EMPLOYMENT TRIBUNALS

Claimant: **Mr J Gul**

Respondent: **Hovis Ltd**

Heard at: **East London Hearing Centre**

On: **14 October 2025**

Before: **Employment Judge J Feeny**

Representation

For the Claimant: Mr A Ali, McKenzie Friend

For the Respondent: Mr R Winspear, Counsel

RESERVED JUDGMENT

1. **The unfair dismissal and breach of contract complaints are dismissed. It was reasonably practicable to have brought those complaints in time.**

2. **All complaints under the Equality Act 2010 are dismissed. The period of delay of 11 days was not a period of time that was just and equitable.**

3. **As a consequence, all claims are dismissed.**

REASONS

The Hearing

1. This hearing was listed to determine the issue of jurisdiction/time limits by EJ Reid at a previous preliminary hearing on 15 July 2025.

2. At this hearing, the Claimant was represented by Mr Amzat Ali, who described himself as a McKenzie Friend. The Respondent was represented by Mr Winspear, Counsel.

3. The hearing was listed in person so that the Claimant could have the benefit of an interpreter. Unfortunately, the Tribunal omitted to book an interpreter initially, one was belatedly booked to attend for 1pm. Given that Mr Ali was attending as advocate on the part of the Claimant, and with the Claimant confirming that he was able to understand and speak English sufficiently well to participate in a case management discussion, it was agreed that the hearing could proceed without an interpreter until the time came for the Claimant to give evidence.

4. EJ Reid had ordered the Claimant to provide a witness statement and to disclose evidence, including relevant medical records, explaining why his claim had been brought out of time. The Claimant had not done this. When this was raised at the start of the hearing, Mr Ali on behalf of the Claimant applied for a postponement of the hearing. Having heard submissions from both parties, I refused the postponement application (see reasons below).

5. The hearing resumed once the interpreter had arrived. The Claimant gave evidence through the interpreter. He answered questions from myself to serve as his evidence-in-chief and was then cross-examined by Mr Winspear. Mr Ali asked some questions in re-examination.

6. I asked Mr Ali whether he also wished to give evidence on the Claimant's behalf, given he was a relevant witness to events (i.e. why the claim had been presented late), but he declined to do so.

7. Having heard the Claimant's evidence, both parties then made oral submissions. Mr Winspear had also provided a skeleton argument in advance of the hearing.

Reasons for refusing postponement application

8. The Claimant applied for a postponement of this hearing pursuant to rule 32 of the 2024 Rules of Procedure. The Respondent opposed the application.

9. In determining the application, I had regard to the overriding objective and the Presidential Guidance on postponement applications.

10. The application for a postponement was made at the hearing itself. The basis of the application is the Claimant's own non-compliance with the Tribunal's orders. In particular, the Claimant was ordered to provide a witness statement explaining why his claim was out of time and medical evidence relevant to the same issue by 30 September 2025. The Claimant did not comply with that order.

11. The Claimant was also ordered to provide further information on his discrimination claims by 11 August 2025. The Claimant did, at least in part, comply with this order, albeit late, by sending some further particulars by email on 21 August 2025.

12. The Claimant sought to explain his non-compliance by reference to current difficulties he is experiencing with his mental health. He told me that he had been on anti-depressant medication, prescribed by his GP, for the past five

months and that he had been attending Talking Therapies for counselling for three months.

13. He said he had completed a form to request his counselling records from Talking Therapies about two days ago but had not yet received the records. He had asked his GP surgery about obtaining his GP records and had been directed to the NHS app. He had not been able to log on to the app and was intending to go into the surgery in person to ask the receptionists to help him, but he had not done this yet.

14. Despite knowing that EJ Reid's order could not be complied with before today's hearing no advance notice was given to the Respondent or the Tribunal and, instead, the postponement application was made in the face of the court.

15. No real reason has been given to explain the non-compliance other than a reliance on mental health difficulties. The Claimant and Mr Ali could not satisfactorily explain why they had been able to comply (at least in part) with the order for further particulars but could not provide a short witness statement addressing time limits. The Claimant is capable of engaging in litigation including providing the further information by email (with Mr Ali's assistance) and attending this hearing and explaining his position.

16. I asked Mr Ali to summarise the Claimant's case on time limits. Mr Ali said that the principal reason for the delay was that the Claimant experienced difficulties obtaining legal support and eventually realised that he could not afford the solicitors' fees that had been quoted. He contacted Mr Ali for help around the time that the deadline expired.

