



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002932/2025

**Held in Edinburgh via Cloud Video Platform (CVP) on 16 June 2026
& Consideration of Written Submissions on 21 July 2026**

Employment Judge Sangster

Ms M M Wojcik

**Claimant
In Person**

Bearhill Care Ltd

**Respondent
Represented by
Ms L Murray
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that:

1. The Tribunal does have jurisdiction to consider the claimant's complaints of unfair dismissal and discrimination arising from disability.
2. The Tribunal does not have jurisdiction to consider the claimant's complaints of failure to make reasonable adjustments and harassment related to disability. Those complaints are therefore dismissed.

REASONS

Introduction

1. The claim was set down for a preliminary hearing to determine whether the complaints were lodged within the requisite time limits. The claimant was assisted by an interpreter.
2. The complaints being brought were discussed at a case management preliminary hearing held on 25 March 2026 (the **CMPH**). It was noted, at that time, that the claimant brings complaints of:

- 2.1. Unfair dismissal. In relation to this complaint, it was noted that there was a dispute as to whether the claimant resigned or was dismissed, and in relation to the effective date of termination.
 - 2.2. Failure to make reasonable adjustments in/around December 2023;
 - 2.3. Harassment related to disability, in respect of specified incidents in June 2024; and
 - 2.4. Discrimination arising from disability, in respect of her the initiation of the capability process and her dismissal.
3. These complaints were discussed at the start of the hearing, with reference to the list of issues prepared by the parties, which was contained at pages 54-60 of the preliminary hearing bundle. It was noted that, in addition to the complaints detailed in the list of issues, the claimant brings a complaint that her dismissal was an act of discrimination arising from disability (as noted above, and recorded in paragraph 6 of the note issued following that hearing)
 4. As a result, it was noted that the issues to be determined at this hearing were as follows:

Unfair dismissal

- 4.1 What was the effective date of termination?
- 4.2 Were the complaints brought within 3 months of the effective date of termination?
- 4.3 If not, was it reasonably practicable for the complaint to be presented within that period?
- 4.4 If not, were they presented within such further period as the Tribunal considers reasonable?

Disability Discrimination

- 4.5 Can the claimant show a prima facie case (or reasonably arguable basis) for her contention that the various acts are so linked as to be continuing acts or to constitute an ongoing state of affairs?
- 4.6 Were the complaints brought within 3 months starting with the date of the act to which the complaint relates, or if there is conduct extending over a period, the end of that period?
- 4.7 If not, were they brought within such other period as the Tribunal thinks is just and equitable?

5. The claimant gave evidence on her own behalf. The respondent did not lead any evidence. A joint set of productions was lodged, extending to 99 pages.

Findings in fact

6. This Judgment does not seek to address every point about which the parties have led evidence or made submissions on. It only deals with the points which are relevant to the issues which the Tribunal must consider in order to determine the issues which required to be addressed at this hearing. If a particular point is not mentioned, it does not mean that it has been overlooked, it simply means that it is not relevant to the issues to be determined. The relevant facts, which the Tribunal found to be admitted or proven, are set out below.
7. The claimant commenced employment with the respondent, as a Care Assistant working in Bearehill Care Home, in June 2013.
8. The claimant was a member of the trade union Unison. She contacted them for support on 12 June 2024, and she received ad hoc support thereafter. The claimant had a discussion with Thompsons Solicitors at the end of 2024, having been referred to them by Unison.
9. The claimant commenced a period of absence due to ill health on 30 October 2024. She did not return to work.
10. At the start of 2025 Annamarie Hudson (**AH**) became Home Manager, taking over from Celia Findlay (**CF**), who had held that position for around 18 months prior to that and who left the respondent's employment at that point.
11. On 17 June 2025, the claimant was invited to capability hearing. She was advised that a potential outcome was the termination of her employment. The claimant asked if it was possible to agree exit terms instead. On 19 June 2025, at 15:00, AH sent an email to the claimant stating that settlement discussions need to be conducted via solicitors and that the capability process would run concurrently, but separately.
12. The claimant responded, at 15:19, indicating that she was seeking legal advice, and asked if the respondent would cover the cost of her doing so, stating she understood that this was standard in settlement agreements. She asked if the capability hearing could be postponed, until she was able to obtain legal advice. She reiterated that question in a further email sent at 17:45 that day.
13. In an email sent at 08:18 on 20 June 2025, AH sent an email to the claimant stating that the capability meeting would focus solely on the OH report and her health. The claimant responded at 09:20 stating:

'As previously stated, I would like to end my employment on mutually agreed terms. I have been open and honest about my health limitations and my wish to resolve this respectfully and without the need for formal procedures.

To move forward, I kindly ask again that the company confirms:

- 1. Whether it is willing to consider a financial settlement in recognition of my 12 years of service;*
- 2. Whether it will cover the cost of my legal consultation, which is standard in settlement agreements.*

Given that I have already expressed my intention to leave on mutual terms, I do not feel it is appropriate to proceed with today's meeting. Therefore, I will not be attending the capability meeting scheduled for 20th June.

I feel that continuing with this formal process while my request for a respectful exit remains unanswered does not reflect the support and professionalism I have shown during my years of service.

I look forward to your reply.'

14. The claimant was informed, by email sent at 09:30 that day, that her email had been passed to the respondent's HR department, as it was not something that AH was able to address.
15. On 25 June 2025, the claimant sent an email to the respondent's HR department, chasing for a response on her previous request, as she understood it had been forwarded to them. She asked for a response as soon as possible.
16. At 14:46 on 30 June 2025, the claimant sent an email to the Regional Support Manager, setting out the request she had made on 20 & 25 June 2025. She stated that she had not received any response from HR and requested he confirm whether the company was willing to consider this. She copied her email to AH and the HR Representative.
17. The HR Representative responded at 14:50, stating *'I have taken advice from Head Office and I await their reply. I hope to have a response for you by Wednesday of this week. Thank you for your patience.'*
18. On 1 July 2025, the claimant was sent a letter entitled *'Confirmation of resignation'*. The letter stated as follows:

'Please accept this letter of confirmation of your resignation email submitted on 20th June 2025. I wish to inform you that your resignation has been approved by the organisation.

We understand that your decision to resign was due to health reasons. We appreciate your contributions to the company during your employment and wish you well in your recovery and future endeavours.

We want to inform you that, given the circumstances surrounding your resignation, you are entitled to an ill-health capability payment. Based on your length of service you are entitled to 12 weeks' pay and your accrued but unused annual leave. This will be processed and paid to you on 22nd July. Please note both of these payments are subject to normal tax and NI deductions.

Your P45 will also be processed at this time and issued to you, and if you were enrolled in the pension scheme, the pension provider will contact you directly.

We wish you all the best in your future endeavours.'

19. The claimant sent an email at 12:34 on 2 July 2025. This extended to 1.5 pages. In her email she stated that she had *'never submitted a formal resignation letter. I was left in limbo, unsupported, and gradually pushed out – but I did not leave by choice.'* She raised concerns about her treatment during her employment. She stated that *'I am accepting the 12-week payment not because it is fair, but because I have to survive. I want you to know: this is not closure. This is not justice.'*
20. The claimant received her final salary payment, and P45, on 22 July 2025. The P45 was dated 22 July 2025, but stated that the claimant's 'leaving date' was 20 June 2025.
21. The claimant attended her local Job Centre in August/September 2025. She explained how her employment came to an end. She was informed of the procedure for raising an Employment Tribunal claim, and the requirement to contact Acas first. She was informed that she had 3 months, less a day, from the date her employment terminated, to contact Acas. She believed her employment had terminated on 22 July 2025, the date she received her P45 and final salary payment. She then prepared a document in Polish setting out her grounds of claim, which she subsequently translated to English. She did not receive any legal advice in relation to the termination of her employment with the respondent.
22. The claimant engaged in early conciliation in relation to these proceedings from 20 October to 27 November 2025. She presented her claim in these proceedings on 2 December 2025.

Submissions

23. There was insufficient time for submissions in the listing period. In accordance with the arrangements discussed at the hearing, parties lodged written submissions as follows:
- 23.1. The respondent lodged a written submission, extending to 12 pages, on 16 June 2026.
- 23.2. The claimant lodged a written submission, extending to 7 pages, on 19 June 2026.
- 23.3. The respondent then confirmed, on 29 June 2026, in response to the claimant's submission, that they had nothing further to add.
24. As the parties' submissions are set out fully in writing, they are not summarised in this Judgment, but have been carefully considered.

Relevant Law

Effective Date of Termination

25. Section 97(1) ERA is entitled 'Effective date of termination'. It states:

'Subject to the following provisions of this section, in this Part 'the effective date of termination' –

- (a) *in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,*
- (b) *in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect...'*

26. In **Kirklees Metropolitan Council v Radecki** 2009 ICR 1244, CA Lord Justice Rix confirmed that *'the effective date of termination will be the date of summary dismissal, as long as that is known to the employee.'*

27. In **Feltham Management Ltd v Feltham UKEAT/0201/16**, HHJ Richardson conducted a review the law in this area and stated, at paragraph 39:

'given its statutory setting and importance, section 97(1)(b) in my judgment requires words or conduct which in their context amount to a plain and unambiguous termination by an employer. The termination may be by words or conduct or a mixture of the two; but it must unequivocally convey to the employee on an objective reading or understanding that the employer is terminating the contract. Words or conduct which reasonably leave the employee in doubt as to whether the employer has terminated the contract will not trigger the effective date of termination.'

Unfair Dismissal

28. The relevant time limits in relation to unfair dismissal complaints is set out in section 111(2) of the Employment Rights Act 1996 (**ERA**).
29. These provisions state that a Tribunal shall not consider a complaint unless it is presented to the Tribunal before the end of three months beginning with the effective date of termination, or within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
30. In considering whether there is jurisdiction to hear such complaints, Tribunals accordingly required to consider the following questions:
 - 30.1. Were the complaints presented within the primary three month time limit?
 - 30.2. If not, was it reasonably practicable for the complaints to be presented within that period?
 - 30.3. If not, were they presented within such further period as the Tribunal considers reasonable?
31. The question of a what is reasonably practical is a question of fact for the Tribunal. The burden of proof falls on the claimant. Whether it is reasonably practicable to submit a claim in time does not mean whether it was reasonable or physically possible to do so. Rather, it is essentially a question of whether it was 'reasonably feasible' to do so (***Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119***).
32. Whether the claim was presented within a further reasonable period requires an assessment of the factual circumstances by the Tribunal, to determine whether the claim was submitted within a reasonable time after the original time limit expired (***University Hospitals Bristol NHS Foundation Trust v Williams UKEAT/0291/12***).

Discrimination Complaints

33. The relevant time limits in relation to complaints of discrimination is set out in section 123(1) of the Equality Act 2010 (**EqA**).
34. This states that such complaints should be brought within either:
 - 34.1. the period of 3 months starting with the date of the act to which the complaint relates; or
 - 34.2. such other period as the Tribunal thinks just and equitable.

