EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Ms S Chamberlain	AND	Isle of Wight Citizens' Advice Bureau

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY **ON** 14 and 15 October 2024
By CVP Video

EMPLOYMENT JUDGE N J Roper **MEMBERS** Ms A Sinclair
Mr P Flanagan

Representation
For the Claimant: **In person**
For the Respondent: **Mr J Franklin of Counsel**

JUDGMENT

The unanimous judgment of the tribunal is that the claimant's claims of disability discrimination are not well-founded, and they are hereby dismissed.

RESERVED REASONS

1. In this case the claimant Ms Sandra Chamberlain, who was dismissed by reason of conduct, claims that she has been discriminated against because of a protected characteristic, namely disability. The claim is for discrimination arising from disability, and because of the respondent's failure to make reasonable adjustments. It has already been determined that the claimant was a disabled person by reason of ADHD at all material times. The respondent contends that the reason for the dismissal was conduct, and that there was no discrimination.
2. This has been a remote hearing. The form of remote hearing was by Cloud Video Platform. An in-person hearing was not held because it was not practicable, and all issues could be determined in a remote hearing, and the parties consented to a remote hearing of this nature.
3. We have heard from the claimant, and from Mrs Yvonne Wright, Miss Rebecca Bell and Mr Keith Sheldrake on her behalf. We also accepted into evidence a short statement from Mrs Sandra Belfitt by way of a character witness for the claimant, but we can only attach limited weight to this because she was not present to be questioned

on her evidence. For the respondent we have heard from Mrs Lisa Joyce, and Mr Eddie Yates.

4. There was a degree of conflict on the evidence. We found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
5. The Facts
6. The respondent is the Isle of Wight Citizens' Advice Bureau which is an independent charity which provides free impartial and confidential advice to members of the public. The claimant is Ms Sandra Chamberlain. She was employed by the respondent from 28 October 2021 as an Advice Session Supervisor for Volunteer Recruitment and Training. She was summarily dismissed on 13 July 2023 by reason of "poor conduct and failure to follow reasonable management instructions".
7. The respondent had a number of policies and procedures in place. One of these was the Dignity at Work Policy. Paragraph 2.2 described Unacceptable Behaviour as: "any behaviour which an individual or group knows, or ought reasonably to know, could have the potential effect of offending, humiliating, intimidating or isolating an individual or group." There was a list of Examples of Bullying which included: "talking about someone behind their back"; "refusal of reasonable work requests;" and "undermining behaviour in front of others". The respondent's Disciplinary Policy also had in its list of examples of gross misconduct (which were likely to lead to summary dismissal) the following: "deliberate refusal or wilful failure to carry out a lawful direct instruction given by management during working hours;" and "serious insubordination."
8. The events in question which are relevant to this claim took place in July 2023. There had been a degree of turmoil in the respondent's management at that time. In early 2023 there have been a redundancy programme, and the claimant was dismissed by reason of redundancy. She successfully appealed against her dismissal, and during that process she made the respondent aware of her diagnosis of ADHD. She was reinstated with reasonable adjustments, which included an agreed working pattern of three days per week.
9. One of the claimant's colleagues was Mr Keith Sheldrake, from whom we have heard. He was also an Advice Session Supervisor. Their immediate line manager was Miss Rebecca Bell, from whom we have also heard. She was the Service Delivery Manager for the respondent's General Advice Team from August 2022 until the end of July 2023.
10. Mrs Lisa Joyce, from whom we have heard, worked for the respondent as a project manager from 2016. She was appointed as Interim Operations Manager with effect from 1 July 2023. She became Miss Bell's immediate line manager and therefore had seniority over and ultimate line management control of the claimant and Mr Sheldrake. Mr Sheldrake took exception to Mrs Joyce's management style and was considering resigning his employment. He was supported by Miss Bell and the claimant, who also had their concerns about Mrs Joyce's management style. The claimant objected generally to what she perceived as Mrs Joyce's "micromanagement" of her, and her "dictatorial manner".
11. On Monday, 10 July 2023 Mrs Joyce asked the claimant and Mr Sheldrake to prepare a flowchart which described the operation of the General Advice section. She asked them to do this by Friday, 14 July 2023. The claimant became aware of this request when she started her three-day week on Tuesday, 11 July 2023. Miss Bell had already prepared a similar flowchart, but she was not aware of this request. The claimant had the relevant information to complete this task, and her evidence is that it could have been completed within about two hours work for each of her and Mr Sheldrake. Mr Sheldrake subsequently completed the task on his own and said that it took between five and six hours. When the claimant became aware of Mrs Joyce's instruction in this respect she did not raise any request or complaint either to Miss Bell, or to Mrs Joyce, to the effect that she had been given insufficient time to complete the task or that she might need an extension of time or some other adjustment because of her disability. The claimant and Mr Sheldrake have explained that it was a busy time in the office at

