EMPLOYMENT TRIBUNALS

Claimant: Mr Braima Sani

Respondent: Imperial College Healthcare NHS Trust

Heard at: London Central (hybrid: claimant by remote video hearing, all others in person)

On: 13, 14, 15, 16 May 2025

Before: Employment Judge B Smith (sitting with members)
Tribunal member Kendall
Tribunal member Godecharle

Representation
Claimant: In person
Respondent: Mr O'Keefe (Counsel)

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The complaint of failure to make reasonable adjustments for disability is not well-founded and is dismissed.

REASONS

Introduction

1. The claimant has been employed as a General Porter at the respondent between since 8 or 11 January 2021. ACAS conciliation commenced on 13 November 2023 and concluded on 25 December 2023. The claim was presented on 21 January 2024.

2. The claimant brings a claim of failure to make reasonable adjustments for disability.

3. By Judgment of EJ Shukla dated 24 March 2025 and sent to the parties on 9 April 2025, the claimant was held to be disabled on 4 March 2024 for the purposes of s.6 Equality Act 2010 ('EQA') by reason of his gastroesophageal reflux disease ('GORD'), chest pain resulting from GORD, and numbness in his left arm.

4. The claimant's other remaining claim, after various applications and earlier decisions of this Tribunal, such as in relation to applications to amend the claim, was unauthorised deductions from wages. However, having discussed that claim carefully with the claimant on day 2 of the hearing, and having clearly explained the consequences of withdrawal to the claimant, the claimant confirmed that he was withdrawing that claim. This is covered by a separate withdrawal judgment.

Procedure, documents, and evidence heard

5. The respondent was represented by Counsel. The claimant represented himself. The Tribunal took this into account throughout and spent considerable time explaining to the claimant in simple terms the procedure to be followed and what was required of him.

6. The claimant was permitted by way of an adjustment permission to attend by remote video hearing, and with breaks as requested. The claimant did not request other adjustments, save that during his evidence he was permitted to move around and stand due to discomfort. He was offered and took breaks during his evidence as required. We made further accommodations of the claimant's health conditions as outlined elsewhere in these reasons.

7. The respondent's witnesses gave evidence under oath and were cross-examined. The claimant also gave evidence under affirmation and was cross-examined.

8. The list of issues was set by order of EJ Brown dated 5 November 2024 sent to the parties on 12 November 2024. There was no dispute about the list of issues and the claimant was specifically given an opportunity to comment on them at the start of the hearing. The issues, in so far as needed to be determined during this hearing were (typographical errors corrected below):

2 Failure to make reasonable adjustments

2.1 On 4 March 2024, did the respondent apply a provision, criterion or practice (PCP) to the claimant? EQA 2010, s20(1). The claimant relies upon the following PCP:

2.1.1 Requiring employees to carry out all their normal contractual duties.

2.2 Did that PCP or would that PCP put others who shared the claimant's disability at a substantial disadvantage when compared with persons who did not share that disability:

2.2.1 Substantial disadvantage: because of disability, the claimant was unable to carry out all his normal contractual duties and was liable to be sent home.

2.3 Were the following reasonable adjustments for the respondent to have to make to avoid the substantial disadvantage:

2.3.1 Redeploying the claimant;

2.3.2 Allowing the claimant to undertake light duties.

2.4 Did the respondent know or could it have been reasonably expected to know that the claimant had a disability? EQA 2010, Schedule 8 para 20(1)(a).

2.5 Did the respondent know or could it have been reasonably expected to know that the claimant was likely to be put at the substantial disadvantage? EQA 2010, Schedule 8, para 20(1)(a).

9. Two additional adjustments were raised by the claimant in his witness evidence. We considered that although they had not been raised before in the list of issues, we felt that in all the circumstances the respondent did have sufficient notice to address them in the hearing.

10. No applications to amend the claim or responses were made by the parties.

11. The Tribunal refused the claimant's renewed application to postpone the hearing on medical grounds on 13 May 2025. Oral reasons were given for this decision. Any request for written reasons must be made within 14 days of the date this Judgment and Reasons was sent. In any event, the claimant attended the hearing at 14:00 on day 1 and was able to communicate and participate fully in the hearing, with appropriate adjustments having been granted by the Tribunal. This strongly suggested that the Tribunal had made the correct decision about whether or not the claimant was fit to attend via remote video hearing and was, with adjustments, able to fully participate throughout. We kept the issue of the claimant's fair participation under review but did not conclude that a postponement was appropriate at any stage save for short periods as set out below.

12. At the start of the hearing claimant had not provided a witness statement. The orders of EJ Brown required the claimant's statement to be sent by 28 April 2025 and the orders included a specific warning that a failure to comply

with the order may result in a witness not being permitted to give evidence because it has not been disclosed in a witness statement (at paragraph 22).

13. The claimant said at the start of the hearing that he had not been able to for medical reasons. However, this was not supported by his medical evidence. The claimant had been given a significant period of time to prepare a witness statement and his more significant medical difficulties did not arise until much closer to the hearing. We find that the claimant had sufficient time to prepare for the hearing and his evidence, and did not do so. In the circumstances, it was right and fair that the Tribunal proceed. The Tribunal did not conclude that an adjournment would be fair in all the circumstances and would have been contrary to the overriding objective. The next available trial listing was in July 2026. By then, the respondent witness would have suffered prejudice from the passage of time, affecting memories, and the respondent would have been put to the unnecessary costs of an abandoned final hearing. It would also be unfair on other Tribunal users.

14. In any event, the Tribunal records that the claimant was able to participate without difficulty in the hearing when he attended by CVP at 2pm on day 1. The claimant was given additional time to read the respondent's witness statements because he had only been sent the password for them on the morning of the hearing. At the direction of the Tribunal, the claimant was also sent a copy that afternoon which was not password protected during the hearing to ensure that there were no access issues. The number of pages of witness evidence was relatively short and the claimant was on notice of the nature of the respondent's case through its response. Also, the claimant had failed to exchange witness evidence in accordance with the Tribunal's orders which was the reason he was not sent the password until day 1. In all the circumstances, we considered that the claimant was given sufficient time to prepare his questions for the respondents witnesses because he was first given until 10am on day 2 to for this purpose at his request (this was later extended). The issues in the claim were also narrow and this was not a case where there was a significant amount of challenge to the facts. The claimant was given sufficient time in all the circumstances to enable a fair hearing.

