EMPLOYMENT TRIBUNALS

Claimant: Mr B Woodward

Respondent: The Crown Prosecution Service

Heard at: **Hull** **On:** **8 May 2019**
Reserved Judgment at Leeds 17 May 2019

Before: **Employment Judge Trayler**

Representation
Claimant: Miss L Amartey, of Counsel
Respondent: Mr D Bayne, of Counsel

RESERVED JUDGMENT

The claim is dismissed as the Tribunal has no jurisdiction to hear it.

REASONS

1. The Preliminary Hearing was listed to determine a single issue, namely whether or not it was reasonably practicable for the claim to have been presented in time and if not, whether it was presented within a further reasonable time period.

2. The Preliminary Hearing took place at Hull on 8 May 2019 and a Reserved Judgment reached on 17 May 2019. At the hearing the Tribunal read the witness statement of the claimant and heard his evidence. The parties had agreed a bundle of documents which were read by the Tribunal. In addition, the Tribunal saw two short films of the claimant walk with assistance and having therapy on his physical ability to climb stairs. Both of which were recorded in February of 2019.

3. In this case findings of fact are made on the balance of probabilities.

4. The claimant is Mr Brendan Woodward who was born on 17 April 1953. Mr Woodward was employed by the respondent, the Crown Prosecution Service (and its statutory predecessor Humberside County Council) from 1 October 1986 until his dismissal on 21 December 2017.

5. At the time of his dismissal Mr Woodward was a Senior Crown Prosecutor. Mr Woodward was throughout this time a qualified solicitor. He had no

experience or knowledge of Employment Tribunal procedures as his work experience was exclusively in the line of criminal prosecutions.

6. Mr Woodward was dismissed by the respondent. It is alleged that the dismissal was for reason of Mr Woodward's conduct. The conduct relied upon by the respondent is the claimant's failure to disclose to it that a County Court Judgment had been entered against Mr Woodward, Mr Woodward having failed to disclose this to the respondent until the judgment had been set aside by the court and the action against Mr Woodward had been discontinued.

7. I make no findings of fact as to what occurred within the dismissal but simply summarise what the claim is about.

8. Mr Woodward, through solicitors, presented a claim to the Employment Tribunal in which he complains of unfair dismissal and of breach of contract (for notice pay) on 18 February 2019.

9. Mr Woodward acknowledges in his claim form that his claim has not been presented within 3 months of his dismissal but asserts that it was not reasonably practicable to present the claim in time and that it had been presented within a further reasonable period.

10. From the claim form it can be seen that Mr Woodward's complaint about the dismissal is that the respondent did not have a reasonable belief in the alleged misconduct relied upon, the respondent's investigation was not reasonable and that dismissal is outside a range of reasonableness. So far as the wrongful dismissal complaint is concerned Mr Woodward seeks payment in relation to his notice period entitlement.

11. The time limits for these complaints are similar and are contained in two statutory provisions. By section 111 Employment Rights Act 1996 a complaint may be presented to an Employment Tribunal that an emplyee was unfairly dismissed by the employer. Subject to the remaining provisions of the section an Employment Tribunal shall not consider a complaint under section 111 unless it is presented to the Tribunal before the end of the period of three months beginning with the effective date of termination of employment, or 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.

12. By article 7 of the Employment Tribunals (Extension of Jurisdiction) (England & Wales) Order 1994 proceedings may be brought before an Employment Tribunal in respect of a claim of an employee for the recovery of damages or any other sum subject to certain conditions which I need not recite here. By article 7 an Employment Tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented within the period of three months beginning with the effective date of termination of the contract giving rise to the claim where there is an effective date of termination. However, where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of the periods within article 7 is applicable if it is presented within such further period as the Tribunal considers reasonable.

13. From this it can be seen that there is little distinction to be made between the time limits for presenting the claim in relation to the two complaints made by Mr Woodward.

14. Mr Woodward was dismissed at a hearing on 21 December 2017. Mr Woodward was informed of his dismissal on that date and told of the reasons. There is no dispute therefore in this case that the effective date of termination of employment is 21 December 2017.

15. The respondent sent a letter to the claimant confirming the dismissal and explaining the reasons, that letter being dated 2 January 2018. The letter was received by Mr Woodward on 4 January 2018.

