



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K. Afzal

**Respondent:** GI Group Recruitment Limited

**Heard at:** Birmingham

**On:** 22 February 2019  
8 March 2019 (In Chambers)

**Before:** Employment Judge Dean

## **Representation**

Claimant: In person

Respondent: Mr A. Watson, Counsel

# RESERVED DECISION JUDGMENT

1. The Claimant's complaint of unfair dismissal has been dismissed on its withdrawal.
2. The Employment Tribunal does not have jurisdiction to entertain the Claimant's complaints of unlawful discrimination by the Respondent.
3. The Employment Tribunal does not have jurisdiction to consider the Claimant's complaints of breach of contract.
4. The Employment Tribunal does not have jurisdiction to entertain the Claimant's complaints of breach of the Health & Safety at Work Act 1974.
5. The Claimant's complaints are dismissed.

# REASONS

## Issues

The issues to be determined at the Preliminary Hearing are: -

1. To identify the date of the last claim about which the Claimant's complaints are made.

2. To decide whether or not some, or all of the claims are out of time.
3. To determine whether, if the claims are out of time, it is just and equitable to extend time to entertain those claims that are brought under the Equality Act 2010
4. If claims are presented under the Employment Rights Act 1996, were the claims presented in time and if not in time, whether it was not reasonably practicable for the complaints to be presented before the end of the period of 3 months following the act or omission complained of.
5. Whether or not some, or all of the Claimant's complaints, if in time, ought to be struck out:
  - a. as having no reasonable prospect of success, and/or
  - b. that the claims were brought vexatiously and having failed to comply with the Order of the Employment Tribunal in relation to the complaint of unfair dismissal.
6. Whether or not some, or all of the Claimant's complaints have little reasonable prospect of success and to consider ordering a deposit.
7. To deal with future Case Management if appropriate.

#### Background

8. By way of background, the Respondent company is an Employment Business.
9. The Claimant worked for the Respondent as a flexible employee and worked on assignment at the Respondent's client BMW at their site at Hams Lane. The Claimant worked on assignment from 29 September 2017 to the 27 October 2017 when he was removed from the assignment the Respondent says because his aggressive behavior towards various of the Respondents employees.
10. The Claimant challenged his removal from the BMW assignment in a grievance that was raised by the Claimant and determined by the Respondent's Regional Account Manager, Emma Johnson on 15 November 2017.
11. The Claimant raised an appeal against the grievance outcome and a Grievance Appeal Meeting took place on the 8 January 2018 which was not successful. On the 21 January 2018, the Claimant's employment with the Respondent was terminated.
12. On 27 August 2018, the Claimant made a reference to ACAS to begin a process of early conciliation. A certificate of early conciliation was issued by ACAS on the 30 August 2018 and on the same day the Claimant presented a claim form to the Employment Tribunal claiming that he had been unfairly dismissed and subject to unlawful discrimination because of the protected characteristics of his race and his religion and/or belief.

13. The claimant's complaint of unfair dismissal was dismissed on his withdrawal of that claim.

### The Law

#### **Jurisdiction – time limits and continuing acts**

14. *Section 111(2) Employment Rights Act 1996 provides that a tribunal shall not consider a complaint that an employee was unfairly dismissed unless it is presented to the tribunal .....*

*(a) before the end of the period of three months beginning with the effect of 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 a complaint to be presented before the end of that period of three months.*

15. The law provides that in respect of discrimination claims and detriment claims, if there is a continuing course of conduct it is to be treated as an act extending over a period. Time runs from the end of that period. The focus of the Tribunal's enquiry must be on the substance of the complaint that the respondent was responsible for an ongoing state of affairs in which the claimant was less favourably treated. The burden of proof is on the claimant to prove, either by direct evidence or by inference from primary facts, that the alleged acts of discrimination were linked to one another and were evidence of a continuing discriminatory state of affairs see Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96 CA.

16. If any of the complaints were not in time, the Employment Tribunal must consider whether there is nevertheless jurisdiction to hear them. In discrimination cases the test is whether it is just and equitable to allow the claims to be brought.

17. The statutory wording of section 123 of the EA10 is slightly different than in the SDA and RRA and, arguably, may be wider. However, for these purposes, we have assumed that the test is the same and that the well established principles apply.

18. When deciding whether it is just and equitable for a claim to be brought, the Employment Tribunal's discretion is wide and any factor that appears to be relevant can be considered. However, time limits should be exercised strictly and the Tribunal cannot hear a complaint unless the claimant convinces it that it is just and equitable to do so. The exercise of discretion is therefore the exception rather than the rule Robertson v Bexley Community Centre [2003] IRLR 434 .