15. The claimant also attended remotely without difficulty on day 2. He was given additional time to prepare his cross-examination, which included between 11:15 and 14:00 on day 2, and the morning of day 3 (until 10:00am), and after his GP's appointment around 11:15 on day 3 until the cross-examination started around 14:00 that day. The claimant had the respondents witness statements electronically since the mid-afternoon of day 1, and hard copy since 9:45 on day 2. There was nothing particularly unexpected about the content of those statements given the written case of the respondent. We considered that this was fair and sufficient time in all the circumstances, particularly because the delay in the claimant receiving them was in part his own fault due to him not having produced his own witness statement, and the respondent expecting simultaneous exchange of witness evidence. Also, the issues in the case were relatively narrow, the principal issue being whether or not the respondent was reasonable to refuse a permanent reasonable adjustment of light duties.

16. The agreed documents were:

    (i) Hearing bundle paginated to 566;

    (ii) Witness statement bundle paginated to 19 (Ms Destrie Pillay, Assistant Portering Manager, Mr Sudhagar Validan, Portering Manager). Mr Taylor's evidence was not relied on subsequent to the claimant withdrawing the unauthorised deduction from wages claim;

    (iii) Cast List;

    (iv) Chronology;

    (v) Additional roster pages (admitted at the claimant's request by consent);

    (vi) Claimant's witness statement; and

    (vii) Statement of the claimant's hearsay witness.

17. The Tribunal only took into account those documents which the parties referred to during the course of the hearing in accordance with the normal

practice of the Employment Tribunals. The parties were made aware of this from the outset. As the claimant was a litigant in person the Tribunal gave close attention to the hearing bundle, generally, however, including the medical evidence, to ensure that nothing favourable to the claimant was omitted.

18. Although in closing the claimant made a general and unspecific submission that there might also be documents which support him which were referred to in the preliminary hearing on disability, the documents for this final hearing were agreed at the start of the hearing. The only omitted documents were the claimant's photographs of the rota which were provided separately to the Tribunal (by consent, item (v) above).

19. It was made clear to the parties that if they relied on any specific findings of fact other than those inherent in the list of issues then this must be clearly drawn to the tribunal's attention. We have only resolved the issues of fact necessary to make our decisions.

20. Both parties made oral submissions at the close of the evidence. The respondent also relied on short written submissions which, out of fairness to the claimant, were provided to him on the morning of day 3 (at around 9:45), before the respondent's witnesses were called or cross-examined. This was to ensure he had sufficient time to read them before closing submissions were made.

21. The Tribunal ensured that the claimant was given sufficient notice of the tasks required of him, such as making closing submissions and cross-examination of the respondent's witnesses.

<u>Claimant's application for anonymity for a witness and a witness order</u>

22. The claimant applied by email dated 13 May 2025 for a witness to have anonymity and be ordered to attend the hearing. The claimant attached a screenshot of a phone message with the proposed witness setting out a

brief statement. The claimant alleged that the witness felt intimidated by the respondent's management but provided no real evidence of this. The claimant's email also said that the witness would not provide his home address and proposed that the Tribunal use the witnesses work address for service.

23. The Tribunal will not make an order that a witness attends a hearing to give evidence under rule 34 (Employment Tribunal Procedure Rules 2024 unless (a) the witness can give evidence that is relevant to the issues in the case; (b) it is necessary to make such an order, for example, because the witness will not attend voluntarily; (c) the Tribunal is provided with the correct service address for the proposed witness; and (d) the making of such an order is in accordance with the overriding objective, applying the Tribunal's discretion. We also took into account Presidential Guidance on Case Management Guidance Note 3: Witnesses and Witness Statements.

24. In accordance with paragraph 8 of the Presidential Guidance, the claimant would need to give the name and address of the witness, a summary of the evidence it is believed they will give, and an explanation as to why a witness order is necessary to secure their attendance. The service address is normally the witnesses home address.

25. We accept that the claimant has given the name but not address of the witness and a summary of the evidence they would give and an explanation as to why an order was necessary. However, the explanation is not supported by evidence.

26. The Tribunal may refuse to make such an order if the attendance of the witness cannot be ensured in time (paragraph 7 of the Presidential Guidance).

27. We refused the application. We did not consider that the proposed witnesses work address was a suitable or appropriate service address for an order that they attend the Tribunal. We also did not consider that, the

application having been made late for no good reason, even if an order was made that the witnesses attendance could be secured in time, given that the claimant's evidence was due to begin the day the application being decided. Also, there was no cogent evidence about why the witness' attendance was necessary: the claimant's assertion of intimidation was wholly unsupported by evidence. It also was not corroborated in the brief statement provided by the witness (only the request for anonymity).

28. The claimant's application for that proposed witness to be anonymous was also rejected. Anonymity can be granted under rule 49:

> *(1) The Tribunal may, on its own initiative or on the application of a party, make an order with a view to preventing or restricting the public disclosure of any aspect of proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person.*
>
> *(2) In considering whether to make an order under this rule, the Tribunal must give full weight to the principle of open justice and to the Convention right to freedom of expression. […]*

29. We considered the proposed witness' right to respect of private and family life (article 8 European Convention on Human Rights 'ECHR'), the right to a fair trial (article 6 ECHR), and the right to freedom of expression (article 10 ECHR). The principle of open justice has been confirmed by a number of courts and tribunals as being fundamental and is the starting point: *R (Guardian News & Media Ltd) v Westminster Magistrates' Court and Another* [2012] EWCA Civ 420. The general rule is that hearings are carried out in, and judgments and orders, are public.

30. The importance of the principle was identified in *Scott v Scott* [2013] AC 417 HL by Lord Atkinson: '*… The hearing of a case in public may be, and often is, no doubt, painful, humiliating or deterrent both to parties and witnesses, and in many cases, especially those of a criminal nature, the details may be so indecent as to tend to injure public morals, but all this is tolerated and endured, because it is felt that in public trial is to found, on the whole, the*

best security for the pure, impartial and efficient administration of justice, the best means for winning for it public confidence and respect'.

31. In *Ameyaw v PricewaterhouseCoopers Services Ltd* UKEAT/0244/18/LA it was held that where a tribunal is satisfied that the Article 8 right to privacy is engaged it must consider whether the interests of the individual concerned should outweigh the broader interests established by Article 6 and Article 10. This is a balancing exercise. The Tribunal should be guided by the following principles from *Fallows and ors v News Group Newspapers* Ltd 2016 ICR 801 EAT:

(i) the burden of establishing any derogation from the principle of open justice or full reporting lies on the person seeking that derogation;

(ii) it must be established by clear and cogent evidence that harm will be done (by reporting) to the privacy rights of the person seeking the restriction on full reporting so as to make it necessary to derogate from the principle of open justice;

(iii) where full reporting of proceedings is unlikely to indicate whether a damaging allegation is true or false, the tribunal should credit the public with the ability to understand that unproven allegations are no more than that; and.

