EMPLOYMENT TRIBUNALS

Claimant: Mr D H Chan

Respondent: Mills Hill Developments Limited

HELD AT: Liverpool **ON:** 12 June 2025

BEFORE: Employment Judge Johnson

REPRESENTATION:

Claimant: Unrepresented
Respondent: Miss Annette Gumbs (counsel)
Ms Leah Corbett (trainee solicitor)

JUDGMENT

The judgment of the Tribunal is that:

Direct discrimination

(1) The complaint of direct discrimination contrary to section 13 Equality Act 2010 was not presented within the applicable time limit. It is not just and equitable to extend the time limit. The complaint is therefore dismissed.

Indirect discrimination

(2) The complaint of indirect discrimination contrary to section 19 Equality Act 2010 was not presented within the applicable time limit. It is not just and equitable to extend the time limit. The complaint is therefore dismissed.

Harassment

(3) The complaint of harassment contrary to section 26 Equality Act 2010 was not presented within the applicable time limit. It is not just and equitable to extend the time limit. The complaint is therefore dismissed.

Victimisation

(4) The complaint of victimisation contrary to section 27 Equality Act 2010 was not presented within the applicable time limit in relation to the alleged detriments (a) and (b). It is not just and equitable to extend the time limit. This part of the complaint is therefore dismissed.

(5) The victimisation detriment (c) is struck out under Employment Tribunal Rule 38(1)(a) because it has no reasonable prospect of success.

Reasonable adjustments

(6) The complaint of a failure to make reasonable adjustments contrary to sections 20 & 21 Equality Act 2010 was not presented within the applicable time limit. It is not just and equitable to extend the time limit. The claim is therefore dismissed.

Discrimination arising from disability

(7) The complaint of discrimination arising from disability contrary to section 15 Equality Act 2010 was not presented within the applicable time limit in relation to the alleged acts of unfavourable treatment (a) and (f). It is not just and equitable to extend the time limit. This part of the complaint is therefore dismissed.

(8) The alleged act of unfavourable treatment (g) is struck out under Employment Tribunal Rule 38(1)(a) because it has no reasonable prospect of success.

REASONS

Introduction

Background to the proceedings

1. These proceedings arose from the claimant's employment as a demi chef de partie at the respondent's El Gato de Negra tapas restaurant in Liverpool city centre. He worked for the respondent from 19 May 2022 until his employment was terminated on 1 July 2022. The respondent argues that the claimant failed his probationary period.

2. The claimant says he is disabled by reason of Aspergers (an Autistic Spectrum Condition) and he is therefore neuro diverse. He was concerned that his dismissal was connected and related to his disability. The respondent accepts that the claimant is so impaired but disputes that the claimant meets the definition of disability under section 6 Equality Act 2010.

3. The claimant did not take any action concerning this dismissal in 2022, until 1 May 2024 when he issued a claim form following early conciliation from 21 December 2023 to 1 February 2024. He says that claim arose from the refusal of the respondent to allow his appeal and grievance raised on 19 December 2023, (more than 17 months later).

Case management

4. The hearing was listed for a preliminary hearing case management (PHCM) on 18 November 2024 and was heard by Judge Rhodes. The claimant argued that notwithstanding the 17 month delay following the termination of his employment before he raised his grievance, this amounted to a continuing act. The respondent asserted that the decision not to allow the claimant a right of appeal in July 2022 was when time began to run, and the claim was presented well out of time. Alternatively, the 17 month gap defeats the claimant's continuing act argument.

5. Following the PHCM, Judge Rhodes listed the case for a preliminary hearing on 12 June 2025, with a duration of 1 day and to determine the following questions:

    a) The time limit issues set out at points 2.1.1 to 2.1.6 in the Annexed List of Issues; and,
    b) Whether any of the claimant's complaints arising out of matters which are alleged to have occurred after 1 July 2022 should be struck out on the basis that they have no reasonable prospects of success;
    c) Any application the claimant may make under Rule 50 (anonymity/privacy); and,
    d) General case management.

6. It was only possible for me to deal with 5(a) and 5(b) at the preliminary hearing.

7. The claimant had been ordered by Judge Rhodes to write to the Tribunal by 16 December 2024 should he wish to revise his Rule 50 (now of course Rule 49 since the 2024 Rules were introduced) and provide full details about what order was being sought and why. The claimant confirmed that although he had previously sought an order for anonymity in this case, he had given notice of his withdrawal of this application on 10 June 2025.

8. Provisionally (and quite sensibly considering how long parties have to wait for a lengthy final hearing to be listed), Judge Rhodes also listed the case for a final hearing on 2, 3, 4, 5 & 6 March 2026 before a Judge sitting with members in the Liverpool Employment Tribunal. It was not clear how many

hearing days would be required, but the issues in this case appeared to justify a 5 day final hearing.

9. Further case management orders were also made with claimant providing a witness statement dealing with the preliminary time limit issues, the parties to each provide their respective submissions on the subject and for the respondent to prepare a preliminary hearing bundle.

Management of the preliminary hearing

10. I delayed the beginning of the preliminary hearing in order that I could carry out some preliminary reading from the large preliminary hearing bundle and so that I could consider the contents of the proceedings, the Note of Judge Rhodes and the respective parties' written submissions for the hearing.

11. There was a subsequent application on 18 November 2024 which was seeking permission to amend allegations of treatment in the direct discrimination complaint and unfavourable treatment in the discrimination arising from disability complaint. This involved the addition of the words:

'…resulting in the claimant being barred from future employment with the respondent',

to the allegations that the respondent's email dated 10 January 2024 and thereby did not take the claimant's allegations of discrimination seriously. Judge Leach in a Tribunal letter dated 14 January 2025 informed the parties that this matter would be considered in the preliminary hearing. I have considered this application within the discussion section below where appropriate.

12. The claimant was also seeking to make an application to amend his claim because the list of issues as currently drafted omits allegations that he had previously made and identified in his email to the respondent and the Tribunal on 20 February 2025, (p307). The claimant explained his reasons for making the application in this email and I considered it below within the discussion section below where appropriate.

