EMPLOYMENT TRIBUNALS (SCOTLAND)
Case No: 8002633/2025

Held in Glasgow on 27 April 2026

Employment Judge M Robison

Mr O Akanni	**Claimant** **In Person** **[Supported by Mr D Adetoro]**
Precious Care Services Ltd	**Respondent** **Represented by** **Mr E Ogunsan** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:

1. The claimant's application to amend to change the name of the respondent to Precious Care Services Ltd is granted.

2. The following claims are dismissed because they are time barred:
    a. Detriment/dismissal for whistleblowing;
    b. Breach of contract/wrongful dismissal; and
    c. Unlawful deduction from wages.

3. Although the claims under the Equality Act 2010 were lodged outwith the three month time limit, it is just and equitable to allow them to proceed.

4. The case will proceed to a final hearing to determine the claim(s) under the Equality Act 2010.

REASONS

1. The claimant lodged a claim in the Employment Tribunal on 31 October 2025 against My Homecare Glasgow, including detriment/dismissal for whistleblowing; victimisation under the Equality Act 2010; breach of contract for failure to pay notice pay and wrongful dismissal; unlawful deduction from wages; and "immigration related" discrimination.

Background procedure

2. The claimant's employment terminated on 30 June 2025, an EC certificate was issued on 17 October 2025, and he lodged a claim in the Employment Tribunal on 31 October 2025. The claimant was advised by letter dated 4 November 2025 from Tribunal administration that his claim had been accepted although it appeared that it had been presented out of time.

3. The respondent entered a response resisting the claim and making an application for strike out on two grounds. First, that it had been lodged out of time. The second ground was that the claimant had instituted the claim against a non-legal entity "having chosen to bring a claim against the trading name" of the respondent, rather than the company name which is Precious Care Services Ltd. The respondent asserted that therefore the Tribunal had no jurisdiction to hear the claim.

4. The claimant submitted a written response to the respondent's application for strike out as requested dated 4 February 2026.

5. At a case management preliminary hearing on 9 February 2026, EJ Kemp listed this case for a preliminary hearing on jurisdiction (time bar) and to decide whether to amend the claim form by amending the name of the respondent and/or making claims under s.13, 19 and 26 of the Equality Act 2010 (as well as for case management as appropriate).

6. EJ Kemp had raised the fact that the claim referred to discrimination because of immigration status, while the claimant had referenced in his agenda the protected characteristic of race. EJ Kemp suggested that the claimant may require to amend his claim to substitute race for immigration status although suggested that could be part of an application to amend to introduce claims under s.13 and 26.

7. Although parties had subsequently lodged written submissions on the matter of time bar and amending the name of the respondent, the claimant had not lodged any application to amend his claims under the Equality Act 2010. When I asked at the outset of the hearing whether he intended to do so, the claimant appeared to suggest that he did not intend to make any such application. However, given that the claimant is unrepresented and that he had not had an opportunity to fully discuss the matter with Mr Adetoro, I invited him to take time to consider this position, and if so advised, to make any such application. He should do so without delay. Clearly, the respondent will be entitled to object.

8. The issues to be considered at this hearing were:
    i. whether the claimant's amendment to change the name of the respondent should be allowed;
    ii. whether his claims were out of time,

iii. if so, in respect of the Equality Act claim, whether it was "just and equitable" to extend time, and

iv. in respect of the other claims, whether it had been "not reasonable practicable" to lodge the claims in time.

9. The respondent lodged a joint file of productions for this preliminary hearing, as well as a written address dated 6 April 2026 from the respondent, and the claimant's response to that dated 15 April 2026.

10. At the hearing, I heard evidence from the claimant. The claimant was supported by Mr D Adetoro (who advised that is he the pastor at his church, and that he has a legal background). Although Mr Adetoro did not formally represent the claimant, I gave him permission to make submissions on his behalf after evidence had been heard.

