



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000471/2023

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Held via Cloud Video Platform (CVP) in Glasgow on 23 January 2024

Employment Judge M Kearns

10 **Mr J Robertson**

**Claimant
In Person**

Optosafe Limited

**Respondent
Represented by:
Mr G Dunlop -
Advocate**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal was that the claimant's claims are time barred and the Employment Tribunal does not have jurisdiction to hear them.

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REASONS

1. The claimant was employed by the respondent from October 2017 until his resignation took effect on or about 4 June 2021. The claimant had until midnight on 3 September 2021 to notify ACAS of his claims under the early conciliation rules. On 12 September 2023, more than 2 years after this deadline, the claimant made an early conciliation notification to ACAS. The claimant thereafter presented an application to the Employment Tribunal on 14 September 2023 in which he makes claims of discrimination, detriment and/or dismissal on grounds of having made a protected disclosure and constructive unfair dismissal.
2. On or around 3 June 2021, the claimant entered into a settlement agreement with the respondent in relation to the termination of his employment.

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Issues

3. Today's Preliminary Hearing was fixed to determine the following issues:

“Whether the Employment Tribunal has jurisdiction to consider the claim in circumstances where –

- a. *The parties have entered into a settlement agreement; and*
- b. *The claim appears to have been presented outside the applicable statutory time period.”*

Evidence

4. The claimant gave evidence on his own behalf. The respondent lodged a bundle of documents which are referred to by page number.

Findings in Fact

5. The following material facts were admitted or found to be proved:-
6. The claimant was employed by the respondent from October 2017 until his resignation took effect on or about 4 June 2021. For part of that time he was the respondent’s managing director. On or about 28 September 2020, the claimant had a serious motorcycle accident. He had to have his shoulder re-set thereafter. He required to take morphine for pain management and was off work for two months following the accident. He returned to work as managing director of the respondent towards the end of 2020 and thereafter became their legal director.
7. On or around 25 March 2021, the claimant tendered his resignation to the respondent on notice. His resignation was accepted on 7 April 2021 and the claimant went on ‘garden leave’ until his employment terminated on 4 June 2021. On 3 June 2021, the claimant entered into a settlement agreement with the respondent in relation to the termination of his employment. The claimant was referred to in the agreement as (“Employee/ you”) and the respondent as (“Company/ we/ us”). Paragraphs A and B of the settlement agreement provided as follows:

“A Your employment with us shall terminate on 4 June 2021 (Termination Date). The parties have entered into this Deed to record and implement the terms on which they have agreed to settle any claims

that you have or may have in connection with your employment or its termination or otherwise against any Group Company (as defined below) or their officers, employees or workers, whether or not those claims are, or could be, in the contemplation of the parties at the time of signing this Deed, and including, in particular, the statutory complaints that you raise in this Deed.

B The parties intend this Deed to be an effective waiver of any such claims and to satisfy the conditions relating to settlement agreements in the relevant legislation.”

10 8. Paragraph 5 of the settlement agreement is in the following terms:

“5 *Waiver of claims*

5.1 *You agree that the terms of this Deed are offered by us without any admission of liability on our part and are in full and final settlement of all and any claims or rights of action that you have or may have against any Group Company or its officers, employees or workers arising out of your employment with us or its termination, whether under common law, contract, statute or otherwise, whether such claims are, or could be, known to the parties or in their contemplation at the date of this Deed in any jurisdiction and including, but not limited to, the claims specified in Schedule 1 (each of which is waived by this clause).*

5.2 *The waiver in clause 5.1 shall not apply to the following:*

5.2.1 *any claims by you to enforce this Deed;*

5.2.2 *claims in respect of personal injury (other than claims under discrimination legislation); and*

5.2.3 *any claims in relation to accrued entitlements under the Pension Scheme.*

5.3 *You warrant that:*

- 5.3.1 *before entering into this Deed you received independent advice from the Adviser as to the terms and effect of this Deed and, in particular, on its effect on your ability to pursue the claims specified in Schedule 1 to this Deed;*
- 5 5.3.2 *the Adviser has confirmed to you that they are a solicitor holding a current practising certificate and that there is in force a policy of insurance covering the risk of a claim by you in respect of any loss arising in consequence of their advice;*
- 10 5.3.3 *the Adviser shall sign and deliver to us a letter in the form attached as Schedule 2 to this Deed;*
- 5.3.4 *before receiving the advice you disclosed to the Adviser all facts and circumstances that may give rise to a claim by you against any Group Company or its officers, employees or workers;*
- 15 5.3.5 *the only claims that you have or may have against any Group Company or its officers, employees or workers (whether at the time of entering into this Deed or in the future) relating to your employment with us or its termination are specified in clause 5.1;*
- and*
- 20 5.3.6 *you are not aware of any facts or circumstances that may give rise to any claim against any Group Company or its officers, employees or workers other than those claims specified in clause 5.1.*