17. Mr Ali also said that the Claimant had learning difficulties but was unable to give any further detail on the nature of these difficulties. I asked the Claimant directly what his learning difficulties were and what expert advice he had received about them. The Claimant's response was to refer to stress and depression. I note from EJ Reid's case summary that there appears to have been a similar exchange between the Claimant, Mr Ali, and EJ Reid at the last hearing.

18. From what I had heard, I was not satisfied that the medical records would assist on the question of time limits. The Claimant does not appear to have any records relating to his alleged learning difficulties. The records regarding his mental health post-date his claim. I was therefore satisfied that there was no prejudice in proceeding in the absence of medical records.

19. The absence of a witness statement could be remedied by the Claimant giving evidence on oath and having his evidence in chief elicited by questions from myself.

20. If the postponement request was granted, there would be real prejudice to the Respondent. The Claimant confirmed that he would not have the means to compensate the Respondent for the wasted costs caused by a postponement.

21. There would also be significant delay. The next hearing would likely be several months away. A postponement would have an impact on other Tribunal users who are waiting to have their claims heard. In addition, I have no confidence that if the postponement was granted the Claimant would comply fully with the order second time around.

22. I therefore considered that the overriding objective was best-served by refusing the postponement application and proceeding today to determine the issue, with the measures outlined above in place to allow the Claimant to give evidence.

The Claim

23. Both before, during, and after the Claimant gave evidence, I attempted to understand from the Claimant what his claims were about.

24. It is common-ground that there was an unfair dismissal complaint and a breach of contract complaint relating to unpaid paternity pay. Although the unpaid paternity pay dated back to 2020 and 2022 the Respondent conceded that for the purposes of a breach of contract claim that time would start to run upon termination of employment, as per the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the 1994 Order").

25. The Claimant's complaints under the Equality Act 2010 ("EqA") were much harder to particularise. There is a complaint of race discrimination relating to bullying behaviour in the workplace at the hands of a manager called Damian. This appears to date back to at least 2023 and possibly earlier.

26. The dismissal itself was also said to be an act of race discrimination. However, the Claimant was dismissed by a different manager (Trevor), not Damian. He has not accused Trevor of racist behaviour in the workplace.

27. Although there was some reference to victimisation before EJ Reid, it appeared from the further information provided that the Claimant was not alleging detrimental treatment on the ground of a protected act; he had simply pointed out to Damian that his treatment was unlawful, but Damian had carried on doing it.

28. There was also a claim for disability discrimination. The main disability relied upon appeared to be a back condition. The Claimant was unable to say how this related to his dismissal (which was for an accident at work, whilst he was driving a forklift truck). He was also unable to explain what adjustments the Respondent should have made for him.

29. In closing submissions, Mr Ali pivoted to a suggestion that the disability was either learning difficulties or mental health issues, despite the Claimant appearing not to agree that he has learning difficulties and the evidence suggesting that the Claimant did not seek medical advice for depression until long after his employment had ceased. In terms of a proposed claim, Mr Ali suggested that a reasonable adjustment would have been to have referred the Claimant to occupational health.

Claimant's evidence and findings of fact

30. As already indicated, the Claimant gave evidence through an interpreter. He was asked questions by myself to elicit evidence-in-chief, was cross-examined by Mr Winspear, and re-examined by Mr Ali. The following is a summary of his evidence and my findings of fact in relation to the same.

31. The Claimant confirmed that he was told by Trevor (the manager) on 16 August 2024 that he had decided to dismiss him for gross misconduct. The Claimant subsequently received a letter confirming the dismissal, which he read. The Claimant submitted an appeal against his dismissal with the assistance of a friend (not Mr Ali). He attended the appeal hearing on 12 September 2024.

32. The Claimant submitted a written grievance on 8 October 2024. Mr Ali had assisted with this. The grievance raised much the same subject-matter as the Claimant's claim. The Claimant received an outcome rejecting his grievance (it is not clear when).

33. On 18 October 2024, with the assistance of Mr Ali, the Claimant contacted ACAS to begin early conciliation. On 29 November 2024 early conciliation ended. Mr Ali told the Claimant that he needed to get on and present his ET1. Although the Claimant said in evidence that he could not recall if he was expressly told by Mr Ali that time limits applied, I find it likely that Mr Ali did relay this to him, given he had already guided the Claimant through the early conciliation process.

34. The Claimant then attempted to obtain legal advice from solicitors. He had a consultation with a solicitor for a £50 fee in mid-December. The fee quotes that he received for assistance presenting his claim were too high and the Claimant decided that he could not afford them.

