EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001218/2025

Held in Aberdeen via Cloud Video Platform (CVP) on 24 September 2025

Employment Judge J Hendry

Mr P Cruickshank	**Claimant** **In Person**
Circles Network	**Respondent** **Represented by:** **Mr J Hyland -** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgement of the Tribunal is as follows:

1. **That the claim for unfair dismissal not having been lodged timeously and the Tribunal having no jurisdiction to hear it the claim is dismissed.**
2. **The claims for sex discrimination and harassment being time barred, and the Tribunal not being convinced that it is just and equitable to hear the claims late they are dismissed.**

REASONS

1. The claimant in his ET1 sought findings that he had been unfairly dismissed from his employment as an Advocacy worker with the respondent and had been sexually harassed by his line manager. It was not particularly clear from the ET1 that the claimant was pursuing a claim for sexual harassment.

2. The claims were opposed by the respondent who pointed out that the claims were considerably out of time and time barred.

3. A CVP hearing was arranged to take place on 24 September 2025.

4. At the start of the hearing, I did not appreciate that the claimant was making a claim for sexual harassment and that this had been referred to in the grounds of resistance. The claim had been registered only as an unfair

dismissal claim and the notice of hearing made reference to determining whether it had been reasonably practicable for the claim to have been lodged in time and this referred to the claim for unfair dismissal.

5. I explained to the claimant at the outset what the not reasonably practicable test related to and that I intended allowing him to give evidence about the background leading up to the lodging of the claims. Mr Hyland would then be given an opportunity to cross examine him.

6. During the course of the hearing, it transpired that a preliminary hearing bundle which had been properly lodged by the respondent's agents had not yet been uploaded. Mr Hyland helpfully emailed the bundle. The claimant had received his copy.

7. Mr Cruickshank in the course of his evidence made reference to various emails between him and his trade union, Unison, which he thought relevant. I allowed him to email these documents to the Tribunal and to Mr Hyland. This was not objected to.

8. It is up to the claimant to demonstrate that it was not reasonably practicable for the claims to be lodged in time and in relation to the alleged sexual harassment claims whether or not it was just and equitable to allow the claims to be received late.

9. **It was agreed that the respondent sent a letter of dismissal to the claimant on 30 August 2025**. The claimant's position was that he did not receive that letter until a couple of days later, on the 3 October 2024. The other significant dates were agreed, namely that the claimant contacted **ACAS on 15 April 2025 and an Early Conciliation Certificate issued on 29 April 2025** and **proceedings commenced on 15 May 2025.**

10. I made the following further findings in fact.

    (i) The claimant is 54 years of age. He was formerly a housing officer. He has a degree. He worked latterly as an Advocate for the respondents who are a charity. The respondent had a contract from Moray Council to provide advocacy services to certain user groups.

    (ii) The claimant's role related principally to provide advocacy for those with mental health difficulties. This included supporting them at mental health tribunal hearings and at other forums such as the Sheriff Court. The claimant had over five years experience in this role.

    (iii) The claimant encountered difficulties at work with his immediate line manager who he accused of sexual harassment.

(iv) The claimant last interacted with his line manager outside work on the 27 September 2024. He alleges he was subject to sexual harassment.

(v) The claimant was summarily dismissed for gross misconduct by letter dated 30 September 2025 which he received on the 3 October.

(vi) At the date of dismissal, the claimant was a member of the trade union Unison. He felt aggrieved at his dismissal. He felt it was unfair. He contacted Unison and was told that he would be represented by a local trade union officer, Ms M Black. The claimant met her and discussed his situation with her. He was in contact with her during the period beginning at the end of October 2024 onwards until she went off work on sickness leave.

(vii) Ms Black's advice to the claimant was to lodge an appeal against his dismissal which he did. He emailed her on the 7 October:

"*Hi Mhairi,*

I can confirm I have not spoken to anyone from Circles Management since the Teams meeting on 24/9, with Carrie and Fay Jones HR when I again disclosed everything. The outcome; Fay now apparently shocked at my managers behaviour towards me, offered/granted me paid leave till 30/9, thus ensuring I would no longer come into contact with him. Fay also emailed afterwards on 24/9 informing me she had now organised for me to return all my work equipment on 25/9 confirming Circles would guarantee my manager was at home, not in the office "for my safety".

