# EMPLOYMENT TRIBUNALS

**Claimant:** **Ms A C Hedd**

**Respondent:** **Tesco Stores Ltd**

**Heard via CVP (London Central)** **On:** **24, 25, 29 November 2021**

**Before:** **Employment Judge Davidson**
**Mr D Clay**
**Ms S Campbell**

**Representation**
Claimant: in person
Respondent: Ms T Burton, Counsel

# RESERVED JUDGMENT

**The claimant's complaints of disability discrimination and her claim for a redundancy payment fail and are hereby dismissed.**

Employment Judge Davidson
Date 8 December 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

08/12/2021

FOR EMPLOYMENT TRIBUNALS

Notes

Public access to employment tribunal decisions: Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

CVP hearing

This has been a remote which has been consented to by the parties. The form of remote hearing was Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

# REASONS

Issues

The issues in the case were determined at a case management hearing before EJ Isaacson on 18 May 2021, at which the claimant was represented by a solicitor and the respondent by counsel. At the outset of the hearing, the claimant confirmed she was not making any claims regarding the meetings of 15 November 2018 and 11 January 2019 (as originally stated) and the List of Issues set out below has been amended accordingly.

1. *Disability Discrimination*

*1.1. Was the claimant disabled?*

1.1.1. It is accepted that the claimant's knee condition amounts to a physical impairment.
1.1.2. It is accepted the claimant was disabled at all relevant times.
1.1.3. It is accepted the respondent had knowledge of the claimant's disability at all relevant times.

*1.2. Direct discrimination*

1.2.1. The treatment relied upon is:-

1.2.1.1. being sent a pre-filled availability form from her Store Manager, David Anthony, during the redundancy process in August 2019;
1.2.1.2. being told by David Anthony and Simon Buckley during a welfare meeting on 19 October 2018 that the claimant would be dismissed because of the claimant's disability;
1.2.1.3. stopping the claimant's company sick pay from on or around 30 September 2018 to the end of claimant's employment.

1.2.2. The claimant relies on a hypothetical comparator being in the same position in all material respects as the claimant, save only they do not share the claimant's disability.

1.2.3. Was the claimant treated less favourably than the comparator was or would have been?

1.2.4. If so, was the reason for the treatment the claimant's disability?

*1.3. Discrimination arising from disability*

1.3.1. Did the claimant's disability cause, have the consequence of, or result in (the **"something"**):

1.3.1.1. her period of absence between November 2017 and 3 February 2020;

1.3.1.2. needing to move to a store nearer the claimant's residence and being on one level: and

1.3.1.3. needing auxiliary aids, specifically, Axia Chair, Leg Rest, Larger Monitor, Lone Working Alarm, Coaching and Strategy Training for Memory Loss and pens designed for people with arthritis.

1.4. Was the claimant treated unfavourably because of the something as set out above, specifically: -

1.4.1.1. being sent a pre-filled availability form from her Store Manager, David Anthony, during the redundancy process in August 2019

1.4.1.2. being told by David Anthony and Simon Buckley during welfare meetings that the claimant would be dismissed because of the claimant's disability; and/or

1.4.1.3. stopping the claimant's company sick pay from on or around 30 September 2018 to end of claimant's employment.

1.4.2. If so, what was the reason for that treatment?

1.4.3. In treating the claimant in that way what aim was the respondent seeking to achieve?

1.4.4. Was that aim legitimate?

1.4.5. Was the treatment a proportionate means of achieving that aim or was there a less discriminatory way of achieving it?

*1.5. Reasonable adjustments*

1.5.1. Did the respondent apply the following provision, criterion or practice (PCP): ceasing Company Sick Pay from 30 September 2018 to the end of claimant's employment?

1.5.2. If so, did the said PCP place the claimant at a substantial disadvantage because of her disability in comparison with persons who do not share the claimant's disability?

1.5.3. Would an auxiliary aid have prevented the claimant being placed at a substantial disadvantage in comparison with employees who were not disabled? Specifically:

1.5.3.1. Axia Chair with office mechanism, movement lock, lumbar support and memory foam;

1.5.3.2. Footrest;

1.5.3.3. Larger Monitor for Computer;

1.5.3.4. Lone Worker Alarm;

1.5.3.5. Coaching and Strategy Sessions for her memory loss; and

1.5.3.6. Pens designed for people with arthritis.

1.5.4. If so, did the respondent take reasonable steps to prevent the claimant being placed at the disadvantage or to provide the auxiliary aid? The claimant alleges the recommendations made by the Virosafe Assessor were not implemented.

