



EMPLOYMENT TRIBUNALS

Claimant: X

Respondent: Network Rail Infrastructure Ltd

Heard at: Manchester (in public; in person)

On: 14 to 16 January 2026
2 February 2026 (In Chambers)

Before: Employment Judge Holmes (sitting alone)

Appearances

For the claimant: Ms M Stanley, Counsel

For the respondent: Ms I Ferber, Leading Counsel

RESERVED JUDGMENT

It is the judgment of the Tribunal that:

The claimant's claims of disability discrimination are not well founded and are dismissed.

REASONS

1. By a claim form presented on 12 July 2024 the claimant, who is, and has been throughout these proceedings, legally represented, brings claims of disability discrimination. She was, and remains, employed by the respondent as an IT Service Desk Analyst in the Request Fulfilment Team. Her claims are of failure to make reasonable adjustments, and/or of s.15 discrimination. The respondent responded to the claims, conceding disability, in respect of most, but not all of the conditions that the claimant relied upon, and denying any form of discrimination.

2. The claims have been the subject of a preliminary hearing, on 8 January 2025, when case management orders were made, and this final hearing was listed.

3. A List of Issues was ordered, and its final iteration, dated 10 June 2025 is at pages 155 to 163 of the main bundle. The hearing, held in person before an Employment Judge sitting alone, and to consider liability only, commenced on 14 January 2026. The claimant was represented by Ms Stanley of counsel, and the respondent by Ms Ferber, KC. There were two agreed bundles. One is the main bundle,

and references to page numbers will be to that bundle. The second is a bundle of medical evidence, and references to documents in this bundle will be in the format “page numbers MB...”. The parties had exchanged witness statements. Ms Ferber had helpfully prepared an Opening Note.

4. The claimant gave evidence, and called Colin Marston, her trade union representative, and the respondent called Catherine Marie O’Connell, and Simon Peel. The evidence was concluded within the 3 days listed, but there was insufficient time for submissions and deliberations. The Tribunal and the parties therefore agreed that they would make written submissions, and the Tribunal would reserve its judgment , considering the case in chambers on 18 February 2026. The Employment Judge started his deliberations that day , and intended that the reserved judgment would be available to the parties within 4 weeks, but this proved unduly optimistic. This was firstly because of the amount of material to be considered, and the complexity of the issues, and then due to pressure of judicial business upon the availability of further time to conclude the deliberations. This was followed by absence for major surgery. A further delay was then caused by the need to anonymise the claimant and other parties, which was not agreed until June 2026. He apologises to the claimant , in particular, for any further anxiety caused to her by this delay, but trusts that she understands why it has not proved possible to promulgate this judgment any sooner.

5. That said, given that there were four witnesses, two bundles , one of 1000 pages, the other of 1564 pages, the expectation that the hearing could be concluded within 3 days was always an over - ambitious one. That large tracts of the early parts of the claimant’s 32 page witness statement , and that of her union representative Colin Marston , some 33 pages, relate to matters that pre-date the claims (none of which arise until after the claimant transferred to the Request Fulfilment Role) , has further hampered the expedition of this judgment. As will also be seen below, there are also issues with the List of Issues, and the fact that closing submissions were made in writing has precluded any oral discussion with the advocates, has not helped. That there were two bundles has also not assisted navigation of the evidence, and although one was expressly prepared as a medical evidence bundle, medical evidence is still contained in the main bundle, meaning that in order to obtain a full overview of the medical evidence, it has been necessary to jump between the two bundles. The length of this judgment hopefully demonstrates why considerable judicial time has had to be expended upon it.

6. The Issues to be determined by the Tribunal, as set out in the List of Issues are set out in Annexe A to this judgment restricted to liability issues only).

7. Having heard the evidence, read the documents to which it has been referred, and considered the submissions of each party, the Tribunal finds the following facts relevant to the issues set out above.

7.1 The claimant started working for the respondent Network Rail on 9 September 2019 in her initial role as an IT Service Desk Analyst.

7.2 The claimant has suffered with anxiety/depression resulting in panic attacks since 2012. However, on 23 September 2021, she was diagnosed with Autistic Spectrum Disorder (ASD), which accounted for some of her anxiety and panic attack symptoms. Further to this, in May 2023, she was diagnosed with Essential Thrombocythemia (bone marrow cancer). She is taking medication in respect of this, which causes mood

changes and irritability. In September/October 2025, she was also formally diagnosed with ADHD, which has been lifelong since her childhood.

7.3 The claimant had a number of occupational health referrals during the course of her employment. The salient ones were:

3 January 2020 – pages 287 to 289 of the bundle

This report confirmed the claimant's anxiety/depression condition, following her absence from work because of panic attacks.

It recommended the following adjustments:

1) When having any form of 1:1 meeting with management she finds been in an office alone can initiate her anxiety - If such meetings could be carried out differently rather than been in an office alone with her manager this would be advisable. For example a HR member of staff or another manager as well

2) Two 20 min breaks rather than 4 10 mins - This will allow her to go outside for fresh air

3) 30 mins for lunch instead of 1 hour and finish at 3.30 - she tends to be fatigued in the afternoons especially following a panic attack.

4) For [the claimant] to sit near a window as she sometimes feels claustrophobic where she currently sits. It of course remains a business decision what can be accommodated and for how long:

I have advised and discussed that a work stress risk assessment should be completed as soon as possible.

21 July 2021 – pages 340 to 343 of the bundle

This report also further considered the claimant's anxiety/depression condition, and recommended adjustments :

Additional supports that could be considered if the business can accommodate:

1. [the claimant] reports she would prefer working from home as this minimises the triggers of her anxiety and panic in the office. She sites her symptoms worsen with smells, excessive noise and very bright electric lighting can increase her anxiety to intense levels. This will affect her performance levels. Also exposure to strong smells in the workspace such as deodorants and bleach can set off asthma attacks.

2. Written communication is preferred as this does help reduce the impact of meeting stressors. She understands the need to participate in some meetings and will carry on as best she can.

3. Being Informed in advance of meetings and the likely subject matter to discuss will reduce the anxiety she can experience.

4. Increased "wrap up time" between calls when necessary to allow [the claimant] to rest if she feels she is under stress and recover for her next call.

6 October 2021 – pages 346 to 349 of the bundle

This report addressed the claimant's capacity to work following a recent autism diagnosis. It sets out in 9 bullet points common traits of persons with autism. A recommendation was made for a workplace assessment , and the doctor said this (page 348 of the bundle) :

2.[the claimant] was tearful on and off during the assessment today even though she engaged fully and answered all my questions. I did wonder whether she would benefit from a further period away from work until the employers have a chance to identify and put appropriate support in places given the diagnosis of autism. She is clearly psychologically vulnerable and I am concerned she will struggle to deal with the aspects of her role she finds more challenging (answering incoming calls – as these are relatively unpredictable, and the interpersonal interactions).

She expressed that remaining at work in some capacity would be less stressful than time away from work. Thus if her employers are able to accommodate her in a role with a more proactive, less reactive tasks, she maybe able to cope without further periods of distress. However it is also important she contact her GP for follow up and support, and be guided by them.

3.The employers could always consider planned time away from work or reduced or restricted hours and tasks at work whilst her mental health needs are identified and addressed as suitable adjustments.

I have explained to [the claimant] that it is the employers who decide whether support is feasible or reasonable.

Given her ongoing psychological vulnerability and to ensure supportive and effective communication, I suggest she has third party support for employment processes/ meetings.

16 May 2022 – pages 589 to 597 of the bundle

Occupational Therapy (by FCA) assessment of the claimant's capabilities in the Service Desk Analyst role in the light of her autism diagnosis. This is a very thorough report into the claimant's autism condition, which sets out very clearly what she could and could not do at work. The previously agreed adjustments were set out, and her strengths and weaknesses were assessed. Recommendations were made under 4 separate headings, which will be considered further below.

The report concluded that the claimant could not go back to her previous role , which involved considerable telephone call handling, and the recommendation was to seek to redeploy her into a more suitable role.

30 January 2023 – pages 623 – 625 of the bundle

This report did little more than to suggest that the claimant's autism condition would require a specialist assessment.

22 March 2023 – pages 630 to 631 of the bundle

Occupational Health report concerning the claimant's fitness for the Service Desk Analyst role, which remained unsuitable for her, and the advice was that redeployment be considered, along with continued working from home. Mention was made of the possibility of medical severance.

21 September 2023 – pages 868 to 869 of the bundle

Occupational Health report following the claimant's move to Request Fulfilment and her cancer diagnosis. The report suggested that the following be considered:

- It is important that she takes short regular 'micro-breaks' (often known as postural breaks; these are 2-3 minutes every 20-30 minutes). These would allow her manage tiredness and migraine associated to her treatment.

- She will require time off work to attend her hospital appointments.

-Regular welfare reviews should be continued with the aim of providing support and identifying any work-related concerns in a timely manner.

-To maintain adjustments already in place for her autism i.e. working from home and when required to attend meetings at the office ensuring she is given notice in advance, safe area where noise can be kept down (noise cancelling headset), smells and lighting controlled.

7.4 That , then was the position up to September 2023. Whilst the claimant deals at some length in her witness statement with the circumstances of, the terms of the referrals for, and the adequacy of some of these reports, these matters do not form part of her claims before the Tribunal, and are thus only background. Paragraphs 5 to 24, for example, of her witness statement go into considerable detail about events in 2020 through to 2023, the relevance of which is not immediately apparent.

7.5 Returning to the history of the claimant's employment, there were issues in the claimant's Service Desk Analyst role in 2020 and 2021. At that time the claimant had not had a formal diagnosis of autism, but was in the process of obtaining one. There were instances of absences during this period, and the claimant did suffer with her mental health.

7.6 On 21 September 2021, the claimant had a major panic attack on the phone at 9am due to being exhausted and triggered by the user's chewing sounds on the phone. She asked her manager, Manager B, to allow her to be off the phones for a bit to allow her to recover but was denied, so she went off work sick.

7.7 Between 23 and 25 September 2021 the claimant underwent an assessment for autism with the Owl Centre, and their report(s) – possibly with some duplications are at pages MB83 to 115. They confirmed a diagnosis of Autistic Spectrum Disorder.

7.8 The claimant underwent the Occupational Health assessment with Dr Sam Flynn on (it seems) 6 October 2021 referred to above (pages 346 to 349 of the bundle). He was aware of, but did not have sight of, the claimant's recent autism assessment. He commented that it would be helpful for OH to have sight of it, but also noted the claimant's reluctance to agree to this. The history of the OH referrals and reports (with some omissions) is summarised above.

7.9 Around November 2021 the claimant raised a grievance . This has its roots in a series on exchanges on Teams (pages 355 to 364 of the bundle) and was then taken over in further email communications (pages 366 to 370 of the bundle) . She says that this grievance was continuously refused even though the mailbox was covered full time by a member of staff and the adjustment would not result in a loss for the team or the business. She made several attempts to get this adjustment because it meant she could go back to work full time and there was no financial loss to the company or any detriment to other members of the team but this was denied every time. There was a grievance meeting on 17 December 2021 (page 412 to 415 of the bundle). Indeed, thereafter, the claimant in 2022 raised a further grievance.

7.10. Eventually, Louise Mears, Occupational Health and Wellbeing Manager at Network Rail, met with the management team (Simon Foster and [Manager B]) to attempt to get this resolved. However, the adjustment was refused and Louise Mears agreed that the claimant would be off the phones and therefore only working 3 hours a day on emails (see pages 393 – 398 of the bundle). She continued in this way until June 2023 when she joined the Request Fulfilment team. In the email Louise Mears sent to confirm the change in working hours, she requested that the claimant should *"not get involved with any other member of staffs workload"*, and *"any concerns about other members of staff can be delt with by [Manager B] or Aemi. If you have a concern please send an email only to [Manager B]. If [Manager B] needs to take action – she will. If you find that someone replicates your work/a colleague does something incorrect – [Manager B] will escalate this appropriately"* (see pages 396 - 398 of the bundle).

7.11 To be clear, neither the subject matter of this grievance , nor its outcome, form any part of the claimant's claims before the Tribunal, which all arise after she was redeployed to another role in June 2023.

7.12 Against this background, in spring 2022 a meeting was arranged on 14 April 2022 to discuss an FCA assessment being carried out (referred to above) with the possibility of the alternative of ill health severance also being mooted.(see pages 551 - 552 of the Tribunal bundle). The claimant felt that she was being forced into this assessment for fear of losing her job, and made it clear that she was doing so under protest.

7.13 The claimant had a number of issues with this assessment, and how it was carried out, which are set out in her witness statement, but are not relevant to the issues to be determined.

7.14 The FCA report issued on 16 May 2022 (see above) and recommended that the claimant get reinstated to work full time and work off the phones at least 80% of the time, but this was not actioned. Despite the report's recommendations regarding the provision of a Mentor following this report, this never came to fruition.

7.15 In the light of the report's findings, ill – health severance was not pursued any further at that time , but it remains a theme of the claimant's evidence that this was the respondent's preferred outcome.

7.16 Matters appear to have continued with no real progress (apart from a further OH report in January 2023 , which simply advised that a specialist assessment be carried out) until 22 March 2023, when another OH appointment took place (see page 630 - 631 of the Tribunal Bundle). The report was responding to a managerial question about her fitness for the role she was carrying out. In the meantime, however, the claimant was in contact with Suzanne Pangbourne, Head of HR, and there were discussions about the possibility of the claimant finding another role. The claimant had, in fact, been on some form of “redeployment” since 2021, but there had been issues (none of which are relevant to these claims).

7.17 On 17 April 2023, the claimant had a meeting with Suzanne Pangbourne in which medical redeployment , and the recent OH report , were discussed. Suzanne Pangbourne sent the claimant an email on 26 April 2023 , summarising the meeting thus (pages 645 to 646 of the bundle) :

Further to our meeting on Monday 17 April 2023, I am writing to confirm the outcome of our discussions. My sincere apologies for the delay I had thought I had sent this on Friday but it was stuck in my drafts.

Medical Redeployment

Occupational Health have advised “Medical Redeployment into a position that does not include repetitive incoming calls and a safe area where you can keep noise, smells and lighting controlled.” You stated that you agreed that it would be beneficial that you should be redeployed in medical grounds. Since our meeting I have asked that your employment status be updated. I can see from both your email and from contact from the redeployment team that this has been actioned. You stated at our meeting that you did not consider that the redeployment team were very supportive previously. I have therefore asked Shereene to discuss this with the redeployment team to explore how your needs can be met. I suggest we discuss level of supports when we next meet.

I will be asking HR colleagues to oversee any applications and will forward your emails to them, this way I can ensure that appropriate redeployment procedures are followed and careful consideration is given to suitability of any roles. We will look for redeployment opportunities for a period of 3 months – i.e (19 April 2023 to 18 July 2023). You will continue to receive full pay during this medical redeployment period.

I will work with Colin to arrange a number of review meetings.

Ill health Severance

We discussed Occupational Health's report – that is after Medical Redeployment has been considered, if Network Rail have not been able to find an alternative roles then you would meet the criteria for ill health severance. I know you said you thought we ought to be able to find you an alternative position but I was clear at our meeting if that we had not been able to find you a suitable redeployment opportunity then we would be

following the Network Rail ill health severance procedures. So whilst of course our focus is on redeployment, it is important that I am clear about this.

Current Role/Working Hours/Location

In terms of working location, then we have already discussed that Network Rail does not have permanent working from home contracts. However any new role will take into account the reasonable adjustments that have been recommended as far as is reasonably practicable. The report is clear in that you are “unlikely to be able to do repetitive incoming telephony work for the foreseeable”. It also recommends a gradual increase in working hours and that you are confident you could work a phased return. Given that we are looking for redeployment opportunities, and the comments above then having spoken to your line management last week, I am proposing that you continue to work the same hours as at present in your current role and that any gradual increase will be time spent on redeployment/training activities. This would be in line with Dr Alan’s advice increasing by 3 hours per week. Whilst you are in your current role working reduced hours we would ask that you use ‘Agent Codes’ when taking breaks, lunch or meetings. If you require time off to attend suitability meetings then this is automatically approved but please can you let your line manager know and use the meeting code. I am advised that use of these codes is the same for all analysts on the team. This will mean your line managers can ensure the mailbox is covered and support you and the rest of the team.

7.18 Thus, the claimant considers that Suzanne Pangbourne “reinstated” the her Medical Redeployment on 17 April 2023, and that was indeed the position.

7.19 The claimant continued to seek other roles within the respondent, but this came to nothing.

7.20 In early 2023 the claimant had felt unwell (she does not really detail the onset of symptoms) and was referred for investigations, which resulted in a diagnosis on 31 May 2023 (pages 660 to 661 of the bundle) of Essential Thrombocythaemia, a form of blood cancer that causes a high number of platelets to form in the blood. The treatment is by means of medication, such as Peginterferon Alfa – 2A, which the claimant was prescribed (see the Chemist on Call document dated 30 August 2023 at page 865 of the bundle) , which has side effects of tiredness, flu – like symptoms and headaches. The claimant provided her manager with a copy of this report at the time.

7.21 The structure of the respondent’s IT Services from 2022 (and possibly before) until the time to which these claims relate was as follows. Catherine Marie O’Connell was, from October 2022, the IT Service and Support Desk Manager. Four teams reported to her, the Helpdesk team, the Request Fulfilment team, then Second Line Support team, and the 24/7 Helpdesk team. She did not , in 2022, directly line manage the claimant, who was, however, at that time employed in the Helpdesk team which reported to Ms O’Connell.

7.22 Against the background set out above, and the claimant’s meeting with Suzanne Pangbourne on 17 April 2023, and the claimant being placed on Medical Redeployment, the claimant herself was looking for suitable opportunities. After an initial approach on 7 June 2023, the claimant approached Hattie Brooks Davies who was the Manager of a Request Fulfilment role which the claimant had noticed was vacant. She informed her that she was on Medical Redeployment and asked if she could apply for the empty

position on the organisational chart. On 9 June 2023, she also emailed Suzanne Pangbourne asking about this position, asking if she could be redeployed to it. This led to the claimant initially being seconded to the role from 26 June 2023 , until January 2024 (see pages 662- 670 of the bundle).

7.23 The claimant duly started the new role as a secondment on 26 June 2023, but on 9 August 2023 Suzanne Pangbourne offered the claimant the role on a substantial basis, with effect from 21 August 2023, thereby ending the secondment (pages 856 to 858 of the bundle). There does not appear to be any record of formal acceptance by the claimant but she clearly did accept the role on the terms offered, and started it on 21 August 2023.

7.24 Again , the claimant's witness statement goes into considerable detail about how this redeployment came about because of her effort and initiative, and she has much to say about the process, none of this forms the basis of any of the claims she makes in these proceedings.

7.25 Likewise the claimant (in para. 37) makes reference to the respondent in July 2023 implementing a three-trigger rule for absences relating to her disability, following a recent change in policy, again , not a claim before the Tribunal.

7.26 The claimant having reported the new condition of blood cancer to the respondent, Manager C referred her again to OH, whose report is dated 21 September 2023 (pages 868 to 869 of the bundle), and which notes that the claimant was suffering side effects of her treatment in the form of tiredness, flu – like symptoms, migraines, insomnia, weight loss, diarrhoea, nausea, vomiting and leg pain. The severity of these symptoms was variable, depending upon the dosage, and by the time of the OH referral the claimant was still managing her work, by then as a Request Fulfilment Analyst.

7.27 This report advised what further adjustments may be required to accommodate the claimant's new condition, namely :

Micro – breaks

Time off to attend appointments

Regular welfare reviews

and to maintain the adjustments already in place for her autism i.e. working from home and when required to attend meetings at the office ensuring she is given notice in advance, safe area where noise can be kept down (noise cancelling headset), smells and lighting controlled.

7.28 Following this diagnosis , and the OH report, the claimant sent emails and the report to her managers, with links and information but was only to be , as she saw it, disappointed again. She was refused adjustments that would allow her to work fulltime and off the phones. She wanted to work full time on emails but was not allowed this adjustment, she contends, but then found the new role to which she was then redeployed.

