EMPLOYMENT TRIBUNALS

Claimant: Ms C Mensah

Respondent: Axis Cleaning and Support Services Ltd

Heard at: Watford ET: by CVP **On: 9 ,10 and 11 February 2022**

Before: Employment Judge Tuck QC; Mr Schooler, Ms Feavearyear.

Appearances
For the Claimant: Mr Apraku, legal consultant
For the respondent: Mr Paget, solicitor

JUDGMENT

1. **The Claimant's claim of unfair dismissals of and disability discrimination fail and are dismissed.**

REASONS

1. By an ET1 presented on 10 May 2020, following a period of early conciliation between 12 March 2020 and 26 April 2020, the claimant brought claims of unfair dismissal and disability discrimination.

Issues

2. At the outset of the hearing the issues were agreed, and sent by the Tribunal to the parties. They are as follows:

Unfair dismissal

a. The claimant was dismissed on 10 February 2020. Can the Respondent establish a potentially fair reason for dismissal within

s98(2) ERA? It relies on “some other substantial reason”, namely the request from its client to remove the claimant from site.

b. Did the Respondent act reasonably in treating that as a sufficient reason for dismissal within s 98(4) ERA; the Claimant says that redeployment ought to have been possible**.**

Disability discrimination: Section 15 EqA

c. The claimant says that the something arising from her disability was her inability to work in the car park / outdoors.
d. The unfavourable treatment she says she suffered was being shouted at on her first day back (which she says was 27/9/19 and the Respondent says was 4 November 2019) by Ali Rashad and Abdi – a security guard.

Reasonable adjustment: s20 EqA

e. The PCP complained of is being instructed to work in the car park.
f. The substantial disadvantage which the claimant suffered was physical discomfort.
g. The reasonable adjustment she sought was to work indoors.
h. The Respondent says it lacked knowledge of disability / substantial disadvantage; para 20 of Sched 8 to the EqA.

Hearing

3. We were provided with a bundle of 152 pages and additional documents from the Respondent - a two page ‘rota’ for November 2019 and a three page wage schedule for September to December 2019. We read all the documents. Witness statements were prepared for the Claimant, and on behalf of the Respondent from Mr Abdirashi Ali, a Soft Services Manager, and Ms Majedah Ramjan, who was a junior HR manager at the material time. Ms Ramjan supported the Sector Support Director, Ms Pam Byrne who was a relevant decision maker in this case; sadly Ms Byrne died of Covid in late 2020.

4. The Claimant gave evidence via a Twi interpreter who was provided by the Tribunal service. The Respondent submitted that the Claimant’s English language skills in the workplace had been very good and that this was not necessary - indeed Mr Ali said he had always spoken to the Claimant in English over the last 10-15 years and communicated effectively and Ms Ramjan said the Claimant clearly understood the hearings she was at. The Tribunal noted however that when the claimant tried to participate in a

Preliminary Hearing without an interpreter, it had proven to be too difficult and the hearing could not be effective. In any event, the Tribunal is aware that giving evidence can be a stressful experience, and doing so in her first language may well be much easier for the Claimant. We were entirely satisfied that it was appropriate to use the services of the interpreter, but in doing so make no findings as to the Claimant's language skills, but to ensure a fair hearing. The tribunal wish to record its thanks to Mr Bossman Mante who translated the entire proceedings, which he seemed to do with great skill and diligence, and certainly did with great patience and good humour.

Facts

5. The Claimant was employed by the Respondent as a cleaner from 21 February 2006 until her dismissal on 10 February 2020. The Respondent provides services, including provision of cleaners, to its clients; it employs, according to the ET3, 2000 employees in GB. The Claimant worked at the Pavilions Shopping Centre at Waltham Cross, a client of the Respondent. The Respondent had 3 employees at that site. A 'sister' company employs security guards on sites – on this site that included Abdirashid Ali and his brother, Abdi Salaad. Pam Byrne, the Sector Support Director was not based at the shopping centre, and nor was Ms Ramjan / the HR function. The manager of the shopping centre at the material time was Mr Kelvin Nwadiaro.