1.5.5. Did the respondent make reasonable adjustments?

*1.6. Harassment*

1.6.1. The alleged unwanted conduct is being told by David Anthony and Simon Buckley during a welfare meeting on or around 19 October 2018 that the claimant would be dismissed because of the claimant's disability. Did the unwanted conduct relate to the claimant's disability?

1.6.2. Did that conduct have the purpose or effect of:

1.6.2.1. violating the claimant's dignity; or

1.6.2.2. creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

1.6.3. What was the claimant's perception of the conduct stated above? Was it reasonable for the conduct to have that effect?

2. *Redundancy payment*

2.1. Has the claimant received the correct redundancy payment? The claimant alleges that her Redundancy Payment should have reflected her salary including her Personal Rate.

Evidence

3. The tribunal heard evidence from the claimant and her husband, James Dumbuya, on the claimant's behalf and from David Anthony (formerly Store Manager), Simon Buckley (formerly People Partner), Stacey Wright (People Manager), Sevgi Polat (Store Manager) and Vishal Patel (formerly Store Manager) on behalf of the respondent. The tribunal had before it a bundle of 811 pages.

Facts

4. The tribunal found the following facts on the balance of probabilities. We have only made findings of fact in relation to matters which were relevant to the issues before us.

5. The respondent operates a national chain of retail outlets with 3,400 branches in various formats including Tesco Express, Tesco Metro, Tesco superstore and Tesco Extra.

6. The claimant commenced her employment on 8 April 1996. She later joined the Recruitment Centre until it closed on 4 November 2007 when she took up the role

of Admin/Wages Assistant at the Monument Metro store. In September 2013, the clamant moved to 26 hours per week after she returned from maternity leave.

7. When the claimant moved from the job in Recruitment to the Admin/Wages Assistant role in 2007, she suffered a drop in her rate of pay. As part of the respondent's policy, a Personal Rate of pay was allocated to her. The Personal Rate erodes over a period of four years at a rate of 25% reduction a year. It appears that the claimant remained on her old rate of pay without the erosion being applied to her until 2013. There was a letter from the respondent to the claimant, referencing earlier conversations about the issue in which it was confirmed that the claimant's Personal Rate would be eroded. This is what happened and by 2017, her Personal Rate had been eroded completely.

8. The clamant relies on a 24 June 2010 document to show that her Personal Rate should not have been eroded. The document relates to the claimant having retained pay and states: "*Retained Pay. Purpose: this rate is paid to staff who were employed before July 1996 and received night premiums at one-third. The amount is frozen and does not erode. It is removed when they no longer work on nights*." The claimant accepted she did not work nights. We are unable to read into this document what the claimant asks us to, as there is nothing to suggest that her Personal Rate would not erode. In any event, the letter of 2013 supersedes the 2010 document and the pay erosion was put into practice, as accepted by the claimant.

9. As part of the respondent's terms and conditions, there is a Sickness Absence Policy. Based on the claimant's length of service, she was entitled to 16 weeks for first absence and then 6 weeks each year while the absence continued.

10. The claimant went on long-term sickness absence from 13 February 2015 due to a knee operation. The complications arising from the operation affected the claimant's mobility and she was unable to return to work at that time. She then had another knee operation in June 2017 to correct the problems caused by her first operation.

11. In November 2017 the claimant contacted the respondent regarding a proposed return to work and the need for an Occupational Health (OH) Assessment prior to her return. In December 2017, she was referred to OH. There was a delay in the respondent arranging the claimant's OH assessment due to a change in HR support at her store and a change in OH provider.

12. In April 2018, the claimant chased the store manager, Scott Morson about the OH assessment and he accepted the respondent's responsibility for the delay and agreed to reinstate her pay. The claimant alleges that there was no time limit attached to this. The respondent states that the reinstatement of salary was until the delayed OH assessment took place. We will refer to this pay as 'goodwill pay' as it is not paid under the company sick pay scheme and was a discretionary payment.

