Appeal No. UKEAT/0198/17/DA

# EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 20 February 2018

**Before**

**THE HONOURABLE MR JUSTICE CHOUDHURY**

**(SITTING ALONE)**

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MISS M KHATUN — APPELLANT

HSBC BANK PLC — RESPONDENT

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Transcript of Proceedings

JUDGMENT

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## APPEARANCES

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| For the Appellant | MR KABIR BHALLA<br>(of Counsel)<br>Free Representation Unit |
| For the Respondent | MR SAUL MARGO<br>(of Counsel)<br>Instructed by:<br>Eversheds Sutherland LLP<br>Kett House<br>Station Road<br>Cambridge<br>CB1 2JY |

**SUMMARY**

**JURISDICTIONAL POINTS - Extension of time: reasonably practicable**

**JURISDICTIONAL POINTS - Extension of time: just and equitable**

Ground 1 was dismissed because the Claimant did not, at the hearing before the ET, seek to rely upon her medical condition to explain her delay. The only medical evidence before the ET dealt with the reasons for failure to attend the first Preliminary Hearing. It was not incumbent on the Tribunal to consider the medical evidence for the delay issue in circumstances where the Claimant had expressly asserted a non-medical reason for her delay, namely that she was awaiting the outcome of her internal appeal even after being told of the relevant time limits. Furthermore, the evidence of her actions in the period up to and around the expiry of the time limit - speaking to ACAS, claiming that she thought she had lodged her claim by 8 June and submitting the early conciliation certificate on 11 June - did not support the contention that she was incapacitated by longstanding anxiety from dealing with such matters.

Ground 2 was dismissed because it could not be said, on the findings made by the ET, that the Claimant was "reasonably ignorant" of the time limits. There were express findings that she was aware of the "relevant time limits", that this was "three months less a day" and that she had been made aware of this at least a month before 10 June, i.e. some 4 weeks before the time limit expired. Those were sufficient findings of fact in this context and the ET did not need to make further findings as to what exactly she was told by ACAS etc.

**THE HONOURABLE MR JUSTICE CHOUDHURY**

1. The Claimant appeals against the Judgment of the Employment Tribunal ("ET") that her claims for unfair dismissal and unlawful discrimination were out of time.

**Factual Background**

2. The Claimant was employed by the Respondent Bank as a Customer Services Officer at its Hedge End branch from June 2008, until her dismissal on 9 March 2015. The Claimant was involved in a serious car accident in 2011. She suffered injuries which resulted in chronic pain in her back, discomfort, insomnia, stress and a chronic anxiety disorder.

3. The Claimant commenced a phased return to work in November 2014. She complains that she was not treated fairly upon her return, both in respect of reasonable adjustments that she expected to be made and the treatment she received from her colleagues. She complained that she felt isolated and ignored by other members of staff. She was subject to frequent fact-finding meetings by management and she was asked to remove her headscarf; the Claimant is a practising Muslim. She brought a grievance setting out some of these complaints on 31 December 2014. After this, the Claimant fell ill and was certified absent from work until 25 March 2015.

4. There was a disciplinary hearing held on 9 March 2015, to consider allegations about her failure to report non-attendance and lateness issues. The Claimant contends that those issues arose because of her health. The Claimant was unable to attend the disciplinary hearing. The hearing proceeded in her absence and she was dismissed with payment in lieu of notice.

A The Claimant lodged an appeal against the dismissal on 1 April 2015. Both her appeal and grievance were dismissed; the outcome being notified in a letter dated 10 June 2015.

B 5. The Claimant lodged proceedings in the ET. These were lodged or recorded as having been received on 23 July 2015. She brought claims of unfair dismissal, discrimination on the grounds of disability, and discrimination on the grounds of religion or belief. A Preliminary Hearing was listed for 23 November 2015, to determine whether her claims had been brought in time. The Claimant did not attend that hearing. The Employment Judge proceeded to hear the claim in her absence and dismissed her claims on the basis that they had not been presented in time and that it was not just and equitable that time should be extended.