35. The Claimant decided to return to Mr Ali for assistance presenting his ET1. There is no clear evidence on when he got back in touch with Mr Ali, for instance, the Claimant could not recall whether it was before or after Christmas. As noted above, Mr Ali declined to give evidence himself on this issue.

36. Given that Mr Ali was aware of the existence and importance of time limits, I find that the Claimant must have got back in touch with Mr Ali after the deadline had expired. If Mr Ali had been asked to assist prior to the deadline expiring then it is likely that he would have taken prompt action to submit the claim, as he would be aware of the consequences of not presenting a claim in time.

37. The Claimant did not say in evidence that his health had been a reason for the delay in contacting Mr Ali. His evidence was that he was spending the time trying to find a solicitor and eventually decided that they would be too expensive.

38. The Claimant was able to participate fully in the internal processes. He submitted an appeal against his dismissal and attended the appeal hearing. He also submitted a grievance with the assistance of Mr Ali. I find that there

were no health reasons, nor for that matter learning difficulties, that affected the Claimant's ability to present his claim in time. He simply did not act sufficiently expeditiously, once he left ACAS early conciliation.

The Law

39. For those claims brought under the EqA, s. 123 applies:

    (1) Subject to section 140B proceedings on a complaint within section 120 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 employment tribunal thinks just and equitable.

40. Under s 123(1)(b) EqA the Tribunal has a broad discretion. The two factors which tend to be most important are (a) length and reasons for delay and (b) prejudice to the Respondent caused by the delay: see the observations of Leggatt LJ in **Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] ICR 1194, CA §§19-20:

    "[18] First, it is plain from the language used ("such other period as the employment tribunal thinks just and equitable") that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980, section 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see *British Coal Corporation v Keeble* [1997] IRLR 336), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see *Southwark London Borough Council v Afolabi* [2003] EWCA Civ 15; [2003] ICR 800 , para 33. The position is analogous to that where a court or tribunal is exercising the similarly worded discretion to extend the time for bringing proceedings under section 7(5) of the Human Rights Act 1998 : see *Dunn v Parole Board* [2008] EWCA Civ 374; [2009] 1 WLR 728 , paras 30-32, 43, 48; and *Rabone v Pennine Care NHS Trust* [2012] UKSC 2; [2012] 2 AC 72 , para 75.

    [19] That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)."

41. The Court of Appeal in **Adedeji v University Hospitals Birmingham NHS Foundation Trust** [2021] EWCA Civ. 23 reiterated that the test is a broad discretion, citing with approval the above comments by Leggatt LJ, and that the checklist approach incorporated from section 33 of the Limitation Act 1980 (as suggested in **British Coal Corporation v Keeble** [1997] IRLR 336) should not act as a fetter on this broad discretion.

42. There is no presumption that the Claimant should get the benefit of an extension of time, even where the period of delay is short. As the Court of Appeal observed in **Robertson v Bexley Community Centre t/a Leisure Link** 2003 IRLR 434, para 25:

> "When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule."

43. The burden to persuade the Tribunal that time should be extended remains on the Claimant.

44. When assessing the balance of prejudice, the Tribunal can take into account both forensic prejudice, such as difficulties gathering evidence due to the Claimant's delay, and more general prejudice, which may include the prejudice from facing a claim that would otherwise be dismissed as out of time. As Laing J summarised it in **Miller & Ors v Ministry of Justice & Ors** UKEAT/003/15/LA, para. 13:

> "*DCA v Jones*[1] also makes clear (at paragraph 44) that the prejudice to a Respondent of losing a limitation defence is "customarily relevant" to the exercise of this discretion. It is obvious that if there is forensic prejudice to a Respondent, that will be "crucially relevant" in the exercise of the discretion, telling against an extension of time. It may well be decisive. But, as Mr Bourne put it in his oral submissions in the second appeal, the converse does not follow. In other words, if there is no forensic prejudice to the Respondent, that is (a) not decisive in favour of an extension, and (b), depending on the ET's assessment of the facts, may well not be relevant at all. It will very much depend on the way in which the ET sees the facts; and the facts are for the ET."