that stage, but neither of them informed Mrs Joyce that they were too busy to undertake the task nor to discuss with her whether it needed to be prioritised ahead of other tasks.

12. Neither the claimant nor Mr Sheldrake commenced the preparation of the flowchart as instructed by Mrs Joyce. They did however find time to have internal discussions about their complaints about Mrs Joyce's management. The claimant found time to raise a complaint to another colleague Mr Savill on Wednesday, 12 July 2023, and she sent Mr Savill a detailed email on the morning of Thursday, 13 July 2023. She also arranged what she called "an emergency meeting" with Miss Bell in order to complain about Mrs Joyce, who by that stage was in her second week of her new role. When she had that meeting with Miss Bell the claimant did not tell her about the task which she and Mr Sheldrake had been set to prepare the flowchart. If she had done, Miss Bell would have told her about the one she had already prepared. The claimant did not complain that she had been set a task which she could not complete within the suggested timescale, nor that there was any problem or any adjustments needed because of her disability.
13. On the afternoon of Wednesday, 12 July 2023 Mrs Joyce noticed that the claimant had her feet up on a chair and was chatting to another member of staff. She asked her to give an update about the progress of the preparation of the flowchart. A form of altercation ensued with the result that Mrs Joyce summarily dismissed the claimant on the following day.
14. We have three slightly different versions of what was said. In her originating claim form the claimant states: "I had not started the flowchart at this point when Lisa came into the office to request a progress report. I said "I'm sorry I just haven't had time yet and have loads to do, so not sure I am going to be able to get it done by Friday, as am only in the office until Thursday." Lisa replied with "well what are you doing right now?" I felt stressed that she had not listened to what I was saying, and basically was questioning my request that I needed more time … I felt suddenly very under pressure and said "go away Lisa you have upset everybody just go away". This was in a normal tone of voice, and I did not shout, as was witnessed by Yvonne Wright, energy adviser."
15. We have heard from Mrs Yvonne Wright, who was present at the time. Her evidence is this: "In an aggressive tone Lisa asked Sandy what she was doing right now at which point Sandy bowed her head, swivelled in her chair to face Lisa who had been standing behind her and said quietly to Lisa: "Please Lisa go away and leave me alone, you are upsetting everybody".
16. Mrs Joyce's evidence is that she sought an update from the claimant about the progress of the flowchart and asked: "How are you getting on?". The claimant's response was to tell her: "We are not. I'm not going to do the progress map, no one wants you here, and we are not doing it. Go away."
17. We cannot determine exactly what was said because the three people who were there have all given slightly different accounts. Nonetheless the following points are clear from the evidence, and we so find: (i) the claimant's line manager had given her and Mr Sheldrake a clear instruction to prepare a flowchart, which was not an onerous task in itself; (ii) neither the claimant nor Mr Sheldrake complied with that reasonable management instruction and had not commenced its preparation; (iii) neither the claimant nor Mr Sheldrake had suggested to Mrs Joyce that they might be unable to complete the task within the suggested time scale, such that they might have had a sensible debate as to what work to prioritise; (iv) they were able to find the time to complain about Mrs Joyce's management style and to arrange "an emergency meeting" with Miss Bell (which was without the knowledge or consent of Mrs Joyce); (v) they did not raise with Miss Bell the fact that they had been asked to complete the flowchart, otherwise she would have volunteered information to the effect that she had already prepared one; (vi) at no stage did the claimant raise with Mr Sheldrake, Miss Bell or Mrs Joyce that she was unable to complete the task of the flowchart because of her ADHD, or that some adjustment needed to be made to assist her to do so; (vii) Mrs Joyce was the claimant's senior manager with direct line management over her, and at the very least (and on the claimant's own version) during their altercation on 12

