EMPLOYMENT TRIBUNALS

Claimant: **Mr S Vinokaran**

Respondent: **Tesco Stores Limited**

Heard at: London Central (in person) **On:** 10 July 2025

Before: Employment Judge B Smith (sitting alone)

Representation
Claimant: **Ms E Godwins (Solicitor)**
Respondent: **Mr Ismail (Counsel)**

JUDGMENT having been sent to the parties on 15 July 2025 and written reasons having been requested in accordance with Rule 60 Employment Tribunal Rules 2024, the following reasons are provided:

REASONS

1. By Judgment dated 10 July 2025 I reached the following conclusions:

    a. I dismissed the claimant's application oral to amend the claim.

    b. Complaint of unfair dismissal and in respect of holiday were not presented within the applicable time limit and it was reasonably practicable to do so. Those claims were dismissed.

    c. Complaints of direct race discrimination, direct disability discrimination, unfavourable treatment because of something arising

in consequence of disability, failure to make reasonable adjustments and harassment related to disability were not presented within the applicable time limit. It was not just and equitable to extend the time limit and those complaints were dismissed.

2. These are my reasons.

Preliminary points

3. By orders of EJ Walker dated 4 April 2025 a preliminary hearing ('the Preliminary Hearing') was listed to determine whether the tribunal had jurisdiction to consider the claimant's claims for unfair dismissal, notice pay and unauthorised deductions of holiday pay in light of the fact that the claimant was dismissed on 14 April 2024 and a period of three months from that date expired prior to: (a) the claimant contacting ACAS under the early conciliation process, and (b) the claimant filing the ET1. Also, whether the tribunal had jurisdiction to consider the claimant's claims for discrimination in light of the fact that the claimant was dismissed on 14 April and a period of three months from that date had expired prior to: (a) the claimant contacting ACAS under the early conciliation process and (b) the claimant filing the ET1. Those orders include at [10] '*I have worked with the parties on the list of issues which is in draft in the Schedule to this order in accordance with EAT guidance to tribunal judges to 'roll up your sleeves' and spend the time to get the list identified at a preliminary hearing for case management. [11]* ***We discussed the ET1 form line by line in detail during the hearing****. I have the claimant's representative a break to take instructions on a number of matters. The claimant's representative confirmed that a number of statements in the ET1 were background and not matters for which the claimant sought a remedy.* ***I have recorded all the matters that the claimant identified as claims****…'*. (emphasis added)

4. The identified claims were for unfair dismissal; notice pay (alternatively as unauthorised deductions from wages); direct race discrimination; direct disability discrimination; unfavourable treatment because of something

arising in consequence of disability (where the unfavourable treatment is expressly identified at 8.1.1 as '*dismissing [the claimant]'),* failure to make reasonable adjustments, and harassment related to disability.

5. At that hearing the claimant was represented by a trainee solicitor. The claim form was presented on 22 October 2024 and was completed by the claimant's solicitors at a law firm. ACAS Early Conciliation started on 12 August 2024 and ended on 23 September 2024.

6. I should record that at the start of the hearing the claimant's written application to amend the claim form dated 26 June 2025 was granted by consent although as I granted it I expressly stated that this did not alter the scope of the claim. This amendment (only) corrected a typographical error in the claim form at box 8.2 page 7 ie. the claimant's reference to his last meeting held on 14 April 2024 was amended to 17 May 2024.

7. I considered an agreed bundle paginated to 112. Although I had previously read as part of my preparation for the hearing a bundle of 60 pages prepared for an earlier preliminary hearing on 2 April 2024, and made sure that the parties could access parts of that bundle (namely meeting outcome letters sent to the claimant) so that they could advise and take instructions, I heard submissions from the claimant's representative that the claimant contested some of the things referred to in those outcome letters and stated that if they were to be fairly taken into account then the claimant's appeal documents would also need to be considered, and these had not been included in the bundle for this hearing. I accepted that it would be unfair in those circumstances to make any relevant determinations involving the earlier bundle documents, given that it was only part of the evidence and related to facts contested by the claimant. I therefore expressly do not make any findings on that basis.

