



# EMPLOYMENT TRIBUNALS

**Claimant** Ms B Rutkowska

**Respondent** Taylor Made Golf Limited

**Heard at:** Exeter  
(remotely by video hearing)

**On:** 30 & 31 May 2023

**Before:**  
**Employment Judge** Goraj

## **Representation**

**The claimant:** in person

**Interpreter (Polish)** Miss A Gleb

**The respondent:** Mr P Tomison, Counsel

## **RESERVED JUDGMENT (PRELIMINARY HEARING)**

### **THE JUDGMENT OF THE TRIBUNAL IS that: -**

1. The claimant was not an employee of the respondent for the purposes of section 230 of the Employment Rights Act 1996 ("the Act") and the Tribunal therefore does not have jurisdiction to entertain her claims of unfair dismissal and /or detriment because of pregnancy or maternity pursuant to sections 99 and/or 47 C of the Act which are accordingly dismissed.
2. The claimant was not in the employment of the respondent for the purposes of section 83 of the Equality Act 2010 ("the 2010 Act") and her claims of employment related pregnancy and maternity

discrimination pursuant to section 39 of the 2010 Act are therefore dismissed.

3. The claimant was a contract worker of the respondent for the purposes of section 41 of the 2010 Act.
4. The claimant's claims of pregnancy and maternity discrimination pursuant to sections 18 and 41 of the 2010 Act were not presented within the relevant statutory time limit, they are however permitted to proceed as they were presented within such further period as the Tribunal thinks just and equitable for the purposes of section 123 of the 2010 Act.

## **REASONS**

### **Conduct of the hearing**

This Preliminary Hearing was conducted as a remote hearing (VHS) to which the parties consented/ did not object. The claimant, who is Polish, requested the assistance of a Polish interpreter which was duly provided.

### **Introduction**

1. By a claim form which was presented to the Tribunals on 21 June 2022, the claimant brought claims of unfair dismissal and/or detriment and /or discrimination because of pregnancy or maternity. The claimant states in her claim form that she was employed by the respondent from 6 January 2020 to 12 March 2021. The claimant's ACAS Early Conciliation Certificate (EC reference number R142861/21/77) records that the claimant's EC notification was received by ACAS on 1 June 2021 and that the EC certificate was issued on 4 June 2021. The claimant gave birth on 3 October 2021.
2. The allegations are denied by the respondent including on the grounds that the Tribunal does not have jurisdiction to entertain the claimant's claims as she was not an employee of the respondent and/or that the claimant's claims are, in any event, out of time. The respondent contends that that the claimant was employed by Adecco ("Adecco") a staffing and recruitment agency, who assigned her to the respondent as a warehouse operative from 6 January 2020 to 12 March 2021.
3. Following a case management hearing on 1 February 2023 and associated Order ("the Order dated 1 February 2023") (pages 73- 93 of the bundle) this matter was listed for this Preliminary Hearing to determine the preliminary issues identified at paragraph 5 of the Order dated 1 February 2023 namely, in summary: -
  - 3.1 Whether the complaints of unfair dismissal pursuant to section 99 of the Employment Rights Act 1996 ("the Act") and/or detriment

pursuant to 47 (C ) of the Act, should be dismissed on the grounds that the Tribunal has no jurisdiction to hear them as they were presented outside the relevant time limits (including whether it was reasonably practicable for such complaints to have been presented within such time limits) and/or

- 3.2 Whether the complaints of discrimination because of pregnancy and maternity pursuant to sections 13 and 18 of the 2010 Act should be dismissed on similar grounds (including whether it was just and equitable for the Tribunal to permit an otherwise out of time complaint of discrimination to be pursued) and/or
  - 3.3 Whether the complaints of unfair dismissal and/or detriment should be dismissed because the claimant was not entitled to bring them as she was not an employee of the respondent for the purposes of section 230 (1) and (2) of the Act and/or
  - 3.4 Whether the complaints of unlawful discrimination should be dismissed as the claimant was not entitled to bring them as she was not in the employment of the respondent for the purposes of section 83 of the 2010 Act and/or a contract worker of the respondent for the purposes of section of 41 of the 2010 Act.
4. At the commencement of the Preliminary Hearing the respondent however, confirmed that it accepted that the claimant was a contract worker of the respondent for the purposes of section 41 of the 2010 Act. The respondent also confirmed that it accepted that the claimant's "engagement" with the respondent formally ended on 12 March 2021.

