

# EAT confirms correct approach to take when considering the discretion to extend time applying the ‘just and equitable’ test under s123 EQA

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## [Dada v The Scottish Ministers \[2026\] EAT 13](#)

### Summary

1. In a judgment handed down by Lord Colbeck, the EAT have emphasised the importance of tribunals not sticking slavishly to the section 33 Limitation Act factors when considering whether to extend time under s123 EQA.

### Background

2. The claimant worked for the respondent as a Fiscal Officer, which entailed assisting in the preparation of documents for court hearings. She resigned in October 2023 and brought claims alleging race discrimination. These claims were struck out at a preliminary hearing in September 2024 as being out of time. In his judgment, EJ Macleod referred to the case of [British Coal Corporation v Keeble \[1997\] IRLR 336](#). In [Keeble](#) it was suggested that the factors set out in section 33 of the Limitation Act 1980 as being relevant to the question of whether the time limit in a personal injury claim should be extended might illuminate the exercise of the ‘just and equitable’ extension in the ET. The judge had also placed reliance on cases which considered the extension of time in the context of the ‘not reasonably practicable’ test.
3. The claimant was given permission to appeal on various grounds, one of which was that the ET had incorrectly applied the test for extending the time-limit, applying an overly strict and segmented test.

## EAT decision

4. Lord Colbeck noted that for a number of years following Keeble, the approach taken to considering the 'just and equitable' test was to apply a "checklist" formula, largely drawn from s33 Limitation Act, which had led to frequent cautions from appellate courts to avoid a "slavish adherence" to this list. In particular, the Court of Appeal in Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23 found that Keeble had often been used by tribunals as authority for the proposition that s33 should be used as a framework for determining whether or not to extend time using the 'just and equitable' test, when in fact Keeble did not say this. Lord Colbeck referred to paragraph 37 of Adedeji, which states that *"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 particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) "the length of, and the reasons for, the delay"*.
5. In short and concise reasoning, Lord Colbeck concluded that the reference to Keeble was "inappropriate", and he did not agree with the respondent that it had no material impact on the conclusion. The correct approach was that as set out in Adedeji.

## Commentary

6. Whilst there has been a spate of case law over recent years warning against a strict adherence to using the factors in s33 of the Limitation Act 1980 as a checklist when determining an extension of time under s123 EQA, the EAT in this case has gone one step further and found that reliance on Keeble in itself could amount to an error of law. Those seeking to defend applications for extensions of time should therefore be extremely cautious when raising arguments regarding the s33 factors, and should make it clear that such factors are in no way mandatory for the tribunal to consider, albeit that they may be of some assistance in certain cases.
7. This case is a useful reminder that the statutory language in s123 EQA makes it clear that the discretion given is a wide one, with no prescribed list of mandatory factors to be taken into account. Where a tribunal has considered the length of and reasons for delay [factors which were found in Adedeji to be particularly relevant] and has not failed to take into account a relevant matter or vice versa, it will be extremely difficult for a party to persuade an appellate court to intervene.

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