45. The Tribunal may also take into account the merits of the claim, albeit it must have a proper basis to do so. Guidance was given by the EAT on this in **Kumari v Greater Manchester Mental Health NHS Foundation Trust** [2022] EAT 132:

> "[63] The tribunal is therefore not necessarily always obliged, when considering just and equitable extension of time, to abjure any consideration of the merits at all, and effectively to place the onus on the respondent, if time is extended, thereafter to apply for strike-out or deposit orders if it so wishes. It is permissible, in an appropriate

[1] [2007] EWCA Civ. 894, [2007] IRLR 128

case, to take account of its assessment of the merits at large, provided that it does so with appropriate care, and that it identifies sound particular reasons or features that properly support its assessment, based on the information and material that is before it. It must always keep in mind that it does not have all the evidence, particularly where the claim is of discrimination. The points relied upon by the tribunal should also be reasonably identifiable and apparent from the available material, as it cannot carry out a mini-trial, or become drawn in to a complex analysis which it is not equipped to perform.

[64] So: the tribunal needs to consider the matter with care, identify if there are readily apparent features that point to potential weakness or obstacles, and consider whether it can safely regard them as having some bearing on the merits. If the tribunal is not in a position to do that, then it should not count an assessment of the merits as weighing against the claimant. But if it is, and even though it may not be a position to say there is no reasonable prospect of success, it may put its assessment of the merits in the scales. In such a case the appellate court will not interfere unless the tribunal's approach to assessing the merits, or to the weight attached to them, is, in the legal sense, perverse."

46. For the unfair dismissal and breach of contract claims the stricter test of reasonable practicability applies. Section 111(2) of the Employment Rights Act 1996 ("ERA") states:

(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.

47. This wording is replicated in article 7 of the 1994 Order.

48. The Court of Appeal in **Lowri Beck Services Ltd v Brophy** [2019] EWCA Civ. 2490 summarised the principles that apply to this test:

"There has been a good deal of case law about the correct approach to the test of reasonable practicability. The essential points for our purposes can be summarised as follows:

(1) The test should be given "a liberal interpretation in favour of the employee (*Marks and Spencer plc v Williams-Ryan* [2005] EWCA Civ. 470, [2005] ICR 1293, which reaffirms the older case law going back to *Dedman v British Building & Engineering Appliances Ltd* [1974] ICR 53).

(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 claimant to present his or her claim in time: see *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] IRLR 119 . […]

(3) If an employee misses the time limit because he or she is ignorant about the existence of a time limit, or mistaken about when it expires in their case, the question is whether that ignorance or mistake is reasonable. If it is, then it will have been reasonably practicable for them to bring the claim in time (see *Wall's Meat Co Ltd v Khan* [1979] ICR 52); but it is important to note that in assessing whether ignorance or mistake are reasonable it is necessary to take into account any enquiries which the claimant or their adviser should have made.

(4) If the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee (*Dedman*). […]

(5) The test of reasonable practicability is one of fact and not of law (*Palmer*)."

49. Where the Claimant prays in aid ill health and other matters as reasons why he was not able to present the claim in time, the Tribunal should consider what else he was able to do over that period to assess the practicability of presenting a claim: **Cygnet Behavioural Health Ltd v Britton** [2022] IRLR 906.

Conclusions

50. The Claimant confirmed that the last act relied upon in his claim was the dismissal. He was dismissed summarily on 16 August 2024, which is therefore the effective date of termination. The Claimant was required to contact ACAS by 15 November 2024. The Claimant did so, by contacting ACAS on 18 October 2024.

51. The Claimant exited ACAS early conciliation on 29 November 2024. He had one calendar month to present his ET1. The ET1 was presented on 9 January 2025. As a result, the claim was presented 11 days out of time.

52. I begin my analysis with the unfair dismissal and breach of contract complaints. In truth, the analysis for these claims is straight-forward.

53. The applicable test in the ERA and 1994 Order is that time can only be extended if it was not reasonably practicable for the claim to have been presented in time. The burden is on the Claimant to show this.

54. I have found that the reason why the Claimant did not present his claim in time is because he spent time attempting to secure legal representation and then did not return to Mr Ali for support sufficiently promptly after failing to get legal support.

55. I do not accept that any mental health condition or other medical issue affected the late presentation of the claim. Although I have not seen medical records, for the reasons stated above, I am satisfied that they would not have assisted the Claimant on this point. On his own account, he did not see his GP to get anti-depressant medication prescribed until around May 2025.

56. I accept that the Claimant would have been upset by his dismissal. I am also willing to accept, to a degree, Mr Ali's submission that the subject-matter of this claim led to a deterioration in the Claimant's mental health. However, I do not accept that the Claimant's mental health was such as to render him incapable of presenting a claim in time. He was able to participate in the internal appeal process and present a grievance to the Respondent complaining of similar matters that appear in his ET1. As per **Cygnet**, this shows that it was practicable to have presented a claim in time.

