EMPLOYMENT TRIBUNALS

Claimant: Mrs Louise O'Riordan
Respondent: Stonbury Limited

RECORD OF A PUBLIC PRELIMINARY HEARING

Heard at: Watford Employment Tribunal
On: 17 November 2025
Before: Employment Judge Alliott

Representation
Claimant: In person
Respondent: Mr M Sellwood (counsel)

JUDGMENT

The judgment of the tribunal is that:

1. It was reasonably practicable for the claimant to present claims of detriment and/or automatically unfair dismissal for making a protected disclosure (whistleblowing), detriment and/or automatically unfair dismissal for trade union membership/activities and breach of contract/unlawful deduction from wages/holiday pay in time. Consequently, there is no jurisdiction to hear those claims and they are dismissed.

2. The claimant's disability discrimination claims were not brought in time and it is just and equitable to extend time to 24 January 2024.

REASONS

1. This public preliminary hearing was ordered by Employment Judge Wood on 3 September 2025 to consider:-

> " (i) To decide whether the claim should be amended pursuant to the claimant's written application? And
>
> (ii) To decide as a preliminary issue whether the discrimination complaints were made within the time limit in section 123 of the Equality Act 2010? The tribunal will decide:
>
> - Was the claim made to the tribunal within three months (plus early

conciliation extension) of the act to which the complaint relates?

- If not, was there conduct extending over a period?
- If so, was the claim made to the tribunal within three months (plus early conciliation extension) of the end of that period?
- If not, were the claims made within a further period that the tribunal thinks is just and equitable?

(iii) To decide whether the unfair dismissal/detriment complaints were made within the time limit in the Employment Rights Act 1996? The tribunal will decide:

- Was the claim made to the tribunal within three months (plus early conciliation extension) of the effective date of termination or detriment?
- If not, was there a series of similar acts or failures and was the claim made to the tribunal within three months (plus early conciliation extension) of the last one?
- If not, was it reasonably practicable for the claim to be made ot the tribunal within the time limit?
- If it was not reasonably practicable for the claim to be made to the tribunal within the time limit, was it made within a reasonable period?"

The law

Impact of second certificate

2. As per the IDS Handbook on Practice and Procedure in the Employment Tribunal:-

At 3.93

> "In HM Revenue & Customs v Serra Garau [2017] ICR 1121, EAT, G's employer gave him notice on 1 October 2015 to terminate his employment. G Submitted an EC request on 12 October and on 4 November Acas issued an EC certificate. His employment came to an end on 30 December, when his notice period expired. The EAT confirmed that the time spent in EC had no effect on the primary limitation period because that period had yet to begin. As Mr Justice Kerr (sitting alone) put it, "The limitation clock could not stop under the …certificate because it had never started." The EAT went on to hold that G had not extended the time limit by contacting Acas a second time on 28 March 2016 (the day before the primary three-month limitation period was due to expire), prompting Acas to issue a second certificate on 25 April. The statutory EC provisions do not allow for more than one EC certificate per "matter" to be issued by Acas. If more than one such certificate is issued, a second or subsequent certificate is outside the statutory scheme and has no impact on the limitation period."

3. Hence, the question that I have to address is whether the claimant's dismissal was part of the same matter as was covered by the first Acas certificate.

As per 3.23:

> "According to the EAT in Compass Group UK and Ireland Limited v Morgan [2017] ICR 73, EAT, an EC certificate is not necessarily limited to events that pre-date it. In that case, M had entered into the EC process in relation to her grievance about being

> instructed to work at an alternative location in a less senior capacity. An EC certificate was issued on 3 January 2015. Two months later, on 18 March, M resigned from her employment. A tribunal found that the EC certificate was valid to cover her constructive dismissal claim, even though it was issued before she resigned. The EAT unanimously dismissed CGUI Limited's appeal against this decision. The EAT pointed to the fact that, under section .18A(1) ETA, the requirement to contact Acas applies before institution proceedings "relating to any matter". It referred to the decisions reached in Science Warehouse Limited v Mills [2016] ICR 252, EAT, and Drake International Systems Limited and others v Blue Arrow Limited [2016] ICR 445, EAT, where the appeal tribunal had discussed the broad interpretation of the word "matter" under the EC scheme. Like the appeal tribunal in those cases, the EAT in Morgan considered it significant that parliament had used the word "matter" in section 18A(1) rather than "cause of action" or "claim" and that the prescribed information required to be provided by a prospective claimant to Acas to fulfill the obligations under the scheme is very limited. It held that the word "matter" may encompass not just the precise facts of a claim but also other events at different times and/or dates and/or involving different people."

4. I note that the following is set out at 3.24:

> "The EAT in Compass Group UK and Ireland Limited v Morgan made it clear that its decision did not mean that an EC certificate affords a prospective claimant a free pass to bring proceedings about any unrelated matter. It will be a question of fact and degree in every case where the proceedings instituted by an individual relate to any mater in respect of which the individual has provided the requisite information to Acas."

5. Despite there being a degree of uncertainty, the fact of the matter is that Compass Group involved a decision that a subsequent dismissal was arising from the same matter as an Acas certificate that had expired prior to the dismissal. In the circumstances, I find that the first Acas certificate in this claim related to the same matter as the subsequent dismissal.

6. Reasonably practicable as per the IDS Employment Law Handbook Employment Tribunal Practice and Procedure at 5.46:

> "When a claimant tries to excuse late presentation of his or her ET1 claim form on the ground that it was not reasonably practicable to present the claim within the time limit, three general rules apply:
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> - Section 111(2)(b) ERA should be given a "liberal construction in favour of the employee" – Dedman v British Building and Engineering Appliances Limited [1974] ICR 53, CA.
>
> - What is reasonably practicable is a question of fact and thus a matter for the tribunal to decide.
>
> - …
>
> - The onus of proving that presentation in time was not reasonably practicable rests on the claimant "that imposes a duty upon him to show precisely why it was that he did not present his complaint" – Porter v Bandridge Limited [1978] ICR 943, CA.
>
> Even if a claimant satisfies a tribunal that presentation in time was not reasonably practicable, that does not automatically decide the issue in his or her favour. The tribunal must go on to decide whether the claimant was presented "within such further period as the tribunal considers reasonable".

7. And at 5.48

> "Meaning of "reasonably practicable". Judicial attempts to establish a clear, general and useful definition of "reasonably practicable" had not been particularly successful. This is probably because cases are so different and depend so much on their particular circumstances. However, In Palmer and another v Southend on Sea Borough Council [1984] ICR 372, CA, the Court of Appeal conducted general review of the authorities and concluded that "reasonably practicable" does not mean reasonable, which would be too favourable to employees, and does not mean physically possible, which would be too favorable to employers, but means something like "reasonably feasible". Lady Smith in Asda Stores Limited 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".

8. And at 5.67:

> "Advisers at fault
>
> Any substantial fault on the part of the claimant's adviser that has led to the late submission of his or her claim may be a relevant factor when determining whether it was reasonably practicable for the claimant to present the claim within the prescribed time limit. In the majority of cases, an adviser's incorrect advice about the time limits, or other fault leading the late submission of a claim, will bind the claimant and a tribunal will be unlikely to find that it was not reasonably practicable to have presented the claim in time. However, much will depend on the circumstances and the type of adviser involved.

9. And at .60:

> "Solicitors. If a claimant engaged solicitors to act for him or her in presenting a claim, it will normally be presumed that it was reasonably practicable to present the claim in time and no extension will be granted. As Lord Denning MR put it in Dedman v British Building and Engineering Appliances Limited [1974] ICR 53, CA: "If a man engages skilled advisers to act for him – and they must state the time limit and present the claim too late – he is out. His remedy is against them." This rule is commonly referred to as the "Dedman principle."

<u>Just and equitable extension</u>

10. At 5.128:-

> "While employment tribunals have a wide discretion to allow an extension of time under the "just and equitable" test in section 123, it does not necessarily follow that exercise of the discretion is a foregone conclusion. Indeed, the Court of Appeal made it clear in Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434, CA, that when tribunals consider exercising the discretion under what is now section 123(1)(b) Equality Act, "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 the discretion is the exception rather than the rule."
>
> The onus is therefore on the claimant to convince the tribunal that it is just and equitable to extend the time limit. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds."

11. And at 5.142:

> "Incorrect advice
>
> It is clear from the case law that a tribunal's discretion to extend time in discrimination cases is wider than the discretion available in unfair dismissal cases. Therefore, whereas incorrect advice by a solicitor or a wholly understandable misconception of the law is unlikely to save a late tribunal claim in an unfair dismissal case…the same is not necessarily true when the claim is one of discriminaiton – Hawkins v Ball and another [1996] IRLR 258, EAT, and British Coal Corporation v Keeble and others.

12. And at 5.143:

> "• Chohan v Derby Law Centre [2004] IRLR 685, EAT: C was employed as an adviser on employment matters and as a trainee solicitor. She was dismissed and brought a claim for sex discrimination, but her claim was presented 18 days out of time. The employment tribunal decided that it would not be just and equitable to extend the time limit, as the delay was caused by the incorrect advice of her solicitors and because C had legal experience. On appeal, the EAT reversed that decision and allowed the time limit to be extended. In respect of the incorrect legal advice, the EAT referred to a non-employment decision of the Court of Appeal in Steeds v Peverel Management Services Limited [2001] EWCA Civ 419, CA, when holding that C should not be disadvantaged because of the fault of her advisers, for otherwise the defendant would be in receipt of a windfall. With regard to C's legal knowledge, the EAT said that the legal point concerning when the cause of action arose was a difficult one and C should not be blamed for getting it wrong."

The facts

13. For the purposes of this application, I have assumed that all acts complained of prior to dismissal were a series of connected events or a course of continuous conduct, This decision is not to be taken as a finding that there was a series of connected events or a course of continuous conduct.

14. The claimant's trade union representative made a notification to Acas on 2 August 2023 and the certificate is dated 13 September 2023.

15. The claimant was dismissed on 2 October 2023. Consequently, the primary three-month limitation period expired on 1 January 2024.

16. The claimant made a second notification to Acas on 12 October 2023. The certificate is dated 23 November 2023. That is a period of early conciliation of 42 days.

17. The claimant presented her claim on 24 January 2024. If the second Acas certificate was valid then her claim was in time.

18. However, even though the claimant had not been dismissed by the date of the first Acas certificate, I find that it related to the same matter and consequently the second Acas certificate is irrelevant.

19. As such, the claimant's claims have been presented 23 days late (the respondent has added the statutory notice period of 7 days and worked on the assumption that the claimant was 16 days late).

20. The claimant had legal expenses insurance. On the day of her dismissal, 2

October 2023, she clearly made a claim and was referred to a firm of solicitors called DAS Law. The claimant told me that she signed an engagement letter with DAS Law and I find that she instructed them to act on her behalf in providing her with advice concerning her potential employment claims.

21. It is clear to me from a series of email exchanges with DAS Law that the claimant was very aware of the three-month time limit for presenting her claim. She was chasing the advice.

22. On 14 December 2023, and thus within the primary limitation period, the claimant sent an email to DAS Law as follows:-

> "Can you confirm the deadline to submit ET claim?
>
> Hannah has most recent EC cert.
>
> I'm concerned I'll miss the deadline."

23. The claimant told me and I accept that she had provided the first Acas EC certificate to DAS Law. It is clear from that email that she had at least two EC certificates.

24. On 14 December 2023 the claimant was sent the following reply:-

> "The time you have been in early conciliation (42 days) will be added to your primary limitation date;
>
> 1 January 2024 + 42 days = 12 February 2024
>
> Given the attached the final limitation is 12 February 2024."

25. The claimant told me that on 24 January 2024 DAS Law telephoned her and informed her that they may have misadvised her concerning the limitation date. Thereupon the claimant presented her claim on 24 January 2024.

26. It is clear that the claimant was misled by legal advice from DAS Law.

27. The claimant also approached Acas. Whilst the response from Acas could be said to be somewhat equivocal, the claimant was informed that the clock stops when she was in active conciliation. It is not clear to me that the conciliator knew about the earlier Acas certificate.

28. Dealing with the factors I have to consider:

29. The length of the delay is 23 days.

30. The reason for the delay is that the claimant was wrongly advised by her legal advisers.

31. The claimant has alluded to health being a reason. I have no doubt that the claimant had significant health issues during this time. However, the question for me is whether those health issues prevented her from presenting her claim on time. The respondent has pointed to social media posts which indicate that the claimant was actively discharging her civic function as a councillor and engaging with her solicitors during this period. I find that her health was not sufficient to excuse the late presentation of the claim.

32. It is an unfortunate fact that the service of these proceedings took 14 months. I have to consider the cogency of the evidence. Any delay will obviously affect the cogency of the evidence. However, in my judgment, 23 days is insignificant in this context.

33. There is no suggestion that the respondent has failed to cooperate.

34. The claimant acted extremely promptly once she knew that she might be out of time. She issued on the same day.

35. The claimant took active steps to gain appropriate advice from 2 October 2024.

36. The claimant's reliance on her legal advisers is understandable. However, pursuant to the Dedman principle, I find that it was reasonably practicable to present her claim in time. As such, there is no jurisdiction to hear the claimant's detriment/automatically unfair dismissal for making a protected disclosure (whistleblowing) detriment and/or automatically unfair dismissal for trade union membership and/or activity and breach of contract, unauthorised deduction of wages and holiday pay claims, and the same must be struck out.

37. As far as the claimant's disability discrimination claims, I take into account the same factors as already recited. However, when balancing prejudice, I find that there is significant prejudice as regards the claimant in that she would lose her claim, whereas the prejudice to the respondent is less in that, whilst it is losing an absolute defence, the claimant was only 23 days late and the delay has been for totally understandable reasons from her perspective. Consequently, in the exercise of my discretion, I extend time as it would be just and equitable to do so.

Approved by:

Employment Judge Alliott

Date: 5 December 2025

JUDGMENT SENT TO THE PARTIES ON
10 December 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:

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