11. Mr Ogunsan was instructed by Mr D Akintola, who is the respondent's HR representative. Mr Ogunsan had originally intended to call him as a witness, but it transpired that the matters he could speak to were not in dispute so he did not require to call him to give evidence.

Findings in fact

12. The Tribunal finds the following relevant facts agreed or proved, based on the evidence heard and the productions lodged.

13. The claimant has an HND in Public Administration and a background in IT. He came to the UK with his wife who was on a student visa.

14. The claimant commenced employment with the respondent on 10 December 2024 as a health care support worker. His employment was terminated on 30 June 2025.

15. Due to difficulties at work prior to the termination of his employment, the claimant undertook research regarding his situation and ascertained that he could contact ACAS for advice about what to do.

16. The claimant had contacted Acas on several occasions before his employment was terminated. He was hoping that matters of concern with his employer could be resolved.

17. The claimant telephoned ACAS on the day of the termination of his employment (30 June 2025) and a few days later, and spoke to ACAS officers on a number of occasions after that.

18. When corresponding by telephone with Acas, he was told he could not rely on the claims he was suggesting because he did not have two years' service with the company. He was advised by ACAS that there were time limits and that he had 90 days, minus one day, to

lodge a claim. The claimant was advised to engage a solicitor but he could not afford to do that.

19. He did however speak to a friend at his church and as a result was introduced to Mr Adetoro who was able to give him some advice. Although Mr Adetoro was busy. They spoke a number of times on the telephone during July, and discussed the fact that he had not worked long enough in the company for some of the claims he wanted to make. He was not however able to meet him in person until August.

20. When the claimant was looking for advice, he engaged with a solicitor online who advised him to complete an ET1 form, and also mentioned time limits.

21. The claimant however was of the view that he still did not have “the correct legal words” to describe his claim and he was advised by ACAS that he needed to have “the right claim” before he submitted the ET1.

22. The claimant got further advice from Mr Adetoro in September and subsequently telephoned Acas to instigate early conciliation. This was on 16 October 2025. He understood that it was only then that Acas could issue a certificate to apply to the Tribunal. The EC certificate was issued on 17 October 2025. The claimant understood from what he was told by ACAS that he had a further 30 days to lodge the claim, and he did so on 31 October 2025.

23. During that time he drafted the ET1 and got it checked by Mr Adetoro who advised him to make some amendments. He reviewed it to ensure that it contained no mistakes.

24. During the time from the termination of his employment in June until he lodged the claim in October, the claimant found himself in difficult personal circumstances, which impacted on his health. He experienced emotional distress, anxiety and mental strain, but that was not sufficiently serious to see a doctor or a therapist.

25. The claimant was concerned about his immigration status. Because the respondent was sponsoring him, he believed that the termination of his employment meant that his visa was terminated, requiring the respondent to report the matter to the Home Office. He believed therefore that it was very important for him to secure another job and another visa. The loss of his job therefore caused him “immigration uncertainty” when his right to remain in this country depended at that time him having employment. During that time he applied for over 300 jobs and had over 10 interviews. So far he has been unsuccessful in securing a job and he believes that this is because of his precarious immigration status and because he does not have a reference from his former employer. He did not however make any request of them for a reference.

26. His anxiety in circumstances of financial insecurity and immigration uncertainty was exacerbated by concerns about his daughter (then aged 3) for whom he is a primary carer (along with her mother). His daughter suffers from a number of conditions, including sickle cell disease which requires the claimant to take her to Queen Elizabeth Hospital every three weeks. He also will on occasions get calls from his daughter's school to take her to hospital because of her increased temperature. He found his circumstances overwhelming because he was concerned that without an income his family may become destitute.

27. The claimant was however able to apply for another visa on the basis of his wife and daughter being in this country, and in November 2025, he made an application for an FLR visa (understood to be Family Leave to Remain) which allows him to remain in this country for the time being.