13. The OH assessment took place in June 2018. The original appointment on 4 June 2018 did not take place. The claimant believed the assessor did not turn up and

the assessor believed the claimant had not turned up. We find that the most likely explanation is that this was due to a misunderstanding in the store between the OH assessor and the store.

14. The rescheduled appointment took place on 19 June 2018 and the assessment was carried out by John Keough of Virosafe Health, the respondent's OH provider. His assessment was that the claimant was unfit to work due to her lack of mobility and medical condition at that time but that if she was to return to work, she should be transferred to a store without stairs which is closer to her home. She would also need a personal evacuation plan. The assessment also recommended specialist equipment including chair, footrest, leg rest and larger monitor. She would also need a lone worker alarm and coaching for her memory loss.

15. John Keough recorded in his report that he had advised the claimant to contact Access to Work to see if she was entitled to assistance for travelling to and from work.

16. There was an issue about how and when the report was sent to the claimant but this was not an issue before us and we make no findings.

17. In October 2018, David Anthony took over the management of the claimant's store. After Scott Morson left the store earlier in the year, there had been a temporary manager in place who appears to have taken no action in relation to the claimant. On his arrival, David Anthony reviewed the personnel at the store and saw that the claimant was on long-term sickness absence. He noted that there was no sick note covering her absence and there did not seem to have been much contact with her. He also saw that she was coded to receive full pay which was unusual given her length of absence. With effect from 1 October 2018, he changed her code so that she would no longer received goodwill pay and he put her on 6 weeks of Company Sick Pay followed by SSP.

18. He then arranged to carry out a wellness visit at the claimant's house with his People Partner colleague, Simon Buckley. This took place on 19 October 2018 and the claimant's husband (who also works for the respondent) was in attendance. There is a conflict of evidence regarding the tone and content of this meeting. Having taken into account the witness evidence and the contemporaneous documentary evidence, we prefer the account of the respondent's witnesses that the meeting was amicable and was conducted with a view to assisting the claimant to return to work. This is supported by subsequent Whatsapp messages between the claimant and David Anthony, which are friendly and constructive. We also note the evidence of the claimant's husband who admitted that, at the end of the meeting, he was showing pictures of his children to David Anthony and Simon Buckley. This would not be the case if he had terminated the meeting early, as alleged by the claimant.

19. We find that one of the matters dealt with by the respondent was the sickness absence policy and this included Simon Buckley informing the claimant of the provisions of the long-term sickness absence policy which includes, as the ultimate step of last resort, dismissal. We find that he did not threaten the claimant with dismissal but we can understand that she would have picked up on these words

and found them distressing. However, we do not criticise the respondent for explaining the policy and it is good practice to inform an employee of possible outcomes of any procedure. We find that Simon Buckley and David Anthony conducted this wellness meeting in accordance with the respondent's policy for dealing with this type of meeting.

20. The issue of the claimant's goodwill pay was also discussed and Simon Buckley explained that this had been stopped as it was only intended to cover the period until the OH assessment. He explained that she would move on to Company Sick Pay for 6 weeks followed by SSP.

21. We do not find that David Anthony or Simon Buckley said to the claimant that if she had not been neglected, she would have been dismissed 'without a dime'. They attended the meeting to find a way to support the claimant back to work. They had no personal issue with her and such a comment would be at odds with everything else said at that meeting.

22. On the basis of David Anthony and Simon Buckley's observation of the claimant's physical condition at that meeting, when her mobility was limited, we understand why they thought she was not fit to return to work at that stage. She told them of medical issues other than her knees and her mental and physical state including her being 'emotional'. She complained that she felt unsupported and neglected by the respondent as she had not had much contact during her sick leave.

23. The meeting was followed up by an email dated 26 October 2018 which summarised the meeting and set out the agreed next steps. These included the claimant looking into what support she could get to travel to and from work and the respondent holding open the vacancy in Highbury until the claimant said she did not want it or was ready to start a return to work programme. Simon Buckley wanted to keep the role empty while the claimant considered it to show that the role was hers if she wanted it. The next meeting, which would be the First Formal Absence meeting, was set for 15 November 2018.

24. At that meeting, the claimant was accompanied by a trade union representative. The respondent offered the claimant the position of Admin and Wages Assistant at the Highbury store, which was nearer to the claimant's home and had better access. The claimant confirmed that this was suitable for her. The respondent informed the claimant that they would put in place a phased return to work plan once she was deemed fit to return to work.

25. The claimant raised the issue of travel to work and her mobility causing a problem at the Highbury store in case of fire. The respondent said they would look into the travel issue and would order the equipment identified by the Virosafe assessor as well as an evacuation chair. The respondent later confirmed to her that she should contact Access to Work in respect of her travel arrangements as it is the employee's responsibility to apply for this benefit.

26. We see that the claimant was in contact with David Anthony about applying for this benefit and he was chasing up to make sure she was doing this. He gave her the support he could and provided the information she needed to make the application.

27. The claimant attended a Second Formal Absence Meeting on 11 January 2019 in person. She was told that the equipment had been ordered and would need to be installed when it arrived at the Highbury store. They agreed on a provisional return-to-work day of 31 March 2019, which was the date the claimant's fit note expired.

28. On 1 April 2019, the claimant was informed that the equipment was in place, ready for her return to work. At that time, the claimant was still waiting for a response from Access to Work. The claimant was still coded for pay purposes as being absent due to sickness.

29. On 5 June 2019, the claimant was informed that she was not eligible for Access to Work as she was then receiving Employment and Support Allowance.

30. By this time the only issue preventing the claimant from returning to work was her travel to work. She said she was fit to work and the respondent arranged for the recommended equipment to be supplied. However, the journey to work issue had not yet been resolved.

31. On 17 June 2019 the claimant raised a grievance alleging that she had been neglected during her sickness absence and that the respondent had not done enough to facilitate her return to work, causing her financial hardship, that David Anthony and Simon Buckley had threatened her with dismissal and had stopped her sick pay. The claimant accepts that this is the first time she complained about the 19 October 2018 meeting.

32. On 17 July 2019, the claimant met with Sonya Patti (Store Manager) at the Highbury store. The notes of this meeting suggest that it was a follow-up wellness meeting, in particular to discuss the equipment in store and not a grievance hearing. The claimant accepted the chair that she was shown, even though it was not the recommended chair, but the other equipment was not present. They discussed a date for returning to work and the claimant indicated that she was waiting for a grievance outcome and resolution of her Access to Work application. At that meeting, they arranged a date for the grievance meeting. Sonya Patti then went on extended sick leave and the meeting that had been arranged did not take place.

33. On 5 August 2019, the respondent announced operational changes within Metro Stores which resulted in some redundancies. During the redundancy process, employees were asked to complete an 'Availability Form' which would include details of availability for work in the new structure. On 15 August 2019, the claimant was sent a form in the post (due to her absence from work) by Simon Buckley, with some details pre-populated by David Anthony. The claimant's husband and other colleagues received blank forms and were given these in the workplace. David Anthony said that he generally pre-populates forms before sending them when he can. The claimant considered that there were errors on the form and corrected these. During the course of the hearing, she accepted that these were not, in fact, errors.

34. The claimant went through redundancy consultation with meetings on 2 September and 16 September 2019. She was given an indicative schedule of the payments she would receive if she was made redundant. She queried the schedule which stated she worked 26 hours a week and she asked why her Personal Rate had not been included in the redundancy payment calculation. The respondent agreed to look into these points and said that the Personal Rate would be included if she was entitled to it.

35. During the redundancy process, alternative roles were discussed and the claimant said she would take redundancy as she could not see any roles suitable for her. She did not apply for any roles during the consultation period.

36. The redundancy consultation was then extended in respect of the claimant while the respondent dealt with the claimant's grievance. Other members of staff at Monument who were made redundant had a last day of employment of 28 September 2019.

37. The grievance was passed to Stacey Wright to follow up in view of Sonya Patti's sickness absence. She carried out an investigation in November 2019 and held a first stage grievance hearing on 27 November 2019 when the claimant was accompanied by her union representative. The claimant was invited to set out her grievances and the respondent investigated these. She alleged she had been bullied and harassed by David Anthony and Simon Buckley who threatened to dismiss her. She also claimed that her Personal Rate should have been included in her redundancy.

