EMPLOYMENT TRIBUNALS

Claimant:		**Respondents:**
Ms V Chhatralia	**v**	Care Concern Group Limited **(R1)**
		McKenzie Care Home Limited **(R2)**
		Shaftesbury Care Group Limited **(R3)**
		GST Management Limited **(R4)**

PRELIMINARY HEARING

Heard at: Reading **On:** 20 February 2017

Before: Employment Judge S Jenkins

Appearances
For the Claimant: Mr H Lewis-Nunn (Counsel)
For the Respondents: Mr G Goodlad (Counsel)

RESERVED JUDGMENT

1. The employment tribunal does not have jurisdiction to consider the claims of unfair dismissal, age discrimination and breach of contract against the Second, Third and Fourth Respondents and those claims are dismissed.

2. The claims of unfair dismissal, age discrimination and breach of contract against the First Respondent will proceed to the hearing listed for **5 June 2017**.

3. The claim of failure to consult under TUPE against the Second and Third Respondents will proceed to the hearing listed for **5 June 2017**.

REASONS

Background

1. The hearing was to deal with the preliminary issues identified by Employment Judge Hill in the case management summary she issued following the previous preliminary hearing in relation to this case held on 1 November 2016. The Claimant had brought claims against four separate Respondents alleging unfair dismissal, failure to inform and consult under TUPE, direct age discrimination, and breach of contract relating to notice.

Issues and law

2. Judge Hill noted that there was a potential time/limitation issue relating to the claims against the Second, Third and Fourth Respondents and therefore ordered that a further preliminary hearing be held to consider:-

    2.1 "whether there is jurisdiction to consider the claims against R2, R3 and R4 given the date of the Early Conciliation process being commenced;

    2.2 whether there is jurisdiction to consider the failure to consult claim given the date of the presentation of the Early Conciliation certificate; and

    2.3 which of the named respondents are correctly named as respondent(s)."

3. With regard to time limits and the impact of early conciliation, Judge Hill identified that the effective date of termination of the Claimant's employment, which is the relevant date for the purposes of her claims of unfair dismissal and breach of contract and the last possible date relevant for her claim of age discrimination, was 3 May 2016. Applying that date (it being noted that the Respondents assert that the date should be earlier in relation to the age discrimination and failure to consult claims) meant that the ordinary time limit for the claims expired on 2 August 2016.

4. The Claimant contacted ACAS, for the purposes of early conciliation against the First Respondent only, on 27 May 2016 and the ACAS certificate following that notification was issued on 8 July 2016. That had the effect of extending time for the purposes of all the relevant statutory provisions relating to the claims against the First Respondent by some 42 days.

5. The Claimant then contacted ACAS for the purposes of conciliation in relation to the Second, Third and Fourth Respondents on 5 August 2016 with the early conciliation certificate in relation to that contact being issued the same day, 5 August 2016.

6. The claim form against all four Respondents was presented on 8 August 2016. The 42-day extension provided by the early conciliation period in relation to the First Respondent meant that the claims against that Respondent were brought in time. However, the notification to ACAS in relation to potential claims against the Second, Third and Fourth Respondents was not made until after the expiry of the primary time limit. There was therefore a need to consider whether that claim should be considered to have been brought in time by reference to the early conciliation undertaken in relation to the First Respondent, whether directly or by the application of Rule 34 of the Employment Tribunals Rules of Procedure 2013, which provides a power to add parties to proceedings, or

possibly by the application of Rule 29, which provides a general case management power.

7. Alternatively, if the claims against the Second, Third and Fourth Respondents had been brought out of time, I then needed to consider whether it would be appropriate to extend time, taking into account the various provisions relating to such extensions within the relevant pieces of legislation.

8. In that respect, the various pieces of relevant legislation dealing with time limits were as follows:-

   8.1 Unfair dismissal

   Three months beginning with the effective date of termination of employment (Section 111(2) Employment Rights Act 1996) with the prospect of time being extended if it is considered that it was not reasonably practicable to have brought the claim in time and that the claim had been brought within such further time as was reasonable.

   8.2 Age discrimination

   Three months starting with the date of the act to which the complaint relates (Section 123(1)(a) Equality Act 2010) with an ability for time to be extended if considered just and equitable.

