



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss W Kindji

**Respondent:** MCare24 Limited

**Heard at:** Birmingham Employment Tribunal

**On:** 23 September 2025

**Before:** Employment Judge Bennett

## Representation

Claimant: Mr Mayanja, legal executive

Respondent: Mr Miah of Counsel

# RESERVED JUDGMENT

1. The claims of outstanding holiday pay under the Working Time Regulations and breach of contract in relation to a failure to provide weekly paid work of 40 hours were not brought in time. It was reasonably practicable for the Claimant to have presented these claims within the statutory time limits. The Tribunal therefore does not have jurisdiction to hear these complaints and they are dismissed.
2. It is not just and equitable to extend time for the Claimant's Equality Act 2010 claims of race discrimination and harassment. These claims are therefore struck out.

# REASONS

## Background

A preliminary hearing took place on 23 September 2025 pursuant to an earlier preliminary hearing by Employment Judge Kelly on 5 June 2025. The purpose of the PH as set out in EJ Kelly's Record of a Preliminary Hearing dated 5 June 2025 was:

1. *There will be a preliminary hearing listed for 1 day starting at 10.00 am on 23 September 2025. This hearing will take place at the hearing centre.*
2. *Subject to the discretion of the Employment Judge on the day of the hearing, and subject to there being sufficient time, all or a combination of the following matters will be considered at this preliminary hearing:*

*2.1 To consider any amendment application required by the claimant's clarification of her claim.*

*2.2 To identify the issues.*

*2.3 Time: To decide if the complaints under the Employment Rights Act 1996 should be dismissed because the Tribunal does not have jurisdiction to consider them because they are out of time. The Tribunal will decide:*

*a. Was it reasonably practicable for the claim to be made to the Tribunal within the time limit?*

*b. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?*

*c. The claimant may wish to give evidence to explain why it was not reasonably practicable for the claim to be made within the time limit and, if it was not reasonably practicable, why it was made within a reasonable period.*

*2.4 Should the Tribunal strike out any of the claimant's claims on the grounds that they have no reasonable prospect of success?*

*2.5 Alternatively, should the claimant be required to pay a money deposit not exceeding £1000 to the Tribunal as a pre-condition of being allowed to continue with any of her claims on the grounds that they have little reasonable prospect of success?*

*2.5.1 Before making such an order, the Tribunal shall make reasonable enquiries about the claimant's ability to pay a deposit. Therefore, the claimant should attend the hearing ready to give evidence on this.*

*2.5.2 If the order is made and the claimant fails to pay the deposit by the date specified, the allegation or argument to which the deposit order relates will be struck out.*

*2.5.3 If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the claimant, the claimant will be treated as having acted unreasonably in pursuing that specific allegation or argument for the purposes of Employment Tribunal Rule 74 (Costs orders) unless the contrary is shown, and the deposit shall be paid to the respondent (in which case it will count towards any cost order made the Tribunal against the claimant).*

*2.5.4 For more information on costs orders, the claimant is referred to Guidance Note 7 of the Presidential Guidance on General Case Management.*

*2.5.5 For more information on striking out and deposit orders, the claimant is referred to Guidance Note 8 of the same Guidance.*

*2.6 Making further orders to prepare for the final hearing.*

*2.7 Arranging the final hearing.*

The issue of time limits was considered after other case management and applications had been dealt with, as recorded in the separate record of PH. I heard oral evidence from the Claimant and submissions from both parties. I reserved my decision.

## **Legal Framework**

### **Reasonably Practicable Test (Employment Rights Act 1996)**

Claims must be presented within three months of the effective date of termination or the act complained of. If not, the Tribunal must consider whether it was reasonably practicable for the claim to have been presented in time. If it was not, the Tribunal may accept the claim if it was presented within a reasonable period thereafter.

What is reasonably practicable is a question of fact. The words of the test should be given a liberal construction in favour of the employee, and the onus of proving that presentation in time was not reasonably practicable rests on the claimant. If it is found not to have been reasonably practicable for the claimant to have presented the claim in time the question then becomes whether it was in fact presented within 'such further period as the tribunal considers reasonable'

### **Just and Equitable Test (Equality Act 2010)**

Section 123 of the Equality Act 2010 provides that discrimination claims must be brought within three months of the act complained of, or such other period as the Tribunal thinks just and equitable.

The Court of Appeal made it clear in *Robertson v Bexley Community Centre t/a Leisure Link* [2003] IRLR 434, CA, that when tribunals consider exercising the discretion under what is now s.123(1)(b) EqA:

*"There is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule."*

The onus is therefore on the claimant to convince the Tribunal that it is just and equitable to extend the time limit. However, this does not mean that exceptional circumstances are required before the time limit can be extended.

In *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] EWCA Civ 640, the Court of Appeal identified two key factors:

- The length of, and reasons for, the delay; and

- Whether the delay has prejudiced the respondent.

In *Adedeji v University College Hospital Birmingham NHS Trust* [2021] EWCA Civ 23, the Court emphasised that Tribunals should assess all the factors in the particular case which they consider relevant to whether it is just and equitable to extend time.

### **ACAS Early Conciliation Extension**

Under both tests the time limit for presenting a claim to the Tribunal is extended by the duration of ACAS early conciliation, provided the claimant complies with the statutory requirements. The relevant period is paused from the date the claimant contacts ACAS until the date the early conciliation certificate is issued.