The events following the claimant's redeployment to the Request Fulfilment Analyst role

7.29 The claimant was line managed in her new role by Manager C. From the outset he held frequent informal discussions with the claimant. In particular :

On 3 July 2023 - Informal conversation about behaviours when speaking to team members;

On 17 July 2023 - Informal conversation about behaviours when speaking to team members;

On 6 September 2023 at 9.52 – Informal conversation over teams regarding conflict with team Colleague;

On 14 September 2023 at 14:15 - Informal conversation regarding issues with team colleague and how employee deals with team members;

On 5 November 2023 - Informal conversation about End of year performance review , the claimant was not pleased with the review she was given and was argumentative, talking over Manager C , would not take his answer at face value, spoke about behaviours;

On 28 November 2023 - Informal conversation regarding behaviours whilst working on Knowledge management project;

On 5 December 2023 - Informal conversation regarding removal from Knowledge management project due to behaviours and performance

7.30 On 5 December 2023 Cath O'Connell sent an email to Manager C following discussions they had held about the claimant , seeking his agreement that she had understood them correctly. She summarised them (pages 901 to 902 of the bundle) as follows:

Behaviours

- * *Taken off knowledge management – due to seeing arguments between the knowledge manager and the employee. This is in addition to the employee stating they were stressed by it.*

- * *Daily stand ups have stopped due to no-one wanting to talk as they get shouted down and disagreed with* •

- * *CUE sessions ran by a project team from an area outside of service operations – employee argued with a team member on the call after refusing to have the call recorded for members of the team that couldn't attend.*

- * *Wanted a copy of OH report sent by LM, LM refused as employee needed to request this themselves – ranting at LM*

- * *Emails support teams complaining about her team members – saying they need training*

- * Won't take managers reasonable requests regarding work – will constantly argue back
- * OH recommended micro breaks – 10/15 mins but consistently takes 25/30 mins being taken as loose track of time even after a conversation between LM and employee - Missing throughout of the day

Performance

- * Well below team average. Ave closures are not in the good area – below and in performance improvement area
- * Conversations had re performance, employee says the queues that working on do not have enough work – we cannot move employee as she refused to work on original requests as will not work with a colleague. There is enough work that are in these queues daily that would allow the employee to be in the “good” performance area
- * Further training cannot happen as the team refuse to train the employee due to her not listening and arguing with them
- * Messages TL to say not done anything today as feeling unwell or tired. Asked if well enough to work, but told yes. Underperforming, but saying well enough to work, but then saying not been well
- * Messaged TL to say not done anything all day as didn't agree with what they were asked to do so played solitaire all day

General

- * Team performance drops due to the employees attitude
- * Line Manager cannot perform strategically as every decision or idea is based around the employee, as always in the back of the mind “how will they take this”, “what will they say”, will they do it or argue. Can't run the team how want or need to
- * Last minute doctors appointments – told on the day, but lasting for the whole day – what are these recorded as, as unfit to work, hence the emergency appointment
- * Statements received to TL from the team that the behaviour is bordering on bullying
- * [Manager C] didn't want to take back over the team when the requirement was there due to the overhead of this employee. This is causing managers of the team to now start to feel drained, and
- * No TL will cover [Manager C] when he goes on AL due to this employee – (additional email from [Manager A] – [Manager A] mentioned this to me, so I asked him to put in a mail). [Managers A and B] will not willingly cover. Andy is the only TL left and he has a non working day on a Friday. This is causing managers of the team to now start to feel drained, and causes follow on issues for [Manager C] to take leave.

- * *Accuses team members of being sexist [sic]*
- * *Informal conversations around behaviours and performance have been held but these have not worked, or improved anything; we are looking at progressing these formally now*
- * *Last minute doctors/hospital appointments are needed as employee isn't feeling well enough to work that then last all day – are these appointments or absence due to illness?*

Manager C confirmed by email (page 901 of the bundle) that this was an accurate recollection of all that had happened.

7.31 The next day, after this exchange, Manager C raised further concerns with Cath O'Connell about an incident involving the claimant and a service user, in relation to the manual installation of software. He did so in an email dated 6 December 2023 (pages 904 and 905 of the bundle) into which he copied screenshots of the exchanges between the claimant and the service user. He, and another analyst, had had to become involved in resolving the issue. Despite him telling the claimant not to continue interacting with the service user, she had continued to do so.

7.32 Cath O'Connell sought HR advice from Suzanne Pangbourne on 6 December 2023 (page 909 of the bundle), who advised (page 909 of the bundle) that this was a performance management issue, which required addressing.

7.33 Consequently on 12 December 2023 Cath O'Connell arranged a Teams meeting with the claimant. The sequence appears to have been that the Teams invitation (with was copied to Kate Stafford of HR) was sent out at 9.37, the claimant immediately replied asking what this was about, to which Cath O'Connell replied to the claimant at 9.40 asking her to have a call to "go through a few things", and told her that this was an informal chat. The claimant replied that she had an adjustment in place that asked that meetings be booked in advance, and the subject matter shared before the meeting, as meetings caused her a lot of stress. She therefore rejected the request for a meeting, and asked that her trade union rep. be present, whom she copied into her response. He too got involved at this point, and emailed Cath O'Connell about this proposed meeting, noting that HR were to be present. Her response was that as this was an informal meeting, there was no need for union representation, and the function of HR was simply to note the meeting. See pages 925 to 940 for these exchanges (with some duplication and reverse chronological order).

7.34 As Cath O'Connell was not aware of the adjustment that the claimant had referred to, she sought further HR advice. Having got it, she then re-scheduled the meeting to 13.00 that day, and sent a further email (page 951 of the bundle) confirming this, and including in the email a short form of discussion points, namely :

Interaction with user for a software installation

Not following a line managers request in regards to not responding to the above user again and other instances

Disagreements with team members and the wider team

Performance drop

7.35 Despite her reservations, and without the attendance of Colin Marston, the claimant did participate in the meeting. (Note: the convening and holding of this meeting in this manner does not form the basis of any of the claims before the Tribunal.)

7.36 In the meeting Cath O'Connell (who probably had a script for what she was to say to the claimant) took her through a number of the issues that had been raised with her by Manager C. The notes of the meeting are at pages 953 to 957 of the bundle. The meeting lasted over an hour, and was ended by the claimant .

7.37 In this meeting the claimant was told that a performance improvement plan would be put in place, in relation to her performance, and, in relation to her behaviours, she was told that the respondent would be going down the formal route, and her behaviour would be investigated. Cath O'Connell stressed that she was not investigating the claimant, and that this was not a formal disciplinary conversation. The claimant was asked whether she wanted any health considerations taken into account, or a further OH referral. She did not ask for one.

7.38 The claimant was unhappy with how the meeting went, and how she had not been told at the outset that it may lead to other formal steps. She reiterated how she considered that her union rep. should have been present. She referenced her autism, and stated how she felt stabbed in the back by Manager C. She wanted to know who had raised this formally, and was told that her behaviours had been raised to Cath O'Connell, who had no choice but to have them investigated.

7.39 The claimant's account of this meeting (paras. 42 to 49 of her witness statement) does not accord with that of Cath O'Connell, supported by the notes. In particular, the claimant characterises this meeting as an investigation, whereas Cath O'Connell was at pains to say that it was not, it was an intimation that there would be an investigation, and indeed, a performance improvement plan. The Tribunal prefers the respondent's evidence on this issue.

7.40 Further, someone (its authorship is not disclosed) prepared a performance improvement plan document (pages 958 to 961 of the bundle). It does not actually bear the claimant's name, although it does refer to her role, and a discussion held on 12 December 2023. The Line Manager's details are not completed, and it has the appearance of a partially completed document. Cath O'Connell makes no reference to it in her witness statement, and the claimant expressly states that she had not seen it until it was disclosed in the course of the proceedings. The Tribunal is left wondering what, if anything , became of it, and it has been disregarded.

7.41 The claimant was then off work sick, following this meeting. Cath O'Connell on 13 December 2023 then received an email from Suzanne Pangbourne to tell Manager C to pause any further action , saying : *"Potential medical information has come to light, please hold these cases until we have further details"* (page 970 of the bundle) .

7.42 This came about, it seems, because of communication between Colin Marston and Suzanne Pangbourne around that time, in which it was suggested that the claimant's behaviours may be the result of the claimant's medication, or a change in it, (which ones, and for which condition, is unclear). This interaction is (curiously) not referred to in Colin Marston's witness statement at all, but is evidenced by an email from Suzanne Pagbourne to Cath O'Connell on 14 December 2023 (page 971 of the bundle) in which she refers to speaking with Colin Marston, which resulted in an agreement , recorded as follows:

- *[the claimant] will self-certify until she can see her GP which I think is on Monday and it is possible she will remain off subject to the advice of her GP.*
- *An OH referral should be completed asap. Kate can help you draft, this should be factual, ensure the history is accurate but not shy away from the recent problems that [the claimant] appears not to have been aware of (even though conversations have clearly taken place.*
- *Please check latest Chemists on call date completed.*
- *There is no need to call [the claimant], lets wait until Monday.*
- *Please can you let me know before you submit OH referral and I let Colin know it is on the way.*

7.43 It was against this background, and for these reasons, that a further OH report was sought. The referral document is at pages 972 to 976 of the bundle, and appears to have been made by Manager C on or about 20 December 2023. The supporting notes (page 974 of the bundle) set out the recent history of the claimant's workplace issues, her cancer diagnosis, and a change of medication for that condition , from late August 2023. It was also around this time that the claimant raised the issue of a reasonable adjustments passport. She did so in an email to Suzanne Pangbourne, and Colin Marston, on 23 January 2024 (page 986 of the bundle) , in which she suggested a welfare meeting.

7.44 The history of workplace issues in these notes includes the following:

There have been frequent and monthly informal conversations with the employee regarding concerns about how employee is reacting to things with their peers, their direct line manager their peers, their direct line manager and also the customers of the IT and Request Fulfilment Team .Expectations have been set in these conversations, some examples of these dates of conversations are 3/7/23, 17/07/23, 6/9/23, 14/9/23, 5/11/23, 28/11/23, 5/12/23

7.45 The referral explained how the claimant was putting forward a change in her medication as possibly explaining her behaviours. In the "questions to be answered" section (page 975 of the bundle) , the OH practitioner was expressly asked to address these issues, and how the claimant's behaviours before any change of medication could be explained.

7.46 This referral was not, as was the respondent's practice, shared with the claimant at the time. An appointment was made for the OH assessment of the claimant on 26 January 2024 (page 987 of the bundle, amongst other references).

7.47 Contrary to what may appear to be suggested in Cath O'Connell's statement (at para. 39 of her witness statement) , the claimant did participate in the appointment, but when the doctor read to her the terms of the referral , as set out above, the claimant , with , it seems the agreement of the doctor, cut short the appointment. This was because the information provided in the referral which set out various behaviours of the claimant towards colleagues, customers and managers had not been notified to her in advance , and she strongly disagreed with the allegations made in these notes.

7.48 The claimant (and Colin Marston) then set about, ultimately using the Subject Access Request procedure, obtaining a copy of the OH referral. She did not succeed in doing so. A meeting was arranged for 15 February 2024 to discuss the next steps, but by email of 14 February 2024 Cath O'Connell send the claimant and Colin Marston the wording of the box in the referral for supporting notes (i.e. that which appears at page 974 of the bundle). Whilst Cath O'Connell used bullets in the text of her email, the text faithfully reproduces what was contained in that part of the referral. Given that this was late in the day, the meeting of 15 February 2024 was postponed.

7.49 A further meeting (possibly in the sense of a virtual meeting) was held , it seems, on 22 February 2024 , although this may not have included the claimant herself. That same day Manager A sent an email to Cath O'Connell in which he reported a further incident involving the claimant and a colleague, Danny Amon. She referred to this colleague having "really pissed her off", accused him of giving her a nasty response, of being really arrogant and having a bad attitude. She had spoken to Manager A about this, and he put in train steps to look into the incident further. The claimant declined, however, to escalate the matter further, and did not want a formal investigation (page 1091 of the bundle) .

7.50 A meeting was held on 11 March 2024 (not, it seems documented anywhere) , at which it was agreed that Colin Marston would re-draft the OH referral in terms that were acceptable to the claimant, and put it to the respondent for agreement. He did so, and his draft is at pages 1102 to 1104 of the bundle. It is in a very different format to that used by the respondent, and far more open, and wide – ranging in the questions that it asks.

7.51 At the outset, the draft prepared by Colin Marston says this:

Purpose of the referral:

- 1. To establish the side-effects being experienced by [the claimant], as a result of the medication she is taking, and the impact they will have on her role/daily life.*
- 2. To establish the impact of her disability(s) and other current medical diagnosis(s)/health condition(s) on her role.*
- 3. To establish a list of Reasonable Adjustments to enable the completion of a reasonable adjustments passport. Please advise on reasonable adjustments which may be needed permanently, and those which could be temporary in nature and likely to resolve with time.*

Further, the draft went on :

Autism:

A. In order to inform management [the claimant]'s autism traits how they are likely to present (autism is an invisible condition, colleagues may think the individual is being rude, unfriendly, insensitive or not listening when this is rarely the intention. Conversely, vague or nonliteral communication can sometimes be difficult for an autistic person to understand)

B. How can these behavioural differences be managed in the workplace? What reasonable adjustments can be considered to help provision equality in the workplace.

C. Please advise on training/development activities for line managers and peers of [the claimant] to assist them in their understanding and integration of [the claimant] into the team.

D. Could the provision of a 'Mentor', (with significant/demonstrable Mental Health awareness), be beneficial for [the claimant]? What benefits could this achieve?

ET: [i.e the claimant's blood cancer condition]

E. Please advise on secondary conditions associated with a diagnosis of ET, such as depressions, irritability, impaired immunity.

F. Please advise on likely impacts to Mental Health and wellbeing as a result of this recent diagnosis, and any support which the company could provision to assist.

G. Please advise on training/development activities for line managers and peers of [the claimant] to assist them in their understanding and integration of [the claimant] into the team.

7.52 In an email of 21 March 2024 from Kate Stafford of HR , actually in the context of another dispute which had arisen about the respondent's Return to Work processes (see below) , informed Colin Marston that his re-drafted OH referral would not be adopted and sent through to then OH provider. She said this (page 1125 of the bundle:

"Regarding the amended Occupational Health referral, unfortunately I am not prepared to accept the amended referral as it has changed the purpose entirely. The current referral will be staying the same with a new question asking whether the absence triggers for the employee takes into account their disabilities. This is a management referral and we need to give OH a full picture.

We would really like the employee to attend the appointment to understand how we can best support and understand if this change in medication is causing the behavioural changes. Ultimately, if the employee refuses to attend we cannot take into account that the medication may be causing these behaviours. We hope that you will work with us on this and encourage the employee to attend."

7.53 In Colin Marston's response, later that day he said (page 1124 of the bundle)

"I will not be advising or attempting to influence [the claimant] in making her decision... Either she accepts a blatantly prejudiced referral, which can only be interpreted as manipulating the OH Service to support a corporate desire to enforce her exit from the business, or, she refuses to engage which also enables a corporate desire to enforce her exit from the business.

There is no positive outcome for [the claimant] here... She hasn't stood a chance from the outset..."

7.54 Cath O'Connell proceeded to progress the OH referral, and a further referral document was prepared by her (pages 1131 to 1135 of the bundle). It is very similar to the original referral (the supporting notes are the same, save for bullet points) , save that in the questions to be answered there is an additional issue relating to the claimant's recent absences for UTI and ear infections.

7.55 In particular, however, reference was made to the claimant's blood cancer medication, as follows (page 1134 of the bundle) :

Is there any reason why these medication changes prior to 12/12/23 but after 30/08/23 would cause these behaviours and to have no recall of conversations taking place regarding unacceptable behaviours. Employee states that these behaviours are due to a medication change, can you please understand when this change was and request evidence of this and understand why the Network Rail medication registration process wasn't followed.

7.56 The claimant , however, would not consent to a further OH referral on these terms, so this referral was closed on 8 April 2024.

7.57 On 19 March 2024 Manager A sent an email to Cath O'Connell (pages 1128 and 1129 of the bundle) in which he set out his recent interactions with the claimant , whom he was managing at the time. He expressed his concerns at the toll that this was taking on his own mental health, and declined to continue managing her any more. He went on to give details of three recent interactions with the claimant on 28 February, 12 March and 19 March 2024. These issues related to the claimant's recent sickness absence, and the procedures that Manager A considered the claimant should have followed, but she would not, and the potential provision to her of some noise cancelling headphones. He made reference to the claimant not calling in when on sick leave, and the subsequent return to work meeting , which did not go well, with the claimant accusing him of harassing her, and discriminating against her. She did not agree with his classification of the reasons for her absence, and was going to challenge this.

7.58 In particular, he said this:

Whilst I appreciate the situation we are in with no dedicated team leader currently in place for the Admin team I feel I am no longer able to support you in managing this individual. I am tired of being threatened with union involvement and the constant arguments with reasonable requests.

7.59 He went on to make reference to his own family situation, and his mental health, saying how work had been his “safe place”, but it no longer was. He therefore felt unable to continue in that role without risk to his well being.

7.60 In April 2024 a position in Ebusiness came vacant. This was an area of the business in which the claimant had previously expressed an interest to Manager C. A vacancy arose around this time, but the position was filled by a contractor Leo Remezs, and the claimant was not offered it.

7.61 She raised this issue in a series of email communications on 8 April 2024 to Cath O’Connell and Manager A. These commenced at 7.59, and continued until 12.04 that day, when Colin Marston also raised this issue on behalf of the claimant. Cath O’Connell explained the reason for the decision in her first email response at 8.04, but the claimant did not accept this, so emailed her again at 8.18. Cath O’Connell replied again at 9.36, but the claimant sent a further email to her at 10.00, to which Cath O’Connell replied at 10.03. Cath O’Connell replied to Colin Marston’s email at 13.11. This exchange is at pages 1142 to 1149 of the bundle (but is replicated elsewhere).

7.62 Cath O’Connell found the claimant somewhat persistent about this issue, and this prompted her to make a note (presumably for the purposes of Simon Peel’s proposed investigation, although neither of them make reference to it in their witness statements) at page 1152 of the bundle about a further interaction with the claimant on 10 April 2024 about another work - related matter, in which the claimant returned again to this issue (that being what Cath O’Connell means by reference to an “operational decision” she had made, and her responses when questioned by the claimant and her union representative. The note reads:

10/4/24 – documented conversation.

o Employee and I had an arranged meeting to talk through iperform, how to use it for 121s and interim and end of year reviews plus personal development plans. I went onto the call, and at once knew the employee was “off” as they were not speaking to me. I tried to show the application, and had the employee share their screen so I could walk them through where the employee’s objectives were, how to comment on these, the 121 updates and also PDP, but was unable to as I was challenged about an operational decision that was made last week when I was on leave and the responses that I had sent to the employee and the employees union rep.

o Employee wouldn’t go into the screens I asked, and repeatedly showed me where they had detailed what they wanted to do, but they were not let. I was pushed back on and was asked what the point of iperform was, tried to explain it again, but to no avail as I was spoken over by the employee who spoke about other employees and the new seconded TL and what these people hadn’t done. I tried to bring the meeting back multiple times to the agenda, but the employee wouldn’t and wanted only to discuss and challenge a decision that was made operationally. I asked if there was anything about the application that the employee needed to understand and was told they didn’t know at that point. And would let me know when they knew. Meeting ended as employee left call.

7.63 During the period 2022 until early 2024 the claimant's various managers also found difficulties in managing her, which resulted in:

Manager B , who managed the claimant between October 2022 and June 2023, needing to take time out of the business due to the stress of managing the claimant ;

Manager C , who managed the claimant from June 2023 (and possibly earlier) , being absent with work – related stress because of his interactions with the claimant , and upon his return to work requested an end to his secondment into this management role, which was granted.

Cath O'Connell – she too found dealing with the claimant stressful, and asked for, and was provided, with a welfare buddy to assist her. She also asked for the role of managing the claimant pastorally to be taken off her, but it was not. She began to dread coming to work for fear of what would be awaiting her from the claimant.

Investigation and Suspension

7.64 Simon Peel , Head of IT Service Management and Operations held ultimate line management responsibility for the entire customer facing IT support services within the respondent, and therefore oversaw each of the business areas in which the claimant worked.

7.65 He began to become aware of the issues that management were experiencing with the claimant around December 2023, when Cath O'Connell held her meeting with the claimant . He liaised with Suzanne Pangbourne of HR about how the claimant should be dealt with. He met with her and Cath O'Connell on 20 March 2024 , and had further (undocumented in the bundle, it seems) discussions by email, which took place between Kath Stafford and Cath O'Connell between 8 and 10 April 2024 (pages 1595 and 1599 of the bundle).

7.60 On 16 April 2024 Kath Stafford wrote by email to Simon Peel (pages 1600 to 1601 of the bundle) . She asked him to make the necessary arrangements to meet with the claimant to suspend her , and provided him with a script and a draft of the letter he was a then to send confirming the issues that would be the subject of the investigation, and the claimant's suspension. She told him that his role would be simply to deliver the message. At some point, precisely when is unclear, Simon Peel prepared a Suspension Checklist (pages 1168 to 1171 of the bundle) , an HR document for use in such circumstances. It contains the following information:

Consideration Y/N Comments

Is there a concern that further serious misconduct or offences might occur?

Y

Due to the historic pattern of refusal of reasonable requests on several occasions, there is a high probability that further instances would follow

Does the employee present a threat or risk to the business, themselves or others?

Y

Several Line Managers have

documented their interactions with the employee and have commented on record how their mental health and well-being has been affected as a result

Is there a risk the employee's presence at work will make it difficult to investigate the allegation e.g. employee may seek to destroy evidence or attempt to influence/intimidate witnesses?

N

7.61 Then, after negative answers to questions as to whether the conduct amounted to serious bullying or harassment, or violent behaviour, and whether any criminal or regulatory body charges have been brought , the following appears:

Are there alternatives to suspension e.g. temporarily relocating the employee, restricted duties, project work?

N

Re-location has been performed once before as a reasonable and subsequently permanent adjustment as part of the teams on-going support of the employee. The nature of work in other teams would contradict the reasons for the re-assignment and would introduce further perceived stress to the employee. This would not be supportive during the suspension and subsequent investigation period. There are no specific project related activities that could be given as the role and that of the teams in the immediate area are transactional customer facing support roles.

7.62 Whilst Colin Marston states that he had not previously seen this document (the Tribunal does not consider that there was any reason why he would) , and questions its authenticity, the Tribunal has no reason to doubt Simon Peel's evidence, and accepts that it accurately records the considerations he took into account in arriving at his decisions.

