



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002968/2025

Held in Aberdeen on 15 April 2026

Employment Judge A Kemp

Mr S Russell

**Claimant
In Person**

Aberdeen City Council

**Respondent
Represented by:
Mr G Milne -
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claim is within the jurisdiction of the Employment Tribunal.

REASONS

Introduction

1. The claimant has made a claim of indirect discrimination against the respondent under section 19 of the Equality Act 2010 ("the Act"). The respondent defends the claim both on its merits and as to jurisdiction. The claimant is a party litigant, but is a solicitor, and the respondent is represented by Mr Milne.
2. There was a Preliminary Hearing held on 27 March 2026 before EJ Doherty after which this hearing was fixed. It is to determine whether or not the Tribunal has jurisdiction over the claim made by the claimant under section 123 of the Act.
3. Although the claimant is a solicitor he had not been involved in Tribunal proceedings before, and I explained at the start how it was to be conducted

The issues

4. The issues were discussed at the commencement of the hearing and agreed with the parties as:

- (i) on what date did the act relied on take place?
- (ii) was that date within the primary limitation period under section 123 of the Act?
- (iii) If not, is it just and equitable to extend jurisdiction under that section?

Evidence

- 5. The claimant was the only person who gave evidence. Documents were provided and spoken to. The claimant was cross examined by Mr Milne.

Facts

- 6. I found the following facts, material to the issues before me, established:
- 7. The claimant is Mr Stuart Russell. He is a solicitor having qualified in about 2003.
- 8. The respondent is Glasgow City Council.
- 9. The claimant has been employed by the respondent as a Commercial Property Solicitor for around three years and remains in their employment. His employment had been on the basis of a standard 37 hour working week, for which he was paid a salary calculated on the basis of a pay scale [his written contract of employment was not before the Tribunal].
- 10. The respondent recognises three unions, the GMB, Unite and Unison (collectively referred to herein as “the unions”) and negotiates terms and conditions of employment of its staff with the unions.
- 11. The claimant is not a member of a union.
- 12. In or about April 2024 the respondent issued a post to its employees [not produced to the Tribunal] that it was to enter a period of consultation with staff and unions with a view to reducing the standard working week from 37 to 35 hours, with part-time staff having a pro-rata reduction.
- 13. In or about January 2025 the respondent issued another such post to its employees [not produced to the Tribunal] that it was entering formal consultations to reduce the hours for full time workers from 37 to 35 hours per week, but was to preserve the hours of part-time workers. When the claimant read that, he considered that the proposal was discriminatory under the Equality Act 2010 in light of what he considered to be a disparity between the proportions of male and female staff who were full time or part time respectively. The proposal however had not been actioned and there were reports in the media of the possibility of strike action over it.

14. On 13 June 2025 the respondent concluded two agreements with the unions. They were a Collective Agreement and an Implementation Agreement.
15. On 16 June 2025 the claimant received an email from the respondent which implemented those Agreements for him. Similar messages were sent to other employees of the respondent deemed to be in scope, being those who were considered to work full time [details of what that was defined as were not given in evidence]. The email referred to the negotiations with the unions and a collective agreement having been reached *“to implement this change to contracts of employment for all in-scope employees with effect from 1 July 2025.....”*
16. Under the heading “what does this mean for you” was stated *“The below paragraph(s) shall be automatically incorporated into your contract of employment with effect from 1 July 2025 as a result of this collective agreement.....Your normal hours of work are 35 per week.....”*
17. Although the email did not state that there was to be a reduction in salary commensurate with the reduction in hours from 37 to 35 per week the claimant understood that that was to be the case from other communications. The email contained a link to such communications. It also provided a link to frequently asked questions, and had an email address to send queries as well as commenting about raising matters with a line manager. The email also referred to a buyout payment to compensate for the reduction in working hours, which was to be paid in two instalments.
18. The claimant remained working on 37 hours per week at the salary appropriate for that for June 2025. From and after 1 July 2025 his hours reduced to 35 per week and his salary was reduced accordingly.
19. The first instalment of the buyout payment was paid to the claimant in July 2025 and accepted by him. The second instalment is to be paid in July 2026.
20. The claimant carried out some research online into making a claim. He had the belief that the time limit period of three months before early conciliation required to be started was calculated with effect from 1 July 2025. He considered whether or not to make a claim for the period to 30 September 2025. He was concerned at doing so against his current employer. He decided to proceed.
21. The claimant commenced early conciliation on 30 September 2025. A certificate was issued for that by ACAS on 7 November 2025. The present claim was presented on 6 December 2025.
22. During his career the claimant has had a limited involvement in employment law issues from his work with colleagues in private practice, prior to his