38. The grievance outcome was sent by letter dated 30 January 2020. Stacey Wright accepted that the respondent was responsible for various delays in dealing with the claimant and that the claimant should have been given more notice that her 'goodwill payment' was being stopped and she was being moved to Company Sick Pay. Stacey Wright agreed to pay the claimant 8 days pay to reflect this. She did not find any evidence of bullying although she acknowledged the claimant's feelings and agreed to pass her comments back.

39. Following the outcome of the grievance, the redundancy process restarted and her redundancy was confirmed on 3 February 2020. She received payment in lieu of notice and dismissed by reason of redundancy with effect from 3 February 2020. She was also paid a statutory redundancy payment and an ex gratia payment, as shown on her final payslip.

40. Although there were two differently presented final payslips before us, the amounts of the payments on each were the same. The statutory redundancy payment was based on pay excluding the Personal Rate. The claimant claims that this was incorrect and should have been based on pay including the Personal Rate.

41. By email dated 7 February 2020, the claimant appealed against the grievance outcome. She also appealed against the calculation of her redundancy payment which did not include her Personal Rate.

42. VIsha (Giz) Patel investigated the grievance appeal and provided an outcome to the claimant on 5 May 2020. He concluded that she was not entitled to have the Personal Rate included in her redundancy payment and he found no evidence that this had been promised to her during the redundancy consultation process. He also upheld the original grievance decision.

Law

43. The relevant law is as follows:

*Direct discrimination*

Direct discrimination means less favourable treatment in comparison to a comparator because of a protected characteristic. S. 13 EA 2010 defines direct discrimination as:

> *A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*

*Discrimination arising from disability*

44. Under s. 15 EA 2010 (A) discriminates against (B) if:

> *(a) A treats B unfavourably because of something arising in consequence of B's disability, and*
>
> *(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*

*Duty to make reasonable adjustments*

45. S. 20 EA 2010 sets out the general scope of the duty to make adjustments, *inter alia:*

> *(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*
> *(4) The second requirement is a requirement, where a physical feature 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.*
> *(5) the third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid…*

46. Section 26 EA 2010 provides that A harasses B if:

> *(1) A person (A) harasses another (B) if—*
> *(a) A engages in unwanted conduct related to a relevant protected characteristic, and*
> *(b) the conduct has the purpose or effect of—*

*(i) violating B's dignity, or*
*(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B*
*(1)*
*(2) …*
*(3) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
*(a) the perception of B;*
*(b) the other circumstances of the case;*
*(c) whether it is reasonable for the conduct to have that effect.*

Determination of the Issues

47. The tribunal unanimously determines the issues as set out below.

*Direct discrimination*

48. We find that the claimant was sent a pre-filled availability form as part of the redundancy process. There is a conflict of evidence as to whether the claimant was singled out in this respect: she says she is not aware of her colleagues receiving pre-filled forms and David Anthony says he often sends out pre-filled forms. Neither position was supported by any evidence other than oral assertion but can perhaps be explained by the fact most people were given their forms at work and the claimant's form was sent to her by post. We found David Anthony to be a credible witness and find no reason to disbelieve that he often sends out forms which are pre-filled. The claimant is only able to tell us that she was not aware of anyone who received such a form but she cannot say that nobody else in the organisation did. We therefore find that she was not singled out as she alleges.

49. In any event, we do not find that this amounts to less favourable treatment. Different treatment does not necessarily mean less favourable treatment.

50. Further, we can see no connection with the claimant receiving a pre-filled form and her knee condition, which is the disability she relies on.

51. We have set out our findings regarding the wellness meeting on 19 October 2018 at the claimant's home. We do not accept that the claimant was told that if she had not been neglected she would have been dismissed 'without a dime'. We do accept that David Anthony and Simon Buckley told her of the provisions of the long-term absence policy which would include the possibility of dismissal as a final resort. We do not find that they indicated that dismissal was the inevitable outcome of the procedure and nothing in their subsequent conduct suggests that this was their view.

52. Documents including WhatsApp messages and meeting notes show no animosity on either side. The communications are civil and constructive. We find no evidence that David Anthony wanted to obstruct the claimant's return to work. We accept that David Anthony and Simon Buckley were trying their best to get the claimant back to work. If they had not intended that she would return to work, they would not have ordered expensive equipment and supported her in her Access to Work application.