7.63 Within that checklist, Simon Peel assessed that suspension was necessary in the circumstances as there was a concern that further serious misconduct would occur due to the historic pattern of refusal to follow reasonable management requests. This would mean there was a high likelihood that this conduct would continue. He also noted that several line managers had documented their interactions with the claimant commenting on how their mental health and wellbeing had been affected. As a result, he did not want to exacerbate the impact of the claimant's conduct any further and so again, considered

suspension a necessary conclusion. He assessed the alternatives to suspension, but upon consideration he concluded that there were none. The claimant had already been re-deployed to her current role and he noted that the nature of the work in other teams would contradict the reasons for her previous re-deployment thus introducing further perceived stress to the claimant.

7.64 Although an OH Report had previously been discussed with the claimant to understand the impact of the possible change in the claimant's blood cancer medication on the claimant's behaviours, the claimant did not want to participate in the OH appointment scheduled in January 2024, and so there was no OH advice available prior to the claimant's suspension.

7.65 He also considered it necessary to suspend the claimant's access to her work accounts. Restriction of access to an employee's work account is standard practice in cases involving suspension, and no exceptions were made in this instance. This decision was particularly important given the claimant's role as a Request Fulfilment Analyst which provided her with an extra account with enhanced access to the organisation's IT systems. The Request Fulfilment Team is responsible for managing user access and permissions to various accounts and shared data which includes highly sensitive information. In her role, the claimant had access to account details for over 40,000 of Network Rail's employees and so Simon Peel was concerned that allowing continued access to the claimant's work accounts could pose a risk to the business, particularly in light of the claimant's previous failure to comply with reasonable management instructions.

7.66 Simon Peel arranged a calendar invitation for the claimant for 13.00 to 14.00 on 17 April 2024 (not visible in the bundle, this being a virtual meeting) to which the claimant replied by email at 11.14 that day (page 1163 of the bundle), saying that she was free at 13.00, but asking what the meeting was about, and reminding Simon Peel that she had a reasonable adjustment in place of being informed in advance of the content of any meeting. He replied, at 11.21, that he could not provide her with any information, but would relay the details when they spoke. The claimant replied at 11.24 saying that she was unsure what to do, but also asked that Colin Marston be present as support.

7.67 In his reply at 11.27 Simon Peel said that the meeting was an important conversation about a conduct matter, and that he was fine with Colin Marston's attendance.

7.68 After further email traffic about arranging Colin Marston's attendance, the claimant insisting upon this, and then his own direct email involvement, the meeting, with Colin Marston's involvement was arranged so that he could attend (pages 1153 to 1163 of the bundle contain, with some duplication, this exchange).

7.69 Consequently, after some delay, the meeting went ahead, with Colin Marston's attendance. No notes were taken by the respondent, there was no HR presence, and the purpose of the meeting, from the point of view of Simon Peel, was simply to inform the claimant of the investigation and her suspension. No input was expected or required from the claimant, this was simply the announcement of the decision that had been taken. Colin Marston did, it appears, take handwritten notes (not in the bundle, but no point was raised about this) and his witness statement sets out his recollection of the

meeting. The matters discussed were confirmed in a suspension letter dated 17 April 2024 (pages 1165 to 1167 of the bundle) , which contained the following (Note: the Tribunal has , for ease of future reference, enumerated the allegations in this letter , in square brackets, but this was not how the original document appears):

Following our meeting on 17th April 2024 I am writing to confirm that as of 17th April 2024 you are suspended from work until further notice pending investigation into allegations of gross misconduct and misconduct as follows:

Alleged gross misconduct by breaching our Network Rail Behaviours: Challenging, Collaborative, Accountable and Customer Driven, impacting the health and wellbeing of others within the team and potentially amounting to bullying and harassment.

Allegations of misconduct in that you are unable to follow reasonable management instructions over a sustained period and this accumulation constitutes serious insubordination with an impact on your and the team's performance. This is a breach of the Disciplinary Policy: 2.10. Acts of failure to follow management instructions has a wider impact on team morale and performance.

Please see below some specific examples that will form part of the investigation below. However, the investigation may identify other issues and allegations which will also be investigated:

Alleged gross misconduct:

[1] - Daily team standups (via teams) have had to stop. These were for operational strategy decisions that were discussed for the day. These have stopped due to peers not wanting to talk as they felt they were getting "shouted down" and "disagreed with" by you. These have still not been reinstated which is having a detrimental impact to the queue of requests for Network Rail's customers.

*[2] - February 2024: You sent messages to the management team about other members of the wider team speaking about them in a derogatory manner. There was an instance with a member of the SAM Team, where you had a conversation with a colleague stating that the SAM team member "-****has really pissed me off now, Really nasty response, really arrogant and bad attitude.. he's not trying to help he's trying to make me do his job."*

[3] - December 2023: Refusal to follow reasonable management requests. This is in regard to a software install with an employee who needed Reasonable Adjustment software, you were asked to not correspond with a customer anymore after the customer stated they didn't want to correspond with you. The request came from the Team Leader due to concerns that the customers mental health was being affected they had stated that they had sat in their car to make sure they didn't miss a call from you again ahead of a long drive. When management spoke to you about this they were told "my reaction was im not going to install as she doesn't deserve it, but I did it regardless."

Alleged misconduct

[4] - September 2023: You refuse to follow reasonable management instructions as to what tasks were to be completed that day. As you didn't agree, you messaged the Team

Leader to say you had not done anything all day as you didn't agree with what they asked you to do so you played Solitaire all day. This was discovered when the Team Leader asked why productivity was low.

[5] - November 2023: You refused to create new accounts as you didn't want to work in the same area as a peer. This led to an hour conversation with management and a Team Leader explaining why your peer was working in that area also, but to no avail and you still refused. Without new accounts our colleagues in Network Rail cannot work.

[6] - January 2024: You refused to follow your managers request regarding operational requirements to work on certain areas of the queue, you stated you would work elsewhere.

[7] - March 2024: You are not willing to follow the attendance management notification process and refuse to call in daily. This process is in place as management have the wellbeing and safety of their team at the forefront of their mind, when someone has been requested to call in daily and are stating that they won't, it causes management concern.

[8] - April 2024: You continually emailed management in relation to why someone was asked to pick up tasks that you wanted to pick up whilst you were on Annual Leave. This resulted in management having to explain 3 times over email to you, and then to the Trade Union Representative. This is having a detrimental impact on managements' wellbeing.

7.70 Of these issues, some – Nos. 1 to 3 , of course, had been raised with the claimant by Cath O'Connell in her meeting with the claimant on 12 December 2023, and she had been told then that they would be investigated. Others had occurred since then, and so the claimant had not been so informed about any potential investigation into these issues. Whilst Cath O'Connell was aware of the matters which postdate her meeting on 12 December 2023, (or most of them), and does refer to them in her witness statement, the Tribunal has not included all of them in the recital of her evidence, as no claims are made about Cath O'Connell's treatment of the claimant at all.

7.71 The simple fact is that each of the matters set out by Simon Peel in this letter as being examples of the claimant's conduct which was going to be the subject of the investigation had all been raised previously to management by her colleagues and/or line managers, and the reports upon which he has based his letter had clearly been made.

7.72 Whether or not they were true, or correct, or had any validity, it is not the Tribunal's function to determine, nor, frankly could it. The claimant's claims are based solely upon the respondent's treatment of her having received such reports, and their validity is not an issue.

7.73 Following the suspension , and receipt of this letter, the claimant on 18 April 2024 emailed Simon Peel (page 1590 of the bundle) saying;

The way this is being handled and escalated has caused me incalculable emotional distress, I was awake at 4 am, had a massive panic attack.

Being autistic this is extremely distressing because of the forthcoming scrutiny and stressful meetings, I am not well as a consequence.

I called the GP surgery and am now waiting for a 2 week sick note starting from today.

I will send it as soon as I have it.

7.74 The claimant duly on 18 April 2024 provided to the respondent a Fit Note for 2 weeks for “stress and anxiety” (page 1180 of the bundle) . This was followed by a further Fit Note for 2 weeks up until 19 May 2024 , for “work related stress and anxiety” on 3 May 2024 (page 1203 of the bundle) . On 15 May 2024 the claimant received an email from Michelle Croft, HR Senior Investigations Manager, seeking to hold a meeting with her on 30 May 2024 to discuss the matters to be investigated (pages 1207 to 1209 of the bundle). Whilst the claimant described this as being “accusatory and bullying” in tone, all it was largely a recital of the suspension letter, with a repeat of the offer of support from PAM assist. The claimant , however, reacted badly to this email, and on 16 May 2024 (it seems after some contact with the PAM support service) was admitted to hospital that evening (see pages MB775 to 788 of the bundle). She was not, however, detained, but discharged back into the care of her GP later that night. Whilst she was noted to have suicidal thoughts, she was assessed as being a low risk, and hence was discharged.

7.75 There then followed a period during which Colin Marston asked that the investigation process be put on hold, which it was. Following the claimant’s suspension there were a number of further steps taken (or, on the claimant’s case, not taken) , but none of them form the basis of any of the claimant’s claims before the Tribunal. The relevant progress of the investigation is set out below. Other than perhaps in relation to remedy, the Tribunal cannot see any immediate relevance to the issues before it of any other matters, despite their inclusion in the bundle, and reference in the claimant’s witness statement.

7.76 The claimant presented these claims to the Tribunal on 12 July 2024. No claims postdating the presentation of the claim form have been added by way of amendment.

7.77 The facts of the subsequent history, however, have been included in the evidence of both parties, despite their very limited relevance. To summarise, following the claimant’s suspension, a further referral to OH was made, although precisely when it was first made is unclear. An initial appointment for 20 June 2024 was cancelled, and rescheduled for 23 July 2024. There were then two versions of the resultant report, the first of which was released to Simon Peel (when it probably should not have been), but was then superseded by the second report dated 25 July 2024 (pages 1263 to 1265 of the bundle) , which reported that although the claimant was fit to return to work, with adjustments, she was not fit to participate in a disciplinary meeting.

7.78 That report included this information in relation to the claimant’s blood cancer medication (page 1264 of the bundle) :

Reason for referral

.....The main underlying medical conditions are autism (a report dated 23/9/2021 from the Clinical Nurse Specialist and Clinical Associate Specialist is on file confirming the diagnosis), the difficulty reading social cues and a type of bone marrow cancer, for which [the claimant] has weekly injections under the haematology department. Side effects from these injections are significant fatigue, irritability affecting behaviour (confirmed in a report from her specialist), low mood and muscle aches, affecting her ability to mobilise. I viewed several reports (reports from her haematologist dated 13/6/2023 and 19 April 2024, correspondence and messages (reasonable adjustments required dated 23/1/2024 and email dated 7/5/2024) on the OH file

Current capacity for employment:

.....She has difficulty reading social cues and says she is under continuous strain to moderate her behaviour/ trying to read cues causing her to feel fatigued after a working day. This has been aggravated by the current medication to treat her bone marrow cancer as described above and due to menopausal symptoms.

Outlook:

.....The autism diagnosis and underlying blood condition is likely to be ongoing for the foreseeable future, including the treatment she takes causing fatigue and irritability.

Whilst the claimant could not attend a meeting, the respondent pressed ahead with its investigation, and other witnesses were interviewed and statements taken.

7.78 The claimant's suspension was kept under regular review, in accordance with the respondent's policies. As there was no change in circumstances, the suspension was maintained on each review. No claims are made about any decisions made upon any review of the suspension. The claimant's normal email account access was restored to her on 27 August 2024.

7.79 The respondent in September 2024 was keen to move matters on, so Simon Peel on 25 September 2024 wrote to the claimant (page 1317 of the bundle) to suggest that a further OH report into her fitness to participate in the disciplinary process be obtained, and he proposed some terms for the referral for her and her union representative to consider.

7.80 After further communication, the terms of the OH referral were agreed, and on 4 October 2024 Simon Peel made the OH referral in the terms set out at page 1326 to 1328 of the bundle). There was, however, a problem with the format of the assessment, and then the claimant queried whether the assessor would be adequately qualified.

7.81 It is unclear (and probably unimportant) whether and when the appointment did take place, but there then ensued an issue with the claimant declining her consent to the release of the report to the respondent. A form of report, dated 18 November 2024, but with what would seem to be the claimant's proposed amendments in red was produced, but its status is unclear (pages 1369 to 1373 of the bundle).

7.82 The issues with this report continued into January 2025, the OH provider not agreeing to all the amendments sought by the claimant.

7.83 The position , by 24 January 2025, therefore, was that the issues over the OH report had still not been resolved, and the fitness or otherwise of the claimant to participate in the disciplinary process was still in doubt. Simon Peel therefore wrote to the claimant that day, setting out the position, informing her of the departure of the previous investigating office from the business, and telling her that the disciplinary investigation process would now be moving forward with immediate effect (page 1406 of the bundle), with a new investigation manager.

7.84 By then, the OH report that had been commissioned was becoming somewhat dated, and a decision was taken to set up a further appointment for the claimant. A new referral was therefore made on 28 February 2025, with the claimant attending an appointment on 7 May 2025. The resultant report is in the bundle (page 1457 to 1460 of the bundle), although quite how, when the claimant objected to it being shared, is unclear, but it suggested that the claimant was in fact now fit to participate in the disciplinary process, which she disagreed with. On that basis, she withheld her consent for formal release of the report.

7.85 Diane Gradwell, a Practice Manager from the respondent's National Records Group at York, was appointed as the new investigation manager. In order to try to move matters on, she wrote to the claimant on 6 October 2025 to invite her to attend an investigatory interview on 15 October 2025 , via TEAMS. She set out again the issues to be investigated , as per the suspension letter (pages 1481 to 1483 of the bundle) . She subsequently also sent the claimant some written questions (pages 1476 to 1478 of the bundle). The claimant has subsequently replied with written responses, and other evidence (pages 1539 to 1561 of the bundle). In this documentation the claimant has set out her responses to the allegations (in red) , and her new union representative (having taken over from Colin Marston) has raised further queries for the respondent in blue.

7.86 This document therefore contains:

The original allegations that were notified to the claimant as the likely subjects of the investigation in the suspension letter

Further specific questions raised by Diane Gradwell in relation to each of these subjects

The claimant's responses (in red) to the factual allegations made against her in the suspension letter, and to the specific questions asked of her

Requests for further details of the allegations (in blue)

The claimant's proposals for various reasonable adjustments that she contends the respondent should make, or should have (in green)

7.87 Taking these in turn, to summarise the position, (again adding the enumeration inserted by the Tribunal into the suspension letter above):

Alleged gross misconduct

[1] Daily standups (via teams) have had to stop. These were for operational strategy decisions that were discussed for the day. These have stopped due to peers not wanting to talk as they felt they were 'shouted down' and 'disregarded with' by you. These have still not be reinstated which is having a detrimental impact to the queue of requests for Network Rail's customers

The claimant's response to these allegations is that she was not aware that these meetings had stopped, and sought further details about when this had occurred. She contended that the opposite was the case, she had been given positive feedback. She went on to discuss such meetings that were cancelled, but said this was not because of her. In answer to the further questions raised by Diane Gradwell the claimant provided more information, but it did not amount to any acceptance that she had behaved in the manner alleged. She did, however, go on to cite the Occupational Health report of 6 January 2021, which set out how persons with her condition can come across in their communication with others. She went on to say that if she had been made aware that this was happening she would have sought the chance to explain her condition and its effects to colleagues.

[2] February 2024: You sent messages to the management team about other members of the wider team speaking about them in a derogatory manner. There was an instance with a member of the SAM Team, where you had a conversation with a colleague stating that the SAM team member 'Danny' has really pis8ed me off now, really nasty response, really arrogant and bad attitude. He's not trying to help he's trying to make me do his job'

The claimant's primary response was that she could not find the relevant email or chat, so had no record from which to check whether she had or had not used this language. She did, however, go on to explain that if she did make this comment, it would have been out of accumulated frustration, which can cause difficulties in filtering emotions in autistic persons. She went on to elaborate upon what the causes of her frustrations were, and mentioned the other factors in her life which caused her stress, such as her cancer diagnosis, and the effects of her medication. She also made the point that this conduct had not been raised with her at the time.

She went on to set out the "context" in which the allegations should be considered, and what, in her view, a "good manager" should have done in this situation.

[3] December 2023: Refusal to follow reasonable management requests, this is in regard to a software install with an employee who needed reasonable adjustment software, you were asked to not correspond with a customer anymore after the customer stated they didn't want to correspond with you. The request came from the Team Leader due to concerns that the customers mental health was being affected they had stated that they had sat in their car to make sure they didn't miss a call from you again ahead of a long drive. When management spoke to you about this they were told 'my reaction was I'm not going to install as she doesn't deserve it, but I did it regardless'

In her response to this allegation, the claimant admitted that Manager C had told her not to further message the service user, but said she had done so because the user had contacted her again. She set out the events as she recalled them, and copied the relevant messages. She contended that the matter had been grossly exaggerated, and whilst there had been some initial frustration on both sides, the issue had been resolved cordially. She had acted in the best interests of the user, and had put her interests first. The claimant did not add anything to her comments in relation to this allegation which related to her autism, or indeed any other disability.

[4] September 2023: You refuse to follow reasonable management instructions as to what tasks were to be completed that day. As you didn't agree, you messaged the Team Leader to say you had not done anything all day as you didn't agree with what they asked you to do so you played Solitaire all day. This was discovered when the Team Leader asked why productivity was low.

The initial response to this allegation came from the union representative , seeking further clarification of the relevant management instructions, and questioning the actions of Paul Coyle, which the claimant took issue with. She herself denied that she had failed to follow any management instruction, she was unable to do so because of the actions of Paul Coyle. The claimant then goes on to set out in some detail, with evidence, the relevant events, and how she was left with no work to do. She did admit making the comment that she had nothing else to do all day but to play Solitaire, but this had been a figure of speech.

In short , the claimant did not agree that she had failed to follow any management instruction. Again, the claimant did not add anything to her comments in relation to this allegation which related to her autism, or indeed any other disability.

[5] November 2023: You refused to create new accounts as you didn't want to work in the same area as a peer. This led to an hour conversation with management and a Team Leader explaining why your peer was working in that area also, but to no avail and you still refused. Without new accounts our colleagues in Network Rail cannot work.

The claimant's initial response , reinforced by her representative's request for further particulars, was that she had no recollection of this, and, in response to the specific additional questions asked about this incident, the claimant denied refusing to create new accounts, saying she could not do what was not there. Again, the claimant did not add anything to her comments in relation to this allegation which related to her autism, or indeed any other disability.

[6] January 2024: You refused to follow your managers request regarding operational requirements to work on certain areas of the queue, you stated you would work elsewhere.

The claimant's response was that she had no recollection of any such instances, but denied that had ever refused to work on any queues of work. She asked for further details. She could offer no explanation for any such conduct, because she was unaware of what it was.

[7] March 2024: You are not willing to follow the attendance management notification process and refuse to call in daily. This process is in place as management have the wellbeing and safety of their team at the forefront of their mind, when someone has been requested to call in daily and are stating that they won't, it causes management concern.

The initial response was from the union representative, asking for more information about the claimant's awareness of the relevant policy. The claimant's own response was that there was nothing to indicate that she had ever refused to follow the policy, or had refused to call in daily. Basically she went on the deny that she was aware of any requirement to phone in daily, as opposed to texting in, and she believed that she was doing the right thing in contacting Manager A as she did. Again, the claimant did not add anything to her comments in relation to this allegation which related to her autism, or indeed any other disability.

[8] April 2024: You continually emailed management in relation to why someone was asked to pick up tasks that you wanted to pick up whilst you were on annual leave. This resulted in management having to explain three times over email to you, and then to the trade union representative. This is having a detrimental impact on managements wellbeing.

In her response the claimant does not expressly admit that she did continually email management in relation to this issue, but implicitly did so in her responses to the further specific questions asked about this issue (page 1559 of the bundle) where this is recorded:

[Q.]Can you please explain why such emails were sent and why you sent subsequent emails following the initial explanation from the manager?

[A.]Cath refused to explain initially, she only gave a clear explanation to Colin Marston my union rep, see above.

The claimant also went on to answer the following question (page 1559 of the bundle):

[Q.] Can you please explain to me in your own words how you best communicate with your management when you require clarification or wish to challenge a request/decision? What might impact your ability to communicate with your manager in this way?

[A.] I am autistic, I struggle with social queues and social niceties, at this time I am also now diagnosed with ADHD and some characteristics overlap. An autistic style of communication can sometimes be interpreted as blunt or we are often accused of being relentless, but that's because for an autistic individual it is important to have clear information. Management has had numerous opportunities to become more aware of what autism is, they had OH reports and I personally sent them links and information. At the time I was also going through Menopause untreated and taking medication that causes irritability. All a recipe for making it really difficult to moderate the natural direct style of communication that I have.

7.88 For completeness, the document ends with the union representative raising some 9 or so additional requests for further information.

7.89 There, from late 2025, it seems, things have lain. The disciplinary investigation process has been put on hold, the claimant remains suspended, on full pay, and no further progress whatsoever has been made pending the determination of the disciplinary investigation, although the respondent has interviewed a number of employees in connection with it.

8. Those then are the relevant facts. There was not much dispute as to the facts, which are well documented. That said, it has again to be observed that the Tribunal was faced with far too much evidence of matters which were not directly relevant to the issues, and, indeed were not even referred to in the evidence of any witnesses, on either side. The documents relating to the claimant's grievances in 2021 and 2022 are a case in point, containing many pages of material that was of no real relevance to the issues.

