



# EMPLOYMENT TRIBUNALS

**Claimant:** Julie Hinds

**Respondent:** Tesco Stores Limited

**Heard at:** London South ET via CVP (video)

**On:** 11 April 2025

**Before:** Employment Judge Beckett

**Appearances:**

For the claimant: Mr C Devlin (counsel)

For the respondent: Mr J Neaman (counsel)

## RESERVED JUDGMENT

On hearing Mr Devlin on behalf of the Claimant and Mr Neaman on behalf of the Respondent;

And on reading the written representations of the parties and considering the authorities provided by the parties;

The Tribunal determines that:

- (1) The Respondent's application for the claims to be struck out is refused.
- (2) The Respondent's application for a deposit order is refused.

## REASONS

1. The hearing had been converted from an open preliminary hearing to determine the issue of disability, to a preliminary hearing to consider the respondent's application for strike out and deposit orders.
2. The claimant within the ET/1 issue on 29 February 2024 advanced claims of direct disability discrimination, discrimination arising from disability, failure to make reasonable adjustments, harassment, victimisation and direct age discrimination. Early conciliation with ACAS started on 21 December 2023 and the certificate was issued on 1 February 2024.
3. The Claimant was employed by the Respondent as a Wage Clerk. She started work for them in 1996. She had resigned on the Monday before the hearing.

4. The claimant's position is that the acts and omissions set out in the Particulars of Claim amounted to conduct extending over a period within the meaning of s123(3)(a) of the Equality Act 2010 (EqA 2010).
5. Initially disability was in issue and the preliminary hearing listed on 11 April 2015 was to determine this. However, on 10 March 2025 the respondent notified the tribunal that disability was no longer contested. The respondent also applied to convert the hearing to consider an application for strike out or deposit orders regarding the claimant's prospects of establishing whether claims are in time.
6. The application for strike out/deposit orders asserted that the tribunal does not have jurisdiction to hear part of the Claimant's claim as it was brought outside the relevant limitation period, and the respondent denied that there was conduct which formed part of a chain of continuous conduct. Further, the respondent denies that the period taken by the Claimant to issue the claim is just and equitable.
7. In the alternative, the Respondent applied for deposit orders under rule 40(1). The written application requested an order under rule 40(1) that the Claimant should pay a deposit of £1,000 as a condition of continuing to advance each allegation which are the subject of the application
8. The Claimant had objected to the request to convert the PH on 2 April 2025, stating that the Claimant alleged there was conduct extending over a period under s.123(3)(a) Eq A 2010 and that matter should be determined at the final hearing after hearing witness evidence.
9. However, the hearing was converted and both parties confirmed that they were ready to deal the application relating to strike out and deposit orders. There had been some confusion in the lead up to the hearing as to the exact nature of the hearing. As both parties were prepared and able to deal with the application, I do not need to go through the various submissions relating to the listing of the hearing.
10. The tribunal had been provided with a bundle, and skeleton arguments. It was agreed that the tribunal would hear submissions only and not evidence.
11. A bundle of authorities (268 pages) was sent by the Respondent to the Tribunal, and provided to me during the course of the hearing. I was also provided with *Kolev v Middlesex University* [2023] EAT 173.

The relevant law

12. As to the timing of claims, s123(1) of the Eq A 2010 provides that proceedings after the end of the period of three months starting with the date of the act to which the complaint relates, or such other period as the Tribunal thinks 'just and equitable'. The limitation period is extended by the time occupied by the period of Early Conciliation. By subsection (3)(a) it is provided that 'conduct extending over a period' is to be treated as done at the end of the period.