19. Case law provides that consideration of the factors set out in section 33 of the Limitation Act 1980 is of assistance. The Employment Tribunal should have regard to all the circumstances of the case, and in particular to the following:
- a. the length and reasons for the delay;

- b. the extent to which the cogency of the evidence is likely to be affected by the delay;
  - c. the extent to which the party sued cooperated with any requests for information;
  - d. the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and
  - e. the steps taken by the claimant to obtain professional advice once he or she knew of the possibility of taking action.
20. In addition, when deciding whether to exercise its just and equitable discretion, the Employment Tribunal must consider the prejudice which each party would suffer as a result of the decision to be made (sometimes referred to as the balance of hardship test) British Coal Corporation v Keeble [1997] IRLR 336 EAT.
21. Failure to adopt a “checklist” approach carries the risk that a significant factor will be overlooked London Borough of Southwark v Afolabi [2003] IRLR 220 CA.
22. Mental ill health may be a reason to extend time DCA v Jones [2008] IRLR 128 CA .
23. A number of authorities have suggested that reliance on incorrect advice should not defeat a claimant’s contention that their claim should be heard, depending on the source of that advice See for example Chohan v Derby Law Centre [2004] IRLR 685 EA.
24. Additionally, the authorities say that the pursuit of internal proceedings is one factor to be taken into account. However, the fact that a Claimant defers presenting a claim while awaiting the outcome of an internal appeal process does not normally constitute a sufficient ground for the delay see Apelogun-Gabriels v Lambeth London Borough [2002] ICR 713.
25. If the issue is determined as a preliminary issue, it is appropriate for the Employment Tribunal to form a fairly rough idea as to whether the complaint is strong or weak Hutchison v Westward Television Limited [1977] IRLR 69 & Anderson v George S. Hall Limited UKEAT/003/05 .
26. If a claimant establishes it was not reasonably practicable to present the claim in time, they must then satisfy the tribunal that they presented it within such further period as was reasonable. This means that the Employment Tribunal will want to hear evidence about the period prior to the expiry of the time limit and evidence about the period between that date and the date the claim was presented.

### **Strike out and deposit applications**

27. The statutory provisions in relation to applications for strike out of a complaint or response are set out in the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013 and in particular:
- Rule 37
  - Striking out

37.—(1) *At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—*

*(a) that it is scandalous or vexatious or has no reasonable prospect of success;*

*(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;*

*(c) for non-compliance with any of these Rules or with an order of the Tribunal;*

*(d) that it has not been actively pursued;*

*(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).*

In relation to applications to Deposit order the rule is detailed at Rule 39: Deposit orders

39.—(1) *Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party (“the paying party”) to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.*

*(2) The Tribunal shall make reasonable enquiries into the paying party’s ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.*

*(3) The Tribunal’s reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.*

*(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21.*

*(5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—*

*(a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and*

*(b) the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders),*

*otherwise the deposit shall be refunded.*

*( 6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order.*

Evidence

28. The evidence before me at the Tribunal has been those documents that have been submitted in an agreed bundle, extending over 94 pages. Contained within the bundle which is paginated and indexed, I have been referred in particular to the pleadings and relevant documentation including in particular the Claimant's statement which is taken as his witness statement [pages 39-40] which deals with the reasons why his complaint to the Tribunal was not presented until the 30 August 2018. I have heard limited oral evidence from the Claimant about matters limited to the reasons why his complaint was presented when it was and had not sooner. The extent of my consideration of the merits of the claim has been limited to determine only the reason why his claims were brought when they were and, to enable me to determine the Respondent's application that the Claimant, if allowed to pursue his claim should be subject to a Deposit Order, I have made enquiries as to his means.
29. To understand the claims as the Claimant identifies them to be, it has been necessary to review the Claimant's originating application form ET1 [2-12], in particular at page 8, in reference to paragraph 8.2 the background and details of the Claimant's complaint. To assist the understanding, the Claimant's allegation is that he complains that he is being discriminated against by the Respondents because of his race which he describes to be Asian/Other. The Claimant indicated that he is generally perceived to be from Pakistan and he says he is Bhutan. The Claimant describes his protected characteristic of religion to be that of Muslim. The prohibited conduct of which the Claimant complains is that of harassment, direct discrimination and victimisation.
30. The detail of the Claimant's complaint, set out at paragraph 8.2 have been numbered by me as set out below and marked in bold as they appear on the claim form ET1. The Claimant has been asked to identify the date upon which the alleged discrimination occurred and the protected characteristic in respect of which he says the discrimination occurred and the prohibited conduct in order that I and the respondent can make sense of the complaints beyond the bare statements that are made on the face of the form.
- i. **unequal advancement progression**  
The Claimant refers to treatment occurring on or before 27 October 2017. The protected characteristic relates to his race and the prohibited conduct is acts of direct discrimination. In particular, the claimant says that others who began working at the client site on the same day were offered more lucrative shifts than him.
  - ii. **inequitable actions**  
The Claimant complains about acts on the 27 October 2017 and direct discrimination because of protected characteristics of race and religion.

