Individual employees may be personally liable for failure to make reasonable adjustments

By Craig Ludlow
3PB Barristers

Merriman v 1st Staff Ltd and others [2026] EAT 128

Introduction

1. In this case the Employment Appeal Tribunal ('EAT') held that an Employment Tribunal ('ET') 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[1].

Background facts

2. The claimant, Ms Merriman ('M'), had been engaged via an agency to work as a tutor for a person with special needs. M 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 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 M's services were provided, including the 1st Respondent - 1st Staff Ltd ('R1').

Proceedings before the Employment Tribunal

3. So far as is relevant to this appeal, the ET permitted M's claim under sections 20 and 21 of the Equality Act 2010 ('EqA 2010') against R1 of a failure to make reasonable adjustments to proceed. However, similar claims against R2-R5, all of whom were individuals working for R1, were struck out as having no reasonable prospects of success.

[1] 1st paragraph of the Summary of the Judgment.

Relevant law

4. Sections 39, 109 and 110 EqA 2010 materially provide as follows:

> **39 Employees and applicants**
>
> …
>
> (5) A duty to make reasonable adjustments applies to an employer.
>
> **109 Liability of employers and principals**
>
> (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.
>
> …
>
> **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).

…

Judgment of the Employment Appeal Tribunal

5. In deciding this case and allowing M's appeal, the EAT (HHJ Barklem sitting alone) followed the reasoning of the EAT in the earlier case of **Baldwin v Cleves School and ors** [2024] EAT 66 (Michael Ford KC sitting as a Deputy Judge of the High Court) in which that EAT considered there is no discretion on the part of an ET to refuse to make a finding of a 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(4) 'reasonable steps' defence, succeeds in that defence, fails in that defence, concedes it has no defence or is itself found to be liable under section 109[2]. 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[3].

6. HHJ Barklem went on to cite paragraph 10.55 of the Equality and Human Rights Commission's Employment Statutory Code of Practice ('the Code') as supportive of his view as to the correct state of the law, and which provides[4]:

> "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

[2] Paragraph 37 of the judgment in **Baldwin**.
[3] Paragraph 11 of the Judgment in **Merriman**.
[4] Paragraphs 13 and 14 of the Judgment in **Merriman**.

> under the principal's authority. The principal may avoid liability if they can show that the agent was not acting with their authority."

And the Code 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."

7. HHJ Barklem continued that although the duty is imposed on an employer or principal, a company can only act through its agents or employees. Thus where an act is carried out by an employee which amounts to a breach of the employer's duty, section 109 is, in his judgment, engaged as too, potentially, is section 110[5].

8. Consequently, HHJ Barklem held that the ET had erred in holding that a claim could not be brought against individuals as opposed to an employer[6]. The appeal therefore succeeded and, the main issue being binary, he therefore ordered that R2-R5 be rejoined to the claim so far as reasonable adjustments is concerned[7].

Comment

9. In light of the fact that year on year ever since the EqA 2010 came into force the ET system has dealt with and continues to deal with a significant number of claims alleging failure to make reasonable adjustments (in this author's view part of the reason for this state of affairs is that the threshold for claimants being considered as disabled under section 6 EqA 2010 is set so low (principally as a consequence of the word 'substantial' in section 212 EqA 2010 being defined as only 'more than minor or trivial')), it is perhaps surprising that it has taken so long for this legal point to be taken under the legislation and argued before the EAT in **Baldwin** and now **Merriman**.

10. On the one hand the reason for this may lie in the fact that the case law on the predecessor provisions suggests a contravention under section 110 could arise

[5] Paragraph 14 of the Judgment in **Merriman**.
[6] Paragraph 17 of the Judgment in **Merriman**.
[7] Paragraph 18 of the Judgment in **Merriman**.

independently of section 109. Thus, in interpreting the similar provisions in the Disability Discrimination Act 1995, the EAT held that a claim could be made against individual employees for personal liability even in the absence of a claim against the employer: see, for example, **Barlow v Stone** [2012] IRLR 898 (as noted by the EAT in **Baldwin**[8]). Thus claimants and their representatives, despite historically considering that as a matter of law they could have advanced failure to make reasonable adjustments claims against named individuals as respondents, may have nonetheless chosen in the main to only advance such claims against employers as: (1) the express duty to make reasonable adjustments is upon them pursuant to section 39(5) EqA 2010 and not on individuals; (2) it is the employer who ultimately is most likely to be able to pay any financial award made if claims succeed; and (3) including individual respondents may have just been seen as superfluous and unnecessary.

11. On the other hand, it might also be that hitherto claims advanced pursuant to sections 20 & 21 EqA have, in the main, just been made against employers because claimants and their representatives did not consider such claims could be made against individuals and / or they have simply not given much thought to naming individuals - it seeming superfluous and unnecessary.

12. As claims filter through the ET system following these judgments, it will be very interesting to see whether failure to make reasonable adjustments claims will now routinely be made against both individuals and employers. With the ever-increasing use of AI by litigants in person and the principles from these cases filtering into the technology used, it is likely that AI will suggest making claims against both as a matter of course. Further, it can easily be seen that there are strategic reasons why claimant representatives are likely to advise their claimant clients to include individuals as named respondents, not least to potentially increase the pressure on employers to settle cases rather than having the possibility of their employees being held personally liable and public judgments being made against them.

13. Additionally, as the references to and principles from these cases find their way into company equality & diversity training and the awareness of their potential impact upon individual line managers and HR personnel who are usually responsible for implementing reasonable adjustments, it will be interesting to see if there is resistance from such individuals agreeing to undertake such implementation or if they might only be willing to do so if their employers give undertakings that they will not rely on the

[8] Paragraph 31 of the Judgment in **Cleves**.

section 109(4) EqA 2010 ‘reasonable steps’ defence in any future employment tribunal litigation arising out of such implementation if they are named as individual respondents.

This document is not intended to constitute and should not be used as a substitute for legal advice on any specific matter. No liability for the accuracy of the content of this document, or the consequences of relying on it, is assumed by the author. If you seek further information, please contact the 3PB clerking team.

30 October 2026



Craig Ludlow

Barrister
3PB

Telephone: 0330 332 2633
craig.ludlow@3pb.co.uk

3pb.co.uk