



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Chetan Masharani

**First Respondent:** L Rowland & Company (Retail) Limited

**Second Respondent:** Mr Miles Holt

**Heard at:** Manchester

**On:** 9 and 10 October 2023<sup>1</sup>, 13 May 2024 (tribunal only)<sup>2</sup> 13, 14, 15, 16 and 17 January 2025

**Before:** Employment Judge Cookson  
Mrs JK Williamson  
Ms Claimant Gallagher

## REPRESENTATION:

**Claimant:** Mr Edwards (counsel)  
**Respondent:** Ms Knowles (counsel)

## JUDGMENT ON LIABILITY

The agreed list of issues in this case is attached (“the List”).

It is the unanimous decision of the Tribunal that:

1. The complaint of indirect disability discrimination made against the first respondent referred to in section A of the List is not well-founded and is dismissed.
2. The complaint of failure to make reasonable adjustments for disability made against the first respondent set out in section B of the List is well-founded and succeeds.

---

<sup>1</sup> First hearing adjourned after the commencement of evidence because one of the counsel became unwell

<sup>2</sup> Reconvened hearing also had to adjourn due to ill health of one of the counsel before the parties attended the hearing

3. The complaints of direct age discrimination made against the first respondent under paragraph 2 of section C of the List is dismissed on withdrawal.
4. The complaint of direct age discrimination made against the first and second respondent under paragraph 3 of section C of the List is not well founded and is dismissed.
5. The complaints of direct disability discrimination made against the first respondent under paragraph 2 of section D of the List are dismissed on withdrawal.
6. The remaining complaint of direct disability discrimination made against the first and respondent set out in section D is not well-founded and is dismissed.
7. The complaints of discrimination arising from disability made against the first respondent under para 2.1 and 2.3 in section E are dismissed on withdrawal.
8. The remaining complaints in section E made against the first and second respondent are not well founded and are dismissed.
9. The complaints of harassment related to age and/or disability made against the first respondent in paragraph 1 of section F of the List are dismissed on withdrawal.
10. The remaining complaints of harassment related to age and/or disability in section F of the List are not well founded made against the first and second respondent and are dismissed.

**Approved by Employment Judge  
Cookson  
23 January 2025**

Judgment sent to the parties on:  
3 February 2025  
For the Tribunal:

**Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 8 weeks of the sending of this written record of the decision (the usual time limit being varied by case management order).

**Public access to employment tribunal decisions**

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

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

**IN THE MANCHESTER EMPLOYMENT TRIBUNAL**

**Case no: 2408937/2021**

BETWEEN:

**CHETAN MASHARANI**

Claimant

and

**(1) L. ROWLAND & COMPANY**

**(RETAIL) LIMITED**

**(2) MILES HOLT**

Respondents

---

**AGREED BESPOKE LIST OF ISSUES**

---

**Summary**

1. The Claimant was employed by the First Respondent as a Pharmacy Manager from 27<sup>th</sup> November 1995 until he was dismissed for redundancy. He brings claims of indirect disability discrimination, failure to make reasonable adjustments, discrimination arising from disability, direct age and/or disability discrimination, and harassment on the grounds of age and/or disability.
2. The Respondents have conceded that the Claimant is a disabled person for the purposes of section 6 Equality Act 2010 ('EQA') by reason of multiple sclerosis.
3. The issues between the parties to be determined by the Employment Tribunal in the Claimant's claims are set out below.

**(A) Indirect Disability Discrimination (s.19 Equality Act 2010 ('EQA'))**

*In respect of the Claimant's indirect disability discrimination the issues are as follows:*

Did the First Respondent apply to the Claimant a provision, criterion, or practice (PCP)? The PCP which the Claimant relies on is the imposition of reduced staffing levels at the First Respondent's branches set by reference to a computer algorithm, including a reduction to 68 base staffing hours at the Claimant's branch.

1. Did the First Respondent also apply this PCP to persons who do not share the Claimant's protected characteristic (disability)?
2. Did the PCP put persons with whom the Claimant shares the protected characteristic (the same disability i.e. Multiple Sclerosis) at a particular disadvantage compared to others? The disadvantages relied upon by the Claimant are increased mobility issues, fatigue, urinary frequency and muscle spasms.
3. Did the PCP put the Claimant to that disadvantage?
4. Can the First Respondent show that the PCP was a proportionate means of achieving a

legitimate aim? The First Respondent will argue that the PCP was a proportionate in that there was no less discriminatory alternative of achieving the legitimate aim, that legitimate aim being reasonably necessary and to ensure the future viability and sustainability the First Respondent's pharmacy business.

**(B) Failure to make reasonable adjustments (ss. 20-21 EQA)**

*In respect of the Claimant's claim for failure to make reasonable adjustments the issues are as follows:*

1. Did a duty arise under the First Respondent's PCP, a physical feature of the First Respondent's premises, or the Respondents failure to provide an auxiliary aid? The PCP which the Claimant relies on is the imposition of reduced staffing levels at the First Respondent's branches set by reference to a computer algorithm including a reduction to 68 base staffing hours at the Claimant's branch.
2. Did the First Respondent know or ought the Respondents reasonably to have known that the Claimant was likely to be placed at the disadvantage contended for? The disadvantages relied upon by the Claimant are increased mobility issues, fatigue, urinary frequency and muscle spasms.
3. Has the Claimant suffered a substantial disadvantage when compared to a person without his disability, because of the PCP, a physical feature of the First Respondent's premises, or the First Respondent's failure to provide an auxiliary aid compared with persons who are not disabled? The Claimant contends that the First Respondent should have taken the step of increasing base staffing hours from 68 to 80 per week.
4. Would increasing base staffing hours from 68 to 80 per week have been a reasonable adjustment to make in the circumstances?