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D 6. The Claimant applied for a reconsideration of that Judgment on the grounds that she had been too unwell to attend. A further Preliminary Hearing was listed to be heard on 12 February 2016, to consider: (a) her application for a reconsideration; and (b) if the matter was to be reconsidered, then whether the claims were presented out of time, and, if so, whether time should be extended. At the further hearing, at which the Claimant appeared in person, Employment Judge Reed revoked the original Judgment. The Judge accepted that the Claimant was unable to attend the previous hearing due to health reasons. Having heard evidence in relation to her non-attendance and considered some medical evidence, the Judge said as follows:

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> **"4. I accepted that it was her intention to attend the Tribunal but on the morning she became very unwell. She had sent an email to the Tribunal at that time but she was not well enough to ring.**
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> **5. She subsequently saw her GP and she produced to me a letter dated 10 December. This confirmed that the claimant had significant anxiety which was heightened on day [sic] in question and that she was also in pain.**
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> **6. In those circumstances I concluded that she had an explanation for her absence at that hearing and therefore it was appropriate to revoke the original Judgment."**

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7. The Tribunal then proceeded to consider the time issue. Employment Judge Reed held that the claims had been presented out of time and that time should not be extended. The Judge held as follows:

> **"22. The claim was actually presented on 3 July 2015.**
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> **23. The claimant's evidence as to her state of knowledge was inconsistent and confusing but I concluded that at some date well within the three month period following dismissal she had spoken to ACAS and been told about the relevant time limit. It may well have been the case that she awaited the outcome of the grievance hearing before approaching ACAS for early conciliation but there was clearly nothing preventing her putting a claim in (or, of course, contacting ACAS as she would have to do before commencing proceedings) well within the three month period."**

8. As to the just and equitable extension of time, the Tribunal held and said as follows:

> **"27. This was not a case in which the respondent could contend that the delay particularly prejudiced them - there was no question of documents having been destroyed or witnesses forgetting what happened. On the other hand, the claimant would be severely prejudiced if I found against her. She would lose her right to challenge the actions of the respondent. The balance of prejudice therefore clearly favoured the claimant.**
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> **28. However, I still felt it was not just and equitable that the claims should go forward. The fact was that the claimant had consciously taken the risk of not commencing proceedings, in the knowledge that time would expire. That was, of course, her prerogative. What she could not expect, however, was that if she lost that "gamble" she would still be able to take a claim to the tribunal."**

9. The claims were therefore dismissed.

## The Grounds of Appeal

10. The Claimant lodged an appeal. Permission to appeal was refused on the papers by Mrs Justice Simler (President) and then by His Honour Judge Peter Clark at a Rule 3(10) Hearing on 19 October 2016. However, the Claimant obtained permission from the Court of Appeal (Lewison LJ, on the papers) to proceed on two grounds of appeal. First, that the Employment Judge erred in law and failed to consider the effect of the Claimant's illness and disability and medical evidence on the issue of whether it was "reasonably practicable" for her to bring her claim in time, and on whether it was "just and equitable" for the discrimination claim to succeed; further or alternatively, it was perverse for the Judge to fail to take the medical

A evidence and the Claimant's condition into account. The second ground was that the Employment Judge erred in law in holding that the Claimant's state of knowledge was sufficient to make it "reasonably practicable" to present her claims and in failing to conclude that the Claimant was reasonably ignorant of the time limit; further or alternatively, the Judge failed to give sufficient reasons for reaching his conclusion.

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**The Legal Principles**

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11. Although the time limit for both unfair dismissal and discrimination complaints is three months, the statutory provisions dealing with those time limits differ. In respect of unfair dismissal claims, an extension may be granted under section 111(2)(b) of the **Employment**

D **Rights Act 1996**. This provides:

> **"(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal -**
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> > **(a) before the end of the period of three months beginning with the effective date of termination, or**
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> > **(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."**

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12. In respect of discrimination claims, the ET has a broad discretion to extend time under

F section 123(1)(b) of the **Equality Act 2010**. This provides:

> **"(1) Subject to sections 140A and 140B, proceedings on a complaint within section 120 may not be brought after the end of -**
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> > **(a) the period of 3 months starting with the date of the act to which the complaint relates, or**
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> > **(b) such other period as the employment tribunal thinks just and equitable."**

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13. These provisions have been considered in many cases over the years. Some of the key principles relevant to this case may be summarised as follows:

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(1) Whether or not it is reasonably practicable for a claim to be presented in time is primarily a question of fact and common sense in each case. However,

those matters were to be given a liberal construction in favour of the employee. **Northamptonshire County Council v Entwhistle** [2010] IRLR 740, per Underhill P at paragraph 5.