6. The Claimant told us that she suffered a stroke on 31 March 2019, leading to a period of hospitalisation. In fact her medical records indicated in numerous different documents, that her stroke occurred on 31 May 2019. Ms Ramjan said in her statement that the Respondent was made aware that the Claimant had a stroke on 31 May 2019, and the first sick note from the Claimant's GP we saw was for the period from 31 May 2019 to 25 June 2019 citing the reason for absence as 'stroke'. I asked the claimant by reference to her medical records whether she might be mistaken and May might be the correct date, but she remained adamant that her stroke had been in March.

7. The claimant gave evidence that she returned to work on 27 September 2019. She had a doctor's certificate for the period 27 September to 22 October 2019 – and also one for the period between 4 July and 4 August 2019, but not for any intervening period. As set out below, the Respondent's documents indicated a return to work on 4 November 2019, and pay records produced on the second day of the hearing confirmed she was paid from this date. Nevetherless, the claimant was adamant that she had returned on 27 September 2019. Mr Ali was asked if he recalled the Claimant being at work in September 2019 but he could not recall her return date. To the extent that it necessary to determine the dispute, the tribunal is satisfied, on a balance of probabilities that the return was on 4 November 2019, not only because that is

consistent will all the contemporaneous documents we have, but also because we consider it inherently unlikely the claimant worked in the car park throughout October in addition to November without raising her complaints.

8. Ms Byrne sent an internal email on 30 October 2019 which said that she had told the Claimant that "if everything is in order she can return to work on Monday with reduced hours of 20 for first week…" On 31 October Ms Byrne emailed Mr Nwadiaro saying that she had met with the Claimant and had agreed that if her GP approved her return, she would come back "on Monday on a reduced hours (20)" basis. He replied the same day saying that he wanted to be clear as to whether her GP or occupational health were providing advice.

9. These emails support the Respondent's case that the Claimant was invited to a welfare meeting before she returned to discuss what hours she would work. It apparent that the Claimant and Ms Byrne also discussed what duties the Claimant would carry out, and Ms Ramjan said that the wish was to give the claimant "light duties". Mr Ali was instructed by Ms Byrne to type out the duties agreed – which were litter picking in the car park and externally and internal cleaning of toy machines, massage chairs etc. Ms Ramjan said that the Claimant reported being 'happy' about her adjusted hours and duties prior to her return.

10. The claimant's case was that on her first day back at work she was shouted at "by Ali and Abdi". She said she was going to carry out her normal duties when "Richard asked me to go to the car park. He said I wasn't fit for work so I should work in the car park. Ali and Abdi were shouting". When asked what words were used, and she said they shouted that she was "not fit for work and should go to the car park". Mr Ali denied any such exchange, either in September or November. He was however aware that the Claimant had been assigned duties in the car park by way of "light duties" on her return from a long period of sick leave after her stroke. We do not accept that the Claimant's co-workers, with whom she tells us she had never had disagreements, would have shouted at her on her first day back from extended sick leave. She may have been instructed to go to the car park as those were her assigned "light duties", but we do not accept she was shouted at. We further note she made no complaint of being shouted, either at the time or during any subsequent meetings.

11. The Claimant said that she was instructed to work 4pm until 8pm, and that she made complaints to "Mr Ali Rasheed" about her hours and having to work in a cold carpark. The Respondent's case was that during a welfare meeting

conducted by Ms Byrne and also attended by Ms Ramjan, Mr Abdirashid Ali and Abdi Salaad on 26 November 2019 the claimant expressed her dissatisfaction about working in the cold car park and in working after 6pm. Ms Ramjan said that she asked the Claimant whether she had any doctors notes or medical evidence about hours and duties, and the claimant said she did not. Ms Byrne instructed a risk assessment and ordered additional PPE in the meantime. A letter confirming the meeting was written, dated 23 December 2019.

12. Ms Ramjan completed a referral for an Occupational Health appointment setting out the hazards the claimant identified, namely working after 6pm (as it affects her blood pressure as she needs to eat after 6pm), inability to put her hand in hot water, getting dizzy when she looks up and it being too cold for outside work (despite PPE being provided). Meanwhile on 29 November 2019 Mr Nwadiaro emailed an account that the claimant was refusing to take instruction from "Abdi" to "cover the shop floor" when her colleague went for lunch, and so made an excuse about a headache. He sought information about when the OH review would take place.

