



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Sophie Amono

v

**A.S. Watson (Health & Beauty UK)
Limited**

Heard at: London Central (CVP)

On: 5 January 2024

Before: Tribunal Judge RE Peer acting as an Employment Judge

Representation

For the Claimant: In person

For the Respondent: Catherine Urquhart of Counsel

JUDGMENT

- (1) The claimant has no reasonable prospect of establishing:
 - a. that alleged discriminatory acts prior to 21 December 2022 were part of a course of conduct over a period that ended after 21 December 2022; or
 - b. that it is just and equitable to extend the time limit for bringing complaints of discrimination in relation to those acts.
- (2) The complaints of discrimination in relation to those acts are therefore struck out under Employment Tribunal Rule 37(1)(a).
- (3) The claimant has not established that at the relevant times she was a disabled person as defined by section 6 Equality Act 2010 because of impairments of anxiety/panic disorder, dyslexia, ADHD or clinical depression.
- (4) The claimant has established that at the relevant times she was a disabled person as defined by section 6 Equality Act 2010 because of weakness in working memory, processing of phonological information and reading comprehension.

REASONS

CLAIMS AND ISSUES

1. The claimant, Sophie Amono, was employed by the respondent, as a Senior Social Media Specialist from 1 August 2022 to 6 January 2023. Early conciliation started on 20 March 2023 and ended on 1 May 2023. The claim form was presented on 10 May 2023.
2. The respondent, A.S. Watson (Health & Beauty UK) Limited is a health and beauty sales company. The respondent contends that acts complained of which occurred before 21 December 2022 are brought out of time and it would not be just and equitable to extend time for the claims to proceed.
3. The claims and issues were identified and clarified at a preliminary hearing on 9 August 2023 before EJ Peer. At that hearing the claimant's claim for ordinary unfair dismissal was dismissed upon withdrawal by the claimant. The claims relevant to this hearing as recorded in the case management orders of EJ Peer include claims for direct race and sex discrimination, direct and associative discrimination, unfavourable treatment because of something arising in consequence of disability and failure to make reasonable adjustments. The claimant also claims breach of contract.

Preliminary issues for determination

4. A further case management preliminary hearing took place on 5 October 2023 before EJ Glennie. EJ Glennie ordered a preliminary hearing be listed to determine various preliminary issues and conduct further case management as appropriate. This preliminary hearing was therefore listed to determine the following preliminary issues as recorded in EJ Glennie's orders of 5 October 2023 and the Notice of Preliminary Hearing sent to the parties on 17 October 2023:
 - (1) Whether there is no reasonable prospect of the Tribunal deciding that there was conduct extending over a period such as to bring within time allegations about events that occurred before 21 December 2023;
 - (2) To the extent that complaints may be out of time, whether it would nonetheless be just and equitable for the Tribunal to hear those complaints;
 - (3) Whether at the time of the events complained of, the claimant was a disabled person within the meaning of the Equality Act 2010;
 - (4) Whether at the time of the events complained of the claimant's mother was a disabled person within the meaning of the Equality Act 2010.
5. The claimant contends that there was conduct extending over a period such that all allegations of discrimination are to be treated as in time and in the alternative contends it would be just and equitable to extend time for the

claims to proceed. The claimant contends she and her mother are disabled persons within the meaning of the Equality Act 2010.

6. The respondent contends that events which occurred before 21 December 2022 are outside the primary three month time limit and there is no just and equitable basis on which time ought to be extended. The respondent's position is that the allegations of discrimination relating to events which occurred before 21 December 2022 are brought out of time and there is no reasonable prospect of the claimant establishing they were part of a course of conduct and the Tribunal has no jurisdiction to hear them such that they ought to be struck out under Employment Tribunal Rule 37(1)(a).
7. At the hearing it was discussed and agreed that the relevant cut-off date in light of the initial approach to ACAS for early conciliation being on 20 March 2023 was 21 December 2022 rather than 20 December 2022 as initially pleaded and recorded. There was no prejudicial impact on either party with regard to their preparation for today's hearing or material impact given the timeline in affirming the relevant cut-off date as 21 December 2022.
8. The respondent contends that the claimant has not demonstrated that she was a disabled person within the meaning of the Equality Act 2010 at the time of the events complained of. The respondent accepts that the claimant's mother was a disabled person within the meaning of the Equality Act 2010 at the time of the events complained of and accordingly, the Tribunal need not decide issue (4).

THE HEARING

9. The hearing was a remote hearing. The form of remote hearing was fully remote by Cloud Video Platform. The parties agreed in advance to the hearing being held as a remote hearing. The hearing proceeded effectively as a remote hearing and neither party raised any objection.
10. The tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net.
11. The claimant relied upon a disability impact statement and an updated written statement dated 29 November 2023 and two unsigned written statements from Charley Gavigan. I heard live evidence from the claimant on oath.
12. There was an agreed bundle indexed to 298 pages (HB). The respondent produced a skeleton argument and timeline and the claimant produced an opening statement and timeline.
13. The claimant also produced an additional bundle indexed to 69 pages and sent copies of four first instance decisions together with a copy of the Court of Appeal's decision in Vento (Vento v Chief Constable of West Yorkshire Police [2002] EWCA Civ 1871) during the course of the hearing. The decisions presented as referred to by the claimant because, for example, one decision concerned a claimant with dyslexia and one concerned a

claimant with anxiety. I explained that first instance decisions or decisions of the Employment Tribunal were not binding on me. The decision in Vento is not relevant to the issues for decision before me at this preliminary hearing.

14. The preliminary hearing was listed for one day. Further to discussion with the claimant, there were adjustments agreed to accommodate her request for additional time to process and reflect on information provided. I reassured the claimant that she could ask for questions to be repeated and breaks when necessary and that the hearing could proceed at a pace that would enable her to fully participate. The claimant raised no objection as to the way the hearing progressed.
15. There was insufficient time within the one day allocated to fully deliberate and deliver my decisions on the issues for determination before me. I therefore reserved my judgment.
16. I read the evidence in the bundle to which I was referred and refer to the page numbers of key documents that I relied upon when reaching my decision below.
17. There was discussion at the hearing that in relation to the issue as to whether there is no reasonable prospect of a Tribunal deciding there was conduct extending over a period such as to bring within time allegations about events that occurred before 21 December 2023, my role was not to reach fact findings or consider evidence but to consider the pleaded case taking it at its highest.
18. In relation to the issue of disability, I would need to consider the evidence relied upon and reach findings of fact thereafter applying the law to the facts found to reach a conclusion on issue (3) as to whether the claimant was a disabled person at the relevant time within the meaning of the Equality Act 2010.

FINDINGS OF FACT

19. Having considered all the evidence, I found the following facts on a balance of probabilities.
20. The parties will note that not all the matters that they told me about are recorded in my findings of fact. That is because I have limited them to points that are relevant to the legal issues.
21. The claimant, Sophie Amono, was employed by the respondent, as a Senior Social Media Specialist from 1 August 2022 to 6 January 2023.
22. Early conciliation with ACAS started on 20 March 2023 and ended with the issue of a certificate on 1 May 2023. Allegations about events occurring before 21 December 2022 are brought out of time unless they comprise conduct extending over a period of time ending on or after 21 December 2022.

