Case Number: 3311313/2024

EMPLOYMENT TRIBUNALS

Claimant: **Mrs C Madu**

Respondent: **Compass Group UK and Ireland Limited**

Heard at: **Watford Employment Tribunal via CVP**
On: **14 October 2025**

Before: **Employment Judge Bartlett**

Representation
Claimant: Mr Daniels, lay representative/friend
Respondent: Mr Byrne

JUDGMENT

1. The claimant's claims for race discrimination are dismissed for want of jurisdiction as they are out of time.

2. The claimant's claims for unfair dismissal, notice and holiday pay are dismissed for want to jurisdiction as they are out of time.

3. All the claimant's claims are dismissed for want of jurisdiction.

REASONS

1. A case management hearing took place on 14 August 2025 in which this preliminary hearing was scheduled. It was set out in the case management orders that this hearing would determine whether the claims had been brought in time. The claimant purported to bring unfair dismissal, notice and holiday pay claims and it was set out that the tribunal will consider whether it was not reasonably practicable to have presented the claim in time. It was also set out in respect of the race discrimination claim the tribunal will consider whether it is just and equitable to extend time if the claim is out of time.

2. The case management orders also set out at paragraph 6 a direction that the claimant provide the following information by 12 September 2025:

2.1. When does the claimant say the last day that she carried out work for the respondent;
2.2. what dates (or approximate dates) does the claimant say the incidents set out in the claim form as allegations of race discrimination (stated today to be in 2022) occurred upon;
2.3. what date did the claimant make a complaint in writing about the allegation of race discrimination.

3. The claimant did not provide this information. At the start of this hearing, I asked the Mr Daniels why this information had not been provided and he said that he had not understood that this was the focus of what was discussed at that case management hearing. I reminded him that that direction was clearly set out at page 2 paragraph 6 of the case management orders. He made reference to the claimant having difficulties with her mobility as to why she was not at the hearing which was taking place via CVP.

4. Mr Daniels was able to provide the following information following my repetition of the above questions. The information he provided was as follows:
   4.1. the date when the claimant last worked for the respondent was 29 September 2021;
   4.2. he was unable to identify the dates or approximate dates of the alleged race discrimination;
   4.3. he had been unable to locate the claimant's grievance and did he know when that had been submitted.

5. It was agreed that we would break in the proceedings until 11:15 as the claimant was expected to attend Mr Daniels house by that time so that she could provide some of the missing information.

6. I stated that this information was important because it went to the issues that I have to decide about the time limits.

7. The claimant did arrive and she did provide further information largely in response to questions I asked her. The information she provided included the following:

   7.1. The discrimination started in October 2021 and went on until November 2021;
   7.2. she handed in a grievance in February 2022 and sent it by post. I asked how she knew it was at that date and she said because she had a good head for dates;
   7.3. the last date she worked was in 2022. I asked how she knew this because she had not provided any information to support this: no payslips, no P60, no letters, no bank statements, etc. She referred to a bank statement that was dated 2024 and recorded transactions into two bank accounts. The bank account on the left-hand side was a Saver account and the claimant said that the entry on 12 October 2022 of £300 referenced "intermember transfer" was payment by the respondent in respect of her last period of work for them;
   7.4. I asked how that was linked to the respondent, she said because of the amount and maybe that was how they were paying her because she had worked at a hospital and for that work they paid her in this account. Around this point in the hearing and in response to my question, she said that before Oct 2022 she last worked for the respondent in August 2021. I asked her how she knew this and she said because that was the last payment into the Saver account called "intermember transfer" before the 12 October 2022 payment.
   7.5. I said to the claimant that there were payslips from the respondent on various dates in 2021 such as pay date 29 September 2021 and there was no matching payment in this Saver account for that payment or other payments in payslips.
   7.6. I said that there was an obvious problem with the claimant's claim that she suffered discrimination in October 2021 until November 2021 because it had been said that the last date she worked was 29 September 2021 at one point and at another point she said that she last worked around the start of October 2022.

