



EMPLOYMENT TRIBUNALS

Claimant: Mr B King

Respondent: Thales DIS (UK) Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: Southampton

On: 19 and 20 May 2025

Before: Employment Judge Gray

Appearances

For the Claimant: In person (assisted by Mr Zahra)

For the Respondent: Mr Hickford (Solicitor)

JUDGMENT

1. It is just an equitable to extend time in this claim so that it can carry on and be decided at a further hearing.

JUDGMENT having been delivered on the 20 May 2025 (and sent to the parties on the 3 June 2025), and written reasons having been requested by email from the Claimant dated 5 June 2025, in accordance with Rule 60(3) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS FOR THE DECISION

2. These are the reasons for the decision set out above.
3. In this document I am going to deal with the decision as to whether it is just and equitable to extend time in this claim so that it can continue and be decided.

4. For reference at this hearing, I was provided with hearing documentation consisting of 272 pages to which was added at the request of Mr King and with the agreement of the Respondent a copy of the grounds of response in the first claim. Mr King had also submitted a 10-page witness statement.
5. This claim (the second claim) was submitted on the 14 July 2020 (page 33).
6. The disability discrimination claim details were submitted on the 21 March 2021 (page 64).
7. The complaint of sex discrimination is dated 23 April 2018 (page 48) so should have been submitted by the 22 July 2018.
8. The last complaint of disability discrimination is dated 31 May 2018 (page 111) so should have been submitted by the 30 August 2018.
9. This means the sex discrimination complaint is just under two years out of time and the disability discrimination complaint is just over two and half years out of time.

What Happened up to this Hearing

10. What happened before this hearing is complicated and has been helpfully set out in the Judgment of Employment Judge Dawson dated 7 October 2024 (paragraphs 16 to 38 of that Judgment).
11. I refer to those matters below as they are relevant to this Judgment, as well as what Judge Dawson decided at the hearing in front of him on 4 October 2024.
12. Mr King says that he first raised a grievance about Mr Mercer (his supervisor at work) in July 2017. He didn't carry on with that grievance.
13. Mr King says that he brought another grievance about Mr Mercer in April 2018.
14. There was going to be a meeting about that on 20 June 2018.
15. An incident then took place on the 31 May 2018 with Mr Mercer. The meeting which had been planned for 20 June 2018 was cancelled by Gemalto (which is what the Respondent used to be called. It is now called Thales DIS (UK) Limited).
16. On 8 August 2018 Mr King was dismissed. He put an appeal in against the dismissal on 21 August 2018.
17. On 13 November 2018, Mr King made his first claim to the tribunal.
18. On 19 November 2018, Mr King was asked whether he was bringing a discrimination claim in his first claim and he replied with emails on 22 November 2018 and 28 November 2018. He talked about bullying and harassment at work but did not say he was bringing a claim because of his disability or his sex.

19. At work, on 21 November 2018, an appeal meeting took place in relation to the dismissal. On 3 December 2018 Mr King's appeal was rejected, and it was made clear that the grievance would not be going any further.
20. On 7 December 2018, Regional Employment Judge Pirani decided that because Mr King had not identified a protected characteristic, the claim would only be accepted as unfair dismissal. His Honour Judge Tayler has said that Regional Employment Judge Pirani was right about that.
21. Up to this point in the process Mr King had not been represented by lawyers.
22. On 17 June 2019, Judge Gray decided that the claim for unfair dismissal had not been presented in time and Mr King's claim was dismissed. Part of Judge Gray's reason was that the occupational health report that he had seen did not suggest that the Claimant had a disability. He also recorded that Mr King had accepted that he had support from his union during his dismissal and appeal. He was represented by lawyers at that hearing.
23. Mr King appealed to the Employment Appeal Tribunal and his appeal was rejected. The appeal took place on 14 September 2020.
24. By then, Mr King had issued a second claim on 14 July 2020 (this one). Again, Mr King was not represented by lawyers.
25. The second claim form said it was about sex discrimination.
26. On 21 March 2021, Mr King sent a document called a Harassment Log which contained incidents from 20 July 2017 up to 20 April 2018 and referred to disability discrimination. (The second version of this document in the file of papers we used at this hearing is at pages 107 to 111, with the last incident being 31 May 2018 (page 111)).
27. Judge Dawson made a case management order on 25 March 2021 where he set out that it was necessary to decide three things. They were:
 - a. Whether Mr King needed permission to bring a claim of disability discrimination because he did not tick that box in his claim form/ET1 and, if he does, whether it should be given.
 - b. Whether the first case (1403950/2018) meant that this case cannot be brought and should be stopped.
 - c. Whether this case should be struck out because it was not brought within three months.
28. Judge Dawson decided that questions a) and b) would be decided at the same time but c) would be decided separately.
29. On 2 August 2021, Judge Reed decided that the Claimant should not have permission to amend his claim and the claim should be stopped because of the

