EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000097/2026

Held in Edinburgh by video conference on 14 September 2026

Employment Judge McCluskey

Mr G Kartal	**Claimant** **In Person**
Royal Mail Group Ltd	**Respondent** **Represented by:** **C McDairmant,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that:

1. The complaints of automatically unfair dismissal and whistleblowing detriment were not presented within the applicable time limit. It was reasonably practicable to do so. The Tribunal has no jurisdiction to consider the complaints.

2. The complaints of sex discrimination and sexual orientation discrimination were not presented within the applicable time limit. It is not just and equitable to extend the time limit. The Tribunal has no jurisdiction to consider the complaints.

REASONS

Introduction

1. The case was listed for a public preliminary hearing to determine time bar.

2. The claimant gave evidence on his own behalf. Ms McDairmant asked questions in cross examination of the claimant. The respondent did not call any witnesses.

3. There was a joint file of documents extending to 130 pages. The Tribunal explained to parties that it would only consider documents to which it was taken during oral evidence.

Issues

4. The claimant clarified that all his complaints are about what happened on 15 July 2024. The claimant asserts that on that date there was an incident in the respondent's van and on the same date he was dismissed / told not to return by the respondent.

5. It was agreed by parties for the purpose of the time bar hearing today, that the issues to be determined relied on acts on 15 July 2024 only. The Tribunal would therefore consider why the claim had not been presented to the Tribunal within 3 months of 15 July 2024, that is by 14 October 2024. The Tribunal would also consider what had happened after 14 October 2024 until the claim was presented on 12 January 2026.

6. The status of the claimant is not agreed by the parties. The respondent asserts that the claimant was an agency worker assigned to work for the respondent by Blue Arrow Recruitment Agency. The claimant appears to assert that he has employment or worker status directly with the respondent. That was not an issue to be determined today. It was agreed that the only issues to be determined today are about time bar.

7. It was agreed that the time bar issues to be determined today are:

    a. Whether it was "not reasonably practicable" for the claimant to present a complaint of automatically unfair dismissal / detriment for having made a protected disclosure within the three month period set out in the Employment Rights Act 1996 (ERA).

    b. If not, whether the complaints of automatically unfair dismissal / detriment for having made a protected disclosure were presented within a reasonable further period.

c. Were the complaints of discrimination presented within such other period that the Tribunal thinks is just and equitable, as they were not presented within the three month period set out in the Equality Act 2010 (EqA).

Findings in fact

8. The Tribunal made the following findings in fact, necessary to determine the issues:

9. The last day of the ordinary limitation period on which a complaint of automatically unfair dismissal, detriment for making a protected disclosure or discrimination, including harassment, could be presented in time was 14 October 2024.

10. ACAS early conciliation started on 15 December 2025 and ended on 22 December 2025. That was too late to result in an extension of the three month time limit by virtue of section 111(2A) Employment Rights Act 1996 or by virtue of section 140B Equality Act 2010.

11. The claim form was presented on 12 January 2026. The last date for presentation was 14 October 2024. The claim form was presented 64 weeks late.

12. The claimant was charged by the police on 15 July 2024. This followed an incident in one of the respondent's vans on 15 July 2024, involving the claimant and a member of the respondent's staff.

13. A few days after 15 July 2024 the claimant engaged a criminal solicitor to provide advice to him about the criminal charge.

14. The criminal charge sheet said that the claimant was not to contact any witnesses whether directly or through a third party.

15. There was a criminal trial which ended on 9 December 2025. The claimant was acquitted.

16. On or around 9 December 2025 the claimant asked his criminal solicitor about bringing a claim in the Tribunal. The criminal solicitor told him he did not know about employment law and signposted him to an employment law solicitor.

17. The claimant was in London over the 2025 Christmas period.

18. The claimant engaged in ACAS early conciliation in June 2024 in connection with a claim in the Tribunal against a different employer. This was recorded in the claimant's GP records which he provided to the Tribunal. The entry in his

GP records was dated 20 June 2024. The entry records that the claimant was "sacked" from a previous job (not with the respondent) and had received "a payout from ACAS".

19. Prior to 15 July 2024 the claimant knew about ACAS and that they provided advice about employment disputes.

20. An enquiry to ACAS about the claimant's employment rights would not have breached any instruction not to contact witnesses.

21. An enquiry to professional advisers about the claimant's employment rights would not have breached any instruction not to contact witnesses.

