EMPLOYMENT TRIBUNALS

Claimant: **Mr K. Mc Allister**

Respondent: **Newcastle upon Tyne Hospitals NHS Foundation Trust**

Heard at: Newcastle Employment Tribunal **On: 31 July to 04 August 2023**

Before:

Employment Judge T.R. Smith

Mr S.J. Lie

Representation

Claimant: **Mrs Mc Allister (wife of the claimant)**

Respondent: **Ms S. Brewis (counsel)**

Judgement

The claimant's complaint of direct disability discrimination is not well founded and is dismissed.

The claimant's complaint of discrimination arising from disability is not well founded and is dismissed.

The claimant's complaint of a failure to make reasonable adjustments is not well founded and is dismissed.

The claimant's complaint of harassment related to his protected characteristic of disability is not well founded and is dismissed.

Written reasons

Abbreviations

1.EQA 10. The Equality Act 2010.

2.ABC. The Appointment Bookings Centre ,a patient booking centre operated by the respondent.

3.PTS. Passenger Transport Services. A service provided by the North East Ambulance Trust for moving patients from home to hospital and vice versa and also between hospitals.

Preliminary matter

4.Prior to the substantive hearing it became apparent that a full tribunal could not be constituted, despite attempts by the administrative staff to obtain an out of region member.

5.The parties were therefore invited to consider whether they would consent to the matter proceeding with the Employment Judge and one member. The parties were informed of the panel from which a member could not be obtained, namely the employers panel, and that, if the case proceeded, as the panel would only consist of two people, the Employment Judge would have a casting vote. The parties were given time to reflect: both parties agreed to proceed.

The issues.

6.At the start of the hearing the respondent made various concessions which are set out below.

7.It was conceded by the respondent that the claimant was a disabled person within the meaning of section 6 EQA 10 at all material times, that is when the alleged acts or omissions of discrimination took place.

8.The physical condition of the claimant's disability relied upon, and accepted by the respondent, was the claimant's chronic heart and lung conditions.

9.The respondent conceded it was not relying upon a knowledge defence either in respect of the complaint of discrimination arising from disability or a failure to make reasonable adjustments.

10.The agreed issues the tribunal had to determine are set out below.

Failure to make reasonable adjustments

11.Did the respondent apply a provision criterion or practice in requiring employees, who drove to work, to walk from the car park to the hospital entrance?

12.Did that PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability in that the effort in so walking caused the claimant fatigue and pain and could make him late for work?

13.Did a physical feature namely the location of the entrance to hospital in relation to the available disabled parking bays put the claimant at a substantial disadvantage compared to someone without the claimant's disability in that the effort in so walking between the two caused the claimant fatigue and pain and could make him late for work?

14.What steps would it have been reasonable in all the circumstances for the respondent to have taken in order to remove or ameliorate the disadvantage?

15.The claimant suggested:-

- being permitted to park in the hospital patient drop off/pick up bays.
- being permitted to park on the hospital taxi rank.
- being permitted to use the reserved bays located in the blue car park.
- allowing the claimant to work from home.

16.Was it reasonable for the respondent to have taken those steps and when?

Discrimination arising from disability

17.Did the respondent treat the claimant unfavourably by suggesting that the claimant utilised the respondent's flexible working policy to carry out his contractual hours, whilst avoiding being late for work?

18.If the claimant was treated unfavourably was the unfavourable treatment because of something arising in consequence of the claimant's disability? The claimant asserted that the something was taking longer to get from a disabled parking bay to the hospital entrance, and that arose in consequence of his disability.

19.Was any such proven treatment a proportionate means of achieving a legitimate aim? The respondent contended that requiring staff to work their agreed contractual hours was a proportionate means of achieving a legitimate aim.

Direct discrimination.

20.Did the respondent do the following things namely:

- did the respondent refuse to allow the claimant to park in the reserved parking bays approximately 45 metres from the hospital entrance?

21.Was that less favourable treatment?

22.The claimant relied upon a hypothetical comparator.

23.If so, was the unfavourable treatment because of the claimant's disability?

Harassment

24.Did the respondent do the following things namely: –

- on or about 02 September 2022, when discussing the distance between the disabled parking bay offered to the claimant, and the hospital entrance, did Mr Ian Watson ask the claimant if he was prepared to try and walk the distance, to which the claimant answered in the negative and said it resulted in him being severely out of breath and was not something he would do twice a day.
- did Mr Iain Watson suggest that if, as a result of the distance between the disabled parking bay offered to the claimant and the hospital entrance, he was delayed he could make up the time at the end of his shift, or flexible working options could be discussed.

- pressurise the claimant to apply for an “Access to Work” grant by indicating that unless he could obtain the grant, or make alternative arrangements to be dropped off at work, he was at risk of losing his job.
- pressurise the claimant by asking for updates on his Access to Work application by Mr Ian Watson, Ms Wendy Johnson and Ms Sue Kelly

25.If so, was that unwanted conduct?

26.Did it relate to the claimant’s disability?

27.Did the conduct have the purpose of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

28.If not, did it have that effect? The tribunal would take into account the claimant’s perception, the other circumstances of the case, and whether it was reasonable for the conduct to have that effect.

29.It was agreed that the case would proceed on a liability only basis and remedy, if necessary, would be addressed by means of a separate hearing.

The evidence.

30.The tribunal heard oral evidence from :-

- The claimant himself.
- Mrs Michelle Mc Allister, the claimant’s wife.

31.For the respondent, the tribunal heard oral evidence from: –

- Mr Iain Watson, Assistant Health Records Services Manager and the claimant’s line manager
- Mr Lee Winship, HR adviser
- Ms Anya Connor, Assistant Directorate Manager for Outpatients and Health Records
- Mr Gavin Evans, Deputy Director of Estates, Operations and Management.

32.The tribunal also had before it a bundle of documents which initially consisted of 333 pages. Further documents were added during the course of the hearing increasing the page count to 336. The tribunal has only had regard to documents it was specifically taken to in the course of evidence.

33.A reference to a number in the judgement is a reference to a page in the bundle.

Other Key personnel

34.Mr Kris Kelly, Assistant Medical Records Manager.

35.Ms Wendy Johnson, Senior HR adviser.

36.Ms Deborah Banks, Head of Outpatient Services

37.Ms Hannah Marsland, HR manager.