first claim. Mr King appealed and in March 2024, His Honour Judge Tayler decided that Judge Reed had not applied the correct legal test and the questions should be decided again.

30. On 19 April 2022, Mr King was diagnosed with ADHD.
31. On 24 June 2022 the Mr King was assessed as autistic.
32. At a hearing on the 4 October 2024, Judge Dawson then decided that Mr King's claim would not be struck out and that he could add a claim of disability discrimination. The allegations added were those set out in the harassment log document (pages 107 to 111).
33. Also, at the hearing on the 4 October 2024 the Respondent (now called Thales DIS (UK) Limited) accepted that, at the times of his employment, Mr King was disabled because of:
 - a. anxiety and depression
 - b. dyslexia
 - c. autism
 - d. ADHD
 - e. learning difficulties.

The evidence Mr King gave at the hearing in front of Judge Dawson

34. At the hearing on the 4 October 2024 in front of Judge Dawson, Mr King gave evidence and Judge Dawson recorded what he found in his written Judgment. I refer below to matters Judge Dawson recorded in paragraphs 50 to 56 and 59 of his written Judgment which are relevant to the matters I need to decide.
35. Judge Dawson asked Mr King what he would have said to Judge Gray at the hearing on the 17 June 2019 if he had been asked whether he was bringing a discrimination claim. Mr King said he would have said that he was not bringing a disability claim because he had been told by the Respondent's doctor that he did not have a disability. Judge Dawson believed Mr King. He listened to his evidence and the questions the Respondent asked him and looked at the documents from 2018 and decided Mr King was telling the truth.
36. Judge Dawson asked why Mr King had put in the second claim form when he did, and he said it was because he had found out from a subject access request that the Respondent had not done anything about his grievance, and he was told that was wrong by someone who was giving him advice.
37. Mr King said that when he was being represented at the first appeal (so around September 2020) his barrister told him that he was protected under the Equality Act 2010.

38. Judge Dawson found that the picture of what happened is very confused. For some of the time Mr King was represented by lawyers, but he was not represented when he filled in his claim forms. Judge Dawson found that Mr King did not claim disability discrimination in his first claim form because he thought he could not do so because he had been told that he was not disabled.
39. Judge Dawson found that although Mr King was represented by lawyers at the hearing with Judge Gray, it was obvious that they did not raise the question of discrimination or seek to amend the claim form. Judge Dawson did not know why that was, but found it was clear they thought the only claim which was being made was one of unfair dismissal.
40. Having heard Mr King give evidence, Judge Dawson was satisfied that Mr King was unsure of his rights from 2018 onwards and was doing the best he could to understand the process. Mr King reacted to information as it came along and as he understood it. He issued the second claim form when he was told that the Respondent had been wrong not to finish his grievance. At some point he then became aware of the issues around disability discrimination and raised them with the tribunal shortly before the hearing in March 2021.
41. If Mr King was not disabled, or if he had been represented by lawyers throughout, Judge Dawson says he would have found that Mr King could, and he should have presented all of his claims in the first claim form. However, it is now known that Mr King was disabled when he put in his first and second claim forms and he was not always represented by lawyers.
42. Judge Dawson found that although a lot of time has passed since the allegations, the delay from August 2021 is not the fault of Mr King (or the fault of the Respondent). It is just a consequence of the legal process.

