EMPLOYMENT TRIBUNALS

Claimant		Respondent
Miss S Allanson	v	**Boots Management Services Ltd**

Heard at: Leeds by CVP **On: 13,14,15,16 April 2021**

Before: Employment Judge O'Neill

Sitting with Mr K Lannaman and Mr D Wilks

Appearance:

For the Claimant: In person assisted by Mr R Loft

For the Respondent: Mr M Brien of Counsel

JUDGMENT

1. The claim of Unfair dismissal fails and is dismissed
2. The complaint of discrimination arising from disability (S15 EQA) fails and is dismissed.
3. The complaint of failure to make reasonable adjustments (S20 and S21 EQA) fails and is dismissed.

REASONS

Overview

1. The claimant was employed as a sales assistant by Boots. Following a long period of ill-health absence, she was dismissed by reason of ill-health capability on 19 August 2019. She appealed her dismissal and her appeal was upheld and she was offered reinstatement which she refused.

Claims

2. The claimant has lodged the following claims which have been considered by the Tribunal at today's hearing.
   - unfair dismissal
   - discrimination arising from disability (S15 EQA)

- failure to make reasonable adjustments (S20 and S21 EQA)

Issues

3. The issues have been identified at the preliminary hearings before Judge Brain and Judge Lancaster. At the outset of the hearing, the parties agreed that these remained the issues and I do not repeat them here.

Law

4. In respect of unfair dismissal the relevant statutory provisions are section 98 Employment Rights Act 1996 (ERA) and S122 and S123.
5. In respect of the discrimination claims the relevant statutory provisions are section 15, section 21 and 20, section 6 Equality Act 2010 (EQA).
6. The burden of proof is on the claimant to show on the balance of probability that she has a disability within the meaning of section 6 EQA.
7. The burden of proof is on the respondent to show the reason for dismissal.
8. Equality Act 2010 Guidance on the Definition of Disability 2011.
9. Counsel for the respondent has referred to the following cases
   - West Midlands co-operative Society v Tipton 1986 AC 536
   - Taylor v OCS group Ltd 2006 ICR 1602
   - Merseyside v Taylor 1975 ICR 185
   - Polkey v AE Dayton Services Ltd [1987] UKHL 8

Evidence

10. The tribunal had before it an agreed bundle of documents paginated and indexed of 654 pages and a chronology.
11. We heard evidence from the claimant and from the following respondent witnesses

    Ms J Poskitt - the dismissing officer

    Ms K Cook - the store manager

    Ms K Roden - the appeals officer

12. The claimant and the witnesses had all produced written statements which we have taken as read and have been cross-examined.

Findings of Fact

13. Having considered all of the evidence both oral and documentary the Tribunal makes the following findings of fact on the balance of probabilities which are relevant to the issues to be determined. Where we heard or read evidence on matters on which we make no finding or do not make a finding to the same level of detail as the evidence presented to us that reflects the extent to which we consider the particular matter assisted us in determining the issues. Some of our findings are also set out in our conclusions below in an attempt to

avoid unnecessary repetition. Conversely, some of our conclusions are set out in the findings of fact adjacent to those findings.

14. The claimant was employed as an assistant for 13 years from June 2006 until her dismissal on the grounds of capability on 19 August 2019. The parties accept that the effective date of termination was 19 August 2019.

15. At the outset of this hearing and at the previous preliminary hearings, the claimant had agreed that the reason for the dismissal was capability on the grounds of ill-health. During his cross examination of the respondent witnesses Mr Loft did not challenge them as to the reason for the dismissal. During his submission Mr Loft appeared to suggest that capability was not the real reason for the dismissal. For the avoidance of doubt, the Tribunal make an express finding that capability on the grounds of ill-health was the reason for dismissal.

16. On 4 September 2018 the claimant commenced a period of ill-health absence because of a stress fracture to her foot. We find that this foot injury is unrelated to any other injury or impairment of the claimant and was the sole reason for her absence from work in the period 4 September 2018 until 11 February 2019.

17. On 11 February 2019 (shortly before she was due to return to work) the claimant suffered a most unfortunate injury in an accident when she fell from a bus damaging her hand and fracturing her shoulder. We find that the aggregated shoulder injury was the sole reason for her absence from work from 11 February 2019 until her dismissal on 19 August 2019. In respect of this finding, we have taken into account the GP notes and the fit notes provided by the GP which in this period relate exclusively to the shoulder injury and make no mention of any other impairment and in particular no mental impairment.

