



# EMPLOYMENT TRIBUNALS

**Claimant:** Leon Schliker

**Respondent:** Accomplish Group Limited

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Cardiff (in private; by video)      **On:** 24<sup>th</sup> February 2022

**Before:** Employment Judge Howden-Evans

### Appearances

For the Claimant: Ms Schliker, Claimant's mother

For the Respondent: Mr Brockley, Counsel

## Judgment on an Issue

The employment judge's decision is that Mr Schliker's claims of disability discrimination and wrongful dismissal have been presented within the relevant time limits in the Equality Act 2010 and the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 and the Tribunal has jurisdiction to hear these claims.

### REASONS

1. Mr Schliker has presented claims of disability discrimination and of wrongful dismissal (ie breach of contract for failure to give notice of dismissal).
2. Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the Order") explains a wrongful dismissal claim must be presented to the Tribunal within 3 months of the date of dismissal.
3. S123 Equality Act 2010 provides a discrimination claim must be presented within 3 months of the act (of discrimination that is being) complained of.
4. It is agreed that Mr Schliker was dismissed from his employment with Accomplish

on 27<sup>th</sup> January 2021.

5. It is agreed Mr Schliker commenced ACAS early conciliation on 10<sup>th</sup> July 2021 and that conciliation ended on 12<sup>th</sup> July 2021. Mr Schliker presented the ET1 claim form to the tribunal on 28<sup>th</sup> July 2021.
6. The starting point is that both claims should have been presented to the Tribunal on or before 26<sup>th</sup> April 2021. The effect of the ACAS EC provisions is Mr Schliker would not be able to start a tribunal claim for disability discrimination or wrongful dismissal without first contacting ACAS and commencing ACAS early conciliation - on or before 26<sup>th</sup> April 2021 Mr Schliker should have contacted ACAS to start early conciliation and this would have extended the time limit for presenting the claim to the tribunal by at least one month and then the ET1 claim form should have been sent to the tribunal within that extra month.
7. In relation to a wrongful dismissal claim, there is an exception to the 3-month time limit where it was “not reasonably practicable” for the claim to be presented within that 3-month period. The burden is upon Mr Schliker to prove it was not reasonably practicable for him to present the claim before 26<sup>th</sup> April 2021 and he has presented the claim within a reasonable period of time. As the respondent’s barrister has explained reasonably practicable means reasonably feasible; it is a high threshold to meet.
8. In considering whether it was or was not reasonably practicable for Mr Schliker to present the claim within the 3 month period, the legal authorities suggest I should focus on what was the substantial cause of Mr Schliker’s failure to comply with this deadline.
9. Here Mr Schliker says it was not reasonably practicable for him to submit the claim in time as
  - 9.1. Mr Schliker and his mother were not aware of the existence of the employment tribunal or any other means of externally challenging his dismissal until a Zoom meeting, on 6<sup>th</sup> July 2021, with Paul Cotgias.
  - 9.2. For a period of some months starting at the end of February 2021, Mr Schliker was unwell with low mood, which, combined with his learning difficulty meant he felt overwhelmed by the situation and didn’t know what to do. Mr Schliker describes himself as having attention deficit hyperactivity disorder (ADHD). He described himself as “feeling worthless and overwhelmed” for a number of months from end of February 2021 onwards.
  - 9.3. Mr Schliker was not aware that a manager in Accomplish had told those carrying out Mr Schliker’s disciplinary hearing, that he wanted Mr Schliker to be dismissed and had referred to Mr Schliker in a derogatory manner which Mr Schliker believes suggests his dismissal was predetermined and discriminatory – Mr Schliker asserts he first became aware of this when he had sight of documents disclosed by Neath and Port Talbot County Borough Council’s safeguarding team on 2<sup>nd</sup> July 2021.
10. In relation to a discrimination claim, there is an exception to the 3-month time limit

when the claim has been presented within “*such other period as the employment tribunal thinks just and equitable*”. There is guidance in *British Coal Corp v Keeble* [1997] IRLR 336 and s33 Limitation Act 1980. In particular I should consider: (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 Mr Schliker acted once he knew of the facts giving rise to the cause of action; and (e) the steps taken by Mr Schliker to obtain appropriate advice once he knew of the possibility of taking action.