13. At the beginning of the hearing, I asked the claimant to describe what adjustments he might need to accommodate the impairments that arose from his neuro diverse conditions he referred to Aspergers and informed me that he would mainly need additional thinking time, that he may struggle to 'take turns' and could interrupt and that he would need to write things down on paper so that he could refer to them later on.

14. He said that he found CVP hearings to be more manageable. I did find at times the slight delays within the CVP platform meant that the claimant could find it difficult to take turns in the way that he described. Despite this, he was an articulate and knowledgeable person who was able to make submissions and raise arguments as the hearing progressed.

15. An added difficulty, however, was the claimant's tendency to continuously review the case as it progressed and to tweak and recalibrate the issues. This generated significant correspondence and him revisiting what appeared to be previously settled matters. While it is understandable that he will want his claim to be presented in what he believes is the best possible way, his lack of restraint during the proceedings has become increasingly difficult. This included the sending of additional emails and documents following this preliminary hearing when he had been expressly told that no additional written submissions were required. This has resulted in a disproportionate use of Tribunal resources.

16. In terms of the submissions that he wished to make concerning time limits, the claimant confirmed that he was not seeking to argue that time should be extended on just and equitable grounds under section 123 Equality Act 2010. His primary argument was therefore that the complaint involved allegations which formed a series of discriminatory events and the latest of which would have been the refusal by the respondent to accept the request for an appeal more than 17 months post dismissal.

17. Ms Gumbs mentioned that the claimant had presented two additional claims to the Tribunal since these proceedings began. They were as follows:

    a) Case number: 6005369/2025. This was presented on 18 February 2025 and named the respondent employer, but also Mr Smith as second respondent. A complaint of disability discrimination was brought, the proceedings accepted, and a response had been presented by the respondent.

    b) Case number: 6020316/2025. This was presented on 1 June 2025 and was in the process of being vetted by the Tribunal. The claim identified the respondent employer, but also Mr Smith and Simon Shaw as second and third respondents respectively.

    For the avoidance of doubt, my consideration of the preliminary hearing issues today, related to the current claim, although my decision may well impact upon the way the second and third claims are dealt with by the Tribunal given that they arise from the same period of employment with the (first) respondent.

Issues

18. The issues which the Tribunal has been asked to consider are those found in the Annex to Judge Rhodes' Note of PHCM dated 18 November 2024 and are as follows:

2.1.1 Given the date the claim form was presented and the effect of early conciliation, any complaint about something that happened before 20 September 2023 may not have been brought in time.

2.1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

2.1.3 Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act to which the complaint relates?

2.1.4 If not, was there conduct extending over a period?

2.1.5 If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?

2.1.6 If not, were the claims made within such further period as the Tribunal thinks is just and equitable? The Tribunal will decide:

(a) Why were the complaints not made to the Tribunal in time?

(b) In any event, is it just and equitable in all the circumstances to extend time?

19. The identified substantive issues of the claim would be reserved to the final hearing.

Evidence used

20. The Tribunal was provided with firstly, a large preliminary hearing bundle of 520 pages and which consisted of the proceedings, the Note of PH of Judge Rhodes, many emails sent by the claimant and respondent, papers relating to the second claim and substantive documents.

21. The parties agreed that this was a case where submissions were only required and there was no need for the claimant to give oral evidence.

22. Ms Gumbs added that although the application had been made by the respondent, it was for the claimant to prove that the claim had been presented in time or not. However, she offered to provide her submissions first with the right of reply after the claimant had provided his. This took account of his status as an unrepresented party and that he might find it of assistance to observe how counsel provided her submissions. The claimant agreed and I was happy to proceed on this basis as it was in accordance with the need to deal with cases flexibly in accordance with the respective parties' resources in accordance with the overriding objective.

23. Once I head heard the submissions from both parties, I reserved my decision as there was a significant amount of material to review before I could reach a decision. The claimant did seek permission to provide further written submissions, but I explained that I had sufficient information available to me to reach my decision.

Findings of fact

24. It would be appropriate at this point to outline the basic findings of fact in this case which I understood to be uncontroversial and essentially amount to a chronology of events.

25. The parties should note that the Tribunal's findings of fact do not seek to deal with every point where the parties disagree, simply what is relevant to the issues which the Tribunal is being asked to consider. If the discussion of an incident or point is not referred to within these findings, it does not mean that it has not been considered by the Tribunal, simply that it is not relevant to the issues and the findings that we are required to make.

26. In terms of the findings that we make, the Tribunal has reached its decision on what it considers to be on balance of probabilities the most likely way/reason in which an incident arose.

The respondent

27. The respondent company is a business which runs restaurants and, in this case, their restaurant which at the material time was relevant to this case was *'El Gato Negro Tapas'.* The restaurant was located in Exchange Flags, Liverpool City Centre. It is understood that a restaurant still exists at this site, but it is appears to have changed its name to *'The Black Cat Club'.* It is not clear whether the current business is still operated by the respondent, but I concluded that it was not relevant to this case.

28. The respondent had a kitchen to prepare food and employed a chef and other members of staff to deal with the catering side of the business.

The claimant

29. The claimant began his employment with the respondent as a demi chef de partie at their Liverpool branch of the restaurant chain '*El Gato Negro Tapas'* from 19 May 2022. He was subject to contract of employment, (p499) and was subject to a probationary period of 6 months in accordance with clause 3.

30. Unfortunately, he was determined by the respondent to have failed his probationary period and he was dismissed by the Head Chef Harry Doyle on 1 July 2022.

31. On 6 July 2022 the decision was confirmed in a letter which was sent by Mike Smith (HR Manager) and which confirmed that the claimant's last day of service was 1 July 2022, (p505).

32. The claimant responded on 8 July 2022 and sought confirmation of the number of hours which would be used to calculate his payment in lieu of notice. There was an exchange of emails on 9 and 12 July 2022, with the claimant accepting Mr Smith's proposal that 36 hours work would be used when calculating the payment in lieu that applied, (p506).

33. A period of more than 17 months then elapsed where the claimant was no longer employed by the respondent and where the claimant was employed with another business, before a grievance was brought on 19 December 2023. In this email dated 19 December 2023, the claimant sent an email which was described as *'an official Disciplinary Appeal & Grievance'.* In this

correspondence, the claimant referred to discriminatory acts relating to his neurodiverse condition of Aspergers, (p510-12).

