



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss M El Harrachy

**Respondent:** www.axparis.co.uk Ltd

**Heard at:** Manchester (in public; in person)

**On:** 25 March 2025  
6 September 2025 and  
2 February 2026 (In Chambers)

**Before:** Employment Judge Holmes (sitting alone)

## Appearances

For the claimant: In person

For the respondent: Mr L Fakulne (Solicitor)

Interpreter : Mr Ali

## RESERVED JUDGMENT ON PRELIMINARY HEARING

It is the judgment of the Tribunal that:

1. All the claimant's claims of race discrimination were presented out of time, and it would not be just and equitable to extend time for their presentation. They are dismissed.
2. The claimant's claims of unlawful deductions from wages, if any, pre-date 2 July 2023 and were presented out of time and it was reasonably practicable to have presented them within time;
3. Further, or in the alternative, the claims that the claimant seeks to make as unlawful deductions from wages claims are not, on a true analysis, such claims, and the Tribunal has no jurisdiction to hear them, and they are dismissed.

## PROPOSAL TO STRIKE OUT THE UNFAIR DISMISSAL CLAIM OR MAKE A DEPOSIT ORDER

4. The claimant's claim of unfair dismissal was presented in time, but, of its own motion the Tribunal is considering striking out that claim, or making a deposit order, on the

grounds that it has no reasonable prospects of success , or has little reasonable prospects of success.

5.If the claimant wishes to object to this proposal, she must by **27 March 2026** provide in writing to the Tribunal and the respondent the following further information:

- a) Does the claimant accept that the respondent dismissed her because of her absence from work (i.e. capability) , or does she suggest that it was for some other reason, and , if so, what was that reason?
- b) Does the claimant agree or deny that as at the date of her dismissal she had been absent from work, save for 23 January to 30 January 2023, since 10 October 2022?
- c) Does the claimant agree or deny that the respondent sought her consent to obtain an occupational health report upon her?
- d) If she agrees, does she also agree that she did not provide consent to the respondent obtaining such a report ? If she disagrees, when and how did she provide such a consent?
- e) If she did not provide such consent, did she explain to the respondent why, and, if so, when and how did she do so?
- f) Does the claimant agree or deny that she was invited to a capability meeting to be held on or about 26 June 2023 ?
- g) If so, does the claimant agree or deny that she did not attend that meeting?
- h) If she agrees , did she seek any postponement, or provide any explanation to the respondent for her absence, or in any other manner communicate with the respondent about this meeting?
- i) Does the claimant agree that following the lodging of her appeal she was invited to an appeal hearing on in August 2023?
- j) Does the claimant agree or deny that she did not attend that hearing, nor seek a postponement of it, nor explain to the respondent why she could not, or did not attend it? What, if any, communication did the claimant have with the respondent about the appeal hearing?
- k) Did the claimant seek any assistance or representation from her trade union in relation to the capability meeting or the appeal meeting?
- l) In general terms, why , after 10 months absence, does the claimant contend that her dismissal was unfair, either procedurally , or substantively ?
- m) What was the date upon which she commenced her new employment in 2023, on what days and for how many hours did she work, producing any documentary evidence as to when that new employment commenced, and its terms.

6.If the claimant wishes the Tribunal to take into account her ability to pay any deposit that it may order, she shall by **27 March 2026** provide to the Tribunal and the respondent details of her means, setting out her income and expenditure, savings and capital, with supporting documentation.

## REASONS

### ***1.The procedural history.***

1. By a claim form presented on 7 November 2023 the claimant brings claims of unfair dismissal, unlawful deduction from wages and race discrimination. The claims have been the subject of four previous preliminary hearings, on 3 June 2024, 10 July 2024, 14 November 2024 and 25 March 2025. That last hearing could not be concluded, and was re-listed for 6 May 2025. Unfortunately due to the closure of Alexandra House that day, that hearing had to be postponed. It was eventually re-listed, and heard on 6 September 2025.

2. In these hearings the claims were clarified, and the issues as to time limits were identified. After some analysis , it has emerged that the claimant's claims of unfair dismissal, and possibly for unlawful deductions from wages arising upon her dismissal have been brought in time, but that any claims which pre-date 2 July 2023 (i.e 3 months before the claimant commenced ACAS early conciliation) are all out of time. That affects all her claims of race discrimination, and any unlawful deductions from wages claims that pre-date 2 July 2023.

3. These issues were identified in the preliminary hearing before Employment Judge Butler on 14 November 2024, and he listed a public preliminary hearing to determine:

(i) Were the race discrimination complaints in their entirety brought outside of the 3-month primary time limit to bring such complaints, even after allowing for extensions to time for ACAS early conciliation?

(ii) If the race discrimination complaints were brought out of time, would it be just and equitable to extend time to give the tribunal jurisdiction over those complaints?

(iii) Were the unlawful deduction from wages complaints, insofar as they refer to underpayment of wages, brought outside of the 3-month primary time limit to bring such complaints, even after allowing for extensions to time for ACAS early conciliation?

(iv) If the unlawful deduction from wages complaints were brought out of time, has the claimant established that it was not reasonably practicable to bring the claim in time? And, were the complaints brought within a reasonable time thereafter?