(2) Where an employee is:

> **"… reasonably ignorant of either (a) his right to make a complaint of unfair dismissal at all, or (b) how to make it, or (c) that it was necessary for him to make it within a period of three months from the date of dismissal, an industrial tribunal could and should be satisfied that it was not reasonably practicable for his complaint to be presented within the period concerned." (*Wall's Meat Co Ltd v Khan* [1979] ICR 52 per Brandon LJ at page 61B)**

(3) Whist the existence of an internal appeal cannot be said to be irrelevant, it may in some cases be relevant to the question of whether the employee could reasonably be expected to be aware of, or to have made enquiries in respect of, time limit. **John Lewis Partnership v Charman** UKEAT/0079/11.

(4) A medical condition such as depression or anxiety can, in principle, present a sufficient impediment so as to render a claim not reasonably practicable, although the focus of any analysis ought to be the impact of the illness in the latter stages approaching the deadline. **Schultz v Esso Petroleum Co Ltd** [1993] 3 All ER 338. I was taken to the following passages, in particular, in the judgment of Potter LJ at page 345A-C:

> **"Turning to Mr Wynter's earlier submissions, it seems to me that, in its briefly stated form, the industrial tribunal decision does appear to indicate that it proceeded on the basis that, because the application could physically have been made - in the sense that the appellant's illness was not such as to prevent his giving instructions to do it - during the first seven weeks of the three-month period, that meant ipso facto that it was reasonably practicable to present the application 'before the end of the period of three months' (see s 112) and/or 'within the period of three months' (see art 7). If the industrial tribunal did not proceed upon that simplistic basis and more subtle reasoning was involved, it certainly did not make it clear. Nor has Mr Wynter been able to fill the gap, save by asserting that the decision is an unassailable finding on a matter of fact."**

And also at page 345G-J:

> **"Thus, while I accept Mr Wynter's general proposition that, in all cases where illness is relied on, the tribunal must bear in mind and assess its effects in relation to the overall limitation period of three months, I do not accept the thrust of his third submission, that a period of disabling illness should be given similar weight in whatever part of the period of limitation it falls. Plainly the approach should vary according to whether it falls in the earlier weeks or the far more critical later weeks leading up to the expiry of**

> **the period of limitation. Put in terms of the test to be applied, it may make all the difference between practicability and *reasonable* practicability in relation to the period as a whole. In my view that was the position in this unusual case. The way in which the industrial tribunal expressed its decision indicates to me that it had its focus wrong and, in the light of the primary findings of fact which it made, misdirected itself in its approach to the question of reasonable practicability.**
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> **On the basis of the findings made by the industrial tribunal as to the primary facts I would allow the appeal."**

14. As to the just and equitable extension of time, I was referred to the case of **Robertson v Bexley Community Centre t/a Leisure Link)** [2003] IRLR 434, per Auld LJ, who said at paragraphs 23 to 24 that the discretion to extend time in discrimination claims is a broad one and the Appeal Court should only interfere with the finding of the Tribunal if it "erred in principle or was otherwise plainly wrong" in its decision.

15. The factors to be taken into account in the exercise of its discretion and the weight to be given to such factors are matters for the ET, and it is for the claimant to convince the Tribunal to extend time; bearing in mind that the exercise of discretion is the exception rather than the rule.

