



EMPLOYMENT TRIBUNALS (SCOTLAND)

Cases Nos: 8001750/2025 and 8001779/2025

Preliminary Hearing held in Glasgow by Cloud Video Platform on
8 April 2026

Employment Judge A Kemp

Ms S Cherry

Claimant
In person

Glasgow City Council

Respondent
Represented by:
Ms B Robertson ,
Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The claims so far as made under the Employment Rights Act 1996 are not within the jurisdiction of the Employment Tribunal and are dismissed.
2. The claims so far as made under the Equality Act 2010 are within the jurisdiction of the Employment Tribunal as it is just and equitable to extend jurisdiction to those claims under section 123(1)(b) of that Act.

REASONS

Introduction

1. The claimant has made two claims against the respondent with the above reference numbers. The claimant is a party litigant and the respondent is represented by Ms Robertson.

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2. The claims were combined by order dated 11 September 2025. There was a Preliminary Hearing held on 21 October 2025 before EJ Maclean after which case management orders were made. This hearing was fixed, although the date for it was subsequently changed. It is to determine whether or not the Tribunal has jurisdiction over the claims made by the claimant.
3. There are in summary two sets of claims, one set under the Employment Rights Act 1996 where the issue is in essence one of reasonable practicability and the second set under the Equality Act 2010 where the issue is whether it is just and equitable to extend jurisdiction. In each case the claimant separately argues that she was being victimised by the respondent such that her claims were in time.

The issues

4. The issues were set out in the Note following the previous Preliminary Hearing and are set out and addressed below.

Evidence

5. The claimant was the only person who gave evidence. No documents were put before me by either party. Before the hearing began I explained to the claimant that as she was a party litigant I could assist her to an extent under the overriding objective but not so as to act as if her solicitor. I explained about the process for giving evidence. I asked about documents, but she said that she did not wish to refer to any. I explained that all evidence material to the issues before me required to be given at this hearing and that only in exceptional circumstances would additional evidence be permitted once the hearing had concluded. I explained that the claimant would be cross examined after she had given her evidence in chief, and that I may ask her questions, then that she may give evidence in re-examination in answer to questions from Ms Robertson or from me. I then explained about making submissions.

Facts

6. I found the following facts, material to the issues before me, established:
7. The claimant is Ms Sulyta Cherry.
8. The respondent is Glasgow City Council.
9. The claimant was employed by the respondent until the termination of her employment with effect from 17 March 2025.
10. The claimant did not appeal the dismissal internally. She sought advice from Citizens Advice with regard to the matter and had an initial meeting

[on a date not given in evidence] but did not receive material advice from them. She sought to obtain legal advice but did not succeed in doing so.

11. From around late 2024 the claimant had been under threat of eviction from her property which was rented from an organisation called Molendina. She sought to oppose that eviction which was being pursued against her on the allegation of anti-social behaviour which she denied. She was evicted from her then property on 9 May 2025. She required to seek alternative accommodation, and did so by moving in with a friend. That involved relocation outside Glasgow. She also required to accommodate her two dogs, three cats and one terrapin. The process leading up to the eviction and the consequences of it caused her substantial stress.
12. For a material period the claimant has suffered from depression and anxiety. She has received medication and treatment from her General Practitioner. The dismissal from the respondent and later eviction added materially to her depression and anxiety. She informed her GP of suicidal ideation [dates for the same, and details of the medication proscribed for her, were not given in evidence nor were any medical reports or records tendered].
13. After the eviction the claimant was not able to attend her GP as easily, and for a period [the dates and duration of which were not given in evidence] the claimant did not receive medication.
14. The claimant had pursued an earlier Claim against the respondent at the Employment Tribunal under case number 4100564/2024. A Final Hearing took place in the period 3 – 7 February and for a final day on 10 April 2025. Judgment was issued in that case on 9 July 2025 dismissing the claims. The claimant has sought to appeal that judgment.
15. The claimant commenced Early Conciliation on 30 May 2025.
16. ACAS issued a Certificate for that on 5 June 2025.
17. The claimant attempted to complete a Claim Form online on or around 22 June 2025. She found it difficult to do so, and sought to save a copy of it. She was not able to do so successfully. She had intended to return to complete it later but did not do so. At that time she considered that she was being victimised by the respondent for having made a claim, and that timebar did not run as a result of that. The victimisation she considered was happening arose from her belief that the respondent had sent information about her to North Ayrshire Council with regard to housing matters.
18. The Claim Form for claim 8001750/2025 was presented by the claimant on 17 July 2025. She did so herself, having not received legal advice on it, or the making of claims after dismissal.

