



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr T Coakley

**Respondent:** All Metal Roofing Limited

**Heard at:** Watford      **On:** 8,9,10,11 September (7 October deliberation day)  
and 3 November 2025

**Before:** Employment Judge Cowen  
Ms Jaffe  
Mr Scott

## Appearances

For the claimant: Mr Coakley (in person)

For the respondent: Mr Aggrey- Orleans (counsel)

# JUDGMENT

1. The Claimant's claims of unfair dismissal and disability discrimination are dismissed.

# WRITTEN REASONS

## Introduction

1. The claim was heard over the course of 4 days. The Tribunal deliberated on two occasions and the parties were asked to attend to be provided with this

oral judgment and to deal with any remedy issue.

2. At the final hearing, the Tribunal were provided with 2 lever arch files of documents and a bundle of witness statements. The Claimant had made a statement and the Respondent provided five statements from witnesses as well as a large number of exhibits to these statements which were not contained in the bundle and ought to have been. These were allowed, although it did make the evidence more difficult to follow at times.
3. All the witnesses gave oral evidence and were cross examined. The Claimant represented himself and where necessary the Tribunal helped to formulate questions, or ask those pertinent to the list of issues.
4. Additional documents were allowed, where the Tribunal considered it helpful and appropriate to the decision making and where it was in line with the overriding objective.

#### Facts

5. The Claimant started working for the Respondent on 16 June 2014 as a Contracts Manager. He became the Contracts Director in March 2016. The respondent company was owned by Mr and Mrs Shenahan after they bought out the previous co-owners. A holding company, AMR Specialist Systems ("AMRSS") was set up in 2011.
6. The Claimant was seen as being very capable in his role and was helpful when the previous Contracts Director suffered a personal tragedy and was unable to perform his role as he had done previously. At that time Mr Shanahan spoke to the Claimant about the prospect of bonus payments and other 'golden handcuffs'. It was Mr Shenahan's intention to plan for the succession of the business by ensuring that the Claimant would remain loyal to the company. In return, the Claimant would purchase a shareholding in the company, thus earn from the dividends.
7. Around the time that the Claimant was appointed as Contracts Director he began to discuss with Mr Shenahan how the company would grow, and his role in it. However nothing was formalised at this time.
8. In Summer 2017, a meeting was convened with the company accountant, the Claimant and Mr Shenahan, at which it was suggested that the Claimant could purchase a £500,000 shareholding in the company. This would be funded by a directors loan which would be repaid from the dividends and pay rises for the next five years. This arrangement was agreed. There was no mention of the shares being B shares.

9. Mr Shenahan took advice from the Respondent's accountant about how to structure the share sale. On 11 July 2017 10% of the shares in AMRSS were transferred to the Claimant from Mr and Mrs Shenahan. The shares which were issued to the Claimant were in AMR Specialist Systems Limited, a holding company, which owned 100% of the Respondent company. The Claimant was told of this position, but did not have a full understanding of the legal significance of this.
10. The Claimant began to receive dividends and thereby repay the loan which had been provided to pay for the shares from October 2017. The Claimant spoke with Mr Shenahan and the issue of pay rises was re-negotiated, leading to pay rises and bonuses being awarded within the period of the loan repayment.
11. Share certificates were not issued to the Claimant until late 2018, early 2019, when they were signed by Mr and Mrs Shenahan and sent by email via Ms O'Toole.
12. The Claimant was not a person who was familiar with share purchase agreements, or the legal intricacies of shareholding. He took some advice from the father of a friend about what he should be looking for. As a result of this the Claimant asked repeatedly for a shareholders agreement to be finalised. This was slow in happening, as it was not considered a priority by Mr Shenahan. However, there was no explicit explanation given to the Claimant to indicate that regardless of the lack of shareholder agreement, he was in any event a shareholder and receiving dividends. Unfortunately the Claimant did not appreciate that he had been a shareholder since approximately July 2017.
13. The Respondent's solicitor at the time also failed to provide the shareholder agreement, or to explain to the Claimant the significance or otherwise of having this document. Mr Shenahan had also refused to pay for a full valuation of the company due to the increased fees this would attract, which also led to some delay in drafting the shareholder agreement.
14. In February 2018 the Claimant emailed the Respondent's solicitor, asking for an update and answers to his concerns about the outstanding shareholders agreement. On 27 February 2018, the solicitor replied to the Claimant and Mr Shenahan indicating that in order to produce a shareholders agreement, the Claimant's shares would have to be reclassified as B shares.
15. The Claimant became more upset and annoyed by the delay, and saw this as prevarication by Mr Shenahan. He emailed Mr Shenahan on 28 February 2018 outlining his displeasure. By this time the Claimant had become very anxious about the shareholding and his mental health was affected by what he saw as the strain of the situation. Mr Shenahan replied on 1 March 2018

saying he wished to talk to him before replying to the letter, but indicating that the solicitor had made a mistake and that the shares had been 'sorted'.

