



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms A Ettienne

**Respondent:** Devon County Council (1)  
Ms J Tomegea (2)  
Ms F Giblin (3)  
Ms L Parker (4)

**Heard at:** Exeter (by video)  
**On:** 13 November 2024

**Before:** Employment Judge Volkmer

## Appearances

For the Claimant: In person  
For the Respondents: Mr Yendole, solicitor

## WRITTEN REASONS

These written reasons are provided pursuant Pursuant to rule 60(5) of the Employment Tribunal Rules of Procedure 2024, further to the order of the Employment Appeal Tribunal dated 7 July 2025.

## Background

1. The Claimant commenced the Early Conciliation process with ACAS on 20 August 2022. The Early Conciliation Certificate was issued on 1 October 2022. The claim form was presented on 21 November 2022.
2. A Preliminary Hearing took place before Employment Judge Midgley on 4 July 2024. Two minutes before the hearing, the Claimant submitted a document titled "Grounds of Claim". She also applied to add Jacqueline Sims as a Respondent within the case management agenda for the hearing. It was not possible to clarify the Claims and Issues in that hearing. The Claimant was ordered to provide further information by 20 July 2024 in the form of a chronological list of events, identifying:
  - a. the date;
  - b. alleged conduct;
  - c. where it was referenced in the ET1;
  - d. the people involved;

- e. whether the complaint is made against the First Respondent only or any other individual; and
  - f. the section of the Equality Act 2010 which this relates to.
3. The Claimant provided the majority of this information in a table submitted on 7 August 2024. She did not specify where each event was referenced in the ET1 or whether the complaints were pursued against the First Respondent only.
  4. The Claimant submitted a further amendment application by email on 20 September 2024, seeking to add a further individual respondent, Natasha Bibby, and to add further alleged acts of discrimination.
  5. A further hearing was listed to take place on 8 October 2024 to determine the amendment application and to determine time limits.

*Hearings on 8 October and 11 November 2024*

6. A hearing bundle was provided to the Tribunal with 104 PDF pages. It was page numbered in two sections: A and B. Section B contained the Claimant's witness statement. The hearing was held remotely by video and the Tribunal heard oral evidence from the Claimant.
7. The Respondent objected to those of the Claimant's allegations which were said to be amendments to the original claim, which was set out at pages A:76 to A:79 of the Preliminary Hearing Bundle.
8. Following cross-examination of the Claimant at the hearing on 8 October 2024, the hearing had to be adjourned due to the Claimant feeling unwell.
9. We did not have the time in that hearing to fully clarify the Claimant's claims. However, I set out my understanding of the claims and issues in a draft List of Issues sent to the parties on 11 October 2024. The Case Management Order included a direction that the Claimant respond to various points set out in the order and the List of Issues by 29 October 2024. The Claimant did not do so and applied on 4 November 2024 for an extension. An extension was granted, which required the Claimant to submit the information by 8 November 2024. The Claimant did not do so until 11 November 2024.
10. The Claimant's email of 11 November 2024 did not clarify all of the matters requested. At the beginning of the hearing on 11 November 2024, we clarified various aspects of the Claimant's claim, and the revised List of Issues appended to this judgment sets out the claim as clarified.
11. We discussed the Claimant's indirect discrimination claim (requiring staff to conduct statutory home visits and requiring staff to work with other employees were suggested as PCPs), I explained the requirement to prove group disadvantage and the ability for the Respondent to defend a claim if it can show the PCPs are a proportionate means of achieving a legitimate aim. The Claimant decided to withdraw her indirect discrimination claim and I issued a separate dismissal judgment.

12. I decided that it would be appropriate to decide the amendment application first as this would affect considerations regarding time limits. Some amendments were permitted and some were not. Those amendments which were permitted are shown as underlined in the appended List of Issues.