18. By March 2019 the claimant was making good progress (Mr Joshi letter to the GP of 20 March 2019); by May the letter 15 May 2019 from Mr T Robinson to the GP says that the fracture is healed almost completely with very good anatomical alignment. At that point we find that the claimant had made a recovery from the fracture itself. There is also a letter on the file to indicate she has made a full recovery in respect of a hand injury.

19. However, the letter from Mr Mahmoud to the GP dated 27 June 2019 confirms that the claimant is suffering from a post-traumatic left frozen shoulder for which he has given her a steroid injection. From this letter we infer that the frozen shoulder impairment is related to the shoulder fracture and the absences may be aggregated for the purposes of section 6 EQA.

20. On 14 June 2019 the claimant had a meeting with her new store manager Kirsty Cook, following which she was referred to the occupational health Department, which in Boots is called ‘Colleague health’ and is operated by Nuffield Health. A telephone assessment took place on 22 July 2019 and a letter of the same date was sent to Ms Cook describing the restrictions to the shoulder movement which the claimant had reported. There was no physical examination by the author of the report.

21. The Tribunal looked at the letters from those treating the claimant and in particular those of Mr Joshi, Mr Robinson, Mr Mahmoud and also Mr Roy, who wrote on 4 September 2019. The tribunal finds the picture painted by these medical practitioners who are treating the claimant as a very positive one reporting good progress. The tribunal also finds from the descriptions given that any remaining impairment is relatively modest. Mr Roy in his letter writes

that the pain has resolved to some extent, leaving the claimant with some stiffness and confirms that she has 'an element of frozen shoulder'. He states that she is otherwise fit and well. The medical evidence before us does not indicate as at the date of dismissal that this aggregated shoulder injury is going to be an impairment which is likely to have a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities lasting 12 months or more, i.e. until 11 February 2020 or beyond.

22. In the 13 years she has worked for Boots the Claimant has had a number of absences from work for various psychological conditions. However, we cannot find in the notes, any referral to a psychiatrist or any psychiatric report.
23. The Claimant had a long absence from work in 2009. The sick notes refer to stress and anxiety. There are also other physical conditions in the GP notes in this period. She had been referred to Dr Dagens at Boots occupational health service who prepared a report dated 2 February 2010 and he refers to 'difficulties with anxiety and depression'' but gives no more specific a diagnosis. At that stage he did not believe the claimant's condition to be a disability within the meaning of section 6. The sick notes refer to stress and anxiety. The Claimant was referred to a psychology unit and received counselling and was given help in developing strategies to enable her to return to work. She was also prescribed medication.
24. Following the sudden and tragic death of her former husband the claimant had another long absence in 2010. This was variously described as grief reaction, stress reaction, stress and anxiety. The claimant's reasons for absence also included gynaecological conditions and tennis elbow as recorded in the return-to-work interview on 22 February 2010.
25. Someone has inserted in a return-to-work form dated 17 January 2011 that the Claimant had had 3 absences in the previous twelve months of which two, the period from 18 January 2010 to 21 February 2010 and 24 May 2010 to 13 November 2011 states Mental Illness / Depression.
26. The return-to-work interview dated 15 February 2016, following an absence from 11 July 2015 to 13 February 2016 records the reason for the absence as stress-related illness with an underlying stomach problem.
27. The return-to-work interview dated 13 September 2017, following a period of absence from 16 May 2017 to 12 September 2017 records, stress/anxiety.
28. In 2018 the significant absence appears to relate to an ongoing back problem. In 2019 the significant absence relates to back and foot pain.
29. All the fit notes from 4 September 2018 relate to physical problems with the claimant's foot and shoulder and do not refer to mental illness of any kind.
30. The claimant has produced GP notes going back many years. It is clear from those notes and from her testimony that she has had an extraordinarily difficult life and the Tribunal has the greatest sympathy for her in respect of many of the experiences recorded in the notes. The notes also record a wide range of ongoing different physical conditions of various kinds and indicates that she has had a series of significant physical conditions. We also infer from the GP notes that difficult situations at home and changes or difficulties at work may provoke a stress reaction in the claimant who appears not to be very resilient although we recognise her life has been very difficult at times. In 2019 the Claimant had

had a long period without medication and stress does not appear in her GP notes until about June.

