EMPLOYMENT TRIBUNALS

Claimant: Mr. O Adedeji

Respondent: University Hospital Birmingham NHS Foundation Trust

Heard at: Birmingham **On: 24 July 2018**

Before: Employment Judge Woffenden

Representation
Claimant: In Person
Respondent: Ms G Roberts of Counsel

JUDGMENT having been sent to the parties on 25 July 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1 On 27 November 2017 the claimant (a consultant colorectal surgeon) presented a claim to the tribunal on which he complained of unfair dismissal and race discrimination.

2 A preliminary hearing under rule 53 (1) a) Employment Tribunal Rules of Procedure 2013 ('the Rules') was listed for 8 June 2018 but was converted by Acting Regional Employment Judge Findlay to a preliminary hearing under rule 53 (1) b) of the Rules to consider whether the claim was in time and, if not, whether it should be extended and/or whether the Early Conciliation requirements had been complied with.

3 There was a bundle of documents of 140 pages which included the documents on which the respondent relied and (in a separate section) those on which the claimant relied. I have considered only those documents to which the parties referred me in submissions or under cross-examination. In readiness for today's hearing the claimant had prepared a document headed 'Preliminary Hearing' which appeared to contain evidence from him relevant to the issues I had to decide. Therefore, having first discussed those issues with him, I proposed and he agreed that the document could serve as his witness statement and gave him the opportunity to read and amend it (if he so wished) prior to the commencement of the hearing. In the event he made no such amendments.

4 From the evidence I saw and heard I make the following findings of fact:

4.1 The claimant was a consultant colorectal surgeon employed by the respondent from 4 July 2004 to 25 August 2017, having resigned on 25 May 2017 and given the respondent three months' notice of termination. It was common ground that (disregarding any extension of the time limit for the purpose of facilitating early conciliation before instituting proceedings) the primary three month limitation period in respect of any complaint of unfair dismissal or race discrimination expired on 24 November 2017.

4.2 The claimant had contacted ACAS on 20 May 2017 naming his representative from the British Medical Association (his professional association and trade union) as his representative in the information he provided to ACAS without having first obtained her permission.

4.3. The trade union representative told him on 22 May 2017 the BMA should not be 'on record' as his representative. He therefore telephoned ACAS on 23 May 2017 and believed (erroneously) that as a result he had effectively withdrawn his notification to ACAS .However, he was issued with an ACAS Early Conciliation Certificate (R140570/17/47) on 23 May 2017 which gave the date of receipt of ACAS notification as 20 May 2017.

4.4 As at 20 May 2017 the claimant was aware of his right to bring claims to the tribunal and that there was a primary time limit of three months within which to make such claims. However although his employment ended on 25 August 2017 he took no action in this regard in September October or for the first 16 days of November 2017.His explanation for this period of inactivity was that on 30 August 2017 the General Medical Council ('GMC') as the body responsible for regulating doctors) had imposed an Interim Order on him which imposed minimal restrictions on his practice and he hoped that ultimately at some time in the future the GMC would give him a 'clean bill of health' which would stand him in good stead in future attempts at conciliation with the respondent via ACAS. His aim was to get his old job with the respondent back and would then be in a position to obtain alternative employment elsewhere within the NHS. Although he was aware that GMC decision making can be a very lengthy process he chose to wait until the last day of the three month time period before initiating the presentation of his claim to the tribunal. He accepted under cross-examination that by the beginning of November 2017 he had all the facts he needed to bring his claim and that he knew he did not have to wait for the final determination from the GMC before doing so.

4.5 The claimant was in contact with his representative at the British Medical Association ('BMA') in May 2017 at the time of the events in paragraph 4.2 and 4.3 above and was in contact with the BMA in November 2017.On 16 November 2017 he also contacted solicitors (Irwin Mitchell) and sought employment advice from that firm. He explained he had obtained an Early Conciliation Certificate and was told he needed to submit his claim to the tribunal by 24 November 2017 because he had undergone early conciliation.

4.6 The claimant waited (on his own evidence) until the last possible moment before contacting ACAS again on 23 November 2017 because he believed

that only a favourable outcome from the GMC would result in engagement by the respondent in meaningful conciliation. He was issued with another ACAS Early Conciliation Certificate (R211651/17/33) on 1 December 2017 which gave the date of receipt of ACAS notification as 23 November 2017.

