



EMPLOYMENT TRIBUNALS

Claimant: Mr A Heygate-Browne

Respondent: Dwr Cymru Cyfyngedig

Date: 9 March 2026

Representation: Mr Heygate-Browne
(represented himself)

Mr Probert (Counsel)

Before: Employment Judge R Harfield

Reserved Judgment on preliminary issues

The decision of the Employment Judge is:

- (1) The direct disability discrimination and harassment related to disability complaints about the events of 14 May 2024 and 21 May 2024 were not presented within the applicable time limit. It is not just and equitable to extend time and those complaints are therefore dismissed;
- (2) The failure to make reasonable adjustments complaint about 11 October 2024 was not presented within the applicable time limit but it is just and equitable to extend time for this particular complaint. This complaint of failure to make reasonable adjustments will therefore proceed to final hearing.

REASONS

1. Introduction

1.1 Following Acas early conciliation between 31 March 2025 and 12 May 2025, the Claimant presented his claim form on 17 May 2025 complaining of unfair dismissal and disability discrimination. The Claimant later withdrew the unfair

dismissal claim because he remains in the Respondent's employment. In box 8.2 the Claimant wrote he faced discrimination on multiple occasions based on his disability of dyslexia that left him feeling unwelcome and very uncomfortable. He then referred to three particular occasions of 14 May 2024, 21 May 2024 and 11 October 2024.

1.2 The Respondent filed grounds of resistance defending the claim, including asserting the complaints were out of time. A case management hearing took place before EJ Sharp on 21 August 2025 where she listed a public preliminary hearing to take place on 10 December 2025 to decide:

(1) Would it be just and equitable to extend the time limit for presenting the claim? The time limit in s123 Equality Act 2010 is three months from the date of the last alleged act of discrimination, as extended by the rules relating to early conciliation. The Judge will assume at the preliminary hearing that there was conduct over a period ending with the last alleged act of discrimination. The Judge will consider why the claim was not presented sooner and, in any event, whether it just and equitable to extend time. The claimant must persuade the Judge to extend the time limit. If time is not extended the claim (or that part of it) will be dismissed.

(2) If the claim continues and there is sufficient time, case management orders and listing of the final hearing.

1.3 The Claimant was ordered to provide a witness statement. In the case management summary EJ Sharp recorded that she had pointed out to the Claimant that it appeared all his claims had been brought out of time and that she explained the difference between a continuing act and continuing effect. EJ Sharp also recorded that the Claimant had been given permission to amend his claim by a Legal Officer to add indirect disability discrimination, but that she had explained the amendment failed to properly set out the elements of such a claim and it was unlikely to succeed as framed. She recorded that the Claimant had withdrawn that complaint but that she had not dismissed it and the Claimant, if he wished to further amend his claim, must apply by 3 October 2025. The Claimant appealed the treatment of that indirect disability discrimination complaint to the Employment Appeal Tribunal.

1.4 EJ Sharp prepared a List of Issues recording that the Claimant was bringing two complaints of harassment related to disability or direct disability discrimination relating to 14 May and 21 May 2024, and a complaint of failure to make reasonable adjustments relating to 11 October 2024.

1.5 Paragraph 13 of the case management orders said: "The claims and issues, as discussed at this preliminary hearing, are listed in the Case Summary below. If you think the list is wrong or incomplete, you must write to the Tribunal and the other side by seven days of the sending of this Order by the

Tribunal office. If you do not, the list will be treated as final unless the Tribunal decides otherwise.” The Claimant wrote in about how the 14 May 2024 was described in the List of Issues, and whether it included both the written material for that training session as well as what was said by the trainer. The Respondent wrote to accept that they accepted the allegation covered both. That was (other than as already referred to, the appeal to the Employment Appeal Tribunal about indirect disability discrimination), the only point raised about the case summary and List of Issues and there was no other application to amend.

- 1.6 On 25 November the Respondent’s solicitors wrote in about the notice of hearing sent on 19 September about the hearing due to take place on 10 December. The Respondent disputed that it was appropriate for the preliminary hearing to proceed on the basis of a presumption that there was conduct extending over a period ending with the last act of discrimination. The Respondent’s point was that it caused them potential prejudice given the Claimant’s complaints covered two distinct periods of time (May 2024 and then 11 October 2024) and were pleaded on different facts and different types of complaint. They said they were potentially prejudiced by an assumption being made that these events were part of conduct extending over a period given they would wish to raise separate arguments about each, and there was a risk that if time were extended for 11 October 2024, it would bring all allegations within time. EJ Sharp replied to say standard wording had been used, but it was not her intention to limit the next Judge’s discretion, that paragraph 37 states all of the claims appear to be out of time, that there does appear to be separate periods of time, she was not able to remember the claim due to the passage of time, but it was up to the hearing judge how they wished to approach the next hearing and would not bind their hands.
- 1.7 The preliminary hearing took place before EJ Ryan on 10 December 2025 but was postponed because the Claimant said he had not received the Claimant’s counsel’s skeleton argument, he needed legal advice, and he could not deal with the issues that day in light of the skeleton. The Respondent disputed that the Claimant had not received the skeleton but pragmatically did not oppose the postponement. The Claimant was given the option to produce his own skeleton argument if he wished. The Claimant explained that he had then been able to get 30 minutes legal advice from a charity but that this is the only legal advice he has received throughout his case.
- 1.8 The relisted hearing therefore came before me. I had a hearing file that included the Claimant’s witness statement. I heard oral evidence from the Claimant. I had skeleton arguments from both parties and also heard oral submissions. There was insufficient time to deliberate and deliver an oral Judgment and therefore Judgment was reserved. I apologise for the delay in delivering this Judgment. For reasons of procedural economy, I do not set out the parties’ full submissions in this Judgment, but they are incorporated by reference below, at appropriate places.

2. Background and findings of fact

2.1 The Claimant has worked as an energy analyst for the Respondent since 1 August 2011. From 1 February 2024 to 31 October 2024, he was seconded to the position of Energy Programme Manager.