31. We are not satisfied that we have had before us evidence which shows a common diagnosis which draws together the separate episodes of stress and/or anxiety and/or depression as being related or a recurring condition.
32. In any event we find the reason for absence from 4 June 2018 to the 19 August 2019, began with the claimant's foot injury and continued with her shoulder injury.
33. There were two Boots stores in Hull, Hull Prospect and St Stephens. During the course of 2018 -19 Prospect was transferred in its entirety to St Stephen. This was inevitably a very busy period for the respondent and its managers. In addition, the manager of Prospect (Charlotte) was pregnant and went into labour on the day in February that Ms Cook arrived as manager on secondment to begin a period of handover. Ms Cook, who was acting manager at prospect from February 2019 accepts that she was focused on the move and the trading position of the store and allowed the time table envisaged in the company's long-term sick policy to slip. Under the long-term sickness absence policy there should be a stage I support meeting at an early stage and by the time a colleague's absence reaches four weeks. If a colleague's absence reaches 18 weeks there should be a stage 2 long term absence review. At 26 weeks absence there should be a stage 3 capability review meeting at which dismissal is a possible outcome. Although the timetable was not followed the respondent conducted each of the three stages.
34. In February 2019 there was an informal and unrecorded meeting with the claimant. The first recorded support meeting took place on 29 March 2019 meeting with Ms Cook (Stage 1). There was an absence check meeting with Ms Cook and the claimant on 14 June 2019. Occupational health assessment by telephone was made on 22 July 2019. On the 26 July 2019 Ms Cook conducted a formal long term absence review meeting (Stage 2). The capability meeting took place on 19 August 2019 with Ms Poskitt (Stage 3) at which the claimant was dismissed. The claimant appealed on 30 August 2019. The appeal was heard by Ms Rogan on 17 October 2019 and 19 November 2019. The claimant was offered reinstatement which she declined.
35. As each of the meetings Stages 1 to 3. The claimant remained off work and was unable to provide a likely return date. The long-term sickness policy provides 'we will work together to identify any reasonable adjustments we can make to your workplace or your working arrangements to help you return to work'.
36. At the absence check meeting on 14 June 2019, the claimant remained unfit for work and was unable to provide a likely return date. At that meeting, Ms Cook introduced a discussion about alternative duties and suggested till work, tasking and greeting. The claimant rejected all these suggestions and continues to assert that they are unsuitable. The claimant was not prepared to undertake till work because there had been an incident in the past, for which she had been disciplined following a test purchase which she had mishandled. It was not at all clear what Ms Cook intended to mean by tasking and at the tribunal this remained unclear to the panel members, notwithstanding that she was asked to explain what she meant by this, it would seem that tasking meant doing whatever shop floor work she was asked to do at the time, to use the common

phrase, 'a general gofer'. Greeting is a recognised store role, it comprises meeting customers at the entrance, offering them a basket and offering directions or other help. The claimant says this role was not suitable because she did not feel comfortable in approaching customers and she would find this role confrontational and she feared she would be rude to customers as a consequence.

37. At this stage 2 meeting on 26 July the claimant said that she did not foresee a return by September. The meeting notes show that there was no specific discussion about reasonable adjustments to the workplace arrangements to assist the claimant in returning. Ms Cook refers to the policy and says 'we could look at reducing hours, have to do risk assessments' but she took no steps to enter into a detailed discussion about adjustments at that meeting. It would appear from the notes that at that stage she was leaving that aspect as a discussion for the capability meeting.

38. The capability meeting took place on 19 August 2019 with Ms Poskitt, the outcome of which was the dismissal of the claimant. At this meeting, Ms Poskitt took no steps to explore ways of supporting the claimant in a return to work. Throughout the meeting, she pressed the claimant to provide a foreseeable return period. The claimant said in terms that she was unable to do so unless she knew what she was going to be required to do. Ms Poskitt's position was unless and until she had a timescale for a return to work within a foreseeable period, she was unable to explore adjustments. The parties therefore reached a stalemate. Miss Poskitt told the tribunal that she did not put her mind to ways and means of breaking this logjam. The tribunal find that as the employer and given the aims of the Boots long term sick and Rehabilitation policies, it was her responsibility to explore ways of doing so and under the rehabilitation policy and the long-term sickness policy, she had a duty to explore adjustments and ways and means of supporting the claimant's return to work but she failed to do so. So scant was her understanding of the claimant's position that she misunderstood that the claimant, when referring to walking the store, was referring to something other than the greeting role which she has rejected previously with Ms Cook.