## **Background**

5. In summary, the background to this matter is that the claimant originally brought proceedings by a claim form presented on 11 April 2021 (in case number 1401378.2021) against Adecco (a staffing and recruitment agency) and the respondent in respect of her alleged pregnancy related treatment/ the termination of her "employment" (pages 1-23 of the bundle). The claimant's claim against the respondent was however rejected by the Tribunal on 26 May 2021 on the grounds that the claimant had not provided to the Tribunal a valid EC number in respect of her claim against the respondent (pages 24-25 of the bundle). The proceedings against Adecco in case number 1401378.2021 were ultimately settled by way of an ACAS COT3 agreement and an associated dismissal upon withdrawal of proceedings judgment on 13 June 2022.
6. The claimant issued further Tribunal proceedings (in case number 1402748.2021) by a claim form dated 3 August 2021 (pages 26-40 of the bundle). In these proceedings the claimant named "Adecco Agency" as both the First and Second Respondents (but cited the address and EC certificate number for the respondent in respect of the Second Respondent on the claim form – page 28 of the bundle). This complaint was ultimately rejected by the Tribunal in April 2022 on the grounds that

the claimant had not responded to the letters from the Tribunal asking her to confirm whether this claim was a duplicate of her earlier claim.

7. The claimant subsequently issued these proceedings against the respondent (in case number 1402030/2022) on 21 June 2022.

### **Witnesses**

8. The Tribunal received three witness statements on behalf of the claimant – two from the claimant and one from her partner, Raul Andre Martins. The statement from Mr Martins was not, however, taken into account by the Tribunal for the purposes of the Preliminary Hearing as it related to the substantive claim. The Tribunal heard oral evidence from the claimant. The Tribunal also received a witness statement and heard oral evidence from Ms Susan Taggart, the respondent's HR director.

### **Documents**

9. The Tribunal was provided with a bundle of documents ("the bundle") and accompanying index. The Tribunal became aware during the Preliminary Hearing, and subsequently when preparing the reserved Judgment, of further correspondence / documents on the Tribunal file which were not included in the bundle. The documents which came to the attention of the Tribunal during the Preliminary Hearing were shared with the parties at that time. Any relevant correspondence/ documents which have come to light subsequently are identified below in case they are not already known to the parties. The claimant also provided during the course of the Preliminary Hearing a copy of the COT3 agreement reached between the claimant and Adecco in May 2022 (as requested by the Tribunal).

### **The issues and associated matters**

10. The Preliminary Issues are as identified above. As further stated above the respondent now accepts that the claimant was a contract worker for the purposes of section 41 of the 2010 Act. It is also agreed between the parties that the claimant's "engagement" with the respondent formally terminated on 12 March 2021 which is the date of the alleged dismissal / alleged last act of discrimination / detriment. Any alleged acts occurring prior to 12 March 2021 have been treated strictly for the purposes of this Preliminary Hearing, as "conduct extending over a period".
11. It is the claimant's case that, following the rejection of her claim against the respondent on 26 May 2021 in case number 1401378/2021 (because of the absence of a valid EC number for the respondent) she sent to the Bristol Employment Tribunals (by post and email) on 7 June 2021 a copy of an ACAS EC certificate naming the respondent. The parties included in the bundle a screenshot of the claimant's email to the Tribunal dated 7 June 2021 (page 132 of the bundle) in which she quotes the case

number and ACAS EC reference number R142861/21/77 together with the name (in substance) and address of the respondent. The respondent did not challenge the validity of this email. The Tribunal explained to the parties that, having made the enquiries which it was able to undertake in the available time, there did not appear to be any record of the email (or any letter) on the Tribunal's file. This continued to be the case when the Employment Judge sought confirmation of the position when preparing this reserved Judgment.