Findings of fact

38.There were factual disputes between parties. The tribunal has not attempted to determine each and every factual dispute, but has limited its findings of fact relevant to the agreed issues.

Background

39.The claimant started working for the respondent as a medical records clerk on or about 11 November 2018.

40.He was allocated Agenda for Change band 2 under the National Terms and Conditions for Hospital Staff.

41.The claimant was contracted to work 15 hours per week. He worked two days a week either Tuesday and Thursdays or Tuesday and Wednesdays .He did not work weekends. He could work either 8am until 4 pm or 9 a.m. until 5 pm.

42.His employment is continuing.

43.The claimants role involved, as at the date of the alleged matters that give rise to this claim, QR scanning and processing bundles of medical records. It was a deskbased task.

44.Initially the claimant was employed at the Royal Victoria Infirmary, another hospital operated by the respondent, but the medical records department subsequently transferred to the Freeman Hospital. This case centres on the claimant's employment at the latter hospital

45.Due to illness and Covid shielding, the claimant had not, prior to the transfer, worked at the Freeman Hospital

46.The Freeman Hospital does not have an accident and emergency department but it is a regional transplant centre and deals with a variety of patients with very serious life-threatening conditions such as renal failure, cardiological conditions and cancer. Many of its patients are acutely unwell. Ambulance access is required to the hospital at any time of day or night.

47.The claimant suffers from chronic heart and lung conditions. The medical evidence before the tribunal (334) stated that the claimant was only able to walk very short (unspecified) distances and was not very tolerant to prolonged exposure to cold/rainy weather conditions. Inclement weather could impact on the claimant's oxygen saturation level.

48. The claimant's own assessment of his walking ability was that he could only walk up to 50 m (although this specific distance was never raised with the respondents at the meetings on 02 and 15 September 2022 or in his grievance, more of which later) without needing to rest, and further distances would be exhausting.

49.The tribunal accepted the claimant's description of his mobility limitation.

50.He has a motor mobility vehicle and has been assessed as being entitled to a blue parking badge.

51.Ultimately the claimant started attending work at the Freeman hospital from 31 January 2023, following a successful Access to Work assessment, further details of which, again, appear, later in this judgement.

Parking at Freeman Hospital.

52.The tribunal was provided with a helpful plan (218) and various photographs (219 to 244).

53.Parking for staff and visitors at Freeman Hospital is a challenge, given the size of the site and the limited number of parking bays

54.It is important to record the distinction between staff and public parking.

55.Staff parking is controlled by means of the issuing of permits by the respondent's transportation department ,and having designated car parks. Public parking is unregulated (save to the extent that parking fees apply and are enforced) and the

respondent provides a mixture of disabled bays and none disabled bays to the public.

56.The respondent's transportation department cannot allocate a public disabled parking bay to a member of staff. It has an obligation to maintain a minimum number of public disabled parking bays. It was never the claimant's case that he should have been offered public parking.

57.It is also important to note the disabled parking bays differ in terms of their dimensions from none disabled bays. They occupy a greater footprint.

58.The demand for staff parking, and the limited bays available has resulted in the respondent issuing 80% more staff passes than there are available spaces, on the basis that not every member of staff would want to use a car parking bay at the same time due to holidays, sickness, shifts etc. This is an illustration of the extent of the demand on staff parking bays.

59.The tribunal has made reference to various distances in metres. It is important to emphasise that the claimant's case centred solely on the distance from the disabled parking bay offered to him by the respondent, to the entrance closest to the medical records department at the hospital.

60.From the hospital entrance, to medical records1(where the claimant worked) a further distance had to be covered but the claimant made no complaint about covering that distance, 62m, because the temperature was controlled and he could take rests.

61.It was common ground that the disabled parking bay offered by the respondent to the claimant was the closest staff disabled bay to the entrance of the hospital, which led to the medical records department.

62.The distance from that offered bay to the hospital entrance was between 97 to 103 m. It was not necessary for the tribunal to seek to resolve this small discrepancy. On either figure it was over 50 m.

63.Reference was made to the taxi rank and the drop off zones in the evidence. It is helpful, at this stage, to spend some time explaining their locations and capacity. There is a helpful plan.

64.Starting with the taxi rank, there were four spaces. The spaces were located directly outside the main entrance to the hospital.

65.Although the tribunal has used the word “rank” that is somewhat misleading. The vehicles could not simply ply for trade. One company has a franchise and taxis could only visit the hospital either to drop off or to pick up a pre-booked fare.

66.There were, in addition, two separate, none taxi, drop-off/pick up points.

67.The first was outside the hospital main entrance and the second was to one side, known as the cardiology drop-off/pick up point.

68.Starting with the main entrance drop-off/pick up point. This drop-off point was divided into two sections (266). One was for ambulances and the second for patients.

69.Of the nine spaces in the main entrance drop-off/pick up, 6 were for ambulances/rapid response units and 3 were for patients and their carers.

70.The drop-off/pickup points were limited to a maximum of 10 minutes waiting time and no employee was entitled to use the bays.

71.There are a further 16 space drop-off/pick up bays adjacent to the cardiology entrance. These spaces were approximately 50 m from the hospital entrance.

72.The claimant himself accepted in cross examination that because the two dropoff/pick up bays were frequently full, some visitors dropped off patients on the road, in breach of the respondent’s rules as to stopping.

73.The respondent maintains a camera system and was able to provide statistics for vehicles in the vicinity of the main entrance and drop-off/pick up areas (that is the main entrance and the cardiology drop-off/pick up areas)(110).

74.The figures were for a snapshot period from Monday 24 until Sunday, 30 October 2022. The tribunal was satisfied they were a reasonable representation of usage, and they were not challenged by the claimant.

75.Between 7 am and 7 pm, Monday to Friday, demand always exceeded capacity. For example on Wednesday, 26 October at 8 o’clock demand was 623.1%. The average demand for weekdays ranged between 146% to 430%.

76.Whilst the statistics were not shown to the claimant during the internal discussions and grievance, the tribunal was satisfied they were gathered contemporaneously and existed prior to the rejection of the claimant's grievance on 09 November 2022 .

77.Finally the tribunal should mention what was referred to by the parties as " the reserved spaces" which was first raised by the claimant in his grievance hearing on 06 April 2023.

78.This consisted of six spaces and could not be used by staff. It was reserved for regulators, such as the CQC who could, and did on occasion, arrive unannounced, and also for non-executive directors of the respondent, attending board meetings. They were not disabled bays and did not comply with the dimensions required for a disabled bay

Medical records.

79.At the Freeman Hospital the respondent has two medical record offices, the first on level I and the second on level II. In hospital terminology level I was the ground floor and it was to this office that the claimant had been allocated.

Occupational health report 16 August 2022

80.The claimant had been absent from work commencing September 2021 due to long covid.

81.In view of his absence the claimant was referred to the respondent's occupational health department, and on 16 August 2022 was deemed fit for work, subject to certain recommendations (61 to 65).

82.At the meeting the occupational health nurse recorded *"the symptoms affecting current functioning are described as fatigue, and also shortness of breath if he walks on a flat surface for greater than two – three minutes or if he walks more than one flight of stairs or on an incline".* Thus climbing stairs, or walking on an incline led to fatigue and shortness of breath even if the duration involved was less than two – three minutes.

83.The only two occupational health recommendations made in the report relevant, for the purpose of these proceedings, were as follows:-

- Firstly was a recommendation that an access to work risk assessment (not to be confused with the government Access to Work scheme) was undertaken to establish whether the walking route between the proposed parking bay and the hospital entrance was manageable. Whilst the claimant was subsequently critical this had not been undertaken, in reality, as will be seen, the claimant walked the route and considered it too long having regard to his disability and communicated that to the respondent. The respondent did not challenge the claimant's assertion. In any event, the failure of the respondent to carry out such an assessment did not form part of the allegations of discriminatory conduct raised against the respondent.
- Secondly the claimant was signposted to the government's "Access to Work" scheme and was advised that it might facilitate transport to work, if close parking to medical records 1 was not feasible and the claimant remained subject to shortness of breath.

84.On 24 and 25 August 2022 various emails passed between the claimant and Mr Kelly.

85.Mr Kelly was covering for Mr Watson, the claimant's line manager, as he was absent on annual leave.

86.Mr Kelly requested the claimant to return to work having regard to the occupational health advice and enclosed a plan setting out the parking arrangements (335/336) for the claimant to utilise in order to work in medical records 1. This required the claimant to use the staff disabled parking space already identified.

87.He suggested the distance was *"approximately a two-minute walk".*

88.Mr Kelly indicated various supportive measures would be implemented to facilitate a return to work including light duties, additional supervisory meetings and flexibility to attend medical appointments. The claimant would work in medical records I in the scanning bureau. In view of patient confidentiality he did not consider this work could be undertaken from home.

89.The claimant responded, setting out his concerns regarding walking from the suggested disabled parking space to the hospital. He said he wanted to trial the route with his wife and requested a meeting. **(66 to 69).**

90.As a result of the email exchanges, as requested, a meeting was arranged.

Meeting 02 September 2022

91.A meeting was held on 02 September 2022. Present at the meeting were Mr Wilson, Mr Winship, and the claimant.

92.A contemporaneous document setting out a summary of the meeting was before the tribunal. The matters discussed were expanded upon in an outcome letter dated 13 September 2022 (75 and 80 to 81). The tribunal accepted those documents, read together, were a reasonably accurate summary of the meeting, subject to one caveat,(see paragraph 109) set out below.

93.The purpose of the meeting was to develop a return-to-work plan.

94.Two principal subjects were discussed, namely the distance between the disabled space allocated to the claimant and the hospital entrance, and also the possibility of home working.

95.Prior to the meeting the claimant had visited the hospital site and concluded it would take 7 minutes to walk between the proposed car parking space and the hospital entrance, and it was not something he could do twice a day as he considered it would leave him severely out of breath. Thus the parking offered was not, in the claimant's view, appropriate. He notified Mr Watson of the same in email dated 01 September 2022 (71). Mr Watson shared that email with Mr Winship, so they were both aware, prior to the start of the meeting, of the claimant's position as regards the offered disabled parking space.

96.It is proper to record the claimant also stated at the meeting that bad weather would exacerbate his condition.

97.The claimant was told that a reasonable adjustment had already been made in that he was allow to park in the nearest staff disabled parking space and the one that was being offered to him was the closest to the hospital entrance. That was not disputed.

98.Thus, to summarise, there was no closer staff disabled parking space available on the hospital site than the one offered to the claimant.

99.The claimant asked to use the drop off bays located directly outside the front entrance of the hospital, a distance of only a few metres.

100.For clarity, at this meeting, the claimant had not raised the issue of utilising the cardiology drop-off/pick up bays. The conversation was therefore purely about the drop-off/pickup bays at the front entrance.

101.Mr Watson indicated they were short-term dropping off areas and considered it unlikely that permission could be granted for permanent parking but promised to seek further clarification from the transportation team.

102.The tribunal is satisfied he did so, and his preliminary view was affirmed.

103.The claimant was advised that, given the nature of the work ,there was no possibility of remote working as it involved collating vast amounts of paper records which contained sensitive personal data.

104.The claimant did ask whether he could work from home for the subject access request team but was told, again given the volume of paper notes and confidentiality, it was not a job that could be undertaken from home. He did not identify any other available posts suitable for home working.

105.The claimant did not dispute before the tribunal that the reasoning he was given for the refusal of home working was in any way unreasonable.

106.The claimant himself accepted in evidence that homeworking was the very last resort and certainly one role he had undertaken in the past, working from home, doing ABC work during shielding, had affected his mental health and had not been a success.

107.Mrs McAllister, in evidence, confirmed that at the subsequent meeting she attended on **15 September 2022** their principal focus was that of a car parking space. Thus although mentioned in subsequent correspondence, homeworking was not a matter that that the claimant actively pursued with the respondent and the respondent was entitled to assume it was not a viable option, given the lack of challenge to its reasoning for refusal

108.The claimant indicated he would not utilise the disabled space offered to him. With his health, and the time it would take to walk from the parking space to the

hospital it would make him late for work. Mr Winship suggested the claimant could utilise the respondent's flexible working policy or if he was a little late for work, the additional minutes could be made up at a time convenient to both himself and his manager. He did make a comment to the claimant to the effect that other staff planning their journey sometimes had to leave their homes a little earlier to ensure they were not late, for example in inclement weather.