2.2 On 14 May 2024 the Claimant attended a training course run by Ms Lewis from an external training provider JL Training and Consultancy. The complaint about this in the ET1 Claim Form is: “where several of the trainees raised concerns about the language used by the trainer as it could be construed as insulting to those with neurological conditions including referring to those whom [have] dyslexia as diseased.” The Claimant said that several of those present, including himself, had objected in the session and afterwards and he had asked for managers to be given appropriate training. He wrote he had received confirmation through the grievance and grievance appeal, and from the training and development team that it did happen, and was not appropriate, and action would be taken to correct it. There is a factual dispute in this case between the parties about whether the Claimant did object at the time. He says he did. The Respondent asserts the Claimant raised it after the event on 24 May 2024 by way of an email to Ms Coleman, a PMO Analyst, where the Claimant said he thought it was her that had raised a genuine concern about the instructor raising neuro-deviation as an illness and not automatically correcting herself until challenged. He explained to Ms Coleman that he has dyslexia and was also concerned about this [79]. Ms Coleman replied to say that she was sending a teams message to check the course instructor had taken it out of the presentation and would let the Claimant know what was said. The Claimant also later mentioned it to his manager, Mr Dixon, on 25 July 2024 [102] (referred to further below). It is not for me at this stage to resolve that factual dispute between the parties about who and how the Claimant raised concerns with at the time; but it is of relevance to the time limit arguments before me that I will return to below.

2.3 The second occasion referred in the ET1 is 21 May 2024, when the Claimant said he had been asked by Mr Dixon to present to the team during “Equality Week” about his disability. The Claimant alleges that during the presentation Mr Dixon: “in a mocking voice suggested that he heard the way to talk to people with the neurological condition dyslexia was to speak to them slowly and in short sentences [like a paramedic would to someone in shock].” The Claimant wrote that as part of the grievance and grievance appeal Mr Dixon had accepted he said this, but it was information he had obtained from the internet. The Claimant wrote in the ET1 he was on a temporary secondment, and he struggled with raising the issue in case it caused a grudge because Mr Dixon would decide if he kept the role, but he did then in fact raise it a few days later. The Claimant wrote that weekend dealing with the stress he fell ill and ended up in A&E being diagnosed with benign paroxysmal positional

vertigo. There is a factual dispute in the case about the context/ tone of what it is Mr Dixon said. In particular, the Respondent denies that Mr Dixon was mocking the Claimant in any way.

2.4 On 22 May 2024 the Claimant sent an email to Kathryn Foot, HR Talent & Development Team advisor (copying in Mr Dixon) saying he was surprised by the lack of knowledge in Welsh Water about what dyslexia is, and an example from the meeting the day before was: “one manager said they had developed how they deal with dyslexic people based on something they had read on the internet to use short sentences and by speaking slowly to them rather than providing them more time and written content in advance of asking for feedback. Another member of the team who had a dyslexic son said that might help. However, this would not help me and my understanding is that this does not necessarily help dyslexic people and by what it sounds like, talking to dyslexic adults like they are children could be seen as insulting and demeaning and make matters worse. Instead the focus should be on giving them time to review material and digest it before pressing them on feedback through things like circulation of agendas and reports before meetings, longer deadlines, supporting them in meetings by asking people for time to digest the information and respond where people are pressing dyslexic people on the spot too much etc. I think training needs to be provided to advise them how to treat employees with the disability. Maybe this could be developed working hand in hand with the British Dyslexia Association. Seeing dyslexia people suffering due to lack of knowledge on how to deal with it raises alarm bells with me and is tragic for the harm it might cause [75-76].” Ms Foot responded on 22 May 2024 asking if she could use some of the content on an anonymous basis and she would discuss with her own manager the provision of training.

2.5 The Respondent asserts that Mr Dixon apologised to the Claimant on 23 May 2024, but my understanding is that is disputed by the Claimant. On 23 May 2024 the Claimant emailed Mr Dixon [78] saying he had chance to sleep on what Mr Dixon had said in a recruitment meeting about how the Claimant felt about reactions to his presentation in the team meeting (so it would appear there was at least a discussion between the Claimant and Mr Dixon prior to that email). The Claimant said he was not comfortable or happy with a few things, and he set them out in the email. One concern was: “Mention in front of the whole team when I was discussing genuine dyslexia that you had taken from the internet that a solution to dealing with dyslexic people was to speak very slowly and in short sentences which was demeaning not just to me as a dyslexia person but also to others with the same condition.” He also wrote about how he felt Mr Dixon had seemed disinterested in the presentation. The Claimant said he was not really comfortable in discussing it with Mr Dixon other than by email at that time. It was the next day that the Claimant contacted Ms Coleman about the 14 May training, as referred to above.

2.6 On 25 July 2024, as part of an email exchange about 121s, the Claimant raised that he had said the day before that things had been a bit awkward since he raised a concern with Mr Dixon previously that he was upset that Mr Dixon had said something inappropriate and incorrect about a disability he had in front of the whole team, and he was not seeing the support he would expect and had seen Mr Dixon offer to other team members. Mr Dixon replied, saying from previous conversations he did not understand there was anything left unresolved, or that there was anything inappropriate, but they could talk further if the Claimant wished [102]. This tends to suggest there had been earlier discussions, and certainly that there is a dispute between the Claimant and Mr Dixon whether anything “inappropriate” was said. The Claimant replied on 25 July 2024 to ask if they could focus the next day on the situation relating to a particular member of staff, and the request could be discussed another time. But he also went on to say: “I am currently trying to improve awareness and knowledge of disabilities and how to treat people through working closely with the ABLE network. There have been other instances in DCWW management circles, including a remark in a leadership training session from the trainer that several of the participants had issue with where it was said those suffering from Neurodivergent conditions had a disease. I was one whom felt this was not right. However, if you could help maybe look into these conditions more (please don’t use the internet again unless trusted source) and support us as much as you can that would be much appreciated.” [102].

2.7 There is no evidence before me of either of the May incidents being raised again prior to the Claimant’s grievance in October 2025 (whether by way of documents or in the Claimant’s witness statement). All the Claimant says in his witness statement that he was trying to resolve the issue internally through improving training and knowledge of how to deal with disabled people.

2.8 On 7 September 2024 the Claimant applied for the substantive, permanent version of his seconded role. The third occasion raised in the ET1 then relates to 11 October 2024 where the Claimant alleges that Mr Dixon called him, saying he was unsuccessful in his application to make the position permanent “despite being able to prove I had reflected everything asked for in the job description and Dwr Cymru having a policy of guaranteed interviews for people with a disability. I was denied my right to interview.”

2.9 The Claimant in his witness statement says that on the evening of 11 October he was told by Mr Dixon he was refused the guaranteed interview. He says he then received an email from Mr Dixon saying Mr Dixon needed to consider external applicants, and that the Claimant could re-apply or reuse his existing application. Mr Dixon said he would look for further training and development opportunities for the Claimant [51]. On 14 October 2024 the Claimant emailed an Adam Fairman in Mr Dixon’s absence on annual leave, asking about the status of his application. The Claimant said on 11 October Mr Dixon had told

him he was unsuccessful and they were looking to recruit externally, but he later received an email saying they would be considering external applicants, but he was able to re-apply (which the Claimant said had not been mentioned in the initial conversation).

