EMPLOYMENT TRIBUNALS

Claimant: Mrs Jagoda Benislawska

Respondent: XPO Supply Chain Limited

Heard At: Bedford **On**: 31 March 2017

Before: Employment Judge Brown

Representation

For the Claimant: Ms M Wisniewska, Representative

For the Respondent: Ms P Whelan, Consultant

JUDGMENT having been sent to the parties on 4 April 2017, and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided.

REASONS

Introduction—Issues

1. On 1 September 2016 Mrs Jagoda Benislawska, who I will refer to in these Reasons as 'the Claimant,' presented a claim to the Employment Tribunals: she complained that her dismissal was automatically unfair because it related to her pregnancy, and she complained that she had been subjected to discrimination on grounds of pregnancy and maternity. She also contended that she was owed notice pay.

2. The date that the Claimant gave in the ET1 as that on which her employment had ended was 4 November 2015, and therefore, on the face of it, a long period of time—just fewer than ten months—had passed between the end of her employment and the presentation of her claim. In its response, the Respondent drew attention to what it contended was the presentation of the claim out of time, and invited the Tribunal to consider that issue as to jurisdiction as a preliminary issue.

3. The matter was originally listed for a preliminary hearing at Bedford on

10 November 2016 to identify issues and make case management orders, but, following the presentation of the response, the question whether, in light of time limits, the Tribunal had jurisdiction to consider the Claimant's complaints was identified as a preliminary issue, and a notice of hearing was sent out to the parties. That hearing was originally due to take place on 26 January 2017, but as a result of judicial unavailability, it was re-listed for 31 March 2017, and it came before me on that day.

4. At the outset of the hearing, I identified the issues with the parties at the start of the hearing. The Claimant sought to present complaints under:
   (1) s. 111, Employment Rights Act 1996 ('ERA') for unfair dismissal (by reference to s. 99, ERA, and reg. 20, Maternity and Parental Leave Regulations 1999, which make a dismissal automatically unfair if the reason or principal reason for dismissed is connected with the pregnancy of the employee);
   (2) s. 120, Equality Act 2010 (by reference to ss. 39 and 18(2)) for pregnancy discrimination);
   (3) article 3, Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, for breach of contract in respect of non-payment of notice pay.

Applicable time limits: the statutory framework

5. In respect of each of these complaints a three-month ordinary time limit exists which may be extended:

   (1) in the case of a complaint of unfair dismissal if it was not reasonably practicable for the claim to be present within the ordinary three month time limit and it is presented within a reasonable time thereafter: s. 111(2)(b), ERA;
   (2) in respect of the complaint under the Equality Act 2010 if it is just and equitable to extend time: s. 123(1)(b) EqA;

6. The reasonable practicability test also applies to a contractual claim for notice pay see: Article 7(c) of the 1994 Order.

7. The Claimant did not contend that the dismissal of her appeal against dismissal was itself an act of discrimination or, taken in combination with her dismissal, amounted to an act extending over a period, which would have given rise to different time limit considerations in respect of the discrimination complaint because of s. 123(3), EqA.

8. Each of the time limit provisions is subject to a provision extending time to facilitate early conciliation before the institution of proceedings. These extensions of time works in two ways: in summary, first, they pause the running of time, for time limit purposes, between the start and end of the period of early conciliation; secondly, where early conciliation is begun later within the ordinary time limit, they extend that time limit for a month after the completion of early conciliation. The summary in this paragraph is not meant to be a precise reformulation of these extension provisions, but to capture their essence in broad and therefore slightly imprecise terms.

9. I therefore had to consider each of the statutory tests—reasonable

practicability, and just and equitable grounds for extending time—in reaching my decision.

10. I drew the parties' attentions at the start of the hearing to s. 33(3), Limitation Act 1980, which the case law invites me to consider (along with all relevant circumstances) in reaching a decision specifically on the just and equitable test. I considered that this would be a useful framework for the parties to consider and address along with any other matters on which they wished to rely.

Materials

11. In reaching my decision, I had a concise written witness statement from the Claimant, and extracts from her medical records. I heard oral evidence from the Claimant who was cross examined by Ms Whelan, and oral submissions from both of the representatives.