16. Mr Woodward however, was taken ill on 2 January 2018. Mr Woodward had surgery in 2010 but had returned to full duties by 2011. It seems that the condition for which Mr Woodward was admitted to hospital in 2018 has some relationship with his earlier surgery. Mr Woodward was taken to hospital on 2 January 2018 because of abdominal pain. He had surgical intervention on 6 January 2018 and again on 9 January 2018. His condition caused serious concerns both to Mr Woodward and his family and it is true to say that both he and his family feared for Mr Woodward's life. After surgery Mr Woodward was in an induced coma until 23 January 2018 when his sedation was stopped. On that date Mr Woodward first sat up without assistance. By 31 January 2018 Mr Woodward was moved from an intensive treatment unit to a high observation unit.

17. Mr Woodward had been told by the respondent that his appeal was put on hold, correspondence of that time taking place between Mr Woodward's wife and the respondent's Human Resources Manager.

18. By February 2018 Mr Woodward with a good deal of assistance and help by a therapist begins to recover his movement and from the films I saw it is clear that Mr Woodward has a great deal of difficulty walking around and needs the assistance of a carer.

19. Thereafter, Mr Woodward has a skin graft on 9 March 2018 in which skin is grafted from his thigh to his abdominal operation site. On 10 March 2018 Mr Woodward was discharged from hospital. By that time of course Mr Woodward had been in hospital for over two months and returned home. He was still in pain having had a recent skin graft and continued to have limitations on his movements. There is no dispute between the parties in this case that Mr Woodward whilst in hospital would have had extreme difficulties in pursuing any complaint of unfair dismissal against the respondent. There is therefore no argument that it was not reasonably practicable for Mr Woodward to present a claim within that period. The operation of the time limits in this case provided by both article 7 and section 111 above require that the claim be presented within three months of the effective date of termination of employment and that therefore the time limits expired on 20 March 2018. Again, this is not a matter of dispute between the parties.

20. From that date Mr Woodward continued to make progress and within the bundle there are medical reports on this. The first is at page 100 & 101 of the bundle and is typed on 2 May 2018 when Mr Woodward was seen by Consultant Surgeon Mr Sushil Rekhraj. Within that letter the surgical

intervention is described including the plastic surgery and that the wound had eventually closed well with skin coverage being achieved just prior to discharge from hospital. On review the Surgeon is pleased with Mr Woodward's excellent progress, he has good gastro-intestinal function and that he had gained significant weight following discharge from hospital. Mr Woodward is described as having no further abdominal pain or symptoms or signs of obstruction and the wound had healed remarkably well although Mr Woodward still required regular dressings by a Community Nurse. Mr Woodward was described as having made excellent progress but that he may require further plastic surgery. Mr Woodward had described having trouble with lethargy and polyuria and his GP was asked to manage this condition. The Surgeon is to see Mr Woodward again in three months' time to see how he is progressing but would see him sooner if required. The Surgeon had advised Mr Woodward to commence with all normal activities of daily living and that he would benefit from the continued use of a corset to support his abdominal walls. It is said that Mr Woodward would also benefit from regular exercise and support with weight management. It is pointed out that understandably Mr Woodward had to be off work for a while following discharge and that it had been left to him at his discretion with regard to a return to work when he feels ready. The GP was asked to support Mr Woodward with the necessary sick notes as required.

21. Mrs Helen Woodward had been in correspondence with the respondent concerning Mr Woodward's condition in January 2018 but on 6 June 2018 Mr Woodward sent an email to Ms Lesley Bakewell in which he gives an update as to his recovery. Within this he gives detailed information as to his wound still healing and it being cleaned and dressed by a Community Nurse twice weekly. He reports the comments that he was making excellent progress and that the wound had healed remarkably well and that there would be a review around the end of July. Mr Woodward says because his wound has not fully healed he has to have abdominal support and is not in a position to drive and that he is trying to build up his own physical strength with daily walks and exercises within the house. He says that he is limited to what he can do but is progressing slowly with advice from the Community Nurse. Mr Woodward says he would be seeing his Plastic Surgeon in the next few weeks and that whilst he continues to recover he is now in a position to be contacted directly with regards to his appeal which had been put on hold. He says that over the next few weeks the wound will reach a point where it will require not to be dressed but the new skin is sufficiently weak to make him resemble a character in the "Alien" film. He asks that his email is passed on to senior management and asks who his point of contact is concerning the appeal which he requests to be heard in Hull. Mr Woodward says he had been certified as unfit to work until 31 July 2018 and "*clearly I may be able to attend an appeal hearing earlier than that dependant on how my recovery progresses over the next few weeks*".