4. He also made orders that the claimant prepare and serve a witness statement in support of any application to extend the time for presentation of the claims, and for a hearing bundle, both of which have been complied with. The Tribunal accordingly has a witness statement from the claimant dated 25 February 2025, with some attachments, and a hearing bundle, to which references to page numbers relate. There was , however,

a previous hearing bundle, for the hearing held on 10 July 2024, and some of the documents referenced in this judgment are to be found therein.

5. The claimant, and the Tribunal, was assisted in the hearing of 25 March 2025 by Mr Qasem, Interpreter, and Mr Fakunle appeared for the respondent.

6. The claimant gave evidence. During her evidence, in fact not long into it, when being questioned about the extent to which she was relying upon any medical condition which prevented her bringing the claims in time, and having attached to her witness statement some medical records which did not appear to cover the relevant periods, she said that she had other medical records, in hard copy form, with her, and that these covered the other periods in question.

7. After an adjournment the claimant initially produced the entirety of these records to the Employment Judge, but after a further adjournment over lunch, she reduced these to some 28 pages. The claimant also produced 4 Fit Notes.

8. She confirmed that she did wish to rely upon these in support of her applications to extend time. The Employment Judge sought the views of the respondent upon the late application to be permitted to rely upon additional documents which had not been disclosed to the respondent.

10. Mr Fakunle very pragmatically, and fairly, did not object to their admission, but clearly (as it was now gone 3.00 p.m.) he would need time to consider them and take instructions, and would have questions for the claimant upon them. In those circumstances it was clear that the hearing could not proceed, but must be postponed. The claimant did not disagree.

12. The question arose of whether the hearing should be abandoned, be part – heard. The latter course was taken, which meant the final hearing had to be postponed. This was explained to the claimant, so she was aware of the consequences of pursuing her race discrimination claims (the main claims that are affected by the time limit issues), but she remains, as she is entitled to, keen to press on with them. Whilst the Employment Judge could sit on 6 May 2025 to conclude this hearing, it could not take place.

## ***2.The resumed hearing.***

13. At this hearing the claimant again appeared in person, with the assistance of Mr Ali, Interpreter, and Mr Fakunle appeared again for the respondent.

14. The claimant resumed her evidence, having made a further witness statement – “Updated Witness Statement Regarding Time Limits” dated 22 April 2025. The respondent did not adduce any evidence. At the conclusion of the hearing there was insufficient time for the parties both to make their closing submissions, so consideration was given as to whether there would have to be a further hearing for them to do so, or whether they could each make written submissions. As was discussed at the time, the Employment Judge had reservations about the claimant making written submissions, for which the claimant would not have the assistance of a Tribunal – appointed Interpreter. As, however, she was expecting to have some assistance in drafting her

submissions, she was content to make written submissions, which she could do after having had sight of the respondent's submissions. The Tribunal accordingly ordered sequential exchange of closing submissions. The respondent duly submitted its submissions on 7 November 2025, and the claimant hers on 5 December 2025. As advised, the Employment Judge deliberated in Chambers on 2 February 2026 (the first available date) , and this reserved judgment is now issued.

15. Having heard the evidence, and considered the submissions of both parties, the Tribunal find the following relevant facts in relation to the time limit issues. References to page numbers are to pages in the hearing bundle prepared for this hearing (unless they are references to the previous preliminary hearing bundle, or the claimant's medical records, of which there are 113 pages) .

15.1 The claimant , who is of Moroccan nationality, was employed by the respondent from 2 August 2019 until her dismissal on 11 July 2023 (the respondent's date in the Particulars of Response, the claimant actually states an earlier date of 28 June 2023, which in the body of the ET3 the respondent accepts as being correct ).

15.2 By a claim form presented on 7 November 2023 the claimant brought claims of unfair dismissal, unlawful deduction from wages and race discrimination. She was, and remains, unrepresented. The claimant had commenced ACAS early conciliation on 2 October 2023, and obtained a certificate on 11 October 2023. In the preliminary hearing held by this Employment Judge on 10 July 2024 the issues of the date of the dismissal, and whether the unfair dismissal claim had been brought out of time were discussed, and the conclusion reached that the claimant's date of termination was later than she had stated, and was , at the earliest , 6 July 2023, making her unfair dismissal claim in time (see page 49 of the bundle).

15.3 The claimant's claim form as originally presented contained little detail about her discrimination claims, and, in particular no dates were specified.

15.4 The claimant provided further details of her claims in a document entitled "Response to Particulars of Respondent" dated 19 May 2024 (not in the bundle, it seems), but by the Tribunal's order sent to the parties on 19 July 2024 the claimant was ordered to provide additional information about both her unlawful deductions from wages claims, and her race discrimination claims (pages 50 and 51 of the bundle).

15.5 The claimant did so in two documents, the first dated 7 August 2024, and second dated 4 September 2024 (pages 57 to 61 and 55 to 56 of the bundle respectively).

15.6 The unlawful deductions from wages claims total some £10,488.81, and cover the period from 2020 to 2023. No specific dates in these years are identified, but the claimant did attach some documents from which these dates may be apparent.

15.7 The dates for the race discrimination claims, however, appear to range from 2020 (or possibly even earlier) to 27 April 2023. The bulk of these claims, however, relate to the period between January 2022 to March 2022, and the conduct of one Jason Lyons, the respondent's Group Operations Manager.