39. At the time of the capability meeting on 19 August 2019. The claimant had a consultant's appointment with Mr Roy booked for 4 September 2019. This was expressly pointed out to Ms Poskitt and the claimant asked in terms for an outline rehabilitation plan to put to the consultant for his advice. The tribunal finds that that was a sensible and practical suggestion, and that a reasonable employer acting reasonably, would not have dismissed without ascertaining from the claimant's medical advisers what she might be capable of doing on a return in the near future and what her limitations might be. Ms Poskitt accepts that the respondent's occupational health report of 22 July 2019, was of little assistance to her and in terms of the prognosis and prospects of return the OH report deferred to the claimant's own medical advisers (specifically the GP but Ms Poskitt conceded that would apply equally to the consultant).

40. About 10 years earlier Ms Poskitt had been the claimant's store manager and the claimant told the tribunal that Ms Poskitt should not have dealt with the capability meeting because of a conflict of interest. The claimant says that Ms Poskitt upset her at the time of her former husband's death by denying her as much time off as she expected, or requested on the basis that Ms Poskitt asserted that the company bereavement policy did not extend to former

partners. The claimant says it was her intention to lodge a grievance about Ms Poskitt but she did not do so and by the time she returned from her long-term sickness absence, Ms Poskitt had moved to another store. The claimant relies on a return-to-work meeting with her team manager Ali Ward to have put Ms Poskitt on notice of a likely complaint. We accept Ms Poskitt's evidence that she had no notice of any likely complaint through Ms Ward or otherwise. As we understand it from the claimant's own evidence Ms Poskitt had left the store by the time of the return-to-work interview with Ali Ward. In addition, we accept Ms Poskitt's evidence that all this happened 10 years ago and although it may be still in the mind of the claimant, it was water under the bridge for Ms Poskitt. We also note that no reference to unfairness by reason of such a conflict appears in the appeal letter, the ET1 or in the records of the two preliminary hearings. We do not find that there was a conflict of interest in this matter or that Ms Poskitt acted in bad faith.

41. We also accept Ms Poskitt's evidence as to the feasibility of the proposal made by the claimant when she suggested 'walking about seeing customers, I could possibly do that'. Ms Posskitt told us that such a role would have to be made more specific and it would not be practicable, even as a temporary measure, to simply allow someone to walk about the store. Such a role might be feasible, but would have to be elaborated upon to include specific tasks such as promoting the Boots advantage card by handing out leaflets and encouraging customers to take out such a card. Ms Poskitt could not envisage a role built around 'walking about seeing customers' which was likely to be acceptable to both the respondent and the claimant and which was less confrontational than the greeting role suggested by Ms Cook.

42. The claimant appealed her dismissal. The appeal was heard by Ms Roden. Ms Roden conducted the hearing fairly and with an open mind and offered reinstatement with a phased return to be discussed with the Manager Charlotte (who had returned from maternity leave and had not been involved in the dismissal) and a further check in with Colleague Health. Ms Roden found in terms that communication had not been as effective as it might have been and that rehabilitation has not been fully explored.

43. The claimant rejected this offer. At today's hearing, the claimant explained that the key factors preventing her return was the fact that it was coming up to Christmas and she was anxious about returning in such a busy period. She also told us that she was anxious about returning to a new store with new expectations as to staff rostering which could include late nights on Sundays. Having been out of the business for so long she was also anxious about returning to the world of work at all. After a previous long period of absence she had undergo gone (with the support of the psychology unit) what she describes as graded exposure, which we understand to mean that, with support she faced her fears (in this case re-entering the store) little by little until she could overcome them. She raised none of these issues as specific reasons for refusal with Ms Roden, notwithstanding the fact that the claimant's letter of rejection makes it clear that she had every confidence in Miss Roden.

44. When Ms Cook took over the management of the store (and while the claimant was absent on sick leave) she introduced a storewide policy in which staff were no longer permitted to call in with work-related issues including sickness absence via the personal mobile phones of assistant managers and colleagues and an official store number was issued to staff. Unfortunately, the number was

not issued to the claimant who incurred difficulties in contacting the store as she was required to do under the sickness absence policy. When this was raised with Ms Cook it was addressed and the claimant was provided with the store number, Ms Cook's own direct contact number and an email address. It is evident from the C's own evidence, the text messages and the meeting notes that there were occasions when the claimant was unable to get through. However, we find that she was able to get through more often than not, and in a busy store it is understandable that there may be occasions when Ms Cook would not be able to deal with a phone call. We find that Ms Cook took all reasonable steps to ensure the claimant was able to make contact and when alerted to took steps to deal with unanswered calls.

