EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002109/2025

Held by CVP in Glasgow on 26 and 27 August 2026.

Employment Judge: M Kearns

Mr D Pentland	**Claimant** **In person**
Homeless Network Scotland	**Respondent** **Represented by:** **Ms C Maher** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal was that:

(1) the claimant's contract with the respondent terminated on 21 May 2025.

(2) the claims of unfair dismissal and disability discrimination were lodged out of time.

(3) It was reasonably practicable for the unfair dismissal claim to be lodged in time; and

(4) It is not just and equitable to extend the time limit for the discrimination claim.

Accordingly, the claims are time barred and the Employment Tribunal does not have jurisdiction to hear them. The claims are dismissed.

REASONS

1. The respondent is a charity for the homeless. The claimant had an intermittent association with the respondent for around 5 years. In his most recent role, he was engaged by the respondent as an Associate from 14 August 2023 until the termination of his engagement in May 2025. On 14 June 2025, he notified ACAS of the current claims under the early conciliation rules. On 20 June 2025, ACAS issued an early conciliation certificate. On 28 August 2025, the claimant presented an application to the Employment Tribunal in which he made claims of disability discrimination and unfair dismissal. The disabilities asserted in the ET1 are dyslexia and ADHD. Today's Preliminary Hearing was fixed to determine the list of preliminary issues set out below.

Evidence

2. The claimant gave evidence on his own behalf. Mr Andrew McAleavy, a retired social worker and former mental health nurse also gave evidence for the claimant in relation to the issue of disability status. The parties lodged a bundle of documents "(J)" and referred to them by page number. The respondent called Janice Higgins, their Head of Corporate Services and Margaret-Ann Brunjes, their CEO.

Issues

3. The Notice of Hearing sent to the parties on 1 April 2026 set out the following issues for determination at this Preliminary Hearing ("PH"):

   a. What was the claimant's effective date of termination?

   b. In light of that were the claims of unfair dismissal and discrimination lodged in time?

   c. If not, does the Tribunal exercise its discretion to hear the claims out of time applying the following tests:-

      i. In respect of the unfair dismissal claim, was it not reasonably practicable for the claim to be lodged in time and was it lodged in such further period as the Tribunal considers reasonable (s.111(2)(b) of the Employment Rights Act 1996).

      ii. In respect of the discrimination claims, was the claim lodged in such further period as the Tribunal considers just and equitable (s.123 of the Equality Act 2010).

d. Was the claimant engaged by the respondent under a contract of employment at any time?

e. If so, on what dates was the claimant employed under such a contract?

f. In light of that, does the claimant have the necessary period of continuous service in terms of section 108 of the Employment Rights Act 1996?

g. Was the claimant a disabled person as defined in section 6 of the Equality Act 2010?

Findings in Fact

4. The following material facts were admitted or found to be proved:-

5. The claimant was engaged by the respondent as an Associate from 14 August 2023 until the termination of his engagement on 21 May 2025.

Disability Status

6. The claimant, who is now aged 54 attended the Royal Edinburgh Hospital in 1980 and was diagnosed at the age of 8 with 'hyperactivity disorder'. He has not been to his GP in 20 years apart from to collect sick absence certificates he had requested by telephone. He is not taking any medication. He struggles with motivation and often misses deadlines at work. He also struggles with concentration and gets distracted easily. He is able to read well but his mind can wander while he is reading. He can be impulsive and occasionally says inappropriate things.

7. The respondent is a registered charity. It is a national membership body for people and organisations committed to ending homelessness in Scotland. It works to influence policy, provide platforms for people who have experienced homelessness, support multi-sector partnerships, provide a consultancy function for local authorities, and to provide training and opportunities for concerted action on homelessness.

8. The respondent is governed by a Board of Directors and Charity Trustees who represent its membership. All thirteen Board members are volunteers, who delegate the day-to-day running of the organisation to a Chief Executive, who is supported by a leadership team, a team of advisors and specialist leads and a team of ten paid employees. The respondent also has fourteen workers who are people with experience of homelessness and are known as 'Associates'.