13. Limitation is in issue in this case. It is therefore necessary to address the second provision before the first as if the Tribunal were to uphold the claimant's argument on conduct extending over a period, the question as to whether or not a more generous time-limit than the relevant three months may not arise at all, or if it did arise, the length of time for the extension needed for the claim to be in time would be shortened.
14. Whether acts can amount to 'conduct extending over a period of time' as required by the legislation requires the Tribunal to consider relevant circumstances. Both parties provided authorities to assist.
15. An assessment of the authorities reveals consistent considerations. These include the most important factors, which are the duration of the relevant period, the identity or identities of the wrongdoer or wrongdoers, the relationship if any between different wrongdoers, and the nature of the acts relied on.
16. The longer the period, the more difficult it would be for a claimant to show that the acts constitute a single piece of conduct. If a complaint is made against one wrongdoer, it will be easier to show conduct extending over a period. The more diverse the forms of adverse treatment relied upon, the greater will be the difficulty of characterising them as continuing conduct as opposed to a series of discrete acts.
17. The Tribunal's power under s123(1) to extend the period as 'just and equitable' is wide.
18. In respect of the relevant applications, the Employment Tribunals Rules of Procedure 2024 set out the relevant tests.
19. Rule 38 reads as follows:
  - (1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds-
    - (a) that is scandalous or vexatious or has no reasonable prospect of success;
    - (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
    - (c) for non-compliance with any of the Rules or with an order of the Tribunal;
    - (d) that it has not been actively pursued;
    - (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim, response or reply (or the part to be struck out).
20. The power under rule 38 should be exercised in appropriate cases, as the system should not be filled up with cases which are vexatious, or hopeless.
21. The Tribunal in certain cases will be able to strike out a claim or response, or part of a claim or response, where there is no reasonable prospect of success in respect of a contested issue. Given that the lead authorities repeatedly

confirm that the Tribunal should be exceedingly cautious in striking out cases, one example where the Tribunal could exercise its discretion is where there is contemporaneous documentation that directly contradicts a pleaded case.

22. The strike out provisions should be used sparingly where the claims are highly fact-specific.

23. The application made by the Respondent was that the claim should be struck out on time grounds as having no reasonable prospect of success. The Respondent also asked the Tribunal to consider, in the alternative, whether a deposit order should be made.

24. Rule 40 states:

(1) Where at a preliminary hearing the Tribunal considers that any specific allegation or argument in a claim, response or reply has little reasonable prospect of success, it may make an order requiring a party ("the depositor") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument ("a deposit order").

25. Elias J, sitting in the EAT, observed in *Jansen van Rensburg v Royal Borough of Kingston-upon-Thames* UKEAT/0096/07/MAA that the test in respect of deposit orders is less rigorous than the test for a strike-out and therefore the Tribunal has more leeway when considering whether or not to make an order.

26. "the authorities also repeatedly urge caution – having regard to the difficulty of disentangling time points relating to individual complaints from other complaints and issues in the case' because there may be no appreciable saving of preparation or hearing time in any event, if episodes that could potentially be severed as out of time, are in any case relied upon as background to more recent complaints; because of the acute fact-sensitivity of discrimination claims, and the high strike-out threshold; and because of the need for evidence to be prepared, and facts found (unless agreed), in order to make a definitive determination of such an issue" (HHJ Auerbach, *Caterham School Ltd v Rose* UKEAT/0149/14/RN).

27. The EAT in *Kolev v Middlesex University* [2023] EAT 173 allowed a claimant's appeal against a judge's decision to strike out her claim on the basis of the judge's summary determination that the claims were brought out of time, there was no conduct extending over a period, and time should not be extended. HHJ Tucker held:

"29. ...If crucial, at times, wholly determinative issues are to be decided at a preliminary hearing it is an essential tenet of a fair process that the parties should know what those issues are and have had adequate notice of them so as to be able to fairly and properly address them and their implications for the claims before the Tribunal.

30. It is also necessary to ensure that there is a clarity about whether the preliminary hearing has been listed to determine an application to strike out,

or, to determine a preliminary issue. Strike-out applications may be made wholly on submission, taking the case of the party whose claim or response is at risk of strike-out at its highest. Fair and just determination of a preliminary issue may require evidence to be given, including oral evidence, and a factual determination to be made so as to reach a definitive outcome on a point which cannot be re-visited at a full merits hearing. In many cases that will require either, agreed case management directions or a hearing to identify the issues which will be considered at the preliminary hearing so that directions can be made as to how and when evidence should be prepared and considered. In addition, the terms of r.54 of the ET Rules of Procedure 2014 are mandatory: in the case of a preliminary hearing involving 'preliminary issues' as defined in r.53(3) (i.e. those which may determine liability), at least 14 days notice must be given and that notice must 'specify' the preliminary issues that are, or may be determined.