(iv) where such a case proceeds to judgment, the tribunal can mitigate the risk of misunderstanding by making clear that it has not adjudicated on the truth or otherwise of the damaging allegations.

32. In this case there was no real or cogent evidence that anonymity was required or that harm may result if it was not granted. The starting point is open justice and there must be cogent evidence to displace that starting point. The claimant's application for anonymity was wholly unsupported by cogent evidence and it could not be justified in this case.

33. Also, the claimant's unevidenced concerns about retaliation by the respondent would not be met by anonymity in this case: this is because the claimant had already provided the name of the proposed witness to the respondent.

Admissibility of the claimant's evidence

34. The claimant sought to give evidence and relied on a witness statement served very much out of time (see above, order of EJ Brown). It was signed and dated 13 May 2025 and the last three pages were sent to the Tribunal at 2:51am on day 2 of the hearing.

35. We decided in all the circumstances that it was fair to admit the evidence, and that, given the narrow issues in the case, the respondent did have sufficient time to take instructions before cross-examining the claimant (ie. between 11:15 and 14:00 on day 2, with cross-examination starting at 14:00). They also had until the start of day 3 to call their own witnesses and consider supplementary evidence arising from the claimant's own statement. The issues in the case were narrow and much of the claimant's statement was not challenged, on the face of the pleadings, as an issue of fact. Also, we did not agree that the claimant's assertion as to the percentage of a porter's duties being 'light' was a new argument. This is because it was the claimant's case all along that there were sufficient light duties that it should be granted as a reasonable adjustment. Although the claimant sought to introduce a new comparator from another hospital, this was purely on the basis of what he had heard. In all the circumstances, we felt that the respondent would have sufficient time to consider this evidence and respond accordingly.

36. The Tribunal did decide admit the evidence of the proposed hearsay witness, but they did not give live evidence and was not cross-examined. This was fair to the respondent because the Tribunal took that into account when assessing what weight to give that evidence. We did not consider that any of the points raised in that document were sufficiently unfair to the respondent such that it should have been excluded.

37. We also permitted the claimant until 10am on day 3 (later 2pm) to prepare his cross-examination at his request, taking into account his health conditions, the need for reasonable adjustments, and the timing of when he received the respondent's witness statements.

Admissibility of the claimant's live witness

38. At 13:15 on 14 May 2025, day 2, the claimant emailed the respondent and Tribunal a new witness statement from a supporting witness (Mr Idrus) he wanted to call. The claimant asserted that this individual had heard about the case and wanted to give evidence in support. The respondent objected to this late evidence being permitted given the prejudice a late statement would cause them.

39. The witness was not available until 14:00 on day 3, although the claimant's evidence had been scheduled to be completed mid-afternoon on day 2. There was no notice of this witness being called by the claimant or the content of the statement before it was sent as above.

40. The Tribunal did not permit the claimant to call this late witness, Mr. Idrus. It was not served until as described above, but the claimant was aware of potential to call witnesses from the outset, including during the hearing before EJ Brown, and was alerted by the Tribunal of the need for any late statements to be served as soon as possible on day 1. We considered that there was no properly evidenced reason why this witness' evidence was not served earlier. Even if the claimant did only become aware of it, effectively as a cold call during one of his breaks, there was plainly a background to this individual becoming aware of the proceedings of which we were unaware.

41. We found that to admit this late evidence would cause the respondent significant prejudice. This is because it was a true ambush and causes potential disclosure difficulties in terms of what this witness sought to say about the respondent record systems which has not received detailed

attention so far in the evidence. We consider that there was not sufficient time for the respondent to properly be in a position to challenge this witnesses evidence, even overnight, given the time of service and the enquiries that would need to be carried out to challenge its content. This witness evidence was not something that the respondent was on notice about, as opposed to the general content of the claimant's witness which largely repeated the case as was known and expected.

42. Also, the respondent would also be deprived of the opportunity to seek disclosure about the communications with this individual which would need to be explored given the context of his very late involvement, and the respondent and Tribunal would need to know exactly what communications about the claim have been made between this proposed witness and the claimant and others because this went to credibility. However, there was insufficient time to properly explore an area of disclosure.

43. There was limited prejudice to the claimant because the evidence from this witness about the proportion of porter tasks which are classed as light is in fact impressionistic and not supported by documentary evidence and lacks detail. However, there was also the prospect of further prejudice to the respondent based on the answers that might be given in cross-examination about the tasks and respondent's record keeping that the respondent was not in a position to properly explore or challenge.

44. It was also the case that the witness was not available until 2pm on day 3, which would mean that there would be an unacceptable gap. If this witness did not attend until 2pm on day 3, and the respondent's witnesses gave evidence also that afternoon, it was likely that submissions would be required on day 4. However, this could give insufficient time for the Tribunal to deliberate, and the delay in proceedings was not justified by a late witness. The addition of this witness would therefore be highly disruptive to the Tribunal proceedings. We did not consider it appropriate to interpose this witness until after the respondent's witnesses had been cross-examined given that the exact evidence of this witness was to a degree unknown and there was a strong likelihood that the respondent's witnesses

would need to be recalled to reply to anything said by him. This would further mean that the Tribunal was less likely to complete within the allocated listing. Whilst we did not treat this as determinative, particularly if fairness demanded more time for a fair determination of the claims, this was a factor we could properly take into account. We were satisfied that overall fairness did not require us to admit this late evidence.

45. To admit this evidence would be wholly contrary to the overriding objective in the circumstances as they were.

46. Whilst we recognise a degree of prejudice to the claimant from this decision, it would have been wholly avoided if the claimant had ensured that any potential witnesses were identified at an earlier stage of the case, and it was open to him to find supporting witnesses significantly earlier than happened here.

Events of day 3

47. On the morning of day 3 the claimant emailed the Tribunal stating he was in pain, and had been since the previous night. He appeared by CVP and explained that he had an appointment with his GP that morning at 11:15. Although the respondent objected to further delay, the Tribunal agreed to resume the hearing at 14:00 so that the claimant could attend his GP. In the meantime the claimant (by consent) emailed the Tribunal only (with the consent of the respondent) his proposed cross-examination questions so that the Tribunal could ask them instead of him that afternoon if need be.

48. The claimant provided the Tribunal with evidence that his doctor on day 3, following the appointment, had changed his antidepressant medication.

49. The claimant duly attended the hearing at 14:00 and indicated that he would prefer the Tribunal to ask his questions. The Tribunal monitored the claimant's presentation throughout to ensure that he hearing was only

continuing if it was fair. At times, the Tribunal slowed proceedings in order to give the claimant time to take handwritten notes.

50. The Tribunal did not allow questions from the claimant that were irrelevant to the issues, namely those seeking to attack the professionalism of the respondent's legal representatives (particularly in relation to the preliminary hearing on disability).

51. The Tribunal proceeded to ask the claimant's written questions (reworded where appropriate for clarity and relevance and to avoid repetition) and the claimant indicated he was content with those questions, and the claimant also asked his own detailed supplementary questions of the witnesses. The claimant was fully able to engage with the cross-examination process and was given a fair opportunity to challenge the respondents' witnesses.

52. We should record also that the claimant received the respondent's written closing submissions on the morning of day 3, before the respondent had even called evidence, and so did receive them well-in advance of closing arguments at the start of day 4.

Relevant Law

53. The duty to make reasonable adjustments is found in s.20 EQA. That duty applies to employers: s.39(5) EQA. Failure to comply with the duty is at s.21 EQA. The relevant questions are:

(i) what is the provision, criterion or practice ('PCP') relied upon;

(ii) how does the PCP put the claimant at a substantial disadvantage in comparison with persons who are not disabled;

(iii) can the respondents show that it did not know and could not reasonably have been expected to have known that the claimant was a disabled person and likely to be at that disadvantage; and

(iv) has the respondents failed in its duty to take such steps as it would have been reasonable to have taken to have avoided that disadvantage?

54. The Code says at [6.10] that PCP '*should be construed widely so as to include, for example, an formal or informal policies, rules, practices, arrangements or qualifications include one-off decisions and actions'*.

55. Pendleton v Derbyshire County Council [2016] IRLR 580 and Nottingham City Transport Ltd v Harvey [2013] ALL ER(D) 267 EAT demonstrate that, generally, a one-off incident will not qualify. However, a practice does not need to arise often to qualify as a PCP. In Ishola v Transport for London [2020] ICR 1204 the Court of Appeal said the term PCP does not apply to every act of unfair treatment of a particular employee (at [37]). Rather, the words provision, criterion or practice '*carry a connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again*.'

56. Substantial disadvantage means more than minor or trivial: s.212 EQA. It must also be a disadvantage which is linked to the disability.

57. A PCP is unlikely to be considered proportionate if there is a way of achieving the aim which imposes less detriment: Chief Constable of West Yorkshire Police v Homer [2012] ICR 704.

58. The Tribunal must also consider the extent to which the step will prevent the disadvantage to the claimant.

59. In the context of reasonable adjustments claims, the claimant must prove facts from which it could reasonably be inferred, absent an explanation, that the relevant duty has been breached: Project Management Institute v Latif [2007] IRLR 579 EAT at [54]. The burden then shifts to the respondent under s.136 EQA. In Rentokil Initial UK Ltd v Miller [2024] EAT 37 it was then held at [43] that '*What Latif means is that the burden is on the*

employee, initially, to show (if disputed) that the PCP was applied and that it placed the employee at the substantial disadvantage asserted. They also need to put forward and identify some at least potentially or apparently reasonable adjustment which could be made. But, if they do, then the burden may pass to the employer to show that it would not have been reasonable to expect them to make that adjustment.'

60. A PCP can include an expectation, and the identification of the PCP should, because of the protective nature of the legislation, follow a liberal approach and a tribunal should widely construe the statutory definition: Ahmed v Department for Work and Pensions [2022] EAT 107 at [25].

61. The identity of non-disabled comparators may be clearly discernible from the PCP under consideration: Fareham College Corporation v Walters [2009] IRLR 991 EAT. The fact that disabled and non-disabled people may both be affected by a PCP does not in of itself preclude a finding of substantial disadvantage where the likelihood and or frequency of the impact is greater for a disabled person: Pipe v Coventry University Higher Education Corporation [2023] EAT 73.

62. The Code at [6.28] lists factors which might be taken into account when deciding if a step is reasonable to take, including whether taking any particular steps would be effective in preventing the substantial disadvantage, the practicability of the step, the financial and other costs of making the adjustment and the extent of any disruption caused, the extent of the employer's financial or other resources, the availability of the employer of financial or other assistance to help make an adjustment, and the type and size of the employer.

63. A knowledge defence applies (paragraph 20, Schedule 8 EQA):

(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) in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question;

(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.

64. The respondent referred us to Romec v Rudham [2007] All ER (D) 206 (July) at [39] about the degree to which the proposed adjustment will alleviate the disadvantage as being relevant to reasonableness, and Aleem v E-Act Academy Trust Ltd UKEAT/0099/20 at [71] in terms of the relevance of cost to a publicly funded employer.

Findings of fact

65. There is no dispute about the authenticity of the documents.

66. The claimant has been employed as a General Porter at the respondent between since around 8 or 11 January 2021. ACAS conciliation commenced on 13 November 2023 and concluded on 25 December 2023. The claim was presented on 21 January 2024.

67. Accepting the evidence of Destrie Pillay, Assistant Portering Manager at the respondent (which was not meaningfully undermined by anything), we find that the claimant was employed as a Band 2 Porter. The role involves manual handling by its nature and about 95% of the duties involve manual handling. The claimant contented that 70% of the duties involved light handling. We consider that the evidence from the claimant and Ms Pillay can be reconciled on the basis that manual handling jobs did not necessarily always involve heavy lifting. There was no real dispute that a significant proportion of the jobs did involve heavy lifting: even on the claimant's account around 30% of the jobs were not light duties. The Portering Department's remit covered various departments in the hospital and all

porters were trained to cover those departments, including moving patients from trolleys, beds and wheelchairs, moving waste carts, gas cylinders (weighing between 70-80 kg), and transporting patients and blood samples. The porters are also responsible for the transportation of post and waste carts, involving heavy lifting when full. The essential parts of role as described by Ms Pillay and Mr Validan were as above. This was corroborated by the job description (p144) which included: to assist with the collection and delivery of equipment around the site and assist with the furniture moves as appropriate; attend medical emergencies including cardiac arrests with he resus trolley / bag; in the event of any fire / major accident or incident, be present at key entrances, check ID badges, assist patients able to walk and assist nursing team with patients unable to walk; ensure the safe storage and maintenance of appropriate stock, medical gases and supplies…and ensure that these are available as required within the designated area; change medical gas cylinders on wards; safely transfer Liquid Nitrogen through the designated hospital route; to transfer patients in and around the hospital site … via means of walking, wheelchair, trolley or beds; assisting patients to be pat slid across from trolleys to the bed with assistance from the nursing staff; to undertake mortuary duties as required including collection and delivery of deceased patients to the mortuary using appropriate means of transport where required; to undertake specimen collections and deliveries; collection and safe removal [of waste], frank mail; provide cover for other area specific porters when required. We accept, on the clear evidence of the respondent's witnesses that the nature of the tasks was not such that they could be done on a limited hours basis. This is because tasks were reactive to the needs of a hospital – including things needing to travel on an urgent basis – and therefore not amenable as a question of fact to limited hours working which would still achieve a particular volume of work. The tasks arose as and when, and with different volumes of work over the day, so there was not a set of tasks which could be divided up and just left for the claimant to do on a limited hours basis. Nothing was predetermined and the tasks given by radio on a needs basis.