25 *You acknowledge that we acted in reliance on these warranties when entering into this Deed.*

5.4 *You acknowledge that the conditions relating to settlement agreements and compromise contracts under section 147(3) of the Equality Act 2010, ... paragraph 2 of Schedule 3A to the Disability Discrimination Act 1995, paragraph 2(2) of Schedule 4 to the*

Employment Equality (Sexual Orientation) Regulations 2003, ... have been satisfied.

5.5 *The waiver in clause 5.1 shall have effect irrespective of whether or not, at the date of this Deed, you are or could be aware of such claims or have such claims in your express contemplation (including such claims of which you become aware after the date of this Deed in whole or in part as a result of new legislation or the development of common law or equity).*

5.6 *You agree that, except for the payments and benefits provided for in this Deed, and subject to the waiver in clause 5.1, you shall not be eligible for any further payment from any Group Company relating to your employment or its termination and you expressly waive any right or claim that you have or may have to payment of bonuses, any benefit or award programme, under any share plan operated by any Group Company or any stand-alone share incentive arrangement, or to any other benefit, payment or award you may have received had your employment not terminated.”*

9. Schedule 1 of the settlement agreement includes the following claims: 1.1 for breach of contract or wrongful dismissal; 1.2 for unfair dismissal, under section 111 of the Employment Rights Act 1996; 1.6 for unlawful detriment, under section 48 of the Employment Rights Act 1996; 1.18 for direct or indirect discrimination, harassment or victimisation related to disability, discrimination arising from disability, or failure to make adjustments under section 120 of the Equality Act 2010 and/or direct discrimination, harassment or victimisation related to disability, disability-related discrimination or failure to make adjustments under section 17A of the Disability Discrimination Act 1995; 1.20 for direct or indirect discrimination, harassment or victimisation related to sexual orientation, under section 120 of the Equality Act 2010 and/or under regulation 28 of the Employment Equality (Sexual Orientation) Regulations 2003;

10. In relation to the termination of his employment and the negotiation of the settlement agreement, the claimant received legal advice from a solicitor. The solicitor advised him as to the terms and effect of the settlement agreement and its effect on his ability to pursue his rights before and Employment Tribunal.
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11. On 3 June 2021, the claimant's solicitor issued a letter to the respondents headed: "*John Robertson - Settlement Agreement*". The letter stated: "*I am writing in connection with the deed between my client, John Robertson and Optosafe Limited dated 3 June 2021 to confirm that:*
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1. *I, Kenny Scott of MacRoberts LLP, whose address is 10 George Street, Edinburgh, EH2 2PF, am a Solicitor in Scotland who holds a current practising certificate.*
 2. *I have given John Robertson legal advice on the terms and effect of the Deed and, in particular, their effect on my client's ability to pursue the claims specified in Schedule 1 of the Deed.*
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 3. *I gave the advice to John Robertson as a relevant independent adviser within the meaning of the above acts and regulations referred to at Clause 5.4.*
 4. *There is now in force (and was in force at the time I gave the advice referred to above) a policy of insurance or an indemnity provided for members of a profession or professional body covering the risk of claim by my client in respect of loss arising in consequence of the advice I have given them.*
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Yours faithfully"

- 25 12. The settlement agreement was signed by both parties and the claimant received payment of the sums due under it. Thereafter, the claimant had no contact with the respondent between June 2021 and May 2022. On 12 September 2023, more than two years after entering the settlement agreement described above, the claimant made an early conciliation notification to ACAS. On 14 September 2023, ACAS issued an early
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conciliation certificate. The claimant thereafter presented an ET1 application form to the Employment Tribunal on 14 September 2023 in which he makes claims of discrimination, detriment and/or dismissal on grounds of having made a protected disclosure and constructive unfair dismissal. In relation to the claims of whistleblowing, discrimination and constructive unfair dismissal, at the latest, the claimant had until midnight on 3 September 2021 to notify ACAS of his claims under the early conciliation rules. The claims were accordingly more than two years late.

