



EMPLOYMENT TRIBUNALS

Claimant: Ms M Kolade
Respondent: Whittington Health NHS Trust
Heard at: Reading (by video)
On: 20 July 2026
Before: Employment Judge George

Representation

Claimant: no attendance and no representation
Respondent: Ms S Firth, counsel

JUDGMENT

1. The tribunal does not have jurisdiction to consider the following allegations:

- 1.1 List of issues 2.1.1, all three parts,
- 1.2 2.1.3 to 2.1.9,
- 1.3 3.2.1, all three parts,
- 1.4 3.2.3 to 3.2.9,
- 1.5 4.2.1, all three parts,
- 1.6 4.2.3 to 4.2.9.

because the claim as based on those allegations was presented outside the time limits in s.123 Equality Act 2010 and it is not just and equitable to extend time.¹

2. The claimant shall pay to the respondent costs in respect of counsel's brief fee at the hearing before Employment Judge Smeaton on 4 November 2025 namely £1,500 +VAT @ 20% = £1,800.

¹ Numbering as in the List of Issues appended to Employment Judge Smeaton's order sent to the parties on 18 November 2025.

FULL REASONS

JUDGMENT with summary reasons was given at the hearing on 20 July 2026. Although written reasons were not requested at the hearing, the Tribunal considers that (in the circumstances where neither the claimant nor her representative were present) it is appropriate to provide written full reasons, and the following written full reasons are therefore provided:

1. I listed this hearing part heard before me following a hearing on 16 January 2026 to consider the issues in paragraph 2 of the order of Employment Judge Smeaton (page 125). Broadly speaking the hearing in January 2026 was listed to consider time points and any application by the claimant to amend her claim.
2. Neither the claimant nor her representative, Mr John Neckles, a trade union representative, have attended today. To explain my decision to proceed in their absence, I need to revisit the procedural chronology to some extent. I am not going to repeat all of the matters set out in my detailed judgments and orders that were sent to the parties in two batches on 30 March 2026 (page 466 of the hearing file) and 1 July 2026 (pages 496 & 498) but merely flagged the following matters that are of particular relevance today.
3. The question of whether the Tribunal had jurisdiction to consider all of the allegations or whether some were time barred (which I refer to as the “time points”) were first listed by Employment Judge T Brown to be determined at a preliminary hearing in orders that were sent to the parties on 31 May 2025 (see page 54). He, at that point, did not specify whether the time points would be decided on the basis of strike out or deposit orders on the one hand, or as a definitive determination of jurisdiction on the other. The substantive issues in the claim had yet to be finalised.
4. The preliminary hearing that was listed by Judge Brown was postponed first on the respondent's application to 30 October (see page 61) and then on the claimant's application (because of non-availability of her representative) to 4 November 2025 (see page 69). Judge Brown had, by his orders (see paragraph 2 on page 57) ordered that further information about the claim be provided by 16 June. It is apparent from paragraph 11 at page 56 of his case summary, that he had given the amount time requested by the claimant's representative although he appears to have had some reservations about whether that was proportionate.
5. At my request, Ms Firth found and forwarded to the tribunal the claimant's written submissions that were before Employment Judge Smeaton. When I read them, my attention was drawn to the fact that Employment Judge Alliott amended the order of Judge Brown. By an order that was sent to the parties on 1 July 2025, Judge Alliott directed that the then outstanding particulars should be provided forthwith.
6. At page 7 of the claimant's written submissions for the hearing before Judge Smeaton, Mr Neckles set out what he described as substantial compliance with

the directions of Judge Brown. In that, he pointed out that the claimant had posted a disclosure list to the respondent in various documents on 12 July 2025. A schedule of loss had also been provided a couple of days later on 14 July 2025 with the application for the postponement of the hearing date. Despite that, the further and better particulars were not provided until the morning of the hearing on 4 November 2025.

7. Judge Smeaton's order starts at page 125 of the hearing file. Mr Neckles was present on that occasion. But, at page 129 paragraph 33 she explained the circumstances in which that hearing started and in which the Further Information was provided:

“The Claimant sent the FBPs (together with a number of other documents) to the Tribunal, either very early on the morning of 4 November 2025, before the hearing commenced, or after 10.00am, once the hearing was supposed to have started (in the event, the hearing did not start until 11.00 because Mr Neckles was unwell). No satisfactory explanation was given for this delay. The reasons relied upon by Mr Neckles did not cover the entire period of delay.”