9. There is, the Employment Judge (and some of his colleagues) has noted, an increasing trend for parties to include in the final hearing bundle every document that has been disclosed, regardless of whether they are really relevant to the issues to be determined. Doubtless the advent of the electronic age has played a part in this, as it is very easy just add a few hundred pages by a few clicks, rather than having to physically copy and add them into a paper bundle. Parties, especially legally represented ones, need to be far more focussed on what really needs to go into a hearing bundle. Documents are not to be added "for completeness", nor just because they were disclosed. A far more disciplined and forensic approach is required, and counsel, in particular, or any senior advocate, conducting the final hearing has a responsibility to keep the bundle down to the minimum required for the hearing. Parties are reminded of the availability and utility of agreed facts, or summaries of documents, which could circumvent some of these problems, but which are, sadly, extremely rare.

10. In similar vein, as noted, the relevant claims start in April 2024, yet there is a plethora of evidence going back into 2022 and 2021, and even earlier. The Tribunal appreciates that background can be relevant, but the claimant's witness statement and that of Colin Marston have been drafted with little or no forensic editing, and they appear simply to have been allowed to rehearse their views and feelings, in wide ranging and often purely historic terms, with little or no focus upon the issues in the claims. Colin Marston's statement even includes allegations of specific treatment (e.g bullying,) of the claimant in 2022, which look as if they are claims actually being made in these proceedings, but are not. The claimant has been legally represented throughout this claim, and it was her lawyers' responsibility to ensure that only necessary and relevant evidence was provided to the Tribunal.

The respondent's submissions.

11. The respondent's submissions, dated 26 January 2026, are in writing, and can be considered fully by reference to the Tribunal's file. The salient points will be referred to at each point when the specific issues are discussed in this judgment. The respondent also prepared and submitted further submissions in reply dated ... 2026.

The claimant's submissions.

12. The claimant's submissions dated 10 February 2026, are also in writing, and can be read on the Tribunal's file. They too will not be recited in full here, but will be considered in the context of each of the issues.

Discussion and rulings.

i) The relevant law.

13. The relevant statutory provisions are set out in Annexe A to this judgment. Both parties' submissions set out the relevant caselaw. There is no controversy about the law to be applied, and the Tribunal has considered, and applied, in particular, the guidance in the caselaw on reasonable adjustments referred to by both counsel.

ii) Consideration of the issues.

14. Unfortunately Ms Stanely's Closing Submissions do not guide the Tribunal through the claimant's disabilities, and their particular effects, so it has been necessary to go through them in some detail, particularly for the purposes of establishing whether any of the PCPs relied upon by the claimant put her at any particular disadvantage, and whether any of the treatment that she complains of can be considered to have been because of anything arising in consequence of any of her disabilities. That has led to the Employment Judge trying to carry out that exercise, which gives rise to the need to make an observation that, because the closing submissions were not oral, but written, he did not get the opportunity to raise with counsel for both parties, but which has become significant now that he has had to analyse the claims in some detail.

15. That observation is in relation to the List of Issues, and how the issues in respect of both the s.15 claims, and the reasonable adjustments claims have arguably not been adequately addressed. The starting point is that the claimant relies upon three conditions, a., b., and c, in section 1 of the List of Issues. The Employment Judge's understanding is that **each** is conceded to amount to a disability. That must be so in respect of c., as it is a condition which is a deemed disability. This is not, therefore, the Employment Judge considers, a case where a cumulation of conditions is conceded to amount to a disability, there are three separate disabilities.

16. The problem that arises, though, is that in relation to both the s.15 claims (para. 5 of the LOI) and the reasonable adjustments claims, at para. 11 the relevant questions are posed in respect of the claimant's disability, in the singular, thus:

5. Did the following things arise in consequence of the Claimant's disability:

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

17. Neither counsel, with respect, addressed this point in their closing submissions, but, as is clear from the need to take a structured approach, the Tribunal needed to be, but was not always, referred to which disability is relied upon, and how, for each of the claims.

18. The Employment Judge has therefore attempted to see if any of the three disabilities could be the relevant one (or possibly relevant ones) , but , with respect , he should not have had to do so, and the burden is upon the claimant in respect of both of these types of claim to establish these essential elements.

a.)The s.15 discrimination claims.

19. To refresh the memory, these claims are that the respondent contravened s.15 by:

a. Failing to give the Claimant advance notice of the subject matter of the meeting on 17 April 2024.

b. Deciding to instigate an investigation under the disciplinary policy.

c. Suspending the Claimant on 17 April 2024 and blocking the Claimant's work accounts.

d. Failing to take into account the Claimant's disabilities and/or effect of medications (between August 2023 to April 2024 which is alleged to include irritability, mood changes, fatigue, dizziness, joint and muscle pain, depression and anxiety) when suspending the Claimant with effect from 17 April 2024.

20. The claimant contends that this was unfavourable treatment, and was because of the following things that arose in consequence of the Claimant's disability:

i. the Claimant's behaviours/issues with social etiquette that arise due to her disabilities and/or the effects of her disability medications (between August 2023 to April 2024 which is alleged to include irritability, mood changes, fatigue, dizziness, joint and muscle pain, depression and anxiety) meaning that the Claimant is unable to read social cues, takes things literally, is perceived as being blunt/arrogant due to having a monotone voice and being persistent and using a wider vocabulary, and may be perceived as relentless when chasing completion of work (not understanding the other party's timeline unless clearly stated), all of which is aggravated by stress or by being under scrutiny due to traumatic events related to her ASD when she was not diagnosed and masking.

ii. the effects of her disability medications (between August 2023 to April 2024 which is alleged to include irritability, mood changes, fatigue, dizziness, joint and muscle pain, depression and anxiety).

21. The respondent's overall submissions are , firstly, that it is the claimant who is required to prove: (1) that each of the alleged acts is "unfavourable treatment"; (2) in respect of each such act, that the unfavourable treatment was done "because of" her behaviour; and (3) that such behaviour arises either in consequence of her disabilities, or in consequence of the effects of her cancer medication, Interferon. Ms Stanley's submissions do not directly address these points, but the Tribunal considers that Ms Ferber is correct, and will approach these issues on the basis that she suggests.

Section 15 claim (a.) Failing to give the Claimant advance notice of the subject matter of the meeting on 17 April 2024 – unfavourable treatment ?

22. The claimant's case is that as she had an adjustment in place that she would be given advance notice of all meetings, the failure to give advance notice of this meeting was unfavourable treatment. Ms Stanley submits that this clearly shows that not giving her advance notice of such meetings would amount to unfavourable treatment. The claimant, she rightly points out, brought this to the respondent's attention once she was aware of the meeting.

23. Ms Ferber contends that as the purpose of the meeting was solely to inform the claimant of the investigation and her suspension, requiring no input from her at that stage, this adjustment was unnecessary, and made no difference. The alternative was to communicate these facts to her in writing, so the effect would be the same.

24. Whilst appreciating the claimant's concerns, the Tribunal agrees with the respondent. As much store is set by it, the actual wording of the recommendation in the OH report of 25 March 2020 is important. It is (page 299 of the bundle) :

She would also benefit from being advised in advance of the subject of meetings with management so that she is prepared for the purpose of the meeting.

25. The recommendation is clearly in the context of meetings in which the claimant is likely to be required for some input, for which some preparation would be required. No preparation on the part of the claimant for a meeting in which she was simply to be told of her suspension and the investigation was required.

26. In any event, when one examines what actually occurred, the claimant got the benefit not only of a meeting, but also, because she had raised this issue, the presence in it of her trade union representative. For all his complaints about the circumstances, Colin Marston was allowed to , and able to, accompany the claimant in this meeting. She thus had a level of support that a simple written notification would not have achieved.

27. The Tribunal considers that the fact of her suspension , and the investigation, was likely to have a bad effect upon the claimant whensoever, and howsoever it was communicated to the claimant. Giving her advance notice of a meeting , whose sole purpose was to communicate these actions would have served no purpose, and may even be considered less favourable by dragging out such a process for no purpose.

28. This claim, the Tribunal finds, therefore fails at this stage, and is dismissed.

29. There is, however, an alternative basis for dismissing this claim that the respondent advances, were the Tribunal to have been against its primary submission, which is that if this was unfavourable treatment, it was not "because of" any of the matters relied upon as arising in consequence of the claimant's disability (or any of the three relied upon). This issue will be addressed further in the context of other s.15 claims, and the Tribunal's view upon it (and hence the alternative plea of the respondent in the context of this claim) will be explored there.

30. Finally, the respondent also , in the further alternative, relies upon the defence of justification. Again, this may fall to be considered in the context of other s.15 claims, and will therefore be discussed later as well.

Section 15 claim (b.) Deciding to instigate an investigation under the disciplinary policy.

31. The respondent's first submission is that there was no unfavourable treatment of the claimant. On the contrary, disputed allegations – which were plainly very upsetting to her – had been made about her. An investigation was required for her benefit, as well as for the benefit of all those affected. That investigation was required, to find out what had happened and why, giving the claimant the opportunity to take part, and only after that investigation could any decision be taken about any next steps.

32. Ms Stanley disagrees. She points out that the investigation was not a neutral fact-finding exercise. It was an investigation into the claimant (and nobody else) under the disciplinary policy. It is an obvious instance of unfavourable treatment.

33. The Tribunal reminds itself of the wording of the suspension letter, in particular, the first two paragraphs, which read:

Alleged gross misconduct by breaching our Network Rail Behaviours: Challenging, Collaborative, Accountable and Customer Driven, impacting the health and wellbeing of others within the team and potentially amounting to bullying and harassment.

Allegations of misconduct in that you are unable to follow reasonable management instructions over a sustained period and this accumulation constitutes serious insubordination with an impact on your and the team's performance. This is a breach of the Disciplinary Policy: 2.10. Acts of failure to follow management instructions has a wider impact on team morale and performance.

34. It is clear that the proposed investigation could lead to disciplinary action, and that this was against the claimant, and her alone. As is clear, the threshold for unfavourable treatment is a relatively low one, and the Tribunal is quite satisfied that to be notified of a disciplinary investigation is unfavourable treatment (note: no such claim is made about the suspension).

35. That then requires the Tribunal to consider whether the reason for this treatment was anything arising as a consequence of the claimant's disability (whichever one is relevant for these purposes).

36. Ms Stanley submits that the claimant can satisfy this burden for these reasons. She invites the Tribunal to recollect the evidence given by the claimant, in particular in answer to the Tribunal's questions as to the link between the conduct which formed the basis of the investigation, as set out in the suspension letter, and her disabilities. She also refers to Simon Peel's evidence on the point.

37. By way of example, the claimant's blunt communication style was something arising from her ASD: this is pleaded at paragraph 5(i) of the List of Issues [B/156] and see eg. "she can be perceived as being blunt...she is direct and has a 'tone.' [the claimant] reports that she speaks to everyone the same and cannot change this as it is part of her underlying condition" [B/591]. The Tribunal was reminded of the evidence concerning the allegation concerning the service user in December 2023. The allegation was that C had failed to follow a management instruction: see the allegation at the top

of [B/1166]). A review of the relevant written messages between the claimant and her line manager, Manager C, demonstrated that the claimant had not in fact failed to follow a management instruction. It is submitted, the respondent's real concern (about the incident with this service user) was the claimant's "blunt" communication style (which is very obviously a manifestation of her ASD).

38. By way of further example of allegations potentially arising from a "blunt" communication style, she referred to the allegation dated February 2024 bottom of [B/1165]).

39. The claimant has pleaded her inability to read social cues and "being persistent" as manifestations of her ASD (paragraph 5(i) of the List of issues [B/156]). These were matters that arose from her ASD: see for example the references to not understanding "social rules" [B/347].

40. The allegation advanced by R (as having occurred in "March 2024" [B/1166] was that C had refused to follow attendance management processes. The relevant communications (which were written) demonstrate that the claimant had not in fact refused to comply with these processes (see the communication at [B/1113]) but these messages do reveal that the claimant had sought information and explanation (in circumstances where someone following "social cues" might not have done so).

41. Similarly, the allegation said to have occurred in "April 2024" [B/1166] is that [emphasis added] the claimant "continually emailed management in relation to why someone was asked to pick up tasks..." The communication (again all in writing) appears at [B/1147 to 1150, 1142 to 3]. This communication is a very obvious example of the claimant failing to pick up on social cues. As the claimant said herself in evidence, it was a manifestation of her ASD that she continued to communicate, and ask the question) when Cath O'Connell had made it clear she did not intend to give further information.

42. Finally, she submits that the Tribunal need only be satisfied that something arising out of the claimant's disabilities was an effective or operative cause of the unfavourable treatment. She cites in this context **Charlesworth v Dransfield Engineering Services Limited UKEAT/0197/16/JOJ**, as authority for the proposition that it need not be the sole or main cause.

43. In reply on this issue, Ms Ferber submitted as follows (at para. 28 onwards) :

In respect of the "because of" question, it is accepted that the decision to instigate an investigation arose (in part) as a consequence of the claimant's behaviour – plainly and explicitly, it was the claimant's behaviour which led to the investigation.

44. But, she continues, it is for the claimant to prove that her behaviour arose as a consequence of either her disabilities, or the effects of her medication from August 2023 to April 2024. She submits that the claimant has failed to discharge that burden: not only because she does not accept that she behaved in the manner alleged at all; but also because the claimant has adduced no evidence expressing any expert medical opinion about the behavioural effects of Interferon medication on her individually (as opposed to listing generic side-effects). On the contrary, the OH report of 21 September

2023 was obtained by the respondent explicitly to provide information about the effects of the claimant's recent cancer diagnosis, and that included a long and detailed paragraph at page 868 of the bundle (under the heading "*Current Health Issues*") describing the side-effects of the claimant's cancer medication. Of the many and detailed side-effects which are listed, none are behavioural.

45. The Tribunal has considered these competing submissions. It accepts that in respect of many, indeed, most of the allegations in the suspension letter, the claimant either does not admit them and even denies some of them. That, however, is not the full picture. The claimant, in her written responses at pages 1539 to 1561 of the bundle, did not admit allegations nos. [1], [2], [4], [5], [6] and [7]. She did, in respect of No. 3 admit that she had been told not to contact the service user again, but she made no reference to any of her disabilities in her response to this allegation. She did so, however, in the alternative (i.e she did not accept the allegations, but put this forward as a possible explanation for any such conduct) in relation to Nos. 1, and 2.

46. Allegation 8, however, is different. That, it will be recalled, relates to the claimant's continued questioning of management, in the person of Cath O'Connell, about her sense of grievance that .. was allowed to pick up work queues that she considered should have been allocated to her. In her responses the claimant does admit this conduct, but goes on to attribute it to her autism. The Tribunal considers that in addition to the claimant's assertion that this was the case, there is ample medical evidence to back up that view, and the Tribunal is entitled to find, and does find, that the conduct which is the subject of allegation no. [8] did indeed arise in consequence of her disability of autism/ASD.

47. It is appreciated that this is only one allegation out of the eight in the suspension letter. The Tribunal, however, takes Ms Stanley's point that that the Tribunal need only be satisfied that something arising out of the claimant's disabilities was an effective or operative cause of the unfavourable treatment, it need not be the sole or main cause.

48. That analysis was approved in **Bodis v Lindfield Christian Care Home Ltd [2024] EAT 65 (1 May 2024, unreported)**, where HHJ Tayler gave further guidance on the position where something which arises in consequence of disability is a cause, but only a minor one, of the treatment complained of. He explained that the guidance in **Pnaiser** applies to the s.15 the approach to causation which has been established in relation to direct discrimination in cases such as **Nagarajan v London Regional Transport [1999] IRLR 572**. He said that the authorities make it clear that to establish liability under s 15, the 'something' which causes the treatment can be a minor component of the reason for the treatment provided it is 'significant' so as to be an 'effective cause'. He said that Simler P's reference in **Pnaiser** to 'more than trivial' was to ensure that too high a standard is not applied to the word 'significant', and he did not think it would be helpful to introduce a concept of 'causal triviality' into the law in this field. On the facts of the case, where a disability had the result that the claimant's answers to questions in a disciplinary investigation were short and evasive, it was enough for s.15 to apply that those answers were a contributing factor (albeit one which the employment tribunal had described as 'trivial') in the employer's decision to proceed to a full disciplinary hearing.

49. Whilst this allegation was only one of eight, it was a serious one, and, indeed, the most recent. The Tribunal is quite satisfied that it was a significant factor, and was an effective cause of the decision to instigate an investigation.

50. The claimant therefore satisfies the first limb of s.15, and has established that the treatment of instigating an investigation into allegation [8] in the suspension letter , (but only in that limited regard) which the Tribunal has found to be unfavourable, was indeed “because of” something arising in consequence of her disability of ASD.

Justification

51. The respondent, however, pleads in the alternative, the defence of justification to this claim. That is put in the List of Issues as :

a. to inform employees as soon as possible once a decision to suspend has been taken and to do so with as little prior notice as possible in order to mitigate, as much as possible, the risk of an employee causing disruption to the Respondent’s business.

b. ensuring the safety and wellbeing of both the Claimant and the line managers who had been interacting with the Claimant pending investigation into the Claimant’s behaviour, to enable a fair investigation to be carried out free from interference and risk to the Respondent’s business and to protect the Respondent’s internal working systems, particularly in cases of potential conflict and where there are employees, like the Claimant, who have enhanced access compared to the majority of other colleagues.

c. to provide and maintain a safe working environment for all employees, the maintenance of professional boundaries in the workplace, ensure that all employees can expect to be treated with dignity and respect whilst at work, require its employees to maintain standards of good behaviour and to carry out reasonable management instructions.

52. That defence , however, is raised in respect of all four claims of s.15 discrimination, the first of which has been dismissed, in any event. The wording, however, appears also to focus largely upon the decision to suspend the claimant , which is another one of the s.15 claims, but not this one.

53. In her written submissions, however, Ms Ferber appears to go further, in that she says *this at para. 31* :

If the Tribunal needs to consider justification in respect of Issue 2, then it must conduct that assessment objectively: identifying both the aim (investigating disputed allegations, so that all affected employees have the opportunity to respond and the facts can be established), and deciding whether the instigation of an investigation was appropriate, and reasonably necessary.

32. For all the reasons set out in paragraphs 15 to 27 above (in respect of the question of whether the instigation of an investigation was unfavourable at all), it was plainly both appropriate and reasonably necessary for there to be an investigation: any other process would have missed the important preliminary step of establishing the facts of what had happened, and why.

54. Ms Ferber, with respect, has introduced a new legitimate aim , namely “investigating disputed allegations, so that all affected employees have the opportunity to respond and the facts can be established which is not in the List of Issues, nor has it ever appeared in any iteration of the Grounds of Resistance.

55. Ms Stanley, in her submissions, does address this issue. She says:

19. Justification: This is really an allegation which turns on justification under section 15(2) of the EqA. The only (potentially) relevant pleaded legitimate aims are (it is assumed) those set out at paragraphs 8(b) and (c) of the List of Issues [B/157 to 8].

20. The legitimate aim at paragraph 8(b) starts “ensuring the safety and wellbeing of both the Claimant and the line managers who had been interacting with the Claimant pending investigation into C’s behaviour...” This appears to be an aim relating to suspension during the course of the investigation (not the decision to investigate).

21. The legitimate aim at paragraph 8(c) is: “to provide and maintain a safe working environment for all employees, the maintenance of professional boundaries in the workplace, ensure that all employees can expect to be treated with dignity and respect while at work, requires its employees to maintain good standards of behaviour and carry out reasonable management instructions...”

22. R bears the burden of showing a decision to instigate this disciplinary investigation on these allegations was a proportionate means of achieving a legitimate aim in terms of achieving those ends.

56. Ms Stanley therefore has also clearly picked up on the same issue that the Tribunal has, namely that the justification advanced in the List of Issues relates not to the decision to investigate, but the decision to suspend the claimant .

57. In her submissions in reply Ms Ferber does not address this additional legitimate aim that she introduced in her previous submissions.

58. The Tribunal’s view is that whilst, in hindsight, the new formulation proposed by Ms Ferber may well have been an apposite one, and capable of amounting to a legitimate aim in its own right, the Tribunal cannot allow, at this late stage , the respondent to add in this further , new, legitimate aim. As observed in the line of cases starting with **Chandhok v Tirkey [2015] IRLR 195** and ending with the more recent case of **Moustache v Chelsea and Westminster Hospital NHS Foundation Trust [2025] IRLR 470** departure from a List of Issues will only be permitted in exceptional circumstances, which, where both parties are legally represented, there has been extensive case management, and a List of Issues has been agreed (in this case since June 2025) do not pertain here. In any event, Ms Ferber has not , in her submissions in reply, sought to press for this further legitimate to be considered.

59. That leaves, then, the respondent’s justification defence to this claim resting solely upon (c) in section 8 of the List of Issues, namely that this treatment was a proportionate means of achieving the legitimate aim(s) of providing and maintaining a safe working environment for all employees, the maintenance of professional boundaries in the workplace, ensuring that all employees can expect to be treated with dignity and respect whilst at work, and requiring its employees to maintain standards of good behaviour and to carry out reasonable management instructions.

60. Ms Stanley’s submissions challenge this. As she rightly points out, however, the respondent has to justify the treatment found to be discriminatory under the first limb of s.15. Her submissions (paras. 19 to 23) proceed on the basis that the respondent will have to justify the treatment of instigating an investigation into all of the allegations, but

as the Tribunal has only found that allegation No. [8] is relevant for these purposes, it is only the investigation into that allegation that the respondent has to justify.