July 2023 the claimant told her to “go away”; (viii) this was in the presence of another junior level employee Mrs Wright, and other volunteers; and (ix) Mrs Joyce concluded that the claimant had failed to act on a reasonable management instruction, and that the claimant’s conduct had undermined her in front of junior colleagues, which was a serious breach of the respondent procedures.

18. Mrs Joyce formed the view that the claimant’s behaviour amounted to poor conduct and failure to follow reasonable management instructions. She concluded the claimant’s behaviour towards her was unacceptable.
19. Mrs Joyce took advice from the respondent’s legal advisers, and on the following morning Thursday, 13 July 2023 she asked the claimant to attend a meeting. At that meeting she dismissed the claimant summarily. She had received advice to the effect that the claimant had less than two years’ service and did not have the right to pursue a claim for unfair dismissal. For this reason, Mrs Joyce did not tell her that she would be attending a formal disciplinary hearing and did not offer her the opportunity to be accompanied at that meeting. In a subsequent letter dated 17 July 2023 Mrs Joyce confirmed that the claimant been dismissed with effect from 13 July 2023 for “poor conduct and failure to follow reasonable management instructions”, and she confirmed that the claimant would receive four weeks’ pay in lieu of her notice period.
20. At that time the respondent was aware that the claimant suffered from ADHD, because this had been discussed in the spring of 2023 during the previous appeal process. However, we accept Mrs Joyce’s evidence that she personally did not know that the claimant had ADHD.
21. We find that the reason Mrs Joyce dismissed the claimant was not because she had failed to complete the preparation of the flowchart within the suggested timescale, but because she concluded that the claimant had failed to act on a reasonable management instruction and had undermined her authority.
22. We have heard no evidence with regard to how the respondent normally conducts disciplinary hearings. Accordingly, we are unable to conclude that the respondent has any practice or otherwise of calling employees to meetings and then dismissing them before they have the opportunity to consider the allegations or to arrange to be accompanied.
23. The claimant commenced the Early Conciliation process with ACAS on 26 July 2023. The Early Conciliation Certificate was issued on 6 September 2023. The claimant presented these proceedings on 28 September 2023.
24. Having established the above facts, we now apply the law.
25. <u>The Law</u>
26. This is a claim alleging discrimination because of the claimant's disability under the provisions of the Equality Act 2010 (“the EqA”). The claimant complains that the respondent has contravened a provision of part 5 (work) of the EqA. The claimant alleges discrimination arising from a disability, and a failure by the respondent to comply with its duty to make reasonable adjustments.
27. The protected characteristic relied upon is disability, as set out in section 6 and schedule 1 of the EqA. A person P has a disability if he has a physical or mental impairment that has a substantial and long-term adverse effect on P’s ability to carry out normal day to day activities. A substantial adverse effect is one that is more than minor or trivial, and a long-term effect is one that has lasted or is likely to last for at least 12 months, or is likely to last the rest of the life of the person.
28. As for the claim for discrimination arising from disability, under section 15 (1) of the EqA a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B’s disability, and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. Under section 15(2), this does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.
29. The provisions relating to the duty to make reasonable adjustments are to be found in sections 20 and 21 of the EqA. The duty comprises of three requirements, of which the first is relevant in this case, namely that where a provision criterion or practice of A’s

puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, there is a requirement to take such steps as it is reasonable to have to take to avoid that disadvantage. A failure to comply with this requirement is a failure to comply with a duty to make reasonable adjustments. A discriminates against a disabled person if A fails to comply with that duty in relation to that person. However, under paragraph 20(1)(b) of Schedule 8 of the EqA A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know – (a) in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question; (b) … that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.

