



EMPLOYMENT TRIBUNALS

Claimant: Mr Lee Hudson

Respondent: WH Smith plc

PRELIMINARY HEARING

Heard at: Bristol (by CVP)

On: 22 January 2026

Before: Employment Judge Midgley

Representation

Claimant: In person.

Respondent: Mr P Manson (solicitor).

JUDGMENT

- 1. The Claimant has no reasonable prospects of demonstrating that the claim was presented in time or that it would be just and equitable to extend time to allow the claim to be presented.**
- 2. The claim is therefore struck out.**

JUDGMENT having been handed down on 22 January 2026 and written reasons having been requested at the end of the hearing in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

REASONS

Claims and Parties

1. By a claim form presented on 20 February 2025, the Claimant brought claims of disability discrimination and religion and belief discrimination in relation to his employment by the retailer known as 'WH Smith' in the period 2010 to 2020.
2. The Respondent is not the Claimant's employer. The Claimant's employer was

“WH Smith Retail Holdings Ltd” at all material times. The Claimant accepted and acknowledged that the Respondent was not his employer in the claim form, (ticking box 4.1 on the ET1 form to confirm that he ‘did not work for the Respondent [he was] making [his] claim against.’)

3. The claim form itself contains no details of any claim (as further detailed in the Procedure, hearing and evidence section of this Judgment below).
4. The hearing was listed to determine the Respondent’s applications to strike out the claims on the grounds that the Claimant had no reasonable prospect of establishing that the claims were presented in time (made on 21 July 2025) and/or because the Claimant had breached case management orders (made on 2 December 2025). On 5 January 2026 Employment Judge Gray directed that the second application could be determined at this preliminary or at a subsequent preliminary hearing.

Procedure, Hearing and Evidence

5. The hearing was conducted by CVP. The Claimant appeared in person; the Respondent was represented by Mr Manson. I had read the Tribunal’s file held on the Judicial Case Management system and the bundle of documents for the hearing (consisting of 112 pages) which had been prepared and filed by the Respondent in advance of the hearing.
6. At the outset of the hearing, having made introductions and explained the purpose of the hearing, the Claimant immediately interrupted me, spoke over me and would not heed my requests to stop doing so and to listen to me. It was apparent that his concerns were then three-fold: first, that the hearing should be limited to the single issue of whether his claim was in time; secondly, that he objected to the inclusion of his statement dated 27 April 2025 in the bundle, which he had submitted in accordance with the Order of Employment Judge Ferguson on 21 April 2025. Lastly, that a consequence of his disability was that he could not retain information and that he would be disadvantaged if he could not immediately interrupt me or Mr Manson to address any point in his mind to the extent he believed necessary.
7. When eventually the Claimant deigned it appropriate to listen to me, I explained that both applications were potentially for determination as a result of the Order of Judge Gray, but the question of whether the claims were in time would be considered first, secondly, that it was appropriate to have included the ‘statement’ given it contained the only articulation of the Claimant’s claims and further included some explanation of why the claims were presented when they were and not before. Lastly, I explained whilst the Tribunal would consider ‘adjustments’ to its process in compliance with the principle in section 20 of the Equality Act 2010 as an aspect of its duty to ensure a fair hearing, such adjustments had to be reasonable and, further, one factor which was relevant was whether any adjustment would enable the hearing to be completed within the listing.
8. My concern, which I expressed to the Claimant, was that if he interrupted whenever he wished, and was permitted to speak for as long as he deemed necessary, the Respondent would not have a fair hearing and the application would not be resolved within the listing which would not accord with Rule 3 and

the Overriding Objective.

