



EMPLOYMENT TRIBUNALS

Claimant: Z. Sunsoay

Respondent: Payoneer (UK) Limited

Heard at: Birmingham **On:** 21 July 2025

Before: Employment Judge Wedderspoon

Appearances

For the claimant: In Person

For the respondent: Mr. K. Wilson, counsel

JUDGEMENT

1. The claimant's claim of unfair dismissal and detriment complaints are out of time and it would have been reasonably practicable to have submitted these claims in time.
2. In the circumstances the unfair dismissal and detriment complaints are dismissed.
3. The claimant's claim of age discrimination is out of time but it is just and equitable to extend time.

REASONS

1. By notice dated 21 February 2025 Judge Boyle Fixed a hearing to deal with the following issues :-
 - (i) Note for the Equality Act claims - the time limit in section 123 of the Equality Act 2010 is 3 months from the date at the last alleged act of discrimination as extended by the rules relating to early conciliation. The judge will assume at the preliminary hearing that there was conduct over a period ending with the last alleged act of discrimination. The judge will consider why the claim was not presented sooner and in any event whether it is just and equitable to extend time. The claimant must persuade the judge to extend the time limit. If time is not extended the claim or that part of it will be dismissed.

- (ii) Note for Employment Rights Act claims -in general terms the time limit is 3 months from the relevant event as extended by the rules relating to early conciliation. The claimant must persuade the judge to extend the time limit. If time is not extended the claim or that part of it will be dismissed.
2. The notice had also referred to dealing with a strike out application based on no reasonable prospects and/or a deposit order based on little reasonable prospect of success. Following on from Judge Boyle's order dated 21 February 2025 the respondent made a detailed application for strike out on 27 of May 2025 stating the basis of its application was pursuant to rule 38(1)(a) of the Employment Tribunal procedure rules 2024 for the claimant's claims of automatic unfair dismissal pursuant to sections 103, 103A and 104 of the Employment Rights Act 1996 to be struck out on the grounds that the claims had no reasonable prospect of success; or in the alternative pursuant to rule 40 (1) of the ET rules for a deposit order in respect of the claimant's claims for direct age discrimination pursuant to section 13 of the Equality Act 2010. The application was detailed setting out jurisdictional points and in the alternative merit arguments. At the commencement of the hearing, the claimant accepted he had received the respondent's application. Initially the claimant stated that he was not prejudiced today and could deal with that matter. Following a short adjournment the claimant stated that he was not in a position to deal with the application properly as he was a litigant in person and had not properly prepared for it. The respondent resisted this stating that the Judge's order was clear.
3. The Tribunal determined that the notice of hearing could have been more fully detailed or in fact amended following the respondent's very detailed application dated 27 May 2025 when it sought a strike out/deposit order on a jurisdictional basis and/or on a merits basis so that there could be no misunderstanding as to what was to be dealt with today. The Tribunal took into account that the claimant was a litigant in person who had not fully prepared to deal with the merits points. In the interests of justice therefore the tribunal declined to deal with the strike out/deposit order based on merits at this stage and focused on the time points.
4. The Tribunal was provided with a bundle of 203 pages. Skeleton arguments were provided by both the claimant and the respondent. The claimant provided a witness statement the respondent provided a witness statement from Ms. Miles (but did not seek to call her as a witness). The claimant gave evidence and was cross examined by the respondent.

Background

5. By claim form dated 5 February 2024 the claimant brought claims of automatic unfair dismissal pursuant to sections 103, 103A and 104 (1) of the Employment Rights Act 1996 and direct age discrimination pursuant to section 13 of the Equality Act 2010 and detriment claims based on public interest disclosure. The claimant was employed by the respondent, a global financial services business, as a programme manager from 7 November 2022 to 2 November 2023.

