



EMPLOYMENT TRIBUNALS

Claimant: Mr A Takk

Respondent: HBOS plc

Heard at: London Central

On: 19 April 2017

Before: Employment Judge Walker

Representation

Claimant: Mr R Owen-Thomas, Counsel

Respondent: Mr S Jones, Counsel

RESERVED JUDGMENT

The Judgment of the Tribunal is as follows:

1. The Claimant's claim for unfair dismissal and direct discrimination arising out of his dismissal are dismissed on the grounds that the Tribunal has no jurisdiction to consider them.

REASONS

1. The Tribunal ordered a Preliminary Hearing to determine the question of jurisdiction, which took place on 19 April 2017.
2. The Claimant had brought proceedings claim both unfair dismissal and direct discrimination arising out of his dismissal.
3. Although the Claimant's ET1 listed a number of other facts, it was clear from the pleading that the Claimant relied on those facts and matters set out above as background detail only and the sole factor which gave rise to his claim for direct discrimination was the dismissal. It was also clear from the Claim Form that the Claimant recognised that his claim had been brought

out of time. He argued that in relation to unfair dismissal it was not reasonably practicable to present the claim within three months of the date of dismissal since he was unaware of the proposed restructure being a sham and that in the undisclosed restructure, his role was not redundant or he would have been appointed to a new role. He also argued, in relation to the dismissal on the grounds of race, that it would be just and equitable to extend time for the presentation of the claim to bring the claim within the Tribunal's jurisdiction.

The Evidence

4. The Tribunal heard evidence from Mr Takk himself and for the Respondent from Joanna Carver. Joanna Carver was the Respondent's General Counsel for commercial banking legal. There was an agreed bundle of documents.

The Issues

5. Since there was no dispute that the claim was out of time, the issues for the Tribunal in respect of the unfair dismissal claim were
 - (a) was it not reasonable practicable to bring a claim within the original limitation period;
 - (b) if yes, was the claim brought within such further period as the Tribunal considers reasonable;

as Section 111 of the Employment Rights Act 1996 provides that a complaint may be presented to the Employment Tribunal by any person that they were unfairly dismissed, but an Employment Tribunal shall not consider a complaint under this Section unless it is presented to the Tribunal before the end of the period of three months beginning with the effective date of termination or within such further period as the Tribunal considers reasonable in a case where it satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

6. The question of what is not reasonably practicable has been considered in a number of cases and they are often grouped together in categories, one of which is ignorance of facts. In the case of a claim where the Claimant alleges he was ignorant of facts, the issues for the Tribunal are as follows:

(a) was the Claimant ignorant of facts, which are crucial or fundamental to the claim?

That has been described in case law as involving a series of questions.

(b) did the Claimant's mind on learning of those facts genuinely and reasonably change from one where he did not believe he had grounds for a claim to one where he believed the claim was viable?

(c) Was the ignorance of the facts reasonable?

(d) Was the change of belief also reasonable?

(e) Has the information about the facts genuinely and reasonably produced the change of belief?

7. If the Tribunal concludes those apply, then it may conclude whether it was not reasonably practicable for the claim to have been brought in time. In that case the Tribunal must then consider was action taken within a reasonable time once the facts were known.

8. In relation to a discrimination claim, Section 123 of the Equality Act 2010 provides that a complaint within Section 120 (i.e. in relation to work matters brought before an Employment Tribunal) may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates, or such other period as the Employment Tribunal thinks just and equitable. Again, case law has expanded on the legislation and it is clear that the test which the Tribunal must consider in relation to just and equitable extensions of time include a balancing exercise in relation to the prejudice which each party would suffer, together with analysis of certain factors set out in the Limitation Act, including matters such as the length of the delay and the reason for it, how the cogency of the evidence will be effected, the extent to which the Respondent has cooperated with any

requests for information, the promptness with which they Claimant acted once he knew of the facts and the steps which the Claimant took to get legal advice once he knew of the possibility of taking action.

