Case Number: 2411493/2023

EMPLOYMENT TRIBUNALS

Claimant: Miss J Kantarama

Respondent: Manchester City Council

Heard at: Manchester **On:** 7-8 May 2026

Before: Employment Judge Phil Allen

Representation
Claimant: In person
Respondent: Mr E Stenson, counsel

JUDGMENT

JUDGMENT having been approved on 8 May 2026 and sent to the parties on 11 June 2026, full written reasons having been requested in accordance with rule 60 of the Employment Tribunal Rules of Procedure, the following written full reasons are therefore provided.

FULL REASONS

Introduction

1. The claimant undertook work as a support worker (grade 2). She was engaged through an agency. The engagement at the respondent lasted from 27 February to 12 May 2023. The claimant brought a claim for harassment related to race, direct race discrimination, direct sex discrimination, harassment related to age and direct age discrimination. She also applied to amend her claim to include claims for harassment related to disability, direct disability discrimination, discrimination arising from disability, indirect disability discrimination, breach of the duty to make reasonable adjustments, detriment for having made a protected disclosure and under the Agency Worker Regulations 2010. The respondent denied the claims.

2. At a preliminary hearing (case management) on 13 March 2025, Employment Judge Parkin had arranged a preliminary hearing with two days allocated to it. In the case management order made following that hearing, he had set out the things to be decided at a preliminary hearing. This was the preliminary hearing he had arranged.

Claims and Issues

3. In the case management order issued following the preliminary hearing (case management) on 13 March 2025, the issues to be determined at this hearing were set out as follows:

3.1. The claimant's outstanding amendment applications, in respect of her claims for disability discrimination, protected disclosure ("whistleblowing") detriment and under the Agency Worker Regulations 2010.

3.2. If she is permitted to amend her claim to include disability discrimination claims, the disability issue: whether she was a disabled person at all material times during her engagement with the respondent at Ross Place from 27 February 2023 to 12 May 2023 by reason of her conditions of autism and ADHD. For the avoidance of doubt, the issue of whether the respondent had actual or constructive knowledge of any such disability will not be decided at this hearing.

3.3. In respect of the claimant's other discrimination claims, namely race harassment, direct race discrimination, sexual harassment, direct sex discrimination and age discrimination as listed in the Annex to that Order (based on EJ Slater's Order sent out on 30 September 2024 including items 2.1.18 and 2.1.19 permitted by amendment in EJ Parkin's Order sent out on 31 January 2025 after the second case management hearing on 22 January 2025): whether each of those claims was presented in time or, if not, whether it is just and equitable to permit them to be determined at a final hearing.

3.4. Whether the claims in these procedures should be stayed to await the outcome of the claimant's civil court claim, under the Protection from Harassment Act 1977, if that claim is being pursued

4. At the start of this hearing, we confirmed that those were the issues to be determined, save that the fourth issue no longer needed to be determined as the other proceedings were not ongoing. It was confirmed that each issue would be addressed and considered in turn.

Procedure

5. The claimant represented herself at the hearing. Mr Stenson, counsel, represented the respondent.

6. The hearing was conducted in person with both parties in the Manchester Employment Tribunal.

7. An agreed bundle of documents was prepared in advance of the hearing. Where a number is referred to in brackets in this Judgment, that is a reference to the page number in the bundle. I read the documents in the bundle to which I was referred.

8. The application to amend the claim was the first thing which I heard and determined. I heard submissions from the claimant on the issue. I heard submissions from the respondent. I adjourned to consider my decision. In the afternoon of the first day and after consideration I informed the parties of my decision on that issue, and I provided my summary reasons for that decision orally.

9. We then moved on to consider the disability issue. We discussed the respondent's acceptance that Autism was a disability but its contention that the claimant had not proved that ADHD had been a disability at the relevant time. I asked the parties to highlight the documents which they believed I need to read (or re-read) in order to determine the issue of whether the claimant had a disability at the relevant time by reason of ADHD. I adjourned the hearing in order to read/re-read those documents. I then heard submissions from the claimant, followed by submissions from the respondent. After hearing those submissions, I adjourned the hearing at the end of the first day.

