Appeal No. UKEAT/0150/18/JOJ

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 7th December 2018

Before

THE HONOURABLE MR JUSTICE CHOUDHURY

MS V BRANNEY

MISS S M WILSON CBE

MRS M LINSLEY — APPELLANT

COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOM — RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MR ANTOINE TINNION (of Counsel) Instructed by: Paul Doran Law Churchill House 12 Mosley Street Newcastle-Upon-Tyne NE1 1DE
For the Respondent	MR ANDREW WEBSTER (of Counsel) Instructed by: Government Legal Department One Kemble Street London WC2B 4TS

SUMMARY

DISABILITY DISCRIMINATION – Reasonable adjustments

The Tribunal erred in its approach to the Respondent's policy on parking, which was clearly a relevant factor to be taken into account in determining the claim on reasonable adjustments. The Tribunal also erred in its assessment of the reasonableness of the adjustment in question in that it failed to focus on the particular disadvantage suffered by the Claimant, namely the stress of having to look for a parking place.

The case would be remitted to the Tribunal to reconsider the reasonable adjustment issue.

THE HONOURABLE MR JUSTICE CHOUDHURY

1. The Appellant, to whom we shall refer as the Claimant, as she was below, appeals against the Decision of the Employment Tribunal sitting in North Shields, dismissing her claim that the Respondent had failed to make a reasonable adjustment in respect of her disability.

Factual background

2. The Claimant has ulcerative colitis, which was accepted in this case as amounting to a disability within the meaning of section 6 of the **Equality Act 2010**. The condition can manifest itself in an unpredictable, sudden and urgent need for a bowel movement, and can be aggravated by stress. The Claimant commenced working for the Respondent in 2001. She has at all material times driven to and from work in her own vehicle. Between 2011 and 2012, the Claimant worked at the Respondent's Benton Park View site in Newcastle-upon-Tyne. This site is some 17 miles from her home.

3. Following a visit to the Respondent's Occupational Health Service on 18 April 2012, the Claimant was declared fit for her full range of duties, but it was stated that, "She would benefit from a car park space to avoid the stress of looking for a place to park, which aggravated her symptoms". A similar recommendation was made by Occupational Health following a further visit in about July of that year. No dedicated parking space was, however, provided at the Benton Park View site at that time.

4. Between 2012 and 2015, the Claimant worked at another of the Respondent's sites at Weardale House, Washington. This site was closer to home. The Claimant was issued with a reasonable adjustment 'passport' which recorded various adjustments made for her; these

included the provision of a reserved parking space and also provision for a workstation located near to a toilet. The Claimant was provided with a reserved parking bay at Weardale House. Weardale House was closed in September 2015. The Claimant then moved to another site in Waterview Park, Washington, where she worked as a caseworker. The Claimant was also allocated a disabled parking space at Waterview Park. It should be noted that the Claimant had, at that time, a blue badge entitling her to park in disabled parking bays. However, that blue badge expired at the end of November 2015 and the Claimant did not seek to renew her blue badge after that time.

5. A further Occupational Health report was prepared in September 2015, "To address issues relating to the Claimant's need for a dedicated parking place." That report advised that the Claimant "would benefit from access to a parking space on the site near to one of the buildings so that she can get to the toilet facilities urgently, should she need to, due to physical symptoms related to her ulcerative colitis". On 9 December 2015, the Claimant's request for a reserved parking space at Waterview Park was granted for a further year. A further Occupational Health report that month stated that the Claimant should be provided with a reserved parking space, should be placed near to the toilet where she was working, and have a less confrontational role. The possibility of having to conduct confrontational discussions with service users was a potential source of stress for the Claimant.

