THE INDUSTRIAL TRIBUNALS

CASE REF: 8411/18

CLAIMANT: **Marius Aflat**

RESPONDENTS: **1. Diamond Recruitment**
2. Moy Park

DECISION ON A PRE-HEARING REVIEW

The decision of the tribunal is that it has no jurisdiction to consider the claimant's claims, as set out in paragraph 11 of this decision.

Constitution of Tribunal:

Employment Judge (sitting alone): **Employment Judge Crothers**

Appearances:

The claimant appeared in person and represented himself, assisted by Ms M Cristache, interpreter.

The first-named respondent was represented by Mr P Bloch of EEF Northern Ireland.

The second-named respondent was represented by Mr C Fullerton, Solicitor of Arthur Cox Solicitors.

BACKGROUND

1. (i) The claimant presented a claim to the tribunal (reference 1821/16) on 9 August 2016 alleging unfair dismissal and discrimination on racial grounds. He had been supplied as an agency worker to the second-named respondent ("Moy Park") with effect from 20 February 2015.

(ii) Following further correspondence from his Solicitor on 12 August 2016, a separate case reference number (1850/16) was allocated. A Case Management Discussion was scheduled for 19 December 2016. However, on 15 December 2016 the parties attended the Labour Relations Agency and a CO3 agreement was signed by the claimant, and on behalf of the two respondents on 15 December 2016.

(iii) Following correspondence from the Labour Relations Agency to the tribunal, the claims were dismissed by the tribunal on 19 December 2016.

(iv) The claimant presented a further claim to the tribunal (case reference 8411/18) on 14 June 2018, again alleging unfair dismissal and unlawful discrimination on racial grounds. It was not disputed that the first-named respondent ("Diamond") was the claimant's employer for the purposes of any unfair dismissal claim and that Moy Park was the correct respondent in relation to any discrimination claim.

(v) The claimant was afforded time to consider a bundle of documents presented by Moy Park Solicitors together with written submissions before the hearing commenced. Mr Bloch adopted the same submissions on behalf of Diamond and, at the end of the hearing, made an application for witness costs in the sum of £213.00.

(vi) The position adopted by the respondents is succinctly summarised in paragraphs 4 and 5 of Moy Park's response to the current claim as follows:-

> *"(4) Notwithstanding the above, the Claimant has again issued proceedings against the Respondents in relation to claims for unfair dismissal and discrimination. The current allegations relate to the same complaints raised by the Claimant in his previous claims before the Tribunal (1821/16IT and 1850/16IT) and are alleged to have taken place during the same time period, namely after the first 3 months of working at the Second Respondent in 2015 up to his dismissal from the First Respondent, and in any event prior to the date of C03 Agreement signed by the Claimant on 15 December 2016. For the avoidance of doubt, the Claimant had not been employed or engaged by the Second Respondent in any capacity since the date his employment ended with the First Respondent on 15 May 2016.*
>
> *5. It is respectfully submitted that the tribunal does not have jurisdiction to hear the present claim. As set out above, the Claimant entered into a conciliated settlement with the Respondents whereby he agreed to refrain from continuing with his claims for unfair dismissal and discrimination and the said claims were dismissed by the tribunal on 19 December 2016. Furthermore, and in any event, the Claimant has not presented the current claim to the tribunal within the statutory time limit. The Claimant's complaints relate to events which are alleged to have taken place during 2015-2016 and so his claims are considerably outside the statutory time limit."*

ISSUES BEFORE THE TRIBUNAL

2. The issues before the tribunal, as amended at the hearing, were as follows:-

(1) to determine whether the tribunal has jurisdiction to hear this claim (8411/18) given the subject matter of the claim has been the subject of previous tribunal proceedings which have already been determined following an LRA conciliation.

(2) to determine whether the unfair dismissal claim is out-of-time and if so, whether time should be extended on the basis that it had been reasonably practicable for the claimant to have lodged his claim within time or at any stage before he did in fact lodge that claim.

(3) to determine whether the claimant's discrimination claim on racial grounds is out-of-time, and, if so, whether it is just and equitable in all the circumstances to extend time.