10. On the morning of the second day, I informed the parties of my decision on the outstanding disability issue, and I told them my summary reasons for that decision.

11. I then moved on to consider the time/jurisdiction issue on the morning of the second day. The claimant made her submissions on that issue, followed by the respondent's submissions. After hearing those submissions, the hearing was adjourned so that I could consider and reach a decision on that issue. After the adjournment, I returned and informed the parties of my decision on that issue and the summary reasons for my decision. As the outcome of that decision was that the claim was dismissed, the hearing concluded at 12.55 pm on the second day.

12. Written reasons having been requested by the claimant, this document provides full written reasons for the Judgment issued following the hearing.

The application to amend

13. For the application to amend the claim, the key relevant dates are set out below.

14. The claimant was engaged by the respondent from 27 February to 12 May 2023. The engagement ended on 12 May 2023. As a result, that was the last date upon which the things alleged could have occurred.

15. On 1 November 2023 the claimant entered her claim at the Employment Tribunal. That followed ACAS early conciliation from 24 to 26 October 2023.

16. On 6 August 2024 the claimant made the first application to amend (45). That referred to disability discrimination, public interest disclosures, and agency workers. The information provided was not sufficient for the amendments sought to be understood.

17. On 12 September 2024 the claimant was diagnosed with autism. The claimant also says that she has ADHD and the respondent says not. The claimant says that she has always had the impairments.

18. On 25 September 2024 there was a preliminary hearing (case management) heard by Employment Judge Slater (78). Issues in the disability discrimination claim were identified (83), as well as complaints regarding the Agency Worker Regulations and regarding protected disclosures. The claimant accepted that the respondent did not know that she was autistic.

19. On 30 September 2024 a Judgment was issued which dismissed the unfair dismissal claim on withdrawal.

20. Further preliminary hearings (case management) were conducted by Employment Judge Parkin on 22 January and 13 March 2025 (171). The outstanding application to amend was identified. The case management order recorded that the claimant did not wish to add any respondents.

21. In May 2025 the claimant made the application to amend (187).

22. In April 2026 the claimant made an application to add two additional respondents (212).

23. In summary, the claimant said that the claims were not entered earlier because: it is the way in which she processes information and she did not realise that she had the claims, she is a litigant in person and she has learnt things; and the response which she has received to a subject access request appears to have explained her wish to add the two respondents (albeit I was not shown precisely what had done so).

24. I considered the factors outlined in the case of **Selkent Bus Company v Moore** [1996] IRLR 661 and in the Presidential Guidance on general case management in relation to amendment of the claim. Those matters include: the balance of injustice and hardship between the parties; the nature of the amendment; the applicability of time limits (including the relevant test which applies and the elements of that test); and the timing and manner of the application.

25. In deciding whether or not to grant leave to amend, I have a discretion. I must have regard to all the circumstances and, in particular, balancing the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. **Vaughan v Modality Partnership** [2021] ICR 535 emphasised the importance of that factor (saying that the balance of justice is always key), and the importance of considering the practical consequences of allowing an amendment (as a practical approach should underlie the entire balancing exercise).

26. I can take account of the merits of the complaint for which amendment is sought, that was confirmed in **Kumari v Greater Manchester Mental Health NHS Foundation Trust** [2022] EAT 132 where it was said that they were not necessarily an irrelevant consideration. I can take account of the assessment of the merits at large, but I must proceed with care and caution in doing so and I must be mindful that I have not heard evidence.

27. In his submissions, the respondent's counsel highlighted what was said in the decision in the case of **Chandhok v Tirkey** [2015] IRLR 195, where it was said that the claim form is not just a way to get the ball rolling.

28. In this case, when the claimant first entered her claim, the claimant did not claim what she now seeks to add to or amend in her claim form at all.

29. I considered the application to amend as it applied to the different types of claims which the claimant sought to add by amendment, by considering the different types of claims in turn, followed by the application to add two respondents.

The protected disclosure claims

30. I started with the protective disclosure detriment complaint. I found that was a significant amendment which introduced an entirely new complaint and causal argument.