34. Mr Smith acknowledged this email on 19 December 2023 and confirmed receipt of the email and that he would respond in due course, (p507). The claimant then went on to raise several health and safety/food safety issues which are not obviously relevant to these proceedings being references to recollections of his time working for the respondent, (pp508-9)

35. In the interim however, the claimant did seek to secure alternative employment and correspondence was included within the bundle which referred to a request for a reference and Mr Smith confirming to the claimant that he could use his name on 30 September 2022, (p507).

36. On 21 December 2023, Mr Smith informed the claimant that his employment terminated on 1 July 2022, and he had no right of appeal against the dismissal decision because it was so long after the date when he was dismissed, (p516). The claimant then sought to question whether he could apply for a new role with the respondent and the next day on 22 December 2023. Mr Smith explained that his previous service would be taken into account should an application be made, (p515). The claimant then questioned whether his recent application for a chef de partie/kitchen porter would be progressed.

37. On 21 December 2023, the claimant notified ACAS of a potential claim relating to disability discrimination and an early conciliation certificate was issued on 1 February 2024. The claimant then presented a claim form to the Tribunal on 1 May 2024. This was 10 months following the claimant's dismissal and related to a period of employment of less than 2 months duration. He indicated within section 8.1 of the claim form that complaints of unfair dismissal and disability discrimination relating to victimisation (section 27 EQA) and harassment (section 26 EQA). However, the attached grounds of complaint identified additional discriminatory complaints relating to his disability, namely direct (section 13 EQA), indirect (section 19 EQA), reasonable adjustments (sections 20 & 21 EQA) and discrimination arising from a disability (section 15 EQA). In other words, he identified every potential form discriminatory complaint that could be brought under the EQA in relation to disability. The grounds of complaint was a lengthy document.

38. The Tribunal accepted the claim and on 20 May 2024, issued the usual Notice of Claim and Notice of Preliminary Hearings letters requiring a response to be presented by 17 June 2024. On 11 June 2024 the respondent presented a response and detailed grounds of resistance, which rejected the claimant's allegations. The primary ground of resistance was that the claimant was subject to a probationary period and on 6 July 2022 contacted him to say that his employment had ended on 1 July 2020 because the required standards of work had not been met.

39. Judge Rhodes heard the PHCM on 18 November 2024 and at this hearing the claimant withdrew the complaint of unfair dismissal, which was dismissed.

The case was listed for a PH to consider the questions identified within the list of issues above.

Law

Time limits – discrimination complaints

40. Section 123(1) of the Equality Act 2010 provides that a complaint 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 Tribunal thinks just and equitable.

    Under section 123(3) conduct extending over a period is to be treated as done at the end of the period; and failure to do something is to be treated as occurring when the person in question decided on it. Under section 123(4) in the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something (a) when P does an act inconsistent with doing it; or (b) If P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

Strike out of all or part of a claim – Rule 38(1)(a)

41. A Tribunal may strike out all or part of a claim (or response), that is scandalous or vexatious or has no reasonable prospect or success.

42. In *Wangtian Xie v E'Quipe Japan Limited* [2024] EAT 176 describes the key principles from leading authorities including the draconian nature of strike out, the public interest of cases being heard on their merits, exercising care when striking claims brought by litigants in person, but that there is no absolute prohibition to strike out discrimination cases, especially if the case involves undisputed facts and evidence.

43. In *Cox v Adecco* [2021] ICR 1307 (which was considered in *Wangtian Xie* (above), HHJ Tayler stressed the importance of understanding what a claim is about before considering strike out, but that nobody gains from truly hopeless cases being pursued to a hearing.

Case Law – Joint Bundle of Authorities relied upon by the parties.

44. This was a large bundle which to 965 pages and consisted of 57 authorities. It is not necessary to refer to them all in this judgment, but I recorded that the parties referred to the following cases within their *oral* submissions and in the following order.

Ms Gumbs' final submissions

45. *Coutts & Co plc & anor v Cure & anor* [2005] ICR 1098 EAT – time limits in relation to fixed term employees regulations and the relevant date from when time begins to run is the date when a right is infringed.

46. *Arthur v LNER Limited (t/a One Stansted Express)* [2006] EWCA – series of similar acts in relation to whistleblowing complaints and the linkages between individual acts.

47. *Lupetti v Wrens Old Home* [1984] ICR 348 EAT – the effective date for when time starts to run is the date when termination of employment takes effect, rather than when notice is given.

48. *Hale v Brighton & Sussex* UKEAT/0342/16/LA – a decision to instigate disciplinary procedures was an ongoing state of affairs and thereby a continuing at meaning that the claimant presented their claim in time.

49. *Taylor v OCS* [2006] ICR 1602 – how the Tribunal should approach unfair dismissal and disability discrimination cases.

50. *Holt v Res on Site Ltd* (2014) UKEAT/0410/13/BA – applying *Taylor* (above). Tribunal should consider dismissal process as whole and Judge's discretion concerning relevance of evidence and contributory fault.

51. *Hendricks v Commissioner of the Police for the Metropolis* [2003] ICR 530 CA – statutory time limits in discrimination complaints and guidance concerning how Tribunals should approach this matter. When seeking to establish that a complaint is part of an act extending over a period, the claimant must show a prima facie case.

52. *Lyfar v Brighton & Sussex University Hospitals Trust* [2006] EWCA Civ 1548 CA – considers *Hendricks* (above) and the exercise of just and equitable discretion to extend time.

53. *Barclays Bank plc v Kapur* [1991] ICR 208 HL – whether exclusion of prior service is an act extending over a period or a one off decision.

54. *Amies v ILEA* [1977] 2 All ER 100 – jurisdiction provided by statute.

55. *Owusu v London Fire & Civil Defence Authority* [1995] IRLR 574 EAT – an act extends over a period of time if it takes the form of some policy or rule or practice from which decisions are taken from time to time.

56. *Cast v Croydon College* [1998] ICR 500 CA – whether there was more than one decision amounting to an act of discrimination and the question of extending time.

57. *Tyagi v BBC World Service* [2001] IRLR 465 CA – a job applicant cannot complain of a policy of continuing discrimination extending over a period.

