



EMPLOYMENT TRIBUNALS

Claimant: Mr Mohammed Fiaz

Respondent: Home Office

Heard at: West Midlands

On: 2nd April 2026

Before: Employment Judge Steward

Representation

Claimant: In Person

Respondent: Mr Maini-Thompson (Counsel)

JUDGMENT

The decision of the Tribunal is:

1. The claim of Disability Discrimination is dismissed due to lack of jurisdiction.

REASONS

Introduction

1. The matter was listed for preliminary hearing to determine whether it was just and equitable to extend time for the disability discrimination complaints. I was provided with a bundle for the hearing which I had read in full and heard evidence from Mr Fiaz. Mr Fiaz and Counsel for the Respondent also addressed me in submissions.
2. Mr Fiaz (The Claimant herein referred to as 'C') original claim received by the tribunal on the 17.7.23 was for unfair dismissal. There was no claim for discrimination. The details of the claim were at page 10 of the ET1 and listed incidents from 2020 and 2021. The C referred in the ET1 to being sick due to

his experience at work. He referred to panic attacks and a thyroid problem. He was also referred to counselling. Regardless he did not make any claim for discrimination. There is no reference to less favourable treatment due to thyroid issue or at all.

3. A preliminary hearing took place on the 5th August 2024 before EJ Kenward. At paragraph 9 of the case management order the C stated that his resignation should be treated as a constructive dismissal due to the treatment by the R. This included bullying and the last act of bullying was March 2021 after which the C went on sick leave. This was 2 years before his employment ended. At para 12 of the case management order its recorded there was no loss of earnings and any award if successful would be limited to the basic award (the equivalent to a statutory redundancy payment) Paragraph 16 sets out all the facts the C relied on in some detail. There is no mention within the case management order of any additional claims the C seeks to bring. It was suggested to the C in cross examination that if he had mentioned new claims these would have been addressed by the Judge at this hearing. There is no mention of any other claims at this point and therefore on balance I accept they were not raised or they would have been dealt with.
4. The matter was then listed for a Final Hearing on the 10th-12th June 2025. The matter of constructive unfair dismissal came before EJ Broughton on the 7th February 2025 to consider the R application for strike out and/or deposit order. The claim was not struck out but the Judge did state at paragraph 19 of the order that the C would be in 'significant difficulties' in trying to meet the burden of proof. The Judge also made the point that if successful any award would be limited to a modest basic award. The case was eventually listed for Final Hearing on the 5th-9th January 2026.
5. At page 60 in the bundle was an email sent by the C to the Tribunal dated the 23.12.25 and a request pursuant to R.29 of the Employment Tribunal Rules of Procedure to amend the ET1 claim form. This sought to add an additional claim for disability discrimination and failure to follow medical advice which was connected to the original claim of unfair dismissal. A copy was served on the R. The accompanying statement in support of this application refers to the OHS report confirming that due to the illness the C is covered by the Equality Act. The OHS report is at page 149 in the bundle and the date of the assessment was 29/4/2021. The report makes it clear that the thyroid condition would be considered under the disability legislation within the meaning of the Equality Act 2010. It is also clear that the C was aware of this report. The OHS report discusses a phased return to work over 4-6 weeks. There is correspondence between the C and Gemma Morgan dated the 18.5.2021 where Ms Morgan outlines the nature of the discussions she had with the C at the meeting on the 18.5.21 which includes the OHS. At page

178 in the bundle a further email from Ms Morgan to the C on the 8.6.21 references the OHS report and the 4-6 week phased return to work as outlined in the OHS. At page 180 Helen Winwood in an email to the C and Ms Morgan on the 14.7.21 references the OHS report and the agreement of the 4-6 week phased return to work in line with the OHS. The C said in cross examination that he got the OHS in early 2025. On the balance of probability, I do not accept this. The evidence in the bundle shows the C was aware of the OHS and had discussed it with Ms Morgan. As a result of the OHS a planned return to work was considered and outlined at page 180 in the email from Ms Winwood. Even so if the C position was accepted and he didn't get the OHS report until early 2025 he still delayed for a considerable period (some 10 months or so) before he brought the claim for disability discrimination. The paper application to amend was refused and the application was to be heard on the first day of the Final Hearing. The application was refused on the 30th December 2025. The second claim was presented on the 31st December 2025 only 1 clear working day before the Final Hearing. The factual background for both claims is largely the same arising out of issues from 2020/2021.