4.7 At 15.41 on 24 November 2017 a paralegal at Irwin Mitchell sent the claimant an email which read as follows:
"*I can confirm receipt of the documents you have forwarded to me.*
We have reviewed the papers that you have forwarded to us. Unfortunately, you have not provided us with a copy of your Early Conciliation certificate from May and therefore, we are unable to advise on when your limitation period. From the information you have provided to us, we understand that Conciliation ended on 23 May 2017, and you resigned on 25 May 2017.
*There is some recent case law, which stated that if you complete Early Conciliation before your employment is terminated you will not be granted an extension of time, further, a second period of conciliation will not lead to an extension (**Commissioners for HM Revenue and Customs v Serra Garau UKEAT/0348/16**).*
*Further, the cases of **Science Warehouse Ltd v Mills** and **Compass Group v Morgan** state that a period of Early Conciliation can include constructive unfair dismissal, even if it is concluded before the resignation takes place.*
For the reasons above, there is a real risk that your limitation to lodge your claim to the Employment Tribunal is today. We would advise that you lodge your ET1 Claim Form today to protect your position. If you have received alternative advice, and you wish to follow this then you are free to do so, however, we must warn you that if your limitation is today and you do not lodge your claim to the Tribunal then you will be time barred and may be unable to bring your claim.
As we have previously stated, we are not instructed to act on your behalf, and in any event we would not have the information or sufficient time to competently draft a lodge your claim on your behalf. Therefore, you remaining conduct of your claim and it is your responsibility to ensure that your claim has been lodged to the Tribunal."
Up to receipt of that email the claimant believed the Early Conciliation Certificate number R140570/17/47 was a nullity.

4.8 The claimant had begun filling in the ET1 form online on 24 November 2017.His evidence was he believed he had sent it in to the tribunal .His evidence on this point was vague confusing and difficult to follow .I did not find it credible and reject it. That evening at 20.05 on 24 November 2017 he received an email by the Employment Tribunal Service telling him he had started a claim and that to return to it he would need his claim number and a memorable word. The email contained a box '*Complete claim'*. The email told the claimant that he would receive a confirmation email once he had submitted his claim. However he did not read it until the morning of Saturday, 25 November 2017. He then spent three days working on the contents of the form over Saturday 25 November Sunday 26 November and Monday 27 November 2017. Section 8.2 of the ET1 form (in which claimants are asked to set out the background and details of their claim including the dates when the events complained about happened) comprises 6 pages and 40 separate numbered paragraphs detailing various events beginning with allegations of victimisation dating from April 2013.He received confirmation that his claim had been submitted to the tribunal at 23.54 on 27 November 2017.

4.9 The claimant provided on the claim form at section 2.3 the Early Conciliation Certificate number R140570/17/47.He did so because it was not possible to submit the claim without such a number and in the light of the advice he had received from Irwin Mitchell .He explained in the first paragraph of section 8.2 of the ET1 form that he had '*erroneously contacted ACAS before I resigned, and I don't think anything started. I have contacted ACAS now, and they are in the process of contacting the hospital, but I have been advised the Employment Tribunal may consider that my first contact is what matters*."

4.10 The claimant then set out in section 8.2 of the ET1 form the '*Claim Details* 'in numbered paragraphs 1 to 40. In paragraph 12 the claimant identifies two acts which he alleges were '*contrary to the Equality Act 2010,sections 13.1 and 19.1*" .First on 30 November 2016 it is alleged that Dr. Rosser (the respondent's medical director) approached the claimant's representative and offered in return for the claimant agreeing to go back to Nigeria that he would be able to facilitate a rehabilitation programme that would see the claimant revalidated as a consultant colorectal surgeon and secondly on 8 December 2016 it is alleged Mr. Radley approached the claimant and said he would be able to facilitate the claimant's reskilling if he agreed to Doctor Rosser's proposal. There was reference in paragraph 37 to an alleged act of harassment by Dr. Suggett when on 5 June 2017 the claimant said he was informed that he would be referred to the GMC for fitness to practice following the claimant's resignation on 25 May 2017 but, unlike the allegations in paragraph 12, the claimant does not say this was contrary to any section of Equality Act 2010 and no mention is made of the protected characteristic of race anywhere in section 8.2.

4.11 In the document headed 'Preliminary Hearing' the claimant said that if he was successful and permitted to proceed with his claim he would like to amend his claim '*to clarify some aspects'*.