11. During the hearing, I had the benefit of considering witness statements from Mr Schliker and his mother and of hearing both witnesses give evidence on oath. I accept that both witnesses gave a truthful account. I note that when answering Mr Brockley’s questions, Mr Schliker often replied “this is a bit too much for me” and would sometimes lapse into agreeing with every question when he became tired or overwhelmed by questions. We took breaks every 30 minutes and questions were often rephrased to use shorter sentences. I accept Mr Schliker is a vulnerable witness and I recommend that an intermediary is appointed to facilitate communication at future hearings; to ensure the communication needs of Mr Schliker are met and Mr Schliker can fairly participate in proceedings.

### Findings of fact

12. Shortly before working for Accomplish, Mr Schliker had been employed by Cefn Lodge as a carer. He had worked for Cefn Lodge for circa 3 years.
13. Between 11<sup>th</sup> November 2020 and 27<sup>th</sup> January 2021 Mr Schliker worked for Accomplish as a carer.
14. On 27<sup>th</sup> January 2021 Mr Schliker was verbally told that Accomplish were dismissing him from employment. He received an email from Accomplish on 1<sup>st</sup> February 2021 confirming he was dismissed.
15. In mid-February 2021, Mr Schliker returned to his former employer and started working as a carer with Cefn Lodge.
16. On 17<sup>th</sup> February 2021 Mr Schliker’s manager at Cefn Lodge told him that “someone from safeguarding” had phoned and that Cefn Lodge were not able to employ Mr Schliker. Mr Schliker was dismissed from his employment with Cefn Lodge.
17. Mr Schliker was devastated by this dismissal and didn’t know where to turn for help. He didn’t know who “someone from safeguarding” was and phoned Accomplish, Cefn Lodge and the Council to understand what was going on. He was not able to ascertain who had phoned Cefn Lodge. He was not able to get any answers. A manager from Cefn Lodge suggested he contact ACAS for help.
18. Towards the end of February 2021 Mr Schliker did phone ACAS – he made this telephone call whilst he was on his own. He has difficulty recalling the conversation but described it as a short conversation. He did not recall ACAS saying anything about an employment tribunal. Mr Schliker described the

conversation as being confusing as he had been dismissed twice – he found it too complicated to explain and too complicated to understand. Mr Schliker felt he couldn't take any more and couldn't cope with the situation.

19. It was around the end of February 2021 that Mr Schliker confided in his mother and asked her to act on his behalf.
20. By the end of February 2021, Mr Schliker was unwell. Whilst there are no GP records before me, I accept Mr Schliker's evidence supported by Ms Schliker's evidence that Mr Schliker was in a "low mood" and was experiencing feelings of worthlessness. It explains why Ms Schliker took over the conduct of this matter on his behalf at end of February 2021.
21. At the end of February 2021 Ms Schliker read Accomplish's letter of dismissal and told Mr Schliker he needed to appeal this decision. Mr Schliker phoned "Mark", the manager at Accomplish, and was told by Mark that Mark would speak to HR and would return to Mr Schliker. Mark did not return to Mr Schliker.
22. Between February 2021 and April 2021 Ms Schliker tried phoning Accomplish several times – the number given on the dismissal letter was an automated message and did not connect to a person; she googled Accomplish and this provided a different number. Using this number, she was able to speak to "Mandy" who sent an email to a colleague asking them to contact Ms Schliker; no one returned her call. A few days later she phoned Mandy again and was told the colleague had said she would not deal with Mr Schliker's mother.
23. On 11<sup>th</sup> May 2021, as she had not been able to speak to anyone in Accomplish, Ms Schliker helped her son to submit a data protection subject access request to Accomplish. When this request was ignored, on 14<sup>th</sup> June 2021 Ms Schliker helped her son to submit a second subject access request to Accomplish and on 16<sup>th</sup> July 2021 they submitted a third subject access request to Accomplish. Subsequently Ms Schliker helped her son to make a complaint to the Information Commissioner's Office. On 24<sup>th</sup> August 2021, Accomplish responded to the subject access requests and provided copies of some documents.
24. As well as trying to contact Accomplish, in Spring 2021, Ms Schliker was repeatedly phoning the local authority, trying various phone numbers, to understand why "someone from safeguarding" would prevent Mr Schliker from working at Cefn Lodge.
25. On 27<sup>th</sup> May 2021 Ms Schliker received a telephone call from Paul Cotgias of Neath Port Talbot County Borough Council, during which he confirmed that he had been the chairperson of the local authority's safeguarding professional strategy meeting that had considered the referral relating to Mr Schliker. Mr Cotgias told Ms Schliker that he had been the person that had contacted Cefn Lodge and told them they could not employ Mr Schliker because of that safeguarding referral.
26. Mr Cotgias suggested Mr Schliker make a data protection subject access request to the social services department of Neath Port Talbot County Borough Council, to understand the background behind him contacting Cefn Lodge. Ms Schliker made that request on 27<sup>th</sup> May 2021.

27. On 2<sup>nd</sup> July 2021 Mr Schliker received documents from the social services department, in compliance with the subject access request. These documents included correspondence that Mr Schliker believes indicates a manager in Accomplish had told those carrying out Mr Schliker's disciplinary hearing, that he wanted Mr Schliker to be dismissed. Ms Schliker's evidence was that these documents led her and her son to believe that Mr Schliker was being bullied by those in Accomplish and that his dismissal had been predetermined and was discriminatory.
28. On 6<sup>th</sup> July 2021 Mr Schliker attended a Zoom meeting with Ms Schliker and Paul Cotgias. During this meeting, Mr Cotgias suggested Mr Schliker contact ACAS and start an employment tribunal claim. Mr Schliker and Ms Schliker say this was the first time they were aware of the existence of the employment tribunal.
29. Whilst Mr Brockley has suggested it is implausible that anyone would not have heard of the employment tribunal, Mr Schliker and Ms Schliker have both been questioned at length on this topic and I accept that neither of them were aware of the existence of the employment tribunal prior to that conversation with Mr Cotgias in July 2021. At the point of his dismissal, in January 2021, Mr Schliker was 21 years old. He described being dismissed as "being chucked straight in the deep end". He was not aware of people being dismissed before. He had not read newspapers or seen anything on television referring to employment tribunals. In February 2021 he was totally bewildered and didn't know where to turn for help. I have no doubt that had he been aware of the employment tribunals' existence he would have contacted the employment tribunal at that point. When he became aware of ACAS's existence, he did phone them in February 2021. Unfortunately, this was only a short call and Mr Schliker was too overwhelmed to explain his situation or receive guidance. When he became aware of the employment tribunal (on 6<sup>th</sup> July 2021) he contacted ACAS and started early conciliation on 10<sup>th</sup> July 2021.
30. Equally, Ms Schliker was not aware of the existence of the employment tribunal. She has never been dismissed from a job and Mr Schliker's dismissal by Accomplish was the first time she had experienced any friend or family member being dismissed from employment. She had not read about employment tribunals in newspapers or seen them referred to on television or in adverts. When her son was dismissed, she genuinely believed his only recourse was to ask Accomplish to review their decision or to ask his former employer (Cefn Lodge) to reemploy him. She was aware of ACAS in February 2021, as her son had told her he had contacted ACAS – she had thought that was a good idea, but when contacting ACAS hadn't worked, she believed that his only recourse was to persuade Accomplish to change their decision. In light of the extensive attempts, she made in Spring 2021, to pursue this with Accomplish and the Council, I accept that if she had been aware of the existence of employment tribunals, she would have contacted the employment tribunal in Spring 2021.
31. I accept that the substantial cause of Mr Schliker's failure to present his claim within the 3-month deadline was his reasonable lack of knowledge of the existence of the employment tribunal.
32. As Lord Scarman has commented in *Dedman v British Building and Engineering*

*Appliances Ltd* [1974] 1 All ER 520, I should consider “*what were Mr Schliker’s opportunities for finding out that he had rights? Did he take them?*” When Mr Schliker became aware of ACAS’s existence, he did phone ACAS in February 2021, without delay. Unfortunately, this was only a short call and Mr Schliker was too overwhelmed to explain his situation or receive guidance and shortly after this Mr Schliker became unwell experiencing low mood and depression. It has been suggested that Mr Schliker should have sought legal advice or should have attended the CAB to seek advice. Given that he was unwell, experiencing low mood and feelings of hopelessness, I accept it was not reasonably practicable for him to seek legal advice from solicitors or from the CAB in Spring / Summer 2021. He did all that he could manage to do at that point in time – he asked his mother to take over this battle on his behalf and he did contact ACAS. I accept that it was reasonable for him to not be aware of the existence of employment tribunals until July 2021. I accept that this reasonable lack of knowledge of the existence of employment tribunals meant it was not reasonably practicable for Mr Schliker to submit his claim in time.