16. Other cases to which I was referred include **Paczkowski v Sieradzka** [2017] ICR 62. That was a case in which the claimant had sought the advice of a skilled advisor and the issue was whether the claimant could say she was reasonably ignorant of the relevant time limits. Her Honour Judge Eady QC held that the Tribunal had erred in finding that it was not reasonably practicable for her to do so because it had failed to make sufficient findings of fact to support that conclusion:

> **"30. Allowing that the advice given to the claimant might have been reasonable in the particular circumstances of this case and, at the same time, that the information provided by the claimant and specific questions raised by her might also have been reasonable, I consider that the employment tribunal could only arrive at a final conclusion on these issues once it had made findings as to the instructions given and questions asked, and as to the status of the advisers and the advice received. Allowing that this is a judgment of an employment tribunal which is to be viewed as a whole and which cannot be expected to be drafted to the highest standards of legal draftsmanship, I am not satisfied there is**

> **sufficient explanation for the conclusion on reasonable practicability, which ultimately comes down to a statement at para 16 as to what may have been the duty of care in respect of a CAB adviser.**
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> **31. Having taken the view that the absence of adequate findings and explanation renders the employment tribunal's conclusion unsafe, I do not consider that it is open to me to reach my own view on this point. I have allowed that the particular circumstances of this case may, as the claimant urges, be sufficiently exceptional as to mean that it was not reasonably practicable for her to lodge her claim in time. Whether, however, that is in fact the case will depend upon an assessment of the actual nature and status of the advice given and the context in which it was given, what the claimant is found to have provided by way of information and what advice she actually sought. As I have stated, I do not consider that the employment tribunal has made sufficient findings on those crucial points, although I have been taken to material that was before the tribunal - including the ET1 and the claimant's witness statement - that would seem to provide more relevant detail in that regard. It is a matter of assessment for an employment tribunal as to whether this really is an exceptional case such as would satisfy the tribunal it was not reasonably practicable for the claim to have been presented in time. I therefore allow the appeal but remit this matter to an employment tribunal."**

17. I was also taken to the case of **Norbert Dentressangle Logistics Ltd v Hutton** UKEATS/0011/13. That was a case very much on its own facts in which Langstaff J upheld, with considerable reservation, a finding of the ET that it had not been reasonably practicable for a claimant to comply with the time limit on the basis that he was not able to function properly in that time. This was despite the fact that the claimant had shown himself to be perfectly capable of taking other steps in the proceedings.

18. Finally, I should mention that I was taken to two decisions dealing with the time limits for lodging appeals to the Employment Appeal Tribunal. However, I find those to be of limited assistance for the simple reason that the test under the **Employment Appeal Tribunal Rules 1993** is not concerned with reasonable practicability or indeed whether it would be just and equitable to extend time.

**Ground 1**

*Submissions*

19. The Claimant is represented in this appeal by Mr Kabir Bhalla, who is acting through the Free Representation Unit. The EAT is most grateful to Mr Bhalla for his careful and skilled

submissions in this case. He submits under ground 1 that there was evidence before the Judge demonstrating that the Claimant was suffering long-standing and disabling symptoms of anxiety and stress and that these symptoms had a direct impact on the Claimant's ability to present her claims in time. He said the Judge clearly relied upon those symptoms in setting aside the first Judgment, but failed to give them any consideration whatsoever in considering whether it was reasonably practicable for the Claimant to present her claims in time. In failing to do so, the Tribunal, he said, erred in law. In the alternative, he said that the failure to take that evidence into account was perverse. These points, he said, apply even more strongly to the question of whether it would be just and equitable to extend time for the discrimination complaint, particularly in light of the Judge's finding that the Claimant would be severely prejudiced by the refusal to extend time. He submits that cases such as **Schultz** are directly on point, in that the Tribunal failed not only to consider the effect of the illness on the latter stages of the three-month time limit but failed to consider the effect of the illness at all.

20. Mr Margo, who on behalf of the Respondent, submits that ground 1 of the appeal appears to rely entirely on the fact that the Judge did not refer expressly to the Claimant's health in that part of the Reasons that dealt with the extension of time. As such, said Mr Margo, the appeal appears to be a perversity appeal and is bound to fail; that is because there is clear evidence to support the Tribunal's conclusions that "she had consciously taken the risk of not commencing proceedings". He refers to the evidence recorded by the Tribunal that the Claimant "was waiting for her grievance to be resolved" before going to ACAS and that she had spoken to ACAS at least a month before she received the grievance outcome, i.e. by about 10 May 2015. He submits that the Judge must be taken to be aware of the Claimant's health because the Judge referred to the GP's letter of 10 December 2015. The weight, if any, to be attached to such evidence was a matter for the Judge. In any event, he said the medical

A evidence does not support the Claimant's case that she was somehow prevented from presenting a claim in time.

B *Analysis and Conclusions*

21. The difficulty for Mr Bhalla under this ground is that the Claimant did not appear to be relying upon her medical condition to explain her failure to get the claim in on time. The Tribunal records:

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> **"17. … She told me it was always her intention to challenge that dismissal but she was waiting for the grievance hearing resolution before going to ACAS.**
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> **18. … she spoke to ACAS at least a month before she received the outcome letter and was given advice in relation to time limits. She was told she had three months less a day within which to get her application in to the Tribunal. She told me that she thought she had presented her claim on 8 June but it was clearly received on 23 July 2015.**
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> **19. In any event, she said that she was waiting for her grievance to be resolved and it simply took too long."**

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22. On the basis of these findings, which are not challenged, it is difficult to see how it can be said that the Tribunal should have considered the Claimant's medical condition in determining the question of reasonable practicability. It does not appear that the reasons expressly relied upon by the Claimant at the hearing to explain her delay had anything to do with illness or anxiety. Rather, the Claimant stated that she was waiting for the outcome of her grievance and that that was the reason she had left it too late.

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23. Considerable reliance is placed by the Claimant on medical evidence, which comprised, at the hearing, the letter from her GP dated 10 December 2015. This provides as follows:

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> **"I am writing to confirm that you have significant and longstanding anxiety. On the morning of the case your anxiety was especially heightened as you were going to go into Court and present your own case; you felt as though you were going to pass out and die and became extremely drowsy. Your pain also became heightened.**
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> **It is not unusual for patients with anxiety to experience a significant heightening of anxiety when a stressful trigger, such a representing themselves in Court, has to be faced. In my opinion your absence in Court was reasonably explained by your medical condition."**

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24. That letter on its face only explains the failure to attend the hearing in November 2015. It says nothing about her state of mind or her ability to engage with Tribunal in the period between 9 March 2015 (when she was dismissed) and 8 June 2015 (when the time limit expired). It does mention that there was heightened anxiety as the time for attending the Tribunal approached. However, there is nothing there to suggest that her anxiety was such that it was heightened whenever any deadline was approaching. There is a marked difference, it seems to me, between the stress of appearing in Court and the stress involved with having to lodge documents in time.

25. I considered carefully whether, in the context of this particular hearing, in which medical evidence was being relied upon to explain non-attendance at a previous hearing and the Tribunal had to consider the time issue, it was incumbent on the Tribunal to, as it were, "join the dots" and consider the medical evidence in relation to the time point. In the circumstances of this case, I do not consider that the Tribunal was under any such duty. I say that for two main reasons. First and most obvious is the fact that the Claimant herself did not assert that those matters were the explanation for her delay. Secondly, there was nothing to suggest from the overall picture of events that the Claimant was incapacitated from taking such steps as contacting ACAS on or about 10 May 2015, putting in her early conciliation certificate on 11 June, and then submitting a claim on 23 July. Had there been evidence that she had not been able to do any of those things then it might have called for an explanation, in which case the Tribunal might have considered the medical evidence, notwithstanding the fact that it had appeared to relate to another issue. However, here the Claimant was able to do those things according to her own evidence and her own evidence appears positively to have asserted that she was awaiting the outcome of her grievance. In those circumstances, the Tribunal was not

under any obligation to factor into its analysis the medical evidence, which on its face was adduced to address a different issue altogether.

26. The Tribunal also expressly found that there was "clearly nothing preventing her putting a claim in … within the three-month period". Mr Bhalla criticised that finding as being one which is based purely on the discussion the Claimant had with ACAS and the fact that she was awaiting the outcome of her appeal. However, I see nothing wrong with that approach because that was all that the Claimant had asserted as being the reason for the delay.

27. Mr Bhalla submits that the Claimant was relying upon considerably more evidence than simply the letter of 10 December 2015, and that these matters taken together would indicate that she was incapacitated in the relevant period. Two sets of information are relied upon: the first set is a number of medical records which the Claimant claims she sought to adduce before the Tribunal; the second set comprises correspondence between the Claimant and the Tribunal and subsequently between the Claimant and the EAT.