4.12 The claimant also referred in that document to the respondent having had the opportunity but failed to reject his resignation and remove what he described as the '*condition*' of emigration to Nigeria in its reply to his resignation letter dated 8 June 2017 and that the ACAS conciliation process (which was '*in train but not completed*' at the date of presentation of his claim) which took place in November 2017 '*would have been another opportunity to remove that condition'* but the respondent declined to participate in conciliation. He contended that discrimination was part of a pattern of behaviour by the respondent and part of a '*continuum* 'of breaches in trust and confidence. Under cross examination he said the last act of race discrimination was not in June 2017 but in November 2017 and he wanted to amend his claim. Neither of those matters are found in the ET1 form presented on 27 November 2017 and no application to amend was made by the claimant nor has the claimant presented a fresh claim to address any new allegations.

5 Section 18 A (1) Employment Tribunals Act 1996 imposes on claimants the requirement to contact and provide certain information to ACAS before instituting proceedings. It provides that:

'(1)Before a person ("the prospective claimant") presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter.

This is subject to subsection (7).

(2)On receiving the prescribed information in the prescribed manner, ACAS shall send a copy of it to a conciliation officer.

(3)The conciliation officer shall, during the prescribed period, endeavour to promote a settlement between the persons who would be parties to the proceedings.

(4)If—

(a)during the prescribed period the conciliation officer concludes that a settlement is not possible, or

(b)the prescribed period expires without a settlement having been reached,

the conciliation officer shall issue a certificate to that effect, in the prescribed manner, to the prospective claimant.

(5)The conciliation officer may continue to endeavour to promote a settlement after the expiry of the prescribed period.

(6)In subsections (3) to (5) "settlement" means a settlement that avoids proceedings being instituted.

(7)A person may institute relevant proceedings without complying with the requirement in subsection (1) in prescribed cases.

The cases that may be prescribed include (in particular)—

cases where the requirement is complied with by another person instituting relevant proceedings relating to the same matter;

cases where proceedings that are not relevant proceedings are instituted by means of the same form as proceedings that are;

cases where section 18B applies because ACAS has been contacted by a person against whom relevant proceedings are being instituted.

(8)A person who is subject to the requirement in subsection (1) may not present an application to institute relevant proceedings without a certificate under subsection (4).'

6 Section 207B of the Employment Rights Act 1996 extends time limits for bringing a claim of unfair dismissal for the purpose of facilitating early conciliation before proceedings are instituted. It provides that:

'1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a "relevant provision").

But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 207A.

(2)In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b)Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3)In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4)If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5)Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.

7 There is a materially identical counterpart provision in section 140B Equality Act 2010.

8 In **The Commissioners for HM Revenue and Customs v Serra Garau UKEAT/0348/16/LA** the Honourable Mr Justice Kerr considered in the context of a claim of unfair dismissal and disability discrimination whether more than one certificate can be issued by ACAS under the statutory procedures and what effect, if any, a second such certificate has on the running of time for limitation periods. He held that the early conciliation provisions do not allow for more than one certificate of early conciliation per 'matter' to be issued by ACAS .If more than one such certificate is issued ,a second or subsequent certificate is outside the statutory scheme and has no impact on the statutory limitation period. He referred in his judgment to the cases of **Science Warehouse v Mills [2016] ICR 252**, in which it was held that an employee was not obliged to go through fresh mandatory early conciliation where she sought to amend her claim to add victimisation (a new cause of action) following her employer's response to her initial claim for discrimination on ground of pregnancy /maternity; **Tanveer v East London Bus and Coach Co Ltd [2016] ICR D11**,in which HHJ Eady said that the amount of time spent on early conciliation would not count in calculating the date of expiry of the time limit ;the clock simply stopped during the early conciliation period ; and **Compass Group UK and Ireland Ltd v Morgan [2017] ICR 73I** in which the President of the Employment Appeal Tribunal held the word

'matter' in section 18 A(1) of the Employment Tribunals Act was very broad and could embrace a range of events ,including events that had not happened when the early conciliation process was completed . In **Serra Gerau** the Honourable Mr Justice Kerr held that as far as the first certificate was concerned (in that case issued to the claimant before the expiry of his notice period) the 'limitation clock could not stop because it had never started.'

