



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Bradley

Respondent: The Royal Mint Ltd

Heard at: Cardiff

On: 8, 9, 10 January 2024 – hearing;
17, 30 January 2024 – claimant attended Tribunal to record evidence;
1 March 2024, Tribunal in chambers;
4 March 2024 – claimant attended Tribunal to record evidence;
14, 15, 20, 21 May 2024 - hearing

Before: Employment Judge S Moore
Mrs M Farley
Ms Y Neves

Representation

Claimant: Ms S Roberston, Counsel

Respondent: Ms K Moss, Counsel

RESERVED JUDGMENT

1. The claimant's claim for direct and indirect sex discrimination is dismissed on withdrawal by the claimant.
2. The claimant's claim for direct disability discrimination is not well founded and is dismissed.
3. The claimant's complaint for discrimination arising from disability regarding the refusal to permit rescindment of her resignation is well founded and succeeds. The other complaints are not well founded and are dismissed.
4. The claimant's claim for failure to make reasonable adjustments is not well founded and is dismissed.
5. The remedy is to be decided at a separate remedy hearing.

REASONS

Background and Introduction

1. The ET1 was presented on 29 November 2022. Early conciliation commenced on 20 September 2022 and the certificate was issued on 1 November 2022.
2. The claimant brought claims of direct discrimination on the grounds of disability and sex, discrimination arising from disability, failure to make reasonable adjustments and indirect sex discrimination. The direct and indirect sex discrimination claims were withdrawn by the claimant on 21 May 2024 and are dismissed above upon this withdrawal.

The hearing

3. The hearing was originally listed to take place 8-12 January 2024. The hearing was postponed on 10 January 2024 due to the claimant's health. Additional reasonable adjustments were discussed and agreed with the parties to enable the claimant to continue to give evidence. The claimant was provided with questions in advance and attended the hearing centre to give live evidence which was recorded and then transcripts provided an agreed. The Tribunal sat on 4 March 2024 to review the transcripts and draft any questions arising to the claimant. The claimant's evidence was completed on 4 March 2024. The hearing then continued on 14, 15, 20 and 21 May 2024 with the Respondent's evidence and submissions. The Tribunal reserved their decision.

Documents, witnesses and list of issues

4. There was an agreed bundle, updated for the May dates of 788 pages. The respondent was granted permission to adduce new documents namely calendar entries for Ms Jessop and her PA, Ms Templar. The claimant was permitted to produce further calendar entries and provide a supplementary statement addressing the new documents.

5. The Tribunal heard from the following witnesses:

For the claimant:

The claimant and Mr B Bradley

For the respondent:

Ms A Jessop (CEO);

Mr R Smith (Head of Human Resources);

Ms N Howell (Chief commercial Officer for Consumer Business Division)

6. A list of issues was understood to have been agreed by the parties on the first day save for one minor point. This was titled "Agreed Amended List of Issues 24 May 2023". The point of disagreement was the inclusion of 11.1 concerning whether one of the legitimate aims was within the ambit of the

amended response. This was resolved as Judge Ryan had permitted the amendment application setting out this legitimate aim. It was therefore understood this list of issues to be agreed.

7. On 20 May 2024 Ms Moss produced a different list of issues titled “Amended list of issues drafted by the respondent for the preliminary hearing on 18 May 2023 incorporating some of the changes suggested by the claimant”. This was on point of submissions. This took some discussion given the previous understanding of the other list of issues. It was clarified that the respondent had agreed the 24 May 2023 list of issues save for 11.1. The 24 May 2023 list of issues therefore stood as the final list save that the section regarding S207 TULCRA would be reserved to remedy, in the event the claimant succeeded in any of her claims.

Reasonable adjustments

8. Reasonable adjustments for the claimant had been discussed and agreed at a previous preliminary hearing before Judge Ryan. These were recorded as breaks every 90 minutes and that the claimant would be permitted to have a flask whilst giving evidence to take caffeine.
9. At the outset of the hearing on 8 January 2024 the Tribunal discussed whether any further adjustments were required. It was agreed that the following further adjustments would be made:
 - a. The claimant would have time to pause and respond to questions;
 - b. The Tribunal and Counsel for the respondent would be ready to calmly repeat any instructions and / or questions;
 - c. There would be increased short breaks and it was stressed the claimant could request a break outside planned breaks.
10. On 10 January 2024 the Tribunal decided to postpone the final hearing as the claimant was not well or fit enough to continue and this was in the interests of justice as cogent evidence could not be given by the claimant. The following orders were made to enable the claimant to continue to give evidence and for the hearing to be relisted.
11. Regard was had by the parties and the Tribunal to the Equal Treatment Bench Book and in particular Chapter 4. After considerable discussion it was discussed that three dates would be allocated for the claimant to attend the hearing centre and continue her evidence in an allocated booth where the evidence could be recorded. The respondent provided their remaining written cross examination questions to the claimant on each morning copied to the Tribunal.
12. The claimant could be accompanied for welfare support but that person was not present in the allocated booth for giving her evidence. The claimant was provided with a suitable private room containing the following: note pad and pen, clean copy of the bundle, witness statements, cast list and agreed chronology and a copy of the respondent’s advance written questions.

13. Suitable warnings were given regarding non- use of mobile phones and not discussing evidence with anyone during this procedure.
14. The claimant read through each question in turn and recorded her answers on Teams. The Teams recording and transcript were made available by the Tribunal to the parties' representatives who had to agree transcripts.
15. The transcripts of all the evidence was then included in the updated bundle.

Findings of fact

16. We make the following findings of fact on the balance of probabilities.
17. The respondent is a private limited company wholly owned by HM Treasury. The board is made up of executive and non executive directors. There is an executive team comprising of eight functional directors and division heads.
18. The claimant commenced employment with the respondent on 5 January 2009 initially as Head of HR Business Partnering. She reported to Ms Jessop who at that time was Director of HR and Safety Health and Environment. In 2015 the claimant was promoted to the role of Director of HR reporting to Ms Jessop who was subsequently made CEO.
19. The claimant's director service agreement provided termination by either party had to be by prior notice in writing. The period of notice required from the claimant to terminate was three months.
20. The claimant was highly regarded as a hard and motivated worker. She had a tendency to be disorganised and would struggle with planning. She also sought more responsibility beyond her remit and on occasions had difficulty in accepting she would not have capacity and be reluctant to relinquish control. The claimant and other witnesses said she "wore her heart on her sleeve". There would be occasions, particularly from 2019 onwards where the claimant did not always behave appropriately at work becomes sometimes blunt, overly assertive sometimes aggressive, shout at people and storm out of meetings. Ms Jessop and Mr Smith became adept in recognising the claimant was not feeling herself because she became obviously emotional or aggressive.
21. The respondent provides a range of support to employees who have a medical condition or disability. There is an employee assistance program (EAP). The counselling service begins with an initial telephone call and then a referral as required; employees are entitled to six free counselling sessions and these can then be extended by agreement. They also have mental health first aiders (MHFA) which is essentially a signposting support mechanism. The respondent will also and has covered the cost of additional medical support such as specialist diagnosis. The claimant as HRD would have been aware of these arrangements.

The claimant's disabilities

22. It was accepted by the respondent that the claimant was disabled in respect of the impairments of depression and anxiety and ADHD. The respondent accepted knowledge of depression and anxiety from around 2013 and knowledge of ADHD diagnosis from January 2022.

Previous resignations

23. In February 2019 the claimant's mother passed away. In September 2019 her mother in law also passed away. Following an executive team meeting, the claimant broke down and fell out with colleagues at work describing that she had "exploded", sworn and offered to resign. At the said meeting the claimant was unable to express her views in a coherent way and had an emotional meltdown. Ms Jessop refused to accept the claimant's resignation as she recognised she was unwell.
24. Following this the claimant took time off work and participated in mediation with the executive with whom she had disagreed.
25. The second time the claimant attempted to resign was in September 2021.
26. It was not disputed that the claimant had developed fixations or obsessions with members of staff if she perceived they were not performing well. The management team including Ms Jessop had to intervene and assist managing the individual. The Tribunal were told about two examples of this behaviour. The first individual was eventually exited from the business after the mediation referenced above. The second was an individual we shall refer to as "M". The claimant developed a fixation with M and refused to work with this person. This made the executive team work very awkward and Ms Jessop had to step in and act as an intermediary. This culminated in February 2021 when the claimant approached Ms Jessop in a similar way as discussed above, sobbing uncontrollably and said she could no longer work with M, it was making her ill and said if he was not sacked she would leave. As M was about to be made permanent from an interim role, the claimant said she would resign if the role was made permanent. The claimant took time off work. Ms Jessop refused to accept the resignation again recognising the claimant was unwell and the respondent agreed to delay making the role permanent as a result, albeit this was eventually resolved and the claimant returned to work.

Pay awards

27. The respondent undertook benchmarking in respect of the salaries of the senior leadership team and salaries were generally in the lower quartile of the market rate, according to Mercer data in the bundle. Any increase of over 5% required being able to show an increase in the job role and agreement from the Remuneration Committee ("Remco"), of which the claimant was secretary in her capacity of HRD.
28. In 2018 the claimant expressed concern that she was earning less than other executives. Ms Jessop prepared a paper for Remco seeking a pay increase of 10% for the claimant and this was agreed.

29. In April 2022 the claimant raised the issue of her pay with Ms Jessop. The claimant told Ms Jessop that money had become very important to her and she did not feel she was paid enough. The claimant agreed she had raised her package with Ms Jessop at this time. Ms Jessop agreed to raise it with Remco.
30. In May 2022 the claimant was awarded a pay increase of 6.25% taking her salary to £122,792 p.a. This percentage increase was above the standard increase for the team. The Mercer data shows that the claimant's salary was at 84% against the market lower quartile. It was unclear if the respondent benchmark their salaries using national or regional comparisons.
31. The claimant agreed under cross examination that she was aware any further significant pay increase was unlikely.