12. The Claimant gave evidence with the assistance of an interpreter of Polish. I checked before the Claimant began her evidence that she and the interpreter understood one another. Each confirmed that she understood the other.

13. Ms Wisniewska had referred at the end of the Claimant's witness statement to what appeared to be an unreported Employment Tribunal decision from 2000, *Barbara v Bernard Matthews Foods Ltd*, but she had not brought printed copies of that case. She was unable to tell me where she had found it, except to say that I would find it if I googled it. I therefore attempted—with the agreement of the parties, and in their presence, using my notebook computer, which I had in court—to find this decision online, using a variety of legal resources, and ultimately Google, but I was unable to do so, so I have been unable to take that decision into account in reaching my decision. Since the decision referred to was a first-instance decision and since the principles relating to time limits are well settled by appellate authority which binds me, I was satisfied that the unavailability of the decision referred to was unlikely to cause any unfairness to the Claimant; my decision would be specific to the facts and circumstances as they affected her.

Findings of fact

14. I reached the following findings of fact on the balance of probabilities. I treated the burden as on the Claimant to prove to that standard any contentions of fact on which she sought to rely in support of her case that it had not been reasonably practicable to present her complaints in time, and that it would be just and equitable to extend time. I treated the burden as on the Respondent to establish any facts on which it sought to rely. In other words, the party asserting a fact on which it relied bore the burden of proving it.

15. The Claimant was dismissed from her employment by the Respondent on 4 November 2015. She went to seek advice promptly from the Citizens Advice Bureau who, I find, helped her to produce a written appeal against

her dismissal. On 23 November 2015, the Claimant attended her GP who noted that she had been 'fired' from work, that she had been in contact with the Citizens Advice Bureau about unfair dismissal, that there were problems with her pregnancy, that she was mentally low and upset. By way of a plan, the GP said 'await outcome of meeting with lawyer, review next week and discuss matters relating to the pregnancy.'

16. In her witness statement in these proceedings the Claimant had made no mention of a meeting with a lawyer, but when asked about this by Ms Whelan in cross examination, the Claimant said that she had spoken to a lawyer, probably in early December 2015, that the meeting had lasted for about 20 minutes, and that she had received no information beyond that which she had previously discovered by looking at the internet. It is surprising that, in the context of a hearing about time limits, the Claimant did not mention the fact that she had taken advice from a lawyer. The question whether the Claimant should waive privilege in respect of that legal advice was one for her, but the taking of legal advice is always relevant to time limits, and the Claimant's failure even to mention the fact that she had met lawyers was unimpressive. When Ms Whelan asked the Claimant what information she had got from looking at the internet (in light of the Claimant's evidence that the lawyer had not told her anything she had not found online), the Claimant was said that she had been looking for free legal advice. I did not consider it credible that even a 20-minute consultation with a lawyer focused entirely on availability of free legal advice. In my judgment, the Claimant's evidence on this point was evasive.

17. By reference to an effective date of termination of 4 November 2015, the ordinary three-month time limit for presenting a claim to the Employment Tribunals would have expired on 3 February 2016.

18. On 20 January 2016, the Claimant attended a hearing of her appeal against dismissal. By no later than the 27 January 2016 she knew that her appeal had been unsuccessful. The Claimant's ability to participate in the hearing of her appeal against her dismissal is some evidence of her capacities at this time, and tends to suggest that she was reasonably able to take steps to challenge her dismissal even without the help of lawyers.

