



EMPLOYMENT TRIBUNALS

Claimant: Ms Rita Mehta
Respondent: Lowell Financial Ltd
Heard by: CVP **On:** 1 March 2021
Before: Employment Judge Wedderspoon

Representation

Claimant: In person
Respondent: Miss Gould, Counsel

RESERVED JUDGMENT ON PRELIMINARY HEARING

1. It was reasonably practicable to bring the complaint of unfair dismissal within time. The claim is brought out of time and is dismissed.
2. It is not just and equitable to extend time for the discrimination claim. There is no jurisdiction to hear this claim and it is dismissed.

REASONS

1. Pursuant to the order of Employment Judge Buckley on 5 November 2020, this preliminary hearing was arranged to determine whether the claimant's claims of unfair dismissal and discrimination had been brought in time, whether discriminatory conduct had extended over a period and whether the claimant had a disability at the relevant time pursuant to section 6 of the Equality Act 2010.
2. At the outset of the hearing, the respondent conceded that the claimant did have a disability at the relevant time (from January 2016) namely a physical impairment hip dysplasia/osteoporosis/arthritis. In addition, the respondent did not seek an adjudication on whether the acts of discrimination formed a continuing act, noting that in the Court of Appeal decision of **Hendricks v Metropolitan Police Commissioner (2002) EWCA Civ 1686**, such issues should be determined at a final hearing. The respondent submitted that as the claimant complained about a discriminatory dismissal and/or unfair dismissal since the claims were brought outside of the primary limitation period it was unnecessary for the Tribunal to determine whether there were continuing acts at the preliminary hearing. The Tribunal agreed with this approach.
3. The claimant also raised a proposed amendment to her claim. She sought to allege that the grievance process was discriminatory. Her grievance was dealt with in February 2019 prior to her resignation on 2 March 2020. The claimant had not provided a draft proposed amendment. The Tribunal having determined it was unnecessary to adjudicate on whether there were continuing acts of discrimination, invited the claimant to detail her proposed amendment and send to the respondent and tribunal if the case proceeded beyond the preliminary hearing.
4. At the commencement of the hearing it became apparent there was not an agreed bundle of documents. The Tribunal had been provided with a bundle from the respondent of 335 pages but the claimant had sent in an additional bundle of documents the Friday before the Monday hearing. On the basis that the respondent was able to deal with the additional bundle and to avoid delay, the hearing proceeded with the use of both bundles. The claimant had provided a detailed 23 page witness statement. However, the Tribunal was mindful that the claimant was a litigant in person and in the circumstances the Tribunal provided the claimant with an opportunity to emphasise the points she relied upon and the documents she relied upon. Following the claimant's evidence, the respondent was given time to take further instructions. The claimant was subject to a detailed and thorough cross examination by Miss. Gould of Counsel.

Facts

5. From November 2006 the claimant was employed by the respondent as a collections team leader. The respondent is part of the Lowell group of companies which acquires debt from different companies and acts as a debt collection manager. She lodged a grievance in October 2019. She entered ACAS conciliation on 15 January 2020 and was issued an ACAS certificate on

15 February 2020. The claimant resigned her employment on 2 March 2020 on the basis that the respondent was in repudiatory breach of the implied term and trust and confidence and her dismissal was discriminatory. The claimant issued her claim on 27 July 2020. Her claim details her representative as Mr. Gulati of the CWU trade union. In her claim the claimant complains about being subject to a disciplinary investigation because of her disability related absence and alleges there was a failure to make reasonable adjustments; that she had been subject to victimisation and harassment. The claimant should have issued her claim by 1 June 2020 and instead issued it 57 days out of time.

