



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8002327/2025**

**Open Preliminary Hearing held in Dundee on 8 April 2026**

**Employment Judge R Mackay**

**Ms C Summers**

**Claimant  
In Person**

**Richmond House Care Home**

**Respondent  
Represented by:  
Mr Muirhead,  
Tribunal Advocate**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

1. The claims of unfair dismissal and wrongful dismissal are dismissed, having been presented to the Employment Tribunal outside the statutory time limit, the Tribunal being satisfied that it was reasonably practicable for the claims to have been presented in time.
2. The claim of direct race discrimination, although presented outside the statutory time period, is permitted to proceed, having been presented within a further period considered by the Tribunal to be just and equitable.

### **REASONS**

#### **Introduction**

1. At a case management hearing on 7 January 2026, a list of issues was set out. It was accepted that most of the claims were out of time. This preliminary hearing was fixed to consider whether the claims brought by the claimant should nonetheless be allowed to proceed based on the relevant statutory extensions available.

2. At the outset of this hearing, a discussion took place about the victimisation claims made. In summary, the claimant's position is that having done a protected act, a former colleague passed information to two other employers in late June and early July 2025 which led to her losing the two positions. The claimant commenced early conciliation with ACAS on 12 August 2025. Having regard to the dates of the alleged detriments specified, Mr Muirhead accepted that those claims were in time.
3. The remainder of the hearing dealt with the remaining claims: unfair dismissal, wrongful dismissal and direct race discrimination. The effective date of termination of employment was agreed to be 23 April 2025, and the direct race discrimination claim relates to the dismissal and the process leading up to it. As such, all these claims have been presented out of time.
4. The Tribunal heard from the Claimant, who gave her evidence in a clear and open manner. A small bundle of documents was also produced.

### **Findings in Fact**

5. The claimant was employed by the respondent as a senior carer. She was summarily dismissed for alleged gross misconduct on 23 April 2025.
6. She holds a degree in law from a university in Nigeria but has never practised as a lawyer in Nigeria or elsewhere. Her career in the UK has been focused on the care sector, and the claimant had been working towards an SVQ4 qualification in care. As a law graduate, however, she had a general understanding that time limits exist for making claims.
7. The claimant felt a significant amount of shame about her dismissal. She did not disclose the circumstances to some of her immediately family. She experienced depressive symptoms, including a desire to "hide away" but did not seek medical help. She did not want to get into debt so felt the need to work. She was able to focus on work by putting her feelings to one side.
8. She commenced alternative work on 8 May, acting as a self-employed carer to an individual client. She continued in that position until September 2025.
9. On 4 June the claimant received a letter from the SSSC to the effect that the respondent had made a report to them about her. She contacted them by telephone and, on 11 June, was provided with a list of solicitors she might contact. The solicitors mentioned by the SSSC were in Dundee and Glasgow. She did not contact them. The claimant was concerned about the cost of instructing solicitors, particularly if required to travel outside her locality.
10. She was also provided with details of the CAB. She phoned the CAB in Perth on the same date and was advised that they did not have a legal department.

They provided the claimant with a list of solicitors who specialise in employment law.

11. She researched the firms suggested online and concluded that only one of the firms suggested dealt with employment law. She contacted that firm but was told by the receptionist that they did not offer services in employment law. The claimant did not try to contact any other legal firms at that time.
12. On 4 August, having done some more research online, the claimant contacted a solicitor. He asked if she had contacted ACAS and explained the time limit of three months less one day. He told her she should contact ACAS.
13. On 6 August, the claimant contacted a larger CAB branch. Her call was returned by a specialist the following day. He advised her to apply to ACAS.
14. The claimant did so on 12 August. She did not offer any reason for the delay in contacting ACAS after having been advised to do so.
15. The ACAS certificate was issued on 23 September 2025, there having been some delay in allocating a conciliator. The claim was submitted to the Tribunal on 30 September 2025. The claimant was receiving legal advice at that time and was advised to lodge the claim the minute she got the certificate. She did not offer any reason for her delay in doing so having received the certificate.

### **Relevant Law**

16. The relevant time limit for the unfair dismissal complaint is set out in section 111(2) of the Employment Rights Act 1996. For wrongful dismissal, a comparable time limit is contained in article 7 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994.
17. These provisions state that a Tribunal shall not consider a complaint unless it is presented to the Tribunal before the end of three months beginning with the effective date of termination, or 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.
18. In considering whether there is jurisdiction to hear such complaints, the Tribunal is accordingly required to consider the following questions:
  - a) Were the complaints presented within the primary three-month time limit?
  - b) If not, was it reasonably practicable for the complaints to be presented within that period?