19. The Claimant's evidence was that she made contact with a friend of a friend who she only knew as Natalya probably in mid-February 2016 (therefore, after the ordinary time limit had already expired), and that Natalya's advice to her was that she had three *years* in which to present a claim to the Employment Tribunals. The Claimant's evidence was that Natalya had said that the Claimant could contact ACAS. No contact was made with ACAS by 3 February 2016 or indeed at any stage until the middle of May 2016. There was no evidence before me from Natalya. The Claimant had not given Natalya's name or details in her witness statement. She said that she had no contact details for Natalya (beyond her phone number) and did not know her second name. I have not been satisfied on the evidence before me that it is more likely than not that Natalya told the Claimant that she had three *years* to present a complaint: if Natalya knew about early conciliation, that would suggest a reasonable understanding of recent developments in employment law. The three-month time limit is of some vintage and is common knowledge. I conclude that someone who knew about early

conciliation is likely to have known about the ordinary three-month time limit. Natalya would have to have been ignorant of the applicable time limits to suggest there was a three-year time limit which is not consistent with her understanding of early conciliation. I have also considered whether it is probable that the Claimant misunderstood what Natalya told her, but I have not been persuaded that this is more likely than not: it was not the Claimant's case that she had reasonably misunderstood the applicable time limit.

20. I accept that it is more likely than not, on the basis of the medical records that I have seen that the Claimant had a more complicated than usual pregnancy and that this affected her mentally and physically, but I am unable to assess objectively on the basis of cogent evidence what the Claimant could and could not do during her pregnancy, rather than just her comparative or relative abilities. The question of what the Claimant could and could not do was not dealt with by way of medical evidence, and I considered the Claimant's own evidence to be self-serving and unreliable as to her abilities, because her witness statement had suggested serious long-term incapacity during the period of her pregnancy, but her oral evidence was that by February 2016, she had recovered from her depression. It was plainly in the Claimant's personal interests to give evidence that her abilities prevented her from actively pursuing a claim, given the long delay. Therefore, in the circumstances, I approached her evidence with caution.

21. The Claimant was eventually delivered of her baby by caesarian section on 28 March 2016, and I accept that, as a result of her pregnancy and maternity, and the way in which she gave birth, she is likely to have been more physically indisposed than other women might have been. But, again, I find myself unable to make an assessment objectively on the balance of probabilities as to what the Claimant could and could not do in the absence of cogent evidence to that effect. The medical records provide limited assistance in assessing the Claimant's objective capacities, and I consider the Claimant's evidence to be unreliable for the reasons set out earlier.

22. On 11 April 2016 and 3 May 2016, a health visitor visited the Claimant at home to discuss matters relating to her early experiences or motherhood. Two entries in the medical notes relating to those visits were highlighted to me in which the health visitor is recorded as having noted the following:-

Discussion about maternal wellbeing – post-natal depression.

On each occasion this is given as part of a long list of matters which are noted.

In the 11 April 2016 entry, the health visitor noted, under the heading 'Mental and physiological observations': "Feels is coping well with excellent support of own mother and husband. Has been out and about already but is aware not to do too much. General observation – bright and cheerful recovering well from caesarian section."

In respect of the notes made on 3 May 2016, the health visitor wrote: "has had mother to stay for last two months and she has returning tomorrow so

is feeling very nervous of being alone. Does have good support from partner and has brother with his family in Daventry, but just worried not going to cope well. Discussed at length and is keen to join in with local groups and will go out and about to see people. Does not feel over-anxious, just sad mother is leaving."

These entries, I find, do not make a diagnosis of post-natal depression since the references to post-natal depression appear to be standard data inputs with a code—they appear to be a checklist of matters which the health visitor considered, rather than a diagnosis or the recording of a complaint—and, importantly, there is no record from a doctor that the Claimant was complaining about, or was diagnosed with, post-natal depression, nor is there any medical evidence before me confirming a diagnosis of post-natal depression. I do accept that pregnancy and motherhood were new experiences for the Claimant—this was her first baby—and as the health visitor had recorded on the 3 May 2016, the Claimant was feeling nervous about being alone when her mother left, a little over a month after the birth, but I conclude that the medical evidence falls short of establishing post-natal depression, and I feel unable to place reliance on the Claimant's own evidence to make good this evidential deficiency. In any event, the proper focus of my enquiry is not medical diagnoses, but evidence of fact about what the Claimant could and could not do, since it is this factual evidence, not a medical label, that is relevant to an assessment of what was not reasonably practicable for the Claimant, and to what is just and equitable. I did not have cogent reliable evidence of incapacity on the part of the Claimant, or cogent evidence of times when the Claimant said that her capacity was more or less impaired.

23. ACAS early conciliation was begun, so an ACAS Certificate records, on 16 May 2016. This was substantially after the ordinary three-month time limit ended in February 2016. An ACAS Certificate was issued by email on 31 May 2016. The Claimant's evidence about how early conciliation came to be completed was not consistent. In cross examination, Ms Whelan asked the Claimant about the sequence of events, and the Claimant's evidence in response to the question was as follows:

Ms Whelan: So, when after March [2016] did you next try to get help? What did you do to get help?

The Claimant: So, only in May [2016], I contacted again the same friend and she filed the documentation to ACAS.

24. The Claimant said in evidence that she had met Natalya again in July 2016, and had first contacted Ms Wisniewska in August 2016, probably early August 2016.

25. Later in the Claimant's evidence I sought to clarify with her the sequence of events. I asked her: 'When was the first time that you knew that ACAS had been contacted in May 2016?' Her evidence was: "So basically when we contacted Ms Wisniewska, she said if it has been filed they should be able to send it back to me, to re-send it, and ACAS informed me that the paper was ready in May 2016."

26. I find that the Claimant's answer in response to my question was inconsistent with her evidence that she had met Natalya in July 2016, after early conciliation had been completed, and discussed the situation with Natalya. I find that it is therefore probable that the Claimant knew before August 2016 that an ACAS Certificate had been filed.

27. The Claimant's evidence was that, after May 2016, nothing much had happened to pursue her case because she believed she had 3 years to proceed, but that she had met Natalya in July 2016 who had returned papers to her (these papers were not in evidence before me) and that as a result of money given to the Claimant by her parents, she had approached Ms Wisniewska in early August 2016. Thereafter the claim was presented on 1 September 2016, probably a little under a month later.

28. The time of events from Ms Wisniewska's instruction onwards ought to have been capable of being established precisely, because the Claimant retained the services of Ms Wisniewska at the hearing before me, but it was not established precisely. I noted that Ms Wisniewska was acting for a fee. She had kept records. It was therefore surprising that there was no explanation about precisely when in August 2016 Ms Wisniewska had been engaged and what had happened since in the period up to the presentation of the claim.

29. The response was filed by representatives acting on behalf of the Respondent on 6 October 2016. Shortly thereafter, probably in mid-October 2016, Mr Keith Eaves who had been the Claimant's line manager and who had been responsible for the decision not to maintain the Claimant's employment at the end of her probationary period, gave notice to the Respondent of his intention to leave and join a competitor. He left about a month later, in mid-November 2016.

30. Other aspects of the Claimant's evidence and in particular the chronology of events which led to the presentation of the claim on 1 September 2016 had not been fully and clearly set out in her witness statement account. The Claimant's witness statement, which she adopted as true, referred at paragraph 27 to the 'EDT' which was not something that the Claimant in fact understood until Ms Whelan explained that it stood for 'Effective Date of Termination.' The Claimant had, therefore, adopted evidence which she did not in fact understand. If she did not understand it, she could not be confident about its truth. This too damaged her credibility.

31. In my judgment and accepting Ms Whelan's submission to this effect it would be implausible (though, I accept possible) for lawyers not to make clear to a prospective claimant in Employment Tribunal proceedings the very strict time limits which operate. Given the vagueness of the Claimant's evidence, the Claimant has not satisfied me that, notwithstanding her 20-minute consultation with lawyers, and her advice from the Citizens Advice Bureau and internet research, she knew nothing about time limits and had been told by Natalya that she had three *years* to present a claim. I accept Ms Whelan's submission that the haste with which the Claimant acted after her dismissal in taking advice from the Citizens Advice Bureau, and her haste again in the summer of 2016 is consistent with the Claimant holding a belief that she needed to act quickly in order to protect her legal position.

32. So far as the Claimant's evidence that Natalya had told her that she had three years in which to proceed is concerned, I note that on the facts that if that had been said it would in any event have been said after the expiry of the ordinary three- month time limit, but in any event I have not been satisfied in light of the damage to the Claimant's credibility that the Claimant has established that account as more likely than not. I note that, as soon as the Claimant had funds, she started with proceedings within about a month.

33. I also take into account that the Claimant's first language is not English. I bear in mind also that the availability of sources of free advice for those who cannot afford to pay has contracted seriously in recent years and those organisations which provide advice are often very stretched in the advice that they can give.

Applicable legal principles

Reasonable practicability and extensions of time

34. The question whether it was not reasonably practicable to present a claim in time is essentially an assessment of fact for me, but it has given rise to a substantial amount of case law about what is reasonably practicable and what is not. The below is not a comprehensive summary of that authority, but I have taken the following principles into account:
    (1) the applicable statutory provision is to be given a liberal interpretation in favour of employees;
    (2) ignorance of time limits will render it impracticable to present a claim. Reasonable ignorance will therefore make it not reasonably practicable to present a claim;
    (3) illness which prevents presentation of a claim will leave it not reasonably practicable to present a claim (even if the employee had not been ill earlier within the ordinary three-month time limit);
    (4) where an employee knows about the right not to be unfairly dismissed, there is an obligation to seek information or advice about how to enforce that right;
    (5) an outstanding internal appeal does not mean that it is not reasonably practicable to start a claim, although if an employee reasonably believes that an appeal is a bar to a claim, this may make it not reasonably practicable to start a claim;
    (6) if an employee instructs lawyers or advisors, and through their default, a claim is not presented in time, the starting point is that nonetheless it was reasonably practicable for the claim to have been presented in time (although it is necessary to assess whether someone can properly be called an advisor for these purposes);
    (7) being actively misled by a third party as to time limits may make it not reasonably practicable to present a claim in time;
    (8) if it was not reasonably practicable to present a claim in time, I may allow an extension of time for such further period as I consider reasonable. There is no fixed upper or lower limit, and this is a matter for my discretion, which I must exercise judicially.

Extensions of time on just and equitable grounds

35. Again, the question whether it is just and equitable to extend time is fact- and circumstance-sensitive, but certain principles have been established by the authorities:
    (1) There is no presumption in favour of extending time and the onus is on a claimant;
    (2) By contrast to the starting point for extensions of time on reasonable practicability grounds, incorrect legal advice should not ordinarily be visited on a claimant by refusing to extend time;
    (3) I am encouraged to consider the factors in s. 33, Limitation Act 1980, but this is not mandatory and I should not adopt a checklist approach;
    (4) while the single most important factor may be whether the delay will have affected the ability of a Tribunal to conduct a fair trial of the issues, this should not be relied on as a reason not to attach weight to other factors, such as serious and avoidable delay in claiming, or obtaining advice.

Conclusions

Reasonable practicability

36. I turn then to my conclusions in light of my findings of fact and the applicable law.

37. In respect of the unfair dismissal and notice pay complaints a stricter legal test applies. The question for me is whether it was reasonably practicable for the complaints to be presented within the ordinary three-month time limit. As at 3 February 2016, when the time limit expired, it was not practicable for complaints to be presented to the Employment Tribunals because the Claimant had not engaged in early conciliation. So considered, the question would be whether it was not reasonably practicable for the Claimant to have engaged in early conciliation by that date which would have extended the time for presenting a claim by a month after the time when early conciliation ended. In light of the fact that the Claimant had done research on the Internet herself and had received legal advice, as well as advice from the Citizens Advice Bureau, I am not satisfied that as at 3 February 2016 it was not reasonably practicable for the Claimant to have embarked on early conciliation.

38. In any event, putting aside the question of early conciliation and considering whether the Claimant could have begun Tribunal proceedings by 3 February 2016, I have not been satisfied that it would not have been reasonably practicable for her to do so. The approach to these questions is complicated by the introduction of the statutory requirement as to early conciliation, but whether I am considering 3 February 2016 as the date by which a claim should have been presented or 3 February 2016 as the date by which early conciliation should have been begun, with a later date for presentation of the claim, the Claimant has failed to satisfy me that it was not reasonably practicable to do what was required in respect of early conciliation or the presentation of a claim by the respective dates in light of the steps which she had taken both in seeking advice and in light of her state of physical and mental health, which I have not been satisfied was sufficiently impaired to make it not reasonably practicable to pursue a claim.

