



EMPLOYMENT TRIBUNALS

Claimant: Ms N Ogunjobi

Respondent: Hampshire Trust Bank PLC

Heard at: London Central Employment Tribunal (By CVP)

On: 29 August 2025

Before: Employment Judge Lewis

Appearances

For the claimant: Represented herself

For the respondent: Ms G Churchhouse, Counsel

PRELIMINARY HEARING JUDGMENT

1. The claim for unfair dismissal is struck out. The claimant did not have the minimum length of service required.
2. The claims for discrimination are not struck out and no deposit is ordered.

REASONS

The issues for the preliminary hearing.

1. At a preliminary hearing on 3 June 2025, EJ Jack ordered a preliminary hearing to decide the respondent's application for strike out of the claims or for a deposit order. EJ Jack did not set out any further details. He ordered the respondent to set out within 28 days the basis for its application.
2. The respondent set out its application in a letter dated 15 July 2025. It stated that it made an application for the claims 'to be struck out under rule 38(1) on

the basis that they were not within the jurisdiction of the tribunal as they were submitted outside the statutory time limit and/or have no reasonable prospect of success'. The respondent also applied for a deposit order 'in the event that' its strike out application was not granted.

3. Although the respondent started by referring to rule 38(1), I read the application as being an application either to strike out on the substantive grounds of actually being out of time 'and/or' because there were no reasonable prospects of it being in time. I reached that view, both because of the 'and/or' wording and because of the wording of the rest of the application which was written in terms of the actual issue rather than 'reasonable prospects' (apart from regarding the fall back deposit application.
4. An Employment Judge had not previously considered the scope of the Application because it was left open by EJ Jack. I said at the beginning that I could not make a decision as to whether there was in fact continuing discrimination without hearing full evidence about the merits of the case. However, I could look at the issue of reasonable prospects in regard to continuing discrimination.
5. On 'just and equitable' I felt there was no such problem about encroaching on the evidence regarding the alleged discrimination itself. All that was relevant was evidence regarding why the claimant did not make a claim sooner. Moreover, I noted that at the end of paragraph 3 of the respondent's application, it says 'the respondent contends that it is not just and equitable to extend time'. It does not say 'There are no reasonable prospects of the tribunal considering it would be just and equitable to extend time'. I therefore considered that the actual issue of whether it was just and equitable to extend time was anticipated and before me if I did not strike out the claims on no reasonable prospects grounds.
6. To my perception, the hearing today was explored and argued on the basis that there was no reasonable prospect of establishing continuing discrimination *and* that it would not be just and equitable to extend time. Indeed the vast majority of the day was concerned with the latter and in particular, Ms Churchhouse questioning the claimant around her reasons for not putting in a claim sooner.
7. Ms Churchhouse's written submissions refer to 'prospects' / 'reasonable prospects' only in the context of a deposit order.
8. I therefore consider that the question whether it would in fact be just and equitable to allow in the claims out of time was fully dealt with.
9. After I gave my decision, ie that I was not striking out or making a deposit on time grounds because I could not say there was no / little reasonable prospect of success, and that moreover, that assuming there was no continuing discrimination, I would consider it just and equitable to allow in the claims as late, Ms Churchhouse indicated that she understood the issue of continuing discrimination and of the just and equitable discretion would be

ultimately decided by the tribunal at the final hearing. I was worried that there had been a misunderstanding and I said I would give the matter some thought.

10. I do feel that I decided the matter and was in a position to do so and no one was disadvantaged. It concerns me that the final tribunal will have to go through the evidence relevant to just and equitable, which took us the best part of a day, all over again. However, I have reluctantly decided that, given the respondent's application did refer to rule 38, I cannot be sure there was no misunderstanding in preparation for today. I am also unsure, on further thoughts, whether it is right for me to make a definitive exercise of the just and equitable discretion on a hypothetical basis that there was no continuing discrimination, when that latter matter has not yet been definitively decided.
11. I set out below why I do not think it can be said there were no or little reasonable prospect of success (a) on the unfair dismissal qualifying period (b) on continuing discrimination and (c) on the just and equitable discretion if continuing discrimination is ultimately not proved.
12. To summarise for the claimant - the effect of my decision is therefore that the discrimination claims do not get knocked out at this stage without a hearing on the actual discrimination on the basis that they are too weak to proceed, but the final tribunal will still have to make a decision about time as part of its wider decision about whether there was discrimination.

The law

13. The law on strike out and deposit is set out in the respondent's written submissions and I do not set it out here.
14. As I have just explained, an issue arose as to whether I was definitively deciding the time-limit points or whether I was simply looking at it through the lens of whether the claims should be struck out as having no reasonable prospects of success or a deposit ordered because they have little reasonable prospects of success.
15. I was referred to the cases of **Mesuria v Eurofins Forensic Services Ltd** 2025 EAT 103 and **Caterham School Ltd v Rose** EAT 0149/19 regarding the importance of clarity from the outset regarding whether the tribunal is deciding the substantive preliminary point or whether it is considering a rule 38 strike out on grounds of no reasonable prospects of success.

Conclusions

Unfair dismissal

16. As far as the unfair dismissal claim is concerned, the claimant did not have two years' service and so it is struck out. The claimant's only ground for suggesting

two years was not needed was that her constructive dismissal was unfair because of discrimination. This is a common mistake made by unrepresented parties. I explained to her that her claim would therefore in fact come under the heading of discrimination in the Equality Act, ie that it was a constructive dismissal by reason of direct age / race / sex / perceived disability discrimination. After we had had a chance to re-read the particulars of claim, the respondent stated that they would agree to amendment of the claim so that it was a seventh alleged act of direct discrimination (the linked-in allegation now becoming the 8th). This was on the basis that the reason the claimant said she resigned was the three actions originally itemised in the List of Issues under 'unfair dismissal'. In my view, the unfair constructive dismissal claim was already encompassed by the wording of the particulars of claim, but I would otherwise have allowed the amendment.