31. Regarding time limits, those which apply to protected disclosure claims are the relatively more stringent reasonably practicable test. The claimant had not provided anything which could show that it had not been reasonably practicable for her to have entered the claim within the primary time limit. The application to amend had been made (taking the earliest possible date) on 6 August 2024. That was fifteen months after the events. I found that the application to amend had not been made within such further time as was reasonable. I agreed with the respondent's submission that there was no chance of the claimant being able to successfully argue it was not reasonably practical to enter the claim in time. Time limits are not in and of themselves determinative of an application to amend. However, in this case for this type of complaint, I found them to be a very important factor.

32. The application had been made when the case was still being prepared. That was a factor supporting the application to amend. It was something which was common to all of the claims for which amendment was sought (and I will not repeat it for each of them in this Judgment, albeit that I took it into account for all of them).

33. The prejudice to the claimant of refusing the application to amend would be significant, as she will not be able to pursue a claim that she wishes to.

34. There is prejudice to the respondent in granting the amendment, because there is forensic present arising from the delay since the time of the events, where the potential claim and need to remember/address the facts relevant to those claims were not identified until May 2025, two years after a brief period of engagement.

35. Balancing all of those factors, I decided that the application to amend to include claims for detriment arising from a protected disclosure were refused.

36. The claimant also sought to include a claim for automatic unfair dismissal as a result of having made a protected disclosure. That application would have been refused for the same reasons as I have given for refusing the application to amend to include the claims for protected disclosure detriment. However, the claimant was also unable to pursue that complaint because of the Judgment made by Employment Judge Slater which dismissed on withdrawal the unfair dismissal claim on 30 September 2024. That Judgment determining any unfair dismissal claim, meant that the claim could not be amended to include the automatic unfair dismissal claim in any event.

Claims under the Agency Worker Regulations

37. I then considered the claimant’s application to amendment to include claims under the Agency Worker Regulations. They were set out at pages 199-205. I did not think that the claimant understood the claims she was trying to add, and I did not understand them either. The claimant said that it was not fair. That is not the way the Agency Worker Regulations work (there is no claim for unfairness). The claimant was not engaged for twelve weeks, and she was not denied or treated detrimentally for raising Agency Worker Regulation rights at the time. The claimant could potentially/technically have had a claim under Regulation 12 in relation to access to collective facilities and amenities, but I could not identify such a complaint from what the claimant said, from what was in summary/reality a bullying complaint.

38. The amendment sought was a significant amendment introducing an entirely new complaint.

39. The time limits which apply are subject to the just and equitable test, not the more stringent reasonably practicable test (which I have explained for the protected disclosure complaints). However, the significant delay between 12 May 2023 and May 2025, when the application to amend was detailed, was a significant material factor in considering the application.

40. The prejudice to the claimant of refusing the application was limited, where she did not genuinely understand the complaint she wished to bring, and the complaint appeared to me to have no merit whatsoever. The claimant is of course able to pursue the claims set out in her claim form, which appear to form the heart of her complaints (lessening the prejudice of refusing the application).

41. The prejudice to the respondent was the same as I have already explained for the previous type of complaint.

42. As a result, I decided that the application to amend the claim to include claims under the Agency Worker Regulations was refused.

The disability discrimination complaints

43. The claims for indirect disability discrimination and failure to make reasonable adjustment were entirely new complaints which would require significant additional evidence, including evidence about the PCPs, how they were applied and to whom. I considered them to be significant amendments.

44. For the time limits, the test for extension of time is whether it is just and equitable. The issues were first identified on 13 March 2025, so just over two years after the events.

45. I accepted there was significant forensic prejudice to the respondent of amending the claim to add those complaints two years after the events. There was prejudice to the claimant if I refused the application, in not being able to pursue those particular complaints.

46. On balance, I decided that the application to amend to include claims for indirect disability discrimination and breach of the duty to make reasonable adjustments were refused.

47. The direct disability discrimination complaint relied upon seventeen existing allegations. As a result, there would be limited additional evidence required if the application were granted, albeit, as the respondent's counsel submitted, evidence about causation would be required. However, the prejudice to the respondent is significant less where the facts relied upon are the same as those which will need to be largely addressed in evidence in any event.

48. At the hearing we discussed knowledge of disability. It was recorded in the case management order made following the 25 September 2024 hearing, that the claimant accepted that the respondent did not know of her disability. I did not entirely understand what the claimant said at this hearing, but she certainly did not identify that she had told the respondent about her disability. Without knowledge of her disability, the respondent could not have treated the claimant less favourably because of her disability. I was able to take into account the merits of a complaint

where it was hopeless (as was explained in **Kumari**). This complaint was hopeless. There was no prejudice to the claimant in being unable to progress a hopeless case. The application to amend to include a direct disability discrimination claim was refused.

49. That left (of the disability discrimination complaints) the application to amend to include the claims for harassment related to disability and discrimination arising from disability. They relied upon the same seventeen complaints which are already required to be determined and the decision to terminate the engagement. That is all evidence which will need to be heard.

50. There is a time issue. The claimant will need to show that it is just an equitable to extend time for an amendment made at the hearing.

51. I did not accept that there was any forensic prejudice to the respondent if leave to amend was granted. There is prejudice in needing to defend additional claims and there is potential additional cost.

52. There is prejudice to the claimant if the application were refused, as the claimant would be unable to pursue potential meritorious complaints.

53. On the merits, I was concerned because I did not really understand how the discrimination arising from disability complaint would be made out, but for that complaint I decided that was really an issue for determination of the merits as it was not obviously an entirely hopeless complaint. There was an issue about merits, knowledge of disability and the claim for discrimination arising from disability, which I did consider when determining whether it was just and equitable to extend time for the claim generally as explained at 110.4 below, but I did not identify that specific issue until considering that later issue and not when considering the initial application to amend.

54. I looked at the seventeen harassment allegations. I could not see any way in which allegations one to thirteen and fifteen, could possibly be related to disability. In that respect, the harassment complaints were hopeless. As a result, the application to amend for those allegations was refused. However, for allegations fourteen and sixteen to eighteen, I did not view the case that they were related to disability as being hopeless. The test for related to disability, being different to the direct discrimination test and not being dependent upon knowledge.

55. I granted the claimant's application to amend to include a claim to include a claim for harassment related to disability as set out in allegations fourteen and sixteen to eighteen only. I granted the claimant's application to amend to include a claim for discrimination arising from disability as recorded in the list of issues following the 13 March 2025 hearing only. For those claims, whilst I granted leave to amend, I left it for the Employment Tribunal to determine if it would be just and equitable to extend time based upon the claims being amended on the 7 May 2026. I did not determine the time/jurisdiction issues by granting the application to amend (and that issue was considered later in the hearing as recorded later in this Judgment).

Application to add respondents

56. The last application was the claimant's application to add two additional respondents (Ms Henry and Ms Woods). It was an important factor when determining that application, that the respondent had accepted that it was

vicariously liable for the actions of Ms Woods and Ms Henry and it was not relying upon the employer's defence.

57. Having already refused to allow the claimant to amend her claim to include the protected disclosure claims and much of the disability discrimination claim, it would be surprising if I allowed the claimant to pursue those new claims against individual respondents. Those applications were refused for the same reasons as provided for refusing leave for the current respondent.

58. The claimant is unable to pursue a claim under the Agency Workers Regulations against individual respondents and therefore the application to ament was refused because the claim could not succeed against them. It would have been refused anyway for the reasons already given in relation to that amendment sought against the current respondent.

59. For the remaining disability discrimination claims, the position on timing was different to that which applied to the current respondent, as the application to add them as respondents was only made in April 2026, nearly three years after the last alleged event. That was a very very significant delay. There was no real explanation for why the application had been made so late. I was not shown anything in the response provided to the claimant's subject access request that genuinely supported the claimant's change of mind about there being named individual respondents. I noted what was said at the hearing on 13 March 2025.

60. The position on prejudice is different than it was for the respondent, because there is little, or no, prejudice for the claimant in the application being refused where the respondent is liable anyway and she will be able to obtain a finding about what occurred in a Judgment in her claim against the current respondent.

61. There would be significant prejudice to the individual named potential respondents in being added as respondents to a claim to which they are currently not a party so long after the alleged events.