2.10 On the evening on 14 October 2024 the Claimant then raised a grievance. The grievance can be found at [85]. The Claimant raised being told on 11 October that his application was unsuccessful and they were going externally for recruitment, but that when he asked for written feedback he was told he could reapply. The Claimant said the response did not explain why he had been unsuccessful, given he should have made the score threshold for interview under the Respondent's guaranteed interview scheme for those with disabilities. He said he was already doing the role and matched the job description to ensure he got a high score on application and would exceed the minimum criteria for a guaranteed interview. He said the guarantee was not met.

2.11 The grievance also said there were several instances of inappropriate behaviour towards him based on his disability. He referred to Mr Dixon on 21 May 2024 allegedly making fun of his disability in front of colleagues and allegedly mocking him. He said "although I was keen not to harm my relationship with my line manager during my secondment I felt that the right thing would be to challenge it, not just due to the law and legal protections but also because it was a Welsh Water official employee diversity value that we needed to challenge inappropriate behaviour towards those with a protected characteristic. I raised it with my line manager and with HR and tried to follow the Welsh Water internal process of trying to address it first informally with my line manager. I thought at the time that the feedback had been taken onboard but I now believe that raising with HR a failing of my line manager led to Andrew Dixon keeping a grudge and deciding then that I would not be allowed to keep my position." The Claimant also referred to raising an issue in May 2024 where, during training, neurodiverse conditions were described as a disease by the presenter, and he had again raised this with the business as per the internal process to try to deal with perceptions in Welsh Water toward disability.

2.12 The Claimant wrote: "Although these events happened more than 3 months ago as per case law including the Wells Cathedral employee tribunal case, if the employee did not submit a legal case with 3 months as they had tried to follow company internal process guidelines then the timeframe can be extended by up to a few years. It has been less than 6 months."

2.13 The Claimant said not being given a guaranteed interview was a third instance of unfair treatment for someone with his disability. The Claimant said he believed he was denied the interview because of Mr Dixon being upset that the Claimant had raised Mr Dixon's treatment of his disability to HR and training and development. The Claimant said: "This is discrimination and I

no longer believe I will be fairly considered at an interview and need this escalation.” The Claimant said he would like to see no discrimination based on disability and he should be allowed to be made permanent in the position.

- 2.14 The grievance was acknowledged on 16 October 2024. On 25 October 2024 a first grievance meeting took place with a follow up on 7 November 2024. Prior to the meeting the Claimant asked whether the correct policy was being followed because the grievance policy says where the content is about perceived bullying or harassment, the dignity at work policy and procedure should be followed (which has its own procedure). The Claimant was told in response that the dignity at work policy would be referred to and guided by during the course of the grievance investigation along with other relevant policies.
- 2.15 Prior to the meeting the Claimant also sent an email with an extract from guidance provided by the British Dyslexia Association and the duty to make reasonable adjustments. He also said: “At the moment I have been trying to follow the internal processes and the section on employment tribunal has not yet been applied in the hope that internal processes can deal with it. Although some of the instances are greater than 3 months old as per the Wells Cathedral case laws where employees have tried to follow internal procedures/ processes instances older than this up to a few years can be used. I also advised HR within 3 months of the inappropriate conversations but said I was following the Welsh Water procedure to try resolve the issues informally first. As I have felt these attempts were not successful I have now asked for the formal grievance investigation process to start.”
- 2.16 The grievance investigator met with Mr Dixon on 22 November 2024. On 11 December 2024 the Claimant was told the grievance report was still being compiled. On 6 January 2024 the Claimant chased the position and was offered a meeting on 8 January 2024 to discuss and be given the grievance outcome. The grievance outcome starts at [89]. It found that Mr Dixon’s actions and independent research had resulted in clear misjudgement, the best practice would have been for Mr Dixon to seek advice from within the Respondent, and Mr Dixon did not use the most appropriate environment to make his comments which had offended the Claimant. The grievance outcome said Mr Dixon had not considered how individuals use their own trusted methods to adapt. It was found that Mr Dixon’s comments were ill judged, but the decision maker did not believe it was Mr Dixon’s intent to offend the Claimant or discriminate against him.
- 2.17 The grievance outcome said Mr Dixon had said he did follow up with the Claimant in a meeting on 22 May 2024, had provided his explanation, and had apologised for any offence he may have caused, and that Mr Dixon also said he had continued to have follow up meetings to work with the Claimant on aiming to understand how to support the Claimant at work with the Claimant’s dyslexia.

- 2.18 The grievance outcome said, with regard to the presentation by the external trainer, the decision maker understood from what the Claimant said, that the Claimant had initially raised the matter himself. It was said “I am also to believe that you did escalate this concern to Kathryn Foot who contacted the trainer to have the comment removed and the presentation amended, and I understand that you were provided with this feedback.” The decision maker said she was recommending to the Talent and Development team that source material used by external and internal training providers be checked thoroughly before use.
- 2.19 The decision maker said Mr Dixon should have held a meeting with the Claimant to give feedback about the job application and give a better explanation why the Claimant was not shortlisted. The decision maker said that Mr Dixon had demonstrated he followed a selection process and evaluated the application CV against set criteria that had scored 53% against a minimum threshold of 60% for a guaranteed interview. The decision maker did not consider that the decision was influenced by dyslexia or by an intention to discriminate against the Claimant, but that the approach and communication methods in notifying the Claimant of the decision were unsatisfactory.
- 2.20 The grievance decision maker, Ms Hopkins, recommended that there be a review of the Claimant’s CV with the hiring manager to get feedback which the Claimant could use to improve his CV and reapply to achieve a better score to meet the minimum scoring threshold for a guaranteed interview. The grievance outcome recommended a review of the recruitment policy, and also mediation, and training for Mr Dixon.
- 2.21 On 14 January 2024 the Claimant emailed a response to the grievance outcome which he chased on 22 January. I do not have the detail of what the Claimant sent on 14 January. On 23 January Mr Thomas responded to say there would be no further revisions to the grievance outcome letter and that the Claimant had the right of appeal if he was not satisfied. Mr Thomas asked what he would like to do moving forward, including a proposed return to work. On 24 January the Claimant lodged a grievance appeal. The grievance appeal is at [95]. The Claimant said he felt the Respondent was making excuses for his line manager and was not accepting all aspects of where he was wronged.
- 2.22 The grievance appeal meeting took place on 24 February 2025. On 24 March 2025 the Claimant attended a grievance outcome meeting. The grievance appeal outcome is dated 24 March and is at [96]. It states that the Claimant said he felt some points had not been fully addressed to allow him to comfortably return to work. In particular, the Claimant felt that Mr Dixon had discriminated against the Claimant in his comments at the team meeting and that Mr Dixon saying “speaking in short sentences” had not been initially

addressed in the original grievance. Further, that the Claimant believed he had been discriminated against due to his disability, and that influenced Mr Dixon's decision not to shortlist the Claimant for interview.

- 2.23 It was held that this additional comment made by Mr Dixon at the team meeting was a misjudgement and the appeal manager otherwise concurred with what had been found and recommended at the first stage about this meeting and what Mr Dixon said. It was again said: "As discussed in the appeal meeting and agreed by yourself that it was not Andrew Dixon's intention to offend or discriminate against you and that this was out of character for Andrew Dixon. I therefore feel that the appropriate action through training improvements implemented as part of your initial grievance also address your concern linked with the above-mentioned comment."
- 2.24 In relation to the shortlisting for interview, the appeal manager, Ms Collier, said she had had a further discussion with Mr Dixon who said the Claimant had not been shortlisted because the skills and experience of completing the secondment were not included in the application process CV or cover letter, and therefore the application was not strong enough to progress to interview. It was said the intended next steps remained for the Claimant to resubmit his application with improvements to the external recruitment process which was currently on hold to ensure he could continue if he wished. The appeal manager said that they had also themselves reviewed the Claimant's application, agreed with Mr Dixon's scoring, and gave the Claimant her own recommendations on how to improve the application. It was said the appeal manager did not believe Mr Dixon's decision was influenced by dyslexia or intended to discriminate against the Claimant, but the approach and communication method in notifying the Claimant of the decision were unsatisfactory.
- 2.25 On 31 March 2025 the Claimant started Acas early conciliation and also emailed the grievance appeal manager saying it did not appear everything he had asked to be looked at was looked at. He said, about not being given a guaranteed interview, that "I have suggested it cannot be explained otherwise that a potential motive here was in my raising concerns about my treatment based on disability with the person leading the recruitment process and HR leading to bias against me." He said he considered his issues were being explained away as isolated communication failures rather than a trend of events that were discriminatory to people with protected characteristics under the Equality Act. The Claimant said he was intending to return to work the week commencing 7 April, but would seek to continue to seek fair recognition and justice for what had occurred through whatever options were still available to him and as he had been told there was no further opportunity for an internal appeal, he would look at external assistance now he had exhausted what could be done internally. Acas early conciliation ended on 12 May 2025. The Claimant submitted his ET1 Claim Form on 17 May 2025.

2.26 In the List of Issues prepared by EJ Sharp, the complaint is recorded in respect of 14 May 2024 as: Jackie Lewis of JLT [an external training provider] referring to dyslexia and similar neurodiverse conditions as “diseased”; and in respect of 21 May 2024, Mr Dixon allegedly saying in a mocking tone that staff should speak to people with dyslexia slowly and in short sentences. The List of Issues then records one complaint of alleged failure to make reasonable adjustments, asserting that the Respondent had a provision, criterion or practice: “that candidates have to reach a score of at least 60% to access that guaranteed interview scheme for disabled candidates” which put the Claimant at a substantial disadvantage because the Claimant struggles more than neurotypical persons with deriving the meaning of written words, which affected his completion of the application form. It was said that the Respondent by way of a reasonable adjustment, should have allowed the Claimant to apply for the permanent role by sending his CV and attaching a video clip of him answering questions in the application form. It is noted that the Claimant did not ask for this adjustment at the time.

3. The Legal principles relating to deciding time limit issues at a preliminary hearing

3.1 Section 123 of the Equality Act says:

“(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 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 the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.”

3.2 In Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686, it was said by the Court of Appeal:

“52. The concepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as a complete and constricting statement of the indicia of ‘an act extending over a period.’ I agree with the observation made by Sedley LJ, in his

decision on the paper application for permission to appeal, that the Appeal Tribunal allowed itself to be side-tracked by focusing on whether a 'policy' could be discerned. Instead, the focus should be on the substance of the complaints that the Commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the Service were treated less favourably. The question is whether that is 'an act extending over a period' as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed."

3.3 In considering whether separate incidents form part of an "act extending over a period" one relevant but not conclusive factor is whether the individuals or different individuals were involved in the incidents; Aziz v FDA [2010] EWCA Civ 304.

3.4 As to the approach to take to applications for an extension of time on a just and equitable basis, it was said in Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] ICR 1194:

"18. First, it is plain from the language used ("such other period as the employment tribunal thinks just and equitable") that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980, section 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see British Coal Corporation v Keeble [1997] IRLR 336), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see Southwark London Borough Council v Afolabi [2003] EWCA Civ15; [2003] ICR 800, para 33...

19. That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)."

3.5 The question of prejudice is a relevant factor but again is not necessarily determinative: Miller v The Ministry of Justice UKEAT/0003/15/LA.

3.6 Delay caused by a claimant in invoking the internal grievance procedure is one of the factors that the tribunal has to weigh in the balance, along with all the other circumstances. It is not the deciding factor. In the case of Robinson v The Post Office [2000] IRLR 804 EAT the tribunal refused to

grant an extension of time even though there was no evidence of prejudice to the respondent, if it had been granted. The tribunal was concerned that the claimant had been aware of the time limit but had refused to issue his claim, even after he had advice from his trade union to do so. It was held that the mere fact that internal process or grievance is brought is not, automatically in and of itself necessarily enough to guarantee an extension will be granted. It is one factor to be weighed.

- 3.7 In Wells Cathedral School Ltd v Souter EA-2020 000801 (previously UKEAT/0836/20 (20 July 2021 unreported)) the Employment Appeal Tribunal described the need to strike a balance between the desire to encourage the internal resolution of disputes without the need to issue a tribunal claim, and the need for finality in legal proceedings, especially where any delay causes unfairness to the respondent. The Employment Appeal Tribunal declined to overturn the tribunal's decision to grant an extension in circumstances where it was convinced that the claimants had been genuinely engaged in pursuing their grievances to avoid bringing tribunal proceedings and in circumstances where out of time allegations would still need to be considered as part of the unfair dismissal complaint. The tribunal also considered it significant that there was unlikely to be any forensic prejudice to the respondent because most of the allegations concerned written documents which had already been collated and considered as part of the grievance process. HHJ Auerbach emphasised that what factors are relevant and how they should be weighted is case-sensitive and that no one factor necessarily is decisive. It was said the case law principles do not mean a claimant can secure a guaranteed extension of time merely by presenting a grievance and, at least until the internal process has run its course, unless the respondent can show some forensic prejudice has arisen. Whether it is just and equitable will depend on weighing in the balance all the factors that are relevant and some cases it may be sufficient and in other cases it may not.
- 3.8 The two different outcomes in Robinson and Souter, which show the need to consider the particular circumstance of a case when deciding whether or not to exercise this discretion.
- 3.9 In E v X & Anor UKEAT 20 0079 20 1012 the Employment Appeal Tribunal reviewed the case law relating to preliminary hearings on matters relating to time limits. Some of the principles were summarised as follows:
- In order to identify the substance of the acts of which complaint is made, it is necessary to look at the claim form;
 - It is appropriate to consider the way in which a claimant puts his case and, in particular, whether there is said to be a link between the acts of which complaint is made. The fact that the alleged acts

in question may be framed as different species of discrimination (and harassment) is not decisive;

- Nonetheless, it is not essential that a positive assertion that the claimant is complaining of a continuing discriminatory state of affairs be explicitly stated, either in the claim form, or in the list of issues. Such a contention may become apparent from evidence or submissions made, once a time point is taken against the claimant;
- It is important that the issues for determination by the tribunal at a preliminary hearing have been identified with clarity. That will include identification of whether the tribunal is being asked: (1) to consider whether a particular allegation or complaint should be struck out, because no prima facie case can be demonstrated, or (2) substantively to determine the limitation issue;
- The fact that different individuals may have been involved in the various acts of which complaint is made is a relevant, but not conclusive, factor;
- Definitive, substantive determination of an issue which is factually disputed requires preparation and presentation of evidence to be considered at the preliminary hearing, findings of fact and, as necessary, the application of the law to those facts, so as to reach a definitive outcome on the point, which cannot then be revisited at the full merits hearing;

3.10 In Concentrix CVG Intelligent Contact Limited v Obi [2022] EAT149 the EAT held that where there are discrete incidents of discriminatory treatment which occurred over a period of time and amount to conduct extending over a period of time, and are all out of time, the tribunal's approach to the just and equitable extension of time need not be all or nothing. It is possible, for a tribunal to conclude it is not just and equitable to extend time for all of the incidents even if they are part of conduct extending over a period of time. For example, some older incidents may incur greater forensic prejudice to a respondent.

4. Discussion and Conclusions

The approach to take

4.1 The case was originally case managed on the basis that the complaints were all presented outside of the primary time limit. It is often the case that in those circumstances a hearing will be listed to determine whether it is just and equitable to extend time based on the date of the last complaint of discrimination and presuming, for the purposes of that hearing, that the other allegations fall within the ambit of being conduct extending over a

period (subject to the actual determination at a final hearing, if needed). This is because normally if it is not just and equitable to extend time for the most recent act complained about, looking at earlier events will not improve the Claimant's position. Further, making a substantive decision about whether particular complaints form part of conduct extending a period can sometimes be difficult where there are many individual instances complained about. This is particularly so when not all the evidence has been heard and a decision not yet made about what is or is not discriminatory, and on what basis. Hence the cautionary words in cases like E v X about what should be determined time limit wise at what kind of hearing. That said, there are not many discrete complaints in this case; there are only three and the whole position can in my judgement be fairly looked at, and the parties prepared and made their submissions on that basis.

Are the complaints out of time?

- 4.2 Before I do so, however, I have to deal with arguments raised by the Claimant that in fact the complaints are not out of time. Such an argument was not, as I understand it, envisaged when EJ Sharp listed this hearing. The Claimant raised one argument that his case is not out of time in his skeleton argument. He raised a second argument on the day of the hearing itself. I asked the Respondent's counsel what he proposed we do about this; and he said he was content for the points to be determined at the hearing.
- 4.3 The Claimant argues that his direct disability discrimination and harassment related to disability complaint about the comments made by Mr Dixon on 21 May 2024 are not out of time because it is conduct extending over a period that continued after that date because there had never been a message to say that what Mr Dixon said was inappropriate and there should be something to say that. I am presuming he means something beyond what is in the grievance and grievance appeal outcome. I do not accept the Claimant's argument. The substance of the Claimant's complaint is what Mr Dixon said to him that day (and the context of how it was said). That is the substance of the complaint of less favourable treatment to his detriment/ unwanted conduct related to disability said to have the proscribed purpose or effect. The substance of the complaint clearly relates to 21 May 2024 and is not part of some individual ongoing conduct extending over a period. The Claimant is confusing the alleged discriminatory act itself with what he wants to say about its effect on him. As an individual act it is out of time.
- 4.4 The Claimant argues that his direct disability discrimination and harassment related to disability complaint about what the trainer, Ms Lewis, said in her slides and orally during the training on 14 May 2024 is

itself conduct extending over a period because, contrary to what he was told, the slides have in fact not been changed and are still being used. He says he saw them in January and that the content complained about remained. I have not seen the original slides or what the Claimant says he has seen since and I do not know the source of the information that the grievance decision maker refers to in the grievance decision. Why the Claimant did not include this evidence in his witness statement I do not know and was an odd thing to leave out. But if what he says is correct, I do not in any event accept his argument. The substance of the Claimant's complaint of less favourable treatment to his detriment/ unwanted conduct related to disability said to have the proscribed effect is what Ms Lewis said in the training on 14 May 2024 and what was in the slides that were displayed in the training on that day in that training environment. It is that conduct which allegedly had the detrimental impact on him or created the proscribed effect on him. Again, if what the Claimant says is correct, then it is a point that would potentially go (if the case gets that far) to remedy in the case, rather than amounting to itself conduct extending over a period. As an individual act it is, in itself out of time.

- 4.5 The Claimant accepted that the refusal of a guaranteed interview was a one off event and that his ET1 was lodged, in this respect, outside of the primary time limit. It therefore follows that all of the complaints are out of time, unless I decide it is just and equitable to grant a longer period of time in which to bring any or all of the complaints.

Conduct extending over a period?

- 4.6 I turn next to the question of whether the three instances are themselves collectively part of conduct extending over a period. I find they are not. The substance of the two periods of complaints is, as the Respondent says, totally different. The May 2024 allegations are about comments made by individuals about dyslexia/neurodiversity said to be harassment or direct disability discrimination. The October 2024 complaint is a failure to make reasonable adjustments complaint about the manner in which the Claimant submitted his application for the permanent role to be assessed whether he met the threshold for a guaranteed interview. In particular, whether he should have been offered the facility to submit a video clip. They are very different types of complaint about very different matters. There is a 4 to 5 month gap between them. The only link, other than the Claimant's dyslexia, is that Mr Dixon was involved in the comments made in the team meeting on 21 May, and in the assessment of the Claimant's application and whether the Claimant met the threshold for a guaranteed interview in October 2024. (The complaint about Ms Lewis' training has no link to Mr Dixon). This link relating to Mr Dixon is not, in my judgement, anywhere near sufficient. The Claimant accepts that he did not ask Mr Dixon, or anyone else in the Respondent, to allow him to submit his

application partly by video clip. His argument is that the Respondent, as a large employer should have pre-empted the need as a business. The actual specific complaint of failure to make a reasonable adjustment that he is bringing about being able to submit a video clip is not predicated on, for example, Mr Dixon having some personal animus towards him related to his disability or earlier events.

- 4.7 In fairness to the Claimant he recognised this potential difficulty in closing submissions. He alleged that when EJ Sharp prepared the List of Issues his complaints had been changed or reduced relating to the refusal of the guaranteed interview, and that he must have missed this. I do not accept this. It is evident that EJ Sharp prepared the List of Issues having considered what the Claimant had written and in discussion with the Claimant. The Claimant was given the opportunity to check and comment on the List of Issues and he did not do so on this point. The Claimant only raised the point that his complaint about 14 May covered both the slides and what Ms Lewis said. It is evident from this, that in fact the Claimant did check the List of Issues. The Claimant also pursued his appeal about the indirect discrimination complaint, but as I said to the Claimant (and EJ Ryan did at the hearing before him) unless and until the Employment Appeal Tribunal changes how that indirect discrimination complaint proceeds I have to proceed on the basis of the case before me, which is that the 11 October 2024 complaint only relates to not being given the adjustment of being allowed to submit a video clip. The Claimant acknowledged this and made a comment about potentially in the future making an application to amend. I then drew to his attention, because I did not want him to proceed on any kind of misunderstanding, that his potential difficulty could be that if time is not extended, he could be left with no claim to make an application to amend about. There was no application to amend before me.
- 4.8 In summary I do not find that the incidents in question are sufficiently linked so as to form part of conduct extending over a period culminating in the last act of 11 October 2024.

May 2024 complaints – just and equitable extension?

- 4.9 I then have to consider whether it is just and equitable to extend time for the May 2024 complaints. For the May 2024 complaints the Claimant initiated Acas early conciliation 10 months after the events, 7 months out of time. As against a 3 month time limit, it is substantial delay. The Claimant argues that Parliament intends to change the time limit for tribunal complaints. However, I have to apply the law as it currently stands.

- 4.10 In relation to the reason for delay, in my judgement, the Claimant decided at the time not to pursue any formal complaint or tribunal claim. There is a factual dispute about what the Claimant actually personally did about the training content delivered by Ms Lewis, but even on his own account he raised it at the time to get the content changed and as an internal learning point. In relation to Mr Dixon's comments on 21 May 2024, the Claimant had again raised this as a potential training point with Ms Foot, and with Mr Dixon directly himself. But as of 25 July 2024 the Claimant had, in my judgement, left things with a request for Mr Dixon to, in the future, be more careful and use trusted sources for information when looking into conditions, and in general terms to be supportive. The Claimant in his evidence does not set out anything after that, until the guaranteed interview situation. Indeed, in his grievance letter he said that at the time he thought the feedback had been taken onboard i.e. it was at an end.
- 4.11 Whether the Claimant knew about employment tribunal time limits within the 3 months following May 2024 (so late August 2024) I do not know as he did not say in evidence or give a clear account of exactly how and when he found out. Certainly, the Claimant knew about time limits by 14 October 2024. But the Claimant had the wherewithal following the events of May 2024 to find out about how to bring a tribunal claim, and time limits, if he wished to do so, and he did not. I find the Claimant at that time did not pursue an employment tribunal claim in time (for example by commencing Acas early conciliation by 20 August 2024) because he was not at that time seeking or wishing to bring any kind of formal complaint about the events of May 2024, whether that be a formal grievance or a tribunal claim. The reality is, in my judgement, the Claimant made a decision at that time not to take any formal step. He thought the feedback given was enough. He would have been able to, if he wished to do so, find out about the time limits and lodge a tribunal claim about the events of May 2024 within time.
- 4.12 What changed things were the events of 11 October 2024, with the Claimant then deciding to present a formal grievance about the handling of his application for the permanent role, and to add in to that the events from May 2024. In doing so the Claimant knew and expressly acknowledged in his formal grievance that the 3 month time limit for the May 2024 complaints had passed. He decided not to bring a tribunal complaint about them at that time in October 2024 (which would have still been out of time but less so) and decided instead to pursue his formal grievance. The Claimant told the Respondent he was relying on Wells Cathedral School.
- 4.13 But as the Respondent asserts, the Claimant's situation here in relation to these May 2024 complaints, is very different to that in Wells. In Wells the Claimants opting to use the internal grievance procedure took them

outside of the 3 month window. Here, for these May 2024 events that window had already passed by some measure, and time was continuing to pass. Wells did not guarantee the Claimant an extension (which the Claimant appeared to appreciate from his use of “can”). The Claimant was taking a considerable risk.

- 4.14 In terms of prejudice, if time is not extended the Claimant will not be able to bring these complaints. If time is extended the Respondent has to defend the complaints it could otherwise defeat by a limitation defence. In terms of forensic prejudice, the Respondent says that there are live factual disputes relating to the complaints about the 14 May because there is a factual dispute about whether the Claimant actually himself raised his concerns at the time. It is said that evidence would now be being given after a significant period of time. In relation to 21 May, it is said there are factual disputes about the context and whether in particular Mr Dixon was mocking the Claimant as opposed to it being said that Mr Dixon’s comments were at worst ignorant. It is said that Mr Dixon will be prejudiced by the delay and in having to give his evidence on his comments made on 21 May 2024, having thought the matter resolved in July 2024. It is said it is naturally more difficult for a witness to give evidence in those circumstances because a witness will legitimately think they will not have to remember it as a live issue. The Respondent says that even if this was in part looked at in the grievance and grievance appeal process, that does not remedy the prejudice because Mr Dixon would still have to now remember back a significant period of time. It is also said by the Respondent that the factual discrepancies also make the complaints weak on their merits.
- 4.15 I do not find that the tribunal claim about 14 May and 21 May 2024 was presented within a period of time that I consider just and equitable. I do not extend time for those complaints. I do not say this on the basis of a merits assessment because I do not consider I have sufficient before me to reach a safe view on that. I do not know enough about exactly what was on the slides or was said by Ms Lewis or the context of what she said, nor do I know exactly what the Claimant complained about at the time (if anything) which would be potentially relevant to determining whether the threshold for a harassment claim is met. It is not clear to me exactly what the grievance investigation unearthed in that regard, or whether the Respondent was just proceeding on the basis of what the Claimant told them. In relation to the comments by Mr Dixon, the context of this is acutely relevant and there is a stark dispute of fact between the Claimant and Mr Dixon about this. I take the Respondent’s point that the Claimant’s allegation of Mr Dixon laughing at him or mocking him seems to have grown over time and was not the Claimant’s original complaint. I accept that would be likely to be of relevance in assessing whether the threshold for harassment is met. However, I have not seen what Mr Dixon told the

grievance investigators or heard him give evidence tested under cross examination. The Claimant would argue, for example, that there was always an undercurrent to his complaint about Mr Dixon, shown by for example, his complaint to Mr Dixon on 23 May that Mr Dixon had appeared disinterested throughout the presentation. I do not consider I can safely reach a view on the merits based on what I have before me.

- 4.16 In terms of prejudice, other than the obvious prejudice to the Claimant if time is not extended, versus that to the Respondent if time is extended, it seems likely to me that evidence could be fairly given about what was said/ on the slides at the training on 14 May 2024, and there is a likelihood of there also being a paper trail about what the claimant complained about at the time (if anything). In relation to 21 May 2024, I accept there would be some prejudice to Mr Dixon in having to give an account 2 ½ to 3 years after the event about things like his tone and facial expression, although it is reduced somewhat (but not completely) by the fact it was looked at nearer the time in the grievance investigation, albeit only after the delay in the Claimant raising a formal complaint between May and October 2024. I accept there is also prejudice to the Respondent in having to meet a complaint that the Claimant had in my judgement originally decided not to pursue formally and that links with the public policy interest of finality.
- 4.17 The most significant factors for me in my overall weighing up, is the reason for delay. The Claimant made an initial decision not to formally pursue any complaint about the events of 14 and 21 May, and so the tribunal time limit expired when he would have been in a position to take steps if he had wished to do so. The initial time period did not expire because of following a grievance process; the Claimant had not brought one because he thought his feedback had been taken on board. After 11 October 2024 the Claimant then made the decision to pursue the formal grievance but not to bring a tribunal claim at that time knowing that the time limit had passed and that time would continue to run for these May 2024 events. He was seeking to use the Wells case to recapture and keep as live something that he knew the time limit had already passed for, and he had previously decided not to pursue. I do not consider it just and equitable to extend time in those circumstances, and more so when I add in the prejudice, albeit not the most severe of prejudice, to the Respondent and the link with both of these things (the Claimant's choice and prejudice to the Respondent) to the public policy interest in finality. I acknowledge that the timescales in the grievance process were largely not in the Claimant's hands, although deciding to follow that process rather than bring the tribunal claim/ commence Acas conciliation was.
- 4.18 I should add that the Claimant argues he had been warned in the Respondent's Code of Conduct/ company procedures that everyone must comply with company procedures and anyone who did not could face

disciplinary action. He says he considers he had to go down, or was forced to go down, the formal grievance route and exhaust it because he could otherwise face disciplinary action. Whatever the Code of Conduct might say I do not accept this was the Claimant's reasoning. If he thought he had to exhaust a formal grievance before bringing the tribunal claim about the May 2024 events, he would have done this in May 2024. He did not because he was intending to take any formal action at the time. The reality is, when he got to the events of October 2024, he decided to bring a grievance about that, and to try to add back in the May 2024 events despite their age. In my judgement, if the Claimant genuinely thought a bar to bringing his tribunal claim was a risk of disciplinary action if he did not see through a formal grievance, as against knowledge of the time limits and that time was passing, he would have said something about that fear and the situation at the time. He could have, for example, asked HR about it, but he did not. He mentioned Wells at the time, but he did not mention that point. I do not extend time for these May 2024 complaints

October 2024 reasonable adjustment complaint – just and equitable extension of time?

- 4.19 I turn then to the reasonable adjustment complaint from October 2024 about not being given the opportunity to file a video clip. Acas conciliation was started just under 6 months, when it should have commenced after 3 months so the delay is not insignificant although not the most egregious kind the tribunal may see in a case. In terms of the reason for the delay, the Claimant knew about the tribunal time limit, but it had, of course, not initially expired. The Claimant promptly brought within days his grievance about not being given a guaranteed interview, and I accept he was genuinely seeking to progress that grievance in the first instance and with what at first was quite some measure of time available before the time limit would expire.
- 4.20 If I take from the Claimant's perspective at the time, that 11 October 2024 would be the operative date, he needed to start Acas early conciliation by 10 January 2025. The Claimant had by that point in time received the grievance outcome a couple of days earlier. He did not commence Acas early conciliation but instead (to the best of my understanding as I do not appear to have all the correspondence) engaged in correspondence about amendments to the grievance outcome letter. When that did not all resolve as he wished, he then pursued the grievance appeal, again without at that time commencing Acas early conciliation. The Claimant would have been capable of calculating and applying the time limit to contact Acas. It also would have been open to him to undertake Acas early conciliation alongside of pursuing correspondence about amendments to the grievance outcome and/or pursuing the grievance appeal. With hindsight that would have been the sensible course to take.