6. In September 2016, the Claimant commenced a period of sickness absence. Whilst on leave the Claimant successfully applied for the position of Business Analyst. This post was located at the Benton Park View site. The Claimant commenced working at the Benton Park View site in November 2016. The Tribunal described the Benton Park View site in its Judgment at paragraph 83 as follows:

> **"83. Benton Park View is a large site operated by the Respondent where about 8000 employees work. There are two entrances that give access by roadways and walkways to a series of offices. Some parts of the road system are used on a one-way basis. Around the offices, there are numerous car parks. At both entrances, there are security offices. Once cleared to enter the site, access to the car parks and the offices is unlimited. Near the main entrance, there is a reception area with parking areas restricted to use by visitors. Most of the other parking spaces are on a 'first come' basis but some parking bays have dedicated users and one car park is limited to essential users. Parking is normally restricted to the car parks but some on-road parking is permitted for delivery vehicles. There are toilets in the reception area and near the entrances of all of the office buildings. Near the office where the Claimant works, there are laybys on both sides of the road where limited parking is available".**

7. The Respondent has a national policy on the use of its car parks. That policy gives priority to those staff members requiring a parking space as a reasonable adjustment under the **Equality Act 2010**. This covers blue badge holders and non-blue badge holders if Occupational Health have recommended the provision of parking space as a reasonable adjustment. There is also a local policy on parking at Benton Park View which reflects the terms of the national policy in that priority is given to staff requiring a car parking space as a reasonable adjustment.

8. On 27 January 2017, a further Occupational Health report on the Claimant identified stress as an aggravating factor and stated, "Due to the nature of her condition Mrs Linsley requires quick access to the toilet. The lengthy commute can, therefore, cause issues with continence, especially when her symptoms are more acute. This itself can create issues with anxiety and aggravate her condition". There was a further Occupational Health report on 14 March 2017 which referred to the fact that the Claimant is currently off work due to stress, that the trigger to her stress is work related and that symptoms of this can be made worse by stress. The report referred to the fact that the Claimant felt management had not put in place recommendations made and in not doing so this had caused her current symptoms and was the "sole reason" for her absence. A meeting with management was recommended to resolve perceived issues and it was also recommended that free access to toilet facilities and flexible working arrangements be provided.

9. The report also stated that the Claimant perceives that her management have failed to implement reasonable adjustments to support her in managing her underlying medical condition in the workplace. In response to a question asking whether there were likely to be further absences due to her underlying condition, the report answered that her underlying condition of ulcerative colitis is likely to persist in the long-term and that "stress can make the symptoms of this condition worse and therefore managing any potential stress will be helpful."

10. It is also relevant to note that there was a further reasonable adjustment passport dated 17 February 2017 in which it was stated that one of the agreed adjustments was:

> **"Provision of a disabled car park space agreed at BVP office, despite not being a blue badge holder, agreed that a car parking space will be provided at Essential User Bays which are situated at Ainthorpe Gardens should Mandy not get space on site when she arrives at work. If Mandy parks in these bays she will have to sign the relevant paperwork at security."**

11. The Claimant had commenced requesting a dedicated parking space at Benton Park View from about October 2016. She repeated her request on a number of occasions, however, the Respondent did not provide a dedicated parking space for the Claimant. Instead, the Respondent made alternative provisions for the Claimant. It appears that all of the managers who sought to assist the Claimant with the various adjustments being sought, only one of which was dedicated parking, operated in ignorance of the parking policies mentioned above. The arrangements that were made for the Claimant were described by the Tribunal as follows (see paragraph 94 of the Judgment):

> **"In due course, Mr Atkinson became aware of the parking problem. Although Mr Atkinson normally left such matters to those with immediate responsibility for the employee involved, he took a personal interest in the Claimant's problem over obtaining a dedicated parking bay. He was aware of the Claimant's condition and that she had had a dedicated bay at Washington. He had the impression that dedicated bays were only provided on medical grounds to blue badge holders. However, he contacted Kath Scott from the PT Operations Customer Services Delivery Area and asked that an exception be made for the Claimant. In response, he was informed that an exception would be made but only so that the Claimant could use an essential user parking bay, which was near the entrance normally used by the Claimant, whenever she wished. This would be cleared with security so that the Claimant only had to sign in when using one of these bays. The Claimant would not have to declare her condition when using a space and security would not be made aware of it. It was also arranged that the Claimant could park in a layby near the offices in an emergency. Normally, this would incur a parking violation but security would be made aware of the Claimant's vehicle registration number so that this did not**

occur. However, the Claimant would be required to move the vehicle when she was able. Mr Atkinson considered that this was an achievement in that he thought he had obtained a concession that was a departure from normal practice. It did not appear that he had ever read the actual policies relating to the car park."