53. It is considered good practice to inform an employee of the possible outcomes of any procedure. We therefore find that doing so was not less favourable treatment. We understand and appreciate that the claimant would have been distressed to hear the word 'dismissal' and it is possible that her reaction to this may have overshadowed the content of the rest of the meeting.

54. We therefore find that there was a genuine attempt to get the claimant to return to work. We also find that David Anthony and Simon Buckley were following the guidance to managers in respect of wellness meetings and their comments reflected those guidelines. We find, therefore, that a non-disabled employee with a long-term sickness absence issue would have been told the same.

55. We find that the List of Issues has misdescribed the issue of the claimant's pay in September 2018. It was not her Company Sick pay which was stopped but the goodwill payment which had been put in place by Scott Morson and had remained in place. On David Anthony's arrival as Store Manager, he saw the anomaly and moved the claimant on to Company Sick Pay with effect from 1 October 2018. As part of the claimant's grievance outcome, it was acknowledged that this should have been communicated to her in advance, not just at the wellness meeting and she was awarded some pay in recognition of this failing.

56. We find that it was reasonable for David Anthony to regularise the claimant's pay situation. We do not accept that Scott Morson would have instituted the goodwill payment indefinitely. The reason David Anthony moved the claimant from goodwill pay to Company Sick Pay was not because of her disability but because she was receiving money she was not entitled to under the respondent's absence procedures.

57. We find that a non-disabled person who was continuing to receive a goodwill payment without good reason would also have had the payment stopped.

*Discrimination arising from disability*

58. We find that the claimant's period of absence between November 2017 and 3 February 2020 did arise from her disability. However, we find that this was not the reason that she received a pre-filled availability form in August 2019. That form was part of the redundancy process and the form was sent to everyone affected (although not all forms were pre-filled). We have found that the pre-filling of the form was not connected to the claimant's disability and we also find it was not connected to her absence.

59. We find that the discussion at the wellness meeting on 19 October 2018 was because of her absence. Her absence triggered the need for a wellness meeting. However, we find that the respondent was trying to achieve a legitimate aim by offering employees wellness meetings after long absences from work. We consider that the treatment was a proportionate means of achieving that aim.

60. We find that the change to the claimant's pay from 30 September 2018 was connected with her period of absence. Her absence was the explanation for the

goodwill payment and the Company Sick Pay. We find that the treatment in moving the claimant's pay code from goodwill pay to company sick pay was a proportionate means of achieving the legitimate aim of following the respondent's policies in respect of sick pay entitlements. We consider that the treatment was a proportionate means of achieving that aim.

61. We find that the need to move to a store near the claimant's residence which was on one level did arise from her disability. We find that the need to move to a store near the claimant's residence is not the reason for her being sent a pre-filled availability form or being told of the provisions of the long-term absence policy or stopping her goodwill payment.

62. We find that the need for some auxiliary aids, namely the Axia chair, leg rest and lone working alarm arose from the claimant's disability. We find that the need for the larger monitor, coaching and strategy training for memory loss and pens for people with arthritis did not arise from the claimant's disability. We find that the need for the auxiliary aids is not the reason for her being sent a pre-filled availability form or being told of the provisions of the long-term absence policy or stopping her goodwill payment.

*Reasonable adjustments*

63. We consider that the PCP in the List of Issues uses the wrong terminology and it should read "Did the respondent apply the following provision, criterion or practice: ceasing goodwill pay from 30 September 2018 and moving to company sick pay and SSP from then to the end of the claimant's employment?" We have taken into account the authorities which state that the tribunal should consider the PCP in the List of Issues and not reformulate it. However, in this case, we believe that the substance of the complaint remains the same and both parties are aware of what is being claimed. We have just clarified the terminology so that the PCP makes sense in the context of the facts of this case.

64. We find that the respondent, in moving the claimant from goodwill pay to company sick pay was putting in place a one-off arrangement arising from the unusual circumstances of this case. In particular, that a manager had put in place the goodwill payment due to a delay in arranging an OH assessment. The manager had then left the store and the matter was not followed up by the interim manager with the goodwill payment continuing in place until the anomaly was noticed by the new incoming manager, David Anthony.