22. Mr Woodward says that he took some two to three hours to compose and type this email.

23. The next medical update in the bundle is at pages 102 /103 and was typed on 2 October 2018. In this Mr Rekhraj recited it was a pleasure to review Mr Woodward in the clinic, it being almost 10 months since he was admitted with an obstructed and strangulated incisional hernia with perforated bowel for which he had complex abdominal surgery. Mr Rekhraj says he is very

pleased to note that he had made an excellent and a remarkable recovery and that his scars had healed well and the skin graft had fully taken. Mr Rekhraj says he had explained to Mr Woodward that it is important that he controls his weight and prevent any other complications from his hernia. It is also recited that Mr Woodward had been referred to the Weight Management Service. Mr Rekhraj says there is not much benefit in bringing Mr Woodward back regularly to his clinic for review and with his permission he had therefore discharged him back to his GP care.

24. Mr Woodward reports that during this period and continuing until the end of the year he was not himself with a loss of confidence and memory and that he had much stress and trauma after the operation. Although this had not been medically addressed until relevantly recently before the Tribunal hearing when Mr Woodward had been referred for help. Mr Woodward describes himself as emotionless at times but then getting upset easily.

25. By 2 November 2018 the respondent writes to the claimant saying that they are pleased to hear he is improving but that he is still not fit enough to attend an appeal hearing. It is pointed out that the opportunity to appeal the decision to dismiss cannot be left open indefinitely as it was over 10 months since the dismissal, a decision had been taken not to extend the deadline any further and that the appeal is required by 12 November after which the hearing will be heard by 3 December 2018. Mr Woodward is asked if there are any reasonable adjustments required.

26. By 8 November 2018 Mr Woodward completes an appeal form provided by the respondent. Within that he identifies the decision against which he is appealing, namely, termination of his contract of employment and also ticks three boxes to describe the grounds of appeal. These are that the outcome/decision reached is not reasonable in light of the information on which it was based, the measures/sanctions imposed as a result of the outcome were not in proportion and that new information has come to light which was not available at the time that the original decision was made. Mr Woodward identifies the additional new information as being the view of the Solicitors Regulatory Authority with regard to alleged breach of the Solicitor's Practicing Regulations that information is awaited following a request to the Professional Ethics Section. Mr Woodward states briefly that in view of the additional evidence received by Rory Byrne from Sally Robinson a copy of her original notes of her findings of facts conversation should now be produced to him. A written request is to be made via the HR Advisor.

27. The appeal hearing does take place on 30 November by which time the result of the Solicitors Regulatory Authority enquiry is known. The SRA had stated that it did not consider the failure to report the proceedings against Mr Woodward was deliberate and that it presented little risk. By letter of 5 December 2018 the respondent informed Mr Woodward that the appeal had been refused, this letter having been signed for by Mr Woodward on or around 10 December 2018.

28. Thereafter, Mr Woodward ponders what to do about the dismissal, ultimately deciding before 2 January 2019 that he would get assistance from a solicitor in preparing any action that became necessary. In the first week of January Mr Woodward confirms that he had been informed by a solicitor that his complaint of unfair dismissal was out of time. Mr Woodward had by this point

thought that he had three months from the appeal being decided to bring a claim.

29. Mr Woodward says that on 30 November 2018 he was of the view that he had 3 months from when he knew the appeal was unsuccessful to bring a complaint. He confirmed that he knew from the outset after his dismissal that he could complain of unfair dismissal and that he was aware that there may well be a time limit based on his experience as a prosecutor where time limits apply and also some vaguer knowledge as to personal injury claims but that he did not know that there was a three month time limit. Mr Woodward confirms that between 21 December 2018 and 2 January he did not look into the question of the time limits but had decided to put in a claim in December 2018. Mr Woodward decided to take legal advice on 2 January and in the first week of January he had been advised over the telephone as to the time limits. Mr Woodward was under the impression he had to complete the internal processes first before bringing a claim but he had no factual basis for this. Mr Woodward was aware of the respondent's internal processes which allowed an appeal but there is no question of the respondent having misled Mr Woodward as to any time limit applicable.