8. The chronology I have set out above between 16 June 2025 (when the further information should first have been provided) and the 4 November 2025 (when it was provided) explains why Judge Smeaton made the comment that she did not consider the explanations by Mr Neckles' for the claimant's failure to provide the further information covered the entire period of the delay.
9. On 28 November 2025, the respondent made a costs application (page 142). This was done on the basis that further particulars had been ordered which the claimant had failed to provide until the morning of the hearing. It is stated in the application:

“On the morning of the open preliminary hearing on 4th November 2025 the claimant's representative made an application for the open preliminary hearing to commence at 11 am instead of 10 am. The claimant's representatives also provided further particulars of the claim and disclosure documents relating to the time point; no explanation was provided for the delay or why they could not have been provided sooner.

They go on to explain that,

“as a result of the last-minute provision of FBPs, the Respondent was not able to confirm its position at the Preliminary Hearing. Orders had been made for the Respondent to confirm whether it submits that the Claimant requires permission to amend her claim and for the Claimant to respond to that accordingly. All of that could have been dealt with during the PH had the FBPs been provided on time.”

10. The respondent's representatives went on to explain that it had not been possible to determine the strike out application in respect of time points because of the time taken by Employment Judge Smeaton to clarify the issues. The basis of the costs application is that the upshot was that a further preliminary hearing was listed that would not have otherwise been necessitated. The respondent therefore applied for counsel's fees of £1,500 plus VAT being the costs of Ms Firth's attendance on 4 November.
11. To put it in summary, the respondent argued in their costs application that the

Judge at the preliminary hearing on 4 November had been unable to determine of the time limit points because of the need to clarify issues and deal with other matters arising from the extremely late compliance by the claimant with the orders of Judge Brown, as amended by Judge Alliott.

12. The case then came before me on 16 January.
13. I remind myself of paragraph 21 of my orders at page 469 of the hearing file where I explain why I refused the postponement application that had been made fairly late in the day - certainly within seven days of the date of the hearing itself. A summary of the basis for the application was that Mr Neckles' evidence of his own ill-health had not supported his position that he was unable to represent the claimant at the hearing. It was not a position I accepted. I note in particular what I say at paragraph 33 in that it appeared that he was now, in fact, fit to carry out the sort of work necessary to represent her at the hearing given the nature of the issues to be decided. He had provided detailed submissions in writing in response to the issues after the employment tribunal had said that the application to postpone would be considered on the morning of the hearing itself.
14. It was also argued as an alternative, that there should be a postponement on the basis that the claimant was unfit, but I rejected that because the evidence was that the claimant was fit to attend provided she was represented and I was not satisfied that Mr Neckles was unable to represent her.
15. The next relevant matter in the chronology are some communications following the hearing on 16 January 2026. There had been an exchange between Mr Neckles and the Tribunal where my colleague, Judge Cowen, had said it was too late before the 16 January hearing for an amendment application to be made. The claimant, through her representative, made an application for reconsideration of that decision on 20 January. In the end that was not considered by Judge Cowen because it was covered by the outcome of the hearing on 16 January which included that the claimant could make an application to amend no later than 14 days after the date this order was sent to here (para.7 page 467). That order was sent to the parties on 30 March.
16. The same order included the notice of hearing for today's part-heard hearing (para.1 on page 466). At the same time, the parties were sent the judgment explaining why the strikeout application had been rejected and a deposit order together with a covering letter that explained how that dealt with the reconsideration application. So far as I can tell from the Tribunal file, the reconsideration application dated 20 January 2026 was the last communication from the claimant or her representative before the email which was sent this morning.
17. The respondent, however, had chased information about whether the deposit had been paid in June 2026 and their communications to the Tribunal had been copied to the claimant.
18. On 1 July 2026 the Tribunal sent various documents to the parties including confirmation that the deposit had not been paid and a judgment about the issue covered by the deposit (page 496).