12. It is not in dispute that none of these arrangements guaranteed the Claimant a parking space at the site. It should be noted that there can be no doubt, based on the Tribunal's findings, that the Claimant was treated with a considerable degree of sympathy and consideration by the Respondent, and that it made many adjustments to accommodate her condition. These included, in no particular order, changes to her role, reductions in her hours, locating her workstation close to the toilets, permitting a phased return to work after absences, allowing her to escalate telephone calls should they become confrontational, providing regular breaks to use the toilet, discounting disability-related sickness absence and providing flexible working hours.

13. The Claimant, however, continued to be aggrieved by the failure to provide a dedicated parking space. We have been taken to an email written by the Claimant on 7 March 2017 addressed to the Chief Executive of Her Majesty's Revenue and Customs, in which the Claimant said that she writes in "utter desperation". She refers to the fact that reasonable adjustments have been recommended in six previous Occupational Health reports, but that these had not been implemented. She refers to the recommendation for a reserved car parking space and concludes by saying, "All I ask is that these adjustments are put in place, being able to work out of an office near home and have a car parking space, which I have had in my previous Washington office without a lengthy Tribunal case or yet another grievance to facilitate my need to attend work".

14. It is therefore clear that the Claimant continued to be aggrieved by the failure to provide a dedicated parking space. On 12 April 2017, the Claimant issued proceedings in the Newcastle Employment Tribunal complaining that she had been discriminated against on the grounds of disability, in that the Respondent had failed to make reasonable adjustments and that she had

been subjected to harassment. Whilst the Claimant's ET1 did not refer specifically to the stress associated with looking for a parking space, in a document setting out further particulars the Claimant stated that if there were no spaces readily available when she arrived at work this increased her anxiety, which, in turn, aggravates her condition. She also mentioned that, as she would often get to work later than other staff due to morning problems with her condition, this put her at a substantial disadvantage in having to park a long way from the toilets as other staff would already have parked near the entrances that were close to the toilets. Whilst the Claimant could park in laybys around the site when she urgently needed the toilet, she would have to return to her car to drive back around the site to park up in a different location.

15. It is also fair to note, before leaving the factual summary, that the Tribunal found the Claimant's evidence to be unsatisfactory in some respects. In particular, they considered that her reasons for not seeking to renew her blue badge were, "contradictory and confused".

The Tribunal's Decision

16. The Claimant had initially sought to rely on no fewer than 57 separate allegations against the Respondent. However, on day four of the five-day Hearing, the Claimant withdrew her complaints in respect of all but four of those 57 allegations. The four remaining allegations were that the Respondent had failed to make reasonable adjustments in respect of parking arrangements and working from home, and that the Claimant had been subjected to harassment on two occasions.

17. In relation to the claim that there had been a failure to make a reasonable adjustment in respect of parking, the Tribunal held as follows (see paragraphs 137 to 144 of the Judgment):

> **"137. The big thing for the Claimant is car parking. Without considering the merits of the case, the Claimant declined to do the one thing that might have solved all of her problems - she failed to seek a blue badge having already held one. Her reasons for this were contradictory and**

confused. Obviously, this does not remove the need for the Respondent to provide reasonable adjustments but it does raise questions over the Claimant's motivation and what she was trying to achieve.

138. Full details were not made available but it was clear that the Claimant also faced problems outside work which caused her stress. These included changes in working hours to look after her father and the still born birth of her niece's baby. Given the apparent impact of stress on the Claimant, these matters must have been contributing factors in affecting her condition. Again, this does not detract from the Respondent's duties to the Claimant but it may assist in understanding her reactions.

139. The purpose of a reasonable adjustment is to put a disabled person in a similar position to that which he/she would have been in but for the disability.

140. The first live issue concerns the Respondent's alleged 'failure to provide a dedicated/reserved/disabled parking bay at Benton Park View'. The Claimant sets out various provisions, criteria and practices which she contends are relevant. In essence, she contends that she was required to attend work without being allowed access to a dedicated reserved parking space and being denied access to such a space. It is not in dispute that she was allowed access to the site in a vehicle and she was allowed to park on the site, if space was available.

