EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Mrs B Skarbek-Cielecka

Respondent: Holly Rise Consultants Limited
t/a Bluebird Care

HELD AT: London South Tribunals

ON: 26, 27 and 28 March 2019
In chambers on 10 May 2018 and 28 June 2019

Before: Employment Judge Freer
Members: Ms E Whitlam
Ms M Foster-Norman

Appearances
For the Claimant: In person
For the Respondent: Mr C Ludlow, Counsel

RESERVED JUDGMENT

It is the unanimous judgment of the Tribunal that the Claimant's claims are unsuccessful.

REASONS

1. The Claimant presented her claim to the Tribunal on 07 December 2017.

2. The Respondent resists the claim.

3. The Claimant gave evidence on her own behalf.

4. The Respondent gave evidence through Mr Neil Blatch, Director, Ms Valerie Holland, Registered Manager, and Ms Anna Madejska, Care Worker.

5. The Tribunal was presented with a bundle of documents comprising 456 pages, a supplementary bundle comprising 48 pages, with further documents during the hearing as agreed by the Tribunal.

6. A Case Management Order was made from a hearing on 25 June 2018, in which a provisional list of issues was set out and the Claimant was ordered to provide additional information to clarify her claim. The Claimant provided this information in a letter dated 22 August 2018.

7. There was a further Preliminary Hearing on 20 November 2018 where the Claimant's claim for unpaid annual leave was dismissed upon withdrawal and a judgment was made that the Tribunal had no jurisdiction to consider the Claimant's claim of unauthorised deduction from wages because it had been presented to the Tribunal out of time.

8. Accordingly, a revised list of issues was provided by the Respondent and agreed by the parties at the outset of the hearing, which incorporated the Claimant's additional information as appropriate and removed those matters determined at the Preliminary Hearing.

9. The Claimant had appealed the judgment of the Tribunal at the preliminary hearing, but confirmed that she was content for this Tribunal hearing to continue and determine the remaining matters in issue.

10. The Claimant confirmed that she was relying on the witness statement prepared by her dated 07 July 2018 that appears at pages 205 to 208 of the bundle.

11. Regrettably there has been a delay in providing this reserved judgment which has been due to member unavailability and other unforeseen factors.

The law

Direct discrimination

12. Section 13 of the Equality Act 2010 provides:

> "(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others".

13. On comparison between the Claimant and the case of the appropriate comparator, real or hypothetical, there must be no material difference between the circumstances relating to each case (section 23).

14. A Tribunal may not make findings of direct discrimination save in respect of matters found in the originating application. A Tribunal should not extend the range of complaints of its own motion (**Chapman –v- Simon** [1994] IRLR 124, CA, per Peter Gibson LJ at para 42).

Burden of Proof

15. The burden of proof reversal provisions in the Equality Act 2010 are contained in section 136:

> "(1) This section applies to any proceedings relating to a contravention of this

Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision".

16. Guidance is provided in the case of **Igen Ltd –v- Wong** [2005] IRLR, CA. In essence, on a balance of probabilities there must be facts from which a Tribunal could conclude, in the absence of an explanation by the Respondent, that the Respondent has committed an act of unlawful discrimination. The Tribunal when considering this matter will raise proper inferences from its primary findings of fact. The Tribunal can take into account evidence from the Respondent on the primary findings of fact at this stage (see **Laing –v- Manchester City Council** [2006] IRLR 748, EAT and **Madarassy –v- Nomura International plc** [2007] IRLR 246, CA). If there is a *prima facie* case, then the burden of proof falls upon the Respondent and the Respondent must prove on a balance of probabilities that the Claimant's treatment was in 'no sense whatsoever' on racial grounds.

17. The term 'no sense whatsoever' is equated to 'an influence that is more than trivial' (see **Nagarajan –v- London Regional Transport** [1999] IRLR 573, HL; and **Igen Ltd –v- Wong**, as above).

18. The Court of Appeal in **Madarassy** above, held that the burden of proof does not fall upon the employer simply on there being established a difference in status (e.g. sex or race) and a difference in treatment. Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal "could conclude" that, on the balance of probabilities, the Respondent had committed an unlawful act of discrimination.

19. Tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating on why the Claimant was treated as they were and postponing the less-favourable treatment issue until after they have decided why the treatment was afforded. Was it on the proscribed ground or was it for some other reason? (*per* Lord Nicholls in **Shamoon –v- Chief Constable of the Royal Ulster Constabulary** [2003] IRLR 285, HL).

20. The Supreme Court in **Hewage –v- Grampian Health Board** [2012] UKSC confirmed:

"The points made by the Court of Appeal about the effect of the statute in these two cases [*Igen* and *Madarassy*] could not be more clearly expressed, and I see no need for any further guidance. Furthermore, as Underhill J pointed out in *Martin v Devonshires Solicitors* [2011] ICR 352, para 39, it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts

necessary to establish discrimination. But they have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other."

21. The approach set out in **Hewage** was endorsed and applied to the Equality Act 2010 burden of proof reversal provisions by the Court of Appeal in **Ayodele –v- Citylink** [2017] EWCA (Civ) 1913.

Working Time

22. Regulation 12 of the Working Time Regulations 1998 provide:

> **"**(1) Where an adult worker's daily working time is more than six hours, he is entitled to a rest break.
>
> (2) The details of the rest break to which an adult worker is entitled under paragraph (1), including its duration and the terms on which it is granted, shall be in accordance with any provisions for the purposes of this regulation which are contained in a collective agreement or a workforce agreement.
>
> (3) Subject to the provisions of any applicable collective agreement or workforce agreement, the rest break provided for in paragraph (1) is an uninterrupted period of not less than 20 minutes, and the worker is entitled to spend it away from his workstation if he has one".

Employment Particulars

23. Under section 38 of the Employment Act 2002, if when the proceedings were begun the employer was in breach of its duty to the employee under section 1(1) or 4(1) of the Employment Rights Act 1996 (statement of employment particulars) and the Tribunal finds in favour of the Claimant in any jurisdiction set out in Schedule 5, the Tribunal shall make an award of compensation of two or four weeks' pay.

Time limits

24. In a discrimination claim an employment tribunal can consider a claim presented out of time "if, in all the circumstances of the case, it considers that it is just and equitable to do so" (section 123 of the Equality Act 2010). This gives a tribunal a wide discretion and to take into account anything which it judges to be relevant. The discretion is broader than that given to tribunals above under the 'not reasonably practicable' formula.

25. Notwithstanding the breadth of the discretion, the exercise of discretion is the exception rather than the rule' (see **Robertson –v- Bexley Community Centre** [2003] IRLR 434,).

26. The discretion to grant an extension of time under the 'just and equitable' formula has been held to be as wide as that given to the civil courts by s 33 of the Limitation Act 1980 to determine whether to extend time in personal injury actions (**British Coal Corpn –v- Keeble** above).

27. Under that section the court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular: (*a*) the length of 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 had co-operated with any requests for information; (*d*) the promptness with which the claimant acted once he knew of the facts giving rise to the cause of action; and (e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

28. Although, these factors often serve as a useful checklist, there is no legal requirement on a tribunal to go through such a list in every case, provided no significant factor has been left out of account.

29. The relevant statutory provisions relating to time limits applicable to the Claimant's claim under the Working Time Regulations is set out in regulation 30(2). An employment tribunal shall not consider a complaint unless it is presented to the tribunal (a) before the end of the period of three months beginning with the date on which it is alleged that the exercise of the right should have been permitted, 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.

30. There are two essential limbs to these statutory provisions with regard to claims presented out of time. First, the Claimant must show that it was not reasonably practicable to present their claim in time. The burden of proof is on the Claimant (*Porter-v- Bandridge Ltd* [1978] IRLR 271, CA). Second, if the Claimant proves the first limb, the time within which the claim was in fact presented must be reasonable.

31. The Court of Appeal in **Palmer and Saunders –v- Southend-on-Sea Borough Council** [1984] IRLR 119 stated word "practicable" is equivalent to "feasible" and to consider that matter colloquially and untrammelled by too much legal logic.

