



EMPLOYMENT TRIBUNALS

Claimant: Ms F Abdullah

Respondent: TBG Flex Limited

RECORD OF A PRELIMINARY HEARING

Heard at: Reading (part in private, part in public by C.V.P.)
On: 19 August 2026

Before: Employment Judge George

Appearances

For the claimant: self-representing

For the respondent: Ms G Blesson, solicitor

RESERVED JUDGMENT

1. The complaint **of unauthorized deduction from wages** is struck out under Employment Tribunal Procedure Rules 2024 rule 38(1)(a) because there are no reasonable prospects of the claimant showing that the complaint was presented in time.
2. The breach of contract complaint is struck out under Employment Tribunal Procedure Rules 2024 rule 38(1)(a) because there are no reasonable prospects of the Tribunal having jurisdiction to consider it.
3. Otherwise, the application for the claim to be struck out or for deposit orders in the alternative is dismissed.

REASONS

1. The Employment Tribunals Procedure Rules 2024 include the following:
“38.— Striking out

(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds—

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim, response or reply may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

...

2. The respondent argued that there are no reasonable prospects of the claimant showing that the unauthorised deduction from wages complaint was in time because even if there had been a series of deductions, the claim had been presented more than three months after the payment of wages from which the last such deduction had been made.
3. The respondent also argue that there are no reasonable prospects of the remaining complaints (race related harassment/discrimination and/or sex discrimination and/or whistleblowing detriment) being found to be in time and that *those* should be struck out on those grounds.
4. I reserved my decision on the applications for orders striking out the claim or for deposit orders because there was insufficient time to give a decision. I had heard oral submissions to supplement the respondent's written submissions at page 79 and oral submissions from the claimant.
5. There was a lot of ground to cover and the hearing had already overrun. Towards the end of the hearing the claimant was under pressure of time because her computer was schedule to do a restart at 5.00 pm. I had been asking the claimant specifically about the latest date when she was paid one of the installments of the back pay due because she had been incorrectly paid over a period of time. I asked the claimant when in 2024 the last payment was made and she needed to check. Given that her computer was imminently going to close down and restart, I directed her to send information to the Tribunal about when the last installment of the back pay was paid to her no later than 21 August 2026 and make any other submissions by the same time. The respondent had leave to make any further submissions on their

application to strike out the unauthorised deduction from wages complaint by 28 August 2026. The claimant did not send the information to the Tribunal. The respondent wrote on 28 August and repeated their position that the unauthorised deduction from wages complaint was out of time.

6. I accept the respondent's argument that the initial explanation of the unauthorized deduction from wages complaint in the claim form is set out in para.9 of the attachment. It is said that from about 2018 the interim director of property services had known that the claimant was being paid incorrectly. The only logical reading of that paragraph is that the incorrect pay was resolved within a matter of weeks of the same individual being given the role of Assistant Director in 2024.
7. The claimant argues that there was consequential loss caused by her being paid incorrectly. She explained that at the time she was repaid the lump sums owed by way of back pay, she had financial support with her rent as social entitlement. When she was being repaid the previous underpayment she had to declare it to the Department of Work and Pensions and that, as she put it, swallowed up her benefit entitlement. Her grievance is that, had she been paid the correct amount all along then she would have known when applying for support what income she was on. I inferred she considers that she would still have been entitled to support with her rent at some level rather than be in the situation where she did not benefit from the repayment of what was owed her because it caused her to lose income elsewhere that month.
8. Taking what she said at face value, I can well understand her frustration. If she had a valid unauthorized deduction from wages complaint, she would be entitled to claim losses caused by the underpayment if she could evidence them. What she explained about losing her benefit entitlement either immediately when the repayment was made or overall compared with what her situation would have been had she never had deductions made might arguably fall into the category of such consequential losses.
9. However, the fact remains that even on her case she stopped being underpaid sometime in 2024. She would still need to bring a valid unauthorized deduction from wages claim in order to claim consequential losses within it. Furthermore, she was repaid what was owing to her at least from the period proximate to the correction of her pay, although she contends that the decision was not backdated far enough.
10. Time limits for presenting an unauthorized deduction from wages complaint are set out in s.23 Employment Rights Act 1996

"23.— Complaints to [employment tribunals].
(1) A worker may present a complaint to an employment tribunal —
(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),

(b) that his employer has received from him a payment in contravention of section 15 (including a payment received in contravention of that section as it applies by virtue of section 20(1)),

(c) that his employer has recovered from his wages by means of one or more deductions falling within section 18(1) an amount or aggregate amount exceeding the limit applying to the deduction or deductions under that provision, or

(d) that his employer has received from him in pursuance of one or more demands for payment made (in accordance with section 20) on a particular pay day, a payment or payments of an amount or aggregate amount exceeding the limit applying to the demand or demands under section 21(1).

(2) Subject to subsection (4), an [employment tribunal] shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3) Where a complaint is brought under this section in respect of—

(a) a series of deductions or payments, or

(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates, the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

(4A) An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint.

(4B) Subsection (4A) does not apply so far as a complaint relates to a deduction from wages that are of a kind mentioned in section 27(1)(b) to (j).

