EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102210/2023

Preliminary Hearing held in Glasgow remotely by Cloud Video Platform on 12 June 2023

Employment Judge A Kemp

Mrs F Gibbons	**Claimant** **Represented by:** **Ms R Mohammed,** **Solicitor**
Glasgow Homecare Ltd trading as Home Instead	**Responden** **Represented by:** **Mr T Wood,** **Counsel** **Instructed by:** **Mr R Denton,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. **The claimant's claims of unfair dismissal and breach of contract are not within the jurisdiction of the Employment Tribunal and those claims are dismissed.**

2. **The claim related to allegedly outstanding holiday pay is within the jurisdiction of the Tribunal and shall proceed to a Final Hearing.**

REASONS

Introduction

1. This Preliminary Hearing was arranged to address issues of jurisdiction on the issue of time-bar. The Claim is made for unfair dismissal under sections 94 and 98 of the Employment Rights Act 1996 ("the Act"), for notice pay which is a claim for breach of contract under the Employment Tribunals (Extension of Jurisdiction) (Scotland) Order 1994 ("the Order") and for holiday pay which may be a claim under the Act as an unlawful deduction from wages or directly under the Working Time Regulations 1998 ("the Regulations").

2. The parties agreed that the effective date of termination was 15 December 2022, being the date on which the claimant was informed orally of her summary dismissal by the respondent. The respondent accepted that the claim as to holiday pay, which was in relation to a deduction from wages made on 15 February 2023, was such as to fall within the jurisdiction of the Tribunal.

3. The hearing took place by Cloud Video Platform in accordance with the Notice of Preliminary Hearing.

Evidence

4. The claimant gave evidence as did her solicitor Ms Mohammed. A Bundle of Documents had been prepared by the parties which was spoken to. Two documents were provided by the claimant during her evidence and added to it without objection. The respondent did not lead any evidence.

5. One question was asked of the claimant in examination in chief which was to the effect of what the claim meant to the claimant. It was far not apparent to me that that could be a relevant matter. Ms Mohammed suggested in argument on the point that it may fall under the overriding objective, and the requirement to be fair and just when exercising discretion on the matter. I indicated at the time that I was far from clear that that was so and would require some convincing on the matter. For completeness however

the question was allowed under reservation of its relevance. It is addressed below.

Issues

6. The hearing considered the following issues, which were identified with the agreement of the parties at the commencement of the hearing:

   (i) Was it not reasonably practicable to have commenced the Claim by undertaking Early Conciliation timeously, which was by 14 March 2023?

   (ii) If so, was the Claim presented within a reasonable period of time thereafter?

The facts

7. The claimant is Mrs Fiona Gibbons.

8. The respondent is Glasgow Homecare Ltd. It trades as Home Instead Glasgow South.

9. The claimant was employed by the respondent until her summary dismissal at a meeting held on 15 December 2022. The claimant's dismissal was confirmed in a letter sent to her dated 19 December 2022 which had words to the effect that she had been dismissed at the meeting (the letter was not before the Tribunal).

10. The claimant instructed MML (Scotland) Ltd to act for her in relation to her dismissal after that dismissal. A letter of engagement confirming the terms of engagement was emailed to the claimant on 23 December 2022 and accepted by her.

11. MML (Scotland) Ltd is a company of which Ms Ramiza Mohammed is one of two directors. She is a solicitor. She is the only person at the company undertaking employment law work. The other director does not do so, but is a solicitor in the field of private client work. There is also a paralegal and administrator at the company each of whom work in the field of private client work.

12. Ms Mohammed uses a diary entry to warn herself of impending time-bar in a claim, which provides an alert about one week prior to the date on which the time-limit expires (no evidence of when that entry was for the claimant's case was given).

13. The claimant appealed her dismissal in the period 26 – 28 December 2022. An appeal hearing was held, and a decision on the appeal, rejecting it, intimated by letter dated 2 February 2023. The claimant informed Ms Mohammed of that, who sought to negotiate a settlement of the claims that the claimant intended to make with the respondent.

14. On 15 February 2023 the respondent deducted from wages due to the claimant what it considered to be an excess of holidays taken by her over days that had accrued to the date of dismissal.

15. On 27 February 2023 the respondent emailed Ms Mohammed and stated that the respondent was "not looking to continue any further discussions as to settlement."

