Case Number: 2300795/2026

EMPLOYMENT TRIBUNALS

Claimant: Ms A. Forbes

Respondent: Skanska Rashleigh Weatherfoil Limited

Heard at: London South Employment Tribunal, Croydon (by CVP) **On:** 3 July 2026

Before: Employment Judge McCann

REPRESENTATION:

Claimant: In person

Respondent: Mr H Taylor (Solicitor)

JUDGMENT was sent to the parties on 15 July 2026 and full reasons were requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules. The following written full reasons are therefore provided:

FULL REASONS

1. At the preliminary hearing on 3 July 2026, and by consent between the parties, the correct name for the respondent (Skanska Rashleigh Weatherfoil Limited) was substituted in place of Skanska Construction UK Limited. This was confirmed in the Judgment, sent to the parties on 15 July 2026 (and corrected on 28 September 2026).

2. By that judgment, it was recorded that the claimant's claim was not presented within the applicable time limit; and it was not just and equitable to extend the time limit. The claim was therefore dismissed. That decision had been made at the preliminary hearing on 3 July 2026 with oral summary reasons given on that same day.

3. On 20 July 2026, the claimant requested full written reasons; and her request was forwarded to me on 4 August 2026. Thereafter, it was explained to her that

I was unavailable for most of August and would not be able to turn my attention to producing these Full Reasons until mid/late September 2026.

4. The preliminary hearing on 3 July 2026 was listed to determine whether the Tribunal had jurisdiction to consider any of the claimant's complaints given that her claim was presented substantially out of time. This would require consideration of whether it would be just and equitable to enlarge time under section 123 of the Equality Act 2010 (EA 2010).

Documents and witness evidence

5. At the outset of this preliminary hearing, there was some discussion about documents. The respondent had provided a Bundle (consisting of 153 pages) to the Tribunal and to the claimant ahead of the hearing but the claimant told me that she had not been able to access it. The claimant had produced a witness statement, bearing her signature and a handwritten date of 8 June 2026. The claimant also indicated that she had provided a bundle of documents to the Tribunal but this had not been sent to the respondent and I did not have access to it. I paused the preliminary hearing to enable the claimant to access and review the respondent's bundle (which was re-sent to her) in order to see if it contained the necessary documents so that the hearing could proceed using that Bundle; and for the respondent to review the claimant's statement. When the hearing resumed, the claimant agreed that the respondent's Bundle contained all of the necessary and relevant documents other than a screenshot of an email which was undated but apparently sent in the days following 21 February 2009. It was from the claimant to someone at her temp agency (Potensis) called "Winnie". I permitted the claimant to rely on this document and a copy of it was provided to the respondent.

6. The claimant gave oral evidence. She swore to the truth of her written statement and explained that the screenshot of her email to "Winnie" was sent in order to let her know that the claimant's line manager (Mr Baker) had not responded to an email. The claimant agreed that she did not make any allegation in this email of sexual harassment. The claimant was then cross-examined by the respondent's representative, Mr Taylor. The parties then made closing submissions and I took some time to deliberate, giving my decision and reasons orally on the day of the preliminary hearing.

7. I set out in these Reasons the facts which I have found to be material to my conclusions. If I do not mention a particular fact in these Reasons, it does not mean that it has not been taken into account by me. To the extent that I have made any findings of fact, this was on the balance of probabilities.

Background

8. The claimant presented an ET1/Claim Form on 20 April 2026 asserting claims for sexual harassment and/or direct sex discrimination in respect of events during the period of her work at the respondent company.

9. The claimant's employment had commenced on 4 August 2008 and terminated on 22 April 2009. In her claims, the claimant alleges that, during this period of time, she was subjected to unwanted conduct of a sexual nature and/or was less favourably treated because of sex by her line manager at that time (Mr Baker). The very last date on which any incident of harassment or discrimination occurred was (as the claimant agreed) 22 April 2009, some seventeen years prior to the presentation of this claim.

10. This preliminary hearing was listed by this Tribunal to consider whether, given that the claimant's complaints in her claim were presented substantially outside of the prescribed time limits, it would be just and equitable to extend time under section 123 EA 2010. If the Tribunal determined that it was not just and equitable to extend time, then it would have no jurisdiction to determine the complaints and they would fall to be dismissed.