SOURCES OF EVIDENCE

3. The tribunal heard evidence from the claimant and considered relevant documentation in the course of the hearing.

FINDINGS OF FACT

4. Having considered the evidence insofar as same related to the issues before it, the tribunal made the following findings of fact, on the balance of probabilities:-

(i) The tribunal is satisfied, as reflected in the claimant's claim forms, that the effective date of termination of his employment with Diamond was 13 May 2016. His two initial claims were presented to the tribunal on 9 August 2016 and 12 August 2016 respectively.

(ii) On 24 September 2018 the tribunal office received correspondence from the claimant together with attached correspondence from Mr P McAllister, Principal of Holy Rosary Primary School. This correspondence refers to the claimant and his family being evicted from their home in Gypsy Street on 1 May 2018 and expressed the Principal's concern about the effects this would have on children. In the correspondence prepared by the claimant, which refers initially to allegations surrounding the signing of the CO3 agreement on 15 December 2016, the claimant states that:-

> *"In 2017 I went to another lawyer and I told him about what happened and he told me that I was put under pressure/threatened when I signed on December 2016 and that he will contact my former lawyer who abandoned me during my discussion with (the representative) of Moy Park factory and Diamond Agency to get more info from her or one of the persons present at the meeting."*

It appears that this was the first time the claimant had alleged that he was placed under pressure/threatened by representatives of Diamond and Moy Park and that he was informed by these representatives that if he did not take the amount of £1,150.00 offered by them:

> *"I would not get anything and if I would go on in The Court they would ask for compensations in huge amounts that I wouldn't be able to pay and that I would end up in Prison and with tears in my eyes I asked them to receive me back to work because I have 2 children to support and to go to school from Belfast and that the life of my children in that moment depended on them, but they refused this and I was afraid from this reason and from the reasons from the past that happened during the year 2016."*

(iii) In his claim form presented to the tribunal on 14 June 2018, the claimant made no reference to any such pressure or threats at the meeting held under the auspices of the Labour Relations Agency on 15 December 2018. It is evident to the tribunal that the LRA representative was moving between a room containing the claimant, an interpreter and his Solicitor, and another room/rooms containing the respondents and their representatives. The tribunal does not accept on the evidence, that the claimant was placed under duress in terms of being pressurised or threatened when he signed the CO3 agreement.

(iv) The claimant was clearly aware of procedures related to presenting a claim to the tribunal as he had presented two claims in 2016. Furthermore, it is clear that he had had access to legal advice at an unspecified date in 2017. It was a consistent theme of his evidence that the bodies and individuals he contacted have failed to help him. He referred to being under stress. However the medical evidence shown to the tribunal referred to only two episodes of stress, on 11 July 2017 which appears to have been work-related, and a further episode in May 2018. The claimant also referred to issues including the death of an unborn child and the fact that he had no house and no income. He also relied on his mother's idea to send documentation to Romania for translation in advance of presenting his recent claim on 14 June 2018. It was clear to the tribunal that the claimant had also engaged the police on a number of issues but that they also allegedly failed to help him. He also claimed that his only income was £137.00 from child benefit allowance and that he still wished to work. At a later stage in his evidence the claimant alleged that no organisation believed him and that he had no Solicitor to help him. He informed the tribunal that, in terms, he could not afford legal representation. The claimant gave no satisfactory explanation for his delay in presenting a further claim in the claim form presented on 14 June 2018.

THE LAW

<u>Conciliated Agreements</u>

5. (1) Article 245 of The Employment Rights (Northern Ireland) 1996 provides as follows:-

> "*245. – (1) Except as provided by the following provisions of this section, any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports –*
>
> *(a) to exclude or limit the operation of any provision of this Act; or*
>
> *(b) to preclude any person from presenting a complaint to, or bringing any proceedings under this Act before, an industrial tribunal.*
>
> *(2) Paragraph (1) - …*
>
> *(e) does not apply to any agreement to refrain from instituting or continuing proceedings where the*

Agency has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996; …"

(See also Hennessy v Craigmyle and Co. Ltd [1996] ICR 461).

(2) Harvey on Industrial Relations and Employment Law (Division P1) (Harvey) 705-710 states that:-

"Once a contracting-out agreement has been concluded through the intervention of a (Conciliation Officer), it is very difficult for a party to get it set aside".

Res Judicata

(3) It is in the public interest for there to be finality and litigation. This is reinforced where the parties have entered into a settlement agreement. Further, a settlement agreement should not be undermined except on the clearest possible grounds. (See **Joseph Ackerman v Thornhill and Others [2017] EWHC 99 Ch**).