16. Ms Mohammed has three children, one of whom is a daughter aged 7. Her daughter fell ill on or around 6 March 2023 with severe abdominal pain. She was also not eating, and was vomiting. Ms Mohammed consulted her GP, and her daughter was referred to the Southern General Hospital, Glasgow. There was a concern that she may have contracted appendicitis. Tests were carried out on 9 March 2023. An urinary tract infection was diagnosed. Anti-biotics were administered, but without success.

17. Ms Mohammed concentrated on her daughter's health in the period from 6 to 13 March 2023. She was very distressed and anxious as a result of the illness. She carried out limited work during that time, doing so from home and responding to calls to her from clients or others reactively. She did not check her work diary. Ms Mohammed had the ability to access her laptop for work purposes when at home, but did not do so in relation to the claimant's case in that period.

18. Ms Mohammed's daughter was admitted to hospital on 14 March 2023, and was treated with intravenous anti-biotics whilst there. She remained in hospital until 17 March 2023, on which date she was discharged. During

the period of that hospitalisation Ms Mohammed remained with her daughter at the hospital throughout. There was no access to internet facilities during that time. She did not carry out any work.

19. Ms Mohammed commenced early conciliation on behalf of the claimant on 19 March 2023 online. Also on 19 March 2023, a Sunday, Ms Mohammed sought to present a Claim Form for the claimant to the Employment Tribunal. That Claim Form referred to Ms Mohammed herself as the claimant, in error, and did not refer to an Early Conciliation Certificate number as at that date none had been provided. It stated as the date of termination of employment 19 December 2022 as that was the date, at that stage, that Ms Mohammed thought that the dismissal had been effective upon.

20. An Early Conciliation Certificate was issued by ACAS on 20 March 2023. On the same date Ms Mohammed emailed the Tribunal with a revised Early Conciliation Certificate number, being that on the Certificate, and applied to amend the Claim Form by including that detail and Further and Better Particulars. She attached in error a paper apart with particulars of the claim for a person who was not the claimant.

21. On 23 March 2023 the Tribunal wrote to Ms Mohammed rejecting the Claim Form in light, in part, of the said errors as to the name of the claimant and that the paper apart did not refer to the claimant, for reasons fully set out in that letter.

22. On 27 March 2023 Ms Mohammed received that letter and sent to the Tribunal by email that day an amended Claim Form, substituting the name of the claimant for her own name, providing the Early Conciliation Certificate number and attaching a paper apart with particulars of the claim for the claimant.

23. That Claim Form was accepted by the Tribunal on 31 March 2023, and it was considered to have been presented on 27 March 2023.

24. After the Response Form was received from the respondent and intimated to the claimant Ms Mohammed asked the claimant about when she was informed of the dismissal, and the claimant confirmed that that took place

at the meeting on 15 December 2022. That fact was conveyed to the respondent's solicitor by email dated 15 May 2023.

The claimant's submission

25. The following is a brief summary of the submission made. It had not been reasonably practicable to have presented the claim because of the mental state of the agent, who did not have the mental capacity to deal with the matter. Shortly after negotiations were unsuccessful her daughter had become ill, tests had been carried out, and she had then been admitted to hospital. Matters depend on the facts and circumstances. The agent had no capacity to deal with the matter because of distress, and the lack of any other support. The claim form had been presented as soon as possible.

The respondent's submission

26. The following is a brief summary of the submission made. The law was settled, and the test was what was reasonably practicable, or feasible. The Dedman principle applied. Reference was made to the case of ***Ireland*** and the authorities set out therein. In that case the solicitor was the only person dealing with employment claims. The EAT held that it had been impossible for a properly instructed Tribunal to have held that presenting the claim timeously had not been reasonably practicable. The claimant and her solicitor ought to have been aware of the date of dismissal. Ms Mohammed had misapprehended the true date. The Claim could have been commenced at any time before 6 March 2023. Early Conciliation does not require formal pleading, and is not infrequently undertaken by litigants in person (party litigants in Scotland). The system for ensuring that time-limits were not missed was rudimentary. No assistance had been sought from anyone else. It was not appropriate to focus on the last day or days of the period. There had been a week after negotiations had not concluded with agreement. If the issue of what was reasonable arose, the period from 20 to 27 March 2023 was not reasonable as it was required by errors made by Ms Mohammed. There was no relevance to the importance of the case for the claimant, and the overriding objective was not applicable.