30. The provisions relating to the burden of proof are to be found in section 136 of the EqA, which provides in section 136(2) that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. However by virtue of section 136(3) this does not apply if A shows that A did not contravene the provision. A reference to the court includes a reference to an employment tribunal.
31. We have considered the cases of Pnaiser v NHS England [2016] IRLR 170 EAT; Basildon & Thurrock NHS Foundation Trust v Weerasinghe UKEAT/0397/14; City of York Council v Grosset [2018] IRLR 746 CA; Sheikholeslami v University of Edinburgh [2018] IRLR 1090; Robinson v Department for Work and Pensions [2020] IRLR 884; Williams v Trustees of Swansea University Pension and Assurance Scheme [2019] IRLR 306 SC. Environment Agency v Rowan [2008] IRLR 20 EAT; Newham Sixth Form College v Sanders EWCA Civ 7 May 2014; Archibald v Fife Council [2004] IRLR 651 HL; General Dynamics Information Technology Ltd v Carranza [2015] ICR 169 EAT; Sheikholeslami v University of Edinburgh [2018] IRLR 1090; Ishola v Transport for London [2020] ICR 1024 CA; Nottinghamshire City Transport Ltd v Harvey [2013] EqLR 4 EAT; Griffiths v Secretary of State for Work and Pensions [2015] EWCA Civ 1265; Royal Bank of Scotland v Ashton [2011] ICR 632 EAT; Project Management Institute v Latif [2007] IRLR 579 EAT; and Nottingham City Transport v Harvey [2013] EqLR 4 EAT.
32. We have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s. 207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures (2015) ("the ACAS Code.
33. The Issues to be Determined:
34. The claimant's claims to be determined by this Tribunal were agreed at a case management preliminary hearing and set out in the Case Management Order of Employment Judge Cuthbert dated 20 March 2023 ("the Order"). These claims were then subject to a preliminary hearing which took place before Employment Judge Lambert on 20 June 2024. In his judgment dated 14 July 2024 ("the Judgment") Employment Judge Lambert determined that the claimant was a disabled person by reason of ADHD at all material times. He also dismissed the claimant's claims for unfair dismissal on the grounds of having raised protected public interest disclosures, and for breach of contract. The claimant's remaining claims which now fall to be determined at this hearing are therefore limited to the claims of disability discrimination at paragraphs 4 and 5 of the List of Issues in the Order. These are claims of discrimination arising from disability under section 15 EqA, and in respect of an alleged failure to make reasonable adjustments under sections 20 and 21 the EqA. They are set out in more detail below.
35. The Claimant's Disability:
36. The disability relied upon by the claimant is Attention Deficit Hyperactivity Disorder (ADHD). For the reasons set out by Employment Judge Lambert in the Judgment, the claimant was a disabled person by reason of this impairment at all times material to this claim.
37. Discrimination Arising from Disability s15 EqA:

38. The proper approach to section 15 claims was considered by Simler P in the case of Pnaiser v NHS England at paragraph 31: (a) Having identified the unfavourable treatment by A, the ET must determine what caused it, i.e. what the "something" was. The focus is on the reason in the mind of A; it involves an examination of the conscious or unconscious thought processes of A. It does not have to be the sole or main cause of the unfavourable treatment but it must have a significant influence on it. (b) The ET must then consider whether it was something "arising in consequence of B's disability". The question is one of objective fact to be robustly assessed by the ET in each case. Furthermore: (c) It does not matter in precisely what order the two questions are addressed but, it is clear, each of the two questions must be addressed, (d) the expression "arising in consequence of" could describe a range of causal links … the causal link between the something that causes unfavourable treatment and the disability may include more than one link, and (e) the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.
39. In City of York v Grosset, the Court of Appeal made it clear that s15(1)(a) EqA requires investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) "something"? and (ii) did the "something" arise in consequence of B's disability?
40. When considering the first issue, the "something" needs to be merely a more than trivial part of the reason for the unfavourable treatment: Sheikholeslami v University of Edinburgh. In Robinson v Department for Work and Pensions the Court of Appeal emphasised the importance in a section 15 EqA claim of considering the thought processes of the putative discriminator, and also that "but for" causation does not suffice. The question of what amounts to "unfavourable" treatment was considered by the Supreme Court in Williams v Trustees of Swansea University Pension and Assurance Scheme. Lord Carnwath suggested that a relatively low threshold of disadvantage suffices to trigger the need for justification under section 15 EqA [at para 27].
41. In Basildon & Thurrock NHS Foundation Trust v Weerasinghe the EAT held that the fact that unfavourable treatment might be loosely related to a person's disability, or the context in which the disability was manifested, is not the same as showing that the treatment was the result of something arising out of the person's disability.
42. In this case the claimant relies on one act of unfavourable treatment, namely dismissing her on 13 July 2023 for failing to follow instructions and for "poor conduct". The respondent concedes that the claimant was dismissed, and that this was unfavourable treatment.
43. The claimant asserts that on 12 July 2023 she was unable to complete a requested flowchart because of the effects of her ADHD and that this inability arose in consequence of her disability. (The claimant confirmed at the preliminary hearing that she was not alleging that any response or comment which she made to Ms Joyce on 12 July 2023 was attributable to her ADHD).
44. However, we do not accept that the claimant was dismissed because of something which arose in consequence of her disability. She was not dismissed because she had failed to complete the task of preparing the flowchart within the relevant suggested timescale. Being unable to complete the task within the relevant timescale might have been "the something" which could have arisen from the claimant's ADHD. But as we have explained in more detail in our findings of fact above, the claimant and Mr Sheldrake had not even started the task in circumstances where they were able to find time to arrange a meeting to complain about Mrs Joyce. At no stage did the claimant raise with either of her line managers Miss Bell or Mrs Joyce that she could not complete the task, or that she required more time or other adjustments, because of her ADHD. We have accepted Mrs Joyce's evidence that she concluded from their discussion on 12 July 2023 that the claimant had failed to act on a reasonable management instruction, and she had undermined her in front of junior colleagues. Mrs Joyce had formed the view that this was unacceptable conduct which is why the

claimant was dismissed. Mrs Joyce did not know at that time that the claimant suffered from ADHD and we have accepted her evidence that it formed no part of her decision.

