



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Cooper

**Respondent:** 1st Choice Fitted Bedrooms Limited

**Heard at:** Manchester

**On:** 12 March 2025

**Before:** Employment Judge Leach

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr Boyd, Counsel

**JUDGMENT** following this public preliminary hearing having been sent to the parties on 1 April 2025 and written reasons having been requested by the claimant by letter dated 11 April 2025, in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

### A. Introduction

1. This Preliminary Hearing was listed to determine whether:-
  - a. the claim was presented within the applicable time limits (Time Limit Issue)
  - b. whether the claim should be struck out on the grounds that it had no reasonable prospects of success,
  - c. whether deposit orders should be made
2. I decided to dismiss the claim on the grounds that it was presented out of time and these reasons therefore focus on the Time Limit Issue.

## **B. The Hearing**

3. The respondent had made its applications and set out the basis for its applications, in advance of the hearing. The claimant gave evidence. She had provided a statement in advance of the hearing. Whilst I did not have a copy of the statement at the start of the hearing it was apparent from what the claimant provided during the hearing that it had been served in compliance with case management orders. The claimant was cross examined by Mr Boyd.

4. The claimant also attended with an extract from medical records that she wanted me to consider as well as a summary of research into relevant medical conditions. Whilst these documents should have been provided on the 5 February 2025, I agreed that I would take those into account and am grateful to Mr Boyd for not raising any objections to that.

5. In addition to the claimant's evidence I heard submissions from Mr Boyd and of course from the claimant.

6. I was also provided with a bundle of documents prepared for this hearing. References to page numbers are to this bundle.

7. I considered the evidence and submissions provided before reaching my decision to strike out the claim on the grounds that it was not issued within the applicable time limits.

## **C. The complaints.**

8. The claimant presented her claim on 26 March 2024. A preliminary hearing for case management purposes was held on 30 October 2024. Following that hearing, the Tribunal provided the parties with a document that summarised the discussions at that hearing, set out the case management orders made and attached a draft list of issues (Case Management Summary). A copy of the Case Management Summary is at pages 30-44.

9. The following is apparent from the Case Management Summary:-

- a. That the claimant was employed by the respondent for 6 months from May to November 2023.
- b. That although the claimant had included in her claim form a complaint of unfair dismissal, the claimant lacked the required 2 years continuous employment for a "standard " unfair dismissal complaint. The Judge at the hearing determined that there were no circumstances giving rise to an automatic unfair dismissal complaint and decided to dismiss the unfair dismissal complaint.
- c. Various complaints under the Equality Act 2010 were identified. All complaints relied on the protected characteristic of disability. The complaints arise from the respondent's decision to dismiss the claimant.
- d. The reason provided by the respondent for dismissing the claimant was that she was in possession of cannabis whilst in the workplace. The

claimant does not dispute this. The respondent also says that the claimant was (or appeared to be) under the influence of drugs whilst at work.

- e. According to the Case Management Summary and attached draft list of issues, the claimant brings a complaint under section 15 Equality Act 2010. She says the respondent treated the claimant unfavourably by dismissing her for being in possession of cannabis whilst at work. That dismissal was because of something arising in consequence of her disability – the something arising being “brain fog”. It was the brain fog, says the claimant, that made her forget she had cannabis in her pocket.
- f. The Case Management Summary also notes that the claimant brings a complaint of a failure to make reasonable adjustments. She relies on the following PCPs:
  - Not giving notice of a disciplinary hearing (the claimant says she was given one minute’s notice only);
  - Not allowing an employee to have a companion at a disciplinary hearing;
  - Predetermining the outcome of the hearing.
- g. The claimant says that her impairments mean that she needed more time and support to be able to present her response to the allegations. She says that adjustments should have been made, to provide the claimant with more time and to be accompanied by a colleague to the hearing.
- h. Paragraph 21 of the Case Management Summary noted the importance of an accurate and complete list of issues. The parties were provided with a period of time (14 days) to notify the Tribunal and the other party if the draft list of issues was not accurate and complete. There was no such notification from either party.

#### **D. Relevant Law - time limits.**

10. The claimant complains that the respondent was in breach of its obligations under the Equality Act 2010 (Equality Act 2010).

11. Section 123 EqA provides that complaints may not be brought after the end of 3 months “*starting with the date of the act to which the complaint relates*” (s123(1)(a) EqA. This is modified by section 140B – providing for early conciliation.

