



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Smith  
**Respondent:** Grey Consultants Limited  
**Heard at:** London South  
**On:** 5 March 2025  
**Before:** Employment Judge Cawthray

## Representation

**Claimant:** In person, not legally qualified  
**Respondent:** Mr. Shellum, Counsel

**JUDGMENT** having been sent to the parties on and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

## REASONS

### Background and Procedure

1. The hearing was listed for a public preliminary hearing to consider whether it was just and equitable to extend the time limit for presenting the claim.
2. At the start of the hearing the Claimant confirmed that the only complaint within the claim from was a harassment complaint. The ET1 clearly sets out that the last alleged act of harassment was her dismissal on 16 October 2023.
3. I explained the process involved at the hearing today in relation to giving and challenging evidence and making submissions.
4. I also discussed the issues with the parties at the outset. I explained that the hearing had been listed to consider if the Claimant's claim had been brought in time, or if not, was it just and equitable to extend the time limit to bring the claim.
5. I clarified with the parties at the outset the dates set out below and explained that if the last date of alleged harassment was 16 October 2023 the ordinary

time limit is 15 January 2024.

6. I explained that the ACAS Early Conciliation rules operate to extend the time limit.
7. Early Conciliation started on 12 January 2024 and ended on 12 February 2024. This meant that the ordinary time limit was extended until 12 March 2024.
8. The Claimant submitted her ET1 on 12 July 2024.
9. The Notice of Hearing sent to the parties on 9 October 2024 set out the issue, and an information note. I reminded the Claimant that it was for her to persuade me that the time limit should be extended and that if time is not extended the claim will be dismissed.
10. The parties had provided a bundle of documents. The Claimant had provided a written witness statement. The Claimant swore on the bible and gave oral evidence. Both parties gave oral submissions.

### **Issues**

11. Would it be just and equitable to extend the time limit for presenting the claim?

### **Facts**

12. I have made findings of fact based on the evidence presented and as necessary to determine the issue for consideration at the hearing today.
13. The Claimant was diagnosed with psychosis 2018 but the condition was under control with medication.
14. The Claimant's employment ended 16 October 2023.
15. On 25 October 2023 the Claimant submitted a grievance letter. The letter set out her concerns and referred to the Equality Act 2010.
16. The Claimant called ACAS on 25 October 2023 and contacted other advisory bodies around this time. The Claimant was aware of time limits in the Employment Tribunal from this time.
17. The Respondent provided a grievance outcome on 8 December 2023.
18. The Claimant was admitted to hospital on 9 December 2023 due to schizophrenia and stayed on a psychiatric ward until 19 December 2023.
19. The Claimant emailed the grievance manager on 14 December 2023 whilst she was in hospital.
20. The Claimant sent the Respondent her initial grievance appeal on 21 December 2023.

21. The Claimant sent further details about her appeal on 8 January 2024.
22. The Claimant started ACAS Early Conciliation 12 January 2024. ACAS Early Conciliation ended on 12 February 2024. There was engagement by the parties between the period.
23. The deadline for submission of the ET1 was 12 March 2024.
24. On 11 March 2024 the Claimant was issued with a GP fit note. The fit note says the Claimant was not fit to work between 11 March to 10 April 2024 and referred to clinical illness needing treatment in hospital
25. The Claimant
26. The Claimant was admitted to hospital on 12 December 2024 due to schizophrenia and stayed on a psychiatric ward until 10 April 2024.
27. Whilst in hospital the Claimant produced some paperwork in relation to difficult and upsetting family matters. She had her laptop with her in hospital.
28. The Claimant called ACAS on 20 March 2024, whilst she was in hospital.
29. The day after her release from hospital the Claimant called ACAS on 11 April 2024.
30. The Claimant says she did not have her laptop charger on release from hospital and did not have it until approximately a month later.
31. There were additional fit notes in the bundle, as summarised below.  
  
Fit note – 15 April 2024 – schizophrenia – not fit to work 10 April – 10 May 2024  
Fit note – 10 May 2024 – schizophrenia – not fit to work 10 May – 7 June 2024  
Fit note – 7 June 2024 – schizophrenia – not fit to work 7 June 2024 – 10 July 2024  
Fit note – 10 July 2024 – schizophrenia – not fit to work 10 July – 10 August 2024
32. At some point in July 2024, prior to submitting the ET1, the Claimant spoke with her GP regarding her ET claim.
33. The ET1 was submitted 12 July 2024. The ET1 is clear, and references legal provisions.
34. Following discharge from hospital the Claimant had a number of matters that she needed to work on including financial and living arrangements. I appreciate that the Claimant had, from December 2023, experienced significant upset in her family life and difficulties with her mental health and this would have been difficult period for her.