6. The claimant was a member of a trade union and was assisted throughout her employment by a trade union representative, Mr. Gulati. The claimant's evidence is that she submitted her claim late due to her poor mental health and the poor advice she received from her trade union representative namely she alleges she was informed she had six months from her dismissal to submit her claim.
7. Mr. Gulati assisted the claimant in amending her written grievance which was submitted on 11 October 2019. A grievance hearing took place on 15 November 2019 which Mr. Gulati attended with the claimant. An outcome was provided to the claimant, rejecting her grievance on 16 December 2019. The claimant appealed her grievance on 7 January 2020. A grievance hearing took place on 28 January 2020. The grievance outcome was provided by letter dated 18 February 2020; her appeal was not upheld. The claimant resigned on 2 March 2020 alleging discriminatory treatment and breaches of contract. The claimant relied upon the rejection of her grievance appeal as the last straw. Following her resignation, the claimant emailed Mr. Gulati on 6 August 2020 to inform him that she had resigned and submitted her Tribunal claim.
8. In terms of the claimant's health, the claimant stated she had been off sick in October 2018 following a hip replacement. She was on a lot of medication. On 2 March 2020 the claimant was awaiting CBT. She had benefitted from group therapy in November 2019. She was suffering from low mood and depression. She was not sleeping and was relying heavily on her parents. Her first course of CBT started at the end of July 2020 when the claimant described putting her life together. By 27 July 2020, the claimant felt mentally able to issue her claim. Her family did not want the claimant to put in a claim because of the effect it could have on the claimant's mental health.
9. In her evidence the claimant relied upon a letter dated 25 September 2019 from the My Well Being College about the claimant's attendance at a group stress control course for five weeks from 8 October 2019. The claimant relied upon a number of fit notes dated 26 September 2019, 29 November 2019, 4 February 2020, 2 March 2020, which indicated she was unfit for work due to work related stress /stress and/or she was starting or waiting for CBT. On 4 March 2020 the My Well Being College wrote to the claimant to arrange 1 2 1 CBT sessions for 10 March 2020. The claimant was provisionally diagnosed with a generalised anxiety state and underwent 12 sessions. She underwent CBT sessions 9 November 2020 to 11 January 2021 (see My Well Being College letter dated 11 January 2021).

10. The claimant's G.P.'s letter dated 15 December 2020 referred to the claimant being down and depressed with anxiety and being fearful about further dislocations. The claimant initially raised with her G.P. on 13 September 2019 her mental distress because of "*insufficient support at work*". She informed her G.P. on 17 November 2020 she had resigned in March 2020 on the basis of a lack of support and understanding from her workplace, lack of adjustments and being pressurised to return to work despite ill health. The claimant was signed off sick from work from 16 October 2018 to 29 September 2019 because of her right hip replacement and multiple hip dislocations of her right hip prosthesis. From 26 September 2019 to 14 March 2020 received fit notes for "work related stress symptoms".
11. The claimant relied upon her sick notes in the bundle of documents from pages 298 and 353 and referred to several specific entries. At page 342, on 13 September 2019, she was described in the notes as ventilating her thoughts and worries about her work place/management decisions. She was described as experiencing disturbed sleep due to worries and stress about her job. On 26 September 2019 (page 343) the claimant was diagnosed with work related stress. She described work was "stressing" and she was trying to manage her sickness; she felt "very anxious and going to attend CBT".
12. On 16 October 2019, the claimant was prescribed 50 mg tablets (two at night; 100mg) of amitriptyline (an anti-depressant) along with pain medication. On 24 November 2019 the claimant continued to take 100 mg at night of amitriptyline and her pain medication. On 29 November 2019 during a consultation with her G.P. the claimant described work issues and ongoing hip problems. She said she was unable to work; was having CBT. At this point the claimant was prescribed sertraline (an antidepressant) 50 mg (1 tablet per day). Her evidence is that this medication was seen as an alternative to amitriptyline. At the request of the claimant her anti-depressant medication was changed back to amitriptyline on 19 December 2019 (page 345). On 31 December 2019 the claimant was suffering with symptoms in her hands and sertraline was reissued. On 7 February 2020 her medication was changed again to amitriptyline (100 mg). The claimant continued to be prescribed this medication to the end of March 2021 when she says she continued to suffer low mood anxiety.
13. The claimant also referred to her therapy notes. On 5 March 2020 the claimant was booked on 6 sessions of CBT treatment via the My Well Being college. On 10 March 2020 at her first session of CBT she described since her diagnosis she has not found support from her employer and that no reasonable adjustments were made. Her confidence was affected and her parents were looking after her. She looked after her uncle only. She was not sleeping and was unable to go cycling. Due to the claimant's concern about the pandemic she was unable to attend a session on 17 March 2020. She declined a telephone treatment session on the day because she was looking after her sick uncle. She requested the next session be by telephone. On 24 March 2020 the claimant was concerned about Covid and her father, who was a key worker, who may bring the virus home. On 1 April 2020, the claimant discussed what she could and could not control. Her P45 arrived the day before and she wished to cut ties on social media with people from work. She was mindful of things she could not do physically and Covid and the use of avoidance strategies. On 28 April 2020 at the claimant's CBT session

she complained how the builder at the house was not doing the required job. She described feeling worse and ruminating on the worries from her former employer. On 9 June 2020 at the claimant's ninth CBT session, the claimant complained that everything was getting on top of her and that she was burying her head in the sand. Her uncle's health was deteriorating. Her arthritis symptoms had flared up and she felt very fed up. She described feeling helpless and felt she had no purpose. At session 10 of CBT treatment on 16 June 2020 the claimant described doing some mindfulness and prioritising her sleep. She described that not working was a big factor of where she was at currently. She was thinking about being at work and how it would look in a post lockdown world. She had weaned herself off caffeine. She was smiling at the end of her appointment. On 7 July 2020 (page 302) the claimant stated that she is overcompensating for her anxieties but she could be worrying her parents if they thought she was struggling internally and so she did too much as to not give off the impression that she is struggling. She was about to enrol on some support groups.

