

In the Wales Employment Tribunal

Case Number: 6020497/25



EMPLOYMENT TRIBUNALS

Claimant: M Bogle

Respondent: The Village Bakery (Wrexham) Limited

JUDGMENT

Heard at: (by video) **On:** 27th January 2026

Before: Employment Judge R Powell

Appearances

For the Claimant: In Person

For the Respondent: Mr D Jones, of counsel

RESERVED JUDGMENT ON JURISDICTION:

The time for presentation of the claims of harassment, the claim of direct discrimination and the claim of unfavourable treatment is extended to 2nd June 2025.

Introduction and background

1. This hearing was directed by Employment Judge Sharp following a preliminary hearing she conducted on the 5th September 2025.
2. The record of EJ Sharp's discussion and conclusions are contained within the 338-page bundle provided to me for this second preliminary hearing. Her decisions and directions are found at pages 46 to 57 of that bundle.
3. EJ Sharp concluded that the claimant's pleaded case was far from clear and, after a detailed consideration, she recorded four claims, to which a fifth (subparagraph 4.2 below) was added by myself on the 27th January 2026 hearing. By reason of the additional claim which I admitted there are now five claims before the Employment tribunal:

- 3.1 Harassment related to sex by a production manager who swore at the claimant by saying "*you should fuck off*" on **11 November 2024**.
- 3.2 Harassment related to race by a production manager who swore at the claimant by saying "*you should fuck off*" on **11 November 2024**.
- 3.3 Direct discrimination on the grounds of sex on the same date and identical grounds for the harassment claims noted above.
- 3.4 Unfavourable treatment arising from her disability by her manager's tone of voice and physical proximity, when she was told to go home after the end of her shift; contrary to section 15 of the Equality Act 2010. The date of which was uncertain but prior to the **11th December 2024**; the date on which the claimant's long term sickness absence commenced.
- 3.5 Unauthorised deductions from the claimant's wages between **11 December 2024 – 22 April 2025** by the failure to make payments of Statutory Sick pay.
4. In addition to the determination of any application to amend the claim, EJ Sharp also listed this hearing to consider:
 - 4.1 Whether it was just and equitable to extend time for the presentation of any of the pleaded/ amended claims.
 - 4.2 Further case management.
5. Due to the time given to the claimant's application to amend her claim, the question of jurisdiction was not decided on 27th January. I heard submissions from both parties on that issue and considered the documents to which they referred me but my deliberation and decision was considered after the conclusion of the hearing.
6. EJ Sharp set out the issue jurisdictional issue as follows:

"Given the date the claim form was presented [2nd June 2025] and the dates of early conciliation, any complaint about something that happened before 25 February 2025 may not have been brought in time".

1.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

7. The parties now agree that the two acts of discrimination are alleged to have occurred on or before 11th November 2023.

Issue: a course of conduct extending over a period

8. The people accused of the pleaded acts of discrimination are:

9.1 Mr Steve Wright (Production Manager) whom the respondent admits said to the Claimant *"Melissa, you're in the way, can you just get out of the fucking way"* on the 11th November 2024. This single act is pleaded in three alternatives (1st and 2nd and 3rd allegations).

9.2 Richard Brice on 8th November 2024, who told the claimant to "go home". Whilst the Claimant accepts that telling her to go home when working past the end of her shift is not in itself unfavourable, she complains that the tone used and the failure to give her personal space was unfavourable. This is an act of alleged unfavourable treatment relating to the claimant's pleaded disability of dyslexia.

9. The concept of a course of conduct is broad. The Tribunal should focus on the substance of the complaints for which the claimant asserts the respondent was responsible; was there an ongoing situation or a continuing state of affairs in which female ethnic minority employees, or disabled employees in the service of the respondent were treated less favourably?

10. The question is whether these two alleged unlawful acts "extending over a period" as distinct from a two unconnected, or isolated specific acts, for which time would begin to run from the date when each specific act was committed?

