



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Preston

Respondent: EE Limited

Heard at: Southampton (by CVP)

On: 14 August 2025

Before: Employment Judge Yallop

REPRESENTATION:

Claimant: In person

Respondent: Miss L Wood (Solicitor)

PRELIMINARY HEARING IN PUBLIC JUDGMENT

The judgment of the Tribunal is as follows:

Time limit: Unfair dismissal

1. The complaint of unfair dismissal was not presented within the applicable time limit, but it was not reasonably practicable to do so. The complaint was presented within a further reasonable period. The complaint will therefore proceed.

Time limit: Disability discrimination

2. The complaints of discrimination arising from disability, failure to make reasonable adjustments and harassment were not presented within the applicable time limit, but it is just and equitable to extend the time limit. Those complaints will therefore proceed.

JUDGMENT having been sent to the parties on 23 September 2025 and written reasons having then been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided.

REASONS

Introduction

1. The Claimant worked for the Respondent as a customer service advisor/representative. She was absent from work from 2 December 2020, and was dismissed on 14 October 2021 on the grounds of capability.
2. The Claimant claims that she was unfairly dismissed and suffered discrimination on the grounds of disability. The Respondent contests her claim.

The preliminary hearing

3. I dealt with a preliminary hearing on 14 October 2025 to decide whether the Tribunal had jurisdiction to determine the Claimant's complaints, as the parties agreed the Claimant's claim was lodged outside the applicable time limit.
4. The Claimant represented herself. The Respondent was represented by Miss Wood (solicitor).
5. The Claimant gave sworn evidence. There were no other witnesses.

Issues

6. Before I heard any evidence, I agreed with the parties that the issues I needed to determine were as follows:

Unfair dismissal - time limit

- 1) The parties agree that the Claimant did not bring her complaint within the statutory time limit.
- 2) Was it reasonably practicable for her to do so?
- 3) If not did the Claimant bring her claim within a reasonable time thereafter?

Disability discrimination - time limit

- 4) The parties agree that the Claimant did not bring her complaint within three months of the act or omission to which the complaint relates.

- 5) Were the claims made within a further period that 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?

Findings of fact

- 7. My findings of fact are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point.
- 8. The Claimant was employed by the Respondent as a customer service advisor/representative. She was on sick leave from 2 December 2020 because she was experiencing frequent seizures. The Claimant was dismissed on 14 October 2021 on the grounds of capability.
- 9. During the capability process, the Claimant received advice from a trade union representative, Paul Elsmore.
- 10. On 4 November 2021, the Claimant appealed against her dismissal. An appeal meeting took place on 7 December 2021, and the Respondent wrote to the Claimant on 13 January 2021 dismissing her appeal.
- 11. Having received the appeal outcome, the Claimant took advice from Mr Elsmore on the process for making an Employment Tribunal claim, and she contacted the Employment Tribunal herself to start early conciliation. At the time the conciliation took place, she was aware of the time limit for bringing an Employment Tribunal claim.
- 12. The Claimant gave evidence that after the ACAS certificate was issued, she worked with Mr Elsmore on the information needed to make a claim to the Employment Tribunal. As her trade union had agreed to support her with the claim, Mr Elsmore then sent the information to Peter Kerslake. The Claimant says that the trade union used Mr Kerslake to represent union members with Employment Tribunal claims, and that Mr Kerslake was supposed to lodge the claim on the Claimant's behalf. Mr Elsmore subsequently informed the Claimant that her claim had been lodged in time by Mr Kerslake on 17 March 2022.
- 13. The Claimant's evidence is supported by a written witness statement from Mr Elsmore dated 21 June 2025. In his statement he confirms that on 4 March 2022 he sent a prepared and ordered bundle of all documents relevant to the case to Mr Kerslake, who then confirmed on 18 March 2022 that he had submitted the claim the day before. Although Mr Elsmore did not attend the hearing to give oral evidence, there is a text message attached to his witness statement showing messages between Mr Kerslake and Mr Elsmore in which Mr Kerslake confirms to Mr Elsmore that the ET1 had been submitted by him. I accept that that evidence is genuine.