My guess, VoiceAbility (VA) now realises this is a hot potato, want no part in this, will play the 'technically' Peter was sacked on 30/9, despite no-one talking to me from Circles nor VA therefore, I did not transfer to VA on 1/10 and basically, currently, I am unemployed. Despite only receiving this official Circles letter sacking me on 3/10, which was after VA handing me a letter on 1/10 saying I am an employee of their organisation.

Yes, of course I agree with you RE Appeal, just not sure who to, Circles, VA or more likely ACAS.

Circles Network consistently failed in their duty of care towards me and follow their own P&P. I repeatedly reported my manager verbally in April and May, and then In writing in July, Aug & Sep, yet Carrie failed to investigate ANY of my concerns RE bullying, harassment & sexual harassment, notwithstanding Circles Polices stating that they take such concerns 'very seriously'. Instead she chose to protect her manager, and even mocked and laughed at my concerns in the meeting Fay also attended.

The consequences of sweeping this under the carpet, meant she tacitly allowed this to happen over many months, empowering and emboldening my manager's behaviour, sadly resulting in him aggressively approaching me in Tesco's, verbally threatening and physically provoking me.

I really do appreciate your assistance and support, as I do worry I maybe unable to move forward with this, on my own.

Regards,

Peter

NB: I will complete and forward you a copy of my draft Statement detailing all of the above by week's end, thanks again."

(i) The claimant had been given a right of appeal in his dismissal letter. The claimant had attended an appeal hearing on 25 November 2024. He was represented by Ms Black. The following exchange was recorded between the claimant and his trade union representative:

"MB Ideally first opportunity to that rather than an appeal, you have broken employment relations act and ACAS code of conduct. Peter should have been part of, but wasn't part of any investigation.

PC I am running out of time to go to tribunal. This needs to be done within three months.

MB advised that we are okay for that. We can call them and let them know to pause it.

PC This has taken two months."

(ii) The claimant had no further contact with Ms Black. When he enquired with the Union he was told that his case had been passed to a Mr Frew in Inverness who failed to respond to emails from the claimant. He emailed Ms Black on 28 February 2025:

"*Hi Mhairi,*

Firstly, I hope this email finds you well and I am sorry for needing to reach out to you. However, in your absence my case was passed to John Frew, Inverness Branch, who has failed to respond to two of my emails (2/2/25 & 25/2/25) leaving me feeling abandoned by Unison.

Secondly, as it appears Unison has quietly quit on me whilst I have an active case, I have suspended my payment this month and will be requesting a refund when I submit my complaint RE John Frew. Given his inability to contact me, plus I am unsure how someone in Inverness can effectively support me.

Thirdly, I had managed to suspend proceedings due to a medical concern, then Unisons delay, but can no longer put my case nor my life on hold due to John's inability to contact me, and will need to proceed.

Consequently, it would be great if I could be supported by someone locally, ideally yourself as this case now nears completion and I am in a strong position."

(iii) In January the claimant received a Sick Note from his GP indicating that he was unfit to work through stress for a month.

(iv) The claimant complained to Unison about the representation he had received and received a response from them on 7 May 2025. It transpired that Ms Black was absent through illness from January 2025 onwards. The email made no reference to any complaint in relation to erroneous advice given to the claimant about employment tribunal time limits.

(v) The claimant wrote to Unison:

"I am writing to raise a formal complaint regarding the handling of my unfair dismissal case and the lack of communication, support and continuity from Unison since January 2025. I believe the actions (and inactions) taken by the branch are in breach of Unison stated commitments to member representation and support, and I respectfully request a full investigation and formal response."

(vi) The complaint related to a failure to inform him of any formal handover to another trade union representative.