65. As such, the respondent was not applying a PCP as this was a one-off situation.

66. If we are wrong about this, we find that the claimant was not put at a substantial disadvantage because of her disability in comparison with persons who do not share the claimant's disability. The application of the company sick pay scheme applies to all employees who are absent due to sickness, whether or not they have a disability and irrespective of what the disability is.

67. We find that the auxiliary aids (Axia Chair, footrest and lone worker alarm) would have prevented the claimant from being placed at a substantial disadvantage in

comparison with employees who were not disabled. The respondent's evidence is that the auxiliary aids were in place by 1 April. The claimant accepted this at the time but now disputes that the auxiliary aids were in place. There is evidence that she accepted the chair, although it was not the one that had been recommended. She did not see the footrest and lone worker alarm as they could not be located when she visited the store. We find that it was not necessary to take further steps to locate the equipment because the claimant did not attend for work. At that point, the barrier to her return was the travel from home to work. She had hoped that this would be provided through Access to Work until she found out that she was not entitled to this benefit due to other benefits she was receiving.

68. The respondent stated that they offered to change the claimant's husband's shifts so that he could provide transport for the claimant but we have seen no evidence of this – only a suggestion for him to bring her to a meeting on one occasion.

69. However, the arrangements for travelling to work is not something that the respondent is responsible for and it was not for the respondent to make adjustments to remove that disadvantage. We find that the reason the claimant did not return to work was because she could not find a way to travel to work, not because there were insufficient auxiliary aids at the workplace.

70. It is likely that the travel to work obstacle could eventually have been overcome but, in the events, the redundancy process intervened and it was not necessary to resolve the travel to work issue once the claimant accepted her redundancy.

*Harassment*

71. We have found that the mention of dismissal by David Anthony and Simon Buckley during the welfare meeting on 19 October 2018 was in the context of explaining the provisions of the long term sickness policy to the claimant. It is likely that the claimant was distressed by hearing the word 'dismissal', particularly as she was emotionally vulnerable at the time. The claimant was informed of the provisions of the long term sickness policy due to her long term absence, but this would have been the same if she had been absent for a non-disability related reason.

72. We find that the fact the possible outcome of dismissal was unwelcome to the claimant is not sufficient for the conversation to amount to harassment. We find that the conversation did not have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

73. We accept the claimant's perception that she was upset by the information, and we understand why that would be. However, we do not find that David Anthony or Simon Buckley behaved in anyway improperly by informing her of the provisions of the policy. We also find that they emphasised that they hoped that they would be able to help the claimant back to work and not dismiss her for long term absence. We see from the contemporaneous documents that this is what they were working towards and the claimant appears to be cooperative and appreciative of their efforts.

*Redundancy payment*

74. We find that the claimant has received the correct redundancy payment. The Personal Rate, which the claimant believes should have been included, had not formed part of her salary since 2017. It was reduced by 25% a year from 2013 to 2017, in accordance with the respondent's policy. It is understandable that she might be confused about the payment amount but she has failed to produce any evidence to show why this is incorrect. The document from 2010 that she relies on does not assist her. In any event, the respondent has a letter from 2013 which sets out the position. Even if the claimant did not receive this letter, as she alleges, she was aware that her salary was being reduced. We find no reason why the Personal Rate should be included in a redundancy payment calculated in 2019.

75. We note that the redundancy payment and other termination payments are calculated by an algorithm and there is no human intervention in determining the entitlement.

*Comment and conclusion*

76. The respondent has, unfortunately, at various stages in dealing with the claimant been responsible for significant delays, both in arranging her initial OH assessment, in dealing with the grievance and in dealing with the grievance appeal. The claimant has had to chase up on many occasions. The respondent has provided explanations for these delays and we do not find any element of discrimination to be involved but we do understand and record the claimant's frustration at this state of affairs. We also acknowledge the physical and emotional impact of this case on the claimant and her family and we commend her for the conscientious way she went about the presentation of her case. She will, no doubt, be disappointed at our findings but, as was explained to her during the hearing, the tribunal can only reach findings on the issues before it, based on its assessment of the evidence, and must apply the relevant legal principles to such issues.

77. In conclusion, the claimant's complaints fail and are hereby dismissed.