In particular, the Claimant says that he had asked about being allocated a weekend shift and was blocked from the client site.

- iii. **racism, lying by account coordinators, very hostile**  
The protected characteristic to which the discrimination relates, is race and the prohibited conduct is harassment, which the Claimant says occurred on or before 4 April 2018.
- iv. **mohammed said if I lied you, you would be working**  
The protected characteristic is in respect of race and the prohibited conduct is harassment, direct discrimination and victimisation in relation to events which occurred on the 27/28 October 2017. The claimant explained at the hearing that the comment was made on the telephone after the claimant had asked for shifts, he observes Mohammed is very racist.
- v. **mohammed referred to me as a supremacist when I began to talk about my religion**  
The protected characteristic relates to both race and religion. The prohibited conduct relates to harassment that took place on the 27 and/or 28 October 2017. The claimants additional narrative is that the comment was made about the claimant when he began talking about his religion.
- vi. **corrupt action**  
The protected characteristic is, race and the prohibited conduct is harassment and victimisation. The claimant added at this hearing that the Respondent by the actions of the account co-ordinator were lying and changing statements. The respondent did not say anything to the claimant other than that they were giving him no more hours. The events occurred between the 27 October 2017 and January 2018.
- vii. **lies and falsehood told about me at work.**  
The protected characteristic relates to race and the unlawful and the prohibited conduct relates to victimisation and harassment because of race. The last event of which took place on the 4 April 2018.
- viii. **I said to cathy wells I was being bullied, she was informed this through another member of staff, she calls me back and accuses me of being a bully and not to call the company.**  
The complaint is in respect of the protected characteristic of race and the prohibited conduct is alleged to be an act(s) of harassment which occurred in the period November 2017 to February 2018.
- ix. **emma johnson denies wrongdoing from staff shouting and mockery of religion.**  
The protected characteristic is alleged to be both race and religion. The prohibited conduct relates to harassment of the Claimant by the Respondent's employees in the period 27 October to at latest the end of November 2017.
- x. **mischief in the land, insulting me by way of my religion, knowledge and observance practices.**

The protected characteristic relates to both race and religion. The prohibited conduct is of harassment that occurred on the 25 October 2017.

- xi. **shredding my contract and asking me to only bring my bank documents in to get paid which means they schemed and plotted that this would be my last week which was planned inchoate offences.**

The protected characteristic is race. The prohibited conduct relates to harassment and victimisation that occurred between the events of the 21 – 28 October 2017.

- xii. **and not maintaining ties (contract).**

The protected characteristic relates to both race and religion. The prohibited conduct is victimisation following the Claimant's de-assignment in the period up to April 2018 during which period the claimant says at this hearing that the respondent did not follow industry practices but only their own, they gave him no more work and he was de-assigned and there was tumultuous disorder.

- xiii. **not given risk assessments when asked for it or policy documents.**

The protective characteristic is race. The prohibited conduct is alleged to be harassment, that occurred on the 27 October 2017.

- xiv. **breach of Health & Safety at Work Act 1974 –**

The protected characteristic is alleged to be race. The prohibited conduct is harassment and direct discrimination that occurred in April 2018.

- xv. **hate crimes, religious discrimination, racism.**

The Claimant describes the complaint or statement as being the way he describes all of the actions that he has referred to paragraphs 1-14 above

31. I have spent time to identify the grounds upon which the Claimant alleges he has been subject to unlawful discrimination because of the protected characteristics of his race and/or religion as that information was not apparent from the face of his claim form to enable the respondent and the Tribunal to understand what it is the claimant complains about. No application to amend the claim form is made at this stage.

32. I am mindful that if this case proceeds to a Final Hearing, I do not wish to make findings of fact that may inhibit the scope of the Tribunal considering a full account of the evidence however certain principle facts emerge that are not disputed.