About the evidence and submissions Mr King gave at this hearing

43. Mr King submitted two witness statements to this hearing, a 10-page statement prepared for this hearing and the statement he had previously submitted (pages 145 to 151). He confirmed these were true by affirmation.
44. Mr King was not challenged on his evidence by the Respondent through the process called cross examination.
45. Mr King explained that he believed he had to exhaust the Respondent's disciplinary and grievance processes before he could do anything else.
46. Mr King says that he was obeying and trusting his employer's demand that he follows its rules and procedures for grievances, an employer he had been with for 19 years.
47. On the 13 November 2018 Mr King approached ACAS and was told that he was 6 days late to make an unfair dismissal claim and that he should immediately claim for it, which became his first claim. Mr King explains that he believed it

would have been unreasonable to also claim for the matters he had raised in his grievance without that being investigated by the Respondent, so he did not tick the box to indicate he was claiming discrimination. He clarified that it would not be reasonable to claim in the Tribunal before the employer had an opportunity to respond.

48. It is then within the letter to Mr King from the Respondent dated 3 December 2018 that he is told that his grievance could not be completed due to his suspension and then dismissal from the company (page 136).
49. It is not in dispute that the parties are informed in the notice of the first claim (dated 7 December 2018) that Regional Employment Judge Pirani had directed that as the Claimant had failed to identify the protected characteristic relied on, despite being asked, the claim can only be accepted as unfair dismissal. It was submitted by the Claimant that this added to him being “deadlocked” from claiming discrimination.
50. The Claimant provided this claim to the Employment Tribunal on the 14 July 2020 (page 33). He was asked why he provided it then. Mr King referred to being advised in 2020 and making a subject access request and then putting in his claim. This is consistent with what Judge Dawson has already found in his Judgment (as mentioned above).
51. About not claiming disability discrimination at that time, despite referring to being disabled in the claim form (page 41), Mr King confirmed that he was not sure about disability. He had been told by Occupational Health that he was not disabled.
52. I was referred to the letter from Mr King’s GP dated 23 December 2019 which refers to the Claimant having severe depression and anxiety and high levels of stress which may have an effect on his behaviour and judgement (page 98). I note that the letter does not state the Claimant is a disabled person within the meaning of the Equality Act.
53. Mr King says it was in 2021 that he was told by his advocate at the Employment Appeal Tribunal (EAT) appeal for the first claim that his mental health / medication / private counselling and carer duties to his wife came under the Equality Act (paragraph 29 of his witness statement) and why he then submitted the disability discrimination details he did in March 2021 (as confirmed in his oral evidence).
54. Mr King submitted if time was not extended, he would lose his right to potential justice.
55. It was said on behalf of Mr King that the inconsistency in the claim forms provided to the Employment Tribunal (the first does not refer to being disabled, or discrimination, but seeks a recommendation for discrimination (page 9) whereas the second claims sex discrimination, doesn’t seek a recommendation, and says the Claimant is disabled (page 41)) support that the Claimant did not know what he was doing and that he was impaired by the undisputed mental health challenges.

About what the Respondent submits:

56. The Respondent says that the Claimant despite the undisputed mental health challenges has been able to submit three Tribunal claims, a reconsideration and appeals to the EAT. The Respondent submits this means the out of time claims could have been submitted on time or earlier than they were.
57. It was acknowledged by the Respondent that if the Claimant was not granted an extension to bring the claim he will have lost his opportunity to challenge points. However, the nature of how this matter has unfolded with multiple complaints (including a third Employment Tribunal claim), it was argued by the Respondent that there is significant prejudice to it in continuing to contest this matter.
58. I would observe that Judge Dawson has found when deciding if the claim could continue that this second claim did not involve unjust harassment of the Respondent (paragraph 57 of his Judgment). Judge Dawson also believed the Claimant about his explanation for issuing the third claim and he did not find that that third claim was designed to harass the Respondent (paragraph 60 of his Judgment).
59. The Respondent submitted that its costs and resources are relevant, but it was acknowledged a smaller one given the nature of the Respondent. But it was submitted, the need for certainty and finality should weigh heavy in this regard.
60. It was asserted there may be evidential prejudice, but it was not demonstrated that there was real evidential prejudice. I would observe that the matters raised in this claim were matters that were communicated by grievances raised by the Claimant with the Respondent at the time.