32. The possible relevant factors are not exhaustive. Each case depends upon its own facts.

33. Factors may include matters such as the substantive cause of the claimant's failure to comply with the time limit; whether there was any physical impediment preventing compliance; whether and if so when, the claimant knew of their rights; whether the employer had misrepresented any relevant matter to the claimant; whether the claimant had been advised by anyone, and the nature of any advice given; and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time.

34. The mere assertion by a claimant of ignorance of the right to claim, the time limit, or the procedure for making the claim, is not to be treated as conclusive.

35. **Schulz v Esso Petroleum Ltd** [1999] ICR 1202, states: "In assessing whether or not something could or should have been done within the limitation period, while looking at the period as a whole, attention will in the ordinary way focus on the closing rather than the early stages".

36. The Court of Appeal held in **Marks & Spencer –v- Williams-Ryan** [2005] IRLR 562 that: "when deciding whether it was reasonably practicable for an employee to make a complaint to an employment tribunal, regard should be had to what, if anything, the employee knew about the right to complain to the employment tribunal and of the time limit for making such a complaint. Ignorance of either does not necessarily render it not reasonably practicable to bring a complaint in time. It is necessary to consider not merely what the employee knew, but what knowledge the employee should have had had he or she acted reasonably in all the circumstances".

37. In **Riley –v- Tesco Stores Ltd** [1980] IRLR 103, the Court of Appeal established that the issue of reasonable practicability is an issue of fact and must be determined by examining all the circumstances. Matters relating to advisers are relevant only as part of the general overall circumstances of the case.

Facts and associated conclusions

38. The Claimant was employed by the Respondent as a Care Assistant from 29 February 2016.

39. During the period of her employment the Claimant was undertaking an educational qualification in her home country of Poland and returned there on a regular basis to carry out her studies.

40. The Claimant signed a contract with the Respondent on 1 March 2016, which is at pages 101 to 110 of the bundle.

41. The contract confirms that the Claimant's employment started with the Respondent on 29 February 2016.

42. Under clause 6, entitled 'Place of Work' the contract provides: "By definition, domiciliary care happens in many different locations and Bluebird Care is responsible for providing services at various locations for varying periods of time. Accordingly, you will have no fixed place of work and will be expected to perform duties at any location that is it within reasonable travelling distance of your home that is determined by Bluebird Care".

43. Clause 7, 'Payment & deductions from salary' provides: "For travel in connection with work between customers you will be paid 28p per mile as travel expenses. Any time spent travelling between home and work will not count as travel time and you will not receive travel expenses in respect of the journey. Your time from your first customer of the day to your final customers of the day (including travelling in connection with work between customers, but excluding any unpaid breaks and travel between home and work) will count as working time for the purposes of the National Minimum Wage. You will be entitled to an unpaid break of 20 minutes when working a continuous

shift of 6 hours or more".

44. The contract also has clauses relating to 'unlawful discrimination and harassment' and 'termination and notice period'.

45. Clause 9, under the heading 'Hours of Work', provides: "This is a 'Zero Hours' contract. You will work such hours and at such times as agreed between us. Bluebird Care is not under an obligation to offer you any work and has specifically reserved the right to reduce your working hours whenever necessary. There is emphatically no guarantee of work or of minimum hours under this contract, unless confirmed in a working hours agreement for a specific period of work".

46. With regard to the claim of direct race discrimination, the Claimant relies upon her Polish national or ethnic origin.

47. The Claimant relies upon four allegations of less favourable treatment.

The first allegation of direct discrimination is that: *"On 04 March 2016, the Respondent prioritised employees of English origin when allocating hours and clients".*

48. On 04 March 2015 Respondent undertook 'shadowing planning' during a period of staff mandatory training during which new staff shadow the shifts of established carers as part of their training.

49. The Claimant in her evidence stated that the "English girls" were treated in a special way in that they went to the office first and had the first choice of clients and hours. The Claimant alleges that she waited for three hours only to be offered what was left.

50. At that time the Claimant was awaiting the result of a DBS check, which had not been received. The Claimant's DBS check was outstanding due to an error. Ms Helen Watson had filled out the form and had spelt the Claimant's name incorrectly. The Tribunal finds as fact that this was a simple error and was it not in any way a deliberate action. The Claimant accepted in evidence that she could not be scheduled to work by the Respondent without a valid DBS check.

51. The Claimant accepted in her evidence that the two other new staff who had arranged shadowing training before the Claimant, Emily and Kim, had active and valid DBS checks.

52. In her additional information the Claimant claimed that: "Mandrine, another foreigner (an African girl) was the last one". The Tribunal finds as fact that there was no individual named Mandrine and the person to whom the Claimant refers was called Christine Wanjala, who was originally from Kenya. The Respondent could not give Ms Wanjala a role as a live-in carer, as she wanted, because her work permit would only allow her to work a maximum of 20 hours per week and a live-in carer role required a commitment to over 40 hours per week.

53. The Tribunal accepts the Respondent's evidence that employees lead on the amount of work they wish to do and that during carer shadowing they do not select the clients but shadow another carer's shifts with that carer's clients. There is no opportunity for those doing the shadowing to select the clients.

54. The Tribunal accepts the Respondent's evidence that the first two members of staff who arranged shadowing shifts were the only two who were able to undertake work immediately, whereas the Claimant and Ms Wanjala were not.

55. With regard to the Tribunal hearing, the evidence of the Claimant was of someone who talked a good deal, says what she feels and found it difficult to listen to and act upon advice.

56. In the minutes of a meeting held between the Claimant and Ms Holland and Ms Reed on 10 May 2017, it is recorded the Claimant stating that "she thinks confrontation is best way to resolve an issue" and that "Bozena stated she does not like complaining, she does not count every single day, and she is not unhappy working for Bluebird Care. She is very grateful for everything". The Claimant confirmed in evidence that this is what she had said.

57. The Claimant did not raise any complaint at the time. During her appraisal on 12 August 2016 the issue is not mentioned. At a supervision meeting on 14 November 2016 the Claimant does not indicate any issue. The Claimant resigned from her employment on two occasions, first by a letter dated 25 March 2016 at page 114 of the bundle and second on 07 August 2017 at page 198 of the bundle. The Claimant had a lengthy meeting with Ms Holland on 10 May 2017 (the minutes are in the Tribunal bundle) and also lodged a grievance by a two-page letter dated 11 July 2017. None of these documents raised this issue of alleged discrimination or any suggestion of discrimination generally.

58. The Tribunal concludes that the Claimant has not proved facts from which it could conclude that she has been less favourably treated because of her Polish national or ethnic origin. The two members of staff who were given shadowing arrangements before the Claimant were immediately ready to undertake the work, the Claimant did not have a valid DBS check necessary for her to undertake work. That reason for the treatment of the Claimant is in no sense whatsoever to do with The Claimant's Polish national or ethnic origin.

The second allegation of direct discrimination is that: "*On 23 June 2017, the Respondent prioritised employees of English origin in relation to allocating 'on call' duties".*

59. In her additional information the Claimant alleges that she was in the office with Ms Helen Millar and Ms Michelle Reed from the Respondent's administration team and discussed the possibility for the Claimant to be assigned on-call duty at the weekend, which Helen agreed, but Michelle Reed said "it was promised to another carer, an English girl".

60. The Claimant accepted in her evidence the Respondent employs a wide

cross-section of nationalities. The Tribunal accepts the Respondent's evidence at page 295 and 296 of the bundle demonstrating the nationalities of individuals who have been employed by it: Ghanaian, Chinese, South African, Jamaican, Bulgarian, Hungarian, Thai, Lithuanian, Greek, Zimbabwean, Fijian, Russian, Croatian, Serbian, and Portuguese. The Respondent has employed more persons of Polish national or ethnic origin than any other nationality.

61. On-call work is generally covered by a management supervisor taking the calls and one carer/supervisor to do the care work required.

62. The Tribunal finds as fact that at the time under review, Ms Madejska, also of Polish national and ethnic origin, had started to undertake much of the weekend on-call work. Ms Madejska had worked full-time for the Respondent, working week shifts and alternate weekends. She then found alternative work with another employer, which meant her financial situation had improved to the extent that she did not need to work weekend shifts. As a consequence, Ms Madejska was offered week-end on-call work by Ms Holland, which Ms Madejska accepted as from 11 March 2017. The weekend on-call period is 7.00pm Friday to 7.00pm Sunday.

63. On those occasions Ms Madejska could not do weekend on-call work the Respondent typically allocated it to workers who had a full weekend without shift work. If a member of staff was allocated to do weekend work they would not also be allocated emergency or cover work. Also, the Respondent tried to avoid those of its workers who had been working shifts during the week.

64. The Claimant would regularly request to work week-end assignments which means that she would not be a priority for on-call work. The evidence demonstrates that the Claimant was assigned to work (and did work) on Sunday evening, had worked during the previous week and had worked the previous Saturday and Sunday.

65. The Respondent's records shows that Ms Madejska was not working on-call on the weekend of 24 and 25 June 2017. There does not appear to be any record before the Tribunal of who actually did work that weekend.

66. Ms Madejska has since March 2017 undertaken the vast majority of the weekend on-call work for the Respondent. It is fair to say that she is the Respondent's first choice.

67. The Claimant's account of the event changed during her evidence from being told the comment directly to overhearing a conversation. The nature of the conversation as alleged is also not part of the Claimant's manuscript entry on her time sheets for that period. The comment as alleged is also similar to the Claimant's own use of words in her additional information "English girls were treated in a special way".

68. Further, the Claimant makes no reference to the event or of discrimination generally in her resignation written only six weeks later.

69. The Tribunal has considered all the relevant evidence and finds that the Claimant has not proved evidence from which the Tribunal could conclude the Claimant was less favourably treated as alleged.

The third allegation of direct discrimination is that the: *"Respondent failed to allow the Claimant to work 4 weeks' notice from 9 August 2017 to 5 September 2007".*

70. The Claimant's concerns regarding her first resignation letter were addressed by the Respondent and she stayed in employment.

71. The Claimant resigned a second time on 7 August 2017. It is at page 198 of the bundle and is entitled "Resignation Letter". It states: "It is my resignation letter, but I still ask you to pay me everything, which was outstanding after June 2016, because Neil reimbursed only three first months of my underpaid work. There were no issues concerning my work with clients. After my complaint you started to 'produce evidence'. I can't continue working with you, because it is obvious, you are trying to damage me".

72. Mr Blatch replied by a letter dated 9 August 2017 in which he states: "I am in receipt of your resignation letter which states that you wish to leave Bluebird Care and your final day of employment will be 8th August 2017". The Claimant's resignation was accepted.

73. The evidence of Mr Blatch was that before he replied to the Claimant he showed the Claimant's resignation letter to Ms Holland. Ms Holland's evidence was that she was away on annual leave when she was informed what had happened.

74. By a letter dated 11 April 2017 the Claimant submitted a grievance to the Respondent, which is at pages 191 and 192 of the bundle. Ms Holland replied by a letter dated 21 July 2017 which states: "Neil and I have had numerous meetings with you about your grievances evidence your wages, which both he and I thought had been resolved". The letter that addresses a number of matters and concludes: "I have been told that you have more time booked from 13th to 21st August therefore I have not given you any work until we have a meeting to find out if any of the issues can be resolved". This letter was sent by recorded delivery to the Claimant's home address. The Claimant in evidence contended that she was back in the UK and ready to work from 03 August 2017. However, she did not contact the Respondent to query her working dates and one working day later tendered her resignation. The Claimant argues that she received the 21 July 2017 letter on 05 August. If true, this was still received before the Claimant sent her resignation letter and she did not query with the Respondent Ms Holland's view of her absence dates.

75. The Claimant was in Spain on 29 June 2017 (see Claimant's messages with Kim White – documents C1) and went to Poland on study leave from 11 July 2017. Ms Holland believed that because the Claimant did not respond her letter of 21 July, the resignation letter had been final. The letter 21 July confirms that Ms Holland considered the Claimant to be booked off work until 21 August.

76. In the Claimant's messaging with Ms White she states on 01 July 2017 "They are trying very hard to find something against me. Now is the time for Tribunal, I believe"

77. The Claimant referred to an email at page 196 of the bundle that she argues she sent to Ms Sarah Edwards on 01 August 2017 stating: "On 13th July I sent you a message, that I will be back to work on Thursday, the 03/08/2017, but till today I can't see my time sheet on the Pass system and I don't have my Roster either. Can you explain to me the situation?".

78. The Respondent denies having received this email together with the one of 13 July referred to in that e-mail and which is not in the Tribunal bundle. Ms Holland stated that Ms Cummings (nee Edwards), Care Coordinator, was away on annual leave from 27 July to 10 August 2017, which cannot be correct as she replied to Mr Blatch's e-mail on 07 August 2017 (see below). The Claimant's email of 01 August 2017 was out of the ordinary as she had sent it direct to the Sarah Edwards e-mail address. Whereas all her earlier e-mails had been sent to Sarah Cummings' e-mail address (see for example pages 190, 183, 182 and 171), which look like they had automatically been redirected to the Sarah Edwards e-mail address.

79. At 15.28 on 07 August Mr Blatch sent an email to Ms Cummings enquiring whether the Claimant was available to work that week. Ms Cummings replied that the Claimant had made no contact and she did not think the Claimant was in the country. The Claimant did not contend that she has tried to contact the Respondent since her return to the UK.

80. The Tribunal has carefully considered all the evidence, including the ongoing issues raised by the Claimant in respect of the Respondent and the Respondent's issues with the Claimant's attitude as raised, for example, in her 2017 appraisal.

81. Having considered all the available material the Tribunal concludes that Mr Blatch genuinely considered that the Claimant was resigning with immediate effect from the terms of her resignation letter: "I can't continue working with you, because it is obvious, you are trying to damage me". The Tribunal accepts Mr Blatch's evidence that even if the Claimant did send the e-mails dated 13 and 01 September 2017, he was unaware of them when he accepted the Claimant's resignation with immediate effect.

82. The Claimant did not reply to Mr Blatch to inform him that he had got it wrong and in fact she had not resigned with immediate effect and wished to work her notice period.

83. On balance the Tribunal concludes that the reason why Mr Blatch acted as he did in accepting the Claimant's resignation with immediate effect was because he genuinely read her resignation letter to mean that. He wrote to the Claimant in those terms and she did not reply to contradict his understanding.

The fourth allegation of direct discrimination is that: *"The Respondent sent an email virus to the Claimant on 20 April 2018".*

84. The Tribunal concludes that this claim was manifestly without merit.

85. The sequence of events is straight forward. Mr Blatch received an e-mail from Mr Daria Gliszcynska which contained a computer virus. The virus infected Mr Blatch's e-mail contacts and sent an e-mail to all of those contacts with a copy of the virus, which is what had previously happened with regard to Mr Gliszcynska as confirmed in his e-mail of 03 September 2018.

86. The Claimant argued in evidence that Mr Blatch had sent her an e-mail with an attachment called "contract of employment", knowing that she would open it and infect her device. However, the Claimant had to accept that the attachment was called simply 'contract' and when the series of events was explained to her with reference to Mr Gliszcynska's explanatory e-mail, she would not accept the circumstances.

87. This level of suspicion held by the Claimant was similar in nature to other issues raised by her of cameras having been installed into the homes of some of the customers to monitor the Claimant, that her phones were being 'tapped' by the Respondent, and the Claimant having reported to the Police that she considered that she was being followed by a car (in oral evidence she did not allege that this was the Respondent, although that seems to be the implication in correspondence (see page 201b for example)).

88. The Claimant accepted in evidence that the sending of the virus was not because of her Polish nationality or national or ethnic origin and added: "I don't know why he sent it to me".

89. Accordingly, this allegation has not been made out.

Time limits

90. For completeness, as a consequence of the allegations of the 20 April 2018 virus e-mail and accepting the Claimant's resignation with immediate effect on 09 August 2017 not being held to be acts of direct discrimination, the remaining two allegations were presented to the Tribunal out of time.

91. The Claimant presented her claim to the Tribunal on 07 December 2017. ACAS received the Claimant's Early Conciliation notification on 01 August 2017 (Day A) and issued the certificate on 14 August 2017 (Day B). The last act of discrimination of the remaining two allegations relied upon was 23 June 2017. Therefore, the normal time limit would expire on 22 September 2017. However, that time was frozen for the conciliation period of 14 days, which creates a new time limit of 06 October 2017. This expired one month after Day B and therefore is the date by which the Claimant's claim should have been presented to the Tribunal. It was presented two months out of time.

92. The Tribunal has had regard to the balance of prejudice, all the circumstances and the factors set out in section 33 of the Limitation Act 1980, in particular: the length of the delay, the Claimant not raising any specific points to explain the delay; the effect of the delay on the evidence, particularly the event on 04 March 2016; the Claimant was under no impediment to submitting the claim;

the Claimant's message to Ms White on 01 July 2017 regarding her knowledge of employment tribunals; the Claimant's ability to submit a detailed grievance around that time; and the Claimant not having explained any steps that she had taken to obtain advice. The Tribunal concludes that the balance of prejudice tips in favour of the Respondent, it is not just and equitable to extend time and Tribunal has no jurisdiction to consider the claims. However, this decision is academic due to the Tribunal's judgment that the two allegations were not successful in any event.

Regulation 12 Working Time Regulations 1998 – rest breaks

93. The Claimant set out in her additional information a schedule of the thirty dates on which she argues she worked for more than six hours without an uninterrupted 20 minute rest break, contrary to regulation 12 of the Working Time Regulations 1998 (and her contract of employment).

94. The Tribunal has considered the issue of time limits with regard to this claim. The issue of time limits was clearly set out in the Tribunal's earlier case management order, the list of issues and the Claimant had previously addressed the issue of time limits at the preliminary hearing on 20 November 2018 dealing with the Claimant's unauthorised deduction from wages claim.

95. The last date relied upon by the Claimant in her table of dates is 15 June 2017. This produces a time limit for presenting the claim of 14 September 2017. ACAS received the Claimant's Early Conciliation notification on 01 August 2017 (Day A) and issued the certificate on 14 August 2017 (Day B). This therefore freezes the clock for a period of 14 days creating a new time limit of 28 September 2017. The time limit has not expired within the period of a month after Day B (14 September 2017) and therefore the time limit remains as calculated of 28 September 2017. The Claimant's claim was presented on 07 December 2017, over two months out of time.

96. The Tribunal concludes that it was reasonably practicable for the Claimant to have presented the claim in time. Her hours and pay was a repeating source of complaint by her to the Respondent. The Claimant should reasonably have been aware of her rights and the opportunity to bring a claim to an employment tribunal, particularly having regard to the message to Ms White on 01 July 2017 regarding a potential Tribunal claim and her ability around that time to submit a detailed grievance. The Tribunal has received no evidence of any impediment preventing the Claimant from presenting her claim on time and therefore concludes that it was reasonably practicable for her to do so and the Tribunal has no jurisdiction to consider the claims.

97. Although the Tribunal has made the above conclusion on jurisdiction, it received evidence on this matter and has spent a good deal of time going through each of the alleged circumstances. The Tribunal therefore sets out its findings in the table below. The Tribunal has accepted the Claimant's account of hours worked and travel time where that information has been clearly supplied and as indicated in the tale below.

Date	Worked over 6 hours?	Uninterrupted break of not less than 20 minutes (excluding travel time)?	Breach of WTR?
10 April 2016	Yes	No	No (C had potential 20 minute break from 19.08 to 19.45 but voluntarily started next client early at 19.22)
11 April 2016	Yes	Yes (16.30 to 17.15 less 4.5 minutes travel)	No
30 April 2016	Yes	Yes (10.00 to 13.00 less 9.5 minutes travel)	No
26 May 2016	Yes	Yes (11.00 to 12.00 less 9 minutes travel)	No
10 July 2016	Yes	Yes (13.10 to 14.30 less 7 minutes travel)	No
29 July 2016	Yes	No (12.15 to 12.45 less 16.5 minutes travelling)	**Yes**
14 August 2016	Yes	No	**Yes**
19 August 2016	Yes	Yes (14.20 to 16.45 – no evidence of	No

		travel time)	
15 September 2016	Yes	No (15.30 to 16.15 less travel time of 30 minutes)	**Yes**
18 September 2016	Yes	No	**Yes**
19 September 2016	Yes	Yes (12.40 to 15.20 – no evidence of travel time)	No
30 September 2016	No	Yes (11.45 to 15.15 - no evidence of travel time)	No
27 October 2016	Yes	Yes (17.40 to 19.00 - no evidence of travel time)	No
12 November 2016	Yes	Yes (9.25 to 12.30 - no evidence of travel time)	No
03 December 2016	Yes	Yes (16.30 to 18.00 - no evidence of travel time)	No
08 December 2016	Yes	Yes (17.40 to 19.10 - no evidence of travel time)	No
09 December 2016	Yes	Yes (15.30 to 16.30 - no evidence of travel time)	No

19 January 2017	Yes	Yes (No Claimant record – on Respondent's rota 11.15 to 15.30 - no evidence of travel time)	No
03 February 2017	Yes	Yes (14.50 to 17.15 - no evidence of travel time)	No
17 February 2017	Yes	Yes (13.45 to 16.30 - no evidence of travel time)	No
20 February 2017	Yes	Yes (14.30 to 16.30 - no evidence of travel time)	No
03 April 2017	Yes	Yes (17.00 to 18.00 - no evidence of travel time)	No
10 April 2017	Yes	Yes (11.30 to 12.30 - no evidence of travel time)	No
17 April 2017	Yes	Yes (100 – 10.30 and 14.00 to 14.30 - no evidence of travel time)	No
08 May 2017	Yes	Yes (12.15 to 13.00 - no evidence of	No

		travel time)	
26 May 2017	Yes	Yes (15.30 to 17.15 - no evidence of travel time)	No
27 May 2017	Yes	Yes (14.35 to 17.05 - no evidence of travel time)	No
15 June 2017	Yes	Yes (16.00 to 18.45 – no evidence of length of staff meeting)	No

98. The Tribunal further notes from the above assessment that of the four breaches of regulation 12 as found above, the last one is dated 18 September 2016, which is more substantially out of time than the last overall allegation considered above. The Tribunal further emphasises its conclusion that it was reasonably practicable for the Claimant to present her Tribunal claim within time.

99. The additional information provided by the Claimant set out details of an alleged failure by the Respondent to provide her with daily rest breaks in breach of regulation 10 of the Working Time Regulations. However, this was not set out in the Claimant's witness statement, is not included in the List of Issues agreed by the Claimant at the outset of the hearing and was not addressed by her in submissions. The Claimant's focus was on the 20 minute rest breaks.

100. However, for the sake of completeness, it is noted that the last event relied upon in Table 8 of the Claimant's additional information is 10 July 2017. Therefore, the time limit including the ACAS early conciliation period expired on 23 October 2017 and the claim has been presented around six weeks out of time. The Tribunal reaches the same conclusion and for the same reasons as it has above regarding rest breaks, that it was reasonably practicable for the Claimant to present the claim in time and the Tribunal has no jurisdiction to consider it.

101. The Claimant cannot obtain any compensation for not having received particulars of employment as that is contingent on a successful claim. However, the Claimant signed her contract of employment on each page when she entered into the agreement on 01 March 2016 and on balance after

considering all the evidence, the Tribunal prefers the evidence of Ms Holland and that a copy of the contract was supplied to the Claimant at the time.

102. The Tribunal has no jurisdiction to address the Claimant's claim regarding the issuing of her P45.

Employment Judge Freer

Date: 09 August 2019