



EMPLOYMENT TRIBUNALS

Claimant **Respondents**
Mr Jokpoghene Obelikpeyah v **v Abbatt Property Recruitment**

OPEN PRELIMINARY HEARING

Heard at: London Central (By CVP remote videolink)

On: 5 July 2022

Before: Employment Judge Brown

Appearances

For the Claimant: In Person
For the Respondents: Mr D Bunting, Counsel

JUDGMENT AT AN OPEN PRELIMINARY HEARING

The judgment of the Tribunal is that:

1. The Claimant's claim was brought out of time. It is not just and equitable to extend time for it. The Tribunal has no jurisdiction to consider the claim and it is struck out.

REASONS

Background

1. By a claim form presented on 15 April 2022 the Claimant brought complaints of victimisation against the Respondent.
2. The full text of his complaints was as follows: "I am a black African and a Nigerian. I stated doing temporary work through Abbatt Property Recruitment on 31 July 2020. For a period I was posted to cover various sites as a concierge. This went on until 9th September 2020 when Abbatt gave me continuous work as a temporary fire marshal at the site Imperial Wharf in London. I worked there until

the 5th of January 2021 when I was told by one of the consultants at Abbatt that I can no longer work at Imperial Wharf. I was subsequently found work at other sites, East Village and Artillery Quay, as a temporary fire marshal. On the 22nd of March 2021 I submitted a grievance asking the management of Imperial Wharf to investigate discrimination I was subjected to whilst working at their site, inadequate toilet facilities at the site and failure of Abbatt to enrol me in a workplace pension scheme. I was subsequently contacted by Mr Aurfan, a consultant at Abbatt who told me that Abbatt would be looking into my concerns. My grievance was investigated by Mr David Hurren and issued an outcome on 22nd April 2021. I appealed this outcome and an appeals outcome was issued on the 18th of May 2021. However, since submitting my grievance of 22nd March 2021 Abbatt have refused to offer me anymore work, Abbatt have refused to contact me about my availability for work, Abbatt have refused to acknowledge receipt of my messages to the consultants informing them of my availability for work and Abbatt have not offered me any support or inform me about the reason behind their actions. Abbatt completely ignored me like I never existed.”

3. The Claimant had obtained an early conciliation certificate. Day A was 25 February 2022 and Day B was 16 March 2022.
4. The Respondent defended the claims. It asked that the claim be struck out or made the subject of a deposit order.
5. On 26 May 2022 REJ Wade listed this Open Preliminary Hearing to determine:
 - a) Should the claim be dismissed as out of time?
 - b) In the alternative should the claim or part of it be struck out as having, on time grounds, no reasonable prospect of success? and,
 - c) in the further alternative, should the claim or part of it be made the subject of a deposit order as having, on time grounds, little reasonable prospect of success?
6. On 16 June 2022 Employment Judge E Burns also wrote to the parties, confirming that the Respondent’s application for a strike out or deposit order because the Claimant’s claims had no, or little, reasonable prospects of success, would be considered at this hearing.
7. The Respondent gave its detailed grounds for strike out or deposit order in a letter dated 22 June 2022. It said that the Claimant has no reasonable prospect of showing a causative link between all or any of the (alleged) because:
 - a. the (alleged) detriments predate both the Respondent’s knowledge of the Complaint and the Complaint itself;
 - i. the Claimant acknowledges at box 8.2 of his ET1 that he was removed from the Imperial Wharf site and was informed of that removal by the Respondent, on 5 January 2021;
 - ii. the Claimant’s last shift for the Respondent occurred on 4 March 2021;
 - iii. the Claimant states in the Complaint itself he anticipated a lack of future work because of the client complaint dated 4 January 2021;

iv. the matters contended for by the Claimant amounted (if at all) to 'failures' (i.e. to offer him work; to contact him about his availability; to acknowledge his messages; or offer support) to which s.123(3)(b) and s.123(4) Equality Act 2010 apply. Such failure(s) thereby deemed to have occurred at the very latest within a very short period of time from 4 March 2021. The Claimant contends for a total failure, 'completely ignored me like I never existed'.

v. the Claimant was engaged as a temporary worker on terms that inter alia (a) guaranteed him no work, (b) stated that there may be periods without work, and (c) stated that an assignment could be terminated at any time.