35. Section 123(3) EqA states that conduct extending over a period is to be treated as done at the end of the period and failure to do something is to be treated as occurring when the person in question decided on it.
36. The 'just and equitable' test is a broader test than the 'reasonably practicable' test. What is just and equitable depends on all the circumstances. The burden of proof is on the claimant, as explained in **Robertson v Bexley Community Centre** [2003] IRLR 434, in which the Court of Appeal also said, at para 25:
- "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 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 discretion is the exception rather than the rule."*
37. In **British Coal Corporation v Keeble** [1997] IRLR 336 the EAT indicated that task of the Tribunal, when considering whether it is just and equitable to extend time, may be illuminated by considering section 33 Limitation Act 1980. This sets out a check list of potentially relevant factors, which may provide a prompt as to the crucial findings of fact upon which the discretion is exercised, such as:
- (a) the length of and reasons for the delay;
 - (b) the extent to which the cogency of the evidence is likely to be affected by the delay;
 - (c) the extent to which the party sued had cooperated with any requests for information;
 - (d) the promptness with which the claimant acted once they knew of the facts giving rise to the cause of action; and
 - (e) the steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action.
38. In **London Borough of Southwark v Afolabi** [2003] IRLR 220 the Court of Appeal confirmed that, whilst that checklist provides a useful guide for Tribunals, it does not require to be followed slavishly. In **Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] EWCA Civ 640, the Court of Appeal confirmed this, stating that it was plain from the language used in s123 EqA ('such other period as the Employment Tribunal thinks just and equitable') that Parliament chose to give Employment Tribunals the widest possible discretion and it would be wrong to put a gloss on the words of the provision or to interpret it as if it contains such a list.

39. In **Adedeji v University Hospitals Birmingham NHS Foundation Trust** [2021] EWCA Civ 23, the Court of Appeal approved the approach set out in Afolabi and Morgan and, at paragraph 37, Underhill LJ confirmed, that

‘rigid adherence to a checklist can lead to a mechanistic approach to what is meant to be a very broad general discretion, and confusion may also occur where a tribunal refers to a genuinely relevant factor but uses inappropriate Keeble-derived language. The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular “the length of, and the reasons for, the delay”. If it checks those factors against the list in Keeble, well and good; but I would not recommend taking it as the framework for its thinking.’

Discussion & Decision

Effective Date of Termination

40. The first point the Tribunal considered was when the effective date of termination (**EDT**) was.
41. The Tribunal did not accept the respondent’s assertion that the claimant resigned on 20 June 2025. The terms of her email of 20 June 2025 are set out in paragraph 13 above. The claimant, in her email, stated that she would like to reach an agreement with the respondent about the termination of her employment. She invited the respondent to put forward a proposal in relation to this. She stated that she would not attend the capability hearing scheduled for that day, pending a response to her email. Whilst she was expressing an intention to leave, this was clearly stated to be conditional upon terms being mutually agreed with the respondent. She did not state that she was resigning, and no termination date was indicated.
42. The Tribunal then considered the respondent’s correspondence of 1 July 2025 (paragraph 18 above). This stated that the claimant’s resignation, dated 20 June 2025, had been *‘approved by the organisation’*. As set out above, the Tribunal concluded that the claimant had not resigned on 20 June 2025 and there had been no indication of a termination date in her correspondence. The respondent’s correspondence stated that the claimant was entitled to 12 weeks’ pay and accrued annual leave. It stated that that would be paid to the claimant on 22 July 2025. It did not however give any indication of when the claimant’s employment had terminated or would terminate. The Tribunal noted that section 97(1)(b) ERA requires there to be words or conduct which amount to a plain and unambiguous termination by an employer. Words or conduct which reasonably leave the employee in doubt will not trigger the EDT. The Tribunal noted that the respondent’s correspondence of 1 July 2025

did not state that the claimant's employment had already terminated, nor confirm the date that had occurred. It did not state that the claimant's employment terminated on the date of the letter, so did not amount to plain and unambiguous summary termination. It did not state that the claimant's employment would terminate on a specified date in the future, so there was doubt as to whether the claimant's employment would continue for the whole 12 week period referenced, up to the point of the payment being made to her on 22 July 2025, or some other date.