## The Issues

13. The issues to be considered at this hearing in relation to jurisdiction (time limits) are as follows:

### 1. ***Time limits***

1.1 *The Claimant commenced the Early Conciliation process with ACAS on 20 August 2022. The Early Conciliation Certificate was issued on 1 October 2022. The claim form was presented on 21 November 2022. Accordingly, any act or omission **which forms part of the original claim** which took place before **22 August 2022** is potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint. Since the claim was presented more than one month after the ACAS certificate was issued, there is no ACAS extension applicable to the time limit.*

1.2 *In relation to the new alleged acts added by way of amendment application made on 7 August 2024, any act which took place before **8 May 2024** is potentially out of time.*

1.3 *Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:*

1.3.1 *Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?*

1.3.2 *If not, was there conduct extending over a period?*

1.3.3 *If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?*

1.3.4 *If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:*

1.3.4.1 *Why were the complaints not made to the Tribunal in time?*

1.3.4.2 *In any event, is it just and equitable in all the circumstances to extend time?*

## Facts

14. The Claimant is a qualified social worker with over twenty years' experience in the field. She is highly educated with degrees in social work and psychology. The Claimant was engaged by the Respondent through an agency as an Assistant Team Manager from 7 July 2021. The Claimant resigned on 16 May 2022, and her case is that this was a constructive dismissal. Her employment ended on 25 May 2022.

15. The Claimant notified ACAS on 20 August 2022 and the ACAS certificate was issued on 1 October 2022. The Claimant presented the claim on 21 November 2022.
16. The Claimant had significant involvement in various court proceedings through her role as a social worker. She was aware that time limits applied to court proceedings.
17. The Claimant felt at the time of the events taking place that she was being discriminated against. The Claimant was aware of the three month time limit to bring claims to the Tribunal (this is based on her own evidence). The Claimant had access to free legal advice through her household insurer, which she utilised throughout.
18. The Claimant's evidence was that, although she knew of the three month time limit, she thought that there was an indefinite period of time from issue of the ACAS certificate to present the claim. She did not look at information on the ACAS website nor discuss this with the legal advisers with whom she had contact through her household insurance.
19. After filing her claim, the Claimant also took advice from citizens advice and approached a firm of solicitors. She instructed solicitors to act for her in relation to an investigation into her by Social Work England, but considered that the cost was prohibitive in relation to her Employment Tribunal claim so did not instruct them.
20. The Claimant's evidence is that the reason for the delay is that she was distressed because of the racism that she had experienced. She continued to have flashbacks.
21. I do not uphold the Claimant's assertion that she had PTSD. The Claimant conceded in oral evidence that she did not have a medical diagnosis of PTSD, but said that she was able to recognise it herself because of experience from her work as a social worker. Further, aside from a reference to flashbacks, no factual explanation or medical evidence was provided by the Tribunal in relation to PTSD, it was simply a bare assertion. I consider that establishing whether an individual has PTSD is a complex medical matter which requires a formal diagnosis by a qualified medical professional. The Claimant has not been diagnosed with PTSD and I do not consider that she has otherwise proven on the balance of probabilities that she has it.
22. There were no other health conditions referred to in the witness statement. No medical records were provided to the Tribunal in support of the Claimant's position.
23. The Claimant took another role as a social worker which began on 23 May 2022. The Tribunal notes that this was during the currency of her employment with the Respondent (as this did not end until 25 May 2022). The Claimant was able to work in a highly demanding role as a social worker throughout the entire period from the first act of discrimination to the time of presenting her claim.
24. The Claimant referred to her new role having the "same climate of discrimination" as Devon.

### **Time Limits: the law**

25. Section 123 EqA provides that:

*123 Time limits*

*(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.*

26. Section 140B EqA permits an extension of time where ACAS early conciliation is undertaken.

*“140B Extension of time limits to facilitate conciliation before institution of proceedings*

*(1) This section applies where a time limit is set by section 123(1)(a) or 129(3) or (4).*

*(2) In this section—*

*(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and*

*(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.*

*(3) In working out when the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.*

*(4) If the time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.*

*(5) The power conferred on the employment tribunal by subsection (1)(b) of section 123 to extend the time limit set by subsection (1)(a) of that section is exercisable in relation to that time limit as extended by this section.”*

27. This determination relates to section 123 (1)(b) EqA: whether the claim has been brought within “*such other period as the employment tribunal thinks just and equitable*”.