19. The Claim Form for claim 8001779/2025 was presented on 21 July 2025. She again did so herself.

Claimant's submission

20. The following is a very basic summary of the submission made. The claimant asked that her personal circumstances be taken into account and the impact of what happened on her health and wellbeing. She said that the situation had been quite overwhelming for her.

Respondents' submission

21. The following again is a very basic summary of the full and helpful submission that was made. It was argued that the claimant had not discharged the onus on her in relation to each matter of jurisdiction. There had been no act or omission after the date of termination, it had not been shown to be reasonably practicable not to have presented the claims timeously, nor that they had been presented in a reasonable period of time. It was not just and equitable to extend jurisdiction to the 2010 Act claims as there was no good explanation for the delay, the respondent would suffer prejudice including for matters that could have been raised within her first claim by an application to amend, and that matters raised went back to 2024 on which the respondent would suffer prejudice, although no forensic prejudice was suggested for the periods of 12 and 16 days of delay in the presentation of the claims that were made. Ms Robertson referred to a number of authorities all of which I have considered.

Law

(i) *Employment Rights Act 1996*

22. The relevant time limits are found in sections 23, 48 and 111 of the Employment Rights Act 1996. Section 23 was not mentioned in the Preliminary Hearing Note, but applies to an unlawful deduction from wage claim, and is in terms materially the same as those set out below, but which provision for the last in a series of deductions in section 23(3).

23. The provisions of section 48 that are relevant to the present case are

“48 Complaints to employment tribunals

-(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B....

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

- (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint

relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

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

- (a) where an act extends over a period, the ‘date of the act’ means the last day of that period, and

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

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

(4A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3)(a).....”

24. The provisions of section 111 that are relevant to the present case are as follows:

“111 Complaints to employment tribunal.

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

- (a) before the end of the period of three months beginning with the effective date of termination, or

- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).....”

25. The burden of proof is on the claimant to prove that it was not reasonably practicable to present the complaint in time: ***Porter v Bandridge Ltd [1978] IRLR 271.***

26. The question of what is reasonably practicable is explained in a number of authorities. In ***Palmer and Saunders v Southend on Sea Borough Council [1984] IRLR 119***, a decision of the Court of Appeal, the court

suggested that it is appropriate: “to ask colloquially and untrammelled by too much legal logic, ‘Was it reasonably feasible to present the complaint to the Industrial Tribunal within the relevant three months’?” That, it explained, is a question of fact for the Tribunal taking account of all the circumstances. It gave the following guidance:

“Dependent upon the circumstances of the particular case, an Industrial Tribunal may wish to consider the manner in which and reason for which the employee was dismissed, including the extent to which, if at all, the employer’s conciliatory appeals machinery has been used. It will no doubt investigate what was the substantial cause of the employee’s failure to comply with the statutory time limit; whether he had been physically prevented from complying with the limitation period, for instance by illness or a postal strike, or something similar. It may be relevant for the Industrial Tribunal to investigate whether at the time when he was dismissed, and if not then when thereafter, he knew that he had the right to complain that he had been unfairly dismissed; in some cases the Tribunal may have to consider whether there has been any misrepresentation about any relevant matter by the employer to the employee. It will frequently be necessary for it to know whether the employee was being advised at any material time and, if so, by whom; of the extent of the advisors’ knowledge of the facts of the employee’s case; and of the nature of any advice which they may have given to him. In any event it will probably be relevant in most cases for the Industrial Tribunal to ask itself whether there has been any substantial fault on the part of the employee or his advisor which has led to the failure to comply with the statutory time limit. Any list of possible relevant considerations, however, cannot be exhaustive and, as we have stressed, at the end of the day the matter is one of fact for the Industrial Tribunal taking all the circumstances of the given case into account.”