(4) In **Virgin Atlantic Airways Ltd v Zodiac Seats UK Limited [2013] UKSC 46**, six principles were set out in relation to res judicata as follows:-

1. A party is prevented from bringing subsequent proceedings to challenge an outcome that has already been decided (cause of action estoppel).

2. If a claimant succeeds in the first action and does not appeal the outcome, he may not bring a subsequent action on the same cause of action (i.e. to recover further damages).

3. The doctrine of merger treats a cause of action as having been extinguished once judgment has been provided and accordingly the Claimant's only right is the judgment itself.

4. A party may not being subsequent proceedings on an issue that has already been determined (issue estoppel).

5. A party may not bring subsequent proceedings which should and could have been dealt with in earlier proceedings (the 'Henderson v Henderson' principle).

6. There is a general procedural rule against abusive proceedings.

TIME LIMITS

6. Article 65 of the Race Relations (Northern Ireland) Order 1997 provides as follows:-

"65.- (1) An industrial tribunal shall not consider a complaint under Article 52 unless it is presented to the tribunal before the end of –

(a) the period of 3 months beginning when the act complained of was done …

(7) A court or tribunal may nevertheless consider any such complaint, claim or application which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so".

7. The burden is on the claimant to persuade the tribunal to exercise its discretion in his favour and the exercise of such discretion is the exception rather than the rule. (**Robinson v Bexley Community Centre [2003] IRLR 434**).

8. Harvey at Division P1 279 states:-

"The discretion to grant an extension of time under the 'just and equitable' formula has been held to be as wide as that given to the civil courts by s 33 of the Limitation Act 1980 to determine whether to extend time in personal injury actions (British Coal Corpn v Keeble, DPP v Marshall, above). Under that section the court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular: (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued had co-operated with any requests for information; (d) the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and (e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action (see British Coal Corpn v Keeble [1997] IRLR 336, at para 8). However, although, in the context of the 'just and equitable' formula, these factors will frequently serve as a useful checklist, there is no legal requirement on a tribunal to go through such a list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion' (Southwark London Borough v Afolabi [2003] EWCA Civ 15, [2003] IRLR 220 at para 33, per Peter Gibson LJ). This point was reiterated by Laing J in Miller v Ministry of Justice UKEAT/0003/15 (15 March 2016, unreported) (see further para [280] below), where she rejected any suggestion that if a tribunal does not expressly rehearse the factors and 'balance them off' appropriately, it will err in law. She emphasised that it is for the employment tribunal to decide (subject to Wednesbury) what factors are relevant to the exercise of its discretion and what weight to give to them, and not for the EAT to give detailed instructions on the matter (paras 29–30)".

9. (i) Article 145 of the Employment Rights (Northern Ireland) Order 1996 provides as follows:-

"(1) A complaint may be presented to an Industrial Tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this Article, and Industrial Tribunal shall not consider a complaint under this Article 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 a 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".

(ii) In **Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119** May LJ proposed that a tribunal should ask the following question:-

"Was it reasonably feasible to present the complaint to the Employment Tribunal) within the relevant three months?"

SUBMISSIONS

10. The respondent's written submissions are appended to this decision. The claimant did not make oral submissions.

CONCLUSIONS

11. The tribunal, having carefully considered the evidence together with the submissions and having applied the principles of law to the findings of fact, concludes as follows:

(1) The subject matter of claim reference 8411/18 has been the subject of previous tribunal proceedings which have already been determined following an LRA conciliation. The tribunal is satisfied, on the evidence, that there are no grounds on which the conciliation agreement could properly be set aside. The claimant is therefore prevented from bringing subsequent proceedings issues which have already been determined.

(2) In any event, and apart from the conclusion at (1) above, the claim of unfair dismissal is very considerably out of time and, on the evidence, the tribunal is satisfied that the claimant did not present an unfair dismissal claim within such further period as the tribunal considers reasonable where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of three months. Furthermore, there is no basis for extending time on a just and equitable basis in the all the circumstances of the case relating to the claimant's allegations of discrimination on racial grounds.

(3) The tribunal is further satisfied, in light of the claimant's personal circumstances, that a costs order would be inappropriate.

(4) The tribunal has therefore no jurisdiction to consider the claimant's claims.

Employment Judge:

Date and place of hearing: 12 December 2018, Belfast.

Date decision recorded in register and issued to parties:

IN THE OFFICE OF THE INDUSTRIAL TRIBUNALS
AND THE FAIR EMPLOYMENT TRIBUNAL

CASE REFERENCE NUMBER: 8411/18IT

BETWEEN

MARIUS AFLAT

CLAIMANT

-v-

DIAMOND RECRUITMENT

FIRST RESPONDENT

MOY PARK LIMITED

SECOND RESPONDENT

PRE-HEARING REVIEW
SUBMISSIONS ON BEHALF OF THE SECOND RESPONDENT

BACKGROUND

1. On 09 August 2016, the Claimant submitted an ET1 Claim Form (Case Reference Number: 1821/16IT) against the Respondents alleging unfair dismissal and discrimination. On 12 August 2016, the Claimant's (then) solicitors provided further submissions to the tribunal by way of email correspondence in relation to his claim for unfair dismissal. The said email correspondence was allocated a separate Case Reference Number, namely 1850/16IT. The claim in respect of discrimination was based on allegations of mistreatment on grounds of the Claimant's nationality / ethnicity, which the Claimant alleged began following his first 3 months of working at the Second Respondent's site in 2015. The Claimant alleged that the Second Respondent failed to act on his complaints and protect him from the alleged mistreatment.

2. On 15 December 2016, the parties attended a conciliation meeting facilitated by the Labour Relations Agency (LRA) and signed a conciliated agreement (C03 agreement). On 19 December 2016, the Claimant's claims (1821/16IT and 1850/16IT) against the Respondents were duly dismissed following notification of the said conciliated settlement to the tribunal.

3. The Claimant's present claim, dated 14 June 2018, relates to the same complaints as raised in his previous claims before the tribunal (1821/16IT and 1850/16IT) and are alleged to have taken place during the same time period, namely after the first 3 months of working at the Second Respondent in 2015 up to his dismissal from the First

Respondent, and in any event prior to the date of C03 Agreement signed by the Claimant on 15 December 2016. For the avoidance of doubt, the Claimant has not been engaged by the Second Respondent in any capacity since the date his employment ended with the First Respondent in and around 15 May 2016.

ISSUES

4. The preliminary legal issues to be determined (per the Record of Proceedings dated 26 November 2018) are as follows:

   (a) whether the tribunal has jurisdiction to hear this claim (8411/18) given that the subject matter of the claim has been the subject of previous tribunal proceedings which have already been determined following an LRA conciliation; and

   (b) whether the claim is out of time and, if so, whether time should be extended on the basis that it had not been reasonably practicable for the Claimant to have lodged his claim within time or at any stage before he did in fact lodge that claim.

5. It will be noted that the claim of unfair dismissal is a matter for the First Respondent as the Claimant's (then) employer and so these submissions will deal with the time limit issue (paragraph 4(b) above) only insofar as it pertains to any claim in respect of discrimination, the applicable test being whether, in all the circumstances of the case, it is just and equitable for the tribunal to extend time.

THE LAW

Conciliated Agreements

6. The restrictions on contracting out are set out in Article 245 of the Employment Rights (Northern Ireland) Order 1996 which provides, insofar as material:

   "245.— (1) Except as provided by the following provisions of this section, any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports —

   (a) to exclude or limit the operation of any provision of this Act; or

   (b) to preclude any person from presenting a complaint to, or bringing any proceedings under this Act before, an industrial tribunal.

   (2) Paragraph (1) — ...

   (e) does not apply to any agreement to refrain from instituting or continuing proceedings where the Agency has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996; ...".

7. It is now well established that challenges can be made to the validity of conciliated agreements and that this generally falls under two broad headings: (i) those which

raise the question whether the conciliation officer acted properly in accordance with his/her statutory powers and duties, and (ii) those which allege that the agreement is voidable on common law grounds. The Claimant has not alleged any impropriety on the part of the conciliation officer in this instance and, in terms of the common law grounds, the applicable ground in this case would appear to be economic duress (though the Claimant has not expressly framed his argument as such). This ground was considered by the Court of Appeal in England & Wales in the case of ***Hennessy v Craigmyle & Co Ltd [1986] I.C.R. 461***.