Tribunal deliberations

The claimant's application to amend to correct the respondent's name

28. The respondent originally requested strike out on the basis that the claimant had sued the wrong legal entity. In a "written address" dated 1 February 2026, they argued that such a claim is fundamentally defective and cannot succeed, relying on two cases which EJ Kemp had not been able to locate at the citations stated and which the respondent subsequently confirmed they could not be located.

29. The claimant had originally set out his position in writing in the letter dated 4 February 2026. Although he had said it was "an honest mistake by a self-represented claimant" during submissions made by Mr Adetoro on his behalf he sought to "amend" that submissions to make it clear that the claimant had used the name for the respondent which the respondent used to communicate with their employees, which was misleading.

30. The claimant submitted in his written submissions that "I worked under the trading name My Homecare Glasgow and reasonably believed this to be the correct legal entity". He stated that "this type of error is not a basis for striking out a claim, because the Tribunal has wide powers to substitute or correct the name of a respondent where the intended employer is clear. The respondent has already filed an ET3…demonstrating that it fully understood it was the intended employer. No prejudice arises from the substitution". The claimant relied on the Tribunal's discretion and in regard to the name of the EC certificate argues that the purpose of EC is to notify the employer of the dispute, and that purpose was fully achieved. He requested that the Tribunal substitutes the respondent's correct legal name and allow the claim to proceed.

31. The respondent's legal adviser, Mr Ogusan on 6 April 2026 stated that "the respondent submits that such an amendment would be procedurally unfair, contrary to established

legal principles and inconsistent with the purpose of limitation rules and Tribunal procedure". He relied on decisions of the Court of Appeal based on the civil procedure rules and in regard to cases in the civil courts and not the employment tribunal. He also relied on the fact that the EC certificate was in the name Myhomecare Glasgow, and argued that the certificate cannot validate proceedings against the respondent's company, and that any amendment to substitute a legal entity would amount to substitute a legal entity would amount to introducing a new claim. He relies in particular on the fact that the original claim was filed outside the statutory limitation period. He argued that permitting the amendment would effectively backdate the substitution to the date of the original claim, thereby circumventing the limitation regime. This would cause substantial prejudice and undermine the integrity of the statutory scheme, he argued.

32. The Employment Tribunal is not bound by the civil procedure rules (which only apply in England and Wales in any event). The rules which apply in the Employment Tribunal are to be found in the Employment Tribunal Procedure Rules 2024. In particular, under rule 33 of the 2024 Rules, employment tribunals have a wide discretion to add, substitute and/or remove parties to proceedings. Parties can be substituted where it appears there are "issues between" the parties falling within the jurisdiction of the Tribunal which it is in the interests of justice to determine.

33. The same principles apply to an amendment to substitute parties as to any other type of amendment. Accordingly, the principles of *Selkent v Moore* 1996 ICR 336 apply and the test is ultimately a question of the balance of hardship and injustice.

34. *Selkent* also confirms that time bar is not fatal when it comes to considering whether an amendment can be allowed. Further, a Tribunal can add or substitute another respondent to an existing claim even after the time limit against that respondent has expired (see *Drinkwater Sably v Burnett* 1995 ICR 328). The fact that the original claim may be out of time is beside the point, because consideration will be given to applying the rules on time limits and extending time limits to the original claim, as is the case in this claim.

35. On the matter of the name on the EC certificate, in *Drake International Systems Ltd v Blue Arrow Ltd* 2016 ICR 445, the EAT held that no further procedure is required where a claimant seeks to amend a claim to substitute one respondent for another (a decision which was recently approved by the Court of Appeal in *Reynolds v Abel Estate Agents Ltd* 2026 ICR 369).

36. Bearing in mind the guidance in *Selkent,* and subsequent decisions of the EAT and the Court of Appeal, the key question is the balance of prejudice.

37. Here there is no prejudice to the respondent in allowing the amendment because as the claimant pointed out, the key point is that there should be service on the correct employer.

It is clear that the respondent having lodged an ET3 as the claimant's employer will not be prejudiced.