109.On balance (although not referred to in the respondent's notes) the claimant did express concern about the comment made by Mr Kelly that the parking space was just a *"two minute"* walk, which he felt made an assumption about him and was discriminatory. Mr Watson defended Mr Kelly stating it was clearly just a general phrase seeking to convey that it was a very short distance. The tribunal need not concern itself further with this matter, given it did not form part of the allegations of discrimination raised by the claimant against the respondent.

110.On balance the tribunal found Mr Watson did ask the claimant whether he was willing to park in the allocated disabled space and *"try the walk".* The tribunal considered that the context this phrase was used was significant . The tribunal concluded that Mr Watson simply wanted to be certain that the claimant, having been told of the allowances that could be made if he was late, still wished to reject the disabled parking space offered to him. What Mr Watson wanted to ascertain was that the disabled parking space offered to the claimant was in no sense, from the claimant's perspective, a reasonable adjustment and therefore was off the agenda so that he would then move on to look at other possibilities.

111.At the meeting Mr Winship did explain to the claimant, after the rejection of the parking space and adjustments thereto, that if alternative roles had to be explored, that would involve redeployment. This was not in the tribunal's judgement, as the claimant suggested, a threat but a statement of the reality of the situation. The tribunal was satisfied both Mr Watson and Mr Winship wished to avoid redeployment which is why Mr Watson asked the claimant about what happened in respect of an Access to Work application, mentioned by occupational health.

112.The claimant accepted he had not explored Access to Work until he had clarity in respect of the parking situation but agreed to proceed with his application. The respondent provided the claimant with a link so he could make an application. The

respondent could not make an application on behalf of the claimant. It was only the claimant who could make the application.

113.The tribunal did not find that fair criticism could be made of the claimant for failing to make an earlier application, although signposted to it by the respondent's occupational health department, given the claimant was not aware of the disabled space suggested and the walking route necessary until he received correspondence from Mr Kelly on 24 and 25 August 2022 and had personally visited the hospital.

114.However neither did the tribunal find that the respondent could be criticised for encouraging the claimant to make an application, given the potential benefit him, as indeed ultimately was the case.

115.In view of the lack of a successful resolution it was agreed further enquiries will be made and another meeting arranged. **Meeting 15 September 2022**

116.A further meeting was held on 15 September 2022.

117.Present were Mr Watson, Mr Winship, the claimant and his wife.

118.The outcome of the meeting was confirmed in a letter dated 20 September 2022 (86 to 88) and the tribunal regarded that as a reasonable summary of the principal matters discussed.

119.It was accepted that the previous notes did not record that the claimant mentioned Mr Kelly had told the claimant he thought the distance between the proposed disabled space and the claimant's workstation *was "approximately a twominute walk",*or Mr Watson's response

120.Mr Watson indicated that having spoken to the transportation team the patient drop-off area, due to the demands upon it and patient needs, could not be utilised as a dedicated parking space for the claimant.

121.As a result of this, other options were discussed, such as whether the claimant's wife could drop the claimant off at the hospital.

123.The claimant indicated there was a possibly that this might make his wife late for her own work. It was in this context that Mr Watson further suggested that by utilising the flexible working policy, arrangements could be made for the claimant to

start early so he could be dropped off by his wife and there would be no danger of her being late for her own work commitments.

124.Mr Watson also indicated he was prepared to look at the claimant's rostered hours to see if they could be adjusted, again so a lift could be arranged for the claimant by his wife or a family member that was more convenient, to facilitate a return to work. The claimant did not pursue this option.

125.The claimant was asked about progress with his Access to Work application by Mr Watson and the claimant indicated it had been submitted but no timescale had been given to him as to processing. Mr Watson asked the claimant to keep the respondent appraised of any developments.

126.The claimant was offered a post at the ABC centre at Regent point . Regent Point, was a building on a separate site, some miles away, where there were disabled parking spaces very close to the main entrance. The work involved speaking to patients over the telephone and arranging appointments. The claimant did not consider that work was suitable, due to his breathing problems. This suggestion, in the view of the tribunal, demonstrated that the respondent was taking active steps to address a return to work that would accommodate the cliamant's disability.

127.It was at this meeting that the claimant first mentioned the cardiology dropoff/pickup bays.

128.Mr Watson did subsequently explore that option with the senior hospital transportation lead as is evidenced by an e-mail exchange on 15 and 16 September 2022 (261) . Mr Watson was advised "*all staff parking is in a designated staff car pars (* sic parks*) only. The bays suggested are not suitable for staff parking and if you can advise why other disabled parking bays for staff… inappropriate I'm giving (*sic*) further consideration for a possible very short term arrangement.."*

129.The tribunal noted that the author had underlined the word *"very".* Following an internal meeting, this option was not discussed with the claimant because he was seeking a long-term solution namely to park permanently.

130.Redeployment was raised with the claimant by Mr Winship. The claimant did not wish to consider redeployment.

131.At the end of the meeting Mr Watson indicated to the claimant that an updated occupational health report would be obtained, given the claimant remained absent from work.

The Grievance

132.The claimant raised a grievance on 04 October 2022 (90 to 93.)

133.Whilst the grievance made reference to various matters, the thrust of the claimant's case in respect of car parking was as follows *"I mentioned the use of other bays nearer to the hospital entrance that are used for pickup and drop-off or PTS vehicles".*

134.The tribunal noted the issue of parking in the taxi rank was not pursued.

135.Although the grievance specifically referred to a failure to make reasonable adjustments, and discrimination arising from disability, no reference was made to harassment. The claimant accepted he experienced difficulties with employers for over 30 years and therefore have some knowledge of the rights of those who are disabled. Whilst the tribunal reminded itself the claimant was a litigant in person the use of these two legal labels and the reproduction of the definition of discrimination arising from disability under section 15 EQA 10 led the tribunal to conclude at the time of the grievance's authorship the claimant did not consider he had been harassed in the legal sense. The claimant accepted that he only considered that he might have been subjected to harassment having taken advice, well after he had raised the grievance.

136.Ms Banks was appointed to investigate the grievance.

Occupational health meeting 11 October 2022.

137.It is appropriate, to complete the chronology, to briefly record that a further meeting with occupational health took place on 11 October 2022.(94 to 97)

138.The report was not helpful to either party. It simply recommended that the claimant was fit to return to work. The recommendations made, appeared to have been cut and pasted from the report of 15 August 2022.The author stressed that the implementation of those recommendations was a matter for the respondent's management to consider and review.