The law

27. Section 111 of the 1996 Act provides as follows, so far as relevant to this Claim:

> "**111 Complaints to employment tribunal**
>
> (1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.
>
> (2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—
>
> (a) before the end of the period of three months beginning with the effective date of termination, or
>
> (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
>
> (2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a)."

28. There are equivalent provisions in Regulation 7 of the Order.

29. Before proceedings can be issued in an Employment Tribunal, prospective claimants must first contact ACAS and provide it with certain basic information to enable ACAS to explore the possibility of resolving the dispute by conciliation (Employment Tribunals Act 1996 section 18A(1)). This process is known as 'early conciliation' (EC), with the detail being provided by regulations made under that section, namely, the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014. Each of the Act and Order make provision for the effect of early conciliation in section 207B and Regulation 8B respectively which provide, in effect for the purposes of this case, that within the period of three months from the effective date of termination of employment EC must start, doing so then extends the period of time bar during the period for EC, and is then extended by a further month after the

date of the EC Certificate for the presentation of the Claim Form to the Tribunal. If EC is not commenced timeously a Tribunal cannot consider a claim unless it was not reasonably practicable to have commenced EC in time, and the Claim Form is presented within a reasonable period of time thereafter.

30. The question of what is reasonably practicable was explained in ***Palmer and Saunders v Southend on Sea Borough Council [1984] IRLR 119,*** a decision of the Court of Appeal. The following guidance is given:

> "34. 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. … 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. What however is abundantly clear on all the authorities is that the answer to the relevant question is pre-eminently an issue of fact for the Industrial Tribunal and that it is seldom that an appeal from its decision will lie. Dependent upon the circumstances of the particular case, an Industrial Tribunal may wish to consider the manner in which and reason for which the employee was dismissed, including the extent to which, if at all, the employer's conciliatory appeals machinery has been used. It would no doubt investigate what was the substantial cause of the employee's failure to comply with the statutory time limit, whether he had been physically prevented from complying with the limitation period for instance by illness or a postal strike or something similar. […] Any list of possible relevant considerations, however, cannot be

> exhaustive, and, as we have stressed, at the end of the day the matter is one of fact for the Industrial Tribunal, taking all the circumstances of the given case into account."

31. In ***Asda Stores Ltd v Kauser UKEAT/0165/07***, a decision of the Employment Appeal Tribunal, Lady Smith at paragraph 17 commented that it was perhaps difficult to discern how:

> "'reasonably feasible' adds anything to 'reasonably practicable', since the word 'practicable' means possible and possible is a synonym for feasible. The short point seems to be that the court has been astute to underline the need to be aware that the relevant test is not simply a matter of looking at what was possible but asking whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done."

32. In ***Marks and Spencer plc v Williams-Ryan [2005] IRLR*** 562 the Court of Appeal set out the issues to consider when deciding the test of reasonable practicability, which included (i) what the claimant knew with regard to the time-limit, (ii) what knowledge the claimant should reasonably have had, and (iii) whether he or she was legally represented.

33. In ***Lowri Beck Services Ltd v Brophy [2019] EWCA Civ 2490***, the Court of Appeal stated that the test of reasonable practicability should be given a liberal interpretation in favour of the employee, citing ***Williams-Ryan***. In ***Brophy*** the claimant did not have professional advice, which was held to be a factor in his favour. That case also examined what has become known as the Dedman principle, which is put simply that fault by a skilled adviser is taken to be the fault of the claimant, following the Court of Appeal decision in ***Dedman v British Building and Engineering Appliances Ltd [1973] IRLR 379***

34. The burden of proof is on the claimant to prove that it was not reasonably practicable to present the complaint in time: ***Porter v Bandridge Ltd [1978] IRLR 271.*** That was considered in ***Agrico Ltd v Ireland EATS/0024/05*** in which the solicitor's firm had failed to prove that it was not reasonably practicable to have presented the Claim timeously when

the solicitor with charge of the case went on holiday leaving matters to his secretary, who then fell ill. Not all errors on the part of the skilled adviser are determinative, however - ***Ebay (UK) Ltd v BuzzeoUKEAT/0159/13.***