8. The Claimant gave evidence at this hearing. He had provided a written witness statement.
9. There was a Bundle of documents. Full disclosure had not taken place, however.
10. The Claimant confirmed that the detriments he relies on in his victimisation claims are, as set out in his letter to the ET dated 31 May 2022:
 - "1. Refused to offer me anymore work;
 2. Refused to contact me about my availability for work;
 3. Refused to acknowledge receipt of my messages to consultants informing them of my availability for work;
 4. Did not offer me any support or inform me about the reasons behind their actions; and
 5. Completely ignored me like I never existed.
11. He confirmed that he was not alleging that the Respondent victimized him by failing to respond to his grievances. He confirmed that all his complaints relate to the Respondent's failure to offer him any work after March 2021.

Findings of Fact

12. The Respondent is a temporary work agency.
13. The Claimant signed a document entitled "Terms of Engagement of Temporary Workers" on 25 July 2020, p65. Its terms included :
 - "2.1 These Terms constitute a contract for services between the Employment Business and the Temporary worker and they govern all Assignments undertaken by the Temporary Worker. However, no contract shall exist between the Employment Business and the Temporary Worker between assignments.
 - ...
 - 3.1 The Employment Business will endeavour to obtain suitable Assignments for the Temporary Worker...
 - 3.2 The Temporary Worker acknowledges that the nature of temporary work means that there may be periods when no suitable work is available...
 - ...

9.1 The Employment Business or the Client may, without prior notice or liability, terminate the Temporary Worker's Assignment at any time.

...

9.5 If the temporary worker does not report to the Employment Business to notify his availability for work for a period of three weeks, the Employment Business will forward his P45 to his last known address."

14. The Claimant regularly made himself available for temporary work for the Respondent from August 2020, pp 69 – 83. The Respondent regularly offered work to the Claimant between August and December 2020.
15. On 5 January 2021, the Respondent told the Claimant that a complaint had been made about him being rude at a client's temporary job at Imperial Wharf. The client was a company called Rendall and Ritner. The Claimant was removed from the Imperial Wharf site. He told the Tribunal that he believed the complaint had been made because the Claimant is a black African person and from Nigeria and because he was a temporary member of staff.
16. The Tribunal accepted the Claimant's evidence that the Respondent did not offer him any further work for 4 weeks thereafter. However, on 4, 12, 21 February 2021 and 4 March 2021, the Respondent offered him work at another Rendall and Ritner site called East Village in Stratford, London.
17. On the 22 March 2021 the Claimant presented a grievance to the company Rendall and Ritner, saying that he believed that he had been discriminated against because he was Black African and a Nigerian, p67. In the grievance, he said that he had been told not to return to work on 5 January and that, for a month after 5 January, he had not been given any jobs.
18. On 30 March 2021 the Respondent's Associate Director, Mr Aurfan Ramzan sent the Claimant an email stating that he would be looking into the Claimant's concerns, p89.
19. The Tribunal accepted the Claimant's evidence that, with the intention of pursuing a claim for discrimination against the Respondent, he contacted ACAS on 7 April 2021 and a certificate No: R12822 1/2 1/14 was issued on 19 May 2021.
20. The Respondent's Managing Director, Mr Hurren, held a grievance discussion with the Claimant on 23 April 2021 and provided the Claimant with an outcome letter on 27 April 2021, p92. In the grievance outcome letter, Mr Hurren said: "Whilst we can end any assignments at any time, I do consider the communication from our temporary recruitment team was poor. Having worked for a number of weeks as a Fire Marshal, with no issues, I agree that a more detailed explanation was appropriate and for this on behalf of Abbatt I apologise." He also said, "On a separate note, I would like to apologise for my colleague Aurfan not responding promptly to your request for further information." He concluded by saying: "I would also like to thank you for bringing this to my attention and your request for us to find you some more additional temporary work. I have already spoken to Aurfan and he is happy to offer additional shifts as and when they are available. Can I please ask that you keep in contact with him so that he knows of your availability."
21. The Claimant appealed against the findings of Mr Hurren on 2 May 2021. On 18 May 2021 the Respondent sent a grievance appeal outcome, p94. The appeal

outcome said that it was likely that the Respondent had not given the Claimant further work because of conduct issues, rather than his race. It said that the Respondent was under no obligation to issue the Claimant with replacement shifts for the ones which had been cancelled. P96.