9. The role of associate was created to provide flexible, paid opportunities for people with personal experience of homelessness to inform and influence the

respondent's work and wider housing and homelessness policy and services. It was an evolution of the respondent's previous volunteering programme enabling people to be paid for their knowledge and time.

Length of the claimant's association with respondent

10. The claimant's engagement by the respondent as an associate began on 14 August 2023. Prior to that, from 2 August 2021 until 1 August 2023 (J116), the claimant was engaged by the respondent as an employee on a two year fixed term contract for the purpose of being seconded to the Scottish Government as a homelessness policy officer. That contract ended when the fixed term expired on 1 August 2023. In the application form he completed in June 2021 for that seconded role, he answered "*No*" to the question: "*Do you have a health condition or disability?"* The claimant was aware that his fixed term employment contract was coming to an end in August 2023 and he was supported by the respondent to apply for other jobs (J166). On 7 August 2023, the claimant received his P45 which showed a leaving date of 2 August 2023.

The claimant's status

11. On Monday 14 August 2023, the claimant met with Janice Higgins, the respondent's Head of Corporate Services. Ms Higgins talked the claimant through the associate worker agreement and the claimant signed it at the meeting. It was entitled 'Statement of Terms and Conditions for Workers' (J174). The agreement stated at paragraph 2 "*This agreement is not a contract of employment and it does not give you any employment rights other than those to which workers are entitled."* The rights and benefits were set out in the contract. The claimant's work involved drawing on his personal insight into homelessness to shape the work of key stakeholders in national and local government, housing associations, health services and across the charity sector. This was undertaken through consultation, peer research, providing training, and attending meetings and events. By email dated 17 August 2023 (J173) Ms Higgins sent the claimant a copy of the signed agreement along with a copy of the Associate Handbook and an excel copy of the associate time summary to claim payment for the hours worked.

12. The claimant's associate role was subject to a flexible agreement which allowed him to choose the hours, days and location from which he wished to work. The respondent's 'Statement of Terms and Conditions for Workers' regulated the arrangement between the respondent and the claimant. The claimant could, and did, choose not to work on given days. The respondent did not control his activities and the claimant had latitude to decide how he spent his time. Much of his work was done in a group setting, or representing the respondent externally in meetings, training and events. The claimant did not attend general staff meetings

and he was not on the respondent's circulation list for employee emails. There was no mutuality of obligation, the claimant was not required to make himself available for work and the respondent was not obliged to provide work. The respondent only made work available to the claimant and the other associates if there was a need for it and the claimant was free to decline any work offered. The claimant was required to submit timesheets for hours worked. Each associate has a 'link worker' who is an employee of the respondent. As with all associates, the claimant was paid travel costs from his home address to and from the respondent's office whilst employees of the respondent are required to pay for their own transport to the office. The payments made to the claimant and the other associates were subject to tax and National Insurance via PAYE. The claimant was paid holiday pay but not sick pay. As a worker, the claimant was not subject to the respondent's disciplinary or absence management policies and these were not applied to him.

The nature of the claims

13. The details of the claimant's claim contained in his ET1 were generated by AI. The claimant claims unfair dismissal; direct discrimination, indirect discrimination and discrimination arising from disability in relation to the termination of his engagement on 21 May 2025 and breach of a duty to make reasonable adjustments. With regard to the claim for unfair dismissal, the claimant was a worker and not an employee. Even had he been an employee, he would not have had the necessary 2 years' continuous service at termination. The claimant's direct discrimination claim is unspecified but it appears to amount to a claim that the respondent treated him less favourably by terminating his engagement. No real or hypothetical comparator is identified. The claimant's indirect discrimination identifies the respondent's disciplinary and absence management policies as PCPs and states (erroneously) that these were applied to him and placed him at a disadvantage. His section 15 case is that the something arising from his disability is his impulsivity, which leads him to sometimes '*act out shock and awe stuff in situations where it is not appropriate'*. He also claims breach of a duty to make reasonable adjustments.