23. The claimant's claim form presented on 10 May 2023 identifies the types of claims she is bringing as including complaints of race, disability and sex discrimination. The claimant does not record anywhere on her claim form details of any impairments. The claimant has ticked the box for 'No' in reply to the question 'Do you have a disability?' at section 12.1 of the claim form.
24. The particulars of claim do not clearly or expressly set out the impairments relied upon by the claimant. The first paragraph refers to the alleged discrimination resulting in 'mental and physical health had deteriorated to such an extent that I handed in my notice on 30 November 2022'. The claimant refers to 'an onset of depression'. The claimant refers to 'panic attacks suffered during the discrimination outlined in the feedback'.
25. The particulars of claim set out allegations under the headings of race, disability and sex. The claimant alleges that on 9 September 2022 Francesca Rich made a comment about the Queen and in October 2022 made a comment about the claimant's hair. The claimant relies on these as incidents of race discrimination. The claimant alleges that in a probation review meeting on 25 November 2022 Francesca Rich delivered feedback that she was difficult to work with (from Hannah Cossey and Emily Venables) and her performance was marked down due to her flexible working arrangement. The claimant relies upon this as an incident of race, disability and sex discrimination. The claimant also relies on a comment about her being a single mother and people-pleasing given at the meeting on 25 November 2022 as an incident of sex discrimination.
26. The particulars of claim also refer to the termination of her contract on 6 January 2023 as an incident of discrimination under the disability heading. The claimant sets out that she declared her 'anxiety, insomnia and panic disorders' to Molly Grogan in HR and her line manager Francesca Rich and that she had been referred to occupational health and 'given time to speak to her union representative regarding raising a grievance' on 16 December 2022. The claimant also sets out that she was told on 13 January 2023 that no grievance could be raised as her contract was terminated.
27. The claimant's prima facie case is taken as set out in her claim form and particulars of claim (HB 5-19) as referred to at paragraphs 23 to 26 above.
28. There is no dispute between the parties that: after handing in her notice on 30 November 2022, the claimant did not attend work; the claimant had annual leave scheduled 1 to 12 December 2022; on 8 December 2022, the claimant told Molly Grogan about health issues; and on 9 December 2022, the claimant was put on paid sickness absence.
29. There is also no dispute between the parties given the timelines each provided to the Tribunal that on 15 December 2022, Molly Grogan asked the claimant if she wished to raise a grievance. The claimant did not want to raise a grievance at that point and wished to speak with her union representative.

30. Both parties also agree that an OH assessment was scheduled for 5 January 2023 but that on 4 January 2023 the scheduled appointment was moved by the provider and then cancelled by the claimant. On 6 January 2023, the claimant's employment terminated. On 19 January 2023, the claimant attended an OH appointment. The parties agree that the respondent had no knowledge of the appointment arranged independently by the claimant after her employment had terminated.
31. At the case management hearing on 9 August 2023, the claimant said that she was disabled by way of dyslexia, ADHD (attention deficit hyperactivity disorder) and anxiety disorder. As set out above, the claim form and particulars of claim did not refer to either dyslexia or ADHD. There was discussion at the case management hearing on 9 August 2023 about the need for the claimant to demonstrate disability and the types of information that would need providing. A link to the Guidance was provided with the record of that hearing.
32. At the hearing before EJ Glennie on 5 October 2023, the claimant was ordered to produce, by 2 November 2023, medical records relevant to the conditions on which she relies as giving rise to disability and a witness statement describing the effects those conditions have on her ability to carry out normal day to day activities, and the duration or likely duration of those effects.
33. In cross-examination, the claimant was asked whether she agreed that there had been a discussion on 9 August 2023 about demonstrating disability and that EJ Glennie's orders set out what she needed to do and that she had to explain the effect of the impairments on her ability to do day to day activities. The claimant said she agreed. The claimant was asked whether she had accessed the Guidance she was referred to. The claimant said 'no' and then said that she did not have a chance as the substance of the document had been prepared after she caught Covid 19 (an NHS Covid 19 notification dated 19 October 2023 records a positive result for coronavirus).
34. The claimant's disability impact statement (HB 92-93) lists anxiety/panic disorder, ADHD, dyslexia, clinical depression and insomnia under a heading of 'impairments'. The claimant refers to anxiety/panic disorder, ADHD and dyslexia as lifelong.
35. The claimant then sets out at paragraph 1 that 'the four conditions which count as disabilities are life-long anxiety-panic disorder, ADHD & dyslexia, and as a result of the incidents outline in this claim, clinical depression ...making it a new disability as a result of the discrimination experienced.' The claimant does not therefore seek to rely on insomnia as an impairment for the purposes of her disability discrimination claims. The claimant also does not appear to rely on clinical depression as a disability she had at the time of the alleged incidents of discrimination rather that it resulted from them.
36. The claimant refers at paragraph 7 of her impact statement to having had postnatal depression which was successfully treated before she returned to

the workforce with the respondent. The claimant does not otherwise mention depression in her impact statement and her evidence is that when she started work in August 2022 she was not suffering from post-natal depression.

37. The claimant refers to panic attacks and 'increase in severe headaches and difficulty sleeping...this occurred following the events from my probation review'. The statement does not set out when she first experienced panic attacks or the frequency of panic attacks although the statement does set out that 'I have never suffered panic attacks in a professional setting until my time employed at A.S. Watson'.
38. The statement sets out at paragraph 5 that her 'specific learning disabilities' made 'communications an area that can be difficult to manage. This means that I often require extra time to process information and communications compared to someone who does not have this impairment'. At paragraph 6, the claimant refers to 'particularly hard to retain information as it impacts my short term memory...harder to prioritise short-term urgent tasks.' This is stated to be more difficult or worsen during times of pressure or 'when traumatised'.
39. The bundle contains copies of NHS website pages for 'Panic disorder' (HB 175-178). This starts: 'Panic disorder is an anxiety disorder where you regularly have sudden attacks of panic or fear. Everyone experiences feelings of anxiety and panic at certain times. It's a natural response to stressful or dangerous situations. But someone with panic disorder has feelings of anxiety, stress and panic regularly and at any time, often for no apparent reason.' Anxiety and panic attacks are set out as symptoms of panic disorder with anxiety referred to as 'a feeling of unease. It can range from mild to severe, and can include feelings of worry and fear. Panic is the most severe form of anxiety.'
40. A one page letter headed 'open referral letter' from Aviva records a consultation on 8 December 2022 with Dr Imrana Akhtar (HB 104). The letter records a diagnosis of 'anxiety' and states 'Past 1 months suffering with anxiety and last week panic attacks. Difficulty sleeping at nights. ...Having weekly counselling which finds helpful.'
41. An occupational health report (HB 106 to 111) details a telephone consultation on 19 January 2023. There is no indication from the report that OH had any awareness that the claimant's employment had terminated on 6 January 2023. The report records 12 December 2022 as the first day of sick absence and the estimated return to work date as 19 January 2023. Under the heading 'fitness to work' the claimant is stated to be 'fit with adjustments'. The recommended adjustments are to 'provide supervision' recommended as temporary to end 31 January 2023. The report records that 'in my opinion Sophie is fit for an immediate return to work on full duties and contractual hours. I recommend regular catch up meetings with her manager to monitor her wellbeing.'

