



# EMPLOYMENT TRIBUNALS

**Claimant**                      **Miss G Lowe**  
**Respondent**                 **SF Ltd**

Heard at: Bristol (by VHS)                      On: 26 January 2022

Employment Judge Street

## Representation

Claimant:                      Miss Lowe in person  
Respondent:                 Ms Webber, counsel

**JUDGMENT** having been sent to the parties on 27 January 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

### 1. Background

- 1.1. This is a claim for unfair constructive dismissal, discrimination on the grounds of pregnancy, maternity and sex, and unlawful deduction of wages, with failure to pay holiday pay accrued due and pension contributions due from the employer.
- 1.2. The claimant resigned on notice on 22 March 2021 and the effective date of termination was 16 April 2021. The complaint was presented to ACAS on 16 July 2021 and the early conciliation certificate was issued on 12 August 2021. The claim was put in on 16 August 2021. The respondent says the Tribunal has no jurisdiction given that all the claims are late.
- 1.3. The hearing was listed for consideration of jurisdiction: that is whether the claims were late and, if so, whether time was to be extended. The test for extending time in the unfair dismissal claims and money claims is that it was “not reasonably practicable” for the claim to be brought in time. For discrimination claims, the test is that it is “just and equitable” to extend time. The question of jurisdiction also arises in respect of the employer’s pension contributions.

## 2. Evidence

- 2.1. The claimant gave evidence on her own behalf from a written witness statement.
- 2.2. The respondent called Ms Laverty, HR Manager, who gave evidence from a written witness statement.
- 2.3. The parties presented an agreed bundle of documents of 58 pages including the pleadings. Numbers in brackets in these reasons are references to the page numbers in the agreed bundle.

## 3. Issues

- 3.1. The issues before the Tribunal to decide are as follows.
- 3.2. Given the date the claim form was presented, 16 August 2021, and the dates of early conciliation, any complaint about any act or omission which took place more than three months before that date (allowing for any extension under the early conciliation provisions) is potentially out of time, so that the tribunal may not have jurisdiction.
- 3.3. Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
  - 3.3.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?
  - 3.3.2. If not, was there conduct extending over a period?
  - 3.3.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
  - 3.3.4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
  - 3.3.5. Why were the complaints not made to the Tribunal in time?
  - 3.3.6. In any event, is it just and equitable in all the circumstances to extend time?
- 3.4. Was the constructive unfair dismissal and unauthorised deductions from earnings complaint made within the time limit in section 111 and 23 of the Employment Rights Act 1996? The Tribunal will decide:
  - 3.4.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination or date of payment of the wages from which the deduction was made?
  - 3.4.2. If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

- 3.4.3. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
- 3.4.4. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable further period?
- 3.5. Whether there is jurisdiction for the Tribunal to decide the claim in respect of the employer's failure to pay pension contributions due.

#### 4. Findings of Fact

- 4.1. *The hearing was not an opportunity to test the claimant's evidence as to her treatment while employed by the Respondent, in particular during 2020 to 2021. I make no findings of fact on that treatment, but at this stage, I have taken her case at its highest, that is, for these purposes only, treating her account of the history as accurate, even though it is challenged by the Respondent. This is in summary the account she gives of the way she was treated during her pregnancy and after the birth of her son.*

A new Financial Controller joined the company in April 2020. Miss Lowe agreed to delay her maternity leave from 8 June 2020 to 29 June 2020, feeling there was no option for her, because the new Financial Controller was struggling. She was carrying out work that she saw as his responsibility on her last day of work, given that the department worked to tight timetables and he was out.

Her son was born on 6 July 2020.

She was repeatedly contacted during the two weeks after the birth by colleagues about work matters.

She was invited back part-time when the new Financial Controller resigned and agreed to return to work in a limited role for 25 hours per week on 18 August 2020.

She found herself working excess hours, in excess of the agreement. She asked the HR manager to look for a permanent Financial Controller, her job being unsustainable.

On 9 October 2020 she asked for shared parental leave from 4 December.

There were further difficulties with continuing excess demands on her. She felt unsupported,

The agreement for her leave was not given until 26 November 2020, and then on terms that she remained responsible for some work until 18 December 2020; there was a failure to arrange cover for the tasks she was supposed to relinquish.

She was signed off work for a month on 4 December 2020 feeling wholly unsupported with an unreasonable workload.

She was contacted about work while off sick.

Her GP on 12 January 2021 issued a fit note stating that she was fit for work, "As long as her work contract is not exceeded".

She returned to work on 14 January 2021 on the basis of the shared parental leave agreement which stated that she was there as on-call support as and when needed, until 30 April 2021. No return to work meeting was carried out. The agreement was not respected and she was chased to handle tasks and emails beyond the terms of the agreement, citing for example, several unnecessary or unreasonable requests in February 2021.

*These are the Findings of Fact made by the Tribunal relevant to the issues to be decided.*

- 4.2. The Claimant started her employment with the Respondent on 2 October 2017.
- 4.3. SF Ltd is a manufacturer of stainless steel flu and chimney systems for gas and solid fuel appliances. It is based in Barnstaple and has some 80 permanent staff. The parent company is American.
- 4.4. The Claimant's role was as a Management Accountant, assisting the Financial Controller in a department usually comprising 3 staff
- 4.5. The financial controller, with whom she got on well, left in October 2019, to take up a post with South West Metals. The HR Manager from the Respondent also joined South West Metals in 2020.
- 4.6. Miss Lowe disclosed to her employer that she was pregnant in January 2020 and that she planned to take maternity leave from June, including outstanding annual leave.
- 4.7. Her son was born on 6 July 2020. At the request of SF Ltd, she returned to work part-time on 18 August 2020.
- 4.8. She was exploring the possibility of a move to South West Metals from around November 2020, with a possible start date in April 2021 (37). The offer of a post came in March 2021, enabling her to resign.
- 4.9. She resigned on 22 March 2021. She explains in the resignation letter that her last day will be 16 April 2021. She would continue to be on call until then as per her agreement. She added,

“Thank you so much for the opportunity to work in this position for the past 3 years. I've learnt a lot, especially within the last year where I covered the Financial Controller role. All of which I will take with me throughout my career. I wish the company and the employees continued success in the future.”

- 4.10. She raised no complaint in her resignation letter.
- 4.11. Notwithstanding the warm terms of that resignation letter, at her exit interview on 15 April, she reported the difficulties she had experienced with the company, the pressure she had been under, the lack of support for her, the excessive hours expected of her when pregnant, including that she had not been able to use her time off in lieu because the department was understaffed, down to one person, the failure to recognise the pressure she had been under including with a new baby. She had felt obliged to agree to carry on working in a supporting role after the baby was born, because there was no-one else who could do the job, so had had to give up her maternity leave. The efforts she had made after the baby was born

had not been understood or appreciated. She regretted having accepted the return to work in a supporting role. She was taken for granted. She felt that she would have been more fairly treated if she had been a man, "The men who work here have very slopey shoulders when it comes to their responsibilities." "The culture at SF is very difficult and it is only a good place to work for a man."

- 4.12. The effective date of termination was 16 April 2021.
- 4.13. She initially expected to hear further from the HR Manager at the Respondent given the terms of her exit interview but did not. She did not raise a written grievance. She did not follow up her verbal account on 15 April with any enquiry. She did not supply the documents that she referred to in her exit interview to support her account of unfair treatment.
- 4.14. She was aware in general terms of the availability of a claim to the Employment Tribunal and that there were time limits. She did not know what they were. She made no enquiries.
- 4.15. She started work at South West Metals as their Finance Manager on 26 April 2021, a post that she had accepted by at least 29 March 2021.
- 4.16. On 15 July 2021, the Respondent terminated its business contract with South West Metals.
- 4.17. Miss Lowe approached ACAS with a view to early conciliation on 16 July 2021.
- 4.18. She spoke to an ACAS advisor the following week. She was advised to take legal advice about time limits and did so, speaking to a solicitor.
- 4.19. The ACAS certificate was issued on 12 August 2021.
- 4.20. The claim was made on 16 August 2021.

## 5. Law

- 5.1. Time limits in the Employment Tribunal are in general enforced strictly, but there are provisions for time to be extended.

### *Time Limits – Equality Act 2010*

- 5.2. Section 123 of the EA 2010 sets out the period within which proceedings are to be brought.
- 5.3. Proceedings on a complaint within section 120 may not be brought after the end of:
  - (a) the period of 3 months starting with the date of the act to which the complaint relates or
  - b) such other period as the employment tribunal thinks just and equitable.
- 5.4. That means that a claim must be presented before the end of the three-month period beginning when the act complained of was done. So, if an employee is dismissed because of a protected characteristic on, say, 10 March, the last day on

which a claim may be presented to a tribunal is 9 June, because the starting date is included in the computation.

5.5. By section 123(3),

“ For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

5.6. By section 123(4)

“In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

5.7. In *Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686*, in particular paragraphs 51 and 52, continuing acts are explored, concluding simply,

“The question is whether there is an act extending over a period as distinct from a succession of unconnected or isolated specific acts for which time would begin to run from the date when each specific act was committed.”

5.8. The question is whether the employer is responsible for “an ongoing situation or continuing state of affairs” in which the members of the defined group are treated less favourably. It is wrong to pay close attention to words such as 'policy', 'rule', 'practice', 'scheme' or 'regime', as these are but examples of when an act extends over a period.

5.9. Citing *Hendricks*, Choudhary P in *South Western Ambulance NHS Foundation Trust v King [2020] IRLR 168*. warned ‘... that reliance cannot be placed on some floating or overarching discriminatory state of affairs without that state of affairs being anchored by specific acts of discrimination occurring over time. The claimant must still establish constituent acts of discrimination or instances of less favourable treatment that evidence that discriminatory state of affairs.’ (at [36]).

5.10. Where a claim is made late, in relation to the question of whether or not to extend time, a sufficient case must be made out by the claimant. It is not a question of

extending time unless there is a good reason not to. The applicant must convince the Tribunal that it is just and equitable to extend time; the exercise of discretion is the exception rather than the rule. (*Robertson v Bexley Community Centre (t/a Leisure Link)* [2003] EWCA Civ 576.)

5.11. The caselaw and principles are reviewed in *Thompson v Ark Schools* ([2019] ICR 292). The exercise of the discretion is case and fact sensitive. The following guidance of a general nature is cited from *Miller v Ministry of Justice, unreported, 15 March 2016*:

- The discretion is a wide one
- Time limits are generally strictly observed
- How to balance the various factors and their relevance is a matter for the Tribunal
- The balance of prejudice to each side is a consideration
- The factors set out in section 33(3) of the Limitation Act 1980 may be helpful

5.12. The factors set out in that section are “all the circumstances of the case and in particular:

- The length of and reasons for the delay
- The extent to which the evidence is or is likely to be less cogent than had the time limit been observed
- The conduct of the respondent in relation to matters such as disclosure
- The duration of any disability of the claimant arising after the cause of action arose
- The extent to which the plaintiff acted promptly and reasonably once he or she knew that there was scope for a claim
- The steps taken to obtain appropriate advice and the nature of the advice he or she might have received.

5.13. Those facts are a useful reference point but the Tribunal is not required to work through the list in each case: the point is to have regard to the relevant factors. Rigid adherence to a checklist can lead to a mechanistic approach to what is meant to be a very broad general discretion (*Adedeji v University Hospitals Birmingham NHS Foundation 2021 EWCA Civ 23*).

5.14. The time limits set are extended by section 140B of the Equality Act to facilitate conciliation before the institution of proceedings. Provided that the claimant contacts ACAS within the time limit for bringing the claim, the clock is stopped. The period from the day after the claimant complies with the requirement to contact ACAS for early conciliation (day A) until the day on which the claimant receives or is treated as receiving an early conciliation certificate (day B) does not count towards the time limit. If the time limit would otherwise expire between day A and one month after day B, it will instead expire at the end of that period, that is,

one month after day B. One month means the “corresponding date” so where day B is 30 June, the time limit will expire on 30 July (*Tanveer v East London Bus & Coach Co Ltd [2016] ICR D11*).

5.15. Section 140B(2) sets out that extension, as follows.

“In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

5.16. Section 140B continues,

(3) In working out when the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If the time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

5.17. Subsections (3) and (4) apply sequentially, not in the alternative. That is, the one-month extension to the limitation period provided for by section 140B(4) applies to the time limit as extended by section 140B(3). First the days of the conciliation period are added to the date on which a time limit expires. Then the period of one month after Day B applies, to give every prospective claimant the period of at least one month from the end of the early conciliation period in which to bring a claim (*Luton Borough Council v Hague 2018 ICR 1388, EAT*)

5.18. However, none of this applies to extend time if the claimant presents the complaint to ACAS after the initial time limit has expired. That is because subsection (3) helps to work out when the time limit expires. It does not have any effect when the time limit has already expired. Equally, subsection (4) does not apply where Day A is after the expiry of the time limit.

5.19. There is then no automatic extension of time and the Tribunal will have no jurisdiction to consider the claim unless the claimant satisfies the Tribunal that time can and should be extended. (*Pearce v Bank of America Merrill Lynch [2019] 6WLUK 771*).



### *Unfair Dismissal Time Limits*

- 5.20. The time limit for bringing an unfair dismissal claim is set out in section 111 of the Employment Rights Act 1996. The claim must be brought before the end of the period of three months beginning with the effective date of termination, or within such further period as the tribunal considers reasonable where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the time limit expired.
- 5.21. The complaint must be made to the Tribunal within three months counting the date of dismissal – so the time limit ends one day earlier in the third following month.
- 5.22. So, for example, if a dismissal is effective on 19 December 2021, the time limit expires three months later on 18 March 2021, subject to any extension under the ACAS early conciliation procedure.
- 5.23. The time limit for bringing a claim runs from the effective date of termination, even where there is an internal appeal. The appeal does not extend the time limit.
- 5.24. Changes to time limits to accommodate conciliation procedures through ACAS are in ERA 1996 at section 207B. The same rules apply as set out above in relation to the effect of early conciliation in discrimination claims.
- 5.25. The Tribunal therefore has to determine when the time limit expired, whether it is extended by the ACAS conciliation period, whether it was reasonably practicable to bring the claim within the time limit and if not, what is a reasonable longer period within which to bring the claim.
- 5.26. With the passage of time since unfair dismissal legislation was introduced and the publicity given to unfair dismissal cases, it has been long established that a claimant is unlikely to be able to show that it was not reasonably practicable to present a claim because of ignorance of the right to claim (*Porter v Bandridge Ltd 1978 ICR 943*). Where an employee has knowledge of the right to claim, there is an obligation to seek information or advice about the enforcement of those rights, and so ignorance of time limits may not be reasonable in the absence of enquiry (*Trevelyan's (Birmingham) Ltd v Norton [1991] ICR 488*). Those cases were decided before the availability of information from reputable and reliable sources on the internet, making reasonable enquiry easier and effective for those able to access it.
- 5.27. The Claimant referred to the case of *John Lewis Partnership v Charman [2011] 3WLUK 795*. In that case it was held that where a lay person had not sought the advice of a skilled adviser or otherwise been put on notice of the time limit, it was reasonable for him to defer investigating the possibility of making an unfair dismissal claim until the determination of his internal appeal, and until then, it would not be reasonably practicable for him to present his claim for the purposes of the Employment Rights Act. The finding was that the Claimant in that case was reasonable in his ignorance of the time limits.

### *Unlawful Deductions from Wages Time Limits*

- 5.28. The time limits for a claim in respect of unlawful deductions from wages are set out in section 23 of the Employment Rights Act 1996. They are in similar terms to the time limits for unfair dismissal claims and section 207B applies to permit an extension of time for early conciliation in the same way.

### *Pension contributions*

- 5.29. The Employment Rights Act 1996 section 27(1)(a) makes it clear that wages mean any sum payable to the worker in connection with his employment. It did not apply in respect of the employer's failure to make pension contributions to a pension provider on his or her behalf. There is no other provision within the jurisdiction of the Employment Tribunal that authorises a claim to be brought in respect of such a failure. The tribunal has no jurisdiction to hear such a claim (*Somerset County Council v Chambers [2013] 4WLUK 616 EAT*).

## **6. Reasons**

- 6.1. This was a hearing conducted by video, held in public with the Judge sitting in open court in accordance with the Employment Tribunal Rules. It was conducted in that manner because a face to face hearing was not possible in light of the restrictions imposed by the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 2) Regulations 2020, the parties consented and it was in accordance with the overriding objective to do so.
- 6.2. The hearing was listed to deal with questions of jurisdiction, that is, whether the Tribunal had the authority to decide the claims made. The Tribunal only has jurisdiction to consider claims that fall within the rules. Claims brought late are therefore not within the jurisdiction of the Tribunal unless time is extended. The Respondent raised a question too about whether the Tribunal had jurisdiction to consider any failure to make employers' pension contributions.
- 6.3. Miss Lowe's resignation letter is courteous and pleasant and comments on the useful experience she has gained. It does not raise any complaint.
- 6.4. In contrast, the record of the exit interview on 15 April 2021 makes it clear that Miss Lowe was at that time very alive to the unfair treatment that she felt she had suffered and that she attributed it to unfavourable and unfair treatment during her pregnancy, after the baby was born, and subsequently on the grounds of her sex. More than once she refers to being treated differently from a man.
- 6.5. She refers to lack of support, understaffing, lack of direction and overload. She describes being taken for granted, abandoned.
- 6.6. To her credit, she describes putting her personal interests aside relative to the needs of the employer – choices she made because she felt there was no-one

else to do the essential work impacted severely on her personal life. That was not recognised.

- 6.7. The time limit for her claim started running at the latest at the date when her employment came to an end.
- 6.8. She hoped that her exit complaints would be followed up. She was told to keep her documents. She heard nothing more.
- 6.9. Having heard nothing, she took no action. She did not ask for her complaints to be followed up. She did not pursue the matter with a telephone call. She did not ask the HR manager why there had been no follow up. She did not put her complaints in writing.
- 6.10. The relevance of that is that in spite of the terms of the exit interview, after she left SF Ltd, she was not awaiting any outcome of an internal process. It was reasonable to wait a few days or even weeks to hear what would happen about her complaints. By the time she had heard nothing for a month or a couple of months at the outside, she had no reason to believe any process was ongoing.
- 6.11. If she had thought there was any internal investigation going on after her exit interview, it would have been reasonable to follow up with an enquiry. If she wanted the matter investigated, it would have been reasonable to pursue it.
- 6.12. She was aware of the basis for her claim, as is clear from the terms of the exit interview. She was aware that it was a claim in respect of being forced to resign, and in respect of discrimination. She was aware in general terms of the scope for a claim to the Tribunal and that there were time limits for that, as she confirmed in oral evidence.
- 6.13. During the period after leaving the Respondent, she did not make any enquiry. She did not establish the time limits for claiming and she did not explore what steps were required to bring a claim.
- 6.14. For those knowing in general terms of the scope to claim, ignorance of time limits has never been regarded as readily justifiable. With the internet and the ubiquity of google (or other search engines), it has become very much more difficult to argue that ignorance is reasonable. Any search of Employment Tribunals, without more than that, and of course the search can be much more focused, brings information from reputable sources such as Gov.uk, ACAS, the Citizen's Advice Bureau. The information that is immediately available is clearly expressed and accurate.
- 6.15. Miss Lowe is intelligent, educated, articulate, a confident user of technology.
- 6.16. She was not suffering ill health during the primary limitation period or during the period leading up to the submission of her claim. She was throughout able to deal with matters and able to make enquiry .
- 6.17. Her failure to carry out those simple searches confirms to me that there was a clear decision not to pursue a claim.
- 6.18. If there were any thought of bringing a claim, it would have been reasonable to research the elements of what would be required, and how much time she had to make up her mind about it and prepare.
- 6.19. The reason she gives for not pursuing a claim at this time is that the new employer had a business relationship with the old employer. I am not concerned

with the merits of the reason but with the fact that she made a decision not to bring the claim, and chose not even to research the possibility of bringing a claim.

- 6.20. The Respondent terminated the contract with South West Metals on or around 15 July 2021.
- 6.21. At that point, on 16 July 2021, Miss Lowe presented her complaint to ACAS. Her interpretation was that she was one day late.
- 6.22. She says that at that point, she felt safe to bring the claim. Her judgment was that the rupture was final, so there was no need for her to refrain from action against her old employer to protect the commercial interests of the new employer
- 6.23. Her witness statement emphasises her sense of insecurity in her new job, during probationary period, that she was the main earner, that she had no job security and a baby to support. Those are very understandable reasons for feeling insecure. Many people face similar pressures on changing jobs.
- 6.24. She does not say that she was influenced by anyone at her new employer or that she discussed her reasoning with them.
- 6.25. She says that at this stage, she did seek expert advice, and was misled both by ACAS and her solicitor. ACAS she says told her that she would benefit from the extension of time during the ACAS procedure, although in fact the contact with ACAS was outside the primary time limit. She also says that the ACAS advisor told her to take legal advice, which suggests a rather less confident view of the time limits.
- 6.26. She contacted a solicitor, whom she reports saying "You may be out of time", but not saying that she was. She reports both as saying that she was maybe 24 hours out of time. She continues to say, "I was a day out".
- 6.27. It is unfortunate indeed if she was given wrong advice both by ACAS and by a solicitor in relation to the time limits. There isn't a lot of complexity to the facts of this case in relation to the time limits, for someone with experience of the early conciliation system, in place since 2013. I cannot be wholly confident how accurately she is reporting what she was told.
- 6.28. She continued to see herself as only 24 hours out of time given that she had put the application in to ACAS on the day after the primary time limit expired.
- 6.29. She did not have a sense of urgency about getting the claim in. She did not attempt to get the certificate issued quickly, to limit the delay, and did not put the claim in as soon as she had the certificate. Her claims were more than a month late, working from the effective date of termination.
- 6.30. Asked about the delay from the date of issue of the certificate and the presentation of the claim to the Employment Tribunal, she could only say that "Can't quite remember, maybe trying to put it in, maybe clarifying some legal advice potentially I would say."

### *Evaluation*

- 6.31. The Respondent's submission is that the majority of the discrimination claims have no reasonable prospects of succeeding. I am not going to determine the merits of the case without hearing full evidence.

- 6.32. The Respondent challenges Miss Lowe's chosen comparator. Even if well-founded, it is not clear that that would dispose of the claims, given that some of her complaints might proceed as harassment rather than direct discrimination.
- 6.33. Given that she presents the case on the basis of continued detrimental and discriminatory treatment during the last few months of her employment, it is appropriate to consider the case at this preliminary hearing on the basis that the claims were not already out of time at the termination of her employment.
- 6.34. I have to consider the balance of hardship or prejudice in dismissing the claims or allowing them to proceed.
- 6.35. The Respondent has lost some of its key staff and is in some difficulty in responding to the claims. I do not attach much weight to that simply because that difficulty does not stem from the delay in putting the claim in. That would have been their difficulty had the claim gone in during the primary limitation period.
- 6.36. The claimant brings substantial claims, albeit claims she chose not to bring during the primary limitation period.
- 6.37. I do not find the balance of hardship test to point clearly one way or the other.
- 6.38. I have to consider the reason for the delay.
- 6.39. Miss Lowe was aware at the outset, at the date of the exit interview, of the grounds and scope for a claim and in general terms that there are time limits. The reason for delay was that she chose not to bring a claim and not to explore the possibility of bringing a claim, until after the primary time limit had expired.
- 6.40. There was no internal process that she was waiting to hear about.
- 6.41. She was not at the time unable to make enquiry, and she was well equipped to make enquiry.
- 6.42. She says she was not aware of the specific time limits. She relies on her ignorance being regarded as reasonable. She depends on the case of John Lewis v Charman.
- 6.43. In Charman, the claimant was young and inexperienced – he was 20. Prior to his dismissal, he knew nothing about employment tribunals or any right to claim for unfair dismissal. He relied on his parents who were not well informed. He decided to wait until the outcome of his internal appeal and it was held to be reasonable for a lay person to defer investigating the possibility of a recourse to law until the appeal process was concluded.
- 6.44. Miss Lowe's situation is very different. She is older, a professional woman, educated, with substantial life experience, familiar from her professional role with rules and requirements and with deadlines.
- 6.45. To rely on ignorance of time limits, that ignorance has to be reasonable. In her case, in my judgment, it was not. She knew enough to make enquiry and enquiry would have quickly produced accurate information.
- 6.46. She relies on incorrect advice. Incorrect advice after the time limit has expired is not a reason for failure to make the claim in time.
- 6.47. Essentially, she chose not to bring the claim or to research time limits until after the expiry of the primary time limit. That does not show that it was not reasonably practicable to bring the claim in time.
- 6.48. In my judgment, the claim for unfair dismissal and unlawful deduction from earnings were made out of time. The claimant has not shown that it was not

reasonably practicable to bring the claim in time. There are no grounds to extend time.

*Just and equitable test*

- 6.49. Many of the same considerations apply in respect of the discrimination claims. The claims were made late.
- 6.50. Miss Lowe decided not to claim during the primary time limit. She was not unaware of the scope or grounds for a claim, she knew there were time limits. She had been very alive to the facts that caused her such distress and frustration at the point of the exit interview in April 2021, taking that as a date by which her concerns had crystallised, although she had been very alive to the build up of concerns earlier. She chose not to claim, and she chose not to explore her options by some basic research.
- 6.51. It was a clear decision not to pursue the matter.
- 6.52. To the extent that she relies on incorrect advice, she was not misled during the period before the primary time limit expired.
- 6.53. She says that she decided not to bring a claim because of the commercial relationship with her previous employer. That does not help her. It did not preclude some research into the procedure and time limits and it did not even preclude referring her complaint to ACAS during the primary three month period, which would have preserved her position with regard to the time limits and given her time for discussion and reflection.
- 6.54. The delay is more than a month. She had had enough advice to know there was a question about delay.
- 6.55. Even while going through the ACAS procedure she did not use the time to draft her claim ready to present it promptly on the certificate being issued, nor could she give any account of what the further delay of a few days was caused by.
- 6.56. Her ignorance of the time limits is unreasonable, but this is less about ignorance than the decision not to claim.
- 6.57. Taking into account all the circumstances, I do not find it is just and equitable to extend time to overcome the disadvantage the claimant caused to herself by that decision not to bring or even research the steps to bring a claim in time.

*Jurisdiction for the claim in respect of pension contributions*

- 6.58. Miss Lowe brings a claim in respect of a failure to make the right pension contributions.
- 6.59. The Tribunal is a statutory Tribunal, with jurisdiction only over claims that are created by and defined by legislation. There is no claim available to cover the failure to make pension contributions that the Tribunal has jurisdiction to resolve.

*In Conclusion*

- 6.60. The Tribunal has no jurisdiction to hear the claims of unfair constructive dismissal, unlawful deduction from earnings, discriminatory constructive dismissal, discrimination on the grounds of sex and pregnancy or maternity discrimination. That is because the claims were made outside the time limit. In the case of unfair constructive dismissal and unlawful deduction from earnings, it was reasonably practicable to bring the claims in time and time is not extended; in respect of the discrimination claims, it is not just and equitable to extend time. The tribunal has no jurisdiction in respect of the claim in respect of pension contributions. The claims are dismissed.

**Employment Judge Street**

Date: 23 February 2022

Reasons sent to parties: 2 March 2022

FOR THE TRIBUNAL OFFICE