Conclusions

Disability

45. The claimant has raised two elements of disability, a physical impairment ie the shoulder injury and a mental impairment of anxiety and depression. The burden of proof is on the claimant to show that she has a disability within the meaning of section 6 EQA.
46. We find that the foot injury is unrelated to any other injury or impairment of the claimant and was the only reason for her absence from work in the period 4 September 2018 until 11 February 2019.

47. We find that the aggregated shoulder injury (fracture followed by frozen shoulder) was the sole reason for her absence from work from 11 February 2019 until her dismissal on 19 August 2019. In respect of this finding, we have given weight to the fit notes provided by the GP which in this period relate exclusively to the shoulder injury and make no mention of any other impairment and in particular any mental impairment and the GP records.

48. Having looked at the letters from those treating the claimant and in particular those of Mr Joshi, Mr Robinson, Mr Mahmoud and also Mr Roy, who wrote on 4 September 2019. The tribunal finds the picture painted by these medical practitioners who were treating the claimant as a very positive picture reporting good progress. The tribunal also finds from the descriptions given at that stage was that any remaining impairment was relatively modest.

49. In the circumstances, we conclude that the claimant has not shown on the balance of probability that her shoulder conditions when aggregated together are a disability within the meaning of the EQA and has failed to show as at 19 August 2019 that the shoulder impairment is likely to have a substantial adverse effect on her ability to carry out normal day-to-day activities lasting 12 months or more, i.e. until 11 February 2020 or beyond.

50. We are not satisfied that we have had before us evidence (notwithstanding the Claimants own account) which shows a diagnosis which draws together the separate episodes of stress and/or anxiety and/or depression as being related and/or a recurrent condition. In the circumstances, we conclude that the claimant has not shown on the balance of probability that her mental health conditions should be aggregated and /or are part of a recurrent condition and

therefore she has not shown that she has a disability due to a mental health impairment within the meaning of the EQA ie likely to have a substantial adverse effect on her ability to carry out normal day-to-day activities lasting 12 months or more.

Reason for dismissal

51. We find that the long sickness absence from February 2019 was capability because of the shoulder injury. Because of this injury she was dismissed on the grounds of ill-health which is a capability dismissal within the meaning of S98(2) ERA. The EDT is agreed to be 19 August 2019 and capability is a potentially fair reason for dismissal. Fairness is to be determined under S98(4)ERA.

S 15 EQA – Discrimination arising

52. The less favourable treatment relied on is the dismissal. The dismissal was by reason of the shoulder injury and its related absence and its impact on return to work and capability. The dismissal did not therefore arise from a disability within the meaning of the act.

Unfair Dismissal S 98 (4) ERA

53. We are mindful of the guidance of the Court of Appeal in Taylor v OCS and the tribunals when judging fairness should take into account the whole procedure, including the appeal stage.
54. But for the appeal we find the dismissal by Ms Poskitt to be procedurally unfair because Ms Cook left the detailed discussion of a rehabilitation process to the capability stage and Ms Poskitt failed to explore how the claimant might be supported in a return to work, failed to put her mind to how the stalemate might be unlocked, failed to address the reasonable request of the claimant that she be provided with at least an outline rehabilitation plan to put to the consultant on 4 September 2019, which was only two weeks away.
55. We do not accept the claimant's contention that the dismissal was unfair because of any bad faith or conflict of interest on the part of Ms Poskitt.
56. Although Ms Cook has fairly conceded that there was slippage in the envisaged timetable of the long-term sickness policy, we accept her explanation for how this may have come about in the circumstances. We have taken such slippage into account but given that the managers went through each of the three key stages we do not find the dismissal to be unfair because of that slippage.
57. The claimant also submitted that the dismissal was unfair because the procedure was not properly explained to her at each stage to ensure she had an understanding. We do not accept this criticism, key documents were sent to her explaining the policy, she had been through this kind of procedure previously and knew what a return to work plan might look like and had been told clearly of the possible consequences if such a plan could not be achieved. The claimant herself contributed nothing by way of suggestions for achieving a return to work until the capability meeting.
58. We find the appeal conducted by Ms Roden to be a fair and open-minded examination of the dismissal, the claimant clearly had confidence Ms Roden

who committed to put in place not only reinstatement but a phased return to work to be agreed with the store manager Charlotte, who had now returned from maternity leave and had not been involved in the dismissal process. We can see no good reason why the claimant refused this offer.

