

# Disability discrimination and employers' knowledge

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The Court of Appeal has set out what an employer does and does not need to know in order to be found to have discriminated against a disabled employee.

There are a number of types of disability discrimination, and the extent of knowledge required for an employer to have committed them varies. The Court of Appeal in this case explained what the requirements are in a claim concerning discrimination arising from disability.

The facts of this case help to illustrate how the test for discrimination arising from disability works. Mr Grosset was a teacher and Head of English at a school in York; he suffered from cystic fibrosis which meant he had to hours of intense physical exercise each day in order to clear his lungs. The school was aware of this and agreed this amounted to a disability. Due to his disability, Mr Grosset struggled to deal with an increased workload at the school; in turn, this caused him stress which exacerbated his cystic fibrosis. During this stressful period, Mr Grosset showed the 18-rated horror film, Halloween, to a class of vulnerable 15- and 16-year-olds. When this was uncovered, Mr Grosset was suspended and eventually dismissed for gross misconduct. Medical evidence eventually presented at the Employment Tribunal showed that the error in judgment in showing the film had been caused by Mr Grosset's disability.

The Court of Appeal held that the decision to discipline and dismiss Mr Grosset was unfavourable treatment on the basis of something arising from his disability – namely, the error in judgment in showing the film. This was so despite the fact that the council did not know at the time that the conduct arose as a consequence of his disability; whilst it is a defence to a discrimination arising from disability case for an employer to say it was unaware of the disability, there is no requirement for the employer to have been aware of the consequences of it.

The employer in this case had sought medical advice, but that advice did not make the connection between the conduct and the condition, so consulting a doctor will not necessarily absolve the employer of liability. The only other avenue open to an employer in defending such a claim is to show that the unfavourable treatment was a proportionate means of achieving a legitimate aim.

***City of York Council v Grosset [2018] EWCA Civ 1105***

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