39. In reaching that decision I have taken into account the difficulties that the Claimant was experiencing in her pregnancy, but it does not seem that those difficulties prevented the Claimant from taking further steps by way of obtaining advice or challenging the fairness of her dismissal by attending the appeal hearing on 20 January 2016, about two weeks before the ordinary time limit expired, and I have not been satisfied that the Claimant's health circumstances left it not reasonably practicable for her to prosecute Tribunal complaints. Nor have I accepted that the Claimant was reasonably ignorant of the process by which Tribunal complaints might be pursued. Therefore I conclude that, for this reason, the Tribunal has no jurisdiction to consider those complaints.

40. However if I were wrong to reach that conclusion I would in any event have concluded that the period of time beyond 3 February 2016, to 1 September 2016 when the claim was presented was longer than was reasonable in all the circumstances, so that even if it were not reasonably practicable to have presented a complaint within the ordinary three-month time limit, the Tribunal has no jurisdiction because the actual presentation of the complaint was after the expiry of a further reasonable period.

41. In reaching this conclusion, I have focused in particular on the time between Ms Wisniewska's involvement from early August 2016 to the presentation of the claim on 1 September 2016, since during this period, there is no suggestion that the Claimant was ignorant of her rights or of time limits, and there is no doubt that she knew that the early conciliation requirements had been met, and she was receiving advice from a paid advisor. I conclude that, in light of the very long delay since dismissal, and in the absence of any evidence before me about what was happening in this period between early August 2016 and 1 September 2016 that even this period of about four weeks was longer than was reasonable following the earlier expiry of the ordinary three-month time limit. Therefore, even if the period up to early August 2016 could be condoned as a reasonable delay, the delay thereafter was in itself unreasonable in all the circumstances.

42. It follows, in my judgment, that the complaints of unfair dismissal and notice pay must be dismissed for lack of jurisdiction.

Consideration on just and equitable grounds

43. I turn now to the complaint under the Equality Act 2010 for pregnancy discrimination. I have considered as part of my findings of fact the length of and reasons for the delay on the part of the Claimant. The delay in this case is a very considerable delay, and the latter parts of the delay, in particular the period between the engagement of Ms Wisniewska in August 2016 and the presentation of the claim on 1 September 2016 has not been explained. The overall period of the delay from 3 February 2016 to 1 September 2016, just short of seven months beyond the ordinary three-month time limit, has been incompletely explained and, in my judgment, not satisfactorily explained by reference to the Claimant's ignorance of time limits, the involvement of Natalya, her financial circumstances, her circumstances as a new mum, and her health. 15 days of this period falls to be disregarded as a period when early conciliation was under way, but this short period when

the time limit clock stopped does not affect my conclusion that this is overall a very long delay.

44. I do not consider that the fact that Mr Eaves moved to a competitor made it *impossible* for the Respondent to obtain further information from him before he did so, because the Respondent was on notice of the claim before it had Mr Eaves' notice of resignation. It would have been possible to seek information from him, but I do accept that the real-world timing of events means that it would have been difficult for the Respondent to have been expected to act so quickly to avoid the prejudice to it that Mr Eaves' departure has caused. Until Mr Eaves gave notice, there was no reason to think that he would not be available to give instructions; as soon as he gave notice and said that he was going to work for a competitor, I accept that the relationship between the Respondent and Mr Eaves took on a different quality. While I accept that it is a potentially circular argument on the question of prejudice, in my judgment, the Respondent was reasonably entitled not to embark on incurring substantial expense on taking detailed evidence from Mr Eaves where it was facing a claim that was very substantially out of time. Had the Claimant's claim been presented earlier Mr Eaves would have been available to the Respondent for longer than is in fact the case.

45. No particular criticism is made of the conduct of the Respondent save that it is said that the Respondent delayed substantially in convening and resolving a hearing of the Claimant's appeal against dismissal. I accept that a relatively significant period of time elapsed between November 2015 and the resolution of the appeal in January 2016 and that this ate into the ordinary three-month time limit for presenting a claim. But this is not the reason offered by the Claimant for not pursuing a claim earlier.