28. The Court of Appeal in Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640 summarised the position at paragraphs 18 and 19:

*“[18] ... It is plain from the language used (“such other period as the employment tribunal thinks just and equitable”) that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980, section 123(1) of the equality act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in*

*the circumstances to put a gloss on the words of the provision or to interpret it as if it contained such a list ... [19] that said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)."*

29. Legatt LJ went on to say [25] *"As discussed above, 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."*

### **Time Limits: discussion and conclusion**

30. I consider that in circumstances where the Claimant knew of the relatively short timescale of three months during which she needed to approach ACAS and her continued access to legal advice during this period, it was not reasonable for her to believe that there would be an indefinite period within which to present the claim after issue of the ACAS certificate. Given that the Claimant was able to work in a highly demanding job for the entire relevant period, I find that she could also have presented the claim during that period even though she was suffering flashbacks.

31. In considering the balance of injustice and hardship in allowing or refusing the application, I took into account the following factors in this case:

- a. the earliest complaint is in September 2021 and the latest is on 25 May 2022. ACAS conciliation was commenced within the 3 month limitation period. The ACAS certificate was issued on 1 October 2022 but the claim was presented 20 days after the one month limit following the ACAS certificate being issued (on 21 November 2022). The complaints in the original claim are therefore between 20 days and 9 months out of time. Those added by way of amendment are over two years out of time;
- b. the Claimant knew about the three month time limit but thought that she had an indefinite period to submit her claim after obtaining the ACAS certificate;
- c. the Claimant took legal advice from her household insurers throughout the period;
- d. there was nothing preventing the Claimant from looking at time limit information on the ACAS website, or discussing it with her legal advisers but she did not do so;
- e. the Claimant had experience of court work as a social worker so was aware of time limits applying;
- f. the Claimant took a new role, and was able to complete that highly demanding role in the relevant period;
- g. there was also a "climate of discrimination" in her new role ;
- h. the Claimant did not have a medical reason for the delay;
- i. the Claimant had flashbacks of the matters complained of;

- j. although the allegations are now very historic, the Claim itself was presented in November 2022;
  - k. the Respondents submits that they suffer inherent forensic prejudice caused by submitting a claim later than the primary time limit: there was no opportunity to investigate matters whilst they were fresh. There was no formal grievance process;
  - l. the Respondents were aware through the ACAS process of the potential for a claim;
  - m. three of the four named Respondents are no longer employed by the First Respondent. Given they are parties to the claim, the fact that they are not continued employment is of less relevance than it otherwise would be;
  - n. the Respondents will have to defend a claim they would not otherwise have to if the Claim is found to be in time;
  - o. the Claimant will not be able to hold the alleged perpetrators to account if the Claim is found to be out of time.
32. I have taken all of the factors set out above into consideration in considering the balance of prejudice. The Claimant was aware of time limits and had access to legal advice. It was not reasonable to believe that the period to present the claim after receipt of the ACAS certificate was indefinite. Notwithstanding having flashbacks, the Claimant was able to work in her role at the Respondent as well as immediately after leaving the Respondent (therefore covering the entire period between the alleged acts and presentation of the claim) . She could have presented the claim but did not do so. In every case of a claim being outside of the initial (three month plus ACAS extension) time limit, the Claimant will suffer the prejudice of being prevented from pursuing their claim. Equally every Respondent will be required to defend a claim they would otherwise not have had to if the just and equitable extension is granted. The Respondents have limited forensic prejudice. Considering all of the factors, balancing the prejudice and considering the overriding objective, in my finding it is not just and equitable to extend time.
33. The Tribunal does not have jurisdiction to hear the Claimant's claim and it is dismissed.