33. It is apparent that the Claimant began employment with the Respondent on the 29 September 2017 as an Assembly Operative. He was assigned to work for the Respondent's Client, BMW as an Assembly Operative and he was assigned to work at the Client's site until the 27 October 2017 when his assignment at the site was brought to an end.

34. Although the Claimant pleaded no dates in his ET1 of the alleged acts of discrimination, having clarified his complaints before me, it is evident that the Claimant raised a grievance that was considered by the

Respondents. Although the Claimant identifies the 27 October as being the date of termination of his employment [5] and has confirmed in his claim form that he obtained another job on the 1 November 2017 [6], the Respondent whilst not reassigning the Claimant to other client contracts or work during the period of the 27 October 2017, terminated his employment and issued a P45 on the 21 January 2018 [81].

35. Mr Watson has indicated that he understands that flexible employees such as the claimant worked on assignment and if an employee working on a flex contract such as the claimant does not work under any assignment for a period of time they will be classed as a leaver, it being the respondent's policy to terminate the contract of any person who has not worked under assignment for 7 weeks. The contract is terminated in effect because of lack of work and the person is sent a P45 as in the claimants case [81].
36. Although not articulated in his claim form, the dates of the alleged behaviour about which the Claimant complains, that is identified at paragraph 8.2, have been anchored to a number of dates which the claimant has given at this hearing. The very latest date of the events complained of is said to be an unspecified date in April 2018. To the extent a date in April was referred to by the Claimant, it was 4 April 2018 which is the date the Claimant says was his last contact with the Respondent. The claimants gives an account that 4 April 2018 was the date when he tried to contact the Respondent to obtain information about how he should conduct himself safely within the environment that he had been working at for their client BMW. In the event 4 April 2015, the claimant says was the date the Police arrested and charged him with harassment of the Respondent's employees.
37. I find that the last date possible in respect of conduct about which the Claimant complains, was the 4 April 2018.
38. I have heard evidence from the Claimant of his account as to why his complaint to the Employment Tribunal was presented when it was.
39. I have been referred to the Claimant's statement [39-40] in which the Claimant has given his account of the reasons why he did not present his complaint sooner than he had. He has amplified the content of the statement in answer to questions in cross-examination.
40. The Claimant gave an account to the Tribunal that in the period 14 March 2018 – 4 April 2018 he had served a 3-week term in prison for breach of bail conditions in relation to charges that had been brought against him on two counts of common assault and reckless spitting against his Father and younger Brother. Having taken up alternate employment, on 1 November 2017 [6] the claimant had subsequently lost that job and on release from prison had been living in a hostel.
41. Having raised a grievance on the termination of his assignment to work at the client's premises on 27 November 2017 the Claimant's grievance was investigated by Emma Johnson, the Regional Account Manager of the Respondent Group who wrote to the Claimant by email 15 November

2017 [46-47]. There followed an exchange of emails between the Claimant and Emma Johnson and the Respondent's HR Director Catherine Wells which led ultimately to a Grievance Meeting held on the 8 January 2018 between the Claimant and Ms. Wells, Emma Johnson and Kim Lowe [54-69], the conclusion of which was confirmed by Cathy Wells HR, Manager on the 12 January 2018 [70]. The decision confirmed that the Claimant's grievance was not upheld.

42. The Claimant appealed against his grievance decision on the 15 January 2018 [72]. The Claimant's employment was terminated on the 21 January 2018 as was recorded by the P45 which was issued to him. Following an exchange of email correspondence, the Claimant was invited to an Appeal Hearing scheduled for the 30 January 2018 [73] which the Claimant declined to attend and the Claimant's appeal was determined on papers and the Claimant was informed on the 5 March 2018 [page 90] that his appeal against the grievance decision was unsuccessful.
43. The Claimant in his statement [39-40], having identified the date of termination of his employment, to be the 27 October 2017, has given evidence, which is not wholly consistent, about the dates on which different events occurred.
44. In his witness statement, it stated that it was in roughly December 2017 that the claimant became aware about Employment Tribunals. In his statement, he says that he was not aware of Employment Tribunal time-limits until after the time limit for complaining to the Tribunal had expired when he spoke to the ACAS Advisor. The Claimant indicated that he spoke to an ACAS advisor sometime between December 2017 and January 2018, he had tried to obtain advice from ACAS before his grievance meeting which was held on the 8 January 2018.
45. The Claimant clarified and altered his account and said that in fact he had spoken to ACAS after the grievance meeting, soon after that time, "*within a month either way*". Subsequently, the Claimant providing a still different account, explained that he found out about ACAS, either because someone told him about it or he had done research about ACAS and it had either been the CAB or the Police had told him to speak to ACAS. The Claimant in his witness statement confirms that he learned about the process on how to make a claim to a Tribunal by using and accessing the Gov.UK website about how to make a claim and that he had not presented a complaint then because "*it was already from what I knew, too late because of the time limits, I filled in the Tribunal form as nothing else seemed to work*".
46. Discerning what I can from the confused and often contradictory account he has given, I find that as early as January 2018 the Claimant was aware of Employment Tribunals and the fact that complaints could be brought to an Employment Tribunal to complain about rights in employment and the right not to be discriminated against in the workplace. I find that the Claimant was aware that there was a 3-month time limit following the act about which an individual complained, within which a complaint should be brought to the Tribunal. Although the