14. The following claims listed in the claimant's ET1 (and generated by AI) relate either to the claimant's period of previous employment with the respondent between August 2021 and 1 August 2023 or to an earlier point in his worker contract:

    a) "*Having been absent whilst sick for work related stress and at one point suicidal idealisation Homeless Network Scotland failed to look at any return to work needs that they did employ towards more able bodied members of staff."*

b) *"Whilst seconded to the Scottish Government, Homeless Network Scotland failed to investigate allegations of bullying and intimidation i made against Scottish Government staff, they were contractually obliged to do this in line with the secondment agreement."*

c) "*Having requested a reasonable adjustment to my working environment, namely an external screen, this was denied by manager. My manager said they had no screens. Homeless Network Scotland proceeded to buy screens for the next 4 employees that started in the company after that date and i had to purchase my own*."

d) "*Homeless Network Scotland failed to ensure adequate risk assessments were undertaken in line with the work i was doing and the risks of vicarious trauma that is ever-present in this work place. At one point Homeless Network Scotland sent me to a presentation at an organisation with a colleague who couldn't read or write and failed to notify me of this prior to the workshop."*

e) "*Homeless Network Scotland failed to ever offer me flexible working arrangements even though every other member of staff was allowed to work from home 2 days per week*."

15. The essential facts leading up to the termination of the claimant's Associate engagement with the respondent are recorded in correspondence between the parties and do not appear to be in dispute. On 15 April 2025, the claimant was in the respondent's office with three of his colleagues, Grant Campbell, Head of Partnerships and Consulting and also the Claimant's 'link worker', Michelle Major, Impact Lead, and Jamie Milne, Policy and Communications Adviser. In the context of a discussion about minority groups the claimant questioned why some people would refer to themselves as "n"-words ("the incident"). The claimant used the full word rather than the abbreviated term. The colleagues present all challenged the claimant's use of a racial slur. The respondent attempted to address the incident with the claimant using its problem solving policy and asked the claimant to provide an assurance that he would not use the word again. The claimant refused to discuss the incident or provide the assurance requested. In an email dated 12 May 2025 (J253), the claimant told the respondent he was angry at their actions and reactions to his use of inappropriate language. He stated that he thought he was "*now done with HNS*", was "*awaiting a few different legal perspectives on continuous employment as described in case law*" and said that he would see them in court.

16. On 21 May 2025, the respondent's Chief Executive, Margaret-Ann Brunjes wrote to the claimant an email (J251) with the subject heading: "*Your role at HNS*". The email stated:

"*Dear David*

I want to begin by acknowledging the challenges you have shared with us, including your ADHD and dyslexia, and your broader lived experiences.

Please be assured that we have approached all discussions about this matter with care and consideration for your circumstances and because we recognise it may not have been your intention to cause harm.

HNS decision to not immediately terminate your role when you used the 'n-word' in the workplace is part of our consideration of your circumstances. Instead, we initially sought to address this matter through open dialogue and a resolution that would support mutual learning and growth, while ensuring such an incident would not happen again.

However, your reluctance to discuss the incident, acknowledge the distress caused to those who witnessed and reported it, or provide assurance that it will not recur has left us with no viable path forward.

Regrettably, we are now in a position where we must end your role as a worker at HNS with immediate effect. *As a gesture of goodwill, we will make a continuous payment up to and including Friday 30 May based on the average hours worked across the previous month. From that payment, we will deduct £75 still owed to HNS from your recent salary advance. And we will include 1 day owed to you in holiday leave. You will no longer be able to access HNS e-mail or intranet and should arrange to return any equipment that belongs to us and collect any that belongs to you*." The email also stated: "*Our duty to make reasonable adjustments applies to enabling disabled workers to perform their roles or access opportunities, not to tolerating behaviour that breaches workplace policies or legal standards. Using a racial slur, especially without remorse or assurance it won't happen again, is unlikely to be directly attributable to these conditions in a way that negates either of our responsibilities.*

This decision was not made lightly, and I genuinely regret that it has not been possible to find a resolution.

If you ever feel ready to reflect on this matter and wish to reconnect, I would be more than willing to have an open and constructive conversation with you. We remain hopeful that you may find a path forward that aligns with your goals and values." The claimant's access to the respondent's intranet and email account was removed on 21 May 2025. The claimant carried out no work for the respondent after that date.