16. On 1 March 2018, the Claimant resigned for a first time due to the fact that there had been ongoing discussion about the shareholder agreement, but that it had not been settled. The Claimant resigned due to the fact that the negotiation had not been concluded and this caused him to have uncertainty and stress. This was a misunderstanding on the part of the Claimant, as he had in fact received the shares.
17. After a conversation with Mr Shenahan, the Claimant was persuaded to rescind his resignation and to continue with his role. Mr Shenahan also changed the Respondent's solicitors and instructed them to draw up the shareholder agreement. This was done and sent to the Respondent for signing. The Claimant participated in negotiation over this document in March 2018, having received the document on 6 March 2018.
18. In August 2018 the Claimant signed a further contract of employment, setting out terms and conditions and indicating both parties intention to continue to be in an employment relationship.
19. Ultimately, the Claimant signed the shareholder agreement on 28 June 2019 when Mr Shenahan asked him to do so after work one evening. It had taken a long time to get to this point and Mr Shenahan wanted the negotiation to be completed. This was due to the fact that his mental health was not good at that time and that his suspicion of Mr Shenahan and the company, together with his lack of understanding of the document, meant that he was reluctant to commit. The Claimant signed the agreement, having instructed solicitors and had the document checked, but considered that he had been pressured to do it. Nevertheless he agreed the terms and signed the document.
20. The Claimant said that he did not trust Mr Shenahan with regard to the shareholder agreement, but continued to work for them and was willing to enter into further negotiation for a second tranche of shares. Mr Shenahan's evidence was that he tried on a number of occasions to explain the shareholding arrangement to the Claimant, but that the Claimant did not seem to be able to understand or take in the information.
21. The Claimant was off work for 2 weeks in January 2019. This was the start of his mental health problems. The Respondent were aware that this was the reason for his absence as it was set out on his GP fitness certificates. At the return to work meeting, the Claimant told the Respondent that work was not the cause of his depression. He also told Mr Shenahan that one of the adjustments which he wanted upon his return was for Mr Shenahan to communicate with him more openly

22. The Claimant was diagnosed with depression and took medication from January 2019 and was subsequently diagnosed with generalised anxiety disorder. He did not take any further time off work, but continued to work under pressure.
23. During 2019 the Claimant continued to pay off the directors loan for the shares he had purchased. There was no discussion at this time of any further share sale.
24. In approximately March 2020, Mr Shenahan spoke to his accountant about how a further share sale might be structured. This would include paying off the existing loan and then entering into a further share sale. At this point the Claimant was not involved in the discussion. The timing of this discussion coincided with the start of the Covid Pandemic and the focus of the business and Mr Shenahan became adapting to the new working environment and keeping the business going. By early April 2020, Mr Shenahan included the Claimant in emails with the accountant about how to structure any further share purchase.
25. The accountant sent options to Mr Shenahan on 10 April 2020. This was copied to the Claimant. However, this conversation was then deferred, due to the Covid lockdown and the urgent need to concentrate on other business matters.
26. The remainder of 2020 involved keeping the business going through Covid and did not involve discussion of further share sale.
27. Around the start of 2021 the Claimant had a stressful and difficult time in his private life, including a bereavement and a house move. The Claimant did tell Mr Shenahan that he was exhausted and told him of a night in A&E, but did not tell Mr Shenahan that he felt suicidal.
28. On 28 May 2021 Mr and Mrs Shenahan visited the Claimant at home and went out for a meal with him and his wife. At that time, relations between the Claimant and the Respondent remained convivial.
29. It was not until June 2021 that the issue of the share sale arose again, during conversations with the company accountant, around the time of the company accounts being finalised. The accountant then produced a report in September 2021 about how to structure a proposed share sale. There had not been any ongoing discussion with the Claimant at this time, since April 2020.
30. The Claimant's request to the accountant in September 2021 was to understand his earnings to date and how he would be treated if he were to resign his position.

31. The negotiation in relation to the share sale faltered once again. During this period the Claimant once again had more pressing matters at home, with the birth of a child and adjusting to fatherhood. He began to work more frequently from home and travelled less to the Respondent's sites. Mr Shenahan said that he spoke to the Claimant to give him feedback and constructive criticism as staff had complained to him that the Claimant could not be contacted, or had a baby in the background on his calls. This made him less accessible than he had been previously.
32. During 2022 the Claimant found the issues of work and the share sale increasingly difficult to cope with, in part because he had a lack of clear understanding of his position and commitment.
33. The Claimant found it hard to admit to his mental ill health and when asked in a questionnaire in October 2022 whether his depression/anxiety amounted to a disability, the Claimant said no. Although he had declared his condition repeatedly on the Respondent's health form since his first absence in 2019. The Claimant did not appear to have discussed his mental health with colleagues, in particular Liz O'Toole the office manager who dealt with HR issues on a day to day basis.
34. On 22 September 2022 Mr Shenahan wrote to the Claimant asking to discuss the next share sale with him. He said "... Martin has sent some information previously, I just want to check there have been no changes as it's been a while". At this point the discussions with the accountant started again. By November 2022 Mr Shenahan was investigating the cost to the business and timescale of the share sale and the Claimant was encouraging the accountant to finalise the sale.
35. It seems that matters stalled over December 2022 as Mr Shenahan wanted to be clear on the tax implications for the company.
36. There was a meeting on 5 December 2022 which was not a formal, designated shareholder meeting. It was a business meeting which included the Claimant, Mr and Mrs Shenahan, Peta Hobbis, Finance Director, and the company's accountant. The email setting up the meeting dated 5 December from Mr Shenahan indicated that it would commence at 9am and that Peta would be included in the first part, and the Claimant would have an opportunity to have a one to one meeting with the accountant, prior to Mr and Mrs Shenahan having a private conversation with the accountant. Mr Shenahan did not indicate that any part of the meeting would constitute a formal shareholder meeting.
37. On 8 December 2022 the accountant sent Mr Shenahan and the Claimant a video explaining how he would receive the next 10% of shares and how these

could be financed. The Claimant said that this was in part what led to his mental health breaking down. He found that due to the complexity of the proposal and the time over which it was discussed, he became very wary of the proposal and of Mr Shenahan, leading to increased stress and anxiety for the Claimant. The Tribunal concluded that the Claimant struggled to retain the information which he was given at these meetings.

