EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000068/2023

Held via Cloud Video Platform (CVP) in Dundee on 21 July 2023

Employment Judge W A Meiklejohn

Ms Haeyun Lee	**Claimant** **In Person**
Inverlochy Castle Ltd	**Respondent** **Represented by:** **Mr R Peoples - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is as follows –

(a) The Tribunal does not have jurisdiction to hear the claimant's complaint of constructive unfair dismissal because, as at the effective date of termination of her employment, she did not have two years' continuous employment; and that complaint is dismissed.

(b) The claimant's complaint of direct race discrimination is not time-barred and will proceed to a final hearing.

ORDERS

By virtue of the power to do so under Rule 29 of the Employment Tribunal Rules of Procedure 2013, the Employment Tribunal makes the following Orders -

(1) Not later than 25 August 2023 the claimant must either –

(a) confirm in writing to the respondent and the Tribunal that she is not bringing a complaint of harassment under section 26 of the Equality Act 2020, or

(b) submit to the Tribunal (copied to the respondent) an application to amend her ET1 claim form to include a complaint of harassment.

(2) In the event that the claimant does submit such an application, the respondent shall be allowed a period of 14 days from the date upon which such application is notified to them to object to such application.

IMPORTANT INFORMATION ABOUT ORDERS

(1) You may make an application under Rule 29 for an Order to be varied, suspended or set aside. Your application should set out the reason why you say that the Order should be varied, suspended or set aside. You must confirm when making the application that you have copied it to the other party and notified them that they should provide with any objections to the application as soon as possible.

(2) If an Order is not complied with, the Tribunal may make an Order under Rule 76(2) for expenses or preparation time against the party in default.

(3) If an Order is not complied with, the Tribunal may strike out the whole or part of the claim or response under Rule 37.

REASONS

1. This Glasgow case came before me for an open preliminary hearing, conducted remotely by means of the Cloud Video Platform. The claimant appeared in person assisted by a Korean language interpreter, Ms H M Ham. The respondent was represented by Mr Peoples.

2. It was agreed at the start of the hearing that the proceedings would be conducted in English with the claimant seeking a translation from Ms Ham only when she had difficulty in understanding what was being said. The

claimant had a good understanding of English and required to seek a translation from Ms Ham on only two or three occasions.

Issues

3. The issues for determination at the preliminary hearing were set out in a list of issues prepared by Mr Peoples where they were expressed as follows –

(a) Did the claimant have a sufficient qualifying period of continuous employment with the respondent in terms of section 108(1) of the Employment Rights Act 1996 ("ERA") to allow her to bring a claim for unfair dismissal in terms of sections 94 and 111 ERA?

(b)

(i) Has the claimant's claim for discrimination because of the protected characteristic of race been brought outwith the time-limit provided by section 123(1)(a) of the Equality Act 2010 ("EqA") as extended, if at all, by section 140B EqA?

(ii) If so, is it just and equitable for the Tribunal to extend time to allow the claim to be brought in terms of section 123(1)(b) EqA?

Procedural history

4. A closed preliminary hearing for the purpose of case management took place on 8 April 2023 (before Employment Judge d'Inverno). Within the Orders made following that hearing, the claims brought by the claimant were identified as follows –

(a) A complaint of constructive unfair dismissal.

(b) A complaint of constructive wrongful dismissal.

(c) A complaint of direct discrimination because of the protected characteristic of race in terms of section 13 EqA:

(i) the claimant being an Asian woman,

(ii) who compares herself with an actual comparator who was a French woman, and

(iii) the less favourable treatment complained of being non approval of her requested holiday dates in the month of September 2022.

(d) A complaint of unauthorised deduction from wages contrary to the provisions of section 13 ERA in respect of 24 hours worked (3 x 8 hours for each of 5, 6 and 7 August 2022) and being mandatory induction hours.

(e) A complaint of breach of contract, said to arise

(i) by reason of the respondent's alleged refusal to withdraw her previously signed exemption to the minimum continuous hours provision of the Working Time Directive, and

(ii) by reason of the respondent informing her that she could not continue to reside in the staff accommodation during the period of her notice, as she was unable to work during that period.

5. The said Orders also dealt with the following points –

(a) The claimant was not bringing complaints of discrimination where the protected characteristic was sex or disability.

(b) The claimant purported to give notice of a complaint of harassment related to her protected characteristic of race within her case management agenda, which complaint was neither confirmed nor departed from during the preliminary hearing.

6. The present hearing was fixed to deal with the preliminary issues as set out at paragraph 3 above, and Orders were made for the exchange of documents and provision by the respondent's representative of a skeleton argument in advance of the hearing.

Evidence

7. I heard evidence from the claimant. I had a bundle of documents prepared by the respondent's representative (to which I refer below by page number), a supplementary bundle (to which I refer below by page number, prefixed by "S") and also (a) the skeleton argument for the respondent and (b) the claimant's response to this.

Findings in fact

8. The claimant came to the UK on or around 9 July 2022. She spoke sufficient English to undertake work as a waitress. She secured employment with the respondent after arriving in the UK.

9. The claimant was employed by the respondent as a waitress between 8 August and 29 September 2022. She received her last pay from the respondent on or around 27 October 2022.

10. On or about 14 August 2022 the claimant submitted a holiday request to take time off around the time of her birthday in September 2022. In an exchange of emails with Ms K Watson on 22 August 2022 (17-19), the claimant was advised that her holiday request was refused. She was also told that the staff rota would be arranged so as to allow her time off around her birthday.

11. On or around 22 September 2022 the claimant noticed that a manager's name did not appear on the staff rota. On or around 27 September 2022 the claimant discovered from a colleague that the manager was on holiday.

12. The claimant had no knowledge of UK employment law prior to the events which led to her present claim. She had no experience of the Employment Tribunal system. She was familiar with the website gov.uk from her visa application, prior to coming to the UK. She was computer literate.

13. On or around 22 September 2022 the claimant contacted ACAS for advice. This was triggered by her being asked to leave the staff accommodation where she had been staying. She gave the respondent one week's notice of termination of employment on 22 September 2022.

14. On 29 September 2022 the claimant submitted a grievance to the respondent. This was not upheld. On 6 October 2022 the claimant submitted an appeal against the grievance outcome (S1-S3). Within this email she (a) included a link to the ACAS website and quoted extensively from that website, and (b) made reference to making an Employment Tribunal claim. At or around this time the claimant became aware of Early Conciliation ("EC").

15. On 4 November 2022 the claimant received her grievance appeal outcome in an email from Ms J Watson, Hotel Manager (S4-S5). Her appeal was turned down. She was told that this was the end of the grievance procedure.

16. The claimant understood that she had a period of three months within which to submit a claim. She believed that this ran from 29 September 2022. However, from speaking with ACAS, she became aware that "time stopped" for the duration of EC. In her case EC started on 8 December 2022 and ended on 19 January 2023.

17. The claimant thought that she needed to await the outcome of her appeal before submitting an Employment Tribunal claim. Her explanation for waiting from 4 November 2022 (when she received the appeal outcome) until 8 December 2022 (when she initiated EC) was that she needed to decide whether or not to continue with her case.

18. The claimant submitted a number of emails she received from ACAS. The respondent declined to include these in the joint bundle. I considered that it was appropriate to take account of one of these emails in relation to the time bar issue. This was an email from the ACAS Conciliator to the claimant dated 17 February 2023 which included the following sentence –

"As the certificate has been issued on the 19th January you have a months to submit your claim to Tribunal regardless of how settlement discussions are progressing."

19. This prompted the claimant to submit her ET1 claim form. Her claim was received by the Tribunal on 18 February 2023.

Submissions

20. It was agreed that Mr Peoples should go first, by way of oral submissions to supplement his skeleton argument. Mr Peoples dealt firstly with the issue of whether the Tribunal had jurisdiction to hear the claimant's constructive unfair dismissal claim. He indicated that he had nothing to add to his skeleton argument. His position was that the claimant did not have the necessary period of two years' continuous employment (in terms of section 108(1) ERA) to bring a complaint of unfair dismissal.

21. Turning to the claimant's complaint of discrimination, Mr Peoples argued that time ran from 22 August 2022 when the claimant's holiday request was refused. That meant that the statutory time limit (in terms of section 123(1) EqA) was 21 November 2022. The claimant had not initiated EC until 8 December 2022 and accordingly no extension of the time limit could apply. Her claim had been lodged 2 months and 28 days after the time limit, and it would not be just and equitable to extend time.

22. Mr Peoples referred to **Barnes v The Commissioner of the Metropolis and Independent Police Complaints Commission 2005 WL 3635213** where, at paragraph 17, the Employment Appeal Tribunal ("EAT") quoted from the Judgment in **Mensah v Royal College of Midwives 1995 UKEAT 124** (per Mummery J at paragraph 6, referring to the equivalent time limit provision in the Race Relations Act 1996) –

"It is not correct to say that the time limit under Section 68(1) only runs from the date when knowledge is acquired, for example, of a comparable person of a different race or colour who has received more favourable treatment…. An act occurs when it is done, not when you acquire knowledge of the means of proving that the act done was discriminatory. Knowledge is a factor relevant to the discretion to extend time. It is not a pre-condition of the commission of an act which can be relied on as an act of discrimination."

23. Mr Peoples also referred to paragraph 19 in **Barnes** where the EAT said this –

"It follows that a Tribunal will be entitled to ask questions about a Claimant's prior knowledge: when did he first know or suspect that he had a valid claim for race discrimination? Was it reasonable for him not to know or suspect it earlier? If he did know or suspect that he had a valid claim for race discrimination prior to the time he presented his complaint, why did he not present his complaint earlier and was he acting reasonably in delaying? These, of course, are far from being the only questions which the Tribunal may ask in order to decide whether it was just and equitable to consider the complaint. The Tribunal has to consider all the circumstances…."

24. In the present case, Mr Peoples submitted, the claimant knew the facts relating to her race discrimination claim by 22 September 2022 at the latest. This was long before she contacted ACAS to initiate EC. There had been unreasonable delay on her part.

25. Mr Peoples said that it was apparent from her grievance appeal on 6 October 2022 that the claimant was contemplating an Employment Tribunal claim. She was told in Ms Watson's email of 4 November 2022 that the grievance process was at an end, and yet she did not contact ACAS until 8 December 2022. If she was not familiar with UK employment law, the claimant should have sought professional advice once she believed she had suffered discrimination. She chose not to do so.

26. Mr Peoples accepted that it might be relevant if the claimant had received incorrect advice from ACAS and she had acted on the strength of that advice. However, the deadline here passed in November 2022 and so the ACAS advice relied on by the claimant could not assist her.

27. Mr Peoples submitted that the Tribunal should take account of the merits of the claim in exercising its discretion as to whether it would be just and equitable to extend time. He referred to **Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT 132** (per Auerbach J at paragraph 69) –

"The tribunal is therefore not always obliged, when considering just and equitable extension of time, to abjure any consideration of the merits at all,

and effectively to place the onus on the respondent, if time is extended, thereafter to apply for strike-out or deposit orders if it so wishes. It is permissible, in an appropriate case, to take account of its assessment of the merits at large, provided that it does so with appropriate care, and that it identifies sound particular reasons or features that properly support its assessment, based on the information and material that is before it. It must always keep in mind that it does not have all the evidence, particularly where the claim is of discrimination. The points relied upon by the tribunal should also be reasonably identifiable and apparent from the available material, as it cannot carry out a mini-trial, or become drawn in to a complex analysis which it is not equipped to perform."

28. In the present case, Mr Peoples contended, the respondent had exercised its discretion in a way which was consistent with its own policy in relation to holidays. It had accommodated the claimant's request by rearranging her shift pattern to give her four consecutive days off. This was not indicative of a decision maker having conscious or unconscious bias based on the claimant's race. Mr Peoples argued that the claim was weak and this was a factor of which the Tribunal should take account.

29. For the sake of completeness, I should record that Mr Peoples also referred to ***British Coal Corporation v Keeble 1997 IRLR 338, Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 334*** and ***Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23.***

30. The claimant submitted that discrimination meant an unfavourable act when compared with another employee. There could not therefore be discrimination in this case until the other employee took her holiday. This was around 22 September 2022.

31. The claimant said that the mail which she received on 6 October 2022 (rejecting her grievance) had indicated that there could be no exception to the holiday rule. The respondent had however made an exception for the other employee. They had refused to explain why the other employee had been

allowed to take holidays. The difference in treatment could have been for a discriminatory reason. This supported the argument that the claim was not weak.

32. On the issue of whether she should have sought professional advice, the claimant said that ACAS had not advised her to do this. She had not known she could contact a lawyer and in any event she believed this would have cost a lot of money, which she did not have.

33. Almost one month of the delay in lodging her Tribunal claim, the claimant submitted, had been while she was waiting for the respondent to respond to her grievance appeal.

34. The claimant sad that she had relied on advice from ACAS. She had been told that EC stopped time running, and that she had one month after EC ended to submit her claim.

Applicable law

35. The right of an employee not to be unfairly dismissed is found in section 94 ERA. Section 108(1) ERA provides as follows –

Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination.

36. Section 120 EqA gives the Employment Tribunal jurisdiction to determine complaints relating to a contravention of Part V (Work) EqA. Section 140B EqA deals with the extension of time limits to facilitate conciliation before the institution of proceedings. Section 123 EqA deals with time limits and provides, so far as relevant, as follows –

(1) Subject to section 140B, 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.

Discussion and disposal

37. I deal firstly with the claimant's complaint of constructive unfair dismissal. The claimant said during her evidence that she was not aware of the need to have two years' continuous employment to bring an unfair dismissal claim. Unfortunately, from her perspective, this is a question of whether the Tribunal has jurisdiction. Subject to a limited number of exceptions, a Tribunal cannot consider an unfair dismissal claim unless the employee has the required two years' continuous employment.

38. Understandably, given her lack of knowledge of UK employment law, the claimant has not argued that her case falls within one of those exceptions. Notwithstanding this, I did give some thought as to whether one of those exceptions might apply.

39. The exceptions which might be relevant in this case were –

(a) Section 101A ERA (**Working time cases**) – the claimant might argue that she had refused to forego a right conferred on her by the Working Time Regulations 1998 ("WTR").

(b) Section 104 ERA (**Assertion of a statutory right**) – the claimant might argue that she had been constructively dismissed because she had asserted a right conferred by WTR.

40. According to the claimant's ET1 claim form (a) she was seeking to reduce her working hours following a diagnosis of Carpal Tunnel Syndrome which she believed to be work related and (b) she was told she could not remain in the accommodation provided by the respondent if she was unable to work. This could potentially foreshadow claims of the type referred to in the preceding paragraph.

41. However, I noted that the nature of the claims brought by the claimant had been considered by EJ d'Inverno with evident care at the preliminary hearing

on 8 April 2023. As recorded at paragraphs 4 and 5(a) above, the claims being pursued, and those that were not being pursued, were set out in detail in the Orders following that hearing. The matters of working hours and remaining in staff accommodation were categorised as alleged breaches of contract.

42. I did not consider that it was appropriate to revisit this. Matters had clearly been discussed at the 8 April 2023 hearing and EJ d'Inverno had set out the issues with the benefit of the parties' input at that hearing. In contrast, the nature of the claims was not a matter within the scope of the present hearing. I did not believe that I should disturb the settled position just because I could see an alternative (but speculative) argument.

43. Accordingly I decided that the claimant did not have the necessary two years' continuous employment to give the Tribunal jurisdiction to deal with her constructive unfair dismissal claim, and that claim required to be dismissed.

44. Turning to the claimant's direct race discrimination claim and whether that was time-barred, I reminded myself of section 123(1) EqA. For the purpose of the statutory time limit for a claim under EqA, the starting point is "the date of the act to which the compliant relates". I was satisfied that the act for this purpose was the refusal by the respondent of the claimant's request to take holiday at or around the time of her birthday.

45. That was what Mummery J said in ***Mensah***, quoted with approval in ***Barnes***. The fact that the claimant only discovered later that the refusal of her holiday request might be discriminatory did not alter the date of *"the act to which the complaint relates"*, which was the refusal on 22 August 2022. As ***Mummery J*** said in Mensah, "Knowledge is a factor relevant to the discretion to extend time".

46. I agreed with Mr Peoples' assessment that the primary time limit for presentation of a direct race discrimination claim here was 21 November 2022. This meant that the "stop the clock" provisions in section 140B ERA were not engaged in this case because the primary time limit had already expired before the period of EC began on 8 December 2022. The direct

discrimination claim could only proceed if I decided that it was just and equitable to extend time.

47. The Court of Appeal in Robertson, per Auld LJ at paragraph 25, said this –

"It is also of importance to note that the time limits are exercised strictly in employment and industrial cases. Where tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise 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 discretion is the exception rather than the rule."

48. Following ***British Coal Corporation v Keeble***, Tribunals will often have regard to the factors set out in section 33 of the Limitation Act 1980 when considering where it would be just and equitable to extend time. Those factors are –

(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 cooperated with any requests for information.

(d) The promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action.

(e) The steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.

49. In ***Adedeji*** the Court of Appeal, per Underhill LJ at paragraph 37, referred to ***Keeble*** and said this –

"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…."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."

50. In deciding whether it would be just and equitable to extend time so as to allow the claimant's race discrimination claim, I began by considering the length of and reasons for the delay. The length of the delay was 89 days (from 21 November 2022 to 18 February 2023). This was a lengthy period which, at first glance, counted against the claimant. However, I noted that –

    (a) There had been a period of five weeks from 22 August 2022 to 27 September 2022 during which the claimant could not have been aware that the refusal of her holiday request might have been discriminatory because she did not know that another employee's holiday request had been granted.

    (b) There had been a period from 6 October 2022 to 4 November 2022 during which the claimant was awaiting the outcome of her grievance appeal. I accepted her evidence that she thought she had to await the outcome of her appeal before presenting a Tribunal claim.

51. The fact that there was a period of five weeks during which the claimant did not know, and could not have known, that the refusal of her holiday request might have been a discriminatory act counted in her favour when assessing whether it was just and equitable to extend time (or at least mitigated the negative impact of the length of the delay). Given her lack of knowledge about employment law, the claimant's belief that she had to await the outcome of her grievance appeal was not unreasonable. That also counted in her favour.

52. The claimant took from 6 November 2022 until 9 December 2022 to decide what she should do. This was unfortunate because the primary time limit expired during this period. However, it was not unreasonable for a claimant to take some time to consider whether or not to pursue a Tribunal claim, particularly when unaware of how the time limit operated. I considered that this period of delay should be regarded as neutral in my assessment of whether it was just and equitable to extend time.

53. The claimant was computer literate and this meant that she could undertake internet research. She was familiar with the gov.uk website and developed some familiarity with the ACAS website. She also had direct contact with ACAS prior to and during the period of EC. Her understanding was that, for the purpose of pursuing a Tribunal claim, time started to run from 29 September 2022.

54. 29 September 2022 was the date of termination of the claimant's employment and was therefore relevant to unfair dismissal and breach of contract claims. That it might not be relevant to a possible discrimination claim was something of which the claimant was unaware. Given her lack of knowledge of UK employment law, that lack of awareness was not unreasonable, and that counted in the claimant's favour.

55. The claimant was aware of the *"stop the clock"* aspect of EC. She believed understood that this was the effect of her initiating EC on 8 December 2022. She was told by ACAS on 17 February 2023 that, in effect, 18 February 2023 was the deadline for presenting a Tribunal claim. She acted in accordance with her understanding that this was the date by which her claim had to be submitted. That was reasonable and counted in her favour.

