



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001732/2025

Held in Edinburgh via Cloud Video Platform (CVP) on 28 April 2026

Employment Judge Sangster

Mr D Carse

**Claimant
In Person**

Digby Brown LLP

**Respondent
Represented by:
Ms M Macdonald -
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that:

1. The Tribunal does have jurisdiction to consider the claimant's complaint of unauthorised deductions from wages.
2. The Tribunal does not have jurisdiction to consider the claimant's complaints of unfair dismissal, failure to make reasonable adjustments and discrimination arising from disability. Those complaints are therefore dismissed.

REASONS

Introduction

1. The claim was set down for a preliminary hearing to determine whether the complaints were lodged within the requisite time limits.
2. The complaints being brought were discussed at a case management preliminary hearing held on 26 November 2025. It was noted at that time that the claimant brings complaints of:
 - 2.1. Automatically unfair dismissal, as a result of making protected disclosures.

- 2.2. Disability discrimination – failure to make reasonable adjustments during his employment and that his dismissal amounted to discrimination arising from disability.
- 2.3. Unauthorised deductions from wages in respect of his last salary payment.
3. These complaints were discussed at the start of the hearing and it was agreed that these reflected the complaints brought in the ET1. As a result, it was noted that the issues to be determined at this hearing were as follows:

Unfair dismissal /Unauthorised deductions from wages

- 3.1. Were the complaints brought within 3 months of the effective date of termination/the date of the deduction?
- 3.2. If not, was it reasonably practicable for the complaint to be presented within that period?
- 3.3. If not, were they presented within such further period as the Tribunal considers reasonable?

Disability Discrimination

- 3.4. Were the complaints brought within 3 months starting with the date of the act to which the complaint relates?
- 3.5. If not, were they brought within such other period as the Tribunal thinks is just and equitable.
4. The claimant gave evidence on his own behalf. The respondent did not lead any evidence. A joint set of productions was lodged, extending to 53 pages. Each party also lodged a list of the authorities they relied upon.

Findings in fact

5. This Judgment does not seek to address every point about which the parties have led evidence or made submissions on. It only deals with the points which are relevant to the issues which the Tribunal must consider in order to determine the issues which required to be addressed at this hearing. If a particular point is not mentioned, it does not mean that it has been overlooked, it simply means that it is not relevant to the issues to be determined. The relevant facts, which the Tribunal found to be admitted or proven, are set out below.
6. The claimant commenced employment with the respondent, as a Legal Claims Advisor on 23 October 2023. His contract of employment with the respondent stated that the notice required to terminate his employment would

be 4 weeks during the first 4 years, and that *'the notice period can be waived and payment in lieu of notice can be given'* by the respondent.

7. On 29 January 2025, the claimant was orally informed of the termination of his employment. His employment terminated that day and he received a payment in lieu of this notice entitlement.
8. Later that day, he was sent an email by the respondent, attaching a letter confirming the termination of his employment. The letter stated *'Your employment will terminate on 29 January 2025. You will be paid 4 weeks' pay in lieu of notice. In accordance with clause 10.ii of your contract of employment, you will not be required to work a formal notice period. A sum constituting your pay in lieu of notice, less income tax and national insurance contributions, will be paid to you as part of your final salary on 28 February 2025.'* He was informed in the letter that he had no right of appeal, given his length of service.
9. A P45 form was generated on 18 February 2025. This confirmed that the date the claimant's employment with the respondent terminated was 29 January 2025. The claimant commenced alternative employment on 28 February 2025, having attended an interview on the date his employment with the respondent terminated. He passed the relevant section of his P45 to his new employer.
10. The claimant received his final salary payment on 28 February 2025.
11. The claimant engaged in early conciliation in relation to these proceedings from 12 May to 23 June 2025. He presented his claim in these proceedings on 15 July 2025.

Submissions

12. The respondent summarised the evidence, timeline and relevant law. In summary the respondent submitted that:
 - 12.1. The claimant has not demonstrated that it was not reasonably practicable for him to present his complaint of unfair dismissal within the relevant time limit, or that he did so in a reasonable period thereafter.
 - 12.2. It is not just and equitable to extend time in relation to the discrimination complaints. The balance of prejudice weighs more heavily on the respondent.
13. The claimant submitted that time should be extended in respect of all complaints as there was ambiguity as to the termination date and he was

experiencing stress and anxiety. He read through the response he submitted, in advance of the hearing, to the respondent's list of authorities.