8. I also had witness statements from the claimant, Ms Christy (the claimant's supporter). The claimant was represented by a solicitor advocate with support from the instructing firm. The respondent was represented by

counsel. There was also a 'case summary' relied on by the claimant giving the reasons relied on for time limits.

9. The claimant was supported at the hearing by Ms Christy. A Tamil interpreter was only available via a laptop. In the circumstances, only the claimant's evidence was interpreted. This was agreed by the claimant's representatives because he was professionally represented and Ms Christy was present to support and explain things to the claimant. No other adjustments were required for the hearing.

10. In terms of procedure, the Tribunal first heard the claimant's evidence, then heard submissions on the claimant's oral application to amend the claim, a decision on this was made and announced with oral reasons, and then there were submissions and a decision on the substantive time limit issues above. The parties overall agreed to that order of proceedings. The claimant's representative was given time to take instructions as required. Although in closing submissions on time limits the claimant's advocate suggested reliance on the claimant's appeal documents (not in the bundle), having been reassured by the Tribunal about the points in paragraph [7] above, this point was not pursued.

11. The claimant gave evidence under oath and was cross-examined. The respondent did not require Ms Christy's evidence to be cross-examined so this was taken as read by the Tribunal.

12. I should also record that, following an application by the respondent, the claimant agreed to waive privilege over advice provided by the CAB and so unredacted copies of pages 70 to 103 were provided during the hearing.

13. For completeness, although at the Preliminary Hearing the possibility of the claimant applying to amend the claim to include victimisation claim was raised, I confirmed that that this was not pursued.

14. The claim for notice pay (alternatively unauthorised deductions from wages) was withdrawn during this hearing following a goodwill offer from the respondent. The claimant confirmed that the holiday pay claim remained (although unspecified, it was said that this required disclosure before better particulars could be provided), and the claimant was content with the alleged PCP in the list of issues for the reasonable adjustments claim.

15. In addition to the points raised in the claimant's skeleton argument, the respondent raised on Sakyi-Opare v The Albert Kennedy Trust [2021] UKEAT 0086 in respect of the correct order to determine matters and the claimant raised Lowri Beck Services Limited v Brophy [2019] Civ 2490 (Underhill LJ at [12]). In Lowri the EAT upheld a decision to extend time limits in circumstances where the Tribunal had focussed on comparative prejudice and there was no rule that required a good explanation for the delay to be established before time could be extended in discrimination claims. In that case, the upheld decision also involved a finding that the genuine belief of the employee's brother about the effective date of termination was objectively reasonable.

16. I took into account the authorities in the respondent's skeleton argument even if not expressly mentioned in these reasons.

The claimant's oral application to amend

17. Before turning to the substantive issues, I asked the parties if anything arose from the list of issues. The claimant had not raised any disagreement with the list of issues in correspondence before the Tribunal and did not proactively raise any difficulties with the list of issues before I checked this with the representative. However, at this stage the claimant's advocate asked to include the claimant's appeal as an additional issue in the claim of unfavourable treatment because of something arising in consequence of disability contrary to s.15 Equality Act 2010 ('the s.15 Claim'). It was necessary to clarify exactly what the claimant's representative was referring to, and it was established that the claimant invited me to include as a new

issue 8.1.2 '*the decision to not uphold the appeal'* (of dismissal). The respondent did not agree that this was part of the original claim. This is correct. On the ET1 the closest that comes to this is that it says in box 8.2 '*On 14 April 2024, Claimant was dismissed due to capability. At the last meeting held on 14 April 2024, Claimant protested the process embarked on that lead to the dismissal. Claimant was advised that he has been off for 9 months with no attempt to return.'* This was the date that was corrected by way of amendment to 17 May 2024, the claimant's appeal meeting.