8. I then asked the claimant some questions about why the ET1 was submitted when it was and about delay. The claimant answered some of these questions and so did Mr Daniels. In summary, their evidence was:
   8.1. I asked why the first ET1 was submitted on 1 February 2024 when the ACAS certificate ended on 20 December 2023. Mr Daniels stated that the claimant had suffered some injuries, she had suffered a fall and was bedbound. He did not have contact with her through to February 2024;
   8.2. I asked what were the health issues and the claimant said she had arthritis in her hand and leg. Mr Daniels said she was in and out of hospital but no records were provided to support this nor any detail about why she was in hospital. The account was remarkably vague;
   8.3. I referred to the first ET1 being rejected and then reconsideration of that decision was dismissed on 10 May 2024 and asked why there was a delay until 20 June 2024 to submit the second ET1. Mr Daniels said that the address issue was complex and these were just clerical errors;
   8.4. I asked why the third ET1 was submitted on 28 October 2024 when the second ET1 was rejected on 27 August 2024. Mr Daniels said that there was an issue with his email, his emails were wiped and he was unable to access them. It was only when he accessed them that he saw a communication from the tribunal and contacted the tribunal. I asked when he lost access and he could not identify exactly when and said around June. I asked when he regained access and he said around July/August 2024. I asked why there was a delay between the end of August to October 2024. Mr Daniels denied that there was a delay and said that overall everything had been handed in on time;
   8.5. I said that on the claimant's own claim she said that the discrimination happened in the autumn of 2022 and so why wait until 2024 to bring a claim. Mr Daniels said he only met the claimant at the end of 2023 and before then she had no legal understanding and did not know to bring a claim.
   8.6. I asked what steps the claimant took to bring a claim. Mr Daniels said she would not have known the law. The claimant said she did know and she wrote the letter to the respondent to ask them to tell her what she had done. She said this was February 2022 but a grievance letter has not been provided.

9. The claimant brought claims of unfair dismissal, notice and holiday pay.

10. Section 111(2) ERA sets out the reasonably practicable test which I must apply to out of time ERA claims of the sort in this claim. The standard limit to submit a claim to the Employment Tribunal is 3 months from the alleged act though this can be extended as a result of the ACAS early conciliation scheme which is set out in detail in section 207B ERA.

11. The claimant also brought claims of race discrimination. Section 123 of the Equality Act 2010 sets out that if the claim is out of time the tribunal will consider whether it is just and equitable to extend time.

Chronology

12. The claimant was employed by the respondent on 17 March 2019. The respondent says her employment was as a casual worker. The respondent says her last day of work was 29 September 2021.

13. The claimant's employment was terminated by the respondent with an effective date of termination EDT of 23 August 2023. This was not disputed.

14. The claimant submitted the ET1 in this claim on 28 October 2024. This was accompanied by an ACAS certificate which identified the prospective respondent as Levy Restaurant

and set out the date of receipt by ACAS of the EC notification as 20 August 2024 and the date of issue of the ACAS certificate as 22 August 2024.

15. The situation is complicated by the fact that the claimant had attempted to submit a number of claims previously. The details of these are as follows:

    15.1. Case number 3301457/2024. On 1 February 2024 the claimant lodged an ET1. This named the respondent as levy kitchen. With the ET1 she submitted ACAS early conciliation certificate which named the prospective respondent as "Compass Group UK and Ireland Limited". This set out the date of receipt by ACAS of the EC notification as 8 November 2023 and date of issue of the ACAS certificate 20 December 2023. This ET1 was rejected because the names of the respondent in the ET1 and ACAS certificate were different. The tribunal rejected the claim on 26 April 2024. On 9 May 2024 Mr Daniels asked for an appeal of the decision to reject the ET1. This was treated as a request for a reconsideration and this was dismissed on 10 May 2024. This claim was out of time in any event because the last day to submit the ET1 was 20 January 2024. It was submitted 10 days late.

    15.2. On 20 June 2024 the claimant submitted an ET1. This named the respondent as levy kitchen. The ET1 named the prospective respondent as "Compass Group UK and Ireland Limited". The ACAS certificate set out the date of receipt by ACAS of the EC notification as 8 November 2023 and date of issue of the ACAS certificate 20 December 2023. This ET1 was submitted 6 months after the date of the issue of the ACAS certificate. This ET1 was rejected because the names of the respondent in the ET1 and ACAS certificate were different. The tribunal rejected the claim on 27 August 2024. This was claim number 3306018/2024. This claim was out of time because it should have been submitted by 20 January 2024;

    15.3. the ET1 in this claim was not submitted until 28 October 2024. It relied on an ACAS certificate that stated that the date of receipt by ACAS of the EC notification was 20 August 2024 and the date of issue by ACAS of this certificate was 22 August 2024.

Findings of fact

16. I accept that Mr Daniels took steps to submit an ET1 containing the claimant claims. The first attempt was on 1 February 2024 and this was 10 days out of time.