19. Two days later on 3 July, the respondent's representative emailed the Tribunal and the claimant's representative with an updated hearing file and mentioned in the body of that email that this was for today's part-heard hearing (giving the date of it) and saying that the respondent's skeleton argument would be provided by 16 July 2026. The skeleton argument was sent to the claimant and the Tribunal on that date.
20. I have gone through that chronology in some detail as the background to the email from Mr Neckles for the claimant of today's date, 20 July 2026. He emailed at 09.10 and said that he had become aware of the preliminary hearing date on 19 July, in other words only yesterday. He states that he had become aware of the preliminary hearing through the contents of the respondent's emails to which the skeleton argument was attached. That had apparently caused him to look in his email spam account and to find "two to three emails" from the Watford Employment Tribunal address.
21. His explanation appears to be that receipt of the respondent's skeleton argument had triggered his investigation and that led to him finding the emails from Watford. But he does not specify in the email of 20 July, exactly which documents he found on that occasion, he just says two to three emails. He apologises for being unable to attend saying that he is out of the jurisdiction between 7 July to 22 July, representing himself in a personal claim before the Granada Supreme Court.
22. This email raises more questions than it answers. He does not, for example, refer to the respondent's email in June 2026 chasing whether there had been payment of the deposit or their email by which they sent the updated bundle on 3 July 2026. In the latter email the respondent stated what the date of the next hearing was. So, if the respondent's emails were getting through to the claimant's representative, it is unexplained why he was apparently unaware of the date of the hearing until the skeleton argument was noticed on 19 July, if that is, in fact, what happened.
23. I also give weight to Ms Firth's argument that Mr Neckles has previously communicated with and received communications from the Employment Tribunal without difficulty. The penultimate time that he wrote was to make an application for a postponement of the hearing. When he was informed by the Tribunal that his application for a postponement was to be dealt with at the start of the hearing, it prompted some detailed written submissions. In other words, he apparently received an email from the Tribunal in the second week in January.
24. He had also apparently received the email notifying him that it was too late to make the amendment application because that prompted the reconsideration application. If it is, in fact, the case that he has not received communications from the tribunal since January, then it is curious that he did not take any steps to find out the outcome of the hearing at which he had not been present to represent the claimant's interest or to find out the outcome of the reconsideration application.
25. Overall, these are unexplained matters which are potentially inconsistent with his explanation for the claimant's absence and lack of representation today. I do not

make a determination of this but I have doubts that 19 July genuinely was the first knowledge that Mr Neckles had. For him to lack knowledge would depend upon the Tribunal's emails being diverted to his spam account when they have previously been delivered without difficulty and Mr Neckles not having taken the steps one might expect him to take to find out the decisions he was waiting for. There is no satisfactory explanation for him making no enquiries of either the Tribunal or the respondent between 20 January 2026 and 20 July 2026 to find out what happened to the postponement application or reconsideration application.

26. What I do have on behalf of the claimant is a 20 page skeleton argument prepared by Mr Neckles. At the start of today's hearing, I expressed concerns about whether I should be concerned that, potentially, the claimant herself may not have knowledge of today's hearing. If one takes at face value what Mr Neckles says in his email of this morning and he did not find out until yesterday that there was a hearing listed for 20 July, then did the detailed submissions that were provided for today done on the instructions of the claimant? However, for reasons that I just explained in detail, I have cause to doubt that the 19 July genuinely was the first knowledge by Mr Neckles of the issues. I do not have grounds to think that the skeleton argument was not done on the claimant's instructions.
27. Mr Neckles did not ask for a postponement of today's hearing in the 20 page skeleton argument, but given the gravity of the issues before me I considered whether I should raise the prospect of a postponement of my own motion. I need to consider rule 47 which provides that if a party fails to attend or to be represented at a hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party having considered any information which is available to it, after any enquiries that may be practicable, about the reason for their absence.
28. I decided against postponing the hearing but to proceed in the claimant's absence. There is no satisfactory explanation for the absence of the claimant and her representative because she was given notice of the hearing in the usual way and I am not satisfied that the notice of hearing did not in fact come to her attention or alternatively it ought reasonably to have come to her attention. The claimant's representative says that he is out of the jurisdiction but, as I have explained, he ought at the least to have taken reasonable steps to find out the outcome from the last hearing and, so far as I know, was receiving emails from the respondent including one with the date of the hearing on it.
29. However, out of an excess of caution, I have decided that I will direct the administration to post the judgment from today to the claimant's postal address. This is a step that is occasionally taken and this seems to me to be a case where it is prudent to make sure that that direct communication with the claimant.