30. Mr Woodward confirms that it was not until the end of November that he thought about making a claim. Between that first week in January and when claim was presented on 18 February Mr Woodward submitted documents to a solicitor to enable completion of a claim. He prepared statements on the complaint he had about the disciplinary process adopted by the respondent, the illness he had and his previous medical history and the reasons why the claim was late. Mr Woodward confirms that he had a phone call of no more than one hour in the first week of January which is potentially a lengthy session. During the course of the preparation of the claim he explains that there were some 10 telephone calls and emails between him and the solicitor.

31. As the parties have done their submissions I considered the various periods of time between the dismissal on 21 December 2017 until the presentation of the claim on 18 February 2019.

32. Mr Woodward submits that it is clear that he was incapable of making a claim in the period whilst he was in hospital, that is from 4 January 2018 until 10 March 2018 when he was discharged. During this period Mr Woodward had been at times extremely poorly and had at least 3 surgical interventions.

33. The respondent specifically puts forward no argument that it was reasonably practicable for the claimant to present a claim in that time. I find that to be a sensible and unavoidable concession in this case.

34. Whilst in hospital Mr Woodward was in a serious condition at least until 23 January 2018. Thereafter he had limitations on his mobility, pain and surgical interventions from which he had to recover. Thereafter he had to have help to get back on his feet and he was having assistance with mobility difficulties and with physiotherapy and other therapies by 19 February 2018. To assist closure of his wounds after surgery he had plastic surgery on 9 March and was discharged on 10 March. Within that time, I find it was not reasonably practicable for the claimant to present his claim.

35. By the time of his discharge from hospital Mr Woodward had only 10 days by which to both seek early conciliation of the claim with ACAS and, subject to that referral, present his complaint. Should Mr Woodward have approached ACAS within that 10 day period and the certificate had been issued there would have been an extension to his time for presenting a claim in that the period between approaching ACAS and the issue of the certificate by ACAS is added to the limitation period. Had Mr Woodward approached ACAS within that period and a certificate not been issued by ACAS until after the limitation period had expired then a further one month is added to the limitation period. However, there is no approach to ACAS by Mr Woodward at that time and I do not believe it was reasonably practicable for him to do so. The limitation period therefore expires there having been no referral to ACAS 3 months after the effective date of termination of employment which in this case is 20 March 2018. I go further now in relation to that short period to the 20 March and specifically find it was not reasonably practicable for Mr Woodward to present his claim in that period. I do not believe it was reasonably practicable for Mr Woodward to do what was required namely to do a small amount of research on the internet or otherwise or contact a solicitor or other adviser to make a referral to ACAS so soon after surgery for a serious condition. On his discharge from hospital Mr Woodward having been in hospital for 2 months would, as he says, have been disorientated and unable to concentrate on anything other than his recovery.

36. Therefore, I find it was not reasonably practicable for Mr Woodward to present his claim within 3 months of the effective date of termination of his employment within the meaning of section 111 of the 1996 Act and article 7 of the Extension of Jurisdiction Order of 1994.

37. Therefore, the first part of the condition for applying anything more than the initial 3 month time limitation has been satisfied in relation to each of the complaints. I therefore have to turn to the question as to whether the claim was presented within such further period as is reasonable.

38. As the respondent submits, as far as a reasonable period thereafter is concerned there is little distinction to be made between that concept and the concept of reasonable practicability for bringing a claim.

39. It is clear that it is for the claimant to show that it was not reasonably practicable to bring the claim see **Porter v Bandridge Ltd 1978 ICR 943 CA** and that practicability is a question of fact to be determined by the Tribunal, **Walls Meat Company v Khan 1979 ICR 52**.

40. In ignorance cases, in other words, when the claimant says he is unaware of the right to bring a claim or the time limits it is important for the Tribunal to ask what the claimant's opportunity was for finding out his rights and whether he took them and if not, why not, also if he was misled or deceived, see **Dedman v British Building and Engineering Appliances Limited 1974 ICR 53 CA**. The question is not whether the claimant knew but whether he ought to have known of his rights (**Porter**). It is pointed out as early as 1991 in **Trevelyan's (Birmingham) Ltd v Norton ICR 488** that where a claimant knows of his rights to complain ignorance of the time limits are rarely acceptable. More recently in **Sodexo Health Care Services Limited v Harmer EATS 0079/08** an extension was refused when the claimant knew of a time limit but failed to make proper enquiries as to what it was.

41. In **Marks and Spencer Plc v Williams-Ryan 2005 ICR 1293 CA** the claimant delayed as he believed he needed to exhaust an internal appeal procedure first, the Tribunal was found not to acted perversely allowing the claim in. A similar decision was reached in **John Lewis Partnership v Charman**.