30. Tribunals and Courts are under significant pressure at present from the volume of work before them. The need for effective case management and application of the principles set out in the overriding objective is clear. That, however, cannot be any justification for short cuts where that leads to unjust or unfair consideration of important issues and claims. Whilst unnecessary delay is inconsistent with the proper administration of justice, "justice must never be sacrificed on the altar of speed".

...  
32. ...there is authority to support the proposition that caution applies to consideration of limitation issues in discrimination cases at a preliminary stage. In practice, those issues may be so closely inter-twined with merits of the claims themselves. For example, it may not be possible to determine whether an act extended over a period within the meaning of s123(3) of the EqA 1010. unless and until a decision is made about whether separate incidents amounted to unlawful discrimination. Consequently, there may be no appreciable saving of time in seeking to determine those limitation issues at a preliminary hearing."

(emphasis added)

28. Ellenbogen J in *E v X, L and Z* [2020] 12 WLUK 599 distilled the core principles applicable to applications to strike and/or the determination of preliminary issues. Some of those principles are:

- (i) It is important that issues for determination by the tribunal at a preliminary hearing have been identified with clarity. That will include identification of whether the tribunal is being asked (1) to consider whether a particular allegation or complaint should be struck out, because no prima facie case can be demonstrated or (2) substantively to determine the limitation issue;
- (ii) When faced with a strike out application arising from a time point, the test which a tribunal must apply is whether the claimant has established a prima facie case, in which connection it may be advisable for oral evidence to be called. It will be a finding of fact for the tribunal as to whether one act leads to another, in any particular case;

- (iii) An alternative framing of the test to be applied on a strike out application is whether the claimant has established a reasonably arguable basis for the contention that the various acts are so linked as to be continuing acts, or to constitute an ongoing state of affairs;
- (iv) In an appropriate case, a strike out application in respect of some part of a claim can be approached, assuming, for that purpose, the facts to be as pleaded by the Claimant;
- (v) A tribunal hearing a strike out application should view that claimant's case at its highest, critically, including by considering whether any aspect of that case is innately implausible for any reason;
- (vi) If a tribunal considers (properly) at a preliminary hearing that there is no reasonable prospect of establishing that a particular incident, complaint about which would, by itself, be out of time, formed part of such conduct together with other incidents, such as to make it in time, that complaint may be struck out;
- (vii) Caution should be exercised, having regard to the difficulty of disentangling time points relating to individual complaints from other complaints and issues in the case; the fact that there may be no appreciable saving of preparation or hearing time, in any event, if episodes that could be potentially severed as out of time are, in any case, relied upon as background more recent complaints; the acute fact-sensitivity of discrimination claims and the high strike-out threshold; and the need for evidence to be prepared, and facts found (unless agreed), in order to make a definitive determination of such an issue.

29. In respect of the deposit order, the Tribunal only needs to make a broad assessment of the merits (*Spaceman v ISS Mediclean Ltd* [2019] ICR 687 EAT).

### Facts

- 30. The Tribunal was provided with the ET/1 and ET/3. In brief, the Claimant started employment with the Respondent as a Wage Clerk in 1996.
- 31. Early conciliation with ACAS started on 21 December 2023 and the certificate was issued on 1 February 2024.
- 32. Within the ET/1, the Claimant brought claims of discrimination, harassment, victimisation and failure to make reasonable adjustments.
- 33. The ET/1 was presented on 29 February 2024.
- 34. The claims relate to alleged incidents from July 2021. At that time, the Claimant was line managed by Ms Davies. The Claimant alleges that Ms Davies' conduct amounted to direct discrimination on grounds of disability, discrimination arising from disability, and/or harassment relating to disability. Further, the Claimant

alleges direct discrimination on grounds of age and a detriment for the purposes of her victimisation claim within the period July 2021 to 26 October 2022.