42. The report further records that the absence was due to mental health concerns and that 'She explains that she was suffering with anxiety, panic attacks, headaches and insomnia. She perceives this was as a result of discrimination within the workplace...now feels able to manage her anxiety.' The report also records that 'Sophie states she is feeling a lot better...has not experienced any recent panic attacks' and 'Sophie appears to now be making a good recovery from her recent ill health...It appears that her anxiety occurred as a result of a workplace concern.' The OH assessor sets out her understanding that classification under the Equality Act 2010 is a legal rather than medical decision but that the provisions are unlikely to apply. The opinion given is that the duration of the impairment of anxiety and stress-related illness is 'less than 12 months and unlikely to last longer'.
43. The claimant has produced medical records (HB182-201). The medical records produced are for the date range 18 December 2022 to 18 December 2023. The records are marked to suggest 77 pages of records but those provided in the HB do not consist of 77 pages. The records are marked to show that the section for 'Active problems' and for 'Significant past' are 'empty'. The section for 'Minor past' contains an entry of 15 June 2023 'low mood'. The earliest dated entry is 19 April 2023 and refers to 'low mood' since giving birth in February 2022 (HB 184) and refers to 'been seeing private therapist weekly since then but struggling more over last few weeks' and medication as sertraline. An entry for 2 August 2023 refers to the claimant as doing a Masters.
44. The records include an application for adult disability payment completed by Dr Scott dated 11 September 2023 (HB 198) which records 'She reports low mood for over 1 year also some anxiety' and 'No suicidal ideation has been mentioned. She has been referred to the Mental Health team for assessment for ADHD but this was declined.' The claimant self-referred on 25 November 2023 referring to a break down two weeks prior and a suicide attempt two years prior (HB 189). The medical records state 'no current involvement with mental health services' and 'describes recent difficulties'. Advice was given about reducing alcohol and to seek advice about other stressors such as finance through CAB. The diagnosis was 'stress' and for sertraline to be increased with 'no follow up'.
45. The claimant also relies upon a report of the Halycon Centre dated 4 July 2023 authored by Michele Anya Rowson stated to be a qualified specialist teacher holding an approved qualification with a current Specific Learning Difficulties (SpLD) Assessment Practising Certificate (HB 112-139). The claimant was referred by the University of the Arts: Central St. Martins where she was studying an MA Arts & Cultural Enterprise. The report includes the detail and results of various screening tests that were carried out together with outcomes. The remit was to screen symptoms as to impact on ability to engage and perform in an educational setting.
46. The report records the outcome that "Sophie's background information, performance in a range of cognitive and attainment tests given and the behaviours observed at this assessment contribute to a consistent picture and confirm that Sophie has a profile of a Specific Learning Difficulty

(Dyslexia). Sophie's profile and responses also confirm the presence of characteristics of ADHD (combined). Definitions of dyslexia and ADHD are provided in Appendix 3 of the report. and it is clear that Sophie's profile is consistent with these definitions. In particular, Sophie's profile highlights difficulties which have impacted on aspects of her literacy. Sophie's difficulties are long term and in sharp contrast to Sophie's underlying ability." The report refers to a 'long-term impact on her ability to carry out normal work and study activities.'

47. The details of profile include that 'Her auditory working memory is weaker than expected and she is slow to process phonological information' and 'has weaknesses in the area of reading comprehension even when she is provided with sufficient time; furthermore, when she is reading longer passages she can forget content as larger demands are placed on memory.'
48. The report records that in relation to ADHD the claimant 'presents with a pattern of behaviours that is suggestive of ADHD as a Specific Learning Difficulty (SpLD)' and that she should consult with her doctor for a definitive diagnosis.
49. In terms of adjustments, the report records that the 'main implications' are that 'time and support to assist her with managing the demands of the potentially large quantity of academic reading, writing and research that she will be required to undertake...may find listening and note-taking in lectures challenging.' The report records that 'Sophie also reported difficulties with focus, attention, concentration, procrastination, time management and organisation.' The recommendations were for 25% extra time during examinations. The report also suggests that there will be benefit in 1:1 support to develop strategies to assist her in managing her underlying weaknesses in the context of Higher Education study. The report refers to the next step for the workplace setting being a Workplace Needs Assessment to determine the most appropriate support and that reasonable adjustments in the workplace to benefit might include working in a quiet place with noise-cancelling headphones, instructions in written form and that colleagues be aware that there may be a requirement for additional time to complete work-related tasks.
50. Appendix 3 of the report provides the following definition for dyslexia:

"Dyslexia is a learning difficulty that primarily affects the skills involved in accurate and fluent word reading and spelling. Characteristic features of dyslexia are difficulties in phonological awareness, verbal memory and verbal processing speed.'
51. Appendix 3 provides the following definition for ADHD:

"ADHD is a neurodevelopmental disorder that is characterised by features of both a mental health condition and a specific learning difficulty. ...Hyperactive-impulsive symptoms are less common in adults, who may present predominantly with problems of inattention. Educational performance is a specific difficulty for almost all individuals with ADHD,

related to the attention deficits that characterise the disorder. As it impacts on learning, ADHD should therefore be regarded as a specific learning difficulty.'

52. I have concluded that I can place some weight on the Halycon report. The author of the report presents as having relevant experience and expertise to conduct assessments and clearly states the limitations of her assessment as based on screening for symptoms affecting an educational setting and that the assessment is provisional in that it does not provide a formal diagnosis. I accept that as at July 2023 the claimant was assessed as having weaknesses in her auditory working memory, processing of phonological information and reading comprehension. I also accept that as at July 2023 the claimant was assessed as presenting with a profile suggestive of dyslexia and ADHD as defined in that report. Dyslexia and ADHD are both to be considered as specific learning difficulties.
53. In cross-examination, it was put to the claimant that there were no documents before the Tribunal setting out any diagnosis and no evidence about lifelong awareness of the conditions. The claimant said the conditions were lifelong but not her awareness of them. She explained that awareness of the condition was different from having the impairment given diagnosis could be later in life. The claimant also referred to medication only given for panic disorder when it reached a certain stage. The claimant said she had panic attacks and anxiety from when she was a child and in relation to ADHD/dyslexia she had some self-awareness of her difficulties but it was only when it was picked up by the university that it 'clicked'.
54. The claimant also relies on evidence from her therapist. There were two letters from Charley Gavigan stated to be an Integrated Therapeutic Coach and Therapist (HB 145, 180) and in addition an unsigned written statement dated 14 November 2023 (HB211-212) and a separate unsigned statement dated 7 December 2023 before the Tribunal. The unsigned statements present as replicating the information contained within the letters. The documents refer to the claimant as paying privately for therapeutic sessions and that the claimant had worked with the therapist during the time of her employment. The 14 November 2023 documents record the claimant having described the workplace situation and that 'rapidly began presenting with high levels of anxiety, panic, overwhelm as she desperately tried to make meaning from racist/sexist comments and behaviours from colleagues'. The 7 December 2023 documents refer to the relationship beginning in June 2021 with fortnightly sessions to support 'her anxiety and the symptoms it presents in her life' and refers to 'In my opinion the presenting anxiety issues were due to masking 'normality' through years of prolonged stress and subsequent burnout which made her more susceptible to periods of low mood and depression.'
55. I note that the therapist's 7 December 2023 document suggests the claimant had symptoms of anxiety when the claimant is said to have started seeing the therapist in June 2021 and thus before her employment started in August 2022. I can however only place limited weight on evidence contained within unsigned statements in circumstances where the witness does not attend