The Grievance meeting.

139.As there was nothing in the agreed issues as regards the conduct of the grievance, the time it took, or its outcome, the tribunal can deal with the process in relatively brief terms. In addition part of the claimant's grievance covered matters that were, again not in the agreed issues, so the tribunal did not consider it necessary to set out those details.

140.A meeting took place on 21 October 2022 between the claimant and Ms Connor, the latter supported by Ms Johnson, to see whether the matter could be resolved informally.

141.The claimant confirmed the main issue he wanted resolved was the location of parking offered to him in relation to his post in medical records 1.

142.The discussion mirrored much of what had been said between the claimant, Mr Watson and Mr Winship.

143.The claimant was told could not park in the patient drop-off/pick up bays.

144.He raised , after having apparently dropped it previously, the possibility of parking in the taxi rank and Ms Connor indicated she would make enquiries 145.The claimant repeated he did not want a post offered to him at the ABC.

146.The respondent's objections to home working were repeated.

147.Ms Connor asked the claimant whether he had a result for his Access to Work application and he said he had not, but agreed to keep the respondent updated.

148.The claimant was again offered flexibility as regards working days and hours to fit round his family so they could collect and drop him off.

149.The possibility of supplying a mobility scooter to enable the claimant to travel from the designated parking space to medical records 1 was raised by the respondent but the claimant indicated he did was not interested in mobility aids as he considered it impacted upon his dignity.

150.The claimant was told that if he could not return to work with the adjustments suggested then the respondent would need to seek further advice from occupational health as to what alternative roles might be suitable and also a skills audit would

need to be to be undertaken. In other words the respondent would need to look at redeployment.

151.The claimant did not identify any vacant band 2 positions within the directorate and neither Ms Connor , nor her HR adviser was aware of any, although at this stage the claimant had not entered into redeployment, so a detailed search had not have been undertaken. As it transpired the claimant never entered redeployment so a skills audit and trust wide search was not necessary.

152.Following the meeting, Ms Connor made further enquiries as regards parking in the taxi rank and the drop-off/pick up bays.

153.She received an e-mail from Mr Evans which indicated that some of the bays were used by ambulances and the patient pick up/drop-off parking was limited to 10 minutes and parking within such bays was not possible because, in his view, the spaces were *"critical to providing access for patients and our high demand resulting this area directly becoming heavily congested . As such to lose 1 to allow for all-day parking would have a negative impact on the ability of patients to access the site".*

154.Having regard to Mr Evans position within the respondent, and the statistical evidence available to him, the tribunal was satisfied Ms Connor had reasonable grounds to reject the claimant's grievance in this aspect, relying on Mr Evan's opinion.

155.On 09 November 2022 the claimant was advised by letter that his grievance was rejected and reasons given (119 to 122).

156.The claimant was dissatisfied and therefore the grievance was investigated formally.

Formal grievance investigation.

157.Ms Carol Ewan was appointed as investigating officer.One event occurred during the investigation which tribunal should briefly record.

158.On 09 and 11 January 2023 the respondent was contacted by Access to Work (136/143.) .The respondent was told the claimant application had been granted.

159.The government would pay for the cost of taxi travel to and from work for the claimant.

160.The claimant would be required to contribute 25p per mile per journey, that being the cost the claimant would have already faced had he not accessed the scheme. The tribunal considered that to be a low estimate having regard to the cost of petrol, maintenance and depreciation, having taken judicial notice to the AA Cost of Motoring.

161.Total support was assessed at £2085.71pa of which Access to Work would contribute £1981.43. Thus the annual cost to the claimant was approximately £104.

162.On 30 January 2023 the claimant returned to work on a phased basis utilising the Access to Work arrangement.

163.A grievance investigation report was produced in March 2023 (150 to 159) **The grievance hearing 06 April 2023.**

164.The claimant's formal grievance was finally heard on 06 April 2023.

165.Present was the claimant, his wife, Ms Banks, the chair of the grievance hearing and Ms Marsland who provided HR support.

166.Notes of the meeting were placed before the tribunal and not disputed (161 to 169).

167.The claimant raised, for the first time, the issue of the *"reserved spaces".* He asserted that a space should be allocated to him, which was only approximately 45 m from an entrance into the hospital.

168.The outcome of the grievance, which was the rejection of the claimant's grievance, and the reasoning for it, are set out in outcome letter dated 27 April 2023 (202 to 206). The claimant was given a right of appeal. There was no evidence before the tribunal as to whether the claimant has exercised that right or not

Mr Evan's evidence.

169.The tribunal regarded the evidence from Mr Evans as being significant and it can be summarised as follows.

170.He explained that the reserved spaces formed part of an addition to the existing car park. Those staff using the extended car park were meant to follow the path into the main hospital entrance. Utilising the path the distance well exceeded the

distance between the claimant's allocated disabled parking space and the hospital entrance. Put simply if the proper path was followed the reserved spaces were no nearer than what had already been offered.

171.He did however concede that some staff followed a road, which had a steep incline, and which gave entry to the basement of the hospital and the laundry store. Utilisation of this route was discouraged and markings had been made to encourage the use of the path. Despite the discouragement he accepted that the route suggested by the claimant was used by some staff as a shortcut.

172.He accepted that if the claimant used this route it would be approximately 45 m from the reserved spaces to an entrance to the hospital.

173.However the route was discouraged because it failed to comply with British Standards 8300 (the design of buildings to meet the needs of disabled people code of conduct) or Building Regulations. There was no pavement and vehicles used the route for deliveries. He was concerned for the claimant's safety. He also expressed concern at the gradient, approximately 10% given he understood slopes impacted on the claimant's mobility.

174.No member of staff was permitted to use the reserved spaces.

Law , discussion and conclusions.

The burden of proof

175.The tribunal reminded itself of the burden of proof, which it has applied throughout its deliberations. It is set out in section 136 EQA 10.

176.The tribunal has also had regard to The Equality and Human Rights Commission
Code of Practice on Employment (2011) (the code) throughout its deliberations

Direct discrimination

177.The tribunal started with the complaint of direct discrimination.

178.It applied the following legal principles.

179.Direct discrimination is defined in section 13 (1) EQA 10 as follows: –

"(1) 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."