35. There are further allegations made in respect of a colleague Ms De-Luc, which relate to direct discrimination on grounds of disability and age, discrimination arising from disability and harassment. These are said to have occurred between February 2022 and October 2022.
36. The Claimant had submitted a grievance on 2 January 2023. There was an investigation and a meeting with the Claimant on 27 January 2023. The outcome letter was received by the Claimant on 25 August 2023. The Claimant appealed on 5 September 2023.
37. There are complaints relating to the handling of the grievance and the subsequent appeal which are alleged to constitute direct discrimination on grounds of disability, discrimination arising from disability, harassment relating to disability and a detriment for the purposes of her victimisation claim.
38. The appeal outcome in November 2023 accepts age discrimination. The Claimant states that there was a failure after that admission to take any appropriate action, which is alleged to constitute direct discrimination on the grounds of age.
39. There are further claims in respect of an alleged delay in engaging occupational health, which is alleged to constitute direct discrimination on grounds of disability, discrimination arising from disability, harassment relating to disability and a detriment for the purposes of her victimisation claim.
40. There is also a claim in respect of alleged failures to make reasonable adjustments.
41. The Claimant was signed off sick in October 2022, and remained signed off. I was told during the hearing, by counsel for the Claimant that she resigned this week.

### Submissions

42. Both counsel had provided helpful skeleton arguments, which were expanded upon during the hearing. The Claimant's argument was largely based on the format and listing of today's hearing, which was understandable in light of the lead up to the hearing. However, both counsel addressed key issues during the hearing, and responded to each other's submissions.
43. The main submission for the Claimant was that the application for strike out should be refused as there was a *prima facie* case that the complaints based on events prior to 18 October 2023 formed, with those in-time allegations, 'conduct extending over a period' for the purposes of s123(3)(a) Eq A 2010, and that in so far as any complaint was presented outside the primary three-month limit, it would be 'just and equitable' to substitute a longer period such as to bring it within the Tribunal's jurisdiction.

44. The Respondent submitted that the claims should be struck out as there was no reasonable prospect of success. They submitted that the duty to make adjustments arose in respect of the first PCP in October 2022, the second in April 2022, significantly before October 2023.
45. The Respondent argued that the handling of the grievance and subsequent appeal do not form part of conduct extending over a period with the other complaints as required. They note that the grievance process was handled by Mr Weaver who worked at the Addlestone Extra, and the appeal process by Mr Tite who worked in the Bracknell North Superstore. The Claimant was based at the Brooklands Extra in Weybridge. Ms Davies and Ms De Luc worked at the Brooklands Extra.
46. The Respondent argued that the complaints relating to the grievance process related to disability rather than age and involve a different protected characteristic. They further argued that they involve a different type of protected conduct. They note that reasonable adjustments were not part of the grievance and so even if that link were sufficient, it is not there.
47. In respect of the just and equitable test, the Respondent submitted that there was a considerable delay and that the Respondent would be considerably prejudiced by the grant of the extension of time, as the evidence is mainly based on alleged comments and conversations, and reasoning behind decisions.
48. Finally, in respect of the complaint relating to failure to make reasonable adjustments, the Respondent argued that there was no reasonable prospect of success on the merits, as the Claimant admitted that she had been excused from the daily Rumble, and was not required to remove cardboard, tidy shelves or lift any heavy items, following her diagnosis of Osteoarthritis.
49. In the alternative to strike-out, the Respondent submitted that I should make deposit orders in the sum of £1,000 for each claim. Both applications were based on the submission that the Claimant had little reasonable prospect of succeeding either on the conduct extending over a period point or on the issue of whether the Tribunal should substitute a more generous time limit than the three-month period allowed by way of default.
50. The Claimant submitted that the claims as pleaded and information before the Tribunal showed that there was a prima facie case, and that the Tribunal should allow the issue as to jurisdiction to hear the claims at the final hearing when evidence is to be called.
51. The Claimant has not yet given a reason for the delay. In due course, the burden of persuasion will be on the Claimant on this point. It was argued during submissions that the Claimant could have provided evidence as she had been on notice since the date of the application, and indeed the ET/3, that the Respondent did not accept that all the claims were in time, or that such time should be extended.



