



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8003047/2025

Preliminary Hearing held by Cloud Video Platform on 3 July 2026

Employment Judge P Singh

Mrs S Dickinson

**Claimant
In Person**

Sally Salon Services Limited

**Respondent
Represented by:
Ms C Grey,
Employee Relations
Consultant**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Judgment

1. The complaints of constructive unfair dismissal, detriment on the ground of protected disclosure and disability discrimination were presented out of time.
2. The Tribunal is not satisfied that it was not reasonably practicable for the claimant to present the complaints of constructive unfair dismissal and detriment on the ground of protected disclosure within the statutory time limits. In any event, the complaints were not presented within such further period as the Tribunal considers reasonable.
3. The Tribunal does not consider it just and equitable to extend time for the disability discrimination complaints.
4. The Tribunal therefore has no jurisdiction to consider the complaints and they are dismissed.

REASONS

Introduction

5. This was an open preliminary hearing to determine whether the Tribunal had jurisdiction to consider the claimant's complaints. The claimant appeared in person. The respondent was represented by Ms C Grey, Employee Relations Specialist.
6. At the previous preliminary hearing on 23 April 2026, Employment Judge Sangster recorded at paragraph 2 of her order that:

*"The respondent has agreed to collate a joint set of productions for use at the preliminary hearing and provide a copy to the claimant. The productions should be in chronological order and have numbered pages. It should incorporate all documentary productions intended to be referred to at the preliminary hearing by either party. The respondent will provide a copy to the claimant, **no later than 7 days prior to the preliminary hearing.**"*

7. At paragraph 3 of her order, Employment Judge Sangster set out:

"The respondent will lodge an electronic copy of the joint set of productions for the preliminary hearing, with the Tribunal at least 7 days prior to the preliminary hearing."

8. Employment Judge Sangster's orders were not complied with. I made it clear that this was unacceptable and that case management orders were not optional. Ms Grey, to her credit, accepted that the respondent had not complied and apologised to the claimant and the tribunal for the non-compliance. I did not deem it proportionate to consider the non-compliance any further, as the claimant confirmed she was content to proceed, and I had on the Tribunal's file all of her relevant evidence. I did not allow the respondent to produce any additional evidence.
9. The claimant gave evidence on her own behalf. She was cross-examined. The Tribunal considered the documents to which reference was made and the parties' oral submissions. The parties did not wish for summary reasons to be provided. The Tribunal reserved its decision.
10. The claimant is a litigant in person. I have therefore taken care to consider the substance of the explanation she gave for the delay, and not merely the way in which it was expressed. The burden nevertheless remains on the claimant where the statute places that burden upon her.

The issues

11. The issues for determination were those identified in the earlier preliminary hearing note. They were, in summary:

- a. whether the complaint of unfair dismissal was made within the time limit in section 111(2)(a) of the Employment Rights Act 1996;
- b. if not, whether it was not reasonably practicable for the claimant to present that complaint in time and, if so, whether it was presented within such further period as the Tribunal considers reasonable;
- c. whether the complaint of detriment on the ground of protected disclosure was made within the time limit in section 48(3)(a) of the Employment Rights Act 1996;
- d. if not, whether it was not reasonably practicable for the claimant to present that complaint in time and, if so, whether it was presented within such further period as the Tribunal considers reasonable; and
- e. whether the discrimination complaints were made within the time limit in section 123(1)(a) of the Equality Act 2010, or within such other period as the Tribunal considers just and equitable.

Findings in fact

- 12. The claimant was employed by the respondent as a Retail Manager. Her employment commenced on 10 February 2003. Her employment ended on 2 September 2025, following her resignation.
- 13. The claimant has Multiple Sclerosis ("MS"). The respondent conceded disability status and knowledge at the earlier preliminary hearing. The claimant has fatigue, impaired mobility, anxiety and the need to plan her workload and rest periods.
- 14. The claimant relies on alleged acts of disability discrimination said to have taken place between 21 January 2025 and 15 May 2025. Those allegations include alleged refusal to redistribute staffing hours said to arise from the claimant's flexible working arrangement, alleged failure to award a pay increase, alleged derogatory comments made by managers in April 2025 and alleged deficiencies in the grievance and appeal process.
- 15. The claimant made a protected disclosure to SafeCall on 28 January 2025.
- 16. The claimant's grievance appeal outcome was issued 6 June 2025. The claimant first saw the appeal outcome on 9 June 2025. She went off sick with work-related stress from 10 June 2025 and did not return to work thereafter.