27. In ***Asda Stores Ltd v Kauser* UKEAT/0165/07**, a decision of the Employment Appeal Tribunal, Lady Smith at paragraph 17 commented that:

“..... the word ‘practicable’ means possible and possible is a synonym for feasible. The short point seems to be that the court has been astute to underline the need to be aware that the relevant test is not simply a matter of looking at what was possible but asking whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done.”

28. In ***Marks and Spencer plc v Williams-Ryan* [2005] IRLR 562** the Court of Appeal stated that “The first principle is that section 111(2) should be given a liberal interpretation in favour of the employee.” It set out the issues to consider when deciding the test of reasonable practicability, which included (i) what the claimant knew with regard to the time-limit;

(ii) what knowledge the claimant should reasonably have had; and
 (iii) whether he was legally represented.

29. In **Lowri Beck Services Ltd v Brophy [2019] EWCA Civ 2490**, the Court of Appeal re-stated that the test of reasonable practicability should be given a liberal interpretation in favour of the employee. The claimant in that case did not have professional advice, which was held to be a factor in his favour.

30. The nature of the test was considered in **Cygnnet Behavioural Health Ltd v Britton [2022] EAT 18**, in which it was stated that

“the employment judge directed himself that section 111(2) should be given a liberal construction in favour of the employee, citing **Dedman v. British Building & Engineering Appliances Ltd [1974] ICR 53, CA**. In my judgment, I note that this is not reflective of the way that section 111(2) has been interpreted and applied by the Court of Appeal in more recent cases. The test is a strict one and, perhaps in contrast to the ‘just and equitable’ extension in other statutory contexts, there is no valid basis for approaching the case on the basis that the ET should attempt to give the ‘not reasonably practicable’ test a liberal construction in favour of the claimant.”

31. It is, with great respect to the EAT, difficult to understand that last sentence except in the context of a distinction with the test in discrimination law. The reference to a liberal interpretation in favour of the employee had itself been made in **Williams-Ryan**, which the EAT in **Britton** cited, and although **Brophy** was not mentioned it had re-stated that principle. **Williams-Ryan** and **Brophy** are both Court of Appeal authority. **Britton** was also doubted by the EAT in **Cross v NHS Somerset Clinical Commissioning Group [2024] EAT 20**. Each of the two Court of Appeal authorities is not necessarily binding on a Tribunal in Scotland but they are worthy of considerable respect, particularly in relation to a UK-wide statutory provision where there is nothing particular in Scots Law which would not make it applicable. I consider that the Court of Appeal comments should be preferred to those in **Britton**, and followed, in this respect.

32. The Tribunal conducts its own assessment of the issue of reasonable practicability, and whilst it may take account of medical evidence it is not bound to accept it, particularly if there is other evidence that is not consistent with it - **Chourafi v London United Busways Ltd 2006 EWCA Civ 689**. That was a case where the claimant had not attended the Preliminary Hearing to give evidence, however.

33. The issue of a medical condition was addressed in **Kauser**, in which the following was said about the Tribunal’s judgment:

“There is no finding of illness or incapacity. The circumstances are not comparable, for instance, to those of the Claimant who fell ill seven weeks into the three month period, in the case of **Schulz v Esso Petroleum Co Ltd [1999] ICR 1202**. It cannot be sufficient for a Claimant to elide the statutory time limit that he or she points to having been ‘stressed’ or even ‘very stressed’. There would need to be more.”

34. It appears to me firstly that the statutory words must be applied, and secondly that in doing so a liberal interpretation of those words in favour of the employee is permissible, against the statutory test of reasonable practicability, and not whether what the claimant did was reasonable. There is no strict approach, but the onus falls on the claimant. All of the circumstances are to be considered when making that assessment.
35. If the claimant is successful in arguing that it was not reasonably practicable to have presented the claim in time, it is then necessary to consider whether the claim was presented within a reasonable period of time thereafter. In **Cullinane v Balfour Beatty Engineering Services Ltd UKEAT/0537/10** it was stated that the question whether a further period is reasonable is not the same as asking whether the claimant acted reasonably, but requires “an objective consideration of the factors causing the delay and what period should reasonably be allowed in those circumstances for proceedings to be instituted”, having regard to the ‘strong public interest’ in claims being brought promptly, and against a background where the primary time limit is three months.
36. In **Howlett Marine Services Ltd v Bowlam [2001] IRLR 201** it was confirmed that the issue of reasonableness in this respect was assessed having regard to all the circumstances.

