



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002300/2025

Held in Glasgow via Cloud Video Platform (CVP) on 30 June 2026

Employment Judge D Hoey

Ms A McNellis

**Claimant
In Person**

Care Townhill Ltd

**Respondent
Represented by:
Mr D Milne -
Counsel [Instructed
by Messrs Jackson
Boyd]**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

In terms of section 123 of the Equality Act 2010, the claim was brought within such period as was considered just and equitable and the claim will now proceed to a final hearing to determine the issues on a date to be confirmed.

REASONS

1. This case called for a time bar hearing it being accepted that the claim had been lodged 14 days late. The parties referred to a joint bundle of 130 pages and the claimant gave evidence. Following a break to allow both parties to consider the position I heard oral submissions and reserved my decision.

Facts

2. The claimant was employed as Pharmacist Manager. The claimant was not a member of the relevant trade union for the entirety of her employment but in the latter stages of a disciplinary process the claimant was a member and had the support of the union in terms of ad hoc advice and in dealing with drafting of communications. That included access to an employment solicitor.
3. Following the claimant's dismissal her union advised her about the Tribunal process, including the need to initiate ACAS early conciliation and that time limits applied to lodge a claim. She understood there was a 3 month time limit

which was subject to extension in respect of early conciliation. The claimant understood that calculating time limits was complex but essential.

4. The claimant was dismissed on 8 April 2025 (having commenced employment on 19 July 2023). On 2 July 2025 the claimant contacted ACAS and initiated early conciliation. On 13 August 2025 ACAS sent the claimant an early conciliation certificate bearing the same date. This was sent by email with a covering note which said “If you are considering making a claim to an Employment Tribunal, you have at least 1 month from the date you received this certificate if you notified ACAS within the original applicable time limit”. The note then provided links to a number of online guidance documents which provided more information.
5. The claimant had already been advised as to the process and understood the need to take care with regard to her claim and time limits and of the complexity. The claimant had a number of health impairments, including ADHD and dyslexia, but was able to process information and take steps to protect her position (including by the seeking of advice).
6. Notwithstanding the ending of ACAS early conciliation, the parties were still discussing matters and the ACAS conciliator was involved. On 2 September 2025 the conciliator contacted the claimant about notice pay which the respondent had reconsidered. The conciliator sent the claimant an email and confirmed she would telephone her to discuss.
7. The claimant received a call on the way to her new place of employment on 2 September 2025. Discussion took place and the claimant was reminded that she had a month to present her claim. The claimant had not checked the email that contained the certificate, nor sought specific advice as to the precise time limits. and believed that she had been told she had one month from the telephone call to raise a claim. It was more likely than not that the claimant had been told of the correct time limit, which had already been sent to her in the email she did not check, namely that she had at least a month from the date on the certificate. The claimant had not listened properly and heard “one month” and assumed the time limit began from the date of the call.
8. The claimant had been speaking with her union in or around August 2025. The union had employment law specialists who were able to assist the claimant, directly or indirectly. The claimant confirmed she had received an ACAS certificate and communicated the relevant date – 13 August 2025. She mentioned that she had until 2 October to raise a claim. Her union adviser told her to seek confirmation as to date as it did not seem accurate.
9. On 23 September 2026 at 634pm the claimant sent an email to the conciliator as follows: “I hope you are well. I know that back on 2 September you told me

I had at least a month left to submit. If it's not too much trouble would you be able to let me know when I absolutely need to have submitted it by? Sorry to be a nuisance I had got a good chunk of it done but I am juggling between looking for work, dealing with some health problems and recovering from concussion! I tried to work it out for myself and I can't really figure it out. I just wouldn't want to have to rush at the last minute".

10. On 24 September 2025 at 1125am the conciliator responded: "Unfortunately I am unable to advise on the exact date – there are too many unknown variables. If you google limitation date there are online calculators you can use. I can advise that it is 3 months from the date of detriment, which is for you to decide, plus any time we were having discussions (up to 6 weeks)."
11. The claimant found an online calculator which suggested the last date for submission was 13 September 2025. The claimant panicked and on 24 September 2025 at 1224 the claimant replied saying: "That's OK I didn't realise that! I'm having a bit of a panic because the calculator is saying my submit date is 13 September but when we spoke on the phone on 2 September you said I have a minimum of a month left. What can I do? Please don't think I am being accusatory I'm just panicking because I don't want to not be able to submit!". The conciliator responded at 1240 on 24 September saying: "The letter which accompanies the certificate explains you have at least one month from this date to submit a claim. I suggest you submit your complaint to the Employment Tribunal. There is always a possibility your claim may still be in time".
12. The claimant had spoken to the administrative staff in the Employment Tribunal service who told the claimant that she may wish to lodge her complaint as soon as possible, it not being possible to give her advice.
13. At 143pm on 24 September 2025 the claimant finalised her ET1 and submitted it to the Tribunal. In it she said: "I want to apologise if this has been submitted late. My ACAS advisor told me on 2 September I had a minimum of 1 month to complete. This week I have been sorer than usual so asked the exact date. She referred me to an online calculator which said 13 September so I'm panicking! I promise if I had known it needed to be submitted sooner I would have done so".
14. The claimant sought new employment and commenced a new role on 26 June 2025. The claimant worked as a locum picking up shifts. From around November 2025 she began full time or regular hours.
15. Following the claimant's dismissal, the respondent reported the claimant to the health board, the university and the regulator. The claimant brought the claim to the Employment Tribunal in part because she believes the claim will

allow her to “clear her name”. If she is not able to present the claim, she believes she would be prejudiced given how she was treated and the absence of a formal determination on those matters, and that the outcome would be relevant in the complaint process.

16. The claim that is brought raises a number of different discrimination complaints.

Observations on the evidence

17. One of the key issues in this case was what the claimant had been told on 2 September. In evidence in chief the claimant said the call with the conciliator about the date for submission occurred on 2 September. She said she remembered the call as she had been going to work. She said she remembered being told she had at least a month to present her claim which meant she was working towards 2 October. The claimant was then asked why she was panicking about lodging a claim in September if she believed that the submission date was at least 2 October. In her email of 23 September she referred to panicking when she asked the conciliator to confirm the dates. The claimant said it was taking her longer to finalise the response given the amount of material she had.
18. The claimant said that at that point she had been matters with her union, including “about making a claim”. She said they could not give her an exact date it needed to be sent in by but suggested she submit it as soon as she could. She said because they had suggested she submit it as soon as possible she sent the email to the conciliator as she was “a bit worried”. The claimant says she is an anxious person.
19. I considered the respondent’s agent’s submission that the claimant was not being truthful, which he said affected justice and equity and whether the claim should be permitted to proceed. I carefully considered the submission that the claimant had been dishonest. Having considered the claim, the evidence and the contemporaneous documents I have concluded that on the balance of probabilities, the claimant had not been dishonest. I concluded that the claimant believed she had a month from 2 September to raise her claim but her advisers had told her she may have been mistaken at which point the claimant sought clarification.
20. There was no doubt that in places the claimant’s evidence was inconsistent and lacking in credibility. I took that into consideration and look at the evidence before me. The claimant’s position did oscillate and there was a lack of clarity. It was possible that the claimant was not being honest. In particular one interpretation to be placed on what happened could be that the claimant learned of the correct date for submission late September and sought to

present her knowledge as different in her email to the conciliator, with a view to arguing the conciliator had caused her to be mistaken.

21. I decided on the balance of probabilities that the claimant had been mistaken in her interpretation as to what she had been told on 2 September. With some hesitation I decided that the claimant believed she had until 2 October and was anxious to be clear as to the precise date (hence her decision to seek clarification at the end of September, and her reference to panic etc). It was not plausible that the conciliator had given the claimant advice as she alleged. It was more likely than not that the claimant had not listened to the discussion carefully. She accepted she had in fact been “buying breakfast on the way to work” when the call came in. While she said that resulted in her being clear as to what had been said, I decided that it made it less likely the claimant had been clear. It was likely she had been told the correct information but the claimant had heard a month and assumed it meant a month from the date of the call. There was no sense in the claimant having a month from the date she had a call with the conciliator, given the certificate had been issued a few weeks before.
22. I took into account the claimant’s lack of clarity as to receiving the certificate and her changing position in evidence, cross examination and in submissions. I did have doubts as to the claimant’s credibility but I was satisfied from the information before me on the balance of probabilities that the claimant had not known for certain her claim was already late before 23 September. I was satisfied that the claimant ought to have known the time limits and those advising her ought to have told her (and that it was possible she had in fact been told). The letter with the certificate did in fact make the position clear.
23. However, I was satisfied from the evidence and context that the claimant had not checked the position carefully and had instead relied upon what she thought she had been told by the conciliator until 23 September when she realised the claim was late.

Law

24. The time limit for Equality Act claims appears in section 123 as follows: “(1) *Proceedings on a complaint within section 120 may not be brought after the end of – (a) the period of three months starting with the date of the act to which the complaint relates, or (b) such other period as the Employment Tribunal thinks just and equitable ... (3) For the purposes of this section – (a) conduct extending over a period is to be treated as done at the end of that period; (b) failure to do something is to be treated as occurring when the person in question decided on it*”.

25. Section 123 of the Equality Act 2010 requires that any complaint of discrimination within the Act must be brought within three months of the date of the act to which the complaint relates, or such other period as the Tribunal thinks just and equitable. When considering whether it is just and equitable to hear a claim notwithstanding that it has not been brought within the requisite three month time period, the Employment Appeal Tribunal has said in the case of **Chohan v Derby Law Centre** 2004 IRLR 685 that a Tribunal should “have regard to” the Limitation Act 1980 checklist as modified in the case of **British Coal Corporation v Keeble** 1997 IRLR 336 which is as follows:
- a. The Tribunal should have regard to the prejudice to each party.
 - b. The Tribunal should have regard to all the circumstances of the case which would include:
 - i. Length and reason for any delay;
 - ii. The extent to which cogency of evidence is likely to be affected;
 - iii. The cooperation of the respondent in the provision of information requested;
 - iv. The promptness with which the claimant acted once he knew of facts giving rise to the cause of action; and
 - v. Steps taken by the claimant to obtain advice once he knew of the possibility of taking action.
26. In **Abertawe v Morgan** 2018 IRLR 1050 the Court of Appeal clarified that there was no requirement to apply this or any other check list under the wide discretion afforded to Tribunals by section 123(1). The only requirement is not to leave a significant factor out of account. Further, there is no requirement that the Tribunal must be satisfied that there was a good reason for any delay; the absence of a reason or the nature of the reason are factors to take into account. A key issue is whether a fair hearing can take place. See also **Dada v Scottish Ministers** 2026 13.
27. The Court of Appeal in **Chief Constable of Lincolnshire v Caston** 2010 IRLR 327 observed that although time limits are to be enforced strictly, Tribunals have wide discretion.
28. In **Rathakrishnan v Pizza Express (Restaurants) Ltd** 2016 ICR 283 the Employment Appeal Tribunal held that in that case the balance of prejudice and potential merits were both relevant considerations and it was wrong of the Tribunal not to weigh those factors in the balance before reaching its conclusion on whether to extend time.

29. I considered and applied the judgment of Underhill LJ in **Lowri Beck Services v Brophy** 2019 EWCA Civ 2490 and in particular at paragraph 14. Ultimately the Tribunal requires to make a judicial assessment from all the facts to determine whether to allow the claims to proceed and in particular assess the respective prejudice. I also applied the principles set out by the Court of Appeal in **Adedeji v University Hospitals Birmingham NHS Foundation Trust** 2021 ICR D5. The Court emphasised that it would be wrong to rigidly apply the “Keeble factors” since that would lead to a mechanistic approach to what is meant to be a very broad general discretion. The correct approach 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.

Submissions

30. Both parties made submissions and these have been fully taken into account. Given the seriousness of the matter I took the time to consider carefully the evidence given and issues in this case and reserved my decision.

Decision and discussion

31. I require to carefully apply the statutory wording in deciding whether or not the claim can proceed. In so doing I recognise the significance in my decision since if the claim is not allowed to proceed, the claimant is prevented from proceeding with her claim and no judicial determination is made. I must, however apply the statutory wording in light of the facts, exercising my discretion judicially. I considered each of the relevant issues set out above.
32. Firstly I considered the **length and reason for the delay**. The parties agreed the claim was lodged 14 days late. There is a dispute as to the reasons for the delay. The respondent’s agent argued that the claimant was dishonest. Their position was that the claimant learned her claim was late around mid to late September and that she had manufactured her email to the conciliator.
33. The respondent’s agent’s position was that the claimant knew on 23 September her claim was late and she decided to misrepresent what she had been told by the conciliator in her email which was why, the respondent’s agent contended, the email had been 21 days after the discussion took place.
34. The claimant ought to have known the claim was late. She had been told on a number of occasions about the importance of time limits. The certificate had been sent to her with an email making it clear she had at least a month to submit her claim and links to online guidance documents were provided. The claimant had a solicitor and support whose advice could easily have been sought. Those are important factors I take into account, together with the misunderstanding the claimant had, the belief she had following he