22. The Claimant occasionally contacted Mr Ramzan and Ms Bethany with his availability in April, May and June 2021, pp83 - 84. He received some replies to his messages. On 29 April 2021 Mr Ramzan said, "Thanks Roy let me see what I can do." P84.
23. Mr Ramzan's last reply was on 2 June 2021, "Thanks I'll see what comes in", p84.
24. On 2 September 2021 the Claimant emailed Mr Ramzan saying that he was available to work Wednesday nights, all day Thursdays and all day Fridays. He said "I am minded to say that I haven't been given any shifts since March 2021." P97.
25. In evidence to the Tribunal, the Claimant agreed that it was in his mind, when he wrote the email on 2 September 2021, that the Respondent had not offered him shifts for 6 months and that it had not honoured Mr Hurren's assurance that the Respondent would offer the Claimant more work.
26. On 1 October 2021 the Claimant emailed the Respondent saying that, since receiving the grievance outcome of 18 May 2021, he had not heard anything from the Company. He asked the Respondent to confirm its final position, p98. The Respondent's Ms Hanson replied that day, 1 October 2021, stating that the grievance appeal was the final position. She referred the Claimant to the appeal outcome dated 18 May 2021, p99 and enclosed a copy of it.
27. On 13 November 2021 the Claimant emailed Mr Ramazan again, saying that he was still available for work, p100. He received no response.
28. On 30 November 2021, the Claimant sent Mr Ramzan an email saying he was available for work on Mondays and Tuesdays, p103. He said, "I have not been handed any shifts since March 2021." P103. Mr Ramzan did not respond to that email, or offer any temporary jobs.
29. The Claimant sent a further grievance to the Respondent on 11 January 2022, p104. In it, the Claimant said that he had presented a race discrimination grievance on 22 March 2021 and had been given a grievance outcome on 2 May 2021 and a grievance appeal outcome on 18 May 2021. He said that the last shift he had worked was 24 February 2021. He said, "I am minded that since then I have not been offered any more shifts or contacted about my availability for work by any of the recruitment consultants at Abbatt. As a matter of fact, several of my emails and messages informing about my availability for work have been totally ignored.. I believe this is because of the grievance I raised." P104nd
30. The Claimant told the Tribunal that the last shift he worked was, in fact, on 4 March 2021, although he may have worked later at a site on Greenwich. He said he had not received his complete employment file.
31. The Respondent held a grievance meeting with the Claimant on 26 January 2022. The Respondent issued a grievance outcome on 14 March 2022, p106. It said that the Claimant had last worked for the Respondent on 24 February 2021, some time before his grievance was presented. The second grievance outcome stated that it

was more likely that shifts were not offered to the Claimant after February 2021 because of conduct issues, rather than because of his grievance.

32. The Claimant appealed against that outcome and the Respondent issued a second grievance appeal outcome on 29 March 2022.
33. The second grievance appeal outcome of 29 March 2022 said that the Claimant himself said that he had not worked for the Respondent since 24 February 2021.
34. The Claimant contended, in evidence, that the Respondent made clear, in this letter, that it had stopped offering him shifts after 24 February 2021. He said that that information had not been disclosed to him previously. He said that, if he had been aware of this company decision earlier, he would have presented his claims for discrimination and harassment after conciliation on 7 April 2021
35. The Respondent did not inform the Claimant, on 4 March, that 4 March 2021 was his last shift. The Respondent did not give the Claimant a P45.

Time Limits & Continuing Acts

36. By s123 *Equality Act 2010*, complaints of discrimination in relation to employment may not be brought after the end of
 - a) the period of three 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.
37. By s 123(3) & 4 *EqA*
 - (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.
 - (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.
38. In *Commissioner of Police of the Metropolis v Hendricks* [2003] ICR 530, the Court of Appeal held that, in cases involving numerous allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken' in order to establish a continuing act. The Claimant must show that the incidents are linked to each other, and that they are evidence of a 'continuing discriminatory state of affairs'. This will constitute 'an act extending over a period'. 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'. Paragraph [52] of the judgment.

39. In *Cast v Croydon College* [1998] ICR 500, the Court of Appeal allowed the claimant's appeal against the finding that her claim of sex discrimination was out of time. The claimant had made several job-sharing and part-time working requests to her employer, all of which had been refused. Her appeal was allowed on the basis this amounted to a complaint of an act extending up until the termination of her employment, p 515B-C. Auld LJ set out the law at pp 507H-509B:

"The authorities distinguish between a complaint of a "one-off" discriminatory decision whether or not it has a long term effect, which is governed by the general provision in section 76(1), and one of the application of a discriminatory policy or regime pursuant to which decisions may be taken from time to time, "an act extending over a period" for which section 76(6)(6) provides." Lord Griffiths in *Barclays Bank Plc. v. Kapur* [1991] I.C.R. 208, 213G, referred to the difference between a "one-off" decision and "the continuing state of affairs which is governed by section 68(7)(b)" (the equivalent in the Race Relations Act 1976 of section 76(6)(b) of the Act of 1975). In *Owusu's case* [1995] I.R.L.R. 574, 576, a complaint of an employer's failure to regrade the complainant on a number of occasions, Mummery J., giving the judgment of the Employment Appeal Tribunal, made the same distinction: "the tribunal erred in law in failing to treat the acts complained of on regrading and failure to give the opportunity to act up as continuing acts in our view the allegations amount to a prima facie case that there was a continuing act. The continuing act was in the form of maintaining a practice which, when followed or applied, excluded Mr. Owusu from regrading or opportunities to act up. "The position is that an act does not extend over a period simply because the doing of the act has continuing consequences. A specific decision not to upgrade may be a specific act with continuing consequences. The continuing consequences do not make it a continuing act. On the other hand, an act does extend over a period of time if it takes the form of some policy, rule or practice, in accordance with which decisions are taken from time to time. What is continuing is alleged in this case to be a practice which results in consistent decisions discriminatory of Mr. Owusu. "It would be a matter of evidence for the tribunal as to whether such a practice ... in fact exists. It may be that, when explanations are given by the respondents, it will be shown that there is no link between one instance and another, no linking practice but a matter of one off decisions with different explanations which cannot constitute a practice." As to a "one-off" discriminatory act, it is important to keep in mind that it may be an application of an established discriminatory policy or it may be inherently discriminatory regardless of any such policy. If the complaint is of a specific discriminatory act the fact that it may have been an application of an established policy adds nothing for this purpose. The starting point is, therefore, to determine what is the specific act of which complaint is made. The fact that a specific act out of time may have continuing consequences within time does not make it an act extending over a period: see *Amies v. Inner London Education Authority* [1977] I.C.R. 308 — failure to appoint to a position; and *Sougrin v. Haringey Health Authority* [1992] I.C.R. 650 — refusal to upgrade an employee. As to an act extending over a period, the authorities make clear — at least in the case of discrimination in the field of employment under section 6 of the Act of 1975 and section 4 of the Race Relations Act 1976 (see Brooke L.J. in *Rovenska v. General Medical Council* [1998] I.C.R. 85, in particular at pp. 92D–H, 94G–95C and 95F–H) — that it is the existence of a policy or regime, not a specific act of an employer triggering its application to the complainant, that matters. A moment's consideration of the concluding words of section 76(6)(b) of the Act of 1975 — "any act extending over a period shall be treated as done at the end of that period"

(my emphasis) — shows that that must be so. If the “act extending over a period” required a specific act by an employer to give it effect there would be no need or room to “treat ... it as done at the end of the period.” See, as examples of claimed continuing acts of discrimination: *Calder v. James Finlay Corporation Ltd.* (Note) [1989] I.C.R. 157 — refusal of benefit of employment — and *Barclays Bank Plc. v. Kapur* [1991] I.C.R. 208 — employer's refusal to take previous pensionable employment into account in calculating pension entitlement.”