59. The reasons the claimant gave the tribunal for rejecting the offer do not arise from her shoulder injury, but from her concerns about returning in December and about returning to the new store on new rosters.
The claimant knew from experience that December was a busy month when all the staff would be under pressure and she did not want to return in that environment, but she failed to tell Me Roden or any other manager and therefore gave them no opportunity to do anything about it. Given Ms Roden's fair and open minded conduct of the appeal, the tribunal find it likely that Ms Roden would have done her best to accommodate the claimant.
60. During the claimant's absence from work the Prospect store had moved in its entirety to St Stephens. The claimant had convinced herself that in the new store she would be required to undertake a new shift roster which would involve late nights and Sunday working which she was not prepared to do. Under her existing contract it expressly says that she has the right to opt out of Sunday working. The contract also says that the company reserves the right to make changes to the hours and days you are required to work but, in such cases, 'you will be given reasonable notice of these changes'. There is no evidence that any respondent manager had given the claimant notice that she would be required to work late at night or on Sundays and she had had no discussion about those terms. She raised it with Ms Roden, who very reasonably advised her in terms that her roster would be a matter of discussion with the manager of the store on her return to full duties.

61. We accept the Respondents submission to the extent that

    a) In assessing the procedure followed, is a standard of reasonableness, not perfection
    b) At the point of dismissal on 19 August 2019, the overall procedure followed was fair, the three stages of the procedure having been followed
    c) Even though the dismissal was defective by not exploring adjustments, not waiting until the September consultation or obtaining a further OH report, that was remedied by the appeal hearing and decision to offer the claimant reinstatement and a further referral to OH; and
    d) The fact that C rejected the offer of reinstatement shows that either (i) the originally decision was correct in that she simply was not capable of performing her role; or (ii) if she might be capable, then it was unreasonable to reject the offer of reinstatement

62. In all the circumstances we conclude that the appeal by Ms Roden corrected any previous unfairness and the dismissal was fair.

Polkey

63. Further and in the alternative, we conclude that had Ms Poskitt explored the shape of a return to work plan with the claimant and waited until after her visit to Mr Roy on 4 September 2019, it would have made no difference.
64. We accept Ms Poskitt's evidence that the suggestion made by the claimant that a job be found for her of walking round the store was not clear and would have to be elaborated on and made more specific.
    We agree with Ms Poskitt that if the claimant was not prepared to undertake the role of greeting, then it is most unlikely that any meaningful role could be created in the short term to support a return to work and certainly not in the long term.
    We note that even if the claimant is able to show a disability within the meaning of section 6 that there is no requirement on the part of the employer to create a new role by way of reasonable adjustment. By analogy, a failure to create a new role would not place an employer outside the band of reasonable responses in respect of unfair dismissal.
65. In the circumstances we would apply a reduction under Polkey of 100%.

Failure to mitigate

66. Further and in the alternative, we find that the claimant by rejecting the offer of reinstatement has failed to mitigate her loss and any compensatory award should be reduced by 100%. (S123)
67. Similarly, by rejecting the offer of reinstatement, any basic award should be reduced by 100% (S122(1).

Reasonable Adjustments

68. Given that we have made no finding of disability within the meaning of section 6, no duty arises to make reasonable adjustments.
69. Further and in the alternative, if there was such a duty, then we conclude that the respondent met that duty.
70. Role: Ms Cook had offered greeting, which was rejected then and continues to be rejected by the claimant. There is no obligation upon the respondent to create a new role. The tribunal share the view expressed by Ms Poskitt that if the claimant was unable to undertake the role of greeting the creation of a meaningful role walking around the store would not be feasible. Ms Cook had made the offer of greeting which the Claimant rejected.
71. Communication: The claimant who incurred difficulties in contacting the store as she was required to do under the sickness absence policy. When this was raised with Ms Cook it was addressed and the claimant was provided with the store number, a direct contact number and an email address. Although we find there may be occasions when Ms Cook did not answer a phone call we find that Ms Cook took all reasonable steps to ensure the claimant was able to make contact and when alerted to any issues took steps to deal with unanswered calls. In the circumstances we find that the respondents have met their duty.

72. The claim of unfair dismissal fails and is dismissed.

    The complaint of discrimination arising from disability (S15 EQA) fails and is dismissed.

The complaint of failure to make reasonable adjustments (S20 and S21 EQA) fails and is dismissed.

16 April 2021

Employment Judge O'Neill