the tribunal to submit to cross-examination. I accept that whilst this was not explained or made explicit at the hearing that the unsigned statements replicate information in the signed letters on letterhead from the therapist. There were however no real details of the individual's qualification and authority to speak of any matters concerning the stated impairments. There is no evidence that the therapist has any form of medical qualification. Moreover, the documents are not precise with regard to any stated impairments, provide no reasoning as to how conclusions were reached and are in general and vague terms. I concluded that I could only place very limited weight on this evidence.

56. In cross-examination, the claimant was asked about her medical records given the date range which started in December 2022 and that there were no active problems or significant past recorded. The claimant said that she had wanted to prove she had the impairments for 12 months and the GP had asked if she wanted all her records which would be 100s of pages and they had been slimmed down to what was provided. The empty boxes did not mean she had no active problems or significant past and this wasn't a full medical report. The claimant said she had needed an urgent psychiatric referral. I did not find this a sufficient explanation or good reason as to why the medical records presented the claimant as a person with no active problems or significant past. The records show that the claimant self-referred in November 2023, her medication was increased, and there was not considered to be any need for follow-up. The entry for December 2023 does refer 'need for urgent psych referral'. However, these are issues arising in 2023 and cannot be regarded as significant past prior to that.
57. The claimant was asked about depression given the evidence suggested (HB 140) she received a prescription for Sertraline in July 2023 after her employment ended. The medical records show sertraline had been prescribed prior to July given reference in a 19 April 2023 entry. The medical records also show a one off prescription for zopiclone on 15 November 2023 given the claimant was struggling to sleep. The claimant referred to her therapist's letter and that she had been seeing them since June 2021 and post-natal depression. As above, the claimant's own evidence is that her stated post-natal depression had resolved before she started employment and I have concluded I can place limited weight on the therapist's documents.
58. The claimant was asked about the earliest entry of 19 April 2023 in the medical records. The claimant was asked if this demonstrated that prior to that date the claimant had not attended her GP. The claimant said the records referred to her having had a low mood since February 2022. She explained circumstances in which she had to move to London and therefore could not see her GP and relied on her employer's virtual service.
59. There is reference to the claimant having had low mood since February 2022 in the medical records. I note that the reference is to 'low mood' and not to 'depression' or other term. I also note that the claimant's evidence is of post-natal depression since February 2022 which had resolved before her employment started. There is no evidence available to me of any diagnosis

or medical record of the claimant having had depression during her employment. I accept that the Aviva GP made a diagnosis of 'anxiety' on 8 December 2022 and recorded that the claimant had been suffering for the past month at that point. I also note the claimant's own evidence of experiencing anxiety and panic attacks. The difficulty is that there is no real detail in the evidence as to the frequency of the panic attacks or the symptoms associated with anxiety and their commencement, pattern or duration. There is also no evidence before me to suggest that other than contact with the Aviva GP on 8 December 2022 and the OH assessment on 19 January 2023 the claimant had any contact with medical professionals until 19 April 2023. There is no evidence that the claimant sought any support or assistance other than via her therapist until April 2023.

60. The claimant referred to wanting to evidence 12 months and that complete medical records might cause her difficulties given the amount of information. The relevant period is the claimant's employment with the respondent and as to whether any impairments relied upon as then present were long-term as at that time. I have reflected carefully on the claimant's explanation as to why she has only produced limited medical records which do not cover the period of her employment. However, I can only reach findings and conclusions based on the evidence available to me.
61. Other than the claimant's assertions and the information from her therapist on which I have found I can place limited weight, there is very little evidence available to indicate that the claimant had the impairment of anxiety/panic disorder as distinct from experiencing some anxiety from time to time during the whole period of her employment or prior to that period. The references there are suggest anxiety/panic attacks impacted on her after the meeting on 25 November 2022 or around that time. The OH report records that the claimant perceived her anxiety/panic attacks, headaches and insomnia around that time to be as a result of her workplace experiences and that as at 19 January 2023 she was feeling better.
62. The available evidence suggests that the claimant's experience of anxiety/panic attack arose around November 2022 and the evidence does not enable me to reach any findings or conclusions that it was to be regarded as anxiety/panic disorder or long-term at that point.
63. In relation to the impact or effect on day-to-day activities of either dyslexia or ADHD, there is very limited evidence before me. The claimant does not refer in her claim form or particulars of claim to either of the conditions. The claimant does not refer in her claim form or particulars of claim either explicitly or implicitly to difficulties or effects which align with those identified in the Halycon report as suggestive of either of these conditions. I am mindful that the claimant is a litigant in person but I do find it relevant that she has not set out in her own words in either her claim form or particulars of claim that she experienced any such difficulties. The only reference to 'time' is having more time to speak to her union representative but without any context that cannot enable any inference that the need for more time was due to any particular condition or difficulty linked to processing weaknesses or dyslexia/ADHD.

64. I accept that in her impact statement the claimant refers to needing extra time to process information and difficulties retaining information together with communications being an area difficult to manage. The claimant does not provide any real detail or context for this.
65. In her written statement dated 29 November 2023, the claimant sets out information about her factual allegations for the majority of the statement. At paragraph 16 she sets out that 'I made a GP appointment where a diagnosis of anxiety was made and notes made highlighted that this had been continuing for at least a month (Appendix 22). This brings me up to the period of the 20 December and highlights that the treatment and issues raised lasted over a period of time that continued past this date.' Appendix 22 is the Aviva GP appointment which took place on 8 December 2022. The claimant's written statement provides no information at all about the period thereafter and paragraph 17 refers to the early conciliation process which started on 20 March 2023.
66. In relation to events that occurred on and before 25 November 2022 in so far as they were not part of conduct extending beyond that date, the three month time limit expired on 24 February 2022. In approaching ACAS on 20 March 2023, the claimant was three weeks out of time. The claimant resigned on 30 November 2022 and her evidence was that her resignation resulted from the discrimination she had experienced. In relation to events that occurred on and before 30 November 2022, the three month time limit expired on 28 February 2023 such that the claimant was nearly three weeks out of time.
67. In cross-examination, the claimant was asked how she knew to go to ACAS. The claimant said she had spoken to the union and to Charley around mid-March 2023. The claimant said that there was a chain of communication and Molly had said she could speak to the union around that time and she spoke to the legal team. The claimant was asked when and she said the union was involved mid-October. The claimant was asked if she asked the union about bringing a claim and when and the claimant said she didn't know the exact date.
68. The claimant was also asked why she had waited until March 2023 to bring a claim if she had contact with her union in October 2022. The claimant said she had discussed it with her therapist. The claimant was asked if she had discussed it with anyone who knew about employment law claims. The claimant said that she had discussed the issue and she had a union rep and spoke around October and had spoken with the union rep and the legal team. The claimant was again asked if she had ever had advice about how to start a claim and when. The claimant referred to Molly having told her she could have no part in the grievance process when she had told Molly on 13 January 2023 that she was looking for a better outcome.
69. I asked the claimant to clarify her evidence in relation to the questions that were being asked of her. I recapped the question and gave her the opportunity to answer the question if she had received any advice about

bringing a tribunal claim and, if so, when. I asked if she was able to say whether this was before or after the end of her employment. The claimant referred to 'legal advice discussed with union between date 13 January 2023 and the date I lodged the papers.' The claimant said she was trying to get the timeline. The claimant was asked whether she had done any internet research and said she was following the ACAS Code to raise a grievance for her problems. On 13 January 2023, the claimant's understanding was that she could not progress any grievance.

