EMPLOYMENT TRIBUNALS

Claimant: Mr E Joseph

Respondent: Sasse

Heard at: Watford **On:** 30 March 2022

Before: Employment Judge Maxwell

Appearances
For the Claimant: no attendance
For the Respondent: Mr Brennan, Legal Advisor (Make UK)

JUDGMENT

1. The Claimant's claim is dismissed as it was not presented within the time permitted by section 111(2) of the Employment Rights Act 1996 and the Tribunal has no jurisdiction.

REASONS

Recusal & Postponement Application

Timing

1. At 11.14pm the night before this preliminary hearing, the Claimant sent an email which contained an application for postponement and recusal. The application letter referred to 10 numbered appendices, of which 5, 8, 9 & 10 were attached. It also said the "remaining supporting documentation will be submitted tomorrow morning (Appendix 1 -4 inclusive, 6 and 7)"

2. At 10am on the morning of the hearing the Claimant was not in attendance. Shortly thereafter, the remaining documents were received from him by email.

Application

3. The Claimant's application is not, in every respect, easy to follow. His complaints include:

3.1 the lack of a response from the Tribunal to various emails he has sent about his claim;

3.2 the content of preliminary hearing bundles prepared by the Respondent and / or the lack of consultation with him in that regard;

3.3 the name of the Respondent in the ET3 being wrong;

3.4 biased and unfair orders that I have made;

3.5 the preliminary hearing being adjourned, twice;

3.6 prejudice to the Claimant in preparing his witness statement;

3.7 Ms Sellars-Jones not being called to give evidence and be challenged on it by the Claimant;

3.8 notice of hearing not stating this would be in public or the purpose of it.

Law [Recusal]

<u>Apparent Bias</u>

4. The relevant test in connection with recusal for apparent bias was addressed by the House of Lords in **Porter v Magill [2001] UKHL 67**; per:

> **103. I respectfully suggest that your Lordships should now approve the modest adjustment of the test in R v Gough set out in that paragraph. It expresses in clear and simple language a test which is in harmony with the objective test which the Strasbourg court applies when it is considering whether the circumstances give rise to a reasonable apprehension of bias. It removes any possible conflict with the test which is now applied in most Commonwealth countries and in Scotland. I would however delete from it the reference to "a real danger". Those words no longer serve a useful purpose here, and they are not used in the jurisprudence of the Strasbourg court. The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.**

5. In **Ansar v Lloyds Bank TSB [2006] UKEAT/0609/05/SM**, Burton J set out various principles relevant to recusal applications:

> **13. Judge McMullen QC incorporated into his judgment on 8 March 2006, when adjourning this appeal, the submissions of law carefully and convincingly set out by Mr Gidney in his skeleton argument on that occasion, which were accepted both as common ground between the Appellant and the Respondents, and as accurately summarising the correct law to apply, drawn as they were was from the Court of Appeal authorities there referred to of Locabail (UK) Ltd v Bayfield Properties Ltd [2000] IRLR 96, Bennett v Southwark LBC [2002] ICR 881 and Lodwick. For ease of reference, and with further approval, we set out the eleven propositions (slightly reordered) below:**
>
> **“1. The test to be applied as stated by Lord Hope in Porter v Magill [2002] 2 AC 357, at para 103 and recited by Pill LJ in Lodwick v London Borough**

of Southwark at para 18 in determining bias is: whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Tribunal was biased.

2. If an objection of bias is then made, it will be the duty of the Chairman to consider the objection and exercise his judgment upon it. He would be as wrong to yield to a tenuous or frivolous objection as he would to ignore an objection of substance: Locabail at para 21.

3. Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour: Re JRL ex parte CJL [1986] 161 CLR 342 at 352, per Mason J, High Court of Australia recited in Locabail at para 22.

4. It is the duty of a judicial officer to hear and determine the cases allocated to him or her by their head of jurisdiction. Subject to certain limited exceptions, a judge should not accede to an unfounded disqualification application: Clenae Pty Ltd v Australia & New Zealand Banking Group Ltd [1999] VSCA 35 recited in Locabail at para 24.