11. The claimant had previously presented an ET1/Claim Form against the same respondent in respect of what she accepts were very similar, if not identical, claims on 25 August 2009, albeit under the Sex Discrimination Act 1975, the relevant legislation at that time. That claim came before the Watford Tribunal for a Pre-Hearing Review (as preliminary hearings were then called) on 10 March 2010 and was dismissed as being out of time and because it was determined that it was not just and equitable to extend time.

12. During cross-examination, the claimant accepted that she understood that her original claim was not permitted to proceed because, although she explained to the employment judge at a hearing in 2010 what she had been going through in relation to her own depression and the issues facing her brother who was on suicide watch and the delay that this caused with presenting her claim, the Judge at that hearing did not allow her claims to proceed. The claimant told me that, back in 2010, she attended a hearing and produced a witness statement for that hearing and could not now recall whether she was asked any questions.

13. It was not disputed by the claimant that her recent ET1/Claim Form, presented on 20 April 2026, was 16 years and nine months beyond the time limit prescribed by section 123 EA 2010 and that it relies on the same allegations of sexual harassment and direct sex discrimination as her previous claim (presented on 25 August 2009).

14. The claimant gave evidence via her witness statement and in answer to questions in cross-examination and from the Tribunal. The claimant said that the reasons for seeking to relitigate her claim now (and for presenting this claim substantially out of time) are that:

    i. She had been very adversely impacted by the events during her work for the respondent in 2008 to 2009 and had not been able to recover and move forward and had been retriggered by the '#metoo' movement (which I note started to gain global visibility in 2017, some nine years ago).

    ii. She wanted redress and compensation for the impacts on her.

    iii. The claimant explained that she was not in a good place in 2009, when she had a number of personal issues to deal with, including a deterioration in her brother's mental health. She accepted during her evidence, however, that this was all before she issued her first claim on 25 August 2009.

    iv. She had sought legal assistance on several occasions over the last 10 years or so in order to get help with pursuing her claims against the respondent; but was not able to secure legal representation because her view of her legal position and the strength of her case was different to the negative advice she received from various legal representatives.

    v. The claimant explained that, having concluded that she would not be able to obtain legal representation, she tried to resolve her dispute by corresponding directly with the respondent company from August to December 2025, including by seeking a settlement of £12 million. That came to nothing and she has not sought to advance any claims in relation to that correspondence.

    vi. When that correspondence did not resolve matters to her satisfaction, she went to Acas on 6 February 2026, received an Acas early conciliation certificate on 17 March 2026 and tried to submit her ET1/Claim Form on 16 April 2026 but was not able to use the online system so sent it by post, with her claim then being presented on 20 April 2026.

    vii. She explained that she was homeless in the first few months of 2026 which made it difficult for her to progress matters.

15. During cross-examination, the claimant accepted that she knew that her line manager (the alleged harasser) had resigned from his employment in 2009

before a disciplinary hearing could take place. The claimant accepted that it would be very difficult to determine her claims fairly now given that the key witness was not available to the respondent. The claimant also agreed that, in November 2025, the respondent had sent her a detailed response to her correspondence and so did not "brush her off". She accepted that the respondent's detailed response letter was sent to her on 15 November 2025 but she did not contact Acas and then the tribunal until February and April 2026 respectively. She stated that she did not really think of contacting the employment tribunal until February 2026. She maintained that this thought did not cross her mind, even though she accepted that she did have in mind the possibility of litigating her dispute against the respondent.

Submissions

16. The parties then made closing submissions.

17. The respondent submitted that I should not exercise my discretion to extend time because it could not get a fair hearing – the allegations were very historic and witnesses memories will have faded substantially and the key witness (the claimant's former manager and the alleged perpetrator of the sexual harassment and direct sex discrimination) resigned in 2009 and so was not available to the respondent if it were called upon to defend the claim. The respondent submitted that the prejudice to it would be substantial if the claim was permitted by me to proceed.

18. In addition, the respondent pointed out that, if the case were allowed to proceed under the just and equitable extension in section 123 EA 2010, it would then apply for it to be struck on the basis that the claimant was estopped from relitigating a claim she had already litigated (in other words, that the principle of *res judicata* and its close relative, abuse of process, as enunciated in *Henderson v Henderson*, was clearly applicable and the claimant would therefore be prevented from pursuing her claim on that basis).

19. Furthermore, the respondent submitted that it was not just and equitable to extend time because the claimant was seeking to use this litigation to strongarm it into parting with huge sums of money in a settlement and that was clearly improper. It also stated that it was simply not credible for the claimant to say that she did not consider bringing tribunal proceedings until early 2026, given that she threatened litigation in her correspondence with the respondent in the period from August to December 2025 and had previously litigated in the employment tribunal and so was aware of both the process to follow and the importance of time limits.