**(C) Direct Age Discrimination (s.13 EQA)**

*In respect of the Claimant's claim for direct discrimination for age the issues are as follows:*

1. The comparator relied upon by the Claimant for the purposes of direct age discrimination is a pharmacy manager under the age of 47.
2. Did the First Respondent treat the Claimant less favourably because of the protected characteristic of age than the First Respondent would have or did treat others? The less favourable treatment which the Claimant relies upon is:

- 2.1 The First Respondent's failure to respond to the Claimant's letter of 28<sup>th</sup> February
  - 2.2 The First Respondent's ongoing failure to address under hours/staffing
  - 2.3 The First Respondent's failure to afford the Claimant the grievance procedure
3. Did the First and Second Respondents treat the Claimant less favourably because of the protected characteristic of age than they would have or did treat others? The less favourable treatment which the Claimant relies upon is:
- 3.1 the Claimant's conversation with the Second Respondent on 4<sup>th</sup> March where it is alleged the Second Respondent said to the Claimant 'take a golden handshake at the peak of your career'.
4. Was the Respondents treatment of the Claimant a proportionate means of achieving a legitimate aim? The Respondents position is none of the less favourable treatment which the Claimant relies upon occurred as alleged or at all. The Respondents will argue that their actions constituted a proportionate means of achieving a legitimate aim, namely the appropriate and safe management of its business and operational practices.

**(D) Direct Disability Discrimination (s.13 EQA)**

*In respect of the Claimant's claim for direct discrimination for disability the issues are as follows:*

1. The hypothetical comparator relied upon by the Claimant for the purposes of direct disability discrimination is a pharmacy manager without multiple sclerosis.
2. Did the First Respondent treat the Claimant less favourably because of the protected characteristic of disability than the First Respondent would have or did treat others? The less favourable treatment which the Claimant relies upon is:
  - 2.1 The First Respondent's failure to respond to the Claimant's letter of 28<sup>th</sup> February
  - 2.2 The First Respondent's ongoing failure to address under hours/ staffing
  - 2.3 The First Respondent's failure to afford the Claimant the grievance procedure
3. Did the First and Second Respondents treat the Claimant less favourably because of the protected characteristic of disability than they would have or did treat others? The less favourable treatment which the Claimant relies upon is:
  - 3.1 the Claimant's conversation with the Second Respondent on 4<sup>th</sup> March where it

is alleged the Second Respondent said to the Claimant 'take a golden handshake at the peak of your career'.

**(E) Discrimination arising from disability (s.15 EQA)**

*In respect of the Claimant's claim for discrimination arising from disability the issues are as follows:*

1. Was the Claimant treated unfavourably (detrimentally) by the First Respondent?

The unfavourable treatment which the Claimant relies upon is:

1.1 The First Respondent's failure to respond to the Claimant's letter of 28<sup>th</sup> February

1.2 The First Respondent's ongoing failure to address under hours / staffing

1.3 The First Respondent's failure to afford the Claimant the grievance procedure

2. Was the Claimant treated unfavourably (detrimentally) by the First and Second Respondent?

The unfavourable treatment which the Claimant relies upon is:

2.1 the Claimant's conversation with the Second Respondent on 4<sup>th</sup> March where it is alleged the Second Respondent said to the Claimant 'take a golden handshake at the peak of your career'.

3. Are there facts from which the Tribunal could decide, in the absence of the Respondents explanation, that the Respondents treated the Claimant unfavourably and that the unfavourable treatment was because of something arising in consequence of his disability contrary to section 15 of the EQA?

4. The Claimant's position is his inability or reduced ability due to multiple sclerosis to perform certain tasks and exacerbation of his multiple sclerosis symptomology due to having to work where there are pressures of understaffing are something arising from his disability.

5. If so, was the Respondents treatment justified as a proportionate means of achieving a legitimate aim? The Respondents position is none of the unfavourable treatment which the Claimant relies upon occurred as alleged or at all.

6. The Respondents will argue that their actions constituted a proportionate means of achieving a legitimate aim, namely the appropriate and safe management of its business and operational practices.

**(F) Harassment based on age and/or disability (s.26 EQA)**



*In respect of the Claimant's claim for harassment based on age and/or disability the issues are as follows:*

1. Did the First Respondent engage in unwanted conduct related to a relevant protected characteristic (age and/or disability)? The unwanted conduct which the Claimant relies upon is:
  - 1.1 The First Respondent's failure to respond to the Claimant's letter of 28<sup>th</sup> February
  - 1.2 The First Respondent's ongoing failure to address under hours /staffing.
  - 1.3 The First Respondent's failure to afford the Claimant the grievance procedure
  
- 2 Did the First and Second Respondent engage in unwanted conduct related to a relevant protected characteristic (age and/or disability)? The unwanted conduct which the Claimant relies upon is:
  - 2.1 the Claimant's conversation with the Second Respondent on 4<sup>th</sup> March where it is alleged the Second Respondent said to the Claimant 'take a golden handshake at the peak of your career'.
  
- 3 Did the conduct have the purpose or effect of violating the Claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
  
- 4 If the complaint is 'effect only', taking into account the Claimant's perception and the other circumstances of the case, was it reasonable for the conduct complained of to have the required effect?

March 2023  
BRIDGE MCFARLAND LLP