



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr W Choudhry

**1<sup>st</sup> Respondent:** HSBC UK Bank Plc

**2<sup>nd</sup> Respondent:** Mohammed Usman Habas Elahi

**3<sup>rd</sup> Respondent:** Lorena Lekegegaj

**4<sup>th</sup> Respondent:** Faryl Sajd Shafique

**5<sup>th</sup> Respondent:** Aisha Sulaiman

**Heard at:** Birmingham by CVP

**Heard on:** 7 March 2023

**Before:** Employment Judge Hindmarch

## Appearances

For the claimant: In person  
For the respondents: Ms Greenley – Counsel

## JUDGMENT ON AN OPEN PRELIMINARY HEARING

The claim was brought outside the three-month time limit and it is not just and equitable to extend time. The claim is dismissed.

## REASONS

1. This Open Preliminary Hearing came before me on 7 March 2023 and was conducted by CVP with the parties agreement. The Claimant, Mr Choudhry, represented himself and the Respondents were represented by Counsel, Ms Greenley. I had a bundle of documents running to 151 pages and a Skeleton Argument from Ms Greenley.
2. The Open Preliminary Hearing was listed at a Telephone Case Management Preliminary Hearing before Employment Judge Battsby on 11 November 2022 to consider a number of jurisdictional issues.

3. At the outset of the proceedings, we agreed to deal with the jurisdictional issue as to time limits first.
4. The Claimant brings discrimination complaints of harassment and victimisation. The 1<sup>st</sup> Respondent was his employer at the relevant time and at the time he issued the proceedings although he no longer works for the bank. There are 4 named individual Respondent's who were former colleagues of the Claimant whilst he was employed by the 1<sup>st</sup> Respondent. 3 of these are no longer working for the 1<sup>st</sup> Respondent.
5. The ET1 was presented on 25/01/2022 and ACAS early conciliation took place for the 1st-3rd Respondents between 19/12/2021 and 21/01/2022. The Respondents representative did not have early conciliation certificate for the 4<sup>th</sup> and 5<sup>th</sup> Respondents. I agreed to make enquiries of my clerk as to whether the office held these. I did so at the start of my deliberations. My clerk emailed me the ACAS early conciliation certificate for the 4th Respondent. It appears the Tribunal office did not have a certificate for the 5<sup>th</sup> Respondent. All of the certificates for the 1<sup>st</sup> – 4<sup>th</sup> Respondents had the same period for early conciliation.
6. It was agreed and noted at the Telephone Case Management Preliminary Hearing that any matter that occurred prior to 20/09/2021 was out of time.
7. The Claimant claims 11 acts of harassment said to have occurred whilst he was training with the 1<sup>st</sup> Respondent between December 2019 and March 2020. If those are not part of a continuing act they are significantly out of time by some 18 months.
8. The Claimant claims a single act of victimisation in relation to an informal verbal warning given to him for alleged misconduct on 11 June 2021. He says that was given in response to a protected act being the raising of a grievance in relation to the acts of harassment on 24 May 2021. That alleged act of victimisation is 3 months out of time.
9. In discrimination claims, I can extend time if it is just and equitable to do so. It is for the Claimant to satisfy me that I should do this. Ms Greenley's Skeleton Argument set out the law. I have to have regard to the overriding objective and the balance of hardship as between the parties.
10. Employment Judge Battisby ordered the Claimant to provide a witness statement for this hearing. He did not. Instead, he asked for an email exchange with the Respondent's solicitor to be placed in the bundle, dated 17 January 2023 (page 116-117), in which he states the delay was "due to HSBC deliberately taking long on the responses when I raised a complaint."
11. Despite there being no witness statement, the Claimant was offered the opportunity to give evidence about delay. He told me he was not aware of the time limits and had not researched them. He said he had informally raised his concerns about harassment with managers but there was no evidence of this in terms of documents in the bundle. We know he started the formal grievance process in May 2021 – some 14 months or so after the last alleged act. After the Claimant raised his grievance he was relatively swiftly invited to a grievance hearing which took place on 24 June 2021 and he received the outcome on 12 July 2021. His complaint about HSBC

delaying matters appears to be about the grievance appeal in which the hearing took place on 18 October 2021 and where the decision was dated 15 December 2021. 4 days later he went to ACAS.

## THE LAW

12. Time limits in discrimination claims are dealt with in s123 Equality Act 2010 which provides:

“(1) Subject to section 140B 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.

...

(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.”

13. Tribunals should not extend time unless the Claimant persuades them it is just and equitable to do so. The exercise of my discretion to extend time should be the exception, not the rule Bexley Community Centre (t/a Leisure Link) v Robertson (2003 EWCA Civ s76).

14. Facts that may fall to be considered are the length and reasons for the delay, the extent to which the cogency of evidence may be affected by the delay and the steps taken by the Claimant to obtain advice.

15. The fact that an employee is pursuing an internal appeal does not, of itself, mean that it is not possible to present a claim within the properly applicable time limit, even if this means submitting the claim before the appeal has been concluded (Bodhu v Hampshire Health Authority (1982) ICR 200).

16. A Tribunal may find that it is reasonable for an employee to be ignorant of time limits and deadlines however that ignorance has to be reasonable.

17. I have to consider whether there has been a continuing act. The appropriate test is whether the employer is responsible for an “an ongoing situation or a continuing state of affairs” in which the acts of discrimination occurred, as opposed to a series of unconnected or isolated incidents (Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686, followed in Lyfar u Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548.)

## CONCLUSIONS

18. The claims are clearly out of time. I am of the view they are not a continuing act – harassment is a different kind of discrimination to victimisation and different players

were involved. They are not an ongoing situation or a continuing state of affairs being some 15 months apart. Thus, the harassment claims are 18 months out of time and the victimisation claim is 3 months out of time.

19. I then have to consider if it is just and equitable to extend time. I remind myself Employment Tribunals have strict time limits for a reason – this is because memories fade and witnesses move on and may not be available. This is particularly the case with harassment allegations such as these which concern comments made, and behaviours exhibited, which will have a lack of documentary evidence. This makes it much more difficult for the Respondent to defend the claims. I am told that as well as the 4 named individual Respondents, the harassment allegations involve other individuals many of whom have left the Respondent's employment.
20. The Claimant tells me he was unaware of time limits. It is for individuals to do their research and avail themselves of this information. The Claimant was able to approach ACAS, obtaining I am told certificates for up to 20 potential Respondents. If he could research how to do this, there is no good reason why he could not research time limits. The Claimant's argument that the 1<sup>st</sup> Respondents should have told him about time limits is flawed. It is not for a potential Respondent to do this. There is no evidence the 1<sup>st</sup> Respondent misled the Claimant in any way.
21. I have considered carefully the issue of the grievance appeal outcome being delayed to December 2021. Such delay may justify the extension of time albeit it is only one of the factors to consider. I have reminded myself the exercise of discretion should be the exception, not the rule. The Claimant is clearly an intelligent man working in professional services and should have made reasonable enquiries as to time limits.
22. As Ms Greenley sets out at paragraph 6.e of her Skeleton Argument I have to consider the length and reasons for the delay and whether the delay has prejudiced the Respondent. I have set out my findings on the length and reasons. I find the delay is a serious prejudice to the Respondent. We have allegations dating back to 2019 which would not fall to be tested at a final hearing until most likely 2024.
23. For all the reasons above I have decided it would not be just and equitable to extend time and I dismiss the claim.

Employment Judge Hindmarch

13 March 2023