There is no information in Mr Elsmore's statement about why the trade union branch used to instruct Mr Kerslake, or how their working relationship operated.

14. The Claimant said she was told that because of the pandemic it was likely to take two years for the Tribunal to acknowledge her claim, and that corresponded with information she had found online about Employment Tribunal delays. She says she chased Mr Elsmore over the next two years because she had not yet heard anything about her case, but trusted that it was just taking time for the Tribunal to deal with it.
15. The Respondent points out that there is no proof the Claimant actually chased Mr Elsmore and that the Claimant admits she did not do anything else to check on the status of her claim. I found the Claimant to be a truthful witness, as she readily agreed with hindsight that she should have lodged the claim herself in the beginning and that she could have asked for Mr Kerslake's details or information such as a case number that would have allowed her to contact the Tribunal herself during the long delay. I accept the Claimant's evidence that she did chase Mr Elsmore, but has been unable to provide proof of this because the evidence was lost when she changed phones. I also accept her evidence that she had believed her solicitor and trade union were managing her case, and that she just had to wait until the Tribunal was able to consider it.
16. The Claimant accepted that she is computer literate and that she was able to do research online from March 2023 when her non-epileptic fit symptoms abated. However, as she already knew about the time limits for Employment Tribunal claims and had believed she had complied with them, I do not consider that doing research would have assisted her.
17. The Respondent argues that the trade union was negligent in its support of the Claimant. However, I accept that Mr Elsmore had been informed by Mr Kerslake that he had submitted the Claimant's ET1 form, even though it had not actually been submitted. The person primarily at fault for the claim not having been submitted was therefore Mr Kerslake.
18. The Claimant gave evidence that she believed at the time that Mr Kerslake was a solicitor, but it has since transpired he was not. A tribunal has previously considered Mr Kerslake's status in the case of *Paul Cross v Openreach Limited* (case number 1402822/2022), which was referenced by the parties. In that case, the Tribunal came to the conclusion Mr Kerslake was not a skilled advisor. There is no evidence before me to contradict that conclusion. I therefore find that Mr Kerslake was not a skilled adviser.
19. The Claimant said that once the two-year period had passed (which would have been around 17 March 2024, although the Claimant was not able to provide exact dates), she got concerned and spoke to her trade union about whether she should lodge a claim herself. At that point, she obtained from Mr Elsmore Mr Kerslake's email address, and she emailed Mr Kerslake directly, but he did not respond. Mr

Elsmore also tried contacting Mr Kerslake without success. The Claimant therefore decided to lodge a claim herself, which she did on 11 June 2024.

Relevant law and conclusions - unfair dismissal time limit

20. Section 111 Employment Rights Act 1996 provides:

- (1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.
- (2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal-
 - (a) before the end of the period of three months beginning with the effective date of termination, or
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

21. This is a strict test, as emphasised by Judge LJ in **London Underground Ltd v Noel [1999] IRLR 621** who said:

"By section 111(2)(b) this period may be extended when the tribunal is satisfied 'that it was not reasonably practicable for the complaint to be presented before the end of that period. The power to disapply the statutory period is therefore very restricted. In particular it is not available to be exercised, for example, 'in all the circumstances', nor when it is 'just and reasonable', nor even where the tribunal, 'considers that there is good reason' for doing so."

22. In the case of **Bodha (Wishnudut) v. Hampshire AHA [1982] ICR 200** Browne-Wilkinson J observed: *"The statutory test remains one of practicability ... The statutory test is not satisfied just because it was reasonable not to do what could be done."*

23. The onus of proving that presentation of the claim in time was not reasonably practicable rests with the Claimant.

24. The Claimant's effective date of termination was 14 October 2021. With an extension for ACAS conciliation, the Claimant's claim was therefore due to be lodged on 21 March 2022. It was actually lodged on 11 June 2024, so was more than two years late. I therefore need to determine whether it was reasonably practicable for the claim to be presented in time and if not, whether it was brought within a reasonable time thereafter.

