



EMPLOYMENT TRIBUNALS

Claimant: Ms A Rezaei

Respondent: Royal Marsden NHS Foundation Trust

Heard at: London Central **On:** 19, 20, 21 January 2026

Before: Employment Judge Davidson
Mr S Godecharle
Mr L Tyler

REPRESENTATION:

Claimant: in person
Respondent: Mr A Ohringer, Counsel

JUDGMENT

1. The complaint of direct disability discrimination is not well-founded and is dismissed.
2. The complaint of unfavourable treatment because of something arising in consequence of disability is not well-founded and is dismissed.
3. The complaint of failure to make reasonable adjustments for disability is well-founded and succeeds.
4. The claimant's application for a Preparation Time Order succeeds in part.
5. The respondent shall pay the claimant the following sums:
 - a. Compensation for injury to feelings: **£6,000.00**;
 - b. Interest on compensation for injury to feelings calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996: **£840.00**.
 - c. Preparation Time of 20 hours at £44 per hour: **£880.00**

REASONS

Issues

1. The issues were set out by EJ Bartlett at a case management hearing on 27 February 2025 as follows:

1. *Direct discrimination (section 13 EqA)*

1.1. Did the respondent treat the claimant less favourably than it treats or would treat others because of disability by, in April 2024 by not offering the Pathology Operations Manager position to the claimant when the successful applicant from the interview process of 20 February 2024 declined the job offer?

1.2. Was there any material difference between the circumstances of the claimant and the other applicant (Reza Mirzu) who was then offered the position instead of the claimant?

1.3. The claimant relies on Reza Mirzu as the comparator.

1.4. If there was less favourable treatment of the claimant, was this less favourable treatment because of the claimant's disability?

2. *Discrimination arising from Disability (section 15 EqA)*

2.1. The claimant relies on the disability of anxiety. The respondent accepts that the claimant has the disability of anxiety.

2.2. Did the respondent know, or could it reasonably have been expected to know that the claimant had the disability? If so, from what date?

2.3. Did the respondent treat the claimant unfavourably by in April 2024 not offering the Pathology Operations Manager position to the claimant?

2.4. Did the following thing arise in consequence of the claimant's disability: her anxiety affecting her concentration and clarity of mind and speech affecting the quality of her responses (resulting in the responses not being succinct) particularly in an interview situation such as the interview on 20 February 2024?

2.5. Was the unfavourable treatment because of that thing?

2.6. Was the unfavourable treatment a proportionate means of achieving a legitimate aim?

2.7. The respondent relies on 'ensuring the highest scoring candidate in any recruitment process is offered the role in the interests of fairness in the recruitment process, service and patient care at the respondent' as a legitimate aim?

2.8. The Tribunal will decide in particular:

2.8.1. was the treatment an appropriate and reasonably necessary way to achieve those aims?

2.8.2. could something less discriminatory have been done instead?

2.8.3. how should the needs of the claimant and the respondent be balanced?

3. *Duty to make reasonable adjustments (section 20 EqA)*

3.1. Did the respondent know or could it reasonably have been expected to know that the claimant had the conditions of anxiety? From what date? The claimant says 2 February 2024 when she completed her application form and/or 21 February 2024 in the claimant's email to Judith Lucas.

3.2. Did the respondent know, or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage? From what date? The claimant says 2 February 2024 when she completed her application form and/or 21 February 2024 in the claimant's email to Judith Lucas.

3.3. Did the respondent have the Provision, Criterion or Practice (PCP) of relying on the interview performance and "conciseness of the responses" as a major determining factor in assessing suitability of the applicants for the role, when the role is originally offered and if the role becomes vacant again and needs to be filled?

3.4. Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability?

3.5. What steps could have been taken to avoid the disadvantage? The claimant suggests:

3.5.1. full consideration of the entire application form, experience, skills, qualifications and knowledge relevant to the role, rather than the interview process only;

3.5.2. consideration for conditions such as mental health impairments (e.g., anxiety disorders) that can affect interview performance under pressure.

3.6. Was it reasonable for the respondent to have to take those steps and when?

3.7. Did the respondent fail to take those steps?

4. *Remedy*

4.1. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

4.2. Should interest be awarded? How much?

Evidence

2. We heard evidence from the claimant on her own behalf and from Karen Musee (Head of HR Operations), Judith Lucas (Director of Operations – Clinical Services) and Oluseyi Odugbesan (Employee Relations Specialist/Manager) on behalf of the respondent.
3. We also had a bundle of documents running to 334 pages.

Facts

4. The tribunal found the following facts on the balance of probabilities.
5. The respondent is an NHS Foundation Trust providing inpatient, outpatient, day care services and carrying out research.
6. The claimant was employed as Associate Director of Laboratory Medicine (Pathology) at another NHS Foundation Trust (Royal Brompton).
7. In January 2024, the respondent invited applications for the post of Pathology Operations Manager. The claimant learned of the vacancy from a friend on 26 January 2024 and submitted her application on 2 February 2024.
8. The form included an Equal Opportunities form in which the claimant selected 'I do not wish to disclose my disabilities' from a drop-down menu but also selected that she had a mental condition in another drop-down menu. She told the tribunal that she had selected the option from the drop-down menu regarding not wanting to disclose her disability in error. We accept that this may be the case but the respondent can only base its reaction on the form as they receive it.
9. There were 43 applications for the role. Six candidates, including the claimant, were shortlisted for interview.
10. The candidates were asked to book their interview slot via an interactive form on a platform called Trac, which gave the candidates the opportunity to request any special arrangements for the interview, for example to cater for a disability or language issue. The claimant did not make any requests for adaptation.
11. When the claimant booked her interview, there was only one slot remaining at 10.20am. She says she was not aware how much time was allocated to each interview.
12. The interviews took place on 20 February 2024 via video link. The claimant's interview started five minutes late. The claimant was told that the interview slot was 40 minutes. Her position is that this meant there was only 35 minutes for the interview. The respondent has not challenged this other than to say all the interviews were approximately the same length.

13. There was a panel of three: Judith Lucas, Alison Morilla (Director of Pathology and Clinical Genomics) and Professor Robert Duncombe (Chief Pharmacist). Each of them scored each candidate according to pre-prepared questions which had been set out in a form to be completed contemporaneously. Although there were ten questions marked out of 3, the panel appear to have regarded the scores as being out of 36, instead of 30. The tribunal had the scoring sheets of Alison Morilla and Professor Duncombe but not Judith Lucas.
14. Following the interviews, the panel met to discuss the outcome of the interviews. The stand-out candidate was Stephen Wilkins who was top-scored by all three. Alison Morilla scored the claimant at 19 (or 19.5) and scored Reza Mirza at 21. Professor Duncombe scored the claimant at 20 and Reza Mirza at 16.

Candidate	Scorer 1 (Judith Lucas)	Scorer 2 (Allison Morilla)	Scorer 3 (Rob Duncombe)
Stephen Wilkins	?	24	22
Reza Mirza	?	21	16
CLAIMANT	?	19 to 19.5	20
SP	?	12	11.5
FT	?	11	14.5
MP	?	11	14.5

15. Judith Lucas's evidence to the tribunal was that, after discussion, the panel agreed that Reza Mirza came second and the claimant came third. Unfortunately, there are no contemporaneous documents to confirm this as Judith Lucas's notes are not available and there was no overall scoring summary sheet. This is clearly a serious failing in the record keeping of the process, affecting the respondent's ability to evidence its position that the claimant's scores were lower than Reza Mirza.
16. The respondent's position in its ET3 and in witness evidence was that the claimant's scores were lower than Reza Mirza when Judith Lucas's scores were taken into account and that this was the decision reached on 20 February 2024 after the interviews. In evidence, Judith Lucas said that the interview scores were only part of the final assessment, which also considered the application as a whole. We find the lack of clarity on this issue is indicative of a lack of vigour in the process, demonstrated by a failure to link the questions to the person specification or to include what was clearly an important requirement for private sector experience even as a desired experience.
17. It is not clear to us who actually came second in February 2024 but we find that Judith Lucas considered Reza Mirza to be a better candidate than the claimant and, although she did not have her actual scores in April, she relied on her recollection.
18. While we accept that Judith Lucas's evidence was that the whole application was considered, there is no documentary or contemporaneous evidence of this. For example no scores are recorded to rate relevant experience, skills and

knowledge. We therefore find that, in practice, the interview operated as a tiebreaker.

19. In our view, the interview process was flawed as it marked question by question, rather than competency by competency. As such it is harder to compare the candidates' relevant skills for the role.

20. The following day, 21 February 2024, Judith Lucas called the claimant to inform her that she had not been successful. The claimant was on a train and the call was cut off so the communication continued via email. The claimant requested feedback and Judith Lucas told her

It is with regret that we are unable to offer the role to you as you presented very well at interview and have a wealth of relevant experience and knowledge which you were able to draw upon. You were considered appointable to the role but unfortunately there was another candidate who answered the questions slightly more directly and succinctly; this would be the only point of development I have as feedback as the rest of your interview was good and your focus on quality was very assuring.

21. We note that Judith Lucas did not refer to 'other candidates' but to 'another candidate' in the singular.

22. The claimant expressed her disappointment and disclosed her mental health disability of anxiety which, she said, can affect clarity of mind and speech under pressure, particularly in interview situations. In reply, Judith Lucas said that the top three candidates (including the claimant) demonstrated a wealth of experience and knowledge but that the claimant's score was not the highest.

23. We do not find that this indicates to the claimant that she came third.

24. We note that, of the six shortlisted, three were appointable and three were not. Judith Lucas's email recognises this sub-grouping but it does not, in our view, necessarily suggest the claimant was therefore third.

25. We note Judith Lucas's evidence that her clear recollection is that she rated Reza Mirza above the claimant even though she does not recall the scores she gave. We are not sure whether Judith Lucas's evidence is that his total scores exceeded the claimant's (which would mean she scored him three marks higher than the claimant) or whether his experience and application as a whole was more impressive than the claimant's.

26. We conclude that, in the discussion after the interviews, there was unanimity regarding the top candidate. In those circumstances, the discussion about second/third place became less relevant.

27. Although there is no direct evidence to show this, we assume that all the candidates, including the successful candidate, were informed of the outcome of the interviews on 21 February 2024.

28. The claimant received written confirmation of the unsuccessful outcome of her application on 5 March 2024.

29. On 7 April 2024, the claimant wrote to Krystyna Ruszkiewicz (Director of Workforce) to express her concerns regarding the recruitment process. She informed her that the interview had started late and that she had felt rushed which had an impact on her because of her disability of anxiety. She complained about the process, while acknowledging that if there was a better candidate, she would understand that. However, she noted that the preferred candidate had less relevant experience than her and that he had subsequently declined the offer and asking why she was not contacted as the second person. She went on to ask specific questions of the respondent. The claimant received no reply to this complaint.
30. On 17 April 2024, Judith Lucas discussed the vacant position with Alison Morilla and they decided to offer the position to Reza Mirza as the second highest scorer. The respondent invited Reza Mirza to meet up face to face to see if he was still committed. After that meeting, a formal offer was made which Reza Mirza accepted. Although the witness statement states that Judith Lucas discussed with Alison Morilla, her oral evidence was that this was a decision of the whole panel. We did not hear from Alison Morilla or Professor Duncombe and have to resolve the inconsistent evidence of Judith Lucas. On the balance of probabilities, we find that she only discussed the matter with Alison Morilla and that her witness statement is more reliable than her oral evidence.
31. The respondent accepts that there was no fresh consideration of the candidates when the April decision was made.
32. On 25 April, the claimant called Karen Musee following up her complaint of 7 April 2024, which had not been responded to. Karen Musee forwarded the complaint to Ellen Mossman (Deputy Chief People Officer) who then forwarded to Oluseyi Odugbesan to investigate. Oluseyi Odugbesan was asked to take forward the fact-finding investigation as he had experience of the recruitment platform, Trac. As part of his investigation he spoke to Judith Lucas as lead interviewer. Judith Lucas said she would provide answers to the claimant's questions.
33. Oluseyi Odugbesan replied to the claimant on 12 June 2024 answering her queries and informing her that Reza Mirza was given the role after Stephen Wilkins declined it. The content of his email is a cut and paste of the information given to him by Judith Lucas by email on 10 June 2024.
34. On 18 June 2024, the claimant replied complaining that the response did not address the issues she raised. The claimant then submitted her claim to the tribunal.

Relevant law

Direct discrimination

35. Section 13 of the Equality Act provides: *“(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.”*
36. The claimant must establish facts from which a tribunal could properly find that the treatment was because of her protected characteristic and the mere fact of

a difference in status and a difference in treatment, without more, will not be sufficient for a tribunal to be able to conclude that the respondent had discriminated.

37. If the claimant shows facts from which it could be inferred that the respondent has treated her less favourably because of a protected characteristic, the burden of proof shifts to the respondent who must show that the treatment was in no sense on the grounds of the claimant's protected characteristic.

Discrimination arising from disability

38. Under section 15 of the Equality Act 2010 (A) discriminates against (B) if:

- (a) A treats B unfavourably because of something arising in consequence of B's disability, and
- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

This does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

39. There must be unfavourable treatment and the reason for the treatment must be because of something arising in consequence of B's disability. This is an objective question and does not depend on the motive of the alleged discriminator.

40. The threshold for 'unfavourable treatment' is relatively low and it is enough that the person is put at a disadvantage or can reasonably say that they would have preferred to be treated differently (*Williams v Trustees of Swansea University Pension and Assurance Scheme and another* [2018] UKSC 65).

41. The objective justification test requires the unfavourable treatment to be both an appropriate means of achieving a legitimate aim and a reasonably necessary means of doing so (*Homer v Chief Constable of West Yorkshire* [2012] UKSC 15). The tribunal should consider whether the measure taken was proportionate at the time the unfavourable treatment was applied and whether or not a lesser measure could have achieved the legitimate aim.

Duty to make reasonable adjustments

42. Section 20 of the Equality Act 2010 sets out the duty to make reasonable adjustments. This provides that, if there is a provision, criterion or practice (PCP) that puts a disabled person at a substantial disadvantage in comparison with non-disabled persons, the employer must take reasonable steps to avoid the disadvantage.

43. It is for the claimant to show that there is a PCP and that it causes substantial disadvantage due to the disability. Substantial is more than minor or trivial. The tribunal must test whether the PCP has the effect of disadvantaging the disabled person more than trivially in comparison with those who do not have the disability. This is a low threshold.

Determination of the Issues

44. The respondent will note from our comments that the recruitment process was deeply flawed in a number of respects. We must go on to consider whether any of those flaws were tainted by discrimination.

Direct discrimination

45. The respondent treated the claimant less favourably than her comparator Reza Mirza by not offering her the Pathology Operations Manager job in April 2024.

46. We find that the decision in April 2024 was based entirely on the February 2024 scoring. (We deal with whether that was an appropriate course of action below.) There is no evidence that there was another assessment in April other than a brief discussion between Judith Lucas and Alison Morilla. Therefore, the decision to appoint Reza Mirza was based on the original scoring and, at the time the scoring was done in February 2024, the panel was not aware of the claimant's disability. The respondent's scoring process was therefore not tainted by disability.

47. As the decision was based on the original scoring, there is therefore no direct discrimination on grounds of disability.

Discrimination arising from disability

48. The respondent knew from 21 February 2024 that the claimant had the disability. The respondent also knew that the claimant claimed that the disability could impact her ability to provide concise and succinct answers in a time pressured situation.

49. The respondent treated the claimant unfavourably by not offering her the position of Pathology Operations Manager in April 2024.

50. We find that, at the time the offer was made to Reza Mirza, the respondent was aware of the claimant's representations regarding the potential impact of her disability on her interview performance but took no steps to reconsider its assessment of the two appointable candidates at that stage. The respondent submits that it is not reasonable to expect an employer to re-open a process which has been concluded. We disagree. It is not onerous, particularly where Reza Mirza and the claimant scored so closely, to see whether the disability had any impact on the scores and whether any post-interview adjustment should be made.

51. Given that the scoring was based on answers to questions, rather than core competencies, it is not clear how the claimant may have been scored down for not being succinct. We assume that she was, because this is what she was told.

52. It is possible that the others were marked higher for being succinct, rather than the claimant being insufficiently succinct. Either way, she appears to have been scored down against the other candidates on the basis of her communication skills.

53. We do not have the medical knowledge, and no evidence was put before us, whether the claimant's anxiety impairment had an impact on her performance over and above the stress and anxiety all candidates experience. The claimant has not given us any specific examples of what questions she felt were impacted by her anxiety.
54. We find that the claimant has not demonstrated that the unfavourable treatment was because of something arising from the claimant's disability.

Reasonable adjustments

55. The claimant filled out the Equal Opportunity form on 2 February 2024. She stated that she did not want to disclose whether or not she had a disability but then went on to do so, citing Mental Health from a drop-down menu. This effectively gave respondent a mixed message but respondent was aware that claimant had stated she had a mental health condition.
56. In any event, the respondent knew from 21 February 2024 that the claimant had the disability of anxiety.
57. The respondent knew on 21 February 2024 that the claimant thought she had been placed at a disadvantage. We find that respondent made no assessment of whether or not she had been placed at that disadvantage other than a comment that she had not come across as anxious. We find that this may be true but doesn't mean that she didn't have the disadvantage. The respondent made no follow-up enquiry of claimant to get further details of how she felt her disability impacted the process. We note that respondent does not seem to have pursued the issue at all in February 2024, having appointed Stephen Wilkins by that stage.
58. The claimant was told that the basis of selection was performance at interview, which is why she was unsuccessful in her application. Judith Lucas now says more factors are taken into account and the panel looks at the application as a whole. This conflicts with the evidence of Karen Musee who stated that interview performance was the basis of selection once candidates have been shortlisted. We find that interview performance as a whole was a major determining factor, of which conciseness of expression was an important element, in selecting the preferred candidate and that this is the relevant PCP. The PCP is applied both at the time of the recruitment exercise and where there is a subsequent selection process (as in this case when the preferred candidate declined the job offer).
59. We find that the PCP placed the claimant at a disadvantage. Is that disadvantage substantial? We note the importance placed by respondent on communication skills and find that the disadvantage impacted the claimant significantly. We also note that respondent relies on the other candidates' better performance in communication skills, particularly conciseness of answers.
60. The claimant suggests that full consideration should be given to the entire application form, experience, skills qualification and knowledge. The respondent has providing conflicting evidence about whether they took these

steps but the documentary evidence, and some witness evidence points to the interview being the deciding factor.

61. If interview performance is the crucial factor, then we find that respondent should consider whether interview performance has been impacted by any disability. This consideration can potentially take place after the interview process has concluded. Particularly in this situation when the preferred candidate dropped out and the issue of who was second and who was third became determinative of who got the job.
62. We find that respondent should have re-opened its consideration by reviewing whether the claimant's stated disability had impacted her performance and whether any scores should be adjusted. We say this bearing in mind the closeness in scores between claimant and Reza Mirza where a reassessment could realistically have impacted the final decision.
63. The respondent was aware that they had the opportunity to remedy a potential unfairness flagged to them by claimant as potentially discriminatory and they took no steps to address this. We do not find that it would have been onerous to carry out this exercise. Even if the outcome of this exercise was to re-interview both candidates, given that the interviews are 40 minutes and conducted by video, we find that was not unreasonable.
64. We find that respondent failed to take that step.
65. We therefore conclude that respondent has failed to make the reasonable adjustment of considering the interview scores in the light of its awareness of the claimant's disability.

Remedy

66. We find that the appropriate level of award for injury to feelings is in the middle of the lower *Vento* band. We award the sum of £6,000 plus interest.
67. Our reasons for reaching this conclusion are as follows:
 - 67.1. the amount should be compensatory not punitive;
 - 67.2. the liability finding we made related to a one-off incident and we are not compensating the claimant for the effects of a 'course of conduct';
 - 67.3. there is a distinction between a failure to make a reasonable adjustment as part of a recruitment exercise, where the process is competitive and no applicant can have an expectation of success, and a failure to make a reasonable adjustment during the course of an ongoing employment relationship;
 - 67.4. we do not find that the discrimination resulted in the claimant not being appointed, just that she was excluded from the opportunity to participate in the process in April 2024;
 - 67.5. while we acknowledge the claimant's genuine distress, we have no medical evidence before us to link the respondent's failure to make

reasonable adjustments to any impact on the claimant's health, particularly as the effects the claimant describes are a result of the entire process, parts of which we have not found to be discriminatory.

Preparation Time Order

68. The claimant has made an application for a Preparation Time Order based on the additional time she had to spend in preparation for this hearing due to the respondent's late and piecemeal disclosure. The respondent argues that delays are part and parcel of the litigation and that there was nothing exceptional or unreasonable.
69. Having reviewed the relevant correspondence and the claimant's Schedule of additional time spent, we find that the respondent was late in disclosure and did not keep the claimant informed as well it should have and must bear some responsibility for the additional work it has put the claimant to. However, we find that chasing the other side and making applications is part of conducting litigation and these activities do not meet the test of warranting a Preparation Time Order. Therefore, having considered the details of the claimant's schedule, we find that she is entitled to an award in respect of 20 hours preparation time. The relevant rate is £44.00 per hour so we make an order of £880.00.

Employment Judge Davidson

22 January 2026

JUDGMENT SENT TO THE PARTIES ON

11 February 2026

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FOR THE TRIBUNAL OFFICE