42. In **Reed in Partnership Limited v Fraine** UKEAT/0520/10/DA the claimant was ignorant of the deadline, there was no evidence that he was misled or made any enquiries or sought advice during the limitation period. A decision to allow the claim in these circumstances was overturned by the Employment Appeal Tribunal.

43. I return to the case law with the submissions of the parties. The next period I consider is from 20 March 2018 until the claimant's correspondence with the respondent on 6 June 2018. In that email the claimant explained that he sought to take over from his wife the responsibility of corresponding with the respondent. What is clear from the latter, albeit that Mr Woodward says it took some 3 to 4 hours to prepare, isthat he makes a detailed explanation of his condition by reference to the opinions of those treating him. The claimant suggests that he was still unfit for work and indeed there is no dispute about that. Mr Woodward is having attention to skin grafts from a community nurse twice a week and is lacking in energy and has dysuria. I ask myself whether I can say it was not reasonably practicable for the claimant from some time in that period and at least by 6 June 2018 to take advice and if necessary research the internet on time limits, notify ACAS and complete a claim form. I fully accept that the claimant would be unable to attend an appeal hearing due to his physical limitations not least in relation to travel. But pursuing a claim and making enquiries as to what needs to be done is not the same as having to attend and prepare for an appeal hearing. I find that it is probable that should the claimant have made an approach either to ACAS or to any competent advisor, including a solicitor as he subsequently did, that the conversation would or should necessarily have led immediately to the time limits for making a claim and that at that point the claimant would be aware of what was required and when he should have made his claim from.

44. So far as an ACAS referral is concerned what is required is only a rudimentary explanation on the telephone as to the nature of the complaint Mr Woodward wished to make. Indeed, the respondent had assisted him with its appeal form which includes the three grounds upon which Mr Woodward now seeks to challenge the dismissal within the Employment Tribunal. Mr Woodward says it is only a brief rudimentary document and that is true, but the appeal document does outline three areas of appeal which Mr Woodward essentially depends upon now. Indeed, the ET3 claim form for the Tribunal only requires a brief statement of the facts perhaps accompanied with an explanation as to why the claim was put in late and why it is not possible or at least not desirable to give full particulars of the complaints at that stage. In my finding it would be enough to recite what is said within the appeal document with a brief explanation that Mr Woodward had not been sufficiently well to present the claim sooner. All this could have been discovered by Mr Woodward had he taken what would be a reasonable step to make a telephone call and get help in June time rather than the following January when he did. My finding is that by 6 June Mr Woodward being in a position to state his case with some clarity and by reference to other information, probably the summary from his surgeon, he had become able to conduct affairs on his own behalf. It is not

possible to make any finding prior to that date but as at the 6 June it seems that Mr Woodward is capable of at least making enquiries.

45. I then consider the further period from 6 June until Mr Woodward completes his appeal on 6 November and again given that Mr Woodward was able to complete an appeal and address his mind to that I find that it was reasonably practicable to present a claim within that period and that by the date of the appeal he is able to pursue matters. Mr Woodward seeks to say that his mental capacity is not what it had been when he was used to pursuing difficult and other prosecutions on behalf of the respondent. However, it is clear from the letter that he is able to express himself in an orderly manner and therefore a physical lack of feasibility of presenting the claim has substantially diminished at least by 6 June and is no longer there by the date of the appeal on 6 November.

46. By this stage Mr Woodward says his focus was on getting his appeal done first and at the back of his mind he had the idea that he needed to do this before complaining to a Tribunal. This was no more than an assumption which he had by the time of the outcome of the appeal known by 10 December 2018 at the front of his mind. On the basis of that assumption Mr Woodward did not immediately present a claim and he had some belief at that point that he had 3 months in order to do so. To have reached that assumption he must have had some idea that there were time limits and indeed for a solicitor of Mr Woodward's age and experience I would expect him to have some wariness at least that there would be a time limit within which claims have to be pursued. Ultimately Mr Woodward sought advice in the first week of January so by then at least he was able to pursue matters. There was then a delay from an initial telephone consultation in the first week of January to 18 February and for this period at least there can be no dispute that the claimant had advice and knew of the time limits and indeed knew that his claim was out of time. That period from the first week of January to 18 February, a period of 42 days, is accounted for by the exchange of 10 emails and telephone calls between the claimant and his solicitor, the claimant preparing statements on the details of his allegations and the reasons for the lateness of his claim. At the very least, Mr Woodward has not shown that it was not reasonably practicable to make the claim in that 42 day period.