ADHD diagnosis

32. The claimant had worked closely with a colleague who we shall refer to as "V". V's daughter had been diagnosed with ADHD and made a podcast. The claimant upon listening to the podcast recognised many of her own behavioural traits and arranged her own assessment with Harley Psychiatrists who had been recommended by V. The assessment took place on 26 January 2022 and we had sight of the report. The claimant was diagnosed with ADHD. Her main problem areas were described as follows:
- a) Work/education - Tired/bored quickly of a workplace, difficulty with administrative work/planning;
 - b) Relationship and/or family Relationship problems - difficulty with housekeeping and/or administration;
 - c) Social contacts - Tired/bored quickly of social contacts, difficulty maintaining social contacts, low self-assertiveness as a result of negative experiences;
 - d) Free time / hobby - Unable to relax properly during free time, unable to finish a book or watch a film all the way through, being continually busy and therefore becoming overtired, binge eating;
 - e) Self-confidence / self- image - Uncertainty through negative comments of others, excessive intense reaction to criticism, distressed by the symptoms of ADHD
33. The claimant was very open with her work colleagues about her diagnosis. Ms Jessop bought her flowers and asked if there was any professional help that could be offered to support her but the claimant declined as she was working through support with the professional she had engaged on a private basis. Ms Jessop also tasked the claimant with arranging some training for the executive team on neuro diversity. The claimant worked on plans with a trainer in May 2022 but the follow up meeting was cancelled due to her resignation.
34. Ms Jessop implemented some adjustments of her own design and volition such as refraining from sending lots of information instead highlighting key points, summarizing long reports and assisting with delegating tasks.
35. The claimant was not referred to occupational health at any relevant time. Various reasons were given in evidence. Ms Jessop told the Tribunal that

in the past she had strongly asked the claimant to arrange an occupational health appointment yet the claimant refused. We accepted her evidence on this as the claimant agreed under cross examination she did not want to be referred as she did not wish to be perceived as weak or a burden but the claimant would have agreed to be referred after her rescindment request. See below.

36. Ms Jessop was also of the view that as the claimant was receiving professional private psychiatric treatment a referral to occupational health was not necessary. There was a further belief that as the claimant was the most senior HR person within the respondent that if she needed to be referred anywhere she could refer herself.
37. Mr Smith told the Tribunal that any occupational health assessment would have been done by a general practitioner who did not specialise in ADHD and it would have been likely that it would have needed an onward referral to a specialist. As the claimant was receiving that specialist treatment in any event a referral to occupational health would have been a bit pointless. At that time Mr Smith was confident that the claimant was getting the specialist care and advice needed from her own arrangements.
38. There was evidence that the respondent had previously paid for assessments if they were beyond the professional remit of the usual occupational health provider, for example where someone had been diagnosed with OCD. The claimant was asked about this under cross examination and told the tribunal that the respondent as an organisation had asked this particular individual to seek help and led the referral process. The claimant said that during the period between her diagnosis and her resignation she was not in a fit state to make rational decisions. The claimant disagreed that she was aware she could have asked for support to be referred to a specialist. The claimant told the Tribunal that every time she had the private consultation with the psychiatrist is cost £250 with an additional cost of £190 for the ADHD medication. The only time the claimant asked for the respondent to pay for a psychiatrist was last meeting with Ms Jessop on 6 July 2022 (see below).
39. We find that the claimant must have been well aware of the full range of support offered by the respondent in terms of a possible referrals to occupational health and onwards specialist referrals in her role as HRD. We also find that the claimant did not ask for a referral or assistance until 6 July 2022 and had capacity to do so as evidenced by her making her own private arrangements to be treated by Dr Vukadinovic. If she was capable of making those arrangements she was capable of asking the respondent to make a referral but she chose not to as she did not wish to be seen as a weak or a burden.
40. On 14 February 2022 the claimant had a private psychiatrist appointment with Dr Vukadinovic who prescribed the claimant 30mg Elvanse Adult (ADHD medication) and arranged follow up appointments.

Claimant's mental health between March – May 2022

41. We had sight of contemporaneous medical records for this period. Further,

this period had been considered by the psychiatric reports prepared for the purpose of these proceedings (see below). We also had witness evidence from the witnesses as to the claimant's state of mind and how she presented at the time. We have carefully considered all of this evidence on making the following findings.

Psychiatric Assessments with Dr Vukadinovic

42. We deal with this in chronological order although that means the chronology of events is interrupted (we return to these below). All of the assessments took place via Teams whilst the claimant was at work, in an open plan office. The claimant could have chosen to conduct these appointments in a private room if she had wanted to. At the end of each report the claimant was advised to engage and inform her GP.

24 March 2022.

43. The claimant reported being more patient with reduced binge eating, maintaining a good level of balance but she was still having outbursts. At work the claimant said she "*was not seeing any improvement*" and was still unable to sit in a meeting without doing several things in parallel. She reported she had decided to reduce her Sertraline prescription (anti depressant medication) to 100mg with her GP and she has been taking that dose for one month. The psychiatrist recommended reducing it to 50mg and monitoring her mood. The Elvanse was increased to 50mg.

28 April 2022

44. The claimant reported feeling good on the new dose, calmer and more refreshed in the morning, enjoying a holiday but coming back to work she felt a bit overwhelmed. The claimant described the medication "*as already life changing*" but was still impulsive. The Elvanse Adult was increased to 70mg which was the maximum dose. She reported that she had stopped Sertraline completely.

9 June 2022

45. This was recorded under appointment outcomes:

"Sarah reports that on 70mg of Elvanse she felt anxious, was very tense, and had almost an out-of-body experience. She also ran out of her HRT medication at the same time and had a meltdown. Sarah decided to stop working for 4 days, and it took her some time for her to recover. She is back on HRT and on a reduced dosage of Elvanse 50mg and reports that she feels much better and stable. She has been off sertraline for 3-4 weeks as well. All in all, she feels stable, doesn't report any side effects and would like to continue with the same medication."

The claimant was asked about this psychiatric report and why she told the psychiatrist that she was "feeling good" in April and stable in June. The claimant told the Tribunal that she gave mis information to the psychiatrist and lied as she was desperate to ensure the ADHD medication continued and she would have said anything. She also stated that she kept on thinking

it would get better as long as she pulled herself together and needed to give the ADHD medication time to settle down but was very unwell and was not thinking rationally. She also stated that she could not be open with the psychiatrist because she was in an open plan office on a Teams call.

23 June 2022

46. The report notes the claimant was not feeling good, low and was having a lot of negative thoughts. She resigned her job as *“she feels she is not behaving well and she can’t contain her emotions, so for her sake and her colleagues, she decided to leave.”* Three or four days earlier the claimant had reduced the dosage of Elvanse to 30mg and the tension she was feeling was described as better. It was agreed to continue on a lower dosage of Elvanse and to restart Sertraline 50mg. It was noted that the claimant had distanced from suicidality, and convinced the doctor she would never take her own life as she knows that is a symptom of depression. The current risk to self was noted as low.

GP records

47. There were the following entries in her GP records during this period.

15/03/2022

“Telephone encounter Has been diagnosed with ADHD by psychiatrist privately. Has been started on Elvanse 30mg a day for a month and due review next Thursday but runs out omf medication this Thursday. Has really helped with her impatience and her terrible meltdowns. Has reduced sertraline to 100mg. On this dose for a month and feels fine. Advised can reduce to 50mg and then if remains fine can stop or take alt days for a month. Advised we need some documentation from the private psychiatrist in order to prescribe more medication and then can refer locally.”

48. On 11 May 2022 the claimant had a telephone consultation with the nurse having requested a repeat prescription of her HRT. The claimant’s HRT was changed. Her prescription for Femoston was stopped and she was prescribed Utrogestan and Lenzetto.

49. The next relevant entry was on 28/07/2022 which stated as follows:

“Acute stress reaction pt thinks she's had a bit of a breakdown. since start adhd medication tried to stop sertraline. was also changed hrt prep. been struggling. put herself back on 100mg sertraline and starting to feel better. would like med3, more hrt and rpt for sertraline.”

Sertraline Medication

50. In the claimant’s witness statement she states that she stopped the Sertraline relatively quickly over a 4-6 week period starting at the end of March 2022 as she concluded (of her own volition and without medical advice) that it was no longer needed given the ADHD diagnosis and medication. The claimant was incorrect about the period over which her medication changed and the withdrawal period was slightly longer and more

stable than she suggested in her witness statement. The medical evidence shows that the Sertraline was decreased from 150mg to 100mg on 17 February 2022. On 24 March 2022 the psychiatrist records that she had been on 100mg for one month. On 15 March 2022 the claimant reported feeling fine, so Sertraline was thereafter further decreased from 100-50mg. By 28 April 2022 the claimant had stopped Sertraline completely as reported to the psychiatrist at that consultation.

51. We find that the claimant reduced her Sertraline medication from 150mg to 100 mg from mid February 2022, thereafter to 50 mg from 15 March 2022 and by the end of April 2022 was not taking any at all. This is a period of approximately 10 weeks.

Claimant's evidence

52. The claimant's witness statement gave an account of her state of mind during March – June 2022. The claimant told the Tribunal that by the end of April she had closed down from everybody and was becoming consumed with dark thoughts and wanted to disappear. She recalled screaming uncontrollably at her husband who was so concerned he wanted to get her sectioned. In May 2022 at the point of the change of HRT medication the claimant says:

"I was extremely anxious and very suicidal, very depressed, exhausted, and sleeping most of the weekend. I am always awake at 7am but at that time, I would sleep up until midday on the weekends. I would still be working still but over the years learned how to show other people I was okay, when I wasn't. Outside I might appear fine but internally there was a mix of complete anxiety, depression and anger, and by the time I would get home, I would just sit there for hours and think 'how do I end all this.'"

53. We accepted Mr Bradley's evidence about how the claimant was at home at this time. The claimant had a major unprovoked melt down at home at one point screaming and shouting wanting a divorce on the spot. He was due to go on a sailing holiday but decided he could not go. In the preceding months prior to the event, she had become very agitated while grappling with changes to her medication. The most recent event as described above was the worst he had experienced.