11. On the evidence before me, the act of Mr Wright was a response to the claimant's conduct, which was perceived to be interfering with other employees who were working to rectify a problem on a production line.
12. Mr Brice's act was also a response to the claimant's presence/ involvement in an action which, from Mr Brice's perspective, did not need her input.
13. The two events, on the evidence before me were discrete and on each occasion the employer's conduct was a response to the claimant's alleged preceding behaviour.
14. The connection between the two events was the claimant's alleged conduct which led to a frustrated and/or rude retort.
15. On the evidence before me I am not persuaded that the two events were otherwise than isolated specific events.
16. I further note that, had I found the above incidents formed an act which extended over the period from the 8th to 11th November 2024, those claims would still be outside the jurisdiction of the tribunal.

A Just and Equitable Extension of time for the presentation of the claim

17. Whilst the claimant does not bear an evidential burden, she does bear the onus of persuading the tribunal to extend the period for time for presentation of the discrimination claims. In support of her application Ms Bogle put forward the following arguments.

The Claimant's explanations for the delay in presentation of her claim

18. Within Ms Bogle's ET1 she gave the following explanations for the date on which she presented her claim:

"My' case has had many delays due to rescheduling on the company and my behalf. The fact that I was advised by a lawyer to go through the grievance process first.

Other extenuating factors include the fact that I have been experiencing anxieties. Which I would now say is a disability as I have been off since November due to this.

I have been fearful of interaction due to the lies that have been documented against me.

Ill health on my part and also that of my mother. Who has caught pneumonia and ended up in hospital. She is my childcare usually so I had to support her during her time of need. As she also as a result developed heart, kidney and lung failure.

When I went to support her in hospital I unfortunately also caught the infection and required hospital treatment.

At the same time my daughter was being hit by a fellow student and mocked for her features and I had to transfer her to another school.

“As I am also dyslexic when I have significant stressors then it affects my writing skill and mentally, I wasn't able to complete the necessary written submission as I was too overwhelmed.”

19. The claimant's explanations can be reasonably analysed in three categories:
 - 19.1 The conduct of the respondent
 - 19.2 The advice from a lawyer
 - 19.3 Personal and external factors affecting the claimant.
20. To properly understand the claimant's position, it is necessary to set out the above events in broadly chronological order.
21. I have considered all the correspondence between the parties in the period from October 2024 to the 24th February 2025 [pages 83 to 124 of the agreed bundle]. I have also taken into account the claimant's participation in her grievance hearing and her willingness to participate in the subsequent appeal process.
22. I note the claimant was proactive in advancing her grievance and the appeal and engaged in electronic correspondence with the respondent over a four-month period.
23. **The Claimant's Anxiety.** According to the opinion of the respondent's external Occupational Health advisor, set out in page 223 of the bundle, the primary cause of the claimant's anxiety was the evidence given by some of her colleagues in the course of the investigation of her grievance complaints. The date on which the claimant was aware of that evidence was the date on which she received the respondent's reasoned decision on her grievance; 3rd December 2023. The claimant appealed the grievance outcome and expressly challenged the criticism of her own conduct set out by her colleagues in their witness statements.
24. **The Infection.** The documentary evidence first mentions the claimant's infection on the 25th March 2025 [Page 115 of the bundle] by way of reference to that ill health in the preceding week. On the available evidence this illness does not appear to have affected the claimant prior on, or prior to 24th February 2025.
25. **Unable to complete the ET1 form because the claimant was overwhelmed.** As the date for presentation of the claim was the 24th February 2024, I have reviewed the claimant's apparent ability to set out in writing the essential detail of her claims prior to that date. I noted the content of the claimant's email to the respondent, dated the 16th January 2024, [100-103] which sets out her criticisms of the grievance hearing, responds to allegations made against her during the grievance hearing and reflects on her allegations which are now formulated as grounds 1 to 4 of her claim before the employment tribunal.
26. I accept that the claimant was distressed by the grievance outcome and the criticism of her own conduct made by her work colleagues.
27. However, the content of her response is articulate, detailed and expressly refers to acts of discrimination by the persons named in her June 2025 ET1.
28. In essence, that which was set out in the above December 2024 correspondence was more than sufficient to form the particulars of a claim which could have been presented to the Employment Tribunal before the 24th February 2025.