6. The Disability Discrimination claim is therefore out of time pursuant to S.123(1)(a) of the Equality Act 2010 in that it has not been presented before the end of the period of 3 months of the events complained of. The R say there was no good reason why the disability discrimination claim could not have been presented earlier and that it would not be just and equitable to extend the time pursuant to S.123(1)(b) of the Equality Act 2010.

The Law

7. The claim is out of time as discussed above. Is it just and equitable to extend the time pursuant to S.123 (1)(b). There is a wide discretion to allow late claims. There is no specific list of factors to consider however I have considered S.33 of the Limitation Act 1980 and the case of **British Coal Corporation v Keeble and Ors 1997 IRLR 336 EAT**. Such factors as are relevant include the length of the delay and the reasons for it. The extent that having regard to the delay, the evidence adduced or likely to be adduced would be less cogent than if the action had been brought within the timeframe allowed. The promptness of the Claimant in that once he knew that the actions of the Respondent might be capable at the time of giving rise to an action how promptly did he act on this. What steps did the Claimant take to obtain legal advice. I also consider the balance of prejudice against the Respondents for the lateness of the claim and against the Claimant given he might be denied his right to pursue the claim.

The respective parties positions

8. The R state in opposition to the amendment (at page 64 in the bundle they state that the application is opposed in an urgent email dated the 30.12.25) and refer the tribunal the fact the application fails to set out the specific amendments being sought such as it is not possible to identify the amendment being sought and the following factors below when considering the balance of injustice/hardship having regard to all the following and the overriding objective
- (i) Nature of the amendment-the C seeks to amend the claim to include a new cause of action. He fails to identify the factual basis for the addition of a new claim. There is no connection to existing claim form.
 - (ii) The C left the employ in March 2023 as per the Constructive Dismissal claim. It is 30 months out of time.
 - (iii) It has been submitted at an extremely late stage. The matter was ready for trial on the 5th January 2026 and the bundle was prepared and Counsel briefed.
 - (iv) The claim form was submitted on the 17.7.23. The amendment could have been part of the original claim. There have been 2 Case Management Hearings in the original claim when the matter subject to the amendment could have been raised. The Case Management Orders make no reference to a claim for Disability Discrimination being raised.
 - (v) The C was in discussion with ACAS yet did not make the application to amend until the eve of the final hearing.
 - (vi) The C refers to the OHS report being the source of the relevant information regarding the Disability Discrimination claim. The R say its not credible based on the evidence that he was not aware of the OHS contents until early/February 2025. In any event the C still delayed by 10 months before making the application to amend.
 - (vii) At the strike out hearing in February 2025 the Tribunal makes it clear the C has an 'uphill struggle' to prove the Constructive Unfair Dismissal claim. Its suggested the new claim is purely a 'makeweight' to bolster the original claim.
 - (viii) The R say the parties will not be on an equal footing as the parties have exchanged the documents and witness statements. The C has had the opportunity of considering the R case.
 - (ix) It is not proportionate as the C has had ample time and opportunity to present the claim for Disability Discrimination.
 - (x) It will introduce delay.
 - (xi) It will add unnecessary expense for the R.
9. The C states in the attachment to the email dated the 23.12.25 that information was not shared with him at the relevant time which prevented him adding to the claim. He further goes on at page 67 in the bundle to set out other factors supporting the application for the amendment. This includes the fact the C says the issue of the Disability Claim was raised with the Judge at the strike out hearing in February 2025. The C says he was only aware of the

potential for the disability claim in 2025 after it was disclosed by the R. The C says the claim is not 30 months out of time as he only knew of the possibility of a claim in 2025. The C states he was in touch with the union and was in touch for the purposes of the strike out hearing on 7th February 2025. The C says he was in touch with the union again on the 11th February 2025 with a summary of the hearing and the new evidence which had come to light. The C said he wanted to proceed with extra grounds such as the discrimination claim and asked for guidance on this. He corresponded with the union throughout 2025 over this and they sought assistance from the PCS Legal. The C contacted the union rep again on the 11.12.25 and the 29.12.25.

Conclusion

10. I have considered the bundle, the live evidence from the C and the submissions both parties have made. I do not accept that it is just and equitable to extend time pursuant to S.123(1)(b) of the EA 2010 and allow the claim for Disability Discrimination. I agree with the R that the claim is substantially out of time. The last act complained of was in 2021 some 5 years ago and the C left the employ of the R in March 2023. The claim was brought in December 2025 over 30 months late. The C refers to the OHS report being the source of the relevant information regarding the Disability Discrimination claim. The OHS report is at page 149 in the bundle and the date of the assessment was 29/4/2021. The report makes it clear that the thyroid condition would be considered under the disability legislation within the meaning of the Equality Act 2010. For all the reasons I gave at paragraphs 5 and 6 above I accept what the R submits that the C must have been aware of the contents of the OHS report in 2021 and therefore clearly knew of the potential for a claim under the Equality Act 2010. The R say it's not credible based on the evidence that he was not aware of the OHS contents until early/February 2025. Given the factual matrix explored with the C in cross examination I accept this submission. In any event the C still delayed by 10 months before making the application to amend. The length of the delay is unacceptable and so are the reasons for the delay. The C has not acted promptly.
11. The original claim form was submitted on the 17.7.23 and there was no good reason why the discrimination claim could not have been submitted along with it. The C went through 2 CMH on the 5.8.24 and the 7.2.25 and yet there is no evidence of the discrimination claim being raised at all. The C says he did raise it on the 7.2.25 before EJ Broughton. There is no evidence of this but, even if I accept it was, he still did not bring the claim until the very eve of the Final Hearing some 10 months later.
12. The C was vague and unclear when questioned about the role of the Union. He seemed to be in correspondence with them in 2020 but said in his evidence that emails went back and forth and that they 'fobbed him off' and

at this time didn't really get involved. Later in 2025 he returned to them in February regarding the potential Discrimination claim but they didn't get back to him. The C though never sought the advice and assistance of a solicitor or other legal advice such as Citizens Advice or Law Centre. I got the impression that C was capable given the contents of the email he sent to the tribunal and the R on the 23.12.25 and the way he had conducted the claim in person through 2 CMHs.

13. The Disability Discrimination claim is a new cause of action, and the C has not identified the factual basis for the new claim. EJ Broughton at the CMH on the 7.2.25 said that the C faced an 'uphill struggle' to prove his claim. At page 77 in the bundle and the C new ET1 for the Discrimination claim the C says both claims (Constructive Unfair Dismissal) arise from the same circumstances. The C said that he was not aware of the relevant facts of a potential disability discrimination claim at an earlier stage of his employment but at the same time suggesting the Rs acts and omissions contributed to a breakdown in the C trust and confidence with the R. This is somewhat contradictory. I have considered the case of **Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT 132** and appreciate that the merits of the case in general is also a potential consideration in the just and equitable argument. Given the above and without the benefit of testing the evidence and hearing the cross examination at a final hearing, it appears that the C case is weak. This factor has not played a predominant consideration in my judgment, but I am aware of the arguments, case law and submissions.
14. The R say the parties will not be on an equal footing as the parties have exchanged the documents and witness statements. The C has had the opportunity of considering the R case. It is not proportionate as the C has had ample time and opportunity to present the claim for Disability Discrimination. It will introduce delay. It will add unnecessary expense for the R. It has been submitted at an extremely late stage. The matter was ready for trial on the 5th January 2026 and the bundle was prepared and Counsel briefed. I accept these submissions. To allow the Disability Claim to proceed will result in delay and more cost. The facts complained of date back to 2021 and further delay diminishes the recall and cogency of the evidence that the witnesses may give. It will require a further case management hearing listed in May to determine the issue of the C disability and thereafter timetabling into 2027 for a further final hearing. This leads to delay and further expense and in my view the prejudice suffered by the R is greater than that suffered by the C in not being able to bring the claim.
15. For all the above reasons I do not find that it is just and equitable to extend time for the C to bring a claim for Disability Discrimination pursuant to S.123(1)(b) EA 2010 and the claim is dismissed as the tribunal has a lack of jurisdiction. The further CMH listed on the 14th May 2026 can be vacated.

Employment Judge **Steward**
Date 10.4.26