9 In **Morgan** the claimant was found to have satisfied the early conciliation requirements in relation to a constructive unfair dismissal complaint when the resignation which underlay it occurred after the ACAS Early Conciliation certificate was issued to the claimant; the proceedings related to a sequence of events that were in issue between the parties at the time of the early conciliation process.

10 In relation to time limits for unfair dismissal claims Section 111 Employment Rights Act 1996 provides that:

'(1)A complaint may be presented to an employment tribunal] against an employer by any person that he was unfairly dismissed by the employer.

(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—

(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 that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(2A)Section 207A(3) (extension because of mediation in certain European cross-border disputes) and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply for the purposes of subsection (2)(a).'

11 The question of what is reasonably practicable is a question of fact for the tribunal. The burden of proof falls on the claimant.

12 The word' practicable 'is to be given a liberal interpretation in favour of the employee **(Dedman v British Building and Engineering Appliances Ltd [1974] 1AER 520).** May LJ described the relevant test in this way: '*We think that one can say that to construe the words "reasonably practicable" as the equivalent of "reasonable" is to take a view that is too favourable to the employee. On the other hand, "reasonably practicable" means more than merely what is reasonably capable physically of being done - different, for instance, from its construction in the context of the legislation relating to factories compare Marshall v Gotham Co Ltd[1954]AC 360,HL. In the context in which the words are used in the1978 Consolidation Act, however ineptly as we think, they mean something between these two. Perhaps to read the word "practicable as the equivalent of "feasible" as Sir John Brightman did in [Singh v Post Office [1973],CR437 NIRC] and to ask colloquially and untrammelled by too much legal logic-"was it reasonably feasible to present the complaint to the employment tribunal within the relevant 3*

months?"-is the best approach to the correct application of the relevant subsection.**"(Palmer and Saunders v Southend-on-Sea Borough Council [1984] ICR at 384,385).** He said the factors could not be described exhaustively but listed a number of considerations which might be investigated including the manner of, and reason for the dismissal, whether the employer's conciliatory appeals machinery have been used, the substantive cause of the claimant's failure to comply with the time limit whether there was any physical impediment preventing compliance, such as illness, or a postal strike, whether, and if so when, the claimant knew of his rights, whether the employer had misrepresented any relevant matter to the employee, whether the claimant had been advised by anyone, and the nature of any advice given, and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time.

13 In relation to time limits for discrimination claims section 123 Equality Act 2010 states that:

'(1) Subject to sections 140A and 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.

(2)Proceedings may not be brought in reliance on section 121(1) after the end of—

(a)the period of 6 months starting with the date of the act to which the proceedings relate, or

(b)such other period as the employment tribunal thinks just and equitable.

(3)For the purposes of this section—

(a)conduct extending over a period is to be treated as done at the end of the period;

(b)failure to do something is to be treated as occurring when the person in question decided on it.'

14 The 'just and equitable' test is a broader test than the 'reasonably practicable' test in section 111 Employment Rights Act 1996.The burden is on the claimant to persuade a tribunal that it is just and equitable to extend time **(Robertson v Bexley Community Centre [2003] IRLR 434.**

15 In the case of **British Coal Corporation v Keeble [1997] IRLR 336 EAT** it was suggested that in exercising its discretion the tribunal might be assisted by the factors mentioned in section 33 of the Limitation Act 1980 .Those factors are consideration of the prejudice which each party would suffer as a result of the decision reached and to have regard to all the circumstances of the case ,in particular the length of and reasons for the delay ;the extent to which the cogency of the evidence is likely to be affected by the delay ;whether the party

sued had cooperated with any requests for information ;the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action ;and the steps taken to obtain appropriate advice once he or she knew of the possibility of taking action. However a tribunal is not required to go through the matters listed in section 33 (3) of the Limitation Act, provided that no significant factor is omitted **(London Borough of Southwark v Afolabi [2003] IRLR 220).**

16 I have regard to the parties' submissions (both oral and written).

17 Ms Roberts submitted that the notification of ACAS on 20 May 2017 and the issue of a certificate on 23 May 2017 prior to resignation and termination of employment which was relied on the submission of the claim did not afford any scope to extend the limitation period under that Early Conciliation process. The second certificate was not issued until 1 December 2017 after the claim had been presented; the claimant could not rely on it to extend the limitation period.

18 She drew my attention to the similarity of the facts in this case and those in **Serra Garau.** Where there were two conciliation periods, the second was' *a purely voluntary exercise with no impact on the running of time'* (**Serra Garau**). The first could not extend the limitation period because it had not commenced: there is no extension of time limits by virtue of Early Conciliation where the limitation has not yet begun to run.

19 In the absence of any extension of the limitation period she submitted the test in relation to the claim of unfair dismissal (where the claim was presented 3 days late) was set out in section 111 (2) Employment Rights Act 1996.

20 As far as discrimination was concerned the relevant provision was section 123 (1) Equality Act 2010.The claim of discrimination was not clearly particularised in the claim form but if they were the acts on 30 November 2016 and 8 December 2016 limitation would expire on 7 March 2017 and if the alleged act of harassment on 5 June 2017 was related to the protected characteristic of race, limitation would expire on 4 September 2017.

21 She submitted the claim could and should have been presented in time. The claimant had been playing a tactical game to put him in a stronger negotiating position with the respondent That did not mean it was not reasonably practicable for his claim to be presented in time He did not contact ACAS until 23 November 2017 and believed he had submitted the claim on 24 November 2017 but he could and should have taken steps much earlier so as not to put himself in jeopardy in the first place. The claimant was a very well educated man well capable of accessing professional legal representation when needed; he had access to solicitors (via Irwin Mitchell and BMA) and had received an express warning that the limitation period expired on 24 November 2017.His pleaded case as far as discrimination was concerned appeared finite and even the latest act complained of (harassment) was on 5 June 2017 so the time limit expired on 4 September 2017.It followed there was no basis for an extension of time on just and equitable grounds.

22 She reminded me that time limits are generally strictly enforced in the employment tribunal .No case had been made out why the tribunal should exercise its discretion in this case. It was for the claimant to demonstrate why the

discretion should be used here .Discretion to extend time was not 'at large'; thus the time limits will properly exclude otherwise valid claims unless the claimant can displace it. The fact that a fair trial was still possible was not sufficient to warrant exercise of a discretion.

23 The allegations were historic and if permitted to proceed very significant sums of public money would be spent in resisting them. Memories were likely to fade; it was already summer 2018.The merits of a claim were important factors to take into account when considering the balance of prejudice; the respondent contends they have no real prospect of success.

24 In his submissions the claimant relied on Early Conciliation Certificate R211651/17/33 as the correct certificate for the purposes of Section18 A (1) of the Employment Tribunals Act. He contends that an ACAS conciliation officer had not endeavoured to promote a settlement between he and the respondent as required under section 18 (3) of the Act because no such officer ever contacted him before the issue of the Early Conciliation Certificate R140570/17/47) and an ACAS conciliation officer had not issued the certificate because it was signed by an Early Conciliation Support Officer. There was only one certificate which complied with section 18 (4) of the Act and that was R211651/17/33. If so Day A was 23 November 2017 and it fell between the primary limitation period (25 August 2017 to 24 November 2017). He had until 1 January 2018 to present his claim and he had already presented it on 27 November 2017.Therefore his claim was in time. He submitted that the respondent was wrong to rely on **Serra Garau.** He pointed to paragraph 25 of **Compass** in which the President said" *Moreover, we envisage that the fact of certification will in most cases be sufficient to demonstrate compliance with section 18A (1)*.' which he submitted implied that not all ACAS certificates fulfil its requirements.

25 In the alternative if the tribunal was to find the claim had been presented out of time the claimant submitted that time be extended in his favour.

26 As far as the unfair (constructive) dismissal claim was concerned he said that until 3 pm on 24 November 2017 he believed he had a month to put in his claim because he had notified ACAS the day before. He submitted no reasonable person would have believed conciliation had taken place in May 2017 and that it would have been possible to 'reapply' at a future date. It was punitive for this to lead to the dismissal of his claim. He had reasonably withdrawn from conciliation because he wanted his trade union representative to advise him during it. He had left his contact with ACAS until just a day before the primary limitation period had expired feeling only a good outcome from the GMC would give him any chance of success in the conciliation process with the respondent. It was reasonable for him to have withdrawn from conciliation initially and having 'postponed' his conciliation attempt to wait as long as he did to improve the chances of a positive outcome. Lastly he submitted it was not reasonably practicable for him to present his claim on time because he only received definitive advice on the last day, had 600 pages of evidence to compress into a single page, had tried but failed to present it on the last day and did so within three days.