68. The claimant's person specification also included: manual dexterity for operating equipment; physically able to assist with patient transfers, moving

furniture and other transport and delivery systems. This corroborates the respondent witness' description of what the role entailed.

69. There are 53 members of staff in the Portering Department and 45 are at Band 2. In March 2024 there were high levels of sickness both short and long term, and staff on leave.

70. The claimant was off work with chest pain from August 2022. In October 2022 he had a CT scan and his GP advised that he avoid strenuous activity. Whilst the chest pain was being investigated occupational health had advised he was unfit for work. On March 2023 the claimant had seen occupational health who had advised reduced hours for 4 weeks, avoiding heavy lifting, pulling and pushing during that period. The claimant returned to work on 8 May 2023.

71. Before the relevant time, the claimant did have periods of redeployment or light duties, not involving moving patients, but did involve moving light equipment such as empty wheelchairs or empty cylinders. The claimant had light duties to him offered between May and August 2023 following GP advice as part of a supported return to work (p199), as accepted by the claimant in cross-examination. The claimant through his cross-examination sought to suggest that even during that period he was offered duties which he considered too heavy, something which Mr Validan denied (it is not necessary for us to make a determination on this, but it illustrates a point made later). Also, before around 28 September 2023 the claimant had a period of temporary redeployment. That period of redeployment was working for one month at another hospital's coffee shop within the Trust (September 2023). The claimant was then off sick from 29 September 2023. It was indicated to the claimant's manager there were no light duties available at the portering team at that time (p167) and so the expectation was that he would undertake the full scope of the role on his return. The claimant was off sick with GORD, chest pain and upper limb numbness from 3 October 2023.

72. After various communications, the claimant was offered on 18 December 2023 a period of light duties ie. transport of specimens only, subject to a review after a month (p220).

73. In the run up to the claim the claimant had submitted successive fit notes stating he was only fit to work with amended duties, typically light duties with no pushing or pulling or lifting, or no lifting heavy objects or pushing heavy objects. Fit notes submitted by the claimant on 13 December 2023 and 15 February 2024 repeated that the claimant may only be fit for work with amended duties including no heavy lifting, no pushing or pulling heavy objects. These were for the period 13 December 2023 to 15 April 2024.

74. We find that lifting, pushing and pulling objects were an essential part of the claimant's role (as an issue of fact), accepting the respondent's witnesses evidence of this which was not meaningfully undermined by anything. This was the evidence of the respondent's witnesses and corroborated by the job descriptions above. It was an essential part of the role that the employee be able to transfer patients, and move and transport furniture and equipment. Whilst there were some lighter duties these were limited in scope and were insufficient to provide enough work to cover a full shift, accepting the evidence of the respondent's witnesses on this point. The only aid available was a bed mover which still required the heavy lifting or pulling to use.

75. Following a grievance raised by the claimant on 15 November 2023, including that someone else in the department had been doing light duties for two years, Ms Trippp, HR Business Partner, wrote to the claimant explaining that that person had been supported with light duties for a period of a month following an operation, similarly to how the claimant had been supported (ie. on a limited basis). It was also explained (p200) that an issue with the hospital chute transport system for specimens was such that the claimant could now be offered light duties for a month.

76. In January 2024 the claimant was offered light duties, namely just transporting specimens and blood, as a temporary arrangement to facilitate

a return to work. This is more restricted that the light duties the claimant did between May and August 2023 when he also moved empty wheelchairs and cannisters. We accept the evidence of Mr Validan that part of the reason for limiting his duties during that period was to ease the claimant in slowly with a view to adapting him back to full duties. During that period the chute system usually used was not working at full capacity. This was disputed by the claimant, but we find that this was the case because the respondent's witness evidence of this was also corroborated by an email from Ms Tripp dated 15 December 2023 at p200. We accept that it was broken. Accepting the respondent's witness evidence, we also find that there was a higher volume of samples requiring manual transportation. Although the claimant disputed this he had no evidence to undermine the evidence of his managers who were more likely to have an overview of this.

77. However, we also find that during this period there was insufficient work for the claimant's full hours. The claimant disputed this, but we preferred the evidence of his managers because they were better suited to know what amount of work was available. The main point the claimant had in support to dispute this was that no official complaint was made, but it does not follow that this supports his case. Also, the team morale was affected by the claimant being perceived as having favourable treatment. We accept the evidence of Mr Validan and Ms Pillay of these points which was not meaningfully undermined by anything. Emails dated 2 January 2024 also had made it clear that this was an arrangement that would be subject to review (p227).

78. A table (p558) produced by Mr Validan demonstrated that the claimant was doing about 40 specimen transport jobs a day. The claimant felt that this demonstrated that he was doing more work than anyone else in the department. However, this is a clear skewing of the statistics and highly disputed by Mr Validan. We prefer his evidence as he is better placed by his role to understand the amount of work generally and available at the department.

79. The claimant accepted in cross-examination that around 50% of the sample collection jobs were to be done urgently. This was consistent with the respondent's major haemorrhage procedure which required porters to be available urgently for that task. The claimant accepted in evidence doing some jobs urgently in January 2024. We find that the considerable proportion of urgent tasks was such that there was (as a question of fact) a need for a reasonably high degree of flexibility in the tasks that any given porter could undertake.