43. Whilst the respondent relied upon the claimant's comments in her email of 2 July 2025 (see paragraph 19 above) as demonstrating that the claimant was aware that her employment *had been* terminated, the Tribunal did not accept this was the case. The claimant was simply articulating her dissatisfaction at the way that she had been treated, and reiterating that she had not resigned.
44. The Tribunal concluded that the first occasion when it was made unequivocally clear to the claimant, by the respondent, that her employment had terminated was on 22 July 2025, when she received her P45. The terms of the P45 were clear and unambiguous. There could be no reasonable doubt from that date, that the respondent considered that the claimant's employment had ended. Whilst the P45 suggested that the claimant's employment had terminated on 20 June 2025, the Tribunal concluded that the EDT was 22 July 2025, the date the claimant received her P45 and this was communicated to her.

Unfair Dismissal

45. The Tribunal considered whether the complaint of unfair dismissal was presented within the primary three month time limit. Given the Tribunal's findings in relation to the EDT, the relevant time limit expired on 21 October 2025, subject to the extension for early conciliation.
46. The claimant engaged in early conciliation from 20 October to 27 November 2025. She presented her claim in these proceedings on 2 December 2025. Her unfair dismissal complaint was accordingly lodged within the requisite time limits.

Disability Discrimination

47. The Tribunal was satisfied that the claimant had demonstrated a prima facie case that the complaints of discrimination arising from disability were linked and constituted a continuing act: they related to the instigation of the capability process on 17 June 2025 and the termination of the claimant's employment. Given the Tribunal's findings in relation to the EDT, the complaints of discrimination arising from disability have been lodged within the requisite time limits.

48. The Tribunal considered whether the claimant had demonstrated a prima facie case that the other complaints (failure to make reasonable adjustment and harassment related to disability) were linked to the complaint of discrimination arising from disability and constituted a continuing act, or an ongoing state of affairs. The Tribunal was not satisfied that the claimant had demonstrated a reasonably arguable basis for that contention. The complaints are different in nature (involving different factual circumstances and different legal arguments), they involve different people (CF was the Home Manager at the time of these complaints, and is named in the complaints of harassment), in different time periods (December 2023 and June 2024).
49. The Tribunal then considered whether the complaints of failure to make reasonable adjustment and harassment related to disability were brought within such other period as was just and equitable. The Tribunal noted that the claimant asserts that the respondent failed to make reasonable adjustments from December 2023 onwards, and that the acts of harassment occurred in June 2024. The claimant did not explain the reason for the delay in raising these issues. While she spoke about the loss of her employment impacting her health, there was no suggestion that her health impeded her from raising issues or presenting a claim to the Tribunal in 2024. The Tribunal noted that the claimant remained at work until October 2024. She received support from her trade union from June 2024 onwards and took legal advice in December 2024.
50. The Tribunal took these findings, in relation to the length of and reasons for the delay into account, as well as the balance of prejudice between the parties in the claim proceeding at this stage, when determining whether it is just and equitable to extend time. The Tribunal concluded that no satisfactory explanation was advanced for why the complaints were not brought sooner, particularly where the claimant was in receipt of support from her trade union, had the opportunity to take legal advice and was not inhibited from raising proceedings as a result of her health. Whilst the Tribunal is aware that the claimant will be unable to pursue complaints of failure to make reasonable adjustment and harassment related to disability, if discretion is not exercised in her favour, the Tribunal is also mindful that the respondent would be prejudiced if the claims were allowed to proceed at this stage. There is no doubt that the cogency of the evidence, which would require to be led in relation to events which took place in 2023 and 2024, will be adversely impacted by the delay in those complaints being raised, and it is noted that CF is no longer employed by the respondent. In these circumstances, the Tribunal concludes that the balance of prejudice weighs more heavily on the respondent.

51. For these reasons the Tribunal is not persuaded it would be just and equitable to extend time in the claimant's favour in relation to these complaints. The Tribunal accordingly does not have jurisdiction, under the EqA, to hear the complaints of failure to make reasonable adjustment and harassment related to disability.
52. As indicated above, the claimant's complaints of unfair dismissal and discrimination arising from disability were both lodged within the requisite time limits. Those complaints, alone, will proceed.

Date sent to parties**23 July 2026**