58. *Okoro v Taylor Woodrow* [2013] ICR 580 CA (applied *Tyagi)* – a ban imposed on claimants from the respondents' sites was a one off act and time ran from that date.

59. *Rovenska v GMC* [1998] ICR 85 CA – each time the respondent refused the claimant's request for a limited registration without passing the language test was an alleged act of discrimination. Accordingly, the relevant date for the purposes of time limits is the final act alleged.

60. *Chaudhary v RCS* [2003] ICR 1510 CA – appeals raised by member of RCS and time begins to run from the determination of the appeal refusal.

61. *Ibarz v University of Sheffield* (2015) UKEAT/0018/15 – considers the question of a series of similar acts where policies etc' are extended over a series of fixed term contracts and whether there are sufficient linkages.

62. *Jessemy v Rowstock Ltd* [2014] EWCA Civ 185 – whether an employee can bring a claim for victimisation detriments following the ending of their employment and a purposive interpretation of the Equality Act 2010 as a consolidating piece of legislation, (see Underhill LJ at paragraph 48).

The claimant's final submissions

63. *Ma v Merck Sharpe and Dohme Ltd* [2008] EWCA Civ 1426 – consideration of whether alleged acts of discrimination extended over a period or where isolate acts resulting in some being out of time.

64. *Coutts* (see above)

65. *Hendricks* (see above)

66. *Aziz v FDA* [2010] EWCA Civ 304 CA – considers the question of 'continuous acts' and reviews existing authorities such as *Hendricks.*

67. *Hale* (see above)

68. *Tyagi* (see above)

69. *Cast v* (see above)

70. *Shamoon v RUC* [2003] ICR 337 HL – considers the question of detriments and comparators in discrimination law.

The respondent's (Ms Gumbs') submissions

71. Miss Gumbs had already provided a skeleton argument before the hearing began. In oral submissions, she provided an outline of the statutory provisions concerning time limits for discrimination cases under section 123 of the Equality Act 2010. She reminded me of the chronology of events in this case and that the claimant had been dismissed on the 1 July 2022 and that since that date a lengthy period had elapsed before he had sought to bring a

grievance against the respondent concerning his dismissal and to launch an appeal against the same decision. On this basis she argued, the claim was presented more than three months after the date of the dismissal and no extension will have been provided by the early conciliation, considering the date when the claimant presented his claim to Acas.

72. Reference was made to the case of ***Coutts*** (above) and noted that provisions were made regarding what amounted to a series of acts. Miss Gumbs observed that the claimant referred to a series of acts over a period of time which amounts to a category 2, or a category 3 issue as described within ***Coutts*** (paragraphs28):

    (1) "A one-off act of discrimination, such as a refusal to promote, which has continuing consequences for the disappointed candidate.
    (2) An act extending over a period of time, constituting a rule or policy, by reference to which decisions are made from time to time.
    (3) A series of discriminatory acts, whether or not set against a background of a discriminatory policy.

    A complaint in respect of category (1) must be made within three months of the act or, where specific statutory provision is made for a deliberate omission to act, within three months from the date when the relevant less favourable treatment was "decided on". Time runs for a category (2) complaint when the discriminatory rule is abrogated; and it will also run in the case of the specific application of the rule to any given employee, eg in refusing promotion, from the date of that application. Time runs in a category (3) complaint where there is specific statutory provision for this, from the last in the series of acts."

73. The respondent's position was that it is not possible to identify category 3 and there is no provision available to the tribunal to extend time on that basis. Miss Gumbs referred to the case of ***Lupetti*** (see above) and observed that time runs from the effective date of dismissal. In this case the effective date was 1 July 2022. What the claimant did afterwards did not amount to a series of continuing acts.

74. Miss Gumbs then described the dismissal process as continuing conduct noting that the case of ***Hale*** (see above) should be compared with the claimant's case where there was no disciplinary process and no steps have been taken according to procedure.

75. She added that the question of continuing conduct under category 2 provided by ***Coutts*** places the burden on the claimant to show that all the allegations were linked. She accepted that there being an absence of activity did not necessarily end the conduct but observed that the claimant was no longer employed by the respondent from the 1 July 2022 and form that date, he was not subject to any conduct or indeed an absence of conduct by his employer.

76. Ms Gumbs submitted that as a matter of policy, the claimant must be in employment to be able to rely upon the question of extended conduct under time limits, adding that they cannot bridge the gap between the date of dismissal and the date when Acas was notified.

77. In conclusion she argued that this was a case where the employment relationship was very short and where there were no incidents of discrimination or victimisation following the effective date of termination. It would be an absurd situation she said, if the claimant was allowed to apply for an appeal from his former employer at any stage in the future even if it was many years after the employment relationship had ended with the respondent.

78. Miss Gumbs also referred to the question of just and equitable extensions under section 123 EQA. She observed that the claimant confirmed that he was not relying upon the just and equitable argument as part of his case. But she nonetheless reminded me of her written submissions and the chronology of events. She added it was not a detriment to reject the request for an appeal many months after the employment had terminated. Accordingly, her argument was that the claim was well outside the normal time limits that it was not just an equitable to extend and that the claim should be struck out.

Claimant's submissions

79. The claimant referred to the case of ***Ma*** (above) and asserted that it was reasonably arguable for there to be a series of continuing acts following the dismissal which resulted in the claim not being presented out of time. He confirmed that in relation to the case of ***Coutts*** he was either bringing a category 2 or a category 3 claim. The refusal of the appeal on the 21 December 2023 related to the original decision to dismiss on the 1 July 2022. The claimant then referred to the merits of his discrimination complaint and submitted that the respondent effectively created an ongoing situation or state of affairs. He added that the decision to dismiss was based upon sham reasons and it related to the claimant's disability.

80. He referred to the case of ***Cast*** (above) and noted that the claimant in that case brought the same complaint time and time again. He argued that the refusal of the appeal clearly amounted to a discriminatory detriment and that the respondent was deliberately seeking to prevent any claimant for from report being reengaged as an employee. While it may be true that 17 months have passed, he is someone with a disability and it is reasonable that he could consider the refusal of the appeal to amount to a detriment. He then proceeded to describe the difficulties that he encountered as a person with autism and believed that it would be a miscarriage of justice to prevent him from pursuing the claim.