35. If it was not reasonably practicable to have presented the claim (including by commencing early conciliation) timeously, a secondary issue is whether the claim was presented within a reasonable period of time thereafter. That issue, and the question of reasonable practicability more widely, was addressed by the EAT in a protective award case in ***Howlett Marine Services Ltd v Bowlam [2001] IRLR 201.***

Discussion

36. I considered that the claimant and Ms Mohammed each gave credible and generally reliable evidence, although with the evidence of Ms Mohammed there was one issue, as to whether others in the company of which she is a director could have commenced Early Conciliation, where I did not accept her evidence as I shall come to. There was no substantial dispute over the facts, the dispute was over whether the facts fell within the statutory provisions or not. Ms Mohammed is correct that each case is decided according to its facts and circumstances, although there are principles to apply as is addressed in the caselaw above.

37. The first issue is whether or not it was reasonably practicable to have commenced Early Conciliation timeously, which is by 14 March 2023. The onus of proof in this regard fell on the claimant. I have considerable sympathy for Ms Mohammed, whose distress at the illness which befell her young daughter was obvious and genuine. She is far from the first nor will she be the last solicitor to have an issue with an argument of time-bar in the Employment Tribunal. I have however been driven to conclude that it has not been proved that it was not reasonably practicable to have commenced Early Conciliation timeously.

38. Firstly, it appeared to me that it was obvious that the date of termination was a matter that any solicitor required to be clear about, and to check with the claimant herself. Ms Mohammed did not do so initially, only asking that specific question after the Response Form was received. She

proceeded in the belief at the time of commencing Early Conciliation and commencing the Claim that the effective date of termination was 19 December 2022, and therefore put that date in the Claim Form. She did accept however that the letter dated 19 December 2022 stated words to the effect that the claimant had been dismissed at the meeting, and either by asking the claimant directly or considering the terms of the letter fully, or both, it was or ought reasonably to have been clear that the effective date of termination was 15 December 2022, not 19 December 2022. As a result at the latest early conciliation required to be commenced on 14 March 2023. Ms Mohammed did not dispute that at the hearing, and had clarified the position in an email on 18 May 2023 to the respondent's solicitor, but she was I consider at fault in relation to when the time-limit for commencing Early Conciliation passed.

39. Secondly it is notoriously risky to leave commencing Early Conciliation, the first stage to allow a Claim Form to be presented, until the last day. Time-limits are an issue every solicitor engaged in litigation knows about, and requires to treat with care. It is a matter referred to in ***Ireland***, as well as other authorities. That case also refers to the authority of ***Schultz v Esso Petroleum Company Ltd [1999] IRLR 488,*** a Court of Appeal authority stating that, in summary, all of the period up to the time-limit should be considered, not just the last day or days. But it is important to note that it concluded that it was not right to give a period of disabling illness similar weight irrespective of the part of the period into which it fell. Although the overall period should be considered, the focus should be upon the later stages of the three months, reflecting the reality that in most cases this is when litigants focus their minds on lodging a claim. The claimant had been dismissed for long-term absence due to depression. It was held that he had been physically capable of giving instructions to his solicitor for the first seven weeks of the three-month period but was too ill to do so for the last six weeks. The Court of Appeal overturned the decisions of the tribunal and the EAT that it had been reasonably practicable to present his claim in time, in part because of the failure to focus on the fact that the illness struck the claimant in the crucial later stages of the limitation period.

40. Here, the appeal decision was given on 2 February 2023. Early Conciliation might reasonably have commenced shortly after then, as that was in the later stages of the three month period in my view. By 27 February 2023 it was clear that negotiations for settlement had not concluded successfully. There was at that point little over two weeks to go before the period of the time-limit was to expire, very much in the later stages of the period in my view, and prudence at the very least indicated that Early Conciliation should start then, or shortly afterwards. There was nothing to gain by waiting at that point. I consider that it was reasonably practicable to have commenced Early Conciliation at or around that time. It was not until around 6 March 2023 that Ms Mohammed's daughter fell ill. There was accordingly about a week to have commenced the Early Conciliation after negotiations were at an end, and before that happened, and no reason put forward for that not being done. I appreciate that the illness may have come on suddenly, but the closer to the end of the later period one is, the greater the risk being run in not commencing Early Conciliation because of some intervening difficulty.