17. The second attempt was on 20 June 2024 almost 6 weeks after the reconsideration of the decision to dismiss first ET1 was rejected. I find that no adequate explanation for that delay was provided. To the contrary no reason was provided except that the respondent's name and address was complicated. I do not accept that reason because the tribunal clearly set out what the reason was for the rejection which was that the respondent's name did not match on the ACAS certificate and the ET1. Despite this the second ET1 repeated the error with the respondent's name.

18. I recognise that the error with the respondent's name is something that falls at least partially on Mr Daniels as well as the claimant. The claimant should not be blamed for Mr Daniel's error however she was aware that Mr Daniels is not a legal representative and it is her claim and it is for her to take some interest and responsibility in making sure that it is submitted correctly if it is something that she wishes to pursue. Given that there were issues with the respondent's name which was something within the claimant's particular knowledge, I find that the claimant is in part responsible for the error. There was no evidence that she was chasing Mr Daniels to submit the claim on time or quickly.

19. The second ET1 was rejected on 27 August 2024 and it was almost 2 months later that the ET1 in this claim was submitted. Mr Daniels stated that this was because his emails were wiped and he could not access his emails. I asked him specifically when this

happened and when he regained access. He was vague about the dates and referred to dates before the rejection of the ET1. I found this evidence unconvincing as the reason for the delay particularly the denial and minimization of the fact that there was delay. He said that this happened around August 2024, he mentioned correspondence from the tribunal and then he contacted the tribunal. I find that there is no good reason for delay between 27 August 2024 and 28 October 2024 in submitting this ET1. This is particularly the case given that the new ACAS certificate obtained shows that ACAS was contacted on 20 August 2024 which was in fact before the second ET1 was rejected.

20. The claimant's illness and ill-health has been relied on. The only medical evidence I have been provided with is two fit notes. One says that the claimant was assessed on 11 June 2025 and says that she is not fit to work for a one-month period because of leg swelling. This has no relevance to the time I am considering for time limits.

21. The other fit note sets out the claimant was assessed on 15 November 2024 and is signed as unfit to work due to right elbow injury for a period of four weeks. This is signed by a clinical practitioner. This again covers a period after submission of the ET1 and does not assist the claimant.

22. I have not been provided with any supporting evidence about the claimant's claims to ill-health and that this had a serious detrimental impact on her submitting her claim. I do not accept that that her health had a serious detrimental impact on her submitting her claim in time.

Decision

Decision on time on unfair dismissal, notice and holiday claims

23. In Lowri Beck Services Ltd v Brophy 2019 EWCA Civ 2490, CA, Lord Justice Underhill set out the essential points established in the case law:
    23.1. the test should be given a liberal interpretation in favour of the employee
    23.2. the statutory language is not to be taken as referring only to physical impracticability and for that reason might be paraphrased as whether it was 'reasonably feasible' for the employee to present his or her claim in time.
    23.3. if an employee misses the time limit because he is ignorant about the existence of a time limit, or mistaken about when it expires in his case, the question is whether that ignorance or mistake is reasonable. If it is not, then it will have been reasonably practicable for the employee to bring the claim in time. When assessing whether ignorance or mistake are reasonable, it is necessary to take into account any enquiries which the employee or his adviser should have made
    23.4. if the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee
    23.5. the test of reasonable practicability is one of fact and not of law.

24. In Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, CA, the Court of set out that 'reasonably practicable' does not mean reasonable, which would be too favourable to employees, and does not mean physically possible, which would be too favourable to employers, but means something like 'reasonably feasible'. Lady Smith in Asda Stores Ltd v Kauser EAT 0165/07 explained it in the following words: 'The relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done'.

25. In relation to ignorance of legal rights, as set out by the Court of Appeal in Porter v Bandridge Ltd 1978 ICR 943, CA the correct test is ought the claimant to have known of her rights.

26. The Tribunal has a discretion and there are a number of factors that I must consider. The length of the delay and the reasons for the delay and then whether the delay has prejudiced the respondent for example by difficulties investigating the claim because the claims are not fresh are two factors which I must consider. I have to do consider the balance of prejudice, the explanation for the delay, the length of the delay, whether incorrect advice was given and relied on, ignorance of right, ignorance of facts, the effect of any disability or ill-health and the merits of the claim.

27. I find that these claims are out of time and therefore I need to consider whether it was not reasonably practicable for the claimant to have presented the claim in time.