13. The Claimant went on holiday from 4 December 2019. Occupational health appointments were offered between 18 and 20 December 2019, but Ms Ramjan was unable to reach the Claimant to tell her about them. She asked Mr Ali if he could get hold of her. By email of 17 December 2019 he said he had been unable to reach her either. At some point however, Mr Ali said that the Claimant told him that she would not attend any OH appointment because "it was too far away".

14. The events of 6 January 2020 led to an investigation, and in the bundle we have the contemporaneous accounts of Mr Ali, and an account which we understand was written by Ms Byrne after speaking to the Claimant. On that date the Claimant was scheduled to work 2pm until 6pm. The Claimant attended the shopping centre just before midday and told Mr Ali that she wanted to work earlier in the day. He replied that she needed to do her assigned hours, which caused her to shout at him. Mr Ali says that the centre manager, Mr Nwadiaro overheard her raised voice and, in the words of Mr Ali, "came to calm the situation down." The Claimant returned about half an hour later with a doctors note which had a manuscript sentence on it which said she should work between the hours of 9am and 5pm. That note had been signed on 30 December 2019. The Claimant says that Mr Ali put this doctor's note in the bin. Mr Ali says that he did no such thing, but that when he told the Claimant that he would need to send the note to HR or take it to the OH meeting. He says that the Claimant refused to listen to him and "kicked off"; Mr Nwadiaro came back again and the Claimant told both that they "wanted to kill her". The account recorded by Ms Byrne is that the Claimant said she was

explaining that she cannot finish at 6pm as that is “no good”, and that Ali threw her doctors note on the floor, as Kelvin came in asking what was going on. Ms Byrne’s note records the claimant saying “they don’t understand me and they just want my blood pressure to go up, I didn’t shout, but said they are trying to kill me.” In her evidence the Claimant vehemently denied that she had shouted during this incident.

15. Mr Nwadiaro sent an email on 6 January 2019 at 12.35pm to Ms Ramjan saying that the “situation with [the Claimant] is getting ridiculous” and asking her to call him. At 13.51 he sent a further email saying that after an “ugly situation” with the claimant earlier that day, he did not want her returning to site and required the return of her keys. The timing and content of these emails is consistent with the account of Mr Ali.

16. It does not appear to be in dispute that the Claimant was sent home. We accept that there was some sort of altercation and that Mr Nwadiaro came into the room with Mr Ali and the claimant twice. We accept that the claimant was concerned that working in the car park at the hours scheduled was impacting her health, mentioning her blood pressure and making a comment that it would “kill her”.

17. Ms Byrne acted immediately to investigate the situation, taking notes of her conversation with the Claimant and requesting a written account from Mr Ali. Her letter to Mr Nwadiaro on 6 January 2020 confirms she had “removed” the claimant from site while she investigated. On 7 January Ms Byrne wrote to the Claimant confirming her suspension on full pay pending the investigation into the allegations of the Claimant raising her voice towards the client and not following management instructions.

18. The Claimant during her evidence denied receiving many of the letters sent to her. The address was correct and Ms Ramjan told us that all letters were sent in duplicate – one by normal first class post and one by recorded delivery which required a signature. Unfortunately we did not have the records confirming delivery; Ms Ramjan said that not all of the duplicate letters were collected from the post office, and told us that the Claimant complained of having to go to the post office to collect duplicate letters when she already had the first copy.

19. A welfare meeting was scheduled for 13 January 2020, but the Claimant did not attend. Ms Byrne’s letter to the Claimant dated 14 January states “after

speaking to your son, he informed us that you were unable to attend due to not remembering about the arranged meeting". A further meeting was therefore scheduled for 23 January 2020, and her suspension pay was stopped.

20. The Claimant was invited to an investigation meeting in relation to the matters of 6 January, to take place on 4 February 2020. We have notes of that meeting taken by Ms Ramjan – which we note commenced with her being asked if she had the paperwork which had been posted to her. The Claimant, who was accompanied by her son, denied raising her voice during the incident; Ms Byrne concluded that on the evidence before her, she thought it appropriate to issue a final written warning to the claimant to be on her record for 12 months. Ms Byrne told the Claimant that she would write to the client asking him to reconsider his decision to her going back on site. This was confirmed in writing on 5 February 2020.