18. I agreed with the respondent that this fell outside of the pleaded claim – both from the ET1 and following the express clarification at the previous Preliminary hearing – and therefore it required an amendment application. The claimant's representative was content to deal with this during the hearing as an oral application. The claimant's representative submitted that it was not appreciated that when the written application to amend was made that additional information was required, and it was clarified that what was also required was to add into box 8.2 '*the appeal manager refused the claimant's appeal against dismissal for this reason'* and, after clarification by the Tribunal, the words '*and this is discrimination arising… [ie. s.15 EQA]*' The claimant submitted that this was the sort of issue that was alluded to and was inherent in the original claim, although it was accepted that it was not expressly set out. It was also submitted that, despite the terms of the orders resulting from the earlier Preliminary Hearing, it had been simply omitted from the list of issues as a live complaint, and it would not cause the respondent any prejudice, the appeal having been mentioned in the Grounds of Response. It was also submitted that the trainee solicitor who represented the claimant at the earlier hearing was not alert to the error regarding the date, and that the claimant was not aware that this error had not been corrected and he should not be penalised because of another's oversight. The claimant accepted that this amendment was out of time, and that time would run on that amendment from today's date.

19. The respondent resisted the application, relying on the fact that both parties were represented and that hearing dealt with the claims in detail, especially

given that the claimant's representative was expressly given the opportunity to check with the claimant that nothing had been missed in the list of issues. It also relied on Maruufo v Bournmouth Christchurch and Poole Council UKEAT/0103/20 in which the EAT described the claimant's case as a '*movable feast'* and '*an evolving concept in her mind which involved various iterations'*, upholding a refusal to permit an application to amend to include new claims where the Tribunal had already assisted in the identification of the claims, and that at [49] '*Some procedural rigour is necessary, even in the relative informality of the Employment Tribunal'*.

20. Also relevant from Mafuufo is paragraph [38]:

'The underpin to the exercise of the wide powers of case management is the Tribunal's overriding objective which enables cases to be dealt with fairly and justly. Dealing with a case fairly and justly includes, so far as practicable, showing that the parties are on an equal footing, dealing with cases in a way which is proportionate to the complexity and importance of the issues, avoiding unnecessary formality and seeking flexibility in the proceedings, avoiding delays so far as compatible with proper consideration of the issues and saving expense. Those are all important matters, some of which do not easily sit alongside each other. It is the duty of the Tribunal to have all those matters in its mind so that it can exercise its discretion fairly and justly. Precision, specificity and clarity are required in the statements of case or pleadings in the Tribunal, particularly in discrimination complaints and complaints where a number of causes of action are relied on. The Respondent has to know the case it has to meet to enable it to respond with equal precision, specificity and clarity and to enable both sides to understand the issues in dispute and prepare for an eventual hearing.'

21. The Tribunal has a discretion to permit amendments to a party's statement of case. The two principal authorities to be applied are Selkent Bus Company v Moore [1996] ICR 836 and Vaughan v Modality Partnership UKEAT/0147/20/BA(V). In summary, when exercising my discretion I must take into account the overriding objective, and all the circumstances. These

include the nature and extent of the amendment sought; the timing (including time limits and the implications of the amendment in terms of the impact on the trial timetable or costs); the merits (to a degree) of the proposed amendments; and the relative prejudice and hardship or injustice that would be caused to the parties if the application were to be permitted. In particular, applying Vaughan v Modality Partnership, I must expressly consider the balance of prejudice and injustice when making my decision.

22. In making my decisions it was necessary to first consider the nature of the amendment sought, and in particular whether it amounted to the addition of factual details to existing claims, whether it was the addition or substitution of other legal labels for the existing pleaded facts, or whether it amounted to a new claim. It was also appropriate to take into account time limits when considering a new claim to be added by way of amendment, although that is an issue which can be determined substantively at a later stage. For the purposes of the hearing I took the time at which any new claim is deemed to have been received as the time at which the application to amend was made. I also could take into account the extent to which any amendment would involve different areas of enquiry (Abercrombie v Aga Rangemaster Ltd).

23. I also considered Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT 132, at [88], namely when considering the merits of an amendment:

'Once again, we do say that the employment tribunal should proceed with care and caution and, if it is relying on its general view of the strength of a proposed complaint as a point against granting the amendment, then it must identify a reasoned basis for doing so on which it is properly entitled to rely, bearing in mind that it does not have before it the full evidence that the tribunal would have at a full hearing, and the need to avoid becoming drawn in to conducting a mini-trial. But, if it reaches that view properly, then questions of weight and balance are then for it to decide, and the EAT can only intervene on grounds of perversity.'