41. Ms Mohammed uses a diary system to set out time-limits, indicating that the alert is put in the diary about a week before the date of the time-limit expiring, but did not state in evidence when that entry was for the present case. That entry may well have been later than it ought reasonably to have been following such a system, because of the error with the effective date of termination, but that detail is not known. I would not use the term "rudimentary" to describe that system, as Mr Wood did in submission, but the system was somewhat limited, and the evidence on it not as clear as it might have been. It appeared to be a form of back-up reminder, but given the comments above there was no reason to wait as long as the date of a reminder one week or thereby prior to the perceived last day. In any event I consider that it ought reasonably to have been clear to Ms Mohammed that Early Conciliation required to be commenced sufficiently in advance of the last possible date of 14 March 2023 so as to do so effectively and successfully, thus avoiding an issue over time-bar. If her practice was to do so a week before the time-limit expired, that was by 7 March 2023, although her own system might have been proposing 11 March 2023.

42. I do appreciate the distress and worry that there would have been for Ms Mohammed's daughter when she fell ill on or about 6 March 2023. That is entirely understandable on a human level, and I have considerable sympathy for her position, as anyone would but particularly those who have been in private practice. I was not however satisfied that that, of itself, in the period from 6 March 2023 to 13 March 2023 inclusive, meant that it was not reasonably practicable to have started Early Conciliation. Ms Mohammed was at that stage at home, but with access to a laptop. She was not doing no work at all, but doing some that was "reactive" as she put it. That is, however, a difficulty for her evidence and argument for the claimant, in my judgment. She ought not to have been solely reactive in that manner where there was an issue over the time-limit for the claimant fast approaching. She knew, or ought reasonably to have known, of that fact. The true time-limit was a little over a week away. A diary alert is a system many solicitors use, but it is a form of last line of defence to avoid time-bar difficulties. It requires to be monitored to be effective. It was not the action of a solicitor acting reasonably not to check for such diary entries over time-limits as she had described in evidence or ask someone else in the firm to do so, in my view, even with the situation with her daughter ill at home. That is so even with the distress and anxiety at her daughter's condition. The level of incapacity was not complete, as she was at least taking calls. That indicates sufficient capacity to be proactive on such an important issue as time-bar of a case for a client. If she had, the issue of the claimant's case requiring very prompt action on Early Conciliation would have become apparent.

43. It was then I consider reasonably practicable either for Ms Mohammed to have contacted ACAS herself, either by telephone or online, and provided the details, which would have taken only a few minutes, or to have informed her colleagues of the difficulty and asked them to do so, or indeed do the same with the claimant herself. There is no difficulty in the task of contacting ACAS for such a purpose. Party litigants do so very regularly. Basic information is all that requires to be given. There is no need to give full details of the claim or claims made. All that is recorded on the certificate is the fact of commencing Early Conciliation and the date of that, the date of the certificate, and the identity of the parties. It would

have been sufficient to refer to a claim of unfair dismissal, but also to refer to a claim for notice pay and holiday pay. A solicitor with no experience in employment law could easily do so particularly as those basic details could be given by Ms Mohammed in a call to her if there was any issue over it, as could a paralegal, or administrator, in my judgment. I do not consider that the circumstances explained in the evidence before me are such that it was beyond the reasonably practicable for Ms Mohammed to have contacted such colleagues, or separately to do so to the claimant herself, if unable to attend to that Early Conciliation personally. Solicitors as skilled advisers have duties to their clients which continue even when there are very difficult, distressing and challenging circumstances in home life, as there were here.

44. I accept that on 14 March 2023 the claimant's daughter had been admitted to hospital, and she was at that point (no detail as to the time of day was given in evidence) not able to attend to any work at all, which continued until her discharge from hospital on 17 March 2023. She was with her daughter continuously, without any internet access. She was doing no work at all at that point. On that date she was in effect incapable of commencing Early Conciliation.