9. The Claimant spoke over me again; I therefore explained that when he did so I could not hear what he was saying, which no doubt he regarded as important and wished me to consider, further, that he could not hear what I was saying which was certainly important and he may wish to consider, and thirdly that it was neither courteous nor respectful to the Tribunal and was not acceptable. I suggested that if, as the Claimant suggested, he could not recall what I said if he could not immediately interrupt to address the point, then he should make a note of it, and I would give him an opportunity to address each point at a relevant stage of the hearing. The Claimant agreed to that proposal.
10. I then sought to clarify the claims as I understood them from the claim form and the 'Statement' by discussing them and the Claimant's position on some of the issues relevant to the issue of jurisdiction with him. The essential points of that discussion, specifically the points relating to the 'Statement,' were as follows:
 - 10.1. The Claimant's claims were of disability discrimination, relying on mental impairments caused by PTSD, anxiety and depression.
 - 10.2. The Claimant was not pursuing any claim of religion or belief discrimination, despite ticking the relevant box in section 8 of the claim form.
 - 10.3. The legal claims the Claimant was seeking to make were of discrimination arising from disability, failure to make reasonable adjustments and harassment.
 - 10.4. The claims related to the period between 2018 and August 2019 (the latter date being when the Claimant began a period of sickness absence) but did not extend to the process by which he was selected and subsequently dismissed on the grounds of redundancy between August and 31 October 2020.
 - 10.5. The Claimant knew of his legal rights to present a claim in the Tribunal and the time limits applicable to those rights; he had previously presented a claim to the Bristol Tribunal in 2020 against Natures Way Foods Limited in relation to events which occurred during his employment in 2002.
 - 10.6. The Claimant accepts that the claims in these proceedings were presented out of time.
11. By agreement between the parties, I did not require the Claimant to give evidence by oath or affirmation. Mr Hanson was content for the Claimant's responses to my questions and his clarification of his claims to be accepted at face value and to be considered as part of the application.
12. I explained that I would hear the Respondent's arguments first and encouraged the Claimant to note the points he wished to respond to during them. I proposed that I would then permit him time, if he required it, to consider his response before making his closing argument. The Claimant stated that he was content with that course.

Factual Background

13. The following facts are apparent from the claim form, the further information of the claim submitted by the Claimant on 27 April 2025 (referred to as the 'Statement'), the correspondence on the Tribunal file and the Claimant's responses to my enquiries at the outset of the hearing.

The Claimant's employment

14. The Claimant is a military veteran, having served in the British Army. His civil employment commenced after his military career ended. The Claimant's condition of PTSD is likely linked to his military service.

15. In 2010 the Claimant commenced employment with WH Smith as a Sales Assistant. In 2016 he was promoted to Supervisor, and in 2017 he was again promoted, this time to the position of Store Manager; he became responsible for two smaller stores.

16. In late 2018 and early 2019 the Claimant began Postmaster training.

17. In 2018 the Claimant transferred to the WH Smith Fareham store. It was busier than the store to which he had initially been appointed as manager. Furthermore, the store was understaffed; three members of staff left within a short period of the Claimant taking up the role. Nevertheless, the Claimant argues that the Respondent subsequently gave him management responsibility for the two smaller stores which he had previously managed. The Claimant says that he therefore began to work six or seven days a week.

18. In late 2018 and early 2019 the Claimant first began to experience deteriorating mental health and other health issues. In consequence, his memory began to fade, he struggled to recall or process written instructions, he found it increasingly difficult to concentrate and to retain information and to write emails. Additionally, he found it increasingly difficult to process conversations in real time, particularly if he was in a busy or noisy environment, due to an auditory condition.

19. He complains that despite raising his concerns about the impact of those symptoms on his ability to perform his contractual duties, the Respondent, particularly the Stores Director and South of England Stores Director, made no adjustments to his duties and offered him no support, such as reducing his duties, offering him different shift patterns, appointing employees to cover his days off, and adopting clearer lines of communication, such as HR calling him by phone rather than sending him emails, and/or temporary redeployment. It is understood, therefore, that the Claimant may well rely upon that period and those alleged failures to support a claim that the Respondent failed to make reasonable adjustments or to refer the Claimant to Occupational Health to understand his health conditions and the adjustments which might be made for them.