9. I should point out that in addition to these factors there is often a consideration of the merits of the claim, but it was agreed with the parties that the circumstances of this case are relatively complex and there was no possibility that I would be able to evaluate the merits of the claim at this stage, so I did not do so.
10. The Respondent pointed out that I should look at the Limitation Act factors not individually as a check box exercise but also more generally and together.

Facts

11. The facts that I have found were those relevant for the determination of this issue. Where facts were disputed, I have made an effort to avoid determining other facts that might bind any future Tribunal.
12. The Claimant started work with the Respondent on 13 December 2004. He is a lawyer specialising in capital markets work. The Respondent is a large and well known bank. At first the Claimant's role was Assistant General Counsel with HBOS but that operation merged with Lloyds in 2009 and by the end of his employment the Claimant held a role of Head of Capital Markets Legal. In his Claim Form, the Claimant set out a number of events where he appeared to allege he had been discriminated against but as I have noted, he did not seek to rely on them other than as background to his claim in relation to his dismissal.
13. The facts relating to the dismissal start in October 2015. In or around July 2015 a new General Counsel was appointed being Joanna Carver. In or around October 2015 she asked a group of senior staff to go on a trip abroad for a working holiday or offsite. The Claimant was not invited. It is not disputed that in the course of that working off site, the Respondent

determined to introduce a new structure which included restructuring the lawyers in Grade G roles and the teams.

14. In February 2016, the Claimant says the proposed structure and available roles were announced and the process involved a desktop application process. The plan was that outcomes would be announced during March to April and they would be implemented in July 2016. The grade band, which the Claimant was in, was Band G. For Band G employees, the outcome of who had succeeded in their applications for new posts and who was therefore redundant was to be announced in late February.
15. The Claimant was informed of the roles he could apply for and had approximately one week to submit a desktop application and make his choice of preferences. The Claimant complained that he had not been involved in the meeting at which the general structure was initiated nor did he have the opportunity to have prior knowledge of the post or be instrumental in determining and setting up the processes. He said much of the detail and duties for his role were not adequately reflected in the new post. He considered himself to be at a higher risk of redundancy because he felt some of his role was lost in the new structure. The Claimant was told on 22 February 2016 that he had not been successful in his application for any of the three roles for which he applied. He was given notice of redundancy with his employment to terminate on 23 June 2016.
16. Thereafter, the Claimant applied for voluntary redundancy rather than being made compulsorily redundant. The Claimant indicated that he did this because he was somewhat pressured into it. He said he was finding it stressful and difficult to be at work and had been unwell and he described communications with his manager. What is clear is that the Claimant visited a Doctor on Friday 27 May 2016 and obtained a fit note that signed him off from work due to stress at work until 24 June, which was past the date on which his employment would terminate by reason of redundancy.
17. On Tuesday 31 May the Claimant emailed his line manager and said he was taking time off and would be switching his blackberry off, but he also

invited the company to feel free to get in touch if anything critical came up. After that, on or around 13-15 June, there were emails between the members of the legal management about a new structure and team name to take effect from 1 July.

18. On 15 June, the Claimant emailed saying he would be dropping off his blackberry laptop and token that day to Tracey W. The Tribunal do now know who Tracy W was, but understand that he did return his equipment that day.
19. The Tribunal understands that on either 1 or 4 July, the new team structure took effect which was not the structure that the Claimant had been notified about but rather a slightly different structure which had been referred to in the emails in mid June. The Claimant was unaware of it at that time and only learned of it some time later.
20. The Claimant was in touch with some of his former colleagues who had also not been retained and one of those was called Vivek Prashar. The Claimant accepted that they had had a number of communications through the summer but he maintained those were only about general social matters and family matters. He accepts, however that on 27 September he and Mr Prashar had a meeting or discussion about the Claimant giving evidence to support Mr Prashar in a claim that he was making. Mr Prashar then prepared a draft witness statement and sent it to the Claimant by an email dated 28 September 2016. In that witness statement there was a section in red which was prefixed by the words "needs work" which referred to the fact that post redundancy the Claimant understood a further reorganisation took place within Capital Markets and it resulted in the more obvious and better aligned structure which, had it been made at the outset, meant he would not have been prejudiced and the outcome might have different. While those words are clearly the words of Mr Prashar and not the Claimant, this was a clear reference to the second re-organisation and unequivocally an indication that there had been a further change of some sort. The Claimant says that he did not discuss the contents of the proposed affidavit before Mr Prashar prepared it, and that he did not either read that or fully understand