Claimant indicated that he had accessed the Gov.UK website in March 2018, because a Police Officer had told him that his complaints about the Respondent were a matter for the Civil Courts the claimant speculated in the alternative that he accessed the Gov.uk website after the Claimant describes "*possibly speaking to a Job Centre Advisor*" that being when he had gained information about pursuing complaints in an Employment Tribunal.

47. After the lunchtime break when his evidence continued, the Claimant sought to clarify again the sequence of events of his gaining information about the Employment Tribunal process. He confirmed that he first learned how to make a claim to the Employment Tribunal in March or April 2018. He confirmed he had accessed Gov.UK after he had been released from prison, however he knew then that he was already out-of-time to present a complaint as he considered that his employment with the Respondent had terminated on the 27 October 2018 when he had been removed from the BMW assignment. He considered, on the basis he believed his employment terminated on the 27 October 2017, that after January "*there was no point in considering the Tribunal*". The Claimant confirmed that whilst he was trying get his grievances considered he "*knew that the time limit for bringing a claim was about January*". I am clearly of the view that when the grievance hearing was held the claimant was already aware of the right to complaint about employment related matters to an Employment Tribunal and he was aware of the three month time limit for presenting complaints.
48. I have sought to reconcile the confused accounts that the Claimant has given as to when he had knowledge of the right to complain to an Employment Tribunal. I find that the Claimant was aware of Employment Tribunals and the fact that claims could be brought without payment of a fee in December 2017. I find that the Claimant by January 2018, was aware that there was a 3-month time limit within which a complaint had to be commenced. I find that on or before and at very latest by 4 April 2018, the Claimant was aware that a complaint to an Employment Tribunal could be brought to complain about employment matters, including discrimination and the Claimant was aware of the existence of a 3-month time limit, within which a complaint to the Tribunal ought to be presented.
49. In answer to questions in cross-examination, on the preliminary issues, Mr Watson, for the Respondent has put to the Claimant the circumstances why his assignment to the Respondent's client was terminated and the events which followed, that the Respondents had informed the Claimant on the 15 November 2017 that his assignment to work on behalf of the Respondents at the BMW Hams Hall site had been because of "*your aggressive nature towards the team on site is not acceptable*" [page 47]. Subsequently, after a formal Grievance Hearing on the 8 January 2018 and subsequent communications with Cathy Wells, HR Manager, Ms. Wells on the 8 February 2018 [page 80] Ms. Wells informed the Claimant:

*"When I asked you to please stop emailing the abusive and threatening emails to my colleagues you began to abuse me, so I*

*ended the call. We have reported you to the police. We will not respond to any calls or emails from you, so please do not contact anyone at GI Group again.”*

Subsequently, the claimant confirmed that he had pleaded guilty to a charge that:

*“Between 21 January 2018 and 27 May 2018 in Derbyshire pursued a course of conduct which amounted to the harassment of Catherine Wells and which you knew or ought to have known amounted to harassment of them. Between these dates, sent numerous communications of an abusive nature. Contrary to Section 2(1) and (2) of the Protection of Harassment Act 1997, the Claimant had been ordered to pay compensation to Ms. Wells of £100.00 [page 92]. Subsequently on the same day, a notice of restraining order was issued [page 93] which was varied on the 11 December 2018, the terms of the variation restraining the Claimant: -*

- 1. Not to contact Kim Lowe or Mohammed Nabil directly or indirectly by any means.*
- 2. Not to be within 100 metres of BMW Hams Hall, Warwickshire.*
- 3. Not to make contact with GI Group (Agency) based at BMW Hams Hall site.*
- 4. Not to contact in any way Hams Hall, Warwickshire.*
- 5. Not to contact either directly or indirectly Ms. Charlotte Richards or Ms. Catherine Wells. This Order lasts until 19/09/2020”. [94]*

50. The Claimant confirmed his guilty plea and the Claimant confirmed in correspondence to the Employment Tribunal on the 5 December 2018 [page 34] that between 30 October – 14 November 2018 he was serving a custodial sentence at HMP Hewell.