5. The EAT should test the Employment Tribunal's decision as to recusal and also consider the proceedings before the Tribunal as a whole and decide whether a perception of bias had arisen: Pill LJ in Lodwick, at para 18.

6. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without something more found a sustainable objection: Locabail at para 25.

7. Parties cannot assume or expect that findings adverse to a party in one case entitle that party to a different judge or tribunal in a later case. Something more must be shown: Pill LJ in Lodwick above, at para 21, recited by Cox J in Breeze Benton Solicitors (A Partnership) v Weddell UKEAT/0873/03 at para 41.

8. Courts and tribunals need to have broad backs, especially in a time when some litigants and their representatives are well aware that to provoke actual or ostensible bias against themselves can achieve what an application for adjournment (or stay) cannot: Sedley LJ in Bennett at para 19.

9. There should be no underestimation of the value, both in the formal English judicial system as well as in the more informal Employment Tribunal hearings, of the dialogue which frequently takes place between the judge or Tribunal and a party or representative. No doubt should be cast on the right of the Tribunal, as master of its own procedure, to seek to control prolixity and irrelevancies: Peter Gibson J in Peter Simpler & Co Ltd v Cooke [1986] IRLR 19 EAT at para 17.

10. In any case where there is real ground for doubt, that doubt should be resolved in favour of recusal: Locabail at para 25.

> **11. Whilst recognising that each case must be carefully considered on its own facts, a real danger of bias might well be thought to arise (Locabail at para 25) if:**
>
> > **a. there were personal friendship or animosity between the judge and any member of the public involved in the case; or**
> >
> > **b. the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or,**
> >
> > **c. in a case where the credibility of any individual were an issue to be decided by the judge, the judge had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or,**
> >
> > **d. on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on their ability to try the issue with an objective judicial mind; or,**
> >
> > **e. for any other reason, there were real grounds for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues."**

6. Whilst no exhaustive list can be provided of the circumstances in which it will be appropriate for a judge to grant a recusal application, some guidance in this regard was provided in **Locabail v Bayfield [2000] 2 WLR 870 CA**; per Lord Bingham CJ:

> **25. It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the religion, ethnic or national origin, gender, age, class, means or sexual orientation of the judge. Nor, at any rate ordinarily, could an objection be soundly based on the judge's social or educational or service or employment background or history, nor that of any member of the judge's family; or previous political associations; or membership of social or sporting or charitable bodies; or Masonic associations; or previous judicial decisions; or extra-curricular utterances (whether in textbooks, lectures, speeches, articles, interviews, reports or responses to consultation papers); or previous receipt of instructions to act for or against any party, solicitor or advocate engaged in a case before him; or membership of the same Inn, circuit, local Law Society or chambers (see K.F.T.C.I.C. v. Icori Estero S.p.A. (Court of Appeal of Paris, 28 June 1991, International Arbitration Report, vol. 6, 8/91)). By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case**

> **rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see Vakauta v. Kelly (1989) 167 C.L.R. 568); or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be.**

Conclusion [recusal & postponement]

<u>Background</u>

7. This case has a most unfortunate procedural history, which is set out in my previous case management orders. Very briefly:

    7.1 on 23 August 2021, notice was sent to the parties of a preliminary hearing to determine whether the Claimant’s claim was in-time;

    7.2 during the preliminary hearing on 2 December 2021, in the course of hearing oral evidence from the Claimant on the time point, it became apparent he had documentary evidence relating to prior failed attempts to present his claim and with the agreement of both parties, the hearing was adjourned (with directions for witness statements and a bundle of documents, such orders not having been made previously);

    7.3 on 28 January 2022, the preliminary hearing had to be adjourned yet again because:

        7.3.1 there was an initial delay as the Claimant had difficulty joining by CVP;

        7.3.2 the Claimant had made a recent application for reconsideration of my previous order and this had to be dealt with first;

        7.3.3 insufficient time remained (the matter had been listed for 3 hours) and I relisted it for 1-day, in-person at Watford.

<u>Analysis</u>

8. The Tribunal has limited resources (both judicial and administrative). A great deal of correspondence is received from parties and it is not always possible to

respond to this in a timely fashion. Quite often matters raised in this way are not addressed until a hearing takes place before a judge.

9. On 2 December 2021, I made an order for the Claimant to send his documents to the Respondent and then for the Respondent to prepare a hearing bundle. This is reflective of my usual approach in a case where the Respondent is professionally represented and willing to agree, which is to make the Respondent responsible for preparing the bundle. As at 28 January 2022, it was apparent the parties had been unable to cooperate in agreeing a bundle of documents and were in dispute over this. So as to resolve that dispute and notwithstanding it would lead to unnecessary duplication, I made an order that required the Respondent to prepare a bundle which included a section for the Claimant's documents (the appendices to his witness statement) to be retained in the sequence the Claimant had provided them. Notwithstanding this accommodation, it appears the Claimant is still dissatisfied with the hearing bundle.

10. There is an ongoing dispute as to the correct respondent to the Claimant's claim. The Claimant named the respondent in his claim form as "Sasse". The ET3 form included "Sasse Facilities Management Limited", albeit the attached grounds of response were entitled "Sasse". Naming issues of this sort are a common occurrence and more often than not, resolved without the need for a determination by the Tribunal. The Claimant did not agree that the Respondent should be named other than as Sasse. Pursuant to my order of 2 December 2021, the Respondent provided a witness statement from Ms Sellars-Jones, who explained how by way of various corporate transactions the Claimant came to be employed by Sasse Facilities Management Limited. Despite having sight of this statement and the company being solvent, the Claimant did not agree to the name of the respondent being changed. Rather than making a determination on this point, I decided that issue should be reserved to a final hearing. It will be a matter for the Respondent to decide what evidence it calls at a final hearing in connection with the name of the correct respondent to the claim. If Ms Sellars-Jones is relied upon in this regard, the Claimant will have an opportunity to challenge her then. She is not relevant on time.

11. The orders I have made were, in large measure, by agreement between the parties. I have set up a framework within which the Claimant can put forward the witness and documentary evidence he wishes to, in order to seek to prove that it was not reasonably practicable for him to present his claim in time and that he did so within a reasonable period thereafter.

12. The Claimant had ample opportunity following my order on 2 December 2021, to prepare his witness statement by 16 December 2021. He did not ask for any more time in which to do this. If (I am unclear) his complaint is that I directed sequential exchange (he did not object at the time) this was for good reason and caused no unfairness:

    12.1 the Respondent would not know what the Claimant was relying on in connection with time until he set that out;

    12.2 only then would it be apparent whether this was something any witness for the Respondent could comment on;

12.3 in the event, Ms Sellar-Jones statement only addressed the name of the correct respondent and not time.

13. The adjournments have been necessitated by the matters set out above and in my previous orders. They were granted in the interests of justice.

14. The preliminary issue to be dealt with at this hearing has been notified to the Claimant repeatedly. It was set out in the notice of hearing dated 23 August 2021. It was repeated thereafter, including a paragraph 2 of my case management order of 28 January 2022, which gave the Claimant notice of this hearing today.

15. There is nothing in the matters which have been raised that would cause the fair-minded and informed observer, having considered the facts, to conclude that there was a real possibility that the tribunal was biased. To the extent that I have made decisions the Claimant disagreed with (whether at the time or subsequently) this does not satisfy the relevant test. The recusal application is refused.

16. No grounds for postponement were raised other than that I should not conduct the hearing and the Claimant should not have to appear before me. Whilst a party may apply for recusal that does not excuse them from attending to argue the case, should their application not succeed. The Respondent has attended today, prepared to argue the preliminary issue. The Claimant has had ample opportunity to prepare and participate. He has chosen not to do so. It is not in the interests of justice to further adjourn this hearing.

17. Postponement is refused.

Preliminary Issue

Issue

18. The preliminary issue for determination is whether the Tribunal lacks jurisdiction to hear the Claimant's claim because it was presented outwith the time limit in section 111 of the **Employment Rights Act 1996** ("ERA"). This in turn will engage whether, in the event it was not presented within the period of three months after dismissal:

    18.1 it was not reasonably practicable for the Claimant to present the claim within three months;

    18.2 it was presented within a further reasonable period.

Evidence

19. I received:

    19.1 The revised hearing bundle, including the Claimant's appendices;

    19.2 The Claimant's witness statement.

20. When deciding how much weight to attach to the Claimant's witness statement, more especially where what he set out was not corroborated by documentary evidence, I took into account that he had not attended this hearing to confirm the truth of his account and be cross-examined on it by the Respondent or answer any questions the Tribunal had.

Facts

21. On 24 August 2020, the Claimant attended a disciplinary hearing in connection with an allegation of falsifying timesheets. He was told of his dismissal with immediate effect and advised of his right to appeal. Immediately thereafter, the notes record him saying:

> **I will not be coming back to you, I will see a solicitor**

22. Dismissal was confirmed by a letter of the same date.

23. The Claimant contacted ACAS on about 28 August 2020, albeit he did not commence the conciliation process at that time.

24. By a letter of 31 August 2020, the Claimant appealed against his dismissal. This included:

> **This decision in the guidance set by ACAS is a case of unfair dismissal and I would urge you to reconsider the outcome.**

25. The Claimant's appeal hearing took place on 10 September 2020. During the course of this he is noted as saying:

> **I have family in HR**

26. The Claimant contacted ACAS to begin conciliation on 27 September 2020. This concluded on 6 October 2020 and he was sent a certificate. The email sent to him by ACAS included:

> **Your certificate is attached.**
>
> **Your certificate number is R197897/20/38. If you make a tribunal claim you must use this number in full.**
>
> **[…]**
>
> **It is your responsibility to ensure that any tribunal claim is submitted on time.**
>
> **Acas cannot advise you about when a tribunal claim should be submitted.**
>
> **[…]**

27. On 9 November 2020, the Claimant sent a handwritten ET3 claim form, complaining of the Respondent having unfairly dismissed him, by registered post addressed to:

> **Radius House**

> **51 Clarendon Road**
>
> **Watford**
>
> **WD17 1HP**

28. The letter was returned to him by Royal Mail on 11 November 2020, as the address was incomplete. There is an Employment Tribunal hearing centre (being part of the South East Region) at Radius House, along with various other business on different floors.

29. On 29 November 2020, the Claimant sent an email to the Midlands East Regional Office of the Employment Tribunal, attaching a pdf of a typed claim form, complaining of unfair dismissal by the Respondent and saying:

> **To whom it may concern There seems to be some misunderstanding with my claim.**
>
> **I was informed by ACAS to find my own tribunal. Of which I found Watford Tribunal, Radius House, 51 Clarendon Road, Watford, WD17 1HP and sent my application 3 weeks ago.**
>
> **As I did not receive a response I followed up with a phone call last week 26-Nov-20. I spoke with a client who confirmed that they had received my application, however they informed me that it should have been sent to Leicester Tribunal. I asked if they were able to forward the application back to myself or onto Leicester and unfortunately they said as it had been rejected by them it is not in their policy to do anything else.**
>
> **Should Leicester require further information regarding the claim sent to Watford they will need to contact them directly.**
>
> **I look forward to hearing from you.**

30. A letter dated 30 November 2020 and sent 1 December 2020 from the Midlands East Employment Tribunal, returned the Claimant's claim form to him and said:

> **Your claim form is being returned because there are only three prescribed methods of presenting an Employment Tribunal Claim form (ET1) which are detailed below:**
>
> > **1. Online by using the online submission service provided by HMCTS accessible at www.qov.uk/employment-tribunals/make-a-claim**
> >
> > **2. By post to the Employment Tribunals Central Office - England & Wales at PO Box 10218, Leicester LE1 8EG.**
> >
> > **3. By hand to a designated Employment Tribunal office within business hours (Monday to Friday excluding public holidays - see overleaf for designated offices) The attached claim form has not been presented using one of the prescribed methods; it therefore cannot be accepted and is returned to you accordingly.**

31. On 7 December 2020, the Claimant presented a claim form online (one of the prescribed methods) complaining the Respondent had unfairly dismissed him.

Law [Time]

32. In the ordinary course, a claim under the **Employment Rights Act 1996** ("ERA") must be presented within three months of dismissal. That time period is extended by the operation of the ACAS EC scheme:

    32.1 the period from the day after Day A (when the claimant contacted ACAS) and Day B (when the certificate was sent) is not counted;

    32.2 if the time limit would otherwise expire in the period of one month following issue of the EC certificate, it is extended the end of that period.

33. Where a claim is presented outwith the primary limitation period, the Tribunal has a discretion to extend time under ERA, where:

    33.1 it was not reasonably practicable for the claimant to have presented the claim within the 3-month period;

    33.2 the claims was presented within a further reasonable period.

34. The onus is upon a claimant to prove that is was not "reasonably practicable" for a claim to have presented within the specified time period. This represents a high hurdle to a late claim; see **Saunders v Southend on Sea Borough Council [1984] IRLR 119 CA**, May LJ giving the judgement of the Court said:

    > **22. In the end, most of the decided cases have been decisions on their own particular facts and must be regarded as such. However we think that one can say that to construe the words 'reasonably practicable' as the equivalent of 'reasonable' is to take a view too favourable to the employee. On the other hand 'reasonably practicable' means more than merely what is reasonably capable physically of being done – different, for instance, from its construction in the context of the legislation relating to factories: compare Marshal v Gotham (1954) AC 360. In the context in which the words are used in the 1978 Consolidation Act, however ineptly as we think, they mean something between these two. Perhaps to read the word 'practicable' as the equivalent of 'feasible' as Sir John Brightman did in Singh's case and to ask colloquially and untrammelled by too much legal logic – 'was it reasonably feasible to present the complaint to the Industrial Tribunal within the relevant three months?' – is the best approach to the correct application of the relevant subsection.**

35. A claimant will not establish that it was not reasonably practicable to bring a claim before an Employment Tribunal simply by relying upon ignorance of the right to bring such a claim, or the time in which that might be done, rather the reasonableness of such ignorance will need to be established. In **Walls Meat Company Limited v Khan [1978] IRLR 499 CA**, Lord Denning MR said:

    > **15. I would venture to take the simple test given by the majority in Dedman's [1973] IRLR 379 case. It is simply to ask this question: Had the man just cause or excuse for not presenting his complaint within the prescribed time? Ignorance of his rights — or ignorance of the time limit — is not just cause or excuse, unless it appears that he or his advisers could not reasonably be expected to have been aware of them. If he or his**

> **advisers could reasonably have been so expected, it was his or their fault, and he must take the consequences. […]**

36. With the passage of time the existence of Employment Tribunals and the right to bring claims of unfair dismissal and discrimination have become well known. As such, prospective claimants will in most cases struggle to persuade an Employment Tribunal that they were unaware of the right to bring a claim, and those who aware of such rights will, therefore, be on notice of the need to take advice as to how and when such a claim may be made; **see Trevelyans (Birmingham) Limited v Norton [1991] ICR 488 EAT**:

> **From the cases, it is our view that the following general principles seem to emerge. The first, as time passes, so it is likely to he much more difficult for applicants to persuade a tribunal that they had no knowledge of their rights in front of industrial tribunals to bring proceedings for unfair dismissal […] Second, that where an applicant has knowledge of his rights to claim unfair dismissal […] then there is an obligation upon him to seek information or advice about the enforcement of those rights.**

37. The question of whether a mistaken belief that a claim was already proceeding, when it was not, might lead to a conclusion it was not reasonably practicable to present a claim was considered in **Software Box Ltd v Gannon, [2016] ICR 148 EA**T; per Langstaff P:

> **41. Here, as it seems to me, the fact that a complaint was made within time and then rejected does not and should not, as a matter of principle, preclude the consideration of whether a second claim traversing the same ground is one in which the tribunal should have jurisdiction. The purpose of the Act is to ensure that claims are brought promptly. But the need to do so within a short period of time is balanced by the interests of justice which Parliament has regarded as encompassed in the test of reasonable practicability. If the approach to reasonable practicability is taken as it was by Brandon LJ in Wall's Meat Co Ltd v Khan [1979] ICR 52 , 60, it requires a focus upon what is reasonably understood by the claimant. If there is a case in which a claimant reasonably considers that there is no need to make a claim, not therefore understanding (for very good reasons) that the time limits apply to the claim, as they do, because she had already made a claim which remains effective, it seems to me to be open to a tribunal to consider a second claim made once she realises that her view was mistaken. It does not seem to me much to matter whether the analysis is that within section 111 the complaint has already been made, but the claim in respect of it is a repeat of the same complaint, which was made within time, restricting improper use of that by the doctrine of abuse as indicated in Marley (UK) Ltd v Anderson [1996] ICR 728 , or whether (as I would prefer) the Act requires focus upon the complaint which is made, as and when it is made and presented, in this case the effective claim presented in April. Accordingly, the tribunal could decide to permit her claim to continue if satisfied that on this footing it was not reasonably practicable to bring her second claim earlier.**

Conclusion [time]

Dates

38. The Claimant's employment terminated on 24 August 2020. Absent an extension for ACAS conciliation, he had until 23 November 2020, in which to present a claim. Pursuant to ERA section 207B, the period 28 September to 6 October 2020 (9 days) is not to be counted. This extends time until 1 December 2020. Accordingly, the Claimant's claim on 7 December was 6 days late.

Reasonable Practicability

39. It is clear from the Claimant's comments during the disciplinary and appeal hearings, together with the terms in which he wrote to the Respondent, that he:

    39.1 knew of his right to claim unfair dismissal;

    39.2 knew of ACAS;

    39.3 was aware he could take advice about the termination of his employment and bringing a claim in the Employment Tribunal.

40. The Claimant has not said that he was unaware of the time limit to bring a claim and I do not find that was so.

41. The reason the Claimant's claim was late is that up until 7 December 2020 he did not attempt to present it by one of the prescribed methods.

42. Although the Claimant was not in attendance today to argue his case, I considered whether it might be not have been reasonably practicable for him to have presented his claim in time because of a mistaken belief he had already done so, stemming from his two prior failed attempts.

43. In order for any such mistaken belief to lead to this conclusion it would be necessary for me to be satisfied that the Claimant was reasonably mistaken, per **Software Box Ltd v Gannon**. The Claimant would need to have a reasonable belief that there was no need for him to present a claim because he had already done so, successfully.

44. I am not satisfied the Claimant was misadvised by ACAS. It is most unlikely an ACAS officer would have told the Claimant he should "send his claim to the relevant ET office". This is not in accordance with the prescribed methods for presentation of a claim, with which ACAS officers would be exceedingly familiar. Nor is this information included in any of the emails ACAS sent to him.

45. The Claimant says a friend helped him to draft his grounds of appeal and get the Tribunal's address. The mistaken belief it was appropriate to send a claim form to Radius House (the letter was not addressed to, nor was it received by the Employment Tribunal) is much more likely to have been the result of the Claimant's own thinking, together with his friend or advisor, than to have come from ACAS. The same must also be true of the Claimant's attempt to email a pdf claim form to Midlands East, rather than using the online portal. These are

mistaken ways of proceeding that he decided upon, with those who were assisting him at the time. ACAS did not contribute to his misunderstanding.

46. Very many unrepresented claimants successfully present claims using one of the prescribed methods. Information about how to submit a claim correctly is widely available, online, from ACAS, the CAB and at .gov.uk. The Claimant has access to the internet and email. It is clear that he did make enquiries and have some assistance. The terms in which his appeal letter is drafted suggests it had been contributed by someone with knowledge of employment law. The Claimant did not attend the hearing today to answer any questions about the efforts he made to obtain advice and information about the correct way to present a claim, early in the relevant period, or at later stages when his claims were returned.

47. I do not find the Claimant's mistaken belief was reasonable. It follows that he has not satisfied me that it was not reasonably practicable for him to have presented his claim within the time permitted.

48. Accordingly, the Tribunal does not have jurisdiction to determine his claim and this is dismissed.

EJ Maxwell

Date: 30 March 2022

Sent to the parties on:

8/4/2022

For the Tribunal Office:

NG