141. It has to be accepted that the Respondent did not provide such a space. The question for the Tribunal was to decide whether the Claimant made a reasonable adjustment having regard to the Claimant's disability. The Claimant sought such a space because she alleged that her condition required that she had easy access to a toilet in an emergency situation on arrival at her place of work. She claimed that a dedicated parking bay would reduce her anxiety which exacerbated her condition. The Tribunal did not have the benefit of any medical evidence, other than the occupational health reports, which were based on information supplied by the Claimant. The Tribunal accepted that the Claimant might require access to a toilet when she entered the Respondent's site. She was allowed to park in any available space, wherever it was situated, which could be close to one of the buildings, all of which had toilets. She was also allowed to use one of the laybys, which were closer to the buildings and the toilets than the car parks. Although, she then had to move the vehicle, she was allowed access to the essential user parking bays, where there were likely to be spaces. If she was accused of breaching parking regulations, management had undertaken to deal with this on her behalf.

142. The Claimant sought a dedicated parking place. The Tribunal was not satisfied that this was the only possible reasonable adjustment or that it was necessarily the best solution. In an emergency, the dedicated bay might not be in the best position - should it be near an entrance, if so, which one, should it be near the Claimant's office or should it just be near a building with a toilet? Accordingly, access to any parking space might actually be an advantage and this would be an option even with a dedicated space. Alternatively, parking in a layby might be helpful if this put the Claimant nearer a toilet. This was allowed by the Respondent. Support in dealing with any complaint about parking violations was also available. Finally, the Claimant was allowed access to parking bays in the essential user parking area, which was at the Claimant's preferred entrance to the site.

143. The Respondent had clearly failed to comply with its own policy on parking space allocation. However, it was not argued and the Tribunal did not find that this was a contractual right. The rights under the policy were discretionary and could not be depended upon.

144. The Tribunal considered the evidence provided by the Claimant and finds that she established facts that supported her allegations in this regard. The Claimant was advised by occupational health that she should have a reserved parking space and one was not provided at Benton Park View, despite this being a breach of the Respondent's own policies. It follows from the above that there are facts from which the Tribunal could decide in the absence of any other explanation that the Respondent contravened the provision concerned so that the provisions of Section 136 of the EA do apply. However, the Tribunal finds that the Respondent did make a reasonable adjustment in the arrangements that it made for the Claimant at Benton Park View. It may not have been the best and it was not what the Claimant wanted but it was sufficient for the Respondent to discharge its obligations to the Claimant under the EA."

18. The Claimant's claim in that regard was therefore dismissed, and the Claimant's other claims were also dismissed.

The Legal Framework

19. Section 20 of the **Equality Act 2010** provides:

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

The grounds of appeal

20. Permission was granted to proceed with four grounds of Appeal and these are taken in the order that they appear in the Claimant's skeleton argument as that appeared to us to reflect the relative importance and strength of the grounds relied upon in the original Notice of Appeal.

(a) Ground 3: The Tribunal erred in law by holding that the Claimant could not depend on the Respondent's own parking policies because they were discretionary and not contractual in effect.

(b) Ground 2: The Tribunal erred in law and breached its duty to give reasons by failing to address the Claimant's case that providing a reserved parking space at Benton Park View would eliminate the stress caused to the Claimant for having to look for a parking space at work, which would be likely to aggravate her colitis symptoms.

(c) Ground 4: The Tribunal erred in law in that it applied the wrong test in determining whether the adjustment sought was reasonable by considering whether it was the "only possible" reasonable adjustment or if it was necessarily the best solution.

(d) Ground 1: The Tribunal's decision to dismiss the Claimant's claim in respect of reasonable adjustments was perverse in light of the evidence and other findings made by the Tribunal.