21. Meanwhile on 4 February 2020 Ms Byrne indeed wrote to Mr Nwadiaro telling him that the claimant had "been fully investigated and dealt with appropriately", and that "I am very confident that this matter is resolved and there will be no repetition". She asked for his permission for the Claimant to return to site. Mr Nwadiaro replied on 4 February that "I am NOT confident [that the Claimant] is in the right frame of mind to carry on working on my site. The countless issues [she has] exhibited in the last couple of months has made my Centre an unpleasant environment for myself, her colleagues and the business". He did not give permission for her return. Ms Byrne made a further attempt to change Mr Nwadiaro's mind in an email of 7 February 2020, highlighting the need for the Respondent to act reasonably and fairly towards the Claimant and urging him to reconsider. He refused to do so.

22. Faced with this position of their client, Ms Byrne wrote to the Claimant by letter dated 5 February 2020, inviting her to a meeting on 10 February 2020, warning her that unless an alternative role could be found, the outcome could be termination of her role. The claimant denied receiving this correspondence, but did attend the meeting of 10 February 2020 with her son, and at the outset was asked if she had received "the letter sent to you" and she confirmed she had.

23. At the meeting of 10 February 2020 the claimant persisted in her contention that she had done nothing wrong. Ms Byrne said that she had tried to get the client to change their mind, but had not been able to so had asked for all company vacancies to be sent through. Five vacancies were listed; none were geographically realistic for the Claimant. In her evidence the Claimant said the

only role being offered to her involved a 5am start in Kent, and she could not drive, making it unsuitable. Ms Ramjan in cross examination said that in addition to looking at vacancies, Ms Byrne had explored with an employee in Harlow whether they were willing to swap with the Claimant, but they were not. The claimant was therefore dismissed, as confirmed in a letter dated 12 February 2020.

24. The claimant denied receiving the letter of dismissal. She was paid 12 weeks notice of £5712; and 2.5 days of outstanding holiday pay in the sum of £238. The claimant said that she received the money in her bank account and her P45 and P60 in the post, but did not understand what the money was for. She did not appeal against her dismissal.

25. The claimant did not allege that any discussion of her disability, medical history, adjusted hours or dissatisfaction with duties took place during the meeting of 10 February 2020, and nor is any noted.

Submissions

26. Both parties provided written submission for which we are grateful, which they supplemented orally. The following cases were also sent by the parties:
    a. **Henderson v Connect (South Tyneside) Ltd** [2010] IRLR 466, EAT.
    b. **Dobbie v Burns** [1984] IRLR 329, CA.
    c. **SCA v Boyle** [2009] UKHL 37
    d. **Goodwin v the Patent Office** [1998] UKEAT 57/98
    e. **Walker v Sita Information Networking Computing Ltd** [2013] UKEAT 0097/12

27. Mr Paget emphasised that the Mr Apraku spent time in cross examination seeking to establish that there had been no altercation or shouting on 6 January 2020, but contends that this missed the point as the client clearly requested the removal of the Claimant from site. Whether the client was acting fairly is not a matter which, he submits, can be attributed to the Respondent. In any event, the reason for the termination was not the cause of the Claimant's dismissal. The reason was the customer's refusal to have the Claimant back on site. Case law confirms a respondent must seek to avoid injustice to a claimant. An employer does not have to establish the truth of any allegation – though in this case the Respondent did. By investigating and imposing a final written warning on the Claimant the Respondent was in a good position to seek to persuade its client to permit the Claimant back on site. These efforts were made, but failed.

28. The documents confirm five alternative roles were put to the Claimant, and in cross examination she also said she was offered a role in Kent with a 5am start. It was not suggested that was suitable for her, but showed that all vacancies were put to the Claimant. Ms Ramjan in cross examination gave further details of a 'switch' being explored with an employee in Harlow, which unfortunately was declined.

29. The clear reason for dismissal was 'third party pressure' / some other substantial reason "SOSR"; it had nothing whatsoever to do with her disability which the Claimant confirmed was not mentioned at all.