employment with the respondent. He has not been involved in any Employment Tribunal claim.

Claimant's submission

23. The following is a very basic summary of the submission made, which was supplemented by two written submissions prepared for the initial application made by the respondent for strike out. The claimant argued that the date for calculation of time bar was 1 July 2025, as that was the date on which the changes were to become effective. Any claimant would regard that as the appropriate date to use. If he was wrong about that it was just and equitable to extend jurisdiction.

Respondents' submission

24. The following again is a very basic summary of the submission that was made both orally and on the basis of an earlier written submission in relation to strike out. The appropriate date of the act was 16 June 2025. The claimant was aware from the email of all material aspects of the variation of contract. His claim was therefore outwith the jurisdiction. It was not just and equitable to extend jurisdiction to a late claim. It would involve prejudice to the respondent in responding to it. It was accepted that the delay did not involve forensic prejudice but the claim would involve investigation of matters going back to April 2024, and be costly. The burden was on the claimant and sufficient had not been shown to justify granting the extension. The respondent referred to a number of authorities, some but not all of which are noted below, and all of which I have considered.

Law

25. 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.”*

The date of the act

26. The section refers to the date of the act to which the complaint relates. In ***Mensah v Royal College of Midwives*** EAT/124/94 the EAT held that an act occurs when it is done, not when the claimant acquires knowledge of the means of proving that the act done was discriminatory. Knowledge is a factor relevant to the discretion to extend time. It is not a pre-condition of the commission of an act which is relied on.
27. That approach was followed in ***Virdi v Commissioner of Police of the Metropolis*** [2007] IRLR 24, again in the EAT. The following was stated:
- “I concede that there is much to be said for time not beginning to run until an employee is made aware of the decision which confers the cause of action. But that is not how the legislation has been drafted; the question is when the act is done, in the sense of completed and that cannot be equated with the date of communication.”*
28. Both of these authorities are on the basis of predecessor statutory provisions but there is no difference in principle between them and section 123.

Conduct extending over a period

29. This was addressed in ***Hendricks v Metropolitan Police Commissioner*** [2003] ICR 530 where it was referred to as an “ongoing situation or a continuing state of affairs”. A distinction is to be drawn between completed

acts which have continuing consequences, which do not fall within the provision, and acts which extend over a period, which do.

30. The onus of proof is on the claimant - **Robertson v Bexley Community Centre** [2003] IRLR 434. The law was reviewed relatively recently in **Ahmed v Capital Arches Group Ltd** [2025] EAT 133.

Just and equitable

31. 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.
32. 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.
33. 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].*

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)."*
34. 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.
35. 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.
36. 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.
37. 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.*"

38. 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*”.
39. 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.
40. If there is negligence by a solicitor that need not prevent application of the extension: **Virdi v Commissioner of Police of the Metropolis** [2007] IRLR 24, a principle that was applied in **Benjamin-Cole v Great Ormond Street Hospital for Sick Children NHS Trust** UKEAT/0356/09.
41. 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.
42. 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, including **Robertson**, 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**.

