Appeal No. UKEAT/0193/18/JOJ

EMPLOYMENT APPEAL TRIBUNAL

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

At the Tribunal
On 14 December 2018
Judgment handed down on 17 April 2019

Before

THE HONOURABLE MRS JUSTICE SLADE DBE

MR T STANWORTH

MS P TATLOW

MR G WRAY — APPELLANT

JEWISH CARE — RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	No appearance or representation Written Submissions by: MR DEMITRIOUS PANTON (Solicitor) Youngs Solicitors 10 Ellesmere Road Sheffield S4 7JB
For the Respondent	MR MATTHEW CURTIS (of Counsel) Instructed by Frettens LLP The Saxon Centre 11 Bargates Christchurch BH23 1PZ

SUMMARY

JURISDICTIONAL POINTS - Extension of time: reasonably practicable

The Claimant presented his claims for unfair dismissal and breach of contract out of time. He was of limited means and did not have good literacy skills. At the date of expiry of the time limits for presentation of the claims the fees regime was still in place and he would have had to pay £250 to lodge his claim. The Employment Judge found as a fact that he had consulted and instructed a lawyer at the CAB and was told about the limitation period and, albeit wrongly, that it had expired. The Claimant delayed from early August 2017 when he learned about the abolition of the fees regime to 9 September 2017 to present his claim. The Employment Judge found that there was no evidence before her that the Claimant did not have funds to present a claim. She found that the Claimant had access to advice, could reasonably be expected to be aware of time limits and on the basis of his written statement that he was saving up to pay for other matters connected to his claims he had not established that it was not reasonably practicable to present his claim in time. Further the Employment Judge held that in any event the further delay from the expiry of the limitation period to 9 September 2017 was not reasonable. Whilst in some cases before the decision of the Supreme Court in **R (on the application of Unison) v Lord Chancellor** [2017] IRLR 911 the requirement to pay a lodgement fee of £250 may render it not reasonably practicable to lodge claims for unfair dismissal in time, each case is to be judged on its own facts. The Employment Judge on the facts before her did not err in deciding that the Claimant had not established that it was not reasonably practicable to lodge the claims in time.

THE HONOURABLE MRS JUSTICE SLADE DBE

1. Mr G Wray ("the Claimant") appeals from the decision of an Employment Tribunal, Employment Judge McNeill QC sitting alone ("the EJ") who by a decision sent to the parties on 21 February 2018 ("the Judgment") held that the Claimant's claims for unfair dismissal and breach of contract against Jewish Care ("the Respondent") had been presented out of time and were dismissed. Before the EJ the parties and the EJ proceeded on the basis that the date on which the ordinary limitation period expired, taking into account the ACAS early conciliation extension, was 6 July 2017. Following the decision of the EAT in **Luton Borough Council v Mr Haque** on 12 April 2018 an application by the Claimant for reconsideration of the Judgment it was accepted by the EJ and both parties that the date on which the ordinary limitation period expired was 18 not 6 July 2017. The EJ held by a decision on 23 June 2018 that an error by the Claimant's legal advisors as to that date does not assist the Claimant on reasonable practicability. As previously indicated on his behalf the Claimant did not appear and was not represented at the Full Hearing before the Employment Appeal Tribunal ("the EAT"). However the EAT has been greatly assisted by a full, clear and well reasoned skeleton argument submitted for the Claimant by Mr Demetrious Panton of Youngs solicitors. The Respondent was represented before the EAT as they were before the EJ by Mr Matthew Curtis of counsel. As is appropriate in the absence of the opposing party, Mr Curtis presented submissions for the Respondent fairly and carefully.

2. The Judge sifting the appeal directly to a Full Hearing expressed the view that it raises issues concerning time limits and the correct approach to the reasonable practicability of lodging ET claims when the previous fees regime was in place. Whilst in some cases the requirement to pay £250 to lodge a claim for unfair dismissal and breach of contract with an Employment

Tribunal ("ET") may have rendered it not reasonably practicable to present such claims in time, each case must be considered on its own facts.

3. This appeal concerns the application by the EJ to the relevant facts of the time limit provisions in **Employment Rights Act 1996** ("ERA") section 111(2)(b) to the claim for unfair dismissal and those in the **Employment Tribunals (Extension of Jurisdiction) Order 1994** ("the 1994 Order") regulation 7, to the claim for breach of contract, pay for the notice period.