(ii) Equality Act 2010

37. Section 123 of the Equality Act 2010 provides as follows in regard to time limits

“123 Time limits

(1) Subject to [sections 140A and section 140B] proceedings on a complaint within section 120 may not be brought after the end of—

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or
- (b) such other period as the employment tribunal thinks just and equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

- (a) the period of 6 months starting with the date of the act to which the proceedings relate, or
- (b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

- (a) conduct extending over a period is to be treated as done at the end of the period;
- (b) failure to do something is to be treated as occurring when the person in question decided on it.

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

- (a) when P does an act inconsistent with doing it, or
- (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.”

Just and equitable

38. The issue of what is just and equitable involves the exercise of discretion. The width of the discretion conferred by a predecessor provision to what is now within section 123 was considered by the Inner House of the Court of Session in the case of **Malcolm v Dundee City Council [2012] SLT 457**. The court held that the issue of whether a fair trial was possible was “one of the most significant factors” in the exercise of this discretion, in its review of authority. It referred *inter alia* to the cases of **Chief Constable of Lincolnshire v Caston [2010] IRLR 327** and **Afolabi v Southwark London Borough Council [2003] ICR 800**.

39. In **Malcolm** the delay had been of the order of a month, but it is notable that whether a fair trial was possible or not was not considered to be a determinative issue.

40. In **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] ICR 1194** the Court of Appeal held:

“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, s 123(1) of the Equality Act 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 to interpret it as if it contains such a list. Thus, although it has been suggested that 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 [2003] EWCA Civ 15; [2003] ICR 800**, para 33. The position is analogous to that where a court or tribunal is exercising the similarly worded discretion to extend the time for bringing proceedings

under s 7(5) of the Human Rights Act 1998: see ***Dunn v Parole Board [2008] EWCA Civ 374; [2009] 1 WLR 728***, paras [30]-[32], [43], [48]; and ***Rabone v Pennine Care NHS Trust [2012] UKSC 2; [2012] 2 AC 72***, para [75].

5 19. 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 while matters were fresh)."

10 41. That was emphasised in ***Adedeji v University Hospitals Birmingham NHS Foundation [2021] EWCA Civ 23***, which discouraged use of what had become known as the ***Keeble*** factors as form of template for the exercise of discretion. The Limitation Act 1980 is in any event not a part of the law of Scotland.

15 42. The decisions from the EAT have not always been entirely consistent on how the discretion is to be exercised. In one line of authority, the absence of a good reason for a delay was held not to be fatal to the possible exercise of the discretion. That line emanates from the cases of ***Pathan v South London Islamic Centre UKEAT/0312/13*** and ***Szmidt v AC Produce Imports Ltd UKEAT/0291/14***, in both of which the EAT held that the tribunals erred in concentrating entirely on the reason for the delay at the expense of other factors; in particular, the relative prejudice to both parties if an extension of time were or were not granted.

20 43. The other line is to the effect that an acceptable explanation for the delay is indeed fatal to exercising the discretion in favour of the claimant, and commences in ***Habinteg Housing Association Ltd v Holleron UKEAT/0274/14*** in which the EAT allowed an appeal against the decision of a tribunal to grant an extension of time to a claimant who provided no evidence or explanation for the delay in presenting her claim.