38. Accordingly, the claimant's application to substitute Precision Care Services Limited as the respondent is allowed.

Time bar: not reasonably practicable

39. Complaints about detriment/unfair dismissal following a protected disclosure under section 48 of the Employment Rights Act 1996 must be lodged within three months of the detriment which a claimant claims to have suffered as a result of making the protected disclosure or the claimant was dismissed.

40. Claims for unlawful deductions from wages (under section 13 of the Employment Rights Act 1996) must also be lodged within three months of the date of the last deduction.

41. A breach of contract claim must also be lodged within three months of the date of termination of the contract giving rise to the claim (Article 7 of the Employment Tribunals (Extension of Jurisdiction Scotland Order 1994).

42. In regard to each of these types of claims, the Tribunal is given discretion to allow late claims where it was not reasonably practicable to lodge a claim, provided the claim was lodged within a reasonable time thereafter.

43. Where the claim is lodged out of time, the Tribunal must consider whether it was not reasonably practicable for the claimant to present the claim in time, the burden of proof lying with the claimant. If the claimant succeeds in showing that it was not reasonably practicable to present the claim in time, then the tribunal must then be satisfied that the time within which the claim was in fact presented was reasonable.

44. The Court of Appeal set out the correct approach to the test of reasonable practicability (*Lowri Beck Services Ltd v Brophy [*2019] EWCA Civ 2490). Lord Justice Underhill summarised the essential points as follows:

    i. The test should be given "a liberal interpretation in favour of the employee" (*Marks and Spencer plc v Williams-Ryan* [2005] EWCA Civ 479, which reaffirms the older case law going back to *Dedman v British Building & Engineering Appliances Ltd* [1974] ICR 53);

    ii. The statutory language is not to be taken as referring only to physical impracticability and for that reason might be paraphrased as whether it was "reasonably feasible" for the claimant to present his or her claim in time: see *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] IRLR 119….

    iii. If an employee misses the time limit because he or she is ignorant about the existence of a time limit, or mistaken about when it expires in their case, the

question is whether that ignorance or mistake is reasonable. If it is, then it will [not] have been reasonably practicable for them to bring the claim in time (see *Wall's Meat Co Ltd v Khan* [1979] ICR 52); but it is important to note that in assessing whether ignorance or mistake are reasonable it is necessary to take into account any enquiries which the claimant or their adviser should have made;

iv. If the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee (*Dedman*)…

v. The test of reasonable practicability is one of fact and not law (*Palmer*).

45. I accepted that the claimant was being candid when he gave evidence about his knowledge of time limits. The claimant stated that he had been advised about time limits by Acas conciliators and by a solicitor whom he had contacted for advice. He was candid too about the reasons for the delay in lodging which related not only to his personal circumstances but also to concerns about getting the claim correct.

46. In this case the claimant was dismissed on 30 June 2025. Although he obtained an EC certificate on 17 October 2025, he did not lodge his claim until 31 October 2026, which is 32 days late. Accordingly I find that the claimant did lodge his claim out of time and the question to consider was whether it was not reasonably practicable to have done so.

47. While I accept that the test should be given a liberal interpretation in favour of the employee, here the claimant was aware of the time limit. This is not a case where the claimant was ignorant of the time limit or when it expired given the circumstances of his claim. While the claimant did not instruct a solicitor, he was advised about time limits when he contacted a solicitor for advice and he confirmed that Acas conciliators had advised him of time limits.

48. The claimant repeated several times that the reason for his delay in lodging the claim was because he did not have "the right legal words" and that there were some delays in him getting assistance from Mr Adetoro. He had however managed to speak to him by August, which was of course before the time limit had expired.

49. All the while however he was in communication with Acas who had advised him of the time limit. During this time he was capable of lodging more than 300 job applications. As Mr Ogusan submitted, all the claimant had to do was to contact Acas and request the EC certificate within the three months, and he had failed to take that simple step.