70. During her submissions, I recapped for the claimant to enable her to clarify what she relied upon in relation to when she brought her claim and/or why time ought to be extended if I found certain allegations were brought out of time. The claimant affirmed that she relied upon her health and personal circumstances around that time. The claimant referred to being seriously impacted with her anxiety and stated that she had legal advice to get it [the claim] in. The claimant therefore suggested during submissions and in giving evidence that she had received legal advice about timing but although she was asked a number of times about whether she had received advice about the timing of her tribunal claim no clear details or dates were provided.
71. In reflecting on the claimant's evidence, I have been mindful about the tribunal setting and the claimant's stated difficulties with processing information and her demonstrable efforts to try and recall the timeline during the provision of evidence. The claimant did state that she had some legal advice about timing although it is unclear when she had that advice. She also gave evidence of being in discussion with her union representative from mid-October although this may perhaps have been related generally to the workplace situation rather than the specifics of a tribunal claim and could not initially have covered events in November 2022. Given the claimant did not provide any clear details or dates as to when she had any advice or assistance and as to whether that related to the timing and possibility of a tribunal claim, it is difficult to reach any findings other than that she was in receipt of some advice and assistance during the relevant period. I also found that in so far as she relies upon seeking to bring a grievance as a reason for not bringing her tribunal claims earlier, the claimant's understanding on 13 January 2023 was that she could not progress any grievance in any event.
72. As above, the claimant contacted ACAS on 20 March 2023 and a certificate was issued on 1 May 2023 and her claim was presented to the tribunal on 10 May 2023.

LAW

Time limits

73. A claim of discrimination must be brought within the time limit laid down by statute in order for the tribunal to have jurisdiction to consider the claim. Section 123 of the Equality Act 2010 ("the Act") provides as relevant:

"(1) Subject to section 140B, proceedings on a complaint within section 120 may not be brought after the end of-

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or
- (b) such other period as the employment tribunal thinks just and equitable.

...

(3) For the purposes of this section-

- (a) conduct extending over a period is to be treated as done at the end of the period;
- (b) failure to do something is to be treated as occurring when the person in question decided on it.
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something-
 - (a) when P does an act inconsistent with doing it, or
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

74. These time limits are subject to extensions for early conciliation set out in the Act at section 207B and the Order at article 8B. These provide that the day a claimant contacts ACAS (Day A) and the day the certificate is received (Day B) are not counted. Further, if the ordinary 3 month time limit would but for extension expire during the period beginning with Day A and one month after Day B, the time limit is extended to expire at the end of that period. The tribunal is required to treat the time limit as expiring at the end of any extension.
75. In **Hendricks v Commissioner of Police of the Metropolis [2002] EWCA Civ 1686** the Court of Appeal, having reviewed the authorities, explained the approach to the test for whether there was conduct extending over a period at paragraph 52 as follows: *“The focus should be on the substance of the complaints ... was there an ongoing situation or a continuing state of affairs in which officers...were treated less favourably? The question is whether that is 'an act extending over a period' as distinct from a succession of unconnected or isolated specific acts'.”*
76. In **Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548** the Court of Appeal affirmed the test as laid down in Hendricks and the court also gave guidance in relation to determining whether there was conduct extending over a period at a preliminary hearing stating at paragraph 10 that: *“I turn to the first issue: the test to be applied by the ET. In Hendricks v. Metropolitan Police Commissioner [2002] EWCA Civ 1686 Mummery LJ (with whom the other members of the Court agreed) set out the test to be applied at a preliminary hearing [now a Pre-Trial Review] when the Claimant, otherwise out of time, seeks to establish that a complaint is part of an act extending over a period. The claimant must show a prima facie case. Miss Monaghan submitted that that the ET must ask itself whether the complaints were capable of being part of an act extending over a period. I, for my part, see no meaningful difference between this test and the prima facie test.”*
77. In **Aziz v FDA [2010] EWCA Civ 304** the Court of Appeal also approving Hendricks set out at paragraph 33 that when considering whether separate incidents form part of an extending over a period: *“one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents.”* At paragraph 36 the Court of Appeal explained that: *“Another way of formulating the test to be applied at the pre-hearing review is this: the claimant must have a reasonably arguable basis for the*

contention that the various complaints are so linked as to be continuing acts or to constitute an ongoing state of affairs”.

78. In **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA** the Court of Appeal noted the wide breadth of the just and equitable discretion that the Tribunal has to allow claims to proceed out of time. A decision as to whether or not to extend time is only susceptible to challenge where there is a failure to give adequate reasons or where the Tribunal has failed to have regard to a plainly relevant or significant factor or is outside the scope of the differing views which reasonable decision makers might arrive at.
79. In **Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434, CA** the Court of Appeal emphasised that the exercise of discretion so as to extend time is the exception rather than the rule stating at paragraph that: *“there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.”*
80. In **Miller and ors v Ministry of Justice and ors and another case EAT 0003/15** the principles relevant to the exercise of the just and equitable discretion were summarised by Mrs Justice Elisabeth Laing (as she was then) at paragraph 10 as follows:
- “10. There are five points which are relevant to the issues in these appeals.*
- i. The discretion to extend time is a wide one: **Robertson v Bexley Community Centre [2003] EWCA Civ 576; [2003] IRLR 434, paragraphs 23 and 24.***
 - ii. Time limits are to be observed strictly in ETs. There is no presumption that time will be extended unless it cannot be justified; quite the reverse. The exercise of that discretion is the exception rather than the rule (ibid, paragraph 25). ...*
 - iii. If an ET directs itself correctly in law, the EAT can only interfere if the decision is, in the technical sense, “perverse”, that is, if no reasonable ET properly directing itself in law could have reached it, or the ET failed to take into account relevant factors, or took into account irrelevant factors, or made a decision which was not based on the evidence. No authority is needed for that proposition.*
 - iv. What factors are relevant to the exercise of the discretion, and how they should be balanced, are for the ET (**DCA v Jones [2007] EWCA Civ 894; [2007] IRLR 128**). The prejudice which a Respondent will suffer from facing a claim which would otherwise be time barred is “customarily” relevant in such cases (ibid, paragraph 44).*
 - v. The ET may find the checklist of factors in section 33 of the **Limitation Act 1980** (“the 1980 Act”) helpful (**British Coal Corporation v Keeble [1997] IRLR 336 EAT**; ... This is not a requirement, however, and an ET will only err in law if it omits something significant: **Afolabi v Southwark London Borough Council [2003] ICR 800; [2003] EWCA Civ 15, at paragraph 33.**”*

Disability

81. Section 6 of the Equality Act 2010 provides that:

“(1) A person (P) has a disability if-
(a) P has a physical or mental impairment, and
(b) The impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities.”

