



EMPLOYMENT TRIBUNALS

Claimant: Mr Scott Walker

Respondent: Waterstones Booksellers Limited

Heard at: Bury St Edmunds Employment Tribunal

On: 1 December 2025

Before: Employment Judge Freshwater

Appearances

For the claimant: in person

For the respondent: Miss J Duane (counsel)

RESERVED JUDGMENT

1. The tribunal does have jurisdiction to determine the complaint of harassment related to disability under section 26 of the Equality Act 2010 because it is just and equitable to extend the time limits.
2. The tribunal does have jurisdiction to determine the complaint of failure to make reasonable adjustments under section 21 of the Equality Act 2010 because it is just and equitable to extend the time limits.
3. The tribunal does not have jurisdiction to determine the complaint of whistleblowing detriment under section 48(1A) of the Employment Rights Act 1996 because it was not presented in time.

REASONS

Background

1. The claimant is Mr Scott Walker. The respondent is Waterstones Bookseller Limited.

Procedure and hearing

2. This was a public preliminary hearing that took place in person at

Bury St Edmunds Employment Tribunal. The reasonable adjustments that had been agreed in the case were discussed at the beginning of the hearing. These included the need for in person hearings and to receive documents in writing by hard copy (not just email). Mr Walker informed me that he was receiving hard copy documents from the respondent but not the tribunal office. I said that I would contact the tribunal office about this point.

3. Mr Walker had not received the bundle of documents for the hearing until 28 November 2025 by signed delivery. The respondent had also sent a hard copy on 18 November, but Mr Walker did not receive it. He was concerned that he was at a disadvantage, but did not want the hearing to be postponed. I decided that it was in the interests of justice for the case to proceed. Although it would have been ideal for Mr Walker to have received the bundle sooner, he was familiar with information relevant to the issues to be discussed at this hearing. This is because the hearing is about his claims and when they were presented in a claim form to the tribunal. Mr Walker had made a written witness statement for the hearing.
4. I was referred to a bundle of documents of 162 pages. I heard oral evidence from Mr Walker.
5. I heard submissions from Mr Walker and Miss Duane. In order to enable the claimant to have sufficient time to develop his submissions, as well as eat and take a genuine break, the tribunal took an early adjournment for lunch of one and a half hours.
6. Judgment was reserved, which means that I said that I would send my decision to the parties in writing after the hearing. This document records and explains my decision.

Issue to be determined

7. The issue to be determined is whether or not the claimant's complaints have been brought in time and, if not, whether time should be extended.
8. The respondent submitted that any claim before 23 July 2023 was out of time taking into account that the claimant had submitted his claim form and the dates of early conciliation. It said that it was not just and equitable to extend time in respect of the Equality Act 2010 claims, and that it was reasonably practicable for Mr Walker to have brought his whistleblowing claim in time.
9. Mr Walker submitted that he considered each act was a continuous course of events. Further, he had raised a formal grievance that was not addressed in an appropriate time. He had waited for the outcome of the grievance before issuing a claim because he had hoped to resolve his complaint internally. He said that it was just and equitable to extend time for all his claims. He noted that there was a Bill before Parliament that would extend time limits for claims under the Employment Rights Act 1996.

Findings

10. The claimant started his employment with the respondent on 10 April 2019. His employment ended on 4 September 2023.
11. The respondent has conceded that Mr Walker is disabled by reason of ADHD and dyslexia. The Claimant informed the Respondent of his dyslexia in April 2019 and his ADHD on 13 January 2023.
12. The claimant submitted his claim form to the tribunal on 4 December 2023. Early conciliation commenced on 31 July 2023 and a certificate was issued on 11 September 2023.
13. At a case management hearing on 15 May 2025, the claimant said that he was bringing the following claims:
 - a. Whistleblowing;
 - b. Harassment related to disability;
 - c. Failure to make reasonable adjustments;
 - d. Constructive unfair dismissal; and
 - e. Arrears of pay.
14. The respondent concedes that the claims of unfair dismissal and arrears of pay are within time.
15. Mr Walker submitted an informal grievance in November 2022 and a formal grievance in April 2023. He was notified of the outcome of his formal grievance after he left Waterstones in September 2023. The grievance covered broadly the same issues as have been raised in the claims before the tribunal. The grievances were not in the bundle of documents, but I accept the oral evidence of Mr Walker about what the content of his grievances.
16. Mr Walker said that he had been a member of a union for 14 years, but had not sought advice about everything that had happened (such as the process of internal recruitment) and did not consider this to be relevant. He has a laptop at home and, for the last 6 months, a smart phone. He became aware of ACAS guidelines when he raised his formal grievance.
17. The impact of Mr Walker's disability includes that fact that he loses focus, and has a poor concept of time (including dates). He sets reminders for important matters, such as when an MOR is due. He failed to attend a grievance meeting because he had forgotten the date. He also struggles with paperwork.
18. During an August 2023 grievance appeal meeting, Mr Walker's union representative said there was a strong possibility that the complaint would be taken to the employment tribunal. Mr Walker was present when this was said.
19. Mr Walker believed the correct procedure was to follow ACAS guidance about grievance appeals. He did so in an attempt to resolve the matter without going to a tribunal.