Discussion

81. The claim form was supported by a grounds of complaint which was lengthy and while the claimant attempted to cover every single thing that he felt was relevant, it made it more difficult for his claim to be distilled into a concise list of issues.

82. Unfortunately, many litigants in person become focussed upon producing voluminous documents at an early stage. A simple indication of the claims being brought, combined with a list of short allegations (including its date,

what happened and who was responsible/witnessed the act), will be usually sufficient. Overly lengthy grounds of complaint involving relatively short periods of employment can require disproportionate additional work from the respondent and the Tribunal. Moreover, for the litigant in person, it can result in a lengthy list of issues which can burden them with considerable disclosure of documents, numerous witness statements and the risk that they may fail to address a Tribunal on key elements of the case at a final hearing.

83. Judge Rhodes helpfully did some of the 'heavy lifting' at the PHCM and included a proposed list of issues within the Note of PH produced on 18 November 2024, (beginning on page 77 of the PH bundle). The list of issues includes the question of time limits under section 123 EQA.

84. While ideally, it would have appeared simpler and quicker to deal with the complaints as one 'whole', the way in which the list of issues has been prepared and the way in which the claimant has described and dated his allegations, has necessitated my consideration of each complaint separately. I have also identified concerns regarding the claimant's approach to this case, which I will also discuss below as appropriate.

Amendments to the list of issues

85. As I was being asked to consider not only the question of time limits, but also strike out under Rule 38(1), I was conscious that I must ensure that I fully understand the claim under consideration. This is consistent with the guidance provided in *Cox* (above).

86. On 20 February 2025, the claimant sent an email which argued that Judge Rhodes had omitted the following 5th, 6th and 7th allegations from the direct discrimination complaints within the list of issues:

> *"Fifth claim: The Respondent's email to the Claimant stating that he had "no right to appeal" dated 21 December 2023, which is a breach of statutory duty.*
>
> *Sixth claim: Failure to take his Disciplinary Appeal/Grievance seriously (including to conduct any meeting or investigate at all).*
>
> *Seventh claim: Respondent's email to Claimant where the Respondent stated, "we refute these [allegations] in their entirety" which had a tone of dismissiveness".*

87. I considered that this email was effectively a clarification of Judge Rhodes' Note of PH on 18 November 2024. The substance of this discussion was explained to the parties at the PHCM and sent to them on 28 November 2024 in the format included within the bundle. If the claimant had believed that Judge Rhodes had been in error, then she should have notified the Tribunal within 14 days of the date when the Note of PH was sent to him. He failed to do this and consequently the list remains as drafted. He did not make a formal application seeking to amend the claim.

88. However, I did note that these allegations had actually been included within the section 15 EQA list of issues and the claimant was therefore not prejudiced by being deprived of these allegations. I concluded that this was another illustration of the claimant's continuous scrutiny of his claim and seeking to revisit things which he omitted to do earlier within the proceedings. This was unfortunately disproportionate and was prejudicial to the respondent by depriving them of certainty concerning precisely what the claimant's claim is about.

89. However, even if I had invited an application and allowed the amendments, these allegations would have been considered in the same way that their unfavourable treatment allegations would have been. Consequently, these allegations would either have been dismissed because they were out of time or subject to strike out under Rule 38(1)(a) as appropriate.

90. Turning to the application made on 18 November 2024, I heard limited submissions concerning this matter, but in order that I can be satisfied that I fully understand the case under scrutiny for the purposes of strike out (*Cox* see above), I felt it was necessary to consider them further. This was the most proportionate way of resolving this matter and in accordance with the overriding objective. The parties had been afforded plenty of time to address these matters in preparation for and during the PH.

91. The claimant was seeking to provide additional wording to the direct discrimination (s13 EQA) detriment and discrimination arising from disability (s15 EQA) unfavourable treatment which both involve a failure to take the claimant's appeal/grievance seriously in an email dated 10 January 2024. The wording was *'…resulting in the claimant being barred from future employment with the respondent.'* I understand that in relation to the direct discrimination complaint, this allegation was subject to the seventh allegation which was refused above. However, I have considered it for completeness in any event.

92. In making this application, Miss Gumbs submitted that the claimant was seeking to make an amendment which would argue that a policy existed which would mean he would be inevitably barred from employment with the respondent.

93. I agreed that this was an entirely new factual allegation and was seeking to expand existing allegations beyond single acts to an ongoing state of affairs.

94. I also agreed that this application was made significantly out of time, even if we allow the early conciliation period which began before 10 January 2024. Once the early conciliation certificate was issued on 1 February 2024, the claimant would have until 30 April 2024 in which to bring the claim. The claimant was aware of this email and was able to include it within the original grounds of complaint and to address it at the PHCM. Instead, he made the application immediately following this hearing. The claimant had raised the question of being able to make further applications for jobs with the respondent in December 2023 and there is no reason why the substance of

this amendment could not have been made at the time the claim was presented.

95. In terms of prejudice, the claimant would not be significantly prejudiced by being deprived of this amendment. He does after all, at the date of the preliminary hearing, have the benefit of making a series of complaints encompassing all possible disability claims that can arise out of employment. Many of the allegations are duplicated across the various complaints. This is a significant complaint of disability discrimination, harassment, and victimisation.

96. The respondent, however, would be faced with yet another attempt to expand the claim rather than the claimant focusing upon the original claim and list of issues as agreed at the PHCM before EJ Rhodes. The respondent was entitled to know what claim it was facing.

97. My conclusion was that this application served as an illustration of how the claimant approaches this claim and his continual attempts to recalibrate and fine tune those issues which should by now have been identified. Ultimately, this is an application which could have been made shortly after the claim was presented (if not already included within the grounds of complaint) and it is necessary to refuse the application given that it raises new issues, is made significantly out of time and is significantly prejudicial to the respondent.

98. However, even if the application had been granted and I had allowed the amendments, these allegations would have been considered in the same way that the equivalent unfavourable treatment allegations would have been within the list of issues. This because they arise from the same events on the same date. Consequently, these allegations would either have been dismissed because they were out of time or subject to strike out under Rule 38(1)(a) as appropriate, (see consideration of section 15 EQA complaint below).

