

## Disability Related Discrimination

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In July 2008 the House of Lords overruled a long standing Court of Appeal decision signalling a potentially significant change in how “disability related discrimination” is approached. Despite the fact that this case concerned the management of premises, some commentators have suggested that the principles may be applied in the employment sphere.

The majority of the Law Lords held that the Housing Authority’s decision to evict a schizophrenic tenant after he had unlawfully sublet his flat, was not a discriminatory one.

The interesting point, from an employment perspective, related to the House of Lord’s choice of hypothetical comparator namely, a *non-disabled comparator* who had illegally sublet. Prior to this decision, the comparator in disability related discrimination cases, would have been *someone who had not illegally sublet his flat*.

In relation to the requirement of knowledge of the disability, all their Lordships agreed that the Respondent cannot be held to discriminate unless it knows (or ought reasonably to know) of the Claimant’s disability.

Although this case was a housing matter, the judgment may well make it more difficult for disability related discrimination claims to be brought in the employment context.

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