Observations on the evidence

22. This judgment does not seek to address every point upon which the parties have disagreed. It only deals with the points which are relevant to the issues the Tribunal must consider, to decide if the claim succeeds or fails. If the Tribunal has not mentioned a particular point, it does not mean that it has overlooked it. It is simply because it is not relevant to the issues.

23. The standard of proof is on balance of probabilities. This means that if the Tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then it is satisfied that the event in fact occurred. Likewise, if the Tribunal considers that, on the evidence, an event's occurrence was more likely not to have occurred, then it is satisfied that it did not occur.

Relevant law

Automatically unfair dismissal – time bar

24. The Tribunal's jurisdiction to hear a complaint of automatically unfair dismissal is subject to the time limit set out in section 111(2) Employment Rights Act 1996 (ERA) which says *"....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".*

Whistleblowing detriment – time bar

25. The Tribunal's jurisdiction to hear a complaint of detriment for having made a protected disclosure is subject to the time limit set out in section 48(3) Employment Rights Act 1996 (ERA) which says *"....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".*

Discrimination – time bar

26. Section 123 Equality Act 2010 (EqA) Time limits says *"(1)Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of – (a) the period of three 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;(b) failure to do something is to be treated as occurring when the person in question decided on it (4)...."*

27. Section 140B EqA sets out the extension of time limits to facilitate ACAS conciliation before institution of proceedings.

28. The burden of proof is on the claimant to establish that it is just and equitable to extend time (***Robertson v Bexley Community Centre*** [2003] IRLR 434 CA).

29. In ***London Borough of Southwark v Afolabi*** [2003] IRLR 220 the Court of Appeal confirmed that, whilst the checklist in British Coal Corporation v Keeble 1997 IRLR 336 provides a useful guide for Tribunals, it does not require to be followed slavishly. The Court of Appeal in ***Abertawe Bro Morgannwg University Local Health Board v Morgan*** [2018] EWCA Civ 640 confirmed this, stating that it was plain from the language used in s123 EqA (*"such other period as the Employment Tribunal thinks just and equitable"*) that Parliament chose to give Tribunals the widest possible discretion and it would be wrong to put a gloss on the words of the provision or to interpret it as if it contains such a list.

30. In ***Adedeji v University Hospitals Birmingham NHS Foundation Trust*** [2021] EWCA Civ 23, the Court of Appeal approved the approach set out in ***Afolabi*** and ***Morgan*** and, at paragraph 37, Underhill LJ confirmed that rigid

adherence to a checklist can lead to a mechanistic approach to what is meant to be a very broad general discretion. The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the case which it considers relevant to whether it is just and equitable to extend time, including in particular "the length of, and the reasons for, the delay" (See also ***Oluwafunto Dada v The Scottish Ministers*** [2026] EAT 13).

Submissions

31. The claimant and the respondent both made oral submissions. The Tribunal carefully considered the submissions of both parties. The Tribunal has dealt with the points made in submissions, where relevant, when setting out the facts, the law and the application of the law to those facts in reaching its decision. It should not be taken that a submission was not considered because it is not part of the discussion and decision recorded.

Discussion/decision

Automatically unfair dismissal / whistleblowing detriment – time bar

32. The claimant makes complaints of automatically unfair dismissal and detriment for making a protected disclosure The ACAS early conciliation extension of time provisions 'stop the clock' for the period of ACAS early conciliation, if ACAS conciliation commences before the end of the period of three months beginning with the effective date of termination / act complained of. That was not the case here as the effective date of termination / the acts complained of took place on 15 July 2024. Therefore, the claimant does not benefit from the ACAS early conciliation extension of time provisions.

33. The date by which the claimant required to submit a claim, for it to be in time, was 14 October 2024. The claim was presented on 12 January 2026, which is 64 weeks late.

34. The time limits in employment cases are strictly enforced. The onus is on the claimant to prove that presentation of his claim in time was not reasonably practicable for his complaints of automatically unfair dismissal and detriment for making a protected disclosure. That imposes a duty on him to explain precisely why it was that he did not present his complaint by 14 October 2024.

35. In order to establish that it was not reasonably practicable to present a claim in time a claimant will ordinarily have to be able to point to some impediment or hindrance which made compliance with section 112(2)(a) ERA not reasonably practicable, in the sense of not reasonably feasible.