## Law

35. Section 123 of the Equality Act 2010 sets out the time limit for bringing harassment claims in the Tribunal. It provides that complaints of discrimination should be presented within three months of the act complained of:

*(1) Subject to Sections 140A and 140B proceedings on a complaint within Section 120 may not be brought after the end of –*

*(a) the period of three months starting with the date of the act to which the complaint relates, or*

*(b) such other period as the Employment Tribunal thinks just and equitable.”*

36. Section 123(1)(b) provides that where a discrimination claim is prima facie out of time it may still be brought “*within such other period as the Tribunal thinks is just and equitable*”. This provides a broader discretion than the reasonably practicable test for other claims, such as unfair dismissal.

37. The time for presenting a claim is extended for the duration of ACAS Early Conciliation.

38. However, where the ACAS EC process was started after the primary time limit had already expired the ACAS “freezing” of the time limits does not operate to assist a Claimant (Pearce v Bank of America EAT 0067/19).

39. Time limits should be adhered to strictly (relevant case being Robertson v Bexley Community Centre 2003 EWCA CIV 576.)

40. The burden of proof is on the Claimant.

41. The case law on the application of the “just and equitable” extension includes *British Coal Corporation –v- Keeble* [1997] IRLR 336, in which the Employment Appeal Tribunal (“EAT”) confirmed that in considering such matters a Tribunal can have reference to the factors which appear in Section 33 of the Limitation Act 1980. As the matter was put in Keeble:-

*“that section provides a broad discretion for the court to extend the limitation period of three years in cases of personal injury and death. It requires the court to consider the prejudice which each party would suffer as a result of the decision to be made and also to have regard to all the circumstances and in particular, inter alia, to –*

*(a) the length of and reasons for the delay;*

*(b) the extent to which the cogency of the evidence is likely to be affected by the delay;*

*(c) the extent to which the party sued had cooperated with any request for information;*

*(d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action;*

*(e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.”*

42. However, this list of factors is a guide, not a legal requirement. The relevance of the factors depends on the particular case.
43. In *Abertawe Bro Morgannwg University Local Health Board v Morgan* 2018 ICR 1194 the Court of Appeal noted that the tribunal has a wide discretion and the Tribunal was not restricted to a specified list of factors.
44. The most important part of the exercise is to consider the length and reasons for the delay and balance the respective prejudice to the parties.
45. In *Robertson –v- Bexley Community Centre (T/A Leisure Link) 2003 [IRLR 434]* the Court of Appeal considered the extent of the discretion. The Employment Tribunal has a “wide ambit”. At paragraph 25 of the judgment Auld LJ said:-

*“it is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When Tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify a failure to exercise the discretion. Quite the reverse. A Tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule.”*

46. Subsequently in *Chief Constable of Lincolnshire -v- Caston [2010] IRLR 327* the Court of Appeal in confirming the Robertson approach confirmed that there is no general principle which determines how liberally or sparingly the exercise of discretion under this provision should be applied.
47. In *Department of Constitutional Affairs -v- Jones [2008] IRLR 128* the Court emphasised that the guidelines expressed in Keeble are a valuable reminder of factors which may be taken into account, but their relevance depends on the facts of the particular case. Other factors may be relevant too. At paragraph 50 Hill LJ said:-

*“The factors which have to be taken into account depend on the facts, and the self directions which need to be given must be tailored to the facts of the case as found”.*

48. I considered the principles derived from case law in relation to the merits of a claim.

## **Conclusions**

49. The Claimant agreed that her claims had been presented outside the time limit and therefore that was not an issue which I needed to determine.

### Length of delay

50. As set out above, the last date of alleged harassment was the act of dismissal on 16 October 2023. This means that the primary limitation date was 15 January 2024.
51. The Claimant entered into ACAS Early Conciliation on 12 January 2024, within the time limit. ACAS EC ended on 12 February 2024. The ET1 should have been presented by 12 March 2024. The Claimant did not submit her claim until 12 July 2024. This is some four months after the extended time limit.
52. With a primary time limit of only 3 months, a delay of a further 4 months is significant. This is not a case where the claim was just a few days late.