17. The claimant contacted ACAS on 31 July 2025. The ACAS early conciliation certificate was issued on 11 September 2025.
18. The claimant resigned. The date of termination recorded in the claim form and previous case management note is 2 September 2025.
19. The claimant presented her ET1 claim form on 14 December 2025. In the ET1, she ticked boxes for disability discrimination, whistleblowing and payments. She did not tick the box for unfair dismissal, although that box expressly includes constructive dismissal.
20. Following clarification at the case management stage, the claimant was permitted to amend her claim to include constructive unfair dismissal. The respondent did not object to that amendment. The time bar issue remained live.
21. The claimant's ET1 stated that her ACAS certificate "expired 10/12/25". The claimant's claim was lodged late. Her position was that it was only four days late and that the delay was not intentional.
22. During the limitation period, the claimant's health was poor, she was awaiting assistance from her trade union, and she could not afford legal representation. During this period the claimant also spent time reviewing documents obtained through a subject access request.
23. The claimant contacted ACAS before resigning. She was advised about possible labels for her complaints, including discrimination and whistleblowing. She was also aware that there was a time limit of three months less one day and that she required an ACAS certificate.
24. The claimant submitted a subject access request on 18 August 2025. She received material during September 2025. Some of the material was difficult to access or not in the correct format. By 22 September 2025 the claimant had access to the material sent by the respondent, although she considered the process of receiving and reviewing it overwhelming.
25. The claimant was in contact with her trade union. She did not receive confirmation until 11 November 2025 that the union would not provide representation in the Employment Tribunal.
26. The claimant was not admitted to hospital during the period from September to December 2025. She did not identify any other reason for delay beyond the matters summarised above.

27. The claimant relied on medical information concerning MS and MRI results. She was dealing with health concerns. MS can involve fluctuating fatigue and the claimant found the process emotionally difficult. She was not however incapacitated throughout the relevant period or unable to contact ACAS, correspond with the respondent, pursue a subject access request, communicate with her trade union or present a claim.
28. The respondent accepts that the claimant's MS amounted to a disability.

Relevant law

29. Section 111(2) of the Employment Rights Act 1996 provides that an unfair dismissal complaint must be presented before the end of the period of three months beginning with the effective date of termination, or within such further period as the Tribunal considers reasonable where it is satisfied that it was not reasonably practicable for the complaint to be presented within that period. Section 207B applies to the calculation of time limits where early conciliation has taken place.
30. Section 48(3) of the Employment Rights Act 1996 provides that a complaint of detriment, including detriment contrary to section 47B, must be presented before the end of the period of three months beginning with the date of the act or failure to act complained of, or where the act or failure forms part of a series of similar acts or failures, the last of them. If time has expired, the Tribunal may consider the complaint only if it is satisfied that it was not reasonably practicable to present it in time and that it was presented within such further period as the Tribunal considers reasonable.
31. Section 123 of the Equality Act 2010 provides that discrimination proceedings may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates, or such other period as the Tribunal thinks just and equitable. Conduct extending over a period is treated as done at the end of that period.
32. Time limits in the Employment Tribunal are jurisdictional. Where a complaint is presented out of time, the Tribunal may only determine it if the relevant statutory extension provision is satisfied. The issue is not a merely procedural objection which the respondent may waive.
33. The "reasonably practicable" test is a stringent one. It is not enough that it was reasonable, understandable or difficult for a claimant not to present the claim in time. The question is whether it was reasonably feasible to do so. What is reasonably practicable is a question of fact. The onus is on the

claimant to explain why the claim was not presented in time and to provide evidence sufficient to satisfy the Tribunal that the statutory test is met.

34. Ignorance of rights or time limits may in some circumstances be relevant, but the Tribunal must consider whether that ignorance was reasonable. Where a claimant is aware of the possibility of an Employment Tribunal claim, it will ordinarily be reasonable to expect the claimant to take steps to find out how and when such a claim requires to be presented.
35. The existence of an internal grievance or appeal, or the hope that an internal process may resolve matters, will not of itself make it not reasonably practicable to present a claim in time. Internal processes may explain why a claimant chose not to litigate, but that is not the statutory test.
36. The just and equitable discretion under section 123 of the Equality Act 2010 is broader than the reasonably practicable test, but it is still a discretion to be exercised judicially. Relevant factors may include the length of and reasons for delay, the extent to which evidence is likely to be less cogent because of delay, the conduct of the parties, the promptness with which the claimant acted once aware of the facts giving rise to the claim, and the balance of prejudice. There is no presumption that time will be extended. The absence of forensic prejudice to a respondent is not, without more, determinative.

Discussion and decision

37. I first address the constructive unfair dismissal complaint. The claim was presented after expiry of the applicable statutory time limit. The claimant accepted that it was late. The delay was short when measured from the expiry of the limitation period, but the question remains whether it was not reasonably practicable to present the complaint in time.
38. I am not satisfied that it was not reasonably practicable for the claimant to present her constructive unfair dismissal complaint in time. The claimant knew by the date of resignation that she wished to raise a claim. She had contacted ACAS before resigning and had been told about time limits. She knew that she required an ACAS certificate. She was capable of communicating with ACAS, the respondent, her trade union and the Tribunal.
39. The claimant's health difficulties were genuine and significant. I accept that fatigue, anxiety and stress made matters harder for her than they would have been for someone without those difficulties. The evidence did not establish that those difficulties made presentation of the claim not reasonably feasible. She was not hospitalised during the relevant period. There was no medical

evidence stating that she was unable to access a computer, complete the ET1, seek procedural assistance or lodge a protective claim.

