



## EMPLOYMENT TRIBUNALS

**Claimant**

Ms S Richards

v

**Respondent**

London Borough of Bromley (1)  
Wandsworth Borough Council (2)

## OPEN PRELIMINARY HEARING

**Heard at:** Croydon Employment Tribunal (by video)

**On:** 22 January 2021

**Before:** Employment Judge C H O'Rourke

**Appearances**

For the Claimant: In person  
For the First Respondent: Mr Thakerar – Counsel  
For the Second Respondent: Ms Gyane - Counsel

## JUDGMENT

The Claimant's claim of disability discrimination is dismissed for want of jurisdiction, as it was presented out of time.

## REASONS

**Issues**

1. Following a case management hearing on 20 October 2020, this claim was listed for hearing today, by way of Open Preliminary Hearing, to determine whether or not it had been brought within time and if not, whether the Tribunal should exercise its discretion, subject to s.123(1)(b) of the Equality Act 2010, to extend time, on the basis that it would be 'just and equitable' to do so.
2. Claimant's Attendance at today's Hearing. Following the start-time of the Hearing being delayed by the Tribunal for half an hour, the Claimant emailed the Tribunal to say that due to that delay and '*due to other circumstances I did not remember today's court date and have rearranged my schedule for court today.*'

*had scheduled 1 hours availability (sic) this mornings hearing and have a personal appointment which I need to attend.'* The Hearing proceeded at 10.35, with the Claimant in attendance, throughout, by telephone.

3. **Background.** The Claimant brought a claim of disability discrimination against both Respondents, on 21 January 2020, following the termination of her engagement with the First Respondent, as a locum social worker, on 21 August 2019. She had entered into ACAS Early Conciliation on 5 November 2019, receiving the Certificate on 5 December 2019. It was accepted by the Claimant that her claim was out of time, as it should have been presented no later than 5 January 2020. In it, she had ticked the box at 8.1 to claim disability discrimination, but made no mention of such disability, or how she may have been discriminated against because of it, in her details of claim. Her complaint focused on an allegedly misleading and malicious false reference provided by the First Respondent to the Second Respondent, thus resulting in the Second Respondent withdrawing a job offer to her.
4. **Case Management to Date.** The Tribunal wrote to the Claimant on 28 May 2020 and made directions as to the Claimant setting out the nature of her disability, but she did not initially comply. Following further correspondence, she confirmed that she relied upon a complex leg fracture, which affected her mobility. She was also directed to provide copies of her medical records, but by the point of the case management hearing, on 20 October, she had not done so. At that hearing, it was stressed to her by the Tribunal that *'the claim should be actively pursued and the Claimant will need to show she has done so.'* The Tribunal made orders that she provide particulars of her claim, by 30 November; her disability impact statement and medical evidence, by 31 December and schedule of loss by 15 January 2021, none of which she has complied with.

### **The Law**

5. Section 123(1) of the Equality Act 2010 states that:
  - (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.
6. The case of **British Coal Corporation v Keeble [1997] IRLR 336 UKEAT** which indicated that the factors set out in s.33(3) of the Limitation Act 1980 may be useful when considering time limitation points. These are:
  - (a) the length of, and the reasons for, the delay on the part of the plaintiff;
  - (b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed ...

(c) the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;

(d) the ...;

(e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;

(f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.

7. However, the very recent case of **Adedeji v University Hospitals Birmingham NHS Trust [2021] EWCA Civ 23** cautioned, at paragraph 37 that:

*'...rigid adherence to a checklist (with reference to s.33 Limitation Act) can lead to a mechanistic approach to what is meant to be a very broad general discretion, and confusion may also occur where a tribunal refers to a genuinely relevant factor but uses inappropriate Keeble-derived language (as occurred in the present case – see para. 31 above). The best approach for a tribunal in considering the exercise of the 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 (as Holland J notes) "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 taking it as the framework for its thinking.'*

8. The case of **Robertson v Bexley Community Centre [2003] IRLR 434 EWCA** which stated, in the context of the exercise of discretion as to a time limit in discrimination cases that *'there is no presumption that they (tribunals) should do so, unless they can justify failure to justify the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule.'*

9. **Rathakrishnan v Pizza Express (Restaurants) Ltd [2016] IRLR 278, UKEAT** indicated that the potential merits of a claim were relevant factors to be taken into account, in considering the balance of prejudice to the parties.

10. Rule 2 of the Employment Tribunal's Rules of Procedure states:

*Overriding Objective*

*2. The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—*

*(a) ensuring 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.*

*A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.*

## **Submissions**

11. I heard submissions from the Claimant and both Respondent Counsel.
12. Claimant's Submissions. Having been informed as to the factors that the Tribunal would take into account in deciding whether or not to exercise discretion to extend time, the Claimant made the following submissions:
  - 12.1. She has had, throughout the lifetime of this case, problems with communication and access to her emails, meaning that she was unable to access information. She has explained previously that she needs correspondence to be sent in the post.
  - 12.2. She is in the menopause and her memory is affected, requiring her to keep notes.
  - 12.3. She indicated that she has '*lots of stuff*' going on in her life, was suffering a family crisis and didn't sleep much, which prevents her from '*paying attention*' to this claim.
  - 12.4. She was aware of the limitation date (albeit, in later submissions, she said that while she was generally aware that court/tribunal proceedings had limitation periods, she was not aware of the specific date in this case).
  - 12.5. She had not been advised by ACAS to seek legal advice. She denied that as an experienced social worker, with no doubt involvement in legal issues, it would be a matter of common sense to consider the possibility of taking legal advice, when bringing a tribunal claim and that she would not need ACAS' advice to do so, she said that despite her lengthy experience, she had only had involvement with courts latterly.
13. First Respondent's Submissions. Mr Thakerar made the following submissions:
  - 13.1. The Claimant has not advanced any reason for the delay, let alone any good reason. She was aware of the limitation period and had, despite her claimed communication problems, been able to engage with ACAS and receive the EC Certificate (as referred to in her ET1). There is therefore a void in her submissions as to why the claim was sixteen days late.
  - 13.2. She was unable to explain, when challenged, as to why any alleged problems with access to emails would have prevented her from presenting her claim.

- 13.3. There is no corroborative evidence of her stated memory, or personal problems.
- 13.4. None of the other factors in **Keeble** apply and the Tribunal is reminded that it has wide discretion in such matters.
- 13.5. In respect of considering the balance of prejudice to the parties, the balance falls in the Respondents' favour, as, to date, despite two sets of Tribunal orders, the Claimant has failed to show that her claim has any merit, which is a factor the Tribunal can take into account. There has been no compliance whatsoever with Tribunal orders, no medical documents have been provided and the case has the prospects of being '*never-ending*'.
14. **Second Respondent's Submissions.** Ms Gyane made submissions as follows:
- 14.1. She adopted Mr Thakerar's submissions.
- 14.2. The time limit is strict and the Claimant accepts that the claim is out of time.
- 14.3. The exercise of the discretion is the exception rather than the rule.
- 14.4. The balance of prejudice falls in the Respondents' favour, as the claim has no reasonable prospects of success.
- 14.5. The Claimant has provided no reasons for the delay, but only vague excuses. She has, despite her stated 'email issues', been able to engage with ACAS within the appropriate time frame.
- 14.6. Since presenting the claim, she has made no efforts to progress it.
- 14.7. The Second Respondent reserved its position as to costs.
15. **Conclusions.** I find that it would not be just and equitable to exercise my discretion to extend time in this case, for the following reasons:
- 15.1. The Claimant has presented no valid reason as to why she failed to present her claim in time. It is deeply implausible that for over a year now, the Claimant has apparently been unable to access her emails. She was clearly able to do so when communicating with ACAS and she provided no explanation as to why any such problem would have, in any event, prevented her from filing her claim in time, particularly as the electronic filing of a claim is not dependent on email and there are, in any event, alternative, non-digital methods of doing so.
- 15.2. I am unwilling to accept, without corroborative evidence, medical or otherwise that the Claimant's medical or personal circumstances prevented her from meeting the time limit, or since progressing this claim.

- 15.3. She made contradictory submissions as to her knowledge of the limitation date and I conclude, therefore that she was aware of it and/or certainly had the facility to find it out, either by internet search or query of ACAS.
- 15.4. I don't accept, for a moment that an experienced social worker like her would need to be advised by ACAS to take legal advice in bringing such a claim, before considering doing so.
- 15.5. In balancing the prejudice between the parties, I consider that that balance falls in the Respondents' favour, as, applying **Rathakrishnan**, there is no evidence before me whatsoever that might indicate that the claim has any merit. While the Claimant will be debarred from bringing this claim, she has failed utterly to engage with progressing it and all the indications are, from what she said that that situation is likely to continue, resulting, as Mr Thakerar submitted, in a 'never-ending' claim, incurring costs and time expenditure by the Respondents, to no good end.

---

**Employment Judge O'Rourke**  
Dated 22 January 2021