8. In that case, the employee was given notice by his employers that he would be summarily dismissed. The employee was informed that if he signed an agreement abandoning his unfair dismissal rights, he would be paid, inter alia, the sum of £3,150, but that if the employee refused to sign the agreement, he would get nothing. The employee consulted a solicitor, who advised him to sign the agreement. A conciliation officer from ACAS was then contacted and, after discussions with the parties, he drew up an agreement incorporating the settlement terms, which the employee signed. The employee subsequently presented a complaint of unfair dismissal and said that he only signed the agreement because the alternative was penury; if he had not signed, he would have had no means of subsistence. The tribunal, however, found that there was no economic duress on the facts and, upholding the validity of the agreement, dismissed his complaint. His appeals to the EAT and the Court of Appeal both failed.

9. Dealing specifically with economic duress, Sir John Donaldson MR held that this is a ground of avoidance only if the duress is such that the will of the contractor is overborne; in other words, the individual's consent must be vitiated by there being no real alternative available to him. On the facts of ***Hennessy,*** his Lordship did not agree that Mr. Hennessy's financial circumstances were such that he was in effect forced into the settlement (p. 468):

> *"... in fact there was a very clear alternative, namely, to complain to an industrial tribunal and to draw social security meanwhile. It may have been a highly unattractive alternative, but nevertheless it was a real alternative. Economic duress can only provide a basis for avoiding a contract if there was no real alternative."*

10. The Court of Appeal in ***Hennessy*** recognised that the intervention of conciliation officers will not, in all circumstances, "*eliminate the possibility that duress was such as to amount to a coercion of the will vitiating consent...*". Nevertheless, the court affirmed that such intervention must, however, make the possibility "*more remote*". This echoes the sentiment expressed by Popplewell J, giving judgment for the Employment Appeal Tribunal in that case (p. 885):

> *"But we believe that the circumstances in which [economic duress] is likely to be successfully alleged will arise in employment law only in the* ***most exceptional circumstances***".

11. Moreover, **Harvey on Industrial Relations and Employment Law at Division PI 705-710** provides that:

"*Once a contracting-out agreement has been concluded through the intervention of a [conciliation officer],* ***it is very difficult for a party to get it set aside***".

Time Limits

12. The time limit issue regarding submission of a complaint of race discrimination is contained in Article 65 of the Race Relations (Northern Ireland) Order 1997 (the "1997 Order"), insofar as material:

> *"65.—(1) An industrial tribunal shall not consider a complaint under Article 52 unless it is presented to the tribunal before the end of —*
>
> *(a) the period of 3 months beginning when the act complained of was done...*
>
> *...*
>
> *7) A court or tribunal may nevertheless consider any such complaint, claim or application which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so."*

13. It is well established that the phrase "just and equitable" is much broader than the test, for example, in unfair dismissal claims (where the relevant question is whether it was "reasonably practicable" to have presented the claim within time). However, time limits are nonetheless exercised strictly in tribunals and there is no presumption that a tribunal should exercise its discretion to extend time. The burden is on a claimant to persuade the tribunal to exercise its discretion in their favour. In ***Robertson v Bexley Community Centre [2003] IRLR 434***, Auld LJ held that "*the exercise of discretion is the exception rather than the rule*".

14. **Harvey on Industrial Relations and Employment Law at Division PI 279** provides that:

> *"The discretion to grant an extension of time under the 'just and equitable' formula has been held to be as wide as that given to the civil courts by s 33 of the Limitation Act 1980 to determine whether to extend time in personal injury actions (**British Coal Corpn v Keeble, DPP v Marshall**, above). Under that section the court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular: (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued had co-operated with any requests for information; (d) the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and (e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action (see **British Coal Corpn v Keeble [1997] IRLR 336,** at para 8). However, although, in the context of the 'just and equitable' formula, these factors will frequently serve as a useful checklist, there is no legal requirement on a tribunal to go through such a list in every case, 'provided of course that no*

*significant factor has been left out of account by the employment tribunal in exercising its discretion' (**Southwark London Borough v Afolabi [2003] EWCA Civ 15, [2003] IRLR 220** at para 33, per Peter Gibson LJ). This point was reiterated by Laing J in **Miller v Ministry of Justice UKEAT/0003/15** (15 March 2016, unreported) (see further para [280] below), where she rejected any suggestion that if a tribunal does not expressly rehearse the factors and 'balance them off' appropriately, it will err in law. She emphasised that it is for the employment tribunal to decide (subject to Wednesbury) what factors are relevant to the exercise of its discretion and what weight to give to them, and not for the EAT to give detailed instructions on the matter (paras 29–30)".*

SUBMISSIONS

15. It will be noted that the Claimant does not provide any explanation in the ET1 Claim Form as to why he has now reissued proceedings, contrary to the terms of the C03 Agreement, which provides at paragraph 6:

> "*The Claimant agrees to refrain from continuing with these proceedings for both case reference numbers 1821/16 and 1850/16 against both named Respondents*".