29. The above observations are equally pertinent to Ms Bogle's reference to her condition of dyslexia.
30. Ms Bogle also referred to "many delays due to rescheduling on the company and my behalf".
31. It is correct that her grievance was received by the respondent on 12th November 2024 and the grievance outcome was communicated to her on 3rd December 2024. The claimant also initiated her appeal, by an email, on the 3rd December.
32. The appeal processes extended, largely due to the limited availability of the parties, to 16th April and the appeal decision was received by the claimant on 2nd May 2025.
33. The claimant commenced early conciliation on the on 2 May 2025 and ended the conciliation period on 8 May 2025.
34. The claim form was presented on 2 June 2025.
35. The Claimant's mother sadly passed away on 23rd September 2025. I have no doubt that her passing affected the claimant and her family greatly.
36. My decision on jurisdiction must focus on the causes of the delayed presentation of the claim which was received by the tribunal on 2nd June 2025.
37. Events which occurred after the 2nd June 2025, cannot, on the facts of this case, have materially influenced the claimant's decision to present her claim on 2nd June 2025.

Analysis of the claimant's reasons, as recorded above, for the delayed presentation.

38. The contemporary items of correspondence drafted by the Claimant evidence her understanding of the factual allegations now contained in her claim form.
39. Her email correspondence demonstrates her ability to articulate those complaints, her ability to present her case during a grievance hearing and to promptly set out her application to appeal in writing, subsequently supported by detailed written reasons [pages 84 to 106] and her ability to deliver that information electronically to another party.
40. The above factors indicate that the claimant had the necessary knowledge, ability, and the opportunity, to set out her complaints in writing by mid November 2024 albeit she did not do so until 20th December 2024 [84-89].
41. I also note that, on her own case, and prior to commencing the grievance process, she had taken legal advice from an unnamed employment lawyer. That advice is said to have included a statement that she had to complete her grievance process before presenting her claim to the employment tribunal.
42. The respondent doubts the accuracy of the claimant's recollection of that advice asserting that it is highly unlikely that an employment law practitioner would have given such erroneous advice.
43. The claimant has not disclosed the identity of the lawyer in question and I have no detail of what was said, or the means by which to judge the reliability of the claimant's recollection of that advice.

44. In the above context, I have concluded that the claimant was aware of her right to bring an employment tribunal claim in November 2024 and had access to a professional advisor on employment law prior to that. Further, she commenced a grievance because she believed it was a as a necessary precursor to the presentation of a claim.
45. I also find that the entirety of the grievance procedure had concluded by 2nd May 2025.
46. The claimant's prompt action with respect to ACAS conciliation (which commenced on the day she received her grievance appeal decision) [170] suggests that she was following the perceived opinion of her legal advisor. It also suggests she was mentally and physically capable of acting promptly on her intention to present a claim.
47. I have also concluded that the claimant had the intention to present a claim of discrimination prior to drafting of her grievance, but restrained that intention based on the legal advice she received.
48. I note that the there are two stands of case law relating to effect of poor legal advice upon the time for presentation of a claim.
49. The Employment Rights Act 1996 allows an extension of time where it has been 'not reasonably practicable' for a claimant to meet the primary time limit, a time limit which is missed because of faulty legal advice to a claimant from a professional adviser will not provide a basis on which time will be extended: this is the commonly known as the *Dedman* principle.
50. That principle does not apply to the exercise of the just and equitable discretion to extend time under the Equality Act 2010². For example, in *Virdi v Commissioner of Police of the Metropolis* [2007] IRLR 24, EAT) the claimant's solicitors were at fault in presenting the claim, and it was held that such a fault could be not be laid at the door of the claimant.
51. On the claimant's account, the reason she did not present her claim within the time limit was the incorrect advice of an employment lawyer.
52. That explanation is capable of being persuasive up to and including the 2nd May 2024. The claimant does not assert it influenced her conduct after that date.
53. From the 2nd of May, after commencing early conciliation, the claimant's single outstanding task was the preparation and presentation of the claim form.
54. It is evident from the claimant's documents before me that she had a clear understanding of her complaints, and she had existing written versions of her complaints available to her in May 2024. Those included the documents at pages 85-89, 91, 94-95, 100-102, 103 and 104 of the bundles.