The relevant statutory provisions

4. **Employment Rights Act 1996**

> **"Section 111**
>
> **(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 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply for the purposes of subsection (2)(a).**
>
> **…**
>
> **207B**
>
> **(3) In working out when a time limit set by a relevant provision expires the period beginning with [the date the applicant complies with the statutory obligation to contact ACAS before instituting proceedings] and ending with [the date the applicant receives the relevant certificate from ACAS] is not to be counted."**

5. **Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994**

> **"Regulation 7**
>
> **Subject to articles 8A and 8B, an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented -**
>
> > **(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, …**

(ba) where the period within which a complaint must be presented in accordance with paragraph (a) or (b) is extended by [the provisions requiring contacting ACAS and receiving a certificate from them] the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (a) or (b),

(c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable."

The relevant facts found by the Employment Judge

6. The Claimant was employed by the Respondent, a health and social care charity catering for the Jewish community in the United Kingdom. At the relevant time he worked as a chef at Lady Sarah Cohen House. The effective date of termination of the Claimant's employment was 6 March 2017. The employment came to an end in circumstances of alleged gross misconduct. The Claimant was not given pay in lieu of notice, the subject of his claim in contract. The Claimant asserted that his dismissal was unfair.

7. On 24 April 2017 statutory early conciliation with ACAS commenced. On 7 June 2017 the ACAS EC certificate was issued.

8. On 6 September 2017 the Claimant lodged his claim with the Employment Tribunal. A Preliminary Hearing was listed to determine whether the claim would proceed if it had been lodged out of time and if so whether a deposit order should be made. The Claimant did not attend the hearing before the EJ where he was represented by Mr Lewis a barrister whom he had consulted and instructed at a Citizens Advice Bureau ("CAB") on 13 July 2017. A statement made by the Claimant on 16 January 2018 was before the EJ which she referred to in paragraph 8.

9. The EJ accepted that the Claimant contacted the CAB on about 10 June 2017 but was not given an appointment until 13 July 2017. At paragraph 27 the EJ held:

> **"… Given the time limits which he can reasonably be expected to have been aware of, I find, he could have put in a claim form at any time after the end of the early conciliation period, as indeed, very many claimants do without any sort of legal representation. I conclude that the claimant has not proved that it was not reasonably practicable to present his complaint within the relevant time limits. I make that finding subject to the issues of fees which I come to next."**

The EJ held at paragraph 17:

> **"On 13 July 2017, the claimant saw Mr Lewis, who represented him before the tribunal today. Mr Lewis was giving advice at the CAB. On that date, Mr Lewis gave the claimant advice then on the limitation period and, indeed, accepted instructions from the claimant to represent him."**

The EJ concluded at paragraph 24:

> **"Taking into account all the evidence, I accepted the claimant's evidence that he did not know about the three-month time limit until he attended the CAB on 13 July 2017. I also accepted that Mr Lewis gave him advice on that date about the time limits, albeit that was after the expiry of the limitation period. I also accepted that the claimant is a person who was significantly dependent on others for advice in looking at this potential claim, although Mr Lewis steered away from the suggestion that the claimant was illiterate, which was a suggestion arising out of the respondent's response. Mr Lewis, at one stage, suggested the claimant was vulnerable, or referred to his vulnerability but I could not see any evidence that could support such a finding. Like many claimants he looked for, and obtained, some assistance in looking at how to progress his claim."**

Mr Lewis advised, mistakenly as was later clarified in **Mr Haque**, that the time for presentation of the complaint had expired on 6 July 2017.

10. On 26 July 2017 the Supreme Court gave judgment in **R (on the application of Unison) v Lord Chancellor** [2017] IRLR 911 leading to the quashing of lodging and hearing fees for claims in the Employment Tribunal.

11. In paragraph 21 of his statement the Claimant asserted that "it was only in early August 2017 that I learnt that the fees to pay the tribunal was abolished, so this meant I had better access to justice and only had to find less funds to get my claim started and this was as soon as practical for me to do so".

12. The Claimant did not state how it was that he learned about the judgment in the **Unison** case in early August. The EJ held that on 13 July 2017 Mr Lewis accepted instructions from the Claimant to represent him. At paragraph 20, the EJ held:

> **"From the time of his instruction, Mr Lewis, in conjunction with other professional commitments, worked on the case and the claim was presented in due course to the tribunal on 6 September 2017."**

In the ET1 Mr Lewis was named as the Claimant's representative.