57. I also do not accept that the purported learning difficulties had a material impact on the Claimant's ability to present the claim in time. Indeed, the suggestion that the Claimant had learning difficulties appeared to be based solely on Mr Ali's perception of the Claimant, rather than something the Claimant himself recognised. Certainly, it does not appear that the Claimant has ever been formally assessed for learning difficulties. In any event, any such learning difficulties were not causative of the Claimant's delay in contacting Mr Ali, which is the sole reason the claim was not presented in time.

58. It was therefore reasonably practicable to have presented the unfair dismissal and breach of contract complaints in time. Those claims are dismissed.

59. I turn to the EqA complaints. For these complaints I must decide whether the 11-day period of delay is a period that I consider just and equitable. For this decision, I have a broad discretion and can consider a range of factors (so far as they are relevant).

60. Applying **Morgan**, the first question is what was the length and reason for the delay. The length of delay was short, just 11 days. The reason, however, was not a good one. I have found that the Claimant simply did not act with sufficient haste in contacting Mr Ali, despite being on notice that time limits applied and that he had only a limited window of time after exiting early conciliation in which to present his claim.

61. I turn next to consider prejudice to the parties. The prejudice to the Claimant is that he loses the right to bring claims that he wanted to claim. However, this relates only to the EqA complaints, not the unfair dismissal complaint. I will return to this below.

62. The Respondent accepts it has not suffered any forensic prejudice, in that it does not claim that relevant witnesses have moved on, or documentation has been lost. As per **Miller**, however, it does not follow that this is decisive in the Claimant's favour.

63. I accept that there is general prejudice to the Respondent in having to face a claim which would otherwise be barred by statute. Resolving the jurisdiction issue as a preliminary issue has also caused some delay to progressing the litigation, which will have some, albeit slight, impact on witnesses' recollections.

64. Turning to the allegations themselves, I am not in a position to form a view on the merits of the race discrimination claim insofar as it consists of allegations of bullying by the manager Damian. However, based on the Claimant's further particulars, the last act of bullying by Damian was May 2024. This means that this claim on its own is not just 11 days out of time, it is several months out of time. Further, the period of discrimination appears to date back to 2023, which will impact on the reliability of witnesses' recollections of events.

65. Having canvassed the nature of the discriminatory dismissal claim with the Claimant and Mr Ali, I have serious doubts as to whether it has any real merit. Firstly, the Claimant accepts that he did collide with a colleague whilst driving a forklift truck. The misconduct was therefore essentially admitted, the Claimant's argument is that the sanction was disproportionate given, in particular, his very lengthy period of service.

66. Secondly, the Claimant accepts that the dismissal was decided upon by a different manager (Trevor) who had not previously bullied/discriminated against him. When I pointed this out to Mr Ali in submissions, the best he could say was that the Claimant believed the managers worked closely together and would look out for each other.

67. If time limits were not in issue, and I was case managing this claim, I would be minded to list the discriminatory dismissal claim for a deposit order application. Whilst I appreciate that I am not determining a deposit order application in this hearing, it is a factor that goes against exercising my discretion in the Claimant's favour and allowing the race discrimination claim to proceed.

68. The disability discrimination claim is in an even weaker state. Neither the Claimant nor Mr Ali were able to clearly identify the relevant disability, nor were they able to identify what the unlawful conduct was. This is particularly concerning in Mr Ali's case as he clearly has some understanding of employment law and the EqA. In my judgment, the reason why Mr Ali could not articulate a disability discrimination claim, including identifying any concrete steps that could be taken as reasonable adjustments, is because – even if the Claimant was a disabled employee at the material time – there was no unlawful conduct on the part of the Respondent.

69. I therefore conclude that there would be significant prejudice to the Respondent if I were to exercise my discretion to allow the EqA claims to continue, in that the Respondent would have to incur the time, resources, and costs of defending litigation which cannot be fully particularised and, for the most part, appears to be of little merit.

70. For corresponding reasons, the prejudice to the Claimant is not so great. He has certainly been prejudiced by being prevented from pursuing his unfair dismissal complaint, which I consider at heart is what his claim is really about, but unfortunately for him, that is not a matter that I can take into account when applying the test in s. 111 ERA.

71. In light of the balance of prejudice favouring the Respondent, and there being no good reason for the (albeit relatively short) period of delay, I consider that it was not a period of time that was just and equitable. It follows that the EqA claims are also dismissed.

Approved by
Employment Judge J Feeny
Date: 16 October 2025

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

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 claimant(s) and respondent(s).

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. 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: https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/