30. As to the disability discrimination claims – the something arising from her disability was said to be inability to be in the cold, but in cross examination the claimant said that she was not more sensitive to cold after her stroke. As to the alleged shouting at her on her first day back – the documents indicate this was actually 4 November, and Mr Salaad was not present. Mr Ali denied shouting at the Claimant, and having worked with the Claimant for 15 years with no incidents, is inherently unlikely to have been shouting at the claimant on her first day back after her stroke.

31. Whilst the PCP of being instructed to work in the carpark is a PCP, it was designed to give her light duties. They were agreed immediately before her return. However, it did not place her at a substantial disadvantage as compared to a non-disabled person given that the claimant confirmed she does not suffer more from the cold after her stroke as compared to before, and the doctor did not advise her to avoid the cold. Mr Paget also highlighted the Claimant's refusal to attend OH appointments.

32. Mr Apraku also supplemented his written submissions, which indeed supplemented the ET1 and further particulars. He highlighted her long service, and promotion to supervisor role, and clean disciplinary record. He said her stroke was 31 March 2019 and that the medical records were erroneous. Mr Paget he says, did a "spectacular u-turn" relying on third party pressure not conduct which had been relied upon until today. I referred Mr Apraku to the ET3 at para 6.25 which set out the Respondent's consistent case, and the list of issues he prepared which fully set out the Respondent's case as to third party pressure / SOSR.

33. Mr Apraku said there was no proper investigation as the note of Ms Byrne, seemingly of her conversation with the Claimant on 6 January 2020, (95 of the bundle) was undated and unsigned. He said from that being undated and unsigned the tribunal should conclude that letters in the bundle dated 6 and 7 January 2020 addressed to the Claimant, were "suspicious" and "possibly backdated". He also included in the list emails from Mr Nwadiaro, but then said he had no basis to challenge emails. He said that there was no investigation into the conduct for which the was dismissed. Mr Apraku submitted that alternatives to dismissal were not explored, and that the claimant should have had a redundancy payment. He accepted there was no redundancy situation and that there was no legal basis for any such claim, but it should have been considered to reward someone for their good service over 14 years.

34. As to reasonable adjustments, Mr Apraku said that "for some unknown reason" the claimant's duties on her return to work on 27 September 2019, were changed from cleaning toilets inside to working in the carpark. It was denied that the claimant ever said she was happy to work in the carpark, and there were no document with her signing that. He said that a reasonable employer would have swapped the Claimant from the carpark to where she wanted to work. He said that hospital notes were available for the employer. Her difficulties had began when she returned from sick leave after her stroke. He invited the tribunal to draw inferences to support an unfair and discriminatory dismissal.

Law

Unfair Dismissal

35. Section 98 of the Employment Rights Act 1996, so far as material, provides as follows:

> (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
>
> > (*a*) the reason (or, if more than one, the principal reason) for the dismissal, and
> >
> > (*b*) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
>
> (2) A reason falls within this subsection if it—

> (*a*) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
>
> (*b*) relates to the conduct of the employee,
>
> (*c*) is that the employee was redundant, or
>
> (*d*) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
>
> (4) [Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
>
> (*a*) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (*b*) shall be determined in accordance with equity and the substantial merits of the case.

36. In ***Dobbie v Burns*** [1984] IRLR 330 the Court of Appeal confirmed that the dismissal of an employee at the behest of a third party was for some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the claimant in that case held (a security guard). In ***Henderson v Connect (South Tyneside) Ltd*** [2010] IRLR 466, Underhill J (as he then was) held that if an employer "has done everything that he reasonably can to avoid or mitigate the injustice brought about by the stance of the client – most obviously by trying to get the client to chance his mind, and if that is impossible, by trying to find alternative work for the employee – but has failed, any eventual dismissal will be fair".

Disability Discrimination

37. Section 15 of the Equality Act provides:

> (1) A person (A) discriminates against a disabled person (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.

38. This requires the tribunal to identify what has arisen from the claimant's disability, and what the "unfavourable" treatment complained about, consisted of. There is no "justification" argument in this case.

39. Section 20 of the Equality Act provides:

> (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.