(vii) The claimant has not enjoyed good health. He attends his GP for anxiety and depression. He attended his GP following his dismissal and was signed unfit to work for periods.

(viii) The claimant applied for benefits. He attended between 2 and 3 benefit meetings between his dismissal and the end of 2024.

(ix) The claimant had personal difficulties. His daughter became ill on the 11 February 2025. She was in intensive care for a period between 5-6 weeks. During this period, the claimant stayed in Aberdeen for long periods visiting his daughter when he could.

(x) He became concerned at the end of January that he had not heard from his trade union representative about his claim. Towards the end of March/beginning of April, his daughter was much better. He had become aware that Unison was no longer acting for him as he had been unable to pay his trade union fees. He began doing research into his own legal position and discovered that his employment tribunal claims were now late. He contacted ACAS. He was busy in the weeks that followed his contact with ACAS. He had to stay at home for council workers to mend his windows. He did not have a computer and could not easily lodge Tribunal papers. He had a smartphone and was able to browse the internet. He did not submit the employment tribunal papers until 15 May 2025.

(xi) When the claimant contacted ACAS he was told that he had a month to lodge his claim.

Witnesses

11. I found the claimant to be an honest witness and to be generally credible and reliable although I could not wholly accept his evidence in relation to the reasons he had not chased up his Trade Union representative for such lengthy periods or delayed checking his rights and whether any contact had been made on his behalf with ACAS or the Employment Tribunal Service. There was no doubt that he had undergone a difficult period in his personal life exacerbated by his daughter's illness and his own stress.

Submissions

12. The claimant was aware that he had to demonstrate why the claims should be accepted late. After the hearing, and with the agreement of the respondent he sent a copy of a Sick Note to the Tribunal that he had referred to in his evidence.

13. The claimant set out his submission in writing. He accepted that his claims were out of time. He argued that it was not reasonably practicable for him to have lodged them in time though the failures on the part of his Trade Union representatives. He said that he had relied good faith on his UNISON representative, who advised me that I had a year to bring my claim. He made reference to the cases of ***Northumberland County Council v Thompson***, ***Dedman v British Building*** and ***Walls Meat Co v Khan***, as authority for the proposition that relying on incorrect advice can be accepted as a valid reason for lateness.

14. In addition, he argued that he had been signed off by his GP for periods of ill health, "specifically my mental health", and at the same time, his daughter

became seriously ill between January and March 2025. He made reference to various cases which he had considered namely ***Porter v Bandridge*** and ***Palmer & Saunders***. He also referred the Tribunal to ***Marks & Spencer v Williams-Ryan*** and ***London International College v Sen***. He asked the Tribunal to consider all the circumstances.

15. The respondent's lawyer took the Tribunal through the statutory background. In relation to the not reasonably practicable test he referred the Tribunal to a number of authorities namely ***Brodha v Hampshire Area Health Authority 1982 ICR 200***, ***Palmer and anor v Southend-on-Sea Borough Council*** 1984 ICR 372, ***Ashcroft v Haberdashers' Aske's Boys' School*** [2008] ICR 613, ***Paczkowski v Sieradzka*** (2016) (2016) UKEAT/0111/16, ***Schultz v Esso Petroleum Ltd*** (1999) EAT/1066/97.

16. In relation to the exercise of discretion he referred to the cases ***O'Brien v Department for Constitutional Affairs*** [2009] IRLR 294, ***Adedeji v University Hospitals Birmingham NHS Foundation Trust*** [2021] EWCA Civ 23, ***Rathakrishnan v Pizza Express*** *[2016] IRLR 278* , ***Kumari v Greater Manchester***, ***Robertson v Bexley Community Centre*** [2003] EWCA Civ 576, [2003] IRLR 434. There was he said no presumption that an extension should be granted.

17. Mr Hyland's broad position was that the papers disclosed certain important agreed dates namely when the claimant was dismissed and when he contacted ACAS for Early Conciliation and then when the claim was raised. The claims were 139 days late. He accepted that two different tests had to be applied namely the ''not reasonably practicable'' test for the lodging of the unfair dismissal claim and the ''just and equitable'' test for discrimination claims.