The Law that applies to this decision

61. It is not in dispute that the complaints in this claim are all out of time unless it was just and equitable to extend time.
62. Section 120 of the Equality Act 2010 confers jurisdiction on claims to employment tribunals, and section 123(1) of the Equality Act 2010 provides that the 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.
63. Noting the principals from the cases of **British Coal v Keeble [1997] IRLR 336**; **Robertson v Bexley Community Service [2003] IRLR 434 CA**; and **London Borough of Southwark v Afolabi [2003] IRLR 220**;
64. Noting the factors from section 33 of the Limitation Act 1980 which are referred to in the **Keeble** decision:
- a. The length of and the 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 parties co-operated with any request for information.
 - d. The promptness with which the claimant acted once he knew the facts giving rise to the cause of action.
 - e. The steps taken by the claimant to obtain appropriate professional advice.
65. The Court of Appeal in the **Afolabi** decision confirmed that, while the checklist in section 33 of the Limitation Act provides a useful guide for tribunals, it need not be adhered to slavishly. The checklist in section 33 should not be elevated into a legal requirement but should be used as a guide. The Court suggested that there are two factors which are almost always relevant when considering the exercise of any discretion whether to extend time and they are: the length of, and reasons for, the delay; and whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).
66. It is also clear from the comments in **Robertson** that there is no presumption that a tribunal should exercise its discretion to extend time, and the onus is on the claimant in this regard ... "It is also important to note that 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 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".
67. A useful summary of the principles governing the exercise of the 'just and equitable' discretion was set out by Mrs Justice Elisabeth Laing (as she then was) in **Miller and ors v Ministry of Justice and ors and another case EAT 0003/15**:
- a. the discretion to extend time is a wide one;
 - b. time limits are to be observed strictly in employment tribunals. There is no presumption that time will be extended unless it cannot be justified. The reverse is true: the exercise of discretion is the exception rather than the rule;
 - c. if a tribunal directs itself correctly in law, the EAT can only interfere if the decision is, in the technical sense, 'perverse', i.e. no reasonable tribunal properly directing itself in law could have reached it, or the tribunal failed to take into account relevant factors, or took into account irrelevant factors, or made a decision which was not based on the evidence;

- d. what factors are relevant to the exercise of the discretion, and how they should be balanced, are a matter for the tribunal. The prejudice that a respondent will suffer from facing a claim which would otherwise be time-barred is customarily relevant in such cases;
- e. the tribunal may find the checklist of factors in S.33 of the Limitation Act 1980 helpful, but this is not a requirement and a tribunal will only err in law if it omits something significant.

68. As to prejudice, representatives have a duty to advance arguments about real prejudice. A balancing exercise always requires express consideration of both sides of the ledger, both quantitatively and qualitatively. It is not merely a question of the number of factors, but of their relative and cumulative significance in the overall balance of justice (**Vaughan v Modality Partnership** **UKEAT/0147/20/BA(V)**).

What has been decided at this hearing

- 69. I have decided that it is just and equitable to extend time in this claim so that it can carry on and be decided at a further hearing.
- 70. Based on the dates in this claim the sex discrimination complaint is just under two years out of time and the disability discrimination complaint is just over two and half years out of time.
- 71. I accept that the Claimant believed he had an active grievance in place with the Respondent until it was confirmed otherwise by the letter dated 3 December 2018 (page 136). This is the reason he did not submit a discrimination claim before then.
- 72. I accept that the Claimant believed he was then “deadlocked” into an unfair dismissal claim (page 19).
- 73. I accept his explanation, as also found by Judge Dawson, that it was through advice received in 2020 and a subject access request that the discrimination deadlock was released so he could then submit a sex discrimination claim.
- 74. I accept that he thought because disability status was not accepted such a claim could not be included until the advice he received in 2021, prompting him to submit the amendment application.
- 75. I accept what the Claimant did and when was impacted by the undisputed mental health challenges he faces.
- 76. Yes, the Respondent will need to defend this claim, but it relates to matters that it has been aware of at the time through its grievance and disciplinary processes. The Respondent has not demonstrated real evidential prejudice. In my view the prejudice is greater for the Claimant, who has done his best to have this matter heard despite undisputed mental health challenges, if time is not extended and this claim not allowed to continue.

Approved by:

Employment Judge Gray

Dated: 9 June 2025

Sent to the parties on
24 June 2025

Jade Lobb
For the Tribunal Office