- c) If not, were they presented within such further period as the Tribunal considers reasonable?
19. The question of a what is reasonably practical is a question of fact for the Tribunal. The burden of proof falls on the claimant. Whether it is reasonably practicable to submit a claim in time does not mean whether it was reasonable or physically possible to do so. Rather, it is essentially a question of whether it was 'reasonably feasible' to do so (***Palmer and Saunders v Southend-on-Sea Borough Council*** [1984] IRLR 119).
20. Whether the claim was presented within a further reasonable period requires an assessment of the factual circumstances by the Tribunal, to determine whether the claim was submitted within a reasonable time after the original time limit expired (***University Hospitals Bristol NHS Foundation Trust v Williams*** UKEAT/0291/12).
21. For the direct discrimination claim, section 123 of the Equality Act 2010 states that a complaint must be made to the employment Tribunal before the period of three months starting with the date of the act to which the complaints relates or such other period as the employment Tribunal thinks just and equitable.
22. The discretion to extend time is broader than under the "not reasonably practicable" formula (***DPP v Mills*** 1998 IRLR 494), and the court's power to extend time on the basis of what is just and equitable entitles the Tribunal to take into account anything which it judges to be relevant (***Hutchison v 25 Westward Television Ltd*** 1977 IRLR 69). Factors which would assist a Tribunal to decide whether to exercise their discretion include the length and reasons for the delay; the extent to which the cogency of evidence is likely to be affected by the delay; the extent to which the party sued has cooperated with requests for information; the promptness at which the claimant acted once they knew of facts giving rise to the cause of action; and the steps taken to take appropriate advice once the claimant knows of the possibility of taking legal action (***British Coal Corporation v Keeble and others*** 1997 IRLR 336). These Keeble factors are a guide for Tribunal, rather than a list to be adhered to slavishly (***Southwark London Borough Council v Afolabi*** 2003 ICR 800).
23. In ***Abertawe Bro Morgannwg University Local Health Board v Morgan*** [2018] EWCA Civ 640; the Court of Appeal held that:
- "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 reason are relevant matters to which the Tribunal ought to have regard."*

24. When exercising discretion, as well as the ***Keeble*** factors, the Tribunal is also required to carry out a balance of prejudice exercise (***Szmidt v AC Produce Imports Ltd*** EAT 0291/14).

### **Decision**

25. The Tribunal first considered the unfair and wrongful dismissal claims. It being accepted that they were presented out of time, the Tribunal considered whether it was reasonably practicable for the complaints to have been presented in time.
26. It had no hesitation in deciding that it was. The main reason put forward by the claimant was that she did not feel able to deal with the issue earlier due to her state of mind. Although no medical evidence was produced, and as Mr Muirhead submitted, the claimant was fit to work from shortly after her dismissal, the Tribunal accepted that the claimant felt shame and depression which made it difficult for her to take the necessary steps to raise a claim.
27. The difficulty for the claimant, however, is that she did seek advice within the three-month period and was recommended solicitors to contact. Although ignorant of the specific time limits for her claims, she did have a general awareness that time limits apply. She took very limited steps to take legal advice at that time. The same is true with her contacts with the CAB. She only found out the process and time limits after the three-month period, but in the circumstances, there was nothing to prevent her having done so earlier. It was reasonably feasible for her to have done so.
28. It is not, accordingly relevant to answer the third question set out at paragraph 18(c) above. Had it been required to do so, the Tribunal would in any event have found that the claimant did not act within a reasonable period after having been advised to contact ACAS. She was given that advice on the 4<sup>th</sup> of August but did not contact ACAS until the 12<sup>th</sup>. Moreover, while the claimant cannot be criticised for delay by ACAS, once she had the certificate, she did not, as advised, submit the claim immediately. She waited a further week, with no explanation for that delay.
29. The unfair dismissal and wrongful dismissal claims are, accordingly, dismissed.
30. The Tribunal went on to consider the direct race discrimination complaint and the just and equitable extension available. As Mr Muirhead rightly submitted, this is a broader test, and that is reflected in the Relevant Law section above.

31. Considering the length and reasons for the delay, the length is, as the claimant submitted, not particularly significant. The reasons for delay are as reflected above. Although they are not sufficient for the reasonable practicability test, the Tribunal was persuaded that a sense of shame and depressive feelings had a real bearing on the claimant's approach.
32. The claimant's efforts to seek advice are reflected above, and whilst she is criticised for not making greater efforts earlier, she did not delay excessively, and once given clear advice she acted with greater promptness – even if that did not meet the test of reasonably practicability.
33. There is no suggestion that the delay will affect the cogency of the evidence. The respondent already faces a race discrimination claim. The case is set down for a final hearing within a timescale that is typical. There need be no departure from, or extension to, the hearing dates fixed. Moreover, the subject matter of the direct discrimination claim is the dismissal and the process leading up to it, rather than, as is sometimes the case, historic allegations.
34. The Tribunal considered the relative prejudice to the parties of exercising its discretion. There is clearly a very material prejudice to the claimant in refusing it. On the other hand, the respondent already requires to deal with the victimisation claim and the direct race discrimination claim arises from the same set of circumstances. Much of the evidence will be common to both.
35. Having regard to these considerations, the Tribunal decided that it is just and equitable to allow the claim to proceed.
36. The direct discrimination and victimisation claims should now, therefore, proceed to be heard on the dates already fixed.

**Date sent to parties**

28 April 2026