



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000076/2025

Held in Glasgow via Cloud Video Platform (CVP) on 8 July 2025

Employment Judge Campbell

Ms R Savage

**Claimant
Represented by:
Mr J Lawson -
Solicitor**

NHS24

**Respondent
Represented by:
Ms L Gallagher -
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

It is not just and equitable for the time to be extended so as to accept the claim late, and therefore the tribunal does not have jurisdiction to hear it. The claim is accordingly dismissed.

REASONS

Background

1. This was an open preliminary hearing on the issue of time bar. The claimant had submitted a claim to the tribunal containing complaints under the Equality Act 2010 ('EqA'), specifically discrimination arising from disability under section 15, indirect discrimination under section 19 and failure to make reasonable adjustments under sections 20 and 21.
2. The claimant relied on the protected characteristic of disability. She alleged a number of conditions, physical and mental, which individually or cumulatively amounted to a statutory disability under section 6 EqA.
3. The claim related, in summary terms, to a recruitment process under which the claimant was conditionally offered a role with the respondent which the parties agreed had been withdrawn on 18 December 2023. That was the last and only event complained of. However, the claimant initiated Early Conciliation with ACAS on 12 December 2024, almost a year later, and then presented her claim to the tribunal on 10 January 2025. It was clearly

therefore out of time and the claimant sought the use of the tribunal's discretion to extend time under section 123(1)(b) and allow the claim to proceed on the basis that it was just and equitable to do so. In order for a claim to have been within time, she needed to have begun Early Conciliation no later than 17 March 2024.

4. At this hearing the claimant gave evidence and was cross-examined. A joint bundle was prepared and where necessary below, page numbers are referred to by numbers in square brackets. After a short adjournment the parties' representatives gave closing submissions. Mr Lawson made his orally and Ms Gallagher provided a note.
5. I reserved judgment on the preliminary issue in order to consider matters fully.

Relevant facts and matters

I took the following to be relevant in reaching a decision on the preliminary issue. This involved making some findings of fact where it was uncontroversial to do so, and also assuming that certain assertions made by the claimant could be proven at a later full hearing – in other words taking her claim at its highest for now.

1. The hearing bundle contained an agreed timeline of events and those are deemed to be fact. This included that the claimant applied to the respondent for the role of Psychological Wellbeing Officer on 12 April 2023, that a conditional offer of the role was made to her on 18 May 2025 and that there was then a period which involved exploration of adjustments which could be made to allow her to carry out the role with the assistance of Occupational Health ('OH') consultants. On (or within a day or so either side of) 18 December 2023 a Mr Thomson from the respondent's HR department told the claimant by telephone that the offer was being withdrawn.
2. The claimant's evidence regarding the telephone call was that she asked whether the reason for retraction of the offer was her disabilities, and she was told in response that specialist software which was being explored was not compatible with the respondent's IT system, and there were difficulties obtaining her an adjustable desk (which among other things would have to be compatible with her use of a wheelchair). The respondent's position was that she was told it was not feasible to use the specialist software.
3. Also of factual relevance was that whilst awaiting the offer becoming unconditional, the claimant began working in a role with the Department of Work and Pensions on 7 August 2023. She is still in this role. She performs it from home.
4. The claimant put forward two broad reasons why she had not raised a claim within time, and why she had only raised it when she did. Those were:

- a. She was not medically fit to pursue a claim or even take steps to understand whether she was able to make a claim, and
 - b. She was unaware of her right to make a legal complaint to the tribunal.
5. Those are dealt with in turn below along with some related matters.

Medical position

6. On 15 January 2024 the claimant attended her GP with a sore throat that she had had for two weeks, and ear and sinus pain. This was thought to be a viral illness and she was issued penicillin. She said in evidence she was struggling with breathing.
7. On 28 January 2024 the claimant tested positive for Covid-19 and visited her GP the next day. Her breathing continued to be impacted and she was fatigued. She said she was prescribed medication although her GP notes do not appear to disclose clearly what that was.
8. The claimant experienced the same symptoms for around four or five months, with the effects reducing over time from the second week as the medication began to take effect.
9. On 5 May 2024 the claimant attended her GP practice and was noted to be 'acutely distressed', describing a number of challenging factors in her life and 'feeling really low, self-esteem poor' [57]. The GP noted that she 'felt she experienced a lot of issues and discrimination regarding her physical disabilities'. The claimant explained in evidence that she did not recall using the word 'discrimination' specifically, but had described the situation with the respondent withdrawing the job offer and also a previous employer overlooking her as a job applicant and giving the role to another person she knew.
10. The claimant believed that her mental health had been declining since around January 2025 but she had not immediately noticed the effect at the time until things accumulated in or around the beginning of May, when she felt she could no longer carry out her role with the DWP.
11. The GP prescribed her with an antidepressant on 15 May 2024 which was adjusted in dose over the following weeks and which gradually stabilised her mental state. She noted a significant improvement around July or August 2025. Initially she struggled maintaining aspects of self-care but this improved.
12. The claimant began a period of absence from work on 8 May 2025 which continued until 25 October that year. It was covered by fit notes in which the reason for absence was given as Stress or 'stress, depression and anxiety'.