**Approved by:**  
**Employment Judge Volkmer**  
**Date: 14 July 2025**

Sent to the parties on:  
28 July 2025

Jade Lobb  
For the Tribunal Office

## Appendix: List of Issues

### The Issues

#### 1. Employment status

- 1.1 Was the Claimant an employee of the Respondent within the meaning of section 83 of the Equality Act 2010?
- 1.2 If not, was the Claimant a contract worker covered by section 41 of the Equality Act 2010

#### 2. Time limits

- 2.1 The Claimant commenced the Early Conciliation process with ACAS on 20 August 2022. The Early Conciliation Certificate was issued on 1 October 2022. The claim form was presented on 21 November 2022. Accordingly, any act or omission **which forms part of the original claim** which took place before **22 August 2022** is potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint. Since the claim was presented more than one month after the ACAS certificate was issued, there is no ACAS extension applicable to the time limit.
- 2.2 In relation to the new alleged acts set out in the chronology submitted on 7 August 2024, any act which took place before **8 May 2024** is potentially out of time.
- 2.3 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
  - 2.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?
  - 2.3.2 If not, was there conduct extending over a period?
  - 2.3.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
  - 2.3.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
    - 2.3.4.1 Why were the complaints not made to the Tribunal in time?
    - 2.3.4.2 In any event, is it just and equitable in all the circumstances to extend time?

### 3. **Constructive unfair dismissal**

- 3.1 The Claimant claims that the Respondent acted in fundamental breach of contract in respect of the implied term of the contract relating to mutual trust and confidence. The breach(es) was / were as follows;
- 3.1.1 the factual allegations set out at 4.2 which pre-date the Claimant's resignation on 16 May 2022.
- (The last of those breaches was said to have been the 'last straw' in a series of breaches, as the concept is recognised in law).
- 3.2 The Tribunal will need to decide:
- 3.2.1 whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the respondent. The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end; and
- 3.2.2 whether it had reasonable and proper cause for doing so.
- 3.3 Did the Claimant resign because of the breach?
- 3.4 Did the Claimant wait too long before resigning and affirm the contract?
- 3.5 In the event that there was a constructive dismissal, was it a discriminatory dismissal within the meaning of section 39(2)(c) of the Equality Act 2010?
- 3.6 Alternatively, does this fall within the prohibition in section S.41(1)(b) of the Equality Act 2010, which sets out that a principal must not discriminate against a worker by not allowing the worker to continue to do the work.

### 4. **Direct race discrimination (Equality Act 2010 section 13)**

- 4.1 The Claimant describes herself as black and she compares herself with white people.
- 4.2 Did the Respondents do the following things:
- 4.2.1 in September 2021 Ms Giblin (the Third Respondent) attended the managers meeting and started shouting at a black team manager (Mr Adesanya), that the Claimant and Mr Adesanya had not yet recruited sufficient social workers;
- 4.2.2 between April 2022 and May 2022 Ms Giblin falsely accused the Claimant of drift in a case despite the Claimant providing her with evidence to the contrary;
- 4.2.3 in March to May 2022 Ms Giblin did not acknowledge the commendations received by the Claimant's team, which she would forward to Ms Giblin regularly;
- 4.2.4 on 3 March 2022 in response to the Claimant expressing interest in the position of manager of the North BCP Team, Ms Tomegea said comments along the lines of "*why do you think you should be the manager*", "*well you just have to put in a CV*" and "*you*