18. He took the Tribunal to the background circumstances. In relation to any claims for harassment these must predate the dismissal. The last claim must be no later than the 27 September. The claimant may have received a poor service from his Union. He was a clever and resourceful man and the documents make clear he was aware of the 3 month time limit. It was not credible that being aware of the time limits he would have sat back for so long and done nothing about claims he said he had and that he felt strongly about. Even if it was accepted that his Trade Union representative said that the proceedings could be halted he did not check that this had occurred. The respondents are a charity. They would be prejudiced if the claims proceeded particularly the unspecified and underdeveloped claims for harassment. They have limited resources and it is not just and equitable for the claims to proceed with the consequent expense that would entail.

Discussion and Decision

19. The law relating to time limits in respect of unfair dismissal is contained in the Employment Rights Act 1996. Section s111(2) states that an Employment Tribunal shall not consider a complaint unless it is presented before the end of the period of three months beginning with the effective date of termination or 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.

20. Where a claim for unfair dismissal is lodged out of time, the Tribunal must consider whether it was not reasonably practicable for the claimant to present the claim in time. The burden of proof lying with the claimant. If the claimant succeeds in showing that it was not reasonably practicable to present the claim in time, then the Tribunal must then be satisfied that the time within which the claim was in fact presented was reasonable.

21. The Court of Appeal has recently considered the correct approach to the test of reasonable practicability (***Lowri Beck Services Ltd v Brophy*** [2019] EWCA Civ 2490). Lord Justice Underhill summarised the essential points 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 479, [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 (***Palmer and Saunders v Southend on-Sea Borough Council*** [1984] IRLR). 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 [not] have been reasonably practicable for them to bring the claim in time (***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. 3. If the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee (***Dedman***). The test of reasonable practicability is one of fact and not law (***Palmer***).

22. A feature of this case was the advice the claimant says he received. A claimant can rely on failure to act in reliance on advice from, for example, Tribunal employees or government officials. In ***DHL Supply Chain Ltd v Fazackerley*** [2018] UKEAT 0019_18_1004

23. The claimant in this case was an advocacy worker. He was aware that time limits apply in many situations and as was clear from the minutes of the meeting on the 25 November his understanding was that he had three months to make a claim to the Tribunal. I accept that what follows is a quite extraordinary comment by his Trade Union adviser who seems to suggest being able to 'pause' the case (there was of course no case to pause at that point) by contacting ACAS. The claimant says he was misled. I find it hard to believe that he would not have checked the matter. It would have taken seconds on his smartphone. Significantly he then did not check himself with ACAS or the Tribunal that this envisaged 'pause' had been applied for. He also does not directly mention this alleged failure in his complaint to Unison or in the email to Ms Black in February. In fact he makes an odd comment:

''I had managed to suspend proceedings due to a medical concern, then Unisons delay, but can no longer put my case nor my life on hold due to John's inability to contact me, and will need to proceed.''

24. This seems to call into doubt whether he in fact expected Ms Black or someone else in the Union to have taken any formal action. The email to Ms Black which he received no response to was dated 28 February. It must have been clear for some weeks that nothing had been done. The claimant then delays a further 6 or so weeks before contacting ACAS. These long delays are not reasonable even if I was to accept that the comment made by Ms Black about pausing the process caused some initial delay or confusion. The email to her also discloses that he had only emailed Mr Frew in February. I would have expected that the claimant would have checked the time limit or at least checked that proceedings had been raised and 'paused' and it is odd that there is a lack of any emails chasing Ms Black or Mr Frew or indeed the Trade Union's officials until the end of February.

25. Although the claimant in the present case received his ACAS certificate knowing that his claim was already late he delayed for a further two weeks. His position was that he had been misled by ACAS who told him that he had 4 weeks after the grant of the Certificate. I frankly found this implausible as it must have been apparent to them that the claim was considerably out of time before they had been contacted. In addition, the claimant had by this time carried out his own researches and accepted that he knew that the claims were now late having ascertained that there was in fact a three month deadline.