40. In this case the claimant has identified a "pcp", and the provision requires consideration of whether that PCP has put her, as a disabled person, at a substantial disadvantage compared to persons not disabled. If she shows that (or facts from which we can draw relevant inferences), the duty to make such adjustment as is reasonable, arises.

41. The Respondent in this case also raises the issue of knowledge. Schedule 8 to the Equality Act 2010, at paragraph 20 provides as follows:

> "(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—

> (*a*) …
>
> (*b*) [in any case referred to in Part 2 of this Schedule], that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement."

42. Here the Respondent accepts that it knew of her stroke, but denies that it knew that the PCP of her working in the car park placed the Claimant at the substantial disadvantage referred to in section 20 EqA.

Conclusions on the Issues

Unfair dismissal

43. We accept that the reason the Respondent dismissed the Claimant was because its client refused to allow the Claimant to return to work at the Pavillions shopping centre. This "third party pressure" amounts to some other substantial reason; applying ***Dobbie v Burns***.

44. We have seen no evidence to suggest that the reason or principal reason for the Claimant's dismissal was because of or related to her disability or health more generally. Nor was it because of the Claimant's conduct on 6 January 2020 – albeit that conduct was a significant part of the why the client refused to have the claimant work on its premises.

45. Mr Apraku focused his cross examination and closing submissions on the investigation into the events of 6 January 2020 being inadequate or substandard. However, that conduct was never relied upon as the reason for dismissal. In any event, we are satisfied that the investigation was reasonable. Ms Byrne did not sign or date her note of her conversation with the Claimant, but that alone does not render the process unfair.

46. We find that the Respondent acted reasonably in treating this as a sufficient reason for dismissal, in circumstances where Ms Byrne tried twice to change the mind of the client, and then made efforts to look for alternative posts. We accept that all vacancies in early February 2020 were put to the Claimant, and accept Ms Ramjan's evidence that a 'swap' with an employee in Harlow was explored. None of the vacancies available were appropriate.

47. The tribunal of its own volition note that it would have been open to the Respondent to have the claimant serve her notice period by way of garden leave, such that any other vacancies which might have arisen in the 12 week period could have been considered by her. However, the claimant has not argued that failure to do this was in any way unfair and such a course of action was not put by Mr Apraku in cross examination. The tribunal must not substitute its view of the situation, but consider whether the actions of the Respondent were, in all the circumstances of the case, within a range of reasonable responses. We have no hesitation in finding they were.

Discrimination

48. The Respondent accepts that at all material times the Claimant was disabled within section 6 of the EqA.

49. The sole complaint the claimant makes under section 15 EqA is that she was shouted at on her first day back at work when she was sent to the car park. As set out above, we do not accept as a matter of fact this occurred – as alleged or at all. This claim is therefore dismissed.

50. As to the claim of failure to make reasonable adjustments, we note at the outset that when the claimant was ready to return after suffering a stroke, the Respondent organised a welfare meeting to discuss her hours, and halved her hours. It was not in dispute that it sought out for her the lightest duties which were, in its opinion, available. When the Claimant at a second welfare meeting once she had been back for three weeks, raised dissatisfaction with her finishing time and working in the car park due to it being cold. The Respondent appropriately asked if there was a medical basis for that objection. When the claimant said there was no medical evidence about either duties or hours, the Respondent sought to arrange an occupational health appointment which the Claimant did not attend. The Respondent's procedures in this regard appeared to the tribunal to be exemplary.

51. Our conclusion is that there was not a failure to comply with the legal duty to make reasonable adjustments. Whilst the Respondent applied a "PCP" of requiring the claimant to work – at least some of the time – in the car park, the claimant's own case is that this did not place her at a particular disadvantage because of her disability. She said that she was not affected by the cold differently before or after her stroke. The only aspect of working in the car park to which the Claimant expressed her dissatisfaction, was the cold temperature.

52. Even had the claimant been placed at a substantial disadvantage by her disability, we would have accepted that the Respondent did not, and could not reasonably have known that the Claimant was put to this particular disadvantage in circumstances where it made considerable efforts to have the Claimant attend an OH appointment, and she failed to do so.

53. In the circumstances, all the claimant's claims are dismissed.

EJ Tuck QC.

Dated: 11/2/2022

Sent to the parties on: 3/3/2022

N Gotecha for the Tribunal