51. The Claimant's gave a general account of the reasons why between 4 April 2018 and referring his Employment Tribunal claims to ACAS for early conciliation on the 27 August 2018 [page 1] he had not earlier presented his complaint, despite his understanding that the claim was presented out-of-time. The Claimant has referred to the fact that on the 4 April 2018 he had been arrested and charged with harassment which took up much of his time and “patience” which caused him difficulty engaging in the process with the Employment Tribunal as it would have been necessary.

52. I find that by the 4 April 2018, the Claimant had, in the terms that he did, tried to resolve his differences with the Respondents and their HR Department, without success. The claimant's interaction with the respondent had been in a manner such that his behaviour had prompted criminal charges to be brought against him. The charges had progressed to a Court Hearing in September 2018, the claimant had made a guilty plea and a sentence was passed, that the Claimant describes as being ‘roughly two months’ that led to his release on the 18 November 2018. The claimant explains that during the period April to August 2018, the

Claimant was required to prepare his case in many pre-trial Court appearances. The Claimant has not detailed those Court appearances that he made, when they occurred and for how long. The Claimant has described his financial difficulties, his prison sentence in March 2018 and the loss of the job he had undertaken from the 1 November 2017. However, I have heard no medical evidence to lead me to believe that the Claimant was unfit to pursue a Tribunal complaint sooner than he did nor to engage with the process.

### Conclusions

53. In considering the claims that have been brought against the Respondents as they have been articulated by the Claimant at the Preliminary Hearing, I am mindful that the Claimant is a litigant in person and clearly his claim form ET1 was drafted without the benefit of any legal assistance. On the face of his claim form, the Claimant has not particularised the protected characteristic in respect of each allegation, save in respect of:

Allegations 3 *“racism, lying by account coordinators very hostile”*.

Allegation 5. *“mohammed referred to me as a supremacist when I began talking about my religion”*.

Allegation 9. *“emma johnson denies wrongdoing from staff shouting and mockery of religion”*.

Allegation 10. *“mischief in the land, insulting me by way of my religion knowledge and observance practices.”*

Allegation 15. *“hate crimes, religious discrimination, racism”*.

54. Of these five Allegations that do make specific reference to race or/ or religion, Allegation 3 and 15 are, even at this Preliminary Hearing, statements without any specific particulars.

55. Allegation 10. Refers to insults by reference to the Claimant’s religious knowledge and observances, but provides no details or particulars of any alleged perpetrators of such insults or the dates on which they occurred, save that the Claimant at this Hearing has suggested, it occurred on the 25 October 2017.

56. Allegations 4 & 9. Identify named individuals who are alleged to have discriminated against the Claimant, but provide no details of what was said, by whom or the date on which it was said, other than it was clarified at the Preliminary Hearing that the comments made by Mohammed occurred on the 27 or 28 October 2017 and by Emma Johnson between the 27 October and the end of November 2017.

57. Subject to the comments as set out below I have to determine whether :

- a. such comments were made ?
- b. When were they made and were the claims presented within time?

The Respondent submits that the claims as pleaded, have no reasonable prospect of success.

58. The Claimant in his claim form has completed the originating application, paragraph 8.1 [page 7] to indicate he claimed that he was unfairly dismissed and discriminated against on the grounds of race and religion or belief. The Claimant at the Preliminary Hearing confirmed that he is not pursuing a self-standing complaint of unfair dismissal which is dismissed on the Claimant's withdrawal.
59. The first issue that I am required to determine is whether or not the claims brought by the Claimant are presented within time and if not, whether the tribunal has jurisdiction to entertain the claims. In considering that the claim was brought under the Equality Act 2010 it is necessary to consider if this is a case in which although presented out of time it should be heard on the basis that is just and equitable to do so. In respect of a claim for notice pay, whether the circumstances on termination of employment was such that the claim was not presented in time because it was not reasonably practicable to do so and that the claim is presented as soon after the expiry of the 3-month time limit as is considered reasonable.
60. Mr Watson, in his submissions suggests that with regard to the claim for notice pay, such a claim should have been brought by the 20 April 2018. Although the Claimant in his originating application suggests that his employment terminated on the 27 October 2018, the date when his assignment was terminated working at the BMW site, the Respondent accepts that employment was terminated on the 21 January 2018. A timely complaint in respect of notice pay, ought to have been commenced under the procedure for early conciliation on or before the 20 April 2018. The Claimant first made a reference to ACAS for early conciliation on the 27 August 2018 and a Certificate was issued on the 30 August 2018. The claim was presented on the 30 August 2018. The Claimant's complaints for his claim for notice pay have been presented 4 months out of time.
61. The Claimant has referred to the fact that in March 2018, he served a 3-week prison sentence on the 14 March 2018 to 4 April 2018 when he was released from prison. I find there are no circumstances which led to it being not reasonably practicable for the Claimant to have presented a complaint in respect of the Respondent's failure to pay him notice pay, were he entitled to such notice, in time and there are no circumstances that led me to extend time for the Claimant to present a complaint or further to pay notice. The tribunal does not have jurisdiction to consider the claimants complaints of breach of contract.
62. Turning to the complaints of unlawful discrimination in light of the date on which early conciliation commenced on the 27 August, the latest date upon which the Claimant could rely in respect of claims of unlawful discrimination would have been in respect of any acts or a continuous course of conduct ending on and relied on as giving ground to a complaint that occurred on or after the 28 May 2018.
63. I have had my attention drawn to Mr Watson's written submissions in which he suggests that the date of the last complaint of discrimination is in the middle of November 2017 and that time would have expired