82. Part 1 of Schedule 1 to the Equality Act 2010 contains further explanatory provision as follows:

“2. Long-term effects

(1) The effect of an impairment is long-term if-
(a) it has lasted for at least 12 months,
(b) it is likely to last for at least 12 months,
(c) it is likely to last for the rest of the life of the person affected.
(2) If an impairment ceases to have a substantial adverse effect on a person’s ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

...

5. Effect of medical treatment

(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if-
(a) measures are being taken to treat or correct it, and
(b) but for that, it would be likely to have that effect.”

83. In **Goodwin v Patent Office 1999 ICR 302, EAT** the EAT was considering provision in the Disability Discrimination Act 1995 and observed that *“The focus of attention required ...is on the things that the applicant either cannot do or can only do with difficulty, rather than on the things the person can do”* and identified four conditions the tribunal was required to address in relation to deciding whether a person was disabled. The conditions were as follows: does the person have a physical/mental impairment (impairment condition); does the impairment affect the person’s ability to carry out normal day-to-day activities and does it have an adverse effect (adverse effect condition); is the adverse effect substantial (substantial condition); and is the adverse effect long-term (long-term condition). In deciding whether the substantial adverse effect of the impairment is likely to last at least 12 months, the word ‘likely’ means ‘could well happen’, **Boyle v SCA Packaging Ltd (Equality and Human Rights Commission intervening) 2009 ICR 1056, HL**. The Tribunal must consider matters, including whether the impairment has a long-term effect, as at the date of the alleged discriminatory act, **Cruickshank v VAW Motorcast Ltd 2002 ICR 729, EAT**.

84. In **J v DLA Piper UK LLP [2010] ICR 1052**, the EAT gave guidance on the approach to cases concerning mental impairments. Underhill J (then President of the EAT) at paragraphs 38, 40 and 42 set out that:

“38. ...There are indeed sometimes cases where identifying the nature of the impairment from which a claimant may be suffering involves difficult medical questions; and we agree that in many or most such cases it will be easier – and is entirely legitimate – for the tribunal to park that issue and to ask first whether the claimant’s ability to carry out normal day-to-day activities has been adversely affected – one might indeed say “impaired” – on a long-term basis. If it finds that it has been, it will in many or most cases follow as a matter of common-sense inference that the claimant is suffering from a condition which has produced

that adverse effect - in other words, an "impairment". If that inference can be drawn, it will be unnecessary for the tribunal to try to resolve difficult medical issues of the kind to which we have referred. This approach is entirely consistent with the pragmatic approach to the impairment issue propounded by Lindsay P in the Ripon College case and endorsed by Mummery LJ in McNicol (loc. cit.). It is also in our view consistent with the Guidance...."

"40. Accordingly in our view the correct approach is as follows:

(1) It remains good practice in every case for a tribunal to state conclusions separately on the questions of impairment and of adverse effect (and, in the case of adverse effect, the questions of substantiality and long-term effect arising under it) as recommended in Goodwin.

(2) However, in reaching those conclusions the tribunal should not proceed by rigid consecutive stages. Specifically, in cases where there may be a dispute about the existence of an impairment it will make sense, for the reasons given in para. 38 above, to start by making findings about whether the claimant's ability to carry out normal day-to-day activities is adversely affected (on a long-term basis), and to consider the question of impairment in the light of those findings.

(3) These observations are not intended to, and we do not believe that they do, conflict with the terms of the Guidance or with the authorities referred to above. In particular, we do not regard the Ripon College and McNicol cases as having been undermined by the repeal of para. 1 (1) of Schedule 1, and they remain authoritative save insofar as they specifically refer to the repealed provisions."

"42. The first point concerns the legitimacy in principle of the kind of distinction made by the Tribunal, as summarised at para. 33 (3) above, between two states of affairs which can produce broadly similar symptoms: those symptoms can be described in various ways, but we will be sufficiently understood if we refer to them as symptoms of low mood and anxiety. The first state of affairs is a mental illness – or, if you prefer, a mental condition – which is conveniently referred to as "clinical depression" and is unquestionably an impairment within the meaning of the Act. The second is not characterised as a mental condition at all but simply as a reaction to adverse circumstances (such as problems at work) or – if the jargon may be forgiven – "adverse life events". We dare say that the value or validity of that distinction could be questioned at the level of deep theory; and even if it is accepted in principle the borderline between the two states of affairs is bound often to be very blurred in practice. But we are equally clear that it reflects a distinction which is routinely made by clinicians – it is implicit or explicit in the evidence of each of Dr Brener, Dr MacLeod and Dr Gill in this case – and which should in principle be recognised for the purposes of the Act. We accept that it may be a difficult distinction to apply in a particular case; and the difficulty can be exacerbated by the looseness with which some medical professionals, and most laypeople, use such terms as "depression" ("clinical" or otherwise), "anxiety" and "stress". Fortunately, however, we would not expect those difficulties often to cause a real problem in the context of a claim under the Act. This is because of the long-term effect requirement. If, as we recommend at para. 40 (2) above, a tribunal starts by considering the adverse effect issue and finds that the claimant's ability to carry out normal day-to-day activities has been substantially impaired by symptoms characteristic of depression for twelve months or more, it would in most cases be likely to conclude that he or she was indeed suffering "clinical depression" rather than simply a reaction to adverse circumstances: it is a common-sense observation that such reactions are not normally long-lived."

85. In determining questions related to whether a person is disabled within the meaning of section 6 of the Equality Act 2010, a Tribunal must take account in so far as relevant the provisions in the Guidance on matters to be taken into account in determining questions related to the definition of disability ("the Guidance") and the Equality and Human Rights Commission (EHRC) Code of Practice on Employment ("the Code").
86. The Guidance sets out that in considering whether the effect of an impairment is substantial a range of factors might be considered including the time it takes the person to carry out an activity and the manner in which

it is carried out compared with a person who does not have the impairment. The cumulative effect of multiple impairments can be considered as can whether it is reasonable for the person to have coping strategies such that the effects of the impairment are not to be regarded as substantial. The focus is to be on what a person cannot do or can only do with difficulty.

87. Normal day-to-day activities are those which most people do regularly and frequently such as reading and writing, getting washed and dressed, using transport and can include general work-related and study activities including following instructions and interactions with colleagues.