61. Whilst Ms Stanley's submissions focus upon what she submits are performance - related issues that are part of several of the matters that are set out in the suspension letter, allegation no. [8] is not a performance related issue, it is a conduct – related issue. The issue to be investigated was the claimant's (admitted) conduct in pursuing Cath O'Connell for an answer to her questions as to why she was not allocated work that was given to a contractor, when she herself was absent from work, and when she considers that she should have been given the opportunity to carry out this work.

62. Ms Stanley also makes the point that whilst the respondent has relied upon the alleged adverse effects upon the health of managers who had to deal with the claimant, no medical evidence has been produced to support any contention that the claimant's behaviour was having such an effect. She also submits that the respondent was not entitled to take into account these alleged effects upon the well – being of colleagues in deciding whether to instigate an investigation.

63. Ms Stanley's submissions, however, do not specifically address the justification defence and how it might apply to the investigation into allegation No. [8].

Discussion as to the justification defence to this claim.

64. In approaching this issue the Tribunal bears in mind the submissions of Ms Ferber in respect of justification, at paras. 3(e) to (h) of her submissions:

*(e) In respect of the justification defence, a “critical evaluation” of objective justification is necessary, which involves the Tribunal carrying out its own assessment, weighing the needs of the employer against the discriminatory impact on the employee (**Gray v University of Portsmouth EAT 0242/20**).*

*(f) The proportionality assessment involves an objective balancing exercise, carried out by the Tribunal, between the needs of R, and the negative effect of the treatment on C; the process leading to R's decision can be part of the relevant evidence, and the Tribunal can also weigh in the balance the evidence from R's decision-makers about how they thought their actions served the legitimate aims relied upon, and what alternatives they considered (because such evidence might give the Tribunal confidence in reaching its own decision); but the Tribunal must carry out the balancing exercise for itself (**Department for Work and Pensions v Boyers [2022] EAT 76**).*

*(g) When there is a link between proposed reasonable adjustments, and the disadvantage being considered by the Tribunal in the context of a section 15 claim, the question of whether there has been a failure to make those reasonable adjustments is to be considered as part of the balancing exercise, in the evaluation of objective justification (**Dominique v Toll Global Forwarding EAT 0308/13**, and **Griffiths v Secretary of State for Work and Pensions [2015] EWCA Civ 1265**).*

(h) It is, however, important to apply the correct test: the statutory language of section 20 is different from that of section 15, and each involves different considerations – to be “proportionate”, R's actions have to be an appropriate and reasonably necessary means

*of achieving its legitimate aim, and in that context the Tribunal will consider the question of whether any lesser measure might have served that aim, giving a substantial degree of respect to the views of R's decision-maker (if satisfied that they acted rationally and responsibly) about what was reasonably necessary to achieve the aim (**Birtenshaw v Oldfield [2019] IRLR 946, EAT**)*

65. In addition to these authorities, the Tribunal has also considered other guidance from the caselaw. In **Gray v University of Portsmouth** (cited above) Eady, J. in the EAT made it clear that, in the context of a s.15 claim, a Tribunal will be expected to provide sufficient reasoning in its judgment to demonstrate that it carried out a critical evaluation on the question of objective justification. In so holding, the EAT adopted the same approach as applies generally to justification in indirect discrimination claims under the Equality Act 2010. In particular, Eady J cited the Court of Appeal's ruling in **Hardy & Hansons plc v Lax 2005 ICR 1565**, to the effect that a critical evaluation of the evidence is required, entailing a weighing of the needs of the employer against the discriminatory impact on the employee. The Tribunal must carry out its own assessment on this matter, as opposed to simply asking what might fall within the band of reasonable responses of the reasonable employer (the test for unfair dismissal under s.98(4) of the ERA). Crucially, according to the Court of Appeal, the Tribunal must demonstrate the critical evaluation in its reasoning in order to make it clear how it has undertaken its assessment.

66. In **Bolton St Catherine's Academy v O'Brien EAT 0051/15** HHJ Serota QC held that, for the purposes of a s.15 claim, there is no rule that justification has to be limited to what was consciously and contemporaneously taken into account in the decision-making process. Even if no consideration had been given at the time the unfavourable treatment occurred and even if the evidence was not available at the time, an employer can still establish justification by reference to the material before the employment tribunal

67. Further authority for the view that justification under s.15 is not limited to what was in the employer's mind when it carried out the unfavourable treatment can be found in **ICTS (UK) Ltd v Visram EAT 0344/15**. There, HHJ Eady QC, as she then was, stated: '[T]he employment tribunal was left with a pleaded case which contended it was a legitimate aim to remove an employee who was on sick leave and unable to return to work, but who was entitled to receive long term disability benefits whilst he remained an employee. So, the aim relied on by the respondent was to remove the claimant in those circumstances and the legitimacy of that aim was to be judged by the employment tribunal on an objective basis (not limited to what was in the respondent's mind at the time)'.

68. The Tribunal appreciates that this doctrine has its limits, and that an unconsidered or unarticulated aim may be difficult for an employer to rely upon "after the event", but this caselaw does emphasise how it is for the Tribunal to make its own assessment as to whether the justification defence is made out.

69. The legitimate aims (for there are, with respect, multiple aims being relied upon here) relied upon are general ones, but at their heart is firstly the welfare of the claimant's co-workers. The second limb, requiring its employees to maintain standards of good behaviour and to carry out reasonable management instructions, with respect,

is of no real application to allegation No.[8], as no management instruction was involved, and repeated questioning of a management decision , whilst perhaps irksome, is hardly “bad behaviour”.

70. Whilst not as narrow or specific an aim as the proposed aim that Ms Ferber unsuccessfully attempted to introduce, the aim relied upon to justify the instigation of an investigation into allegation No.[8] relates to the potential welfare of the claimant's colleagues, in particular Cath O'Connell. There is ample evidence (paras. 42 to 48 of her witness statement, for instance, plus other communications from her in the bundle) of the effects of managing the claimant upon her, and her note on 10 April 2024 (page 1152 of the bundle) shows how the claimant persisted in pursuing in this issue even in a meeting about another work – related issue, and was unco-operative with Cath O'Connell.

71. In assessing the justification defence to this claim, the Tribunal considers that it has to take the context into account. Were allegation No. [8] to have been the only allegation to be investigated , as a stand alone, single, issue, the Tribunal may have had reservations as to whether the respondent could justify an investigation (and possibly, the associated suspension) , but that is not the case. The investigation was into 8 allegations, of which this was but one, but the other 7 have been found not to arise as a consequence of any disability, and have fallen at the first hurdle of s.15. What the respondent was seeking to investigate in most, if not all, of the 8 allegations was the interaction of the claimant with her colleagues, and the reasons for it . The Tribunal agrees that were there only to have been allegation No. [8] to consider, the instigation of an investigation of this nature may have been rather disproportionate, but to add it to the other 7 allegations which are not subject to s.15 considerations, was not, in the Tribunal's view, disproportionate, and was indeed a proportionate means of achieving the respondent's legitimate aims to provide and maintain a safe working environment for all employees, the maintenance of professional boundaries in the workplace, and ensure that all employees can expect to be treated with dignity and respect whilst at work. This claim is accordingly dismissed.

Section 15 claim (c.) Suspending the Claimant on 17 April 2024 and blocking the Claimant's work accounts.

72. The respondent's primary submissions on this issue are as follows (at para. 33 of Ms Ferber's submissions):

33. There was no unfavourable treatment of C: suspension was on full pay, and was a neutral act to facilitate investigation.

34. In addition, C did not need her work accounts once she was suspended, because she was not working. In respect of C having access to her user account to gather information for the investigation, it is not in dispute (see the letter at [1291-2]) that Mr Peel did reinstate C's user account on 23 August 2024 – that is, after C had returned from sickness absence, and before the investigation had commenced – explicitly so as to facilitate her participation in the investigation: see the second-to-last paragraph of the letter [1292].

35. *In respect of the “because of” question, as with issue 2 it is accepted that the decision to suspend and block the accounts arose (in part) as a consequence of C’s behaviour: it was C’s behaviour which led to the investigation.*

36. *But it is for C to prove that her behaviour arose as a consequence of either her disabilities, or the effects of her medication from August 2023 to April 2024. For the same reasons as those already set out in paragraphs 28 to 30 above, C has failed to discharge that burden.*

37. *Alternatively, in relation to justification, as paragraph 2.5.1 of the policy at [214] indicates, it is a legitimate aim for R to seek to protect its business, C’s colleagues, and C herself, from the risks of her ongoing presence at work pending the investigation into her behaviour.*

38. *Mr Peel’s contemporaneous assessment of those risks (unaffected by hindsight or the effects of litigation) was recorded by him in a Suspension Risk Assessment (see the table headed “Consideration” at [1168-9]), and that should be given a substantial degree of respect (following the principles in Birtenshaw v Oldfield); although, of course, the question of justification is one for the Tribunal’s objective assessment.*

73. For the claimant Ms Stanley submitted (paras. 24 and 25) thus:

24. *Unfavourable treatment: It is obviously treatment to C’s detriment that she was suspended, and/or her work accounts were blocked. C wanted to be in work and have access to her accounts.*

25. *Because of something arising from her disability: The decision to suspend C and block her accounts (which R said was a routine part of any suspension) was taken as a result of the same allegations which triggered the decision to instigate an investigation. The submissions above as to the link between these allegations and the decision to have an investigation are repeated.*

74. She then went on to dispute the respondent’s alternative defence of justification.

75. The first issue for the Tribunal to decide is whether the claimant’s suspension (and the blocking of her access to the IT accounts, which have been conflated into one form of unfavourable treatment) amounts to such treatment. The claimant’s submission is that it “obviously” was, the respondent’s is that, as the claimant was suspended on full pay, and that suspension is a “neutral act”, it equally obviously was not.

76. In her submissions, Ms Stanley said this :

5. *Unfavourable treatment: EHRC Code of Practice defines “unfavourable treatment” in the following way at paragraph 5.7: “For discrimination arising from disability to occur, a disabled person must have been treated ‘unfavourably’. This means that he or she must have been put at a disadvantage. Even if an employer thinks that they are acting in the best interests of a disabled person, they may still treat that person unfavourably.”*

6. *In most cases, there will be little to be gained from seeking to draw a distinction between “unfavourable treatment” (the term used at section 15 of the EqA) and*

analogous concepts of “disadvantage” and “detriment” found elsewhere in the EqA: see [27] of Williams v Trustees of Swansea University Pension and Assurance Scheme [2019] ICR 230. The definition of “detriment” is well-known. A detriment will exist if a reasonable worker would or might take the view that the treatment accorded to her had in all the circumstances been to her detriment: see Shamoon v Chief Constable of Royal Ulster Constabulary [2003] ICR 337

77. Ms Ferber made no submissions on the definition of “unfavourable treatment” for the purposes of s.15 claims.

78. In **T-System Ltd v Lewis UKEAT/0042/15 (22 May 2015, unreported)**, the EAT expressed the test simply – ‘unfavourable treatment is that which the putative discriminator does or says or omits to do or say which places the disabled person at a disadvantage’. However, it is a concept which, is distinct from a ‘detriment’, or ‘less favourable treatment’. Rather, to assess whether something is ‘unfavourable’ there must be a measurement against ‘an objective sense of that which is adverse as compared to that which is beneficial.’ To that extent, the Tribunal must disagree with Ms Stanley’s equiparation of unfavourable treatment with detriment.

79. Indeed, the judgment of Langstaff P. at para. 27 expressly rejects this:

27. ‘Unfavourably’

As to the reasoning by reference to other possible discrimination claims, the meaning of the word ‘unfavourably’ cannot, in my view, be equated with the concept of ‘detriment’ used elsewhere in the Equality Act 2010. The word ‘unfavourably’ is deliberately chosen. So, too, the choice not to use the word ‘detriment’ must be assumed to be deliberate: the draftsman would have been well aware of the use of the word ‘detriment’ elsewhere within the Equality Act, and avoided it. Nor, as the parties were agreed, does the word ‘unfavourably’ require a comparison with an identifiable comparator, whether actual or hypothetical, as would the description ‘less favourable’. ‘Less’ invites evidence to be provided in proof of ‘less than whom?’, ‘un ...’ is by contrast to be measured against an objective sense of that which is adverse as compared with that which is beneficial.

80. The Tribunal’s view is that suspension, paid, or otherwise, is unfavourable treatment, and would be regarded as such by most workers. Being suspended, even if framed as a neutral act, is unlikely to be viewed in the workplace as a “good thing”. It inevitably gives rise to speculation and suspicion amongst one’s colleagues that some form of misconduct has occurred, and would be viewed negatively by most people in the workplace.

81. Having determined that issue, the next is whether this treatment can be found to be because of something arising in consequence of any disability. Because the suspension was imposed because the claimant was being investigated, for the same reasons as the Tribunal found that that treatment in investigating the claimant met the first limb of s.15, the Tribunal also finds that the claimant’s suspension also satisfies that first limb.

82. That finding, however, is made on the same limited basis that the finding in relation to the investigation was made, i.e it relates solely to allegation No.[8]. Whilst

the degree to which that allegation contributed to the decision to suspend is open to question, it would only need to be a significant factor, and the Tribunal is satisfied that it was.

83. That then leads to consideration of the respondent's alternative defence of justification. This relies upon the same matters advanced in the defence to claim (b), and discussed above.

84. In her submissions on this issue, Ms Ferber says this:

37. Alternatively, in relation to justification, as paragraph 2.5.1 of the policy at [214] indicates, it is a legitimate aim for R to seek to protect its business, C's colleagues, and C herself, from the risks of her ongoing presence at work pending the investigation into her behaviour.

38. Mr Peel's contemporaneous assessment of those risks (unaffected by hindsight or the effects of litigation) was recorded by him in a Suspension Risk Assessment (see the table headed "Consideration" at [1168-9]), and that should be given a substantial degree of respect (following the principles in Birtenshaw v Oldfield); although, of course, the question of justification is one for the Tribunal's objective assessment.

85. Ms Stanley's submissions on the justification defence to this claim are as follows:

26. Justification: Again, this is really an allegation which will turn on the ET's consideration of the question of justification under section 15(1)(b) of the EqA.

27. The ET should consider whether: (a) suspended the C and (b) blocking access to the R's systems were justified as separate questions. It would be perfectly possible for R to have taken one of these actions, but not the other. R must demonstrate it has acted proportionately: this necessarily involves a consideration of whether each individual step can be justified.

28. In terms of general points, C will say:

28.1 In circumstances in which a disciplinary investigation is not justified, it would be surprising if the decision to suspend was justified.

28.2 It is unusual to suspend in cases which do not constitute allegations of gross misconduct. As set out above, these allegations are not properly allegations of misconduct at all. They are certainly not allegations of gross misconduct.

29. The particular legitimate aim relied upon is (it is assumed) the aim identified at paragraph 8(b) of the List of Issues [B/157]:

21.1 In terms of "ensuring the safety and well-being" of C and line-managers, the submissions above (about R's case on the effect of C's conduct in the context of these particular allegations) is repeated;

21.2 In terms of ensuring a "fair investigation to be carried out free from risk", R has not particularised any way in which C might have interfered in this investigation.

Notwithstanding that SP complied with HR processes and completed a suspension checklist [B/1168], this is an example of an assumption by an employer (perhaps unexamined) that a disciplinary investigation must necessarily be accompanied by a suspension.

21.3 In terms of “to protect the Respondent’s internal working systems”, this is (it is assumed) the aim relied upon for in order to justify suspending C’s access to systems. R’s own case is that it is simply “standard practice” in any case of suspension is to suspend of access to R’s systems: see paragraph 26 of SP’s witness statement . R did not seek to justify its action by any particular risk posed by C (either by reference to the disciplinary allegations or more generally).

Discussion of the justification defence to this claim.

86. The pleaded justification, as set out in the List of Issues, is really at para.(b), thus:

b. ensuring the safety and wellbeing of both the Claimant and the line managers who had been interacting with the Claimant pending investigation into the Claimant’s behaviour, to enable a fair investigation to be carried out free from interference and risk to the Respondent’s business and to protect the Respondent’s internal working systems, particularly in cases of potential conflict and where there are employees, like the Claimant, who have enhanced access compared to the majority of other colleagues.

87. Miss Ferber in her submissions, however also puts it this way:

37. Alternatively, in relation to justification, as paragraph 2.5.1 of the policy at [214] indicates, it is a legitimate aim for R to seek to protect its business, C’s colleagues, and C herself, from the risks of her ongoing presence at work pending the investigation into her behaviour.

88. Whilst at first blush this paragraph may appear to be slightly different, the Tribunal considers that there is no real difference in the substance of what is being relied upon.

89. In approaching this issue, the Tribunal applies the same tests as it previously did in relation to the justification defence to claim (b). Again, it bears in mind context, which is of course that it is the treatment of suspending the claimant in relation to allegation no.[8] only that the Tribunal has to consider. The respondent does not have to justify its investigation and suspension of the claimant in relation to the other 7 allegations.

90. The decision to suspend, however, is indivisible, and applying the same approach as it did to the investigation , the Tribunal is driven to the same conclusion that it considers that suspension of the claimant in relation to allegation no.[8] when added to the fact that she was also suspended in respect of the other 7 allegations does not prevent the respondent from successfully arguing that to suspend the claimant in all the circumstances was a proportionate means of achieving its legitimate aims as set out in para.b above, and the Tribunal accordingly finds that suspension of the claimant was justified.

91. That leaves the second limb of this claim, the blocking of access to the respondent's IT accounts during her suspension. Ms Stanley addresses this in her submissions:

27. The ET should consider whether: (a) suspended the C and (b) blocking access to the R's systems were justified as separate questions. It would be perfectly possible for R to have taken one of these actions, but not the other. R must demonstrate it has acted proportionately: this necessarily involves a consideration of whether each individual step can be justified.

92. This appears at the justification section of the submissions. The claimant, however, did not plead the acts of suspension and blocking of the accounts as two separate acts of unfavourable treatment, but conflated the two into one. The Tribunal, however, is now being asked to consider justification in respect of them separately.

93. Taking such an approach, therefore, and re-winding it to treat the two alleged acts of unfavourable treatment separately, whilst the Tribunal has found that there is sufficient connection between allegation No.[8] and the claimant's disability to satisfy the first limb of s.15, for the purpose of the treatment of suspension, whether also to suspend her access to the IT systems, assuming for a moment that to be unfavourable treatment (be it noted that the claimant was later allowed access to prepare for the investigation process, and no complaint is made that this treatment was unfavourable in that regard), also satisfies that test requires further consideration. Whilst, of course, linked to the decision to suspend, which the Tribunal has found to be justified, the Tribunal has firstly to consider whether there is sufficient link to the claimant's disabilities for this treatment too to satisfy the first limb of s.15.

94. It is clear from Simon Peel's evidence that the decision to suspend the claimant's IT access was taken because of her position, by virtue of the role she had, of having access to the email accounts of 40,000 employees. She was very knowledgeable about the IT systems, this was the area in which she worked. Most of her interactions with colleagues were by work email, or Teams or similar threads. As she was being suspended, she needed no access to any work accounts at this time. Any access she may have needed for the investigation was granted to her. A further, and the Tribunal considers relevant consideration articulated by Simon Peel, was that the claimant was alleged to have refused to comply with management instructions. That understandably gave rise to a concern that she may do so again, which in the context of extent of her considerable access, carried a risk, if a slight one, of serious damage being done to the respondent's business. The Tribunal therefore finds that, if this is truly to be treated as a separate s.15 claim based on the specific treatment of suspension of IT access, it fails at the first hurdle, but, in the alternative, if it does not, it would be justified for the same reasons that the respondent has successfully argued for the suspension of the claimant in the first instance.

s.15 claim (d.) Failing to take into account the Claimant's disabilities and/or effect of medications (between August 2023 to April 2024 which is alleged to include irritability, mood changes, fatigue, dizziness, joint and muscle pain, depression and anxiety) when suspending the Claimant with effect from 17 April 2024.

95. This is the fourth and final s.15 claim. Ms Ferber's submission (at para.42) is that, in short, this claim does not make sense as an allegation of discrimination arising from disability. She precedes that by denying that Simon Peel failed as alleged, in any event, but the main thrust of her argument is that this is not a s.15 claim at all.

96. Ms Stanley's submissions do not really address this point. All she says is this :

30. Unfavourable treatment: There are two respects in which R failed to take into account C's disabilities and/or the effect of C's medications when suspending C.

97. With respect, the claimant's case on this basis cannot succeed as a s.15 claim. The essence of s.15 claims is unfavourable treatment . Failing to take something into account is not treatment. It may be part of the mental process whereby the perpetrator decided upon the treatment to which the claimant was subsequently subjected, but that failure cannot amount to treatment in itself. The word "treatment" connotes some impact upon the claimant , some action , or failure to act which has an effect upon the claimant. Failing to consider something has no such effect, certainly on the facts of this case. What did, were the three acts of unfavourable treatment already the subject matters of claims (a), (b) and (c). This fourth claim confuses that treatment with the reasons for it. This claim is dismissed.

98. In summary, whilst the claimant did satisfy the threshold for s.15 claims in relation to claims (b) and (c) , she did not in respect of claim (a), and claim (d) is not sustainable as a s.15 claim. The Tribunal, however, has found that the respondent has succeeded in its justification defence to claims (b) and (c). All the s.15 claims, therefore are dismissed.

The reasonable adjustments claims.