20. In her submissions, the claimant said that her previous tribunal claim, which was about the same allegations, was thrown out due to being a few days out of time and that the tribunal on that occasion had failed to look at the evidence of what happened to her at work and did not properly take into account what she was having to deal with at that time. The claimant pointed to the serious nature of the allegations that she was making against the respondent. She said that the impact of her former line manager's conduct had stayed with her and she had "held onto it" until now and she could not forget the way she had been treated. She explained that she felt that she had not been properly heard or seen and that her account of what had happened had not been taken seriously which is why she continued to pursue her claim and she hoped that would be enough to persuade the Tribunal to extend time to allow her case to be decided on the evidence. The claimant did not make any further submissions about her email to "Winnie" but, in her witness statement, stated that it "directly contradicts any suggestion that concerns were only raised after the event or were manufactured later".

The Law

21. My discretion to consider claims which are otherwise out of time is governed by section 123(1)(b) EA 2010. This provides that:

"*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".

I note that, for the purposes of this section, conduct extending over a period is to be treated as done at the end of the period. I assume for the purposes of this preliminary hearing, that the claimant would be able to show, at a full merits hearing, that there was conduct extending over a period within the meaning of section 123(3) EA 2010, such that time would only begin to run from the end of that period.

22. I note that the discretion to allow proceedings to be brought after the period of 3 months prescribed by section 123(1) EA 2010 is a very broad discretion and I am to have regard to all relevant factors in deciding whether the claimant has persuaded me that it is just and equitable to extend time (*Hutchison v Westward Television* [1977] ICR 279 (EAT)). That said, statutory time limits are to be applied strictly and there is no presumption that it would be just and equitable to extend time. As the EAT confirmed in *Polystar Plastic Ltd v Liepa* [2023] EAT 100, although there is no formal burden of proof in assessing questions of

justice and equity under section 123(1)(b) EA 2010, it is for a party asserting a positive case to establish the matter in issue. As such, the requirement to persuade the Tribunal to exercise its discretion is firmly on the claimant (*Robertson v Bexley Community Centre t/a Leisure Link* [2003] IRLR 434 (CA), at paragraph 25, per Auld LJ).

23. This does not mean that a claimant must always put forward a good reason for their delay, or that time cannot be extended in the absence of an explanation for the delay from the claimant. *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] EWCA Civ 640; the Court of Appeal held that (at paragraph 25):

> "*There is no justification for reading into the statutory language any 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 most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard*."

24. In *Owen v Network Rail Infrastructure Ltd* [2024] IRLR 275, the EAT held that a tribunal had erred when it refused to extend time, having "reluctantly concluded that the claimant has provided no evidence on which it can exercise its discretion to extend time" and having found that "without explanation from the claimant, it is not possible for the tribunal to extend time"; and, in *Concentrix GVC Intelligent Contact Ltd v Obi* [2022] EAT 149, the EAT upheld a tribunal's decision to extend time, despite the lack of evidence as to why the claimant had presented the claim one day late, where they had been aware of the time limit. The tribunal found that the delay did not cause any genuine prejudice to the respondent, whereas if the extension had not been granted, the claimant would not have been able to receive any remedy. The EAT rejected a submission that, in circumstances where no reason was provided by the claimant, it was necessary for the tribunal to discern one from the available evidence and held that it is open to a tribunal to exercise the discretion even when finding no reason for the delay. However, the EAT also made clear that it would be an error for a tribunal to fail to consider the potential forensic prejudice arising from historical allegations that would be brought in if an extension of time were allowed.

25. The sorts of factors in section 33 Limitation Act 1980 are useful pointers as to what may be relevant (per *British Coal Corp v Keeble*, at paragraph 8) but these factors should not be treated as an exhaustive checklist or mechanistically

applied (*Adedeji v Uni Hospitals Birmingham NHS Foundation*, per Underhill LJ at paragraph 37).

26. Significant factors are likely to include:

(a) The length of and reasons for the delay; and this may require the Tribunal to consider the extent to which the respondent has cooperated with any requests for information and the promptness with which the claimant acted once she knew of the facts giving rise to her claim; as well as the steps taken by the claimant to obtain advice once she knew of the possibility of taking legal action;

(b) The prejudice to each party of granting or refusing to grant an extension of time. That includes the extent to which the cogency of the evidence is likely to be affected and whether it is possible to have a fair trial.