25 44. In ***Rathakrishnan v Pizza Express (Restaurants) Ltd [2016] IRLR 278***, the EAT in effect preferred the former approach expressing the opinion that a multi-factoral approach was required with no single factor determinative. In that case the balance of prejudice and the potential merits of the claim (as to which the tribunal had heard evidence) were held to be relevant factors to take into account. In ***Edomobi v La Retraite RC Girls School UKEAT/0180/16*** a different division of the EAT (presided over by a different Judge) in effect preferred the latter approach, with the Judge adding that she did not "understand the supposed distinction in principle between a case in which the claimant does not explain the delay and a case where he or she does so but is disbelieved. In neither case, in my judgment, is there material on which the tribunal can exercise its discretion to extend time. If there is no explanation for the delay, it is hard to see how the supposedly strong merits of a claim can rescue a claimant from the consequences of any delay."

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45. In **(1) Wells Cathedral School Ltd (2) Mr M Stringer v (1) Mr M Souter (2) Ms K Leishman: EA-2020-000801** the EAT did not directly address those authorities but stated that, in relation to the issue of delay, “it is not always essential that the tribunal be satisfied that there is a particular reason that it would regard as a good reason”.
46. In **Accurist Watches Ltd v Wadher UKEAT/0102/09** the EAT stated that, whilst it is 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.
47. It appears to me that whilst the reason for and length of the delay is a material factor it is not determinative, that the test is multi-factoral, and that all of the facts relevant to what is just and equitable must be taken into account, and that whether or not a fair trial is possible is also a significant factor.
48. Whilst it is permissible to consider the merits or apparent merits of a claim, or lack thereof, that is an exercise which must be undertaken with care as discussed in **Kumari v Geater Manchester Mental Health NHS Foundation Trust [2022] EAT 132**.
49. The EAT relatively recently reviewed the issue of what is just and equitable in **Jones v Secretary of State for Health and Social Care [2025] EAT 76**. Some of the comments in earlier case law to the effect that the provision should be applied strictly should not, it confirmed, be followed. That is also consistent with the comments of the Inner House in **Malcolm**.

(iii) Early Conciliation

50. There is a further matter to consider, which is the effect of early conciliation on assessing when a claim was commenced. Before proceedings can be issued in an Employment Tribunal, prospective claimants must first contact ACAS and provide it with certain basic information to enable ACAS to explore the possibility of resolving the dispute by conciliation (Employment Tribunals Act 1996 section 18A(1)). Provisions as to the effect Early Conciliation are in section 207B of the 1996 Act and 140B of the 2010 Act. The Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 provide in effect that within the period of three months from the act complained of, or the end of the period referred to in section 123 above if relevant, or its equivalent for the other provisions, EC must start, doing so then extends the period of time bar

during EC itself, and time is then extended by a further month from the date of the certificate issued at the conclusion of conciliation within which the presentation of the Claim Form to the Tribunal must take place.

Discussion

5 51. I considered that the claimant was seeking to give honest evidence. I noted that some documentation that might well have been provided was not, the most obvious of which I address further below. It was not always easy to follow her evidence as part of it did not always address the question asked, and she was not able to recall several points of detail such as dates of events. That, and some of the matters conceded in cross
10 examination, affected the extent to which I could accept her evidence as being reliable, but I did so to the extent that I considered was possible and appropriate.

15 52. I addressed each of the issues identified in the Note following the Preliminary Hearing as follows:

a. Was the claim made within the time limit set out in section 48 of the ERA? Specifically, was the claim presented to the Tribunal within three months (plus any applicable early conciliation extension) of the date of the act or failure to act to which the complaint relates.

20 53. Neither claim was presented timeously under that provision. I did not consider that the claimant had proved any act or omission of the respondent after 17 March 2025 when she was summarily dismissed with payment in lieu of notice. That is the effective date of termination. Her argument that there was a continuing act of victimisation I address below.
25 In so far as the claim as to unauthorised deductions from wages no evidence was given on this, and there was no suggestion that the deductions did not cease as at the date of termination of employment. In so far as there was a series of deductions, the last date for that from what was before me can have been no later than 17 March 2025.

30 *b. If not, was there a series of acts/failures. If so, was the claim presented within three months (plus any applicable early conciliation extension) of the last act/failure in the series?*

54. No. There was no evidence I considered sufficient to establish this. The same outcome applies for unauthorised deductions as set out above.