56. As Mr Peoples had asked me to do, I considered the merits of the claimant's complaint of direct race discrimination insofar as I was able to do so based on the information available to me. There was clearly a difference in race – the claimant was Asian whereas her comparator was European. There was also clearly a difference in treatment – the claimant's holiday request was refused whereas her comparator's was granted.

57. Having regard to the decision of the Court of Appeal in ***Madarassy v Nomura International plc [2007] EWCA Civ*** 33, was there "something more" than these differences which might have transferred the burden of proof to the respondent in terms of section 136 EqA? I did not consider that I had sufficient information to form a view on this. This was significant because the claimant's prospects of success would be enhanced if the burden of proving that their treatment of her was not because of her race passed to the respondent.

58. There was some force in Mr Peoples' argument that the claimant's direct discrimination case was weak (see paragraph 28 above). However, I interpreted what Auerbach J said in Kumari as stressing the need for caution when assessing the merits of a case before evidence had been heard. The Tribunal might find at the end of the day that the respondent's refusal of the claimant's holiday request was unrelated to her race. While I recognised that the respondent had articulated a non-discriminatory reason for the claimant's treatment and that might well prevail, I did not consider that this was a case where I was able to identify sufficient material to make a confident assessment of the merits.

59. However, I did consider that the respondent had put forward a clear answer to the claimant's direct race discrimination claim so that, on paper, it might be said that the respondent's case stood a greater chance of success at a final hearing. This indicated that, when looking at the merits of the case as a factor in the decision whether or not it was just and equitable to extend time, it was a factor which marginally counted against the claimant.

60. I considered the question of prejudice to the respondent if time was extended so as to allow the claimant's discrimination claim to proceed. This was not a case where the cogency of the evidence was adversely affected by the delay. I believed that the only material prejudice to the respondent was having to face a discrimination claim which was presented out of time. That was inevitably the position where a just and equitable extension of time was in issue. It weighed against the claimant, but again only marginally.

61. Looking at matters in the round, I came to the view that it was just and equitable to extend time in this case. I believed that the factors considered above pointed, on balance, towards granting an extension. The claimant's ignorance of UK employment law was not unreasonable. Her belief that time ran, for the purpose of presenting her claim, from 29 September 2022 was not unreasonable. The email which the claimant received from ACAS on 17 February 2023 indicated that the deadline was 18 February 2023, and it was not unreasonable for the claimant to have understood that this was correct and to have acted accordingly.

62. I decided that it was just and equitable to extend the period of time within which the claimant's complaint of direct race discrimination could be brought, and that this period should expire on 18 February 2023. Accordingly, this claim can proceed to a final hearing.

Amendment

63. If the claimant wants to bring a claim of harassment, she will need to make an application to amend her ET1 to include this. For the claimant's benefit as an unrepresented party I will set out, so far as relevant, the applicable statutory provision which is section 26 EqA –

(1) A person (A) harasses another (B) if –

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of –

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) ….

(3) ….

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are –

age;

disability;

gender reassignment;

race;

religion or belief;

sex;

sexual orientation.

64. If the claimant does make an application to amend, she will need to state what she believes the unwanted conduct was, and to explain why it offended her dignity or created an intimidating etc environment for her. She should also explain why this was not included in her ET1 and why she believes she should be allowed to amend to bring in this claim now.

65. If the claimant does make an application to amend, the respondent will have an opportunity to respond, and to object to the application if so advised.

66. If the claimant decides that she does not wish to pursue a harassment claim, she will need to tell the respondent and the Tribunal that this is her position. Either way, she needs to make a decision reasonably quickly, so as to avoid delay.

67. My Orders above reflect what I have said in the preceding paragraphs.

Employment Judge: **W A Meiklejohn**
Date of Judgment: **31 July 2023**
Entered in register: **07 August 2023**
and copied to parties