 EqA words. (the matters contained within this paragraph will hereafter be referred to as 'the test for harassment').

119. **LoI 28(a)**: The Claimant made a contemporaneous note of her telephone conversation with Ms Cambria on 21 November 2023 [MB/404]. Ms Cambria's response to the Claimant's explanation as to what led her to resign was direct and professional. Her response cannot be construed to be a violation of the Claimant's dignity, related to disability, or an act of harassment. The test for harassment has not been met and this allegation is dismissed.

120. **LoI 28(b), (c), and (d)**: The Claimant, in cross-examination, accepted that these allegations were <u>not</u> acts of harassment and they are duly dismissed.

121. **LoI 28(e)**: We saw or heard no evidence whatsoever that Ms Tamber was asked to report back to Ms Cambria about the Claimant's working practises. We accept Ms Tamber's evidence that the only occasion on which Ms Cambria made enquiries about the Claimant was to ask Ms Tamber if she was aware if the Claimant was on annual leave or not. The test for harassment has not been met and this allegation is dismissed.

<u>Victimisation</u>

122. It is accepted by the Respondent that the Claimant's grievance of 8 December 2023 was a protected act.

123. The Claimant resigned from her role on 18 October 2023 and the Respondent accepted the resignation and did not allow the Claimant to retract it. This was not in any way due to the Claimant's grievance but because Ms Cambria had come to the conclusion that upon resignation, the Claimant was no longer committed to her role and would resign again, once she had found a suitable position, if her employment was allowed to continue.

124. This allegation was not put to Ms Hildyard and is not made out. Therefore, the allegation fails.

125. The Claimant's DSAR request was wide-ranging and involved the scrutiny of a copious number of documents. Ms Page maintained contact with the Claimant in respect of her DASR request and endeavoured to make the Claimant narrow her request or make it more focussed. The Claimant did not do so and the Respondent did, what it reasonably could, and provided the Claimant with the documents on 4 July 2026.

126. The Respondent's actions did not subject the Claimant to a detriment and were not connected to her protected act. This allegation is not made out and fails.

Time Limits

127. Considering the Acas Early Conciliation regime and the date on which the Claimant submitted her claim, any acts prior to 27 January 2024 are out of time.

128. There was no evidence or submissions from the Claimant, at all, as to why it would be just and equitable to extend time. Equally, the Claimant has not made out – on any basis – that there are 'continuing act' features that may bring some out-of-time allegations within our jurisdiction. Therefore, any allegations prior to 27 January 2024 are out-of-time and we have no jurisdiction to consider them.

129. For these reasons the Claimant's claim is not made out and stands dismissed.

Employment Judge Sudra

Date: 3rd JUNE 2026

JUDGMENT SENT TO THE PARTIES ON:
16th JUNE 2026

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FOR THE TRIBUNAL OFFICE