50. Although the claimant referenced personal circumstances and concerns about his immigration status, I could not understand why he delayed in lodging the claim for the reasons he stated. I appreciated from what he said that he could not claim "ordinary" unfair dismissal given he did not have two years' service, but he sought to advance other claims which would not require two years' service. I was left with the conclusion that, given he

knew of the time limit, it would have been reasonably feasible for him to have lodged a claim in time, even if the wording was not perfect, which would have protected his position.

51. The claimant said that he was advised by an Acas conciliator that he had one month from the issue of the certificate to lodge his claim. He may well have misunderstood what he was told, because the EC extension could not be relied on where the claimant had already lodged his claim late.

52. I have decided therefore that it cannot be said that it was "not reasonably practicable" to lodge the claim in time. Accordingly the following claims have been lodged out of time and must be dismissed: detriment/unfair dismissal for whistleblowing; breach of contract (notice pay and wrongful dismissal) and unlawful deductions from wages.

Time bar: just and equitable extension

53. The claimant has lodged his claim out of time, and while it was "reasonably practicable" for him to have lodged the claim in time, the question is, in regard to the Equality Act claims whether it was just and equitable to allow the claimant more time to lodge the claim.

54. The relevant provisions relating to time limits in discrimination cases is set out in section 123 of the Equality Act 2010 which states that proceedings "may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable".

55. *British Coal Corporation v Keeble* [1997] IRLR 336, provides that whilst not mandatory the list of factors contained in s.33 of the Limitation Act 1980 is a useful checklist of relevant factors to take into account when considering the just and equitable question, namely:
    i. Prejudice;
    ii. The length of, and reasons for the delay;
    iii. The extent to which the cogency of evidence is likely to be affected by the delay;
    iv. The extent to which the party sued has co-operated with requests for information;
    v. The promptness with which the claimant acted once he knew the facts giving rise to the cause of action; and
    vi. The steps taken by the claimant to obtain appropriate advice once he knew of the possibility of taking action.

56. However, in *Adedeji v University Hospitals Birmingham NHS Foundation Trust* 2021 EWCA Civ 23 the Court of Appeal confirmed that a rigid adherence to what have become known as "the Keeble factors" is to be discouraged when dealing with what is a very broad general discretion on the just and equitable question.

57. The Court of Appeal in *Jones v Secretary of State for Health and Social Care* [2024] EWCA Civ 1508 has recently endorsed the principles laid down by the Court of Appeal in

Abertawe Bro Morgannwg Health Board v Morgan [2018] ICR 1194. In that case the Court of Appeal described the Tribunal as having the 'widest possible discretion to extend time'. While there are no prescribed factors to which the Tribunal is enjoined to have regard in determining whether to exercise its discretion in favour of allowing a late claim to proceed, the length and reasons for the delay, and prejudice to the respondent will almost always be relevant.

58. What is clear is that the test is different from the "not reasonably practicable" test, and indeed that the discretion to allow a claim in late for "just and equitable" is clearly wider.

59. While cognisant of Lord Justice Underhill's health warning in *Adedeji*, in assessing whether it is just and equitable in this case to extend time, I first considered the relevant "Keeble" factors, then focussed on the question of prejudice.

Length and reason for the delay

60. As noted above, the claimant has lodged his claim 32 days outwith the three month time limit.

61. In terms of the reasons for the delay, as I understood it, the claimant delayed lodging the claim (although he knew of the time limit) because he was seeking further advice, because he was concerned to get the wording of the ET1 correct. However, he explained the delays were contributed to by other personal circumstances, and in particular because his mental health was impacted by the termination of his employment, because he had been sponsored by the respondent and his termination meant that his immigration status was at least precarious, meaning that it was very important that he got another job. He was concerned too because his wife and daughter are living in this country and he has the stress and anxiety of helping his daughter who has sickle cell disease and other conditions.