47. The respondent submits that I could deal with this issue on the basis of that period alone and I agree. I find on that basis that first of all the claimant has not shown that it was not reasonably practicable to present his claim within the period from 7 January through to 18 February when the claim was presented and therefore the claim was not presented within a reasonable period after the three month time limit expired.

48. However, I also find, as the respondent submits that the claim could and should have been pursued much earlier. I make this finding on the basis that the claimant is a solicitor and even though he had lost some mental agility and memory this is not displayed in the letter he wrote on 6 June, nor in a subsequent email in October concerning the appeal and preparing the appeal documents in November. I find that the claimant could and should have made more enquiries as to what was required. The claimant accepts that as a solicitor he knew of Employment Tribunals and the chance to make a complaint. I accept that the claimant had no detailed knowledge of Employment Tribunal procedures but that he knew that legal processes often

are subject to time limits. In his own line of work there are time limits for such as laying informations before Magistrates and he knew there were time limits for bringing personal injury claims without any specific detailed knowledge.

49. It is clear from what transpired subsequently that the claimant had the ability to seek advice by researching the internet as the claimant used an iPad and even if he was not fully IT competent had easy access to information. He was also in a position whereby he could, by telephone, access advice which he did at least in the beginning of January and could reasonably be expected to have done much sooner than that.

50. My further finding is that it was reasonably practicable within the period from 6 June to 17 February, the day before the claim was presented reasonably practicable to present the claim. By this time the post-operative condition of the claimant did not prevent him from bringing the claim and at least by November time he had at the back of his mind that there may well be some time limit but that this only ran from after the internal appeal.

51. My Judgment is that the claimant was not reasonably ignorant of the time limits. He could easily have found out by seeking advice, as he subsequently did, much sooner. On balance he was ignorant of the time limits but not reasonably so. I take into account in this the medical history of the claimant and also his recovery from his operations.

52. On behalf of the claimant Miss Amartey submitted that Mr Woodward's medical condition means that for the period of 10 days it was not reasonably practicable for Mr Woodward to make his complaint neither was it before his discharge from hospital. As above I agree with that submission. Miss Amartey properly points out that Mr Woodward had a life threatening condition with some confusion after his discharge from hospital, she also points to the fact that Mr Woodward had been in a coma whilst in hospital. As above I agree with that submission and find as I have, that it was not reasonably practicable to make the claim in time.

53. Miss Amartey submits that the second period is 20 March to 6 June and Miss Amartey submits that it was not reasonably practicable for Mr Woodward to make the claim in that period in that he still had difficulty in focusing and had limited information on any timeliness of an Employment Tribunal claim let alone having any ability to present one. She points out that Mr Woodward said he was not physically or mentally capable of pursuing the claim nor was he able to process the information required to find out it was in time. Miss Amartey submits that simply because Mr Woodward is able to recite medical information the respondent's suggestion that he could also research the ability to bring a claim is not credible. She also points to the time Mr Woodward was said to taken to prepare that. She also says that there was a substantial amount of effort required to extract information from the claimant about the claim itself when Mr Woodward did seek advice. She invites me to focus on what actually happened rather than Mr Woodward's optimism at that stage as to when he might be able to return to work. Miss Amartey also refers to the report on 19 October 2018 referring to a minimum of 4 months for the skin grafts to heal, that he is unfit and therefore the claimant could be said not to be fully fit to deal with the hearing of his appeal. She points out that the grounds of appeal given by Mr Woodward are brief. However, I disagree with those submissions in that the fact that Mr Woodward was able to process

information about his medical condition and order his thoughts sufficiently to complete a brief appeal document, it shows to me that he was also reasonably able within that period at least between June and November to do the necessary research and that his ignorance at that point therefore is not reasonable because he could have made enquiries.

54. Miss Amartey then addresses the period after the appeal when she says that Mr Woodward was still physically and mentally struggling and that he had a misunderstanding as to the time limits although Mr Woodward was somewhat uncertain about this in that it was not entirely clear whether he had not turned his mind to it, on balance it seems that he did have some misunderstanding at that point. Miss Amartey says that at the point of the appeal conclusion the claimant considered making a claim but he had a misunderstanding from that point and within the decision in **Marks & Spencer v Williams-Ryan** his ignorance should not count against him. Similarly, the decision in **John Lewis Partnership v Charman** supports that conclusion. In that case the claimant took a month over a decision to bring a claim before actually issuing it which did not count against him. I do not agree that the situations are similar in that Mr Woodward clearly had the opportunity to seek advice and had not in fact been misled by anybody as to the time limits.

55. I do not agree with the submission that the difficulty in preparing the claim excuses the fact that it was not presented earlier in the period between the first week of January and 18 February. As I have set out above, preparation of a claim was not necessarily a difficult exercise as a skilled advisor should know.

56. I prefer the submissions of the respondent. Mr Bayne submits that the final period of delay by the claimant is explained by him as being ignorance of his rights to bring a claim being namely ignorance or lack of thought about bringing a claim. Mr Bayne submits that as in **Walls v Khan** above it is not solely whether the claimant was ignorant of his rights but whether he could be reasonably expected to be aware of them. He also refers to the decision in **Sodexo Health Care Services Limited v Harmer UKEAT/0079/08/B1** 10 July 2009 where the claimant presented 23 days late. In that case the claimant had been told on enquiring from his Trade Union Representative to exhaust all other routes before bringing a claim. He had not asked about time limits. The Tribunal was in error in that case in treating it as a bad advice case. There are strong similarities to that and the claimant's case in that his evidence was that he had not known the three month time limit but accepted that he knew there were time limits to bring claims generally, for example in the Magistrates' court in relation to Personal Injury claims. It cannot be said that the claimant in this case was reasonably ignorant of the time limits. They had not been induced by anything, anyone let alone the respondent. The claimant had merely made an assumption and it was not reasonable. I agree with that submission. This is the distinction between the claimant's case and that in the **Marks & Spencer v Williams-Ryan** where the claimant had been misled by advice from the employer. Similarly, in the case of **Charman** the difference is that the claimant was young and inexperienced and knew nothing about Employment Tribunals and unfair dismissal. Although the claimant here is not an Employment Lawyer he is not young and inexperienced and knew of his rights to bring a claim. Mr Woodward was therefore in a better position than the man in the street as Mr Bayne submits and with which I agree. Mr Bayne also refers to the decision in **Reed in**

Partnership Limited v Fraine where the claimant made a mistake about how the 3 month time limit operated and consequently presented his claim one day out of time. The claimant had an erroneous assumption. On the basis of **Thompson v Cullinane** the test of reasonableness in this respect are the same as in relation to the "not reasonable practicable" test earlier in the section. The Tribunal should consider what the claimant knew or ought to have known to see whether he acted reasonably. The question is, was it objectively reasonable to delay. In my finding I agree with Mr Bayne's submission that it was not.

57. I agree with the submission that it was not reasonably practicable to present the claim when the claimant was in hospital nor for the short period thereafter but I agree with the submission of Mr Bayne that during the period 10 March 2018 to 6 June 2018 Mr Woodward became capable of submitting a claim form. I agree with the submission of Mr Bayne that 6 June email confirms this and also that there was no medical evidence of mental incapacity in this case albeit a good deal of physical condition evidence has been put together by the claimant. It is clear that the claimant is intelligent and a solicitor and able to digest and reiterate information on his own on the basis of the email of 6 June. I agree with that point and that the claimant became physically and mentally capable to pursue this by the 6 June. There is then the period that, as Mr Bayne accepts, the claimant had some misconception at the back of his mind before going into hospital but this came to the front of his mind subsequently, but the error is entirely Mr Woodward's own making. During this period Mr Woodward showed us, as Mr Bayne submits, that he was able to seek advice to pursue his claim. Certainly, this applies in the period 30 November to 5 January during which Mr Woodward accepts that he was thinking about making a claim but does nothing and more particularly thereafter he knows by the first week of January that his claim is a "mile out of time" and had a solicitor's advice but then a further 6/7 weeks goes by. On the of the decision in **Tipper** Mr Bayne admits that that period of delay is too long and there is no reasonable explanation as to why the claim could not have been put in a simplistic form at least during that period and I agree with that submission.

58. Mr Bayne suggests that once the situation was known by a legal advisor they should have put the claim in immediately and I agree with that submission.

59. For those reasons therefore I find that it was not reasonably practicable to make the claim within 3 months but that the claim was not presented within a further reasonable period. Therefore, the claim is dismissed as the Tribunal has no jurisdiction to hear it.

Employment Judge Trayler

Date: 4 June 2019