45. We reject the claimant's assertion that the unfavourable treatment of her dismissal was because of the "something arising" relied upon, namely her inability to complete the flowchart task because of ADHD. The claimant has confirmed that her comments to Mrs Joyce were not related to her ADHD. The unfavourable treatment was for other reasons, namely her (unrelated) poor conduct, and (as noted earlier the claimant does not assert that her comments to Mrs Joyce were related to her ADHD.
46. Accordingly, we conclude that the claimant's claim that she suffered discrimination arising from disability is not well founded, and it is hereby dismissed.
47. Reasonable Adjustments
48. The constituent elements of claims in respect of an alleged failure to make reasonable adjustments are set out in Environment Agency v Rowan. Before considering whether any proposed adjustment is reasonable, the Tribunal must identify: (i) the provision, criterion or practice applied by or on behalf of the employer; (ii) the identity of the non-disabled comparators (where appropriate); and (iii) the nature and extent of the substantial disadvantage suffered by the claimant.
49. Environment Agency v Rowan has been specifically approved by the Court of Appeal in Newham Sixth Form College v Sanders - the authorities make it clear that to find a breach of the duty to make reasonable adjustments, an employment tribunal had first to be satisfied that there was a PCP which placed the disabled person at a substantial disadvantage in comparison with persons who were not disabled. The tribunal had then to consider the nature and extent of the disadvantage which the PCP created by comparison with those who were not disabled, the employer's knowledge of the disadvantage, and the reasonableness of proposed adjustments.
50. It is the essence of the duty to make reasonable adjustments that it requires the disabled person to be treated more favourably (as a result of their disability) than the non-disabled. They may need special assistance to compete on equal terms – per Lady Hale at para 47 of Archibald v Fife Council.
51. As per HHJ Richardson at para 37 of General Dynamics Information Technology Ltd v Carranza UKEAT/0107/14 KN: "The general approach to the duty to make adjustments under section 20(3) is now very well-known. The Employment Tribunal should identify (1) the employer's PCP at issue; (2) the identity of the persons who are not disabled with whom comparison is made; and (3) the nature and extent of the substantial disadvantage suffered by the employee. Without these findings the Employment Tribunal is in no position to find what, if any, step it is reasonable for the employer to have to take to avoid the disadvantage. It is then important to identify the "step". Without identifying the step it is impossible to assess whether it is one which it is reasonable for the employer to have to take".
52. There is no requirement to show that the disability caused the substantial disadvantage, merely that the PCP caused a substantial disadvantage to the disabled person as compared to those who are not disabled. This comparative aspect of the reasonable adjustments provision was described by Simler J in Sheikholeslami at para 48: "It is well established that the duty to make reasonable adjustments arises where a PCP puts a disabled person at a substantial disadvantage compared with people who are not disabled. The purpose of the comparison exercise with people who are not disabled is to test whether the PCP has the effect of producing the relevant disadvantage as between those who are and those who are not disabled, and whether what causes the disadvantage is the PCP … There is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's circumstances"
53. In addition, it is clear from Ishola v Transport for London, that although a PCP will not be narrowly construed, nonetheless the concept does not apply to every act of unfair treatment of a particular employee. It must be capable of being applied to others, and it suggests a state of affairs which indicates how similar cases are generally treated or how a similar case will be treated if it occurred again. This is consistent with

Nottinghamshire City Transport Ltd v Harvey which states "practice connotes something which occurs more than on a one-off occasion and which has an element of repetition about it".