Executive team meeting 11 May 2022

54. The claimant was late for this meeting and which started in her absence and the claimant was upset with Ms Jessop's attitude towards her at the meeting. Following the meeting the claimant became very upset and asked Mr Smith to collect her belongings and meet her in reception as she wanted to go home.
55. We find there was a degree of downplaying how upset the claimant was after the meeting in the witness statement of Ms Jessop and Mr Smith compared to what was said in the grievance investigation. Ms Jessop's witness statement did not mention the incident at all only that the claimant

took a few days off (and attributed this to the change in HRT). Mr Smith's statement said the claimant had a clash with the exec team and her behaviour was pretty normal, nothing extreme. Neither mention that they discussed the incident with each other after the claimant went home.

56. Mr Smith told a later grievance investigation that the claimant was "visibly upset and tearful". He later spoke with Ms Jessop who expressed concern for her welfare and suggested she take time out to get better but that when the claimant returned two days later she seemed much better.

57. The claimant messaged Ms Jessop at 11.06 am to advise her she had to come home and was seeing the doctor that afternoon. There was no record that the claimant saw the GP but she did have the telephone consultation with the nurse regarding her HRT medication (see above). Ms Jessop was supportive in her response advising she had her support and to take time off. She also congratulated her for understating her ADHD. Later that day the claimant told Ms Jessop she was on the wrong dose and combination of medication, feeling very out of sorts and was starting a new combination on the Friday. Ms Jessop sent two further supportive messages and offered further time off.

58. On 13 May 2022 the claimant sent the following message:

Thank you.... 'mania' over... just feeling exhausted now... I am so, so sorry about this. I am desperate to find "peace of mind and balance'. I will be in on Monday, probably much quieter... you are probably at the end of your tether by now. If you want to have a "conversation" with me about a leaving plan, I will totally understand. See you Monday. Xx

59. Ms Jessop replied telling the claimant not to be so silly and she was proud of her for how she was dealing with the diagnosis.

60. On 13 May 2023 Mr Smith sent the claimant a WhatsApp message asking how was feeling. The claimant replied:

"Yeah better.... mania over, just exhausted... feel like I've been on a bender for a week... ADHD medication not to be messed with... So sorry, again... I'll be back on Monday, calmer !"

61. The claimant returned to work on 16 May 2022. The claimant had been managing the Tech Team but on the appointment of an Interim Director, her management of this team ceased. The claimant agreed under cross examination that she presented at work as "normal" with no further meltdowns or conversations about mental health. She told the Tribunal she had taken the lead at the Platinum Jubilee celebrations and threw herself into all of the activities including a tug of war and line dancing.

Head hunter

62. Sometime in May 2022 the claimant had been approached by a recruitment consultant who we shall refer to as SG about a HR Director role. The claimant attended an interview on site in Newport, driving herself to the interview. This was around the end of May, beginning of June 2022. The

interview was, in the words of the claimant “disastrous”. Within a few days of the interview SG telephoned the claimant on an unscheduled call to inform her she had not been successful.

Resignation

63. On 15 June 2022 the claimant and Ms Jessop were in a meeting. Mr Bradley had been away on his sailing trip for almost three weeks. The claimant denies resigning at this meeting but agrees she floated the idea. She also agrees telling Ms Jessop that money had become important and that she was looking to pursue a career in the interim market in London. The claimant’s friend and colleague “V” had resigned to take up lucrative interim work in London as had another member of the team of which the claimant was well aware. Changing attitudes to home working meant that the interim work could be done from home whilst earning London salaries. The claimant agreed that she told Ms Jessop her husband was retiring and hers would be the only income.
64. Ms Jessop told the Tribunal that the claimant said “actually I want to resign” to which she immediately asked her if she was ok. Unlike previous occasions where the claimant had resigned she was not visibly upset, sobbing or displaying emotions or behaviour to give rise to any concern about her mental health. Ms Jessop described it as a shock but after the claimant talked through her reasons (money, knowledge of close friends taking interim roles in London for more money yet being able to work from home), she considered the claimant had thought this through. The claimant also told Ms Jessop that she had been with the respondent so long things felt repetitive and stale and commented “*there are only so many times you can communicate the profit share*”. Ms Jessop told the claimant she would accept her resignation and agreed not to discuss matters with anyone else until they had mapped out how to break the news and manage the disruption. After the meeting Ms Jessop told Mr Leighton John and her husband but no one else.
65. We preferred Ms Jessop’s account of what happened at this meeting. It was detailed and to a degree corroborated by much of what the claimant said also. We have no doubt that Ms Jessop left the meeting with a clear understanding that the claimant had resigned and having had preliminary discussions about the plan for her notice period. Ms Jessop’s account was also corroborated by what both Ms Howell and Mr Smith say the claimant told them after that meeting (see below).
66. Following this the claimant continued to attend work and presented as stable to her colleagues.
67. After an executive team meeting on 21 June 2022, M raised with Ms Howell that he felt bullied by the claimant and did not want to go back into the room if the claimant was going to be there. The following day, Ms Howell spoke to M in private on the telephone. M wanted to escalate matters to Ms Jessop but agreed Ms Howell would firstly speak to the claimant to see if they could mediate. Unbeknown to Ms Howell, the claimant had overheard the conversation and Ms Howell then told the claimant that M had called her a bully. The claimant responded with words to the effect “*I will solve that I am*

leaving". Ms Howell urged the claimant not to over react and the claimant told her she had already resigned the week before. The claimant told Ms Howell that she intended to go and get interim work and earn more money. Ms Howell said the claimant had tears in her eyes but was calm and collected. The claimant says that she was "ranting, really emotional and wasn't listening". She says she made the decision impulsively purely out of emotion, anxiety and humiliation.

68. Following this discussion the claimant went to see Ms Jessop and told her she had informed Ms Howell she had resigned. She accepted the claimant was a little upset but put this down to having to tell her team.

69. The claimant then called Mr Smith into a separate meeting room and told him she had handed in her notice and had spoken to Ms Jessop the previous week. She told Mr Smith that she was in the last 5 years of her retirement and needed to make the most of it financially and wanted to pursue a career in interim work. She also mentioned tensions being which was probably a reference to the issue with M. Mr Smith accepted the claimant was upset but attributed this to a natural reaction to the claimant leaving after many years of service.

70. Mr Smith had worked with the claimant for many years and they were close. The claimant had previously asked him to help her spot any signs of when she was heading into a "down" and he was able to spot the signs. He described these as getting restless and impatient with both people and work projects, sometimes angry over little things and occasionally becoming more withdrawn. Generally, the main signs would be the sudden changes in the claimant's mood, manic behaviours and more extreme reactions.

71. Mr Smith did not consider that the claimant was experiencing a decline in her mental health. He had witnessed the claimant in the midst of bad mental health episodes and said this time it felt very different.

72. Thereafter the claimant's direct reports were informed.

73. On 23 June 2022 Mr Smith drafted a proposed announcement of the claimant's resignation, stating that she was pursuing a career in the professional interim market. He emailed the draft to the claimant and Ms Jessop stating "as discussed...see proposed draft", so this must have been discussed with the claimant as Mr Smith says in his witness statement.

74. The claimant told Mr Smith she trusted him to draft the statement and it was then sent to the leadership team later that day. This stated:

Hi All

I wanted to let you all know that Sarah Bradley has decided the time is right for her to hand in her notice and pursue a career in the professional interim market.

Sarah has worked at The Royal Mint since 2008 and, as you'll no doubt be aware, during her time in the business she has been instrumental in driving a number of organisation changes and initiatives. Sarah has been a massive support to me personally during my time in The Royal Mint and she definitely

leaves the business having made a huge positive impact. We will all be sorry to see her leave and I'm sure you will all join with me in wishing Sarah all the very best with her future endeavours.

75. On 27 June 2022 the claimant confirmed her resignation in writing by sending an email to Ms Jessop:

Just for formal records and to confirm, I have resigned from my position as HRD and as per my contract, am giving three months' notice.

My last working day will be 30th September 2022, although as agreed with Anne, this may be earlier if I secure another position.

76. Ms Jessop replied on 27 June 2022 formally accepting the resignation.

77. Mr Smith informed the trade unions about the resignation. On 30 June 2022 a meeting took place between the claimant, Ms Jessop and Mr Smith to consider and scope a candidate profile. The claimant appeared calm and actively contributed to the meeting. An external recruiter was contacted who started to undertake searches whilst the candidate profile was to be drafted.

Calendar entry 29 June 2022

78. In the claimant's outlook calendar there was an appointment on 29 June 2022 between 11.30-12.00 with SG. It was categorised as a private appointment with a padlock symbol. During initial disclosure the claimant's outlook calendar was disclosed but as it would have not been viewed on the respondent's system, this would not have been apparent to the claimant who would have only seen a private appointment with no padlock. During the claimant's cross examination the respondent applied and were granted permission to ask the claimant about this appointment. The respondent wanted to know if this appointment was to tell the claimant she had not been successful for the role SG had approached her about. The significance of this was potentially important as it post dated her resignation and pre dated the claimant's attempt to rescind her resignation.

79. The claimant disputed that this was the reason for the calendar entry. The diary entry was taken into the claimant when she was giving evidence from the booth on 30 January 2024. Her initial evidence when asked about this appointment was the only thing she could think of was that she was being declined but then said she could not recollect. The claimant then went on to speculate it might have been about her replacement but was clear it was not around any role. She pointed to the fact that another recruitment consultant (Vanessa) was also in the diary for that date. She denied it being the date of the "disastrous interview" and was very clear that the interview had been earlier and in person having taken place in Newport. The claimant stated that the meeting was also with Ms Jessop and set up by her PA however subsequent disclosure showed that neither of their outlook calendars contained the same diary entry.

80. We find that it is likely the calendar entry was because the claimant was due to speak to SG about her replacement. It was the day before she was due to meet with Ms Jessop and Mr Smith to discuss her replacement and there

was also another entry that day with another consultant. We find that the claimant was well aware that she had not been successful for the role SG had approached her about before she decided to resign. We have taken into account that there were no diary entries for Ms Jessop and her PA as the claimant thought there might have been but we do not consider this minor difference in evidence to be significant given the other corroborating factors around this appointment.