99. With the questions of the applications now determined and the appropriate list of issues being that annexed to Judge Rhodes' Note of PH, I now move on to the substance of this preliminary hearing which deals with time limits and strike out.

<u>Section 13 EQA – direct discrimination</u>

100. In relation to direct discrimination, the claimant makes 4 allegations relating to the disciplinary process and the decision to dismiss him. They are as follows:

a) *"Failing to conduct an investigation during the alleged disciplinary process between May 2022 to 10 January 2024;*
b) *Failing to follow a fair process in accordance with the Acas code of practice in relation to the disciplinary on one July 2022 and the grievance raised by the claimant on 19 December 2023, by the absence of any process leading to the dismissal and subsequent refusal of a right of appeal;*
c) *making a predetermined decision to dismiss the claimant; or,*

d) dismissing the claimant on 1 July 2022."

101. There was no doubt that the claimant was dismissed on 1 July 2022 and at this point, his employment relationship with the respondent ended at around this time. There may have been a dispute that the claimant was unaware of this decision until the date when the dismissal was communicated to him a few days later on 6 July 2022, but he knew he had been dismissed by 6 July 2022 and no later. If the four allegations are considered together, they relate to a period of actions on the part of the employer beginning in May 2022 and ending by 6 July 2022. There is no continuing act beyond this date and the claimant's failure to request an appeal or raise a grievance during July 2022, meant that these acts attributable to the respondent ceased and the matter was closed.

102. Indeed, the ACAS Guide on Discipline and Grievances at Work (2020), for issues to be dealt with fairly both *employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions', (see 4.12 of the ACAS Guide).* While this case does not appear to involve issues arising from a conduct or disciplinary matter and it is more likely one of capability arising from a probation period, the ACAS is Guidance clear of the good practice relating to employment disputes that should apply to both employers and employees.

103. On this occasion, the respondent made a decision quickly and confirmed the decision in writing. Whatever flaws there may have been in their investigation the respondent reacted quickly. The claimant appeared not to react at all and it would unreasonable for the respondent to be expected to conclude that any internal process remains open until such time as the claimant expressly confirms whether they wish to take matters further or not.

104. The 6 July 2022 is the date from when time begins to run and the claimant has three months in which to bring a claim or at least notify ACAS of a potential claim, thereby securing some protection during the early conciliation period.

105. The claimant's attempt to extend the disciplinary process beyond 6 July 2022 is unreasonable and a means by which he seeks to extend the final act from when time starts to run under section 123(1) EQA to a date which will bring him closer to date when the proceedings were issued.

106. Moreover, in terms of the later alleged acts from December 2023, this was not a genuine attempt to allege discrimination following the ending of an employment relationship under section 108 EQA. This because it does not involve an employer resurrecting actions that it had previously taken up to and including the date of dismissal after the employment had ended. I noted that the original decision to dismiss was made by the chef Mr Doyle on 1 July 2022. The subsequent request for an appeal/grievance involved Mr Smith the HR manager, who simply confirmed the decision made by Mr Doyle on 6 July 2022. This did not suggest any continuing state of affairs existing beyond the decision made by Mr Doyle, of a corporate policy of refusing to employ the claimant in future.

107. Instead, it involved a claimant who had after more than a year, decided to return to long expired process which led to his dismissal and to try and bridge the gap to make up for his failure to react within the usual timescales allowed by section 123 EQA, or even simply to exhaust any internal processes that might have existed within the respondent's in house policies and procedures relating to the ending of probationary periods.

108. In any event, by applying section 123 EQA, the claimant should have notified ACAS or presented a claim by no later than 5 October 2022 (assuming date of knowledge of dismissal was 6 July 2022). As he did not notify ACAS until 21 December 2022 more than 14 months after this date, means that the claim was presented well out of time in relation to the section 13 direct discrimination complaints.

109. Although the claimant was not interested in making arguments on just and equitable grounds, I did briefly consider the question of whether time should be extended. The claimant provided little explanation concerning why he could not present the claim earlier than he did and it appears that he has been aware or at least had the wherewithal to make enquiries into the bringing of Tribunal claims, the role of ACAS and importance of time limits.

110. His ability to react quickly was demonstrated within December 2023 when he immediately notified ACAS of a potential complaint the moment, he was refused permission by the respondent to bring an appeal and grievance on 21 December. Yet, he was also able to prolong the period when he brought proceedings leaving it a full 3 months before presenting a Tribunal claim. his elaborate drafting of proceedings and reference to employment law, demonstrated his competence to bring claims effectively and within time.

111. In terms of prejudice, had the claimant been genuinely concerned about the original decision to dismiss, he would have brought a claim immediately or at least within 3 months following his dismissal. His delay of almost 2 years before doing so, represents a view that tactics rather than a genuine feeling of injustice are his real motivation. Simply put, had he been genuine about wanting to bring a claim, he would have been able to and would have done so within the normal time limits.

112. In contrast, the respondent is concerned about the absurdity of an employee seemingly acquiescing to a decision to dismiss following the failure of a probation period and then biding his time for more than a year before deciding to resurrect his grievance and to present a wide ranging selection of discrimination complaints. It would be wholly prejudicial to expect a respondent who employed an employee for less than two months, to be expected to revisit the decision almost 2 years after it took place. It places an intolerable burden on this employer and those working for it. It would not be just and equitable to extend time.

113. I was invited to consider the question of strike out under Rule 38(1)(a) in addition to time limits for those allegations which are alleged to have taken place after 1 July 2022, as part of the list of preliminary matters identified by

Judge Rhodes at the previous PHCM. As the question of time limits has now been addressed, I considered the application of Rule 38(1)(a) and concluded in the alternative that it would have been appropriate to strike out those allegations which took place after 1 July 2022.

114. In considering strike out, I was aware that the claimant was a litigant in person and had Aspergers and that I was dealing with an allegation which could be considered 'discrimination'. While all these things might be true, I was also conscious that the claimant was aware that he could bring a claim within the usual period following his dismissal and concluded that the liberal stretching of allegations well beyond the date of dismissal relating to events that were not in dispute. However, it was the claimant and not the respondent who chose to revisit the dismissal and more than 17 months after it took place. He was unable to explain satisfactorily why despite responding to the dismissal in July 2022, he chose to appeal. What he did was simply assert a right with the respondent long after a date when they could reasonably be expected to agree to it.