62. The application to add the respondents is refused.

General issues

63. To the extent that the claimant may have applied to amend her claims to include any other complaints, that was also refused as it was not clear what other claims it was she wished to pursue and, in any event, for the reasons given for the other claims.

64. As a result, the claimant was granted leave to amend her claim to include claims for discrimination arising from disability and harassment related to disability (for allegations 14, 16 and 17 only). The claimant's other applications to amend her claim were refused.

Disability issue

65. When the hearing was arranged, the question which I was asked to determine was whether the claimant was a disabled person at all material times during her engagement with the respondent at Ross Place from 27 February 2023 to 12 May 2023 by reason of her conditions of autism and ADHD (see question 1.2 of the case management order made by Employment Judge Parkin following the preliminary hearing on 13 March 2025).

66. At the hearing, the respondent conceded that the claimant did have a disability at the material time by reason of autism. I therefore did not need to decide that part of the question as it had been conceded.

67. What I needed to decide was whether the claimant had a disability at the relevant time by reason of ADHD?

68. Disability is defined in section 6 of the Equality Act 2010. Section 6 of the Equality Act 2010 provides that:

> *"A person (P) has a disability if:*
>
> *(a) P has a physical or mental impairment, and*
>
> *(b) The impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities."*

69. It is a definition which looks at what the claimant cannot do by reference to their day-to-day activities, and it is not focused upon medical diagnosis.

70. Section 212 of the Equality Act 2010 provides that "substantial" means more than minor or trivial.

71. Schedule 1 Part 1 of the Equality Act 2010 includes further provisions regarding determination of disability. Paragraph 2 provides that:

> *"The effect of an impairment is long-term if:*
>
> *(a) It has lasted for at least 12 months;*
>
> *(b) It is likely to last for at least 12 months; or*
>
> *(c) It is likely to last for the rest of the life of the person affected.*
>
> *If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur"*

72. Schedule 1 Part 1 of the Equality Act 2010 also includes provisions which relate to the effect of medical treatment and to progressive conditions.

73. The guidance on matters to be taken into account in determining questions relating to the definition of disability, issued by the Secretary of State, confirms that "likely" should be interpreted as meaning that it could well happen.

74. The onus is on the claimant to prove that the relevant condition was a disability at the relevant time.

75. The claimant provided me with five disability impact statements. One was in the bundle prepared by the respondent (401) and four were handed to me on the first day of the hearing. I was not sure why I was provided with five such statements, but I considered them all. The claimant states that she is a neurodiverse individual and says she has been diagnosed with ADHD and autism.

She also says that she has been diagnosed with dyslexia and dyscalculia, but as she is not relying for her claims upon those conditions as being disabilities at the relevant time, I did not need to consider those conditions. In her statements, the claimant refers to things such as rejection sensitive dysphoria, paranoid anxiety, cognitive dissonance, catastrophic neurological shutdown, total neurological collapse, chronic fatigue and permanent hyper-vigilance, but when doing so she did not distinguish between what was as a result of her diagnosed autism and what was said to be as a result of ADHD.

76. In an email sent to the claimant from a university support team on 5 October 2020 (336) it was stated that the claimant had told them on enrolment that she had, or thought she may have experienced difficulties, due to ADHD. I considered that to be of limited weight in proving that the claimant had ADHD as it repeated only what the claimant had said at the time and contained no reference to a third party making the diagnosis. It provided no detail of the day-to-day activities impacted by the potential ADHD.

77. In a medical report of 12 September 2024 prepared by a neurodevelopmental diagnostician and a consultant clinical psychologist there was reference to ADHD (368), but only to the extent that, with reference to a specific behaviour, it was said "*The extent of these difficulties could indicate co-existing ADHD or just traits of ADHD*". Importantly that report contained a clear diagnosis of autism, confirming that the claimant met the full criteria for being autistic. As the respondent submitted, it would have been expected that if there was a diagnosis of ADHD it would have been in that report. There was not one and the words I have referred to did not provide such a diagnosis.