15.8 In her Updated Witness Statement dated 22 April 2025, the claimant says this:

## 2. Timeline of Events

4. March 2022 — I submitted a formal grievance after experiencing discriminatory treatment from my manager.

5. April 2022 - I had a grievance meeting but received no proper outcome. I felt ignored and isolated at work.

6. Throughout 2022 and 2023 - I suffered from anxiety, depression, and stress due to a combination of work-related issues and the emotional aftermath of my divorce, which was finalised in September 2021.

7. 28 June 2023 - I was dismissed from my job while still on sick leave. I contacted ACAS shortly after my dismissal.

8. August 2023 - I appealed the dismissal and was invited to a meeting on 9 August 2023. I spoke to ACAS and was advised that I did not need to attend. I later received confirmation that the meeting went ahead without me and that the original decision to dismiss me remained in place.

9. 2 October 2023 - I commenced early conciliation through ACAS which ended on 11 October 2023.

10. 7 November 2023 - I submitted my claim to the Employment Tribunal.

## 3. Reasons for the Delay

11.1 was mentally and emotionally unwell for most of 2022 and 2023. I had been prescribed medication by my GP and provided Fit Notes during my sick leave.

12. Because of my mental health, I struggled to focus or take any legal steps. I was overwhelmed and could not understand what I needed to do.

13.1 believed I needed to wait for the company to deal with my grievance. I was also afraid of losing my job if I took legal action during my employment.

14. After I was dismissed, my condition did not improve quickly, and it took time before I was able to contact ACAS or understand how to bring a claim.

## 4. Language and Support

15. I did not finish college, and I have no legal knowledge.

16. I did not know that I needed to submit a claim within 3 months of the incidents I experienced.

17. I believed I needed to first complete the internal grievance process, and I thought I had to wait for the company to respond.

*18. I also believed ACAS conciliation was required before anything could go to tribunal, but I did not understand how it affected the time limits.*

#### *5. Medical Evidence*

*19. I have provided copies of Fit Notes from my GP to show that I was suffering from poor mental health throughout 2022 and 2023.*

*20. These documents support my explanation that I was not in a fit state to bring my claim earlier.*

15.8 That statement, however, does not give a full picture, and from the documents before the Tribunal, the following is a more complete timeline. On 31 March 2022 the claimant raised a formal grievance about the conduct of Jason Lyons towards her (page 155 of the bundle). The matters raised in this grievance are four of the matters between January 2022 and March 2022 that form the basis of her race discrimination claims, and in an informal meeting on 5 April 2022 the claimant raised several more.

15.9 The claimant was provided with the outcome of that grievance on 11 July 2022. This is not included in the bundle, but is not, the Tribunal understands, in dispute, and was not to uphold the claimant's grievances. The claimant was offered a right of appeal but did not exercise it.

15.10 The claimant raised a further grievance on 5 October 2022 (again, not in the hearing bundle, but provided the Tribunal) citing :

- Being discriminated against and bullied in the workplace
- Not being paid for work carried out during furlough (April 2020 – August 2020)
- Since company working hours changed never been fully paid as per contracted hours
- Forced into working on flexible hours

15.11 The claimant sought as resolution of these grievances :

1. Equal rights and treatment in the workplace.

2. Payment of what she was due for the work carried out during the period of April 2020 and August 2020.

3. Payment for the difference in pay for the hours that the respondent decided to close early, or an extra full day of work to compensate.

4. Consideration of payment for expenses for travelling to work and her shortened working hours which made it not feasible financially and economically to work, and to restore her working patterns to what they had been since 2019.

15.12 On 07 October 2022, Ms McDowall wrote to invite the claimant to a grievance hearing on 12 October 2022. Following the hearing, the respondent would also address

her flexible working request appeal, but the first part of her grievance would not be considered, as it had been the subject matter of her first grievance.

15.13 Following a grievance meeting on 17 October 2022, the notes of which were provided to the Tribunal by email of 4 September 2025 (so are not in the bundle) at which the claimant was accompanied by her trade union representative Matt Johnson, the respondent by letter of 11 November 2022 dismissed the grievances. Again this is a document that is not in the bundle, but which was produced to the Tribunal, but the claimant did not dispute, telling the Tribunal that could not remember whether she read it.

15.14 In that letter the respondent identified the claimant's grievances as being :

Not being paid work carried out during furlough (April 2020 to August 2020)

Since company working hours had changed never been paid fully as per contracted hours

Being forced to work flexible hours .

15.15 In the outcome letter Kerry McDowall did not uphold the claimant's grievances. The first one was rejected, but not, it seems on the grounds that the claimant was paid, but an allegation she made that she was threatened with loss of her job if she did not come into work was rejected.

15.16 The second claim, not being paid for 30 hours contracted work, was not upheld. This was because the claimant had not worked 30 hours per week, and had been paid for the hours that she had worked. There had, in fact, been an error, in that the claimant had been paid for lunchbreaks, and this was then corrected.

15.17 In relation to the third issue, Kerry McDowall explained how the respondent had been forced to reduce the workforce, and had changed its trading hours. This meant a reduction in the need for work outside its new hours, and therefore that the claimant's 30 hours per week could not be maintained. The claimant had asked that her hours be split over three days, and had been doing so.

15.18 The grievance was therefore rejected. The reference to the claimant grieving about being forced to work flexible hours is a reference to a request that was made by email of 6 September 2022 sent to the claimant by email, in which she was asked to work a 4 day week, Monday to Thursday, 9.00 until 4.30, which would give her 30 hours.

