



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No. 4100889/2025**

**Hybrid Hearing Held in Glasgow on 6 May 2026**

**Employment Judge Hendry**

**Mr R Black**

**Claimant  
In Person**

**Greater Glasgow Health Board**

**Respondent  
Represented by  
Mr D James,  
Advocate  
Instructed by  
Ms L Brunton,  
Solicitor**

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The claims for disability discrimination being out of time and the Tribunal having declined to exercise its discretion in terms of section 123 of the Equality Act 2010 to allow the claims to be heard late dismisses the claims.

**REASONS**

1. The claimant in his ET1 sought findings that he had been discriminated against on the grounds of his disability. The claimant was diagnosed with Autism in 2019 and the respondents accepted that he was a disabled person in terms of the Equality Act 2010 during the relevant period. The claims were opposed.
2. The case proceeded to a case management hearing on 1 September 2025. This was dealt with by Employment Judge Campbell who prepared a Note following that hearing (RBp.43). The Judge identified the issue of potential time-bar noting that the complaints in the ET3 stopped in May 2022 when the claimant was redeployed in a role with the Vaccinations Team. I also noted

that the claimant wanted to amend the claim to include an incident that had occurred on 31 January 2024 when he received his grievance outcome. Following that hearing the claimant lodged a short amendment which was accepted unopposed. A hearing on time bar was arranged.

### **Response to the amendment**

3. The respondents lodged revised grounds of resistance (R65-67).
4. Prior to the hearing the respondents lodged a bundle of documents for use at the Preliminary Hearing (R1-86).

### **Hearing**

5. The claimant was unrepresented at the hearing. Accordingly, I explained the purpose of the hearing to him indicating that I would hear evidence from him about the lodging of his claims to the Employment Tribunal and the history of how those claims had developed. I explained that the hearing was not to make findings in relation to the merits (the rights and wrongs) of his position but I needed to understand what had ultimately led to Tribunal proceedings being lodged. I noted that the ET1 had been lodged over a month after the expiry of the ACAS certificate. The claimant explained that he had tried to lodge the ET1 but that it had “bounced” from the Employment Tribunal system because of some errors he had made in the form. He had corrected the errors and ultimately the Tribunal had accepted his claim form on 6 May 2025.

### **Findings**

6. The claimant had worked for the NHS as a Healthcare Support Worker since 2010. He had been diagnosed with Autism in October 2019. At this time he was assigned a Psychiatrist who he met every three or four months and who provided him with advice and guidance in relation to coming to terms with his diagnosis. The claimant at that point was 56 years old.
7. The claimant enjoyed his work. He was assigned to work in the theatres at the respondent's University Hospital. This is a large hospital. There are 18 operating theatres. There are approximately 10 staff working in each theatre. The claimant enjoyed his work and was unaware of any dissatisfaction with his work.
8. The claimant was concerned about incidents of what appeared to him to be bullying of staff. He also believed that he had also been bullied on occasion.

He made complaints to senior management about these matters but did not feel that they were taken seriously.

9. The claimant's understanding was that some members of staff wanted him moved from working in theatres because of his advocacy on behalf of bullied staff. He understood that these staff members had referred to his autism in the presence of other staff.
10. The claimant had a new Psychiatrist appointed to manage his mental health. He had to ask his line manager, Mary Taylor, for time off to attend the appointment. She asked if she could speak to the Psychiatrist after his interview and the claimant agreed to this. Because of his difficulties at work the claimant became anxious. He had been asked to raise the issue of possible redeployment to the Psychiatrist which he had done. The claimant was unsure why he had been asked to broach this matter with the Psychiatrist. The claimant explained that he was working in a theatre one day when he spoke to the senior nurse in charge who asked him if he would like to work elsewhere. The claimant had no wish to work elsewhere at the time. It was about the same time another nurse advised him that staff had been talking about trying to get rid of him. He explained that there was a lot of gossip in the hospital and that it had "gone round" that he was autistic. He met his new Psychiatrist Dr. Paton.
11. The claimant believes that his workplace could be described as toxic at the time because of bullying. The claimant had a meeting with a Dr. Paton and had been told to telephone his line manager, Mary Taylor. He telephoned the line manager and she then asked him whilst she was on the telephone where he was and he explained that he was outside the doctor's door. She asked to have a "quick word" with Dr. Paton which she did. The claimant thought that this was unusual but didn't query it. The Psychiatrist later told him that being asked to speak to his line manager "was weird".
12. The claimant now believes that his line manager was trying to manipulate the circumstances to allow her to redeploy the claimant out of theatre work on the grounds of his autism.
13. The claimant was in post as a Band 3 Healthcare Support Worker ("HCSW") in the Theatres department from 11 March 2013 until 20 May 2022. The claimant was based at the Queen Elizabeth University Hospital ("QEUH"). On 20 May 2022, after a period of time on the redeployment register, the claimant was appointed to a permanent position as HCSW within the Vaccinations team.