36. The claimant relies on ignorance of his rights as not making it reasonably practicable in the sense of reasonably feasible to present his claim in time. The claimant was charged by the police following the incident in the respondent's van on 15 July 2024 with a member of the respondent's staff. His evidence was that the criminal charge sheet said that he was not to contact any witnesses, whether directly or through a third party. The claimant's evidence was that he understood this to mean that he could not present a claim in the Tribunal until after the criminal proceedings against him had ended. There was a criminal trial which ended on 9 December 2025. The claimant was acquitted of the charge against him. He then decided to bring a complaint in the Tribunal. There was a delay of 34 days, from 9 December 2025 when he was acquitted until 12 January 2026 when he presented his claim. The claimant engaged in ACAS early conciliation from 15 December 2025 to 22 December 2025. The claimant accepted that he was aware of his rights and time limits from 15 December 2025. His evidence was that he did not bring a claim until nearly a month later on 12 January 2026 as he was in London over Christmas.

37. A claimant's complete ignorance of their right to claim automatically unfair dismissal /detriment for making a protected disclosure may make it not reasonably practicable to present a claim in time, but the claimant's ignorance must itself be reasonable. Where a claimant pleads ignorance as to his rights, the Tribunal must ask further questions: What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived? The correct test is not whether the claimant knew of his rights but whether he ought to have known of them. (***Dedman v British Building and Engineering Appliances Ltd*** 1974 ICR 53, CA; ***Porter v Bandridge Ltd*** 1978 ICR 943, CA)

38. Dealing with each of these questions the Tribunal had no hesitation in concluding that the claimant did have opportunities for finding out his rights. The claimant had engaged a criminal solicitor to provide advice to him about the criminal charge. The claimant could have asked the criminal solicitor for advice about presenting a claim in the Tribunal and whether he was precluded from doing so because the criminal charge sheet said that he was not to contact any witnesses. The claimant did not ask his criminal solicitor. This was put to the claimant in cross examination. He said that the criminal solicitor did not know about employment law. He had however asked the criminal solicitor about bringing a claim in the Tribunal after he had been acquitted of the criminal charge. The criminal solicitor had told him he did not know about employment law but signposted him to an employment law solicitor who would be able to help the claimant. It is likely that if the claimant had sought advice

about his rights to bring a Tribunal claim when he read the criminal charge sheet, his criminal solicitor would have signposted him to an employment law solicitor at that time, as he had done later.

39. The claimant had engaged in ACAS early conciliation in June 2024 in connection with a claim in the Tribunal against a different employer. This was recorded in the claimant's GP records which he provided to the Tribunal. The entry in his GP records is dated 20 June 2024 which is a few weeks before the incident at work on 15 July 2024 which forms the basis of this Tribunal claim. The entry records that the claimant said he was "sacked" from a previous job (not with the respondent) and had received "a payout from ACAS". The claimant accepted in his evidence that prior to his engagement with the respondent he knew about ACAS and knew that they provided advice about employment disputes. The claimant said the reason he did not contact ACAS for advice about a potential claim against the respondent until 15 December 2025, was that he thought that he could not bring a claim in the Tribunal because of the wording in the criminal charge sheet about not contacting witnesses.

40. The claimant took steps only on or shortly after 9 December 2025 to familiarise himself with his legal rights and time limits. Thereafter he chose not to act upon that advice until over a month later, on 12 January 2026 when he presented his claim. This was not a case where the claimant had been misled or deceived.

41. The Tribunal concluded that this was not a case where the claimant had discharged the burden of proving that it was not reasonably practicable for him to present a complaint of automatically unfair dismissal or detriment for making a protected disclosure by 14 October 2024 by reason of ignorance of his rights.

42. The claimant was familiar with ACAS from a payout from a previous employer. He could have contacted ACAS for advice on what to do in his particular circumstances. This would not have breached any instruction not to contact witnesses. The claimant had engaged a criminal solicitor to provide advice and representation on the criminal charge against him. He could have asked his criminal solicitor for advice about what was meant by the wording about not contacting witnesses. He chose not to do so. The solicitor would have likely signposted him to an employment lawyer as happened when the claimant asked after the criminal trial.

43. The Tribunal concluded that the claimant had various opportunities for finding out about his rights. He did not take them. It was reasonably practicable for

him to take those opportunities as he knew about sources of advice from ACAS from a previous claim and was speaking to a solicitor in connection with the criminal charge against him about the same incident. This is not a case where the claimant was misled or deceived.

44. The claimant has not shown that it was not reasonably practicable to present his claim in time on the grounds of ignorance of his rights. Accordingly, the question of whether the complaint was presented within such further time as the Tribunal considers reasonable does not arise.