### **Findings of Fact**

1. The Tribunal heard oral evidence from the Claimant. She did not submit a witness statement, but gave limited evidence in chief by answering several questions posed by Mr Mayanja and by the Judge. There was no cross-examination.
2. The Claimant gave an honest and credible account of her reasons for only bringing her claims when she did. She did not exaggerate or embellish her evidence. Her account was emotionally sincere and I find that she was genuinely distressed by events that have happened and by having to give evidence in relation to this.
3. I consider that the problems with the clarification and framing of the Claimant's claim, as has been seen repeatedly throughout the preliminary hearing, are the result of her representative's actions (or inaction) rather than any default on the part of the Claimant herself.
4. Regarding the Claimant's complaint that the Respondent failed to notify the Home Office of the termination of her employment, the Claimant described how, after a conversation with her manager in April 2024 in which she was told she might have to return to Cameroon, she thought *"This was like a war, so let me defend myself."* She confirmed that it was following these threats (as she termed them) that *"It just came to my head that I could defend myself. I think of someone who can talk to me. I knew no-one here. I had to call my sister in France whose husband's friend to Mr Mayanja who can direct me what to do."*
5. Despite being prompted to take action by the phone calls in April 2024 the Claimant did not contact ACAS until 14 October 2024, more than five months later. The Claimant explained the delay in taking action by describing her fear that the Home Office would cancel her 'papers'. She said *"That's why I stayed for so long. Until I thought let me look for someone who can help me."* Mr Mayanja described the Claimant as being in difficult circumstances as someone who had only been in the UK for around 2 years, who didn't know anyone in the UK and lacked support. I accept this and I find that the Claimant was also very anxious about being able to continue providing for her family in Cameroon.

6. I also find that, once she had determined to take action, the Claimant was able to contact family and instruct a legal representative. There was no significant event which prevented her from acting earlier other than something in the manner of a mental block. The Claimant did not provide medical evidence or other documentation to show incapacity and I am satisfied that she was aware of the issues as evidenced by her eventual pursuit of the claim.

## **Application of the Law to the Facts**

### **1. Reasonably Practicable Test – claims of unpaid holiday pay and breach of contract**

- 1.1. While I am sympathetic to her circumstances I find that the Claimant was capable of taking action earlier. She contacted family and eventually instructed a legal representative. There was no intervening event preventing her from acting sooner, and no medical evidence was provided to suggest incapacity in any sense, nor was this put forward as a reason on behalf of the Claimant.
- 1.2. Although I give the words of the test a liberal interpretation I also recognise the somewhat rigorous nature of the test to be applied and that the burden is on the Claimant to demonstrate that time should be extended. I conclude that it was reasonably practicable for her to have brought these claims within the time limit therefore, the Tribunal has no jurisdiction to hear them.

### **2. Just and Equitable Test**

- 2.1. The Tribunal recognises the prejudice that will be caused to the Claimant if time is not extended. She will be left without any remedy at all, despite having made serious allegations. There is public interest in having discrimination exposed and this means that it is often appropriate to test discrimination claims in a full hearing. I place weight on this factor.
- 2.2. However, the Tribunal must also consider the merits of the claims, the length and reasons for the Claimant's delay in bringing the claims, and the overall context.
- 2.3. I consider that the discrimination and harassment claims are not strong. The harassment claim and 'telephone call' element of the discrimination claim was only clarified at the hearing today, having been set out quite differently on two previous occasions. As now stated, this allegation appears to refer to the Respondent informing the Claimant of its legal position. I consider that it would be somewhat surprising if this were found to amount to unfavourable treatment or harassment, albeit I accept it is possible. The harassment claim, like the latter two discrimination complaints, lacks a clear nexus to race.
- 2.4. I consider that the claim under the Working Time Regulations for outstanding holiday pay had the greatest merit on its face. This, of

course, is out of time. In any event, I consider that the issue the Claimant is most aggrieved about is the breakdown of the relationship with her manager and her concern about what was happening with her Sponsorship status. I recognise that there is a background to these claims which has not been fully explained to the Tribunal in that the relationship between the Claimant and the Respondent goes beyond that of employee and employer and so it is an emotive matter for all concerned. There is a conflict between the Claimant's reliance on two alleged acts of unfavourable treatment for her race discrimination claim, the first being that the Respondent threatened to cancel her Sponsorship and the second being that the Respondent in fact failed to cancel it. This gives me concern regarding the merits of the claim and whether there is in fact any possibility of it giving the Claimant the outcome she desires.

2.5. The Claimant's realisation in April 2024 that she needed to "defend herself" did not lead to prompt action on her part. She waited five months before contacting ACAS. While she may have had ongoing uncertainty regarding whether the Respondent would notify the Home Office, the Tribunal considers that it would have been reasonable for her to seek advice earlier.

2.6. In considering whether extension would be just and equitable I take into account all of the above and note in particular:

2.6.1. the significant delay of five months after the key conversation in April 2024.

2.6.2. The reasons for the delay, which included lack of knowledge, the Claimant's social isolation in the UK, and her fear regarding her immigration status.

2.6.3. That the prejudice to the Respondent is moderate. The Respondent's witnesses are available, but the passage of time may affect recollection.

2.6.4. The default position is that Tribunal time limits will be enforced. It is for the Claimant to justify a departure from this principle.

2.6.5. The prejudice to the Claimant is also moderate. If time is not extended, she loses the opportunity to pursue her allegations, but I take into account that the claims could not be described as strong.

2.7. Balancing these factors, I conclude that while the Claimant has provided an honest account of events and has a genuine belief that she has been wronged by the Respondent, her delay in seeking to take action was not justified and in the context of the claims not being overtly strong she has failed to show that an extension of time is warranted. It is therefore not just and equitable to extend time and the claims of direct race discrimination and harassment related to race are struck out as having no reasonable prospect of success.

Approved by:

**Employment Judge Bennett**

**24 September 2025**

**Notes**

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

[www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/](http://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)