26. Turning to the claims for sexual harassment. A claim for discrimination also requires to be raised within 3 months of the act complained about 9section 123 Equality Act 2010).

27. It has long been established as explained in such authorities as ***Robertson v Bexley Community Centre*** [2003] IRLR 434 that a Tribunal has a wide discretion when exercising their discretion on whether, in all the circumstances, it is just and equitable to consider an out of time complaint. It is for the claimant to establish that it is just and equitable for the primary time limit of three months to be enlarged in their case.

28. The factors to be taken into account in deciding whether to extend time for presentation of a claim on a just and equitable basis depend on the particular facts of the case. In ***Department of Constitutional Affairs v Jones*** [2008] IRLR 128 Pill LJ stated that the factors mentioned by Smith J (in ***Keeble***, having referred to section 33 of the Limitation Act 1980 : "50. … are a valuable reminder of factors which may be taken into account. Their relevance depends on the facts of the particular case. …" Those factors include the length of and reasons for the delay, the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action, and the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

29. Another factor referred to in ***Keeble*** at paragraph 25 which may be taken into account is the need for legal certainty and finality in litigation. If the relevant facts bring a claimant to the threshold of a just and equitable extension of time, an Employment Tribunal will consider the balance of prejudice to the parties of respectively granting or refusing an extension of time as well as the strength of the factors relied upon to support an extension. All relevant circumstances are to be taken into account in deciding whether to exercise a discretion whether to extend time on a just and equitable basis to bring a complaint.

30. Some prejudice will inevitably be caused in every case to a claimant in not being able to pursue a claim and to a respondent in having to meet a case which otherwise would be time barred. In many cases prejudice may be felt by one or both parties through the loss of material evidence, including witnesses no longer being available or their recollections dimmed. Further, there may in addition be specific prejudice suffered in particular cases.

31. In this case the claims for harassment seems to revolve around an incident on or about the 27 September which prompted disciplinary action on the 30 September. The claimant says this in the ET1*: ''my male manager had been sexually inappropriate (verbally & physically) a number of times. He made up an allegation two days before contract ended to deflect this and this result in my dismissal.* '' The claims give no detail of what is said to have occurred on the 27 September but hints at previous incidents. He was asked by his employers about these matters and responded. As the respondent's lawyer pointed out this is an undeveloped and relatively open ended claim and these

are notoriously difficult being both time consuming and expensive for employers. His position was that the respondent would be prejudiced having to face such claims which are now at least a year old. He could not give any particular examples of prejudice. He pointed to the claimant having raised issues with his line manager and at a meeting on the 23 July 2024 although he said he had faced sexual harassment at work he declined to provide details (JBp48).

32. The claimant asked the Tribunal to consider the whole circumstances and the various problems that he had encountered after his dismissal from the failings of his Trade Union to assist him to his own health difficulties and the critical illness of his daughter in early 2025.

33. It is not clear that the claimant contacted his Trade Union for help in relation to sexual harassment rather it seemed to relate to the dismissal. There had been previous internal meetings at which he had raised these concerns. The claimant was aware that sexual harassment was unlawful and it is difficult to accept that he had in mind any action until prompted to do so by his dismissal. The claimant as has been pointed out above is an able and intelligent man whose job was that of an advocacy worker. If he had intended to take proceedings in relation to these matters it is difficult to accept he would not have done so before his dismissal. He chose not to do so. In these circumstances he has not persuaded the Tribunal that it is just and equitable to waive the time limit to allow proceedings so many months after the last alleged incident. The delays occurred even before his dismissal and before the later difficulties he encountered. It also does not assist the claimant for these claims to be so vague and unspecified. Even at this stage we do not know how far back these issues are said to have first occurred. In all of these circumstances the application falls to be rejected and the claims dismissed as being out of time.

Date sent to Parties **12 November 2025**