



EMPLOYMENT TRIBUNALS

Claimant: Ms S Mohamed

Respondent: NHS Blood and Transplant

Heard at: **On:** 17 September 2026

Before: Employment Judge Shastri-Hurst

Representation

Claimant: in person

Respondent: Mr O'Dempsey (counsel)

RESERVED JUDGMENT

1. The last alleged act of discrimination is within the primary time limit under the Equality Act 2010 and as such the Tribunal has jurisdiction to hear that claim.
2. The question of whether the remaining five allegations form a continuing act with that last sixth allegation will be dealt with at the final hearing.

SUMMARY REASONS

Introduction

1. The claimant was, at the time relevant to the claim, a locum Band 6 Biomedical Scientist working for the respondent, between 3 June 2024 and 4 October 2024.
2. The claimant started the ACAS early conciliation period on 15 September 2025 and that period ended on 23 October 2025. The claim form was presented on 21 November 2025 and contained claims of direct race discrimination and victimisation under the Equality Act 2010 ("EqA").
3. The case was listed before me to determine the jurisdictional question of whether the claim is out of time and, if so, whether the claim was presented within such time as was just and equitable. The respondent had helpfully produced a skeleton argument for the purposes of today's hearing, which

also covered an argument relating to striking out the claim on the basis that it had no reasonable prospects of success due to being out of time. Having looked at the Notice of Hearing (paragraphs 5 and 6 on page 33 of the bundle), it was clear to me that this was not listed for a strike out argument as well as the jurisdiction argument.

4. In light of the wording of the Notice of Hearing, I considered that it would be inappropriate to deal with a strike out application when no such application had been listed, particularly given that the claimant is a litigant in person. I therefore just dealt with the sole issue of jurisdiction in relation to time limits.
5. As mentioned, Mr O'Dempsey had produced a skeleton argument. I also had a bundle of 73 pages including a witness statement from the claimant, a joint agenda and a draft list of issues.

Issues

6. As set out above, the issue listed for today's hearing is set out at page 33 of the bundle:

The issue for determination at the preliminary hearing is whether or not any aspect of the claim (or all of it) is outside the jurisdiction of the Tribunal on the basis that it was made out of time and it is not just and equitable to extend time for the making of the claim (or the part of it in question).

Findings of fact

7. The following findings of facts were made on the basis of evidence before me at the preliminary hearing. They are not intended to bind the tribunal dealing with the final hearing; that tribunal will hear and see more evidence than I have today.
8. Initially, we spent time this morning finalising the List of Issues that had been drafted by the respondent: the complete List of Issues will be attached to this Judgment.
9. In light of that completed List of Issues, it is clear that there are three allegations of direct race discrimination and three allegations of victimisation. The dates of those allegations are as follows (with reference to the Issue number within the List of Issues:
 - 9.1. Issue 3.2.1 - offering Band 7 role to others – 27 June 2026 (this is the date that the claimant was informed she had been unsuccessful in her application for the Band 7 role);
 - 9.2. Issue 3.2.2 - giving the claimant feedback – 27 June 2026 (this follows from paragraphs 16 to 21 of the claimant's witness statement);
 - 9.3. Issue 3.2.3 - Deputy Manager's behaviour – 4 October 2024 (up to and including the claimant's last day of work);
 - 9.4. Issue 4.3.1 - withdraw Birmingham job offer – 11 October 2024;

9.5. Issue 4.3.2 - mishandle the grievance – 16 June 2025 (the last date on which the respondent can be said to have mishandled the grievance must be the date on which the grievance outcome was conveyed);

9.6. Issue 4.3.3 - the rejection of the grievance – 16 June 2025.

10. Therefore, the last alleged act of unlawful conduct under the EqA is 16 June 2025.

Chronology

11. The relevant chronology in relation to this claim (relevant to the issue of jurisdiction) is as follows:

xx.05.24	Applications for a Band 7 role (three were two positions available)
xx.06.24	The claimant was interviewed
27.06.24	The claimant was told she was unsuccessful
xx.09.24	The claimant spoke to Freedom to Speak Up
xx.09.24	The claimant spoke to Diversity and Inclusion
01.10.24	The claimant raised informal concerns (her alleged protected act)
04.10.24	The claimant raised a grievance, but not in the prescribed format
04.10.24	The claimant's contract ended
11.10.24	The offer of a locum role at Birmingham SCI Lab was allegedly withdrawn
12.11.24	The claimant raised a formal grievance
20.11.24	The response confirmed it would exercise its discretion to deal with the claimant's grievance
16.06.25	The grievance outcome was sent to the claimant
xx.08.25	The claimant attended the Citizens' Advice Bureau
10.09.25	The claimant raised an appeal
15.09.25	ACAS Day A
23.10.25	The respondent confirmed it would not continue with the appeal
23.10.25	ACAS Day B
21.11.25	The claimant submitted her ET1

Law

12. Section 123 EqA sets out the time limits for presenting claims of discrimination and victimisation:

- (1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of –
 - a. The period of 3 months starting with the date of the act to which the complaint relates, or
 - b. Such other period as the employment tribunal thinks just and equitable.

(2) ...

(3) For the purposes of this section –

- a. Conduct extending over a period is to be treated as done at the end of the period; ...

13. Section 140B provides as follows regarding the extension granted by virtue of the ACAS early conciliation period:

(1) This section applies where a time limit is set by section 123(1)(a) or 129(3) or (4). ...