She returned to working on or around Monday 28 October 2024 on a phased return.

Knowledge of legal rights

13. At the time when the respondent withdrew its job offer the claimant had a degree of awareness of the legal rights of people with disabilities. She was aware of the duty to make reasonable adjustments, which she considered fell on the respondent, and she had asked for, and been given, adjustments in roles with previous employers. She did not know the precise statutory source of this, i.e. the 'Equality Act'.
14. The claimant was also aware of the concept of unlawful discrimination and the process of making a claim to an employment tribunal, although she had not done so herself. She believed that complaints could only be raised by people in employment and not therefore a job applicant who had been offered a role and then not been taken on. She also wondered whether a period of service in employment was required before a discrimination complaint could be raised.
15. The claimant felt very clearly and strongly that she had been unfairly treated by the withdrawal of the offer, and that this was because one or more disabilities which the respondent would not do enough to accommodate. She was frustrated because this was not her first experience of being told that an employer could not make adjustments which would allow her to carry out a role she believed she was otherwise more than capable of doing.
16. Some time in late December 2023, immediately following withdrawal of the offer, or in January 2024, the claimant tried to research online whether the respondent had acted within its rights. She put into an internet search engine the question, 'Can an employer revoke a job offer' or similar. Whatever responses were returned, she did not see anything clearly that suggested to her that the respondent had done anything unlawful. She discussed the situation with close family members and decided not to look into the issue further or seek advice because she was concerned that if she did have the option of raising a claim, and proceeded to do so, it could damage her prospect of securing a role with the NHS in the future. She therefore consciously chose not to look into the matter further at this time.
17. Owing primarily to the decline in her health which followed this – briefly in relation to her sinus and Covid-19 issues and then more prolonged as a result of the decline in her mental health - the claimant did not give the matter much thought until after her return to work at the end of October 2024. By chance she was speaking to a colleague who had just qualified as a solicitor, who suggested she may have been able to make a competent claim against the

respondent, but that there may have been a time limit for doing so. That person recommended that the claimant seek more specialist advice. To the best of the claimant's recollection this conversation took place around the beginning of December 2024.

18. The day after speaking to her colleague the claimant contacted Mr Lawson, her solicitor today, and the two had an initial conversation, the contents of which were not explored in this hearing given that they would have been covered by legal privilege. There was a second conversation around a week later and then Mr Lawson contacted ACAS on 12 December 2024 to begin Early Conciliation. He oversaw the progress of the claim from that point.

Discussion and decision

19. The parties' helpful submissions were considered but are not reproduced here. Some particular points made are discussed below.
20. The starting point in a statutory sense is section 123(1) of EqA which states as follows:

'123 Time limits

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.'*

21. It was clear that all of the claimant's complaints had not been presented within the three-month time limit.
22. An employment tribunal has a wide discretion to extend time under section 123(1)(b). However, the starting point should always be that the primary time limit of three months should be applied. Only if it is just and equitable to extend time should that happen. In that sense an extension should be more of an exception than the default rule.
23. Neither party is subject to a burden of proof in relation to the issue, although a decision to extend time must be based on some relevant material or facts. That need not necessarily be provided by the claimant in such a case, although often this will happen as they are the party seeking the exercise of the discretion.