38. The Respondent's staff Christmas party took place on 16 December 2022. During the party the claimant approached Mr Shenahan and told him that he felt he was being misled and that Mr Shenahan was failing to honour his commitments. Mr Shenahan quickly shut down the Claimant and told him the party was not the right place to have a conversation about how the shares would be paid for.
39. Mr Shenahan's evidence was that in early 2023, whilst he was on holiday in Cyprus, he had cause to call the Claimant due to the way he had spoken to his son. This related to the Claimant having used inappropriate language and thrown his car keys at Thomas Shanahan, demanding that he move his car. This appears to have happened on a previous occasion and was witnessed by Mr Shenahan's younger son. The Tribunal saw emails from Thomas Shenahan recounting the incident in August 2022.
40. In January 2023 the Claimant once again become stressed and anxious after he discussed his tax position with the finance director. The Claimant was due to get married in Las Vegas later in the year and was concerned about his finances. Payments were made to the Claimant to assist him with these bills.
41. On 23 February 2023, the Claimant, Mr and Mrs Shenahan and others had a meal together to welcome a new Director to the company. The future plans of the company were discussed by the Claimant at the meal.
42. On 1 March 2023, the Claimant arranged to meet Mr Shanahan to discuss the new business plan which the Claimant had drafted. At the start of the meeting, the Claimant handed Mr Shenahan his resignation letter. The letter did not reference the Claimant's mental health. However, the Claimant did say to Mr Shenahan that he had to think of his family, that he no longer wanted to purchase further shares and that he wanted out. He told Mr Shenahan that he just wanted to be paid £200,000 per annum. The Claimant said that he no longer had the drive or ambition. Mr Shenahan did not accept this suggestion, as he felt that he could not afford to pay that level of salary, but also felt that although he wanted to keep the Claimant, it could not be at any cost. He needed to have a succession plan and therefore accepted the Claimant's resignation.
43. The Claimant did not make it clear that he was in any kind of mental health distress at this time. Mr Shenahan decided that the Claimant should be

placed on garden leave and arranged for his laptop and car to be returned.

44. There were further communications between the parties about the way in which they would part financially.

## **The Law**

### Time Limits

45. For a claim of Unfair Dismissal to be considered by the Tribunal, it must comply with section 111 Employment Rights Act 1996;  
*“ (1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.  
(2) Subject to the following provisions of this section , an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—  
(a) before the end of the period of three months beginning with the effective date of termination, or  
(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.”*
46. The Tribunal must consider whether it was ‘reasonably practicable’ for the Claimant to have brought the claim within the time limit (as extended by EC)
47. The relevant time-limit is at section 123 Equality Act 2010. According to section 123(1)(a) the tribunal has jurisdiction where a claim is presented within three months of the act to which the complaint relates.
48. The normal three-month time limit needs to be adjusted to take into account the early conciliation process and any extensions provided for in section 140B Equality Act.
49. Alternatively, the tribunal may still have jurisdiction if the claim was brought within such other period as the employment tribunal thinks just and equitable as provided for in section 123(1)(b).
50. The tribunal has a wide discretion to extend time on a just and equitable basis. As confirmed by the Court of Appeal in *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23, the best approach is for the tribunal to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time. This will include the length of and reasons for the delay, but might, depending on the circumstances, include some or all of the suggested list from the case of *British Coal Corporation v Keeble* [1997] IRLR 36.

## **Constructive Dismissal**

51. Section 95(1)(c) of the Employment Rights Act 1996 provides that an employee is taken to be dismissed by his employer if “the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct”.
52. It is established law that (i) conduct giving rise to a constructive dismissal must involve a fundamental breach of contract by the employer; (ii) the breach must be an effective cause of the employee’s resignation; and (ii) the employee must not, by his or her conduct, have affirmed the contract before resigning (*Western Excavating v Sharp* [1978] Q.B. 761)
53. The burden of proof lies with the Claimant to establish that, on the balance of probabilities, there has been a fundamental breach of contract.
54. In this case the Claimant claims there was a breach of what is known as the implied term of trust and confidence. A breach of this implied term is necessarily a repudiatory breach of contract (*Morrow v Safeway Stores* 2002 IRLR 9 and *Ahmed v Amnesty International* 2009 ICR 1450)
55. The implied term of trust and confidence in full, as owed by the employer to an employee, is articulated as follows:  
“The employer shall not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between employer and employee”
56. It is relevant to note that there are two limbs to it. When deciding whether or not it has been breached, we need to consider not simply whether there was conduct by the employer which destroyed trust and confidence, but also whether the employer had reasonable and proper cause to act as it did.
57. The breach of the implied obligation of trust and confidence can consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In such circumstances, known as “last straw” cases, the position in relation to affirmation of the contract is modified.
58. In *Kaur v Leeds Teaching Hospitals NHS Trust* 2018 EWCA Civ 978 the Court of Appeal listed 5 questions that should be asked in order to determine whether an employee has been constructively dismissed in a “last straw” case:
  - (a) What was the most recent act (or omission) on the part of the employer which the employee says cause, or triggered, his or her resignation. We note that in *Omilaju v Waltham Forest LBC* [2005] ICR the Court of Appeal

said that the last act may be relatively insignificant, but must not be utterly trivial.