40. In *Chaudhary v Royal College of Surgeons* [2003] EWCA Civ 645, [2003] ICR 1510, Mummery LJ said: “As for the authorities cited, this case is covered by the reasoning of this court in *Rovenska v. General Medical Council* [1998] ICR 85, 94 based on the wording of section 1(1)(b) of the 1976 Act that indirect discrimination occurs when a person “applies” to another a discriminatory requirement or condition to his or her detriment. Cases such as *Rovenska* and the instant case, in which applications are made for registration by regulatory authorities and are rejected, are distinguishable from the cases in which an employer continuously applies a requirement or condition, in the form of a policy, rule, scheme or practice operated by him in respect of his employees throughout their employment: see *Barclays Bank plc v. Kapur* [1991] ICR 208; *Cast v. Croydon College* [1998] ICR 500, 515B; *Owusu v. London Fire and Civil Defence Authority* [1995] IRLR 574.”
41. The power to extend time for the consideration of a complaint have been held to give Tribunals 'a wide discretion to do what it thinks is just and equitable in the circumstances ... they entitle the [employment] tribunal to take into account anything which it judges to be relevant', *Hutchison v Westward Television Ltd* [1977] IRLR 69, [1977] ICR 279, EAT. The discretion is broader than that given to tribunals under the 'not reasonably practicable' formula: *British Coal Corp v Keeble* [1997] IRLR 336; *DPP v Marshall* [1998] ICR 518, EAT. Factors which can be taken into account include the prejudice each party would suffer as a result of the decision reached and all the circumstances of the case, including the length of and reasons for the delay; the extent to which the cogency of evidence is likely to be affected by the delay; the extent to which the party sued has cooperated with any requests for information, the promptness with which the Claimant once he knew of the facts giving rise to the cause of action and the steps taken by the Claimant to obtain appropriate advice once he or she knew of the possibility of taking action
42. However, notwithstanding the breadth of the discretion, there is no presumption that a tribunal should exercise its discretion to extend time on the 'just and equitable' ground unless it can justify failure to exercise the discretion. The onus is always on the Claimant to 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* [2003] EWCA Civ 576, [2003] IRLR 434, at para 25, per Auld LJ.

Discussion and Decision

43. The Claimant's claim relates to the Respondent's failure to offer him any shifts as a temporary worker after March 2021 and/or to respond to his requests for work, or to acknowledge his messages about work.
44. The Claimant was clear that his claim does not relate to the Respondent's conduct of his grievances.

Knowledge

45. The Claimant contended that he did not know, until 29 March 2022, that the Respondent had decided to stop offering him shifts after 24 February 2021.
46. The Claimant pointed to the Respondent's Mr Hurren's grievance outcome letter dated 27 April 2021, wherein Mr Hurren invited the Claimant to provide his availability for work to Mr Ramzan.
47. However, the Claimant appealed against Mr Hurren's outcome. On 18 May 2021 the Respondent sent a grievance appeal outcome, p94, saying that it was likely that the Respondent had not given the Claimant further work because of conduct issues, rather than his race. It also said that the Respondent was under no obligation to issue the Claimant with replacement shifts for the ones which had been cancelled. P96. There was no undertaking to provide further work in that appeal outcome.
48. Mr Ramzan's last reply to the Claimant's notification of his availability was on 2 June 2021, "Thanks I'll see what comes in", p84.
49. Mr Ramzan never replied to the Claimant or offered the Claimant work after that date.
50. The Claimant agreed in evidence that, on 2 September 2021, it was in his mind that the Respondent had not offered him work for 6 months and had therefore not honoured Mr Hurren's undertaking to offer him more work.
51. The Claimant contended that there had previously been a period in January 2021 when the Respondent had not offered him work for 4 weeks, so he could not have known that the Respondent had decided not to offer him more work.
52. However, I considered that a gap of 6 months was of a wholly different magnitude to 4 weeks. It was noticeable that the Claimant remarked, in his email of 2 September, that he had not been offered shifts since March 2021. I inferred that he did not consider the gap of 6 months to be part of the ebb and flow of temporary work.
53. The Claimant wrote to the Respondent asking for its "final position" on 1 October 2021, saying he had not heard anything from the Company since 18 May 2021. The Respondent told him, that day, that its final position was its appeal outcome letter of 18 May 2021. The Respondent had not assured the Claimant of any more work in its letter of 18 May 2021 and it did not offer him further work on 1 October 2021.
54. I considered that the Claimant knew, by 1 October 2021, that the Respondent had not honoured its assurance that it would provide him with more work. He knew that the Respondent had stopped offering him work. That was already in his mind on 2 September 2021, when he stated that he had not been offered work for 6 months, and was confirmed by the Respondent's failure to mention further work when it stated its "final position" on 1 October 2021.