12. Section 123(1)(b) provides that claims may be considered outside of the 3-month primary time limit, provided that the claim is presented within “*such other period as the employment tribunal thinks just and equitable.*”

13. The EqA itself does not set out what Tribunals should take into account when considering whether a claim, which is presented out of time, has been presented within a period which it thinks is just and equitable. I note the following:-

- a. **British Coal v. Keeble EAT 496/96** in which the EAT advised, when considering whether to allow an extension of time on just and equitable grounds, adopting as a checklist the factors referred to in s33 of the Limitation Act 1980. These are listed below:-

- the length of and reasons for the delay;
- the extent to which the cogency of the evidence is likely to be by the delay;
- the extent to which the party sued had co-operated with any for information.
- the promptness with which the claimant acted once he or she knew the facts giving rise to the cause of action.
- the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

- b. **Rathakrishnan v Pizza Express (Restaurants) Ltd [2016] ICR 283 EAT**. This case noted that the issue of the balance of prejudice and the potential merits of the claim were relevant considerations to whether to grant an extension of time.

14. I note the Court of Appeal judgment in the case of **Robertson v Bexley Community Centre [2003] IRLR 434** (particularly paragraph 23-25).

15. As for the exercise of its power under section 123(1) I note the following passage from paragraph 25 of the judgment of Leggatt LJ in **Abertawe Bro Morgannwg University Local Health Board v. Morgan 2018 EWCA Civ 640 ("Abertawe")**

*the discretion given by section 123(1) of the Equality Act 2010 to the employment tribunal to decide what it "thinks just and equitable" is clearly intended to be broad and unfettered. There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard.*

16. In **Kumari v Greater Manchester Mental Health NHS Foundation Trust 2022 EAT 132** the claimant presented a claim alleging various breaches of the EQA 2010. They were presented out of time. The Employment Tribunal decided that it was not just and equitable to extend time, In reaching this, the Tribunal took some account of its view about the merits of the claimant's complaints. The claimant appealed the judgment, particularly on the issue of whether merits should be taken into account when deciding whether or not to allow a claim, issued outside of the primary time limits, to proceed.

17. The claimant's appeal was dismissed. In dismissing the claimant's appeal the Employment Appeal Tribunal (EAT) rejected the claimant's argument that the Tribunal should not have taken account its view on the merits of the case when considering whether it was just and equitable to extend time. The EAT did note however that that the assessment of merits must have been properly reached by reference to identifiable factors that are apparent at the preliminary hearing, taking account of the fact that the tribunal does not have all the evidence before it, and is not at the stage conducting the trial.

## **E. My Decision**

18. It is not disputed that the claimant was issued outside of the primary time limit. The relevant dates are also undisputed.

18.1 The claimant was dismissed on 2 November 2023,

18.2 She commenced early conciliation on 4 January 2023,

18.3 Early conciliation finished and the date of the early conciliation certificate was 15 February 2024,

18.4 The claim should have been presented by no later than 15 March 2024 but was not presented until 26 March 2024.

### Awareness of relevant time limits.

19. This is not the first claim that the claimant has brought in the Employment Tribunals. During her period of employment with this respondent, the claimant was progressing proceedings against her former employers (first claim). The claimant provided a spreadsheet that summarised correspondence relating to that claim and it was apparent from the information on that spreadsheet that the first claim was issued and progressed during and following the claimant's employment with this respondent.

20. I find the claimant was able to engage in administrative and litigation processes following her dismissal.

- a. The claimant successfully applied for state benefits of Universal Credit and PIP.
- b. The claimant successfully pursued the first Employment Tribunal claim to a resolution in the form of a settlement.

21. The claimant has not given evidence that she was unaware of time limits applicable. I find that she was aware of the time limits applicable to her claim. Relevant here of course is her previous experience of Employment Tribunal claims.

### Medical conditions

22. The claimant's evidence and explanation for the delay in issuing this claim is that her time and cognitive resources were taken up in February and most of March 2024; certainly, says the claimant, until settlement terms were agreed on or around the 20 March 2024. Only following that date was the claimant able to turn to this claim and take steps to present it, and the claimant says that medical evidence provided

indicates that her impairments were effectively preventing her from (or significantly disadvantaging her from) engaging in the processes necessary to issue this claim. It was necessary therefore for me to consider relevant medical evidence.

23. The claimant provided medical records. It is apparent from these records that the claimant has a condition of Myalgia Encephalomyelitis (ME) and an anxiety related condition.

24. GP notes provided indicate that the claimant had an appointment on 12 March 2024. There are no relevant entries before then that I have been asked to consider. The information provided on the GP record for that appointment runs to about half a page. I have read it. There is nothing in there to indicate that the claimant was medically unable to present her claim within the time limit prescribed. Whilst there is reference to a condition of ME being more difficult to manage which has in turn caused her anxiety to be more difficult to manage there is nothing to indicate, for example, that the claimant cannot engage in work or carry out other tasks. Further, we know from other evidence provided that the claimant was engaging in litigation and other administration tasks.

