EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000577/2025

Preliminary Hearing held remotely in Glasgow on 6 June 2025

Employment Judge A Kemp

Miss S Coutts	**Claimant** **In person**
Sky Subscriber Services Limited	**Respondent** **Represented by:** **Mr R Multani,** **Paralegal**

JUDGMENT

1. **The claimant's claim of unfair dismissal is outwith the jurisdiction of the Employment Tribunal under section 111 of the Employment Rights Act 1996 and that claim is dismissed.**

2. **The claimant's claims under the Equality Act 2010 are within the jurisdiction of the Employment Tribunal under section 123 of that Act in respect that it is just and equitable to extend jurisdiction to them.**

REASONS

Introduction

1. This was a Preliminary Hearing held into issues of jurisdiction on the basis of timebar. The claimant is a party litigant and the respondent was represented by Mr Multani.

2. There had been a Preliminary Hearing held before EJ McCluskey on 7 May 2025, after which case management orders were made in a Note. This hearing was fixed to address jurisdiction in that Note.

The claims

3. The claimant makes a claim of unfair dismissal under section 94 of the Employment Rights Act 1996 ("the 1996 Act"), and claims of discrimination under sections 15 and 20/21 of the Equality Act 2010 ("the 2010 Act") with those claims identified in the said Note.

4. The parties agreed that the effective date of termination of the claimant's employment was 26 September 2024. Early Conciliation had commenced on 12 December 2024, which is within the statutory periods set out below, with the Certificate issued on 23 January 2025. The Claim Form was presented on 4 March 2025. The Claim Form was not presented within one month of the Certificate, such that subject to the statutory provisions set out below the Claim was out of time. The Claim Form would have been in time had it been presented on or before 23 February 2025. It was therefore nine days late.

The issues

5. I explained that I had identified the following issue:

> Was the claim within the jurisdiction of the Employment Tribunal and in that regard, firstly for the unfair dismissal claim:
>
> (a) was it not reasonably practicable to have presented the Claim Form timeously and
>
> (b) if so was the Claim presented within a reasonable period of time thereafter, both under section 111 of the 1996 Act?

and secondly for the discrimination claims:

(c) is it just and equitable to extend jurisdiction under section 123 of the 2010 Act?

6. The parties confirmed that they were content with those issues.

The evidence

7. A Bundle of Documents was produced by the respondent's representative in advance of the hearing which it was stated was agreed (any document had by the orders required to have been provided to the respondent by 30 May 2025, and the claimant confirmed that none had been). The claimant gave evidence herself, did not call witnesses and the respondent did not leave evidence. In fact only the ACAS Certificate and the Claim Form for the date of commencement of employment from the Bundle were referred to in evidence.

8. Before the hearing had commenced I explained how it would be conducted, that all evidence relevant to the issues required to be given at this hearing and that it was only in exceptional cases that further evidence would be admitted, about referring to documents that were relevant that there would be cross examination, and then about re-examination. I explained I could give a measure of assistance to the claimant during the hearing including by asking questions under Rule 41, and about the overriding objective, but not so as to act as if the claimant's solicitor.

The facts

9. I found the following facts, material to the issues before me, to have been established**:**

Parties

10. The claimant is Miss Sharon Coutts.

11. The respondent is Sky Subscriber Services Ltd as a Site Co-ordinator from 22 April 2013. She worked at their Uddingston premises.

12. In about mid-September 2024 the claimant contacted ACAS for advice on her circumstances, during the process of consultation on a prospective

redundancy. She was not advised about time-limits in the Employment Tribunal if she were to be dismissed.

13. The respondent terminated the claimant's employment by reason of redundancy with effect from 26 September 2024.

14. The claimant has a condition known as Charcot-Marie-Tooth disease. It is an hereditary condition which causes pain particularly in the nerves of her lower limbs. She takes strong analgesia including Pregabalin and Dihydrocodeine, and anti-depressant medication being Citalopram, for the symptoms of her condition. She suffers chronic pain regularly. Her symptoms include fatigue and a lesser cognitive ability.

15. After the claimant's dismissal she felt very anxious and worried at her circumstances. She felt angry at how she had been treated. She is a single mother and sole carer of a seven year old child.

16. She was due to have an operation on her foot to relieve the symptoms of her condition in January 2025 which she was anxious about. That operation was cancelled, and re-arranged for March 2025. That was also cancelled, and it took place in April 2025.

17. The claimant did not carry out research into how to progress any claim online, or as to time-limits to do so, although she had the ability to do so.

18. The claimant looked for work throughout the period from the dismissal to presenting the Claim Form as hereafter referred to. She took her son out for social activities such as going to the cinema.

19. The claimant commenced Early Conciliation in respect of the respondent (adding initials UK before Ltd when doing so, which is not material for present purposes) on 12 December 2024.

20. A Certificate as to that Early Conciliation was issued on 23 January 2025.

21. Following the issuing of that Certificate the claimant continued to email ACAS (the email was not before the Tribunal). On 25 February 2025 ACAS informed the claimant that there would not be a resolution of her claim.

22. A Claim Form for the present claim was presented by the claimant on 4 March 2025. The claimant had prepared it herself.

Submissions

23. **The claimant** stated simply that she had explained matters during her own evidence. I had explained to her about the opportunity for giving submissions, including what that entailed, and that as I had heard the evidence and was aware of the law no detailed submission was required.

24. Mr Multani for **the respondent** argued that all of the claims should be dismissed. A Bundle of Authorities had helpfully been provided. In basic summary of the submission he argued that section 111 should be applied strictly and that the burden was on the claimant. No medical evidence had been provided and simple ignorance of time-limits did not meet the statutory test. The claimant's ignorance must be reasonable, and the claimant had not made enquiries. There were vast free resources available. The claimant said that she would have been able to work. She looked after her child. She was looking for jobs. She managed her pain and symptoms. The Tribunal should infer that she had the ability to present the claim timeously, and consciously chose not to.

25. As to the discrimination claims the claimant had not established why she did not bring the claim in time or the prejudice to her if it was struck out. The respondent would suffer the greater prejudice. Waiting for 9 days to present the Claim Form was unjustified. The claimant had not sought legal advice, or acted promptly or reasonably. Reference was again made to there being no medical evidence. The respondent argued that all claims should be struck out.

The law

Unfair dismissal

26. Section 111(2) of the Employment Rights Act 1996 ("the 1996 Act") provides that the Tribunal shall not consider a complaint of unfair dismissal 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.

27. The presentation of a claim is subject to early conciliation under section 207B of the 1996 Act, as provided by section 111(2A). Where early conciliation is commenced timeously it has the effect of delaying the date by which the claim must be presented by one month. The terms of section 111 contain other provisions not relevant for the purposes of this case.

28. The burden of proof is on the claimant to prove that it was not reasonably practicable to present the complaint in time: ***Porter v Bandridge Ltd [1978] IRLR 271.***

29. The question of what is reasonably practicable is explained in a number of authorities. In ***Palmer and Saunders v Southend on Sea Borough Council [1984] IRLR 119,*** a decision of the Court of Appeal, the court suggested that it is appropriate: "to ask colloquially and untrammelled by too much legal logic, 'Was it reasonably feasible to present the complaint to the Industrial Tribunal within the relevant three months'?" That, it explained, is a question of fact for the Tribunal taking account of all the circumstances. It gave the following guidance:

> "Dependent upon the circumstances of the particular case, an Industrial Tribunal may wish to consider the manner in which and reason for which the employee was dismissed, including the extent to which, if at all, the employer's conciliatory appeals machinery has been used. It will no doubt investigate what was the substantial cause of the employee's failure to comply with the statutory time limit; whether he had been physically prevented from complying with the limitation period, for instance by illness or a postal strike, or something similar. It may be relevant for the Industrial Tribunal to investigate whether at the time when he was dismissed, and if not then when thereafter, he knew that he had the right to complain

> that he had been unfairly dismissed; in some cases the Tribunal may have to consider whether there has been any misrepresentation about any relevant matter by the employer to the employee. It will frequently be necessary for it to know whether the employee was being advised at any material time and, if so, by whom; of the extent of the advisors' knowledge of the facts of the employee's case; and of the nature of any advice which they may have given to him. In any event it will probably be relevant in most cases for the Industrial Tribunal to ask itself whether there has been any substantial fault on the part of the employee or his advisor which has led to the failure to comply with the statutory time limit. Any list of possible relevant considerations, however, cannot be exhaustive and, as we have stressed, at the end of the day the matter is one of fact for the Industrial Tribunal taking all the circumstances of the given case into account."

30. In ***Asda Stores Ltd v Kauser UKEAT/0165/07***, a decision of the Employment Appeal Tribunal, Lady Smith at paragraph 17 commented that it was perhaps difficult to discern how:

> "'reasonably feasible' adds anything to 'reasonably practicable', since the word 'practicable' means possible and possible is a synonym for feasible. The short point seems to be that the court has been astute to underline the need to be aware that the relevant test is not simply a matter of looking at what was possible but asking whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done."

31. Ignorance, usually of the fact of a time limit but also of the right to make a claim, has been an issue addressed in a number of cases. In ***Wall's Meat Co Ltd v Khan [1979] ICR 52*****,** the test which Lord Denning had earlier put forward in another case, Dedman, was re-iterated as -

> "It is simply to ask this question: Had the man just cause or excuse for not presenting his complaint within the prescribed time? Ignorance of his rights—or ignorance of the time limit—is not just cause or excuse unless it appears that he or his advisers could not reasonably be expected to have been aware of them. If he or his

> advisers could reasonably have been so expected, it was his or their fault, and he must take the consequences."

32. In ***Marks and Spencer plc v Williams-Ryan [2005] IRLR 562*** the Court of Appeal stated that "The first principle is that section 111(2) should be given a liberal interpretation in favour of the employee." It set out the issues to consider when deciding the test of reasonable practicability, which included (i) what the claimant knew with regard to the time-limit (ii) what knowledge the claimant should reasonably have had and (iii) whether he was legally represented.

33. In ***Lowri Beck Services Ltd v Brophy [2019] EWCA Civ 2490***, the Court of Appeal re-stated that the test of reasonable practicability should be given a liberal interpretation in favour of the employee. The claimant in that case did not have professional advice, which was held to be a factor in his favour.

34. The nature of the test was considered in ***Cygnet Behavioural Health Ltd v Britton [2022] EAT 18,*** in which it was stated that

> "the employment judge directed himself that section 111(2) should be given a liberal construction in favour of the employee, citing ***Dedman v. British Building & Engineering Appliances Ltd [1974] ICR 53, CA***. In my judgment, I note that this is not reflective of the way that section 111(2) has been interpreted and applied by the Court of Appeal in more recent cases. The test is a strict one and, perhaps in contrast to the 'just and equitable' extension in other statutory contexts, there is no valid basis for approaching the case on the basis that the ET should attempt to give the 'not reasonably practicable' test a liberal construction in favour of the claimant."

35. It is, with great respect to the EAT, difficult to understand that last sentence except in the context of a distinction with the test in discrimination law. The reference to a liberal interpretation in favour of the employee had itself been made in ***Williams-Ryan,*** which the EAT in ***Britton*** cited, and although ***Brophy*** was not mentioned it had re-stated that principle. ***Williams-Ryan*** and ***Brophy*** are both Court of Appeal authority. Each is

not binding on a Tribunal in Scotland but is worthy of considerable respect, particularly in relation to a UK-wide statutory provision. I consider that they should be preferred to ***Britton***, and followed, in this respect.

36. The Tribunal conducts its own assessment of the issue of reasonable practicability, and whilst it may take account of medical evidence it is not bound to accept it, particularly if there is other evidence that is not consistent with it **- *Chourafi v London United Busways Ltd 2006 EWCA Civ 689.*** That was a case where the claimant had not attended the Preliminary Hearing to give evidence, however.

37. The issue of a medical condition was addressed in ***Kauser***, in which the following was said about the Tribunal's judgment:

> "There is no finding of illness or incapacity. The circumstances are not comparable, for instance, to those of the Claimant who fell ill seven weeks into the three month period, in the case of ***Schulz v Esso Petroleum Co Ltd [1999] ICR 1202***. It cannot be sufficient for a Claimant to elide the statutory time limit that he or she points to having been 'stressed' or even 'very stressed'. There would need to be more."

38. Where a claimant was under a mistake as to the detail of the time limit, guidance on the issues that arise was given in ***Dedman*** as follows:

> "What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived? Should there prove to be an acceptable explanation of his continuing ignorance of the existence of his rights, it would be inappropriate to disregard it, relying on the maxim 'ignorance of the law is no excuse'. The word 'practicable' is there to moderate the severity of the maxim and to require an examination of the circumstances of his ignorance".

39. It appears to me firstly that the statutory words must be applied, and secondly that in doing so whilst a liberal interpretation of those words in favour of the employee is permissible, that is against the test of reasonable

practicability, and not whether what the claimant did was reasonable. All of the circumstances are considered when making that assessment.

40. The issue of whether ignorance of a claim or time limit was reasonable was also addressed in ***Inchcape,*** to which the respondent referred in submission. In that case the EAT stressed that the matter was case specific:

> "Claimants in ETs vary enormously. On the one hand there are claimants with a good education and command of English and ready access to the Internet and sources of advice. It will generally be reasonably practicable for them to find out about the enforcement of their rights, not least by using the Internet. It is not difficult for an educated person to find out from official websites that there is a strict time limit for bringing a complaint of unfair dismissal. On the other hand, there are many claimants with very limited education and English, health difficulties and disabilities, and virtually no access to the Internet and sources of advice. It may be much more difficult for them to obtain advice."

41. If the claimant is successful in arguing that it was not reasonably practicable to have presented the claim in time, it is then necessary to consider whether the claim was presented within a reasonable period of time thereafter. In ***Cullinane v Balfour Beatty Engineering Services Ltd UKEAT/0537/10*** it was stated that the question whether a further period is reasonable is not the same as asking whether the claimant acted reasonably, but requires "an objective consideration of the factors causing the delay and what period should reasonably be allowed in those circumstances for proceedings to be instituted", having regard to the "strong public interest" in claims being brought promptly, and against a background where the primary time limit is three months.

42. In ***Howlett Marine Services Ltd v Bowlam [2001] IRLR 201*** it was confirmed that the issue of reasonableness was assessed having regard to all the circumstances. That case concerned a different claim to unfair dismissal but the provision in question in that case was in essence the same as the issue of reasonableness in section 111.

Discrimination

43. Section 123 of the Act provides

> "**123 Time limits**
> (1) Subject to section 140A and 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."

44. Provisions as to the effect Early Conciliation are in section 140B of the 2010 Act. The effect as to a claim presented outwith the period of a month from the issue of a timeous certificate is the same as set out above.

45. Where a claim is submitted out of time, the burden of proof in showing that it is just and equitable to allow it to be received is on the claimant (***Robertson v Bexley Community Centre [2003] IRLR 434***.

46. The Inner House reviewed this provision in the case of ***Malcolm v Dundee City Council 2012 SLT 457*** and held that the issue of whether a fair trial was possible was "one of the most significant factors" in the exercise of the discretion that the section confers. It is not, however determinative of its own.

47. In ***Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] ICR 1194*** the Court of Appeal held:

> "First, 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, s 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 these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see ***British Coal Corporation** v **Keeble** **[1997] IRLR 336***), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see ***Southwark London Borough Council v Afolabi** **[**2003**]** EWCA Civ **15; [**2003**] ICR 800***, para 33. The position is analogous to that where a court or tribunal is exercising the similarly worded discretion to extend the time for bringing proceedings under s 7(5) of the Human Rights Act 1998: see ***Dunn** v **Parole Board** **[2008]** EWCA Civ **374; [2009] 1 WLR 728***, paras [30]-[32], [43], [48]; and ***Rabone** v **Pennine Care NHS Trust [2012] UKSC 2; [2012] 2 AC 72***, para [75].

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)."

48. That was emphasised more recently in ***Adedeji v University Hospitals Birmingham NHS Foundation [2021] EWCA Civ 23*****,** which discouraged use of what has become known as the ***Keeble*** factors as form of template for the exercise of discretion. Section 33 of the Act referred to is in any event not a part of the law of Scotland***.***

49. Some cases at the EAT held that even if the tribunal disbelieves the reason put forward by the claimant for delay it should still go on to consider any other potentially relevant factors such as the balance of convenience and the chance of success: ***Rathakrishnan v Pizza Express (Restaurants) Ltd [2016] IRLR 278***, ***Pathan v South London Islamic Centre UKEAT/0312/13*** and ***Szmidt v AC Produce Imports Ltd UKEAT/0291/14.***

50. The EAT decided that issue differently in ***Habinteg Housing Association Ltd v Holleran UKEAT/0274/14.*** There it was held, in brief summary, that a failure to provide a reasonable explanation for the delay in raising the claim was fatal to the issue of what was just and equitable.

51. In ***Rathakrishnan***. there was a review of authority on the issue of the just and equitable extension, as it is often called, including the Court of Appeal case of ***London Borough of Southwark v Afolabi [2003] IRLR 220***, in which it was held that a tribunal is not required to go through the matters listed in s.33(3) of the Limitation Act, an English statute in the context of a personal injury claim, provided that no significant factor is omitted. There was also reference to ***Dale v British Coal Corporation [1992] 1 WLR 964***, a personal injury claim, where it was held to be to consider the plaintiff's (claimant's) prospect of success in the action and evidence necessary to establish or defend the claim in considering the balance of hardship. The EAT concluded

> "What has emerged from the cases thus far reviewed, it seems to me, is that the exercise of this wide discretion (see ***Hutchison v Westward Television Ltd [1977] IRLR 69)*** involves a multi-factoral approach. No single factor is determinative."

52. In ***Edomobi v La Retraite RC Girls School UKEAT/0180/16*** a different division of the EAT (presided over by a different Judge) in effect preferred that approach, with the Judge adding that she did not "understand the supposed distinction in principle between a case in which the claimant does not explain the delay and a case where he or she does so but is disbelieved. In neither case, in my judgment, is there material on which the tribunal can exercise its discretion to extend time. If there is no explanation for the delay, it is hard to see how the supposedly strong merits of a claim can rescue a claimant from the consequences of any delay."

53. In ***(1) Wells Cathedral School Ltd (2) Mr M Stringer v (1) Mr M Souter (2) Ms K Leishman: EA-2020-000801*** the EAT did not directly address those authorities but stated that, in relation to the issue of delay, "it is not always essential that the tribunal be satisfied that there is a particular reason that it would regard as a good reason". A more recent authority

from the EAT – ***Concentrix CVG Intelligent Contact Ltd v Obi [2022] EAT 149***, supported that same conclusion, although that authority is another at the same level as those in the ***Habinteg*** line, such that it does not resolve the matter finally.

54. The EAT very recently reviewed the issue of what is just and equitable in ***Jones v Secretary of State for Health and Social Care [2025] EAT 76***. Some of the comments in ***Robertson*** (which do not include the comment on onus) should not be followed, and there is consideration of Court of Appeal authority with regard to issues of knowledge or suspicion.

Discussion

55. I require to assess the evidence led before me and make findings in fact on the basis of that. I must then apply the law to those factual findings.

56. The claimant gave evidence that I consider to be in general terms credible and reliable. She did not however present medical evidence to support her position. She is a party litigant, and said that ACAS had informed her that that was not required, but it is for her to discharge the burden of proof, and the absence of it means that there is limited support for at least some of her position.

57. I shall address initially the unfair dismissal claim. Here the test is one of reasonable practicability in the first instance, as explained in the authorities set out above. Although I was satisfied that the claimant's evidence in general terms was to be accepted, I did not consider that she had discharged the burden of proof that it was not reasonably practicable to have presented the claim timeously, which means on or before 23 February 2025. I accept that the dismissal affected her mental health, and that her mental health was already affected by her condition. But there are some aspects of what happened which are not consistent with it not being reasonably practicable to present the claim timeously. Firstly she engaged with ACAS timeously. That involves a measure of cognitive ability. Secondly she said that she was looking for work throughout the relevant period, which similarly involves a measure of cognitive ability. Thirdly she was also looking after her son. Fourthly she did have access to the internet, and was clearly someone who was intelligent and capable,

as demonstrated by her in the role she performed, and before me. Finally there was no clear reason given for presenting the claim on 4 March 2025 to explain why it had not been presented earlier. It appeared from the evidence to be the claimant deciding that she needed to do something about the circumstances of her dismissal, rather than anything that might be described as a concrete explanation for her doing so on that date.

58. It appears to me that there was no substantial impediment for the claimant to undertaking online research of how to make a claim and by when including at or around the time that the ACAS Early Conciliation was taking place and the Certificate received. That the claimant was able to undertake that conciliation indicates to me that it was reasonably practicable to have undertaken such research, and that ignorance of time-limits on her part was not in all the circumstances reasonable.

59. Given the test that the law sets out, and the authorities above on matters, I consider that the claimant has not established that it was not reasonably practicable to have presented her claim of unfair dismissal timeously. In those circumstances I concluded that the Tribunal does not have jurisdiction to consider the Claim under section 111 of the Act and I require to dismiss it accordingly.

60. The test under the 2010 Act is less stringent. There is discretion given to the Tribunal. The delay was between one month after the Certificate was issued, and when the Claim Form was presented, a total of nine days. No evidential or forensic prejudice to the respondent was suggested. A fair trial of the issues under the 2010 Act remains possible, in my view, and indeed there was no argument to the contrary. That is not however by any means the only consideration.

61. The claimant gave as the reason for delay, in brief outline, the impact of the dismissal on her mental health, her medical condition and the circumstances of an operation planned for January 2025 which was then cancelled and re-arranged twice, and the chronic pain she suffers from and the impact of that on her ability to undertake the claim until the time that she did. Whilst no medical evidence was submitted to me there was evidence supporting her in some respects, firstly the medications she has been prescribed and secondly the fact of an operation on her foot. Whilst

the only evidence of the medication and operation comes from the claimant herself, I have accepted that evidence.

62. I did not accept the respondent's argument that the claimant had consciously not pursued the claim timeously. It appeared to me from the evidence I heard that it was not a deliberate act, nor one in the face of knowledge of the time limits. It was more an omission to act timeously than a decision to do so knowing what the time limit was.

63. In my view whilst the reasons for the delay were not sufficient for the test of what was reasonably practicable they are a reasonable explanation for that delay. That is in the circumstance of the claimant having a young child to look after, and being concerned at her circumstances both generally following her dismissal after over eleven years of employment, and medically given the planned operation. It is not determinative, and the reasonableness is towards the lower end of the scale albeit within that scale, but it is a further factor to weigh in the balance.

64. It is also relevant that the delay is limited to a period of nine days and that that was after Early Conciliation was commenced timeously such that the respondent was put on notice on or shortly after 12 December 2024 that there was to be a claim.

65. On the face of the pleadings the claimant has a claim which is at the least statable. It may or may not succeed on the merits, that being dependent on the evidence to be heard, and it is not possible to form a view on how likely or otherwise it might be to succeed. There is however, on the pled case, at least an understandable basis for the arguments being made.

66. She did not have legal advice when making the Claim, and is a party litigant. She may well be a disabled person under the 2010 Act, although that remains in dispute. If so, there is a possibility that claims under sections 15 and 20/21 may have merit, such that not being able to progress them would cause her prejudice.

67. Against that the respondent would be deprived of the statutory timebar defence. It would require to meet the expense of defending the claim. It has however in-house representation, and is a substantial organisation. It

can defend the claim on the merits, and as stated may succeed in doing so. The prejudice to the respondent is there, but in all the circumstances it appears to me limited, and materially less than to the claimant.

68. Taking account of all the circumstances I consider that it is just and equitable to allow the claim under the 2010 Act to proceed under section 123. The balance in my view strongly favours the claimant. The Tribunal has jurisdiction for the claims under the 2010 Act accordingly. Those claims are to proceed.

Case management

69. In light of that decision I consider that a Notice of Final Hearing should be issued, unless either party seeks another Preliminary Hearing within seven days of the date this Judgment is sent to them. Whilst it is possible to hold another such hearing on disability status and knowledge it does not appear to me, on a provisional basis pending any submission, that that is within the overriding objective. From the evidence I heard it appears to me likely that the claimant will meet the definition of a disabled person, given the operation, the medication she spoke of, and the circumstances overall. A Preliminary Hearing would involve material delay, which I consider contrary to the overriding objective. It is also apparent from the earlier Note that further details and supporting documentation are yet to be provided in relation to disability status, and it is possible (although not by any means required of the respondent) that it may later be the subject of agreement.

70. It is also appreciated that further details of the claims being made, and other matters, are still to be provided in accordance with that Note, but I wish to consider making case management orders and fixing the hearing without further delay. That will include an order for a Schedule of Loss setting out what remedy the claimant seeks, with supporting documentation and details, which I propose should be provided within fourteen days of the date of this Judgment being sent to the parties, and with the respondent ordered to reply to that within a further fourteen days.

71. The parties should within seven days of the date of this Judgment being sent to them –

(i) Provide their estimate of how long a Final Hearing will take place, to include liability and remedy;

(ii) Confirm whether there are any dates in the period August to October 2025 inclusive when they would not be able to attend the same;

(iii) Confirm whether they are content that the hearing be in person in the Inverness Tribunal and before an Employment Judge sitting alone, which subject to parties' comments I consider is the appropriate location and constitution for the Tribunal for that hearing given the issues to be addressed, and having regard to formal Guidance on the issue;

(iv) Confirm whether either party seeks longer than six weeks from today's date to exchange all documents on which each party intends to rely at the Final Hearing;

(v) Confirm whether each considers that written witness statements should be used and if so why, with my provisional view being that in accordance with the Practice Direction and Presidential Guidance in regard to their use in Scotland that the "default" position of not doing so is to be followed; and

(vi) Confirm if they have any other case management application or any other comments on the matters of case management raised above that they wish to make.

72. On receipt of replies from the parties, I shall consider how to address these matters, and issue case management orders.

Date sent to parties **30 June 2025**