55. On, and after 2nd May 2024 the claimant had one essential task to complete for the presentation of her claim; the preparation and presentation of her claim form.
56. Apart from the completion of the formal details required by the ET1 form, the claimant's task required a summary of her claims. The relevant detail existed within her grievance appeal documents, albeit considerable editing would have been necessary because those documents encompassed a wider range of concerns.
57. The claimant's explanation for her delay in this period is set out in her claim form [14]:
58. *"As I am also dyslexic when I have significant stressors then it affects my writing skill and mentally, I wasn't able to complete the necessary written submission as I was too overwhelmed."*
59. Following an occupational health appointment on 11th June 2025, the respondent received the following opinion:

"The employee presents with symptoms of anxiety directly related to workplace issues, specifically allegations made against her and the outcome of a grievance process. Her anxiety manifests primarily as sleep disturbance and fear of returning to the workplace. The employee appears physically capable of working but is psychologically distressed by the prospect of returning to an environment where serious allegations have been made against her. The primary issue appears to be workplace-related rather than a primary health condition, though the situation has resulted in secondary anxiety symptoms."
60. I accept that in May/June 2025 the claimant had significant stressors directly related to her work place issues and adverse comments from several work colleagues during the grievance process. I note that the claimant's stress had existed before the grievance process and endured beyond 2nd June 2025.
61. I also find that the claimant's ability to complete the task would have been impeded, to some degree by her dyslexia.
62. I approach my assessment of what is just and equitable in this case by reference to the findings of fact set out above.

A brief summary of the applicable law

63. Lord Justice Leggatt J in *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] EWCA Civ 640, [2018] ICR 1194 at paragraph 17-19, stated:

"17. The board's other grounds of appeal all seek to challenge the decisions of the employment tribunal that it was just and equitable to extend the time for bringing (a) the claim based on a failure to make

adjustments and (b) the claim alleging harassment by Ms Keighan. Before turning to those grounds, the following points may be noted about the power of a tribunal to allow proceedings to be brought within such period as it thinks just and equitable pursuant to section 123 of the Equality Act 2010.

18. First, it is plain from the language used (“such other period as the employment tribunal thinks just and equitable”) that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike Jones v Secretary of State for Health & Social Care section 33 of the Limitation Act 1980, section 123(1) of the Equality Act 2010 does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see British Coal Corpn v Keeble [1997] IRLR 336), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see Southwark London Borough Council v Afolabi [2003] ICR 800, para 33.

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

64. *There is no requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the claimant.”*

The relative prejudice to the parties.

65. To refuse the claimant’s application would lead to the dismissal of her discrimination claims. Those claims appear to have a degree of merit; the respondent accepts some degree of offensive language was used by its employees. But I note the respondent’s case puts forward a tenable non-discriminatory explanation for each allegation and other members of staff, who were part of the grievance process, may well give evidence to corroborate the respondent’s defence.
66. The claimant’s discrimination claims, on the information before me, are arguable, but far from certain.
67. Whilst a final hearing of this matter will not be heard for some time, both parties have written accounts of events which were created within weeks or a few months of the alleged events and those close to contemporary records will be available at a final hearing and available to the witnesses whilst they prepare their statements of evidence.