21. Each of these grounds is dealt with in turn.

Ground 3 – The failure to apply policy

22. Mr Tinnion, who appears on behalf of the Claimant, makes a number of points in support of this ground of appeal. These may be summarised as follows. First, he says that, as it is settled law that an employer may be required to adjust an existing policy to accommodate a disabled employee's needs, the application of the employer's own policy without adjustment must itself be capable of being a reasonable adjustment. He refers in this regard to the cases of **Chivas Brothers Ltd v Christiansen** [2018] UKEAT/0017/16/JW and **Griffiths v Secretary of State for Work and Pensions** [2015] EWCA Civ 1265. Secondly, he says there was no basis in law for the Tribunal to discount the effect of the policy by saying that it was non-contractual and discretionary. Where an employer's own policy requires a particular adjustment to be made, that would normally be highly relevant to the Tribunal's assessment of whether the adjustment sought is reasonable, and an employer departing from its policy should normally have to give cogent reasons for doing so.

23. Mr Webster, for the Respondent, reminds us that when considering whether the Respondent has taken such steps as it was reasonable to have to take to avoid the substantial disadvantage, a holistic approach is required. He referred to the cases of **Burke v The College of Law and another** [2012] EWCA Civ 37, at paragraphs 32-37, and **The Home Office (UK Visas and Immigration) v Kuranchie** UKEAT/0202/16/BA. He submits that the Tribunal was well aware of the Respondent's policy and noted that the Respondent was in breach. However,

he submits that it does not inevitably follow that because the Respondent breached its own policy, it must thereby also have breached its duty to make reasonable adjustments. Mr Webster accepts that the Tribunal's reference to the policy being non-contractual was perhaps unhelpful, but that nevertheless it is evident from a fair reading of the whole of the Reasons that the Tribunal did not simply discount the relevance of the policy by reference to non-contractual status and did consider the reasonableness of the adjustments in light of the evidence as to the Claimant's medical needs. In relation to the latter, Mr Webster points out that there was a lack of medical evidence and that the only evidence as to her needs was that which she told Occupational Health. Moreover, he notes that the seriousness of the Claimant's condition had apparently reduced by late 2016, which is why the OH reports at that stage, and in early 2017, do not specifically recommend a dedicated parking space. Those are matters which he says the Tribunal was entitled to and did take into account.

Ground 3 – Discussion

24. The Tribunal was required to consider whether the provision of a dedicated parking space was a step which it was reasonable for the Respondent to have to take to avoid the disadvantage in question. In answering that question, the Tribunal was required to consider all of the relevant facts. One such relevant fact will be the existence of any policy which bears upon the particular adjustment sought. Here there was just such a policy, the clear effect of which was that a parking space should be provided to an employee requiring that adjustment upon the recommendation of Occupational Health. An adjustment which is recommended in an employer's own policy is one that is likely, at least as a starting point, to be a reasonable adjustment to make. That may not always be the case. There may be a good reason, in a particular case, to depart from the policy. However, one would expect in such a case that the employer would provide a good reason for departing from the policy.

25. The Tribunal in this case expressly found that the Respondent was in breach of its own policy. That would appear to suggest that the Tribunal accepted that, based upon Occupational Health recommendations, a parking space should have been provided to the Claimant at the Benton Park View site, but was not. The Tribunal did not therefore appear to consider that the absence of specific reference in the later reports to the need for a dedicated parking space meant that that recommendation ceased to apply. It is clear therefore, as the Tribunal found, that the employer did depart from its own policy. What was the reason for departing from it? The only explanation in the present case for departing from the policy would appear to be that the relevant managers acted in ignorance of it. That is not a good reason for not applying the policy to the Claimant.

26. In those circumstances, the policy is a factor to which considerable weight may be attached in assessing the reasonableness of the adjustment, not least because, if the policy suggests a particular step, it may be inferred that the employer considers that step to be a practical one to take. The only reason given by the Tribunal for apparently not giving the policy the weight it was due was that it was non-contractual and discretionary. Mr Webster sought to explain that away as merely unhelpful phraseology, which does not detract from the fact that the policy was taken into account. However, it seems to us that by referring to the policy as non-contractual, the Tribunal was doing more than simply expressing itself inelegantly; it had in fact incorrectly diminished the policy's significance in the analysis which it was required to conduct. The policy does not need to be contractual in effect for it to be relevant in determining whether an adjustment which it recommends is reasonable or not. The Tribunal also stated that the policy was not one on which the Claimant could depend, as it was discretionary. However, that too would appear to diminish the significance of the policy for unjustified reasons. It was not found in this case that

the Respondent gave any active consideration or exercised any discretion as to why the policy should not apply in the Claimant's case.

27. It seems to us that had the Tribunal given the policy the weight that would normally attach to a policy that is as directly relevant as this one was, its conclusion as to the reasonableness of the adjustments that were made could have been different. We note in this regard that the Code of Practice on Employment refers, at paragraph 6.28, to the practicability of the step as being one of the factors to be taken into account when deciding whether taking that step is reasonable. The Tribunal indicated that it had had regard to the Code of Practice but no specific mention is made of this paragraph. Whilst the Tribunal is not required in a Judgment to set out the specific provision of the Code that have been considered, it seems to us that if it had considered paragraph 6.28, it would have recognised the significance of the policy.

28. For these reasons we agree with the Mr Tinnion's submission that the Tribunal's approach to the Respondent's policy demonstrates an error of law, and Ground 3 of the Appeal is therefore upheld.

Ground 2 – Error in failing to recognise that a reserved parking space would eliminate the stress caused by having to search for a parking space

29. Mr Tinnion's submission on this ground is that the particular disadvantage being suffered by the Claimant was the stress resulting from having to find a parking space and that the Tribunal failed to focus on that particular disadvantage when considering whether the adjustments that were made were reasonable. He accepts that adjustments were made that gave the Claimant various options in terms of parking and, in some cases, these would enable her to park nearer to toilet facilities. However, he submits that none of these adjustments alleviated the particular

disadvantage of having to look for a space which might not always be available. The reserved parking space, on the other hand, would guarantee the elimination of this particular source of stress.

30. Mr Webster submitted that whilst the earlier Occupational Health reports did refer to the stress of looking for a place to park, the later reports produced after her return to Benton Park View, only mentioned the need to be near a toilet. That was a function, he submits, of the varying severity of the Claimant's condition and that this was a fact which the Tribunal was entitled to take into account, particularly having regard to the absence of any independent medical evidence as to the effect of stress on the Claimant. Furthermore, Mr Webster submitted that the distinction which the Claimant seeks to draw between stress caused by looking for a parking space when the Claimant did not need to go to the toilet and the stress caused by having to look for a parking space when she did need to go to the toilet, is a red herring; the two stressors being on the same continuum. He submitted that it is difficult to see how a stressor that is triggered at an earlier stage in the continuum can require additional adjustments to one that appears later.

Ground 2 – Discussion

31. Section 20(3) of the **Equality Act 2010** imposes a requirement on the employer, where a provision criterion and a practice puts a disabled person at a substantial disadvantage in relation to a relevant matter, to take such steps as it is reasonable to have to take to avoid, *"the disadvantage"*. It is clear that this requires a correlation between the disadvantage in question and the steps taken to alleviate that disadvantage. In order for the Tribunal to analyse the position correctly, it must have in mind the particular disadvantage that is being relied upon, otherwise the analysis as to the reasonableness of the step taken may be misdirected.

32. In the present case, it is clear to us that the Respondent was or ought to have been aware from about 2012 that looking for a parking space was a source of stress. This is referred to expressly in the April 2012 Occupational Health report. Furthermore, the Claimant had a reserved parking space at the Wearside and Waterview Park sites. These dedicated spaces had been provided to her on the strength of a number of Occupational Health reports over the years. Whilst later Occupational Health reports did not refer specifically to the stress involved in looking for a parking space, there continued to be a recommendation that stress be reduced and that the Claimant continue to have easy access to toilets. In addition, upon commencing her work at the Benton Park View site, Mr Atkinson specifically recognised that the Claimant was seeking a dedicated parking bay as, "He was aware of the Claimant's condition and that she had had a dedicated bay at Washington". This would tend to suggest that Mr Atkinson was aware that there was a specific need for a dedicated bay.