around middle of February 2018 and that the Claimant did not issue his originating application form ET1 to the Tribunal until the 30 August 2018 and that therefore the claim is approximately 6½ months out of time. I appreciate the Respondent's skeleton argument was prepared without the benefit of the Claimant's clarification, presented to me. Were the Claimant's clarification to be accepted as an amendment to the claim, which for the purposes of considering the complaints I hypothetically do, I would hypothetically consider whether any of the Claimant's complaints are ones in respect of which the Tribunal has jurisdiction. The date on which the Claimant has described the last act of discrimination took place, is the 4 April 2018 in respect of Allegations 1, 12 and 13. The provisions of Section 123 of the Equality Act 2010 provide that a complaint may not be brought after the end of the period of 3-months starting with the date of the act to which the complaint relates or such other period as the Employment Tribunal thinks just and equitable.

64. Regardless of whether or not the Claimant's allegations of earlier discrimination amount to a series of acts to amount to conduct extending over a period of time such that it is treated as done at the end of the period, if the date of the last possible act is the 4 April 2018 the Claimant's complaints ought to have been referred to ACAS for early conciliation on or before the 3 July 2018. The reference to ACAS was not made in the event until 27 August 2018 some eight weeks out of time.
65. When deciding whether it is just and equitable for a claim to be permitted to be brought out-of-time, there is a wide discretion for the Tribunal to employ, to consider any factors that I might consider to be relevant. I remind myself that time limits are to be exercised strictly and the Tribunal cannot hear a complaint unless the Claimant convinces it that it is just and equitable to do so. The exercise of discretion is the exception rather than the rule.
66. The Claimant, in giving evidence to explain why he did not present his claim sooner than he did has been an inconsistent witness. When the claimant has given an account of when he was aware of the Employment Tribunal's jurisdiction to consider complaints in relation to the employment relationship he has been an inconsistent witness. I have found that the Claimant knew of the existence of an Employment Tribunal to resolve employment complaints with effect from December 2017 and I have found that he knew of the time limits that applied in the Employment Tribunal in January 2018. The Claimant has confirmed that on his own account from April 2018 he was aware of the procedure to be adopted in presenting a complaint to the Tribunal, but he has provided no satisfactory explanation as to why he did not bring a complaint earlier than he did, other than to say that he was dealing with other legal proceedings including criminal proceedings in respect of those charges brought against him in respect of his unlawful harassment of the Respondent's various employees, following the termination of his employment. That is not a good enough or satisfactory explanation.
67. Of the allegations that the Claimant has made, that he has particularised for the first time to some degree at the Preliminary Hearing, seven relate

to acts that are alleged to have taken place on or before the 27 October 2017, one, Allegation 9 in respect of the behaviour of Emma Johnson that continued until the end of November 2017 at the latest, and Allegation 8 in relation to the conduct of Cathy Wells, which is alleged to have taken place between November 2017 and February 2018. Allegation 6, which is alleged to have occurred between the 27 October 2017 and January 2018 and Allegations 3, 7, 12 and 14 allegations, all of which ceased on the 4 April 2018. Although the Claimant has suggested that between January and February 2018, he had been unwell and had had suicidal thoughts, he has provided to the Respondent and to the Preliminary Hearing, no evidence to support that assertion.