Early Conciliation

43. 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 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

44. I considered that the claimant gave credible and reliable evidence. I address the issues as follows:

On what date did the act relied on take place?

45. The claimant argued that the relevant act was the amendment to the contract with effect from 1 July 2025. The respondent argued that it was the email of 16 June 2025. It told the claimant what the agreement reached was, and how it affected his contract of employment.
46. That the impact of the agreement was deferred to be with effect from 1 July 2025 is not the point, in my opinion, having regard to the authorities above and in particular that of ***Virdi***. The decision to make the contractual changes to those on full time contracts was made on 13 June 2025, when the two agreements with the unions were dated, and the claimant was aware of the material elements of it by that email. I therefore do not accept the claimant's argument that the date of the Act for the purposes of section 123 is 1 July 2025. At the latest it was 16 June 2025 which was the date contended for by the respondent but was in my opinion on 13 June 2025 when the two agreements were made. I hold that it was that date, 13 June 2025.

Was the claim presented within the primary time limit?

47. For the Claim to have been presented timeously Early Conciliation would have required to commence on or before 12 September 2025, or if the later date of 16 June 2025 was the date of the act as the respondent contended for by 15 September 2025. It was not, in that it started on 30 September 2025. The claim was not presented timeously in light of that. Although the claimant did not really argue this point the respondent dealt with it in submission. I did not consider that the claimant had established that there was any conduct extending over a period for this purpose, to the extent that that was contended for by him. There was a decision reached after collective consultation processes, which was then to be implemented. In this regard I accepted the respondent's argument. That there are continuing consequences is not the point, as the authorities above refer to, and I therefore answer this issue in the negative.

If not, were the claims presented within a further period that the Tribunal considers just and equitable?

48. It appears to me from the review of authority above that whilst the reason for and length of the delay are each a material factor they are not determinative, 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 but not determinative factor.
49. I have considered the evidence and submissions, and on a relatively fine 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 47 days at worst, or 44 days from the calculation from the respondent's submission. No forensic prejudice from that aspect of the delay was suggested by the respondent, entirely properly.
50. The essential reason for the delay is that the claimant misunderstood the impact of section 123, and the email of 16 June 2025 in that context. When I raised with him the principle from **Virdi** he stated that he was unaware of that case, and his researches had not found it. I accepted his evidence on that. He is a solicitor, but claimants who are advised by a solicitor are not prevented from arguing for the just and equitable extension, and that applies with more force to a party litigant as solicitor, including someone without real employment law experience. There was a very little of such experience that he spoke to in evidence although there was some as he candidly accepted, but he is a Commercial Property Solicitor.
51. That misunderstanding is not entirely a matter for which he, as a solicitor, can be wholly excused, but I consider that in all the circumstances it can be regarded as broadly reasonable. That is so given that his knowledge of employment matters is limited, and he had not ignored the issue of time bar, but had done some research into it which had not led to this aspect. That he had not found the authority is also set in the context that the authorities relied on by the respondent were not wholly relevant, with for example one in the context of the different test in an unfair dismissal claim, and more particularly that **Virdi** (and **Mensah** which also addresses the matter) were not included. The respondent's solicitor argued the matter but not by reference to these authorities.
52. I also took into account the claimant's evidence that he was considering whether to pursue a claim up to what he thought was the last day to do so. That was because it was a claim against his current employer and he was concerned as to how doing so may be received. It appeared to me that that evidence should be accepted, in that pursuing the present claim is taking a line contrary to that decided upon by his current employer, after agreement

with the unions. Taking the time that he did is, I consider, an understandable way to proceed in such circumstances.