Claimant's request to rescind the resignation

81. On 4 July 2022 the claimant's husband returned from holiday and the claimant told him she had resigned. Mr Bradley was very upset, worried and anxious about their future and the claimant decided she would try and retract her resignation. On 6 July 2022 the claimant sent Ms Jessop a WhatsApp message which stated:

Please can we talk today? I need help, thank you".

Ms Jessop replied *"of course see you later."*

82. There was a dispute about what happened next as well

83. The claimant says that after sending the above text message she did not meet with Ms Jessop until 11 July 2022. She says that she was sobbing saying she needed help and to see a psychiatrist and that she did not want to go (leave). She stated she needed help and more time to allow the changes in medication to start working. The claimant says she told Ms Jessop she had appeared calmer lately as she had re started the anti depressants but Ms Jessop appeared angry and exasperated. The claimant agrees she suggested taking things on a month by month basis and asked for time and that the respondent stop the recruitment process. The claimant went away from this meeting believing that Ms Jessop was going to consider her request. The claimant then went on holiday on 13 July 2022.

84. Ms Jessop says they met the morning of 6 July 2022. She told the Tribunal she considered on the drive to work that the claimant might have changed her mind and gave some thought as to how she would respond if this was the case. Ms Jessop concluded that this would be completely disruptive to the business to allow her to change the position. She thought particularly about the claimant's stated motivations for leaving and how many people she had told about them.

85. Ms Jessop says they met in her office that morning and the claimant immediately asked if she could rescind her resignation and that she had stopped taking certain medication earlier in the year but had gone back on them and was feeling better but she had not been herself the past few weeks. Ms Jessop disputed that the claimant said she had been in crisis or anything that strong only that the claimant said she had not been herself.

86. Ms Jessop considered what had been said having already given thought to this scenario and nothing the claimant said changed her mind. She told the claimant it was not the right decision for the respondent to accept the

rescindment. The reasons were that her resignation had been communicated widely and she had been very open with people about wanting more money and this compromised her role of leading on pay awards as people knew she wanted to earn significantly more, especially in her role as being in charge of setting the reward for others.

87. Further, there was a real risk she could resign again given Ms Jessop's understanding of the reasons she had resigned. In particular, Ms Jessop had understood from what the claimant had told her that the claimant's primary motivation for resigning was financial and in particular, Ms Jessop knew that she would be unable to secure any further significant pay awards for the claimant (see above at paragraphs 27-31). this was emphasised in her oral evidence. Ms Jessop told the Tribunal although the respondent was not a "massive organisation" that anyone leaving the executive team would be "big news" and disruptive with speculation about the reasons and who the replacement will be. She did not accept it would be easy to backtrack on such a senior resignation.
88. Ms Jessop disputes that she told the claimant she would think about the decision but agrees she said go away and enjoy the holiday and they would speak further when she returned.
89. The claimant mentioned to Mr Smith on or around 12 July 2022 that she had requested to rescind her resignation. This was the day before she went on holiday. Mr Smith told her he had not yet written the brief for her replacement which gave her hope they would hold the recruitment process. Mr Smith agrees that the claimant mentioned to him before her holiday that she was potentially not being sure about leaving.

Ms Jessop's notes

90. We pause here to set out our findings regarding some near contemporaneous notes made by Ms Jessop. None of the above discussions had been documented by either the claimant or Ms Jessop. These notes are therefore the only near contemporaneous records of what had taken place.
91. On 20 July 2022, a few weeks after the request to rescind we have outlined above, Ms Jessop created a document called "Initial Statement". The claimant had sought disclosure of the version histories of this document and this produced 16 versions which were in the bundle. Ms Jessop gave a supplementary witness statement regarding this document and the differing versions. Ms Jessop told the Tribunal that it was a personal memo to bring together her thoughts and reflections on the recent happenings involving the claimant and she was a reflector in style and this is often her approach to such matters. Ms Jessop explained she will quickly produce a note, reflect then order and develop over time to create a record of her actual position.
92. The first version was created on 20 July 2022. It started with a section on the claimant's background of her employment. She referenced the claimant having "episodes" after which she offered to resign but Ms Jessop refused to accept as she could "see she was ill". The notes goes on to say:

Recently she stated to demonstrate behaviours that could have been another episode and destabilised the team. She came to see me and said that she wanted to resign she had had a lot of changes over the last 6 months and money was now important and so she wanted to do interim work in London where she could be paid more and she wanted a new challenge. She mentioned she had a coach¹ who used to work for us who had identified that Sarah's mental health wasn't helped by being here because she could not be objective as she was "overly" attached to TRM. I accepted her resignation as despite the fact that she was upset I understood her rationale and believed that it was best for her and the team who have all being impacted to a greater or lesser extent. We agreed we would not communicate for a period and would keep it confidential.

3 or 4 days later Sarah told Nicola and insisted that we communicate in the organisation which we did during the next day. A couple of weeks later Sarah told me that she had been hasty had now resumed her medication and wanted to stay. I explained that I needed to think not only about her but the mental health of the team and thought that it was the right decision.

93. Ms Jessop accepted that the reference to "recently she had started to demonstrate behaviours" was a reference to the May 2022 incident when the claimant took time off work (see above at paragraph 54-61). She also accepted under cross examination that the claimant's disability and the effect on others was on her mind but this was not the main reason she refused to rescind.

94. On 28 July 2022, at 13.47 Ms Jessop returned to the note. In terms of timing, this was the day the claimant had emailed the board and a few hours after the exchange we refer to in paragraph 101 below.

95. In a later version at 14.02 MS Jessop added a new last paragraph:

I said that I would not accept the rescinding of her resignation because I thought her resignation was for the best that a number of the team had told me that she had adversely impacted their mental health.

96. In the 15.13 version Ms Jessop deleted the entire paragraph above (starting recently she started to demonstrate behaviours etc). In a later version at 16.07 Ms Jessop added:

A little later she started to demonstrate a renewal of her obsessive behaviour surrounding one of the earlier and most extreme fixations. She was not able to control her behaviour towards him in meetings with not only the exec but also when others were there. Given how traumatic it had been the first time he raised the issue as did his colleague's.

97. This was a reference to the fixation with M (see above). Nothing turns on the deletion of the diagnosis of ADHD at 17.19 as this was added into the next sentence just in a slightly different format.

98. The final version was saved at 17.48. This had removed the reference to the mental health of the team in the sentence that addressed why Ms

¹ This is a reference to V see paragraphs 32 and 64

Jessop had refused to allow the claimant to rescind her resignation and it now read:

On the 27th when she was back I met with her reconfirmed that I would not be agreeing to her rescinding her notice as I had to think about what was best for the team and organisation.

99. On 21 July 2022 the draft candidate pack for the claimant's replacement was drafted (the job title was changed to "Chief People Officer").

100. On 27 July 2022 the claimant returned from holiday and met again with Ms Jessop. The claimant says it was only at this point Ms Jessop confirmed she would not permit the claimant to rescind her resignation. Ms Jessop says she reaffirmed this to the claimant for the same reasons as outlined above. It is accepted the claimant became upset. The claimant then left work and became very unwell (see GP record at paragraph 49).

101. On 28 July 2022 the claimant sent an email to some of the leadership team copied to Mr Smith. She stated:

Despite me informing the business at the beginning of this year of my ADHD disability, the lack of support and reasonable adjustments at work over the last 6 months, has caused me considerable stress, anxiety and deep depression, to the point of not wanting to be 'here' anymore.

My illness was further compounded yesterday by the business refusing to let me rescind my impulsive decision to resign, which due to the nature of my disability, was a decision made whilst being extremely ill and seeking psychiatric support to find the right combination of medication to treat my illness – an illness I have managed and 'masked' over the last 13 years of loyal and dedicated service at TRM, but has been become difficult, (but not impossible), to manage due to my late in life hormonal changes.

102. The claimant then sent a copy of the email to the board with some covering words registering her disappointment with the Boards' support of Ms Jessop's decision not to allow her to rescind her recent resignation. The claimant referenced her ADHD and that this had been exacerbated by the menopause and changes to medication.

103. Mr Love, Chairman, emailed Ms Jessop asking to discuss the email. Another board member commented there was no compunction whatsoever to accept a rescinding of notice, and she believed it would now do more damage than good to reverse this. Mr Love then replied and asked no one else to engage on the topic and that emails would probably be discoverable.

104. Ms Jessop emailed the claimant later that day confirming she would not permit the claimant to rescind. She did not provide a reason only stated that the business has accepted the notice and was not willing for it to be rescinded. Ms Jessop offered her counselling, outplacement support and reminded her of the EAP. It was decided to place the claimant on garden leave at this point and she was so advised.

105. On 1 August 2022 matters were progressing regarding recruiting the

claimant's replacement as the recruitment consultant was far enough along to have drafted the job advertisement for approval. Ms Jessop accepted in her witness statements that recruitment was not a factor in the decision. See below.

106. On 2 August 2022 the claimant emailed Ms Jessop. She stated that she had gone on holiday believing that she would be given time to recover, time for medication to work and continue in her role. She requested reasons why the respondent was not now willing to rescind her resignation. Ms Jessop replied by email on 5 August 2022 as follows:

"You must appreciate how destabilising it is for a senior member of staff to resign. We have communicated your departure to the business and taken steps to commence the search for your successor. I should also point out that this is not the first time that you have either resigned or threatened to do so. I remain of the opinion that the best course of action for the business is not to allow you to rescind that resignation. This has nothing to do with your disability or your sex".

107. The claimant was subsequently signed off sick by her GP. She attempted to challenge the decision not to allow her to rescind via emails to Ms Jessop and later solicitors' letters.

108. The claimant's solicitors letter dated 22 August 2022 complained, in summary of sex and disability discrimination in that the respondent had failed to refer the claimant for occupational or specialist assessment and should permit her to rescind her notice.