15.19 The claimant, however, could not work those hours and did not agree them. She therefore rejected them, and made her own flexible working request, i.e for a 3 day week (not it seems, in the bundle for this hearing or the previous one).

15.20 This was rejected by the respondent by letter of 30 September 2022, and point 4 of her grievance appears to have been treated as an appeal against that decision, which was dealt with in the second part of the meeting on 17 October 2022 (for which the notes are not before the Tribunal).

15.21 Kerry McDowall addressed these issues in the second part of her letter of 11 November 2022, in which she rejected the claimant's appeal (which was for a 3 day working week) but offering her, as a concession, a later start and finish time with a 30 minute paid lunchbreak. The claimant appealed that outcome by letter of 6 January 2023.

15.22 The claimant was, however, at this stage off work sick, for the period 10 October 2022 until 23 January 2023. She had a return to work meeting on 21 January 2023 , and came back to work for 4 days. She was then invited on 31 January 2023 to a grievance appeal meeting on 7 February 2023. On 6 February 2023, however, the claimant went off work sick again, and did not attend the appeal meeting on 7 February 2023.

15.23 The claimant remained off work sick. Her fit notes during this period were continuous, and all cite "stress related problem" as the reason, or one of the reasons for, for her absence. The claimant was invited to attend a welfare meeting on 24 April 2023, but did not attend.

15.24 The grievance appeal was dealt with in the claimant's absence, and was not upheld.

15.25 After an unsuccessful attempt to obtain an occupational health assessment of the claimant , the respondent on 20 June 2023 initiated a medical capability procedure, convening a meeting for 26 June 2023, or thereabouts . The claimant did not attend, nor did she seek an adjournment, or explain why she did not attend. The respondent proceeded, and by letter of 6 July 2023 dismissed the claimant . This document does not appear in the bundle, but was the date confirmed to the Tribunal by the respondent's representative at the hearing on 10 July 2024, making that, at the earliest, the effective date of termination of her employment. In fact the claimant in her letter of appeal on 25 July 2023 (page 157 of the bundle) refers to receiving her letter on 11 July 2023.

15.26 The claimant appealed the decision to dismiss her, by email of 13 July 2023. After a request for more time to submit her grounds, the claimant sent these on 1 August 2023 (page 156 of the bundle) , and was invited on 3 August 2023 by the respondent to attend an appeal hearing, the date of which is not apparent from the papers. In any event the claimant did not attend, and her appeal was dismissed.

15.27 The claimant first contacted ACAS on 2 October 2023, and obtained a certificate on 11 October 2023. She presented her claim form on 7 November 2023.

15.28 In terms of pay, the claimant was paid (see para. 13 of the Record of the Preliminary Hearing on 10 July 2024, page 45 of the bundle) , on the evidence of her payslips before the Tribunal (in the previous PH bundle, pages 52 to 76) , and this does not seem to be in issue , the following amounts :

31 July 2023 – Nil

30 June 2023 – Nil

31 May 2023 - £175.04 sick pay

30 April 2023 - £431.57 sick pay

31 March 2023 - £596.10 sick pay

28 February 2023 - £198.70 sick pay and £277.88 basic pay

31 January 2023 - £298.05 sick pay

31 December 2022 - £437.14 sick pay (plus holiday pay)

30 November 2022 - £437.14 sick pay

15.29 None of these payments, of course, relate to the hours that the claimant actually worked, as they all relate to the period when she was off work sick. As noted in the previous Record of a Preliminary hearing at para. 14 on page 47 of the bundle, the claimant would in this period only be entitled to SSP, and that would have been exhausted after 28 weeks (see pages 77 and 76 of the previous preliminary hearing bundle), doubtless explaining why her pay in her last two payslips , before her notice pay and holiday pay were paid upon termination, was nil.

**The claimant's medical evidence.**

15.30 The claimant produced, at the last hearing , extensive medical records upon which she wished to rely. Upon examination of them the following facts emerge.

15.31 The first entry showing depression is on 30 March 2022 (page 32 of 113 using the internal numbering of this document) , when sertraline was prescribed. The claimant was not, however, signed off work at that time. The next entry mentioning depression is 6 April 2022, and reference is made to the claimant's problems at work. It is also noted that she had just joined a trade union (page 31 of 113). The next entry on 13 April 2022 again mentions depression, and on this occasion the claimant is given a fit note until 22 April 2022. The next relevant entry is on 25 April 2022, when the claimant presented with other, different medical issues, but still complained of depression, so was given a further fit note , which referred to anxiety and depression, as well as the other conditions. This note was valid up until 9 May 2022 (page 30 of 113).

5.32 Thereafter the claimant's next fit note was issued on 18 May 2022, but this was for backache (page 30 of 113). The claimant's next consultations were for ear problems, and backache, and her next fit note for the period 23 May 2023 to 6 June 2023 was for backache (page 29 of 113). Thereafter the medical records show no further consultations in relation to mental health issues from early May 2022 until September 2022. The claimant , however, during that period did consult her GP, but for other health issues.