20. Instead, the Claimant suggests that his managers and colleagues began to distrust him and breached his confidentiality by revealing discussions he had had with them outside of work; he says he was marginalised. It is possible that such conduct may form part of a complaint of harassment. The relevant time frame is again early 2019 to August 2019.

21. The Claimant specifically complains that he was required to complete and sign a form under the Official Secrets Act, but the Respondent did not explain why that was necessary. He has no recollection of why it happened, but he does recall being mocked about it.

The Claimant's sickness absence

22. In August 2019 the Claimant's health had deteriorated to such an extent that he began a period of sickness absence from which he would not return before his employment ended. During that period the Claimant's GP identified that the Claimant was showing symptoms indicative of PTSD and he was referred to Occupational health by his managers.

23. The Claimant complains that during the period August 2019 until March 2020 he was placed under constant pressure by his managers to return to work. This may form part of his complaint of harassment.

24. The Claimant attended three Occupational health reviews between the Autumn of 2019 and his dismissal in October 2020. He makes no complaint about the first two; he describes them as helpful and supportive. However, he does make specific complaint about the last of them which occurred in the period February to April 2020 (as he describes it, "approximately six to eight months after" the Claimant began his period of long-term sickness absence). Given the timing of the Covid 19 pandemic, it is assumed that the last OH appointment was more likely to have occurred in February or early March 2020. The Claimant says that during the telephone consultation the OH practitioner pressured him to return to work immediately. The Claimant alleges there is no record of this consultation; it is missing from his personnel file.

25. The Claimant was furloughed in the Covid-19 pandemic. It is assumed, although no specific dates are provided, that this was in April 2020. The Claimant records that he was furloughed for three months, thus until approximately June 2020.

26. At some stage in late 2019 or early 2020 the Claimant was referred by his GP to various mental health organisations to assist his management of the symptoms of his PTSD. He was first referred to Time to Talk, a community mental health service. That organization confirmed a diagnosis of PTSD and referred him to the Bedale Centre, where it was suspected that the Claimant was experiencing a delusion episode and/or displaying symptoms consistent with a delusion disorder.

27. At or about the same time, the Claimant issued a claim (1401966/202) against Natures Way Food Ltd in relation to his employment in 2002. The Claimant discharged himself from the Bedale Centre and referred himself to the Pathfinders, although that self-referral was unsuccessful.

28. During the first lockdown, between March and June 2020, the Claimant was visited by representatives from a veterans' mental health support service Operation Courage. The Claimant therefore sought further support which he was able to obtain later. It appears (although it is very difficult to identify with any certainty) that during the period of his Furlough and later, in the period 2021 to 2023, the Claimant was visited in accordance with referrals which had been made by Operation Courage to Veterans Outreach Support and Veterans at

Ease. The Claimant was thus able to attend some therapy sessions, although due to a fear that other attendees regarded him as attending solely to obtain free food, the Claimant subsequently attended therapy sessions by Zoom.

The Claimant's dismissal

29. In August 2020 the Claimant was notified that he was at risk of redundancy. The process concluded with his dismissal on grounds of redundancy on 31 August 2020.
30. On 1 February 2021, the Claimant's first claim (1401996/2020) was dismissed as having no reasonable prospect of success.

The DSARs

31. The Claimant made two Data Subject Access Requests of the Respondent, the first in 2021, the second in 2023. He corresponded with the Respondent in relation to the completeness of its resulting disclosures at some length.

The proceedings

32. The Claimant first approached ACAS to initiate a dispute in relation to his employment on 7 January 2025 and an Early Conciliation Notice was issued on 5 February 2025.
33. The Claimant presented his claim on 20 February 2025.
34. The claim form contained no details of the allegations currently pursued as they have been articulated in the Statement (which have been recorded above). Instead, the Claimant wrote

"At this time a lack of communication from the Respondent with regard to the period of my employment and my personnel file being incomplete, the physical [sic] and mental impact of my experiences with them both while and now continuing after my employment, an inability to get appropriate health care for both mental and physical conditions caused by the conditions of employment with the Respondent having a major impact on my ability to perform even simple tasks, I at this time am unable to provide a detailed written account myself and all access to anything along the lines of legal help or advocacy to aid with the situation seems restricted."

35. On 20 April 2025 Employment Judge Ferguson noted that the claim was not in a form which could properly be responded to and was therefore at risk of rejection in accordance with Rule 13(1)(d). She directed the Claimant to provide further clarification of the claims, requiring him to detail what happened that he alleged was discrimination, when it happened and who he alleged had acted in the manner complained of.
36. On 27 April 2025, the Claimant submitted a 33-page document ('the Statement') addressing the history of his employment, his health conditions and his effort to secure treatment for it. The detail at paragraphs 12 to 29 above is taken from that document and the Claimant's discussion with the Judge about its contents at the outset of this hearing.

37. On 21 July 2025 the Respondent entered a response and made an application for the claims to be struck out on the basis that they were presented out of time, the Respondent was not the Claimant's employer, and the claims were not in a form which could properly be responded to.

The Relevant Law

38. Rule 38 permits the Tribunal to strike out a claim if it concludes that it has no reasonable prospect of success.

39. Section 123 of the Equality Act contains the primary time limit for claims brought pursuant to the Equality Act. It provides as follows.

(1) Proceedings on a complaint within Section 120 may not be brought after the end of:

(a) the period of three months starting with the date of the act to which the proceedings relate, or

(b) such other period if the Employment Tribunal thinks just and equitable.

(2)...

(3) for the purposes of this section conduct extending over a period is to be treated as done at the end of the period.

Conduct extending over a period

40. An 'act extending over a period' (also known as a 'continuing act') may arise not solely from a policy, rule, scheme, regime or practice but also from 'an ongoing situation or continuing state of affairs' (Hendricks v The Commissioner of Police for the Metropolis [2003] IRLR 96, CA, paras 51-52 per Mummery LJ, approved by the Court of Appeal in Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548, CA).

41. In Coutts & Co plc v Cure [2005] ICR 1098, EAT, the Employment Appeal Tribunal (HHJ McMullen QC presiding), set out categories into which the factual circumstances of alleged discrimination may fall, and found (albeit obiter) that there are two types of situation in which alleged discrimination may constitute an 'act extending over a period':

41.1. where there is a discriminatory rule or policy, by reference to which decisions are made from time to time; and

41.2. where there have been a series of discriminatory acts, whether or not set against a background of a discriminatory policy.

42. In the former case, an act will be regarded as extending over a period, and so treated as done at the end of that period, if an employer maintains and keeps in force a discriminatory regime, rule, practice or principle which has had a clear and adverse effect on the complainant (Barclays Bank plc v Kapur [1989] IRLR 387).

43. In the latter case, the main issue for the Tribunal tends to be whether it is possible to identify some fact or feature linking the series of acts such that they may properly be regarded as amounting to a single continuing state of affairs

rather than a series of unconnected or isolated acts (Hendricks). A single person being responsible for discriminatory acts is a relevant factor in deciding whether an act has extended over a period: Aziz v FDA [2010] EWCA Civ 304, CA.

44. Therefore, whether the acts complained of are linked so as to amount to a “continuing act” is essentially a question of fact for the tribunal to determine.
45. In cases where the act complained of by the Claimant is not the mere existence of a policy but rather the application of that policy to the Claimant, the Tribunal must consider the following question in relation to when that policy ceased to be applied to the Claimant: “when did the continuing discriminatory state of affairs, to which the policy gave rise, come to an end?” (Fairlead Maritime Ltd v Parsoya UKEAT/0275/15/DA, HHJ Eady QC).

The just and equitable discretion

46. While employment tribunals have a wide discretion to allow an extension of time under the ‘just and equitable’ test in S.123, it does not necessarily follow that exercise of the discretion is a foregone conclusion in a discrimination case. Indeed, the Court of Appeal made it clear in Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434, CA at paras 23, 24 and 25, that when employment tribunals consider exercising the discretion under what is now S.123(1)(b) EqA, ‘*there is no presumption that they should do so unless they can justify a 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.
47. These comments were endorsed in Department of Constitutional Affairs v Jones [2008] IRLR 128 EAT and Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327 CA. However, As Sedley LJ stated in Chief Constable of Lincolnshire Police v Caston at paragraphs 31 and 32:

“In particular, there is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised. In certain fields (the lodging of notices of appeal at the EAT is a well-known example), policy has led to a consistently sparing use of the power. This has not happened, and ought not to happen, in relation to the power to enlarge the time for bringing ET proceedings, and Auld LJ is not to be read as having said in Robertson that it either had or should. He was drawing attention to the fact that the limitation is not at large: there are statutory time limits which will shut out an otherwise valid claim unless the Claimant can displace them. Whether a Claimant has succeeded in doing so in any one case is not a question of either policy or law: it is a question of fact sound judgement, to be answered case-by-case by the tribunal of first instance which is empowered to answer it.”

48. Before the Employment Tribunal will extend time under section 123(1)(b) it will expect a Claimant to be able to explain firstly why the initial time period was not met and secondly why, after that initial time period expired, the claim was not

brought earlier than it was (Per Langstaff J in Abertawe Bro Morgannwg University Local Health Board v Morgan).

49. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law does not require exceptional circumstances: it requires that an extension of time should be just and equitable - Pathan v South London Islamic Centre EAT 0312/13.
50. In exercising their discretion to allow out-of-time claims to proceed, tribunals may also have regard to the checklist contained in S.33 of the Limitation Act 1980 (as modified by the EAT in British Coal Corporation v Keeble and ors 1997 IRLR 336, EAT, at para 8). S.33 deals with the exercise of discretion in civil courts in personal injury cases and requires the court to consider the prejudice that each party would suffer as a result of the decision reached, and to have regard to all the circumstances of the case, in particular:
- (a) the length of and reasons for the delay;
 - (b) the extent to which the cogency of the evidence is likely to be affected by the delay;
 - (c) the extent to which the party sued had co-operated with any requests for information;
 - (d) the promptness with which the Claimant acted once he or she knew of the facts giving rise to the cause of action;
 - (e) the steps taken by the Claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.
51. Whilst these factors are a 'valuable reminder' of what may be taken into account, their relevance depends on the facts of the individual cases, and tribunals do not need to consider all the factors in each and every case. No one factor is determinative of the question as to how the Tribunal ought to exercise its wide discretion in deciding whether or not to extend time. However, a Claimant's failure to put forward any explanation for delay does not obviate the need to go on to consider the balance of prejudice (see Department of Constitutional Affairs v Jones 2008 IRLR 128, CA)
52. Similarly, it is not helpful for the Keeble factors to be taken as the starting point for tribunals' approach to 'just and equitable' extensions; rigid adherence to a checklist can lead to a mechanistic approach to what is meant to be a very broad general discretion, and confusion may occur where a tribunal refers to a genuinely relevant factor but uses inappropriate Keeble-derived language. The best approach for a tribunal in considering the exercise of the discretion is to assess all the factors in the particular case that it considers relevant, including in particular – as Mr Justice Holland noted in Keeble – the length of, and the reasons for, the delay (see Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] ICR D5, CA). However, it is not always essential that the tribunal be satisfied that there is a particular reason that it would regard as a good reason for the delay (Wells Cathedral School Ltd at [p33])

53. It is always necessary for tribunals to identify the cause of the Claimant's failure to bring the claim in time and whilst it is always good practice, in any case where findings of fact need to be made for the purpose of a discretionary decision, for the parties to adduce evidence in the form of a witness statement, with the possibility of cross-examination where appropriate, it was not an absolute requirement of the rules that evidence should be adduced in this form. A tribunal is entitled to have regard to any material before it which enables it to form a proper conclusion on the fact in question, including an explanation for the failure to present a claim in time, and such material may include statements in pleadings or correspondence, medical reports or certificates, or the inferences to be drawn from undisputed facts or contemporary documents (see Accurist Watches Ltd v Wadher UKEAT/0102/09, [2009] All ER (D) 189.)
54. A tribunal considering whether it is just and equitable to extend time is liable to err if it focuses solely on whether the Claimant ought to have submitted his or her claim in time. Tribunals must weigh up the relative prejudice that extending time would cause to the Respondent on the one hand and to the Claimant on the other: Pathan v South London Islamic Centre EAT 0312/13 and also Szmidt v AC Produce Imports Ltd UKEAT 0291/14.
55. In Wells Cathedral School Ltd & Anor v Souter EA-2020-000801-JOJ par 31 "As a matter of law, there is no particular feature that must necessarily be present in order for a just and equitable extension to be granted, nor that, if present, is automatically sufficient to warrant such a grant. However, some factors are, as it is put, customarily relevant. In every case the implication of refusing to extend time will be that the Claimant will not be able to have a complaint adjudicated on its merits, as they would, had time been extended. Conversely, the effect of granting an extension of time will be that a Respondent will be obliged to defend a complaint on its merits, and exposed to the risk of losing, in a way that would not be so, were time not to be extended."
56. A delay caused by a Claimant invoking an internal grievance or disciplinary appeal procedure prior to commencing proceedings is just one factor to be taken into account by a tribunal when considering whether to extend time: Robinson v Post Office [2000] IRLR 804, EAT, approved by the Court of Appeal in Apelogun-Gabriels v London Borough of Lambeth [2002] ICR 713. As the EAT said in Robinson (para. 25, per Lindsay P): "as the law stands an employee who awaits the outcome of an internal appeal and delays the launching of an [ET1] must realise that he is running a real danger."

Discussion and Conclusions

57. The Claimant accepts that the claims were presented out of time. Before considering whether he has any reasonable prospect of showing that he could persuade a Tribunal that it would be just and equitable to extend time, it is first necessary to identify what the precise claims are, when they crystallised into an actionable right, and when the time limit from their presentation lapsed.
58. There are no claims in the claim form. The claims which are specified are only those in the Statement which was sent to the Tribunal on 27 April 2025. The claims in that document seem, on my analysis, to consist of the following:
- 58.1. Claims of failure to make reasonable adjustments in the period late

2018 to August 2019. Given that the trigger for such claims is the either of the date on which the Respondent refused to make the adjustment necessary, or did an act inconsistent with the duty, or if neither of those applied, the date on which a reasonable employer would have made the adjustment in question, and further that the duty to make reasonable adjustments does not apply when an employee is too ill to return to work, the date for presenting claims in respect of any breach of the duty to make reasonable adjustments is November 2019 (being three months less a day from the date on which the Claimant's sickness absence began).

- 58.2. Claims of harassment and/or discrimination arising from disability: these seem to relate to conduct on or about the time the Claimant signed the Official Secrets Act, when he asserts he was marginalised, and then during the period in which he asserts that OH tried to pressure him to return to work, which seems to me to be in March 2020. The time limit for presenting a claim in respect of such claims would therefore be July 2020 at the latest.
59. The Claimant is not, as he told me, seeking to bring any claim in respect of his dismissal in August 2020.
60. In order to assess the Claimant's prospects of demonstrating that it would be just and equitable to extend time to allow a claim to be presented four years or more out of time, it is necessary to consider the relevant factors pertinent to the exercise of such a discretion.
- (a) The length of and reasons for the delay.
61. The claims were, on the most generous interpretation, presented between four years and five months and four years and nine months out of time. The Claimant has been candid and honest in his discussion with me: he accepted that he knew of his right to claim and the time limits applicable to those claims throughout that period. The Statement details the Claimant's health conditions and his efforts to find support and treatment for them. This appears to be the reason why the Claimant did not present the claim sooner.
62. The difficulty for the Claimant in the context of the issue for this preliminary hearing is that whatever the state of his health and the impediments it created for him, he was able to present a claim in 2020. However, the claim he chose to present in 2020 was the claim in relation to his employment in 2002, not this claim relating to his employment with WH Smith Retail Holdings Ltd.
63. It is notable that the date on which the first claim was presented was within a month or two of the time limit for any claim against WH Smith for breach of the duty to make reasonable adjustments expiring, and in the same year as the claim for harassment expired. It was not possible, despite my efforts, to locate the claim that was presented in 2020 during the hearing so as to identify with certainty when exactly it was presented.
64. The point remains, however, that it is likely to have been presented within a few months of one or other for the time limits from the claims in these proceedings expiring.