(b) Has he or she affirmed the contract since that act?

(c) If not, was that act (or omission) by itself a repudiatory breach of contract?

(d) If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the implied term of trust and confidence? (If it was, there is no need for any separate consideration of a possible previous affirmation)

(e) Did the employee resign in response (or partly in response) to that breach? (Nottinghamshire County Council v Meikle [2004] EWCA Civ 859).

### **Disability**

59. Section 6 of the Equality Act provides a definition of “disability” as follows:

(1) A person (P) has a disability if:

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities.

60. S.212(1) of the Equality Act provides that “substantial” means more than minor or trivial.

Schedule 1 of the Equality Act gives further details on the determination of a disability. For example, Schedule 1 para 2(1) provides that the effect of an impairment is long term if it has lasted for at least 12 months, is likely to last for at least 12 months or is likely to last for the rest of the life of the person affected.

61. Para 2(2) of Schedule 1 provides that if an impairment ceases to have a substantial adverse effect, it is to be treated as continuing to have that effect if that effect is likely to recur. In *SCA Packaging Ltd v Boyle* 2009 UKHL 37, the House of Lords ruled that “likely to” in this context means “could well happen” rather than “more likely than not”.

62. To decide whether the Claimant was disabled under s.6 EQA, the Tribunal must consider whether the evidence of the Claimant and the medical evidence available, show that the Claimant had a mental impairment which had a substantial effect on her ability to carry out day to day activities. If so, whether that effect did, or was likely, to last 12 months.

63. The Tribunal must take into account Statutory Guidance on the definition of Disability (2011) which stresses that it is important to consider the things that a person cannot do, or can only do with difficulty (B9). This is not offset by

things that the person can do. This is also confirmed in *Aderemi v London and South Eastern Railway Ltd* 2013 ICR 391. Day to day activities are things people do on a regular or daily basis such as shopping, reading, watching TV, getting washed and dressed, preparing food, walking, travelling and social activities. This includes work related activities such as interacting with colleagues, using a computer, driving, keeping to a timetable etc ( Guidance D2 – D7)

### **Direct Discrimination**

64. Section 13 of the Equality Act provides that:

*“(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.”*

65. Section 23 of the Equality Act goes on to provide that:

*“(1) On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.”*

66. In the House of Lords decision of *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11, [2003] IRLR 285, ICR 337, it was held by Lord Scott that “the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects of the victim save that he, or she, is not a member of the protected class”.

67. The test as to whether there has been less favourable treatment is an objective one: the claimant’s belief that there has been less favourable treatment is insufficient. Likewise, the treatment must be less favourable, not merely different. Unreasonable treatment is not sufficient, although it may be evidence which supports an inference if there is no adequate explanation for the behaviour (*Anya v University of Oxford and anor* 2001 ICR 847, CA).

68. Where there is less favourable treatment, the key question to be answered is why the claimant received less favourable treatment: was it on grounds of disability/sex/race or for some other reason (*London Borough of Islington v Ladele* [2009] ICR 387). As Mr Justice Linden said in *Gould v St John’s Downshire Hill* 2021 ICR 1, EAT “The question whether an alleged discriminator acted “because of” a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the “reason why” question and the test is subjective...For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a “significant influence” on the decision to act in the manner complained of. It need not be the sole ground for the decision...[and] the influence of the protected characteristic may be conscious or subconscious.”

### **Burden of Proof**

69. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. A two-stage process is followed. Initially it is for the Claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the Respondent, that the Respondent committed an act of unlawful discrimination.
70. At the second stage, discrimination is presumed to have occurred, unless the Respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the Respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the Claimant's disability. The Respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.
71. Guidelines on the burden of proof were set out by the Court of Appeal in *Igen Ltd v Wong* [2005] EWCA Civ 142; [2005] IRLR 258 and we have followed those as well as the direction of the court of appeal in the *Madarassy* case. The decision of the Court of Appeal in *Efobi v Royal Mail Group Ltd* [2019] ICR 750 confirms the guidance in these cases applies under the Equality Act 2010.
72. The Court of Appeal in *Madarassy*, states:  
The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the Respondent had committed an unlawful act of discrimination.'
73. It may be appropriate, on occasion, for the tribunal to take into account the respondents' explanation for the alleged discrimination in determining whether the Claimant has established a prima facie case so as to shift the burden of proof. (*Laing v Manchester City Council and others* [2006] IRLR 748; *Madarassy v Nomura International plc* [2007] IRLR 246, CA.) It may also be appropriate for the tribunal to go straight to the second stage, where for example the Respondent assert that it has a non-discriminatory explanation for the alleged discrimination. A Claimant is not prejudiced by such an approach since it effectively assumes in his favour that the burden at the first stage has been discharged (*Efobi v Royal Mail Group Ltd* [2019] ICR 750, para 13).