24. A helpful list of factors to consider was provided in the cases of ***British Coal Corporation v Keeble [1997] IRLR 336***, which both parties referred to, and ***DPP v Marshall [1998] IRLR 494***, namely:
- a. The length of and reasons for the delay,
 - b. The extent to which the cogency of the evidence is likely to be affected by the delay,
 - c. The extent to which the respondent had co-operated with any requests for information,
 - d. The promptness with which the claimant acted once they knew of the possibility of taking action, and
 - e. The steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action.
25. However, it has been made clear in subsequent cases that this is not a closed or definitive list to be slavishly followed. Some factors will be more relevant in each claim than others.
26. A further matter which has been held to be of potential relevance is the apparent merits of the case, although care should be taken when assessing those at a preliminary stage and before all possible evidence has been heard. Some matters disclosed at an early stage in a claim may be agreed or uncontroversial whereas others may be more nuanced, or later squarely contested. Mr Lawson referred to the Employment Appeal Tribunal decision in ***Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT 132*** in this connection. He argued that the claim was evidently competent as drafted and it could not be said that it was without reasonable prospects of success. He was correct in that regard. However, if this is a potentially relevant factor, there is no rule that it is more or less important than any others.
27. Ms Gallagher submitted that there was no requirement to use the Early Conciliation process because the claim was already out of time. It was certainly possible for the claimant, via Mr Lawson, to bypass the process and lodge a claim immediately on or around 12 December 2024. But that would have been to risk the rejection of the claim for failure to provide an Early Conciliation number, setting the claimant back further. In an event there were other more material challenges to the claimant's position which are discussed below.
28. She also submitted that in deciding whether it was just and equitable to extend time the tribunal should not look merely at the knowledge the claimant had of her legal rights and options for redress, but what it was reasonable for her to

know, or to take steps to find out, whether by informing herself of the position or seeking advice and assistance from someone with that knowledge. She cited the decisions of the Employment Appeal Tribunal in ***Perth & Kinross Council v Townsley UKEATS/0010/10/B*** and ***Mensah v Royal College of Midwives EAT/124/94***. In essence, the principles being relied on were that an act of discrimination occurs when it takes place and not any later date when a claimant appreciates or at least views it as such, and unreasonable ignorance of one's ability to raise a claim is not an answer to the question why that claim was raised late.

29. I accepted the submissions of Mr Lawson as far as they went on a number of aspects, including:
- a. That the claimant genuinely did not know that she could make a claim to the tribunal despite not having entered the respondent's employment,
 - b. That the claimant acted promptly in seeking specialist advice following the conversation with her colleague about the possibility of making a claim with the status of job applicant rather than employee,
 - c. That there was no apparent degradation of the relevant evidence as a result of the delay – although it had been almost a year, the process appeared to have largely been documented along the way and the respondent's evidence and rationale for its actions appeared to have been clear, and
 - d. That she put forward a stateable claim on the law and on its apparent merits.
30. However, on balance I reached the conclusion that it is not just and equitable to extend time by the amount required in order for it to proceed to be decided on its merits. The reasons are:
- a. As Ms Gallagher points out, I must not merely look at what the claimant knew within the period when she could have raised her claim within time, but what it was reasonable for her to have known. In this regard:
 - i. She had experience of what she considered to be discrimination in a previous recruitment exercise with another employer;
 - ii. She strongly believed that the respondent's withdrawal of the job offer was wrong, and for the sole reason that it would not make adjustments to accommodate at least one disability,
 - iii. She discussed the situation with family in December 2023,

- iv. She undertook some online research at that time, although did not find a clear answer telling her that she could pursue a claim based on disability discrimination – thus had the resources and mental capacity to undertake this exercise at this time,
 - v. She consciously chose not to research the matter further or explore options for advice and assistance as she felt that pursuing a claim against the respondent, if an option, would damage any prospects of working with the NHS in any role in the future.
- b. Secondly, on the claimant's evidence she only became physically unable to focus on pursuing a possible claim in mid-January 2024 at the earliest and only at the end of that month did she claim that her cognitive abilities were affected. There was no evidence therefore that she was medically prevented from pursuing her rights in December or at least the first half of January. Although the claimant had until 17 March 2024 to commence a claim timeously, and therefore might have been denied the chance to do so from late January onwards, the reality appeared to be that she had already decided not to pursue the matter further. Had she considered initially that she did want to explore that further she could have returned to doing so at some point in July or August at the latest when her stress and anxiety symptoms had abated sufficiently. Her claim would still have been late but by a significantly smaller margin.

Conclusion

31. Ultimately it was these factors which led me to conclude that it was not just and equitable in the circumstances of this case to extend time. The tribunal's discretion is wide, and the claimant had a potentially competent claim, but the predominant factors were that she had a period immediately after the act complained of where she was capable of pursuing a claim (either in the sense of raising one or at least exploring whether she could) but chose not to, and could have returned to this matter in the late summer of but again did not. Given that fact and the significant passage of time which followed, it is not just and equitable for her to be given the option to effectively reconsider that choice she made.
32. The result is that the claim remains out of time and therefore must be dismissed.