The length of the delay

17. The claims relating to the claimant's period of previous employment with the respondent from August 2021 to 1 August 2023 are more than 2 years out of time and are inadequately specified. With regard to the claims arising from the claimant's recent Associate engagement with the respondent from 14 August 2023 to 21 May 2025, ACAS received notification from the claimant of early conciliation on 14 June 2025. Early conciliation ended on 20 June 2025 when ACAS issued the early conciliation certificate. The primary limitation period (as extended by early conciliation) within which claims for unfair dismissal and disability discrimination should have been commenced ended at midnight on 26 August 2025. The claimant presented his ET1 to the Employment Tribunal on 28 August 2025, which was 2 days late.

The reasons for the delay

18. The claimant knew about the three month rule for presenting a tribunal claim and knew the deadline was extended by early conciliation. The claimant was confused about the date his engagement had terminated. Ms Brunjes' email of 21 May 2025 had stated his role would terminate "*with immediate effect*" and indeed, the claimant's access to the respondent's intranet and emails was immediately removed and he did no work for the respondent after 21 May 2025. However, the respondent paid him until 30 May 2025. The claimant knew about the three month time limit for presenting a tribunal claim and thought he had until 30 August. He did not check with ACAS when he contacted them on 14 June 2025. He did not check or delve into it further because he had a fixed date in his mind he was working to. The claimant was aware of all the facts necessary to set out his claim from 20 June 2025 and nothing new happened after that. He has a tendency to leave things until the last minute.

Applicable Law

Unfair dismissal claim

Time Bar

19. Section 111(2) of the Employment Rights Act 1996 ("ERA") provides that claims for unfair dismissal may be presented to an employment tribunal and in relation to limitation, provides at subsection (2) as follows:-

"(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal –

(a) before the end of the period of three months beginning with the effective date of termination; or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."

20. Section 97(1)(b) ERA provides:

*"**97 Effective date of termination***

(1) Subject to the following provisions of this section, in this Part "the effective date of termination" –

(a) ……..

(b) In relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect,..."

Disability discrimination claim

Time Bar

21. Section 123(3)(a) Equality Act 2010 provides in relation to discrimination claims:

"***123 Time limits***

(1) 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.

Disability Status

22. Section 6(1) of the Equality Act 2010 is in the following terms:

"***6 Disability***

(1) A person (P) has a disability if –

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day to day activities."

Discussion and decision

23. The claimant volunteered in cross examination that his claim had been generated by AI by which I understood him to mean that he had used AI to draft his ET1 statements of case. This may explain why it did not appear to focus on his main complaint, which was that his engagement with the respondent had been terminated following his use of a racial slur at a meeting on 15 April 2025 and his subsequent refusal to discuss this or to give an assurance that it would not happen again. The respondent left matters with him that if he ever felt ready to reflect on this and wished to reconnect, the respondent would be more than willing to have an open and constructive conversation with him.

Unfair dismissal claim

Time bar

a. What was the claimant's effective date of termination?

24. As the claimant correctly submitted, Section 97(1)(b) ERA provides that, where a contract of employment is terminated without notice, the effective date of termination is the date on which the termination takes effect. Per the annotated Statutes section of Harvey on Industrial Relations and Employment Law (Division Q): "*If no notice of dismissal is given, the date of termination of employment is immediate, and any money in lieu of notice is to be taken as compensation for immediate dismissal and does not continue the employment or delay the EDT: see British Building and Engineering Appliances Ltd v Dedman [1973] IRLR 379, [1974] ICR 53*".

25. Thus, the effective date of termination in this case was 21 May 2025 when the claimant was dismissed *"with immediate effect"* by email from Ms Brunjes. (See paragraph 16 above).

b. In light of that were the claims of unfair dismissal and discrimination lodged in time?

26. The claimant's engagement with the respondent ended on 21 May 2025 and that was also the latest date for any act of discrimination alleged. ACAS received notification from the claimant of early conciliation on 14 June 2025. Early conciliation ended on 20 June 2025 when ACAS issued the early conciliation certificate. The primary limitation period (as extended by early conciliation) within which claims for unfair dismissal and disability discrimination should have been commenced ended at midnight on 26 August 2025. The claimant presented his

ET1 to the Employment Tribunal on 28 August 2025. The claims were accordingly 2 days late.

c. Was presentation in time not reasonably practicable?