ANALYSIS AND CONCLUSIONS

88. I turn now to the application of the law to the facts I have found in this case.

Whether there is no reasonable prospect of the Tribunal deciding that there was conduct extending over a period such as to bring within time allegations about events that occurred before 21 December 2023

89. The alleged incidents of discrimination other than the termination of her contract of employment on 6 January 2023 all occurred before 21 December 2022 and indeed prior to 30 November 2022 when the claimant resigned. The claimant's evidence is that her resignation was due to these incidents. The persons concerned were those in her line management chain primarily Francesca Rich but also Hannah Cossey. After 30 November 2022, the claimant did not attend the workplace as she had annual leave scheduled. The claimant did engage with the respondent in the person of Molly Grogan in relation to being placed on sick leave, arranging an OH assessment and being asked by Molly Grogan if she wished to bring a grievance with the claimant indicating on 15 December 2022 that she did not then wish to bring a grievance albeit she wanted to speak with her union representative.
90. The claimant does not explicitly plead that the incidents she complains about are a course of conduct extending over the period and did not clearly explain in evidence why or how the incidents are linked so as to form part of a course of discriminatory conduct extending over the period including and after 21 December 2022. Although comments made in September, October and in respect of 'people-pleasing' in November 2022 were made by Francesca Rich, these do not otherwise present as linked to the other feedback complained of as delivered by Francesca Rich but from Hannah Cossey and Emily Venables that the claimant was 'difficult to work with' or the allegation that her performance was marked down due to flexible working arrangements.
91. There is no basis discernible in the pleaded case or conceptually for linking the incidents in September, October and November 2022 to the termination of the claimant's contract on 6 January 2023. That the claimant may have been contemplating bringing a grievance and seeking advice from her union representative having indicated on 15 December 2022 that she did not wish to bring a grievance at that point does not suffice to demonstrate an ongoing discriminatory state of affairs. The claimant liaised with a different person

from those named as perpetrators of the alleged discriminatory incidents which she says caused her resignation, Molly Grogan, in relation to reporting health issues on 8 December 2022, being placed on sick leave and being referred to OH. The claimant resigned on 30 November 2022 due to experiences prior to that date and did not attend the workplace thereafter. The claimant's ill health stated to be a consequence of discriminatory conduct does not of itself thereby constitute circumstances which amount to an ongoing discriminatory state of affairs. There is no basis for discerning an ongoing state of affairs with a final act of discriminatory conduct being the termination of the contract on 6 January 2023. There is no reasonably arguable basis on which it can be contended that there is conduct extending over a period.

92. I have concluded in light of the claimant's pleaded prima facie case and having taken full account of the relevant case law that there are no reasonable prospects of the Tribunal deciding that there is conduct extending over a period so as to bring allegations related to events occurring before 21 December 2022 in time.
93. I have therefore concluded that in so far as the claimant relies upon events occurring before 21 December 2022 her claim has been brought outside the primary three month statutory limitation period and accordingly out of time.

whether to exercise discretion to extend time on a just and equitable basis

94. I therefore turn to consider whether it is just and equitable to extend time so as to allow the claims to proceed.
95. I considered all the factors relied upon and the available evidence. I rely on my findings above. I note that in relation to events on or before either 25 November or 30 November 2022 any claim ought to have been brought by 24 or 28 February 2022 and thus ACAS was approached approximately three weeks late.
96. The claimant has provided scant and unclear evidence as to the reasons why she did not file her claim within the three month time limit. Due to the way the evidence was presented and her affirmation during submissions, I consider that the claimant relies on her health circumstances during this period and other personal domestic circumstances. However, the claimant was engaging in a course of study at university as she was doing a Masters degree at the University of Arts, Central St. Martins and was continuing with this as late as August 2023.
97. Allowing for the claimant as having impairments which mean she takes longer to read or process information, does not in isolation provide a basis for an extension of time. Time limits are laid down in statute for the bringing of claims before the Tribunal including disability discrimination claims brought by persons with a range of impairments which might impact on their ability to prepare and bring a tribunal claim. The evidence available does not demonstrate that the claimant was incapacitated or otherwise facing health

circumstances that completely prevented her from taking relevant steps to file her claim.

98. The claimant gave unclear evidence as to whether she had received any advice about time limits for bringing an employment tribunal claim and if so, when that advice was received. The claimant gave oral evidence that she was in contact with a union representative from mid-October but also somewhat conflicting evidence that she received advice about bringing a claim between 13 January 2023 and when she lodged the claim on 10 May 2023. The claimant made reference to bringing her grievance and the ACAS Code. The evidence available lacked detail such as to whether and when she received any advice on time limits. The bringing of an internal grievance does not of itself provide a basis for extending time limits.
99. The claimant has therefore not provided any good reason why she was prevented from filing her claim on time and no cogent evidence explaining her circumstances from which a conclusion might be reached or even reasonable inferences drawn as to any good reason.
100. I turn to consider the balance of prejudice thus balancing the prejudice the claimant faces if she cannot bring her claims and the prejudice the respondent faces if it must defend claims brought late.
101. Allegations of discrimination are serious allegations and there are good public policy reasons for allowing them to be scrutinised by an independent and impartial tribunal which can hear all the evidence and make relevant findings of fact. I remind myself however that the exercise of discretion is the exception rather than the rule and that the ordinary three month time limit for bringing discrimination claims is laid down in statute. The delay in bringing the claims is approximately three weeks and there is no good reason or cogent evidence before me explaining the reasons for the delay.
102. I considered that the respondent is said to have conducted an investigation although there was no evidence before me or basis on which to discern the terms of reference for that investigation and the scope of the investigation as to whether it covered all the incidents complained of the earliest of which was in September 2022. The allegations relate to incidents which occurred more than a year ago and although they are not very far back in time there is some forensic prejudice in that memories and recall will be impacted bearing in mind that some of the earliest allegations relate to statements made which are unlikely to be documented. The respondent is also to be taken as put to some prejudice in having to defend claims brought late.
103. The claimant has given no detailed evidence as to when she knew she had a cause of action. On 30 November 2022, the claimant took the step of resigning due to the alleged discrimination suffered. I am mindful that is different from a specific concrete awareness of a cause of action in the Employment Tribunal but it is demonstrative of the claimant's understanding that the events of which she complains constituted discrimination. The claimant has given evidence she was in contact with her union representative from mid-October although no real detail as to whether she

had particular advice at any point as to bringing a claim or as to time limits. The claimant suggested that in trying to bring a grievance she was following the ACAS code but I have found that the claimant understood from 13 January 2023 which was 6 weeks before the primary three month time limit elapsed that she was not able to progress any grievance. There was no evidence before me to suggest that the claimant has acted in any particularly expeditious manner with regard to the bringing of her discrimination claims given her stated awareness that she had suffered the alleged discriminatory conduct. By 19 January 2023, she was attending OH and reporting feeling better.

104. I have considered the personal domestic circumstances of the claimant although no detailed evidence was given about these to explain why in isolation or as to context for her general circumstances they might provide any basis for an extension of time. I note that the claimant referred to personal domestic circumstances which were not particularly new or recent related to her move to London and it is unclear why they in particular prevented the bringing of the claims in time or impacted upon timing in any specific way. I considered the health circumstances of the claimant as set out above. I note that there is no evidence of the claimant seeking medical attention between 19 January 2023 and 19 April 2023 and in particular during the period when she could have brought an in time claim including allegations related to events prior to 21 December 2022.
105. I considered all the factors relied upon and presented to me individually and cumulatively.
106. I concluded that it was not appropriate to exercise discretion on a just and equitable basis to extend time for the bringing of the claims related to events that occurred on or before 21 December 2022.