13. In his statement the Claimant advanced the following reasons for delay in presenting his claim to the Employment Tribunal:

> **"19. The reason why I was late was partly because I was unaware of the time limits and mainly that ACAS conciliator had trouble getting any response or cooperation from the Respondents.**
>
> **20. In addition ACAS conciliator was off sick for 2 weeks. There was another delay of around four weeks to get an appointment with CAB.**
>
> **21. I sorted legal advice and was saving up to fund the case and pay the tribunal fees of £250 plus my lawyers' fees and it was only in early August 2017 that I learnt that the fees to pay the tribunal was abolished, so this meant I had better access to justice and only had to find less funds to get my claim started and this was as soon as practical possible for me to do so."**

The conclusions of the Employment Judge

14. The EJ observed that the statutory provisions regarding the limitation periods under the **ERA** and the **1994 Order** are materially indistinguishable.

15. The EJ stated, as has long been established, that the Claimant bears the burden of proof of establishing that it was not reasonably practicable for the complaint to be presented by the due date. If this was established the EJ would decide whether the claim was presented within such further time as was reasonable.

16. The Claimant had contacted ACAS. The EJ held at paragraph 26:

> **"ACAS' email to the claimant of 27 April contained a link to the ACAS booklet on early conciliation. Again, without the claimant giving evidence, I cannot make any finding as to**

> **whether he, with or without assistance, did in fact access this link. Had he accessed the link the time limits would have been clear to him. I do find, however, that he could be reasonably expected, with some assistance, and I find he plainly had some assistance, to access the link so as to be made aware of the relevant time limits. Many claimants depend on looking at sites such as the Employment Tribunal Website and the ACAS website to see what the relevant time limits are. In this case, there is sufficient evidence to show that the claimant, possibly with the benefit of advice, was able to gain access at the very least to the information available from ACAS."**

17. The EJ considered whether the Claimant had established that lack of funds rendered it not reasonably practicable for the Claimant to present his claim in time. The EJ held at paragraph 28:

> **"The difficulty for the claimant with relying on a lack of money and the applicability of the fees regime during the period from the end of the conciliation period until the expiry of the limitation period, is that I do not have the evidence before me to satisfy me that the claimant did not have funds even to present a claim. Indeed, his evidence is that he had been saving up to fund the case and pay tribunal fees and lawyer's fees. On the basis that this is the only evidence before me I cannot say that it was not reasonably practicable for the claimant to present his complaint within the applicable time limits for this reason either."**

18. The EJ summarised her conclusions on whether the Claimant had established that it was not reasonably practicable for him to have presented his claim in time. In paragraph 29 the EJ held:

> **"29. In short, I find that the claimant has not made out that it was not reasonably practicable to bring his claim in time, both because there was information reasonably available to him, as explained, and, also, because I am not satisfied that he did not have the money to present a claim in time.**
>
> **…**
>
> **31. In all the circumstance the claimant has not proved it was not reasonably practicable to present his complaint in time and, for that reason, his claim must be dismissed."**

19. If the Claimant had established that it was not reasonably practicable for him to have presented his complaint in time the EJ held that a delay of two months after the expiry of the extended limitation period was not reasonable. In her decision of 23 June 2018 on the application for reconsideration the EJ observed that for the reasons given in the Judgment the later expiry date of 18 July 2017 would not have affected the outcome.

The grounds of appeal

20. Much in the grounds of appeal appears to be based upon the application to the ET for a review of the original decision. Ground 1 of the appeal, that the EJ erred in proceeding on the basis that the early conciliation extended limitation period ended on 6 July 2017 and not 18 July 2017 had been corrected in the decision on reconsideration of 23 June 2018.

21. By ground 2 it was asserted in paragraph 17 that because of his literacy problems it was not reasonably practicable for the Claimant to have presented his claim during the period from 10 June 2017 when he contacted the CAB to 13 July 2017 when he saw Mr Lewis, a lawyer at the CAB. As for the delay thereafter it was said that if he was given wrong advice that by then the limitation period had expired "this failing should not be visited upon him…".

22. In his skeleton argument for the Claimant Mr Panton referred to **Palmer v Southend-on-Sea Borough Council** [1984] IRLR 119 in which May LJ concluded that the question of whether a step was or was not reasonably practicable, the advice given or available was a material consideration to be taken into account. Very fairly Mr Panton referred to the decision of the EAT in **London International College v Sen** [1992] IRLR 292 in which Knox J held that it was necessary to make findings of fact as to what had been the substantial cause of the delay. Although the decision in **Sen** was appealed to the Court of Appeal this conclusion was not affected. The fact that an advisor had given erroneous advice did not mean that it necessarily followed that it was not reasonably practicable to bring a claim in time.

23. By ground 3 of the appeal it was contended that the existence of fees for starting and pursuing Employment Tribunal proceedings detrimentally affected the Claimant's ability to proceed with his claim. The fees for issuing a claim and pursuing a claim to a hearing could

amount to £1,200. The general impact of the fee regime on the volume of claims referred to by the Supreme Court in the **Unison** case was further relied upon in the skeleton argument of Mr Panton. Further, it was submitted in paragraph 31 of the skeleton argument that the EJ erred in law by focussing on the impact the fee regime had on the Claimant rather than on its general impact on access to justice referred to by Lord Reed in the **Unison** case.

24. In his skeleton argument Mr Panton relied upon a judgment in an Employment Tribunal, EJ Crosfill, in **Benton v Give 2 Give** ET 2302156/2017. Mr Panton wrote that (paragraph 37):

> **"… EJ Crosfill acknowledged that the key issue for consideration was whether the existence of the "fee regime" served as a material factor in making it not reasonably practicable for her to issue proceedings. At para 54 of the judgement, EJ Crosfill states**
>
> > **I consider treating the existence of the fee order as a material factor is more realistic than examining hypothetical reasonable effect of the fee order in individual cases. …"**

25. It was accepted both in the grounds of appeal at paragraph 21 and the skeleton argument at paragraph 33 that the Claimant did not present any evidence of his means to the Preliminary Hearing. However reference was made to his statement which was before the EJ. In paragraph 26 of the skeleton argument it was asserted that "Mr Wray made clear at paragraph 21 [of his statement] that a core reason for him delaying issuing a claim was because he was saving up to pay the Tribunal issuing fee of £250.00. It is self-evident from his written statement that he did not have the required fee at the time that the Claim should have been issued". It could be observed that this is a somewhat particular reading of what is written in paragraph 21 of the statement.

26. Bank statements of an account in the name of the Claimant were before the EAT. It was said in paragraphs 40 and 41 of the skeleton argument that these show that during the relevant period when he was considering bringing his claim he was close to his overdraft limit of £1,000. He had secured other employment but he had to pay regular bills and repay a loan. Further that

"There was little scope to pay the Fees Regime which could amount to £1200. Further his monthly net income entailed that it was unclear if he would have secured a fee remission".

27. The primary financial argument upon which Mr Panton relied as rendering it not reasonably practicable for the Claimant to present his claim in time was existence of the fees regime which has been found to be unlawful as it impeded access to justice.

28. Further, and in the alternative it was said in the skeleton argument that as referred to in **Unison** paragraph 93, the impact of the fees regime on him rendered it not reasonably practicable for the Claimant to issue his claim in time as he would have had to find an issuing fee of £250.

29. By ground 4 the Claimant contended that the EJ erred in holding that even if he had succeeded in establishing that it was not reasonably practicable for him to have lodged his claim in time, on 18 July 2017, presentation on 6 September 2017 was not within a further reasonable period so as to satisfy **ERA** section 111(2)(b).

30. Mr Curtis, counsel for the Respondent, pointed out that until the judgment of HH Judge Eady QC on a Rule 3(10) application in **Luton Borough Council v Mr M Haque** UKEATPA/ 0260/17/JOJ the correct extension of time provisions in the early conciliation regime had been in doubt. The Claimant saw his barrister on 13 July 2017 which was before the judgment in that case.

31. The barrister, Mr Lewis whom the Claimant consulted at the CAB on 13 July 2017, appears to have advised that the claim was already out of time when in fact if presented by 18 July 2017 it would have been in time. Mr Curtis referred to the well known case and long

established test of Lord Denning in **Dedman v British Building and Engineering Appliances Ltd** [1974] 1 All ER 520. At page 525 Lord Denning held that notwithstanding that missing the deadline for presenting a claim was the Claimant's lawyer's fault, it was "practicable" for him to have presented the claim in time.

32. Very fairly Mr Lewis referred to **Northamptonshire County Council v Entwhistle** [2010] IRLR 740 in which Mr Justice Underhill P (as he then was) held at paragraph 9:

> **"In my judgment the judge was right not to read Lord Phillips' endorsement of the *Dedman* principle in *Williams-Ryan* as meaning that in no case where a claimant has consulted a skilled adviser and received wrong advice about the time limit can he claim that it was not reasonably practicable for him to present his claim in time. It is perfectly possible to conceive of circumstances where the adviser's failure to give the correct advice is itself reasonable. … The paradigm case, though not the only example, of such circumstances would be where both the claimant and the adviser had been misled by the employer as to some material factual matter (for example something bearing on the date of the dismissal …) …"**

33. It was not in issue between the parties that the onus of proving that it was not reasonably practicable to present a complaint to the ET within time is on a complainant. Mr Curtis referred to the judgment of the Court of Appeal in **Porter v Bandridge Ltd** [1978] IRLR 271 in which Waller LJ held at paragraph 12:

> **"The onus of proving that it was not reasonably practicable to present the complaint within a period of three months was upon the applicant. That imposes a duty upon the applicant to show precisely why it was that he did not present his complaint. …"**

34. Counsel submitted that the fact that the Claimant received erroneous advice on 13 July 2017 that time for presentation had already expired did not undermine the conclusion of the EJ that, subject to the issue of fees, the Claimant had not established that it was not reasonably practicable for him to have presented his claim in time.

35. It was submitted that the EJ was entitled to infer that the Claimant was or ought to have been aware that there was a time limit within which he should present his claim. Although it was

said on his behalf that he does not have good literacy skills, the EJ did not err in considering that he knew enough to contact ACAS. Paragraphs 12 to 16 of his statement show that he engaged with ACAS and that he received an email from them on 27 April 2017. At paragraph 26 of her Judgment the EJ noted that the email contained a link to the ACAS booklet on early conciliation. It was submitted that the EJ was entitled to infer that he was receiving assistance and could reasonably be expected to access the link and then be made aware of the relevant time limits.

36. It was submitted that the EJ did not err in law or reach a perverse conclusion in finding that the Claimant could reasonably have been expected to be aware of the time limits and that he could have lodged a claim form at any time after the end of the early conciliation period. Further it was contended that the EJ did not err in finding that there was no evidence before her that the Claimant did not have funds to present a claim. The evidence in his statement was that the Claimant was saving up to pay for items in addition to the lodgement fee of £250. The statement said that he was saving up to fund the case and pay tribunal fees and lawyer's fees. It was submitted that on the evidence before her the EJ did not err in finding that the Claimant had not established that it was not reasonably practicable for him to present the claim in time.

37. It was submitted that even with the later date for presentation of the claim, 18 July 2017, the EJ did not err in maintaining her original decision that the further delay from that date to presentation of the claim on 9 September 2017 was not reasonable.

Discussion and conclusion

38. The legal principles applicable to determining whether a complaint of unfair dismissal presented after the expiry of the relevant limitation period may be considered by an ET are clear and well established. As was observed by the EJ, the relevant provisions of **ERA** section

A 111(2)(b) which apply to unfair dismissal are materially indistinguishable from those in regulation 7 of the **1994 Order** applicable to contract claims in the ET. The burden of proving that it was not reasonably practicable to present the complaint within the time limited for doing so is on the complainant. That imposes a duty on the complainant to show precisely why he did not present his complaint in time (**Porter v Bandridge**). In **Walls Meat Company Ltd v Khan** [1978] IRLR 499 Brandon LJ said at page 502 of ignorance or mistake:

> **"Either state of mind will further not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances or from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him."**

Underhill P in **Entwhistle** further cited from the judgment of Lord Phillips in **Marks & Spencer v Williams-Ryan** [2005] IRLR 562 in which Lord Phillips held at paragraph 24:

> **"… if an employee takes advice about his or her rights and is given incorrect or inadequate advice, the employee cannot rely upon that fact to excuse a failure to make a complaint to the employment tribunal in due time. The fault on the part of the adviser is attributed to the employee."**

However as pointed out by Underhill P in paragraph 9 of **Entwhistle** there may be circumstances in which the adviser's failure to give correct advice is itself reasonable, such as where an employer has misled the claimant or the adviser as to some material factor.