27. Section 111 ERA places the onus on the claimant to persuade the tribunal that presentation of his claim in time was not reasonably practicable. That imposes a duty on him to explain precisely why it was that he did not present his complaint by midnight on 26 August 2025.

28. In order to establish that it was not reasonably practicable to present an application in time a claimant will ordinarily have to be able to point to some impediment or hindrance which made timeous presentation not reasonably practicable in the sense of not reasonably feasible. What is reasonably practicable is a question of fact.

29. The claimant testified that he knew about the three month rule for presenting a tribunal claim and knew the deadline was extended by early conciliation. The reason expressed by the claimant for not presenting his claim for unfair dismissal within the time limit was that because the respondent paid him as a goodwill gesture until 30 May, he mistakenly thought that was the date of termination and believed that he had until 30 August to present a claim of unfair dismissal. He said he thought his claim was two days early. However, Ms Brunjes' email of 21 May 2025 clearly stated that his role would terminate with immediate effect – i.e. on that date - and indeed, the claimant's access to the respondent's intranet and emails was immediately removed and he did no work for the respondent after 21 May 2025, even though the respondent paid him until 30 May 2025. The claimant knew about the three month time limit for presenting a tribunal claim and thought he had until 30 August. He did not check with ACAS when he contacted them on 14 June 2025. He said that he did not check or delve into it further because he had a fixed date in his mind he was working to. The claimant accepted in cross examination that he was aware of all the facts necessary to set out his claim from 20 June 2025 and that nothing new happened after that. However, he stated that he has a tendency to leave things until the last minute. The length of the delay in this case was two days.

30. The first test I must apply is whether it was not reasonably practicable for the claimant to make his application in time. I have concluded that the claimant has not shown that it was not reasonably practicable for him to bring his claim for unfair dismissal in time. Ms Brunjes' email of 21 May 2025 clearly stated his role would terminate with immediate effect – i.e. on that date. The claimant's access to the respondent's intranet and emails was immediately removed and he did no work for the respondent after 21 May 2025. The claimant had no good reason for

leaving the presentation of his claim until the last minute other than a tendency to do so for which no recent medical evidence was provided. This claim is accordingly out of time and is dismissed. It is not necessary to address the other preliminary issues in relation to this claim as the tribunal does not have jurisdiction to consider it. However - on the evidence before me - I would in any event have found that the claimant was not an employee and that he did not have the requisite two years' service for an unfair dismissal claim.

Discrimination claim

Time bar

Whether it would be just and equitable to extend time for the discrimination claim

31. The claimant also brings claims of disability discrimination under the Equality Act 2010. These claims are also 2 days late. However, the issue of whether to extend time for discrimination claims is subject to a different test.

32. The tribunal has the power under section 123(1)(b) to extend time if it is just and equitable to do so. Whilst tribunals have a wide discretion to allow an extension of time under the 'just and equitable' test, the exercise of the discretion is still the exception rather than the rule and it is for the claimant to persuade the Tribunal that it should be exercised. The IDS Handbook on 'Practice and Procedure:1: Employment Tribunals (November 2023 edition) sets out at paragraph 5.130 the factors listed in section 33 of the English Limitation Act 1980, and considered in British Coal Corporation v Keeble and others 1997 IRLR 336. The EAT held that the court should consider the prejudice which each party would suffer as a result of the decision reached, and should have regard to all the circumstances of the case, in particular: the length of and reasons for the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has co-operated with any requests for information; the promptness with which the claimant acted once he knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he knew of the possibility of taking action. Subsequently, in Southwark London Borough Council v Afolabi 2003 ICR 800, the Court of Appeal confirmed that whilst the factors in Keeble provide a useful checklist for tribunals, the list need not be adhered to slavishly.