80. The most recent and relevant occupational health report was dated 22 February 2024 following a referral on 8 January 2024 to investigate the claimant's fitness for the full duties of a porter. This was disclosed to the respondent (Mr Validan) supposedly with the claimant's consent (p241) although the claimant disagreed that he had consented in an email sent the same day (p243). It is not relevant for the determination of these claims whether in fact the claimant gave consent or not. The respondent's position on this document at the preliminary hearing (a point made by the claimant in submissions) on disability is also not relevant because the evidence clearly shows Mr Validan receiving the report. The report recorded that the possibility of a full recovery was unknown, in terms of adjustments (temporary or permanent) the advice was that the claimant continue doing lighter duties, as his GP had advised, and the claimant had stated that manual handling can make his condition worse. The claimant stated that he was open to redeployment in that report.

81. We find that on the basis of the medical evidence it was not the case as of 4 March 2024 that the claimant's conditions were likely to be temporary. The latest occupational health report could not say that a full recovery was likely as conditions were ongoing: there was no clear prognosis at that point. Also, by that point the claimant (on his own admission in cross-examination) had not done or been able to do any heavy lifting since March 2023. We record as a matter of fact that this extended beyond 4 March 2024 until at least the day of the hearing with no indication that there would be any meaningful change in the claimant's ability to do heavy lifting in the near future.

82. The claimant met with Mr Sudhagar Validan on 22 February 2024 to discuss a return to his normal contractual duties and there being insufficient volume of work to fulfil his contractual hours. We find that the negative impact on the light duties was discussed with the claimant, accepting Mr Validan's evidence of this.

83. Mr Validan accepted that from October 2023 he was aware that the claimant's fitness to work related to gastro-oesophageal reflux disease, numbness of the upper limb and chest pain because it was recorded on his fit notes. However, it was unclear to him how and when the claimant would be able to return fully to his role. We make these findings from his witness evidence. He was also aware of the 22 February 2024 occupational health report. He accepted this in his evidence and it was addressed to him. Whilst the claimant sought to make arguments about credibility based on his perception of the evidence in the preliminary hearing on disability and respondent's position then, we did not consider that the claimant's point had any force, or any force such that the credibility of Mr Validan was affected. Mr Validan did not give evidence during that hearing.

84. We find that the respondent did consider the possibility of redeployment with the claimant. There was no formal redeployment policy in place at the time. Before the 4 March 2024, the claimant was emailed following a meeting with Ms Tripp in November 2023 at which redeployment was raised. On 21 November 2024 Ms Tripp emailed the claimant stating that they were looking at administrative roles, and could have a further discussion with the claimant if that would be useful, such as a receptionist if the claimant would be interested. The administrative roles were also shared with the claimant on the respondent's intranet page.

85. At a stage 1 sickness meeting on 12 November 2024 the claimant had raised a comparator, suggesting that there were blood and sample jobs within the portering department that he could do and that this option had been given to another porter previously (this is the same individual who provided a hearsay statement to the Tribunal). However, it was explained to the claimant in an outcome letter dated 18 November 2024, which we

accept is accurate as there is no good reason to doubt it, that this individual was offered light duties following a triple heart bypass surgery and hernia operations, but this was as part of a phased return to work to support him over a short period of time. Accepting the letter as an accurate record, we find that during that meeting the claimant raised various roles, but we accept the respondent's explanation as to why they were not available as there is no good reason to doubt that explanation. For the role of post room porter, that role was not currently available. Light duties, as it transpired, were then offered on a short term basis to the claimant (ie. the January 2024 work). Security Team roles were not suitable for the claimant because they involved control and restraint duties contrary to the claimant's physical abilities. The role of Trust Driver also involved lifting and pushing heavy loads, and there was also no vacancy available.

86. The claimant at a meeting on 22 February 2024 told Mr Validan that he could only do driving to deliver light equipment or parcels, or post room duties (supported by the meeting notes at p239). The claimant suggested that he could be trained to do clerical or security jobs but did not indicate that he had the skills or experience to be trained in those roles in a reasonable timeframe. When asked whether the claimant wanted help with redeployment by Mr Validan, the claimant was informed that he would need to look for suitable vacancies. The claimant said he was open to redeployment but would not agree to it without first knowing what opportunities were available. This is shown by the meeting notes at p239: '*I'm telling the OH that I open for Redeployment but not agreeing to it as I don't know what the offer available . OH normally will send to me the report and I have to agreed for the report to be sent to you. I want us to end the meeting now as I don't want to continue. I am going to discuss this with employment tribunal and my solicitors.'*

87. We also find, accepting the clear evidence of Ms Pillay and Mr Validan, that in terms of suitable other vacancies: there were no vacancies in the post room, and in any event the post room work would still require the claimant be able to push and pull a trolley and lift the heavier parcels. Whilst the claimant sought to suggest in evidence that there was an individual working

in the post room who did not such duties, we accept the evidence of Ms Pillay and Mr Validan, that this person was in fact a band 3 supervisor in the role of Post Room Supervisor and therefore this was not a vacancy or open role to the claimant in terms of redeployment. We also accepted Ms Pillay's evidence that to redeploy the claimant into the post room would enable removing someone from their post there, some people having done that role for at least 20 years. There were only two other porters working in the post room role. We also accepted Ms Pillay's evidence that the help desk roles mentioned by the claimant were also band 3 roles, and therefore redeployment into them was not an option those also being supervisory positions. Also, there were no standalone vacancies just involving driving and delivering light parcels. Also, the respondent's witness evidence included that delivering post including being able to push a trolley up a slope in the hospital.

88. We accept the evidence of Ms Pillay that, as a matter of fact, the claimant was not willing to engage in redeployment and in effect expected the respondent to find another role for him, which is consistent with these meeting notes and corroborated by the evidence of Mr Validan. The claimant did not meaningfully look at redeployment himself, on the evidence, and we accept that without the claimant's engagement the respondent could not know what skills or experience he had that might have made identifying other roles possible. We consider that the evidence was clear that the respondent had sought to engage with the claimant on the possibility of redeployment but the claimant chose not to pursue that option in a meaningful manner (save as below), based on the meeting notes and evidence of Mr Validan and Ms Pillay.

89. On the claimant's own admission, however, in cross-examination, he did look at the respondent's vacancies, but he concluded that none were suitable.

90. The claimant attended work on 4 March 2024 but did not provide a fit note that certified him as fit for work. The claimant informed Ms Pillay on that date that he still had no diagnosis and it was not clear how long he would

need to do amended duties. He said he was willing try other jobs, and would let us know if he could not do jobs assigned to him. However we accept the evidence of Ms Pillay that this was not practicable because the respondent needed to know which members of staff could do which tasks to meet service needs. The claimant said to Ms Pillay that he did not know what jobs he was willing and able to do to assist with the prospect of amended duties or redeployment. This account, which we accept, is supported by Ms Pillay's notes dated the same date sent by email at 12:54 (p244). He also did not know how long he anticipated being on amended duties for or when he would be able to return to full duties in the absence of a concrete diagnosis.