12. It is also the claimant's case that she sent a further email to the Bristol Tribunals on 25 November 2021 (following a telephone case management hearing ("CMPH") which she says took place that day (and not on 22 November 2021 as stated in the associated Case Management Order). The claimant says that she attached to the email dated 25 November 2021, a copy of her ACAS EC certificate naming the respondent in case number 1401378/2021. A screenshot of this email is at page 135 of the bundle. The respondent did not challenge the validity of the email. When preparing this reserved Judgment, it was confirmed that the claimant's email dated 25 November 2021 was received by the Tribunal that day (together with the attached ACAS EC certificate). It was further confirmed that there is nothing on file to indicate that the claimant's email/ the ACAS EC certificate came to the attention of an Employment Judge at that time.
13. In the Case Management Order dated 22 November 2021 (at pages 41-43 of the bundle) (which the Tribunal has now ascertained should have been dated 25 November 2021 as the CMPH took place on the latter date as identified by the claimant) it is recorded that the claimant asserted that she had a valid ACAS EC certificate for the respondent. It was further recorded that the claimant would write to the Tribunal with a copy of the EC certificate naming the respondent by way of her application to reconsider the decision to reject her claim against the respondent and in which event the proceedings would be served on the respondent. A further CMPH was also listed at that time to facilitate future case management discussions relating to both claims.
14. In the light of the above, the Tribunal raised with the parties whether, as there appeared to be prima facie evidence that the claimant had on two occasions namely 7 June 2021 (which was within the primary limitation period) and again on 25 November 2021, sent to the Tribunal details of her ACAS Early Conciliation Certificate naming the respondent in case number 1401378/2021, the matter should instead proceed by way of a reconsideration of the decision to reject the claimant's claim against the respondent. The claimant did not express a view. The respondent opposed any such course of action on a number of grounds including, that the proceedings in case no 1401378/2021, which had proceeded against Adecco only with the respondent never being a party, had now concluded (by way of a COT3 agreement and subsequent dismissal upon withdrawal) and would therefore require the involvement of Adecco

before any reconsideration application could be determined involving further costs and delay. The respondent confirmed however, that it accepted that the Tribunal would be entitled to take into account the above-mentioned matters for the purposes of any consideration of whether it was reasonably practicable for any claims to have been submitted at an earlier date/ it was just and equitable to extend time.

15. Having given the matter careful consideration, the Tribunal decided, including having regard to the matters raised by the respondent above, that the most appropriate way forward was to continue with the Preliminary Hearing as listed on the basis that above matters would be taken into account, as appropriate, when determining the time issues.
16. Although it was envisaged in the Order dated 1 February 2023 that the Tribunal would determine the time issues first it was agreed, on reflection, that it was more appropriate for the Tribunal to hear the evidence on both issues together, and the Tribunal did so accordingly.

## **FINDINGS OF FACT**

17. The Tribunal has limited its findings of fact to those required for the determination of the preliminary issues.
18. The respondent is a sports equipment and manufacturing company. The respondent uses recruitment/ staffing agencies, including Adecco, to supplement its workforce from time to time.
19. The respondent trades with Adecco on Adecco's standard terms and conditions of business which are at pages 144 – 152 of the bundle. The terms and conditions relating to "temporary workers" are at pages 148 onwards of the bundle. The terms and conditions include the following terms :- that the client (the respondent) is responsible for the submission of verified weekly timesheets of persons engaged to carry out an assignment (the associate) to the Employment Business (Adecco), that the client is responsible for paying the hourly charges of Adecco calculated by reference to the hourly charge rate applicable to the associate and that Adecco is responsible for paying the associate's salary (subject to statutory deductions), that associates are under the supervision, direction and control of the client for the duration of the assignment, the client is required to supervise the associate to ensure satisfactory standards of workmanship but if the services are unsatisfactory Adecco may reduce or cancel its charges subject to the termination/ notification of the termination of the assignment by the client to Adecco and that all parties (including the associate) are entitled to terminate the assignment at any time without prior notice.