180.The legislative test is therefore broken down into two elements namely less favourable treatment and the reason for that treatment. In some cases, however, it may be appropriate to ask the latter question first, see, **Shamoon -v-The Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11.**

181.The test of what amounts to less favourable treatment is an objective one. The fact that a person believes they have been treated less favourably than a comparator does not of itself establish that there has been less favourable treatment: **Burrett v West Birmingham Health Authority [1994] IRLR 7.**

182.Direct discrimination is concerned with less favourable, rather than unfavourable, treatment. It is the equality rather than the quality of the treatment that matters.

183.As the statutory definition requires less favourable treatment that in turn requires a comparison to be made.

184.Section 23 EQA10 states :

"(1) On a comparison of cases for the purposes of section 13… there must be no material difference between the circumstances relating to each case.

185.Where the protected characteristic is disability, section 23 (2) EQA 10 requires that the circumstances must not materially differ between the claimant and comparator and specifically includes a person's disabilities. In other words the claimant and comparator must have the same abilities and this may mean that the appropriate comparator is also a disabled person.

186.The second element is the treatment must be because of the protected characteristic.

Discussion.

187.The tribunal is satisfied that the claimant has established that the respondent did refuse to allow the claimant to park in the reserved spaces following the request he made during the course of the grievance hearing on 06 April 2023. The fact that

claimant had raised a specific proposal and the respondent had rejected it, looked at objectively, was a refusal.

188.To determine whether that was less favourable treatment the tribunal had to construct a comparator. In doing so the tribunal reminded itsself of the special provisions in respect of disability set out in section 23 (2) EQA 10. Thus a comparator would be another employee who travelled to work by car who could only walk approximately 50 m without substantial difficulty.

189.The tribunal is satisfied that a comparator would have been treated in an identical manner.

190.The reserved spaces were not for the respondent's employees. No employee would have been granted a reserved bay if a request was made.

191.The claimant's contention that an able-bodied employee could use the reserve spaces but he, a disabled person could not, is not supported by the facts. None of the respondent's employees could use the reserved spaces and there was no evidence that any of them did so in practice.

192.They were reserved for specific visitors and not employees. Non-executive members of the trust are not employees. Neither are regulators.

193.Thus when carrying out the comparison the claimant was not treated less favourably when compared with an appropriate comparator.

194.Even if the tribunal was wrong on that point the treatment had nothing whatsoever to do with the claimant's disability. He was refused not because he was disabled but because of the respondent's policy of allocating reserved spaces to non-executive directors and regulators, any of whom may have had a disability.

195.In the circumstances, therefore, the claimant direct disability discrimination must be dismissed.

Discrimination arising from disability.

196.The tribunal applied the following legal principles.

197.Section 15 EQA 10 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".

198.Section 15(1) (a) contains a double causation test. Firstly the unfavourable treatment must be *"because of"* the relevant *"something"* and secondly that *"something"* must itself be *"arising in consequence"* of the disability, see **Basildon and Thurrock NHS Foundation Trust -v- Weerasinghe [2016] ICR 305.**

199.Starting with the first element namely the *"because of "* issue, the focus is on the alleged discriminators reasons for the action and therefore the tribunal must consider the decision-makers conscious and subconscious thought process, see **Robinson v-Department for Work and Pensions [2020] IRLR 884.**

200.The *"something"* must more than trivially influence the treatment; it does not have to be the sole or principal cause.

201.The second element, the *"in consequence"* issue. There is no need to look at what was in the mind of the alleged discriminator and it is a matter of objective fact decided in the light of all the evidence.

202.The approach a tribunal is required to take was helpfully summarised in **Pnasier -v- NHS England [2016] IRLR170,** which the tribunal applied.

Discussion.

203.The tribunal determined that the claimant did not surmount the first hurdle namely demonstrating that what was said was unfavourable treatment.

204.In **Trustees of Swansea University Pension and Assurance Scheme -v-Williams UKEAT 0415/1** the EAT said (approved by the Court of Appeal at **2017 EWCA 1008)** the concept of unfavourable treatment was said to be *"… measured against an objective sense of that which is adverse as compared with that which is beneficial"* and *" the sense of placing a hurdle in front of, or creating a particular difficulty or, or disadvantaging a person .."*

205.In the code the word "*unfavourably"* was said to mean the disabled person *"must have been put at a disadvantage"* .

206.Suggesting to an employee flexibility in terms of their contractual working hours is not a disadvantage. Many would regard an offer of flexibility as an advantage.

207.The tribunal was reinforced in this judgement by having regard to the context in which the suggestion was made to the claimant.

208.The respondent was seeking solutions to the claimant's disability challenges and had no staff disabled parking space closer to his place of work than was offered to him. It was anxious, as was the claimant, to get back to work.

209.The flexible working policy was merely one of a number of suggestions that was explored. It was perfectly reasonable to raise the policy with the claimant given the claimant had said that he had walked from the disabled parking space to medical records 1 and explained amongst his concerns he was concerned, about being late for work. It was offered in the context of a supportive measure namely that the claimant was not to be concerned about being late for work

210.The respondent was seeking to assuage any concerns the claimant may have about action being taken for him if he was late. The tribunal considered Mr Winship put the matter fairly when he said *"this was intended to be a supportive measure".* The tribunal agreed.

211.It was also offered in the context of whether, rather than using a disabled parking space, the claimant could be dropped off and picked up from work by his wife or family. It was the claimant who raised a concern that this might make his wife late for work. In seeking to address that justifiable concern, flexible working was raised. What the respondent was seeking was to explore whether by adjusting the claimant hours his wife or family difficulties in providing transportation could be resolved.

212.The mention of flexible working was not unfavourable, detrimental or disadvantageous to the claimant.

213.As unfavourable treatment has not been established the tribunal did not need to consider the double causation test or the respondents justification defence.

214.The complaint of discrimination arising from disability must be dismissed.

Harassment.

215.The tribunal applied the following legal principles.

216.Section 26 of the EQA 2010 defines harassment as follows:

(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 an offensive environment for B

(2) A also harasses B if -

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose of effect referred to in subsection (1)(b)

(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."

217.In **Richmond Pharmacology Limited v Dhaliwal 2009 IRLR 366** Underhill P. (as he then was) set out three essential elements of a harassment claim namely:

- Did the respondent engage in unwanted conduct?
- Did the conduct have either (a) the purpose or (b) the effect of either (i) violating the claimant's dignity or (ii) creating an offensive environment?
- Was the conduct related to a relevant protected characteristic?

