



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Zesmin

Respondents: Sarah Barnes (1)
Rochdale Metropolitan Borough Council (2)
The Governing Body of Broadfield Primary School (3)

HELD AT: Manchester (by CVP)

ON: 8 December 2025

BEFORE: Employment Judge Porter
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Mr M Mensah, counsel

JUDGMENT

1. The part of the claim relating to allegations of direct discrimination by the first named respondent, Sarah Barnes, was presented out of time.
2. It is just and equitable to extend time to allow that part of the claim to proceed to the final hearing.
3. Whether the respondents conducted a continuing act of discriminatory conduct, and whether part of the claim was presented out of time, will be determined at the final hearing

4. By consent, the claimant is granted leave to amend her claim to include each of the claims identified in the agreed List of Issues which appears in the Annex hereto.

REASONS

Issues to be determined

1. At the outset it was confirmed that this preliminary hearing had been listed on the instruction of EJ Holmes to consider the time limit issues raised in the respondents' email dated 29 May 2025

Background

2. The claimant presented her claim on 19 March 2024, following a period of Early Conciliation which commenced with the 1st and 2nd named respondents on 9 January 2024 and ended on 20 February 2024. Early conciliation with the third named respondent commenced on 25 January 2024 and ended on 7 March 2024. At the time of presentation of the claim the claimant was still in the employ of the third named respondent. A preliminary hearing was held before EJ Buzzard on 17 October 2024, following which the claim of unfair dismissal was dismissed upon withdrawal. A further preliminary hearing was listed to finalise the list of issues and to determine whether parts of the claim were presented out of time, and if so, whether time should be extended to allow the out of time claims to proceed to hearing. That preliminary hearing took place on 20 December 2024 before EJ Feeney. At that hearing a considerable time was spent clarifying the claims and issues. It was noted that:

2.1 the claimant had resigned on 11 November 2024 giving notice. The claimant applied for leave to amend her claim to include a claim of constructive unfair dismissal. The respondent raised no objection to that application and leave was granted.

2.2 the claimant had provided additional information in relation to her claims of discrimination, including new allegations of discrimination arising after presentation of the claim, and her claims were identified as:

- Direct discrimination on the grounds of race and religious belief;
- Victimisation
- Detrimental treatment under the Part Time Worker (Prevention of Less Favourable Treatment) Regulations 2000

2.3 the identification of the new claims may identify a need for the claimant to apply for leave to amend the claim and this would be identified in the Amended response.

3. EJ Feeney did not consider the out of time point.
4. The respondents confirmed in its email dated 29 May 2025 that they had no objection to the amendment to the claim to include each of the claims as identified at the preliminary hearing before EJ Feeney.
5. Counsel for the respondents and the claimant confirmed that they had agreed the Agreed List of Issues for determination at the final hearing, which appears in the Annex hereto. Counsel for the respondents confirmed that the respondents consented to the amendments to the claim to include each of the issues identified in that Agreed List of Issues.

Submissions

6. The claimant made a number of detailed submissions which the tribunal has considered with care but does not rehearse in full here. In essence it was asserted that:-

6.1 the respondents had carried out a continuing course of discriminatory conduct and time did not begin to run until the last act in the series. The claim was presented in time;

6.2 if the claim was presented out of time, she made application for an extension of time to present the claim. She had delayed presenting the claim because she was still employed by the respondent and wanted to follow the internal grievance procedure because she believed that she would receive justice through that internal procedure;

6.3 she did not obtain legal advice on the presentation of the claim until the day before she presented her claim;

6.4 the respondent was fully aware of the claimant's allegations of discriminatory conduct as the claimant had submitted a formal grievance and each of her allegations against Sarah Barnes was investigated and evidence obtained.

7. Counsel for the respondents relied upon written submissions which the tribunal has considered with care but does not repeat here. In addition it was orally asserted that:

7.4 one of the potential witnesses, Rosemary Nunwick, Chair of the original grievance hearing was no longer associated with the respondents;

7.5 another potential witness, Heather Edge, is no longer employed by the respondents;

Evidence

8. The claimant gave evidence. She provided her evidence from a written witness statement. She was subject to cross-examination, questioning by the tribunal and re-examination.

9. The respondent relied upon the written evidence of Mr Hamza Razaqat Jaweed, Legal Officer of Rochdale Borough Council. The tribunal agreed to consider that evidence, noting that it was a question of how much weight it was prepared to attach to the evidence of a witness who had not attended tribunal and could not be questioned on the veracity of their evidence.