5.33 On 28 September 2022 the claimant again consulted her GP , and on this occasion work related stress was discussed. She was prescribed Diazepam, but did not seek, and was not given, a fit note. On 29 September 2022 there was a follow up with the GP, by telephone, when the claimant said that she felt better, but felt that her employer wanted to get rid of her (page 25 of 113). After a further telephone call on 10 October 2022 the claimant then had a face to face consultation with the GP on 12

October 2022 (page 24 of 113). She referred to the next meeting that she had at work, due on 17 October 2022, and said she was looking for another job. The GP recorded a stress – related problem, gave her a further fit note for that condition until 7 November 2022 (page 24 of 113).

5.34 Thereafter the claimant continued over the next few months to be issued with fit notes, where reference was made to stress – related issues, but sometimes there were other issues, such as an upper respiratory tract infection, and ear problems (pages 23 to 13 of 113).

5.35 On 17 April 2023 there is an entry (page 15 of 113) which records that the claimant was due to have an “exam for residency” . On 4 May 2023 there is another entry (page 14 of 113) where this is mentioned, and the doctor/nurse indicates that information for the CAB will be sent to the claimant. This was actioned on 4 May 2023. The claimant in her oral evidence said that she had spoken to the CAB, but could not recall when.

5.36 The next relevant entry on 10 July 2023 (page 13 of 113) refers to the claimant trying to improve her mental health, and that she was looking for a job. The entry on 11 October 2023 (page 11 of 113) reads “at work – designs fashion clothes but distracted”.

5.37 The claimant’s last fit note before this entry was issued on 10 July 2023 (page 13 of 113) for a period on one month up until 2 August 2023. The claimant is not then issued with any other fit note before the claims were issued on 7 November 2023.

16. Those then are the relevant facts. The Tribunal has considered the parties’ submissions.

***The respondent’s submissions.***

17. The respondent’s submissions are in writing, and can be considered fully by reference to the Tribunal’s file. To summarise , the salient points are these. After reciting the relevant statutory provisions and legal principles, Mr Fakunle set out the previous orders of the Tribunal, and recited portions of the Records of the previous preliminary hearings. He summarised the claimant’s evidence, and highlighted some inconsistencies in her oral testimony. He stressed how all her discrimination claims had been dealt with by October 2022, and actually went back to March 2022. He submitted that the claimant had not provided good reasons for the long delay in then issuing her claims. He pointed out that the claimant had accepted that she had access to the CAB and ACAS. He submitted that the claimant was aware of her rights, and her medical conditions had not prevented her from attending work for most of the period between March and October 2022. He continued onto the issue of the balance of hardship. He submitted (para. 21(h) of the submissions) that “most of the relevant employees at the time are no longer in the business. He was not, however, any more specific, and no evidence of this was adduced. He went on to argue that the claimant would suffer less prejudice, as she had other claims which could proceed.

18. On the issue of deductions claims being out of time, he referred to the observations of this Employment Judge in the hearing of 10 July 2024 as to the period of time that the claimant could claim for, given the two year backstop. He contended that

the claims had not been brought within the 3 month time limit, and that the claimant had not shown that it was not reasonable practicable to have presented them within time.

***The claimant's submissions.***

19. The claimant, not being legally qualified or represented, but having the benefit of the respondent's submissions, has made fairly short submissions.

20. In her Submission the claimant makes a number of points. The first is that she was "not aware of the 3 months rule" in relation to Tribunal claims. The claimant then goes on, erroneously, to suggest that the respondent by only raising the time limit issues had thereby expressed a clear indication of accepting all the allegations. That is not the case. She makes reference to her divorce in 2021, and its effects upon her mental health. She makes reference to how she wanted to resolve that matter amicably as well, which was how she also approached this dispute with the respondent. She went on to make reference to joining the union, but how they had refused to help, as the dispute arose before she joined the union. She did concede that the union advised her of the option of going to a Tribunal, but says that she had never been told of the 3 month time limit. In terms of her having obtained new employment, she had to start the new job immediately, because she was in debt, and the job had been referred by a friend who was working at the same place. She went on to say that the CAB had advised her of the option to file an application with the Tribunal, but she had not spoken to ACAS. She then suggests that she was informed by ACAS that she had 3 months and 1 day from when she contacted ACAS in which to bring the claim.

21. She goes on to ask the Tribunal to take into account that she is not professionally trained and did not have any prior knowledge about the Employment Tribunal. Whilst some matters were historic, she was sure management would remember them. The whole Tribunal process would take time, as all the information has to be available before a decision could be made. She then says: *"This is a prime example why I not applied my matter to the Court as I tried to resolve the issue between myself and the Company, then tried to get help from professional but before I can apply in Court the Company have made their decision to wrongfully terminate my employment."*

22. She then sets out a summary of her fit notes between August 2020 and July 2023, ending with a plea that the Tribunal does not allow the respondent to take advantage of the 3 month rule to request strike outs to *"get away from their sins"*.

