

Case Numbers: 3321348/2019  
3314406/2020  
3301134/2021  
3301264/2021  
3301499/2021  
3310697/2021



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Pekacar

**Respondent:** London Borough of Islington and others

**Heard at:** Watford (fully remote hearing)      **On:** 28 September 2021

**Before:** Employment Judge Knowles

## Representation

Claimant: In person

Respondent: Mr Porter, Counsel

# REASONS

## Issues

1. This matter came before me as part of an open preliminary hearing which had been arranged at a previous case management discussion heard on 7 May 2021 by Employment Judge Quill.
2. Today's hearing covered several issues. This judgment concerns only one such issue; namely the Respondent's application that the Claimant's claim against Mr R Willis under case number 3301264/2021 should be dismissed.
3. There are several Respondents to the claims brought by the Claimant. In these reasons, when I refer to the Respondent I mean Mr Willis. The claim brought by the Claimant under case number 3301264/2021 is being brought solely against him, there is no other respondent to that claim.

## Documents

4. I have been provided with the following documents by the parties which are relevant to this issue:
  - a. Agreed bundle index.
  - b. Agreed bundle (839 pages).

**Case Numbers: 3321348/2019  
3314406/2020  
3301134/2021  
3301264/2021  
3301499/2021  
3310697/2021**

- c. Claimant's skeleton argument.
  - d. Claimant's attachments to the skeleton argument (authorities and extracts).
  - e. Respondent's skeleton argument.
  - f. Respondent's attachments to the skeleton argument (authorities).
5. References to numbers in brackets in this judgment are to page numbers in the bundle of documents.

### **The application by the Respondent**

6. The application was made by the Respondent on 27 August 2021 (490-491).
7. The application is made for dismissal under Rule 27 but the claim has already been through initial consideration and the claim can only be dismissed under Rule 37 (Striking Out). I have treated the application as one for strike out under Rule 37.
8. The material part of the application is short so and is consequently copied here in full:

*On 17 February 2021 the Claimant submitted a claim against Mr Robert Willis for race discrimination and victimisation. This claim was identical to a claim submitted against the London Borough of Islington on 12 February 2021.*

*The Claimant had commenced Early Conciliation on 17 February 2021. An Early Conciliation Certificate with reference R113775/21/34 was issued by ACAS on 17 February 2021.*

*Any allegations in relation to events up to and including 17 November 2020 are therefore out of time. The complaints in the Claimant's ET1 all occurred on or prior to 22 October 2020 and therefore the Tribunal does not have jurisdiction to hear these complaints.*

9. The Respondent has produced a skeleton argument. The skeleton argument deals with this application at paragraphs 119 to 136.
10. The skeleton argument puts this claim into context. It explains that the Claimant had on 12 February 2021 lodged case number 3301134/2021 alleging disability and race discrimination and victimisation (ET1 137-155; ET3 230-246). He named London Borough of Islington and Robert Willis as Respondents. The relevant EC certificate named only the First Respondent (135). Absent an EC certificate relating to Mr Willis the claim against him was rejected by the Employment Tribunal (575-578) and the claim only accepted in relation to the First Respondent. Thereafter the Claimant obtains an EC certificate and resubmits a claim against the Respondent, in identical form to that filed earlier; all on 17 February 2021. The Respondent responded to the claim taking the time point, denying that the tribunal has jurisdiction to hear the claim.
11. The Respondent submits that time limits are strict, the tribunal must be convinced it is just and equitable to extend time, and extensions are the exception rather than the rule (Robertson v Bexley Community Centre [2003] IRLR 434, Robinson v The

**Case Numbers: 3321348/2019**  
**3314406/2020**  
**3301134/2021**  
**3301264/2021**  
**3301499/2021**  
**3310697/2021**

Post Office [2000] IRLR 804, Viridi v. Commissioner of Police of the Metropolis and another [2007] IRLR 24).

12. The Respondent submits that the Claimant has not suggested that any of the matters in this claim are in time.
13. In relation to the Claimant's quoted cases, the Respondent distinguishes Science Warehouse v Mills (UK EAT/0224/15/DA) on the ground that this is not an amendment adding a new cause of action. They distinguish Mist v Derby Community Health Services NHS Trust (UKEAT/0224/105) on the ground that this is not a case involving a minor discrepancy between the name on the early conciliation certificate and the claim form.
14. The Respondent makes further submissions as to justice and equity. Although a litigant in person they say he is an experienced one. They submit that the Claimant's complaint that he would otherwise not be able to pursue his goal of obtaining compensation from the Respondent personally is not a proper basis for a just and equitable extension. The Respondent notes that in the mirror case accepted against London Borough of Islington, the Respondent has not invoked the statutory defence therefore the Claimant has remedy against the Borough if his claims succeed. The Respondent submits that the Respondent would be prejudiced by being joined as a respondent as opposed to being a witness for the Borough.
15. In verbal submissions during the hearing, Mr Porter added the complaint concerns the desk which was provided on 22 October 2020, not on 23 October 2020 as the Claimant has claimed. In any event, it was submitted that this was well before 17 November 2020. The remaining submissions were a succinct summary of the written submission for which I am grateful.

## **The Claimant's response to the application**

16. The Claimant opposed the application by letter dated 6 September 2021 (503).
17. The Claimant sets out the following points:

*Firstly, after Rob Willis suspended me (after whistleblowing about him) for exchanging documents and preparing for the Employment Tribunal Hearings, on 23 August 2021, I was emailed by Nancy Houry on 25 August 2021, and asked whether I wanted to withdraw my Tribunal Claim against Rob Willis. You will see that Nancy Houry alludes to this in her application but with no context. Her email to me on 25 August 2021, came off the back of a suspension by Rob Willis, and the pretext of her question was on fallacious justification, just because I had crossed out "references to the fourth claim" when she knows full well, that I was clearing up a messy document and had referred to Rob Willis in brackets.*

*On 12 February 2021, I submitted a Tribunal Claim against the London Borough of Islington and Rob Willis in relation to their failure to allow me to sit at a height adjustable desk in a safe space during the Covid 19 pandemic. However, the Tribunal wrote to me, on 16 February 2021 (which I received on 17 February 2021) to state that the Claim against Rob Willis was rejected because I had not provided a EC certificate for the claim against him. In the letter, the Tribunal provided me with further details as to why the claim was rejected, advising that a EC certificate was required.*

**Case Numbers: 3321348/2019  
3314406/2020  
3301134/2021  
3301264/2021  
3301499/2021  
3310697/2021**

*I am a litigant in person and this was the first time that my claim against multiple Respondents was not submitted by a Lawyer, so I was not aware that this was required. Mr Gazzali from Thompson's Solicitors had submitted my first Tribunal claim versus Islington and Hilary Francis in 2019 (almost 18 months before I submitted my claim against Rob Willis), and did not explain to me what steps he took to do so. It is therefore not the case that I was fully versed with these technical requirements at the time. The Respondents representatives whole application relies on technicalities, so they cannot and should not be allowed to argue about what is "just and equitable", as technicalities are not just or equitable, but in fact disadvantage a litigant in person.*

*Furthermore, the Respondents representative, makes the argument that they accept full liability for the acts and/or omissions of the Respondent. So in other words, they are saying whether it is Islington or Rob Willis who is being sued, to them it is all the same, as they are one and accepting full liability. If they genuinely believed this then they would not have made this application in the first place, and it should therefore make no difference to them if his name is there in addition to the Council.*

*When I received the letter from the Tribunal (on 17 February 2021) I immediately contacted ACAS to ask for a certificate, which they provided on the same day, and on which I relied to submit the claim against Rob Willis, again, to the Employment Tribunal. This is why the ACAS certificate against Rob Willis is dated 17 February 2021.*

*The claims are not identical, as the Respondents' state, they are exactly the same because my intention was always to also make Rob Willis a Respondent to this claim and this is why his name is included on the original Particulars of Claim that I sent to the Tribunal.*

*I wish to draw the Tribunal's attention to two cases which are extreme versions of my situation, but which were not struck out. In Science Warehouse v Mills (UKEAT/0224/15/DA), the EAT held that early conciliation is not necessary to amend an existing claim to include a new, but related, cause of action. In addition, in Mist v Derby Community Health Services NHS Trust (UKEAT/0224/15), the EAT held that early conciliation is not necessary to include a new respondent where there was a discrepancy between the name of the prospective respondent given on an EC certificate and the name on the ET1. Both cases show that Tribunals tended to take a broad brush approach to early conciliation instead of striking out claims on a technicality. This would avoid undue burdens on me and ACAS. I ask that the Tribunal consider these cases and refuse the Respondents' application for strike out.*

*In the event that the Tribunal does not accept that the above cases apply to me, I ask that they consider my argument that it would be just and equitable to allow my claim against Rob Willis to proceed because I am a litigant in person and (for the reasons stated above) I did not realise that a certificate was required for each Respondent, but as soon as the Tribunal informed me, I obtained a certificate immediately and re-submitted the claim. Finally, Rob Willis' name was included on my original Particulars of Claim as a Respondent, so it was clear that I always intended to make the claim against Mr Willis. In addition, to strike out this claim would mean that I would be suffering a detriment on a simple technicality.*

18. Although the Claimant has produced a skeleton argument, which deals with this

**Case Numbers: 3321348/2019  
3314406/2020  
3301134/2021  
3301264/2021  
3301499/2021  
3310697/2021**

application at paragraph 126, this only repeats the 6 September 2021 response set out above.

19. There is an additional authority listed, London Borough of Hackney v Sivandan [2013] EWCA Civ 22. I am specifically directed to paragraph 12. This reads:

*“The second aspect is the vicarious character of the Council’s tortious liability to the claimant, combined with the legal consequence that the liability of the Council and Ms White to the claimant is joint along with all that that implies.”*

20. In verbal submissions today the Claimant stated that in the first claim raised 12 February 2021 the Respondent was named as a Respondent. He submitted that this is the first time he has submitted a claim against multiple Respondent’s, the first claim was submitted by Thompsons Solicitors on his behalf. He acted quickly as soon as he received the rejection. As in his previous claims, it was always his intention to include the Respondent. This is about the Respondent discriminating, not about apportioning liability. The Claimant added that the Respondent will not suffer as the Borough will pay.
21. The Claimant reiterated that he is not a lawyer although he has received help with his case, including from the CAB.

## **Conclusions**

22. The question for me to determine is whether or not this particular claim brought by the Claimant has no reasonable prospect of success for the purposes of Rule 37(1)(a).
23. If it has no reasonable prospect of success, then it will be struck out.
24. Striking out a discrimination claim is in itself said to be the exception rather than the rule, a point emphasised in recent authorities concerning the need to have fully settled and understood the issues between the parties before making such a determination.
25. I note that the parties are some considerable distance from settling the issues in this matter, and it is unlikely that they will do so soon as further claims have been intimated by the Claimant and are presently, I was informed by the parties, going through a process of early conciliation through ACAS.
26. But in this case the strike out application is not put by the Respondent on the evidential merits or on a legal aspect of discrimination claims.
27. The strike out application is founded simply on the basis that it is plainly out of time.
28. The matter is clearly apt for consideration of strike out, given the pure jurisdictional issue raised. These questions are often referred for a hearing of a preliminary point before a final hearing.
29. There appears to be no disagreement between the parties that the claim is out of time. The Claimant does not take any point of fact in his claim which post-dates 22/23 October 2020. It is not necessary to resolve the actual date for the purposes of this application. I take the latest date for the purposes of this application for ease

**Case Numbers: 3321348/2019  
3314406/2020  
3301134/2021  
3301264/2021  
3301499/2021  
3310697/2021**

of determination.

30. The Claimant does not dispute that matters occurring on or before 17 November 2020 are outside of the ordinary time limit. He does not bring any claim that any of the matters referred to in this claim were part of a continuing act.
31. I must determine what is the prospect of the Claimant being granted an extension of time under Section 123 of the Equality Act 2010.
32. I accept the Respondent's submissions concerning Mills and Mist; this is not an amendment case. Nonetheless, the points that Claimant is raising relating to those cases should be considered. They are appropriate submissions, so far as they relate to the nature of adding the Respondent to the earlier claim by way of issuing second proceedings, and so far as the technical nature of the rules are a matter I should factor in to my decision making, which I do.
33. The Claimant has said that he is a litigant in person and did not know that he needed an early conciliation certificate for each respondent because when this was previously attended to in his very first claim in the consolidated proceedings, that was attended to by his solicitors not him.
34. I do acknowledge that the Claimant is a litigant in person. I do not attach much weight to this because he also tells me he has been assisted in bringing these proceedings from various sources. He has not suggested that support was not available to him.
35. I note that strike out in this case does not mean that the Claimant is left without a claim or a remedy. He has the mirror case against the Borough and these issues will still be determined. It take into account that this means also that the claim does not add much in terms of the resources required for it to be determined.
36. I balance this with the fact that an extension of time would mean that the Respondent faces a further claim, in circumstances where there are already another two claims brought against him in a personal capacity. I do accept the Respondent's submission that being a party to proceedings is more of a burden than being a witness for your employer.
37. In the round I do consider that the balance of hardship in this claim falls more greatly upon the Respondent than the Claimant. The Claimant retains his claim against the Borough on mirror terms.
38. This case is already burdened with multiple claims and grows as time passes by. The issues are ever more expansive. It would not conflict with the overriding objective if this claim is struck out.
39. I take into account that time limits are strict and extensions are the exception rather than the rule.
40. In my conclusion, the Claimant does not have a reasonable prospect of having time extended and his claim therefore has no reasonable prospect of success.
41. The claim is struck out under Rule 37(1)(a).

**Case Numbers: 3321348/2019  
3314406/2020  
3301134/2021  
3301264/2021  
3301499/2021  
3310697/2021**

Employment Judge Knowles

13 December 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

26 January 2022

FOR THE TRIBUNAL OFFICE