109. The respondent's solicitor reply dated 26 August 2022 set out all of Ms Jessop's understandings for the claimant resigning at that time. This letter was telling as it is plain from this letter that the respondent did not accept that the claimant's resignation was attributable to either her mental health or ADHD. The respondent "dug in" as can be seen from the following passages:

"On 15 June 2022, during a meeting with Anne Jessopp, CEO, your client advised that she wished to resign from her position as HRD. We are instructed that this decision appeared well considered and was obviously pre-planned. "

The letter then set out the various reasons provided by the claimant for her decision at that time. In relation to the assertion the claimant should have been referred to occupational health:

"Your client was receiving treatment from her own physicians and was reporting back to the business regularly as to the impact of her conditions upon her work. The business was actively encouraging her to do this, and your client will be able to recall the extent to which they were working with her on this. To suggest that your client was denied occupational health support because of her disability makes little sense and is entirely denied. "

And

"Our client does not accept that your client's resignation arose in consequence of

her impaired mental health and instead arose from her desire to work elsewhere and earn more money. An occupational health referral was considered unnecessary given the level of medical support your client was stating she was already receiving.”

And

It would be completely disruptive to now unpick the steps already taken to prepare for your client leaving the business. Your client has clearly been looking to the market for other opportunities, including work outside of South Wales. There is no obvious reason why your client’s disgruntlement with her pay would dissipate and our client is entitled to reject the request for rescindment in circumstances where it is reasonably foreseeable that your client may well resign again for similar reasons, should any better pay opportunities arise.

110. On 13 September 2022 the claimant submitted a formal grievance. The respondent appointed Ms S Austin to investigate the grievance who is a partner at Capital Law. Mr H Lewis, Chief Financial Officer was tasked with making the decision on the grievance following the investigation report. Ms Austin commenced an investigation and was sent some initial information by Mr Smith on 16 September 2022 which he obtained from an internal drive. Included in that information was Ms Jessop’s “initial Statement” that we have discussed above, the final version. Ms Jessop had intended these notes to be private. On 10 October 2022 Ms Jessop emailed Ms Austin stating she had sent these notes in error and asked for them to be destroyed advising she did not give permission for them to be used.
111. Ms Austin interviewed Ms Howell, Mr Smith and Ms Jessop as well as the claimant. Ms Austin prepared some questions in advance for Ms Jessop and Mr Smith but we find nothing turns on this and there was nothing sinister in this arrangement.
112. The grievance investigation report was dated 20 October 2022. This was a comprehensive review of all of the evidence and documents. The report recommend that the grievance should not be upheld. The main relevant reasons for the conclusion were are as follows:
113. Ms Austin acknowledged that permitting the claimant to rescind her resignation was a potential adjustment which could have been made and that it would have ameliorated disadvantage;
114. It would not have been a reasonable adjustment to allow the claimant to rescind her resignation. This was on the basis of the specific circumstances including the claimant’s seniority, the fact that the entire business, the trade unions, and HM Treasury had been informed of her resignation, and the fact that the claimant had said that her reasons for resigning were financial and Ms Jessop knew that this issue could not be resolved.
115. As such it was possible that if the claimant had been permitted to rescind her resignation, she may have resigned again at some point in the near future and Ms Jessop’s view that this would have a destabilising effect on the respondent was accurate.

116. Ms Austin concluded it could be very de-stabilising for the respondent to communicate that a senior person was leaving, then announce that she was not leaving, and to potentially have a further resignation at a later date.
117. On 26 October 2022 Mr Lewis wrote to the claimant to advise her grievance had not been upheld. She was offered the right to appeal against the decision and did so on 13 November 2022. Mr Forbes, Director of Supply Chain was appointed to hear the grievance appeal. The claimant had raised concerns that Mr Lewis and now Mr Forbes were subordinate to Ms Jessop and therefore continued to raise concerns in this regard. Mr Forbes did not uphold the appeal and detailed reasons were set out in his decision letter dated 8 December 2022. Neither Mr Lewis nor Mr Forbes were called to give evidence at the hearing.

Comparators

118. We have not dealt with the evidence regarding other comparators who were said to have been permitted to rescind because the list of issues confirmed that the claimant relies upon hypothetical comparators. We will say that the evidence did not support this assertion.

Expert reports

119. The parties instructed experts to prepare reports for the purpose of this litigation. We have set out the expert evidence as far as is proportional to the liability issues. The main issues where we consider the expert evidence to be relevant for the purpose of the liability judgment is the extent to which the claimant's resignation was attributable to her disability and in respect of the substantial disadvantages relied upon for the reasonable adjustments complaints.
120. The claimant instructed Dr Ajaz, Consultant Psychiatrist who is a fully registered medical practitioner, holds a MBBS (Bachelor of Medicine and Bachelor of Surgery) and a BSc (Bachelor of Science). He is a member of the Royal College of Psychiatrists.
121. Dr Ajaz interviewed the claimant via a 2-hour online consultation on 08 May 2023. He also had sight of the claimant's GP medical records, Harley Street Psychiatrist Records, copy of the grievance and the letter of instruction from the claimant's solicitor. He was aware from the grievance information of the respondent's position that in summary;
- Neither Ms Jessop and Mr Smith understood that the claimant was experiencing a mental health crisis in April, May or June 2022. They were aware she had been unwell around 11 May 2022, but returned to work and appeared to be performing and behaving as expected. Also although Mr Smith observed that her "highs and lows became more frequent during this period", he said she had experienced these highs and lows throughout her employment.

- Whilst the claimant had referred to her behaviour as impulsive and desperate, Ms Jessop perceived this situation to be very different from her previous resignations, as previously she had not given reasons for resigning but had just stated that she could not cope. She says that on this occasion, the claimant gave clear reasons (financial) and once she resigned, she set in motion the communication to the rest of the organisation and was pushing for this to be done immediately.

122. His report was dated 18 May 2023. It was said that Dr Ajaz misquoted the psychiatrist report by saying that on 9th June 2022 it was reported that the claimant “was feeling increasingly tense and anxious”. This was partially incorrect as what was actually recorded was that the claimant had been feeling anxious and tense on the 70mg Elvanse but by the time of the appointment reported feeling stable and an improvement (see paragraph 45 above). We find nothing material turns on this because it was drawn to Dr Ajaz’s attention on follow up questions and this did not change his view nor that of the later joint agreed statement between both experts.

123. Dr Ajaz stated that the claimant has a very good insight into her mental health. He reported there were clear examples of when her mental health has clearly relapsed resulting in her experiencing extreme mood swings, intense feelings of being overwhelmed and other emotional states, acting in a manner that is impulsive - meaning that her capacity to weigh up the consequences of decisions is diminished, often making quick decisions on the spot.

The respondent’s expert report

124. The respondent instructed their own independent expert Dr Singh. The report is dated 18 October 2023. Dr Singh is an equally eminent expert witness being a full time Consultant Psychiatrist in General Adult Psychiatry and on the Specialist Register of the GMC for both General Adult Psychiatry and Learning Disability. In Dr Singh’s opinion the claimant’s decision to resign was affected by her mental health but she had capacity to understand the consequences of her decision to resign. Dr Singh initially stated that there was no evidence of masking of symptoms but the urge to carry on at work regardless of stress. Dr Singh later clarified that she would not expect the claimant’s medical records prior to diagnosis of ADHD to have noted masking but would have expected it to be noted in GP records and reports. It was said to be possible that the lack of recognition could be an example of successful masking of symptoms. Dr Singh also concluded that the claimant may have been masking her actual feelings as a coping mechanism.

125. The experts subsequently agreed a joint statement which stated as follows:

- *We agree that Ms Bradley has a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD), along with Depression and Anxiety over many years.*

- *We agree that at the time of her resignation, her mental state was significantly affected by changes in her psychotropic medication – her ADHD medication dosage was initially increased then reduced due to Ms Bradley experiencing prominent side-effects; around the same time, she had taken it upon herself to reduce and stop her antidepressant medication.*
- *We agree that at the time of her resignation, her mental state was significantly affected by the side-effects of ADHD medication and likely withdrawal effects of stopping antidepressant medication.*
- *We agree that sex hormones play an important role in brain health, and that having a pause/break in her hormone replacement therapy, also likely had a clinically significant affect on her mental health, in the lead-up to her resignation.*
- *We agree that the above factors had a significant influence on Ms Bradley’s decision to resign from The Royal Mint in June 2022.*
- *We agree that the refusal for The Royal Mint to accept the rescindment of Ms Bradley’s resignation, further negatively impacted her mental health, to a significant degree.*
- *Masking behaviours are coping strategies whereby an individual’s inner feelings and emotions are suppressed in order to project more socially acceptable behaviour. It is common for people with ADHD to exhibit masking behaviours (more so with females with ADHD) and it is likely that this also applies to Ms Bradley. However, it is difficult in retrospect, to quantify the degree of masking behaviour Ms Bradley exhibited around the material time.*

Findings of fact – reason for resignation

126. The respondent pointed to a number of factors in support of a finding that the claimants’ resignation was unrelated to her mental health / ADHD or that the June 2022 resignation was different from those before:

- a) The claimant wanted a pay rise and was aware a further significant rise was unlikely to happen (see paragraphs 27-31);
- b) The claimant thought she would secure interim work which would be better paid;
- c) The claimant’s behaviour was calm, balanced and reasonable with no sick leave or “meltdowns”;

- d) There was a long period of time between her verbal resignation and written confirmation;
- e) The claimant had been headhunted.

127. We agree that (a) (d) and (e) are factually proven. We partly agree with (c) in so far as apart from the May 2022 episode, the claimant presented at work as calm balanced and reasonable having regard to her pattern of previous behaviour up until her rescindment request was refused. We also agree the claimant told Ms Jessop about (b) and may have believed that at the time given the experience of he colleague and friend “V” but we do not think that was the reason she resigned.

128. If the respondent’s case is to be accepted we would be finding that the claimant was calm and stable at this time and made the decision to resign based on monetary reasons in a calm and rational manner. It was only when the claimant realised that the interim job marker may not be so lucrative that she had a change of mind and then sought to attribute her resignation on her mental health and ADHD which was at best, an afterthought or at worse, untruthful. We would also going against the joint expert evidence.