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13. At answer 8.1 of the claimant's ET1 he has ticked the boxes for the following claims: unfair dismissal; discrimination on the grounds of disability and sexual orientation; and whistleblowing. He also ticked the box to say that he was 'making another type of claim which the Employment Tribunal can deal with'. In relation to the nature of this claim, he stated: "*Fraud £5million+, HIV diagnosis Illegally broadcast, HIV Discrimination, Constructive dismissal*". At section 8.2 of the ET1, the claimant gave details of his claims. So far as generally within the jurisdiction of an employment tribunal (being the sorts of claims a tribunal normally has jurisdiction to hear) and on the basis of further detail given by the claimant in his evidence, the following claims were made in the ET1: (i) that alleged unlawful disclosure of the claimant's medical status was "*broadcast to third parties by way of WhatsApp messages*" in or about January 2021; that this ought to have been shut down by HR; and that it amounted to discrimination; (ii) that during the claimant's employment (ending 4 June 2021), the respondent's group CEO had allegedly conducted "*an ongoing targeted campaign of discrimination, and sustained harassment*"; (iii) that the claimant was falsely accused of spending £250,000 and allegedly subjected by the respondent's group CEO to "*continuous verbal abuse and harassment*", creating a hostile work environment, and leading the claimant to submit his resignation on or about 25 March 2021.

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14. Between May 2022 and May 2023, the claimant investigated the circumstances surrounding his departure from the respondent. The claimant contacted Police Scotland on 3 March 2023 and reported to them the results of his investigations. Police Scotland said they 'could only see civil matters'

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and that he should 'go through the employment tribunal process'. In or about May 2023, the claimant contacted the National Aids Trust with that picture. He asked them for support and advice. He understood them to have informed him that they felt his settlement agreement had been breached and that 'it would warrant the attention of an employment tribunal'.

Applicable Law

Time Bar

15. Section 111 of the Employment Rights Act 1996 ("ERA") provides that claims for unfair dismissal may be presented to an employment tribunal and in relation to limitation, provides at subsection (2) as follows:-

"(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal –

(a) before the end of the period of three months beginning with the effective date of termination; or

(b) 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."

16. Section 48(3) ERA relates to whistleblowing claims and states:

"(3) An employment tribunal shall not consider a complaint under this section unless it is presented –

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of acts or failures, the last of them, or

(b) 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.”

17. The case law on reasonable practicability is well known. In Walls Meat Co Ltd v Khan [1979] ICR 52 it was held that *“what is or is not reasonably practicable is in essence a question of fact. The question falls to be resolved by finding what the facts are and forming an opinion as to their effect having regard to the ordinary experience of human affairs.”* Page 57C; Per Dedman v British Building and Appliances Ltd [1974] ICR 53 the performance of an act is not reasonably practicable if: *“there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant or a postal strike; or the impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable.”* Brandon LJ at 60G. In the seminal case of Palmer v Southend Council 1984 1 WLR 1129 the Court of Appeal proposed that the tribunal should ask: *“was it reasonably feasible to present the complaint in time?”*

18. Section 123(3)(a) Equality Act 2010 provides:

“123 Time limits

(1) *Proceedings on a complaint within section 120 may not be brought after the end of –*

(a) *The period of 3 months starting with the date of the act to which the complaint relates, or*

(b) *Such other period as the employment tribunal thinks just and equitable.*

19. In Robertson v Bexley Community Centre [2003] EWCA Civ 576 the Court of Appeal stated that the exercise of the discretion to extend time should be the

exception rather than the rule. The burden of proof is on the claimant to convince the tribunal that an extension of time should be granted.

Contracting Out

20. Sections 48 and 111 ERA confer jurisdiction on the Employment Tribunal to determine whistleblowing and unfair dismissal complaints.

21. Section 203(3) sets out the circumstances in which a contract of compromise can validly be used to settle such a claim:

“(3) For the purposes of subsection 2(f) the conditions regulating settlement agreements under this Act are that -

10 (a) *the agreement must be in writing,*

(b) *the agreement must relate to the particular proceedings,*

15 (c) *the employee or worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an employment tribunal,*

20 (d) *there must be in force when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a professional body, covering the risk of a claim by the employee or worker in respect of loss arising in consequence of the advice,*

(e) *the agreement must identify the adviser, and*

(f) *the agreement must state that the conditions regulating settlement agreements under this Act are satisfied.”*

22. Section 120 Equality Act 2010 confers jurisdiction upon the ET to determine complaints relating to, amongst other things,

“(1)(a) a contravention of Part 5 (work);”

23. Section 144 deals with contracting out. It provides:

“(1) *A term of a contract is unenforceable by a person in whose favour it would operate in so far as it purports to exclude or limit a provision of or made under this Act.*

.....

5 (4) *This section does not apply to a contract which settles a complaint within section 120 if the contract—*

(a) *....., or*

(b) *is a qualifying settlement agreement.”*

24. Section 147 Equality Act defines a “qualifying settlement agreement” as one
10 which meets each of the following conditions:

(3) *Those conditions are that—*

(a) *the contract is in writing,*

(b) *the contract relates to the particular complaint,*

15 (c) *the complainant has, before entering into the contract, received advice from an independent adviser about its terms and effect (including, in particular, its effect on the complainant's ability to pursue the complaint before an employment tribunal),*

20 (d) *on the date of the giving of the advice, there is in force a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising from the advice,*

(e) *the contract identifies the adviser, and*

(f) *the contract states that the conditions in paragraphs (c) and (d) are met.*

25 (4) *Each of the following is an independent adviser—*

(a) *a qualified lawyer;....”*

Discussion and decision

Time bar

25. It is a basic principle of employment law that employment tribunals can only hear and determine claims that appear in the claimant's ET1 (unless additional claims are added by amendment). Before addressing the issue of time bar, it was first necessary to identify from the claimant's ET1 precisely what claims the claimant was making and when these were said to have arisen. At answer 8.1 of the claimant's ET1 he has ticked the boxes for the following claims: unfair dismissal; discrimination on the grounds of disability and sexual orientation; and whistleblowing. He also ticked the box to say that he was 'making another type of claim which the Employment Tribunal can deal with'. In relation to the nature of this claim, he stated: "*Fraud £5million+, HIV diagnosis Illegally broadcast, HIV Discrimination, Constructive dismissal*".
26. At section 8.2 of the ET1, the claimant gave details of his claims. Some of the details given in this section fall well outside the jurisdiction of an employment tribunal. An employment tribunal quite simply has no power to conduct a criminal investigation, bring alleged perpetrators to justice or recover alleged misappropriated funds. These are all matters for the police and the criminal and civil courts. Similarly, data protection breaches are matters for the civil courts and not for employment tribunals. Confining myself to matters of the sort that are generally within a tribunal's jurisdiction, the following claims were identified in the ET1 (with some further particulars provided in the claimant's evidence): (i) that alleged unlawful disclosure of the claimant's medical status was "*broadcast to third parties by way of WhatsApp messages*" in or about January 2021; that this ought to have been shut down by HR; and that it amounted to discrimination; (ii) that during the claimant's employment (ending 4 June 2021), the respondent's group CEO had allegedly conducted "*an ongoing targeted campaign of discrimination, and sustained harassment*"; (iii) that the claimant was falsely accused of spending £250,000 and allegedly subjected by the respondent's group CEO to "*continuous verbal abuse and harassment*", creating a hostile work environment, leading him to submit his resignation on or about 25 March 2021. Although the claimant brought up

other alleged claims in his evidence, such as an alleged breach of a duty to make reasonable adjustments, these were not foreshadowed in his ET1 and are not, therefore before the Tribunal.

27. Asked about the whistleblowing claim, the claimant initially stated that he
5 *“blew the whistle after the fact”* when in around February 2023, he contacted the investigator for the security industry authority to say that he had provided false and misleading information to them on 11 September 2020 which he had fraudulently been given. Clearly, his disclosure to the security industry authority in February 2023 could not form the basis of a detriment claim under
10 section 48 Employment Rights Act 1996 because it post-dated the end of the claimant’s employment. It could not, therefore be the reason for any alleged detriment. (It also could not give rise to a claim of automatically unfair dismissal under section 103A.)

28. The claimant then stated that he had blown the whistle to his CEO in May and
15 November 2020 when he stated he had told him that he had suspicions the company was running a modern slavery scheme because he had discovered European nationals with no licences guarding sites. As Mr Dunlop submitted, this was an ‘absolutely new case’, not put forward in the ET1. It is therefore not before the Tribunal for present purposes and is not specifically addressed
20 here. The basis and specifics of the claimant’s whistleblowing claim thus entirely lack clarity.