(c) The potential merits of the claim: *Edomobi v La Retraite RC Girls School* UKEAT/0180/16, 15th November 2016, at paragraphs 25 and 28; and *Kumari v Greater Manchester Mental Health NHS Foundation Trust* [2022] EAT 132. Where it is reasonably apparent that a claimant will face an uphill struggle at a full merits hearing of a complaint, it is less likely to be appropriate for a tribunal to exercise its discretion to extend time. However, an enquiry into the merits will necessarily be conducted at a high level (for example, by reference to the pleadings) and should not involve a trial within a trial.

Discussion and conclusions

27. Pulling all of these threads together. I have regard to the fact that the delay here is substantial (namely, 16 years and 9 months). That is delay of an inordinate magnitude and would require a much better explanation and, even more importantly, much less prejudice on the respondent to justify granting an extension of time. The respondent no longer employs the key witness (the alleged harasser and the claimant's former line manager) and no longer has access to him and so would be prevented from seeking evidence from him.

28. The reasons for the delay are not especially cogent. In effect, the claimant wishes to have a second bite of the cherry, having failed to proceed to trial in 2010 and finding that she was not able to recover from her experiences. The claimant could have appealed (but did not) the previous decision, of the Watford Employment Tribunal, to dismiss her claim because it was out of time and it was not deemed just and equitable to extend time. I note that the claimant also has a financial motive as is clear from her request for a £12 million settlement

which appears to be out of all proportion to her complaints and income and may tend to suggest vexatious conduct on her part.

29. The claimant was apparently told time and again that she would be in difficulty in pursuing a legal claim after all these years had passed, this advice coming from the various solicitors she approached over the years. However, she continued to wait, even after she received a detailed response to her correspondence from the respondent in November 2025, even then not presenting her claim until 20 April 2026.

30. I have had some regard to the underlying potential merits of the complaints. The photo and text messages do raise a clear *prima facie* case of sexual harassment and the claimant was apparently raising some concerns towards the end of her employment with her temp agency (the "Winnie" email); but there is also a potentially credible explanation from the claimant's line manager of a consensual relationship, which is disputed by the claimant.

31. In the end, the key point is always the relative prejudice to the parties.

32. The prejudice to the respondent is very significant and a powerful factor in the circumstances of this case. I do not consider that the respondent can have a fair trial after this very substantial passage of time. The key alleged perpetrator (the claimant's former line manager) left his employment with the respondent some 17 years ago and is no longer available to the respondent; and memories in any event will have faded. I do not need evidence to demonstrate this point; and it is not a question of mere assertion on the part of the respondent's representative. I have regard to the fact that some of the conduct is contained in text messages and a photograph but there are likely to be issues about whether any of the conduct complained of by the claimant was done "in the course of employment" (in circumstances where there is a potentially credible suggestion that the claimant and her former line manager were in a consensual intimate relationship). It is also possible that the respondent would wish to rely on the statutory defence. These issues would require contemporaneous evidence in documents as well as in the minds of employees which is no longer available to the respondent.

33. The respondent is extremely unlikely to be in a position properly to defend this claim and that prejudice to respondent outweighs any prejudice to the claimant, caused by not having a trial of her complaints on their merits.

34. The potential prejudice to the claimant is less clear. On the one hand, she will be prevented from proceeding to trial to have her complaints determined on their merits, in respect of incidents which she says are still impactful for her;

but, on the other, she has no entitlement to pursue an out of time claim, particularly where she appears to be relitigating a claim in which she is advancing identical complaints which have already been dismissed as being out of time (by the Watford Employment Tribunal, in 2010). I have not decided the arguments relied on by the respondent in relation to *res judicata* or *Henderson v Henderson* abuse of process; but there is clear apparent merit in those arguments and that hugely undermines any case for prejudice on the claimant's side. Her original claim (asserting exactly the same complaints) was already out of time, such that the Tribunal had no jurisdiction to determine it. This time round, the position is very clear. The claim is even more out of time (very substantially so), the prejudice to the respondent in having to defend it is significant and that outweighs the fact that the claimant will be prevented from having her claims decided on the evidence.

35. Accordingly, it is not just and equitable to extend time under section 123 EA 2010; and the complaints which the claimant seeks to advance in her claim are dismissed.

Approved by:

Employment Judge McCann

29 September 2026

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