129. We do not agree that the evidence before us can support such findings. We find that the claimant resigned her employment on 15 June 2022, confirmed in a meeting on 22 June 2022 and in writing on 27 June 2022 due to her mental health at that time and her ADHD. These are our reasons:

130. We accepted the claimant and Mr Bradley’s evidence about her true state of mind during the months January – June 2022. In March 2022 she told her psychiatrist she was not seeing any improvement at work. The claimant reduced and then stopped taking her anti depressant medication. Although the reduction in this medication was longer than the claimant had asserted this was only a matter of 4 more weeks and we do not think anything turns on this given the other medical evidence at that time particularly around the time of her resignation.

131. There was a period between 28 April and 8 June 2022 between seeing her psychiatrist. On 9 June 2022, just 6 days before she resigned she told her psychiatrist that she was feeling much better and stable. The claimant told the Tribunal her reasons for doing so. We were invited not to accept her evidence about this. We agree that the explanation regarding not being open to her psychiatrist as she was on Teams in an open plan office to be implausible as the claimant could have taken the Teams calls in a private office if she wanted to. We also find it more likely than not that as of 9 June 2022 she was feeling calmer and more stable having reduce the Elvanse at that time from 70mg to 50mg.

132. This must be taken into account within the context of the overall factual matrix. On 9 June 2022 the claimant may have been feeling more calm and stable but this needs to be considered along with all of the other evidence about her mental health and ADHD at that time. We find that this one factor does not affect our overall findings having regard to the other

evidence that supports the finding her resignation was due to her mental health and ADHD. The situation with the claimant's medication plainly had a significant impact on her and we accept the expert evidence in this regard.

133. We also take into account the incident in May 2022 when the claimant had to take time off and was so upset she was unable to collect her belongings. After this incident the claimant told Ms Jessop she had been "manic" and was "desperate to find peace of mind and balance." She felt Ms Jessop must be at the end of her tether and would understand if she wanted her to leave. The claimant told Mr Smith she had been manic and ADHD medication was not to be messed with – and that she felt like she had been on a "been on a bender".

134. All of these behaviours reflect what the experts later jointly concluded – that the claimant's mental state was significantly affected by changes in her medication including HRT and this likely had a clinically significant affect on her mental health, in the lead-up to her resignation. We find the expert advice highly relevant and persuasive along with the other contemporaneous evidence and the claimant and Mr Bradley's evidence.

135. However it is important to further set out our findings as to what Ms Jessop and Mr Smith reasonably believed to be the reason at the time for the claimant's resignation.

136. We find that they believed the claimant to be in a stable state of mind and whilst upset at the prospect of leaving her role, had made the decision based on the reasons she had given Ms Jessop, Mr Smith and Ms Howell. We find that the respondent at this stage should not have reasonably understood the claimant to be in the midst of a mental health crisis or an ADHD meltdown. We have taken into account that the claimant had taken time off in May 2022 and had displayed that behaviour described above with M. Apart from this her appearance at work after her return from sick leave was on the claimant's own evidence presenting as stable (see paragraph 61 in particular). We particularly take into account that expert evidence on masking and in addition the claimant admitted lying to her psychiatrist about her true state of mind. If the claimant was prepared to be untruthful to her psychiatrist to whom she was paying privately, it is entirely plausible that she was presenting an appearance of normal behaviour at work. Ms Jessop and Mr Smith were close to the claimant and had known her a long time and experienced her previous behaviour when she was unwell. At the time of the resignation and up until 27 July 2022 they were reasonable in their understanding that the resignation was not a symptom of her mental health or ADHD, which the experts later concluded to be likely.

Findings of fact about the reasons for refusing the rescindment request

137. We find that in terms of both the timing of the meeting and the account of what was said, we prefer Ms Jessop's account (see paragraphs 81-90 above where the differing versions are discussed). We do not think it plausible that Ms Jessop would have let matters wait until 11 July 2022 particularly having regard to the nature of the text message the claimant had sent asking for help. Ms Jessop has at all material times up to this point displayed support and understanding for the claimant's behaviour and

mental health challenges. We also take into account what Ms Jessop said in her near contemporaneous notes which corroborate that the claimant told her she had been hasty and resumed her medication and that she told her immediately rescindment would not be possible. Further that she **reconfirmed** (our emphasis) to the claimant she would not accept the rescindment on 27 July 2022. We think that if the claimant had been in the state of distress she described Ms Jessop would have acted to ensure her well-being rather than simply let her go away on holiday. The claimant did not fully appreciate this was a firm refusal to allow her to rescind probably because of her state of mind at that time. Ms Jessop herself reflected that the claimant appeared calm at work before her leave and with hindsight wonders if the claimant had absorbed the decision.

The Law

Direct Discrimination

138. Section 13(1) of the Equality Act 2010 (“EQA 2010”) provides that direct discrimination takes place where a person treats the claimant less favourably because of the protected characteristic than that person treats or would treat others. Under s23(1), when a comparison is made, there must be no material difference between the circumstances relating to each case.
139. Under s136 EQA 2010, if there are facts from which a tribunal could decide, in the absence of any other explanation, that a person has contravened the provision concerned, the tribunal must hold that the contravention occurred, unless that person can show that he or she did not contravene the provision. Guidelines were set out by the Court of Appeal in **Igen Ltd v Wong [2005] IRLR 258** regarding the burden of proof (in the context of cases under the then Sex discrimination Act 1975). The Tribunal must approach the question of burden of proof in two stages.
140. The first stage requires the complainant to prove facts from which the ET could, apart from the section, conclude in the absence of an adequate explanation that the respondent has committed, or is to be treated as having committed, the unlawful act of discrimination against the complainant. The second stage, which only comes into effect if the complainant has proved those facts, requires the respondent to prove that he did not commit or is not to be treated as having committed the unlawful act if the complaint is not to be upheld. To discharge the burden of proof “it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex,” (per Gibson LJ).
141. In **Nagarajan v London Regional Transport and others [1999] IRLR 572 HL** held that the Tribunal must consider the reason why the less favourable treatment has occurred. Or, in every case of direct discrimination the crucial question is why the claimant received less favourable treatment.
142. The key to identifying the appropriate comparator is establishing the relevant "circumstances". In **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** this was expressed as follows by

Lord Scott of Foscote:

"...the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class."

143. **Hewage v Grampian Heath Board [2012] IRLR 870 (SC)** endorsed the guidelines in **Madarassy v Nomura International [2007] IRLR 246 (CA)** concerning what evidence is required to shift the burden of proof. Facts of a difference in treatment in status and treatment are not sufficient material from which a Tribunal could conclude that on the balance of probabilities there has been unlawful discrimination; there must be other evidence.

Discrimination arising from disability

144. Unfavourably is not defined in the Equality Act 2010. The Equality and Human Rights Commission's Statutory Code of Practice on Employment ("the Code"), provides that it means a disabled person "must have been put to a disadvantage". In **Williams v Trustees of Swansea University Pension and Assurance Scheme and anor [2018] UKSC 65** Lord Carnwath held that in most cases little is likely to be gained by seeking to draw narrow distinctions between the word "unfavourably" in section 15 and analogous concepts such as "disadvantage" or "detriment" found in other provisions, nor between an objective and a "subjective/objective" approach. The passages in the Code were said to provide helpful advice as to the "relatively low threshold of disadvantage which is sufficient to trigger the requirement to justify under this section".

145. The unfavourable treatment must be identified and cannot be the mental process which leads the putative discriminator to behave in that way (**T-Systems Ltd v Lewis EAT 0042/15**).

146. **Basildon & Thurrock NHS Foundation Trust v Weerasinghe UKEAT/0397/14** provides the Tribunal should identify two separate causative steps in Section 15 claims (per Langstaff J, then the President of the EAT):

"The current statute requires two steps. There are two links in the chain, both of which are causal, though the causative relationship is differently expressed in respect of each of them. The Tribunal has first to focus upon the words "because of something", and therefore has to identify "something" – and second upon the fact that that "something" must be "something arising in consequence of B's disability", which constitutes a second causative (consequential) link. These are two separate stages."

147. **Pnaiser v NHS England & anor [2016] IRLR 170** sets out the approach to be followed in Section 15 claims (paragraph 31):

- (a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B

unfavourably in the respects relied on by B. No question of comparison arises.

- (b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.
- (c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant.
- (d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in consequence of' could describe a range of causal links.
- (e) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.
- (f) The statutory language of section-on 15(2) makes clear that the knowledge required is of the disability only and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability.

148. It does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment.

149. In respect of S15 (1) (b), the Tribunal must objectively balance whether the conduct in question is both an appropriate and reasonably necessary means of achieving the legitimate aim. In **Birtenshaw v Oldfield [2019] IRLR 946**, the EAT held that the Tribunal's consideration of that objective question should give a substantial degree of respect to the judgment of the decision-maker as to what is reasonably necessary to achieve the legitimate aim provided he has acted rationally and responsibly.

150. We were also referred to the following authorities.

151. It is not a “but for” her disability test - **Robinson v Department of Work and Pensions [2020] IRLR 884**. The tribunal needs to make factual findings about what, objectively, really caused the Claimant’s resignation, by examining all the evidence available to it - **McQueen v The General Optical Council [2023] EAT 36** (10 March 2023, unreported).
152. In **Kapadia v LB Lambeth [2000] IRLR 699, CA**, the Court of Appeal held that whilst there will be cases in which a fact-finding tribunal is not obliged to accept uncontested medical evidence given to it the Tribunal should not seek to substitute, for the medical opinions, their own impression of the claimant.
153. We were further referred to **Hall v Chief Constable of West Yorkshire Police [2015] IRLR 893, City of York Council v Grosset [2018] IRLR 746, CA, Department of Work and Pensions v Boyers [2022] IRLR 741**.