10. An agreed bundle was presented. References to page numbers in these Reasons are references to the page numbers in the agreed Bundle.

Facts

11. Having considered all the evidence the tribunal has made the following findings of fact. Where a conflict of evidence arose the tribunal has resolved the same, on the balance of probabilities, in accordance with the following findings.

12. On 28 January 2023 the claimant raised an informal grievance in writing in relation to the alleged discriminatory behaviour by Sarah Barnes that is:

12.1 In or around February 2022 when the claimant's appraiser raised a question about the claimant's pay Sarah Barnes stated "She's lucky she's getting that. Anywhere else she'd get less."

12.2 In or around June 2022 Sarah Barnes refused to provide the claimant with a lanyard;

12.3 In or around June 2022 Sarah Barnes shouted at the claimant in the presence of children in the dinner queue;

12.4 In or around November 2022 Sarah Barnes failed to set the claimant up with the school cloud log-in;

12.5 In or around 27 January 2023 Sarah Barnes acted in a bullying and intimidating manner when refusing the claimant's request to take some sugar from a guest;

12.6 In or around February 2023 Sarah Barnes was obstructive in authorising the payment of a shortfall to the claimant

13. On 3 February 2023 the claimant raised a formal written grievance (p89) setting out each of the allegations of discriminatory conduct against Sarah Barnes as identified above and included in the agreed List of Issues set out in the Annex hereto.

14. The grievance hearing took place in May 2023. Witness evidence was considered. On 30 May 2023 the claimant lodged an appeal against the outcome (p125-128). The appeal hearing took place on 10 January 2024. The appeal outcome was provided on 24 January 2024. The respondent has put forward no satisfactory explanation for the delay in conducting the appeal process.

15. The claimant was still in the employ of the respondent while the appeal procedure continued and was hopeful that by following the internal grievance procedure she would, in her words, “receive justice.” She did not consider bringing a claim before the employment tribunal until her colleagues warned her that the respondent may be delaying the grievance appeal outcome to “time her out” of a tribunal claim. It was at that point, on 9 January 2024, that the claimant contacted ACAS. She subsequently prepared her claim form and on the day before presenting her claim form, contacted a solicitor for legal advice. The claim form was presented on 19 March 2024. The claimant did not obtain legal advice before that point in time as to progressing a claim before the tribunal. She was a trade union member and had the support of her trade union. However, she did not obtain legal advice from her trade union about progressing a claim before the tribunal because she was awaiting the outcome of the appeal.

[On this the tribunal accepts the evidence of the claimant.]

The Law

16. A claim concerning work-related discrimination must be presented to the employment tribunal within the period of three months beginning with the date of the act complained of s123 (1) (a) Equality Act 2010. Conduct extending over a period is to be treated as done at the end of that period - if there is continuing discrimination, time only begins to run when the last act is completed.

17. A claim of detrimental treatment under the Part-Time Workers regulations must be made before the end of 3 months beginning with the date of the detriment to which it relates. The Tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

18. The Court of Appeal in **Lyfar v Brighton and Sussex University Hospitals Trust EWCA Civ 1548 CA** clarified that the correct test in determining whether there is a continuing act of discrimination is that set out in **Commissioner of Police of the Metropolis v Hendricks 20023 ICR 530 CA**. Tribunals should look at the substance of the complaints in question — as opposed to the existence of a policy or regime — and

determine whether they can be said to be part of one continuing act by the employer.

19. In **Aziz v FDA 2010 EWCA Civ 304 CA** the Court noted that, in considering whether separate incidents form part of an act extending over a period, 'one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents'.

20. The Court of Appeal in **Lyfar v Brighton and Sussex University Hospitals Trust EWCA Civ 1548 CA** stated that when deciding whether a claim is time-barred at a preliminary hearing the test to be applied is to consider whether the claimant had established a prima facie case, or whether the claimant has " a reasonably arguable basis for the contention that the various complaints are so linked as to be continuing acts or to constitute an ongoing state of affairs'.

21. The Tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so. The Tribunal has a wide discretion to do what it thinks is just and equitable in the circumstances **Hutchinson v Westward Television Ltd** [1997] IRLR 69. The Tribunal should consider the prejudice which each party would suffer as a result of granting or refusing an extension and have regard to all the other circumstances of the case including in particular the length of and reasons for the delay, the extent to which the cogency of the evidence is likely to be effected by the delay, the extent to which the parties sued had cooperated with any request for information, the promptness with which the applicant acted once he or she knew of the facts given rise to the cause of action and the steps taken by the claimant to obtain appropriate professional advice once he or she knew the possibility of taking action; **British Coal Corporation v Keeble** [1997] IRLR 336.