62. During evidence and submissions, there was a lack of consensus about the immigration rules and how these would impact on the claimant. The respondent submitted that the claimant did not come to the Tribunal with "clean hands" and I understood that to relate to a misrepresentation of his immigration status and visa applications.

63. Clearly it is not appropriate to consider the detail of the immigration rules, but I was prepared to accept that where the claimant was in this country on a visa and where he had lost his job that his immigration status would be a particular source of concern for him, especially in the claimant's situation where he has a young daughter with health conditions to care for.

64. Despite the stress and anxiety following the termination of his employment, the claimant did not himself require to visit a GP or a therapist, so that it must be concluded that the impact on his mental health was not severe.

The extent to which the cogency of evidence is likely to be affected by the delay

65. In this case the claim was lodged 32 days after the time limit had expired. I could not say that such a short delay was likely to have affected the cogency of evidence to any significant extent.

Promptness of claimant's action

66. The claimant was made aware of time limits but for the reasons noted above he did not act promptly to lodge the claim.

67. I take account of the fact that the claimant obtained the EC certificate on 17 October 2026, but misunderstood the position with regard to the need to lodge immediately thereafter, mistakenly believing that he had one month to do so after its issue.

68. I take account of the fact that the claimant had been put in contact with Mr Adetoro and that he was reliant on him for advice and for getting the wording of the ET1 right, but that he was busy and there was a delay in him getting back to him.

Steps taken to obtain advice

69. The claimant advised that he had contacted Acas even before his employment had terminated. He said that he contacted Acas on the day that he was dismissed and on several occasions after that. He said that he had been told by Acas to seek legal advice and he had attempted to contact solicitors but he could not afford to engage one. He was keen to obtain further advice and was put in touch with Mr Adetoro (the paster at his church), who is not a practicing solicitor but who has a legal background.

Prejudice to the parties caused by the delay

70. A key consideration that I must take into account is the prejudice to the parties in granting, or refusing, the application for the extension of time.

71. As noted above the delay in lodging the claim was 32 days. While it is inevitable that a respondent will consider themselves to be prejudiced by having to defend the claim, but given the respondent has been aware of this claim since that time, and has actively engaged in defending the claim, the prejudice to them in the claim proceeding must be limited.

72. In contrast the claimant will not be entitled to pursue his claims at all if the Equality Act claims are also to be dismissed as out of time.

73. That said, the respondent has expressed misgivings about the prospects of success in relation to the Equality Act claims in particular. As things stand, it may well be that the only valid claim before the Tribunal is a claim for victimisation (which is a stand-alone claim), as there is a question mark over whether the claimant's claim for "immigration status" discrimination could be validly pursued as currently described.

74. The respondent also argues that the claimant has not come to this litigation “with clean hands”, which I understood related to his explanation of his immigration status and the fact that the claimant had not contacted the respondent after his employment was terminated or asked for a reference. Mr Ogunsan questions his motivation for pursuing the claim, suggesting that he has brought the claim to “test the waters” and “waste time” and that it would not be just to allow such a “flimsy claim” to proceed.

75. As noted above, I accepted that the claimant’s evidence was credible and I could not say without hearing further that the claimant has questionable motives for bringing the claim. Further, while I accept that the strength of the claim may be a factor in the assessment of prejudice, I do not consider that I should take account of the merits at this stage, where I have not heard full argument on that matter, where it is likely that question cannot be answered without hearing evidence, and given the possibility that the claimant will make an application to amend in any event.

Conclusions

76. Considering these relevant factors taken cumulatively, I conclude that given in particular the length of the delay and the limited prejudice to the respondent, balanced against the prejudice to the claimant who will not be permitted to pursue any claims, that it is just and equitable extend time for lodging the claim in this case.

77. The claims relating to whistleblowing, breach of contract and unlawful deductions of wages having been lodged out of time are dismissed.

78. The outstanding claims, relating to the Equality Act 2010 only, will proceed to a final hearing. Date listing letters will now be issued to parties.

Date sent to parties **19 May 2026**