



EMPLOYMENT TRIBUNALS

Claimant: Mr M Skubis

Respondent: A M Norris Ltd

On: 30 and 31 March 2026,
1 April 2026

Before: Employment Judge Ahmed (sitting alone)

At: Nottingham

Representation

Claimant: In person

Respondent: Ms Elizabeth Riding, Consultant

JUDGMENT

JUDGMENT having been sent to the parties on 1 May 2026 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunals Procedure Rules 2024, the following reasons are provided.

REASONS

1. In these proceedings, the Claimant brings complaints of direct age discrimination and discrimination arising from disability. Those were the only complaints identified at the case management hearing on 14 July 2025.
2. The relevant disability, which is conceded, is high blood pressure. The Respondent accepts knowledge of the disability at all material times.
3. At this hearing the Claimant sought to add to his complaints and disabilities. He applied to add a complaint of a failure to make reasonable adjustments and to rely on five other impairments as disabilities: Rheumatoid Arthritis, Cervical Spondylosis, Osteoarthritis, Vestibular Neuritis (disorder of the inner ear) and Dizziness.
4. The Claimant did not produce any medical evidence in support of the additional disabilities nor any statement setting out how they impacted his day to day activities. He had not given any prior notice of such an application. He did not identify what the relevant provision, criterion or practice or the substantial disadvantage or what reasonable adjustment ought to have been made to remove the disadvantage.

5. Having heard submissions from both sides, the application to amend was refused. The application was made late and without any explanation for the lateness. I recognise he is a litigant in person but it was recommended to him that he should seek independent advice at the case management hearing. Any new complaint would now be considerably out of time and would result in the hearing having to be adjourned. The Tribunal would need to hear detailed evidence on whether these additional conditions amounted to disabilities as a matter of law which could not be done in the time allocated for the hearing. The Respondent would now be faced, on the first day of the hearing, with an entirely new and different case. In any event it was difficult to see how any of the additional impairments relied on would be relevant to the facts of the case. The issues were identified and set out clearly in the case management order and the Claimant has made no effort in the meantime to apply to amend his case. Overall, the balance of hardship favours the Respondent in refusing the application rather than allowing it.

6. At this hearing the Claimant represented himself, assisted by his wife. An interpreter in the Polish language was provided during the course of the hearing, remotely by video on the first day and in person for the remaining two days.

7. In coming to my decision I have taken into account the oral evidence of the witnesses, the contents of their witness statements and the documents in the agreed bundle.

8. I heard oral evidence from the following:

8.1 The Claimant,

8.2 Mr Axel Chollet, a director of the Respondent and the Claimant's line manager;

8.3 Mrs Donna East, the Managing Director of the Respondent who heard the Claimant's appeal against dismissal.

9. The Respondent is a relatively small employer whose area of business falls broadly into two categories: plumbing and installation to new build homes and maintenance and repair to occupied properties including maintenance contracts, housing associations and maintenance to houses owned by the business itself.

10. The Claimant was employed by the Respondent as a Maintenance, Plumbing and Heating Engineer from 10 March 2023 to 6 October 2023. The Claimant was aged 65 at the time he was recruited and the same age when he was dismissed. His employment was subject to a six month probationary period.

11. The Claimant was interviewed and offered the role by Mr Chollet. Mr. Chollet remembers the tone of the interview as somewhat light-hearted with the Claimant inviting Mr Chollet to guess the Claimant's age. Mr Chollet remembers the Claimant somewhat proudly saying that he looked younger than his years. When he was offered the job, the Claimant mentioned his age again to which Mr Chollet simply said 'age is just a number'. The Claimant did not mention anything about his retirement plans at the interview.

12. The Respondent employs a number of Engineers of a wide variety of ages. Mr Chollet gave evidence as to the age range which is as follows:

<u>Age group</u>	<u>Approximate Number of employees</u>
Apprentices (up to 18)	3 – 4
19 -20	6
20 -30	20
30 – 40	20
40 -50	40
50 – 60	15 -20
60 +	12

13. Individual jobs in the business are allocated for the week ahead by the maintenance department so that plumbers know where they are going to be and the nature of their tasks. Sometimes it can be a small job such as fixing a leak or it could be something much more substantial. An employee has the opportunity to indicate if they have a problem with the tasks they are allocated.

14. When it comes to making necessary adjustments, with the very large number of Engineers at their disposal the Respondent is able to make adjustments where necessary. For example, one Engineer is unable to climb ladders and so he is not allocated jobs which require the use of a ladder. The Claimant did not at any stage indicate he was unable to undertake any of the tasks allocated to him.

15. The Claimant's duties required him to undertake maintenance repairs. At the hearing he complained that he was not offered jobs that were commensurate with his skills or any roles involving heating repairs despite his qualifications and expertise in that field. I am satisfied that he was offered those roles which were necessary and within his capabilities.

16. The Claimant began his employment on 10 March 2023. For the first few weeks he was accompanied by three other experienced Engineers. Two of them reported back to Mr Chollet that they did not think the Claimant was sufficiently competent. One of them had reservations but thought the Claimant might settle given time.

17. After the Claimant went 'solo' a consideration of the work sheets reveals the following issues:

17.1 On 12 April 2023 the Claimant failed to correctly identify a simple blockage which required a second visit by another plumber who easily identified the problem and completed the job;

17.2 On 14 April 2023 the Claimant was sent to a job but was not able to identify the problem or to undertake any repairs. Another plumber visited the same location and the issue was resolved;

17.3 On 2 May 2023 the Claimant incorrectly diagnosed an issue stating a shower tray had to be replaced when it subsequently transpired that this was not necessary. A second visit by another Plumber was required to make the repair;

17.4 On 17 May 2023 the Claimant attended as the second engineer and was asked to identify the cause of a sewage smell. He ignored this and reported a different issue regarding shower clips. A subsequent visit was required;

17.5 On 6 June 2023 the Claimant failed to identify the source of leaking taps making it necessary for another Plumber to visit ten days later and to remedy the issue;

17.6 Also on 6 June 2023, despite spending total of seven hours (over two separate days) the Claimant failed to resolve the issue requiring another Plumber to revisit the property;

17.7 On 16 June 2023 the Claimant spent half an hour at a property and reported everything was fine yet the problem persisted and another Plumber had to be sent to resolve the issue;

17.8 On 3 July 2023 the Claimant misdiagnosed a problem suggesting major work was required when in fact the issue was resolved by another Plumber taking one and three-quarter hours to remedy it;

17.9 On 4 July 2023 the Claimant failed to report an issue back to the office after his visit and it became necessary to arrange for a second Plumber to attend leaving the Customer with an unresolved issue. The work transpired to be a major job which the Claimant should have initiated during his original visit;

17.10 On 6 and 18 July 2023, despite making two separate visits and spending a total of three hours of the property, the Claimant failed to complete the required work. A second Plumber was sent to complete the work;

17.11 On 6 July 2023 the Claimant failed to identify all of the leaks in a shower causing the customer to report the issue again and necessitating another Plumber to visit and complete the task.

18. At some point in June 2023 Mr Chollet spoke to the Claimant to say that there were concerns about his work. There is no note or email from Mr Chollet to confirm the discussion. The Claimant denied that there were any issues about the quality of his work.

19. On 8 August 2023 the Claimant reported that he was feeling unwell. Mr Chollet immediately sent two colleagues to the Claimant's location to take him to the nearest Medical Centre. The reason for the visit, as appears on the medical certificate, was a suspected transient ischaemic attack (mini stroke).

20. The Claimant however only took two weeks off work. The medical certificate did not recommend a phased return to work. On his return the Claimant was asked to complete a questionnaire in line with the Respondent's usual procedure. The Claimant gave his health issue as high blood pressure. He indicated that he was unable to do any heavy lifting, working at heights or climbing ladders.

21. On 23rd August 2023 the Claimant was assigned a job at Whitwick. The Claimant telephoned Mr Chollet to inform him that the hand basin in the bathroom was stuck and could not be removed. The Claimant did not say that this was because of his health issues or that it was too heavy. He simply said that the basin was stuck fast and was concerned that to remove it would damage the wall tiles

behind it. As a consequence, Mr Chollet personally drove to the property whereupon he cut a piece of silicon and removed the basin with relative ease. Mr Chollet was surprised that the Claimant could not do this because it appeared to him to be a relatively simple task.

22. The Claimant's 6-month probationary period was due to expire in September. Plumbers are difficult to recruit but on the other hand the Claimant had not demonstrated an appropriate level of competence. Mr Chollet decided not to extend the probationary period.

23. On 29 September 2023 Mr Chollet had a brief discussion with the Claimant in the yard when he pointed out the various mistakes made and said that the probation had not been successful. The Claimant's employment would therefore be brought to an end.

24. On the same day Mr Chollet wrote to the Claimant confirming termination of employment which he wrote was "based on poor performance over several months".

25. The Claimant appealed against the decision to dismiss. The appeal was dealt with by Mrs. Donna East the Managing Director. In preparation for the appeal Miss East asked Mr Chollet to prepare a statement. In the statement Mr Chollet said that he had spoken to the Claimant relating to his work but that the Claimant did not appear to accept either the fact of poor performance or take on board any advice given. He specifically referred to the issue of the wash basin on 23 August 2023. Mrs East also extracted the job sheets showing the nature and frequency of the issues.

26. At the appeal meeting the Claimant contended firstly, that his probationary period was three months and that it had been extended implying he must have been performing reasonably well. Mrs East pointed out that his contract of employment clearly shows that the probationary period was six months.

27. Secondly, the Claimant disputed his poor work performance and alleged that the dismissal was because he had been taken ill at work on 23rd August. The Claimant went on to say that the job sheets had been fabricated and the real reason for terminating his employment was his health condition.

28. Mrs. East considered the documentary evidence. She rejected the allegation that the job sheets had been fabricated. She decided that on the evidence the Claimant's performance had been very poor. The appeal was dismissed.

THE LAW

29. The relevant statutory provisions from the Equality Act 2010 ("EA 2010") are as follows:

Section 5 EA 2010

"(1) In relation to the protected characteristic of age—

(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group;

(b) a reference to persons who share a protected characteristic is a reference to persons of the same age group.

(2) A reference to an age group is a reference to a group of persons defined by reference to age, whether by reference to a particular age or to a range of ages.”

Section 13 EA 2010

“(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.”

Section 15 EA 2010

“(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) 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.”

Section 136 EA 2010

“(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.”

30. The proper interpretation of section 136 EA 2010 was explained in **Madarassy v Nomura International Plc** [2007] IRLR 246. In that case the Court of Appeal made it clear that the burden does not shift to the employer simply on the Claimant establishing the difference in status (for example a difference in race) and the difference in treatment. Those ‘bare facts’ only indicate a possibility of discrimination, not that there was in fact discrimination. “Could conclude” in the wording of section 136 EA 2010 must mean that a reasonable Tribunal could *properly conclude* from all the evidence before it. Thus, the first stage of the two-stage process envisaged by section 136 EA 2010 is to consider whether the Tribunal could properly conclude from the facts (if proved by the Claimant) whether discrimination is a possible explanation for the treatment.

31. At the second stage of the process (once the Tribunal is satisfied that the Claimant has proved facts from which an inference of discrimination can be drawn) the Respondent must provide a non-discriminatory explanation for its treatment of the Claimant. If, upon a balance of probabilities, the Respondent is not able to show that discrimination was not the reason for the treatment, the Claimant must succeed. If the Respondent discharges the burden by proving, for example, that a non-discriminatory reason for the treatment exists, then the claim must fail.

THE ISSUES

32. The issues to be determined in this case were as follows:

Direct age discrimination

33. Did the Respondent do the following things:

33.1 required the Claimant to do heavy lifting;

33.2 dismiss the Claimant.

34. Was that less favourable treatment?

35. If so, was it because of age?

Discrimination arising from disability

36. Has the Claimant been treated unfavourably because of something arising in consequence of the Claimant's disability contrary to section 15 EA 2010

37. The “somethings” relied on by the Claimant are that he had a medical episode on 8 August 2023 and had to be taken for treatment which caused the Respondent to dismiss him and/or give him work involving heavy lifting.

38. Was the above related to her disability-related sickness absence?

CONCLUSIONS

Age discrimination

39. The Claimant has not identified anyone in particular whom he says was treated better than he was nor has he indicated an age group by way of comparison. Thus, the Claimant does not refer to any actual comparator or comparators by reference to an age group. In fact, the Claimant does not even mention anything about age in his witness statement. He did not challenge Mr Chollet about it in evidence nor did he challenge any of the discussions when he was offered the age.

40. It is illogical that Mr Chollet would dismiss the Claimant for reasons connected with his age when he knew the Claimant's age at the time when he appointed him and also knew that the Claimant would be approaching retirement age very soon. This point was put to the Claimant squarely at the case management hearing for him to respond but he has failed to deal with it.

41. The age range of the Respondent's employees clearly shows that they have no difficulty in appointing Engineers of all age groups and keeping them. Some of them are older than the Claimant.

42. I am satisfied that any employee who had been performing as poorly as the Claimant would have been dismissed, regardless of their age.

43. In my judgment the Claimant fails to show a prima facie case or to prove any facts from which an inference of age discrimination may be drawn. The complaint of direct age discrimination is therefore dismissed.

Disability discrimination

44. I now turn to the complaint of disability discrimination. The unfavourable treatment is alleged to be requiring the Claimant to do heavy lifting and the dismissal. The something arising from disability is said to be the incident when the Claimant was admitted to hospital on 8 August.

45. I do not find that the unfavourable treatment alleged was something arising from disability for the following reasons:

45.1 Insofar as the allegation is pursued, the Claimant has failed to provide any evidence that he was ever asked to do any heavy lifting;

45.2 I am satisfied that the Respondent has established that the reason for the dismissal was the Claimant's work performance and not his disability. I accept that the job sheets accurately record the notes of the jobs in question and the Claimant's failure to undertake work to an acceptable standard. I do not accept the Claimant's wild and unsubstantiated allegation that the documents have been manufactured or fabricated. The work records show a history of inadequate performance.

45.3 I accept that that much of the Claimant's work had to be corrected later by his employees. There are numerous examples. Those colleagues had no reason to lie and neither did Mr Chollett. Mr Chollett had hired the Claimant and no doubt he wanted him to succeed rather than fail.

45.4 The Claimant's high blood pressure was not an issue for the Respondent. The Claimant was off sick for 2 weeks. He returned to work and carried on working for several weeks thereafter without any issues related to his health.

45.5 There is a significant gap in time between the Claimant going to hospital on 8 August and his dismissal several weeks later on 29 September. It is unlikely the Respondent would have waited so long to dismiss the Claimant if they were concerned about the Claimant's disability affecting his work. It is much more likely that by late September, Mr Chollett felt that the Claimant's performance had failed to improve and was unlikely to do so.

46. The complaint of discrimination arising from disability is therefore also dismissed.

47. Finally, on my reading of the case management order I do not understand the Claimant to be making a complaint of direct disability discrimination but if he was, I would have dismissed that too on the basis that the Claimant has failed to show that any less favourable treatment, such as dismissal, was because of his disability. I would have found that the reason of the dismissal was poor performance.

Approved by:

Employment Judge Ahmed

Dated: 05 June 2026

Sent to the parties on

...14 Juen 2026.....

For the Employment Tribunal

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