The claims

Whistleblowing

20. The whistleblowing claim was based on the following particulars of claim:

- a. Report of drug use by another member of staff in mid-2022 although in his oral evidence, Mr Walker said that this was an error and he had made the report in mid-2023;
- b. Raise concerns relating to health and safety at the Respondent's Northampton store in late 2021 or early 2022.

21. The Claimant relies on the following alleged detriments:

- a. Failure to be appointed to Project Manager role in October 2022; and
- b. The Respondent's intention to place the Claimant on a performance improvement plan in December 2022.

Harassment related to disability

22. The harassment claim was based on the following allegations:

- a. Did Phil Mifflin put his head in his hands whilst the Claimant was speaking on a Teams meeting in June 2023?
- b. Was the meeting on 8 November 2022 between the Claimant, Nick Smith and Phil Mifflin, held in a public area of the Cambridge store?
- c. Did Phil Mifflin email another individual asking, what are the next steps to remove the individual from the team? On 27 March 2023?
- d. Did Phil Mifflin send an email to Nick Smith about the Claimant saying, "What the hell are you doing turning up at 6.00 am" on 2 December 2022?

Failure to make reasonable adjustments

23. This was based on the following allegations:

- a. A practice of holding meetings (Team meetings and one to one meetings) via video rather than face to face and not providing an agenda or minutes of those meetings?
- b. A practice of not arranging regular one to one or supervision meetings?

- c. A practice of holding appraisal meetings via video rather than face to face? In his oral evidence, Mr Walker said that his last appraisal was in December 2022.
- d. A practice of conducting internal recruitment without an opportunity to raise disability at the pre-application stage? In his oral evidence, Mr Walker accepted that he had applied for roles in 2021 and 2022.
- e. A practice of holding recruitment interviews by video rather than face to face? This relates to the roles applied for in 2021 and 2022.
- f. A practice of not providing administrative report?

The law

24. The Employment Rights Act 1996 applies to the claim of whistleblowing. Section 48 of that Act states:

“(3)An [employment tribunal] shall not consider a complaint under this section unless it is presented—

(a)before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, 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.

(4)For the purposes of subsection (3)—

(a)where an act extends over a period, the “date of the act” means the last day of that period, and

(b)a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer [a temporary work agency or a hirer] shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

[(4A)Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of

subsection (3)(a).]”

25. The onus of proving that presentation in time was not reasonably practicable rests on the claimant. (see *Porter v Bandridge Ltd 1978 ICR 943, CA.*)
26. 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 (see *Asda Stores Ltd v Kauser EAT 0165/07.*)
27. In the case of *Lowri Beck Services Ltd v Brophy 2019 EWCA Civ 2490, CA.* the following principles were described:
 - a. the test should be given a liberal interpretation in favour of the employee.
 - b. the statutory language is not to be taken as referring only to physical impracticability and for that reason might be paraphrased as whether it was ‘reasonably feasible’ for the employee to present his or her claim in time.
 - c. 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 his or her case, the question is whether that ignorance or mistake is reasonable. If it is not, then it will have been reasonably practicable for the employee to bring the claim in time. However, 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 employee or his or her adviser should have made
 - d. if the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee
 - e. the test of reasonable practicability is one of fact and not of law.
28. In the case of *Bodha v Hampshire Area Health Authority 1982 ICR 200, EAT.* it was held that the existence of an impending internal appeal was not in itself sufficient to justify a finding that it was not reasonably practicable to present a complaint to a tribunal within the time limit. This principle was approved by the Court of Appeal in *Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, CA.*
29. However, internal appeals can be relevant. In the case of *John Lewis Partnership v Charman EAT 0079/11.* the Employment Appeal Tribunal upheld an employment tribunal’s decision to accept an out-of-time unfair dismissal claim where the claimant waited for the outcome of an internal appeal against his dismissal before deciding how to act.
30. The Equality Act 2010 applies to the complaints of failure to make reasonable adjustments and harassment related to disability. Section 123 states:

“(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.