Discrimination claims

17. As regards time-limits for the eight discrimination claims, the first seven actions were out of time. The earliest incident was on 14 December 2023. There were then a cluster of incidents in July 2024. ACAS was notified under early conciliation on 11 November 2024 and the ET1 was presented on 12 December 2024. The eighth alleged act of discrimination, which I shall call the 'linked-in' action, was on 24 October 2024 and therefore in time.
18. I cannot today make a decision regarding whether there was a continuing discriminatory state of affairs between all or any of actions 1 – 7 and action 8. The claimant explained why she thought action 8 was strange and of a kind consistent with some of the earlier actions in terms of joking about her, passing on information about her etc. At this stage, I cannot go as far as saying that there are no or even few reasonable prospects of success of proving continuing discrimination.
19. In any event, even if a tribunal found there was no continuing discrimination, I think there would be strong arguments to exercise its just and equitable discretion to allow each of the individual claims out of time.
20. The reason why the claims were submitted late is only one factor and not determinative. However, I think the claimant has put forward strong reasons for the lateness. The claimant has a hard time with her physical and mental health over the period, compounded by a number of stressors on her mental health. The first action (low performance rating on 14 December 2023) took place at about the same time – or shortly before – the claimant had to cope with a stalker. The stalking went on until September / October 2024. Within 3 months of 14 December 2023, the claimant had been referred to a consultant for a diagnosis and presentation of options in relation to a uterine polyps and possible endometriosis – which was eventually diagnosed. On 1 March 2024 she was given a set of treatment options, including surgical ones, which required a quick decision. I do not consider ability to make a quick medical decision means that you are able to make decisions about running tribunal claims at the same time. On the contrary. It is likely that you would be preoccupied with the medical problems. A procedure took place on 30 April

2024 – a hysteroscopy and removal of the polyps plus insertion of a Mirena coil. The claimant's pain and bleeding did not improve as it should have done by 6 months. In fact it worsened such that she has now decided to have the coil removed. So throughout the time-limit periods and right up to when she did finally present a tribunal claim, the claimant was coping with this physical problem.

21. The respondent has suggested that the claimant did not have such severe effects following the procedure because otherwise we would see hospital discharge letters and more GP notes. In my experience, not all 'external' medical events get recorded in GP notes. Moreover, it can be hard to get letters from NHS hospitals. In any event, I found the claimant's oral evidence convincing on this and it was consistent with those documents which I did see.
22. On 31 October 2024 the claimant had to give up her accommodation because she could not pay the rent. I did not see the whole chain of documents and the text I did see, referred to the claimant giving notice and the date she wanted to choose. However, the claimant gave me a credible account that leaving her accommodation was forced on her because she could not afford the rent, and that she had been given some kind of letter saying she would be evicted, but that the landlord allowed her to go voluntarily to help with her credit record. In my view, there was enough in the text I did see to show that the claimant had explained her circumstances to the landlord and that he was being sympathetic.
23. The financial stresses did not in themselves prevent the claimant starting a tribunal case, as she was able to research on line and understand what to do, but they caused mental stress which added to the other stresses, meant dealing with tribunal claims was not at the forefront of her mind and another burden. The claimant's family paid for her flight to Nigeria in late November 2024, to help her out. Even there, an incident occurred and she visited a private hospital on 10 December 2024. There was no formal diagnosis of anxiety and depression as such, but I read the hospital letter as being very concerned about the claimant's mental health and suggesting medication could be a good idea.
24. The claimant says that she paid privately for 'Better Health' therapy after she returned in March 2025 and that they would not give her a letter as they do not provide letters for court.
25. I also see the force in the claimant's argument that, as regards the first of the alleged discriminatory acts, at that point it was not obvious that it was discrimination, until a pattern emerged flowing from later incidents.
26. The claimant was able to do some things during this stressful period. She was able to get herself to Nigeria but as I say, this was at the urgings of and with the support of her family and she was ill when there. She was able to deal with medical decisions, but those are likely to be absorbing and distracting, and often sap ability to deal with other things. She did not newly establish a business. She carried on her long-standing weekend little business 'side-hustle' of selling hair extensions. At some stage she applied for some jobs, None of

this suggests to me that she would have found it easy to start a tribunal claim and without legal representation.

27. There are therefore strong arguments that the claimant was not culpable in delaying as long as she did before starting her claim.
28. As regards prejudice, the only prejudice which Ms Churchhouse was able to point to was that by the time we have a hearing about two years may have passed since the events in question and memories may have faded. She had no evidence of any concrete problem or lost documents or witnesses who had disappeared. I did not find this very persuasive. Many discrimination claims go back far longer than this one and are far more involved. Moreover, many of the events were raised in the grievance at the time of the claimant's resignation, so the respondent would have known at that stage that the claimant was unhappy.
29. Regarding the claimant, it is important to her to bring claims. She feels strongly that this represented a pattern of treatment on discriminatory grounds. She would lose the ability to bring her claim in its entirety. She would not even be eligible for an ordinary unfair constructive dismissal claim.
30. I therefore think that even if the final tribunal ultimately finds no continuing discrimination, it cannot be said that there are no or few reasonable chances that it would exercise its just and equitable discretion to allow in late claims.

Employment Judge Lewis

Date: 29 August 2025

Sent to the parties on:

3 September 2025

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For the Tribunals Office