33. In these circumstances, we do not consider that the absence of an express reference to the stress involved in looking for a parking place in later Occupational Health reports meant that the Respondent was not aware of the disadvantage in question. It was always clear that one of the reasons for requesting a dedicated parking space was that it reduced stress. It is also relevant to note in this regard the Tribunal's express finding that the Respondent was in breach of its policy. As stated above, that would imply that the Tribunal accepted that there was an operative recommendation from Occupational Health for a dedicated parking space, otherwise there would be no breach.

34. We reject Mr Webster's submission as to the distinction to be drawn between stress resulting from looking for a parking place with need of going to the toilet and when not in such need. The Tribunal was clearly aware that having to search for a parking space was a separate source of stress from that caused by being too distant from a toilet when the urge to have a bowel

movement arises. Not only does the Tribunal make express reference to the 2012 Occupational Health report at paragraph 15 of the Reasons, it also notes at paragraph 141 that the Claimant, "Claimed that a dedicated parking bay would reduce her anxiety which exacerbated her condition".

35. It seems clear to us that the knowledge that there will always be a parking space reserved for the Claimant could remove a great deal of uncertainty and would avoid delay, both of which could increase stress. Had the Tribunal focused on that specific disadvantage it might have been likely to conclude that the arrangements which had been made in respect of parking, would do little to avoid that particular disadvantage. As Mr Tinnion submits, having a number of parking options none of which are guaranteed would be unlikely to eliminate the stress of having to find a parking place even though such stress might be reduced by those options. For these reasons, we conclude that Ground 2 of the Grounds of Appeal is also made out.

Ground 4 – Application of the wrong test for reasonable adjustments

36. At paragraph 142 of the Reasons the Tribunal stated that it was not satisfied that a dedicated parking place was the "only possible" reasonable adjustment or that it was "necessarily the best solution". The Claimant submits that the Tribunal thereby sought to apply the wrong test in determining whether the adjustment was reasonable. That is because there is no requirement on the Claimant to show that the adjustment sought was the only possible reasonable adjustment or that it was necessarily the best solution. In any case, submits Mr Tinnion, even if that were the correct approach, on the facts of this case, a dedicated parking space was the only adjustment that would eliminate the disadvantage in question, namely the stress resulting from the search for available parking.

37. Mr Webster submitted that there was no error in this regard, and that in stating that a dedicated parking space was not necessarily the best solution, the Tribunal simply sought to consider the adjustments that were made in light of the evidence as to the Claimant's disadvantage.

Ground 4 – Discussion

38. For any given disadvantage there may be a number of adjustments that could be made, each of which might individually be reasonable. One could, of course, also have a situation where a number of adjustments are made, each one being inadequate in isolation but the cumulative effect of which is that the adjustment, overall, is reasonable. 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 Stairlifts 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".

39. It was not necessarily incorrect for the Tribunal to say that the adjustment sought was not the only possible reasonable adjustment or that it was necessarily the best solution. Whether or not it was incorrect depends on the disadvantage in question and on the particular facts of the case. In this case, the particular disadvantage was the stress caused by having to search for a parking place. The fact is that the adjustments that were made did not address that disadvantage, but addressed a different one of ensuring that the Claimant was parked near toilet facilities. That much is clear from the Tribunal's analysis in paragraph 142 which focuses on the "ultimate" parking position and whether it is near a toilet rather than the need to avoid searching for a space at all. Had the disadvantage in question been the need to be near a toilet, then the adjustments

considered by the Tribunal might well have been reasonable. The particular disadvantage in question, as we have said, is the stress caused by having to search for a parking place. In light of that disadvantage the adjustment in question, for the reasons already considered, may not have been reasonable.

40. It is our view that whilst the Tribunal was not necessarily incorrect in using the language of possible reasonable adjustments or best solution, on the facts of this case, the Tribunal's analysis was flawed. For those reasons this ground of Appeal is also upheld.

Ground1 – Perversity

41. Given the errors of law identified above it is not necessary, in our view, to go on to consider whether the decision also crosses the high threshold of perversity.

Conclusion

42. For the Reasons set out above, it is our conclusion that the Tribunal erred in law in concluding that the adjustments made by the Respondent were reasonable. Grounds 2, 3 and 4 are therefore upheld.

Disposal

43. The matter shall be remitted to the same Tribunal to reconsider the reasonable adjustment issue.