25. I do not accept from the evidence that I have received that the claimant's medical impairments made it particularly difficult for her to have presented an Employment Tribunal claim on time. I do not accept from the evidence provided that those impairments were the reason the claimant did not present her claim on time.

#### Other considerations

26. Notwithstanding my findings and decisions above, I need to go on to consider whether it would be just and equitable to allow the claim to proceed. I note the guidance from the Court of Appeal in Abertawe that the absence of a good reason for the delay does not in itself mean that it cannot be just and equitable to allow the claim to continue.

#### Prejudice

27. Mr Boyd does not try to argue that the delay of eleven days has resulted in forensic prejudice – that the respondent is somehow prejudiced from obtaining evidence as a result of this delay.

28. If I exercise my discretion against the claimant, she will be prejudiced in not being able to proceed with her claim. If I exercise in the claimant's favour then the respondent will be prejudiced by having to continue to respond to the claim. In considering potential prejudice from allowing (or not allowing) this claim to proceed, I have also taken into account the following.

- a. The submissions made by the claimant put into great doubt that the complaints that were carefully formulated at the previous (case management) preliminary hearing are the ones that she wants to proceed with. In today's hearing the claimant has raised what she says is a clarification about the withdrawal or dismissal of the unfair dismissal complaint, that the reference to unfair dismissal should have been wrongful dismissal. However, the claimant has told me that within the wrongful dismissal claim the claimant appears to want to bring up the

respondent's failure to follow fair procedures as well as their own procedures. These complaints were not apparent from the Case Management Summary. The claimant was instructed to notify the Tribunal and the respondent if the list of issues was not accurate and complete. She did not do so.

- b. In her submissions (but not in her evidence) the claimant provided a detailed explanation about her use of cannabis over the last twenty years; that it had been for medicinal reasons to control pain and that her GP was aware of this. She also told me in her submissions that the GP was prescribing legal Cannabis for the claimant to use in the future. I have no documentary evidence to support the claimant's submissions but it became apparent that the claimant wanted to reformulate the discrimination complaints, that the alleged "something arising" from the claimant's disability was not brain fog but was cannabis use. These are matters that were not mentioned at the previous hearing even though the parties had attended that hearing and discussed and identified the complaints and issues.

29. Extending the time limit, allowing the claim to proceed, would not just result in the respondent facing the identified complaints at the final hearing in August 2025; it would leave the respondent facing further case management and almost certainly an application to significantly amend the claim, I have decided that would amount to significant prejudice given that the case is listed for a final hearing in August. Further case management would likely lead to a postponement and relisting of the final hearing.

30. That additional work and additional delay increases the prejudice that would be caused to the respondent if the claim was allowed to proceed. That increased prejudice could (and should) have been avoided by the claimant setting out her complaints more accurately at the previous preliminary hearing and/or notifying the Tribunal and the respondent that the draft list of issues was inaccurate.

### Merits

31. I considered the merits of the complaints as currently formulated. I agree with Mr Boyd's submissions that the reasonable adjustments claim is almost bound to fail on the PCP point alone. The documents provided showed that the respondent had disciplinary and dismissal procedures in place (although copies of those procedures were not in the bundle before me). The claimant's complaint is, in essence, that the respondent did not apply its policies to her; not that it had a policy of not (for example) allowing employees a right to be accompanied.

32. Further, the respondent's stance on an employee being in possession of illegal drugs is clear and reasonable. There is no dispute that the claimant (an employee with only 6 months' service) was in the workplace, in possession of illegal drugs. Giving more notice of a hearing, allowing a right of accompaniment would almost certainly have made no difference to the outcome.

33. There is also little, if any merit in the Section 15 complaint as currently formulated although as noted above, the claimant wanted to put her Section 15 complaint in a different way had I allowed the claim to proceed.

34. In summary:-

- a. I do not accept the claimant's explanation or reason for the delay.
- b. the respondent will be prejudiced, not just in having to continue to defend the claim up to the final hearing in August 2025, but in terms of the further work that will be incurred before a final hearing in August, if indeed August remains as a realistic date for a final hearing. That work would almost certainly include further case management – in terms of an application to amend the claim and/or further clarification of the list of issues. Such case management would be necessary before witness statements are prepared and would likely result in further delay.
- c. the complaints have little (if any) merit.

35. Collectively these factors lead me to conclude that it would not be just and equitable to allow the claim to proceed outside of the primary time limit. I dismiss the claim.

Approved by

Employment Judge Leach

29 May 2025

JUDGMENT AND REASONS SENT TO THE PARTIES ON

1 July 2025

FOR THE TRIBUNAL OFFICE

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