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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Gregory

**First Respondent:** The London Borough of Havering

**Second Respondent:** Romford Conservative Association

**Third Respondent:** Havering Conservative Party Group

**Heard at:** East London Hearing Centre    **On:** 10 February 2017

**Before:** Employment Judge Gilbert

## Representation

**Claimant:** Mr J Trussler, Counsel

**First and Third Respondent:** Ms S King, Counsel

**Second Respondent:** Appearance not entered and no attendance.

## JUDGMENT

- 1. The correct name of the Third Respondent is Havering Conservative Party Group.*
- 2. The complaint under the Equality Act 2010 is dismissed upon withdrawal by the Claimant.*
- 3. The Tribunal has no jurisdiction to hear the Claimants claim for unfair dismissal which has been presented outside the time limit. It was not reasonably practicable to present it in time. The Claimant failed to present it within a reasonable time after that.*

## REASONS

1. This claim was listed for a preliminary hearing on to determine whether it should be dismissed because the Claimant is not entitled to bring it if the statutory time limit has expired and/or whether the Tribunal has jurisdiction to hear it.
2. The Claimant in these proceedings seeks to claim discrimination because of religion or belief and unfair dismissal. He was an elected member of the First Respondent Council. He ceased to be a member when he was not elected in the 2010 local government elections. As an elected member of the ruling group he was also a member of the Third Respondent. During the Hearing the correct name of the Second Respondent was agreed to be Romford Conservative Association.
3. The Second Respondent has not entered a response to claim or attended this hearing. It has knowledge of today's hearing and documents have been sent to it.
4. The claim was commenced in the Tribunal on 3 May 2016 almost 6 years after the Claimant ceased to be a member of the First Respondent. It was issued and served on 27 June 2016. A response was entered on behalf of the First and Third Respondents only on 19 July and an amendment to the response was accepted by the Tribunal on 15 August 2016.
5. The First and Third Respondents have said the Tribunal has no jurisdiction to hear the claim of unfair dismissal as the Claimant was not an employee. He was an office holder. The Claim was accordingly set down for a preliminary hearing to determine two preliminary issues, time limits for submitting claims and whether the Claimant was an employee so as to be able to claim unfair dismissal.
6. I elected to deal with the time point first. I have to consider whether it was not reasonably practicable to submit the claim within the time limit and if it was not whether it was submitted within a reasonable time after that. If I find the claim cannot be considered because it was not submitted within the original time limit and it was reasonably practicable for it to be submitted within the time limit or I find it was not reasonably practicable for it to be submitted within that time limit and then find that it was not submitted within a reasonable time after it became reasonably practicable for the Claimant to submit it then the claim will be dismissed against all respondents because the Tribunal has no jurisdiction to hear it.
7. The Claimant withdrew the claim for discrimination on grounds of religion or belief under the Equality Act 2010. This means I only have to determine jurisdiction/time limits for Unfair Dismissal.
8. An application for a stay of the proceedings made by the Claimant was no longer pursued at the Hearing.

### **Evidence and documents**

9. I heard evidence from the Claimant himself. He had prepared a witness statement and answered additional questions. He was cross examined and I asked him some questions. I was also provided with documents by the parties. I considered the documents I was referred to by the parties. I also listened to submissions from the Claimant and Respondents.

## The Facts

10. The Claimant was elected as a Conservative member of Havering Borough Council in May 2006. The Claimant ceased to be a Councillor of the first Respondent in May 2010 when he was not selected to stand in the election by the local conservative association in March 2010 and did not stand as an independent. The Claimant says he was prevented from standing for re-election in May 2010 because he was suspended by the Havering Conservative Group on 8 February 2010 when the party whip was withdrawn. His claim for unfair dismissal was received by the Tribunal in May 2016 that is almost six years late if he is relying on the date he ceased to be a councillor or more than 6 years if he is relying on his suspension from the ruling group which he says he learned of when he was notified in writing on 11 February 2010.

11. The Claimant believed his suspension from the Havering Conservative Group to be unlawful at the time it took place. He says he was prevented from taking advice about his position as a councillor and a member of the group at this time because he was arrested by the police on 4 May 2010 for "harassment." He says this was because of action taken by Councillor Benham. The Claimant says he was unable to pursue his claims until 25 January 2011 the date he learned no action would be taken against him on the harassment claim.

12. At this time in January 2011 the Claimant did not take advice about any claim he might have for unfair dismissal. Instead he elected to concentrate on action against Councillor Benham and the Police. That was his choice.

13. I find the claimant had enough information in March 2010 to take advice on his position as a member of the Group and his failure to be selected for re-election after he was suspended by the conservative group on 8 February 2010 and not selected for re-election on 4 March 2010.

14. I find he still had that same information in January 2011 when he elected to pursue complaints against Councillor Benham and the Police after he was told no further action was to be taken against him over allegation of harassment.

15. The Claimant again failed to take any action after he received a document in January 2013 which he says demonstrates his suspension from the Group was unlawful because the group was inquorate.

16. Mr. Gregory agrees there was nothing to prevent him getting legal advice when he decided to pursue action against the police and Councillor Benham in 2011. He says he had other things on his mind. He was concentrating on getting legal advice about conspiracy to injure, defamation and about being arrested. He agreed he could have received legal advice at this time about claims for unfair dismissal. He agreed there was nothing to prevent him getting legal advice in 2013 and nothing to prevent him noticing the group suspending him was inquorate until January 2016. He said he did not think in 2011 when he was notified harassment charges were not being pursued. He was no longer a Councillor and he left it at that.

17. The Claimant says he finally got advice about his suspension from the conservative group and loss of office as a councillor after he realised that the document

he received in January 2013 showed the Group was inquorate when it suspended him. He realised this in January 2015. He went to ACAS on 25 January 2016 and got an early conciliation certificate on 2 February 2016 against three Respondents. His claim was not accepted until May 2016 more than one month after he received the conciliation certificates but also more than one month after three months from the date he says he realised the meeting suspending him from group was inquorate.

## **Submissions**

### **For the Respondent**

18. The First and Third Respondents say it was reasonably practicable for the claim to be submitted on time. The Claimant was not re-elected on 6 May 2010. He believed in February 2010 he was unfairly treated by the Conservative Group and considered the loss of ability to stand as a conservative candidate was unfair. If it was not reasonable practicable then it was in January 2011. The Claimant has agreed today he was more concerned about getting arrested and pursuing claims against the police in 2011. He chose to prioritise this action over his loss of alleged employment. If he is relying on the letter he received in September 2013 then it was reasonably practicable for him to take advice and commence proceedings then. An allegation that the suspension was fraud is not a basis for extending time.

### **For the Claimant**

19. The Claimant says there is a difference in a belief you have a claim and having a claim. He says the claim was covered up by the production of fraudulent documents. When the Claimant got the document showing the group suspending him was inquorate in September 2013 it was clear the intention was to deceive him. It was reasonable for the Claimant to be taken in. He was alerted in January 2015 to the fact the document showed the Group suspending him was inquorate and he acted promptly and got a report on the document. He commenced proceedings straightaway. He did not wait for the fraud report.

## **The Law and Conclusions**

20. The time limit for commencing a claim for unfair dismissal is set out in Section 111 of the Employment Rights Act 1996 and provides

(2) “.....an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal-

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

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied it was not reasonably practicable for the complaint to be presented before the end of the period of three months.”

21. In this case the claimant believed he had a claim from 11 February 2010 when he received written confirmation of his suspension from the conservative party group on Havering Council. He submitted his claim to the employment tribunal on 6 May 2016 some six years outside the primary time limit of three months. I have to decide whether

the Claimant has shown me it was not reasonably practicable to submit it within the primary time limit and if he has did he submit it in a reasonable time after that.

22. I have found the Claimant knew from February 2010 that he believed his suspension from the Conservative group was unlawful and should have been lifted. In his employment tribunal claim details of complaint he said he believed it to be illegal at the time. At that time he did not take advice on a claim. He says he did not take advice at this time because he was arrested for harassment by the police on 4 May pursuant to action taken by Councillor Benham. He said he was unable to to submit his claim until 25 January 2011 when he learned no further action was being taken against on the harassment allegation. The Claimant told me he elected at this time to take advice and concentrate on pursuing claims against the police and Councillor Benham. That is an admission which I find fatal to his claim. I am prepared to accept it may not have been reasonably practicable for him to commence proceedings within the primary time limit by at the latest 5 August 2010 (he ceased being a councillor on 6 May 2010). I find it was reasonably practicable for him to have commenced proceedings by the middle of 2011 after he knew there would be no further action on the allegation of harassment and he elected to pursue claims against the police and councillor Benham. He had sufficient information in May 2010 to pursue his claim but did not do so. He still had that information in January 2011 and elected to concentrate on other matters. He cannot now seek to rely on a document he has had since 2013 which on the face of it demonstrated the group suspending him was inquorate to commence proceedings in May 2016 after realising what the document demonstrated in January 2016.

23 In the circumstances the Tribunal has no jurisdiction to consider his complaint of unfair dismissal and the claim against all three Respondents is dismissed.

Employment Judge

05 April 2017