Failure to make reasonable adjustments

154. Sections 20 and 21 of the Equality Act 2010 set out the duty to make reasonable adjustments. In this case, it is the duty arising under S20 (3) EQA 2010. The Tribunal must consider first of all the PCP applied by the employer, secondly the identity of non-disabled comparators (where appropriate) and thirdly the nature and extent of the substantial disadvantage suffered by the Claimant. (**Environment Agency v Rowan 2008 ICR 218, EAT**). The question whether the proposed steps were reasonable is a matter for the ET and has to be determined objectively.
155. We were referred to **Royal Bank of Scotland v Aston [2011] ICR 632** and **Tarbuck v Sainsbury’s Supermarkets Ltd 2006 IRLR 664, EAT**. In Tarbuck the EAT held that a failure by the employer to consult the employee about reasonable adjustments could not, in itself, be a breach of the duty. Engaging in consultation or requesting a medical report are not “steps” of that type, because taking either of those steps would not in itself have any impact on the substantial disadvantage.

“The only question is, objectively, whether the employer has complied with his obligations or not. That seems to us to be entirely in accordance with the decision of the House of Lords in Archibald v Fife Council [2004] ICR 954. If he does what is required of him, then the fact that he failed to consult about it or did not know that the obligation existed is irrelevant. It may be an entirely fortuitous and unconsidered compliance: but that is enough. Rentokil Initial v Miller: Judge Auerbach [2024] IRLR 631 Conversely, if he fails to do what is reasonably required, it avails him nothing that he has consulted the employee”.

Conclusions

Direct disability discrimination

156. There were 6 acts of less favourable treatment relied upon. The comparator is a hypothetical comparator was a man (now immaterial given

the withdrawal of the sex discrimination claim) who did not have ADHD or depression and anxiety, but with no materially different circumstances to the claimant's:

- with the same experience, qualifications, abilities, behaviour and conduct as the claimant;
- with 13 years' track record with the respondent;
- who had positive appraisals and had recently been awarded significant increase to remuneration;
- who had resigned or threatened to resign previously, in the same way as the claimant had,
- who had given the same explanation at the time of her resignation as the claimant had, including regarding remuneration and intention to seek better remuneration elsewhere;
- where the respondent had taken the same action in response to the resignation, and before the attempted withdrawal, and
- who resigned and then, after the same period between the claimant's resignation and attempted withdrawal, sought to withdraw the resignation, explaining that the resignation was given in circumstances of ill health and extreme stress.

157. In submissions, the claimant's position was that she was her own best comparator as when she appeared mentally ill previously, Ms Jessop would not accept her resignation.

158. In relation to the question of the comparator we consider this is a case where initially the focus should be on the reason why the claimant received the less favourable treatment.

Acts of less favourable treatment

159. When considering the way in which this complaint has been presented, in our judgment the six acts of less favourable treatment are in fact one act – the decision not to permit rescindment. The other alleged acts (taking into account previous resignations etc) are allegations of factors contributing to that decision. The crucial question is: what was the reason the respondent refused to allow the claimant to rescind her resignation?

Decide at or about 06 July 2022 not to allow the Claimant to continue in her employment and choose to maintain refusal to continue the Claimant's employment

160. The claimant's case was the reason why the respondent refused to rescind her resignation was because of her disability.

161. Our findings of fact as to the reasons why Ms Jessop refused to accept the claimant's request to rescind her resignation on 6 July 2022 are at paragraphs 81-89 and 136-137. As of 6 July 2022 when Ms Jessop decided not to accept the rescindment, Ms Jessop did not understand that the claimant was resigning because of her disabilities and this was a reasonable understanding. The claimant had provided plausible reasons for her resignation being the intention to earn more money as an interim in London. The reasons she did not accept the rescindment at that stage was because she believed it would have been de-stabilising. The reason was not because of the claimant's disabilities.
162. We find this to be the case even taking into account what the claimant told Ms Jessop at the meeting on 6 July 2022 (that she had stopped taking her medication, had gone back on them and was feeling better but not been herself). We do not consider that what the claimant told Ms Jessop was enough to have triggered or established an unconscious or conscious bias in her mind that the claimant's resignation had been because of her disabilities and as such does not establish the necessary bias to show the refusal to accept the rescindment was because of the disabilities. Secondly, we consider the timing of the decision to be highly relevant. The decision had been formulated on the drive to work before the claimant and Ms Jessop even had had the discussion. Whilst that decision was not set in stone, the decision was formulated even if could be said that that conversation should have led Ms Jessop to understand that the claimant was attributing her decision to her disabilities. In our judgment this is an attempt to fit a direct discrimination claim into what really is a s15 claim. In support of our conclusions we also took the following into account:
163. On other occasions where the claimant has resigned in circumstances where she was obviously unwell, Ms Jessop refused to accept that resignation because she was unwell. This in our judgment rather than assisting the claimant in being her own best comparator, significantly undermines the claimant's direct discrimination claim. It supports our conclusion that Ms Jessop could not made the decision to refuse to allow the claimant to rescind a resignation because of her disabilities as on every other occasion where she had believed the claimant to be unwell, she had done exactly that.
164. We have carefully considered whether Ms Jessop's notes support the position that the claimant's mental health was the motivating factor. We were invited to conclude that Ms Jessop's comments in her Initial Statement document raised a prima facie case with the burden shifting to the respondent for an explanation. The first version of those notes (see paragraph 92-93) do not in our judgment shift the burden to the respondent. The notes corroborate that Ms Jessop understood the claimant's stated rationale to be the reason for her resignation at the time. In particular where Ms Jessop stated "*I accepted her resignation as despite the fact she was upset I understood her rationale and believed it was best for her and the team who have all being (sic) impacted to a greater or lesser extent*". Ms Jessop talked about the mental health of the **team** (our emphasis) rather than anything relating to the claimant's mental health.
165. Ms Jessop accepted under cross examination that cross examination

that the claimant's disability and the effect on others was on her mind but this was not the main reason she refused to rescind

Take account of previous "threats" to resign, and assume such would be repeated;

166. There were two references by the respondent to the claimant's previous resignations. The first was in Ms Jessop's email of 5 August 2022 (paragraphs 106) and the second was in the solicitor's letter dated 26 August 2022 (see paragraph 109).

167. There are two parts to this allegation. Firstly that the respondent took into account previous threats to resign and secondly that there was an assumption such would be repeated.

168. We have concluded that there were a number of reasons the respondent took into account previous resignations and / or threats to resign none of which were because of her disability. These are as follows. Firstly, because of Ms Jessop's concerns over de-stabilisation to the team of repeated resignations or threats to resign rather than the claimant's disabilities. We have taken again taken into account the fact that when previous resignations occurred where the claimant was plainly unwell they were refused (see above).

169. In relation to the second aspect of this allegation. We have concluded that the reason Ms Jessop took into account that the claimant might resign again in the future was not because of the disabilities but because Ms Jessop reasonably believed that one of the reasons the claimant had resigned was due to pay dissatisfaction and she knew she could not alleviate this. This was plainly set out in the solicitor's letter of 26 September 2022. See findings at paragraphs 109.

170. This complaint is not well founded.

Choose not to refer the Claimant to an Occupational Health Physician;

171. See our findings of fact at paragraphs 35-39 and 109. The reason the claimant was not referred to occupational health was that the respondent considered the claimant could have self referred given her seniority and knowledge within her role and also that the claimant had refused help when offered having instructed a private psychiatrist. Whilst the first reason may be somewhat misguided the reasons were nothing to do with the claimant's disability. This complaint is not well founded.

Choose to disregard the Claimant's subsequent explanation for her resignation;

172. We did not hear submissions about this allegation and it was not pursued with any vigour as a direct discrimination claim. There were a number of individuals involved in this decision making process. The claimant provided explanations for her resignation on a number of occasions. The first time was at her meeting with Ms Jessop on 6 July 2022 (see above). We have already concluded that Ms Jessop's reasons for not accepting this explanation at that time was not because of the claimant's

disability. Subsequently the claimant provided a more detailed explanation in her emails on 28 July 2022 to the leadership team and then the board (see paragraphs 101-103), where it can be in no doubt she made the link between her resignation and her disabilities). Ms Jessop reiterated the decision that she would not be permitted to rescind thereby disregarding the claimant's explanation.

173. In our judgment, the reason Ms Jessop disregarded the claimant's subsequent explanation for her resignation was that she did not believe the claimant's explanation. She believed it to be for all the reasons we have set out above. The reason was not because of the claimant's disability. This complaint is not well founded.

174. Lastly, there were two further decisions that could be said to have been taken disregarding the claimant's explanation namely the grievance outcome and appeal. This was not pursued at all at the hearing. There was no evidence to suggest that either Mr Lewis or Mr Forbes reached their conclusions on the grievance because of the claimant's disabilities.

Choose not to consider reasonable adjustments to allow employment to continue

175. This is essentially reasonable adjustments claim pleaded as a direct discrimination claim. This was also not effectively pursued. In any event we find the complaint not well founded taking into account our conclusions above about the reasons for the respondent's decisions after the claimant attempted to rescind the primary reason being that they did not accept the claimant's later attempts to attribute her resignation to her disabilities.

S15 discrimination arising from disability

176. There are 5 acts of unfavourable treatment relied upon. The focus of both parties in this claim certainly in submissions was the refusal to allow the claimant to rescind her resignation. We therefore deal with those proportionally as follows.

177. Took account of previous offers or expressed consideration of resignation and disregarded or refused to accept the Claimant's subsequent explanation for her resignation;

178. See our discussion above as these complaints were also pleaded as a direct discrimination claim.

179. We have concluded that both of these complaints are essentially complaints about the mental processes engaged in reaching a decision which was cautioned against in **T-Systems Ltd v Lewis**. The unfavourable treatment in this case was the decision not to allow the claimant to rescind her resignation. That is what is said to have put the claimant at the disadvantage. These complaints are not well founded.