(5) No complaint shall be presented under this section in respect of any deduction made in contravention of section 86 of the Trade Union and Labour Relations (Consolidation) Act 1992 (deduction of political fund contribution where certificate of exemption or objection has been given).”

11. In the present case, in order for the unauthorised deduction from wages complaint to be in time, the last payment of wages from which the deduction was made needs to have been no later than 4 December 2024. That is because 4 December 2024 is three months less one day back from the date on which the claimant contacted ACAS. That is why I gave the claimant a final opportunity to provide specific information about the date when she was

repaid (logically sometime after the date when pay was corrected) and she has not taken that opportunity.

12. On the claimant's explanation at the hearing (which is consistent with what she has said in writing), the underpayment was corrected and then she was paid the shortfall by installments with the last such installment being paid sometime in 2024. It is extremely unlikely that the claimant was still being underpaid in the December 2024 pay run, based on what she has said. Indeed in the further information provided for the List of Issues she said 2023/2024. The claimant had the opportunity to show the dates of the actual payment and has not done so. Based on what I have available, I conclude there are no reasonable prospects of the claimant showing that the last in the series of deductions she complains about was made after 4 December 2024.
13. That being the case, the claimant would have to show that it was not reasonably practicable for her to present the claim in time and that she had brought it within a reasonable further period. In the claim form she states that she gave up pursuing the matter "to avoid any further negativity towards me".
14. The respondent pointed out the lack of explanation from the claimant for not presenting the claim sooner in their application for strike out (page 77).
15. The claimant has explained the frustration this situation caused her, in particular because she was unable to ask for a pay review until her challenge to the rate of pay was resolved. She apparently had the support of her Trade Union representative in seeking to address the pay dispute over a period of time. She therefore would have had a source of advice available to her about how and when to present an Employment Tribunal complaint claim. She has not put forward any explanation for delay and, in the light of what I know about the availability of advice for her, I accept the respondent's argument that there are no reasonable prospects that the claimant would be able to meet the tests for an extension of time in s.23(4) ERA.
16. The respondent has shown that the claimant has no reasonable prospects of showing that she brought the unauthorized deduction from wages complaint within the time period in s.23 ERA and no reasonable prospects of showing that the Tribunal has jurisdiction to consider it.
17. I explained in para.102 of my reasons for refusing the amendment application that, since I reject the application to amend to add a complaint of constructive unfair dismissal, the existing breach of contract claim must be something that the Tribunal did not have jurisdiction to consider because, at the time the claim was presented, the claimant was still in employment with the respondent. Under the Employment Tribunal Extension of Jurisdiction (England & Wales) Order 1994 Art.3(c) the Tribunal only has jurisdiction over a contract claim which is outstanding on termination of employment. I strike that claim out because there are no reasonable prospects of it succeeding.

18. The respondent also argues more broadly that the other substantive issues are similarly out of time or, rather, that there are no reasonable prospects of the claimant showing that the claim based on them was in time.
19. The last date of any discrimination complaint is December 2024 (List of Issues 2.1.10) although other allegations date from May 2022 or from dates which are not particularized even though the final hearing is merely 4 months away. The incident which is the subject of List of Issues 2.1.10 was repeated by the claimant in the hearing to have happened roughly in December and I take that at face value. Given the common thread in many of the allegations that the same individuals were responsible, the claimant has better than little reasonable prospects of showing these separate acts were an act continuing over a period. Furthermore, taking the discrimination case at its highest, there are better than little reasonable prospects of the claimant showing that there was a continuing course of conduct, the most recent of which events in the series took place less than three months before she contacted ACAS.
20. Similarly, looking at the whistleblowing detriment complaint, the claimant states that she was removed from contractor meetings between 2022 and 2024 and ongoing as at the time of the claim was presented. The claimant has better than little reasonable prospects of showing that there was an act extending over a period which ended within the primary limitation period.
21. The last race related harassment complaint is said to have been in December 2024. Taking the claimant's case at its highest, there are better than little reasonable prospects of the claimant showing that the acts of race discrimination and race related harassment (if proven to have occurred as alleged) are so connected as to amount to an act extending over a period ending in December 2024. Although the claimant has not been specific about dates – save that she said that her last day in the building was 24 December 2024 – the question about whether the act happened before 4 December is fact sensitive and needs to be considered at a final hearing.
22. Furthermore, if the claimant succeeded in showing a series of acts of discrimination but the last in time was dated such that the claim was out of time by a short period, the Tribunal would have to engage with whether it was just & equitable to extend time. I am not satisfied that, in the present case, that is overwhelmingly likely to be found against the claimant. In short, there are too many fact sensitive questions to answer for me to be satisfied that there are no or little reasonable prospects of the discrimination or whistleblowing detriment claims being found to be out of time.
23. The original application (page 79 dated 17 June 2026) alternatively applied for orders striking out the claim on grounds of unreasonable conduct of the proceedings – principally in relation to lack of particularization of the claim. We have not reached that point yet. However, the parties must cooperate and work together in the short space of time now available in order to ensure that they are ready for the final hearing.

OFFICIAL

Case Number: 6017334/2025

Approved by:

Employment Judge George

2 October 2026

SENT TO THE PARTIES ON

10 October 2026

FOR THE TRIBUNAL OFFICE

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