16. On 24 September 2018, however, the Office of the Industrial Tribunal and the Fair Employment Tribunal received correspondence from the Claimant wherein he appears to allege, inter alia, that he was "threatened" by the representatives of the First and Second Respondents at the offices of the Labour Relations Agency during the conciliation meeting between the parties on 15 December 2016. More specifically, the Claimant states he was informed by the said representatives that, if he did not accept the settlement terms offered, "*I would not get anything and if I would go on in The Court they would ask for compensation in huge amounts that I wouldn't be able to pay and that I would end up in Prison…*".

17. The Second Respondent denies that it or its representatives threatened the Claimant and/or put him under pressure in the manner alleged or at all. As is customary during such conciliation meetings, the Respondents' representatives were situated in a separate room to the Claimant. The Claimant acknowledges in his correspondence of 24 September 2018 that the negotiations were facilitated by the conciliation officer and it should be noted that at no point did the Respondents' representatives negotiate with the Claimant directly, but rather through the conciliation officer.

18. The Second Respondent submits that the Claimant's account of the meeting on 15 December 2016, specifically in relation to his assertion that he was threatened by the Respondents' representatives in the manner alleged, is entirely dishonest with a view to misleading the tribunal.

19. Further and in the alternative, the Second Respondent submits that the Claimant's will was not overborne and that his consent was not vitiated by there being no real alternative available to him. As in ***Hennessy***, the Claimant clearly had an alternative option available to him, namely to proceed with his case before the tribunal and it is

worth noting in this regard that a Case Management Discussion had been scheduled for 19 December 2016, four days after the meeting at the LRA. Further, it is understood that the Claimant had the benefit of legal representation at the conciliation meeting on 15 December 2016.

20. The Claimant's complaint in respect of race discrimination, insofar as it relates to the Second Respondent, appears to relate to the period from May 2015 to March 2016 and so it is considerably outside the three month statutory time limit provided for under Article 65(1) of the 1997 Order. The question therefore turns to whether it is just and equitable for the tribunal to extend time in the circumstances pursuant to Article 65(7) of the 1997 Order.

21. It will be noted, again, that the Claimant provides no explanation in the ET1 Claim Form to account for the delay in issuing the present claim, dated 14 June 2018. However, in his correspondence to the tribunal dated 24 September 2018, the Claimant states: "*In 2017 I went to another lawyer and I told him about what happened and he told me that I was put under pressure / threatened when I signed on December 2016...*". The Claimant does not specify when precisely he received this legal advice in 2017 but it will be noted that he did not ultimately present a claim in respect of this matter until 14 June 2018. The Second Respondent submits that the Claimant failed to act promptly once he allegedly knew of the potential grounds giving rise to the current cause of action.

22. Further, it will be noted that the Claimant's complaints of race discrimination (insofar as they relate to the Second Respondent) pertain to events which are alleged to have taken place over two years ago. In the event that an extension of time were to be granted by the tribunal, it is submitted that the Second Respondent would be prejudiced on the basis that the memories of those persons involved with the matter are likely to have faded, relevant documentation will likely no longer be in its possession, and certain individuals will likely have since left the business who would otherwise have been relevant to the defence of the case.

23. In conclusion, it is respectfully submitted that the tribunal does not have jurisdiction to hear the present claim. As set out above, the Claimant entered into a conciliated settlement with the Respondents whereby he agreed to refrain from continuing with his claims for unfair dismissal and discrimination and the said claims were dismissed by the tribunal on 19 December 2016. Furthermore, and in any event, the Claimant has not presented the current claim to the tribunal within the statutory time limit and the Second Respondent respectfully submits that it would not be just and equitable for the tribunal to exercise its discretion to extend the time limit in the circumstances of the case.