14. The claimant explained that he had periods of illness (depression and anxiety) and had been referred to Occupational Health. He saw another Occupational Health Psychiatrist who then explained that he was “on the sick” and also on the redeployment scheme for about a year and a half. He found this very difficult not knowing what was happening. He approached management periodically with possible job opportunities but none of them came to any fruition until eventually at the beginning of 2023 he found a post with the vaccination team. He had been told by his line manager that he could not work in theatres any longer nor in a patient facing role.
15. During these periods the claimant had assistance from his trade union Unison.
16. The claimant put considerable trust in his employers. He raised a grievance.
17. An e-mail of 12 March 2021 (R68) confirmed that the claimant had an appointment with Occupational Health on 23 March 2021. The claimant had emailed the respondent’s HR Support and Advice Unit (R68):

*“Hi Karen*

*Great to hear from you. I'm still confused with what's going on, I'm asking myself have I done something or is it because I've had time off sick, they don't want me in theatre. I went over this letter and there is no reason that they should have said I can't work in theatre. Confused of the non-direct answer I got from the last meeting. I've looked up lawyers on the internet but apprehensive. I've also tried to get hold of Mrs Paton, the Psychiatrist to find out exactly what was said and why she was asked to write the letter for Mary Taylor. She said to me that day it was a bit unusual for a nurse to contact the Psychiatrist when they are having a routine meeting. You must see why I am not understanding ENT of this or is it just me that's blind to something that's jumping out to nursing staff.”*

18. On 21 April 2021 the claimant had contact with the respondent requesting his files. He wrote (JB.70):  
  
*“The reason for this request is that I have a lawyer who I am taking legal advice from and he has stipulated the urgency to obtain the file in order to put an end to this case.”*
19. The claimant referred to a note of a meeting that took place on 9 June 2021 related to a potential return to work following a period of absence due to a diagnosis of Asperger’s Syndrome and more recently depression and anxiety. It recorded:

*"Steven Reid advised that Dr. Haldane at Occupational Health had previously suggested that redeployment to another directorate/area would be beneficial for Mr Black and he had been working temporarily, out of his substantive role in theatres, currently within theatres stores.*

It recorded:

*Mr Black advised that his theatre's role had always been interesting but over the last 3/4 years he had not enjoyed working there, as he had felt uncomfortable around a number of staff who had taken his confidence away. Mr Black advised that he was constantly being asked if he would prefer to work somewhere else, as he may be happier out of theatre."*

There was then a discussion about the redeployment process.

20. A meeting took place on the 27 February 2023. The claimant had complained about the redeployment process. He was represented by his trade union representative who had indicated that he was bitter about the way he had been treated. It recorded:

*"After I'd seen my Psychiatrist the letter went to Mary Taylor and the ball had started rolling to get me out. When I went to see the Doc in OH they said that Mary Taylor is saying he shouldn't work in the theatres and I said I feel ok working in the theatres and they said they should write this down. So, I was told it looks as if Mary Taylor has a problem with me working in theatres but I said I didn't have a problem working in theatres. So, when it comes to working in theatre I have the intelligence."*

21. The claimant attended a hearing on 31 January 2024 following his request to review the investigation process related to his complaint under The Bullying and Harassment Policy. This was carried out by a Mr Bretherton, the general manager. He wrote to the claimant on 19 February (R85) with the following findings:-