it so that in practice he learned about the second re-structure at a discussion with Mr Prashar on 30 September. At this point the Claimant accepts that he was aware of the information which he relies upon as being the new information that he says caused him to consider his claim differently. I find that contention lacking in credibility. I do not accept that the Claimant did not discuss the facts that the affidavit would address with Mr Prashar before the first draft was prepared. I do not consider Mr Prashar would have written a section in red and prefaced it "needs work" if they had not had some discussion about that matter and he believed Mr Takk would understand what it was all about.

21. In his witness statement the Claimant says he went away to consider what to do next. He said, "At this point I had a lot on my plate. My twin boys had just moved school and we were waiting for their exam results which was very tense for myself and my wife and my two children. My wife had just started her new job and we had a house move underway which is very stressful after 13 years in one place. In evidence the Claimant explained that in fact these events were not all concurrently happening at this particular time but were spread over a period of months with the exam results first followed by the school move and the house move, and that he had not moved house entirely but rather had had to acquire another property, which he lived in during the week, which was within the school catchment area for his children.
22. Mr Takk decided as he put it, that "the least I had to do was raise a grievance about my treatment and so I began drafting a letter of grievance and on 17 October 2016 just over two weeks later I raised a grievance and complained to Mr Simon Davis who is a board member of Lloyds Banking Group responsible for people, legal and strategy". The letter of grievance raises a complaint about both Mr Takk's own treatment and the general treatment of Black, Asian and Minority Ethnic origin employees, particularly during the course of the re-organisation. It is headed "Racial Discrimination Awareness" and indicates some awareness of discrimination law, for example using the expression "direct discriminatory" with reference to certain comments. Mr Takk says that despite writing such a letter, he did

not do any research about his potential claims at this stage and so knew nothing about employment law claims and time limits. What is clear is that, having learned of the position from Mr Prashar, the Claimant certainly had an opportunity at this time to investigate the legal position and he had the legal background to understand the considerable amount of information freely available on the internet which sets out key information with respect to both unfair dismissal and discrimination claims and the procedural requirements for claims to the Employment Tribunal

23. Mr Takk says after raising his grievance he waited for a response. He said that at no point prior to his grievance letter had he been contacted by three other employees, Lorraine Campbell, Harja Brimah or Lesley Wan and he did not know directly they had started legal action. In practice the letter, which he wrote to Mr Davis, says he understood that a number of current and former BAME colleagues (and he listed Harpal Sura, Mr Prashar, Lorraine Campbell, Lesley Wan, Haja Brimah and Rosemarie Joseph) are potentially bringing claims against the Bank. The letter said "Some have been in touch with me directly." I do not believe Mr Takk would have written this if it were not largely true and he had had some form of contact with certain of his former colleagues.
24. In any event, Mr Takk did nothing further for a few more weeks. On 20 October he emailed his former colleagues suggesting a meeting on 31 October and referring specifically to the possibility of a class action, suggesting he had been mulling over the best form of legal action. On 31 October they met. Mr Takk suggests that even in the course of this meeting he did not learn of the time limits for employment claims and this only arose when, on 1 November, Mr Takk received an email from Ms Wan referring to the time bar. Mr Takk says that was the first occasion when he realised that there could be a time bar.
25. On 3 November Mr Takk was put in touch with the solicitors acting for Ms Wan and they lodged an ACAS conciliation form for him. On 18 November the ACAS conciliation certificate was issued indicating the completion of the conciliation and then on 29 November the Tribunal claim was issued.