35 *c. If the claim was not presented within the time limit, was it reasonably practicable for the claimant to have done so?*

55. It is for the claimant to discharge the burden of proof in this respect. It is a question of fact to be determined on the evidence. There are a number of matters to take into account. They include (i) the impact of the dismissal
40 on the claimant; (ii) the claimant being in the final day of the Final Hearing

of her first claim after that, on 10 April 2025; (iii) her eviction on 9 May 2025 and move to accommodation with a friend; (iv) her mental health at that time, on which there was some evidence but no supporting detail from her GP, but which I accepted had been made worse by the dismissal and
5 eviction; (v) her conducting early conciliation timeously (vi) her attempt to present a Claim Form online on 22 June 2025, or thereby, which she did not complete (vii) her knowledge of time bar in general terms (viii) her intention to complete the Claim Form and (ix) that there is nothing particular put forward to explain why she did so on the dates that she did
10 rather than on or before 5 July 2025.

56. Having considered all that was said by the claimant in her evidence, I have concluded that she has not led sufficient to establish that it was not reasonably practicable to have presented the Claim Form timeously. She accepted that she was aware of there being time limits. She had
15 experience of tribunal litigation from her first claim. She attended the Final Hearing on 10 April 2025 for that. She engaged in early conciliation. She made an attempt to present an online Claim on or around 22 June 2025. Whilst she did not succeed in doing so, that she was able to get to that stage having undertaken the earlier stages referred to is not I consider
20 indicative that it was not reasonably practicable to have completed that.

57. The Claim Forms that she did later present had basic information, and there was nothing in particular that she pointed to in evidence that had changed between 5 and 21 July 2025. Although the claimant gave
25 evidence that she believed that there had been victimisation of her and that timebar did not run as a result, it did not appear to me that there was a reasonable basis for that belief. Nothing in writing was put before me to support it. The claimant appears to have treated her landlord, the respondent and others as if one entity for this purpose. She did not lead
30 any evidence to establish a connection between the landlord and the respondent. She did not produce the emails she said had been sent by the respondent which she claims were victimisation. She did not give detail as to their contents in her oral evidence, such that I did not have an understanding of what they had said, and in what context. In any event
35 from her evidence it would appear that they were related to issues of housing, not her dismissal from the respondent.

58. The basis on which there could have been victimisation was not clear from the evidence given to me. It did not appear to me that her belief in this regard, that timebar did not run, was a reasonable one. Having regard to
40 the guidance in **Williams-Ryan** the claimant in my opinion ought reasonably to have known of the timebar applying from 5 July 2025. There was no evidence given to explain adequately on what basis it was held, what if any researches had been done, or why they had not been done. It was, in essence from what was before me, an assertion. I did not consider that that was sufficient. I concluded that it had not been shown to be not

reasonably practicable to have presented the Claims timeously, which is to say on or before 5 July 2025.

d. If it was not reasonably practicable, was the claim presented within a reasonable period afterwards?

5 59. This issue does not now arise.

e. Was the claim made within the time limit set out in section 111 of the ERA? Specifically, was the claim presented to the Tribunal within three months (plus any applicable early conciliation extension) of the effective date of termination?

10 60. No, essentially for the reasons given above.

f. If it was not reasonably practicable, was the claim presented within a reasonable period afterwards?

15 61. This issue should be worded as whether or not it was reasonably practicable to have presented the claims timeously, and for the reasons given above the answer is that it has not been shown that it was not reasonably practicable to have done so.

g. If it was not reasonably practicable, was the claim presented within a reasonable period afterwards?

62. This issue does not now arise.

20 *h. Were the discrimination and victimisation complaints made within the time limit set out in section 123 of the Equality Act 2010? Specifically, was the claim presented to the Tribunal within three months (plus any applicable early conciliation extension) of the act to which the complaint relates?*

25 63. I consider that the date from which the time limit is calculated is 17 March 2025. The claim was not presented timeously against that date. I did not consider that the claimant had established that there was any conduct extending over a period for this purpose. Her argument, and related evidence, was that she was the victim of ongoing victimisation from the respondent, but the evidence for that was not properly before me. She said that there had been emails sent by the respondent, but they were not produced. What they said or when they were sent was at best addressed in outline only. The claimant gave very general evidence to the effect that the respondent was involved in housing issues for her, and had some form of interest in or relationship with her landlord, but the detail of that was missing, as was any form of documentary evidence. It did not appear to me that the kind of act envisaged by section 27 occurred, or at least that there was reliable evidence from the claimant on that. I therefore answer this issue in the negative.