40. I have not treated the claimant's ability to work as the same question as her ability to present a claim. The issue is narrower. It is whether, during the relevant period, her health made presentation of the claim not reasonably feasible. On the evidence before me, it did not.
41. I was not satisfied the claimant required all the documents obtained through her subject access request in order to present a claim. By her own evidence, she already knew the substance of the complaints she wished to make. She had raised complaints internally. She had received the appeal outcome. The fact that further documents may have strengthened or clarified her allegations did not prevent her from lodging a claim in time.
42. The claimant's inability to afford legal representation does not make it not reasonably practicable to present a claim. Many claimants present claims without representation. The claimant was also able to obtain information from ACAS and had contact with her trade union. The fact that the union did not confirm until 11 November 2025 that it would not represent her did not prevent her from lodging a protective claim in time. Nor did it explain why the claim was not presented until 14 December 2025.
43. The claimant's failure initially to tick the unfair dismissal box does not assist on the preliminary issue. The amendment was allowed in case management terms because it was unopposed. The question for present purposes is whether the complaint, as amended, was within time or whether time should be extended. The claimant's misunderstanding of the form does not explain why the ET1 itself was presented late.
44. I therefore find that the claimant has not shown that it was not reasonably practicable to present the constructive unfair dismissal complaint in time. It follows that the Tribunal has no jurisdiction to consider that complaint.
45. The same conclusion applies to the complaint of detriment on the ground of protected disclosure. The alleged protected disclosure was made on 28 January 2025. The detriments identified for the purposes of the preliminary issue were alleged to have occurred by 15 May 2025. The claim was not presented until 14 December 2025.
46. The claimant was aware of the facts relied upon for the protected disclosure detriment complaint at the material time. In any event, she had sufficient knowledge to contact ACAS on 31 July 2025 and to refer to whistleblowing

as a possible label for her complaint. I am not satisfied that it was not reasonably practicable for her to present the protected disclosure detriment complaint within the statutory time limit. For the reasons already given, neither health, the subject access request, trade union delay, lack of legal representation nor the overwhelming nature of the process made presentation of the complaint not reasonably feasible.

47. I turn now to address the disability discrimination complaints. Those complaints are subject to the just and equitable test. That is a broader discretion. I have considered the matter afresh under that test and have taken account of all the circumstances.
48. The discrimination complaints concern alleged acts from 21 January 2025 to 15 May 2025. The claim was presented on 14 December 2025. Even allowing for early conciliation, the discrimination complaints were significantly out of time. The delay was not merely a delay of a few days when viewed against the discrimination allegations. The allegations concern events many months before presentation of the ET1.
49. The claimant gave reasons for delay, and I found her to be a credible and honest witness, but they do not persuade me that it is just and equitable to extend time. The claimant knew the essential facts at the time. She had raised the matters internally. She knew that she regarded the respondent's conduct as discriminatory. She contacted ACAS on 31 July 2025. The subsequent receipt of DSAR material may have supplied further detail, but it did not create the claim. It was open to the claimant to present the claim and provide further particulars later.
50. I give real weight to the claimant's health, including MS, fatigue and anxiety. I have considered whether her disability required a different assessment of the delay. I accept that the process caused distress and that she was unrepresented. Those are important matters. They do not, however, explain the full period of delay. The claimant remained able to undertake steps directed to pursuing her position, including contacting ACAS, communicating with the respondent, pursuing a subject access request and corresponding with her trade union. The evidence does not establish a period of incapacity which prevented the presentation of a claim.
51. I also take account of the prejudice to each party. The claimant will be unable to pursue complaints if time is not extended. That is substantial prejudice to her. The respondent would be required to defend a claim which is otherwise out of time. The allegations concern events said to have occurred between January and May 2025, including oral conversations, internal meetings and

the reasons for decisions taken at the time. Those are matters likely to depend, at least in part, on witness recollection and the ability of witnesses to give a clear account of what was said, by whom, and in what context. The passage of time may therefore affect the respondent's ability to test the claimant's account and the retrieval of its own evidence. I accept that this prejudice is moderated by the apparent existence of contemporaneous documents, and I do not regard it as overwhelming. However, it is real prejudice, and I have weighed it in the balance.

52. I have considered whether the shortness of the delay in relation to the unfair dismissal limitation period should lead to a different conclusion for the discrimination complaints. It does not. The complaints are different. The discrimination allegations substantially pre-date dismissal. Granting an extension would open up allegations going back to January 2025. I am entitled to take into account the practical consequence of extending time, including the historic nature of the issues which would then be litigated.
53. I am not satisfied that it is just and equitable to extend time. The claimant knew the facts and had enough information to present a claim. She took some steps, including contacting ACAS, but did not lodge the ET1 until 14 December 2025. The reasons advanced do not justify the delay. Time limits are statutory limits and are to be observed unless the statutory basis for departure is made out.
54. For these reasons, I do not extend time. The Tribunal has no jurisdiction to consider the claimant's complaints. They are dismissed.

Date sent to Parties

14 August 2026