78. The claimant provided me with an additional document which had been attached to that report. She placed considerable reliance upon it. It was a document about reasonable adjustments. The heading was specific to the claimant and specifically referred to the diagnosis of autism spectrum disorder (but only that diagnosis). The content was generic. There was reference to ADHD in the first sentence of that content which said "*As per the Equality Act 2010, Reasonable Adjustments must be made in any employment or education setting where an individual has a diagnosis of a registered disability (Autism Spectrum Disorder, Attention Deficit Hyperactivity Disorder and Dyspraxia/Developmental Coordination Disorder are classed as disabilities under this Act)*". I did not read what was said as providing a diagnosis for the claimant of ADHD, it was a generic document giving examples of conditions which are likely to be classed as disabilities, including the condition which had been diagnosed for the claimant. The document did not provide the diagnosis the claimant contended.

79. Of the other documents provided, they all showed that the claimant has had or has medical issues, but not that those are as a result of ADHD. The claimant is in receipt of PIP and payments for limited capability for work and work-related activity, she received sick pay from Reed and had provided self-certificates and a GP fit note. None recorded ADHD.

80. In a document which she had prepared (349) the claimant highlighted that the co-occurrence of Autism and ADHD is clinically recognised and occurs. She highlighted that they have both overlapping and conflicting traits or paradoxical symptoms. That is, of course, correct. The fact that the claimant has proved that at the relevant time she was autistic does not mean that she did not also have ADHD. However, it also does not in and of itself prove that she did.

81. I found that the claimant had not proved that she had a diagnosis of ADHD as she has asserted. I did not find that the documents relied upon contained such a diagnosis at all. The claimant had not proved that she had a disability at the relevant time by reason of ADHD. She did have a disability at the relevant time by reason of Autism as the respondent conceded. She has not proved that she also did so by reason of ADHD.

82. As a result, I found that the claimant had not proved that she had a disability at the relevant time by reason of ADHD.

Whether the claims were entered in time

83. The final question I needed to determine at the preliminary hearing, was whether each of the claimant's claims was presented in time or, if not, whether it was just and equitable to permit them to be determined at a final hearing.

84. For that issue the key dates were those set out below.

85. The claimant was engaged by the respondent from 27 February to 12 May 2023. The engagement ended on 12 May 2023. As a result, that was the last date upon which the things alleged could have occurred. From the list of issues, allegations occurred on 1-15 and 30 March, 4, 13 14, 18, 20 and 21 April and 12 May 2023.

86. On 16 May 2023 the claimant had a consultation with her GP (341). The note recorded stress at work and other matters. Importantly, that was the last medical consultation evidenced in the relevant period.

87. On 17 May 2023 the claimant contacted the CQC.

88. On 22 May the claimant sent an email to the respondent detailing her concerns.

89. On 9 June there was a meeting involving the claimant, the respondent and the claimant's trade union representative. Importantly, the claimant was a member of Unison and was clearly in contact with her trade union representative.

90. On 13 June and 13 July, the claimant sent further emails to the respondent with further information.

91. The Employment Tribunal claim should have been entered by 11 August 2023 (for the last allegation). It was not. ACAS early conciliation was not commenced at that time.

92. On 11 September 2023 the claimant emailed her trade union representative providing dates and telling her that she had realised that she had not sent her ET1.

93. ACAS early conciliation commenced on 24 October 2023 and continued until 26 October. That makes no material difference to the time limits in this case, because the it had not been commenced in the period when it should have been.

94. The claim was entered at the Employment Tribunal on 1 November 2023.

95. On 6 March 2024 the claimant spoke to a different branch of Unison. There was an exchange of emails with the previous representative at Unison who said that she had previously closed the file.

96. I considered the grievance document (272) which the claimant asked me to read. I was not sure when that had been provided to the respondent. However, I considered the content to be insufficiently clear to have put the respondent on notice of the claimant's discrimination claim in a way which have avoided or reduced any prejudice identified as a result of the late claim.

97. The legal position is that a claim must be brought within the period of three months starting with the date of the act to which the complaint relates (and subject to the extension for ACAS Early Conciliation). Conduct extending over a period is to be treated as done at the end of the period. A failure to do something is to be treated as occurring when the person in question decided on it.