Time limits

30. Turning to today, Mr Neckles has sent a 20 page skeleton argument on behalf of the claimant. However, he appears to ignore the effect of the Deposit Order made when the case was last before me on 16 January; the consequence of

non-payment of that order is that the claimant may not continue to advance the allegation or argument that the conduct which she complains of prior to 12 April 2024 was part of conduct extending over a period which ended on or after 12 April 2024. She did not pay the deposit and there is now a judgment stating that that allegation may not be pursued.

31. Mr Neckles argues in the claimant's submissions that this is a case of the type exemplified by Commissioner of Police of the Metropolis v Hendricks [2002] EWCA Civ 1686 CA type, where there is a conduct extending over a period ending at a point within the applicable time limit. That is not the case.
32. Ms Firth has set out the key dates (which are either common ground or incontrovertible) on page 3 of the respondent's skeleton argument (RSKEL) and it is:

July 2019	Denied Contracts and Materials Manger post
December 2019	Denied Contracts and Materials Manager post
7 January 2020	Early Conciliation Certificate 1 (page 274)
29 January 2020	Grievance 1 outcome (page 278)
July 2020	Denied Contracts and Materials Manger post
29 January 2021	Appeal against grievance 1 dismissed (page 328)
18 January 2022	Grievance 2 outcome (incorrectly dated outcome letter at page 317 as explained at page 484 para.24.a.)
27 September 2023	Early Conciliation Certificate 2 (page 363)
5 October 2023	Grievance 4 outcome
7 February 2024	Appeal against grievance 4 dismissed
12 April 2024	Any complaint about an act on or after this date is on the face of it in time
19 April 2024	Denied Sterile Services and Materials Manager post
7 June 2024	Early Conciliation Certificate 3 (page 6)
15 July 2024	Claim presented (page 7)

33. I accept that there is one in-time allegation and it relates to the decision to refuse the Sterile Services and Materials Manager post to the claimant. That was decided on or communicated to her on 19 April 2024. The judgment at page 496 means that the claimant may not argue that the 2019 and 2020 failures to appoint or the handling of her grievance or grievance appeals at various dates up to and

including on 2 February 2024 were connected with that decision such that there is a continuing act ending in time.

34. The first question I needed to decide was whether it was appropriate for me to decide the time point on a definitive basis or whether I should consider whether or not to strike out or order deposits to be paid in relation to the older (pre-12 April 2024) matters.
35. The consequence of the deposit order is that today's hearing only concerns allegations which, whether or not they are linked to each other, are all out of time because, whether or not they are linked to each other, the last one took place on 7 February 2024. That accords with the chronology set out in the claimant's chronology of detriments as well as the differences between the parties about numbers and dates of the grievances do not affect the start and end of that period. I concluded that it was appropriate to determine time definitively in relation to the pre 7 February 2024 allegations. I am not making a decision on whether they should be struck out or whether there should be further deposits ordered, as to the extent that the skeleton argument raises a response to such an application, I disregard it.
36. The parties were warned as long ago as the order of Judge Brown that this was an argument that might be considered. Since the end of the period is unequivocally out of time and since I approach this on the assumption that the claimant could show the other acts in the chronology to be connected, it is appropriate to make this determination on the basis of such evidence as is available to me.

The law

37. The law on just and equitable extension is well-established. A tribunal may not consider a complaint under ss.39 or 40 Equality Act 2010 which was presented more than three months after the act complained of unless it considers that it was just and equitable to do so. It is a broad discretion and the factors which are relevant to take into account depend on the facts of the particular case.
38. In British Coal Corporation v Keeble [1997] IRLR 336 the EAT advised that tribunals should consider in particular the following factors: (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued had cooperated with any requests for information; (d) the promptness with which the claimant had acted once he or she had known of the facts giving rise to the cause of action; and (e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she had known of the possibility of taking action. However the factors to be taken into account depend upon the facts of a particular case. Furthermore, one of the most significant factors to be taken into account when deciding whether to set aside the time limit is whether a fair trial of the issue is still possible (Director of Public Prosecutions v Marshall [1998] ICR 518). In Baynton v South West Trains Ltd [2005] ICR 1730 EAT, it was observed that a tribunal will err if, when refusing to exercise its discretion to extend time, it fails to recognise the absence of any real prejudice to an employer. This is part of considering the balance of prejudice.