14. The claimant referred to her additional bundle and document number 27 which related to the grievance she lodged with her employer in the latter part of 2019. She told the Tribunal her grievance was lodged by herself with trade union advice. She described being off work from 1 January 2020 until her resignation in March 2020.
15. Under cross examination the claimant was asked about paragraph 25 of her witness statement where she said "*..had they (the union) told me that I needed to submit the ET1 within 3 months back in March 2020 I would not be in this position.*" The claimant was asked whether if this was the case she would have lodged her claim despite her health issues. The claimant stated that she would have been able to lodge her ET1 with help from her trade union because she needed assistance. She relied upon her trade union representative's advice. The claimant said she was told by her trade union representative that she had 6 months to issue her claim when she had contact with him. When she informed her trade union representative in August 2020 she had lodged her claim he did not tell her she was out of time. The trade union then assessed her case. Her trade union representative assisted her with ACAS conciliation in January/February 2020. She did not ask her trade union representative with assistance to issue a claim in March 2020. He was a qualified and experienced trade union representative. She did not consider that the ACAS certificate was for the purpose of bringing a tribunal claim; at the time she was going through an appeal process at work. The claimant was notified her grievance appeal was unsuccessful by letter dated 18 February 2020. She stated her trade union representative had told her to contact ACAS and she relied upon his advice. She expected her employer to investigate her grievance thoroughly but they did not. When she contacted ACAS she did so for mixed reasons namely to resign and to investigate her grievance. The claimant was inconsistent in her evidence as to whether she spoke to her trade union representative before resigning her employment; initially on questioning she stated she believed it was likely she spoke to her trade union representative about resigning before doing so. She later stated she did not speak to her trade union representative before resigning. She then changed her evidence again and stated she did speak to Mr. Gulati stating that was where her mental health was at the time. The Tribunal concluded that the claimant was evasive about this issue. She was asked about any

discussions with Mr. Gulati about constructive unfair dismissal and bringing a claim. The claimant stated “potentially”. The claimant asserted that she discussed with Mr. Gulati going to the tribunal to bring a claim one week after she resigned. She had text/email contact with Mr. Gulati; she had been informed that she had 6 months to bring a claim. This material had not been disclosed by the claimant. The Tribunal found this evidence unsatisfactory. In respect of contact with her trade union prior to the preliminary hearing, the claimant stated that the trade union had provided assistance to her with her witness statement and she had also done some research. She had texted Mr. Gulati to tell him he gave her wrong advice about the time limit to bring a claim but he did not reply. This text was not disclosed. The claimant stated she had been assisted by another trade union representative and she has told them about the wrong advice she received. Mr. Gulati has not denied that he gave the claimant incorrect advice about time limits. She requested him to give her a witness statement for this preliminary hearing on 15 February 2020 but he did not reply. She stated she asked him to provide a statement outside the time to exchange of statements (4 February) because she suffered a dislocation in December 2020. She said she was trying to recuperate whilst keeping up with the case management orders of the tribunal. The claimant stated she did not misunderstand advice given by Mr. Gulati; he had told her she had a 6 month time limit. Following telling Mr. Gulati at the beginning of August she had submitted a claim, she continued to speak to him and he did not alert her to the fact it was out of time. The Trade Union has continued to assist her in this case.

16. Under cross examination, the claimant refuted that she had simply changed her mind about bringing a claim. As soon as she felt mentally well enough, she submitted her claim. The claimant stated that her grievance was the basis of her ET1 and Mr. Gulati has assisted her with her grievance. In respect of paragraph 9 of her ET1 which referred to terms such as “fundamental and anticipatory breach of contract and waiver”, the claimant accepted they were legal terms she said they were taken from her grievance documentation. Similarly, the doctrine of “last straw/waiver” she said she used because she was advised by friends, Mr. Gulati and from her own research online. The claimant stated she copied and pasted her resignation letter into the claim form and said she had advice from Mr. Gulati and people she knows but her memory was hazy about this. In respect of her resignation letter, the claimant said she copied in “mm solicitors” because her sister is an expert criminal law partner at that firm and was notifying her sister she had finally resigned. Her sister has no knowledge about employment law. Instead, the claimant asked her brother in law’s friend to assist her. He is not a solicitor and has no legal experience. When asked why she asked her brother’s friend to assist who is a non-lawyer as opposed to her legally qualified sister, the claimant stated that it was important to feel comfortable and its who she “wanted to confide in at that time”. She said she connected with people who can help her. When asked why she copied in her sister, a lawyer about her resignation why she did not ask her to assist her with her witness statement for the Tribunal the claimant stated she had assistance from her brother’s friend and trade union. The Tribunal found the claimant’ evidence to be inconsistent and incredible. The claimant was further asked about the help she received from family members. She then stated she had received some assistance from her sister but she spoke to people she feels comfortable with and its sometimes ok not to speak to her sister. In respect of any change in language from the ET1 form and the reference