28. Dealing first with the further medical evidence, the difficulty, of course, for Mr Bhalla, as he fairly accepts, is that these do not appear to have been before the Tribunal. I have been shown the index for the bundle put before the Tribunal on that occasion, which goes to show that the only medical evidence before the Tribunal was the GP's letter of December 2015, which I have already read out. Insofar as the Claimant seeks to assert that there was other evidence before the Tribunal which was not considered, then there is a well-established procedure for asserting that to be the case: that is to obtain the notes of evidence from the Tribunal. However, that has not been done in this case.

29. Accordingly, the only means by which he can now rely upon that evidence before this Tribunal is if I were to accede to an application to adduce that evidence on the basis that it satisfies the tests in **Ladd v Marshall** [1954] 1 WLR 1489. Mr Bhalla did not pursue a **Ladd v Marshall** point today. He was right not to do so in my judgment. These documents - which comprise five letters from the Claimant's GP and one from the hospital chaplaincy - are all dated between January and February 2016. That was long before the Tribunal hearing. There does not appear to be any reason why she could not have produced that evidence for the hearing, and it would therefore not satisfy the first limb of the test in **Ladd v Marshall**, which is that the documents could not have been produced with reasonable diligence.

30. However, even if I have acceded to accept an application, having briefly considered the letters today, it does not appear to me that they would have made any difference to the outcome. That would of course also provide a second reason for not adducing the evidence under **Ladd v Marshall** principles. The reason for that is that none of the letters deal specifically with the period in question; that is the period between 9 March 2015 and 8 June 2015.

31. Indeed, a further difficulty for the Claimant is that these letters expressly confirm that her anxiety levels are not consistently high but are "variable" and that they "probably have waxed and waned". There is therefore no real basis for suggesting, if these documents had been admitted, that the Tribunal was bound to conclude that the anxiety which rendered her unable to attend the first hearing also affected her during the relevant period after her dismissal.

32. As to the second set of documents, the first of these is the letter to the ET dated 8 September 2015. This was not in the bundle before the Tribunal. One can assume that it was in the Tribunal file but one cannot be confident that the Tribunal's attention was drawn to it either

before or during or even after the hearing. The Claimant does refer in this letter to the fact that "The Immense Pressure from the Bank was also making my health condition worse this illness was also was a reason for the delay [sic]". However, it is not clear from that letter what pressure she could be referring to in respect of the period after 9 March 2015, which is when the decision was sent to her. It also appears from this letter that the Claimant was under some sort of misapprehension that her claim had only been lodged three days out of time. That may have been on the basis that time would have been extended by one month had the early conciliation certificate been lodged in time. That does not appear to have been a point specifically taken before the Tribunal, which further supports the view that this letter was not drawn to the Tribunal's attention at the hearing.

33. In any event, on her own evidence before the Tribunal, the Claimant accepts that she did speak to ACAS no later than about a month before the receipt of the grievance and appeal outcome. This was still some four weeks before the end of the time limit. This tends to support the inference that the Claimant was not incapacitated by anxiety at that particular time as she was able to speak to a third party to gain advice about time limits. Mr Bhalla submits that the fact that she spoke to ACAS about a month before her appeal outcome does not tell us about her condition in the critical period up to 8 June, and that the Tribunal erred by not considering and making facts about her abilities in that period. The difficulty with that argument is that on her own evidence the Claimant thought that she had got the claim in on 8 June. That was her statement to the Tribunal, which is not challenged here as being a finding that is unsupported by any evidence. There was therefore nothing before the Tribunal to indicate that there was any incapacity at around that time either, that is to say around 8 June 2015.

34. In the circumstances, I find that the Tribunal did not err in law in not expressly referring to the effect of the illness in determining the question of reasonable practicability or the question of whether it was just and equitable to extend time. On the face of it, the Claimant relied only upon the fact that she was awaiting the outcome of her grievance and not on her ill health to explain her inability to comply. The Tribunal's conclusions cannot be said to be perverse and there was clearly evidence to support them.