27 As far as the race discrimination claim was concerned the claimant drew my attention to paragraphs 14 and an excerpt from paragraph 25 of **Abertawe Bro Morgannwa University Local Health Board v Morgan [2018] EWCA Civ 640** in which Lord Justice Leggatt said 'There is no justification for reading into the

statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that the time cannot be extended in the absence of an explanation of the delay from the claimant.'

28 For the purposes of section 18 A (1) Employment Tribunals Act 1996 the claimant relies not on Early Conciliation Certificate R140570/17/47 but on Early Conciliation Certificate R211651/17/33.It is his case that the former is not issued in compliance with section 18 (4) Employment Tribunals Act 1996. In **Morgan** the context in which the President made her observation in paragraph 25 was when considering the definition of 'matter' for the purpose of section 18 A (1).She went on to say '*In most cases, the parties will know what facts or matters were in issue between them*.' It is not for me to examine the process by which or by whom the ACAS Early Conciliation Certificate came to be issued to the claimant. It is sufficient that such a certificate was issued. I accept Ms. Roberts' submissions; I am bound by **Serra Garau**. The claimant had obtained an Early Conciliation Certificate R140570/17/47 issued by ACAS prior to commencing proceedings. Its effect was not to extend time as it covered a period before time started running on the termination of employment and the second conciliation period had no impact on the statutory limitation period. If I am wrong in that conclusion, as far as Early Conciliation Certificate R211651/17/33 is concerned, he did not obtain it before he instituted these proceedings so neither section 207 B Employment Rights Act 1996 nor section 140 B Equality Act 2010 come into play.

29 I am therefore concerned with the primary three month time limits in relation to both the constructive unfair dismissal claim and the claim of race discrimination.

30 The time limit for presenting a claim of unfair dismissal expired on midnight on 24 November 2017.

31 The claimant is (as Ms Roberts submitted) a well-educated man. He is intelligent and had a sophisticated understanding of his ability to make a claim to the tribunal, and of the relevant time limit having had access to lawyers and his trade union and taken advice from lawyers .He had been advised in terms of when to present his claim and still failed to do it. There was no physical or mental impairment making it not reasonably practicable for the claim to be presented within time. He left matters too long waiting for the GMC to respond positively. That was a high risk strategy. He thereby put himself in the position where if there was any problem in presentation it would not be possible to remedy it in time. He has to bear the consequences of his choices. In my judgment it was reasonably practicable for the claim of unfair dismissal to have been presented in time. It is dismissed.

31 As far as the claim of race discrimination is concerned if the complaint is the allegedly constructive unfair dismissal the time limit for presenting such a claim also expired on midnight 24 November 2017. If not then the position is as submitted by Ms. Roberts in paragraph 20 above.

32 In the case of any complaint in respect of the allegedly constructive unfair dismissal the delay is not substantial .If however the complaints are the alleged acts on 30 November 2016 and 8 December 2016 and the alleged act of harassment on 5 June 2017 the complaints are substantially out of time. There was no evidence before me about why the claimant did not present his complaints about the latter within time. He was not ignorant of his rights or any

facts relating the claim. He had access to advice and information and was not suffering from any relevant ill health. The reasons for the delay were of his own making; he was entirely the victim of his own misfortune having consciously resolved to leave matters to 16 November 2016 before obtaining legal advice and then either not following it or leaving it too late to do so spending a further three days working on the claim form before presenting it although he knew (or ought reasonably to have known) on 24 November 2017 that he had not sent it to the tribunal. The drafting process could and should have been put in train in good time in preparation for a claim he had had in mind since May 2017.

33 In my judgment there is an inevitable impact on the cogency of evidence given the historic nature of the claim of constructive unfair dismissal (if that is said to be an act of race discrimination) and the time which has elapsed in relation to the other allegations of race discrimination allegations.

34 The claimant would be unable to pursue a claim of race discrimination (which may or may not have any merit) if I were not to exercise discretion in his favour.If I decide to exercise my discretion in his favour the respondent will be put to the cost and expense of defending such a claim and its ability to do so is likely to have been affected.

35 There is a public interest in the enforcement of time limits which are exercised strictly in employment tribunals

36 Having considered all of the above, the claimant has not persuaded me that it would be just and equitable to extend time in his favour and allow his claim of race discrimination to proceed. It is dismissed.

Employment Judge Woffenden

17 October 2018