to the last straw doctrine the claimant stated she discussed this with Mr. Gulati. Fundamentally the claimant's evidence was inconsistent.

17. In respect of medication, the claimant stated that from the time of resignation she remained on either amitriptyline or sertraline. The claimant stated that her medication dosage did increase because she took 100 mg of amitriptyline from 14 April 2020 because she was not sleeping. The Tribunal noted that the claimant had previously been prescribed 50 mg of sertraline in November 2019 and this was swapped to 100mg of amitriptyline on 19 December 2019. This was then replaced by 50mg of sertraline on 31 December 2019. On 28 February 2020 the claimant was prescribed 100mg of amitriptyline. The claimant was prescribed 100 mg of amitriptyline on 31 March 2020. By 29 July 2020 the claimant's medication dosage of amitriptyline decreased to 50mg. The claimant was asked about the reference in her G.P. letter to leaving work; she had told her G.P. in November 2020 about leaving in March 2020. The claimant responded that she asked the G.P. to write the letter and they were aware of her medical needs. The Tribunal was not clear from this evidence why the claimant has not discussed her resignation at the time with her G.P. From 2 March 2020 until 27 July 2020 the claimant did not suffer any dislocations. On 26 May 2020 she was to discuss coming off her medication with her G.P. but she stated that she was in her bedroom all the time; had a routine and was putting her life together and attending to household chores and was putting her life back on track.
18. The claimant had a computer and access to the internet for research. She did not do any research to submit her ET1. This was inconsistent with her previous evidence. The claimant stated that Mr. Gulati, the trade union representative advised the claimant where to put the ET1 form. The claimant stated she put in her ET1 when she was mentally prepared. She also stated she was waiting for the respondent to provide her with information so that she could add specifics into her ET1. She did not seek any further advice about the time limit.; she relied upon her trade union representative who told her she had 6 months to issue proceedings. The claimant requested documents referred to an email dated 13 February 2020 between the health and safety administrator and Mr. Hayhurst of the respondent concerning equipment to be provided to the claimant in 2018/2019. The claimant also stated she sought in an email dated 8 November 2019 the grievance policy, copies of her 1 2 1s, all occupational health reports, her CD recording and notes in relation to her absence meeting and all call recordings from 5 April 2019, correspondence between herself and Graeme Whitehead and between herself and HR Anne Lundy. Further the claimant requested further documents at her grievance appeal hearing which was the third occasion when she sought documents. Her grievance was not investigated by the respondent.
19. In respect of her email dated 8 November 2019 to the respondent requesting documents, the claimant had copied in her sister's solicitor's firm's email. She said she did not know why she did that but she thought it was because she was informing her that she was raising a grievance. In addition, on 5 December 2019 the claimant had forwarded a copy of her fit note to the respondent and copied in her sister's solicitors' firm. The claimant stated she copied in her sister in case she did a typo. The claimant said her solicitor did not have any employment law expertise; she was a specialist in criminal law. She believed she may have copied

her into the earlier correspondence dated 8 November 2019 when she “replied to all”.

20. The claimant stated that Mr. Gulati did not tell her she was out of time. She was assisted by her trade union at the last preliminary hearing. She was unaware Mr. Gulati’s advice was wrong.