6. The claimant was dismissed with effect from 2 November 2023. The order of Judge Boyle does not record that the claimant was seeking to allege that his dismissal was discriminatory and this does not form part of the list of issues for the Tribunal to determine. The claimant's case on age discrimination is limited to two allegations of direct age discrimination in his claim form; the first took place on 24 July 2023 when he contends he was excluded from a meeting and the second occurred on 3 October 2023 when he contends the HR director Ms. Miles stated *"I/we expect that someone of your tenure should be able to manage stakeholder relationships"*. For the purposes of the hearing today and in accordance with Judge Boyle's order, the Tribunal accepts that there was a continuing act of discrimination between 24 July 2023 and 3 October 2023.
7. The claimant gave evidence that he contacted ACAS to notify them on 3 October that he was to be dismissed. The claimant was told he was to be dismissed on 3 October 2023 but it was to take effect on 2 November 2023.
8. The claimant decided that he wanted to proceed immediately to a Tribunal and did not want to engage in early conciliation. The claimant checked in to ACAS online and ticked the option on the line stating he did not wish to engage in early conciliation. His evidence was that he wished to proceed to the tribunal to complain about his dismissal and the alleged comment from Ms. Miles on 3 October 2023 that someone of his tenure should be able to manage stakeholder relationships (this is the second allegation of age discrimination).
9. The claimant had not provided in the bundle the e-mail from ACAS which attached the ACAS certificate dated 5 October 2023. The ACAS certificate dated 5 October 2023 states *"this certificate is to confirm that the prospective claimant has complied with the requirement under ETA 1996 section 18A to contact ACAS before instituting proceedings in the employment tribunal. Please keep this certificate securely as you will need to quote the reference number exactly as it appears above in any employment tribunal application concerning this matter"*. The claimant's evidence to the Tribunal was that he assumed that the wording contained in the email accompanying the certificate in October was the same as he received with the second certificate dated 3 January 2024 (see page 158). In the e-mail from ACAS in January 2024 it stated that it *"shows that you notified ACAS of your potential claim you can now use the certificate to make a claim to an employment tribunal if you still want to. The full certificate number was referred to. It also stated to make sure you submit your claim on time; you have at least one month from the date you received this certificate if you notified a case of the dispute within your time limit."*
10. Under cross examination the claimant stated he knew there was a connection between receiving the ACAS certificate and the time for bringing a complaint to the tribunal. The claimant's case was that he had reflected on his initial view of not wanting to enter into ACAS conciliation at a later date because he formed the view it may be better to try and negotiate for an early settlement than just go to the Tribunal. In those circumstances the claimant decided to apply again to ACAS for early conciliation. The claimant stated that he was unaware that the two certificates did interact.
11. It was also suggested to the claimant in cross examination that he could have conducted some online searches with reference to "second certificates". The

respondent included within the bundle a Google search which includes in the search window the phrase “acas early conciliation second time”. The claimant accepted this but stated he did not include that particular research phraseology in a google search. The information on Google when researching recently with the terminology “ACAS early conciliation second time” flags up some AI information (which the respondent accepted was unlikely to have been present at the beginning of 2024) and states “generally contacting ACAS for early conciliation a second time does not extend the time limit for submitting an employment tribunal claim unless the second approach is for a genuinely new and unrelated matter. The first early conciliation certificate is usually the one that impacts the time limit for bringing a claim.” The claimant stated he did not use this phraseology but in any event the wording used in the search is “generally” “usually” so that even conducting a search shows there can be exceptions to the rules and AI summarises and can hallucinate so there are exceptions to.

12. Under cross examination the claimant was taken to page 202 which referred to an article from a google search dating back to 2017 from the University and College Union which described approaching ACAS twice about the same matter and states *“if the tribunal subsequently determines that the second approach was related to the same matters of the first approach the second early conciliation will not stop the clock in relation to the applicable time limits of the claims constituting the matter”*. The claimant accepted from that information it was clear the second approach to ACAS did not stop the clock for the second time.
13. The claimant did not accept that his position was similar to the casing **Garau** because he says that the claimant in **Garau** approached ACAS on 2 of October and it was not clear whether like him the claimant chose not to engage in ACAS conciliation. He did not accept that researching could have drawn his attention to the fact that a second certificate would not extend time for him. He said he had a genuine belief because he did not enter into ACAS conciliation the first time but reflected and changed his mind so believed he could enter conciliation and obtain a second certificate and thereafter if there were unsuccessful negotiations he could proceed with the claim to the Tribunal.
14. The claimant stated that he had contacted CAB in the West Midlands but they referred him to various web pages and were not able to advise. The claimant was unsure whether he did not fit the criteria for assistance. He approached one other organisation but did not receive a reply.
15. The claimant accepted that he was aware of a three month time limit. He said he was a lay person and had not received any particular advice on it. He understood from his second certificate that he had six weeks to try and negotiate. He used an online calculator using the dates in his second certificate to check the time when he could submit a claim to the tribunal. He did not check the dates with the online calculator using his first ACAS certificate.

The Law

16. Prior to commencing proceedings in the employment tribunal certain prescribed information must be provided to ACAS in respect of “relevant proceedings” pursuant to section 18(1)(a) and (e) of the Employment Tribunal Acts 1996.

Section 18A of the Employment Tribunals Act provides for a process to be followed by a conciliation officer upon a notification being made. If at the end of the process settlement is not possible or the prescribed period expires without settlement, ACAS issues a certificate see section 18A (4) of the Employment Tribunals Act.

17. Pursuant to sections 48 and 111 of the Employment Rights Act 1996 the time limit for bringing a claim of unfair dismissal has a three month limitation period. Pursuant to section 123 of the Equality Act 2010 discrimination claims needs to be brought within three months of today.

18. Section 207B of the Employment Rights Act 1996 provides :

(1) This section applies where this act provides for it to apply for the purposes of a provision of this act (a relevant provision).

(2) In this section –

(a) Day A is the date on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act (requirement to contact ACAS before Instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or if early is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection(4) of that section.

(3) in working out when a time limit set by a relevant provision expires the period beginning with the day after day A and ending with day B is not to be counted.

(4) if a time limit set by relevant provision would (if not extended by this subsection) expire during the period beginning with day A and ending one month after day B the time limit expires instead at the end of that..

(5) Where an employment tribunal has power under this act to extend a time limit set by a relevant provision the power is exercisable in relation to the time limit as extended by this section.

8. The effect of these provisions is to stop the clock during ACAS early conciliation and to extend limitation by either that period of time (or depending on the limitation date reached on application of 207 B(3) ERA) for one month after day B. Section 207B (3) and (4) are applied sequentially in calculating the relevant limitation date see **Luton Brough Council v Haque (2018) UKEAT/0180/17**.

9. Where the early conciliation takes place prior to the effective date of termination the ACAS extension provisions do not extend time for the purposes of claims running from the date of termination; see the case of **Raison v DE Capital Bank Limited (2025) EAT 86**.

10. Where a second EC certificate is obtained in respect of the same matter that will not be a certificate within the meaning of s.18A (4) of the Employment Tribunals Act see the case of **Revenue and Customs commissioners v Serra Garau 2017 ICR 1121**; the case was also applied in **Treska v Master and Fellows of University College Oxford (2017) UKEAT/0298/16**.

11. The Tribunal applies the “not reasonably practicable” test for extension of time in unfair dismissal and/or detriment by reason of public interest disclosure. Extensions of time for Equality Act claims are subject to the “just and equitable” test. In both cases the burden is on the claimant to show that time should be extended **Porter v Bandridge Limited (1978) IRLR 271**.

12. The Court of Appeal in the case of **Palmer & Saunders v Southend on Sea Borough Council (1984) IRLR 119** considered the test of not reasonably practicable stating that was it was “reasonably feasible” to present the complaint to the industrial tribunal within the relevant 3 months.

13. In **Wall’s Meat Company Limited v Khan (1979) ICR 52** at 56 regarding test to be applied where legal advisers are involved *“it is simply to ask this question: had the man just cause or excuse for not presenting his claim within the prescribed time? Ignorance of his rights or ignorance of the time limits is not just cause or excuse unless it appears that he or his advisers could not reasonably be expected to have been aware of them. If he or his advisers could reasonably have been so expected it was his or their fault and he must take the consequences.”*

14. In the IDS Employment Law Handbooks Volume 5, 5.54 it states “Where the claimant is generally aware of his or her rights ignorance of the time limit will rarely be acceptable as a reason for delay. This is because a claimant who is aware of his or her rights will generally be taken to have been put on enquiry as to the time limit. Indeed in **Trevelyan’s Birmingham Limited v Norton 1991 ICR 488** EAT Mr. Justice Wood said that when a claimant knows of his or her right to complain of unfair dismissal, he or she is under an obligation to seek information and advice about how to enforce that right. Failure to do so will usually lead the tribunal to reject the claim.

15. The Tribunal has a wide discretion in applying the just and equitable test for extension of time in Equality Act claims. The Court of Appeal in the case of **Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194**

*“First it is plain from the language used (such other period as the employment tribunal thinks just and equitable) that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980 section 123 (1) of the Equality Act 2010 does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or interpret it as if it contains such a list. It may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the limitation act 1980 (see **British Coal Corporation v Keeble 1997 IRLR 336**) the Court of Appeal has made it clear that the tribunal is not required to go through*

*such a list, the only requirement being that it does not leave a significant factor out of account see **Southwark London borough council v Afolabi ICR 800, para 33**. That said factors which are almost always relevant to consider when exercising any discretion whether to extend time are (a) the length of and reasons for the delay and (b) whether the delay has prejudiced the respondent for example by preventing or inhibiting it from investigating the claim all matters were fresh).*

16. Section 33 of the Limitation Act 1980 in addition to highlighting specific factors likely to be relevant also sets out the question of prejudice to each party which is an important consideration when exercising the just and equitable discretion. In **Miller v Ministry of Justice 2016 UKEAT/0003/15 Elizabeth Laing J** noted there were two types of prejudice which a respondent may suffer if limitation is extended “the obvious prejudice of having to meet a claim which would otherwise have been defeated by a limitation defence and the forensic prejudice which 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.”

17. The tribunal is entitled to consider any disadvantage to any party in coming to its conclusions see the case of **A v Choice Support (2022) EAT 145** at paragraph 30.

18. If a claimant is relying on an alleged ignorance as to their rights it will be important to ask whether that ignorance was reasonable see **Perth and Kinross Council v Townsley (2010) UKEATS/00110/10**. More generally when considering the just and equitable extension, Mrs Justice Simler (as she was then) in the case of **Bowers v National Institute for Health and Clinical Excellence (2014) UKEAT/1073/14** stated at paragraph 38

(a) the onus is on the party seeking an extension of time to persuade a tribunal to do so. That is the case because an extension of time is an indulgence. It is the exception and not the rule. It is not an entitlement nor even an expectation;

(b) at best a party seeking the exercise of discretion in his favour can expect that the discretion will be exercised judicially in accordance with established principles but it is incumbent upon the party seeking that exercise in his favour to provide a full and acceptable explanation for his delay.

(c) in the ordinary case a failure to provide a good explanation for delay may well lead to the discretion being exercised against him absent compelling reasons why that should not be the case.

Submissions

19. The parties had both provided detailed written submissions. The Tribunal summaries the submissions.

20. The respondent submitted that following the case of **Serra Garau** the correct EC certificate is the correct one. The limitation period for unfair dismissal/detriment and disability claims runs from 3 October 2023. Primary limitation was prior to any ACAS conciliation extension on 2 January 2024 (assuming the claimant can establish a continuing act between the first and second allegations of discrimination). In respect of the claimant's unfair dismissal, time runs from the effective date of termination on 2 November 2023 so that the primary limitation was prior to any ACAS extension on 1 February 2024. The claimant issued his claim on 5 February 2024 and his claim was therefore four days out of limitation

date for the Equality Act claims and the claimant issued his claim on 5 February 2024 so that his claim was one month and one day out of time.

21. The claimant's belief that he could rely upon the second certificate so that his claims were in time was not reasonable; the claimant made an assumption and failed to take reasonable steps to inform himself of the true and correct position. It was feasible to submit his unfair dismissal/detriment claims in time and the claimant has failed to establish otherwise.
22. In respect of the Equality Act claims one witness is no longer employed by the respondent; the ending of that relationship is complex and the witness resides in Israel. The Tribunal would need to seek permission from Israel to have the witness evidence from abroad; in person attendance in the present situation would not be practical. The respondent is disadvantaged if the claim is permitted to proceed because it would have to litigate a case with time, money and expense which should have been defeated by way of limitation.
23. The claimant submitted that he believes his case has been brought within time. He was a litigant in person. He believed that he could rely upon the second certificate to bring his claim because he had not sought to conciliate the first time round. He sought some advice but did not meet the criteria for Citizen Advice free assistance. Even if he had searched in the way the respondent suggested on google, the search results do not give a definite answer that he could not proceed as he believed with his second certificate. He relied upon **Raison** and submitted that the case means that only the early conciliation period after the termination date should be added to the time limit and conciliation before the termination of employment does not provide any extension. He submitted that this case can be distinguished for **Garau** where the first certificate and conciliation period was wholly before the EDT. In this case the second EC period post-dates the dismissal EDT and was genuinely concerned with seeking to resolve the dispute from arising from it.
24. The claimant further submitted that section 207B requires a connection between the EC certificate relied upon and the matter which forms the basis of the claim so that the first EC certificate cannot operate to pause time for a dismissal that had not occurred. The claimant submitted relying upon the case of **Tanveer** the purpose of section 207B is to resolve disputes.
25. The claimant relied upon the case of **Mellis v The Highland Council 2024 ET** stating that similarly with this claimant there was lack of knowledge of Tribunal procedures. Here the claimant sought to engage with ACAS and had a genuine confusion about the statutory framework. Further he submitted it would be just and equitable to extend time due to the complexity of the process and there is no identifiable prejudice to the respondent.
26. In reply counsel for the respondent stated that the claimant's summary and analysis of the case law was incorrect and **Raison** does not permit the claimant to proceed with his claim.

Conclusions

27. The first ACAS certificate obtained by the claimant is the relevant certificate following the case of **Serra Garau**. In fact the names on the EC certificates if slightly different are irrelevant because it is clear who the intended respondent was; see the case of **Treska**.
28. The need to notify ACAS and obtain a certificate is a prerequisite for issuing a Tribunal claim. The claimant's evidence is that he knew this. His case is that he genuinely believed he had not conciliated in October so could take another opportunity to conciliate at a later date so that he could bring his claim in time.
29. The limitation period for the claimant's discrimination claims runs from the date of the act complained of. The last of these allegations was 3 October 2023. Primary limitation was prior to any ACAS conciliation extension on 2 January 2024 (the Tribunal assumes the claimant can establish a continuing act between the first and second allegations of discrimination).
30. In respect of the claimant's unfair dismissal time runs from the effective date of termination on 2 November 2023 so that the primary limitation was prior to any ACAS extension on 1 February 2024.
31. In respect of the discrimination claims section 140B (3) of the Equality Act had the effect of extending limitation by two days to 4 January 2024. The date of 4 January 2024 is not a date falling between day A and one month after day B therefore section 140 B(4) of the Equality Act does not apply limitation for the claimant's equality act claims and was therefore 4 January 2024. The claimant issued his claim on 5 February 2024 and his claim was therefore one month and one day out of time.
32. In respect of the claimant's unfair dismissal claims the ACAS extension provisions have no effect because both day A and day B predate the effective date of termination so they could not extend the time limit see the case of **Raison**. Limitation therefore remained 1 February 2024. The claimant issued his claim on 5 February 2024 and his claim was therefore four days out of time.
33. The Tribunal's reading of the case of **Raison** is that time spent in ACAS EC prior to limitation starting is not added onto the end of the limitation period.
34. The claimant notified ACAS on 3 October 2023 of his intended claim and he was aware of the ACAS notification requirement and the Tribunal finds that the claimant did understand he required an ACAS EC certificate to bring a claim before the tribunal. From the claimant's evidence he was aware of a three month limitation period too. Although the Tribunal accepts that the claimant genuinely believed that he could contact ACAS again for a second EC certificate and rely upon that to issue a claim at a later date in the Tribunal so that a claim was in time; that belief was not a reasonable one because the claimant formed that belief or assumption without undertaking any reasonable steps so to research or read the clear wording on the certificate or the accompanying email. The Tribunal finds that both the EC certificate and the accompanying email (also finding that the email received in October was the same wording as the email in January) made it clear that obtaining a EC certificate was a pre-requisite for issuing the proceedings in the Tribunal; there was no suggestion from these

documents you had to engage in conciliation at all; just that notification to ACAS was key; the documents make it clear that a claimant should ensure that they issue the claim on the basis of that EC certificate on time.

35. There is no indication anywhere that a claimant is permitted to have a second opportunity to engage in ACAS for the same issues of the first certificate and thereby allowing them a second certificate and extending time. With the greatest of respect to the claimant there is no ambiguity. The claimant is an intelligent and articulate individual who held the role of a manager programmer in the respondent's business. The belief he expresses today about his understanding was not reasonable in the circumstances and was formed by assumption without taking reasonable steps to clarify the position. The claimant as a competent individual is well able to research himself the position. Further, his every detailed written submission indicates his abilities at researching and considering case law and legal material. With a plethora of information now available on the internet about the manner in which a claim can be brought to the Tribunal, the claimant acted unreasonably in making such an assumption as to how he thought he could proceed particularly in the context of his acceptance that he had knowledge that he had three months to bring claims to the Tribunal and his knowledge that he had to have a EC certificate to proceed to the Tribunal.
36. The wording on the ACAS certificate is clear; it states that it shows that "you notified a case of your potential claim you can now use the certificate to make a claim to an employment tribunal if you still want to the full certificate number was referred to it suggested to the claimant to make sure you submit your claim on time you have at least one month from the date you received this certificate if you notified a case of the dispute within your time limit".
37. It was incumbent upon the claimant to make inquiries as to what the implications were on the limitation period for bringing his claim with the use of the EC certificate. Any ignorance in that regard is unreasonable. The claimant says that he used an online calculator to confirm the period he had to submit his claim but the claimant only used the dates on the second EC certificate to research the position and at no time checked the first certificate dates.
38. The Tribunal determines that the claimant could and should have taken steps to understand the implications of the first EC certificate on the limitation period for bringing his claim by reading the information on the certificate and the accompanying email which was unambiguous and it was reasonably feasible for the claimant to bring his claim in time. He did not do so in the circumstances the Tribunal is not satisfied that the claimant has discharged the burden on him to show that it is not reasonably practicable to bring his claim in time.
39. In the context of the discrimination claims, the Tribunal has been informed that the claimant's line manager a witness to the case left the respondent's employment at the end of 2023 and is no longer employed by the respondent and is now living in Israel. Israel is a country where permission must be sought for someone to give evidence from abroad and attendance in person in the present political and military situation is not practicable.
40. If the claimant is not permitted to pursue his two discrimination complaints he will suffer prejudice because he will not have any claim to litigate before this

Tribunal; he will simply have no redress for the way he believes he was treated. The delay is for a period of one month and one day; not an extensive period. The respondent will suffer prejudice if time is extended because it will have to meet a claim which would otherwise have been defeated by a limitation defence. Further the respondent will incur legal fees and management time.

41. The last act in time concerns the HR Director Ms. Miles who has provided a witness statement for today's hearing. She remains an employee and can give evidence about the discussion on 3 October 2023. There is no evidential prejudice to the respondent in respect of the latter allegation. Further, she has made enquiries with Erica who confirms that the claimant was excluded from an off site in October 2023 because of concerns about the claimant's performance. There is nothing else to suggest the claimant was excluded on another occasion which forms the first direct age discrimination allegation. The respondent is therefore at the very least part prepared for these allegations and can give witness evidence to dispute them.
42. The Tribunal takes into account the case of **Jones v the Secretary of State for Health and Social Care 2024 EAT 2**. In that case HHJ Tayler (see paragraphs 27 to 37) stated that strictly speaking section 123 of the Equality Act does not set out a primary time limit that may be extended but rather a time limit of three months "or such other period as the employment tribunal thinks just and equitable". In his Judgment he also referred to HHJ Auerbach's judgement in **Owen and Network Rail Infrastructure Limited 2023 EAT 06** stating "as discussed above the discretion given by section 123(1) of the Equality Act 2010 to the employment tribunal to decide what is just and equitable is clearly intended to be broad and unfettered. There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reasons are relevant matters to which the tribunal ought to have regard.
43. The Tribunal finds here that the claimant brought a late claim because he made an unreasonable assumption about the possibility of engaging with ACAS on a second occasion and obtaining a second certificate for the same matters of the first certificate. His view that simply contacting ACAS but refusing to enter ACAS conciliation meant that he could enter ACAS conciliation on a second occasion and therefore extend time was a genuinely held belief but unreasonably held. The delay here was one month and one day. In the absence of being able to proceed the claimant will have no redress before this tribunal. There will be a consequence of costs to the respondent in having to deal with this dispute but the respondent has already taken steps to prepare itself and arm itself with the defence. In reality the tribunal does not determine there is any significant forensic prejudice in the circumstances that the HR director who was alleged to have made the second discriminatory comment is still in the business and can provide evidence and she has already provided a witness statement today and considered the first allegation as having no merit. In circumstances weighing the balance of the claimant having no redress and the respondent's prejudice (as set out) the prejudice is greater to the claimant if he is not permitted to proceed with his claim. In all the circumstances is just and equitable to extend time.

44. The Tribunal went on to set directions for final hearing.

Employment Judge Wedderspoon
Date: 23 July 2025