25. I have accepted that Mr Kerslake lied about submitting the claim, and I consider that it was therefore not reasonably practicable for the Claimant to have presented her claim on time, as she believed it had already been presented. Whilst I acknowledge the Respondent's arguments that the Claimant ought to have done more over the

next two years to check the position, I bear in mind that the Claimant was an unrepresented lay person who had just been dismissed on capability grounds due to ill health. She remained in contact with her trade union representative, who did not suggest that anything was amiss, and she knew that the pandemic had caused Employment Tribunal backlogs, so did not realise herself that her claim had not been filed. I consider that what the Claimant did was reasonable. Whilst the Claimant has not provided exact dates of conversations with her trade union, or evidence of those conversations, as a result of having changed her phone and lost access to the messages, I accept her evidence. She explained that having realised something was wrong around two years after lodging her claim, she took steps to work out what was happening and then lodged a claim herself. She lodged her claim on 11 June 2022, two years and three months after she thought it had been lodged, and I consider this to be a reasonable period after the expiry of the usual time limit, given that she was not expecting to hear anything from the Tribunal for two years.

Relevant law and conclusions – disability discrimination time limit

26. In accordance with section 123(1) Equality Act 2010, claims must be brought within:

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or
- (b) such other period as the employment tribunal thinks just and equitable.

27. A useful summary of the principles governing the exercise of the ‘just and equitable’ discretion was set out by Mrs Justice Elisabeth Laing in **Miller and ors v Ministry of Justice and ors and another case EAT 0003/15**:

- the discretion to extend time is a wide one;
- time limits are to be observed strictly in employment tribunals. There is no presumption that time will be extended unless it cannot be justified. The reverse is true: the exercise of discretion is the exception rather than the rule.
- if a tribunal directs itself correctly in law, the Employment Appeal Tribunal 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.
- 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.
- the tribunal may find the checklist of factors in section 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.

28. In **Southwark London Borough Council v Afolabi 2003 ICR 800**, the Court of Appeal confirmed that two matters which are almost always relevant are 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).

29. The parties agree that the Claimant did not bring her complaint within three months of the act or omission to which the complaint relates, and that the time limit for the discrimination claims was 21 March 2022, as the discrimination claims all relate to the dismissal.
30. I have already set out why the Claimant did not bring her claim in time, and have concluded that she brought it within a reasonable period once she realised her claim had not been lodged by Mr Kerslake. Unfortunately, the lie told by Mr Kerslake led to a long delay in the claim being brought. I accept the Respondent's submission that three of their potential witnesses are no longer working for the business, which may impact on their ability to defend the claim if arrangements cannot be made for those witnesses to attend, particularly in the case of the dismissing officer. However, as the Claimant's unfair dismissal claim is proceeding and the discrimination claims relate to the dismissal, much of the evidence that is relevant to the unfair dismissal claim will also be relevant to the discrimination claim.
31. The impact on the Respondent must also be balanced against the impact to the Claimant in not being able to proceed with her claim, which I consider to be a greater prejudice. The Claimant was dismissed on the grounds of capability relating to ill health following a long period of absence, and there are therefore facts upon which disability discrimination complaints relating to her dismissal can be argued. I consider that in these circumstances, she would be significantly prejudiced if she lost the opportunity to advance those complaints. The Claimant was lied to by Mr Kerslake via her trade union, and she should not lose the opportunity to proceed with her discrimination complaints because she reasonably believed that lie. I therefore consider that it is just and equitable to extend time to allow the Claimant's discrimination complaints to proceed.

**Approved by:
Employment Judge Yallop
4 November 2025**

Judgment sent to the parties on:
5th November 2025

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For the Tribunal:
Simon Fraser
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