Submissions

21. The respondent submitted that the claimant’s claim has been nearly 2 months out of time. The claimant could not rely upon any additional time via the ACAS conciliation process because she entered ACAS conciliation prior to her resignation. There was a significant period of delay. The respondent submitted that although the claimant had emphasised her health as a reason for lateness, she had accepted at paragraph 25 of her witness statement that had she been aware of the three month time limit “*I would not be in this position.*” The respondent submitted that the claimant was physically/mentally able to submit her claim in time. Further the respondent submitted that the claimant asserted that an experienced trade union representative told her the limitation period was 6 months; this was a serious allegation to make but it was a mere assertion. There did not appear to be any emails in respect of this. The respondent submitted that the advice given to her by her trade union representative was by telephone. The claimant says she received text messages from her representative about time limits but these have not been disclosed. It was highly unlikely that the claimant would have been given such negligent advice from a trade union representative and this is not a position the Tribunal should accept in the absence of direct evidence.
22. The claimant is representing herself and is no longer represented by the CWU. The respondent submitted in the circumstances it is more than likely that the claimant misunderstood what she was told. It is highly unlikely she would be given such advice. It was unusual and a bold assertion. It is far more likely that the claimant was not told she had 6 months to make a claim; she changed her mind to issue proceedings. She had ample opportunity to research her case and she had support from her solicitor sister and friends. Her misunderstanding about time limits was neither reasonable nor was it just and equitable to extend time.
23. It is noteworthy that the claimant’s sister who was copied into correspondence is a solicitor registered with the Law Society as a criminal law specialist. There has been a lack of detail provided by the claimant from 2 March 2020 to 23 July 2020 about finding out details about time limits. It is more than likely the claimant decided not to bring a claim and then later changed her mind out of time. There is nothing in the claim form which would indicate the claimant needed to see her 1 2 1 document to particularise her claim or articulate the reasons for her resignation in the ET1.
24. The respondent submitted that the ET1 was filled in and included the claimant’s trade union details (see page 12). It is highly likely the claimant was receiving assistance. In respect of her witness statement, the claimant says it was prepared with the assistance of others but what is not clear is what assistance she had at

the time of lodging her claim so that the tribunal can properly exercise its discretion and find it is just and equitable to extend time.

25. The respondent submitted that it did not accept that the claimant was told she had a 6 month limitation period. The claimant's evidence that she sought a witness statement from the CWU on 18 February 2020 for the Preliminary Hearing was unsatisfactory. She waited until, after the deadline to prepare her witness statement. This indicates that the claimant is untruthful when she says she was told she had 6 months to issue her claim or the claimant misunderstood. There is a general lack of evidence.
26. In respect of the claimant's medical information, the claimant was prescribed the same medication from September 2019 to date. There was an increase in medication from end of March to July when the dosage was increased. During the first month medication was increased. She did not recount problems about her resignation to her G.P. as a reason for the increase in medication. Amitriptyline and Sertraline have been continually swapped over this period. There is no suggestion that the claimant required extra medication because of the E.T. process. The respondent submitted that the claimant's presentation at the hearing indicated that the claimant is able to deal with the E.T. process over a lengthy cross examination. The claimant was able to go through a lengthy grievance and appeal process as well. The claimant was on medication throughout these processes. CBT taught the claimant coping mechanisms and she showed improvement to her mental health.
27. The respondent referred the Tribunal to the case of **Adedeji v University Hospital Birmingham NHS Foundation Trust (2021) EWCA Civ 23** and in particular to paragraph 37 where Lord Justice Underhill considered the exercise of discretion to extend time for an out of date claim and the application of the Keeble case. He stated
28. *"...rigid adherence to a checklist can lead to a mechanistic approach as to what is meant to be a very broad general 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.. "the length of and the reasons for the delay." If it checks those factors against the list in Keeble well and good; but I would not recommend it as the framework for its thinking."*
29. Miss. Gould on behalf of the respondent submitted that the length of delay was significant here. The claimant had not established the reason has been for the delay. Her evidence contained in her witness statement was that she could have put her claim in on time. There was no evidence adduced that there was a genuine reason for delay. The claimant was unable to say why she had copied her sister into her grievance emails or her resignation. Taking account that the claimant seeks to pursue historical matters dating back to April 2016 the length of delay here is more important. She submitted her ACAS certificate. She simply changed her mind which is not a good reason and does not make it just and equitable basis. There is no evidence to establish it was not reasonably practicable for the claimant to have submitted her claim in time or in a reasonable period. The medical evidence does not assist the claimant. It took the claimant until November 2020 to inform her doctor she resigned in March 2020. If the claimant's work/resignation had such an impact on her mental health it is

surprising this was not mentioned at the time. There is no deterioration in mental health noted and there is no evidence to suggest her mental health was so severe she could not present a claim. The CBT records indicate improvement on 1 June and there is no explanation why the claimant failed to submit her claim until 27 July 2020. The claimant could not reasonably expect any further documents from the respondent after the grievance process. There was no jurisdiction to hear the claimant's claim.