46. I have not been satisfied on the evidence before me that the Claimant experienced disabling (I use this in an entirely non-technical sense) consequences of depression. Even on her own case, her depression ended in February 2016, and this was when she made contact with Natalya. I have not been satisfied on the evidence that the Claimant was disabled (again, I use this in an entirely non-technical sense) by virtue of post-natal depression after she gave birth.

47. In my judgment, the Claimant failed to act promptly and reasonably in the pursuit of these proceeding at several stages both in the period running up to February 2016, and in the period between February 2016 and May 2016, and from May to July, and then in the periods between July 2016 and August 2016, when Ms Wisniewska was instructed, and especially between August 2016 and September 2016 when the claim was presented. I reach this conclusion notwithstanding the fact of the Claimant's pregnancy which I accept carves out a period of time especially during March 2016 and April 2016 when there were limitations on how much time she, as a new mother, could reasonably be expected to devote to pursuing proceedings as opposed to other things.

48. Lastly, in taking into account the medical, legal and other expert advice that the Claimant sought or received I have regard to the fact that she had advice from the Citizens Advice Bureau in November 2015, from a lawyer in

December 2015, from Natalya in February 2016, May 2016 and July 2016, and then finally instructed Ms Wisniewska in August 2016. The Claimant had access to the internet and her evidence is that she used it and obtained information from it. I am not persuaded that the Claimant could not find, online, basic advice about how to bring a claim or the time limits for doing so.

49. I bear in mind that the obvious prejudice to the Claimant of a conclusion that the Tribunal has no jurisdiction to consider her complaint of unlawful discrimination is that she would be shut out of pursuing any complaint at all against the Respondent, given my earlier conclusion on jurisdiction to consider her unfair dismissal claim. I am not able to judge on the material before me what her prospects of success would have been. But I bear in mind the public interest in the determination of complaints of discrimination on their merits.

50. However, I have not been impressed, in light of my findings of fact, at the way that the Claimant has sought to assert the statutory rights that she has sought to invoke in respect of her dismissal, and in my judgment the Claimant reasonably could and should have acted more promptly than she did to take action.

51. I have not been persuaded that it is likely that the Claimant believed that she had 3 years within which to act and in my judgment the Claimant must have known that she was delaying for a very long time relatively speaking before taking action against her employer. I am satisfied that there is some prejudice to the Respondent as a result of the unavailability of Mr Eaves who is alleged to have discriminated against the Claimant.

52. I have taken into account Ms Wisniewska's submission that she has substantial amounts of documentation, and that the appeal officer has not been said to be no longer employed by the Respondent, but it is clear from the way that the Claimant pursues her case that the person she alleges discriminated against her is Mr Eaves, not the person who heard the appeal, and I accept that the Respondent could not reasonably have been expected to start preparing detailed evidence for Mr Eaves during the period between early October 2016 and mid November 2016 when Mr Eaves left its employment. In those circumstances, I consider that the availability of documentation and of other witnesses is unlikely to remedy that species of prejudice to the Respondent, so far as it goes.

53. I have given considerable weight to Ms Wisniewska's powerful and powerfully-made submission about the particular disadvantage which many women may experience in the workplace as a result of pregnancy or maternity, but I conclude that this factor in combination with the other factors to which I have had regard which weigh in the Claimant's favour does not outweigh the combination of the considerable length of the delay, the unimpressive reasons for the delay in light of my findings of fact, and the prejudice to the Respondent as a result of that delay.

54. Therefore, I have not been persuaded that it would be just and equitable to extend time, so as to allow the Claimant's complaint of pregnancy discrimination to proceed, and therefore I conclude that the Employment

Tribunals do not have jurisdiction in respect of the Claimant's complaint under the Equality Act 2010.

55. It follows from my conclusions that there are no complaints within the jurisdiction of the Employment Tribunal and therefore I conclude that the claim must be dismissed.

Employment Judge Brown, Bedford
22 May 2017

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS