



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms T Marsland  
**Respondent:** Keepmoat Homes Limited  
**Heard at:** Tribunals Hearing Centre, 50 Carrington Street, Nottingham,  
NG1 7FG  
In public  
**On:** 31 October 2023  
**Before:** Employment Judge Adkinson sitting alone  
**Appearances**  
**For the claimant:** In person  
**For the respondent:** Mr Ross, Counsel

## JUDGMENT

AFTER hearing from each party, IT IS THE TRIBUNAL'S JUDGMENT THAT

1. The claimant presented her claim for unfair dismissal outside of the time limit for presenting them to the Tribunal. It was reasonably practicable to present the claim in time. Therefore the Tribunal lacks jurisdiction to hear and determine it. It must therefore be dismissed.
2. The claimant presented her claim for breach of contract outside of the time limit for presenting them to the Tribunal. It was reasonably practicable to present the claim in time. Therefore the Tribunal lacks jurisdiction to hear and determine it. It must therefore be dismissed.
3. The claimant presented her claim for unauthorised deductions from wages outside of the time limit for presenting them to the Tribunal. It was reasonably practicable to present the claim in time. Therefore the Tribunal lacks jurisdiction to hear and determine it. It must therefore be dismissed.

## REASONS

### What this hearing is about

1. Ms Marsland has presented claims for unfair dismissal, breach of contract and authorised deductions from wages. The details do not matter for the moment. On 13 July 2023, Employment Judge Ahmed directed that this hearing should take place to decide if those claims were presented too late

and, if so, whether the Tribunal should extend time to allow them to proceed.

**Other parts of the claim that I am not considering**

- 2. There is also a claim for disability discrimination. Employment Judge Ahmed also directed the hearing should determine if the claimant were disabled at the times relevant to her claim. This however has been resolved by the parties. I have made directions in relation to that. They are set out in a separate document. Nothing in this document affects those claims. I therefore say no more about it.

**About the hearing**

- 3. The hearing to decide this issue took place at Nottingham. Both parties attended. There was a file of documents (a bundle) of about 97 pages. I have taken into account the contents of that bundle. Ms Marsland also gave oral evidence to the Tribunal. I have taken that into account too. Both parties summarised their positions at the end of the evidence.
- 4. At the hearing everyone agreed to make – and did make – the following adjustments to accommodate Ms Marsland’s dyslexia:
  - 4.1. Topics had to be “headlined” before the being discussed (e.g. words to the effect of “We are going to talk about the unfair dismissal claim”);
  - 4.2. We paused to allow Ms Marsland to process information;
  - 4.3. I would set out the reasons for my decision in writing so that Ms Marsland could process them away from the pressure of the Tribunal.

**The relevant facts**

- 5. I begin by making an observation about Ms Marsland as a witness. I conclude that Ms Marsland was doing her best to tell me the truth as she recalls it.
- 6. I must decide what the relevant facts are. I do so on the basis of decide what is more likely than not to be correct.
- 7. The chronology of the case is as follows:

19 March 2018	Ms Marsland commenced her employment with Keepmoat Homes Limited (“Keepmoat”)
7 September 2022	Keepmoat dismissed Ms Marsland.
10 September 2022	Ms Marsland appealed against her dismissal.
30 September 2022	Keepmoat rejected her appeal.
Between September and November	Ms Marsland presented electronically a claim to the Tribunal. Either she withdrew it because she realised she had to complete early conciliation and had not done so, or the Tribunal rejects it. It is not clear when or how it ended. However I do not consider that investigating those matters will assist me to decide the issues I must decide

because what is important is Ms Marsland had presented a claim in this period.

10 November 2022	Early conciliation commenced
22 December 2022	Early conciliation ended. Acas send to Ms Marsland the early conciliation certificate by email.
27 December 2022 or thereabouts	Mr Marsland accessed her email for the first time since before Christmas and sees the email from Acas for the first time.
28 December 2023	Ms Marsland fell ill with Covid-19. Ms Marsland's mother is in hospital too and Ms Marsland is her primary carer.
12 January 2023	Ms Marsland chased early conciliation certificate, although she had already received it. She believed the certificate would be some formal document, rather than an email.
20 January 2023	By now, Ms Marsland was fully recovered from Covid-19.
23 January 2023	Ms Marsland presented her claim to the Tribunal.

8. I also make the following findings of fact:

8.1. The Acas certificate says as follows:

**“Your early conciliation certificate is attached**

“Claimant: Toni Denise Marsland

“Reference: R257131/22

“Notified: 10 November 2022

“Respondent: Keepmoat Homes Limited

“Certificate issued: 22 December 2022

“It shows that you notified Acas of your potential claim.

“You can now use this certificate to make a claim to an employment tribunal, if you still want to.

“Use the full certificate number R257131/22/38 when you're asked for it.

**“How to make a claim to an employment tribunal**

“You can make a claim online or by post:

“[Make a claim to an employment tribunal - GOV.UK](https://www.gov.uk/make-a-claim-to-an-employment-tribunal)

“Make sure you submit your claim on time.

“You have at least 1 month from the date you receive this certificate, if you notified Acas of the dispute within your time limit.

“If you're concerned you might be out of time, make your claim as soon as possible. The employment tribunal judge will decide whether to accept it.

“If you have any questions about time limits, [contact the Acas helpline.](#)”

[The parts in bold reflect the layout of the text. The underlined parts are hyperlinks to the relevant pages on the internet].

- 8.2. Ms Marsland told me she interpreted “You have at least 1 month from the date you receive this certificate...” as being a minimum amount of time she had, and not a time limit. Even if I accept that this is how she read it, I am not satisfied that reading it that way is reasonable. They are subject to the condition that follows the word “if...” They cannot in my opinion be reasonably read as suggesting that Ms Marsland could take longer than one month if she so chose.
- 8.3. In any case, I find as a fact that the Acas email makes clear to the reasonable reader that:
  - 8.3.1. It is the certificate for the purposes of early conciliation,
  - 8.3.2. Time limits are important,
  - 8.3.3. If a person has any doubt, they can contact Acas for advice.
- 8.4. I also find as a fact that the Acas email also directs the recipient to how to present a claim.
- 8.5. Ms Marsland had throughout access to the internet and was able to research employment law matters if she wished.
- 8.6. Ms Marsland told me she contacted and sought guidance from Acas before she commenced early conciliation. I accept that.
- 8.7. Ms Marsland knew how to present a claim because she had presented one already.
- 8.8. Ms Marsland told me that she had tried to seek legal advice but was unable to afford it. I accept this. However she had also taken some informal advice from a solicitor who was a friend. That solicitor was not a specialist in employment law.
- 8.9. Ms Marsland may have been ill. Her mother may have been ill. I am not convinced that this meant she could not do anything to progress her claim. This is because she told me she emailed Acas during this time to chase the certificate (not realising the email is the certificate). However even if I did accept that this meant that Ms Marsland could not present her claim, the chronology shows she was well enough from 20 January 2023 to present her claim. She knew how to do so because she had done so already. The Acas email also directed her to the correct process. In addition the fact she had presented a claim already

leads me to conclude she knew what complaints she wanted to present and why, even if she had not been able to save the text in the previous claim to reuse. I note that the information she has provided in her claim is brief and it would take not much time therefore to prepare.

8.10. Ms Marsland's evidence about why she did not present the claim on 22 January 2023 (a Sunday), but did so the next day, is not satisfactory. She appeared to comment that it would not matter because no-one would be at the Tribunal to process it. Later she appeared to suggest it was not the reason. Whatever the reason, I find as a fact that there was no obstacle to her presenting the claim on 22 January 2023 online or otherwise electronically.

9. Ms Marsland told me about events after 23 January 2023. I cannot see how they can assist me to decide if she ought to have presented her claim earlier.

## Law

10. The **Employment Rights Act 1996 sections 23** (for unauthorised deductions from wages), **111** (for unfair dismissal) the Jurisdiction Order **article 7** all contain the same formulation for extending time limits which is in the following formula: An employment tribunal must not consider a complaint unless it is presented:

10.1. before the end of the period of three months from when the claim arose, or

10.2. within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

11. There is no dispute that Ms Marsland should have been presented on 22 January 2023 at the latest. I agree for the following reason. The effect of **Employment Rights Act 1996 section 207B** and **Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 article 8B** ("the Jurisdiction Order") confirms that the ordinary time limits of 3 months in these claims is extended by the amount of time that the parties undertake early conciliation, subject to the claimant always having one month from the end of early conciliation to present their claim. In this case the ordinary limitation date for presenting a claim would have been 6 December 2023. There were 26 days left when the claimant commenced early conciliation. Because this is less than one month, the claimant was allowed one month after the end of early conciliation. That takes the date to 22 January 2023.

12. I only need to refer to one case on how to approach questions of whether it was "not reasonably practicable" to present the claim in time. That case is **Cygnnet Behavioural Health Ltd v Britton [2022] IRLR 906 EAT** and it draws on all the other previously decided cases and summarises the law in paragraphs **[18]-[27]**. I have taken into account all of those paragraphs. The key principles I extract are:

- 12.1. The power to disapply the time limit is very restricted. The test is not satisfied simply because it was reasonable not to do what could be done: [18]-[20];
- 12.2. The claimant bears the burden of proof: [21];
- 12.3. It is a factual test based on common sense: [21];
- 12.4. Any ignorance of time limits has to be reasonable: [23] and [25];
- 12.5. Any ill-health must mean it is not reasonably practicable to bring a claim: [23] and [25];
- 12.6. There is no valid basis for approaching the test on a liberal basis: [27].

### Conclusions

13. I have concluded it was reasonably practicable for Ms Marsland to have presented her claim in time. For me, the following factors lead me to this conclusion:
  - 13.1. She knew how to present a claim because she did so electronically at some point between 30 September 2022 and 10 November 2022;
  - 13.2. I conclude she therefore by 10 November 2022 knew the subject matter of what she wanted to complain about and therefore the claims she wanted to present.
  - 13.3. She contacted Acas before early conciliation commenced. While I accept they cannot advise they can and do give guidance. There is no suggestion they misled her on the issue of time limits.
  - 13.4. Her delay between 22 December when she received her early conciliation certificate and 27 December is not reasonable. If she chose not to check her email that is understandable in the festive period, but it is not reasonable to leave it unchecked for so long, especially when she is contemplating litigation and is in early conciliation.
  - 13.5. The Acas email was clear that time limits were important, offered contact to seek advice, directed her to information on how to present a claim, and therefore made it clear what next steps she needed to undertake. The Acas email did not reasonably lead her to conclude she had longer than one month. She may have misread it. That does not however make it not reasonably practicable to present her claim in time. Therefore she would be reasonably clear about the importance of time limits.
  - 13.6. She had received some guidance from a friend who was a solicitor. There is no suggestion it was misleading.
  - 13.7. I do not see that her emailing Acas for a certificate, without realising the email was the certificate, has any impact on the case. It was not advanced as a reason for why she presented the claim on the 23<sup>rd</sup> and not the 22<sup>nd</sup> for example.

13.8. Even if her illness and her mother’s illness did mean she was unable to take steps to present her claim she was well enough by 20 January 2023. She already knew what she wanted to complain about and had already presented one claim. She knew therefore the details for her complaint and had experience of how to present it. It required her only to put it into the form. There is no reason why in that period of time she could not reasonably have presented her claim.

14. In my opinion there is no other factor that outweighs the above and no other fact that points to a conclusion that it was reasonably practicable for Ms Marsland to present these claims in time.

15. Therefore the Tribunal lacks jurisdiction for these claims and they must be dismissed. This does not affect the claim for discrimination. That will continue in the usual way.

---

Employment Judge Adkinson

Date: 1 November 2023

JUDGMENT SENT TO THE PARTIES ON

.....

.....

FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.