26. In his witness statement the Claimant says he had no idea about the short time period applying to Employment Tribunal claims. "At this point I started to take urgent action" with reference to his learning on 1 November of the time bar. He describes contacting his current solicitors who were acting for Ms Wan, as she had the same insurance cover as she had and he says he discovered at this point that they could be appointed by his insurance company on his behalf. He received legal advice about the time limits on 3 November and the ACAS conciliation was then started that day. He says the solicitor then had to liaise with his insurance company to obtain authority to issue proceedings given the issues about limitation. Counsel was then instructed on his behalf and proceedings were issued on 29 November 2016.

The Law

27. I have referred to the law in some detail in relation to the issues. The relevant section for the unfair dismissal claim is Section 111 of the Employment Rights Act 1996 which provides that a complaint may be presented to the Employment Tribunal by any person that they were unfairly dismissed, but an Employment Tribunal shall not consider a complaint under this Section unless it is presented to the Tribunal before the end of the period of three months beginning with the effective date of termination or 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.
28. The EAT case of *Cambridge and Peterborough NHS Foundation Trust v Crouchman* 2009 ICR 1306 distilled the principles governing the exercise of the tribunal's discretion under section 111(2)(b) of ERA referring to *Machine Tool Industry Research Association v Simpson* 1988 ICR 558 CA and *Marley (UK) Ltd and anor v Anderson* 1996 ICR 728 CA in particular. The principles it identified are the following:

- ignorance of a fact which is crucial or fundamental to a claim will in principle be a circumstance rendering it impracticable for a claimant to present that claim.
 - a fact will be crucial or fundamental if it is such that , when the claimant learned of it his or her state of mind genuinely and reasonably changes from one where he or she does not believe that he or she had grounds for the claim to one where he or she believes that the claim is viable.
 - ignorance of a fact will not render it nor reasonably practicable to present a claim unless first the ignorance is reasonable and secondly the change of belief in the light of that new knowledge is also reasonable
 - whether the belatedly learned fact is true is not relevant. What matters is whether the information about the change has genuinely and reasonably produced that change of belief
 - these tests must be applied to each head of claim upon which a complaint is founded
29. It is recognised at law, that ignorance of time limits will rarely be acceptable as a reason for delay. The case of *Trevelyan (Birmingham) Ltd v Norton* 1991 ICR 488 EAT is authority for the principle that once a claimant knows of his or her right to complain of unfair dismissal he or she is under an obligation to seek information and advice about how to enforce that right.
30. The onus of proving that presentation in time was not reasonably practicable rests on the claimant and that imposes on the claimant a duty to show precisely why it was that he did not present his complaint *Porter v Bandridge Ltd* 1978 ICR 943 CA.
31. The relevant section, in relation to a discrimination claim, is Section 123 of the Equality Act 2010 which provides that a complaint within Section 120 (i.e. in relation to work matters brought before an Employment Tribunal) may not be brought after the end of the period of three months starting with

the date of the act to which the complaint relates, or such other period as the Employment Tribunal thinks just and equitable.

32. The case of *British Coal Corporation v Keeble and ors* 1997 IRLR 336 EAT suggests that tribunals would be assisted by considering the factors listed in section 33 of the Limitation Act 1980. The case of *Robertson v Bexley Community Centre t/a Leisure Link* 2003 IRLR 434 CA provides that when considering section 123(1) (b) Equality Act there is no presumption that tribunals should exercise their discretion; rather the applicant must convince the tribunal that it would be just and equitable to extend time so the exercise of the discretion is the exception and not the rule.

The Submissions

33. Both parties supplied written submissions and both parties then spoke about their submissions after the evidence was completed.

The Respondent's submissions

34. The gist of the Respondent's submissions was that time had expired on 22 September 2016. The case of *Teva (UK) Limited v Heslip* UK EAT/008/09 provided that the Claimant must be unaware of a crucial or fundamental fact being one which the Claimant learns of, when the Claimant learns of it his state of mind and genuinely and reasonably changes from one where he does not believe that he has grounds for a claim to one where he believes he does accept grounds.
35. The Respondent contended that there was no genuine change of mind and referred to the number of issues identified by the Claimant in his ET1 suggesting that these indicated that the Claimant already considered he had a viable claim long before he found out that there had been changes made to the structure. The Respondent also pointed out that by March, the Claimant had already applied for, and been accepted for voluntary redundancy, and that the change that he relied on took place on around 15 June 2016 but only started happening in July 2016. To the extent that the

Claimant relies on ignorance of the time limit, the Respondent argued that the Claimant was a highly skilled lawyer, could have found out the time limits very quickly and would reasonably have been expected to make an enquiry.

36. On the Claimant's own case despite having decided no later than 30 September that he had grounds for a claim, the Respondent pointed out the Claimant took no steps to instruct a solicitor or approach ACAS. Instead he set out his complaint in writing in some detail and sent it to the Bank. It was another month before he commenced his claim and two weeks before he took legal advice.
37. In relation to the discrimination claim the Respondent argued that the Tribunal's discretion to allow a claim to be in time under the just and equitable provisions is broad, but there will be a detriment to the Respondent in allowing the claim to go forward. The correspondence indicates that the various individuals involved in related claims intended to leverage each others claim to the their own advantage and while it would be possible to have a fair trial still, there would be significant prejudice to the Respondent and that the overall behaviour of the Claimant should be taken into account and this claim should not be allowed to proceed.

The Claimant's Submissions

38. The Claimant's submissions are that the claim was presented 41 days out of time. The Claimant submits that the change of role was a crucial fact and when he learned of it, it made it clear in the Claimant's mind that he had both been discriminated against in relation to his dismissal and unfairly dismissed.
39. On questioning about the issue of whether the Claimant had taken action within a reasonable time once the facts were known to him, his Counsel submitted that he had done so and that the test of what was a reasonable time was different from the question of reasonable practicability. The Tribunal therefore had to consider what would be reasonable in all the

circumstances and given that the Claimant had accounted for the time it took, the Tribunal should conclude that he had done so within a reasonable time.

40. On the question of just and equitable extensions of time, the Claimant's submissions recited the issues that the Tribunal should take into account and argued that the Claimant had explained his reasons for not bringing proceedings sooner, sought legal advice promptly and acted immediately on that advice. The evidence was not likely to be degraded by the relatively short delay.

Conclusions

Unfair dismissal claim

41. I first considered the claim for unfair dismissal. There are two main issues being first whether it was not reasonably practicable for the claim to have been brought within the original time claim. In this case the Claimant argues that the reason for this was that he was unaware of key facts, and if I accept this I must then go on to consider whether the claim was brought within such further period, as the Tribunal considers reasonable. In determining whether the Claimant's ignorance did mean it was not reasonably practicable for the claim to have been brought in time, I have to consider whether the Claimant had learned new facts of which he was ignorant which were crucial or fundamental to the claim and genuinely changed his mind. I also have to consider the Respondent's references to the various assertions made by the Claimant about his previous views about the unfairness of the process.
42. Was the Claimant unaware of facts which were crucial to his view of whether he had a claim, or was he always of the view that his treatment by the Respondent was unfair to the extent that he could bring a claim? It is clear that in his ET1 the Claimant complains in strong terms about his perception of the unfairness of the process. However, it is also clear that the Claimant learned no later than 30 September that there had been a

further re-organisation of roles (the nature of which I do not need to address) and that it had been underway before his notice period expired.

43. The Respondent urged me to conclude that the movement of reports between two managers and the renaming of one of the teams was not a reorganisation and that no vacancy was created so that it was unreasonable of the Claimant to regard this as a crucial or fundamental fact relevant to his claims. I have stated to the parties that on many of these issues, the evidence I have had is so limited that I should be cautious about findings of fact. I do not need to consider what the nature of this reorganisation was or whether in fact it merited the description of a reorganisation but it is convenient to refer to the events at that time as the second reorganisation in this judgment. What is more important is that I do accept the Claimant, hearing of the change, believed it to be a significant change to the structure that the Respondent had used as the basis for redundancy consultation and selection.
44. I do have to make some assessment of when Mr Takk learned of this new information. While I note that it would be entirely natural for two people who have recently left the same employer where they worked for a long period together, as I understand to be the case with Mr Prashar and the Claimant, to chat about the situation each time they met so that Mr Takk would have learned of it during the summer as he admitted to some social interaction with Mr Prashar, I am inclined to accept that the Claimant was ignorant of the fact of the second so called re-organisation until told by Mr Prashar, probably on 27 September. I do not accept each of the three factual contentions that Mr Takk made to support his contention that he did not know of the second re-organisation until 30 September 2016, being that he had not previously discussed with Mr Prashar the intended contents of the draft affidavit which Mr Prashar then prepared, that when he was sent it, he did not understand the wording in that draft affidavit, and/or that in the alternative he did not read it.
45. Was the ignorance of the facts reasonable? In relation to the question of whether ignorance of those facts (i.e. about the second re-organisation)

was reasonable in the period between the second reorganisation happening and 27 September 2016, I accept that it was. The Claimant no longer had any reason to become informed of the new internal structure other than through information gleaned from other people still in contact with the business.

- 46 I have found that the Claimant did in fact know of the second reorganisation or about 27 September when he met with Mr Prashar and in the alternative, it would be my view that from that point, when he met with Mr Prashar to talk about the affidavit and the facts that the Claimant could support by way of an affidavit, and onwards when he was sent that affidavit, I do not consider the Claimant can argue it was reasonable that he remained unaware of the facts.
47. Was the change of belief reasonable? The Respondent urged me to consider that it was not reasonable in all the circumstances. The Respondent made a number of points. The Respondent argued that the Claimant overstated this change, which was a minor change of just a few reports and a name change which created no vacancy and that it would be totally unreasonable for the Claimant to have expected that the Respondent would contact him after he had chosen voluntary redundancy, in order to replay the selection process when no vacancy arose.
48. It is not for me to consider or determine whether that second re-organisation was of such a minor level. The changes were reported to the Claimant through another individual and I am satisfied that he believed it to be more substantial than the Respondent contends it was. Therefore, I am satisfied that the Claimant's change of belief was reasonable.
49. Did the Claimant genuinely and reasonably change his mind on the basis of the new information? In effect I had to consider whether the new information that the Claimant understood was crucial or fundamental to his belief that he had a claim. The Respondent refers to the ET1 (which I bear in mind was drafted by Counsel), and statements in it such as paragraph 13 in which the Claimant alleges that throughout his employment with the

Respondent the Claimant was subjected to a culture of racism and direct discrimination and or harassment from his line manager, Greg McEneny and then lists a number of events which took place in 2014, 2015 and 2016. The Respondent says these show that the Claimant clearly thought he had a claim long before this new information came to his attention.

50. I have read the letter of 17 October, which the Claimant says he wrote himself to complain to the Board of the Respondent about his treatment. I recognise that the Claimant did make a lot of comment in his ET1 about his previous treatment and from the wording it suggests that he considered himself unfairly treated, but I do accept that it is possible to be deeply unhappy but not to be confident of succeeding in a claim and then to learn of a new matter which acts as a tipping point and this is what I consider happened in this case.
51. The letter of 17 October was written within approximately two weeks of the Claimant learning of the change and from the way it is described I conclude that his mind genuinely changed from one where he was unhappy with several aspects of the process to one where he believed a claim was viable.
52. Did the Claimant act promptly once he knew of the facts? I have found that the Claimant must have known of the new facts by about 27 September. The Claimant admits he knew enough to consider his treatment unfair by 30 September 2016. Indeed, in the letter of 17 October he refers to himself as being unfairly managed out and says this was against a backdrop of racial discrimination.
53. The Claimant is a lawyer with a number of years experience, albeit it in a different field from employment law. He says he was ignorant of the time limits in relation to Employment Tribunal claims. In his answers to cross examination questions he seemed to suggest he did not know there was any time limit at all in relation to employment claims, which is a very surprising assertion since lawyers are legally trained to know that all claims have some sort of limitation period. He did, however, know that a number of his colleagues were potentially bringing claims and had named several

individuals in his letter to the Board, some of which he indicated had been in touch with him. We know for sure that he had been in touch with Mr Prashar about his claim.

54. The Claimant says he did not attempt to check the time limits at this stage or indeed look into the claims. He did not seek legal advice. Instead he said he elected to write a letter of complaint which he sent on 17 October 2016. In the circumstances, I have to consider whether the action taken to issue proceedings on the 29th November 2016 meets the requirement of being taken within a reasonable time once the facts were known.
55. The Claimant's Counsel urges me to say it was. However, it is accepted that I have to judge that on the basis of an objective consideration of the factors causing the delay and what period should reasonably be allowed in the circumstances for the proceedings to be instituted, having regard to the strong public interest in claims being brought promptly.
56. As I have noted, the Claimant's explanations for the time taken after he learned of these facts at the end of September were that he did not learn of the time limit until 1 November as a result of an email from a former colleague. He says in effect, notwithstanding that he was a lawyer and notwithstanding the fact that he wrote a letter to the Board which used formalistic terminology about discriminatory treatment and unfair treatment, that between 30 September and 1 November (i.e. for a whole month) he made no effort whatsoever to Google or check the law relating to any of the claims which he believed he had. He made no effort to get legal representation until after his former colleague put him in touch with her lawyers on or around 1 November speaking to them on 3 November.
57. The ACAS process was then started that day and ended 15 days later on 18 November and the Claimant filed proceedings as I have noted about 11 days later.
58. The Claimant also said that he was sorting out his insurance cover and he also referred to the problems of his childrens' exam results, their change of

school and moving house. In giving oral evidence he explained that he had not moved house entirely but rather had had to acquire another property, which he lived in during the week, which was within the School catchment area for his children.

59. Counsel for both parties agreed that time is not suspended during the ACAS conciliation period, but I have considered the matter in two ways. I have considered the entire time period and the time period excluding the ACAS conciliation period in the spirit of the legislation. On that latter point, I am aware that there are steps, which could be taken to shorten the conciliation period considerably, which might be preferable where time is of the essence.
60. Looked at either way, I find the Claimant's choice not to seek legal advice during the month of October to be absolutely critical. Not only did the Claimant not seek legal advice at that time, but he says that he did not even Google or do any legal research, something which would have been very easy for him as an experienced lawyer to have done and indeed would have been easy for him to understand.
61. After the Claimant admits he found out and was fully aware of the time limits and aware that his claim was certainly out of time by some considerable time, there were 26 days between 3 November and proceedings being filed on 29 November. As I have noted, for 15 days ACAS conciliation was underway, and on one view, this period should be treated more leniently than the rest, but armed with the detailed letter which the Claimant had prepared on 17 October, it should have been possible to file short but concise proceedings as a matter of urgency before 29 November. The Claimant was asked if he had sufficient resources to have afforded lawyers and conceded that he probably did have.
62. In all the circumstances, I have to conclude that the action taken was not within a reasonable time after the facts were known. The primary reason for this is the Claimant's deliberate decision to write to the Board rather than pursue litigation during October 2016, despite knowing all the facts that

gave rise to his claim. Even after that period when the Claimant decided to bring a claim and instructed lawyers, matters progressed more slowly than was reasonably necessary. In the circumstances the unfair dismissal time should not be extended to the date on which the claim was actually filed and the claim therefore fails.

