



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Saira Ahmad

**Respondent:** Explore Learning Limited

## RECORD OF AN OPEN PRELIMINARY HEARING

**Heard at:** Watford (CVP)

**On:** 19 March 2021

**Before:** Employment Judge Alliott (sitting alone)

### Appearances

For the claimant: Mr Howard Lewis-Nunn (Counsel)

For the respondent: Ms Michelle Tudor (Solicitor)

### COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

“This has been a remote hearing not objected to by the parties. The form of remote hearing was CVP. A face to face hearing was not held because it was not practicable and no-one requested the same.”

## JUDGMENT

The judgment of the tribunal is that:

1. The claimant’s claims against Ms Shivani Vyas are out of time and it is not just and equitable to extend time. Consequently, the claimant’s claims against Shivani Vyas (former second respondent) are struck out.

## REASONS

1. The claimant was employed by the respondent on 12 February 2019 as an Assistant Director.

2. By a claim form presented on 29 May 2020, the claimant brought claims of age discrimination/harassment and victimisation against the first respondent and Shivani Vyas. The early conciliation certificate in relation to the first respondent shows that the date of notification was 16 March 2020 and the certificate is dated 30 April 2020. The early conciliation certificate in relation to Shivani Vyas has the date of notification and the date of certificate as 29 May 2020.
3. Accordingly, as regards the claims against Shivani Vyas, events prior to the 29 February 2020 are out of time.
4. The last allegation made against Shivani Vyas relates to an incident on 18 December 2019. Ms Vyas ceased being the claimant's line manager on or before 2 January 2020. As such, the three-month time limit for pursuing her claims against Ms Vyas expired on 17 March 2020 or, at the very latest, on 1 April 2020. Her claim has therefore been submitted 2 months out of time and I so find.
5. Although the claimant has not filed a witness statement dealing with the issue as to why she did not issue her claim in time, and whether time should be extended on a just and equitable basis, I adjourned this hearing for 20 minutes to allow Mr Lewis-Nunn to take instructions and we proceeded on the basis that the claimant could give sworn evidence and be questioned.
6. As regards three of the allegations against Ms Vyas contained in the claim form, the claimant told me that she only learnt of them during a conversation on 12 February 2020. However, the majority of the claimant's complaints about the conduct of Ms Vyas were known to the claimant as at December 2019. In my judgment, this is not a case where the claimant can say that she did not have the requisite knowledge to bring a claim against Ms Vyas sooner.
7. The claimant told me that she was contacting ACAS as early as December 2019 and that she had access to advice from a solicitor in January 2020.
8. The claimant highlighted health issues which she said hindered her ability to take appropriate steps to bring her claims. However, her health issues did not prevent her from progressing her claim against the respondent. In my judgment, had she wanted to bring a claim against Ms Vyas she could have done so in tandem with the procedural steps she was taking to bring her claim against the respondent.
9. The claimant told me that she was unaware that she could bring a claim for discrimination against a named individual. I find that this is not a good reason for delay. The claimant had access to legal advice in January 2020. The claimant was aware of most of her complaints about the conduct of Ms Vyas then. As a general proposition, individuals considering presenting claims to the Employment Tribunal for acts of discrimination are able to google their rights. It is notable that the claimant made a formal grievance about Ms Vyas in March 2020. She was clearly capable of doing that.
10. I have a wide discretion to allow an extension of time under the 'just and equitable' test. However, there is no presumption that time should be extended in a discrimination case. It is for the claimant to show that it is just and

equitable to extend time. Robertson -v- Bexley Community Care, t/as Leisure Link 20203 IRLR 434, CA.

11. I am required to look at all the circumstances of the case. I find that the reasons for the delay are not good reasons. The length of the delay is, in Employment Tribunal terms, significant. Any delay will affect the cogency of the evidence. The claimant has not acted promptly and she had advice at an early stage. Her claimed ignorance of her rights to bring a claim against an individual is not reasonable in my judgment.
12. Accordingly, I find that the claimant's claims against Ms Vyas are out of time and that it is not just and equitable to extend time. Consequently, the claimant's claims against Ms Vyas are struck out.
13. Due to limitations in time, the respondent's applications for strike-out and/or deposit orders were not dealt with.

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**Employment Judge Alliott**

Date: 29/4/21.....

Sent to the parties on:

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For the Tribunal:

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