218.This test was clarified and extended in the case of **Pemberton v Inwood 2008 EWCA Civ 564** where the court added that when considering whether the conduct had the prescribed effect the tribunal must take into account the following factors:

" …..a Tribunal must consider both…..whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and ….whether it is reasonable for the conduct to be regarded as having that effect (the objective question). It must also…take into account all the other circumstancessubsection (4)(b). The relevance of the subjective question is that if

the Claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the Claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so."

219.The difference between purpose and effect can be illustrated by the case of **Richmond Pharmacology v Dhaliwal [2009] IRLR336** and the tribunal noted the distinction.

Discussion.

220.The tribunal started by considering whether the alleged unwanted conduct described by the claimant actually took place.

221.It was assisted in this task by the concession made by Ms Brewis that, save for a disagreement in the list of issues by means of the reference to "*pressurised"* and the claimant being *"threatened with the loss of his job"* the underlying factual matrix was agreed.

222.The tribunal found the claimant was not "*pressurised"* in respect of making the Access to Work application or as to its progress.

223.In respect of Access to Work, Mr Watson and Mr Winship were following up a recommendation made by occupational health. Only the claimant could make the application and given there was the potential, as proved to be the case, to find a solution to the difficult situation faced by both the claimant and the respondent, it was a proper matter for the respondent to explore with the claimant.

224.The tribunal found that the claimant was asked from time to time about the progress of his Access to Work application. The respondent simply did not know how long the process would take and, given that the claimant was absent from work, was seeking a solution to get the claimant returning to work, an aim both parties were keen to achieve.

225.There was nothing in the evidence before the tribunal to suggest that the claimant was harangued or subjected to any other inappropriate behaviour in respect of his application or its progress. There were not repeated requests within a short

period of time. The requests were not made at inappropriate times. On the claimant's evidence the requests were made on 02 and 15 September 2022, and probably on two further occasions in total by Ms Johnson and Ms Kelly. The application was lodged on or about 02 September and therefore, four requests were made over a period of almost 4 months until it was processed. The tribunal concluded this could not be said to amount to undue or inappropriate pressure.

226.Nor was the claimant threatened with the loss of his employment if he did not pursue an application to Access to Work. The tribunal accepted that on both 02 and 15 September 2022 redeployment was mentioned to the claimant which, if unsuccessful, may have led to the claimant losing his job. 227.However matters never even reached the stage of the claimant having to go into the redeployment pool, given the claimant was able to return to work at the end of January 2023. Whilst the claimant was told in September that ultimately if he went into redeployment and it was unsuccessful he was at risk of losing his job that was not said to violate the claimant's dignity or creating an intimidating, hostile, degrading humiliating or offensive environment but merely to inform him of the overall process. The statutory words must not be cheapened simply because something is said that is upsetting.

228.Thus the factual matrix to the third and fourth allegation of harassment was not made out.

229.Given the concession, rightly made as regards the first and second allegation of harassment, the tribunal moved on to determine whether the conduct have either the purpose or the effect of either violating the claimant's dignity or creating an offensive environment.

230.The tribunal reminded itself of the tone of the statutory language.

231.In **Richmond Pharmacology v Dhaliwal [2009] IRLR336**. The EAT stressed that dignity would not be violated "*by things said or done which are trivial or transitory, particularly where it should have been clear that any offence was unintended*".

232.The need to approach the statutory language with care was further emphasised in **Betsi Cadwaladr University Health Board v Hughes UKEAT/0179/1** where it was

suggested the word *"violating"* was a strong word and a finding of such should not be made lightly. Offending against dignity or hurting was insufficient.

233.The tribunal was satisfied that on 02 September 2022 Mr Watson did ask the claimant whether he was prepared to try the distance from the designated disabled car bay to medical records 1. The context, however is important when looked at when this arose in the discussion. Occupational health had not given any indication as to what distance the claimant could walk. Mr Watson wanted to be clear that the claimant was rejecting, under any circumstances, the possibility of utilising the space offered. He did this so he knew that it was no longer an adjustment that the claimant would regard as reasonable and therefore other options had to be considered.

234.The tribunal has already made findings in respect of the discussions relating to flexible working but the test under section 26 differs from that in respect of a complaint under section 15 EQA 10 so it is appropriate therefore the tribunal briefly deals with the agreed issue.

235.The context of the mention of flexible working was, as the tribunal has already found, to remove any stress to the claimant if he was late and also in terms of addressing the difficulties the claimant first raised about being dropped off by his wife or family and how the policy could be utilised to ameliorate those concerns.

236.The tribunal was not satisfied that subjectively the claimant believed he had been harassed for two reasons.

- Firstly the claimant's statement made no reference to the effect of the above matters upon. To the extent he referred to a matter that he classified as a form of harassment it related to a comment made by Mr Kelly as regards *a "two-minute"* walk but this did not form an issue the tribunal had to determine.
- Secondly in the claimant's grievance he made no reference to the above matters as amounting to harassment.

237.Even if the tribunal was wrong on that point and the claimant could establish a subjective belief, the tribunal was not satisfied that it was reasonable for the conduct to have that effect for the reasons already set out, at length, in this judgement.

Failure to make reasonable adjustments

238.The tribunal applied the following legal principles.

239.A claim for failure to make reasonable adjustments is to be considered in two parts. First the tribunal must be satisfied that there is a duty to make reasonable adjustments; and only then must the tribunal consider whether that duty has been breached. Section 20 EQA deals with when a duty arises, and states as follows:

(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.

……

(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.

240.Section 21 EQA states as follows:

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

241.In determining a claim of failing to make reasonable adjustments, the tribunal therefore must ask itself three questions:

- What was the PCP?
- Did that PCP put the claimant at a substantial disadvantage because of his disability, compared to someone without that disability?
- Did the respondent take such steps that it was reasonable to take to avoid that disadvantage?

242.The key points here are that the disadvantage must be substantial, the effect of the adjustment must be to avoid that disadvantage and any adjustment must be reasonable for the respondent to make.