98. If out of time, I needed to decide whether it was just and equitable to extend time. Section 123(1)(b) of the Equality Act 2010 states that proceedings may be brought in, *"such other period as the Employment Tribunal thinks just and equitable"*

99. The most important part of the exercise of the just and equitable discretion is to balance the respective prejudice to the parties. The factors which are usually considered are contained in section 33 of the Limitation Act 1980 as explained in the case of **British Coal Corporation v Keeble** [1997] IRLR 336. Those factors are: the length of, and reasons for the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the relevant respondent has cooperated with any request for information; the promptness with which the claimant acted once she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once she knew of the possibility of taking action. Subsequent case law has said that those are factors which illuminate the task of reaching a decision but their relevance depends upon the facts of the particular case, and it is wrong to put a gloss on the words of the Equality Act to interpret it as containing such a list or to rigidly adhere to it as a checklist. The Court of Appeal in **Adedeji v University Hospitals Birmingham NHS Foundation Trust** [2021] EWCA Civ 23 emphasised that the best approach in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which are considered relevant to whether it is just and equitable to extend time and that factors which are almost always relevant to consider when exercising any discretion whether to extend time are: the length of, and reasons for, the delay; and whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).

100. **Robertson v Bexley Community Centre t/a Leisure Link** [2003] IRLR 434 confirmed the breadth of the discretion available but also said that the exercise of a discretion should be the exception rather than the rule and that time limits should be exercised strictly in employment cases. The onus to establish that the time limit should be extended lies with the claimant.

101. The Employment Appeal Tribunal in **Concentrix CVG Intelligent Contact Ltd v Obi** [2022] 149 set out the correct approach to considering the just and equitable extension to incidents which together were a course of conduct, but which were out of time. I must both consider whether it is just and equitable to

extend time for the whole compendious course of conduct and, if I decide that it is not, I must consider whether it is alternatively just and equitable to extend time in relation to each of the allegations in their own right.

102. In his submissions the respondent's counsel relied upon what was said in the case of **Miller v Ministry of Justice** [2020] ICR 1143.

103. I identified seven things as being the factors in this case which I considered to be relevant to my decision about whether the late claim had been entered in such further period as was just and equitable. Those factors are set out below.

104. First was the reason for the delay. The claimant said her reason was a medical crisis. The respondent said it was not, looking at the evidence and the dates as I have explained. I did not find that the reason was a medical crisis. That had not been evidenced. It was not a credible explanation based upon the evidence available. Right up until 13 July the claimant was in contract with the respondent. On 11 September she contacted her trade union representative. I appreciated that symptoms can fluctuate, but there was no evidence that the deadline was missed due to a particularly difficult health period. From what the claimant referred to in her email to the trade union representative, it appeared that the claimant had forgotten or overlooked the deadline for entering a Tribunal claim (or commencing ACAS early conciliation).

105. Second was the length of the delay. The claim was entered eight and a half weeks late for the last of the allegations. The claim was entered five months late if looking at the first allegation. I found that to be a notable delay, although it was not as significant a delay as there might be in some other cases.

106. Third was the information and support available to the claimant at the time. The claimant emphasised in her submissions that she is a highly intelligent person and I accept that she is. She explained her ability to use AI effectively. She was perfectly able to research Employment Tribunal deadlines and to have used IT/the internet to find information and to have entered the claim in time. The claimant was a member of Unison and she had ongoing support from a Unison representative. She was still contacting a trade union representative in September 2023, after the deadline for entering a claim had expired.

107. Fourth the promptness with which the claimant acted once she knew about the factors and the claim. Relevant to my decision is that on 11 September the claimant contacted her trade union representative because she knew she had missed the deadline for a claim, but she did not enter her claim until 1 November, one and half months later (she did contact ACAS on 24 October, shortly before).

108. The fifth relevant factor was the prejudice to the respondent of the delay and granting an extension. In this case there was the usual prejudice of needing to defend an out of time claim with the costs involved. That was not a significant factor. More significantly, there was also the prejudice of failed memories which exist for all complaints when matters alleged are particularly about day-to-day interactions, conversations and alleged incidents, whoever those allegations are against. This was a claim relying on largely relatively routine conversations and interactions as being the alleged discrimination. Particular to this case, was the fact that some of the allegations were against Doreen Bird who was also contracted by the respondent through an agency and whose assignment ended on 30 June. I found there to be obvious forensic prejudice as if the claimant had entered her

claim in time there would have been a greater chance of the respondent speaking to Ms Bird and involving her in the defence of the claim.