Relevant Law

Unfair Dismissal

14. The relevant time limits in relation to unfair dismissal complaints is set out in section 111(2) of the Employment Rights Act 1996 (**ERA**).
15. 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.
16. In considering whether there is jurisdiction to hear such complaints, Tribunals accordingly required to consider the following questions:
 - 16.1. Were the complaints presented within the primary three month time limit?
 - 16.2. If not, was it reasonably practicable for the complaints to be presented within that period?
 - 16.3. If not, were they presented within such further period as the Tribunal considers reasonable?
17. 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***).
18. 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***).
19. Section 97(1) ERA is entitled 'Effective date of termination'. It states:

'Subject to the following provisions of this section, in this Part 'the effective date of termination' –

- (a) *in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,*
- (b) *in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect...'*
20. The leading case in relation to section 97(1)(b) is **Robert Cort & Son Ltd v Charman** [1981] I.R.L.R. 437. The EAT and Court of Appeal have, on numerous occasions since, confirmed that this case remains good authority on the interpretation of section 97, which is not affected by the approval by the Supreme Court in **Societe Generale, London Branch v Geys [2013] IRLR 122** of the "acceptance theory" of termination. **Kirklees Metropolitan Council v Radecki** 2009 ICR 1244, CA was one of those cases. In that, Lord Justice Rix confirmed that *'the effective date of termination will be the date of summary dismissal, as long as that is known to the employee.'*
21. In **Feltham Management Ltd v Feltham UKEAT/0201/16**, HHJ Richardson conducted a review the law in this area and stated, at paragraph 39:
- 'given its statutory setting and importance, section 97(1)(b) in my judgment requires words or conduct which in their context amount to a plain and unambiguous termination by an employer. The termination may be by words or conduct or a mixture of the two; but it must unequivocally convey to the employee on an objective reading or understanding that the employer is terminating the contract. Words or conduct which reasonably leave the employee in doubt as to whether the employer has terminated the contract will not trigger the effective date of termination.'*

Discrimination Complaints

22. The relevant time limits in relation to complaints of discrimination is set out in section 123(1) of the Equality Act 2010 (**EqA**).
23. This states that such complaints should be brought within either:
- 23.1. the period of 3 months starting with the date of the act to which the complaint relates; or
- 23.2. such other period as the Tribunal thinks just and equitable.
24. Section 123(3) EqA states that conduct extending over a period is to be treated as done at the end of the period and failure to do something is to be treated as occurring when the person in question decided on it.
25. The 'just and equitable' test is a broader test than the 'reasonably practicable' test. What is just and equitable depends on all the circumstances. The burden

of proof is on the claimant, as explained in **Robertson v Bexley Community Centre** [2003] IRLR 434, in which the Court of Appeal also said, at para 25:

“When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule.”

26. In **British Coal Corporation v Keeble** [1997] IRLR 336 the EAT indicated that task of the Tribunal, when considering whether it is just and equitable to extend time, may be illuminated by considering section 33 Limitation Act 1980. This sets out a check list of potentially relevant factors, which may provide a prompt as to the crucial findings of fact upon which the discretion is exercised, such as:
- (a) the length of and reasons for the delay;
 - (b) the extent to which the cogency of the evidence is likely to be affected by the delay;
 - (c) the extent to which the party sued had cooperated with any requests for information;
 - (d) the promptness with which the claimant acted once they knew of the facts giving rise to the cause of action; and
 - (e) the steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action.
27. In **London Borough of Southwark v Afolabi** [2003] IRLR 220 the Court of Appeal confirmed that, whilst that checklist provides a useful guide for Tribunals, it does not require to be followed slavishly. In **Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] EWCA Civ 640, the Court of Appeal confirmed this, stating that it was plain from the language used in s123 EqA (‘such other period as the Employment Tribunal thinks just and equitable’) that Parliament chose to give Employment Tribunals the widest possible discretion and it would be wrong to put a gloss on the words of the provision or to interpret it as if it contains such a list.
28. In **Adedeji v University Hospitals Birmingham NHS Foundation Trust** [2021] EWCA Civ 23, the Court of Appeal approved the approach set out in Afolabi and Morgan and, at paragraph 37, Underhill LJ confirmed, that
- ‘rigid adherence to a checklist can lead to a mechanistic approach to what is meant to be a very broad general discretion, and confusion may also occur*

where a tribunal refers to a genuinely relevant factor but uses inappropriate Keeble-derived language. The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular “the length of, and the reasons for, the delay”. If it checks those factors against the list in Keeble, well and good; but I would not recommend taking it as the framework for its thinking.’

Discussion & Decision

Effective Date of Termination

29. The Tribunal considered when the effective date of termination (**EDT**) was. The Tribunal noted that Section 97(1)(b) ERA requires there to be words or conduct which amount to a plain and unambiguous summary termination by an employer. Words or conduct which reasonably leave the employee in doubt will not trigger the EDT. The Tribunal concluded that the EDT was 29 January 2025. It was clear to the claimant that his employment was terminating that day. He was informed of this orally in a meeting. This was then confirmed in writing. The letter contained the sentence ‘*Your employment will terminate on 29 January 2025.*’ That sentence is clear and unambiguous. There could be no reasonable doubt from those words that the claimant’s employment would terminate that day.