45. 14 March 2023 was the last possible date to start Early Conciliation timeously. I do not consider that in all the circumstances that fact of what is a form of incapacity starting on 14 March 2023 is sufficient to establish that it was not reasonably practicable to have commenced Early Conciliation timeously solely because of the hospital admittance on that day, and its continuing until 17 March 2023. In my judgment as a solicitor, and a Director of MML (Scotland) Ltd being the entity with which the claimant contracted for professional services, Ms Mohammed did not act reasonably in not commencing Early Conciliation, or making arrangements for that, during, if not before, the period from 6 March 2023 to 13 March 2023 inclusive, the last day of that period being the day prior to her daughter entering hospital as an in-patient. It ought reasonably to have been apparent to her that the time-limit in the present case was approaching and becoming a matter of urgency, as on her evidence and using the system referred to, a diary entry as a reminder to do so ought to

have been in place at the latest on 12 March 2023, despite that date being wrong as discussed above. There were two working days to do so. However much sympathy I have for Ms Mohammed as an individual given the illness her daughter suffered from and the effect that that had on her I conclude that her inaction in relation to the claimant's prospective claim in the period to 13 March 2023 was not reasonable. It was reasonably practicable to have commenced Early Conciliation timeously in my judgment.

46. I do not consider that it can be relevant to the issue of what was or was not reasonably practicable how important the case is to the claimant, being the nature of the question heard under reservation. The test is set out in the statutory provisions, as explained in authority as set out above. In no authority of which I am aware is the importance of the claim to the claimant, or a matter similar to that, suggested as a relevant factor. The test is not in my judgment one to which the overriding objective is or could be relevant.

47. The overriding objective on which Ms Mohammed founded on the matter is in Rule 2 and applies to the Tribunal's Rules of Procedure. I do not consider that it has any relevance to the issues before me.

48. Similarly although Ms Mohammed referred to there being a discretion, I do not consider that there is. The test of reasonable practicability is described in ***Palmer*** as one of fact taking account of all the circumstances. What might be relevant to the exercise of discretion (as to what is just and equitable in the context of time-bar in discrimination claims for example) is not relevant in the context before me. I concluded that however important the claim is to the claimant that cannot be relevant to the issues I must decide. I have not therefore taken that evidence into account, or included it in the findings in fact.

49. Taking account of all the evidence before me I considered that the claimant had not established that it was not reasonably practicable to have commenced Early Conciliation timeously, and as such the Tribunal does not have jurisdiction to hear the claims of unfair dismissal and breach of contract.

50. I then addressed the issue of whether the claim was presented within a reasonable period, lest I was wrong on the first issue. I considered that the errors made in the initial Claim Form were material. Firstly the claimant's name was not given, but that of Ms Mohammed herself, provided by mistake. That of itself invalidated the Claim Form. The second is that there was no Early Conciliation Certificate number given initially, as that process had not as at that date had not led to such a certificate. Attempts to correct that were made on 20 March 2023 by email after the certificate was issued, but that included an attachment of the wrong paper apart. These matters were pointed out by the Tribunal in its letter of 27 March 2023, and then responded to. In my judgment, however, the errors were basic ones, and material. I did not consider that that additional time occasioned by those errors, of a week, was reasonable in all the circumstances. Early Conciliation required to be commenced before a Claim could be competently presented, and once the Certificate was issued, on 20 March 2023, the Claim Form then properly prepared and presented, which in my judgment could reasonably have been done that same day or the next day. In light of the fact that the time-bar had passed (even the wrongly-considered one of a date of termination on 19 December 2022) acting quickly was at that stage obviously important, but equally important was to complete the documentation properly. Unfortunately in material respects it was not. Although the period of time is relatively short at one week I would have held that in all the circumstances the second issue was not determined in favour of the claimant such that the said claims would not have been within the jurisdiction of the Tribunal for that reason separately.

Conclusion

51. The claimant's claims of unfair dismissal and breach of contract are not within the jurisdiction of the Employment Tribunal and must therefore be dismissed.

52. In this Judgment I have referred to some authorities not referred to by the parties (Ms Mohammed did not refer to any authority in submission). If either party considers that by doing so they have suffered injustice they

can raise that in an application for reconsideration, with submissions in relation to those authorities, under Rule 71

53. The remaining claim as to holiday pay was accepted to be within the jurisdiction of the Tribunal, and I consider is so having regard to the relevant terms of the Act and Order, and shall proceed to a Final Hearing, to be heard remotely before an Employment Judge sitting alone. Notice of the date of the same and appropriate case management orders shall be given to parties separately.

Employment Judge: **EJ A Kemp**
Date of Judgment: **15 June 2023**
Entered in register: **15 June 2023**
and copied to parties

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