33. I have taken into account the claimant's evidence and submissions and the submissions of Ms Maher. I have also had regard to all the circumstances of the case. The claimant's engagement ended on 21 May 2025. He notified ACAS of early conciliation on 14 June and received his ACAS certificate on 20 June. Section 207B(3) provides that: "*In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with*

Day B is not to be counted." Day A is 14 June and Day B is 20 June. As the respondent submits, the period beginning with the day after Day A and ending with Day B is 15 to 20 June, or 6 days. The last act of alleged discrimination complained of by the claimant was the termination of his engagement on 21 May 2025. Thus, the primary limitation period for a claim of disability discrimination would end at midnight on 20 August 2025. 6 days would be added to allow for early conciliation, taking the extended limitation period to 26 August 2025. The claimant presented his application to the tribunal on 28 August and it was accordingly 2 days late.

34. The delay in this case is 2 days. The reasons for the delay were that the claimant was confused about the date on which his engagement terminated because the respondent paid him until 30 May 2025. He thought he had until 30 August and he has a tendency to leave things until the last moment.

35. The claimant accepted that even before his engagement terminated, he had known of the possibility of making a disability discrimination claim and that he intended to do so. He knew about the 3 month time limit as extended by early conciliation. Ms Brunjes' email of 21 May 2025 clearly stated his role would terminate with immediate effect – i.e. on that date. The claimant's access to the respondent's intranet and emails was immediately removed and he did no work for the respondent after 21 May 2025. The claimant did not give a reason for leaving the presentation of his claim until the last minute other than that he had a tendency to leave things to the last minute. No recent medical evidence for this was provided.

36. With regard to the extent to which the cogency of the evidence is likely to be affected by the delay, no specific issues were founded on by the respondent and I did not find this to be a factor.

37. Taking all the circumstances into account, I have considered the prejudice each party would suffer if the discretion were exercised or not exercised. The prejudice to the claimant in not extending time is that he would lose the opportunity to litigate the claim. In assessing the level of prejudice this would cause to the claimant, the tribunal may take into account the merits of the claim. As set out below, the claimant did not provide sufficient evidence of disability to meet the test in section 6 Equality Act 2010 and the disability discrimination claims cannot therefore succeed. Furthermore, most of the essential facts in this case are contained in email correspondence between the parties and are not in dispute. The claimant's engagement was terminated for his admitted use of a racial slur in circumstances where he refused to discuss it or give an assurance it would not happen again. No medical evidence was available to suggest that ADHD would cause the claimant to commit misconduct of this nature. Even if such evidence were available, it is doubtful the claim would succeed. It is unlikely an adjustment of

permitting or overlooking this would be found to be practicable etc. Even if the claimant could show that his use of a racial slur were 'something arising in consequence of' a disability a respondent would be likely to establish justification where they had given the claimant an opportunity to continue his engagement under an assurance that it would not happen again.

38. When assessing whether the time limit should be extended, there is less prejudice in not exercising the discretion to extend where a claimant brings a weak claim than where he brings a strong one and the claimant's claims are weak as currently pled and evidenced. Having considered the relevant factors, it appears to me that in this case, the balance of prejudice favours not extending the time limit for the following reasons: I acknowledge that the claimant's delay in presenting the case is short. However, the reasons given for the delay were not persuasive and the claimant did not show that he acted promptly once he knew of the facts giving rise to the cause of action. He admitted he had known the facts from at least June onwards but he did not present the claim until late August. Not extending time means the claimant will lose the opportunity to litigate the claims. However, the claims are weak. The prejudice to the respondent in extending time would be the obvious prejudice of requiring them to meet a weak claim which would otherwise have been defeated by a limitation defence.

39. Balancing the respective prejudice to the parties in all the circumstances, I am not persuaded that it would be just and equitable to exercise the discretion. It follows that the claimant's discrimination claim is out of time and the Tribunal has no jurisdiction to hear it.

40. Since time limits are jurisdictional in the Employment Tribunal, it follows that there is no jurisdiction to consider the other preliminary issues. However, I have set out below how I would have addressed the issue of disability status on the evidence before me had it arisen because the issues of time bar and disability status impact upon each other.

Disability Status

41. The onus rests upon a claimant to show that he is disabled as defined in section 6 Equality Act 2010 and whether or not he can meet that onus is relevant to the issue of time bar. The definition of disability in Section 6 of the Equality Act 2010 (as supplemented by Schedule 1) raises the following four questions. In Goodwin v Patent Office [1999] IRLR 4 the EAT made clear that these must be considered separately and sequentially.