Unfair Dismissal

30. The Tribunal considered whether the complaint of unfair dismissal was presented within the primary three month time limit. Given the Tribunal’s findings in relation to the EDT, the relevant time limit expired on 28 April 2025.
31. Whilst the claimant engaged in early conciliation in 2025, as this was done after the expiry of the primary time limits, it did not result in the extension of the primary time limit.
32. The claim against the respondent was presented on 15 July 2025. The claim was accordingly not presented in the primary three month time limit. It was presented 2.5 months after it expired.
33. In relation to whether it was reasonably practicable for the complaint to be submitted on or before 28 April 2025, the Tribunal considered whether he claimant has demonstrated that it was not reasonably feasible for him to have done so. The Tribunal considered the principal explanations for the late submission of the claim which the claimant advanced, and reached the following conclusions in relation to each:
- 33.1. **Health.** While the claimant made reference to experiencing stress and anxiety, and recovering from a hand injury, after the termination of his

employment with the respondent, the Tribunal found that there was no physical or mental impediment which rendered it not reasonably feasible for the claimant to lodge his claim by 28 April 2025. The claimant was sufficiently well to commence alternative employment from 28 February 2025, and maintain this thereafter. He produced no medical evidence.

- 33.2. **EDT.** The claimant's principal assertion was that he believed that his employment terminated on 28 February 2025, as he did not understand what 'payment in lieu' meant. He stated that that date was calculated taking into account the 4 week notice period. That, however, would have provided a termination date of 26 February 2025. 28 February 2025 was the date he received his final salary payment from the respondent. For the reasons set out above, the Tribunal was satisfied that the EDT was 29 January 2025, and this was unambiguously communicated to the claimant on that date. The Tribunal noted that the claimant knew of the ability to present a claim, and that there were time limits for doing so. Had he made the relevant enquiries, or conducted any research on the internet, he could readily have ascertained what 'payment in lieu' meant, if he did not know. It was plainly practicable, possible or feasible for him to have made enquiries or conducted research in relation to this. Given the remaining terms of the letter however, particularly the very clear statement confirming the termination date, the Tribunal did not accept there was any ambiguity.
34. Taking these points into account, the Tribunal conclude that the claimant did not demonstrate that it was not reasonably practicable for him to bring his complaint of unfair dismissal within the requisite time limit.
35. The Tribunal accordingly concluded that it does not have jurisdiction to consider the claimant's complaint of unfair dismissal. The claimant's complaint of unfair dismissal is therefore dismissed on the basis that it was presented out of time.

Disability Discrimination

36. The claimant's complaints of failure to make reasonable adjustments during this employment and that his dismissal constituted discrimination arising from disability (the **Discrimination Complaints**) relate to acts/omissions which must have occurred on or before 29 January 2025. The 3 month time limit accordingly expired, at the latest, on 28 April 2025. The claimant lodged his claim 2.5 months later, on 15 July 2025.

37. Whilst the claimant participated in early conciliation, as this was done after the expiry of the primary time limit, it did not result in the extension of the primary time limit in respect of the Discrimination Complaints.
38. The Tribunal accordingly determined that the claim was not brought within the period of three months from the act(s) complained of.
39. The Tribunal considered whether the Discrimination Complaints were brought within such other period as was just and equitable. The Tribunal considered the reasons advanced by the claimant for the delay of 2.5 months. In relation to his health, as set out above, the Tribunal concluded that the claimant had not demonstrated that his health had any impact on his ability to present his claim. The main reason relied upon by the claimant was that he believed that time started to run from 28 February 2025, rather than 29 January 2025. The Tribunal's conclusions in relation to this are set out in paragraph 33.2 above.
40. The Tribunal took these findings, in relation to the length of and reasons for the delay into account, as well as the balance of prejudice between the parties in the claim proceeding at this stage, when determining whether it is just and equitable to extend time. The Tribunal concluded that no satisfactory explanation was advanced for why the complaints were not brought sooner. Whilst the Tribunal is aware that the claimant will be unable to pursue the Discrimination Complaints if discretion is not exercised in his favour, the Tribunal is also mindful that the respondent would also be prejudiced if the claims were allowed to proceed at this stage. Taking into account all the circumstances, the Tribunal concludes that the balance of prejudice weighs more heavily on the respondent.
41. For these reasons the Tribunal concluded that the claim was not brought within the relevant time limit, or such other period as was just and equitable. The Tribunal accordingly does not have jurisdiction to hear the Discrimination Complaints.

Unauthorised Deductions from Wages

42. The claimant's final complaint relates to his final salary payment. He asserts that the respondent made of unauthorised deductions from his final salary payment, which was paid on 28 February 2025. The claimant engaged in early conciliation from 12 May to 23 June 2025, resulting in an extension of the primary time limit in respect of this complaint. He presented his claim on 15 July 2025, within the requisite time limit, as extended by early conciliation. The Tribunal accordingly have jurisdiction to hear this complaint.