#### **Failure to make Reasonable Adjustments**

74. *Section 20(3) of the Equality Act 2010 provides that:*  
*"...(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.”*

75. Section 21 of the Equality Act 2010 provides that:  
*“(1) A failure to comply with the first, second or third requirement is a failure to comply with the 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.”*
76. The burden is on the claimant to show the application of a provision, criterion or practice, and the substantial disadvantage suffered by him because of it. Substantial means “more than minor or trivial”. If that is done the burden shifts to the respondent to show that the adjustment in question was not reasonable. A one-off act can amount to a PCP where there is an indication that it would be repeated if a similar situation arose in future (*Ishola v Transport for London* [2020] EWCA Civ 112, CA).
77. The duty to make reasonable adjustments does potentially require an employer to treat a disabled person more favourably than others (*Archibald v Fife Council* [2004] ICR 954
78. Paragraph 6.28 of the EHRC Code sets out some of the factors that might be taken into account when deciding what is a reasonable step: it is wise for the Tribunal to consider the factors although there is no duty to consider each and every one (*Secretary of State for Work & Pensions (Job Centre Plus) v Higgins* [2014] ICR 341, EAT [58]). What is reasonable is considered objectively having regard to all the circumstances. The steps are: a) Whether taking any particular steps would be effective in preventing the substantial disadvantage; b) The practicability of the step; c) The financial and other costs of making the adjustment and the extent of any disruption caused; d) The extent of the employer’s financial or other resources; e) The availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and f) The type and size of the employer.
79. The test of reasonableness is objective and will depend on the circumstances of the case.

## **DECISION**

80. The Tribunal considered each of the allegations in turn, applying the separate tests related to breach of fundamental contract term for constructive dismissal and where appropriate also for less favourable treatment related to disability (direct discrimination).
81. Disability Status – The Respondent admitted and the Tribunal found that the Claimant did suffer from depression and the Respondent was aware of that from January 2019, when he went off sick for 2 weeks. The Tribunal were

satisfied that the Claimant suffered a substantial adverse effect on his ability to do to day to day activities, when his depression was particularly prominent. At other times it relented somewhat, but was likely to return due to the nature of depression and the recurrent stress that the Claimant faced in his work. It clearly lasted for more than 12 months.

82. Allegation 2.1.1.1

*The Claimant was told in around 2015 that he would receive shares in the Respondent company in return for picking up additional tasks but the Respondent then failed to issue the Claimant those shares until 2019.*

83. The Tribunal found no evidence that conversations started in 2015 with regard to shares being sold to the Claimant. The Tribunal found that these conversations started in December 2016 after the Claimant became the Contract Director in March 2016. Mr Shenahan had discussions this with his accountant on a prior occasion, to consider whether and how this could be done.

84. The evidence before the Tribunal showed that the Claimant received 10% shares in All Metal Roofing Specialist Systems Limited (“AMRSS”), in September 2017 and that thereafter he received dividends from the ownership of those shares; which for the first 3 years, were used to pay back the directors loan which had been given to him, in order to facilitate the purchase.

85. The Tribunal also took into account the WhatsApp messages which showed that the Claimant received share certificates shortly after 16 December 2017 and 18 January 2018.

86. The Tribunal concluded that this allegation was not made out on a factual basis and therefore could not amount to a breach of contract. This allegation was dismissed.

87. Allegation 2.1.1.2

*The Respondent continued to promise the Claimant shares in the company throughout 2016 and 2017 yet failed to issue them until 2019.*

88. Having found the that shares were issued in September 2017 and the Claimant knew that he had received them due to the payment of dividends to him, as well as the issue of the share certificates in 2017 and 2018, the Tribunal concluded that this claim was not proved. It could not therefore amount to a breach of contract. This allegation was dismissed

89. Allegation 2.1.1.3

*The Respondent contacted the Claimant through solicitors in 2018 wrongly stating that his shares needed to be reclassified and he would receive class B*

*shares whilst Richard and Justine Shanahan were to receive class A shares.*

90. The Tribunal found that the Claimant chased Matthew Flanagan, the Respondent's solicitor, to answer his questions but had not had any reply from him.
91. The Tribunal saw an email dated 27 February 2018 from Matthew Flanagan at Turner Parkinson LLP which indicated that the Claimant and Mr and Mrs Shenahan held shares in AMRSS. He suggested that reclassification of the shares would need to take place to reflect the terms that Mr Shenahan wished to put into the shareholder agreement.
92. The Tribunal accepted the Respondent's evidence that this was not their instruction to their lawyer and that this was an error by a solicitor who had merely picked up the file with no prior knowledge.
93. The Tribunal accepted that the Claimant was copied into this erroneous advice and that Mr Shanahan immediately questioned why this was happening.
94. The Tribunal found this to be an error by a solicitor, which did not emanate from the Respondent. When Mr Shenahan found out about it he took action to correct it. The Tribunal were satisfied that the evidence did not show an intention by the Respondent not to continue their relationship with the Claimant.
95. In any event, the Tribunal did not consider that the Claimant's resignation in 2023 was in response to this incident in 2018. Whilst it may have formed background to the Claimant's view of the administration of the share issue, it did not form a reason for his resignation 5 years later.
96. From a legal perspective it was far too long between the breach and the resignation. In the interim, the Claimant continued to work and to receive salary and bonus, together with reaffirmation of his contract by way of salary increase. He also signed a further contract on August 2018. The tribunal therefore concluded that this was not a conscious act on the part of the Respondent and the Claimant did not resign in response to it and he reaffirmed his contract by continuing to work and receive pay and a new contract. This allegation was dismissed
97. Allegation 2.1.1.4  
*The Respondents told the Claimant upon his return to work in early 2019 following a period of mental ill health that his shares had been issued and he just needed to sign the agreement, but failed at that time to give him the agreement to sign or to issue the shares.*

98. The tribunal were satisfied on the evidence, that the Claimant's shares had been issued prior to his absence in January 2019 for mental health illness.
99. The Tribunal accepted that at the return to work meeting on 30 January 2019 it was agreed that the Claimant had the share certificates and was therefore aware that he owned the shares.
100. Mr Shenahan told the Claimant that Liz O' Toole, the Office manager, would provide him with a copy of the shareholder agreement for his review and signature. An email on 1 February 2019 from Ms O'Toole attached the shareholder agreement. The Claimant therefore had the agreement and was asked to review it at that time.
101. The Tribunal accepted that the Claimant emailed in reply to acknowledge the Shareholder agreement and said he would review and come back to her about it.
102. The Tribunal were therefore satisfied that the Claimant was provided with the agreement on 1 February 2019. He had previously had ownership of the shares for some time. Therefore the factual assertion in this allegation was wrong and the evidence did not show this. There was therefore no possible breach of contract on this basis.
103. The tribunal also concluded that there was no less favourable treatment and no direct discrimination either. This allegation was dismissed as both constructive dismissal and discrimination.
104. Allegation 2.1.1.5  
*The Respondent told the Claimant towards the end of 2019 that he was to receive an additional 10% shares in the Respondent business but failed to issue the additional shares at any time before the Claimant's resignation*
105. The Tribunal took into account that the first shareholder agreement was signed by the Claimant on 28 June 2019. The Tribunal found that, on balance, it was unlikely that the respondent would have had any discussion with the Claimant about further share allocation/purchase until after the Claimant had signed the shareholder agreement for the first purchase. This occurred in June 2019.
106. The Tribunal accepted the Respondent's evidence that there was discussion at the start of March 2020 with regard to a further share purchase, but that this did not involve the Claimant. By early April 2020, Mr Shenahan included the Claimant in emails with the accountant about how to structure any further share purchase.

107. The Tribunal had no evidence to support the contention that these conversations took place towards the end of 2019. The Tribunal also took into account that at this time the Claimant had not yet completed the repayment on the first share purchase and that the conversations started with ways in which the first repayments could be curtailed before the next share purchase was considered.
108. The Tribunal found on the evidence that the accountant sent options to Mr Shenahan on 10 April 2020. This was copied to the Claimant. However, this conversation was then deferred, due to the Covid lockdown and the urgent need to concentrate on other business matters.
109. There was no evidence that the Claimant was told that he would receive a further 10%. The Tribunal considered that there were discussions about the possibility of the Claimant purchasing a further 10% shares, but concluded that this is not the same thing as being told he would be gifted them.
110. The Tribunal accepted that the Claimant never received these additional shares prior to his resignation.
111. The Tribunal did not consider that the tentative discussion in March/April 2020 about the possibility of the Claimant purchasing further shares amounted to a breach of trust and confidence. The Tribunal considered that there was a misunderstanding by the Claimant of the situation and was not, in any event, the reason why he resigned.
112. The Tribunal also took into account that there was 3 years between the first discussion and the Claimant's resignation and that during that time the Claimant had acted to affirm his employment by accepting payments and pay rises and engaging in the work.
113. The Tribunal also concluded that as this did not occur in late 2019 as alleged, the Claimant had failed to prove the relevant facts and therefore no less favourable treatment occurred. Both the constructive dismissal and discrimination claims were dismissed.
114. Allegation 2.1.1.6  
*The Respondent told the Claimant in 2020 that the issue of additional shares to him would be delayed because of covid yet failed to issue those shares before the Claimant's resignation in 2023.*
115. The Tribunal accepted the evidence that the proposed share deal options were provided by the accountant on 10 April 2020, and were passed to the Claimant. However, there was no evidence of any further discussion of these during 2020. The Tribunal also accepted that the proposal to purchase

further shares was delayed due to the Covid pandemic and the need to concentrate on running the business throughout that period. There was however, no specific evidence which either party pointed to, which showed that the respondent had specifically told the claimant that there would be a delay for this reason.

116. The Tribunal therefore concluded that there was no breach of trust and confidence as this communication did not occur.

117. For the same reasons the Tribunal concluded that this could not amount to less favourable treatment. Both allegations were dismissed.

118. Allegation 2.1.1.7

*The Respondent continued throughout 2021 and 2022 to promise to issue the Claimant additional shares yet failed to do so.*

119. The Tribunal were satisfied that Mr Shenahan spoke with the accountant about the proposed share sale in June 2021, after a meeting to deal with the company accounts. The Claimant was not present at this discussion, as it was between Mr Shenahan on behalf of the Company, and the accountant. The accountant then provided further advice on how this could be structured.

120. The Tribunal could not find any evidence that between April 2020 and September 2021 there was a continuing discussion about the share sale. The Tribunal were satisfied that the matter was left in abeyance whilst they addressed the Covid pandemic and whilst the Claimant faced a number of personal challenges and tragedies. The matter was picked up again briefly in June 2021 by Mr Shenahan on behalf of the company and was then addressed in September 2021 with the accountant and the Claimant.

121. The documentary evidence indicated that Mr Shenahan spoke with the accountant in May 2022 once again, but not specifically about the shares. The Tribunal considered that the issue of the share sale was not discussed in any detail or with any intent until September 2022.

122. The Tribunal considered that the evidence of limited calls to the accountant and a lack of emails showed that there were limited discussions, but there were not negotiations which were progressed by either side. These showed no offer of shares until September 2022, when the issue was taken up once again. However, this was not a promise by the Respondent to issue the shares. It was a discussion of how the Claimant could buy the shares, what the tax implications would be and how he would pay for them.

123. The Tribunal considered that this did not amount to evidence of a breach of trust and confidence. Nor was this less favourable treatment. Both

the constructive dismissal and discrimination allegations were dismissed.

124. Allegation 2.1.1.8

*From 5 December 2022 the Respondent excluded the Claimant from shareholders meetings and failed to communicate with him about shares or company business.*

125. The Tribunal were satisfied that the meeting on 5 December 2022 was not a formal designated shareholder meeting. There was a business meeting which included the Claimant, Mr and Mrs Shenahan, Peta Hobbis and the accountant. An email dated 5 December from Mr Shenahan indicated that the meeting would commence at 9am and that the Claimant would have an opportunity to have a 1:1 meeting with the accountant, prior to Mr and Mrs Shenahan having a private conversation with the accountant. Mr Shenahan did not indicate that any part of the meeting would constitute a formal shareholder meeting.

126. The Tribunal understood that the Claimant felt that these separate meetings were him being excluded when issues about company shares were discussed. But the Tribunal had no evidence to support the Claimant's assumption. The Tribunal considered that this was indicative of some of the breakdown between the Claimant and the Respondent, in the sense that he believed that the Respondent was in some way taking advantage of him.

127. The evidence showed that on 8 December 2022 the accountant sent Mr Shenahan and the Claimant a video explaining how he would receive the next 10% of shares and how these could be financed. The Claimant said that he found that due to the complexity of the proposal and the time over which it was discussed, he became very wary of the proposal and of Mr Shenahan, leading to increased stress and anxiety for the Claimant.

128. The Claimant's evidence was that he felt excluded, but the evidence showed that he was involved in the meeting. The Tribunal concluded that the Claimant struggled to retain the information which he was given at these meetings.

129. The Tribunal found there to be no evidence to support the suggestion that the Claimant was excluded after 5 December 2022 from any meetings about shares or company business. The Tribunal found that the Claimant was not entitled to be included in all business meetings, only those pertinent to his role. There was no evidence that he was excluded from any meeting which was pertinent to his role.

130. The Tribunal therefore concluded that there was insufficient evidence to indicate a breach of trust and confidence in respect of exclusion from meetings at this time. The constructive dismissal allegation therefore was

dismissed.

131. The Tribunal also concluded that the lack of evidence could not amount to less favourable treatment and the direct discrimination claim was also dismissed.

132. Allegation 2.1.1.9

*Following the Respondent's Christmas party in 2022 where the Claimant asked about the delay in the issue of his additional shares, the Respondent failed to issue those shares at that time or at any time up to the date of the Claimant's resignation*

133. The Tribunal found that the Christmas party took place on 16 December 2022, for all staff. During the party the claimant approached Mr Shenahan and told him that he felt he was being misled and that Mr Shenahan was failing to honour his commitments. Mr Shenahan quickly shut down the Claimant and told him the party was not the right place to have a conversation about how the shares would be paid for.

134. There was no evidence to suggest that the Claimant did ask Mr Shenahan at the Christmas party specifically about the delay in issuing additional shares. The conversation was short and was the Claimant's attempt to ask about the payment structure. The Tribunal noted that this was one week after the Claimant had been sent the video by the accountant about the ways in which payment could be structured.

135. The Tribunal considered that by his actions at the Christmas party, the Claimant was showing that his mental health was once again on the decline. The Tribunal considered that whilst it may have been the Claimant's perception that he was being gaslit, that was not in fact the reality of what was happening and that his perception was due to his failing mental health.

136. The Tribunal accepted that the additional 10% shares were never issued to the Claimant.

137. The Tribunal considered that this did not amount to a breach of trust and confidence as the reason it was not done was because there was no agreement on how the sale would be structured or how the Claimant would pay for them. The Tribunal therefore dismissed this allegation. Nor were the Tribunal satisfied that the share issue did not happen because of the Claimant's disability. The allegation of direct discrimination was also dismissed.