**Ground 2**

*Submissions*

35. The contention here is that the Judge erred in law in holding that the Claimant's state of knowledge was sufficient to make it "reasonably practicable" to present her claims in time and in failing to conclude that the Claimant was "reasonably ignorant" of the relevant time limit. Further or alternatively, it is said that the Judge failed to give sufficient reasons for reaching his conclusion. Mr Bhalla accepts that the Tribunal found that the Claimant's evidence on this issue was inconsistent and confusing. However, he submits that the Tribunal failed to make sufficient findings of fact about her knowledge in that he did not identify what she had been told by ACAS, when precisely she had been told it, or what time limit had been mentioned to her or when it started to run.

36. It is said that in the context of somebody suffering from anxiety - which is heightened during Tribunal appearances - it was incumbent upon the Tribunal to scrutinise the evidence more carefully in relation to those matters. In those circumstances, he said, the Tribunal ought to have found that the Claimant was "reasonably ignorant of the time limit" and as such it was not reasonably practicable for her to present her claim in time. Furthermore, he submits that the Tribunal ought to have taken account of the context, which included the fact that she was

awaiting the outcome of the appeal but there should, he says, have been clear findings about that matter as there were in the **Paczkowski** case.

37. Mr Margo submits that this is, once again, a perversity challenge and that it is unsustainable because of the express findings of fact that the Claimant had spoken to ACAS at least a month before receiving the grievance outcome and had been told of the "relevant time limits". Furthermore, there was a finding that the Claimant herself had thought she had presented her claim to the Tribunal on 8 June, which would appear to indicate that she was aware that that was the relevant date. Given these findings which were unchallenged, there is, said Mr Margo, no basis for interfering with the Tribunal's Judgment. He submits that the **Paczkowski** case does not assist as that was in an entirely different context involving advice from skilled advisors.

*Analysis and Conclusions*

38. The question here is whether the Tribunal ought to have found that the Claimant was reasonably ignorant of the time limits. Unfortunately for the Claimant, it appears from the Tribunal's findings that the Claimant was aware of the time limits. The Claimant was told, according to the Tribunal's findings, that she had three months less a day within which to get an application into the Tribunal. That is a reference to the precise time limit which applies in these claims. There cannot be any real doubt as to the Tribunal's finding that whatever else was discussed between the Claimant and ACAS on or around 10 May, it did involve time limits and also that there was reference to the specific amount of time the Claimant had available. I do not accept Mr Bhalla's submission that the Tribunal was bound in those circumstances to make further detailed findings of fact about this matter. The findings which he did make were

sufficient in themselves to indicate that the Claimant was not reasonably ignorant of the relevant time limits.

39. It is also highly relevant, in my judgment, to note that the Tribunal expressly refers to the Claimant having stated that she thought she had presented her claim on 8 June. That finding is also not challenged. If it is correct then it clearly indicates that the Claimant was aware of the time limit and was trying to assert to the Tribunal that she had complied with it. I acknowledge that this finding appears somewhat inconsistent with the content of the Claimant's letter to the Tribunal dated 8 September, in which she asserts that her claim was lodged only three days out of time on 23 July 2015. However, it seems to me that where there is an unchallenged finding of fact, it is not appropriate for this Appeal Tribunal to undermine that finding by reference to documents to which the Tribunal below may not have been referred. The Tribunal's conclusion "that at some date well within the three month period following dismissal she had spoken to ACAS and been told about the relevant time limit" (paragraph 23) was one that the Tribunal was entitled to reach.

40. Similarly, the conclusion that the Claimant had "consciously taken the risk of not commencing proceedings, in the knowledge that time would expire" (paragraph 28) was one that the Tribunal was entitled to reach based on the evidence which the Tribunal records as having been given by the Claimant. For these reasons, ground 2 is dismissed.

41. I acknowledge that as a litigant in person the Claimant may have had some difficulty in getting her points across to the Tribunal. However, this is an Appellate Tribunal which can only consider errors of law. The fact that the Claimant did not manage to present her case in the way that she might have liked, does not provide her with a right of appeal. This is not a

forum for a re-hearing. Findings of fact, which are properly supported by at least some evidence, cannot be challenged on the grounds of perversity. The points of law which the Court of Appeal found to be arguable, I find are not made out, and for these reasons, and notwithstanding Mr Bhalla's very helpful and forceful submissions, both grounds of appeal must be dismissed.