115. Instead, the allegations were replies to questions raised after the employment ended about matters which related to ending to the employment contract. It did not involve the respondent engaging in an ongoing campaign of discrimination or victimisation post dismissal. Had the claimant not raised the request for an appeal/grievance, I cannot see how the respondent would have done anything without the claimant's 'provocation'. In reality, the allegation relates to a 1 or 6 July 2022 allegation. It does not relate to treatment by the respondent given that any processes which led to the claimant's dismissal ended on 1 or 6 July 2022 or within the weeks following that date when an employee could reasonably have been expected to appeal or raise a grievance.

116. I did not accept that the claimant's Aspergers impairments played a role in the request for grievance and/or an appeal being delayed. He was a competent person who has demonstrated the capacity to present cases with identifiable complaints under the Equality Act 2010 and even refer to case law. He did express a tendency to have a heightened sense of seeing injustice dealt with. However, based upon what evidence was available before me, insofar as this might be relevant to this case, he would have reacted quickly to the dismissal in July 2022 and raised his appeal at that point and not delayed for 17 months.

117. Consequently, insofar as allegations are made on dates after 1 July 2022, I concluded that strike out under Rule 38(1)(a) was justified given that it relates both to the bringing of a claim which based upon the information available to me at this hearing has no reasonable prospects of success. However, as I concluded that the processes identified must have been acts that concluded on 1 July 2022 or shortly afterwards, these allegations have been dismissed on time limits grounds.

Section 19 EQA – indirect discrimination

118. The indirect discrimination complaint relies upon 8 PCP's. They relate in broad terms to tasks and expectations while the claimant was working for the respondent as well as alleging that the claimant was dismissed without a fair process. No specific dates were provided by the claimant, and I concluded that they related to PCPs which applied to him between the 19 May 2022 when he began his employment with 1 July 2022 when his employment ended. As the 6 particular disadvantages relating to the PCPs share the same period, I concluded that the final act or disadvantage from which time begins to run would be 6 July 2022 and I would rely to my approach to the allegations of direct discrimination and described above. This complaint is also presented well out of time consequently.

119. In terms of an extension on just and equitable grounds, I would reject such a request if it had been made for the reasons given in relation to the section 13 direct discrimination allegations, above.

Section 26 EQA - harassment

120. The allegation of harassment under section 26 EQA, involves the claimant arguing that on 21 December 2023 the respondent told him that he had no right of appeal in relation to the termination of his employment. The claimant notified ACAS of a potential claim on 21 December 2023 and according to section 207B Employment Rights Act 1996 the date after notification of ACAS (Date A) and the date when an early conciliation certificate is issued (Date B and in this case 1 February 2024), is not counted. I determined that once the date of harassment/Date A is discounted, the 'protected period' for early conciliation begins on 22 December 2023 until 1 February 2024 as these days are not counted. This means that the claimant should have presented his claim to the Tribunal by 30 April 2024. Consequently, this complaint was presented one day out of time on 1 May 2024.

121. The claimant said that he did not wish to rely upon arguing that an extension of time should be allowed on just and equitable grounds.

122. However, I have nonetheless considered this issue further. This allegation relates to a request for an appeal against dismissal more than a year previous to the request being made. It was refused because of the time that had elapsed. It is difficult to see how based upon the information available, this can amount to an arguable discriminatory act. Considering the claimant's awareness of the potential to bring a claim by engaging with ACAS immediately upon being told his request for an appeal was rejected, there is no reason why he could not have presented a claim within days of receiving the early conciliation certificate. It would not be just and equitable therefore, to extend time under section 123 EQA and to allow the extension would cause disproportionate prejudice to the respondent for reasons which have been described elsewhere.

123. Finally, for the same reasons I identified in the direct discrimination section, had I not dismissed on grounds of time limits this allegation which took place after 1 July 2022, I would in the alternative have determined their strike out under Rule 38(1)(a) for the same reasons because based upon the information before me, the complaint has no reasonable prospects of success.

Section 27 EQA – victimisation

124. The complaint of victimisation relies upon 3 protected acts on 19, 23 and 25 December 2023 arguing that the emails sent on those dates identified breaches by the respondent of the Equality Act 2010. The respondent accepts that these emails are protected acts. The claimant argues that the detriments arising from the protected acts are a refusal to conduct a grievance appeal, making remarks rejecting the claimant's right of appeal on 21 December 2023 and not taking the claimants claims seriously on 10 January 2024.

125. I concluded that the alleged detriment of 21 December 2023 is out of time for the same reasons that I gave when finding that the same allegation used in the harassment complaint had been presented out of time. I would also refuse any application to extend time on just and equitable grounds on the same basis. I would also express concerns about whether this allegation amounts to an abuse of process amounting to a contrived complaint which was designed to resurrect a long out of date claim from a decision to dismiss more than 16 months previously. In any event, the allegation is presented out of time and the Tribunal does not have jurisdiction to hear this allegation.

126. I would reject any application for an extension of time on just and equitable grounds for the same reasons given above in relation to the harassment complaint.

127. In principle, the detriment dated 10 January 2024 is in time. It arose during early conciliation and after Date A on 21 December 2023. By presenting the claim on 1 May 2024, the claimant had just presented this alleged detriment/complaint of victimisation in time. However, I would restate my concerns regarding the claimant conducting an abuse of process by seeking to revisit issued arising from a dismissal which occurred in 2022.

128. Given that this is a victimisation complaint, there is the additional problem of whether victimisation is protected by section 108 EQA. I would at this point refer to the case of ***Jessemy*** (above), where Underhill LJ at paragraph 48 held that section 108(1) should be interpreted as if there were added at the end the words *"In this section 'discrimination' includes 'victimisation'".* But even taking this into account, I would restate my arguments that this does not involve a complaint captured by section 108 EQA as the respondent is simply responding to a request for an appeal or the raising of a post dismissal grievance. It is not an act where the respondent can be seen as actually making a detriment given the nature of their reply. This cannot be a case of post dismissal victimisation reflecting new attempts by the respondent to subject the claimant to new detriments long after his employment ended. To find otherwise would (as Miss Gumbs submitted),

create an absurd situation where a disgruntled claimant could long after the employment relationship ended, confect a fresh discrimination claim by simply making a request of them which would quite reasonably be refused because of the time that had elapsed. This would of course not be in the interests of justice.