28. I accept that Mr Daniels took steps to submit an ET1 containing the claimant claims. The first attempt was on 1 February 2024 and this was 10 days out of time. The second attempt was on 20 June 2024 almost 6 weeks after the reconsideration of the decision to dismiss first ET1 was rejected. The ET1 on 28 October 2024 relevant to this claim was submitted almost 14 months after the effective date of termination.

29. One of the reasons put forward for the claimant was that she was ignorant about her rights and that she was not aware until she accidentally met Mr Daniels at his workplace in late 2023. I recognise that the claimant carried out the role of chef and that she has no legal experience. The vast majority of the population are not lawyers and have no legal experience. By the time of the submission of this claim and in the circumstances that ACAS had been involved, two ET1s had been rejected, I find that she ought to have known. This ET1 was submitted 8 months after the first ET1, this was a long period of time in which she could have should have made herself aware of a fundamental require in Employment Tribunal proceedings which is the need to comply with the time limit. This is not a complicated legal concept and it is not hard to find this information via any internet connected device.

30. I have given careful consideration to the claimant's ill-health, I have given consideration to the responsibility for the delays that fall on Mr Daniels. I consider that he does have significant responsibility but by the time the claimant had had two ET1's rejected and ACAS involved at least twice I consider that the delays between submitting the ET1s demonstrate that the claimant ought to have known about the need to submit her claim as soon as she could. However, she did not ensure that it did happen.

31. I consider that by the time of this third ET1, it was reasonably practicable for the claimant to have presented her claims in time.

32. For completeness, though given my findings above it is not necessary to do so I have gone on to consider section 111(2)(b) ERA which is whether the claim was presented within a further reasonable period in the event that I was wrong in the above. Considering all of the factors that I have mentioned above I find that the claimant did not submit her claim within such period that was reasonable in the case. By the time two ET1s had been rejected the claimant can reasonably be expected to be concerned about time limits and the need to act very promptly in submitting her ET1. By the time of submission of this ET1 it was eight months after she had submitted the first ET1 and it is reasonable to expect somebody to be concerned about that time limit and to take action. At this point she could have carried out some research herself, she could have instructed Mr Daniels to put the claim in immediately. There simply is no evidence of any concern about the time limits by the claimant or Mr Daniels.

33. The claimant claims relating to unfair dismissal, notice and holiday pay are dismissed for

want of jurisdiction as they are out of time and I have decided not to extend time.

Discrimination

34. Elisabeth Laing J in Miller and ors v Ministry of Justice summarised the factors a Tribunal should take into account in exercising its discretion to extend time because it is just and equitable to do so. They are as follows:
    34.1. the discretion to extend time is a wide one
    34.2. if a tribunal directs itself correctly in law, the EAT can only interfere if the decision is, in the technical sense, 'perverse', i.e. no reasonable tribunal properly directing itself in law could have reached it, or the tribunal failed to take into account relevant factors, or took into account irrelevant factors, or made a decision which was not based on the evidence
    34.3. what factors are relevant to the exercise of the discretion, and how they should be balanced, are a matter for the tribunal. The prejudice that a respondent will suffer from facing a claim which would otherwise be time-barred is customarily relevant in such cases
    34.4. the tribunal may find the checklist of factors in S.33 of the Limitation Act 1980 helpful but this is not a requirement and a tribunal will only err in law if it omits something significant.

35. In Jones v Secretary of State for Health and Social Care 2024 EAT 2, His Honour Judge James Tayler reviewed the authorities relating to extensions of time on just and equitable grounds and noted that there was a 'common practice' among those seeking to argue that time limits should not be extended of relying on the comments of Auld LJ in Robertson v Bexley Community Centre t/a Leisure Link (above), that time limits in the employment tribunal are 'exercised strictly' and that a decision to extend time is the 'exception rather than the rule', as if they were principles of law. HHJ Tayler stated that the practice of relying on these comments out of context should cease.

36. In Southwark London Borough Council v Afolabi 2003 ICR 800, CA the Court of Appeal went on to suggest that there are two factors which are almost always relevant when considering the exercise of any discretion whether to extend time: the length of, and reasons for, the delay; and whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).

37. In Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194, CA, the Court of Appeal pointed to the fact that it was plain from the language used in S.123 EqA ('such other period as the employment tribunal thinks just and equitable') that Parliament chose to give employment tribunals the widest possible discretion and it would be wrong to put a gloss on the words of the provision or to interpret it as if it contains such a list.

Length of the delay

38. I find that the situation in relation to the length of delay is slightly different in relation to the discrimination claims than in relation to the Employment Rights Act claims. This is because on the claimant's own account her evidence was that the discrimination occurred in October to November 2022. Taking that account at its highest, the discrimination claim is much more significantly out of time than the Employment Rights act claims.