"

- *You believe that you have been unfairly prevented from continuing to work in the operating theatres;*

*Managers are under an obligation to act on clear recommendations received from Occupational Health from your own Psychiatrist.*

- *You believe your Psychiatrist was pressurised by Mary Taylor over the telephone;*

*The letter you provided from your Psychiatrist states that it was written at your own request.*

- *You believe that Paul Docherty had accessed your personal medical information;*
  - *A thorough check undertaken by E-Health found that there was no inappropriate access to your electronic records.”*

22. The claimant asserted that at the hearing Mr Bretherton indicated that he wasn't being allowed to work in theatres because of his autism in case anything untoward happened in the theatre and it became public that someone with autism was working there.
23. The claimant asked his trade union to review the advice he had been given. In their response they said on 28 May 2024: *“I have made note of the fact that you also previously engaged and received legal advice some (time?) ago around parts of your case with a firm independent of Unison”*

#### **Agreed relevant dates**

24. **The last alleged act of discrimination is 19 February 2024. The time limit expired on 8 May 2024.** The ACAS conciliation began on 20 February 2025 and the conciliation ended on 3 April 2025 and the claim was received by the Employment Tribunal on **6 May 2025**.

#### **Claimant**

25. I found the claimant to be generally a credible witness. Because of the passage of time there were some doubts as to his recollection of events and he struggled a little with assigning dates to incidents. Nevertheless, he clearly had an honest belief in his perception of events. The one issue I struggled with was his assertion that he had made reference to having a lawyer and taking matters to court as threats to pressure on the respondents to carry out a full investigation into his complaints but that they were untrue. It is apparent from his evidence that he had at some point contacted a solicitor for advice. His evidence was that the solicitor had not discussed time limits with him and suggested that he proceed with the internal grievance process. His position was that he felt his union had not given him appropriate advice about his legal rights.
26. The claimant explained that the events leading up to the raising of the claim were that he had spoken to his trade union representative after receipt of Mr Bretherton's letter and told the representative that he was unhappy about the outcome. He could not understand why the representative had not intervened when Mr Bretherton had said it was dangerous to have someone with autism working in a theatre. He was promised by the trade union representative that

they would look into the circumstances. He received a letter dated 19 February 2024 saying that there was no prospects of success in any claim. He felt let down by his trade union. He received an e-mail from his trade union officer on 28 May (R55) it stated:

*“As you know I was assigned your case. I was asked to conduct a review, and check if you had a legal case for discrimination against your employer. At a meeting with you I assessed your case to see if there was any potential legal case. Unison can support you with taking forward.*

*My view is that you didn't have a legal case around discrimination or harassment. Your case would not have merits of success were it to be brought to an Employment Tribunal.”*

27. The claimant remained dissatisfied with the situation. He felt he had got nowhere. In early 2025 he spoke to someone whose child had autism and who suggested that he should contact ACAS. He looked up ACAS on the internet and telephoned them to discuss his case. This would have been in early February 2025. **The ACAS certificate was issued on 20 February 2025 (R1).**

### Submissions

28. Mr James agreed to give his submissions first to allow the claimant to understand the arguments that had been put in favour of the claim being dismissed and the refusal of the application for an equitable extension. The solicitor had already lodged and intimated a skeleton submission.
29. He then made reference to the skeleton submission and to the facts that the Tribunal had just heard. He pointed to the relevant dates.
30. In his submission the claims were considerably out of time. It was clear from the claimant that he had concerns going back almost until the date of his diagnosis that he was being treated badly. In layman's terms he had buried his head in the sand and any claim was out of time.
31. The solicitor then took me through the relevant case law. Of particular interest was the case of **Adedeji v. University Hospitals Birmingham NHS Foundation Trust** [2021] EWCA Civ 23 and the comments made there by the Court of Appeal. Mr James accepted that the respondents had not lodged evidence about the impact of the delay on the cogency of evidence but it was clear from the claimant's own evidence that witnesses would struggle to recollect matters as far back as 2021 as the claimant had. He also pointed to the fact that the claimant could not rely on the “paperwork” generated at

the time because these documents did not capture the allegations that he was making which would revolve around unrecorded comments made by Mary Taylor, Mr Docherty and latterly by Mr Bretherton. It was therefore apparent that the cogency of evidence would be impacted because of the long delay in raising proceedings.