Respondent's Relevant Decision

55. On the facts, it was clear to me that the Respondent made its decision, at the latest, by September 2021, not to offer the Claimant further work as a temporary worker.

56. I took into account s123(3) & (4) Eq A in so deciding. A failure to do something is to be treated as occurring when the person in question decided on it. In the absence of evidence to the contrary, a person is to be taken to decide on failure to do something when they do an act inconsistent with doing it, or on the expiry of the period in which they might reasonably have been expected to do it.
57. There was no direct evidence from the Respondent as to when it decided not to offer the Claimant further shifts. I considered that Mr Ramzan's failure to respond to the Claimant at all was inconsistent with the Respondent offering the Claimant work. Mr Ramzan did not acknowledge the Claimant's email of 2 September 2021. It was notable that the Claimant specifically raised not having been offered shifts since March in that email. Mr Ramzan's failure to respond to that email indicated that there would be no change in the lack of work offered. Failing to offer the Claimant any work for 6 months by that point, when the Respondent had previously regularly offered work (with a maximum gap of 4 weeks), was also inconsistent with offering work the Claimant work again.

Not Continuing Act

58. The Claimant also contended, in oral submissions, that the Respondent's failure to give him work, despite him providing his availability, was an act extending over a period, rather than a one-off decision with continuing effects. He pointed out that he had provided his availability on 30 November 2021 and said that the Respondent had made a further decision after 30 November 2021 not to offer work.
59. On the facts, I concluded that the Respondent had decided by 2 September 2021 not to offer the Claimant any more work as a temporary worker and that it never revisited or reconsidered that decision.
60. This was apparent from Mr Ramdan's failure to engage with the Claimant at all. As the Claimant himself put it, the Respondent "ignored me like I never existed." There was no consideration of his requests for work on 13 or 30 November 2021.
61. I decided that the Respondent's decision was a one off act with continuing consequences, rather than a series of acts extending over a period.
62. The Claimant was not in an employment relationship with the Respondent. He signed an agreement "Terms of Engagement of Temporary Workers" on 25 July 2020, p65. Its terms included :

"2.1 These Terms constitute a contract for services between the Employment Business and the Temporary worker and they govern all Assignments undertaken by the Temporary Worker. However, no contract shall exist between the Employment Business and the Temporary Worker between assignments."
63. The Respondent's decision was like the ones in *Rovenska v. General Medical Council* [1998] ICR 85, 94 and *Chaudhary v Royal College of Surgeons* [2003] EWCA Civ 645, [2003] ICR 1510 in which applications are made for registration by regulatory authorities and are rejected.
64. The Respondent decided that it would no longer offer the Claimant shifts under the terms of engagement between them. By 2 September 2021 it effectively decided to terminate their relationship.

No Extension of Time

65. I therefore decided that the Respondent's relevant decision was made by 2 September and that the Claimant knew of the decision by 1 October 2021. At the latest, time for presenting the Claimant's claim ran from 1 October 2021.
66. The Claimant would need to have contacted ACAS by 31 December 2022 for his claim to be in time (assuming he presented in time thereafter taking into account the ACAS EC extension).
67. The Claimant contacted ACAS on 25 February 2022.
68. His complaint was at least 3.5 months out of time when he presented it on 15 April 2022
69. That was a very significant delay. The Claimant gave no reason for his delay, apart from his lack of knowledge. As I have already indicated, I decided that he knew about the Respondent's decision not to offer him work by 1 October 2021 and I have already taken that into account in applying the time limits.
70. The onus is always on the Claimant to convince the tribunal that it is just and equitable to extend time, *Robertson v Bexley Community Centre* [2003] EWCA Civ 576. The Claimant had not shown any good reason for extending time. Indeed, it was noticeable that he continued to write to the Respondent, asking for work and making grievances. He was clearly capable of articulating his complaints but failed to bring a claim to the Tribunal.
71. I decided that the Claimant's claim was presented out of time and the Tribunal did not have jurisdiction to consider it.
72. It was not necessary in those circumstances to consider whether the claim should be struck out because it had no reasonable prospect of success.

EMPLOYMENT JUDGE BROWN

On: 5 July 2022

SENT TO THE PARTIES ON

07/07/2022.

FOR SECRETARY OF THE TRIBUNALS