138. Allegation 2.1.1.10

*In early 2023 Richard Shanahan accused the Claimant of a failure to perform despite evidence to the contrary, excluded him from meetings and unfairly*

*accused him of inappropriate behaviour towards his son and in particular, bullying.*

139. The Tribunal considered that the claimant's evidence about Mr Shenahan accusing him of underperformance was vague and provided no specific instances.
140. The Tribunal also considered Mr Shenahan's evidence, that after the Claimant's baby was born around June 2022 the Claimant started to work from home more. He also said that the Claimant asked to move into the middle of the open office space and so the office was rearranged. However, the Claimant did not attend at work regularly. The Tribunal accepted Mr Shenahan's evidence that he spoke to the Claimant to give him feedback and constructive criticism as staff had complained to him that the Claimant could not be contacted, or he had a baby in the background on his calls. This made him less accessible than he had been previously. Mr Shenhan felt that a quick fix was to ask the Claimant to attend the office more often and once the claimant started to do so, this issue was resolved.
141. The Tribunal were not aware of evidence which undermined or criticised the Claimant's work performance. The Tribunal took into consideration the fact that at this time, Mr Shenahan was still engaging in negotiation with the Claimant to take on a larger shareholding. The Tribunal considered that Mr Shenahan's evidence showed that he was concerned that at that time, the Claimant was not setting a good example to other staff by way of his attendance and behaviour. There was no evidence to suggest that his work performance was lacking in any other way.
142. Mr Shenahan's evidence was that in early 2023, whilst he was on holiday in Cyprus, he had cause to call the Claimant due to the way he had spoken to his son. This related to the Claimant having used inappropriate language and thrown his car keys at Thomas Shanahan, demanding that he move his car. This appears to have happened on a previous occasion and was witnessed by Mr Shenahan's younger son. The Tribunal saw emails from Thomas Shenahan recounting the incident in August 2022. The Tribunal were satisfied that this was not an unfair accusation, as the Claimant did not deny that it had happened.
143. The Tribunal noted that the Claimant was not put through a formal disciplinary action as a result of this incident. This was to his benefit and therefore the Tribunal were troubled by why the Claimant used this as criticism of the Respondent. The Tribunal considered that the Respondent had chosen to deal with the matter informally, by way of a conversation and part of mentoring, rather than by using a disciplinary procedure.

144. The Tribunal found no evidence of specific meetings that the Claimant was excluded from.

145. The Tribunal concluded that the actions of Mr Shenahan did not amount to a breach of trust and confidence. He dealt with accusations about the Claimant's behaviour in an informal, mentoring manner and not in a disciplinary procedure.

146. The Tribunal also considered that this did not amount to less favourable treatment, as the tribunal considered that Mr Shenahan would have dealt with anyone in the Claimant's position in this way, or possibly more seriously by way of disciplinary process. The tribunal found no discrimination.

#### Reason for resignation

147. The Tribunal concluded that the evidence showed that Mr Shenahan didn't consider that the relationship had ever broken down, nor did he want the relationship to end. It was the Claimant who decided to step away from his employment.

148. Tribunal also took into account the fact that in February 2023, Mr Shenahan authorised a payment of £50,000 to the Claimant, to assist him with a tax bill. The Tribunal considered that this would be unlikely to have happened, had the Respondent had a view to remove the Claimant from his employment.

149. The Tribunal accepted that at the time, the Claimant had poor mental health, a continued lack of trust and his perception of a change of behaviour towards him by Mr Shenahan. The Tribunal did not consider that the Claimant's view was reasonable, or accurate. In particular the Tribunal noted that the Claimant's resignation letter on 1 March 2023 did not refer to any of the points which the Claimant raised in the Tribunal and did not in fact give a reason at all.

150. The Tribunal accepted that the Claimant's behaviour had deteriorated and that this had led to some criticism from Mr Shenahan by way of informal conversation. There had been no agreement about the purchase of further shares and the Claimant had decided that he no longer wished to be tied to the Respondent for a long period of time.

#### Direct Disability Discrimination

151. The Tribunal dismissed all the issues which were also set out as breaches of the implied term of trust and confidence.

152. In respect of the dismissal, the Tribunal were satisfied that the Claimant was not dismissed, but resigned for the reasons outlined above. These did not amount to less favourable treatment by the Respondent and therefore the claim of direct discrimination was dismissed.

#### Failure to make Reasonable Adjustments

153. The Tribunal found no evidence that Mr Shanahan was not open in communication with others. The Respondent's witnesses said in evidence that they enjoyed working for Mr Shenahan. The Respondent had started as a family firm which was expanding. The Claimant had invited Mr and Mrs Shenahan to his wedding and then to his rearranged wedding in Las Vegas. All of this points to there being a convivial relationship between the Claimant and Mr Shenahan

154. The evidence from Mr Shenahan was that he agreed to be more open in his communication to the Claimant, upon his return to work in 2019, but this did not amount to a PCP.

155. The Tribunal did not consider that the Claimant had proved that there was a PCP of Mr Shenahan not being open in his communication with any staff. This would be required under s.20 EQA as would a finding that this placed the Claimant at a disadvantage due to his disability. The Tribunal could see no evidence from which they could even infer that this was the case.

156. In conclusion the PCP was not made out and this allegation therefore was dismissed.

#### **Time Limits**

157. The Tribunal concluded that as each claim had been dismissed, there was no need to consider whether the claims had in fact been brought in time.

Approved by  
Employment Judge Cowen

Dated 27 November 2025

Sent to the parties on  
1 December 2025

For the Tribunal