



EMPLOYMENT TRIBUNALS

Claimant: Dr J Gamble

Respondents: University of Liverpool (1)
Mr R Blackburn (2)
Mr J Surroca Aguilar (3)
Mr P Brewer (4)

Heard at: Manchester (by CVP)

On: 13 June 2025

Before: Employment Judge Phil Allen (sitting alone)

REPRESENTATION:

Claimant: Did not attend and was not represented

Respondents: Mrs P Fernandez-Mahoney, solicitor

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claims for harassment related to race and/or religion or belief against the first and/or second respondents were not presented within the applicable time limit. It is not just and equitable to extend the time limit. The claims are therefore dismissed.

REASONS

Introduction

1. The claimant is employed by the first respondent as a research assistant and has been since 9 January 2023. He has brought a claim against the four respondents. His claim was for direct race discrimination, direct discrimination on grounds of religion or belief, harassment related to race, harassment related to religion, and harassment related to disability.

Claims and Issues

2. This hearing was listed following a previous preliminary hearing on 24 April 2025. The case management order made following that hearing set out the issues which would be considered at this hearing. It also contained an unless order.

Application to postpone the hearing

3. On 12 June 2025 (that is on the day before the hearing), the claimant made an application to postpone this hearing. When entering the application on the portal, the claimant asked that it not be copied to the respondent. He attached various documents to his application. The application had not been copied to the respondents, albeit a message had been posted to the portal by the Tribunal (available to all parties) which said that due to the lateness of the application it would be considered at the start of the hearing.

4. At the start of the hearing, I considered the claimant's application to postpone the hearing. I summarised in brief terms for the respondents' representative the grounds upon which the claimant sought postponement, but I did not provide the respondents with any of the detail given in the application or the attached documents (particularly in relation to the claimant's medical conditions). The respondents opposed the application to postpone. I heard brief submissions on the application from the respondents' representative. I then made my decision and informed the attendee of that decision and my reasons for doing so. I refused the application to postpone the hearing. I have provided below the reasons which I gave verbally at the hearing for refusing the application. As the claimant was not in attendance at the hearing, I considered it appropriate to also provide my reasons in writing.

5. As the application to postpone this hearing had been made only one day before the hearing, rules 32(2) and (3) applied. That meant that I could only order a postponement where one of the circumstances set out in rule 32(2) existed. The respondent had not consented, so rule 32(2)(a) did not apply. The application had not been necessitated by an act or omission of another party or the Tribunal, so rule 32(2)(b) did not apply. That meant that I could only postpone the hearing if rule 32(2)(c) applied, that is that there were exceptional circumstances. In reaching my decision I also took into account what was said at rule 32(4)(b).

6. The first reason given in the claimant's application for seeking a postponement, was because he had been unable to arrange representation for the hearing. That was not an exceptional circumstance. It is a common occurrence that a party is unable to find or obtain representation in the Employment Tribunal.

7. The second reason given by the claimant was his ill health and the fact that he was not well enough to attend the hearing to represent himself. In other circumstances, I accepted that ill health may be exceptional. I agreed with the respondents' representative's submission that in this case the claimant's current ill health was not exceptional. The claimant had highlighted on his own claim form that he was too unwell to take an active part in hearings. The claimant had made a number of postponement applications for the previous preliminary hearing, based upon his ill health. There was nothing about the application made to postpone this hearing, which showed that the claimant's health had recently worsened/changed in any significant way. The medical evidence provided was broadly consistent with that provided for the previous postponement applications. I did not find that there was anything exceptional about the claimant's ill health now, which meant that the circumstances of this postponement application were exceptional.

8. The final issue raised by the claimant was that, in broad terms, he was unhappy with the previous case management order. That was clearly not exceptional.

9. As I did not find that there were exceptional circumstances and none of the other sub-provisions of rule 32(2) applied, I did not postpone the hearing, where the application to postpone had only been made the day before the hearing. I emphasised that I had specifically made the decision applying rules 32(2) and (3), rather than considering the postponement application more generally as I would have done had the application been made seven days or more before the date of the hearing.

Non-compliance with the unless order

10. In the case management order made following the preliminary hearing on 24 April 2025 was an unless order. That was included in paragraph six. I will not reproduce what was said in this Judgment as it can be read in that order. That required the claimant to provide a word document containing certain specific information about some of his complaints by 29 May 2025.

11. The claimant had produced some lengthy documents prior to the expiry of the unless order. Relevant to the unless order were: a thirty-seven page document headed disability discrimination statement; and a twenty-three page document headed racial and religious discrimination statement.

12. It was the respondents' position that the claimant had not complied with what was said in the unless order and that there had not been material compliance. The respondents' representative explained why she said that was the case. She highlighted exactly what was required in the unless order, and that compliance with it was necessary for the parties to understand the claimant's case. She contended that the documents provided did not set out the claimant's case in the way ordered, or in a way in which the respondents could understand what the relevant complaints were.

13. As the order made had been an unless order, I had no discretion in considering it. The only question for me was whether there had been material non-compliance with the order by the claimant. What the claimant had provided did not materially comply with what was ordered. The order was clear, and the lengthy documents did not set out the information which the claimant had been ordered to provide. As a result, I found that the claimant had not materially complied with the unless order.

14. Where there is non-compliance with an unless order, the relevant parts of the claim stand dismissed. That means that all the claims against the third and fourth respondents and the complaints of harassment related to disability, direct race discrimination, and direct religion or belief discrimination, against the first and second respondents, stood dismissed on 30 May 2025 as a result of non-compliance. This Judgment provides the written notice to the parties confirming what has occurred. However, as it was not my Judgment, but rather the automatic effect of material non-compliance under rule 39, the dismissal of those claims is not recorded in the Judgment section at the start of this document.

Procedure

15. One of the things which this hearing had been listed to determine (as set out in the previous case management order), was whether it would be just and equitable to extend the time limit for presenting the complaints of harassment related to religion or belief, or race.

16. I was provided with a bundle of documents prepared by the respondent.

17. The hearing was conducted by CVP remote video technology with the attendee attending remotely. The claimant did not attend.

18. I heard submissions from the respondents' representative.

19. I adjourned to consider my decision.

20. Following the adjournment, I informed the respondents' representative of my decision and the reasons for it. I decided that it was not just and equitable to extend time. As the claimant was not present, I said that I would provide my reasons in writing in any event, even though no request had been made for written reasons.

Facts

21. From the claim form, in the previous preliminary hearing, the issues in the complaints of harassment related to religion or belief and harassment related to race, had been identified. They were recorded in that order. There were three allegations of harassment related to religion or belief which were alleged to have occurred on 10 January 2023 and 17 September 2023. There were two allegations of harassment related to race which were alleged to have occurred on 3 July 2023 and 29 November 2023.

22. The claim was entered at the Tribunal on 24 November 2024, following ACAS Early Conciliation for the first respondent between 11 October and 18 November 2024, and for the second respondent from 17 October 2024 until the same date.

23. I did not hear any evidence from the claimant.

The Law

24. If a claim has been entered out of time, I need to decide whether it is just and equitable to extend time. Section 123(1)(b) of the Equality Act 2010 states that proceedings may be brought in, "*such other period as the Employment Tribunal thinks just and equitable*".

25. The most important part of the exercise of the just and equitable discretion is to balance the respective prejudice to the parties. The factors which are usually considered are contained in section 33 of the Limitation Act 1980 as explained in the case of *British Coal Corporation v Keeble* [1997] IRLR 336. Those factors are: the length of, and reasons for the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the relevant respondent(s) has cooperated with any request for information; the promptness with which the claimant acted once he knew of the facts giving rise to the cause of action; and the

steps taken by the claimant to obtain appropriate advice once he knew of the possibility of taking action. Subsequent case law has said that those are factors which illuminate the task of reaching a decision, but their relevance depends upon the facts of the particular case, and it is wrong to put a gloss on the words of the Equality Act to interpret it as containing such a list or to rigidly adhere to it as a checklist. That was reinforced by the Court of Appeal in *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23 where it was emphasised that the best approach for a Tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time and that factors which are almost always relevant to consider when exercising any discretion whether to extend time are: the length of, and reasons for, the delay; and whether the delay has prejudiced the respondent(s) (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).

Conclusions – applying the Law to the Facts

26. I was considering the claimant's claims against the first and second respondent for harassment related to race and/or religion or belief.

27. The alleged events occurred in the period from 10 January to 29 November 2023.

28. The claimant has been unwell, and his ill health has meant that he has been unable to work since 9 January 2024.

29. I accepted the respondents' contention that, based on the claimant's own documents, his ill health has deteriorated. He was therefore as able to enter a claim in February 2024 as he was when he did so on 24 November 2024.

30. The primary time limit for the claim expired on 28 February 2024 (or, at least, ACAS Early Conciliation should have been commenced by that date).

31. The claimant entered a very lengthy grievance with the first respondent on 27 September 2024.

32. ACAS Early Conciliation was undertaken by the claimant, for the first respondent between 11 October and 18 November 2024, and for the second respondent from 17 October to 18 November 2024.

33. The claim was entered at the Tribunal on 24 November 2024. That was just under nine months later than it should have been.

34. There was no continuing act with anything which ended later than 29 November 2023. In considering this issue, I have assumed that the harassment allegations would have been found to have formed a continuing series of events which ended on 29 November 2023.

35. The question was whether it was just and equitable to extend time, or whether the claim was entered in such other period as I considered to be just and equitable.

36. On the evidence before me, there was no real explanation for the delay in entering a claim. It was clear that the claimant's ill health had an impact, but there was no explanation why the claimant had not entered a claim in February 2024 when he had done so in November 2024.

37. There was clear prejudice to the respondents from the delay. The allegations are about alleged verbal comments not things recorded in documents. Memories fade. The claimant did not enter his grievance until ten months after the events (and twenty months after the first alleged comment). The cogency of the evidence will have been reduced. The respondents were not able to record or consider their account at the time or in the period shortly after, as they would have done if the claim had been entered within the time required.

38. There was prejudice to the claimant if I refused to extend time, as he will not be able to pursue the remaining complaints that he has. I accepted that was a significant prejudice.

39. As the respondents submitted, the claim will not be heard until 2026, which would be in the region of three years after the events.

40. The time limits are there for a good and valid reason.

41. On balance, having considered all of the matters I have recorded, my decision was that it was not just and equitable to extend time. I took into account all of the factors I have set out, but particularly noted the absence of any genuine explanation for the late claim (save for ill health generally) and the prejudice which I found existed for the respondents because of the delay (and the length of that delay).

Summary

42. As it was not just and equitable to extend time, the claimant's claims against the first and second respondent for harassment related to race and/or religion or belief were dismissed. Those were the only claims remaining after the other claims were dismissed following non-compliance with the unless order. As a result, the claimant has no ongoing claims against any of the respondents.

Employment Judge Phil Allen

13 June 2025

JUDGMENT AND REASONS
SENT TO THE PARTIES ON

31 July 2025

FOR THE TRIBUNAL OFFICE

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>