33. This case can be distinguished from the Dedman line of authorities as whilst Mr Schliker delegated responsibility to Ms Schliker, Ms Schliker is not an adviser. This case is more akin to the circumstances in *Lowri Beck Services Ltd v Brophy* UKEAT/0277/18/LA, where a Claimant with severe dyslexia had relied heavily upon his brother, who accidentally miscalculated the time limits for presenting a claim. The Employment Appeal Tribunal accepted the Tribunal’s finding that it was reasonable for the Claimant to hand over matters to his brother and it was not reasonably practicable for the claim to have been presented in time in those circumstances. In this case, in February 2021, as Mr Schliker was unwell with low mood, which, combined with his learning difficulty meant he felt overwhelmed by the situation and didn’t know what to do, it was reasonable for Mr Schliker to hand over his claim to his mother. Unfortunately, prior to 6<sup>th</sup> July 2021, she too was completely unaware of the existence of employment tribunals – I accept this meant it was not reasonably practicable for Mr Schliker to present his claim in time.
34. Mr Schliker and his mother became aware of the existence of employment tribunals during a conversation with Mr Cotgias on 6<sup>th</sup> July 2021. Mr Schliker contacted ACAS and commenced ACAS early conciliation on 10<sup>th</sup> July 2021; that conciliation ended on 12<sup>th</sup> July 2021. Mr Schliker presented the ET1 claim form to the tribunal on 28<sup>th</sup> July 2021. As he had contacted ACAS within 4 days of becoming aware of the existence of employment tribunals and had issued the claim within 22 days of that knowledge, I accept Mr Schliker has issued proceedings within a reasonable period of time.
35. Further and in the alternative, I accept it was not reasonably practicable for Mr Schliker to present this claim in time as it was not until 2<sup>nd</sup> July 2021 that Mr Schliker received new information that caused him to believe his dismissal may have been predetermined and tainted by discrimination. On 2<sup>nd</sup> July 2021, Mr Schliker became aware of new information when he had sight of documents that were disclosed by Neath and Port Talbot County Borough Council. Mr Schliker believes these documents suggest that a manager in Accomplish had told those carrying out Mr Schliker’s disciplinary hearing that he wanted Mr Schliker to be dismissed and had referred to Mr Schliker in a derogatory manner which Mr Schliker believes suggests his dismissal was predetermined and discriminatory.

As Mr Schliker was aware of this new information on 2<sup>nd</sup> July 2021 and had issued the claim within 26 days of this knowledge, I accept he has issued proceedings within a reasonable period of time.

36. Turning to consider whether it is just and equitable to extend time for the discrimination claim, I have considered the guidance in *British Coal Corp v Keeble* [1997] IRLR 336 and s33 Limitation Act 1980. 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 Mr Schliker acted once he knew of the facts giving rise to the cause of action; and (e) the steps taken by Mr Schliker to obtain appropriate advice once he knew of the possibility of taking action
37. I have already discussed the reason for the delay and length of the delay in this judgment. The delay was 3 months and would not appear to have had a significant impact on the cogency of evidence, particularly as Ms Schliker had helped her son to make a number of data protection subject access requests, putting the respondent on notice that it was likely to face a discrimination claim. There is no evidence to suggest the Respondent is particularly prejudiced by the delay; the dismissing officer and other witnesses remain employed by the Respondent and are available to give evidence.
38. When I consider the extent to which the party sued has co-operated with requests for information, I note there has been significant delays on the part of the Respondent to comply with data protection subject access requests, with only partial disclosure of documents being provided on 24<sup>th</sup> August 2021 and subsequent disclosure of documents in 2021. I note Ms Schliker had to make a complaint to the Information Commissioner's Office to obtain information from the Respondent.
39. I have already discussed the promptness with which Mr Schliker acted, his attempts to consult ACAS in February 2021, his inability to seek advice in Spring / Summer 2021 and his further contact with ACAS in July 2021.
40. Having weighed up all the factors and the prejudice caused to the respondent by granting an extension (which means they will have to defend a discrimination claim, albeit there has not been any specific prejudice such as loss of documents identified) against the prejudice caused to Mr Schliker (by preventing him from pursuing a discrimination claim, in which he says discriminatory acts are still having an impact on his ability to work) – I have determined it is just and equitable to extend the time limit for this discrimination claim. Having regard to his circumstances and the speed with which he acted, I accept that by presenting the claim on 28<sup>th</sup> July 2021, Mr Schliker has presented this claim within such a period of time as the tribunal thinks is just and equitable.
41. This decision means that Mr Schliker's claims of disability discrimination and of wrongful dismissal (ie breach of contract for failure to give notice of dismissal) have been presented within the relevant time limits in the Equality Act 2010 and Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 and the Tribunal has jurisdiction to hear them. Case management directions

will be provided in a separate Order.

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Employment Judge Howden-Evans  
Dated: 29<sup>th</sup> April 2022

JUDGMENT SENT TO THE PARTIES ON 29 April 2022

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche