Neutral Citation Number: [2026] EAT 128

Case No: EA-2024-001643-RS

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 4 August 2026

Before:

HIS HONOUR JUDGE BARKLEM

- -

Between:

MS C MERRIMAN

Appellant

- and –

(1) 1st Staff Limited, (2) Robert Alexander Dawkins, (3) Yaron Woolf, (4) Ms Emma Davies, (5) Coren Murley, (6) Kisimul Group Ltd, (7) Cassandra Cartin, (8) Mary Grace Meneses, (9) Kim Padua, (10) PA Rigby Ltd, (11) Ross Outer Ltd (Dissolved), (12) EM Butterworth Ltd (Dissolved)

Respondents

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The **Appellant** did not attend nor was represented
Ms A Bibi (instructed by **Peninsula Business Services**) for **Respondents 1-5**

Hearing date: 4 August 2026

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JUDGMENT

SUMMARY

Practice and Procedure

An Employment Tribunal erred in law in holding that the claim of a failure to make reasonable adjustments is not a claim which can be brought against individuals, the obligation to make adjustments resting with the employer.

The EAT held that although the duty to make reasonable adjustments is imposed on an employer or principal, a company can only act through its agents or employees. Where an act is carried out by an employee which amounts to a breach of the employer's duty, section 109 and, potentially section 110 of the Equality Act 2010 is engaged. This means that when an employee is held to have committed an act of discrimination for which an employer is vicariously liable then the employee is equally liable.

The Employment Tribunal's decision to strike out the claims against the second to fifth respondents was reversed.

HIS HONOUR JUDGE BARKLEM:

1. This is an appeal against the decision of an Employment Tribunal sitting at Midlands East and promulgated on 8 November 2024, EJ Broughton sitting alone. In this judgment, I will describe the parties as they were before the Employment Tribunal. There were twelve named respondents. The first to fifth respondents are the only ones remaining.

2. The claimant had been engaged via an agency to work as a tutor for a person with special needs. It appears that the responsibility for funding shifted at one point between the NHS and local authority, although rather surprisingly neither body (which would have been the principal for the agency worker) was joined as a respondent. A rather complex series of "umbrella" and/or service companies have been used at various times to make payment to the claimant, hence the large number of initial respondents.

3. The claimant developed disabilities which meant that it was very difficult for her to attend the premises at which the individual she was to tutor resided and she sought adjustments to include online as opposed to face-to-face teaching. This gave rise to obvious difficulties, including the potential need for a care worker to be with the individual to ensure that he remained focussed and the ultimate decision was inevitably going to be that of the funding body rather than the intermediaries through whom the claimant's services were provided, including the first respondent.

4. The hearing in question took place in the absence of the claimant who sought to adjourn the hearing because of unevidenced medical conditions and an inability to obtain legal advice. Mr Bowers KC rejected the grounds of appeal founded on those matters and they have not been pursued. Today the claimant did not attend the hearing, writing that her disabilities precluded her from doing so and she had also been unable to obtain free legal representation. She had not sought a remote hearing but as she had submitted a skeleton argument and lodged a bundle, I was content to proceed in her absence. The first to fifth respondents were represented by Ms Bibi of Peninsula. That

firm did not appear below. A comprehensive and helpful skeleton argument, was provided.

5. So far as is relevant to this appeal, the tribunal permitted the claimant's claim under section 20 and 21 of the Equality Act against the first respondent of a failure to make reasonable adjustments to proceed. However, similar claims against the second, third, fourth and fifth defendants, all of whom were individuals working for the first respondent, were struck out as having no reasonable prospects of success. It would appear that omission of the second respondents case having been struck out from the summary of the decision was a typographical error.

6. This appeal was permitted to proceed to a final hearing by an order of John Bowers KC sitting as a deputy judge of the High Court at the sift stage.

7. Mr Bowers KC rejected all but one ground of the claimant's grounds of appeal, commenting that they came close to being totally without merit. However, he said as follows in respect of ground 2:

> "The one area where I think there is a reasonably arguable point is as to whether the claims for lack of reasonable adjustments can be brought against individuals as a reasonable adjustment claim is merely a form of disability discrimination claim and there are aiding and abetting provisions. The tribunal states at paragraph 236: 'The claim of a failure to make reasonable adjustments is not a claim which can be brought against individuals, the obligation to make adjustments rests with the employer.' This is arguably incorrect especially in the light of the case she mentions."

The reference to "the case she mentions" is one raised by the claimant in the grounds of appeal, namely **Baldwin v Cleves School & Ors** [2024] EAT 66 to which I shall turn in a moment.

8. At paragraph 238 of the judgment the tribunal said:

> "While the status of the various companies has yet to be clarified and determined, the claim of a failure to make reasonable adjustments will not be struck out. Taking the claimant's case at its highest, certainly the first respondent was involved directly in discussions about the adjustments she had requested and the claims which will proceed at least at this stage are set out above as adjustments and/or absence of auxiliary aids."

9. **Baldwin v Cleves School** was a case decided by Mr Ford KC sitting as a deputy judge of the

High Court at the EAT. The ET had held that the claimant had suffered acts of discrimination by two employees of the school and had held the school vicariously liable. However, the ET had declined to hold the individual employees who had been joined as parties liable. Mr Ford KC said as follows at paragraph 20:

> "The Equality Act then adopts a sophisticated and detailed system for attributing liability to employers and others. The two provisions central to this appeal are sections 109 and 110. The first concerns what acts are treated as done by an employer for the purpose of those provisions, such as section 39, which impose duties on it; the second provision places liability on employees or agents - what is usually referred to as personal liability. The sections state, so far as is material, as follows…"

10. And then he goes on to set out sections 109 and 110:

> "Liability of employers and principles
>
> (1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.
>
> (2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.
>
> (3) It does not matter whether that thing is done with the employer's or principal's knowledge or approval.
>
> (4) In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A—
>
> (a) from doing that thing, or
>
> (b) from doing anything of that description.
>
> (5) This section does not apply to offences under this Act (other than offences under Part 12 (disabled persons: transport)).
>
> 110. Liability of employees and agents
>
> (1) A person (A) contravenes this section if—
>
> (a) A is an employee or agent,
>
> (b) A does something which, by virtue of section 109(1) or (2), is treated as having

been done by A's employer or principal (as the case may be), and

(c) the doing of that thing by A amounts to a contravention of this Act by the employer or principal (as the case may be).

(2) It does not matter whether, in any proceedings, the employer is found not to have contravened this Act by virtue of section 109(4).

(3) A does not contravene this section if—

(a) A relies on a statement by the employer or principal that doing that thing is not a contravention of this Act, and

(b) it is reasonable for A to do so.

(4) A person (B) commits an offence if B knowingly or recklessly makes a statement mentioned in subsection (3)(a) which is false or misleading in a material respect.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale….

(6) Part 9 (enforcement) applies to a contravention of this section by A as if it were the contravention mentioned in subsection (1)(c)."

11. Mr Ford went on to conclude that there was no discretion on the part of a tribunal to refuse to make a finding in contravention of section 110 so long as the conditions for liability under that section are met. For this purpose, it is irrelevant whether or not the employer runs the section 109 defence, succeeds in that defence, fails in that defence, concedes it has no defence or is itself found to be liable under section 109. Thus, when an employee is held to have committed an act of discrimination for which an employer is vicariously liable then the employee is equally liable.

12. Ms Bibi argues that because the duty to make reasonable adjustments is imposed on the employer, (Equality Act section 39(5) which includes the principal in the case of an agency worker, (see section 41) a failure by an individual employee and I quote from her skeleton:

"….does not translate into a personal statutory duty on individual employees. The duty is on the employer in all the circumstances."

Thus, she argues, the strike out against the individuals was correct in law. Alternatively, she argues the strike out was justified because there were no discernable allegations particularised against any

of the individual respondents.

13. In her skeleton argument, as well as the **Baldwin** case the claimant refers to the EHRC Employment Code and specifically to paragraph 10.55. This gives as an example the following:

> "Employees and agents may be personally liable for breaches of the Act where the employer or principal is also liable. Employees may be liable for their actions where the employer is able to rely successfully on the reasonable steps defence. An agent may be personally liable for unlawful acts committed under the principal's authority. The principal may avoid liability if they can show that the agent was not acting with their authority."

And it gives an example:

> "A line manager fails to make reasonable adjustments for a machine operator with multiple sclerosis, even though the machine operator has made the line manager aware that he needs various adjustments. The line manager is not aware that she has acted unlawfully because she failed to attend equality and diversity training, provided by her employer. The line manager could be liable personally for her actions as her employer's action, in providing training, could be enough to meet the statutory defence."

14. Of course the code, although statutory, does not provide a definitive statement of the law, which is for the tribunals and the higher courts to determine. However it does provide support for the view which I have formed as to the correct state of the law. Although the duty is imposed on an employer or principal, a company can only act through its agents or employees. Where an act is carried out by an employee which amounts to a breach of the employer's duty, section 109 is, in my judgment, engaged as too, potentially, is section 110.

15. At paragraph 228 of the tribunal's decision in this case dealing with submissions made on behalf of the sixth respondent, the tribunal said:

> "The claimant in her further and better particulars mentions the extent of the discussions as between the first respondent and Lincoln County Council in her particulars about adjustments and her direct involvement of the first respondent staff in making suggestions and trying to accommodate those adjustments."

16. While I accept the point made forcefully by Ms Bibi that the claimant had failed to provide

particulars in the form required of her by an earlier judgment of the tribunal, I cannot accept, reading the judgment as a whole, that the tribunal attempted to grapple with any distinction between the first respondent on the one hand and the second to fifth respondents on the other so far as particulars relating to the alleged failure to make reasonable adjustments are concerned.

17. In my judgment, the tribunal erred in law in holding at paragraph 236 that a claim could not be brought against individuals as opposed to an employer. Thereafter, it gave no consideration as to the state of the particulars against other than R1. As the conclusion of the tribunal was that the claimant could go ahead against the first respondent, I see no principled basis for concluding that - at least at this stage it could not go forward against the second to fifth respondents too. I have not found the case of **Moustache v Chelsea and Westminster Hospital** of any assistance in that the present case was a preliminary hearing and it is clear that much more work is going to be needed before the case is ready for trial.

18. The appeal therefore succeeds. The main issue is binary and I therefore order that the second to fifth respondents be rejoined to the claim so far as reasonable adjustments is concerned. As I am not able to examine the state of particularisation of the allegations, the matter is bound to return to the tribunal at some stage. In practice, that is likely to involve little or no difference to the way the case progresses. Assuming that the claim has been stayed pending this appeal, there are bound to be further hearings not least to ensure that a proper list of issues can be drawn up and the allegations against each respondent clarified and properly particularised. If and when such particulars are provided in respect of each individual, they would have to make witness statements dealing with their involvement whether in the role of respondent or otherwise.