(2) In this section –

- a. Day A is the day on which the complainant or application concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and
- b. Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If the time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) The power conferred on the employment tribunal by subsection (1)(b) of section 123 to extend the time limit set by subsection (1)(a) of that section is exercisable in relation to that time limit as extended by this section.

Conclusions and case-law

The continuing act argument

14. Mr O'Dempsey invited me to deal with and determine the question of whether the six individual allegations of discrimination/victimisation constitute a continuing act under s123(3)(a) EqA. I decline to do so and consider this is a matter that can only be properly determined at the conclusion of the final hearing.

15. First, I remind myself that there is no requirement that the conduct extending over a period must all relate to the same protected characteristic or prohibited conduct - Worcestershire Health and Care NHS Trust v Allen 2024 EAT 40. In other words, it is the correct approach to consider the six allegations and whether they form one continuing act. It would be wrong in law to consider the three allegations of race discrimination separately from the three allegations of victimisation.

16. Second, it is unusual for the Employment Tribunal to deal with the “continuing act” argument at this preliminary stage of litigation: it is routinely a matter left to the conclusion of the final hearing. Partly, this is because there is a need to make findings of fact about who did what and whether there was any nexus between the six allegations that would mean they should be considered as one continuing act.
17. More fundamentally however, it is established law that individual allegations can only form part of a continuing act if those allegations are found to be unlawful acts of discrimination: that matter will not be decided until the final hearing.
18. In South Western Ambulance Service NHS Foundation Trust v King 2020 IRLR 168 EAT, the Employment Appeal Tribunal held that if any of the acts alleged to be part of a continuing act are not established, either on because they fail on the facts or they are found not to be discriminatory, they cannot contribute to a continuing act.
19. Evidently, a decision as to whether something is discriminatory, or indeed whether something is proven on the facts, is something that can only happen at a final hearing. It would be entirely premature and inappropriate for such issues to be decided at a preliminary hearing.
20. Therefore, I do not see how I can safely determine whether the six allegations do or do not form a continuing act at this preliminary hearing. I decline to do so, and leave this matter to the final hearing.
21. I therefore focus instead on whether the last allegation in the chronology is in time under s123(1)(a) EqA and, if not, whether it should be deemed to be in time under s123(1)(b) EqA.

Time limits

22. The last alleged unlawful act in the chronology is the rejection of the grievance on 16 June 2025. Under s123(1)(a), the primary time limit expired on 15 September 2025. This, coincidentally, is the day on which the claimant commenced ACAS early conciliation and therefore is Day A for the purposes of s140B.
23. Mr O'Dempsey says in his skeleton at paragraph 17(c):

...Even taking 16 June 2025 as the relevant date, the ordinary 3-month time limit would expire on 15 September 2025, which is Day A – meaning the primary time limit was not met as the Claim was presented on 21 November 2025.
24. I took a break following hearing evidence and submissions, in order to consider my judgment. However, I in fact decided not to give judgment as I needed to understand this point raised by Mr O'Dempsey so that I could properly grapple with it in my deliberations.
25. When we returned from the break, I asked Mr O'Dempsey to explain his workings for this paragraph, as he had not set out his calculation for reaching the conclusion that the primary time limit was not met, in light of

the provisions in s140B EqA. He candidly told me that he was not able to expand on it further.

26. I hypothesised that he must have looked at the construction of s140B(3) as follows. Given that s140B(3) only discounts from the time limit calculation the period starting *the day after* Day A, it must be that the claimant gets no extension under s140B(3) if she approaches ACAS on Day A. Mr O'Dempsey agreed that this must have been his interpretation, and that it is a point of construction regarding the statute in question. There is no authority cited for this proposition in his skeleton argument.

27. However, even if that construction of s140B(3) is correct, Mr O'Dempsey would then also have to ignore the effect of s140B(4) to succeed in his argument. I remind myself that s140B(4) EqA reads as follows:

If the time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

28. I also remind myself that s140B(3) and s140B(4) are to be applied sequentially, so once the effect of s140B(3) has been deciphered, one goes on then to apply s140B(4).

29. The primary time limit for the last act in this claim expired on 15 September 2025: Mr O'Dempsey and I agree on that. In that case, even if s140B(3) does not provide the claimant with any extension, s140B(4) allows an extension if the primary time limit expires during the period *beginning with Day A* and ending one month after Day B.

30. Here, the primary time limit expired on Day A, and therefore expired during the period beginning with Day A and ending one month after Day B.

31. Following the rest of s140B(4), in such a scenario the time limit is then extended to the end of that period. On these facts, that would mean that the time limit is extended to one month after 23 October, namely 23 November 2025. The claim form was presented on 21 November 2025, before that time limit.

32. I therefore conclude that the last act of alleged victimisation was presented in time. As such, there is no need for me to consider the just and equitable argument at this stage. The Tribunal will need to consider at the final hearing:

32.1. Whether any proven unlawful acts form a continuous act, and whether the last proven unlawful act itself is in time: if not,

32.2. Whether any proven unlawful acts were presented in such time period as was just and equitable.

Approved by:

Employment Judge Shastri-Hurst

18 September 2026

**JUDGMENT SENT TO THE PARTIES
ON 1 OCTOBER 2026**

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FOR THE TRIBUNAL OFFICE

Notes

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www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/