40 *i. If not, was the conduct complained of part of a continuing act or series of acts extending over a period?*

64. For the reasons given above, no. Matters concluded with the dismissal. The claimant did not appeal it internally.

j. If so, was the claim presented within three months (plus any applicable early conciliation extension) of the end of that period?

5 65. No.

k. If not, were the claims presented within a further period that the Tribunal considers just and equitable? In determining this, the Tribunal will consider (i) the reasons why the complaints were not presented in time; and (ii) whether, in all the circumstances, it is just and equitable to extend time.

10 66. I have considered the evidence and submissions, and on balance have concluded that it is just and equitable to allow the claims to be received and held within jurisdiction. They are late, but by 12 and 16 days. No forensic prejudice from that aspect of the delay was suggested by Ms Robertson, entirely properly, but other aspects were as I shall come to. The reason for the delay is that the claimant was suffering from anxiety and depression, exacerbated by both the dismissal and eviction. She sought advice but had no real success save for a discussion with a Citizens Advice person who did not follow up with her. She had no legal advice. She started to present a Claim, but did not complete that, and whilst she might well have tried again within the primary time limit she was coping with a great deal of other matters at that time. This may not be the fullest explanation for delay, but there is I consider to some extent an explanation for it because of her dismissal and eviction, and the impacts of that on her mental health. It is not I consider a complete explanation, but that there is to the extent that there is is one factor, and even if it were not considered to be a good explanation that is not fatal to the exercise of discretion.

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67. The delay in presenting the two claims is relatively short in duration.

30 68. The next issue is that of prejudice, which includes but is not limited to whether a fair trial is possible. There are a number of aspects to that. Firstly the dismissal occurred on 17 March 2025. That was during the Final Hearing of the first claim, which did not conclude until 10 April 2025. The respondent argued that given that date the claimant could and should have sought to amend her first claim to add matters relating to the dismissal. It is true that the claimant could have applied to amend that Claim for that, but that I consider is firstly not so obvious a matter that the claimant can be said to be at fault for not doing so – she was not aware that she could she said, which I accepted – and secondly it is in my view less than likely that the application would have been allowed. That is because the hearing was nearly concluded on the then existing pleadings, and if the amendment was allowed more evidence would have been required later after the pleadings for both parties had been amended, adding at the very least to the time taken to conclude that claim. It seems

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to me more likely that the application, if it had been made, would have been refused on the basis that the claimant could commence a new claim, allowing her first claim to be determined without further delay. I do not consider that the fact that the claimant did not apply to amend is a factor that militates against extending jurisdiction in such circumstances.

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69. Secondly the respondent refers to the fact that the allegations made in the Claim Forms cross over in part with some of those from the first claim, at least as to timing. Some issues go back to 2024. The respondent argues that the issue of prejudice should be seen in that context, with a claim that is otherwise late. It is indeed late, but in my opinion the issue of prejudice in this context is one of forensic prejudice from the delay in presenting the claim, at least primarily. It is in the sense of whether the delay in presentation has materially affected the ability of the respondent to source and lead evidence to defend itself. The issue is whether or not there can be a fair trial, but all of the circumstances are to be considered. They include the additional aspects raised by these proceedings.

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70. The delay in presentation is at worst 16 days, and that period does not lead to forensic prejudice. The point that the respondent made about prejudice and the relationship with the first claim is not a simple one, and goes beyond that delay. The respondent argues thirdly that the claimant could have raised the issues from the present two claims within that claim by applying to amend it, and did not, and that now doing so is prejudicial to them as it means litigating matters going back to 2024. The point was argued by reference to the EAT authority of **Scuzs v GreenSquareAccord Ltd [2025] EAT 110** that there was a breach of the rule (of English law) known as the **Henderson v Henderson** rule.