243.The duty under Section 20 EQA 10 has essentially four requirements, and the importance of a tribunal going through each of the constituent parts of section 20 was emphasised by the EAT in **Environment Agency v Rowan [2008] ICR 218.**

244.In particular the tribunal should identify:

(a) the provision criterion or practice applied by the employer;

(b) the identity of non-disabled comparators;

(c) the nature and alleged extent of the substantial disadvantage suffered by the claimant comprising itself the need to identify:

(i) the nature of the claimant's disability;

(ii) why this disability placed him at a substantial disadvantage;

(iii) what the substantial disadvantage was;

(d) in light of those matters what a reasonable adjustment would be.

245.The test of what steps are reasonable is objective see **Smith-v-Churchills Stairlifts [2006] ICR 524** While employers are required to take such steps as are reasonable in all the circumstances to help disabled people, which they are not required to make for others, what steps an employer should take involves striking an objectively reasonable balance.

246.While the test as to effectiveness is not that an adjustment will only be reasonable if it is completely effective, the tribunal's focus should be on whether the adjustment would be effective by removing or reducing the disadvantage a claimant is experiencing at work as a result of disability.

247.In **Project Management Institute v Latif 2007 IRLR 579** the EAT explained that, in order to shift the burden onto the employer, the claimant must not only establish the duty has arisen but facts from which it can be reasonably inferred, absent an explanation, it has been breached. Accordingly, by the time the case is heard, there must be evidence of some apparently reasonable adjustments that could be made. It would be an impossible burden to place on an employer to prove a negative. If the claimant sets out the steps, the tribunal must decide whether the respondent's given reasons for not doing them are objectively reasonable by critically evaluating them, weighing their importance to the employer against the discriminatory effect.

Discussion

248.Ms Brewis conceded that the claimant had established the physical feature and PCP upon which he relied.

249.She also sensibly conceded that a disabled person would be placed at a disadvantage and that the claimant himself was placed at a substantial disadvantage. The only issue for the tribunal was whether the suggested adjustments were reasonable. Given the concessions made the burden had shifted to the respondent.

250.In judging the issue of reasonableness the tribunal considered it was appropriate to have regard to the adjustments that the respondent had offered to make, (even if not accepted by the claimant) as it provided an insight into whether respondent seriously addressed its mind to the issue of making reasonable adjustments to accommodate the claimant's disability

251.The tribunal reminded itself the claimant was offered the nearest disabled parking space to his place of work, was offered alternative employment at ABC, was offered a change to start times and shift patterns to see whether his family could give him lifts to and from work, signposted the benefit of Access to Work and also discussed with the claimant the possibility of mobility aids from the disabled parking space to medical records one.

252.The tribunal considered it was convenient to deal with the issue of the taxi parking and the drop-off/pickup spaces, both outside the main hospital entrance and cardiology together.

253.The taxi rank only consisted of four spaces. It was subject, on the evidence, to high operational demand and the transportation department had advised that utilising one of those spaces would not be possible. The respondent's own statistics supported the assertion of high operational demand. The respondent was entitled to take into account and balance the needs of the patients it served and their demand for taxis with that of seeking to address the claimant's disadvantage.

254.The tribunal concluded the respondent had demonstrated the adjustment suggested was not reasonable.

255.Similarly investigations were made as regards the drop-off/pickup bays. The majority were utilised by ambulances and having regard to the nature of this particular hospital were clearly necessary

256.Given the nature of the patient conditions, time was frequently of the essence. The tribunal found that it was appropriate that there were dedicated spaces for the ambulance service. It was further satisfied that having a car parked in one or more of the bays was likely to significantly impinge on patient care and safety.

257.The patient drop off/pick up bays were limited in number

258.As the tribunal has already noted from the statistical evidence for the taxi rank, ambulance bays, and drop-off/pickup bays showed demand far exceeded supply at the time the claimant worked. The claimant's own evidence that people would sometimes park illegally on the road was supportive of the respondent's position.

259.The tribunal found the evidence of Mr Evans persuasive that the bays were critical for providing access to patients and that the area was heavily congested even without the adjustment suggested by the claimant. The loss of a space for two days per week for a whole day would, in the tribunal's judgement further exacerbate the position.

260.The tribunal has not ignored the internal email from the transportation department which suggested that they might be able to accommodate the claimant in a cardiology bay for a "very short " period.

261.It was unfortunate the author was not called to explain what was meant by *"very short".* The tribunal gave this matter much thought. It was persuaded that the respondent had demonstrated that this would not be a reasonable adjustment because what the claimant required was a permanent parking bay within approximately 50 m of the main hospital entrance and this adjustment, if adopted, would not be effective because it would not be a permanent provision.

262.Turning to the reserved spaces the tribunal has already addressed the point in respect of the claimant's complaint of direct discrimination. However the tribunal has reminded itself the test for reasonable adjustments is different.

263.The evidence before the tribunal was at the route suggested by the claimant to access the hospital which was under 50 m would be inappropriate because it did not

comply either British Standards or Building Regulations, was on a steep slope and was on the road utilised by vans to deliver laundry. There was no pavement. If the claimant followed the designated walkway it was common ground that the distance from a reserved space to medical records 1 exceeded the distance from the disabled space offered to the entrance.

264.Thus even if the reserved spaces were available to employees the tribunal was satisfied the respondent has demonstrated that the adjustment suggested by the claimant was not reasonable.

265.More significantly, in the tribunal's judgement, it would not have been an effective adjustment because at the time when it was first raised ,in April 2023, a reasonable adjustment was already in place namely the claimant was being dropped off and delivered to work via taxi, supported by Access to Work.

266.The tribunal had not overlooked section 20(7) EQA 10 which contains a prohibition on an employee having to pay or make a contribution to the employer for any adjustment. However that section was not breached here because on the wording of section 20 no contribution was claimed by the respondent. The contribution was in respect of the government. In any event it was cost neutral because the claimant saved the petrol and depreciation costs of using his own vehicle to travel to and from work.

267.The tribunal was satisfied that the claimant's post of medical records was not reasonably susceptible to homeworking due to patient confidentiality and similarly working on subject access requests was not suitable either for the same reason. The claimant had previously raised a grievance in respect of his mental health from homeworking .

268.The respondent has demonstrated these were not reasonable adjustments.

269.For the above reasons therefore claimant's complaint must be dismissed.

270.Once again the tribunal apologies for the delay in providing written reasons, caused by the pressure of other judicial demands

Employment Judge T R Smith

Date: 26 September 2023

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.