54. It is incumbent on a claimant to show the duty to make reasonable adjustments has arisen and there are facts from which it could be reasonably inferred, absent adequate explanation, that it has been breached. That requires (i) the showing of both substantial disadvantage (to show that the duty has arisen), and (ii) evidence of some apparently reasonable adjustment that could have been made (the issue of breach) see Project Management Institute v Latif.
55. The reasonableness of adjustment is an objective question – see Royal Bank of Scotland v Ashton. What is important is that the adjustment(s) chosen by the employer address the disadvantage and not that it is the claimant's preferred solution. As confirmed by the EAT in Linsley v HMRC: "An employer is not required to select the best or most reasonable of a selection of reasonable adjustments, nor is it required to make the adjustment that is preferred by the disabled person. The test of reasonableness is an objective one: see the case of Smith v Churchill's Stair Lifts plc [2005] EWCA Civ 1220 at [44] in which it is said that "so long as the particular adjustment selected by the employer is reasonable it will have discharged its duty"." It is also crucial for the Tribunal to ensure that in making this assessment it keeps in mind the particular disadvantage relied upon given the requirement for there to be correlation between the disadvantage in question and the steps taken to alleviate that disadvantage (Linsley at para 31).
56. In this case the claimant relies on two PCPs as follows: PCP 1 - requiring the production of a flowchart work to be produced by the claimant and a colleague; and PCP 2 - calling disciplinary meetings without advance warning.
57. The claimant asserts that she was put at a substantial disadvantage compared to someone without her disability of ADHD in that: PCP 1 - she was unable to complete the flowchart when requested because she needs time and space to complete tasks which require focused attention, and this led to her dismissal; and PCP 2 - she was placed at a disadvantage in attending the meeting at which she was dismissed without a colleague present, because she says she does not cope well with stressful situations.
58. The adjustments suggested by the claimant to avoid this disadvantage are: PCP 1 - not giving the claimant a short deadline for completion of requested work and/or being given more time to complete the work; and PCP 2 - permitting the claimant to be accompanied at the dismissal meeting.
59. We unanimously find that the suggested PCP 1 was not a provision criterion or practice at all. We find that Mrs Joyce's instruction to the claimant and Mr Sheldrake to complete the flowchart was a "one-off" management instruction, and that it did not amount to a PCP. As confirmed in Ishola v Transport for London, it is possible for a one-off decision or act to amount to a practice, but it will not necessarily be one, and the term generally connotes "some form of continuum in the sense that it is the way in which things generally are or will be done". As confirmed in Nottingham City Transport v Harvey, "practice connotes something which occurs more than on a one-off occasion and which has an element of repetition about it."
60. For these reasons in respect of the first alleged PCP, we find that there was no PCP in place which caused any substantial disadvantage to the claimant (as compared to other employees without the disability of ADHD), and the statutory duty to make reasonable adjustments was therefore simply not engaged. In any event we do not accept that the claimant suffered any substantial disadvantage by reason of the instruction. It was given equally to Mr Sheldrake, who is one of the claimant's comparators in that he is a fellow employee who does not suffer from ADHD, and he did not comply with the instruction to prepare the flowchart either. Their refusal to commence the task, and/or their failure to discuss with Mrs Joyce whether they might prioritise it over other matters, had nothing to do with ADHD.
61. The respondent has argued that the same principles apply to the second alleged PCP namely "calling disciplinary meetings without advance warning". We tend to agree with

that submission, particularly as we have heard no evidence as to what practice the respondent would usually adopt when calling employees to disciplinary meetings, whether they have unfair dismissal protection after two years' service or otherwise. We cannot find in this respect that PCP 2 was (to quote Nottingham City Transport v Harvey), a practice, in that "practice connotes something which occurs more than on a one-off occasion and which has an element of repetition about it."

62. For these reasons we also conclude that there was no provision criterion or practice in place with regard to PCP 2, and that in itself is sufficient to conclude that the claimant's claim is not well-founded and should be dismissed.
63. However, even if we are incorrect in reaching this conclusion, and PCP 2 does amount to a PCP for the purposes of the statutory test, the claimant did not suffer any substantial disadvantage by reason of her impairment of ADHD (as compared to other employees without the disability of ADHD) because of this alleged PCP. The substantial disadvantage relied upon is that she does not cope well with stressful situations and required a colleague to be present. In circumstances where Mrs Joyce had already decided to dismiss the claimant before their short meeting she was going to be dismissed in any event. We accept that the claimant found her summary dismissal to be upsetting, and that it could be considered to be a harsh response to the circumstances, but equally so would other employees including those without disabilities. We cannot conclude that any such alleged PCP has therefore caused the claimant any substantial disadvantage by reason of her impairment of ADHD as compared with other employees who are not disabled with that condition.
64. For these reasons we conclude that the claimant's claim in respect of an alleged failure to make reasonable adjustments is not well founded, and that claim is also dismissed.
65. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraphs 1 and 34; the findings of fact made in relation to those issues are at paragraphs 6 to 23; a concise identification of the relevant law is at paragraphs 26 to 32; and how that law has been applied to those findings in order to decide the issues is at paragraphs 36 to 64.

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Employment Judge N J Roper
Dated 15 October 2024

Judgment sent to Parties on
03 January 2025 By Mr J McCormick

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