Was it not reasonably practicable for the claimant to present his unfair dismissal and whistleblowing claims in time?

29. To present a claim of unfair dismissal, the claimant has three months from the
25 effective date of termination of employment (4 June 2021). To present a whistleblowing claim, he has three months from the date of the act or failure to act complained of. Depending on the specifics of this claim (which are unclear), the latest date for this is 4 June 2021. Addressing the issue of extension of time, sections 48(3) and 111(2) ERA are in similar terms. They
30 place the onus on the claimant to show that presentation of his claims in time was not reasonably practicable. That imposes a duty on him to explain

precisely why it was that he did not contact ACAS on or before midnight on 3 September 2021 to present his complaint. In order to establish that it was not reasonably practicable to present an application in time a claimant will ordinarily have to be able to point to some impediment or hindrance which made timeous presentation not reasonably practicable in the sense of not reasonably feasible. What is reasonably practicable is a question of fact. If the claimant succeeds in showing that presentation in time was not reasonably practicable, the second leg of the test provides that the tribunal must then be satisfied that the complaint was presented within such further period as it considers reasonable in the circumstances.

30. The claims were notified to ACAS on 12 September 2023, slightly more than 2 years after the deadline. On 14 September 2023, ACAS issued an early conciliation certificate. The claimant thereafter presented his application to the Employment Tribunal on 14 September 2023.

31. With regard to the claimant's evidence as to precisely why it was that he did not contact ACAS on or before midnight on 3 September 2021 to present his complaint, the claimant testified by way of background that he had had a serious motorcycle accident on 28 September 2020 and that he had had to have his shoulder re-set thereafter. He stated that he required to take morphine for pain management and was off work for two months following the accident. He said he felt he had returned to work before he was really ready. He accepted in cross examination that after his sick absence following the motorcycle accident, he had returned to work as managing director of the respondent and had thereafter become their legal director. The claimant stated that in or around the autumn of 2020, he had bought an old mill and that, following his exit from the respondent in June 2021, the sewer underneath his property burst and he contracted hepatitis. He testified that he was sick for around nine months. It appeared that the claimant had no contact with the respondent between June 2021 and May 2022. The claimant stated that in May 2022 a 'whistleblower' had come forward and told him she knew about his HIV and that other people knew about it. (It appeared that HIV medication may have been found in his room after his departure.) Thereafter,

the claimant said that between May 2022 and May 2023, he had investigated the circumstances surrounding his departure from the respondent. He said that everyone had lied to him about how his HIV medication had been found. The claimant stated this was “*due to circumstances that were highly illegal*”.

5 He said he had contacted Police Scotland on 3 March 2023 and that they had told him they ‘could only see civil matters’ and that he should ‘go through the employment tribunal process’. In or about May 2023, the claimant said he had contacted the National Aids Trust with that picture and had asked them for support and advice. He said they informed him that they felt his settlement

10 agreement had been breached and that ‘it would warrant the attention of an employment tribunal’.

32. As set out below, the claimant stated that he believed that if he had spoken to someone in the respondent company they would have enforced the settlement agreement, so he waited eighteen months to make contact with

15 anyone, because he was not allowed to speak to anyone and they had been told not to speak to him between March and June 2021.

33. The claimant also testified that he did not know (at the time of the expiry of the limitation period) that there had been discrimination.

34. The evidence surrounding the settlement agreement was that the claimant

20 had compromised all claims of the sort he now makes, “*whether such claims are, or could be, known to the parties or in their contemplation at the date of this Deed*”. The claimant accepted that he had a solicitor acting for him in June 2021 in connection with the settlement of all employment tribunal claims arising out of the termination of his employment. That solicitor confirmed for

25 the purposes of the settlement agreement that he had given the claimant advice on the terms and effect of the agreement and, in particular, their effect on the claimant's ability to pursue the claims specified in Schedule 1 of the agreement. That schedule includes all the claims the claimant now makes.