Chose not to refer the Claimant to an Occupational Health Physician

180. See our discussion above as this was also pleaded as a direct discrimination claim. We first of all consider whether a decision not to refer the claimant to occupational health was unfavourable treatment. No question of comparison arises.
181. As the claimant's submissions did not address this complaint, we have considered the pleaded claim and list of issues to inform our conclusions. It was unclear when this particular omission or failure to act was said to have occurred or been decided upon which differs from the reasonable adjustments claim (see below) which is made up of two distinct allegations as to when the claimant should have been referred to occupational health. We are also unclear as to how the choosing not to refer to occupational health amounted to unfavourable treatment and when in the context of the s15 claim. In our judgment this claim has not been proven by the claimant at this first stage.
182. In our judgment, even if the omission to refer to the claimant to occupational health was unfavourable treatment the cause of that treatment was, as we have found above, that the respondent considered the claimant could have self referred given her seniority and knowledge within her role and also that the claimant had refused help when offered having instructed a private psychiatrist. This was not the "something arising" relied upon by the claimant.

Refused the Claimant's request to rescind her resignation and chose not to consider allowing the Claimant's employment with the Respondent to continue at all

Was there unfavourable treatment and by whom?

183. There was no dispute that the refusal to allow the claimant to rescind her resignation by Ms Jessop, backed by the board was unfavourable treatment. It had a significantly detrimental impact on the claimant as far as her employment was concerned. Her employment came to an end.

What caused the treatment, why did the respondent refuse to permit the claimant to rescind her resignation?

184. There are a number of factors to this question which have required careful findings of fact and those findings were always going to inform the outcome in this case which is why we have set these out in some detail above and why our conclusions in this regard can be relatively short. We have no doubt that the reason for the refusal was at all times the respondent believed permitting the claimant to rescind her resignation would be destabilising to the business and later, when she attributed the resignation to her disability, the respondent simply did not accept the claimant's assertions relying instead on what her previous expressed reasons had been.
185. However in our judgment this does not assist the respondent. Motives are irrelevant. We agree with the claimant's submission that the

expert psychiatric evidence as well as our findings of fact establishes the required link between the disability and the resignation. There is no requirement for knowledge that the “something arising” leading to the unfavourable treatment is in consequence of the disability.

186. We now turn to s15 (1) (b). We set out our conclusions firstly about whether the respondent has established legitimate aims for the treatment.

187. The legitimate aims were “to maintain reasonable operational integrity and expediency and/or to achieve and maintain stability within the small number of senior executives within its business”.

188. In our judgment the claimant’s seniority within the leadership team was critical. The resignation was announced to the leadership team on 23 June 2022. The reason given with the claimant’s approval was that she was going to pursue a career in the professional interim market. The leadership team would have known that two other HR members of staff had also done the same thing. The resignation must have quickly become known amongst the workforce, well known both internally and to a degree externally. The unions had been informed. The recruitment consultants were actively engaging with potential candidates. At such a senior level had the respondent suddenly withdrawn the recruitment exercise this would have led to questions from potential candidates about how stable any such future role might be. The claimant had resigned verbally and confirmed this in writing. The resignation had been accepted. Whilst the period in between resignation and rescindment may have been relatively short in our judgment this has to be balanced against what happened during that period as set out above and the impact on the respondent’s business. We agree that allowing the claimant to rescind in the above circumstances would have been destabilising and Ms Jessop had reasonable and legitimate reasons for refusing her to do so, which amount to legitimate aims.

189. We turn now to proportionality. In reaching our conclusions we have had regard to the authorities of **Birtenshaw v Oldfield and Department of Work and Pensions v Boyers**. We must weigh the aims of the respondent against the discriminatory effect of the treatment and assess whether the former outweighs the latter.

190. The respondent submitted that the legitimate aims could not have been achieved by allowing the resignation to be rescinded. Much was made of the claimant’s comment at the meeting with Ms Jessop where she suggested taking things on a “month by month basis”. We do not consider this was a serious or well thought out suggestion being made by the claimant. The claimant was effectively grabbing at straws at this stage trying to retain her role. We agree that this would not be a proportionate means of achieving the aims as it would be highly disruptive to the stability of the organisation to permit such a senior individual to decide on a month by month basis whether they were staying or going.

191. The respondent did not consider less discriminatory alternatives to not permitting the claimant to rescind her resignation. In our judgment as of 27 July 2022 at the meeting between Ms Jessop and the claimant and then by reason of the claimant’s email of that date the respondent was on explicit

notice that the claimant was attributing her decision to resign to her disabilities and the impact of the medication changes. The respondent closed its mind to this position because, as we found above they simply did not accept this to be true. We agree with the claimant's submission that the respondent should have taken steps to properly inform themselves as to how the claimant's mental health and ADHD had affected her decision to resign and had they done so they would have known either by provision of the claimant's own ADHD assessment or their own advisor's assessment about the claimant's problem areas that impacted on her decision to resign. In particular, the impulsiveness, extreme reactions to criticisms (as can be seen from her reaction to when Ms Howell told her M had called her a bully) and what the experts and the claimant said about her masking behaviour.

192. Instead the respondent reached their decision based on their own observations, opinions about the contextual background and judgments of the claimant's behaviours at the time. Whilst we acknowledge the respondent were initially entitled to have taken the claimant at her word as to the reasons for her resignation in our judgment this position should have been reassessed around 27 / 28 July 2022. The respondent was not qualified to make those assessments once they were on notice of what the claimant told them had really been going on in her mind at the relevant time. They were not qualified to do so and their disbelief of the claimant caused them to close their minds to any suggestion that the claimant's resignation was attributable to her disabilities. The Tribunal was unable to understand why the respondent did not pause and take some proper informed medical advice concerning the disabilities, the impact on the claimant's behaviour and prognosis to then be in a position to truly assess whether the refusal to allow the rescindment would achieve their stated aims. They may well have still been in a position to decide that the rescindment had to stand although such matters will have to be reserved for remedy.

193. We reject the respondent's submissions that a referral to occupational health would have made no difference to the outcome. Whilst the claimant was a senior employee and could have referred herself to occupational health this does not negate the respondent's responsibility as the employer to make those decisions. The Tribunal considers that the claimant was not adequately managed by the respondent both in terms of her previous behaviour and how this had impacted on other employees and in terms of the claimant's own mental health issues and the ADHD diagnosis. The respondent did operate a caring and close management structure where colleagues were supporting the claimant but this was plainly not enough. The Tribunal were told of at least two occasions where the claimant, who was a senior member of the management team developed and maintained fixations with employees some of whom were subordinate to the claimant. This is demonstrative of an work environment where the claimant's behaviour was not being appropriately managed especially after the ADHD diagnosis. We make no criticism of the claimant in this regard as it is highly likely that such behaviours were as a result of her disabilities. Nonetheless this does not provide a completely free path for any employer to have to accept such behaviours particularly when they impact other employees. This is the very point of proportionality and the need to balance the discriminatory effect of the treatment against the legitimate aims of the respondent.

194. Further there was a misguided assumption that as the claimant was paying for private psychiatrist she was managing her own condition. The private psychiatrist was not placed to make appropriate work placed assessments nor were they charged with doing so by the claimant. We heard evidence that the respondent had arranged for higher level assessments in appropriate circumstances yet did not do so for the claimant.

195. In weighing up the respondent's aims and the effect of the discriminatory effect on the claimant we have concluded that the respondent did not implement proportionate means in achieving their aims. This complaint is well founded. It is important to note that this finding will be subject to further necessary findings of fact at the remedy stage.

Failure to make reasonable adjustments

196. There were four PCP's relied upon and we deal with each PCP in turn as follows. Only the first and third PCP's were addressed in the claimant's submissions. The Tribunal considers that the claimant has tried to fit a reasonable adjustment's claim into what was properly a s15 claim as can be seen from our discussion above and in doing so, the PCP's do not work. Nonetheless we must deal with the complaints and we do so proportionally as follows.

Relying on employees' ability (with or without their colleagues) to ascertain their own need for treatment and to manage their health privately without referral to and supervision of an Occupational Health Physician;

197. Factually this only happened to the claimant. The evidence was that this did not happen with other employees (see paragraph 21 above). We do not agree that there is any evidence that this would a practice repeatable in other cases. This PCP is not valid. Further the alleged substantial disadvantage is not in our judgment made out. The claimant demonstrated good awareness into her own behaviours and this was supported by the expert report. She could recognise her conduct or needs and managed her health at the relevant time as can be seen from her instructing a private psychiatrist for the ADHD diagnosis and then continuing wit the private assessments. Further, applying **Tarbuck**, a failure to refer to Occupational health cannot amount to a failure to make a reasonable adjustment. This complaint is not well founded.

Taking account of and treating repeated offers to resign as being abnormal and as a pattern unacceptable to the business;

198. The claimant did not make submissions about this complaint. The claimant resigned or threatened to resign four times. The respondent on only one occasion decided this was not acceptable to the business. We do not consider this to be a valid PCP as it was a decision taken once and only in respect of the claimant. This complaint is not well founded.

Taking at face value an explanation of reason for resignation

199. The respondent accepted that this was a valid PCP applied by the respondent. The substantial disadvantage was said to be “she would be unable to understand or disclose the effective reason for resignation at the time of resignation.” The experts said different things about this (see Dr Ajaz’s comments at paragraphs 123 and Dr Singh’s at paragraph 124) and we do not think Dr Ajaz directly addressed this question whereas Dr Singh did. This is a different question than the decision to resign which both experts agreed was significantly influenced her mental health as a result of the changes in medication. We conclude that the claimant has not shown the substantial disadvantage. Dr Singh reported that the claimant did have capacity to understand the consequences of the decision to resign and all of the factual matrix of the claimant’s behaviour at that time (the period of time between resigning and rescindment, confirming the resignation in writing, being involved with her replacement) do not support a conclusion that she was unable to understand or disclose the effective reason for resignation to be a substantial disadvantage. In light of that evidence we find the complaint is not well founded.

Accepting resignation without proper investigation (including with physicians) or taking proper account of reasons communicated after resignation.

200. We find this is not a valid PCP. It was a decision taken by the respondent in respect of the claimant only and there was no evidence it would be repeated or be capable of being repeated. We also consider that this is essentially an allegation of a failure to consult the claimant about the reasonable adjustments which cannot be a breach of the duty (**Tarback**). We therefore dismiss this complaint as not well founded.



Employment Judge S Moore

Date: 16 July 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 17 July 2024

FOR EMPLOYMENT TRIBUNALS Mr N Roche

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