65. The Claimant has provided no explanation as to why he waited a further 4 years before presenting the current claim.

(b) The extent to which the cogency of the evidence is likely to be affected by the delay.

66. The cogency of the evidence will be significantly affected by the delay. If there is any claim in respect of the redundancy process, Mr Hanson has confirmed that the managers who oversaw the Respondent are no longer employed by the Respondent. They are unlikely to be able to call them as witnesses. There is no certainty that the managers who were in place in 2018 or 2019 will recall how and why they managed the Claimant in the way they did. Similarly, there is no certainty that the OH clinicians will have any recall of the events.

67. Furthermore, the Claimant has told me, again very honestly and candidly, that whilst he remembers certain events clearly there are other events of which he has no recollection at all. Such gaps in his memory will prejudice not just the Claimant but also the Respondent because the Claimant may be unable to recall events which may support the Respondent's case or undermine the Claimant's.

68. Lastly, given the need for a further preliminary hearing to clarify the claims and determine whether the Claimant should be permitted to amend his claim to add them, which would not take place for at least a further three to four months, and that the delay between such a hearing and any final hearing is likely, on current estimates, to be 12 to 13 months, the final hearing would not take place until at least April 2027. That is some eight years after the period during which the alleged acts of discrimination occurred.

69. The Claimant has not suggested in his statement that he raised a grievance about the events, such that there might be a contemporaneous record of them or the reasons offered by those against whom allegations were made for their conduct. That will create further forensic prejudice for the Respondent.

(c) The extent to which the party sued had co-operated with any requests for information.

70. The Claimant has made two data subject access requests, and he argues that the Respondent has not provided a complete or satisfactory response to either, but the requests were not made until 2021 and 2023. That was after the time limits to present the claim had expired (by either one or three years respectively). Whether or not the Respondent complied with its duties under the GDPR cannot therefore assist the Claimant in explaining the delay in the presentation of this claim.

(d) The promptness with which the Claimant acted once he knew of the facts giving rise to the cause of action.

71. The Claimant has not suggested that he did not know of any facts which he relies upon for the purpose of the claims. The delay in presenting the claims is, as detailed above, a period of four years and five months or four years and nine months. The Claimant was able to present a claim within the first year of that period. He has provided no explanation for the further delay in presenting

this claim. The Claimant delayed for a further 3 years before presenting this claim. He did not therefore act promptly.

(e) The steps taken by the Claimant to obtain appropriate professional advice once he knew of the possibility of taking action.

72. The Claimant has not described making any steps to seek legal advice. He was, however, as Mr Manson has argued, in contact (if not extensive contact) with third party organisations which might have been able to refer him to or point him towards free sources of legal advice (even if they themselves could not provide him with legal advice.)
73. Weighing all those factors in the round I have reached the following conclusions: first, the claim is significantly out of time. Secondly, that the delay in the claim's presentation will significantly prejudice the Respondent. Thirdly, that the Claimant has no reasonable prospect of persuading a tribunal that it would be just and equitable to extend time for approximately four years to allow the claim (such as it is) to be accepted.
74. The claim is therefore struck out on the grounds that it has no reasonable prospects of success pursuant to rule 38.
75. It is unnecessary therefore to consider the Respondent's alternative application to strike out the claim for breach of Orders.

Approved by

**Employment Judge Midgley
Dated 26 January 2026**

JUDGMENT & REASONS SENT TO THE PARTIES ON
09 February 2026