53. The explanation for the delay I regard as broadly reasonable in light of the circumstances I have described.
54. The other factors I consider relevant are that the delay was, given that the early conciliation was late and does not therefore affect the timing of the claim, of 47 days at worst. No forensic prejudice was relied on from that delay as noted, but the respondent does argue overall prejudice. It would of course have to defend a claim that is otherwise not in jurisdiction. That is always a factor, but the nature of the exercise of the jurisdiction is that there may be a countervailing set of considerations.
55. I also considered the nature of the claim, which is one for indirect discrimination. The claimant's view that what was done is obviously discriminatory is unduly simplistic. If the claim is held to be in time there are a number of factual matters which will require proof, including for example the numbers of male and female employees who are full time and part time, and the issue of group disadvantage. The respondent does not accept that the PCP alleged was applied. It seems to me at present that the claimant has a reasonable prospect of being able to establish the matters required under section 19(1) and (2) (a) – (c).
56. But that is not the end of it. There is the defence set out in section 19(2)(d) being one normally referred to as objective justification. The position appears to be that the underlying aim of the variation of contract for full time staff was to save money. That is I consider likely to be regarded as a legitimate aim. The focus is likely to be whether the means chosen were proportionate. In that regard the factors likely to be relevant are that there was an agreement with the unions, and that that included a buyout provision. The claimant has accepted part of the payment, with the second payment due in July 2026. There may have been difficulties with reducing the pay of part-time workers, either because of minimum wage provisions or otherwise. That will be likely to involve detailed evidence, and some of the matters that may require to be investigated and led in evidence go back to 2024.
57. What at this stage is not clear to me is on what basis part-time workers were (as I understand it) wholly excluded from consideration for a variation of terms. No evidence was led about the distinction between full time and part time workers. The respondent has made some comments in its pleadings but they are somewhat limited. That it was the product of negotiation with unions and includes a buyout payment are factors that clearly favour the respondent's arguments, but are not necessarily conclusive. Whether what was done was proportionate, which may include consideration of whether a less detrimental

method of achieving the aim could have been followed (in very basic summary of the law) would depend on the evidence led. At this stage I have very limited information to base a decision on in this regard.

58. I take account of the guidance in authority of the care needed to form a view as to prospects at this stage, and for this purpose. If it could be said that the claim was not one with any reasonable prospect of success the prejudice of not extending jurisdiction would be very limited for the claimant. I do not consider that I can go that far if taking the necessary level of care. The claimant has a claim that on the face of it is statable, and the respondent has on the face of it a defence that is statable. Beyond that assessment of prospects requires either much more information or a form of guesswork.
59. I do accept that defending a claim of this nature will involve cost for the respondent, which given the issue may well be substantial. If jurisdiction is extended that cost will be incurred whatever the outcome (unless an award of expenses is made), but the respondent would be able to argue its defences to these claims, a fair trial of which appears to me not materially impacted by the delay that there was. That ability to have a fair trial is an important but not determinative consideration given **Malcolm**. If jurisdiction is not extended the claimant will not be able to put forward his arguments and no Final Hearing will take place.
60. It seems to me that, taking an overview of all of the evidence and arguments put before me, where the claimant has a statable case for indirect discrimination, where that can be fairly determined including on the objective justification defence if the claimant otherwise proves what he requires to, and where there is the reason for delay explained above, he has established that it is just and equitable to allow the Claim to be held within the jurisdiction of the Employment Tribunal.

Conclusion

61. The claim is I conclude within the jurisdiction of the Tribunal on the basis of the just and equitable extension in section 123 of the Act.
62. 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.
63. The claimant can remain as a party litigant if he so wishes, but in light of the nature of the claim being made, his apparent unfamiliarity with the law in this area, and the circumstances narrated above, he may wish to consider whether it is appropriate to obtain independent legal advice from someone experienced in the field.

64. Finally I should add that a number of the authorities cited above were not put before me by the parties. I considered it in accordance with the overriding objective to issue this decision without specifically reverting to them for comment on them, but if either party considers that it has suffered prejudice from that it may apply for reconsideration of the judgment setting out which authorities it wishes to comment on, and what the submission on them is.

Date sent to parties

23 April 2026