39. Further, I am not satisfied that the discrimination did actually take place in October to November 2022 rather than in 2021. This is because the reasons why the claimant gave as to why she thought it was that date are internal inconsistent, are an untenable interpretation of the facts and incoherent. Her reason was that one entry into a Saver account demonstrated that she was paid in October 2022. There were no payments after

that and therefore her claim that she was discriminated in November 2022 has obvious problems because even on her own account she says she stopped working before that date. However, the reasons why that payment into the Saver account was said to be from the respondent do not withstand any sort of scrutiny. I accept Mr Byrne's submission that it would be unusual for the respondent to make a payment into a Saver account. That is not the strongest point. The stronger points are that none of her payslips that are in the bundle from 2021 correspond to any of the payments made into that Saver account. The Saver account did not identify any payments as coming from the respondent. It is inherently implausible that the respondent would be an "intermember transfer" to the claimant's credit union saver bank account. I also found that the claimant's recollection about dates was extremely poor. She repeatedly confused the dates and changed her position at the hearing. At one point she said she had a good memory for dates but I do not agree with that statement. I find that there that alleged acts of discrimination took place in the autumn of 2021.

Explanation of the delay

40. I have set out in earlier sections of this decision the explanations that have been given for the delay. As set out above, I do not consider that these are good reasons. I repeat those findings here. The claimant and Mr Daniels had contact with ACAS in December 2023. There is no reason at that time why they were not fully aware of the time limits and did not comply with them throughout 2024. Though the issues about the respondent's name on the ET1 ACAS certificate were classified by Mr Daniels, as clerical errors as was made clear by the rejection of the claims, these were serious errors. It took weeks and then months between the rejection of each ET1 for a new ET1 to be submitted and the same error was repeated twice. There was then a further delay of several months before submitting this ET1. The delay was extensive and I reject the explanation for the delay. This is simply a case were there was no concern given to the time limits.

Ill health

41. As set out above I find that there has been very limited evidence about ill-health having a significant detrimental impact on the timing of the submission of the claim. I do not find this to be a good explanation and I do not find that the claimant's ill health had an impact on the delay.

Incorrect advice

42. I recognise that some of the delay can be apportioned to Mr Daniels. I recognise that he is not a professional legal adviser. However, given the circumstances of the involvement of ACAS, the length of delay, the discussions the claimant should have had with Mr Daniels to proceed with an employment tribunal claim from the end of 2023 onwards and about re submitting the ET1 again and again and the delays in ultimately submitting this ET1, a significant part of the responsibility for the delay does fall on the claimant.

Balance of prejudice

43. The events that form the subject of the discrimination claim go back a minimum of three years and as was identified by Elisabeth Laing J in Miller, the nature of forensic prejudice is that, the later a claim is brought, the further back in time the evidence needs to go, and the quality of evidence suffers as memories fade and witnesses become unavailable.

44. I did not consider that the claimant was able to accurately recall dates and I consider that this demonstrates that the quality of evidence of all parties would suffer in this case. There is a clear and obvious prejudice to the claimant by not being able to bring the discrimination claim in this tribunal. There is a public interest in discrimination claims being bought in front

of the tribunal. However, there is a prejudice to the respondent in having to defend this claim. The claim itself is unclear in the ET1 and would require further information to understand it. I find that the respondent would also be prejudiced by the long time since the discriminatory acts occurred in terms of the quality of the evidence that it would be able to provide.

Ignorance of rights

45. In relation to ignorance of legal rights, I find that the claimant may not have known prior to December 2023 but by then she was aware of the ability to bring a discrimination claim. ACAS were involved on more than one occasion. She could and should have taken steps to become aware of the time limit.

Merits of claim

46. The claimant's claims as set out in the ET1 are insufficiently detailed in several respects, for example, no dates are identified and only one individual is identified by his first name. During this hearing the claimant started to go into detail about her claim and in fact referred to another individual by a different first name.

47. I accept that there is potential merit to the claim on the face of it but it has some difficulties due to its vague and unspecified nature.

Conclusion

48. Taking all of these factors into account, I have decided that it is not just and equitable to extend the time limit.

49. The claimant claims for discrimination are dismissed for want of jurisdiction as they are out of time

Approved by:

Employment Judge Bartlett

16 October 2025

JUDGMENT SENT TO THE PARTIES ON

28 October 2025

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FOR THE TRIBUNAL OFFICE

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/