    (1) Does the claimant have a physical or mental impairment?

(2) Does that impairment have an adverse effect on his ability to carry out normal day-to-day activities?

(3) Is the effect substantial?

(4) Is the effect long-term?

42. I address each of these questions in turn.

(1) Does the claimant have a physical or mental impairment?

43. In his ET1, the claimant states that his disabilities are dyslexia and ADHD. He did not lodge any medical records in support of this statement. In his disability impact statement, he also refers to the effects of trauma but this is not currently part of his case as pled. The onus is on the claimant to establish that he was suffering from a physical or mental impairment at the relevant time. The 'relevant time' in this case is between 14 August 2023 and 21 May 2025 but mainly the period from 15 April to 21 May 2025. As he confirmed in cross examination, in his application form (J324) for the seconded role of Homelessness Policy Officer (which he completed in June 2021), in answer to the question "*Do you have a health condition or disability?"* the claimant answered "*No*".

44. Where a claimant is suffering from a mental impairment and particularly with a condition like ADHD - which has a wide spectrum - it is enormously helpful to have some confirmation of the nature and gravity of the impairment by way of medical reports or records. That was entirely absent here. The claimant did not even lodge his GP records, which created some difficulty, given that it is the claimant's onus of proof.

(2) Did that impairment have an adverse effect on his ability to carry out normal day-to-day activities?

45. The Equality Act 2010 does not define 'normal day-to-day activities'. However, the Secretary of State's Official Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability (2011) as updated ("the Guidance") gives help on the meaning of the phrase. It states at D3: *"In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work related activities, and study and education related activities such as interfacing with colleagues, following instructions using a computer, driving, carrying out interviews, preparing written documents and keeping to a*

timetable or shift pattern." Paragraph A7 of the Guidance states that "*What it is important to consider is the effect of an impairment, not its cause."*

46. It was clear from his evidence and that of Mr McAleavy that the claimant had had a very difficult childhood and early life. He testified that he had been admitted to the Royal Edinburgh Hospital in 1980 and diagnosed with 'hyperactivity disorder'. Mr McAleavy stated that he had initially met the claimant when he was 18 or 19 – some 35 years ago when Mr McAleavy had been a mental health worker and then a social worker providing housing support for people with complex needs that included homelessness and the claimant had been a care leaver. He described his impressions of the claimant in his youth several decades ago. He said that whilst initially the claimant had presented as hyperactive, from his initial meetings with him to his later encounters in 2008 – 10 were a "*game of two halves"*. He testified that: '*After 2008/10 for whatever reason – perhaps burnout where the hyperactivity reduces – you became calmer and were able to manage yourself better though your internal thoughts were faster than those around you'.* Mr McAleavy's evidence was that he had not worked with the claimant professionally for many years and that he (Mr McAleavy) had himself retired around 14 years ago. His evidence was rather general and it was difficult to draw conclusions from it in relation to the claimant's ADHD and its effect on his ability to carry out normal day-to-day activities at the relevant time in 2023 - 25. In particular, it was unclear which activities were affected and what it was - specifically - that the claimant could not do. In paragraph 6 above I have done my best to distil some specific findings in fact from the evidence but most of the evidence was general and unspecific in nature.

47. The claimant testified that he has not been to his GP in 20 years and that his only contact with the surgery was to request sick absence certificates by telephone. The claimant is not taking any medication. He struggles with motivation and often misses deadlines at work. He stated that he also struggles with concentration and gets distracted easily. He said he can be impulsive and testified that he occasionally says inappropriate things.

48. The claimant presented his own case. He was intelligent, highly articulate and engaged effectively in this task. However, on the evidence such as it was, I concluded that he had not shown that at the relevant time he suffered from impairments that had an adverse effect on his ability to carry out normal day to day activities. Thus questions (3) and (4) do not arise. I would not have found that the claimant had presented sufficient cogent evidence to meet the onus of proof of disability in this case.

Sent to the Parties 08 October 2026