22. In **Adedeji v University Hospitals Birmingham NHS Foundation Trust 2021 ICR D5 CA** it was noted that rigid adherence to a checklist can lead to a mechanistic approach to what is meant to be a very broad general discretion. The best approach when considering the exercise of the discretion is for the tribunal to assess all the factors in the particular case that it considers to be relevant, including in particular the length of, and the reasons for, the delay. Given the breadth of the discretion afforded to tribunals by the 'just and equitable' formulation, a multi-factorial approach is appropriate when considering whether to extend time.

23. When tribunals consider exercising the discretion to extend time '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. **Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434.**

24. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law simply requires that an extension of time should be just and equitable.

25. In **Hunswicks v Royal Mail Group plc EAT 0003/07** the EAT noted that the authorities clearly establish that where a claimant has missed a relevant time limit as a result of relying on bad advice from a skilled adviser, including a trade union, that is a relevant factor which the tribunal should consider in deciding whether it is just and equitable to extend time. Whether it is a decisive factor will depend on all the circumstances of the case.

26. 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

27. In **Miller and other v Ministry of Justice and others EAT 0003/15** it was noted that there are two types of prejudice that a respondent may suffer if the limitation period is extended: (i) the obvious prejudice of having to meet a claim which would otherwise have been defeated by a limitation defence, and (ii) the forensic prejudice that a respondent may suffer if the limitation period is extended by many months or years, which is caused by such things as fading memories, loss of documents, and losing touch with witnesses.

28. The tribunal has considered and where appropriate applied the authorities referred to in submissions.

Determination of the Issues

29. This includes, where appropriate, any additional findings of fact not expressly contained within the findings above but made in the same manner after considering all the evidence.

30. The claimant makes the allegations of direct discrimination and victimisation against the respondents as set out in the agreed List of Issues.

31. The claimant asserts that she has made allegations of a continuing course of discriminatory conduct, direct discrimination and victimisation, leading up to her resignation on 11 November 2024.

32. The respondent asserts that:

30.1 the allegations of direct discrimination against the first name respondent, Sarah Barnes, end in February 2023 and were presented out of time;

30.2 the allegations of direct discrimination against the head teacher end in August 2023 and were presented out of time.

33. The claims of direct discrimination and victimisation are made against each of the three respondents. The respondent does not argue that it was not responsible for the actions of the first respondent and/or the Head teacher. The first and second respondents do not raise the statutory defence under s109 (4) Equality Act 2010 that they took all reasonable steps to prevent any discriminatory treatment by the first respondent and/or the headteacher.

34. The allegations of direct discrimination which name the headteacher as the alleged discriminator are as follows:

34.1 On or around 26th April 2023, the Headteacher celebrating everybody but the Claimant achieving their NPQ?

34.2 On or around 6th July 2023, the Headteacher blocking the Claimant from achieving an SNPQ qualification and career progression

34.3 In August 2023, stopping the Claimant's Ambitions and Aspirations TLR

35. These allegations are pleaded, in the alternative, as allegations of detrimental treatment under s27 Equality Act 2010.

36. The claimant asserts that, following her grievance alleging discriminatory treatment by the 1st respondent, Sarah Barnes, the respondents embarked on a course of discriminatory conduct which constituted a fundamental breach of contract and led to her resignation.

37. The tribunal concludes that whether there was such a course of discriminatory conduct is for the tribunal to decide after hearing all the evidence. It is not appropriate to make a determination as to whether the claims are out of time at this stage. The claims shall proceed to a hearing when the out of time point will be considered.

38. The allegations against the first respondent, Sarah Barnes, are of direct discrimination relating to the period April 2022 to February 2023. The claimant does not assert that Sarah Barnes took any part in the alleged course of discriminatory conduct of the second and/or third named respondent after February 2023. The claim in relation to the allegations against Sarah Barnes were presented out of time.