68. The Claimant has made representations that having lost his job, that he had found following the cessation of his assignment with the Respondents in November 2017, he had from February 2018 when he had been subject to a custodial sentence, and he had been left in poverty. The Claimant has suggested that his health, poverty and lack of resources as well as his time spent in prison up until the 4 April 2018 have been the reasons why he has not presented his claim to the Employment Tribunal. He has however provided no clear explanation for why he was unable to present a complaint to the Tribunal between 5 April 2018 and 30 August 2018 when he submitted his complaint. I have no grounds upon which I find that there was no time at all during that period that the claimant was unable to engage in the Employment Tribunal process.
69. Balancing the factors to which I have had regard and to the provisions of Section 33 of the Limitation Act 1980, the Claimant has provided inadequate reasons why he delayed presenting his complaint for as long as he did. He had been informed of the Respondent's outcome of his Grievance Appeal by an email of the 5 March 2018 [90] and was aware that any grievance that he had or that he wished the company to resolve internally had been exhausted. The Claimant had sought advice and on his own account at the Preliminary Hearing confirmed that he had been informed that the complaints that he sought to bring against the Respondent company were already out-of-time.
70. The Claimant had sought to pursue complaints internally through the grievance procedure in the Respondent company and the Claimant's complaints have been investigated and dealt with in a timely fashion. The Claimant was aware of facts which he asserts gave rise to a cause of action as recently as March and April 2018 however the Claimant had not acted promptly or at all to pursue those claims when he knew of the possibility of taking legal action. The Claimant had sought legal advice from the Citizens Advice Bureau and the assistance of ACAS in and before April 2018 and did not pursue claims against the Respondent. No evidence has been presented that the Claimant's physical or mental health between April 2018 and the 30 August 2018 was such that he was not fit to present a complaint sooner than he did.
71. When considering the prejudice that each party would suffer as a result of the decision being made whether not to exercise my discretion and to consider if it is just and equitable to allow the Claimant's complaints to

proceed, I have considered the possible merits of the complaints as pleaded in his claim form. I must agree with Mr Watson that the allegations as originally stated are unparticularised and even the 5 Allegations that I have identified as making some reference to the Claimant's protected characteristics of race or his religious belief as currently pleaded, the claims have little prospect of success.

72. In considering the prospective merits of any claim that the Claimant may have, I have scrutinized the claimant's complaints as he has sought to explain them in this preliminary hearing. I remind myself that the Claimant has not made an application to amend his claim form. In considering the prospective merits of the Claimant's complaints, were he to have made an application to amend them to include the information he has provided at this hearing, I have had regard to the guidance provided to Employment Tribunals Galilee -v- The Commissioner of Police of the Metropolis UK EAT/0207/16/RN and Selkent Bus Company -v- Moore 1996 ICR836 and Abercrombie & Others -v- Argo Rangemaster Ltd 2013 EWCA civ 1148. Based upon the scarce additional information provided by the Claimant at this Preliminary Hearing, I am led to conclude that even if in time the Claimant's complaints have little reasonable prospect of success.
73. In considering whether or not it is just and equitable to extend time in this case, set in parallel with the Claimant's lack of a satisfactory explanation for why he failed to present his complaint to the Employment Tribunal sooner than he did I consider the claimants actions as a whole. I am conscious that the Claimant's behaviour towards the Respondent in particular their employees, was of such unacceptable and unreasonable nature that proceedings were brought against him under the Protection from the Harassment Act 1997. The Claimant entered a guilty plea in response to the charges and as a result served a two month prison term.
74. Taking all of the arguments that have been put to me into consideration, I conclude that the circumstances of this case are such that I find that the Claimant did not present his claim of unlawful discrimination in breach of the Equality Act 2010 within a period of three months starting with the date of the act or last act in a series of acts to which the complaint relates. Further the complaint was not presented within such other period as I think is just and equitable to permit the proceedings being brought if the complaints are outside the prescribed time limits.
75. In light of the decision that I have made that the complaints were all presented outside the prescribed time limits and not within such further period as I may consider it was just and equitable to do I conclude that the tribunal does not have jurisdiction to entertain the claimant's complaints.
76. The additional issues that I have been invited to consider, whether to strike the complaints out because they have no prospect of success or to impose a deposit as a condition of the claimant being permitted to proceed with each of the complaints are applications advanced by the respondent in the alternative if the complaints are permitted to proceed on the time point. I have concluded that the tribunal does not have

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jurisdiction to consider the claimant's complaints and it is not necessary for me to make findings in the alternative in this case.

Employment Judge Dean  
20 June 2019