68. The respondent argues it will be put to significant cost (for the preparation and reproduction of a hearing bundle, formal witness statements and representation at a final hearing).
69. I have noted the size of the bundle prepared for this preliminary hearing and the significant proportion of documents therein which were not relevant to this preliminary hearing nor obviously relevant to a final hearing which will primarily be concerned with determining the conscious or unconscious motive of the members of the respondent's staff who, on two separate occasions, swore at the claimant.
70. The volume of documentary evidence concerning the two brief verbal exchanges which encompass the four discrimination allegations should not exceed a hundred pages, of which, a significant proportion has already been collated.
71. I do take into account that the respondent may be put to further costs which are incurred to determine whether Ms Bogle has the pleaded impairment of Dyslexia, if that matter remains in dispute.
72. Further, the respondent emphasises that, if it is correct in its assertion that the claims have very little merit, there is a limited prospect of recouping its legal costs from the claimant who has not attended work, or been paid, for a lengthy period of time.
73. The claim for unlawful deductions from wages (for statutory sick pay) appears to have very little prospect of success because, as the claimant accepted before Judge Sharp, and myself, she did not submit medical certificates (fit notes) to the respondent during her sickness absence. This should further compress the duration of the hearing and the consequential costs incurred by the respondent.
74. Awards of costs remain the exception in the employment tribunal and the central factual disputes in the discrimination claims turn on the recollections of individuals in apparently heated, or stressful, situations. That one side will prevail is not indicative that the other has acted so unreasonably that an award of costs is probable.

Conclusions

75. I accept that the claimant received erroneous legal advice and I accept that she believed she had to complete her grievance process before commencing these proceedings. On receipt of the grievance appeal outcome, she acted promptly by commencing ACAS conciliation on the same day.
76. I further find that, allowing for the claimant's dyslexia, she could have prepared a summary of her case from the existing documents she had written (including her email correspondence) by mid-May and could, as an unrepresented claimant suffering from anxiety, have presented her claim by the end of May.

77. Although, in my judgment the claimant did not act as promptly as might have been expected in the circumstances of the case, I must determine this application in accordance with the overriding objective and make a decision which is just and equitable to both parties.
78. In my judgment, the period of delay for which the claimant does not have a satisfactory explanation is the last two days of the relevant period (1st and 2nd June).
79. That the claimant does not have a wholly satisfactory explanation is not necessarily fatal to her application.
80. The primary concern is the relative prejudice to the parties. I consider that the claimant's delay does not materially prejudice the respondent's ability to present its defence to these proceedings; it has already created records of the grievance hearing and appeal hearing and called witnesses to one of those hearings. Its witnesses were on notice of the allegations of discriminatory shouting within two months of the alleged events and the claim was presented within five weeks of the respondent providing its appeal decision.
81. The prejudice to the claimant would be to deprive her of a forum for redress or remedy for her allegations of race, sex and disability discrimination.
82. Taking all of the above into account, and seeking to make a decision which achieves the employment tribunal 's overriding objective I have reached the conclusion that the interests of justice weigh in favour of allowing the claims of race/sex and disability discrimination to be determined at a public hearing.
83. I extend the time for the presentation of those discrimination claims to the 2nd June 2025.

R Powell
Employment Judge
Authorised for issue on
31st August 2026

Sent to the parties on:
10 September 2026

For the Tribunal Office:
Lauren Chambers

Note on the Delay

Although the tribunal gave judgment and full reasons to the parties orally on the 27th January 2026 this written judgment is completed on 27th July 2026.

I contributed significantly to the delay by reason of the volume of work between February and April 2026.

As a matter of a reasonable adjustment for myself I rely on the audio recording of CVP hearings for my record of the hearing. A significant error occurred, when, for technical reasons, the remote recording of this hearing stopped part way through the judgment on the application.

Thirdly there was a subsequent delay in the provision of the partial recording on which I have relied in writing of this judgment.

I sincerely apologise to the parties for the delay.