...

(3)For the purposes of this section—

(a)conduct extending over a period is to be treated as done at the end of the period;

(b)failure to do something is to be treated as occurring when the person in question decided on it.

(4)In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a)when P does an act inconsistent with doing it, or

(b)if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.”

31. In the case of Miller and ors v Ministry of Justice and ors and another case EAT 0003/15 the following principles were set out:

- a. the discretion to extend time is a wide one;
- b. 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;
- c. 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
- d. 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.

Conclusions

32. There are two different tests for me to apply, based on whether a complaint is brought under the Equality Act 2010 or the Employment Rights Act 1996. It is for this reason that I have reached a different decision for the different types of complaints that Mr Walker has brought to the tribunal.

33. Whatever changes in the law may or may not apply in the future, today I must apply the law that is in force. It is not possible to consider what changes future legislation may or may not bring into effect.
34. I do not find that any of the acts said to have happened by Mr Walker that underpin his complaints of failure to make reasonable adjustments or harassment related to disability were within time. The most recent incident occurred in June 2023, which is before 23 July 2023 (the latest date by which a complaint could be in time). This means that even if there was a course of conduct, none of the conduct would be in time. However, I find that it would be just and equitable to extend time in the circumstances of this case in respect of each complaint. Mr Walker was trying to resolve matters internally, and had raised his complaints with his employer as part of that process. His claim form was issued on 4 December 2023, which was within three months of the termination of his employment and after he had received the outcome of the grievance. He decided at that point to take action in this tribunal. I have taken into account the nature of Mr Walker's disabilities, which he explained make it more difficult for him to focus and deal with paperwork. He did not say expressly in his evidence that he had not understood that time limits apply to employment tribunal claims, and I got the impression that he had simply not put his mind that at all whilst going through the internal grievance procedures. I note that he did have a union representative with him during the formal grievance meeting however I accept that, at that point, the focus was on achieving a resolution internally and that although there was a reference to the potential of going to a tribunal, Mr Walker did not think it was necessary to escalate until after his employment came to an end. He thought that he was doing the right thing by focussing first on the internal procedures and in all the circumstances that was reasonable. In reaching this decision, I have considered the extent to which the respondent is prejudiced by the delay. In my view, this the prejudice to the respondent is not significant as it was able to investigate the allegations raised as part of the grievance process and were investigated which will be documented in records available to the respondent. The prejudice to Mr Walker would be that he could not make any complaint under the Equality Act and this outweighs any the prejudice to the respondent, which has been aware of Mr Walker's complaints through internal procedures for some time.
35. Therefore, the tribunal has jurisdiction to hear the complaints relating to harassment and failure to make reasonable adjustments.
36. The position in respect of the whistleblowing complaint is different. The acts underpinning that complaint were incidents that occurred in 2021 and either mid-2023 or mid-2022 (taking into account the evidence of Mr Walker that he had made a mistake in respect of one of the dates). If the reporting of drug use happened in mid-2023, then it can't be linked to the alleged detriments which happened in 2021 and 2022. This leaves the act relating to raising health and safety concerns in late 2021/early 2022 leading to alleged detriments in October and December 2022. I find that it would have been reasonably practicable for Mr Walker to have made an employment tribunal claim within three

months of when the detriments occurred (which, at it's latest would be by the end of March 2023). Mr Walker's evidence is that that he wanted to wait until the outcome of his grievances. However, there is no evidence to support the assertion that it was not reasonably practicable for Mr Walker to have made his claim much sooner than he did. He could have spoken to his union representative about what to do, particularly when his representative raised the possibility of going to a tribunal. Mr Walker could have researched the possibility of litigation sooner than he did. This is the case even taking into account his disabilities. He is able to use a laptop and a smart phone, and access union advice. He was reasonably capable of presenting his claim in time and certainly much sooner than he did (for example in August 2023, in consultation with his union representative).

37. The tribunal does not have jurisdiction to deal with the claim relating to whistleblowing.

Approved by:

Employment Judge Freshwater

1 December 2025

JUDGMENT SENT TO THE PARTIES ON

12/12/2025

FOR THE TRIBUNAL OFFICE

Notes

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. If written reasons are provided they will be placed online.

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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