35. The claimant referred to his health as a reason for not bringing the claims in

30 time. Whilst I was sympathetic to the claimant’s health problems, he did not explain how these conditions affected his ability to present the claim, nor did

he present medical evidence that the extent and effect of his illness over the limitation period was such it was not reasonably practicable/ feasible for him to present his complaints in time. In addition, the claimant testified that he had spent a number of months investigating the claims. Given the minimal detail
5 in the ET1 the claimant ultimately did present, it is difficult to see why this could not have been presented earlier. Taking the claimant's evidence as a whole, I found it difficult to ascertain what the operative reason was for the claimant's failure to present the claims in time. I concluded that the claimant has not shown that it was not reasonably practicable to present his complaints
10 in time. It follows that the Tribunal has no jurisdiction to consider the whistleblowing and unfair dismissal claims.

Whether it would be just and equitable to extend time for the discrimination claims

36. The claimant's explanations above (paragraphs 31 to 35) are also relevant to the issue of whether it would be just and equitable to extend time for his
15 discrimination complaints. For ease of reference, so far as alluded to in the ET1, these appear to be: (i) that alleged unlawful disclosure of the claimant's medical status was "*broadcast to third parties by way of WhatsApp messages*" in or about January 2021; that this ought to have been shut down by HR; and that it was discriminatory; (ii) that during the claimant's employment (ending
20 4 June 2021), the respondent's group CEO had conducted "an ongoing targeted campaign of discrimination, and sustained harassment"; (iii) that the claimant was falsely accused of spending £250,000 and subjected by the respondent's group CEO to "continuous verbal abuse and harassment", creating a hostile work environment, leading him to submit his resignation on
25 or about 25 March 2021.

37. The reason the claimant gave as to why he presented his discrimination claim when he did and not during the primary limitation period was that he did not know at that time that there had been discrimination and he believed that if he had spoken to someone in the company they would have enforced the
30 settlement agreement, so he waited eighteen months to make contact with anyone, because he was not allowed to speak to anyone and they had been told not to speak to him between March and June 2021.

38. Whilst Tribunals have a wide discretion to allow an extension of time under the 'just and equitable' test, the exercise of the discretion is still the exception rather than the rule and it is for the claimant to persuade the Tribunal that it should be exercised. I have taken into account the claimant's evidence and submissions as set out above and the submissions of Mr Dunlop. I have considered the prejudice each party would suffer if the discretion were exercised or not exercised. The prejudice to the claimant in not extending time is that he loses the opportunity to litigate the claims. However, the prejudice to the respondent in extending time outweighs the prejudice to the claimant in not doing so due to the following factors: (i) The claimant entered into a settlement agreement with the respondent in June 2021 and sums of money were paid to him under that agreement, which still stands. The agreement excludes the tribunal's jurisdiction in respect of the claims he now seeks to make and the claimant's prospects of success are accordingly extremely low. (ii) Extending the time limit would involve the respondents in considerable expense. (iii) The claims are not currently cogently stated or particularised. Many of the statements in the ET1 concern matters not within the tribunal's jurisdiction. (iv) The delay in presenting the case is two years, which would affect the respondents' ability to defend the claim on its merits. (v) The reasons given for the delay were not satisfactorily explained, nor - to the extent that they involved health issues - were they supported by medical evidence. (vi) The claimant testified that he took a significant time to investigate the matter and did not show that he acted promptly once he knew of the facts giving rise to the cause of action. (vii) The claimant had a solicitor advising him regarding the settlement agreement in June 2021 and was aware of his legal rights. Thus, he was advised of the possibility of taking action and elected not to do so. Balancing the respective prejudice to the parties in all the circumstances I am not persuaded that it would be just and equitable to exercise the discretion. It follows that the claimant's discrimination claims are out of time and the Tribunal has no jurisdiction to hear them.

Contracting Out

Whether the parties' settlement agreement excludes the Tribunal's jurisdiction?

39. Standing the conclusion reached above that the claim is time barred and the Tribunal has no jurisdiction, this issue does not arise for determination. Had it arisen, and in light of the Judgment of the Inner House of the Court of Session in Bathgate v Technip Singapore PTE Limited [2023] CSIH 48 XA18/23 (29 December 2023), I would have found that the settlement agreement met all the conditions set out in sections 203(3) ERA and 147(3) Equality Act 2010 and that the jurisdiction of the Employment Tribunal is accordingly excluded by it.

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MKearns

Employment Judge

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6 February 2024**Date**

Date sent to parties

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I confirm that this is my Judgment in the case of J Robertson v Optosafe Limited 8000471/2023 and that I have signed it by electronic signature.