***Discussion and rulings.***

23. The claimant, being unrepresented, and not having English as her first language, has struggled to articulate her claims in writing. In her claim form (page 9 of the bundle), in box 8.2 she provided only general allegations, which majored upon her not being paid during Covid, and then went on to refer to vague and undated allegations of discrimination and harassment. She was therefore ordered, at the preliminary hearing before this Employment Judge on 10 July 2024, to provide further information about all of her claims (pages 50 and 51 of the bundle). She did so by two documents. The first is entitled Response to Court Order 11 July 2024 and dated 7 August 2024 (pages 57 of the bundle), and the second also entitled Response to Court Order 11 July 2024 is dated 4 September 2024 (pages 55 and 56 of the bundle). The crucial date, taking into

account the date of presentation of the ET1 on 7 November 2023, and the date the claimant first contacted ACAS on 2 October 2023, and the date of her certificate of 11 October 2023, is 2 July 2023. As previously observed, any claims which pre-date that date are out of time. Even, therefore, taking the last date of any potential discrimination claims as 27 April 2023 (from the claimant's Response document of 4 September 2024), a position from which the claimant seemed to retreat in her evidence, none of the claimant's claims apart from her claim of unfair dismissal, and (possibly, but see below) any deductions from wages claims arising upon or after the termination of her employment, are out of time.

**A. The discrimination claims.**

***i) The relevant law.***

***a.) The discrimination claims.***

As submitted by Mr Fakunle, the relevant principles to be applied to extensions of time in discrimination claims are set out in cases such as **Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434**, in which Auld LJ commented that there is no presumption that Tribunals should grant extensions of time unless they can justify failure to exercise the discretion. He went on to say: "*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 the discretion is the exception rather than the rule.*"

24. Further, an extension of time does not require exceptional circumstances, just that an extension of time be just and equitable (see *Pathan v South London Islamic Centre* EAT 0312/13). The lead case is, of course, **British Coal Corporation v Keeble and ors [1997] IRLR 336**. The EAT suggested that in determining whether to exercise their discretion to allow the late submission of a discrimination claim, tribunals would be assisted by considering the factors listed in section 33(3) of the Limitation Act 1980. That section deals with the exercise of discretion in the civil courts in personal injury cases and requires the court to consider the prejudice which each party would suffer as a result of the decision reached, and to have regard to all the circumstances of the case, in particular,

the length of, and reasons for, the delay

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

the extent to which the party sued has cooperated with any requests for information

the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action

the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action

25. The factors set out in **British Coal Corporation v Keeble and ors** were revisited in **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] ICR D5**. The Court of Appeal pointed out that the EAT in that case did no more than suggest

that a comparison with section 33 might help 'illuminate' the task of the Tribunal by setting out a checklist of potentially relevant factors. It certainly did not say that that list should be used as a framework for any decision. In the Court of Appeal's view, it is not healthy for the Keeble factors to be taken as the starting point for Tribunals' approach to 'just and equitable' extensions, as they regularly are. 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 occur where a Tribunal refers to a genuinely relevant factor but uses inappropriate language derived from the case of ***Keeble***. The best approach for a Tribunal in considering the exercise of the discretion is to assess all the factors in the particular case that it considers relevant, including in particular the length of, and the reasons for, the delay.

26. The Tribunal, mindful of this guidance, and conscious that its primary task to take all the circumstances into account and balance the prejudice to the parties makes the following assessment of these various factors on the facts found above.

**The length of and reasons for the delay.**

**i) The length of the delay.**

27. The starting point is the length of, and reasons for the delay. The length of the delay varies, from when the earliest of the claims arise to the when the latest arises. The Tribunal will ignore for a moment the claim, made for the first time in the claimant's Response document of 4 September 2023, that on 27 April 2023 the respondent failed to provide her with a letter confirming her employment, which was required by the UK Border Agency for immigration status purposes. That was not a claim made in the original claim form, has never been the subject of a grievance, and would also be out of time, by some 2 months, as it predates 2 July 2023.

28. The result therefore is that, save for this one, all the discrimination claims that the claimant makes date back to 2022, that last one being on 5 April 2022 by Leena Anand that she was not allowed to talk to colleagues, to keep her head down and get on with her own work. It is of note, the Employment Judge considers, that this last allegation did not form part of the basis for the claimant's grievance raised in October 2022.

29. The claimant did not start the Tribunal claims until 7 November 2023, and did not even approach ACAS until 2 October 2023. That is some 17 months after that last of the alleged acts of discrimination relied upon in 2022. It is, of course, even longer after the earlier acts relied upon in March 2022. Thus, on any view the length of the delay, almost 6 times the 3 months time limit (especially when the claimant did not issue until 7 November 2023, wasting another month after getting her certificate) is very significant, and in itself weighs heavily in the balance of the Tribunal's decision on whether to exercise its discretion.

**ii) The reasons for the delay.**

30. Of course, the length of the delay is not the only factor to which the Tribunal is to have regard, it is also to consider the reasons for the delay.

31. Whilst appreciating that reasons for delay need not be exclusive, a Tribunal when presented with a variety of reasons must take care to distinguish between reasons for the delay which were operative at the time, and any which may have occurred to the claimant in hindsight. That is not to suggest that the claimant has made up any such reasons, merely that the Tribunal has to assess her reasons in hindsight, and look for any support that the reasons relied upon were indeed operative at the material times.

32. In terms of the health reasons advanced , the claimant relies upon anxiety, depression and stress throughout 2022 and 2023. She has disclosed her medical records , in the form of her GP records. These do indeed confirm that she has been diagnosed with, and indeed was provided with fit notes for, anxiety and depression, stress. The question, however, is to what extent did these conditions prevent her from taking the necessary steps to present these claims in time, or at least, sooner than she did?