30. Miss. Mehta submitted that she had emails from Mr. Gulati and the CWU branch and text messages and calls she spoke about the time limit with Mr. Gulati who told her she has 6 months to submit her claim. Her trade union assessed her case in December 2020 and decided at that point they would not support her. The claimant submitted she had not misunderstood the time limits. M and M solicitors her sister's firm were copied into correspondence merely because she pressed "reply to all". The claimant submitted that she did not check Mr. Gulati's advice because she trusted his advice so did not check the time limits herself. A contributory factor to late issue of proceedings was the lack of documents she had requested from the respondent. She submitted she would have discussed the ET1 with Mr. Gulati over the telephone. She prepared her bundle for the preliminary hearing but in December 2020 she had a second hip replacement and she needed to recuperate mentally after this. The claimant said she had further evidence on her telephone. Her medication was increased for codeine and tramadol. She spoke to her doctor on 17 November 2020 about the history of what had been going on. She did not need a sick note from her doctor. She was unable to have a face to face meeting with her doctor. The claimant did engage in the appeal process with the support of her trade union but required regular breaks because of her medical condition. The claimant said she had good days and bad days. The delay for putting in her claim was that she had received advice from Mr. Gulati that she had 6 months to bring her claim and submitted the ET1 when she felt mentally ready to do so. The trade union representative gave wrong advice. The claimant was still undergoing CBT therapy. The claimant relied upon four factors (1) incorrect advice from her trade union (2) medication increase (3) mental well-being and (4) hip replacements and dislocations. The claimant emphasised that COVID had affected her outlook. She had been trying the best she could. She lacked concentration due to the state of her mental health. She was a complete mess and on pain medication. It was a combination of all these factors that prevented her from submitting her claim in time.

The Law

31. Pursuant to section 111 of the Employment Rights Act 1996 a claim for unfair dismissal must be brought 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.
32. It is for the claimant to prove that it was not reasonably practicable to bring the claim in time and it is a question of fact for the tribunal to decide. "Reasonably practicable" has been defined as "reasonable feasible" (**Palmer and Saunders v Southend on Sea Borough Council (1984) IRLR 119**). Lord Justice May in

the **Palmer** case suggested a number of factors should be considered namely (a)the manner and the reason for the dismissal including any appeal procedure (b)the substantial cause of the employee's failure to comply with the statutory time limit (c)whether the claimant knew he had the right to complain that he had been unfairly dismissed (d)whether there had been any misrepresentation about any relevant matter by the employer to the employee and (e) whether the employee was advised at any material time and if so by whom; the extent of the adviser's knowledge of the facts of the case and the advice given to the employee. In the case of **Dedman v British Building and Engineering Appliances Limited (1973) IRLR 379** it was held that "if a man engages skilled advisers to act for him and they mistake the limit and present it too late- he is out. His remedy is against them. The Court of Appeal held the Tribunal should enquire into the circumstances and ask themselves whether the claimant or her advisers were at fault in allowing the time period to pass by without presenting the complaint. If either were at fault then it could not be said to have been impracticable for the complaint to have been presented in time. Skilled advisers can include trade union representatives and voluntary advisers such as CAB worker. Whether illness is sufficient to make it not reasonably practicable to submit the claim in time will be determined based on the facts of the case (including any available medical evidence). If a tribunal is satisfied that it was not reasonably practicable to present a claim within the time limit, it must then go on to consider whether the claim was presented "within such further period as the tribunal considers reasonable." How much time that equates to is for the tribunal to decide and will depend on the circumstances of each case.

33. Pursuant to section 123 (1) of the Equality Act 2010 a discrimination claim may not be brought after the end of the period of 3 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. The claimant has the burden of establishing it is just and equitable to extend time. This discretion provides a broader discretion than the reasonably practicable test for unfair dismissal. In **Chohan v Derby Law Centre (2004) IRLR 685** the EAT allowed an out of time claim to proceed where the solicitors had provided incorrect advice and because of the claimant's legal experience. In the case of **Robertson v Bexley Community Centre (2003) IRLR 434** the Court of Appeal held there is no presumption that a Tribunal should exercise its discretion to extend time. In **Abertawe Bro Morgannwg University Local Health Board v Morgan (2018) ICR 1194** the Court of Appeal held the just and equitable discretion is the widest possible; there is no prescribed list of factors. However, factors which are almost always relevant to consider are (a)the length of and reasons for delay and (b)whether the delay has prejudiced the respondent and there was no requirement that the tribunal had to be satisfied that there was a good reason for the delay before it could conclude that it was just and equitable to extend time in the claimant's favour. In the recent case of **Adedeji v University Hospital Birmingham NHS Foundation (2021) EWCA Civ 23** the Court of Appeal emphasised the wide discretion under the Equality Act 2010 to consider whether to allow in a claim out of time but the relevance of the Keeble factors depends on the facts of the particular case.