39. As was emphasised in **Entwhistle** at paragraph 5(6) "Subject to the **Dedman** point, the trend of the authorities is to emphasise that the question of reasonable practicability is one of fact for the tribunal and falls to be decided by close attention to the particular circumstances of the particular case …". The assessment depends not only on what the Claimant knew about the time limit but also what he reasonably ought to have known.

40. The Claimant did not attend the hearing before the EJ. His evidence was contained in his statement of 16 January 2018 and any documents referred to. As explained in **Porter v**

Bandridge it was for the Claimant to establish why he did not present his Claim in time. In paragraph 19 he stated:

> **"The reason why I was late was partly because I was unaware of the time limits and mainly that ACAS conciliator had trouble getting any response or cooperation from the Respondents."**

41. The EJ observed at paragraph 25 that the parties' representatives agreed that she should look not only at what the Claimant in fact knew about time limits but what he ought to have known taking into account the sources of information that were available to him. The EJ referred to the contact of the Claimant with ACAS and their email to him of 27 April 2017 which contained a link to a booklet from which time limits for presenting complaints would have been clear. The EJ found at paragraph 26 that there was sufficient evidence that the Claimant, possibly with the benefit of legal assistance, was able to gain access at the very least to the information available from ACAS.

42. The Claimant had access to legal advice on 13 July 2017. He was given wrong advice that the limitation period for bringing his claim had already expired. However there was no evidence before the EJ that this was the reason he did not present his claim in time. In any event based on the authorities, mistaken legal advice as a reason for not presenting the claim in time would have been most unlikely to render it not reasonably practicable to present the claim in time.

43. On the evidence before her in our judgment the EJ did not err in concluding that the Claimant had access to advice and could reasonably have been expected to have been aware of the time limits for presenting his claims.

44. Mr Panton asserted in his skeleton argument that the mere existence of the "unconstitutional and unlawful" fees regime made it not reasonably practicable for the Claimant

to issue his claim in time. In our judgment such an assertion is contrary to well established authority. A claimant must establish why he did not present his complaint in time. A potential claimant may not present a claim in time for a variety of reasons. The existence of the fees regime may have been entirely irrelevant to such decisions. Adopting the argument advanced on behalf of the Claimant would result in it not being reasonably practicable for a millionaire to present a claim in time if the limitation period had expired while the fees regime was in place.

45. The alternative argument advanced was that the requirement to pay a lodgement fee of £250 rendered it not reasonably practicable for the Claimant to present his claim in time. The assertion in paragraph 26 of the skeleton argument lodged on his behalf was that "a core reason for him delaying issuing a claim was because he was saving up to pay the Tribunal issuing fee of £250.00". As was held by the EJ at paragraph 28, the Claimant's statement said that he was saving up not just for the lodgement fee but for tribunal fees also to fund the case and for lawyer's fees. The Claimant acknowledged that he did not produce any evidence of his means to the EJ. It is hardly surprising that she observed in paragraph 28 that she did not "have the evidence before me to satisfy me that the claimant did not have funds even to present a claim".

46. Statements of the Claimant's bank account were included in the bundle for the EAT. They show that at times the Claimant was near or over his overdraft limit on that account at the relevant time. However even if that material had been before the EJ it does not give a complete picture of the resources available to the Claimant and is overwhelmingly unlikely to have affected the conclusion of the ET.

47. Notwithstanding the well reasoned skeleton argument of Mr Panton the decision of the EJ that the Claimant had not established that it was not reasonably practicable for him to present his claim by 18 July 2017 was not reached in error of law nor was it perverse.

48. If an Employment Tribunal concludes that a claimant has established that it was not reasonably practicable for them to present their complaint in time, the question of whether it was presented within such further period as was reasonable is one for the ET exercising its judgment on the material made available. In this case there was a delay from 18 July 2017 to 6 September 2017. The Claimant learned in early August that the fees regime was no longer in place. He had given instructions to Mr Lewis on 13 July 2017 to represent him. In our judgment it cannot be said that if the EJ had held it not reasonably practicable to present the claim by 18 July 2017 the conclusion that the claim was not presented within a reasonable further period was reached in error of law or perverse.

Disposal

49. The appeal is dismissed.