99. The Tribunal now turns its attention to the other claims made by the claimant , those of failure to make reasonable adjustments. To recap , they are, as set out in the List of Issues:

13.Did the Respondent fail in its duty to take such steps as it would have been reasonable to have taken to avoid the disadvantage? The Claimant says that the following adjustments to the PCP [sc."PCPs"] would have been reasonable:

a. Regards PCP 1, requiring staff to carry out all aspects of their role - the reasonable adjustment would have been for the Respondent to take into account the Claimant's disabilities and/or the effect of the medications she was taking for those disabilities and to adjust her role accordingly, including a mentor / buddy who can assist with communication if required, i.e. checking that she has not misinterpreted indirect communication or non-verbal cues (recommended in the Occupational Therapist report of May 2022) and a reasonable adjustment passport (requested by the Claimant in January 2024).

b. Regards PCP 2, requiring all staff to converse in accordance with 'normal' social etiquette - the reasonable adjustment would have been for the Respondent to take into account the Claimant's disabilities and/or the effect of the medications she was taking for those disabilities and to adjust its expectations accordingly including a mentor /

buddy who can assist with communication if required, i.e. checking that she has not misinterpreted indirect communication or non-verbal cues (recommended in the Occupational Therapist report of May 2022) and a reasonable adjustment passport (requested by the Claimant in January 2024).

c. Regards PCP 3a, applying its disciplinary policy, i.e. deciding to instigate an investigation

i. The reasonable adjustment would have been for the Respondent to have adhered to the previously agreed adjustment of providing the Claimant with advance notice of the subject matter of meeting on 17 April 2024;

ii. The reasonable adjustment would have been for the Respondent to take into account the Claimant's disabilities and/or the effect of the medications she was taking for those disabilities when deciding whether or not to investigate the allegations, including obtaining the Occupational Health report it agreed to obtain in December 2023 in this regard.

d. Regards PCP 3b, applying its disciplinary policy, i.e. suspending the Claimant – the reasonable adjustment would have been for the Respondent to adjust the Disciplinary Policy so that it did not have to suspend the Claimant and block her work accounts.

100. As set out in the List of Issues, the claimant relies upon 3 PCPs, each of which , of course, must be established as having put her at a disadvantage by reason of her inability to comply with them , by reason of any disability that she has established or is conceded.

101. The starting point , therefore for each such claim, has to be the relevant PCP relied upon, as the duty to make any reasonable adjustments only arises if any such PCP has the requisite effect upon the claimant.

102. Notwithstanding that Ms Stanley has chosen to address PCPs (i) and (ii) together in her submissions, the Tribunal will address them separately.

Reasonable adjustments claim (i) – PCP 1

103. That PCP is put as:

a. Requiring all staff to carry out all aspects of their role (PCP 1);

104. Ms Ferber makes the following submission in respect of this PCP.

PCP1: Requiring all staff to carry out all aspects of their role

49. There is no such PCP. This was highlighted in R's Opening Note, and it is also addressed explicitly in the first half of paragraph 30 of Ms O'Connell's witness statement, where she says:

I would like to note that I do not agree that Network Rail operates either PCP1 or 2. This is because, in respect of PCP1, Network Rail appreciates that not all employees will be

in a position to carry out all aspects of their role due to for example a disability which might mean there are certain aspects of their role that cannot be carried out and therefore adjustments might be required.

50. Ms O'Connell was taken in cross-examination to paragraph 30 of her statement, but she was asked only one question:

C Counsel: Please look at paragraph 30 of your statement. In relation to PCP2, you say "Network Rail has certain values and standards of professional behaviour that it expects colleagues to abide by, for example, colleagues are expected to treat each other with mutual respect, Network Rail acknowledges that not all employees are able to comply with these expected standards and colleagues can think and behave differently from what is considered a neurotypical person and this may include differences in cognition, emotions, and behaviour". So, you have certain values and standards, and sometimes if it is reasonable, for a particular employee because of disability, Network Rail allows deviation from those standards?

Ms O'Connell: Yes.

51. Ms O'Connell was not cross-examined on her evidence in the first half of paragraph 30 of her statement, nor in substance about the non-existence of PCP1. In the absence of challenge to R's case on the non-existence of PCP1, the claim must fail.

Despite being put on notice in the respondent's Opening Note (plus of course, the List of Issues) , Ms Stanley has not addressed this point.

Ms Ferber continues, in the alternative, as follows:

52. Furthermore, C's asserted disadvantage is illogical: she says the disadvantage was the decision to suspend her and subject her to a disciplinary investigation, which happened because she was unable to comply with the requirement to carry out all aspects of her role. But there is nothing in the extensive materials before the Tribunal to suggest that this was any part of the reason for the investigation and suspension.

53. In accordance with Gardner, the Tribunal is required to set out what it is about the particular disability of C that gives rise to the particular problems or effect, putting C at a particular disadvantage.

54. Applying Gardner, and more generally Latif, the burden is on C to prove both the existence of the PCP, and the asserted disadvantage. She has not done so.

55. Also following Latif (and even if both PCP and disadvantage were proven), the burden is then on C to prove that there were steps it was reasonable for R to take.

105. Ms Stanley, in her submissions disagrees, and says this:

35. Did R apply these PCPs: The PCP set out at paragraph 10(a) of the List of Issues is "requiring staff to carry out all aspects of their role" [B/158].

36. At [COC/30], COC said "Network Rail appreciates that not all employees will be in a position to carry out all aspects of their role due to for example a disability which might

mean that there are certain aspects of their role that cannot be carried out and therefore adjustments are required.” In so far as it is helpful for a witness to comment on a PCP, this is a concession as to the relevant matters of fact. It envisages a standard policy (the role itself), which may be adjusted by reason eg. of disability.

37. The PCP set out at paragraph 10(b) of the List of Issues is “requiring all staff to converse in accordance with normal social etiquette...”, This is particularised by reference to particular standards of behaviour [B/158]. These are standards of behaviour which eg. the OH evidence in the bundle (and put to COC) suggests that C may not meet and/or or may find particularly difficult to meet because of her ASD: see eg. references to difficulties in understanding social cues eg. [B/347].

38. The submissions at paragraph 59 to 62 of the Respondent’s closing submissions elide the questions of putting relevant facts to witnesses (which is appropriate) and witnesses giving evidence on (and being asked to comment on) the existence of a PCP (a mixed question of fact and law for the ET). There is no doubt that R (like any other employer) did require staff to converse in accordance with normal social etiquette (including eg. understanding social cues, understanding tone of voice etc), albeit that was the general standard. R might adjust these expectations in relation to individuals with particular disabilities (and in some circumstances would be obliged under the EqA to do so).

39. Particular disadvantage: C was put at a particular disadvantage by these expectations to fulfil all aspects of her role/these expectations as regards social etiquette.

40. As pleaded at paragraph 11(a) and (b) of the List of Issues [B/159] this is demonstrated by the fact that C was subjected to a disciplinary investigation and suspended. At least some of the behaviours (which were the subject of the disciplinary investigation) were manifestations of C’s disability. For example:

40.1 It is part of necessarily part of C’s role (and any role which involves interaction with others) to understand “normal social cues” (PCP 10(a)). Alternatively it is part of the normal social etiquette which R expected of employees (PCP 10(b)). R’s decision to investigate and/or suspend C in respect of behaviours arising out of C’s failures to understand these “normal social cues” demonstrates that C was put at a disadvantage by the application of these PCPs: C was investigated eg. for the manner in which she communicated about “ebusiness” work being allocated to a colleague: see the allegation labelled “April 2024” within the suspension letter at [B/1166]

40.2 It is necessarily part of C’s role to communicate in an appropriate and professional manner (PCP 10(a)). Alternatively, it is part of normal social etiquette for an individual to be able to “modulate their voice” and “understand tone of voice” (PCP 10(b)). The allegations giving rise to R’s decision to investigate and/or suspend C included allegations relating to this “blunt” manner of communication demonstrate that C was put at a particular disadvantage by the application of these PCPs.

41. In terms of R’s knowledge of the relevant substantial disadvantage (for the purposes of paragraph 20(1)(b) of the EqA): see eg. the OH report as to social cues and bluntness (which are addressed to the corporate Respondent)³, and SP’s concessions as to his

“colloquial understanding” of ASD in his cross-examination.

Discussion of PCP 1

106. This PCP is a very simple, and narrow one. Requiring staff to carry out all aspects of the role they were employed to carry out is not identified as being an express requirement, for example, of the claimant's, or any other employees', contract of employment, nor has either party made any reference to the Code of Conduct which has been included in the main bundle.

107. Analysis of the suspension letter reveals that only allegations Nos. [3], [4], [5], and [6] relate to any alleged failure on the part of the claimant carry out all aspects of the role that she was employed for.

108. With all due respect to Ms Ferber's argument, the fact that the respondent was raising these issues as a matter for potential investigation and then disciplinary action, demonstrates sufficiently to the Tribunal that the respondent, at that point, did have such a PCP, or why else would it be taking any such action? The existence of PCP (i) is therefore established. That, however, is only the first stage, as the next matter that the claimant must prove is that this PCP put her at a disadvantage because of her disability (or one of them). If, therefore, the claimant were to admit that she had not carried out all the aspects of her role, as set out in allegations Nos. [3] to [6] in the suspension letter, but maintained that this was because of any of her disabilities, she could show the necessary particular advantage.

109. As, however, is clear from her responses to the allegations at pages 1539 to 1561 of the bundle, the claimant does not so admit. To recap, her responses were:

Allegation [3] December 2023: Refusal to follow reasonable management request:

In her response to this allegation, the claimant admitted that Manager 2 had told her not to further message the service user, but she had acted in the best interests of the user, and had put her interests first. She did not add anything to her comments in relation to this allegation which related to her autism, or indeed any other disability.

[4] September 2023: Refusal to follow reasonable management instructions as to what tasks were to be completed that day.

The claimant denied that she had failed to follow any management instruction, she was unable to do so because of the actions of Paul Coyle. She did admit making the comment that she had nothing else to do all day but to play Solitaire, but this had been a figure of speech. The claimant did not agree that she had failed to follow any management instruction. Again, the claimant did not add anything to her comments in relation to this allegation which related to her autism, or indeed any other disability.

[5] November 2023: Refusal to create new accounts as you didn't want to work in the same area as a peer.

The claimant's initial response was that she had no recollection of this, and, in response to the specific additional questions asked about this incident, the claimant denied

refusing to create new accounts, saying she could not do what was not there. Again, the claimant did not add anything to her comments in relation to this allegation which related to her autism, or indeed any other disability.

[6] January 2024: Refusal to follow manager's request regarding operational requirements to work on certain areas of the queue, stating she would work elsewhere.

The claimant's response was that she had no recollection of any such instances, but denied that had ever refused to work on any queues of work. She asked for further details. She could offer no explanation for any such conduct, because she was unaware of what it was.

110. Thus, the claimant did not accept she had not failed to carry out all aspects of her role, or, if she had, this was not her fault. Crucially, she did not attribute any such failure to any of her disabilities.

111. To the extent that Ms Stanely seeks to address this issue, in her submissions (para.40) she says that "at least some of the some of the behaviours ... were manifestations of the claimant's disability", (again, she does not identify which one) and she cites two of the allegations , but none of these are allegations Nos. [3] to [6] .

112. The Tribunal's conclusion, therefore, is that whilst the claimant has established the existence of PCP 1, she has not established that it put her at any particular disadvantage because of any of her disabilities, and any reasonable adjustments claim based on this PCP must fail.

Alternative finding on reasonable adjustments if the PCP was established.

113. For completeness, in the event that the Tribunal's conclusions on the PCP issue are wrong, the Tribunal has considered what, if any reasonable adjustments , the respondent should have made in respect of PCP 1. The claimant's pleaded case (as per the List of Issues) is as follows:

a. Regards PCP 1, requiring staff to carry out all aspects of their role - the reasonable adjustment would have been for the Respondent to take into account the Claimant's disabilities and/or the effect of the medications she was taking for those disabilities and to adjust her role accordingly, including a mentor / buddy who can assist with communication if required, i.e. checking that she has not misinterpreted indirect communication or non-verbal cues (recommended in the Occupational Therapist report of May 2022) and a reasonable adjustment passport (requested by the Claimant in January 2024).

114. Whilst a little artificial given the Tribunal's finding above, this suggested adjustment would not have been a reasonable one. In essence, it is an adjustment (or rather three adjustments, for they are separate, but , not for the first time, the claimant's case has conflated three different things) designed to prevent the claimant from behaving in a manner which may lead to an investigation and/or suspension. These matters will be considered further below, but the main observation to make is that none of this would have prevented allegations being made. The adjustments may (although

this is highly speculative) have prevented the claimant from behaving in the manner alleged, but they would not necessarily have prevented colleagues from making reports about her behaviour, which would, in all probability, at least have to be investigated. As indicated, this is an unnecessary, and only provisional, finding, and these issues are likely to be discussed in more detail below.

PCP 2

115. This is put in the List of Issues as:

b. requiring all staff to converse in accordance with ‘normal’ social etiquette, meaning:

- i. Understanding social cues*
- ii. Practicing polite behaviours*
- iii. Understanding how long to talk, how to take turns, what is appropriate to say*
- iv. Making eye contact*
- v. Understanding personal space*
- vi. Making small talk*
- vii. Saying hello/goodbye*
- viii. Being on time*
- ix. Speaking with inflection and variation in pitch to connote emotion/feelings*
- x. Being able to modulate their voice*
- xi. Understanding tone of voice.*

Again, Ms. Ferber, submits that the claimant has not made out this PCP. She says this:

59. There is no such PCP. This was highlighted in R’s Opening Note, and it is also addressed explicitly in the second half of paragraph 30 of Ms O’Connell’s witness statement.

60. As Counsel’s note of evidence cited at paragraph 50 above demonstrates, Ms O’Connell was cross-examined on the second half of paragraph 30 of her statement only to obtain agreement from her as to the substance of her evidence. Her evidence was not challenged as untrue, nor was it put to her that she was wrong when stating (at the start of paragraph 30) that “I do not agree that Network Rail operates either PCP 1 or 2”.

61. Notably, while the question put to Ms O’Connell (cited at paragraph 50 above) was premised upon R having “certain values and standards” and then allowing deviation from those standards, that is not the pleaded PCP: PCP2 is pleaded as “Requiring all staff to converse in accordance with ‘normal’ social etiquette” (see [158]), together with a list of 9 definitions of “normal social etiquette” (see [158-9]).

62. In the absence of challenge to R’s case on the non-existence of a PCP of “requiring all staff to converse in accordance with ‘normal’ social etiquette”, the claim must fail.

116. Ms Stanley submits as follows:

37. The PCP set out at paragraph 10(b) of the List of Issues is “requiring all staff to converse in accordance with normal social etiquette...”, This is particularised by reference to particular standards of behaviour [B/158]. These are standards of behaviour which eg.the OH evidence in the bundle (and put to COC) suggests that C may not meet and/or may find particularly difficult to meet because of her ASD: see eg. references to difficulties in understanding social cues eg. [B/347].

38. The submissions at paragraph 59 to 62 of the Respondent’s closing submissions elide the questions of putting relevant facts to witnesses (which is appropriate) and witnesses giving evidence on (and being asked to comment on) the existence of a PCP (a mixed question of fact and law for the ET). There is no doubt that R (like any other employer) did require staff to converse in accordance with normal social etiquette (including eg.understanding social cues, understanding tone of voice etc), albeit that was the general standard. R might adjust these expectations in relation to individuals with particular disabilities (and in some circumstances would be obliged under the EqA to do so).

39. Particular disadvantage: C was put at a particular disadvantage by these expectations to fulfil all aspects of her role/these expectations as regards social etiquette.

40. As pleaded at paragraph 11(a) and (b) of the List of Issues [B/159] this is demonstrated by the fact that C was subjected to a disciplinary investigation and suspended. At least some of the behaviours (which were the subject of the disciplinary investigation) were manifestations of C’s disability. For example:

40.1 It is part of necessarily part of C’s role (and any role which involves interaction with others) to understand “normal social cues” (PCP 10(a)). Alternatively it is part of the normal social etiquette which R expected of employees (PCP 10(b)). R’s decision to investigate and/or suspend C in respect of behaviours arising out of C’s failures to understand these “normal social cues” demonstrates that C was put at a disadvantage by the application of these PCPs: C was investigated eg.for the manner in which she communicated about “ebusiness” work being allocated to a colleague: see the allegation labelled “April 2024” within the suspension letter at [B/1166]

40.2 It is necessarily part of C’s role to communicate in an appropriate and professional manner (PCP 10(a)). Alternatively, it is part of normal social etiquette for an individual to be able to “modulate their voice” and “understand tone of voice” (PCP 10(b)). The allegations giving rise to R’s decision to investigate and/or suspend C included allegations relating to this “blunt” manner of communication demonstrate that C was put at a particular disadvantage by the application of these PCPs.

Discussion of PCP 2

117. The first point (somewhat overlooked by Ms Ferber, with respect) is the wording of this PCP. It refers to the requirement for its employees to “converse” in a particular manner, as then particularised. That is not, be it noted, to communicate in a particular manner. That is of some importance, as much of the communication between the claimant and her colleagues, was not face to face, or even by virtual meetings, but was by email or other messaging formats.

118. That rather undermines any part of the PCP based upon , for example, eye contact, and possibly the extent to which any social cues are relevant in purely written exchanges between colleagues. Had it been raised with Ms Stanely, she may have submitted that the term “converse” should be read in a broader context, as including email and other messaging formats. That the specific 9 ensuing particulars largely can only apply to actual conversations , whether they be face to face, by phone or by virtual means, however, rather undermines that submission. To be specific, items (iii), (iv), (v), (vi), (vii), (viii) – probably , it is hard to see how it could apply to written communications, (ix), (x) and (xi) can only apply to actual , and not written , oral communications between employees.

119. The Tribunal will not take too strict an approach, however, which may be over generous to the claimant , but will take into account items (i) and (ii) , which could apply to all forms of communication.

120. Again, the suspension letter is critical. As has previously been established, the allegations in it fall into two categories, those which relate to the claimant's behaviour towards others, and those which do not (at least directly) and are more performance related issues. Going through the allegations again, Nos. [1] , [2] and [8] are the only ones which relate directly to the claimant's communications with her colleagues or managers. No. [1] would satisfy para. (i) of PCP 2, as it clearly relates to actual conversations . No. [2] is probably a written communication, as are the communications referred to in No. [8].

121. Whilst taking Ms Ferber's points, the Tribunal does find that , as evidenced by the fact that it felt it necessary to investigate these matters, the respondent did have a PCP of requiring employees to communicate (the correct formulation) with each other in accordance with normal social etiquette, particularly understanding social cues and practising polite behaviours,

122. The next question, then, of course, is whether the claimant can show that she was put at any particular disadvantage because of that PCP. Again, her responses to the investigation's written questions are instructive. In relation to allegation No.[1] the claimant initially denied this allegation, and was unaware of the cancellation of these meetings, but did go on to make reference to the effect of her condition upon her communications with others. As to allegation No.[2] , the claimant initially had no record of this email communication, but again made reference to her condition as an explanation for any such conduct on her part. Finally, in relation to allegation No.[8] , the claimant did, in effect, admit behaving in the manner alleged, but again linked this to her autism condition.

123. The upshot of this is that the Tribunal is satisfied that the claimant has established the existence of the PCP (in a modified form) and that she, because of her condition, (predominantly) of autism she was put at a particular disadvantage by it by reason of her being less able to comply with this PCP than persons who did not have her condition. The duty to make reasonable adjustments therefore arose.

Did the respondent fail to make reasonable adjustments?

124. The Tribunal accordingly has now to go on to consider whether the respondent did indeed fail to make reasonable adjustments. In doing so, it bears in mind the guidance in **Leeds Teaching Hospital NHS Trust v Foster EAT 0552/10** where the EAT made it clear that there does not necessarily have to be a good or real prospect of an adjustment removing a disadvantage for that adjustment to be a reasonable one. It is sufficient for the Tribunal to find that there would have been a prospect of the disadvantage being alleviated. In **Griffiths v Secretary of State for Work and Pensions 2017 ICR 160**, Lord Justice Elias remarked: ‘So far as efficacy is concerned, it may be that it is not clear whether the step proposed will be effective or not. It may still be reasonable to take the step notwithstanding that success is not guaranteed; the uncertainty is one of the factors to weigh up when assessing the question of reasonableness.’ The claimant contends that the respondent should have made the following reasonable adjustments , which the Tribunal has separated (because it considers that they are separate and distinct adjustments) as follows:

b. Regards PCP 2, requiring all staff to converse in accordance with ‘normal’ social etiquette - the reasonable adjustment would have been for the Respondent to:

[a.] take into account the Claimant’s disabilities

[b.] and/or the effect of the medications she was taking for those disabilities and to adjust its expectations accordingly including :

[c.] [sc. appointing] a mentor / buddy who can assist with communication if required, i.e. checking that she has not misinterpreted indirect communication or non-verbal cues (recommended in the Occupational Therapist report of May 2022) and

[d.] a reasonable adjustment passport (requested by the Claimant in January 2024).

125. Again, these adjustments have been put together, but need to be considered separately. Whilst [a.] , [b.] and [d.] relate to the time at which the respondent was contemplating instigating the investigation into the claimant , the third, [c.], does not , it actually relates to the time before then when the claimant is alleged to have behaved in the manner that she did which led to that investigation. Arguably, so does [d.].

[a.] failing take into account the Claimant’s disabilities, and

[b.] and/or the effect of the medications she was taking for those disabilities and to adjust its expectations

126. Dealing with the first two (albeit the later in time), the claimant’s case is that without holding any investigation , the respondent should have, firstly “taken into account the claimant’s disabilities”.

127. It is of note that this reasonable adjustment is limited to “taking into account” the claimant’s disabilities. It does not go on to add words to the effect of “and because of them disregarding any allegations that had been raised about her , and not instigating any formal investigation or any other formal process”. Without that addition, the proposed reasonable adjustment of simply taking into account the claimant’s disabilities would not have been likely, of itself, to reduce the adverse effects of the PCP upon the

claimant. This , therefore, fails *in limine* as a reasonable adjustment. (Ms Ferber, in any event, makes the point that Simon Peel did , in fact, take the claimant's disabilities into account, but decided to proceed with the investigation in any event).

128. Even if that is not enough to dispose of this reasonable adjustment, it would be bound to fail. What it amounts to is a contention that, without carrying out any form of investigation with the claimant as to what had actually occurred, and thereby not actually establishing any facts, the respondent was supposed to assume that any conduct or behaviour on her part, whatever that may have been, could all be attributed to one of, or more than one of, the disabilities from which she was suffering, and therefore no formal action at all should have been instigated. That cannot be reasonable. Reasonableness is to be judged objectively, and not just from the claimant's perspective. The interests of the employer , and in particular those who had raised concerns about the claimant's conduct towards them, and her performance in her role, deserved consideration. The claimant's proposed reasonable adjustment in this regard would have required the respondent , without carrying out any investigation with the claimant , simply to considered the concerns raised, considered the previous OH reports, and then conclude that no action was to be taken. The complainants would have to have been informed of that, and the ongoing situation of the claimant's employment then addressed. Quite how that could have occurred, without any form of investigation involving the claimant , and hence no factual findings being made by the respondent is impossible to imagine. The claimant appears to be suggesting that the respondent should simply look the allegations at face value, but then simply ignore or discount them because of the claimant's disabilities.

129. That cannot be considered a reasonable way of dealing with these issues. The Tribunal cannot help but observe that the problem with these claims is that they are premature. They are based solely upon the investigation and associated suspension of the claimant. These were not, of themselves, disciplinary acts, without detracting from their effect upon the claimant . They were not determinations of what the claimant had or had not done, or why she had acted as she may have been found to have done. All that would have come later, but this was simply the beginning of that process. Had the respondent concluded that process, found that the claimant had indeed acted in ways that warranted disciplinary action, the decision as to what , if any , action it should then have taken would be very much subject to its duties to make reasonable adjustments.

130. That, however, is a far cry from holding that it would have been a reasonable adjustment , at this stage, for this is the first reasonable adjustment that is being considered, simply to take into account the claimant's disabilities without more, and then discount any conduct that may have merited any disciplinary action, or performance management.

131. The Tribunal then moves on to consider the next adjustment , at [b.] This similarly is put as simply a "failure to take into account", as it follows on from [a.]. It is therefore open to the same critique as to formulation, as it does not specify what the respondent should then have done if it had taken these factors into account, which is presumably the same as for [a.] above. As with [a.] that is fatal to this as a reasonable adjustment.

132. In the alternative, and notwithstanding this defect, taking this as a potential reasonable adjustment, this adjustment is based solely upon the possible effects of the

medication that the claimant was prescribed for the blood cancer condition that was diagnosed in August 2023. It is correct that the claimant did indeed raise issues about the effects of this treatment.

133. Cath O'Connell, on 22 March 2024 raised an OH referral (page 1131 of the bundle) in which, amongst other things, she raised questions about an alleged change in that medication, and its possible effects upon the claimant's behaviour. The claimant, however, would not consent to this referral, and it was closed on 8 April 2024. Simon Peel, therefore, did not have any further information about this medical issue when he suspended the claimant on 17 April 2024. He was, however, aware of the issue, and the subsequent protracted disagreement between the claimant (with Colin Marston's assistance) and management about the terms of any future referral.

134. It was not, therefore until 25 July 2024 that Simon Peel received the latest OH report (from the respondent's new service provider, at pages 1263 to 1265). That does indeed set out the history of the issue of the effects of the claimant's cancer medication, and how it did cause fatigue and irritability, but the report also mentioned the claimant's other menopausal symptoms in this regard. The claimant, of course, has not relied upon that condition as a disability.

135. The position, therefore, is that even if Simon Peel had had the benefit of a further OH report addressing the effect of any change in the claimant's change of cancer medication, it is far from clear that this would have made any obvious link between that medication and any of the conduct or behaviour at issue in the allegations.

136. As with [a.] above, the Tribunal cannot see any basis for contending that it would have been a reasonable adjustment to have taken into account, at that stage, the effects of any medication she was taking, when the effects of any such medications were far from clear, and their relevance, if any, to any of the 8 allegations to be investigated was equally far from clear. Again, that would have been the purpose of the investigation, for her to explain to what extent, and to which allegations, and such alleged side-effects were potentially relevant. This claim is another example of the claimant's recurrent theme that the respondent, instead of instigating an investigation into these matters, should have made its own unilateral enquiries, from which, on the claimant's case, it would have been bound to have found that there was nothing to investigate. That is, with respect, fanciful, and this claim too fails as a reasonable adjustment.

[c.] Failing to provide a buddy/mentor.

137. That brings the Tribunal to [c.], the reasonable adjustment of (presumably, hence the "scilicet" added by the Tribunal) appointing, or making available, a buddy or mentor to assist the claimant. The formulation in the List of Issues is at para.15, where no verb is present, the formulation being simply "*including a mentor/buddy*".

138. The first point to make is that this is a very different adjustment, in time, as it ought to have been made, on the claimant's case, some time in 2022, at the latest, as the recommendation for it was made in an OH report of May 2022. (That, be it noted, potentially makes such a claim very out of time.) This adjustment is therefore nothing to do with the decision to instigate the investigation, its purpose would have been to prevent the claimant from behaving in a manner that may have led to an investigation.

139. Examination of the evolution of this reasonable adjustment is instructive. The reasonable adjustments that the claimant originally pleaded in her Grounds of Claim (pages 36 to 40 of the bundle) at para.14 were :

The Respondent failed to make the reasonable adjustments for the Claimant contrary to section 21 of the Equality Act 2010 in that it:

a. Failed to adhere to the previously agreed adjustment of providing the Claimant with advance notice of the subject matter of meetings on 17 April 2024;

b. Failed to adjust the disciplinary policy so that it did not have to suspend the Claimant and block her work accounts (particularly as it had failed to obtain the Occupational Health report it agreed in December 2023 was required before taking formal action);

c. Failed to take into account the Claimant's disabilities and/or the effect of the medications she was taking for those disabilities when determining disciplinary action against her.

140. This particular form of reasonable adjustment , therefore, appears only to have emerged in the first draft of the List of Issues dated 19 March 2025 (pages 122 to 129 of the bundle). The respondent's second amended response, dated 10 April 2025 , dealt with this new reasonable adjustment at para. 18 (page 138 of the bundle). The point was made that the respondent would be materially prejudiced by responding to such an historic allegation. That issue does not appear in Ms Ferber's submissions , original or in reply, and does not appear to have been pursued. It is in effect, an amendment issue.

141. Be that as it may, the origin of this proposed adjustment is the OH report of 16 May 2022 (pages 589 to 597 of the bundle) where the following appears:

"Having considered [the claimant] previous reports, her reported difficulties and behaviour during today's assessment the following recommendations are advised:

Psychological recommendations:

Findings indicate that [the claimant] would benefit from a buddy/ mentor within the office to discuss any concerns and be available to be a support

142. Interestingly the report goes on also to recommend that stress risk assessments be undertaken, but the claimant has not pursued this as a further reasonable adjustment.

143. That this was a recommendation in an OH report does not, of course, make it a reasonable adjustment. It is the Tribunal's task to determine whether any course of action would or would not amount to a reasonable adjustment. In order to make such an assessment, the Tribunal has to be clear as to what precisely the proposed adjustment is. The wording in the report does not really do that, but it is of note that the term "within the office" is used.

144. The claimant has not clearly stated what this reasonable adjustment would look like. In para. 109 of her witness statement the claimant says this:

109. In terms of a mentor, there was never a request for someone to monitor every single interaction as suggested in the ET3 (see pages 133 – 151 of the Tribunal bundle), but to help when requested and if available. This is a huge exaggeration of what is required or even possible. Any mentoring activity would have to be agreed with the mentor. There wasn't any attempt to force anyone to mentor me. I was offered this mentoring verbally by Alexandra Richards (Co-Chair CanDo Disabled Employee Network) and then, unfortunately, the communication dried out. I am assuming this was because she was very busy. However, trust and confidence was broken through this action.

145. The claimant thus has said what this reasonable adjustment would not amount to, she has not explained how it would actually have worked in practice. It seems that she and the respondent agree (see para. 18 of the second amended response) that there were some discussions about this later in 2024, but this is, of course, after the events at issue in these claims which end on 17 April 2024 with the claimant's suspension.

146. What is totally lacking in the claimant's witness evidence, despite her mentioning the alleged failure to make this reasonable adjustment in paras. 24, 97, 109, 116, 122, 126, 127, 128 and 151 is any detail of how it should have been implemented, and, far more pertinently, how it would have had any prospects at all of preventing the claimant from behaving in any of the ways which led to the decision to investigate and suspend her. That is particularly so in the case of the performance, rather than the conduct aspects of the 8 matters to be investigated.

147. Also signally absent is any evidence that the claimant, or indeed Colin Marston (who became her union rep. in June 2022), following the respondent's failure from May 2022 onwards to implement this reasonable adjustment for the ensuing 2 years ever raised or pursued this issue.

148. There is a paradox in the position that the claimant now takes, and that she (and Colin Marston) were taking in mid – 2022, which was that they did not consider the FCA report in which this recommendation was made was a competent report. Colin Marston's evidence (paras. 33 to 49 of his witness statement) references the various meetings that followed that report, but in none of them did he or the claimant press for the implementation of this specific recommendation in the report.

149. It is hard to consider that the claimant considered there was much importance in this proposed adjustment, and she did not press for it. That, of course, meant that the practicalities of how this recommendation could be implemented were never explored, until after the relevant events. That remained the case up until 17 April 2024, and, frankly, remains the case today.

150. As observed, whilst the claimant has explained what this reasonable adjustment would not have been, she has not explained what it would or should have been. Whilst the recommendation referred to such a buddy or mentor being "in the office", the

claimant was not , at the time of the matters referred to in the Allegations, working in an office, she was working remotely.

151. That immediately gives rise to the question of how any such mentor or buddy could have worked with her. There are, it seems to the Tribunal, two possibilities. The first is that such a person actively monitored, on a full time basis, all the claimant's work and interactions with colleagues, or service users. That would enable them to intervene (by private communication with the claimant, off – line, as it were, perhaps by phone) if the claimant's behaviour was at risk of becoming unacceptable. The other would be for such a person not to have any ongoing role of actively monitoring the claimant , but to have a reactive role, being available to give the claimant any guidance should she feel she have felt that she needed it.

152. The Tribunal's view is that neither of these methods of implementation would have been workable, nor , more relevantly , has the claimant shown that would they have had any realistic prospects of reducing any disadvantage to which the claimant was put, i.e by modifying her behaviour.

153. For example, looking at allegation No. [1] if the suspension letter, (for as ever , this is where the Tribunal has to keep returning) the Tribunal asks how the presence, virtually, of a mentor or buddy in any of the stand up meetings which were cancelled because of the claimant's conduct during them, would have been likely to prevent these issue arising. Was such a person expected to interrupt the claimant , and get her to modify her conduct at that point? The problem would be that the claimant would have had to show some signs of behaving unacceptably for such a person to then intervene, by which time the damage may have been done.

154. Allegation No. [2] , also , is one which it is hard to see how this adjustment would have been effective , as this is based upon email communication between the claimant and others. Would any such mentor or buddy have been expected to have all the claimant's proposed emails in draft , to filter out any such conduct? Would it have been up to the claimant to select what proposed emails to colleagues she referred to the mentor or buddy, or was such a person to have automatic (and hence likely to be very extensive) access, and then be expected to intervene if any appeared to be inappropriate ?

155. Allegation No.[8] raises similar issues. These communications from the claimant were about her dissatisfaction with not being given some work which was unfairly allocated , in her view, to a contractor. This was not the claimant carrying out her day to day work, it was her raising a complaint or query. Again, would that communication have been automatically referred to the mentor or buddy for approval? Further, as it was not the subject matter which was at issue , but the claimant's persistence in repeating the question, would the mentor or buddy have then been made aware of every email that the claimant sent? As held in Griffiths cited above, whilst an adjustment does not have to be guaranteed to be effective, the Tribunal is entitled to take into account any uncertainty as to its efficacy in determining whether it is reasonable. There is considerable uncertainty as to this adjustment.

156. These three allegations, of course, as mentioned above, are the only three which relate to the claimant's behaviours, and the claimant's case on this reasonable adjustment can only be relevant to those issues.

157. Finally, there is a further aspect of this claim, touched upon above, which would be a further impediment to its success. The claimant, as noted above, has made several references in her witness statement to this reasonable adjustment, and the respondent's alleged failure to implement it. Most references in her evidence do no more than note that fact, but in para. 151 the claimant uses the term that this was "denied", which connotes some form of positive decision. Further, in para. 128, the claimant says this:

128. This was topped off at the beginning of 2024 when I again asked for a mentor from Simon Peel (Head of IT Service Management and Operations). I was under a lot of mental distress during all this time. I did what I could, but this was all efforts that I made. There was never any effort from Network Rail to assist me.

158. This is a potentially significant piece of evidence in relation to time limits. Whilst the claim based on this adjustment could well go back to 2022, and hence be considerably out of time, this alleged further request to implement that reasonable adjustment could have re-set the clock, and any claim based upon it could then be argued to run from the date of any subsequent refusal or failure to implement that adjustment.

159. The Tribunal has no note of any cross-examination of the claimant on this paragraph, nor, similarly, of it being put to Simon Peel in cross-examination. It is not backed up by any document in the bundle, nor by Colin Marston's evidence. It is not mentioned in Simon Peel's witness statement. This is unfortunate, and may be a consequence of counsel trying to compress the evidence of 4 witnesses into the 3 days of hearing time available.

160. Be that as it may, the Tribunal is not in a position to assess this evidence in these circumstances, but can say this. The claimant refers to this occurring "at the beginning of 2024". The date when Simon Peel either refused (unlikely, as the claimant does not actually say that he did), or simply further failed to implement this adjustment, using the formulation in s.123(3)(b) and s.123(4) of the Equality Act 2010 seems likely to have been, at the latest, the end of February 2024.

161. The ET1 was presented on 12 July 2024, following the claimant going to ACAS on 10 July 2024, and obtaining a certificate on 11 July 2024. (It is appreciated that there is an earlier one, but it is the July certificate that is relied upon in the ET1). Any claim based on the failure to make this allegedly reasonable adjustment would be out of time.

162. The Tribunal's primary finding, however, is that this was not, in any event, a reasonable adjustment, regardless of any time limit issues, and fails.

[d.] Failure to provide the claimant with a reasonable adjustment passport.

163. Ms Stanely says this in her closing submissions in relation to this claim:

45. It would have been a reasonable adjustment to arrange for a reasonable adjustments passport. C had requested such a passport as recently as January 2024:

[B/986]. A reasonable adjustments passport is not simply an assessment of what adjustments may be required (cf. paragraph 58 of the Respondent's written submissions). It is a practical tool for communicating about and/or obtaining these adjustments.

164. Ms Ferber's submissions say this:

56. C has proposed "a mentor / buddy who can assist with communication if required, i.e. checking that she has not misinterpreted indirect communication or non-verbal cues" and the provision of a "reasonable adjustments passport".

57. It is not clear how either of those steps would have made any difference: C's role had already been adjusted, and she was never required to carry out all aspects of her role.

58. Moreover, as a matter of law, the assessment (by way of a "reasonable adjustments passport") of what adjustments may be required is not capable of amounting to a reasonable adjustment, since it cannot of itself remove any disadvantage (Rider v Leeds City Council EAT 0243/11, applying Tarbuck v Sainsbury's Supermarkets [2006] IRLR 664).

165. The claimant's evidence on this issue is contained solely in para. 108 of her witness statement, where she says:

108. It is really disparaging to call the reasonable adjustments passport a mere "form" (see pages 133 – 151 of the Tribunal bundle). Making a Reasonable Adjustment passport is part of the Reasonable adjustments policy in place at Network Rail (see pages 227 – 231 of the Tribunal bundle). When I requested this should be done in January 2024, it was intended to avoid the repeated disregard for the reasonable adjustments in place as referred previously. This in itself, and due to the way Network Rail seems to rely on the employee to repeatedly confirm adjustments and not follow their own policy, is a reasonable adjustment because it removes the burden of proving the adjustments from the employee to each new manager. For an autistic individual, like me, this is crucial because each time a reasonable adjustment is questioned by a new member of management and I have to present evidence, again and again, a huge amount of stress is created. Having to revisit previous events to locate emails related to the adjustment is extremely triggering and stress inducing and a Reasonable Adjustment passport would have prevented this. It would also have made the employer aware of my requirement to have advance warning of meetings and their contents.

166. The Tribunal has considered the respondent's Managing Disability in the Workplace document (which starts at page 193 of the bundle) , where, at pages 207 to 208 there is a template for a Reasonable Adjustments Discussion Form, with 6 sections for completion by the employee and their manager. This is virtually identical to the Reasonable Adjustments Passport document at pages 233 to 235 of the bundle. In essence, therefore, what the latter does is simply to replicate the discussion that will previously have been held between the employee and their manager, which should have resulted in agreed adjustments.

167. The important part of this document , however is on the last page, where this appears:

A copy of this discussion form should be kept by the manager, a copy given to the employee and a third copy sent to HR Direct for recording purposes.

Once agreed, this form acts as a passport of adjustments, for example when managers or positions change.

168. Thus, the sole purpose of this document is to record what reasonable adjustments are in place, and to ensure that any managers are made aware of them upon any changes.

169. The Tribunal agrees with Ms Ferber that this would not , of itself, been a reasonable adjustment, all it would have done would have been to record any that had previously been agreed. That would not, of course, in any event, made such adjustments reasonable, it would merely have been a means of communicating them.

170. Again, it is to be remembered, that the purpose of this alleged reasonable adjustment would not have been relevant to the decision to investigate or suspend the claimant, it would only be relevant to preventing the claimant's actions being received by colleagues in a negative way, and hence potentially avoiding conduct issues being raised. Again, if at all, this adjustment can only be relevant to those allegations which related to her conduct , i.e Nos. [1], [2] and [8].

171. That, however, is a secondary consideration, the Tribunal having found that none of the reasonable adjustments proposed by the claimant that might have been included in any such Passport were in fact such adjustments, they would not have become so by being included in any Passport document, so this claim too fails.

The remaining reasonable adjustments claims.

172. The Tribunal now turns , finally, to the remaining claims of failure to make reasonable adjustments. They are:

c. Regards PCP 3a, applying its disciplinary policy, i.e. deciding to instigate an investigation

i. The reasonable adjustment would have been for the Respondent to have adhered to the previously agreed adjustment of providing the Claimant with advance notice of the subject matter of meeting on 17 April 2024;

ii. The reasonable adjustment would have been for the Respondent to take into account the Claimant's disabilities and/or the effect of the medications she was taking for those disabilities when deciding whether or not to investigate the allegations, including obtaining the Occupational Health report it agreed to obtain in December 2023 in this regard.

d. Regards PCP 3b, applying its disciplinary policy, i.e. suspending the Claimant – the reasonable adjustment would have been for the Respondent to adjust the Disciplinary Policy so that it did not have to suspend the Claimant and block her work accounts.

173. The respondent has not disputed that the two PCPs in question, 3(a) and 3(b) were applied to the claimant. It does not, however, concede that the claimant was put to any particular advantage by this PCP. Ms Ferber submits as follows:

PCP3(a): Instigating investigations under the disciplinary policy

67. R agrees that it does have a PCP of instigating investigations under its disciplinary policy: see section 2.3 of R's disciplinary policy, headed "Investigation", at [page 213 of the bundle].

68. C's asserted substantial disadvantage (in comparison with persons who do not share her disability) is that she was subjected to disciplinary action for something that was outside of her control.

69. It is wrong to characterise an investigation as "disciplinary action", for all the reasons already set out in paragraphs 15 to 27 above.

70. As the first bullet point in section 1.2 of the disciplinary policy at [212], headed "Principles", straightforwardly says: "Matters will be investigated fully before any disciplinary action is taken". In addition, under the disciplinary policy:

(a) Section 2.3.1 [213] explains that "When misconduct by an employee is suspected, the relevant manager will promptly investigate to establish the facts". That is, before the investigation is concluded, the facts have not yet been established.

(b) Section 2.3.4 [213] explains that "Having investigated the facts, the manager will decide promptly whether to disregard the matter, or arrange for the matter to be dealt with under a formal stage of the disciplinary procedure". That is, only after the investigation – and having established the facts – will R decide whether any disciplinary action should be pursued at all. (c) Section 2.4.4 [214] explains that "Where a matter is to be disregarded and the disciplinary procedure ended the employee will be informed in writing".

(d) Section 2.13.2 [219] (already cited in paragraph 20 above) explains that "if at the investigatory stage it appears that a case initially treated as misconduct should properly be dealt with under some other procedure, the Disciplinary Procedure will be discontinued and an appropriate alternative procedure initiated".

71. An investigation of the disputed facts is an advantage, not a disadvantage, to C. To illustrate the point: the alternative suggested by C's Counsel (of treating the allegations as performance issues) would be worse, because performance management (without prior investigation) would assume the allegations were true.