24. The oral application to amend the claim to include a new s.15 claim where the unfavourable treatment was the appeal manager refusing the claimants appeal was refused. I found that this was, substantively, a new allegation. It was separate and distinct from the claimant's dismissal and is not, for example, a background detail, or a simply factual allegation that is not in of itself a separate claim. Nor is it akin to adding into an existing harassment claim another event which is said to amount to be harassment as part of a course of conduct. It was a new substantive allegation in the circumstances of this case.

25. I consider that the timing and manner of the application was a factor to hold against the claimant. It was not made at an early stage of proceedings. The appeal had not been responded to in the Grounds of Response as an act of discrimination. The application was not in writing and, in a more relevant sense, nor was the claimant's request to include as part of the list of issues the appeal indicated to the respondent in writing before the hearing. In fact, the idea that the appeal was a s.15 claim only arose when I asked the parties if there was anything to amend in the list of issues. Moreover, this was not, in my judgment, a case of an oversight by the representative at the Preliminary Hearing, and it was not an oversight by the claimant. The issue was not raised in the written application to amend a typographical error of a date. Nor is there any good evidence that this was an oversight by either the claimant or his representatives. If this was the case, I would have expected it to have been raised in correspondence before the hearing. Nor was this suggestion properly supported by evidence. Also, it is contradicted by the clear terms of the careful hearing conducted by EJ Walker and the orders set out above. The ET1 was drafted by the claimant's solicitors and he had also previously been advised by the CAB.

26. The new claim is also out of time by a very wide margin. I had the benefit of having heard the claimant's evidence on time limits before making a decision on the amendment application and so was not making an assessment on the likelihood of time limits being extended in a vacuum. In those circumstances, I considered that there were very strong arguments

against it being just and equitable to extend time by around 11 months, particularly when the claimant was advised at an early stage by the CAB and had been professionally represented in the drafting of the ET1 and at the previous Preliminary Hearing.

27. Overall, I considered that although there would be some prejudice to the claimant if this particular s.15 claim about the appeal was not permitted as part of the claims, there would be limited prejudice. This is because, as at the time of making the application, the claimant had many other live claims which were not contingent on the amendment. The core of the claimant's complaint was his dismissal which was not subject to this amendment. Also, there is limited prejudice to the claimant to not be permitted to include a claim which faced difficulties on time limits. I considered carefully the extent to which I could fairly factor in the merits of the claim. Given the factual dispute between the parties surrounding the appeal and lack of documentation available to me today I did not make such a determination. However, on the basis of the time limits issue alone (and only), this was not, on its face, a strong claim to bring in by way of amendment.

28. On the other hand, there would be real and material prejudice to the respondent if the application were to be allowed. A revised Grounds of Response would be required, costing the respondent time and money. There was something inherently prejudicial to a respondent in allowing a substantially out of time claim as an amendment. Also, I considered that expanding the acts of discrimination to the appeal stage amounted to a not insubstantial expansion of the scope of the claim, given that it would add to the length of the final hearing, at least one additional witness would be required, and the tribunal's analysis of the appeal as a separate act of discrimination would require further submissions and deliberation and judgment time. Overall, I considered that the balance of prejudice was against allowing the amendment.

Substantive decisions on time limits

29. Time limits for the claims of unfair dismissal, holiday pay and notice pay are governed as follows. Section 111(2) ERA 1996 (for unfair dismissal) says

> *(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—*
>
> *(a) before the end of the period of three months beginning with the effective date of termination, or*
>
> *(b) 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.*

30. It is similarly the case in a claim for notice pay (article 7 Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994) and unauthorised deductions from wages (s.23(2) ERA 1996). It runs from '*the date of payment of the wages from which the deduction was made'.* It is similarly the case for holiday pay under the Working Time Regulations 1998 ('WTR') (reg 30(2) WTR) from the date of the alleged breach.