34. The tribunal takes account of the Presidential Guidance on Case management and the overriding objective, rule 2 of the rules; this means the Tribunal must deal with cases fairly and justly when interpreting and exercising its powers under the

Rules. This includes (a) ensures that the parties are on an equal footing; (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues; (c) avoiding unnecessary formality and seeking flexibility in the proceedings; (d) avoiding delay so far as compatible with proper consideration of the issues; and (e) saving expense.

35. Further, the Equal Treatment Bench Book notes that Litigants in Person may make basic errors in the preparation of cases including overlooking limitation periods and not understanding the law (see Chapter 1 page 14). I take these matters into account.

Conclusions

36. The claimant is unable to take advantage of an extension of time via the ACAS conciliation process because this was completed prior to the claimant resigning (see the case of **The Commissioners for HM Revenue & Customs UKEAT/0348/16**). The starting point is that the claimant has the burden of persuading the Tribunal that it was not reasonably practicable for her to have issued her unfair claim within time and in respect of her discrimination claim that it is just and equitable to extend time. Overall, the Tribunal found the claimant's evidence to be unsatisfactory and at times, inconsistent. In the course of her evidence the claimant informed the Tribunal she considered the ACAS certificate was related in some way to the internal grievance process she was involved in at work, she did not view it as a first step to issuing proceedings. This is despite the fact that the claimant had been advised to contact ACAS by her trade union representative and actually contacted ACAS herself and had seen the certificate which expressly states "*This certificate is to confirm that the prospective claimant has complied with the requirement under the ETA 1996 s.18A to contact ACS before instituting proceedings in the Employment Tribunal. Please keep the certificate securely as you will need to quote the reference number exactly as it appears above in any Employment Tribunal application concerning this matter.*". The Tribunal was not persuaded by the claimant's evidence about the involvement of her sister or her sisters' firm or brother in law's friend. The claimant stated she was assisted by Mr. Gulati in the grievance process; including the lodging of the grievance and the hearing and appeal grievance hearing. However, the claimant copied her sister's solicitor's firm, (the claimant's solicitor is a criminal law specialist) into correspondence about her grievance and her resignation. The claimant's explanation about this was it was simply to let her know what she was doing does not appear credible particularly taken together with her evidence that her brother's friend (who is not a lawyer) assisted her in the preparation of a witness statement for the preliminary hearing. The tribunal did not find it credible that the claimant was working with her brother's friend on a witness statement who had no legal knowledge (and not her legally trained sister) because she felt comfortable asking him to do so but copied her sister into correspondence about her resignation. The Tribunal was not satisfied the claimant's sister was simply copied into correspondence when she pressed "reply to all".
37. The claimant has made a serious allegation that she received inaccurate advice from her trade union representative. The claimant stated she had this information in emails and texts but none of which was disclosed, despite the fact the claimant

prepared an additional bundle of documentation for the Tribunal's use. This is more concerning by the claimant's lack of expedience to secure a statement from Mr. Gulati. Employment Judge Buckley gave clear directions on 5 November 2020 as to when witness statements should be exchanged for the purposes of the preliminary hearing. The claimant did not seek to obtain a witness statement from Mr. Gulati until after the date of exchange of witness statements. This delay is not explained by a review of her hip replacement a month later in December 2020. The trade union she says are aware that she was misinformed about limitation periods and she had their support at the Preliminary Hearing on 2 December 2020; they have since assessed her case and no longer support her in bringing the claim. The sending of the receipt of the lodged ET1 claim to her trade union representative on 6 August 2020, outside the limitation period, was not satisfactorily explained by the claimant. The Tribunal reached the conclusion on the balance of probabilities that the claimant did not receive inaccurate advice about time limits from Mr. Gulati and in fact was receiving legal support from her sister's firm as well as her brother's friend. The resignation letter and the claim form referred to legalistic terms which the claimant more than likely obtained from her trade union representative and/or other adviser. In all the circumstance the Tribunal were not persuaded that the claimant received inaccurate advice from her trade union.