72. In addition, it is unclear how C can discharge the burden of proving her asserted disadvantage in respect of PCP3(a) ("subjected to disciplinary action for something that was outside of her control"). Her clear and coherent position – both when she was

questioned by the Tribunal about the suspension letter allegations, and through her Counsel's cross-examination of R's witnesses – was that she did not do the things she was accused of.

73. C either did not do those things, or she did them but could not control her behaviour: she cannot argue both.

174. Ms Stanley disagrees. In her submissions, she says this:

47. Particular disadvantage: The particular disadvantage relied upon is set out at paragraph 11(c) of the of List of Issues [B/159 to 60]. Put in general terms, C says that practice of instigating investigations under the disciplinary policy put her at a substantial disadvantage in that it led to her being subject to an investigation process in respect of behaviours arising from C's disabilities. The submissions above are repeated, which give examples of particular allegations flowing from particular manifestations of C's disability(ies).

Discussion and findings.

175. The Tribunal cannot accept the claimant's arguments on this PCP. Ms Stanley falls into the same trap that the claimant does, in that she bases her case on this PCP on the assumed factual basis that all the matters to be investigated were matters which had happened and were beyond the claimant's control. That is, however, at odds with her evidence throughout this case, that she had not actually done anything wrong.

176. For example, in para. 106 of her witness statement , the claimant says:

106. No adjustments were made to my job to allow me to complete it (although I was successfully completing all my tasks whilst dealing with the cancer treatment and the anxiety that had been created by the meeting on 12 December 2023), they still managed to accuse me of lowering my productivity and then proceeded to remove me completely from my role causing distress and an exacerbation of my mental health symptoms.

177. Added to that is her own evidence to the Tribunal, and the matters put to the respondent's witnesses in cross – examination, disputing many aspects of the allegations contained in the suspension letter. Whilst , in her later written responses, the claimant may have made some concessions in relation to allegation no.[8] , the respondent was not to know what her position would be. Not every behaviour on the part of person with autism may be because of their autism, and the respondent was entitled to establish the facts first.

178. Further consideration of the wording of this PCP shows how inappropriate it is. The assertion that being subject to an investigation process in respect of behaviours arising from the claimant's disabilities conflates two stages of the investigation process. The first was to establish what happened, the second was why it happened.

179. The Tribunal finds that the claimant has failed to establish the necessary disadvantage, and that this claim falls at the first hurdle.

Alternative finding on reasonable adjustments.

180. The claimant has put the reasonable adjustments that should have been made as follows (from Ms Stanley's submissions) :

48. Reasonable adjustments sought: The reasonable adjustments sought are set out at paragraph 13(c) of the List of Issues [B/161]:

48.1 Paragraph 13(c)(i) of the List of Issues: C says that it would have been a reasonable adjustment to provide C with advance notice of the subject matter of the meeting on 17 April 2024. This would have meant that the investigation process was less stressful than would otherwise have been the case;

48.2 Paragraph 13(c)(ii) of the List of Issues: C says it would have been a reasonable adjustment to have taken into account the effect of C's disabilities either in terms of taking these into account and not investigating C and/or obtaining OH health advice.

181. Whilst not strictly necessary given the primary finding above, for completeness the has considered whether these steps would have amounted to reasonable adjustments.

182. The first, at para. 13(c)(i) of the List of Issues, of course, relates to the reasonable adjustment, discussed previously, of giving the claimant advance notice. This has been discounted in the Tribunal's other findings, but it is relied upon in this context as a means of reducing the effects of the investigation (note, only the investigation) upon the claimant. It is suggested on behalf of the claimant that advance warning would have reduced the stress that the claimant suffered as a result of the meeting.

183. The first point to make is that this is a reasonable adjustment that does not relate to the decision to investigate, but how to communicate it. The second is that there is no evidential basis for such a contention in any event. There is, as far as the Tribunal is aware, for it has not been taken to it, any medical evidence at all to the effect that one method of informing the claimant of the investigation would have been less stressful than the other. The Tribunal is again being asked to make assumptions. Whilst the meeting with no prior warning may well have been a shock, that is not the same as stress. Equally, being told one is under investigation is likely to be stressful, regardless of how it has been communicated. Having longer to consider a forthcoming investigation before being formally told of it can arguably be more stressful. Whether this particular adjustment would have had any prospect of reducing the effect of the claimant being told of the investigation is thus a matter of pure speculation. Thus, if not at the first hurdle, this claim would have failed at the second.

184. Turning to the second reasonable adjustment, referred to in para. 13(c)(ii) of the List of Issues, that , it has to be noted, has been subtly altered in the formulation advanced by Ms Stanley in para.48.2 of her submissions. The adjustment as put by Ms Stanley is not the same as in para. 13.(c)(ii) of the List of Issues, because it adds the crucial words "and *not* investigating". That is not the formulation in the List of Issues, and it is far too late for the claimant now to seek to further refine this reasonable adjustment into what it perhaps always should have been.

185. As previously observed, the respondent , in the person of Simon Peel, did take the claimant's conditions into account, but decided to proceed in any event. As for obtaining medical advice before instigating the investigation, the claimant was not off work at the time of the investigation being instigated, nor were all of the matters to be investigated obvious medical issues. In any event, if the claimant were to have been referred again to OH at this juncture, it would have been likely that she was being considered for investigation, which would have been likely to be stressful for her, and lead to further protraction of the process. Again, all this is highly speculative, and even if the Tribunal had not determined the PCP issue as it has, it would not have found this was a reasonable adjustment.

The final reasonable adjustments claim.

186. This claim is based on PCP 3(b), as follows:

d. Regards PCP 3b, applying its disciplinary policy, i.e. suspending the Claimant – the reasonable adjustment would have been for the Respondent to adjust the Disciplinary Policy so that it did not have to suspend the Claimant and block her work accounts.

187. The first observation that has to be made, not for the first time, is that there is yet more conflation, or perhaps “mission creep”, in this claim. The formulation of the relevant PCP (3(b), from para. 10 . of the List of Issues) is , with apologies for yet more recital:

ii. Suspending the Claimant in accordance with clause 2.5 of the Disciplinary Policy (PCP 3b).

188. The relevant disadvantage is said to be:

d. By applying its disciplinary policy, i.e. suspending the Claimant (PCP 3b), the Claimant says that this put her at a substantial disadvantage as her condition of anxiety/depression resulting in panic attacks has deteriorated and the Claimant was taken to hospital in May 2024 as a result and she has been in contact with the emergency services on several occasions since.

189. The immediate issue is the addition, in the formulation of the reasonable adjustment relating to this PCP is the addition of the words “and block her work accounts”.

190. To be clear, there were, it seems to the Tribunal three separate , if linked, aspects to the treatment of the claimant. The first was the instigation of the investigation. That, of course, could have been with, or without , any accompanying suspension. The second, however, was the claimant's associated suspension from work . The third was the suspension of the claimant from access to her work email accounts and IT systems.

191. The evolution of these claims is as follows. In the Grounds of Claim, the PCPs were identified at para. 14, but at that stage the relevant particular disadvantages relied upon were not pleaded. The reasonable adjustment that the respondent should have made, however, was pleaded , at 14.(b) as :

b. Failed to adjust the disciplinary policy so that it did not have to suspend the Claimant and block her work accounts (particularly as it had failed to obtain the Occupational Health report it agreed in December 2023 was required before taking formal action);

192. It will be noted that the reference to blocking the claimant's work accounts is linked to her suspension. No particular disadvantage to the claimant in the blocking of her accounts had, that far , actually been pleaded.

193. The claimant subsequently on 6 February 2025 provided further particulars of her claims (pages 89 to 93 of the bundle) . In relation to this claim, the claimant said this (page 93 of the bundle) :

d. applying its disciplinary policy, i.e. suspending the Claimant – the Claimant's conditions of anxiety/depression resulting in panic attacks and ASD are better managed when the Claimant is working as it helps her wellbeing. By suspending the Claimant, her condition of anxiety/depression resulting in panic attacks has deteriorated and the Claimant was taken to hospital in May 2024 as a result and she has been in contact with the emergency services on several occasions since. The reasonable adjustment would have been to adjust the Disciplinary Policy so that it did not have to suspend the Claimant and block her work accounts

194. Again, the reference to blocking the claimant's work accounts is ancillary to her suspension, and the main complaint is that by suspending the claimant , the respondent caused deterioration in her mental health.

195. As far as the Tribunal can tell, the claimant has never identified any separate and distinct disadvantage suffered by the claimant as a result of suspension of access to her work IT accounts, over and above any disadvantage arising from her suspension.

196. The claimant has given no evidence as to how being suspended , but still being allowed access to her work IT accounts, would have avoided the mental health issues that she then suffered as a result of the investigation and her suspension.

197. The other way in which the claims in relation to the suspension (but not, in fact, the blocking of the claimant's IT access) is put is in the claims of failure to make reasonable adjustments, where the decision to suspend is relied upon at PCP3(b), and the substantial disadvantage to which the claimant was thereby put is said to have been the deterioration in her mental health, necessitating medical intervention in May 2024. In this context the effect of the treatment is therefore relevant, as it is the disadvantage to which the claimant says she was put.

198. Whilst at times it has appeared that the claimant was splitting this claim into what is really two different claims (i.e it would have been one reasonable adjustment not to suspend the claimant , and another not to suspend her access to her IT accounts) Ms Ferber's submissions address this as one claim. The claimant did (in paras. 24 to 27 of the closing submissions) seek to make these claims as separate instances of unfavourable treatment for the purposes of her s.15 claims, discussed above, but that is not how they are put for the reasonable adjustments claims. The Tribunal agrees with Ms Ferber's analysis, and will treat this as one claim, i.e that the respondent should have made the reasonable adjustment of not suspending the claimant, and will not

consider whether any separate claim arises out of the suspension of the claimant's IT access.

199. The claimant's pleaded case is that suspending the claimant put her at a substantial disadvantage as her condition of anxiety/depression resulting in panic attacks deteriorated (paragraph 11(d) of the List of Issues).

200. The respondent, of course, accepts that it had the relevant PCP, and it was applied to the claimant. It does not admit that this put the claimant at any relevant particular disadvantage, but, in the alternative, argues that it would not have been reasonable to have made such an adjustment, as follows, from Ms Ferber's closing submissions:

83. That would not have been reasonable, for a number of reasons:

(a) the (small, but very serious) risk of damage to data and IT systems.

(b) the serious negative mental health effects on others, as perceived by themselves, of interacting with C (particularised in paragraphs 39 and 40 above).

(c) C's persistence in pursuing her goals, without an understanding of the effect of her actions on others (as admitted and positively asserted by her Counsel during cross-examination of R's witnesses).

(d) C's persistence in her communications, without an understanding of the effect of her actions on others (as admitted and positively asserted by her Counsel during cross-examination of R's witnesses).

201. The first issue to be addressed, therefore is whether the claimant has shown the necessary particular disadvantage resulting from the application of this PCP to her. The respondent argues that she has not, but the respondent has also accepted that it had the requisite knowledge of the disadvantage (at para. 11.(d) the List of Issues) to which the application of this PCP put the claimant, namely that her condition of anxiety/depression resulted in panic attacks, and deteriorated, with the claimant being taken to hospital in May 2024 as a result and she has been in contact with the emergency services on several occasions since.

202. Whilst it may be open to debate as to the extent to which the Tribunal can or should differentiate between the effects of the investigation, and the effects of the suspension as potentially separate causes of the claimant's subsequent medical issues, it is not easy to do so.

203. Whilst the fact of the investigation may in itself have been enough to trigger the claimant taking sickness absence, the Tribunal cannot ignore the fact that the claimant was also suspended. That work was an important part of her life is documented in the evidence, in particular in the medical report compiled on 20 May 2024 (pages MB 775 to 788 of the bundle), where the following is recorded, under Social/Personal History (page MB784 of the bundle):

"[the claimant] stated that over the past couple of days, she feels that she is edging towards a "nervous breakdown". She acknowledges the stress that she has been under, having been on suspension from work for over a year. She reports that she is autistic, and that her dialogue with the customers at work is very "black and white" and direct. She works for Network Rail. [the claimant] stated that she feels that her work have treated her unfairly, punishing her because they don't understand autism or mental health. She advised me that she is in an employment union, who are taking legal action against network rail for discrimination and violation of the equality act. She acknowledges that her job provided her with structure and stability, that she hasn't had since being suspended which has disrupted her daily routine. [the claimant] stated that she is currently going through the menopause which affects her negatively in terms of her mental health."

There are similar references to the claimant's need to be at work in other, earlier, medical reports.

204. The reference to the claimant being on suspension for over a year is, of course, not accurate, as the claimant was only formally suspended on 17 April 2024. Prior to that, however, she had been in redeployment, and was looking to change roles, so this may be how this confusion has arisen.

205. Whilst again there is mention of another, non – disability related issue, the menopause, the Tribunal is satisfied , on balance , that being suspended (regardless of any IT access issues) did, with the claimant's mental health condition of anxiety and depression, put her at a disadvantage, giving rise to the duty to make reasonable adjustments.

206. So the only issue is whether it would have been a reasonable adjustment not to have suspended the claimant .

207. Simon Peel's reasons are set out in his witness statement, and have not been challenged as not being truthful, the only issues taken are in relation to the reasonableness of the decision, and its effects upon the claimant .

208. Ms Stanley challenges (para.52 of the closing submissions) his decision on these grounds:

52.1 R advanced no evidence that there was any evidence that C herself would pose any risk. R identifies here an entirely generalised risk;

52.2 R relies on "the serious negative mental health effects of others as perceived by themselves." The submissions at paragraph 23 above are repeated.

52.3 R relies on C's persistence as a reason justifying suspension. An individual's persistence (particularly when it is a manifestation of a disability) is not a justification for suspending that individual while they remained employed (and cannot be said to be a reason why adjustments which would otherwise be reasonable and not required under the EqA). The default position for any employee is to be at work. Suspension (in the course of a disciplinary investigation) can be justified only by reason connected with that

investigation. Suspension should not be used as a solution to any other management issue (real or perceived).

209. The reference to the submissions at para. 23 is to the previous submissions (at 23.3) to the effect that the respondent adduced no medical evidence of the alleged effects of the claimant's interactions with colleagues , and the causation of any ill – health, and to the concession made by Simon Peel that the decision to investigate (for these submission actually relate to the investigation, not the suspension) should not depend upon the reaction of co-workers to the claimant's conduct.

Discussion and finding on this reasonable adjustment.

210. The Tribunal accepts that the claimant has done enough to cast the burden of proof upon the respondent. It also accepts that Simon Peel was quite genuine in his reasons, and did approach the decision whether to suspend the claimant with some care, and with an awareness of the claimant's medical issues. It is satisfied that he balanced these factors in making his decision.

211. The Tribunal is also satisfied that it would not have been a reasonable adjustment not to suspend the claimant. Whilst the various matters relied upon by Simon Peel may carry varying weight, they all carried some weight. The first one, the small risk of damage to data and IT systems, derived from the claimant's considerable access to the respondent's IT systems by virtue of her role, involving the IT accounts of some 40,000 employees. Whilst, as the respondent acknowledges, the risk of there being any harm done by the claimant may have been small, that harm, if it occurred could have been considerable.

212. Secondly, Simon Peel did, and was entitled to, take into account the alleged history of the claimant's employment up until that point. The claimant had, it should not be forgotten, already had a discussion with Cath O'Connell about some of these issues in December 2023, and was already on notice that her conduct and/or performance would be under some scrutiny. Yet more incidents were then reported after December 2023.

213. Another aspect of the decision, perhaps overlooked by Ms Ferber , but referred to in para. 27 of Simon Peel's witness statement, was that the decision to suspend was intended to ensure the safety and wellbeing of the claimant as well.

214. It is, however, the second of the matters relied upon in para.83 of Ms Ferber's submissions that , in the Tribunal's view, carries considerable weight, the effects upon her colleagues of the claimant's conduct. The Tribunal cannot accept Ms Stanley's argument that the respondent cannot rely upon this factor without adducing medical evidence. All the Tribunal is doing is assessing the reasonableness of suspending the claimant against the alternative of not suspending her (or some other expedient). The Tribunal is perfectly satisfied that Simon Peel had information before him, which he had no cause to doubt, that several colleagues of the claimant had found her impossible to manage, and had declined to continue doing so. One, Manager C, had been off work ill, because (he claimed, but that was all that Simon Peel needed to consider) of his interactions with the claimant. Another, Cath O'Connell , was similarly struggling, and had herself sought support from the respondent. Another, Manager A, had declined to

continue to manage the claimant after the problems he encountered with her reporting of her sickness absence, and her conduct upon her return to work meeting. He documented his own family and mental health concerns.

215. If the claimant was not suspended from the role that she was actually working in as at April 2024, how was this interaction to cease? If the claimant was not suspended, she would still be working, if she was still working, she would need to continue to interact, one way or another (and the issues were not solely, indeed, if at all, ones of face to face communication) with someone who would have to manage her. Who was that to be ? It could no longer be Cath O'Connell. The claimant has not suggested how this could have worked, but seems to think she could simply have carried on working in these circumstances.

216. Whilst considering alternatives to suspension, the Tribunal notes that Ms Stanely's submissions do not actually propose any others, but, it has to be observed, the claimant at paras. 110 to 111 of her witness statement has suggested that the respondent should have initiated an informal stage (under its disciplinary policy) rather than proceed as Simon Peel did. This, however, is not a pleaded reasonable adjustment, and has not been pursued by Ms Stanley. It will not be considered.

217. Finally, turning to factors (c) and (d), which are very similar, Ms Stanley submits that it was impermissible for the respondent to take these into account in deciding whether to suspend the claimant , because they are manifestations of the claimant's disability. She says (para. 52.3 of her submissions) that such conduct "is not a justification for suspending that individual while they remain employed". She goes on to suggest that suspension in the course of a disciplinary investigation can only by justified by (sc. "virtue of a") reason connected with that investigation.

218. The Tribunal cannot agree. Firstly, the reason was, in any event, connected to the investigation, as part of the matters to be investigated related to her allegedly persistent conduct and its effect upon colleagues, but secondly, this links back to factor (b) of Ms Ferber's formulation discussed above. The risk of continued persistent conduct was a factor which played into the continued concerns for the welfare of the claimant's colleagues, particularly , her managers.

219. That this may well have been a result of any disability is not relevant for these purposes. Disability does not confer immunity from management, subject always to the duty to make reasonable adjustments. The claimant's case, not for the first time, does appear to come perilously close to her asserting that her disabilities gave her total exemption from normal management processes.

220. There are two further factors that are relevant, the Tribunal considers, one of which has been touched upon already, and one has not. The first is the fact that the April 2024 suspension and investigation did not come out of the blue, it was preceded by the meeting on 12 December 2023 with Cath O'Connell.

221. The second is that, however unfortunate for the claimant the suspension and the investigation were, once announced to her, the suspension letter does contain the following (page 1167 of the bundle) :

I appreciate that this may be an unsettling and difficult time for you and would like to remind you of Network Rail's confidential counselling service through PAM Assist. They can be contacted 24 hours a day on [Phone number redacted by the Tribunal].

222. The Tribunal's understanding is that the claimant did indeed take up that suggestion. That wording in the letter may well have been standard, but, nonetheless, it demonstrates that the respondent was seeking to mitigate the harshness of its action, and offer support to the claimant in relation to the effects of the suspension letter. That too, whilst perhaps of lesser weight, is a further legitimate factor to take into account in determining whether it would have been a reasonable adjustment not to have suspended the claimant, in these circumstances, and on these terms. The Tribunal finds that it would not have been, and the respondent did not unreasonably fail to make reasonable adjustments. The reasonable adjustment claims, accordingly, all fail.

Postscript – the future.

223. As observed at the conclusion of the hearing, whatever the outcome of these claims, the situation remains that there is an impasse with the claimant's employment with the respondent. The investigation has, as far as the Tribunal is aware, not concluded, and the question will doubtless be raised as to whether, this long after the event, it ever should be.

224. Whatever steps the respondent now takes with the claimant may well lead to yet further claims, and the parties now clearly need to address her ongoing employment situation with some urgency. The claimant clearly has, and has been recognised as having, some considerable strengths. She also, however, for reasons that are probably beyond her control, issues in terms, particularly, of interaction with colleagues.

225. She did, however, impress the Tribunal, and perhaps surprised herself, in her ability to give evidence to the Tribunal. It may be that the medication issues that she experienced following her cancer diagnosis have now been addressed, and that generally, she has developed greater self – awareness, and more interpersonal skills. Whatever the position, a return to work, on some, agreed basis (carefully managed by senior and suitable union representatives, qualified managers, HR practitioners, and medical specialists) may now be feasible, and is to be encouraged for the benefit of both parties.

226. For its part, however, the Tribunal can do no more than determine these claims, which it has now done.

Case Number: 6005622/2024

Approved by:

Employment Judge Holmes

Date: 27 July 2026

Sent to the parties on:
31 July 2026

.....
For the Tribunal Office:

ANNEXE A

The relevant statutory provisions Equality Act 2010

Section 15:

- (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.

Section 20:

- (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.
- (4) The second requirement is a requirement, where a physical feature 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.
- (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid.
- (6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

- (a) removing the physical feature in question,
- (b) altering it, or
- (c) providing a reasonable means of avoiding it.

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

- (a) a feature arising from the design or construction of a building,
- (b) a feature of an approach to, exit from or access to a building,
- (c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or
- (d) any other physical element or quality.

(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

(12) A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.

(13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

Section 21

(3) 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.