Whether at the time of the events complained of, the claimant was a disabled person within the meaning of the Equality Act 2010

107. In light of my decision that there is no reasonable prospect of the tribunal finding that allegations of discrimination related to events occurring on or before 21 December 2022 are brought in time or that time should be extended to allow the claims to progress, a decision on issue (3) presents as necessary only in relation to whether the claimant can proceed with her complaint that the termination of her contract on 6 January 2023 was an incident of disability discrimination. The claimant also claims breach of contract.
108. I turn to consider the issue as to whether the claimant is a disabled person within the meaning of the Equality Act 2010. I am required to consider this as at the relevant time which is during the claimant's period of employment which commenced on 1 August 2022 and ended on 6 January 2023.
109. The claimant appears to rely on four conditions anxiety disorder, ADHD, dyslexia and clinical depression and I refer to my findings above as to the claimant's pleadings and how these have been presented as relied upon in

the context of these proceedings. In particular I note that the claimant does not refer to dyslexia or ADHD in her claim form or particulars of claim.

110. There is no cogent evidence on which conclusions can be drawn that the claimant had the conditions on which she relies during her employment. In relation to anxiety/panic disorder there is no cogent evidence to explain that the claimant regularly experiences severe anxiety or panic attacks. There is no medical diagnosis or evidence that she has anxiety/panic disorder or to that effect. In relation to ADHD and dyslexia, there is no formal diagnosis or assessment that the claimant has these conditions. In relation to clinical depression, the claimant says this resulted from her experiences towards the end of her employment. Whilst the claimant was prescribed sertraline after her employment ended there is no diagnosis or indication on the available medical evidence that she suffers from clinical depression albeit she has experienced the symptom of low mood.
111. The respondent submitted that the position outlined in the OH report was consistent with the analysis in **J v DLA Piper** of a claimant suffering a short-term reaction to adverse circumstances rather than one suffering with an impairment which would constitute a disability. I find that submission to have merit. The evidence is consistent with the claimant having an adverse reaction to workplace experiences given the lack of medical records or other documentary evidence supporting diagnosis of or that she was suffering from any of the conditions relied upon prior to and throughout her employment. The medical records do not contain any formal diagnosis of depression or clinical depression which post-dates the claimant's employment from which an inference might be drawn that during her employment the condition had presented and was likely to last at least 12 months.
112. In addition to the claimant not referring on her claim form or in her particulars of claim to dyslexia/ADHD, the claimant does not set out any particulars from which reasonable inferences might be drawn that she had difficulties in the workplace that might relate to those conditions. The only reference to time is wishing for time to speak with her union rep in relation to the grievance. The claimant does not set out in her impact statement any detail as to how she is affected by any of the stated conditions other than by general and vague reference to difficulty sleeping and to the need for extra time to process information and that if she experiences a panic attack this impacts on her ability to manage life administration as it leaves her low on energy. To the extent the claimant has experienced severe insomnia or significant difficulty with sleeping, the evidence available indicates she was prescribed zopiclone in November 2023 after her employment ended.
113. I have carefully considered the evidence provided by the Halycon report. This gives evidence supportive of the claimant presenting with weaknesses in auditory working memory, processing of phonological information and reading comprehension such that her profile is suggestive of a person with dyslexia and/or ADHD. There is no requirement for impairments to be formally attributed to a particular condition or for there to be a diagnosis. I have reflected on the opinion set out in the report that the claimant's

difficulties are long-term. I also note that the claimant gave evidence that everything clicked after this assessment in terms of her life-long experience of these difficulties. I accept the claimant's evidence on this point.

114. As above, the claimant has no formal diagnosis for dyslexia/ADHD. There could be a range of reasons for her presentation with processing weaknesses/difficulties as at July 2023. I cannot draw an inference or conclusion that the claimant has dyslexia or ADHD based on the evidence available to me. The Halycon report is clear that a definitive diagnosis needs to be provided by a doctor. The claimant refers to dyslexia and ADHD as learning disabilities. The report refers to dyslexia and ADHD as specific learning difficulties. I am further mindful that a person may be assessed as having dyslexia but that having this condition does not automatically mean that a person would meet the definition of disability under the Equality Act 2010.
115. I am required to consider whether any impairments have a substantial adverse effect in line with the definition of disability under the Equality Act 2010. I am satisfied that the processing weaknesses identified have an effect on the claimant's ability to carry out activities such as reading which is considered a normal day-to-day activity and that this effect is adverse.
116. The claimant has not set out in any detail or provided any real evidence of her experience of these difficulties and the effect they have on her. She states that communications are an area that is difficult to manage and to needing extra time to process and retain information. The Guidance sets out that it can be reasonable to consider whether a person might have reasonable coping strategies such that the effect is not to be considered substantial. I have very little evidence available to me on which I can assess whether any effect is a substantial adverse effect. The only evidence as to whether or not the adverse effect experienced is substantial available to me is as provided in the Halycon report given the lack of detail in the claimant's written statement. Based on the tests conducted within the remit restricted to the educational setting, the Halycon report recommended the claimant be allowed 25% extra time for exams. I find that impact is certainly more than minor or trivial. The need for 25% extra time is however indicative that the adverse effect of her processing weaknesses is substantial in that by comparison with persons not suffering that effect she requires 25% more time for an activity.
117. I note that 'persistent and significant difficulty in reading or understanding written material where this is in the person's native written language, for example because of a mental impairment, or learning disability' is provided as an illustrative example in the Guidance of an effect of an impairment in isolation which, if experienced by a person, it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities.
118. In all the circumstances, I have concluded that it is reasonable to find on the available evidence and by drawing reasonable inferences that the claimant's processing weaknesses has a substantial adverse effect on her ability to carry out certain normal day-to-day activities.

119. I have also reflected upon whether this substantial adverse effect is long-term. I found the claimant persuasive in her evidence about these difficulties being there for her since childhood. There are limitations with the evidence given there is no real or concrete evidence as to the extent of presentation of these difficulties throughout the claimant's life or indeed during her employment. I do find it of probative value that the claimant does not mention this in her claim form or particulars of claim. I have however concluded in light of all the evidence that it is more likely than not that these substantial adverse effects are long-term.
120. On that basis alone, I therefore find that the claimant was disabled within the meaning of the Equality Act 2010 at the time of the events complained of.
121. Accordingly, the claimant is not a disabled person within the meaning of the Equality Act 2010 because of anxiety/panic disorder, dyslexia or ADHD or clinical depression.
122. The claimant is a disabled person within the meaning of the Equality Act 2020 because of weakness in working memory, processing of phonological information and reading comprehension.

**Tribunal Judge Peer
Date 15 January 2024**

Sent to the parties on:

15/01/2024

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For the Tribunals Office

Note

Reasons for the judgment were given orally at the hearing. Written reasons will not be provided unless a party asked for them at the hearing or a party makes a written request within 14 days of the sending of this written record of the decision.

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