- 4.21 In my judgement the Claimant did not do so because he genuinely was engaged in the grievance process and seeking to achieve the resolution he wanted, including what would happen with the permanent job application. He also thought if the grievance process did not resolve things to his satisfaction, he could still try to pursue a tribunal claim and that Wells might help him in that regard.
- 4.22 The Respondent here argues that the Claimant was essentially reserving his right to bring a claim out of time if the grievance did not go his way. It is said by the Respondent that the Claimant's approach subverts the policy reason behind time limits; to deal with matters swiftly and provide finality as soon as possible. It is argued that if claimants who are fully aware of the time limits are able to pause the clock by submitting a grievance, the time limit becomes meaningless. The Respondent argues that a grievance can be highly relevant to the discretion where a claimant gives cogent reasons for preferring an internal process, or is unaware of time limits, but Wells does not give claimants a free hand to knowingly subvert the statutory time limits at will. It is said that if Parliament intended that to be the effect of bringing a grievance the legislation would say so. It is again argued that the Claimant's situation is different to that in Wells.
- 4.23 I acknowledge the point that the Respondent makes. The Claimant was certainly overly relying on Wells, and that was very risky and not a sensible strategy for him to take. However, I do also temper what the Respondent says with the point that the Claimant is and was then a litigant in person. At that point in time the Claimant had received no legal advice at all. He was taking a lay person's approach to Wells. I also do not consider that the Claimant in this context and about this complaint was deliberately trying to play the system in anyway. He wanted to pursue and engage with the grievance process to see if it could resolve things in the way he wanted, and he overly relied on Wells to think that if that did not happen he could then potentially pick things up again with Acas/ the tribunal. As the EAT explains in Wells often there can be wider context to a case than a claimant simply using a grievance to stop the clock and what each case needs is its own individual analysis.
- 4.24 The Respondent raises no particular argument about forensic prejudice. If the complaint proceeds, then clearly they bear the burden of defending a claim they otherwise would not have to do. The complaint in question is a narrow one about whether one adjustment should reasonably have been made to the application process. The Respondent will therefore be exposed to a relatively short hearing. However, I completely accept that this still entails work and cost on their part, including hearing preparation that they otherwise would not be exposed to. If time is not extended the Claimant's case will be at an end; he has no other outstanding complaints.

- 4.25 The Respondent argues that merits should be a key consideration in the overall analysis of this complaint. It is said that the PCP applied to the Claimant was that candidates have to reach a score of at least 60% to access the guaranteed interview scheme for disabled candidates and that the PCP is designed to ameliorate difficulties disabled applicants may experience applying, while balancing the need for applicants to meet a basic competency standard.
- 4.26 The Respondent also says that the Claimant's complaint has always been that he should have qualified for guaranteed interview, and that he did meet the standard and should have got the promotion. The Respondent argues that questioning a decision maker's assessment of an application for promotion is a fundamentally weak basis for a discrimination claim, and even more so when Ms Collier reconsidered his application on appeal and came to the same conclusion. It is said that the Claimant arguing the Respondent should lower the basic competency standard required of the role to accommodate the Claimant would be equally weak, although the Claimant has never advanced that argument himself.
- 4.27 I acknowledge these points, but I would also observe that the way the PCP applied required applicants, as I understand it, to submit a written application. The point the Claimant is making in the complaint set out in the List of Issues, as I understand it, is that requiring applicants to show they meet the basic competency standard of 60% in written form, would potentially place him, because of his particular disability of dyslexia and how that affects him as an individual, at a particular disadvantage because of the written format. That is not necessarily an unviable argument as a matter of logic/legal analysis if it can be made good on its facts. It is not necessarily about lowering the basic competency standard, but about using tools, if appropriate and reasonable, to allow demonstration of that competency standard in a different way or a mixture of ways.
- 4.28 I take the point that the way in which the case is now put in the List of Issues is different to how it was put during the grievance process, which was not about whether for example the Claimant should have been able to submit a video clip. But the Respondent has also not argued they are evidentially prejudiced in having to meet the way in which the reasonable adjustments complaint is now put in the List of Issues.
- 4.29 I also take into account the point that the Claimant's grievance, and indeed his ET1, asserts that he should have made the score threshold for interview/ should have had the promotion. It is on one analysis counterintuitive to an argument that he was disadvantaged in having to submit the application in written form. But the Claimant has not seen the actual scoring that was undertaken of his application. I do not know

because the evidence is simply not before me of how it is the Claimant says (if he does say this) that he had difficulties completing the CV and covering letter and what it is he says he missed and would have included by way of video clip, or done differently in a video clip. I do not know (because again the evidence is simply not before me) how it is the Claimant says the Respondent knew or reasonably should have known that he had that difficulty. The Claimant accepts he did not ask for the adjustment and certainly that makes the case a more difficult one for him to run. But it is not necessarily the complete answer. I do not know what anyone in the Respondent knew about the Claimant's difficulties and how that may or may not affect his ability to complete the written process to be assessed against the 60% threshold for guaranteed interview and what consideration, if any, was given to the possibility of different formats. It strikes me that the Claimant is likely to have a tricky time making good this complaint and all its constituent elements, but I am reluctant to say it is obviously so bad when there is so much information I simply do not know at this stage. It is not the most attractive of arguments given his trenchant approach to saying he actually met the baseline requirements of the job, and given he did not ask for the adjustment at the time, but it is still open to him to argue that in fact the written format did disadvantage him. Litigants do run alternative cases in proceedings.

4.30 I have found the decision about this complaint to be a finely balanced one. There are factors pulling in both directions. I have ultimately decided, on balance, that it is just and equitable to extend the time limit for this particular complaint. I have taken account of all the arguments and competing factors put before me. Overall, in view of the facts that:

- (a) the Claimant was genuinely engaging with the grievance process to try to resolve his concern about the job interview;
- (b) he brought that grievance very promptly which on the face of it gave time to potentially follow that through before bringing a tribunal claim (which is very different to his approach to the May 2024 incidents);
- (c) the length of time the whole grievance process took was largely out of his hands and he was trying to drive it forward;
- (d) when he had the stage one grievance result, he was still trying to resolve it through correspondence and an appeal rather than pursue a tribunal claim;
- (e) the delay then is not insignificant, but is not egregious or unexplained;
- (f) he did overly rely on Wells to pursue that strategy as a matter of choice, but he was doing so as a litigant in person without legal advice;
- (g) whilst he did knowingly miss the primary time limit because of that strategy he adopted by choice, he was not trying to play the system in some way;
- (h) the lack of forensic prejudice to the Respondent;
- (i) Nothing had been communicated to the Respondent that there was any finality in the Claimant's complaints about the handling of the interview;

- (j) the complaint is ultimately a narrow one that will not eat up significant resources;

lead me to the overall conclusion it is just and equitable in these particular circumstances to extend time, when weighed against the factors pulling in the other direction. But absolutely this decision was a borderline and nuanced one, and is not at all a simple analysis or encouragement that a claimant can use a grievance to stop the clock on time limits and gain an extension, particularly where there is no forensic prejudice.

- 4.31 A case management hearing will be listed so that this one ongoing complaint can be listed for hearing and case management orders made to get ready for that hearing.

Employment Judge R Harfield

Dated: 10 June 2026

JUDGMENT SENT TO THE PARTIES ON

Dated: 23 July 2026

Mary Bateman