interpretation of what she had been told by the conciliator on 2 September. I took into account the reason for the delay. The 2 week delay was caused because the claimant had failed to properly check the time limits and satisfy herself through the proper channels as to the time limit. She failed to check with those advising her (as opposed to what she believed a conciliator had told her, bearing in mind a conciliator is not providing advice). The claimant had already been directed to a number of sources that set out the position. I also took into account that the claimant had not presented the Tribunal with a note as to precisely what she had been told about time limits. It was possible the claimant had in fact been told precisely when to lodge her claim and she had not properly taken this on board. I balanced each of these factors.

35. The parties confirmed the 14 day delay had no impact upon **cogency of evidence** and that no issues arose as to the cooperation of the respondent. A fair hearing could still proceed in the event the claim is allowed to proceed. That is an important factor to be taken into account.
36. The **promptness with which the claimant acted** once she knew of facts giving rise to the cause of action was something I took into account. The claimant learned that the claim was time barred around the day she submitted the claim. Once it became clear to her that in fact the claim was late (which was around 23 or 24 September) the claimant submitted it. The initial attempt failed as incorrect details had been submitted but the claimant acted with alacrity once she knew the claim was late and did her best to lodge it.
37. I took into account the **advice the claimant had taken** and the guidance she had been given as to time limits. The claimant laboured under a misapprehension but it was a matter that ought reasonably to have been checked by the claimant. She ought reasonably to have taken steps by checking with those advising her what the actual time limit was. She failed to do so and did not act reasonably in that regard, knowing that time limits were complex and important.
38. I took the foregoing into account in deciding whether it was just and equitable to allow the claim to proceed. I had to consider the **prejudice to each party**.
39. One important factor in this case which differs from most was the fact that the respondent had complained to the health board, university and regulator about the claimant. The claimant believed the determination of the claim would be relevant in considering those complaints. It was possible, as the respondent's agent submitted, the case might have no bearing upon those complaints but it was clear the claimant believed a fair determination of her claim was relevant and it was possible a finding as to unlawful discrimination could well be relevant in determining the complaints the respondent had brought. This is an important matter in exercising discretion in deciding

whether it is just and equitable to allow the claim to proceed. That is a factor I place in the balance.

40. I also take into account the prejudice to the claimant if the claim is not allowed to proceed. The claim involves discrimination which has societal consequences (in addition to the impact upon an individual). There is a public interest in ensuring unlawful discrimination is eradicated. It is but one factor that is placed in the balance. I also take into account the fact the respondent would have to incur the costs (financial and otherwise) of defending a multi jurisdiction claim if the claim is permitted to proceed.

Taking a step back

41. This has not been an easy matter to determine given the issues arising. Having taken a step back and applying the statutory wording in light of the facts and context, I have decided that while the claim was not brought within 3 months, it was brought within such other period as the Tribunal thinks just and equitable. I took account of the relevant factors and balanced the prejudice to each party and determined that it was in the interest of justice the claim proceed. I reached this decision having considered the factors above and having exercised my discretion judicially.

Next steps - parties to agree way forward

42. The parties should now work together to agree the precise issues arising that require to be determined in respect of the particular complaints and defences and seek agreement as to the final hearing (in terms of the duration, suitable dates and whether an Employment Judge sitting alone can hear the claim) and a hearing can be fixed.
43. The parties should also be able to agree dates to exchange relevant documents, including a statement of agreed facts and disputed facts and the final paperwork needed.
44. If the parties consider written witness statements would be in the interests of justice (given the claimant does not have legal advice), a date should be agreed to exchange these – See <https://www.judiciary.uk/wp-content/uploads/2022/09/20220803-Practice-Direction-ET-Scotland-Witness-Statements.pdf> and <https://www.judiciary.uk/wp-content/uploads/2022/09/20220803-Presidential-Guidance-ET-Scotland-Witness-Statements.pdf> for more information.
45. It is not in the interests of justice to fix a further preliminary hearing as the parties ought to be able to agree matters which would allow the Tribunal to fix a final hearing. In the event agreement cannot be reached the Tribunal should

be advised as to the issues in respect of which judicial determination is needed and this can be dealt with expeditiously.

Date sent to parties

7 July 2026