- can't be the manager". Ms Tomegea raised her voice and used a dismissive tone;*
- 4.2.5 on 3 March 2022 Ms Tomegea suggested to two managers in a meeting that the Claimant should be assigned more cases [added by way of amendment application dated 7 August 2024];
  - 4.2.6 in March 2022 a white manager was hired for the Team Manager role;
  - 4.2.7 in April 2022 the Claimant applied for the role of Team Manager and was not offered an interview or an explanation as to why she had not been interviewed;
  - 4.2.8 in April 2022 the Claimant was allocated a case in relation to which she suffered racist abuse from the family, including the father using the "N" word. Initially the First Respondent was reluctant to re-assign the case. Ms Tomegea only agreed if the Claimant was assigned five times more work;
  - 4.2.9 in or around April 2022 Ms Parker told the Claimant in a rude manner that she was not speaking to her but to the team and wanted to hear from the team and not from the Claimant;
  - 4.2.10 in April/May 2022 the Claimant's team members were encouraged to not go to the Claimant with queries/speak to the Claimant and were told by Ms Parker not to do so in meetings with the Claimant present;
  - 4.2.11 in May 2022 Ms Parker removed the Claimant from a case and barred her involvement in it, saying there had been a complaint, but the Claimant was not shown any information about the complaint and a meeting took place on 12 May 2022 without the Claimant [added by way of amendment application dated 7 August 2024];
  - 4.2.12 on 11 May 2022 Ms Boradama made strange facial expression to the Claimant when joined a meeting and then stated, "*what are you doing here? You are not on our team?*". When the Claimant explained that she had been called in, Ms Boradama just stared at the Claimant and then left the meeting without saying anything;
  - 4.2.13 on 13 May 2022, the Claimant was removed from a case in relation to which she had hand delivered flowers for a family after they suffered a bereavement;
  - 4.2.14 on 20 May 2022, the Claimant asked for assistance in relation to an emergency strategy meeting. Ms Parker and Ms Tomega, did not provide such assistance [added by way of amendment application dated 7 August 2024];
  - 4.2.15 on 25 May 2022 Ms Parker and Ms Sims refused the Claimant an extension to do work on the computer [added by way of amendment application dated 7 August 2024];
  - 4.2.16 on 25 May 2022, constructively dismiss the Claimant;
- 4.3 Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse

than someone else would have been treated. The Claimant says she was treated worse than the white workers on “Team 1” and in the alternative relies upon a hypothetical white comparator.

- 4.4 If so, was it because of race?
- 4.5 Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to race?

**5. Harassment related to race (Equality Act 2010 s. 26)**

- 5.1 Did the Respondent do the following things?
  - 5.1.1 The Claimant relies on the same alleged acts as set out above at paragraph 4.2 in relation to direct discrimination.
- 5.2 If so, was that unwanted conduct?
- 5.3 Did it relate to the Claimant’s race?
- 5.4 Did the conduct have the purpose of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
- 5.5 If not, did it have that effect? The Tribunal will take into account the Claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

**6. Duplication of Harassment and Direct Discrimination**

- 6.1 Where specific complaints are presented as both harassment and/or direct discrimination, the tribunal will determine these allegations in the following manner.
- 6.2 In the first place the allegations will be considered as allegations of harassment. If any specific factual allegation is not proven, then it will be dismissed as an allegation of both harassment and direct discrimination.
- 6.3 If the factual allegation is proven, then the tribunal will apply the statutory test for harassment under section 26 Equality Act 2010. If that allegation of harassment is made out, then it will be dismissed as an allegation of direct discrimination because under section 212(1) Equality Act 2010 the definition of detriment does not include conduct which amounts to harassment.
- 6.4 If the factual allegation is proven, but the statutory test for harassment is not made out, the tribunal will then consider whether that allegation amounts to direct discrimination under the relevant statutory test.

**7. Victimisation (Equality Act 2010 s. 27)**

- 7.1 Did the Claimant do a protected act as follows:
  - 7.1.1 on 7 February 2022 to Fran Giblin in an email make a complaint about discrimination;
  - 7.1.2 on 14 April 2022 make a complaint of discrimination by email to Jenny Ellen-Scotland and Corinna Bryant;
  - 7.1.3 on 12 May 2022 make a complaint of discrimination by email to Lisa Bursill, Phil Norrey and Lucy Parker; and
  - 7.1.4 on 16 May 2022 make a complaint of discrimination by email to Lisa Bursill.
- 7.2 Did the Respondent do the following things:
  - 7.2.1 the Claimant relies on the same alleged acts as set out above at paragraph 4.2.6 onwards in relation to direct discrimination.
- 7.3 By doing so, did the Respondent subject the Claimant to detriment?
- 7.4 If so, was it because the Claimant had done the protected act(s)?

**8. Remedy**

- 8.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?
- 8.2 What financial losses has the discrimination caused the Claimant?
- 8.3 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
- 8.4 If not, for what period of loss should the Claimant be compensated for?
- 8.5 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
- 8.6 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?
- 8.7 Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?
- 8.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did either party unreasonably fail to comply with it? If so, is it just and equitable to increase or decrease any award payable to the Claimant and, if so, by what proportion up to 25%?
- 8.9 Should interest be awarded? How much?