Discrimination claim

63. On the discrimination claim the test is different, as I have noted above. This is the just and equitable test and as I have noted under the issues, it is important to consider the prejudice each party would suffer if my decision went against them. The Claimant would clearly suffer some degree of prejudice in that he has the possibility of bringing a claim which could possibly be successful. I am not able, as I have noted, to assess the merits in any way because this matter involves much detail and I have far too little information. However, the Respondent would also suffer some prejudice being the extra cost of litigation were the case to proceed and as the Respondent pointed out, there are other claims being brought and the Respondent believes these individual parties have, to use the Respondent's description, attempted to leverage off the other claims. In the circumstances, it seems to me that the prejudice to the Claimant would exceed the prejudice to the Respondent, but the Respondent would certainly suffer some prejudice if the claim were allowed to go ahead.
64. The Respondent quite rightly does not argue that this claim cannot proceed and be heard properly. The evidence is not lost. The witnesses are available. A fair trial is still possible. However, I still have to look at the circumstances generally and consider the factors in the Limitation Act. These are the length of the delay and the reason for it, how the cogency of the evidence will be effected, the extent to which the Respondent has cooperated with any requests for information, the promptness with which they Claimant acted once he knew of the facts and the steps which the Claimant took to get legal advice once he knew of the possibility of taking action.

65. It is not suggested that the cogency of the evidence will be affected. There were no requests for information to the Respondent so the remaining questions are all about delay. I have to consider the delay and the reasons for it. As I have noted, the primary reason for most of the delay between 27/30 September and 29 November was the Claimant's decision, notwithstanding his knowledge about the relevant facts, not to go to lawyers but rather to write a letter of grievance to the Board. Thereafter, after discussion with his former colleagues, the Claimant appeared to take a more litigious view and says it was only then that he became aware of the time limits after which he still took some time to lodge his claim. The question is not, however, in relation to ignorance of time limits what the Claimant actually knew, but what he should have known and on that point, the Claimant as an able lawyer should have known the true time limit, as he should have sought basic information about his claim as soon as he became aware of it.
66. I have noted that 15 days of that time was spent on ACAS conciliation and where there is a consideration of what is just and equitable, that period should in my view be treated in a slightly different way to the other time. I note that in this particular case, it is not legally required for time to be suspended in that period but I believe it should at least be treated with a little more degree of tolerance. However, after that time period the Claimant still took another 11 days to file a claim during which time he was apparently sorting out his insurance and obtaining Counsel's draft of his grounds of claim.
67. I will not seek to reiterate all the events which I have detailed under my conclusion on the unfair dismissal question, but the Limitation Act expressly includes consideration of the delay and the length of it, the reasons for it and the promptness with which the Claimant acted once he knew of the facts, as well as the steps which the Claimant took to get legal advice once he knew of the possibility of taking action. On all of those counts, it seems to me the general hesitation on the part of the Claimant and indeed his initial choice not to seek legal advice but rather write a letter of grievance without even having apparently done any research which he was well able

to do as a lawyer, more so than the average layman, is significant. I balance this with the prejudice which the Claimant would suffer which I have recognised would be greater than the prejudice to the Respondent. It was clear from the Claimant's evidence that he made a choice after the end of September not to take advice. He says (although it is hard to believe) he did not even look into the law relating to unfair dismissal or discrimination and therefore did not find out about the time limits.

68. The discretion that falls to the employment tribunal judiciary in relation to the just and equitable extension does not exist to make up for such a choice and the consequent failure to bring a claim within the time limit or closer to it. I am satisfied that looked at together, the balance is such that the just and equitable extension of time is not applicable in this case to the extent necessary for the Claimant's claim to be allowed to go forward. For these reasons the claim for discrimination is out of time and must fail.
69. Accordingly, all the Claimant's claims are dismissed on the basis the Tribunal has no jurisdiction to consider them.

Employment Judge Walker
2 May 2017