31. ACAS Early conciliation extensions apply.

32. Relevant factors on whether it was reasonably practicable include whether the claimant knew they had a right to complain, whether the claimant was advised and by who, the extent of the advisor's knowledge, whether there has been fault by the claimant or respondent influencing compliance with the time limit, and all the circumstances: Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119 at [34] CA. Where a claimant knows of their rights to make a claim they are under an obligation to seek information and advice about enforcing that right: Trevelyans (Birmingham) Ltd v Norton [1991] ICR 488. If ignorance of rights is relied on, I must ask if this was genuine and also reasonable: Porter v Bandridge [1978] IRLR 271 at [12] CA. The onus is on the claimant. This includes what the claimant

reasonably ought to have known: Nolan v Balfour Beatty Engineering Services EAT 0109/11. It is the claimant's responsibility to appraise themselves of time limits: Cygnet Behavioural Health ltd v Britton [2022] EAT 108 at [53] and this can include their own internet research (at [56]).

33. Early conciliation extensions do not apply where the limitation period has already expired before early conciliation commences. Applying Pearce v Bank of America Merrill Lynch and ors EAT 0067/19, which concerned a case where the claimant's legal advisors had erroneously assumed the benefit of an early conciliation extension, the EAT upheld a decision that such a claim had not been lodged within a reasonable period after it had become reasonably practicable to commence proceedings.

34. The respondent relied on the Dedman principle, namely Dedman v British Building & Engineering Appliances Ltd [1974] ICR 53 as applied in Walls Meat Co Ltd v Khan [1979] ICR 52 and Riley v Tesco Stores Ltd [1980] ICR 323. Riley held that the EAT and original ET were correct to conclude that it was reasonably practicable for an employee to present a claim within the three-month time period notwithstanding that they had been wrongly advised by the CAB that she could delay the claim until related criminal proceedings were completed. The test was not whether the claimant had been advised by a 'skilled advisor'.

35. Time limits for claims under the EQA are governed by s.123:

> *(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—*
>
> *(a) the period of 3 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*
>
> *[…]*
>
> *(3) For the purposes of this section—*

> *(a) conduct extending over a period is to be treated as done at the end of the period;*
>
> *(b) failure to do something is to be treated as occurring when the person in question decided on it […]*

36. ACAS Early conciliation extensions apply.

37. I have a wide discretion to extend time on just and equitable grounds: Jones v Secretary of State for Health and Social Care [2024] EAT 2. Relevant factors I should normally take into account are: the length of (and reasons for) the delay, and whether the delay has prejudiced the respondent (for example, preventing or inhibiting it from investigating the claim while matters were fresh), whether someone was in ignorance of their rights or had received incorrect advice, if there was an ongoing internal procedure, and reasons relating to disability or ill health.

38. I must distinguish between acts which are properly analysed as conduct extending over a period and discrete acts with continuing consequences. Also, the statute requires us to distinguish between acts extending over a period and a succession of unconnected or isolated specific acts: Hendricks v Metropolitan Police Commissioner [2003] IRLR 96.

39. To summarise the many authorities on this issue, I must not treat any one factor as conclusive or determinative by its nature, and it is not the case that there must be a finding of a good reason for delay before extending time, and it is equally not the case that there must be a finding of forensic prejudice to the respondent before refusing an extension of time.

40. The respondent's oral submissions, in summary, included that there was no medical evidence to support the claimant relying on health (ie depression) as a reason for any delay, particularly where the claimant's inability to work was not the same as preventing him from doing (as he admitted) activities such as visiting the library and accessing advisors (with support), he had access to those who could assist him with English and documents, and it

wasn't reasonable if he didn't read or follow the advice he was given. It was also unreasonable not to do his own research. Also, even if it was not reasonably practicable, the claimant's delay in contacting ACAS was not because he thought his case was actually in time, on his own evidence under cross-examination.

41. The claimant's oral submissions, in summary, were that the claimant thought he was within time, believing that time ran from his unsuccessful appeal, and as he genuinely believed he his claim was in time, his claims were brought such they were brought when it was reasonably practicable and within a reasonable period of time, bearing in mind his difficulties with English.