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71. As discussed during the hearing the position in Scotland is not the same, as that rule is not part of Scots Law – as addressed for example in **Troup v West Lothian Council 2020 CSOH 29**. The principle in Scotland is that of *res judicata*, as explained by the Inner House in the context of claims before the Employment Tribunal in **British Airways plc v Boyce [2010] ICR 1094**. The respondent did not put before me the pleadings in the first claim, such that I could not form a view of the extent to which that principle may apply to matters adjudicated upon in that first claim. Some matters may be repeated in the present claims, but those related to the dismissal itself, and perhaps other matters, would not have been given the chronology. So far as the possibility of amendment to add the present claims is concerned, that is addressed above, and it is also to be noted that the *res judicata* principle is not always an absolute one as addressed in **Boyce**. Where a point has been decided that does bar future litigation, but where it could have been raised but was not the issue is more nuanced, as the Inner House set out.

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72. In so far as relevant, on the same day as the hearing but after it had concluded the EAT published on its website a decision in **Wirral**

University Teaching Hospital NHS Foundation Trust v Moriarty [2026] EAT 48 which addressed the ***Henderson v Henderson*** rule, and upheld the decision of a Tribunal not to dismiss a claim to the extent the respondent sought.

- 5 73. Against that background I consider that the issue of prejudice to the respondent is more limited than as the respondent contends, although there is a degree of that simply from the claimant being allowed to proceed with claims otherwise out of time. In those claims the claimant seeks to refer to matters that she claims arose from prior to the dismissal.
- 10 Responding to them will involve a measure of additional time and expense for the respondent.
- 15 74. If the claimant did plead in that first claim matters that she now seeks to found on in the present two claims, which were the subject of judgment in that first claim, and if the Tribunal considers that that breaches the principle as set out by the Inner House, such matters can be subject to an application for strike out under Rule 38. The respondent can make application for that during case management of the two cases. A decision on that does not require to be taken at this stage when I am not aware of all material matters that affect the decision. It does however appear to me
- 20 that where that process exists the respondent is able to mitigate the impact of the prejudice it seeks to rely on in this regard, and that a fair trial can take place. Indeed if a particular matter as to fairness of a trial arises that is a separate basis on which a strike out could be sought under Rule 38. I conclude that there is some prejudice to the respondent to weigh in the
- 25 balance.
75. Thirdly I take account of the evidence the claimant gave of not being able to secure legal advice, and not having that. She is and has been a party litigant. That is also a factor to weigh in the balance.
- 30 76. Fourthly I do not consider that any adequate view can be taken as to the prospects of success of the claims under the 2010 Act. At least they, or some of them, are on the face of it at the least statable. In the event that any particular claim is considered by the respondent to have no or little reasonable prospects of success an application for strike out or deposit order can be made, but it seems to me that there are liable to be issues of
- 35 fact that are disputed which are, if there is jurisdiction otherwise, appropriate for determination. That is far from saying that the claimant has reasonable prospects of success, merely that I cannot say that the prospects are obviously so poor that that is a factor against accepting jurisdiction. There would be no real prejudice to the claimant if her claims
- 40 had no reasonable prospects of success, but from the material available I do not consider that that can be said, nor indeed was it specifically contended for by Ms Robertson. The claimant did argue that the claim being for discrimination was one that should be heard, but that I did not consider was a material factor in this regard.

77. Taking an overview of all of the evidence and arguments put before me I have concluded that it is just and equitable to allow the claims under the 2010 Act to be held within the jurisdiction of the Employment Tribunal.

Conclusion

- 5 78. The claims as made under the Employment Rights Act 1996 are not within the jurisdiction of the Employment Tribunal and are accordingly dismissed.
79. The claims under the Equality Act 2010 are within the jurisdiction of the Employment Tribunal as it is just and equitable to extend jurisdiction to them.
- 10 80. The Tribunal shall arrange a Preliminary Hearing for the purposes of case management, to be heard remotely, a Notice for which shall be intimated to the parties separately.

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Date sent to parties

16 April 2026