### Reasons for delay

53. The Claimant was aware of the facts that gave rise to the claims in September 2023.
54. The Claimant has been aware of the time limits throughout. She is intelligent and educated. She researched her legal rights. Indeed, she did take steps by consulting with advisory bodies and ACAS from the end of October 2023.
55. As set out in the findings of fact, on 25 October 2023 the Claimant submitted a detailed grievance. The grievance contains the same complaints as the claim form.
56. The Claimant became very unwell from mid December 2023 and required a period of hospital treatment. She was in hospital from 9 to 19 December 2023. However, soon after release she engaged in the grievance appeal, indeed as noted above she emailed the grievance manager on 14 December 2023 whilst in hospital.
57. The Claimant properly engaged in ACAS Early Conciliation. Although resolution was not achieved. The deadline for submitting claim was 12 March 2024.
58. There is no clear evidence given on why the Claimant could not submit her claim between Early Conciliation ending on 12 February 2024 and before she was admitted to hospital on 12 March 2024.
59. I consider that the Claimant's worsening mental health and hospital admission from 12 March 2024 onwards would be a reason impacting her ability to submit claim. However, save for 12 March 2024, the Claimant had time between 12 February and 12 March to submit a claim. There was no explanation why it was not submitted in that period, or indeed sooner, given the Claimant was aware of the deadline.
60. The Claimant eventually submitted a well pleaded claim. However, I considered it very relevant that her grievance dated 25 October 2023 sets out the same complaint and references the Equality Act 2010. I do consider the Claimant could have submitted her claim in time, she could

have used the basis of her grievance to submit a claim, even if it was less well pleaded, on time.

61. I appreciate the Claimant was dealing with some significant challenges, following release from hospital on 10 April 2024 but I do think it is relevant that whilst in hospital she completed paper work re family matters and also contacted ACAS on 20 March 2024.
62. I have noted the Claimant's fit notes. However, although she was not fit for work she did progress admin matters during the periods that the fit notes cover. Indeed, she liaised with ACAS whilst both in hospital on 20 March 2024 and on 11 April 2024. She actually submitted her claim in period covered by a fit note.
63. In these circumstances I do not think existence of fit notes provides a full explanation for the significant further delay following release from hospital and does not justify an extension.
64. It is for the Claimant to persuade the Tribunal that it would be just and equitable to extend time, and there is an absence of medical evidence for the period from 19 December 2023 to 12 March 2024, when she was actively pursuing her grievance appeal and Early Conciliation. She was able to deal with challenging administration matters on release from hospital in April 2024.

#### Prejudice to parties – cogency of evidence - impact on delay

65. In considering the balance of prejudice and hardship, it is the case the Claimant will lose her right to bring a claim. However, there is no part of her claim that is in time, and the allegations go back to October 2023 some 18 months ago. The loss of the right to bring a claim is a consequence of the time limit provisions, which are intentionally short.
66. One of allegations involves a conversation and all witnesses, including the Claimant, will be negatively impacted by the delay and the ability to recall matters. I have no information on whether any of the other witnesses for the Respondent are still employed.
67. Any final hearing is likely to be at least summer 2026 onwards.

#### Merits of case

68. The strength of a claim may be a relevant factor in deciding whether it is just and equitable to extend time, but even where a case is strong, time may not be extended. I have not made findings of fact in relation to the allegations. However, it appears that the "player" allegation may have little reasonable prospects based on the Teams transcripts in the bundle.
69. Even where there are strong claims it is still necessary to consider whether there is a satisfactory explanation for why the claims were not presented in time.

#### Conclusion

70. From the evidence as a whole the picture emerges of an individual that was aware of the time limits, chose to lodge a grievance and engage in Early Conciliation, was aware of the inappropriateness of harassment in the work place and promptly took steps to obtain advice.
71. I appreciate that the periods of hospitalisation and afterwards were challenging periods for the Claimant and that she feels she has been treated badly by the Respondent. However, during admission and on release from hospital she was able to reengage in employment related matters and then Early Conciliation.
72. I do not accept that any ill-health in December acted as a barrier to in bringing a claim on time.
73. I have reminded myself that exercising discretion is the exception not the rule and have paid careful attention the actions taken by Claimant and kept in mind the importance of time limits.
74. Putting matters together overall, and taking into account all these factors, and applying the test set out in the legislation, my judgment is that the Claimant has failed to show it would be just and equitable to extend the time limit.
75. As I have concluded, that the claim is out time, it will not continue.

Approved by:  
**Employment Judge Cawthray**

**Written Reasons made on:**

**14<sup>th</sup> March 2025**

Judgment sent to the parties on:  
14<sup>th</sup> March 2025

For the Tribunal Office