38. The claimant sought to suggest she required further documentation from the respondent to submit her claim in time. This point did not sit easily in the context of the claimant's evidence that she did not submit her claim in time because she was unaware of correct time limits and the fact that she copied material from her detailed grievance into the claim form. Insofar this point is put forward, the Tribunal note that by the grievance appeal hearing on asking for the third time she had not obtained the information she had requested; the claim form is detailed and the Tribunal do not see this is a matter which impeded the claimant from pursuing a claim against the respondent.
39. For the period from March 2020 to July 2020 the claimant continued to take medication for her physical impairments. The claimant conceded she did not have surgery during this period. In the circumstances the Tribunal does not consider the fact that the claimant had a hip replacement/dislocations historically assists the Tribunal in the exercise of its discretion.
40. The claimant also relies upon the fact she had increased medication during the period of March 2020 to July 2020 and her mental well-being. The Tribunal takes account of the fact that the claimant was undergoing treatment for stress via a group mental health therapy programme from the autumn of 2019 and then individual CBT therapy treatment from 2020. The claimant was also taking anti-depressant medication. The dosage of the claimant's medication increased from end March 2020 until July 2020. This may well indicate an increase in symptoms. The G.P. letter dated 15 September 2020 has not provided the Tribunal with a great deal of assistance because it fails to provide any guidance as to the state of mind of the claimant between March to July 2020 and whether in fact the claimant was able to engage in the Tribunal process. The letter sets out a history of the claimant's medical treatment for physical impairment and the fact that in December 2020 she required a revision of her hip replacement. The claimant's therapy notes on 26 May 2020 indicate she was considering discussing coming

off medication with her G.P. because she felt rewarded and had put changes in place to help her and her family's wellbeing. However, by 9 June 2020 the claimant described "everything was getting on top of her". Taking this into account and the fact that the claimant's anti-depressant medication was increased from March to July 2020, the Tribunal concludes that the claimant's description of her mental health as having good and bad days is accurate.

41. At the hearing, the claimant presented as an articulate and intelligent person who had access to the internet and the ability to undertake research.
42. The Tribunal having concluded that the claimant was not misinformed about the primary limitation period, the claimant cannot pray in aid this reason to establish it was not reasonably practicable to issue her claim in time. The Tribunal notes that the claimant had the support of her legally qualified sister and assistance from her brother's friend. Furthermore, the alleged lack of documentation from the respondent did not make it not reasonably feasible to have issued her claim in time. In respect of the increase in the claimant's medication and her mental well-being, the Tribunal finds that the claimant tended to have good and bad days (as she told the Tribunal) in respect of her health throughout March to July 2020. There is no direct medical evidence that establishes the claimant could not have engaged in the Tribunal process or that issuing a claim in this period was not reasonably feasible. The Tribunal notes the increase in medication for this discrete period but also notes that in June the claimant was considering coming off medication.
43. The Tribunal concluded on the balance of probabilities that it was reasonably practicable for the claimant to have issued her claim in time. The Tribunal notes that the claimant asserted that her family did not want her to issue her claim because of the effect it may have on her mental health. On the balance of probabilities the tribunal finds that the claimant changed her mind to issue a claim and did so out of time. This would most likely fit with the revelation to inform her trade union adviser in the absence of any other disclosed communication with him in August. she had issued the claim. This scenario does not support a finding that it was not reasonably practicable.
44. The just and equitable discretion is a wide discretion. The Tribunal takes account following **Abertawe** that it is not a pre-requisite to obtain an extension of time to have a good reason for delay. Following the case of **Adedji**, the reason for delay is a matter to be take account of. However, the delay in this case is significant; it amounts to nearly two calendar months. Length of delay here is very relevant because the claimant seeks to rely upon historical matters dating back to 2016. Cogency of evidence generally speaking is affected by delay. The Tribunal having reached the conclusion that the claimant changed her mind to issue proceedings, factors this in with the other circumstances. There is no dispute that the claimant did suffer from mental health issues from 2019. The claimant required time off work with stress. She engaged in group therapy in 2019 whilst she continued to wait for a course CBT in 2020. The claimant requested an increase in dosage of anti-depressants in March 2020. The claimant's health showed improvement by end of May 2020 when she considered coming off medication and then took a dip for a short period in June 2020. The Tribunal accepts the claimant's evidence that she had good and bad days. She was able

to reduce the dosage of medication by July 2020. There is no direct medical evidence to establish that the claimant was unable to engage with the Tribunal process from March 2020 to June 2020. The medical history notes that the claimant continued to care for her uncle throughout this period and engaged with builders doing building work at the home. The claimant has been vague about the support she had available over this period but the Tribunal finds the claimant had received the benefit of trade union advice throughout her employment, she continued to receive her sister's support who is a solicitor and her brother's friend. The claimant had access to a computer and was capable of conducting research into the legal process of bringing a claim. The Tribunal concludes taking all these matters into account changing your mind to issue a claim and delaying for such a long period when assistance and support was available, it is not just and equitable to extend time.

Employment Judge Wedderspoon

Date

RESERVED JUDGMENT & REASONS SENT TO
THE PARTIES ON

DATE 1 March

FOR EMPLOYMENT TRIBUNALS

Date 18 March 2021

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.