32. The respondent's solicitor made reference to the claimant's condition and to a period of extended illness. This in his submission was not sufficient to justify his failure to lodge proceedings (*Thorpe v. Sainsburys Supermarkets Ltd* [2023] EAT 20. The claimant contended that he was unaware that he was entitled to make any claims against his employers and had to go through the grievance process. The fact that he contacted a solicitor for advice who he made reference to in correspondence and the fact that he had been told by his trade union representative that they had considered the prospects of success of an Employment Tribunal claim all pointed to the fact that the claimant's ignorance was not reasonable. Even at the "last hurdle" the claimant had lodged proceedings outside the month of the period of expiry of the early conciliation certificate.
33. The claimant's position was that he had not been well served by his trade union and was unaware of time limits. He thought that it was fair for the claims to proceed given the huge impact the respondent's actions had on his life and the long period he had spent awaiting redeployment.

### Discussion and Decision

34. The general rule is that proceedings must be brought within three months of the act or acts of discrimination to which the claim relates.
35. Section 123(1)(a) of the Equality Act 2010 is in these terms:

#### *"123 Time limits*

*(1) Subject to section 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."*

36. This is subject to an extension of time to allow for ACAS Early Conciliation. Which must be started within three months of the acts complained of. Once the ACAS early conciliation certificate has been issued, a claimant has one month to present his or her claim.
37. The Employment Tribunal has a discretion to extend the three month time limit in circumstances where it considers that it would be “just and equitable” to do so (section 123(1)(b) Equality Act 2010). There is no presumption that a litigant who has missed the time limit, and relies on the just and equitable discretion, will be given such an extension. In deciding whether it would be just and equitable to extend the time limit the tribunal has to look at the whole circumstances including the reasons for the delay, the actions of the parties and any prejudice which would be caused to the parties by the tribunal's decision about extending time. The time limit runs from the last act of there is a series of discriminatory acts running over a period of time.
38. The case of **Robertson v. Bexley Community Centre** [2003] IRLR 434 states: *“When Tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify a failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of the discretion is the exception rather than the rule”*.
39. Time limits in Employment Tribunals are generally strictly enforced (**Robinson v. The Post Office** [2000] IRLR 804).
40. I considered the submission that the cogency of evidence would have been adversely impacted by the delay. The claim lacks specification but seems to revolve principally around events in 2021. The passage of time had an effect on the claimant's recollection and I accept that the cogency of evidence given the long delay may have been impacted. However, I set against this the fact that there was a grievance process and that the allegations would have been aired there and responses recorded some time ago. I therefore do not place much weight on this factor.
41. I accepted that the claimant had periods of illness but in the period from 2021 until the raising of proceedings he also had long periods where he was fit and able to work. The onus is on the claimant to persuade a tribunal that an extension should be granted. The reasons for the delay are of paramount importance and must be considered. In essence the claimant's position is that it was a discussion with someone about autism that alerted him to the possibility of a claim being made. That evidence I found difficult to accept.

Employment Tribunal claims for unfair dismissal and discrimination regularly feature in the press and on the news. The claimant was clearly unhappy at his treatment and had lodged a grievance. He had the assistance of his trade union representative and it is difficult to believe that the possibility of raising proceedings wasn't discussed especially as the review conducted at his behest by the trade union concluded that the chances of success were low.

42. Even if I were to accept that the claimant was ignorant of his rights and he was not advised by his union about the possibility of raising proceedings (or indeed he actually had a solicitor as claimed) there was no reason why the claimant, who clearly felt aggrieved for some time, could not have researched his rights and concluded he should raise proceedings some considerable time ago. Even after contacting ACAS and obtaining a certificate to allow proceedings to be initiated he did not do so in time. In these circumstances I am not persuaded that it would be just and equitable to allow the claims to proceed out of time and they are dismissed.

**Date sent to Parties**

**14 July 2026**