### **The claimant's contract of employment with Adecco**

20. The claimant was issued with a contract of employment by Adecco. This contract, which was signed by both parties on 22 January 2019 is at pages 94 – 96 of the bundle. The contract includes the following terms and conditions : - that the claimant would be required to work at different temporary workplaces as assigned by Adecco from time to time, the claimant would, at all times, remain under the control and instructions of Adecco including that Adecco could at any time require the claimant to cease working on/ transfer the claimant to a different assignment and that in the event of any conflict between the instructions given by a client and Adecco the latter would prevail/required the claimant to work exclusively for Adecco unless otherwise agreed. The contract also included provisions relating to pay (payment weekly in arrears), grievances, the requirement to notify Adecco of any absences for sickness or injury and regarding termination. The bundle contains copies of the claimant's bank statements which show the receipt of regular weekly salary payments from Adecco.
21. It is agreed between the parties that the claimant worked, as placed by Adecco, as a warehouse operative with the respondent from 6 January 2020 until the formal termination of that arrangement on 12 March 2021. The claimant also had a previous, unconnected, period of assignment (by Adecco) at the respondent.
22. The parties have included in the bundle (pages 107 – 129) correspondence passing between the parties/ Adecco relating to the termination of her working arrangements with the respondent to which the Tribunal has had regard strictly for the purposes of this Preliminary Hearing. The Tribunal has noted in particular that the respondent emailed Adecco on 4 March 2021 advising that the claimant had had to go home as she was feeling unwell and of the difficulties which the respondent stated that the claimant was experiencing undertaking her work. The respondent informed Adecco that it could no longer facilitate the claimant in its workshop and suggested that Adecco should find the claimant a role elsewhere until the claimant felt that she could fulfil the role (page 107). Following further correspondence regarding the respondent's ongoing concerns relating to the claimant's performance, Adecco confirmed to the claimant (page 113 of the bundle) /to the respondent (page 112 of the bundle) that the claimant's assignment with the respondent would terminate on 12 March 2021 however her relationship with Adecco would continue and that it would investigate alternative assignments for the claimant. Adecco ultimately wrote to the claimant on 29 April 2021 advising her that whilst it was still looking for work for the claimant the current roles were not suitable as they involved heavy lifting. Adecco advised the claimant that it would get in touch if anything arose which would be of interest to her (page 129 of the bundle).

## **The Tribunal proceedings**

### **The issue of proceedings in case number 1401378.2021**

23. On 11 April 2021, the claimant presented claims to the Tribunal against Taylor Made Golf (subsequently confirmed as Taylor Made Golf Limited) (“the respondent”) and Adecco Basingstoke (“Adecco”) of discrimination/ unfair dismissal because of pregnancy in case number 1401378.2021. The claimant’s claim form with attached particulars of claim is at pages 1-23 of the bundle.
24. The claimant cited in her claim form an ACAS Early Conciliation (EC) certificate of R123706/21/06 in respect of both respondents. This EC certificate, which is at page 16 of the bundle, names the prospective respondent as Adecco and records that the claimant’s EC notification was received on 21 March 2021 and that the EC certificate was issued on 23 March 2021.

### **The rejection of the claimant’s claims against the respondent**

25. On 26 May 2021, the Tribunal wrote to the claimant accepting her claim against Adecco but rejecting her claim against the respondent because it did not contain an EC number for the respondent (pages 24 – 25 of the bundle).

### **The claimant’s ACAS EC certificate and subsequent events**

26. On 4 June 2021, ACAS issued the claimant with an EC certificate, number R142861/21/77, naming the respondent as a prospective respondent. This certificate, which is at page 131 of the bundle, also records an ACAS EC notification date of 1 June 2021.
27. As stated above, the claimant contends that on 7 June 2021, she sent an email to the Bristol Tribunals in which she stated that the email was being sent in response to the Tribunal’s letter of rejection dated 26 May 2021 and that she was attaching an EC certificate ( ACAS reference number R142861/21/77 – prospective respondent – Taylor Made). A screen shot of this email is at page 132 of the bundle. The claimant also contends that she sent a copy to the Tribunal by post.
28. As explained previously above, the Tribunal has been unable to locate a copy of this email/ letter on the Tribunal file. The claimant’s evidence on this matter has not been challenged by the respondent who did not question the validity of the email. Having given the matter careful consideration, the Tribunal is satisfied, on the balance of probabilities, that such email/ letter was sent to the Tribunal by the claimant at that time. When reaching such conclusion, the Tribunal has taken into account in particular, that the claimant has provided a screen shot of



the email, that the timing of the issue of the ACAS EC certificate (4 June 2021) fits with the relevant time sequence ( email/ letter to the Tribunals dated 7 June 2021) and further, that the email/letter is referred to by the claimant in subsequent contemporary correspondence as detailed further below.

**The correspondence passing between the respondent and Adecco on 10 June 2021**

29. On 10 June 2021 there was an exchange of correspondence between Adecco and the respondent in which Adecco advised the respondent of the proceedings and provided the respondent with a copy of the claimant's claim form (page 132A of the bundle).