109. The sixth factor is the prejudice to the claimant if I were to refuse to extend time and I found that prejudice would be significant. That is a factor which weighs strongly in favour of extending time. When discussing these issues, the claimant suggested that she would be willing to forget the sexual harassment and sex discrimination allegations as she was unable to explain why what was alleged was related to or on grounds of sex, so the prejudice for those complaints was lessened.

110. The seventh factor was the merits. The respondent reminded me of the case of **Kumari** to which I have already referred. I will set out in this Judgment my decision on the merits factor, albeit that (as I will go on to explain) I did not consider merits to be a primary factor when I made my decision weighing up the other six factors. The merits factor was relevant to the following extent:

110.1. The claimant was unable to explain why it was that what she alleged was on the grounds of or related to sex;

110.2. The claimant did not inform me of any genuine reason why the conduct asserted should be found to be on the grounds of race or related to race, save for the assertion that it was. She referred to a clique and how she was treated but did not detail or explain the something more which could reverse the burden of proof. Allegation ten (and possible allegation fourteen) was the exception and that was an allegation involving Ms Bird, when the claimant had clearly distinguished Ms Bird from the white clique alleged;

110.3. For age discrimination the claimant had referred to concluding that the alleged comment was related to her baby face. That seemed to me to have a limited prospect of success; and

110.4. For the section 15 disability discrimination claim, the claimant had an issue with the respondent's knowledge where she had previously accepted that the respondent did not know that she was autistic and she had not said (even at this hearing) that she told the respondent that she was.

111. I weighed the first six factors in the balance. I decided that it was not just and equitable to extend time for the whole compendious course of conduct. I reached that decision weighing all the first six factors which I have outlined but based particularly on the absence of a genuine reason for the late submission, the claimant's access to advice about time limits, the lack of promptness with which she acted once she identified that she had missed the primary time limit, and the forensic prejudice arising from the delay in a claim relying on largely relatively routine conversations and interactions as being the alleged discrimination.

112. I also decided, for the same reasons, that it was not just and equitable to extend time in relation to each of the allegations in their own right

113. For the allegations specific to Ms Bird, the forensic prejudice was a factor which would have been even more significant for those allegations (had I otherwise decided it would have been just and equitable to extend time).

114. For all but the allegations of harassment related to disability, had I not decided not to extend time on a just and equitable basis considering the first six relevant factors, the merits issues would also have meant that I would not have found it just and equitable to extend time.

115. Having found that it was not just and equitable to extend time for all the allegations contained in the claim form entered on 1 November 2023, it followed that it would also not be just and equitable to extend time for the claims not included at that time, but only included after the application to amend had been granted on the first day of this hearing (two and a half years later). Accordingly, I also found that it was not just and equitable to extend time for the complaints of discrimination arising from disability and harassment related to disability (where the amendment had been granted subject to the time/jurisdiction issue). I appreciate that when all the decisions made during the preliminary hearing are recorded in a single document, it might appear unusual for both leave to amend to have been granted and for those same amendments to be dismissed (on time and jurisdiction grounds) in the same document. That reflected the approach taken, of addressing each issue identified by Employment Judge Parkin separately and in turn. Leave to amend was granted expressly subject to the fact that time/jurisdiction would subsequently need to be determined. As a result, when I subsequently found that it was not just and equitable to extend time for all the claims brought, the claim dismissed (in its entirety) included the elements for which leave to amend had been granted the previous day as part of the same hearing.

116. I found that the complaints were not entered at the Tribunal within the time required by section 123 of the Equality Act 2010. It was not just and equitable to extend time.

117. As a result of my finding on time and jurisdiction, the claim was dismissed.

Employment Judge Phil Allen

20 July 2026

SENT TO THE PARTIES ON

28 August 2026

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FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any full written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here: www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/