33. The respondent points out that whilst the claimant states that she suffered from these conditions in 2022 and 2023, she continued to attend work between 24 January 2022 and 6 October 2022. Further, she only worked a three day week, and was back in work from 23 January until 30 January 2023, when she then started the sickness absence from which she never returned.

34. Looking through these medical records, the Employment Judge notes that the first entry showing depression is on 30 March 2022 (page 32 of 113 using the internal numbering of this document) , when sertraline was prescribed. The claimant was not, however, signed off work at that time. The next entry mentioning depression is 6 April 2022, and reference is made to the claimant's problems at work. It is also noted that she had just joined a trade union (page 31 of 113). The next entry on 13 April 2022 again mentions depression, and on this occasion the claimant is given a fit note until 22 April 2022. The next relevant entry is on 25 April 2022, when the claimant presented with other, different medical issues, but still complained of depression, so was give a further fit note , which referred to anxiety and depression, as well as the other conditions. This note was valid up until 9 May 2022 (page 30 of 113).

35. Thereafter the claimant's next fit note was issued on 18 May 2022, but this was for backache (page 30 of 113). The claimant's next consultations were for ear problems, and backache, and her next fit note for the period 23 May 2023 to 6 June 2023 was for backache (page 29 of 113). Thereafter the medical records show no further consultations in relation to mental health issues from early May 2022 until September 2022. The claimant , however, during that period did consult her GP, but for other health issues.

36. On 28 September 2022 the claimant again consulted her GP , and on this occasion work related stress was discussed. She was prescribed Diazepam, but did not seek, and was not given, a fit note. On 29 September 2022 there was a follow up with the GP, by telephone, when the claimant said that she felt better, but felt that her employer wanted to get rid of her (page 25 of 113). After a further telephone call on 10 October 2022 the claimant then had a face to face consultation with the GP on 12 October 2022 (page 24 of 113). She referred to the next meeting that she had at work, due on 17 October 2022, and said she was looking for another job. The GP recorded a

stress – related problem, gave her a further fit note for that condition until 7 November 2022 (page 24 of 113).

37. Thereafter the claimant continued over the next few months to be issued with fit notes, where reference was made to stress – related issues, but sometimes there were other issues, such as an upper respiratory tract infection, and ear problems (pages 23 to 13 of 113).

38. On 17 April 2023 there is an entry (page 15 of 113) which records that the claimant was due to have an “exam for residency” , which is presumably linked to the matter that the claimant complains about in her Response document, when she alleges the respondent failed to provide her with what she needed. On 4 May 2023 there is another entry (page 14 of 113) where this is mentioned, and the doctor/nurse indicates that information for the CAB will be sent to the claimant. This was actioned on 4 May 2023. The claimant was not, however, asked about this in the hearing.

39. The next relevant entry on 10 July 2023 (page 13 of 113) reveals that the claimant was trying to improve her mental health, and that she was looking for a job. The claimant does not appear to have told her surgery about her dismissal, which she presumably knew about by then. Whenever she learned about it, she does not appear to have mentioned it in any consultation, not does she make any reference to appealing her dismissal, which she did by 1 August 2023.

40. By 11 October 2023, however, the claimant appears to have found new employment, as the entry on 11 October 2023 (page 11 of 113) reads “at work – designs fashion clothes but distracted”.

41. The claimant’s last fit note before this entry was issued on 10 July 2023 (page 13 of 113) for a period on one month up until 2 August 2023. The claimant is not then issued with any other fit note before the claims were issued on 7 November 2023.

42. She was therefore, it seems, able to obtain , and start new employment, in this period. Indeed, in her ET1 she states at boxes 7.1 and 7.2 that she had started new employment on 19 June 2023. Whilst in evidence the claimant suggested that this had been inputted in error, in her closing submissions she appears to accept that she started this new job very soon, and explains why she did so.

43. The Tribunal has taken all this evidence into consideration. Whilst the claimant clearly from October 2022 was presenting with a stress – related condition, for which she was treated, this seems unlikely to have accounted for her inability to present these claims for the whole of the period from April 2022 to October 2023. There were clearly periods of time between April and November 2022 when the claimant did not seek any medical help for mental health issues, and from August 2023, or even earlier, she appears to have been well enough to find and start another job, requiring no further fit notes after August 2023.

44. Further , in terms of the reasons for the delay, however, the claimant , it has to be observed has not been very clear as to the reasons, and has relied upon several. They have also been:

Her ignorance of the relevant 3 month time limits

Her belief that she had to await the outcomes of her internal grievances

Her fear of losing her job if she brought a claim whilst still employed.

45. The Employment Judge has had to take all these factors into account. His conclusions upon the reasons for the delay are that the claimant has not really demonstrated clear reasons for it. To the extent to which the claimant claims ignorance of the relevant time limits, it cannot be overlooked that the claimant was at the material time a member of a trade union, and, indeed mentioned to her doctor that she had joined one, presumably to help her with the issues she was having at work. As can be seen, she was assisted by the union, for example in the grievance meeting held on 17 October 2022. She had also been pointed to the CAB by her GP in May 2023, so had another source of advice available to her then.

46. Additionally, the claimant has presented various reasons for the delay in starting her claims. Even in her closing submissions the claimant is suggesting that she was delaying bringing claims about the 2022 matters because she was trying to resolve them internally, but that the respondent then dismissed her. That, however, was in July 2023, and does not explain why she then waited another 4 months before starting the claims. In short, the Tribunal is not at all sure as to what the reasons for the substantial delay actually were, and finds it hard to set much store upon them.