45. The complaints of automatically unfair dismissal and detriment for making a protected disclosure were not presented within the applicable time limit. It was reasonably practicable to do so. The Tribunal does not have jurisdiction to consider the complaints of automatically unfair dismissal or detriment for making a protected disclosure.

Discrimination complaints – time bar

46. The claimant alleges harassment related to sex or sexual orientation on 15 July 2024. He relies on what he says was said to him verbally in the respondent's van by a work colleague. As already found, the last date on which a complaint could be presented for these complaints was 14 October 2024. The claimant did not present his complaint until 12 January 2026, which was 64 weeks late.

47. There is no dispute that the complaint was presented late. The Tribunal must then determine whether the complaint was brought within such other period as the Tribunal thinks just and equitable (section 123(1)(b) EqA). The complaint was brought 64 weeks after expiry of the relevant time limit. The claimant attributes the delay in presenting his claim to two factors as follows: (i) his lack of knowledge about the ability to bring Tribunal proceedings until he made enquiries on about 9 December 2025 after his criminal case had concluded and (ii) in the period between about 9 December 2025 and 12 January 2026 when he presented his claim, as he was in London over Christmas.

48. In considering whether to exercise its discretion to extend time, the Tribunal had regard to the circumstances which it considered relevant, in particular "the length of, and the reasons for, the delay" (**Adedeji**; **Dada**).

Length of the delay

49. The length of the delay was 64 weeks. That is a significant period of time. The discrimination complaints rely on oral testimony. The respondent submitted

that the cogency of the evidence will be impaired given the historical nature of the allegations and fading memories. There is forensic prejudice to the respondent. The Tribunal accepted that this was the case.

Reasons for delay

50. In the period of 3 months after 15 July 2024 the claimant was aware of ACAS and their role in giving advice on employment rights. The claimant had recently engaged with ACAS in another claim for which the claimant had received “a payout”. From a few days after 15 July 2024, the claimant had engaged a criminal solicitor about the incident which also gave rise to the claimant’s Tribunal claim. If the claimant had made enquiries with ACAS or with the criminal solicitor at an early stage, the solicitor would likely have signposted the claimant to an employment solicitor, as he did on conclusion of the criminal trial on 9 December 2025.

51. On balance, the Tribunal did not accept the claimant’s evidence that he did not obtain advice about bringing a claim in the Tribunal until conclusion of his criminal trial because the police charge sheet said that the claimant was not to contact witnesses. The Tribunal did not find the claimant’s evidence to be credible in this regard. The claimant was well versed in dealing with ACAS and knew of their role in providing advice on employment rights. An enquiry to ACAS about his employment rights would not have breached any instruction not to contact witnesses.

52. The claimant had access to professional legal advice through his criminal solicitor who could signpost him to employment law advice. Obtaining professional legal advice on his employment rights would not have breached any instruction not to contact witnesses. The Tribunal concluded that the claimant had ample opportunity to obtain advice timeously. He chose not to do so. He would not have breached any instruction not to contact witnesses if he had obtained that advice.

53. Further having eventually taken legal advice on or around 9 December 2025 on conclusion of the criminal proceedings it took the claimant another 34 days before he presented his claim on 12 January 2026. When asked in cross examination why he had not brought his claim sooner on conclusion of the criminal trial, the claimant said that he was in London and that it was Christmas. The Tribunal did not accept the claimant’s evidence that he could not have brought his claim sooner for these reasons.

54. The claimant will be prevented from proceeding with his discrimination complaints if the Tribunal does not extend time on a just and equitable basis.

That means that his claim will be at an end. Clearly there is prejudice to the claimant in such an outcome. On the other hand, if the discrimination complaints are allowed to proceed there will be prejudice to the respondent who will require to defend complaints based on oral testimony only, who said what in the respondent's van when only the claimant and the respondent's employee were present. The respondent will have to defend complaints which have been presented significantly outside of the statutory time limits and against a background where the cogency of the evidence will be impaired.

55. Taking the relevant factors into account, in particular the length of the delay and the reason offered by the claimant for the delay, which the Tribunal did not find to be credible, and considering those factors alongside the prejudice which each party would suffer depending on the decision reached, the Tribunal was satisfied that it was not just and equitable to extend the time limit under section 123(1)(b) EqA.

56. Accordingly, the Tribunal does not have jurisdiction to consider the discrimination complaints.

Date sent to parties 2 October 2026