52. However, the Respondent applied for the claims to be struck out. It was agreed by both parties that it could only be dealt with on submissions. Counsel for the Claimant submitted that it was not reasonable for the Claimant to have provided evidence for this hearing. Had the Respondent used a different route, and asked for the issue to be determined as a preliminary issue, there would have been directions made for witness statements. Counsel for the Claimant stated that by the Respondent taking this route, the Claimant was on the back foot and unable to put forward factors for the Tribunal to consider as to whether it would be just and equitable for any extension to be made.
53. The Claimant accepted that there were different types of complaints involving different people, but that there was a prima facie case of the Respondent treating a disabled person less favourably, with comments by others, a failure by management to deal with complaints, further failures by other managers to take the issues seriously, a delay and poor handling of the grievance.
54. As to the extension, counsel for the Claimant highlighted the Tribunal's wide discretion. The Claimant was on an extended period of sick leave, and it was suggested that the Tribunal could infer possible reasons for the delay from the pleadings.
55. In respect of the deposit order, I heard that the Claimant's funds were limited as her sick pay had ended and she had resigned. Her sole income is her pension. The Claimant argued that if such an order were to be made, a sum of £5 per claim would be more appropriate or reasonable.

### Conclusions

56. Under rule 38(1)(a) I have to consider whether, on time grounds, the claims should be struck out on the basis that they have no reasonable prospect of success.
57. I remind myself that the burden in any strike-out application is on the party seeking the summary dispatch of the claim or response, in this case, the Respondent.
58. I am mindful that the Tribunal has to view the Claimant's case at its highest in respect of this application.
59. Striking out is a severe sanction, and often described as a draconian measure. It is of course correct that truly hopeless cases should be halted, however it is a power that should be exercised rarely.
60. The Respondent has failed to persuade me that the Claimant's case both in respect of conduct extending over a period and on the just and equitable extension is so hopeless as to have no reasonable prospect of success.
61. Whilst I recognise that there might be hurdles to overcome, on the material provided to the Tribunal for this application, it cannot be said that there is no

reasonable prospect of success. Whilst the wrongdoers are different, and the period of time lengthy, the Tribunal must take into account that the evidential basis for the claims has not been considered.

62. The Tribunal will need to hear the evidence and decide the jurisdiction point as part of the final hearing. The Tribunal might at that stage decide that the earlier claims are not in time and that it would not be just and equitable to extend the time limit. However, it might not. The Tribunal will need to consider all of the evidence.
63. The Tribunal has a wide discretion in respect of extending the relevant time limit. The Tribunal will need to examine carefully relevant factors. The reason for the timing of the presentation of the claim is important, and it might be that physical and/ or mental health played a part. There might be medical evidence served. There were no witness statements or exhibits provided, as there could not be, given the nature of the applications made.
64. From the Pleadings and Grounds of Resistance it is clear that crucial facts are disputed and there has been no opportunity for the evidence in respect of those facts to be considered. This is not only true in respect of the claims themselves, but the timing as well.
65. I cannot speculate on the nature of the evidence to be provided, or the strength of any such evidence. The evidence will be tested by cross-examination and the Tribunal will reach decisions as to the facts.
66. It cannot properly be said at this stage that the claims have no reasonable prospect of success. I therefore refuse the Respondent's application to strike out any of the claims.
67. In respect of the application for deposit orders there is no burden on either party.
68. The consideration for the tribunal is whether under s123(3)(a) any claim has 'little reasonable prospect of success'. Again, the Tribunal has not heard any evidence as to the timing of the claim, or any other matters. The information available to the Tribunal was limited. There were no witness statements or other evidence available to consider.
69. Given all that I have set out above, and considering the wide discretion the Tribunal will have at the final hearing, I am not persuaded that I should make a deposit order in respect of any claim. I refuse the application for a deposit order in respect of any of the claims.

---

Employment Judge Beckett  
Date: 5 May 2025

Sent to the parties on  
Date: 22 May 2025