39. Among the significant factors to be taken into account is whether a fair trial is possible and the question of prejudice to both parties. The fairness of the trial is intimately wrapped up with the question of the impact of any delay on the cogency of the evidence and that is something relied on by the respondent in this case as prejudicial to them.
40. Ms Firth has also in her paragraph 10, quoted that the relevant section from Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] I.C.R. 1194, CA which was more recently considered the case of Concentrix CVG Intelligent Contract v Obi [2012] I.R.L.R. 35, EAT. There HHJ Auerbach emphasised that, if no reason can be discerned from the evidence as to why a claim has been presented late, that does not as a matter of law mean that a just and equitable extension must be refused in every case. Nevertheless, the burden is on the claimant to show that the discretion to extend time should be exercised in her favour.

Discussion and Conclusion on time limits

41. So, starting with the length of and reasons for the delay. The claimant's representative in his skeleton argument argued that the claimant had pursued internal grievances about the initial 2019 and 2020 rejections and relied on the final determination of the appeal on 7 February 2024. Then a period of conciliation between 3 June 2024 and 7 June 2024 with the claim form being lodged on 15 July. Nevertheless, it is clear that an act occurring 7 February is still outside the period of the primary limitation period because contact with ACAS should have been made no later than 6 May 2024. The claimant relies on the final early conciliation certificate of three.
42. Part of the argument by Ms Firth was that the two factual strands of the complaint, the failure to appoint strand and the grievance and grievance appeal strands, are unlikely to be found to be connected to each other. She reminded me of paragraph 6 on page 492 of my reasons for the deposit order, and highlighted that, of the three grievances, which, for consistency I will refer to as grievance 1, 2 and 4, only one of the grievances was about the failure to appoint. So, the description by the claimant, through her representative, of these all being grievances about a failure to appoint, is not borne out by the documentary evidence. Ms Firth argued that they should be regarded as islands in time; three grievances about different things which do not appear to be connected into each other.
43. I had then, as I have now, the grievances in the hearing file before me and read into these reasons, paragraph 6.a, 6.b and 6.c of my reasons for making the deposit order. I found that there were little reasonable prospects of there being found to be a continuing act in the middle period of the chronology as I explain in paragraph 6.b.
44. That point and that reasoning is indirectly relevant to the decision that I have to make today. That is because there is prejudice to the respondent in the claimant pursuing a weak argument that there was a connection throughout the period from 2019 up until 7 February 2024. What I am being asked to do is to extend time from 7 February to the presentation of the claim, and that would not

necessarily deal with all of the time points that arise in this case. Some would remain to be considered at a final hearing. For the purposes of this decision, I presume that the claimant would show a continuing act. I do not think that that means I have to ignore apparent weaknesses in the argument that there was a continuing act when assessing prejudice.

45. The final determination in the second grievance was on 18 January 2022. That is of particular relevance in this context because it is that one, and that one alone, that raises any question of complaints about the failure to appoint to the Contract and Managerial Managers posts. The third of those three posts was appointed to in July 2020.
46. There is more than one early conciliation certificate in this case; one that I note - at page 363 covering the period 16 August 2023 to 27 September 2023 so well after grievance 2. Even if we were to look at the question of delay from 7 February 2024 onwards and not from, for example, each of the acts individually, (i.e. not from July 2020 the last refusal of the third application for a post) it is incumbent on the claimant to act promptly, in particular, where the core complaints which are about the failure to appoint were, by that stage, so far distant. When I am considering prejudice both to the claimant and to the respondent, if I am deciding today whether to extend time from 7 February onwards, it is relevant if it will open the respondent, potentially, up to a weak argument which I have already found to be a weak argument of connections going back through time to 2019. Conversely there is less prejudice to the claimant if she is prevented from pursuing a weak claim where the core allegations and the only grievance about them were concluded by January 2022 – more than 2 years before the final grievance outcome.
47. I also give weight to the fact that, twice before the early conciliation relied on in this case, the claimant contacted ACAS, received an early conciliation certificate, and apparently decided not to bring a claim. It seems to me that it is right to draw the inference from that that it was her choice not to do so at that time, and no explanation has been put forward by her for not doing so. She was given the opportunity to put in witness statement evidence by Judge Brown. Mr Neckles, on her behalf, stated that she was not intending to rely on any evidence. Therefore her absence and lack of representation today is irrelevant to the lack of evidence in support of her argument that it is just & equitable to extend time.
48. All she prays in aid, according to the skeleton argument, is that she was engaged in the grievance procedure and in conciliating. However, she was represented by a trade union representative and she knew, either directly or through them, that it was necessary to start conciliation. There is no evidence from her about what her knowledge was of her right to claim and why specifically, she did not present a claim after the earlier two periods of conciliation. In the absence of that direct evidence I can assume that it was her election not to present a claim after receiving the early conciliation certificates on the previous occasions.
49. The passage of time from the last of the rejection is four years: the passage of time between the outcome of the second grievance, which is the only one about rejections, to presentation of the claim is some two years and five months: the passage of time from the final rejection of a grievance appeal to presentation is