39. The tribunal has considered all the circumstances to determine whether it is just and equitable to extend time to allow the claim against Sarah Barnes to proceed to hearing. The reason for the delay in presenting the claim in relation to the allegations against Sarah Barnes was that the claimant was awaiting the outcome of her grievance appeal. That was delayed by many months by the actions or inactions of the respondents. The respondents have not provided any satisfactory evidence at this hearing as to the reason

for the delay in finalising the appeal outcome. The claimant was still in the employ of the respondent while the appeal procedure continued and was hopeful that by following the internal grievance procedure she would, in her words, “receive justice.” She did not consider bringing a claim before the employment tribunal until her colleagues warned her that the respondent may be delaying the grievance appeal outcome to “time her out” of a tribunal claim. It was at that point that the claimant contacted ACAS, prepared her claim form and on the day before presenting her claim form, contacted a solicitor for legal advice. The claimant did not obtain legal advice before that point in time as to progressing a claim before the tribunal. She was a trade union member and had the support of her trade union. However, she did not obtain legal advice from her trade union about progressing a claim before the tribunal because she was awaiting the outcome of the appeal.

40. In considering the prejudice to the parties in allowing the claim to proceed, the tribunal does not accept that the respondents would suffer significant forensic prejudice if the limitation period is extended by many months or years. The tribunal accepts that there may be fading memories. However, each of the allegations against Sarah Barnes was raised in the claimant’s formal grievance. The respondents had the opportunity to investigate the complaints against Sarah Barnes and to obtain and retain evidence relating to these allegations. The respondent does not assert that the evidence obtained in considering the claimant’s grievance and appeal has been lost or destroyed. Sarah Barnes remains in the employ of the respondent. The respondent has not satisfactorily set out the relevance of the evidence of Rosemary Nunwick or Heather Edge and have not set out evidence of any attempts they have made to approach these two witnesses to give evidence before the tribunal, or of any indication that either of these witnesses would refuse to attend the tribunal to give evidence.

41. In all the circumstances the tribunal finds that it is just and equitable to extend time to allow each of the complaints against the first named respondent, Sarah Barnes, to proceed to a hearing.

42. The tribunal makes no determination on whether the complaints against the second and third respondent, including the allegations against the headteacher, were presented out of time and if so, whether time for presentation of the claim should be extended. That is left for determination at the final hearing.

Approved by
Employment Judge Porter
Date: 16 December 2025

JUDGMENT with REASONS SENT TO THE PARTIES ON
13 February 2026

For the Tribunal

Note

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was that the judge, the parties and each of the witnesses attended by CVP. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

UPDATED LIST OF ISSUES FOLLOWING THE HEARING ON 20.12.24

Time limits

1. Were the claims submitted within the primary time limit?
 1. 1.1 Does the Tribunal have jurisdiction to hear any complaints relating to events prior to 10th October 2023?
 2. 1.2 Do the complaints form part of a continuing act extending over a period?
 3. 1.3 Would it be just and equitable to extend the time for the presentation of any of the claims?

1. Section 13 Equality Act 2010 – Direct Discrimination on the grounds of race/religion/belief.

1.1 Has the Respondent subjected the Claimant to the following treatment namely

1.1.1 On or around 26th April 2022, being subjected to a comment by the Claimants line manager about her incorrect UPS3 pay statement

1.1.2 In May 2022, being subjected to bullying whilst in the dinner queue

1.1.3 On 27th January 2023 being refused sugar by Sarah Barnes

1.1.4 On 3rd February 2023, receiving an incorrect payment

1.1.5 On 7th February 2023 being subject to exclusionary behaviour

1.1.6 On or around 26th April 2023, the Headteacher celebrating everybody but the Claimant achieving their NPQ?

1.1.7 On or around 6th July 2023, the Headteacher blocking the Claimant from achieving an SNPQ qualification and career progression

1.1.8 In August 2023, stopping the Claimants Ambitions and Aspirations TLR

1.1.9 Between 17th October 2023 and 1st November 2023, was being called into a meeting with somebody taking notes as a result of her safe space discussions relating to the Palestine-Israel conflict which did not happen with the Russia/Ukraine conflict

1.1.10 On an unknown date, being denied a lanyard

1.1.11 On an unknown date, had her ability to undertake appraisal functions in 2023/2024 taken away from her?

1.2 Has the Respondent treated the Claimant as alleged less favourably than it treated or would have treated the comparators?

1.3 If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?

1.4 If so, what is the Respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?

2. Section 27 Equality Act 2010 : Victimisation

2.1 The protected act relied upon is the submission of a written grievance on 28th January 2023.

2.2 If there was protected act, has the Respondent carried out any of the treatment set out below because the Claimant had done the protected act?

2.2.1 On or around 26th April 2023, the Headteacher celebrating everybody but the Claimant achieving their NPQ?

2.2.2 On 18th May 2023, made changes to her work days

2.2.3 On 30th June 2023, taking away the Claimants school council lead role

2.2.4 On or around 6th July 2023, the Headteacher blocking the Claimant from achieving an SNPQ qualification and career progression

2.2.5 On 13th July 2023, made changes to her work year groups

2.2.6 In August 2023, taking away her Ambitions and Aspirations TLR role?

2.2.7 On or around September 2023, being deskilled by the Headteacher as a result of having to take Year 4 children to swimming lessons

2.2.8 Between 17th October 2023 and 1st November 2023, was being called into a meeting with somebody taking notes as a result of her safe space discussions relating to the Palestine-Israel conflict which did not happen with the Russia/Ukraine conflict

2.2.9 On 15th December 2023, taking away the Claimants SSMC/BV lead role

2.2.10 On an unknown date, had her ability to undertake appraisal functions in 2023/2024 taken away from her?

2.2.11 On 9th June 2023, suffered being called into meetings on 14th and 15th June 2023 and questioned following an incident regarding a safeguarding disclosure

3. Part Time Worker (Prevention of Less Favourable Treatment) Regulations 2000

3.1 Was the Claimant treated less favourably than a comparable full-time worker? The Claimant alleges that she was subjected to the following detriments - Sarah Barnes commented that "it was due to Syeda being part time and being lucky to

work for Rochdale Council as elsewhere she might get less”

4. Section 13 ERA 1996 – Unlawful deduction of Wages

4.1 The Claimant claims a payment of 31 hours owed time off in lieu

Constructive unfair dismissal

5. Was there a fundamental breach of contract on the part of the employer?

5.1 The Claimant relies upon the following [taken directly from the resignation letter dated 7.11.24]

6.1.1 Raising a complaint on 27th January 2023 about wrongdoing in the workplace in

the form of racial discrimination and bullying by a member of the Senior Leadership Team.

6.1.2 This complaint being dealt with poorly by management, governors and my employers and during that period my experience and treatment at school further worsened.

6.1.3 Changes being made to the Claimants roles and responsibilities by the headteacher affecting her negatively as a professional and further leaving her isolated and feeling pushed out of her job and workplace.

6.1.4 Causing the Claimants mental health to suffer immensely because of what she has gone through at the workplace and being off sick with stress and anxiety because of discrimination and victimisation since January 2024.

6.1.5 Feeling unsafe and uncared for at Broadfield and as the only Asian Muslim teacher at the school, feeling that nobody understands or has tried to understand her experience of racism and discrimination.

6.1.6 Being subject to a grievance process which was unfair and biased where her witness statements were not looked at and her grievances remained unresolved

Including (referenced in the 20.12.24 amendment application)

6.1.7 Failing to hear the appeal within 28 days

6.1.8 Failure of somebody from the Director of Childrens services to attend the appeal hearing

6.1.9 Inaccurate note-taking

6.1.10 6.1.10 Failing to take into account witness statements from an SLT member and a Deputy Head

6.1.11 Failing to conduct an external grievance process

6.1.12 Failure to adhere to ACAS code of practice on disciplinary and grievance procedures putting the employers in breach of Employment Rights Act 1996.

6.1.13 Failure to provide a fair, impartial and non-biased hearing for discrimination claims based on section 13 of the Equality Act 2010.

(Not in the claim form or the resignation email)

6.1.14 The Health Related Absence and the handling of that up until October 2024 by RMBC and Broadfield C P School further playing a part in the deterioration of mental health resulting in GP and OH diagnosing the claimant with work related stress, anxiety and depression with the Claimant on medication because of this.

6.1.15 Some of the Health Related Absence issues relied upon as contributing factors to resignation were the HRA meetings conducted by the Headteacher and another HR person named in the ET.

6.1.16 The headteacher running meetings even after the claimant had asked for a change in meeting leaders for the sake of impartiality and transparency and being able to talk freely in meetings with the presence of the headteacher causing further stress and anxiety in each meeting.

6.1.17 Scheduling an HRA stage 3 hearing with less than 14 calendar days' notice as stated in their policy, meaning the claimant had to email to address that. The claimant also mentioned that she had a sick note for that period including a miscarriage she suffered in that time.

6.2 Did the Respondents breach cause the Claimant to resign?

6.3 Did the Claimant resign for some other reason?

6.4 Did the Claimant affirm the contract (either expressly or impliedly) and thereby lose the right to claim constructive dismissal?