42. On the basis of the written documents and oral evidence, I make the following findings.

43. The claimant was employed as an Express Customer Assistant from November 2003. The claimant was treated for a heart condition on 28 June 2023 and signed as unfit for work from 3 July 2023 and did not return to work thereafter. A formal absence process was carried out by the respondent. The claimant was dismissed on 14 April 2024 when he was dismissed for reason of capability. He appealed the decision and the appeal meeting was on 13 May 2024, continued on 17 May 2024. The appeal was not upheld. The claimant accepted in cross-examination (and I find accordingly) that he believed he had been unlawfully dismissed and subjected to discrimination in April 2024, and he accepted that he must have known that if he did believe Tesco to have acted unlawfully, he could bring a claim to a court.

44. The claimant spoke to staff at Walthamstow Central Library and were advised to speak to the CAB. The claimant contacted a triage worker there on 26 or 27 May 2024. The claimant gave evidence, that I accept, that this delay was due to the worker being on holiday. I do not accept that this delay

was because the claimant was unwell, as he alleged in oral evidence, because there was no medical evidence to support that assertion.

45. Mr Chater of the CAB emailed the claimant on 28 May 2024. This included '*We cannot offer immediate assistance on your case….it is your responsibility to pursue any deadlines you may have*.' The claimant accepted that Ms Christy translated this email to him on 3 June 2025. The claimant also accepted in cross-examination that he understood that deadlines were his responsibility.

46. The claimant accepted that the forms (at bundle p102) were those that Ms Christy had helped him fill out and translate. She also translated the letter ending at p112 and the claimant agreed that he had signed it to confirm his understanding of the document. The claimant's signature was dated 3 June 2025. This document included that the time limits were strict legal deadlines for bringing a discrimination case and it was 3 months less 1 day in employment cases and 6 months less 1 day for all other cases, from the date of the last act of alleged discrimination. Although the claimant sought to say in cross-examination that he had only read that part of the letter just now – in the hearing – I reject this as lacking credibility. The claimant had already accepted in cross-examination that the letter had been translated to him by Ms Christy.

47. The claimant was informed on 18 June 2024 that it would be up to three weeks for the merits and benefits assessment of citizens advice to be carried out. The claimant accepted under cross-examination that he took no steps to research online how to bring a claim or time limits. Although the claimant under cross-examination sought to rely on alleged depression as to why he did not take any searches online himself, this is not supported by any other evidence and I do not consider it is supported as a material fact. In any event, he also accepted not asking his friends to do any such search for him, and I find that this was the case accordingly.

48. The claimant was asked about whether he had contacted ACAS to start the early conciliation process by his discrimination law caseworker by email on 31 July 2024. The claimant attempted to call ACAS, with the help of Ms Christy, on 31 July 2024, but could not get through. He informed his caseworker of this by email on 31 July 2024 at 12:41 and she replied 12:52 that he needed to contact ACAS and start the process otherwise he was at risk of running out of time, and he was clearly advised that he couldn't start the Employment Tribunal process before ACAS had been contacted, and all deadlines were his responsibility. The claimant accepted under cross-examination that this is what he had been advised at that point.

49. Although the claimant contacted ACAS on 1 August, he sought to give evidence that ACAS had delayed starting early conciliation. I reject this as lacking credibility: the claimant by email to his case worker stated that he only made contact with ACAS' general advice team. The claimant accepted in that email that ACAS had offered for help to him during that call.

50. The claimant did not start early conciliation until 18 August 2024. Although the claimant sought to rely on his health condition as to why there was a delay until this point, there was no supporting evidence of this, or anything else to suggest that he was unable to start early conciliation. He also accepted in cross-examination that the reason for the delay at that point was <u>not</u> because he thought his claim was in time. The claimant also received clear legal advice from his discrimination case worker dated 2 August 2024 that the claim must have been brought to the tribunal within 3 months less 1 day from the last act of discrimination. It also stated that the claimant had been advised to contact ACAS as he had not yet started the early conciliation process, and a claim had not yet been made to the Tribunal.

51. Accepting Ms Christy's evidence on this point, following the issue of the ACAS certificate, she spoke to the claimant about the next steps, she explained the options he had and she checked with him if he wanted to take the matter to court. She also looked for a lawyer for the claimant and found

his current solicitors around the end of September 2024, following which there were meetings between the lawyers and the claimant with her interpreting.

52. I accept that the claimant has English as a second language and he is not fluent. Although at work his English is good enough to help customers and speak with colleagues, he relies on family members to read letters about his employment.

53. Although there was a dispute between the parties about when time ran for the holiday pay claim, the claimant stating that because he was paid monthly, it was not due until the end of the month after his dismissal, I consider that time runs from the date of termination (that having been without notice in this case) because that is when he was legally entitled to any unpaid holiday pay. However, this does not materially affect the decisions below in any event.

54. I should record that the written advice the claimant received from the CAB dated 2 August 2024 about the claimant bringing a claims for discrimination was negative. This was from a discrimination case worker. The advice included that at the time of the claimant's dismissal there was no prospect of a return in the near future and this would give the respondent a legitimate aim. It included that whilst potentially at the time of the claimant's appeal outcome the claimant might have been able to return, there was no evidence to suggest that this was something the claimant wanted to do. Whilst I accept that this is not the claimant's position (at least as it is articulated now), this is the advice he was given by the CAB. The advice also included '*The respondent is able to dismiss people for capability and all the evidence they had when they made the original decision suggested that you were not capable after a year of sickness leave. The appeal just looked at whether the decision made in the first place was the correct decision.'* The advice also included that the claimant had been advised to contact ACAS as he had not started early conciliation and recorded that no claim had been made to the Employment Tribunal.

55. I find that the claimant did not originally know about the time limits applicable to his claims, accepting his evidence of this. However, I do find that the claimant ought to have done. Even with the limitations on the claimant's English, I find that his initial ignorance of time limits was not reasonable in all the circumstances. This is because he did have access to family and friends who could help him with English. He was also aware of the matters I find above about his believe that he had been discriminated against and he would need to take the matter to a Court or Tribunal. He was therefore aware of his right to being a claim generally. The claimant failed to research the subject himself and also failed, without any good reasons, to ask others to do this for him (save as set out above). It is clear that with a very few simple internet searches that the basic rules on time limits in the Employment Tribunals can be found without professional assistance. Even if the claimant was suffering from depression, there is no sufficient evidence that this prevented him from taking steps to establishing the position on time limits himself or through others. He readily had the support of Ms Christy from an early stage.

56. I also find that the claimant had knowledge of the issues relating to time limits from 3 June 2024, based on the documented advice on time issues set out above. If this is wrong, then any such ignorance of the advice he was given cannot have been reasonable if the claimant did not – as he suggested in evidence – choose to read that advice.

57. The claimant's submissions in part rely on the suggestion that he believed that he was in time and this was the reason for his delay. I reject that suggestion as a matter of fact. I do not find it more likely than not that this was the case. I accept that the claimant gave two conflicting answers on this area in cross-examination, namely he did not agree with the respondent with it was put to him that he knew he was in time, but he did agree that a belief that he was in time was not the reason he delayed contacting ACAS. However, for the claimant to have a belief that his claims were in time was on the basis that time would run from the date of his appeal and not his dismissal. There is no good reason for the claimant to have formed that

belief, or if I am wrong, any such belief was not reasonable. This is because it is clear from the ET1 that the claimant's case – until the oral amendment application – was not that the appeal outcome was discriminatory ie. the last act of discrimination. If that was the case then the ET1 would have said so, and or it would have been raised by the claimant during the Preliminary Hearing. EJ Walker expressly confirmed during the hearing that those points in the ET1 not articulated in the list of issues were background only.

58. I also do not find on the timeline above that the claimant acted promptly when it came to liaising with ACAS despite the documented advice that this was something he needed to do. Ultimately, it was clear from the communications from the CAB that the claimant knew that deadlines were his responsibility and also they were chasing him to raise matters with ACAS. I do not consider that all of the claimant's interactions with the CAB, taken as a whole, provide an objectively reasonable basis for him to either believe that he was in time, or was acting reasonably in terms of how and when he progressed the claim. Importantly, the claimant's reasons in evidence for his delay in contacting ACAS after receiving the CAB advice was health related (not evidenced) rather than because he honestly and reasonably believed that his claim was in time.

59. The delays in presenting the claim after he was represented by solicitors were also not reasonable. If it is the case that his solicitors wrongly believed that they could rely on ACAS conciliation then this would not assist the claimant: such a reliance would not be reasonable.