five months. One might argue that, presuming that she would establish an act continuing over a period ending on 7 February 2024, that being two months late in presenting her claim is not a very long delay. However, against the background of the earlier lapse of time, it was particularly incumbent on her to delay no further. The only explanation put forward is participation in internal processes and, when she was represented and she can be presumed to know about the right to claim, I do not consider that to be a sufficient and satisfactory explanation for not taking action as soon as the appeal against grievance 4 was dismissed. There is no suggestion that the grievances led to further information relevant to her right to claim: there is no suggestion that she did not know the facts at an early stage that would have allowed her to claim, and it could hardly be so when it is only grievance 2 which concerned failures to appoint.

50. The basis of the respondent's argument that they would suffer prejudice is their evidence about the effects of delay on the cogency of evidence. I heard from Ms Wilshire and she gave additional oral evidence correcting a couple of points in her witness statement and to supplement it. I accept her evidence. In respect of the July 2019 Contracts and Materials Manager post, I see from her paragraph 20.a that the individuals concerned who are alleged to have committed discrimination are Roderick Panganiban and Karthik Thiru. The recruitment exercise for the second Contracts and Materials Manager post (from December 2019) additionally involved Hasan Rabbani and Otilia Beres. Both of those two latter individuals had left the Trust's employment well before the start of the claim (see Ms Wilshire's paragraph 21). Their contact details are, I accept, old; their emails may not still be valid and there has been no positive confirmation that the respondent is unable to locate them but there is some basis to think that the respondent may be unable to contact them.
51. So far as the third Contract and Material Manager post (a 2020 recruitment) is concerned, the two original individuals are still, as I understand it, employed by the Trust and they are the common personalities involved in the three 2019 and 2020 recruitment exercises.
52. As far as the grievances are concerned, the first grievance was investigated by Fiona Isacson who, although she has left the Trust I am told is still in the NHS, but has not responded to a recent request that she contact them. She left on 31 August 2023 before the claimant had brought a claim. The appeal in grievance 1 was dealt with by Aisling Thompson, who has also left the Trust and appears, from what I have been told, no longer to work for the NHS. In her case, she also left three years before the claim was presented. These dates are relevant because one could not have expected the respondent to take steps to keep in contact with those individuals when they have no reason to think that a claim would be brought. Indeed, the Trust might have had reason to think a claim would not be brought if there had been positive engagement in early conciliation and no consequence proceedings. The Trust has reason to be concerned that they will not be able to contact her and that she will not be available as a witness. So, it seems that the best the respondent could hope for in the case of grievance 1 is that someone from HR could present evidence from the file but the individuals themselves, who would be alleged to be discriminators are, potentially, unavailable. By potentially unavailable, I mean that there are valid

reasons to be concerned that they will not be available.