   8.3 Failure to consult

   Three months beginning with the date of completion of the transfer (Regulation 15(12)(a) Transfer of Undertakings (Protection of Employment) Regulations 2006) ("TUPE"), with the same reasonable practicability test applying to any possible extension as set out at sub-paragraph 8.1 above: and

   8.4 Breach of contract

   Three months beginning with the effective date of termination of employment (Article 7 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994) with again the prospect of extension applying the reasonable practicability test.

Findings

9. I heard limited evidence from the Claimant in the form of a short witness statement and her answers to questions from me and under cross-examination by the Respondents' representative. In relation to the matters relevant for the purposes of this hearing, I made the following findings.

10. The Claimant was initially employed in June 2009 by the First Respondent. The Respondents contended, although I heard no evidence on the point, that the Claimant's employment then transferred to the Second

Respondent (although at the time its name was GST Management Limited, i.e. the name of the Fourth Respondent) in October 2011. The Claimant indicated that she only became aware of this in April 2012 following the provision of her P60 for the 2011/12 tax year. The Respondents further contended that GST Management Limited changed its name to McKenzie Care Home Limited in May 2012. The Claimant confirmed that she was issued with a contract of employment in June 2013 which identified the Second Respondent, McKenzie Care Home Limited, as her employer and she confirmed that she was paid by that company from that time onwards.

11. The Respondents also contended that a transfer of the Claimant's employment from the Second Respondent to the Third Respondent, Shaftesbury Care Group Limited, took place on 1 April 2016. The Claimant contends that she was unaware of that transfer and only became aware of the possibility that her employer was the Third Respondent when she received her final pay in respect of her employment. That employment ended on 3 May 2016 and therefore her final pay and pay slip were provided towards the end of May 2016.

12. The Claimant's evidence, which was not challenged and which I therefore accepted, was that, notwithstanding the various changes or putative changes to the identity of her employer, she always worked for companies in the Care Concern Group. She contended that she found the precise circumstances of her employment confusing which was why she made her first contact with ACAS in relation to the First Respondent, i.e. the parent of the group.

13. The Claimant did confirm in her evidence however that, by virtue of the content of her P45, she was aware, at some time towards the end of May 2016, that her employment might potentially have been transferred to the Third Respondent. She also confirmed that she was taking legal advice during this period, having first done so prior to the initial contact with ACAS in relation to the First Respondent in May 2016, and that nothing in particular had changed in relation to her understanding of her employment situation from the end of May to August when she submitted the additional notifications to ACAS in relation to the Second, Third and Fourth Respondents.

14. As I have noted above, the Claimant made contact with ACAS in relation to the First Respondent on 27 May 2016 which I took to be slightly before she received her pay slip in relation to her final pay in which it was noted that the Third Respondent was her employer. She then made contact with ACAS in relation to the Second, Third and Fourth Respondents on 5 August 2016.

Submissions

15. The Claimant's representative, Mr Lewis-Nunn, submitted that, applying the directions provided by the Employment Appeal Tribunal in the cases of Mist v Derby Community Health Services NHS Trust (UKEAT/0170/15/MC) and Drake International Systems Ltd v Blue Arrow Limited

(UKEAT/0282/15/DM), the existing ACAS notification in relation to the First Respondent made in May 2016 was able to be extended to the Second, Third and Fourth Respondents which meant that the Claimant's claims in relation to those three Respondents were brought in time. He noted, and this was not disputed by the Respondents, that all companies were part of the same group and that the same individuals were involved in the management of the Claimant at all times and that her work was carried out for the group as a whole.

16. Mr Lewis-Nunn further contended that if it was necessary to consider that an amendment to the Claimant's claim needed to be made, then the power under Rule 34 to add or remove respondents, taking into account the directions in the Drake and Mist cases, applied. In those circumstances, he contended that the application effectively amounted to an amendment application where the decision was at the discretion of the tribunal. He contended that this would involve an application of the guidance provided by the EAT in the case of Selkent Bus Company v Moore [1996] ICR 836, consideration of the Presidential Guidance on amendments, and by applying the overriding objective. He contended that the balance of hardship weighed very much in favour of the Claimant in that regard, with the Claimant being prevented from bringing some of her claims whilst the Respondents would not be prejudiced, which meant that the application would need to be granted.

17. Mr Lewis-Nunn further contended that if I were not to decide in favour of the Claimant in relation to the automatic application of the early conciliation certificate in relation to the First Respondent or in relation to rule 34, then I should nevertheless exercise my discretion to allow the claims to be brought in time, applying the various tests I have set out at paragraph 8 above. He contended that similar points would need to be made in relation to the balance of hardship. He particularly noted that the Claimant thought that she was dealing with effectively one employer, i.e. the group; she was undertaking the same work at all times and was not moved around and therefore it was reasonable for her to have considered that her employment was with the First Respondent.

18. Mr Goodlad, on behalf of the Respondents, contended that it was not possible for the Claimant to rely on the early conciliation certificate for the First Respondent as applying in relation to the three other Respondents. He noted that the requirement in relation to early conciliation was to notify ACAS of the identity of all respondents in order to allow early settlement. He contended that there was a specific procedure which excused compliance from early conciliation where there were multiple claimants but no corresponding exception in relation to claims against multiple respondents which, he contended, demonstrated that the intention of the draughtsman was that there should be separate early conciliation in relation to all respondents. He also noted in particular the Early Conciliation Rules of Procedure 2014, regulation 4 of which expressly noted that a conciliation certificate must be presented in respect of each respondent. He noted that this was a mandatory requirement and seemed to cover the precise situation here. He noted that in the Mist and Drake

cases, no reference appeared to have been made to paragraph 4 of those Rules of Procedure.

19. With regard to Rule 34, Mr Goodland contended that this was not a case of substituting or adding a particular respondent in that the Claimant already had knowledge of all four Respondents and notifications in respect of claims against them had been made to ACAS. He contended that the issue was not one of adding or substituting respondents, but of compliance with the required process. He noted that the claims had not been rejected on presentation, presumably because early conciliation certificates had been obtained and the relevant numbers quoted, but he submitted that they had been obtained after the time limits had expired. In the circumstances he contended that, in the absence of an extension of time, the claims against the Second, Third and Fourth Respondents lacked jurisdiction.

20. Looking further at Rule 34, and applying the Selkent direction, Mr Goodlad noted that this case did not fall within the categories outlined. He contended that what we were looking at was a request to substitute a party by a circuitous method to overcome deficiencies on the Claimant's side.

21. With regard to time limits and the tests for extending them, he noted that even if there was confusion over the identity of the Claimant's employer, the chronology of events showed that the Claimant knew of the identity of the Second and Third Respondents well before the expiry of the time limit, with the Claimant having confirmed in her evidence that she was aware of the Third Respondent following receipt of her pay slip at the end of May 2016. He contended that the Claimant had provided no explanation as to what, if anything, might have changed in terms of her knowledge of the potential respondents between May and August 2016 and submitted that she simply realised what she should have done and attempted, too late, to correct it.

22. With regard to the balance of hardship, Mr Goodlad noted the Claimant's contention that the Respondents had lost nothing by virtue of the claims being allowed to proceed but he contended that they had lost something; they had lost their statutory defence to the claims relating to time limits. He noted in this regard the direction provided by the Court of Appeal, in the context of just and equitable extensions, in the case of Bexley Community Centre v Robertson [2003] EWCA Civ 576 that time limits are applied strictly in employment cases, that there is no presumption in favour of extending time, and in fact that tribunals should not extend time unless the claimant convinces them that it is just and equitable to do so.

23. Mr Goodlad further contended as a matter of fact that the Claimant had known of the potential for there to be other Respondents at the latest at the end of May, and that nothing had changed in relation to her understanding of the position between May and August, but she did not do anything about that until August. He submitted that it had therefore been reasonably practicable for her to have brought her claims within time and

that, for the same reasons, it would not be just and equitable to extend time in relation to her discrimination claim.

Conclusions

24. In relation to the issues identified above, I first considered whether it was appropriate for me to conclude that the early conciliation notification undertaken by the Claimant in relation to the First Respondent could be said to have extended to the other Respondents automatically, such that the claims against those Respondents could be said to have been brought in time. I considered closely the Judgments in the Mist and Drake cases, and noted that the relevant facts of those cases were somewhat different to those in this case in that the original claim forms were only issued against one respondent, and the issue before the tribunals in those cases was whether to allow an application to add other respondents. In those circumstances, the two judgments make very clear that a claimant is not required to go through early conciliation to add a new respondent and is able to make an application to add a respondent under Rule 34, which will be considered at the discretion of the employment judge. This was most clearly expressed by HHJ Eady QC in her Judgement in the Mist case at paragraph 56 where she said:

> "*…I do not think that the Claimant was required to undertake EC in respect of her application to amend to include a claim against the Second Respondent. In respect of the relevant proceedings, the Claimant was no longer a "prospective Claimant". She had already presented her claim form, she was now asking the ET for leave to amend it. The question was thus entirely for the ET.*"

25. By contrast, the Claimant in this case brought her claims against all four Respondents at the same time using the same claim form. She was therefore a "prospective claimant" against all four Respondents and therefore needed to comply with the early conciliation requirements against them all. That, of course, she did, by virtue of the notifications to ACAS in May 2016 in relation to the First Respondent, and on 5 August 2016 in relation to the Second, Third and Fourth Respondents. However, that latter notification was made outside the relevant primary time limits and therefore had no bearing on them. The later EC notification had to have been made before the expiry of the primary time limit, at the latest, in relation to the Claimant's claims, on 2 August 2016, but was not.

26. I could not therefore conclude that there was any form of automatic extension of the Claimant's early conciliation certificate relating to the First Respondent by way of being able to cross-read that initial certificate from the First Respondent to the Second, Third and Fourth Respondents. I noted the provisions of paragraph 4 of the Early Conciliation Rules of Procedure and considered that the reference there to there needing to be early conciliation in relation to each Respondent must, in practical terms when the application of time limits is considered, mean early conciliation which is commenced within the relevant primary time limits and which then, by its application, extends time for the submission of claims.

However, the Claimant, in delaying making her notification to ACAS in relation to the Second, Third and Fourth Respondents until 5 August 2016, had already exceeded the time limits in relation to her claims against those Respondents.

27. I next considered whether it would be appropriate to add the Second, Third and Fourth Respondents by applying Rule 34 or, alternatively, by applying Rule 29. I did not consider that there was any power for me to apply Rule 34 however, as all Respondents were included in the Claimant's original claim form and therefore there was no question of adding them as parties.

28. I considered however, that it might be possible for me to consider the Claimant's position under Rule 29, which provides that a Tribunal "*may at any stage of the proceedings, on its own initiative or on application, make a case management order*". Indeed, the Judgment in the Mist case indicates that the Tribunal whose decision was being appealed, having joined the second respondent by applying Rule 34, went on to consider whether the claimant should be permitted to amend her claim to pursue her complaints against that entity, applying Rule 29 and the guidance on the exercise of such powers set by Mummery P (as he then was) in the case of Selkent.

29. In taking the view that I should consider whether or not to exercise a power under Rule 29, I considered it would be in furtherance of the overriding objective for me to take such a step, as to do otherwise would mean that the Claimant would be in a worse position through having brought the claim initially against all four Respondents than she would have been had she brought it only against one and sought subsequently to amend.

30. It seemed to me therefore to be appropriate to consider whether I should exercise the general case management power under Rule 29 to allow the Claimant's claim to proceed against the Second, Third and Fourth Respondents, applying the Selkent guidance, and also the Presidential Guidance on case management issued in March 2014.

31. The guidance from both sources makes clear that when considering whether to exercise case management powers the tribunal should "*take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it*" (per Mummery P in Selkent). Mummery P further indicated that, whilst it was impossible and undesirable to list the possible relevant circumstances exhaustively, ones which would certainly be relevant would be; the nature of the amendment, the applicability of time limits, and the timing and manner of the application. Those points are echoed in the Presidential Guidance.

32. Looking at those matters, I considered that the amendment, the adding of new respondents, was a substantial one and certainly not one which involved the correction of minor errors or the relabelling of pleaded facts. With regard to time limits, as I have noted above, the claims against the Second, Third and Fourth Respondents were brought outside the relevant time limits, and therefore I needed to consider whether it would be

appropriate to extend time, applying the appropriate statutory tests and the guidance provided by decided cases in relation to them. I did not consider that anything significant, in terms of my consideration under Rule 29, turned on the timing and manner of the application.

33. With regard to the overriding test of injustice and hardship, I noted that the group by which the Claimant was employed remained the same at all times, that all companies formed part of this group, and maintained a common management. Consequently, it would be likely that the Second, Third and Fourth Respondents would be in no worse a position to defend the claims than would the First Respondent, and therefore it could be argued that they would not suffer any hardship, certainly in comparison with the significant degree of hardship faced by the Claimant if she was not able to bring a claim at all in relation to the matters of which she contends. However, I was conscious that the consideration of the collective position of the Respondents was rather more nuanced than simply being a question of which of the Respondents should face the Claimant's claims. If the Claimant's claims were not allowed to proceed against the Second, Third and Fourth Respondents, then, bearing in mind that there does not seem to be any realistic prospect of the Claimant establishing that she was employed by the First Respondent at any time since 2012, or at the latest 2013, she would not be likely to be able to establish any claim against the First Respondent. The question of exercising the power under Rule 29 would therefore have a fundamental impact on the Respondents as a whole.

34. Ultimately therefore, bearing in mind that the principal issue for me to consider was the question of whether the Claimant had brought her claims against the Second, Third and Fourth Respondents within the relevant time limits, I did not consider that it would be appropriate to exercise my general power of case management under Rule 29, but, instead, to consider the issue of whether the claims should be allowed to proceed against the Second, Third and Fourth Respondents by applying the various statutory provisions relating to the extension of time, and the significant amount of case law that has developed in relation to those provisions.

35. As I noted at paragraph 8 above, the reasonable practicability test applies to the Claimant's unfair dismissal and breach of contract claims (and also the failure to consult claim, but separate considerations apply in relation to that claim which I address below). In considering the application of the test, I drew guidance from the summary of the relevant case law set out in the Court of Appeal's decision in the case of Marks & Spencer plc v Williams-Ryan [2005] ICR 1293, which is still an accurate and relevant summary of the law in this area.

36. In that case the Court of Appeal noted that the statutory provision should be given a liberal interpretation in favour of the employee. The Court noted in particular that regard should be had to what, if anything, the employee knew about the right to complain to a tribunal and the time limit for doing so, and what knowledge the employee should have had, had

they acted reasonably in the circumstances, with the vital question of fact being whether the employee could reasonably have been expected to be aware of the fact that there was a time limit for making a complaint to the employment tribunal (per Lord Phillips MR at paragraph 23). The Court also noted that where a claimant retains a solicitor and fails to meet the time limit because of the solicitor's negligence, the claimant cannot argue that it was not reasonably practicable to have submitted the claim in time.

37. Other cases have looked at other specific issues which might need to be considered in relation to the test, such as illness or external factors such as communication breakdowns, but the Claimant provided no evidence in relation to such matters in her case.

38. The evidence that the Claimant did provide regarding her reasons for not submitting her claims against the Second, Third and Fourth Respondents, as I have summarised at paragraph 12 above, was that she had been uncertain about the precise circumstances of her employment and, in particular, the identity of her employer. However, in that regard I noted that she confirmed that she was aware that her employment had been transferred to the Second Respondent, albeit that it had a different name at that time, in 2012, and that she had been issued with a contract of employment by the Second Respondent, under its current name, in 2013.

39. Whilst therefore, I could accept that there was a degree of uncertainty regarding the identity of the Claimant's employer from time to time, by the time we came to the termination of the Claimant's employment in May 2016, it seemed to me that the Claimant could not reasonably contend that she was employed by the First Respondent. Furthermore, whilst I could accept that the Claimant had reasonable grounds for not being certain as to which of the Second and Third Respondents was her employer, I could not see that there was an excuse for her not pursuing her claims against either of those Respondents within the appropriate time limits.

40. As I have noted above, at paragraph 13, the Claimant confirmed that she had taken legal advice in May, before first making contact with ACAS. Therefore, whether the Claimant had been at fault in not telling her solicitors about the possibility of being employed by the Second Respondent, or whether her solicitors were at fault for not acting upon her instructions, I could see no reasonable grounds for the Claimant not to have pursued her claims against the Second Respondent in time. Similarly, the Claimant confirmed that she was aware of the possibility that her employer was the Third Respondent some time towards the end of May 2016 when she received her pay slip from that company for the month of May. At that stage, she still had more than two months in which to make contact with ACAS in relation to that Respondent, and again, whether due to her own fault or to that of her advisers, I could see no reason why it had not been reasonably practicable for her to have done so.

41. Overall therefore, I concluded that the Claimant, either directly or via her legal advisers, was aware, or could reasonably have been expected to be aware, of the relevant time limits but had failed to progress her claims against the Second, Third and Fourth Respondents in accordance with

them. I therefore considered that the Claimant's claims for unfair dismissal and breach of contract against the Second, Third and Fourth Respondents should be dismissed due to her failure to comply with the required time limits.

42. As I noted at sub-paragraph 8.2 above, the test for extending time in relation to the Claimant's age discrimination claim was different, being whether I considered it just and equitable to extend time. In that regard I considered the direction provided by the EAT in British Coal Corporation v Keeble [1997] IRLR 336 that it is appropriate to take into account the factors set out in section 33 of the Limitation Act 1980 relating to the extension of time in civil cases.

43. Those factors are; 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 had co-operated with any request for information, the promptness with which the claimant acted once they knew of the possibility of taking action, and the steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action.

44. Of those, I did not consider that the delay would have any impact on the cogency of the evidence to be provided by the Respondents' witnesses, and there had not been any request for information made of the Respondents so that factor was not relevant. As I have noted above however, although the delay was ultimately only a matter of days (if the date of termination of employment is taken as the date of the act to which the Claimant's complaint relates, and I appreciate that the Respondents contend that it was earlier than that), the Claimant was aware throughout that her employer could be considered to be the Second Respondent and was aware, from, at the latest, the end of May 2016, of the possibility that her employer could be considered to be the Third Respondent.

45. I also had regard to the direction provided by the EAT in the case of Hutchinson v Westward Television Limited [1977] IRLR 69, that a tribunal is entitled to take into account anything it judges to be relevant in weighing up whether or not to extend time, and I felt it appropriate to consider the pleaded basis of the Claimant's age discrimination claims.

46. In that regard, Judge Hill ordered, at the preliminary hearing held on 1 November 2016, that the Claimant should provide more detail of how she pleaded her claims, and the Claimant had subsequently done that. In relation to her age discrimination claim, the further information provided related to an allegation that a colleague of the Claimant's had sent her an email complaining that another colleague had been too scared to ask a question of the Claimant, that the Respondent had failed to address the Claimant's grievance in respect of that comment, and that there was a failure to address her requests for support.

47. Whilst I have obviously not seen or heard any evidence in relation to those allegations, I did not consider that the allegations would be likely, even if substantiated in fact, to give rise to a conclusion that they amounted to

less favourable treatment of the Claimant than would have been afforded to her younger colleagues, or to harassment on the ground of her age. In other words, it did not seem to me to be likely that the Claimant's age discrimination claim would have reasonable prospects of success.

48. Finally in relation to the issue of the just and equitable extension, I noted the guidance provided by the Court of Appeal in the Robertson case, that there is no presumption in favour of extending time, and that time limits are to be applied strictly in employment cases.

49. Ultimately therefore, applying the guidance provided by the various case authorities and considering the overriding objective, I did not consider that it would be just and equitable to extend time to enable the Claimant's claim of age discrimination to proceed against the Second, Third and Fourth Respondents and therefore that they should be dismissed due to her failure to comply with the required time limits.

50. In summary in relation to the Claimant's claims of unfair dismissal, age discrimination and breach of contract, they will only remain in relation to the First Respondent and it will be a matter for her as to whether she wishes to proceed with those claims against that Respondent.

51. That then left the Claimant's claim of failure to consult under TUPE, which she accepted could lie only against either or both the Second or Third Respondents, for me to consider. In relation to this issue, the Respondents contended that there was a transfer of the Second Respondent's business to the Third Respondent on 1 April 2016, and that the Claimant was notified of that by letter dated 25 March 2016. The Claimant contended that she did not receive any letter and that she had no knowledge of any transfer of her employment until she received her pay slip for the month of May, some time towards the end of that month, from the Third Respondent.

52. Claims in relation to failure to consult under TUPE are required to be brought within three months of the date of completion of the transfer, and the Claimant made contact with ACAS in relation to both the Second and Third Respondents on 5 August 2016, with the ACAS certificate being issued on the same day. If therefore the transfer did take place, as contended by the Respondents on 1 April 2016, then the notification to ACAS, and the subsequent claim brought on 8 August 2016, were made out of time. However, if the Claimant's contention is correct, she was unaware of any transfer until the end of May 2016, and she notified ACAS and submitted her claim within three months of the time at which she had knowledge of any transfer.

53. Without hearing any evidence on the points, I considered that it would be appropriate for me to take the Claimant's assertions at their highest. I then concluded that, even if the transfer took place on 1 April 2016, it had not been reasonably practicable for the Claimant to have brought her claim within three months from that date, due to her asserted lack of knowledge of that transfer, and that she brought her claim within a reasonable time thereafter.

54. I therefore concluded that the Claimant's claim of failure to consult under TUPE should be allowed to proceed against the Second and Third Respondents.

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Employment Judge Jenkins

Date: 8 March 2017

Reserved Judgment and Reasons

Sent to the parties on: .....

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For the Tribunals Office