**The other Keeble factors**

47. The remaining factors, of course, are:

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

the extent to which the party sued has cooperated with any requests for information

the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action

the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action

48. Of these, the respondent has not majored on this factor, but it must be a relevant one. That said, the respondent has done little to show that any witnesses would not be available to give evidence. The second is not relevant, but the third and fourth are. The claimant, once knowing in October 2022 that her grievance appeal had been rejected did not act promptly in taking these matters forward. Similarly, whilst she took steps to obtain union advice once she knew of the possibility of taking action, she either did not act upon that advice, or it was not given.

49. Taking all these factors into account, the Employment Judge is not persuaded (the burden being upon the claimant to do so - see **Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434** referred to above) that it would be just and equitable to extend the time for presentation of the discrimination claims. Whilst noting

that the respondent has not argued any specific forensic prejudice, and there was a grievance process followed, that latter point is double edged. Once a claimant has taken such matters through a grievance process, once an unsatisfactory outcome has been delivered, it behoves a claimant then to proceed to a Tribunal claim without further delay. That the claimant, advised by a senior union official, did not do so after the appeal outcome in October 2022 is very telling, and weighs against her.

50. For all these reasons, the Employment Judge does not grant the claimant's application for an extension of time for presentation of her race discrimination claims, which are all out of time, and which the Tribunal therefore has no jurisdiction to hear.

**B. The deductions from wages claims.**

51. The reading of the claimant's two Response documents together explains more about the claimant's claims. In relation to the unlawful deductions from wages claims, the claimant's document of 7 August 2024 does not actually respond to what the Tribunal asked of her. She was ordered to provide details of why the payments made to her between November 2022 and July 2023 were claimed to be underpayments. She does not actually do so in this document, instead she goes back to 2020, and refers to "total working hours difference" for each year between 2020 and 2023, setting out in each year the number of hours "difference" that she is claiming, both in respect of pay and holiday pay.

52. The Employment Judge, however, now with a better understanding of the claimant's case, understands that these figures are based upon the claimant's view that, since 2020, the respondent has reduced her hours down from the 30 hours that she considered were her contractual hours, and she is therefore claiming not in respect of the hours that she did actually work, but in respect of the hours that she considers she should have worked.

53. These are not, therefore deductions from wages claims at all, they are complaints about her working hours being changed by the respondent, going back to 2020. She does not frame these as race discrimination claims, and they cannot be unlawful deductions claims.

54. Time limits, therefore are irrelevant, the claimant simply cannot bring these claims as deductions from wages claims. Even if she could, she cannot bring any that arose before 2 July 2023. At that time she was paid nil, and on any view her entitlement would be nil, because of her prolonged sickness absence, however her hours were calculated. That must be the case too for all the wages she was paid between October 2022 and July 2023, she has no viable claims in this period. Any claims she has before then, if any, are clearly way out of time. Even if these could be deductions claims, they were raised and dealt with in the grievance dealt with in 2022, when the claimant was represented by her trade union. So it was, the Tribunal finds, reasonably practicable for her to have presented these claims in time, or, in any event, much sooner than November 2023. In any event, the claims are unsustainable as deductions from wages claims, and would be struck out in any event pursuant to rule 38 of the 2024 rules.

**Further action of the Tribunal's own motion – proposal to strike out the remaining unfair dismissal claim, or to order that the claimant pay a deposit.**

55. Having examined all these claims in some detail now, the Employment Judge has noted some issues which require addressing if the claimant is to be permitted to continue with the remaining claim of unfair dismissal.

56. The claimant was dismissed , the respondent contends for the potentially fair reason of capability, she having been off work sick for the period from October 2022 until her dismissal in June 2023, with four days return to work in January 2023. The respondent has set out in Particulars of Response the process that it followed. It claims that:

the claimant was invited to consent to the obtaining of an occupational health report, but did not provide it;

was invited to attend a capability meeting on 26 June 2023 , but did not attend it;

was provided with a right of appeal, which she exercised, but did not attend the appeal hearing.

The claimant's case on why the dismissal was unfair is unclear. Given that the claimant accepts that she was absent for that lengthy period, the Tribunal needs to understand why she contends that the dismissal was unfair. That may be because of some procedural failings, or that it was substantively unfair, or both. The claimant needs however to set out why she contends that the dismissal was unfair. Further, whilst relevant mainly to remedy, and the plea made by the respondent that the claimant's employment would have ended in any event, when the claimant obtained her alternative employment , and its terms, will be highly relevant. To that end , she is ordered to provide the further information set out above. The Employment Judge (i.e. this one) will then consider whether the claimant has any reasonable prospects of success in this one remaining claim. if she has not, it will be struck out.

57. Alternatively, if he considers that the claimant has some, but only little, reasonable prospects of success, he may order the claimant to pay a deposit as a condition of continuing this claim. To that end he has set out in the above orders the further details of the claimant's case on the unfair dismissal to enable him to assess its prospects of success, and what the claimant must do if she wants the Tribunal to take into account her ability to pay in deciding whether to make any deposit order, and in what sum..

Approved by:

Employment Judge Holmes

Date: 12 February 2026

Sent to the parties on:

10 July 2026

For the Tribunal Office:

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