91. We also accept from the claimant's own evidence that even with specimen collection it was difficult to tell between heavy and light duties because some specimens might be heavy or involve pushing a trolley of specimens or similar.

92. We accept Ms Pillay's evidence that the claimant's suggestion that he effectively would carry out a risk assessment on each task to see if he could do it was not practicable in terms of the respondent's needs. This is plainly right given the range of tasks for a hospital porter, and that even specimen transport could involve eg. 8 litres of blood, or items on ice or on a trolley. The claimant raised this both in his evidence and during his meeting with Ms Pillay, accepting her note of the meeting where the claimant stated '*Sani then mentioned that he wanted to try to do other jobs aside from bloods and samples; and that if he could not do the job, he will inform us. I then asked him what jobs was he willing and able to do as he is* [sic] *very experienced porter, and knows the nature of all portering jobs. He replied that he does not know.'*

93. We also accept, therefore Ms Pillay's meeting notes being an accurate record, that during Ms Pillay's meeting with the claimant he was unable to clearly distinguish between light and heavy duties which he could do.

94. We accept the evidence of Mr Validan, and find accordingly, that the only redeployment suggestion from the claimant was for roles which did not

exist, such as delivering light objects only, or just post room duties. Also, we accept that post room only duties would still have involved some heavy pushing of the post trolleys.

95. It was not in dispute that for the relevant periods that the claimant was not fit for unamended duties (ie. fit to fulfil all of his contractual duties), and he had a fit note saying fit for work but only on amended duties, he was not engaged by the respondent and was on sick leave (save for the period in January 2024 when amended duties were available).

96. We give little to no weight to the evidence of the claimant's hearsay witness. This is because they were not available for cross-examination and their assertions could not be tested by the respondent.

97. Although the claimant sought to rely on his hearsay witness as an evidential comparator, their situation was already considered by the respondent in a stage 1 sickness meeting. Whilst the respondent accepted that they had been given light duties following operations, this was said by the respondent to only be for a short length of time and as part of a phased return to work. The claimant disputed this, saying it was for three years, but the claimant had no corroborating evidence of this. We prefer the respondent's witness evidence about this individual because it was supported by the respondent's account in documentary form. We therefore accept (as a question of fact) that the individual being given light duties for a short period of time as part of a phased return to work on several occasions after operations – there being every prospect of a full recovery – was quite different (in fact) to the claimant who did not have a prospect of being able to complete full duties within any known timeframe. We prefer the respondent witness' account because they are also better placed to know how much of this individual's work was light duties as opposed to the claimant.

98. The hearsay evidence was also very limited in scope. For example, it asserted that there are light duties that any staff with health conditions can do, but they only stated that they were doing light duties '*for quite some time after I have three major operations*'. They also asserted that 60-65% of the

job was blood and specimens from the ward to the lab and blood form the blood bank to the ward for patients. However, there was no detail to this assertion or corroborating evidence. Also, this statement did not show the timeframe or location when this might have been the case. It also did not address the fact that even if the job was 60-65% light duties, that did not exclude the 40-35% of the job that could involve heavy duties. It was inadequate evidence to materially support the claimant's contentions in all the circumstances.

99. We also gave limited weight to the claimant's witness evidence. It was largely unsupported by documentary evidence in the contested areas, and, in terms of the relevant issues, relied heavily on highly generalised assertions. To the extent it was disputed we preferred the respondent's witnesses when it came to their account of the meeting with the claimant because it was corroborated by their notes taken at or shortly after the relevant meetings. The general gist of the meetings was not really disputed by the claimant, in his evidence, in any event.

100. Although the claimant sought to rely on other named individuals as named comparators who allegedly had light duties, his evidence was wholly unsupported by corroborating material. Also, the claimant had no cogent evidence about their circumstances or health conditions, or the length of time they had light duties for (such as if it was part of a phased return, and if their conditions were expected to improve).

101. Although the claimant in his statement sought to suggest that blood and specimen jobs account for 70% of porter jobs throughout the day, we prefer the evidence of the respondent witnesses who through their roles would have a better oversight of the amount of jobs and work that this was an overstatement. Also, their evidence was that the blood and specimen jobs varied over the year and dependent in part on whether the chute was working. This was consistent with the position when the claimant was offered light duties in January 2024. Also, the claimant's point here implicitly accepted that at least 30% of the jobs did in involve heavy lifting or similar, and therefore that he was unable to do at least a 1/3 of the role.

102. There was a dispute between the parties whether or not bank staff had been engaged during January 2024 in part because the claimant was only doing light duties. We decline to resolve that issue. There was clear evidence that this was the case from Mr Validan but it was not supported by documentary evidence. The claimant sought to rely on his own photos of the rotas which he thought showed that no bank staff were used for that period, but despite the Tribunal having the original electronic photographs, the detail relied on by the claimant was not visible. We did not consider this issue to be sufficiently relevant or determinative of the claim either way, so in fairness do not make a finding on that point.

103. We also repeat findings from the decision on disability (EJ Shukla dated 25 February 2025):

[15] I accept that the claimant had a physical impairment on 4 March 2024, namely GORD causing chest pain. The claimant was diagnosed with GORD causing chest pain by 17 March 2023…

[16] I accept the claimant had numbness in his left arm, and that this constituted a physical impairment at the relevant date. …

[22] I accept that the claimant suffered from chest pain caused by GORD at the relevant date, and that this was made worse by lifting….I accept that this chest pain made it difficult for him to lift even moderate weights, walk, and to go up and down steps. Accordingly, I find the impairment had a substantial adverse effect on the claimant's ability to carry out normal day to day activities.

Conclusions

2 Failure to make reasonable adjustments

2.1 On 4 March 2024, did the respondent apply a provision, criterion or practice (PCP) to the claimant? EQA 2010, s20(1). The claimant relies upon the following PCP:

2.1.1 Requiring employees to carry out all their normal contractual duties.

104. We find that the respondent did apply this PCP, to the claimant and generally. It was plain from the factual findings above that the employees were required to carry out all their normal contractual duties. When the claimant could not, for example, by reasons of ill health, he was not working on sick leave, save for the period of amended duties in January 2024. As of 4 March 2024, the respondent required the claimant to be able to fulfil all of his duties if he was to be at work, otherwise he was on sick leave. This was clearly the state of affairs at the relevant time.