129. I have therefore considered whether the claimant has attempted to introduce these complaints in a contrived way long after his dismissal and where a lengthy hiatus occurred before requests for an appeal and a grievance took place. The claimant did not persuade me that this claim was not brought unreasonably. I would therefore refer to my discussion in the direct discrimination section above regarding strike out under Rule 38(1)(a) as having no reasonable prospects of success.

130. Finally, for the same reasons I identified in that section, had I not dismissed on grounds of time limits those allegations which took place after 1 July 2022, I would in the alternative have determined their strike out under Rule 38(1)(a) for the same reasons.

Section 20 & 21 EQA – reasonable adjustments

131. The claimant relies upon the same PCPs as those alleged within the indirect discrimination complaint when bringing the complaint of a failure to make reasonable adjustments under sections 20 and 21 Equality Act 2010. Similarly, the claimant relies upon the particular disadvantages under section 19 for the substantial disadvantages in relation to the PCPs in this reasonable adjustments complaint. Several reasonable adjustments are described relating to support of the claimant and education of employees as well as reducing the claimant's workload and imposing lesser sanctions.

132. As the 6 substantial disadvantages relating to the PCPs share the same period, I concluded that the final act or disadvantage from which time begins to run would be 6 July 2022 being the date when the claimant became aware of the termination of employment following the alleged failure of the probationary period. Any ongoing duty to make reasonable adjustments ceased from this point. Consequently, I would rely to my approach to the allegations of direct discrimination and indirect discrimination described above. This complaint is also presented well out of time.

133. In terms of an extension on just and equitable grounds, I would reject such a request if it had been made for the reasons given in relation to the section 13 direct discrimination allegations, above.

Section 15 EQA – discrimination arising from disability

134. The claimant also brings a complaint of discrimination arising from disability contrary to section 15 Equality Act 2010. There are 7 allegations of unfavourable treatment which can be summarized as follows:

a) Failed to conduct a reasonable investigation at any stage of the disciplinary process (from May 2022 to the disciplinary appeal e-mail on 21 December 2023 and grievance response e-mail on 10 January 2024);
b) failed to follow a fair process, per ACAS code of practice on disciplinary and grievance procedures by the absence of any process leading to the missile and subsequent refusal of a right of appeal;
c) predetermining the claimants dismissal;
d) dismissing the claimant on 1 July 2022;
e) emailing the claimant on 21 December 2023 and stating he had “no to appeal”;
f) failing to take the claimants disciplinary appeal grievance dated 19 December 2023, seriously, as the respondent did not conduct any meeting or investigate the matter; and,
g) emailing the claimant on 10 January 2024 stating “we refute these [allegations in their entirety”, which the claimant felt had a tone of dismissiveness.]

135. It is argued that this treatment arose from the claimant’s disability in that he used inappropriate manner and language when at work.

136. I would repeat my previous comments made above in relation to direct discrimination in relation to allegations (a) to (d) as they are clearly out of time and for the reasons already given, it would not be just and equitable to extend time.

137. Allegations (e) and (f) are treated in the same way that I dealt with the allegation of harassment and would reject them as being presented out of time. I would also reject any request for an extension of time on just and equitable grounds on the same basis.

138. Finally, allegation (g) duplicates the second alleged detriment in the victimisation complaint. While in principle this allegation which dates from 10 January 2024 is in time, I dispute that it (and indeed the out of time allegations (e) and (f)) amounts to a genuine post dismissal allegation of discrimination under section 108 EQA where the employment has ended. Instead, rather than unfavourable treatment instigated by the respondent, it is an understandable reaction of an employer faced with an employee dismissed long ago seeking to revisit their dismissal more than a year previously.

139. The claimant has attempted to introduce these complaints in a contrived way long after his dismissal. A lengthy hiatus occurred before requests for an appeal and a grievance took place. The claimant did not persuade me that this claim was brought reasonably. I would therefore refer to my discussion in the direct discrimination section above regarding strike out under Rule 38(1)(a) and determined that allegation (g) should be struck out as having no reasonable prospects of success.

140. Finally, for the same reasons I identified in the direct discrimination section, had I not dismissed on grounds of time limits those allegations which took place after 1 July 2022, I would in the alternative have determined their strike out under Rule 38(1)(a) for the same reasons as described above. .

Conclusion

141. This is a case which serves as a reminder of the significance of time limits and that while they may be short compared with other jurisdictions, they are provided by statute, are clearly set out and available for prospective claimants to consider when assessing their position post dismissal or detriment.

142. The nature of the Tribunal jurisdiction is one which is designed to provide redress for parties in a relatively swift and inexpensive way. However, the expansion of Tribunal jurisdiction has meant that many more complicated complaints can be brought. These complaints can have profound consequences for employers and their employees who are named and often accused of poor behaviour. It also gives prospective claimants a right to bring wide ranging complaints without having to pay costs and providing they behave reasonably, with minimal risk of being ordered to pay costs. The Tribunals are flexible and significant findings and sanctions are possible for a successful claim.

143. However, this is why it is important for claimants to react quickly and behave reasonably when bringing their claims. Claims should be brought in time and focus upon the essence of what led the claimant to litigate their employment issues. The Tribunal now has to deal with many large cases, which raise many complaints with numerous allegations and where a great deal of accommodation is given to those who are unrepresented and who may have impairments whether physical, mental or neurodiverse. However, it is essential that the Tribunal operates in way that while acting in the interests of justice, also behaves in a way that is not only flexible and proportionate to the parties in each particular case, but also considering the impact of any unreasonable behaviour on the many parties seeking to have their cases resolved without delay.

144. Unfortunately, in this case, while I fully acknowledge the claimant's neurodiversity, I must conclude that he has behaved unreasonably and disproportionately in deciding to bring this claim. He may have a strong sense of justice, but he has confused this with treating the Tribunal as a forum in which speculative claims can be brought.

Employment Judge Johnson

Date 13 August 2025

JUDGMENT SENT TO THE PARTIES ON

Date: 3 October 2025

FOR THE TRIBUNAL OFFICE

Notes

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