



# EMPLOYMENT TRIBUNALS

**Claimant** Mr Kevin Whatley  
**Respondent** Sidmouth Care Limited

## JUDGMENT

The claim is struck out.

## REASONS

1. The claimant did not have the necessary two-year qualifying period of service at the date of dismissal, as required by section 108 Employment Rights Act 1996 and so a complaint of unfair dismissal has no reasonable prospect of success.
2. His application to amend the claim to one of automatically unfair dismissal under section 103A Employment Rights Act 1996 (for making a protected disclosure) was dismissed on the basis that:
  - a. he cannot rely on protection from the fact that other people made disclosures;
  - b. he has not alleged that any disclosure was the principal reason for his dismissal; and
  - c. the balance of prejudice was against allowing the application, applying the factors in **Selkent Bus Company v Moore 1996 ICR 836**, particularly the application of time limits and the fact that it was reasonably practicable for him to have made such a complaint in time.

Employment Judge Fowell

Date 3 February 2022

Judgment sent to parties: 3 February 2022

FOR THE TRIBUNAL OFFICE

Note: Full reasons for the decision having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.