2.2 Did that PCP or would that PCP put others who shared the claimant's disability at a substantial disadvantage when compared with persons who did not share that disability:

2.2.1 Substantial disadvantage: because of disability, the claimant was unable to carry out all his normal contractual duties and was liable to be sent home.

105. We find that the PCP did put others who shared the claimant's disability at a substantial disadvantage when compared to persons who did not share that disability. This is because it plainly was the case: those who were unable or less able to fulfil their contractual duties were liable to be sent home, as happened with the claimant, and need to take sick leave. This was a substantial disadvantage because they could not work. Any reasonable employee would consider themselves disadvantaged in the circumstances. This did apply to the claimant also: as a result of his health conditions the medical and GP evidence, corroborated by the occupational health report of 22 February 2024, was to the effect that he should not, for example, do heavy lifting. As a result, the claimant was liable to be sent home and have to provide a sick note for sick pay. He was unable to fulfil all the required duties of his role.

2.3 Were the following reasonable adjustments for the respondent to have to make to avoid the substantial disadvantage:

2.3.1 Redeploying the claimant;

2.3.2 Allowing the claimant to undertake light duties.

106. We accept that redeployment in general would have been likely to help avoid the substantial disadvantage, at least to a role which did not involve heavy lifting. This must be the case because the claimant had a period of one month redeployed a coffee shop where his disability was not such that he was unable to work and was not liable to be sent home. We note that this was in circumstances where a non-heavy lifting alternative role was available.

107. However we do not find that redeployment was a reasonable adjustment in the claimant's circumstances. This is because there were no suitable vacancies for the claimant at that time. This is the case generally because the claimant himself had searched the respondent's vacancies and found none that were suitable. This was similarly the evidence of the possible roles discussed with the claimant by the respondent, such as in the post room or driving. Also, the other redeployment options identified by the claimant were not, for a variety of reasons, suitable. Namely, the possible roles still involved at least some heavy lifting or pulling, such as in the post room, or driving roles which still involved manual handling tasks. Equally, it would not have been reasonable to redeploy the claimant into roles at a higher pay grade because of the impact on the business and other job applicants. It would be unreasonable to effectively parachute the claimant into a higher band role as opposed to him entering via a normal competitive process. In any event, as a matter of fact, there were no such suitable vacancies that were available at the time. In those circumstances there simply were no suitable redeployment options.

108. In the alternative, the respondent did in fact seek to redeploy the claimant as much as was reasonable. They actively explored the issue with him but we have found he didn't engage. In those circumstances, the respondent did all that it reasonably could to mitigate the claimant's disadvantage through redeployment. It would not be reasonable to expect the respondent to create a new role that didn't exist purely to accommodate the claimant

given their competing business needs, especially for a publicly funded employer.

109. We repeat our findings of fact about redeployment options which clearly establish this was not a reasonable adjustment.

110. We do not find that light duties was a reasonable adjustment. We accept that it would have reduced the claimant's disadvantage. This is because when he was on restricted, lighter duties, at earlier times he was not liable to be sent home as off sick. However, it was not reasonable for all of the reasons relied on by the respondent. We accept that there were not sufficient light duties to offer it to the claimant on an ongoing basis, and the fact that he had it for one month does not show that it was practicable long-term. We accept that given the lack of prognosis it was correct to approach it on a longer-term basis. Whilst the respondent could reasonably accommodate short-term light duties for the claimant and others, these were all with a view to a gradual return to work on a relatively short time frame. That was not the case for the claimant. We accept that timeframe is relevant because what might be reasonable for an employer for a short period of time is not necessarily reasonable long term.

111. We also accept that the conditions were such that it was reasonable for specimen only duties for the claimant in January 2024 were limited to that period, namely when there was a broken chute and higher volume of specimen work. We also accept that the levels of staff availability in March 2024 made that no longer reasonable for the respondent to continue with the January arrangements.

112. We also accept that someone in the claimant's role could not reasonably be limited to light only duties because the need for urgent tasks mean that flexibility of available staff was important. Also, there were enough heavy lifting tasks such that there was insufficient light duties to fill the claimant's working hours on a long term basis. Also, if the claimant was not doing full duties this would come at an unacceptable cost to a publicly-funded employer. We also agree with the respondent that the role was not suitable

for a division into light and heavy duty activities particularly given the range of volumes of specimens that might need to transported, the claimant's historic dispute about at least one task given to him in August 2023, and the difficulty in identifying exactly which tasks the claimant could or could not do. We agree that the claimant deciding himself on a case-by-case basis would not be remotely practicable for an employer which needed a variety of tasks to be complete in short time frames, very often on an urgent basis (50% of the tasks in some contexts). Having a porter on longer term light-only duties would have been unreasonable in all the circumstances as we have found them to be.

113. The claimant also in his witness evidence, for the first time, raised two further adjustments: one relating to parking and the other for flexible working. However, we did not consider that these were adjustments that might have been made to avoid the substantial disadvantage. Firstly, there was no link between the claimant's parking situation and any inability to carry out his contractual duties or range of tasks in his role. The evidence did not suggest, for example, that if the claimant had been able to park in a more advantageous position then he would have been able to carry out different duties at work. Therefore we do not consider that the additional proposed adjustment in relation to parking would, or would have been likely to, have reduced the claimant's substantial disadvantage (namely that he was unable to carry out all his contractual duties as a result of his health condition). This contention was not supported by the evidence.

114. The same applies for flexible working. The evidence did not suggest, for example, that if the claimant was able to work reduced or flexible hours that he would be capable of something more than light duties and would be able to carry out all or more of his contractual duties. Therefore we do not consider that this proposed adjustment would, or would have been likely to, have reduced the claimant's substantial disadvantage. This was not a contention supported by the evidence.

115. In the circumstances, the adjustments the claimant says should have been in place would either not have reduced (or likely reduced) the disadvantage

(parking, flexible working), or were not reasonable (redeployment in the manner the claimant sought, or light-only duties), or were in fact done, namely a reasonable and genuine attempt by the respondent at engaging the claimant in redeployment, but no suitable vacancies were available.

2.4 Did the respondent know or could it have been reasonably expected to know that the claimant had a disability? EQA 2010, Schedule 8 para 20(1)(a).

2.5 Did the respondent know or could it have been reasonably expected to know that the claimant was likely to be put at the substantial disadvantage? EQA 2010, Schedule 8, para 20(1)(a)

116. In light of our conclusions above, we do not need to address these issues.

117. For all of the above reasons, the claim is dismissed.

Approved by
Employment Judge B Smith
19 May 2025

SENT TO THE PARTIES ON

20 May 2025
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FOR THE TRIBUNAL OFFICE