53. Grievance 2 was investigated by Paul Abdi. He was the only decision maker involved, giving an outcome on 18 January 2022. He left on 15 October 2023 and I am told he has written an email to say that he did not recollect the matters and, in particular, does not recollect anybody of the name of Kolade. There would be documents, and there are documents in the hearing file that might, in some respect, refresh his memory, but I have therefore been given evidence of a deterioration of his recall which means that his evidence would be based on the assumption that documents might trigger memory. I consider this to be reliable evidence that the quality of evidence about the handling of grievance 2 is likely to have deteriorated. This, I remind myself, is the grievance which was about the recruitment exercise, and as such his evidence is likely to be more forensically relevant than the other grievance officers. The deterioration of the quality of that evidence is therefore forensically more prejudicial to the respondent than the effect of passage of time on less relevant evidence would be.
54. As to Grievance 4, the decision makers do not appear to have moved on but there is always concern that decisions that are taken some time ago might be affected by the passage of time.
55. I was taken to the limited documentation, which is presently available about the earlier recruitment exercises, in particular, pages 145 to 146, 199 to 227 and others dotted through the hearing file about arrangements for interview and appointments.
56. I have mentioned Ms Beres already. The other significance of her as a witness is that she was, at one point, a line manager of the claimant. So, although I understand that two of the other individuals who are potentially available to give evidence were line managers, I accept that her absence as one of the interviewers and a line manager, and the absence of Mr Abdi, who was the investigator in the relevant grievance, particularly in combination with each other, would be prejudicial to the respondent.
57. I am quite satisfied that the respondent has shown the probable degradation of oral evidence and a real risk that witnesses would not be contactable and would not recollect enough to be able to give a proper account of the relevant events. I also accept that, presently missing, not through any fault of the respondent, are interview notes. In the claimant's skeleton argument, paragraph 91, it is argued that feedback to the claimant is available. However, if that is missing for other candidates, as appears to be the case, then the availability of the feedback to the claimant would not mitigate the prejudice to the respondent of documentary evidence to explain why other candidates were scored more highly. That absence is highly relevant in a discrimination complaint.
58. Here again it is relevant that the grievances were not about the recruitment because they did not provide an opportunity to the respondent to retain information that might have been sought at an earlier stage had they been alerted to that complaint. I can see from a brief look at what is in the hearing file that there appeared to be some application forms, some scoring sheets I can see

at pages 272 and thereabouts and at page 386. But, given the numbers of people interviewed, judged by the interview arrangements, it is far from a complete set of documents. I accept Ms Wilshire's evidence that the availability of those documents will depend on, essentially, the chance that the interviewers, where they are available, retained all of their interview notes. When we are talking about interviews that took place in 2019 and 2020 that amounts to the respondent hoping that they will be lucky.

59. Although I do not want to overstate the degree of prejudice that the respondent has demonstrated, I accept that there are likely to be problems with the documentation and the potential absence of Ms Beres, and the likely unavailability of Mr Abdi in combination with each other, would prejudice the respondent in their defence of the earlier matters.
60. On the other hand, there is always prejudice to a litigant if they are unable to pursue a claim and this is a claim of discrimination. It is a claim of discrimination in respect of a number of applications for a post. The claimant, through her representative, argues that that is a pattern. No doubt it is of great importance to the claimant. On the other hand, she apparently chose not to claim at a time when the events would have been fresh in people's minds with knowledge of the right to do so. The delay is not satisfactorily explained by the internal processes. Delay from February 2024 is totally unexplained and that again, despite representation.
61. I also remind myself that the connection with the later allegation of the early recruitment points is weak. The merits of that point are weak and I have already explained why in the deposit order reasoning.
62. So, extending time from 7 February would leave the respondent potentially defending claims back to 2019 which have got little reasonable prospects of being connected to the later claims when they face real evidential problems as I have explained. And that, in summary, is why I have decided that the balance of prejudice is in favour of the respondent and I do not exercise my discretion to the claimant to extend time for those points; it is not just and equitable to do so.

Costs application

63. The power to order that one party pay the legal costs of the other is found in rule 74 of the Employment Tribunal Procedure Rules 2024 (hereafter referred to as the 2024 Rules). So far as is relevant, rule 74 reads as follows:

“(1) The Tribunal may make a costs order [...] on the application of a party ...

(2) A Tribunal must consider making a costs order or a preparation time order where it considers that –

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospect of success; or

(c) a hearing has been postponed or adjourned on the application of a party made less than seven days before the date on which the relevant hearing begins.

(3) A tribunal may also make such an order where the party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of party.”