60. In light of the above findings, I do find that it was reasonably practicable for the claims of unfair dismissal and holiday pay to have been brought within the initial three-month time period. Any ignorance on the part of the claimant was not reasonable in all the circumstances. He had received advice from the CAB by 3 June 2024 and still had not contacted ACAS until 12 August 2024. He had ample opportunity to research the point himself at any time. The initial three-month period did not expire until 13 July 2024 and by that point the claimant had been advised by the CAB and had ample opportunity

to either do his own research or ask friends and family to do the same, and or start the early conciliation process.

61. Even if I am wrong about the above, I find in the alternative that the delay between the claimant contacting ACAS on 12 August 2024 and presenting the claim on 22 October 2024 was such that the claim was not presented within a reasonable time. The claimant had solicitors engaged from late September 2024 and there is no cogent explanation for why it took until 22 October 2024 to present the claim. The claim form was brief in detail and the claimant did not require extensive advice or consideration of documents before it was reasonably possible to commence the claim.

62. I considered the just and equitable test for the discrimination claims very carefully. I accept that it is a different test and I have a very broad discretion to extend time, it having been accepted by the claimant that his claims were out of time for the purposes of the EQA. I also fully take into account that no particular factor is determinative or essential to a finding either for or against an extension.

63. I do consider that the effective extensions of time required by the claimant are not short. This is not the same as a case where the extension is only a matter of days. For the events such as the claimant's dismissal the extension required is from the that period. For the reasonable adjustments claim the extension required will necessarily be longer given the adjustments would need to have been put in place before the dismissal.

64. I do not consider that this was a case where there was a good reason for the delay whilst accepting that this is not a requirement (strict or otherwise) before I can consider that a longer period is just and equitable. Any ignorance the claimant had on time limits was not reasonable and he received advice from the CAB and still delayed in contacting ACAS and presenting his claim. The claimant's submissions in respect of his health are not supported by medical evidence. The claimant cannot properly blame others for his case not being pursued promptly in all the circumstances. This

was also a case where the claimant delayed after receiving negative legal advice.

65. There is also part of the claimant's case that dates back to August 2023, namely that his direct disability claim, as well as the dismissal, included that on 12 August 2023 the claimant's manager suggested that he should go on state benefits. There was clear forensic prejudice to the respondent in that allegation (based on alleged oral words) given the passage of time. It was not conceded by the respondent that those words were said. The dismissal was also included as direct disability discrimination and therefore the motivation behind the dismissing manager would also need to be considered by the Tribunal, and there is a degree of prejudice to assessing that after the delay incurred by the claimant's failure to present the claim in time. I accept that the claimant waited for his appeal to be resolved, and this can be a factor in his favour. However, as I have decided that the outstanding appeal is not part of the claims, it is only of limited weight.

66. I also take into account, but only to a small degree, aspects on the merits two of the claims. Firstly, on the direct discrimination claim, this is not on its face a strong claim because of the difficulty that the claimant will have in proving that he was treated less favourably than those in the same material circumstances as him but who were not disabled, given the difficulty in constructing a hypothetical comparator for that scenario. Also, the harassment claim is vague (this is that the claimant was bombarded with phone calls whilst on sick leave) and therefore will be more difficult to establish. These are not factors I gave significant weight, however, and I am expressly neutral on the question of merits for the other discrimination claims (particularly around the dismissal as a s.15 claim) given the disputed facts and lack of full documentation about those events.

67. I also accept that there is a reasonable degree of prejudice to the claimant if this extension is not granted: he will not be able to pursue those claims.

68. However, taking all of the relevant factors into account, and the circumstances as a whole, and giving them the weight I consider appropriate, I do not consider that it is just and equitable to extend time. The degree of prejudice suffered by the claimant does not outweigh the other factors which point against him on this issue. I consider it to be a finely balanced decision, but, overall, the circumstances of the delay and case as a whole are such that it is not just and equitable to extend time.

Approved by:
Employment Judge B Smith
22 July 2025

SENT TO THE PARTIES ON

24 July 2025
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FOR THE TRIBUNAL OFFICE

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