64. By rule 76 (1), the Tribunal may order the paying party to pay a specified amount not exceeding £20,000 or the whole or a specified part of the costs of the receiving party, to be determined by way of detailed assessment. Under rule 75(2) the Tribunal must not make a costs order against a party unless that party has had a reasonable opportunity to make representations (in writing or at a hearing).
65. There are therefore two stages to determining a costs application. First the Tribunal must consider whether the grounds for making a costs order in rule 74 exist and secondly, if they do, then the Tribunal must consider whether or not to make one. In deciding whether or not to make a costs order, and if so, in what amount, the Tribunal may have regard to the paying party's ability to pay: rule 82. The Tribunal has an open discretion whether or not to take means into account but if it declines to do so, having been asked to consider the paying party's financial circumstances, it should explain its decision: Herry v Dudley MBC [2017] I.C.R. 610 EAT.
66. So, the first question I have got to ask was whether the failure to provide further and better particulars when ordered was unreasonable conduct of the proceedings by the claimant or her representative, or does it alternatively trigger the rule 74(3) discretion to exercise costs for failure to comply with an order.
67. There is no serious contention that the claimant had failed to comply with the order to provide the particulars by 16 June 2025 or, indeed, forthwith as ordered by Judge Alliott (see page 61). Given what the claimant did comply with at about the right time, as I have already explained, it is hard to understand why she did not provide the further and better particulars. I accept that there is a pattern of disruptive conduct of the proceedings by the claimant's representative in particular. There is the request for a late start to the hearing and then the last minute delivery of further particulars. There is an application to postpone a hearing less than seven days in advance which was not copied to the respondent and was not made as soon as the need became apparent. There is the failure to attend today's hearing when acting reasonably the claimant and/or her representative would have been aware of the hearing.
68. That is not the conduct which has led to the claiming of the costs and in some cases post-dates the conduct complained of. However the pattern of conduct causes me to reject the argument that any delay is justified and fully explained. To expand, Judge Smeaton made clear that she was not satisfied that the chronology of the explanation covered the whole of the period of delay. We

have the oddity of the situation of the hearing before her which, at the request of the claimant's representative, started late and then the missing further and better particulars were emailed after the start of the hearing.

69. Then there was the hearing before me in January 2026 which was itself unable to achieve all of the purposes for which it had been scheduled because of the absence of the claimant and her representative. I have already explained why I have rejected the postponement on that occasion as the explanation given for the postponement did not amount to exceptional circumstances justifying it. The explanations for the alleged lack of knowledge of today's hearing are not coherent and full. Those are the matters that the respondents justifiably describe as disruptive to the normal process of the litigation.
70. The unreasonable conduct relied on is shown and that is the failure to comply with the deadline to provide further information. However, at the second stage, when deciding whether or not to exercise my discretion to award costs in favour of the respondent, I take into account that the claimant and/or her representative have behaved in a way which duplicates work. I am not seeking to punish the claimant for that because that is not the conduct that is impugned but it is relevant to my discretion because it means that, where there has been a clear breach of a Tribunal Order, which has led to an increased cost, I do not consider it right to give the claimant the benefit of the doubt in these matters. On the one hand, although Judge Smeaton was able to clarify the issues, and that was the purpose of providing further and better particulars, she was only able to do so at the cost of determining the time point, hence the need for an additional hearing and that was the consequence of it.
71. The matters relied on in the claimant's skeleton argument, in particular paragraph 106, do not satisfactorily explain the failure. There was apparently no warning to the respondent of the reasons that are outlined in that paragraph. The inability at that hearing to complete all the purposes it was listed for caused cost and delay in the progress of this litigation so that it has taken longer for it to reach the point where a final hearing can be listed.
72. I also think it is relevant that the respondent is a public body and legal costs incurred by the respondent are met out of the public purse.
73. So, for those reasons, I decide to award costs. There has not been a request for me to consider the claimant's means and I do not do so. I order the claimant to pay legal fees in respect of counsel's brief fee for the 4 November 2025 hearing. I am told that VAT incurred by the Trust is irrevocable and so I order the claimant to pay £1,500 plus VAT which is £1,800.

Approved by:

Employment Judge George

29 September 2026

JUDGMENT SENT TO THE PARTIES ON
30 September 2026

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written full 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/