**The claimant's email dated 2 August 2021**

30. On 2 August 2021, the claimant sent a further email to the Bristol Tribunals concerning her EC certificate (R142861/21/77) for "Taylor Made". This email is at page 133 of the bundle. In this email the claimant refers to the rejection of her claim against the respondent and that she had subsequently sent her early conciliation number to the Tribunal at the "correct and right time". The claimant also stated in her email that she had spoken to her conciliator at ACAS who had told her that the complaint against "Taylor Made" was probably not in the Tribunals. The claimant confirmed that she had two claims namely - against "Taylor Made" and Adecco and asked the Tribunal to confirm whether everything was correct. It does not appear that any action was taken by the Tribunal in response to this email.

**The issue of proceedings in case no 1402748.2021 in August 2021**

31. On 3 August 2021, the claimant presented a further claim form to the Tribunal. This claim form, which was allocated case number 1402748.2021, is at pages 26- 40 of the bundle. In this claim form the claimant names two respondents namely:- (a) first respondent Adecco Agency with an ACAS EC certificate reference number – R123706/21/06 (the EC number cited in case number 1401378.2021) and giving the address of Adecco and (b) a second respondent – also stated to be Adecco Agency but citing the ACAS EC reference number R142861/21/77 for the respondent (as provided in the email to the Tribunal dated 7 June 2021) together with the address of the respondent. When asked in evidence why she had cited Adecco Agency twice as a respondent in this claim form and not included the respondent, the claimant insisted that she had named the respondent and that somebody else must have made a mistake. The claimant also stated in evidence that she had presented a second claim form as she

had not received any response from the Tribunals following the submission of her EC certificate naming the respondent and that she had done this as a way of bringing the matter to the attention of the Tribunal.

32. The Tribunal is satisfied on the balance of probabilities that, although the claimant did not accept as such in evidence, the claimant named Adecco Agency (rather than the respondent) as the second respondent in error. When reaching this conclusion, the Tribunal has taken into account that although the claimant repeated the name of Adecco Agency as “the second respondent” she also cited on the claim form in respect of such “second respondent” the ACAS EC number relating to the respondent (R142861/21/77) together with the address of the respondent. Further, the only substantive information about the claim is the information contained at paragraph 8.2 of the claim form in which the claimant stated as follows: -

“I am sending again this form because I don't have any answer from Tribunal about my case for Taylor Made. No one answer the phone and email from Tribunal. Employment Tribunal sent me letter ..Rejection of claim...that my claim against Taylor Made Golf has been rejected because I did not have early conciliation number. ET give me two weeks to sent this number. I sent this number in right time to ET by post and e mail the same time but still looks like this case is rejected. Otherwise I did every steps according advise my conciliator from ASAS.

I filled in this form my Early conciliation number of Taylor Made is R142861/21/77. My case number 1401378/2021.

I sent ET1 form in march 2021.

Thank you  
Beata Rutkowska”

33. The Tribunal also accepts, in the light of the information set out above, the claimant's evidence that she presented the second claim form in order to bring to the attention of the Tribunal the position regarding her claim against the respondent.
34. The Tribunal became aware when preparing this reserved Judgment that the claimant also sent an email to the Tribunals dated 4 August 2021 (which is not contained in the bundle) in which she stated that she had telephoned the Tribunal that day to ask about the next steps in her case and had been advised to write and explain her position. The claimant further explained in summary, what she said had happened regarding the rejection of her claim against the respondent and that she had submitted a further ET1 together with an explanation the previous day. The claimant further explained that the case was important to her and asked the Tribunal to confirm whether she had

taken the correct steps/ what she should do. It does not appear that any action was taken by the Tribunal in response to this email.

**3 October 2021**

35. The claimant gave birth on 3 October 2021.

**The case management hearing and order dated 22 November 2021  
(in case number 1401378/2021)**

36. The Tribunal conducted a CMPH by telephone on 25 (not 22) November 2021 in case number 1401378/2021. The associated Order which was dated 22 November 2021 in error (“the Order dated 22 November 2021”) is at pages 41- 43 of the bundle.

37. The Tribunal has noted in particular that it is recorded in the Order dated 22 November 2021 that Adecco (the correct name of which is stated to be Adecco UK Limited) is a recruitment business which employs temporary workers and places them to work on assignments with its clients such as was the case with the claimant and the respondent (Taylor Made Golf Limited). It is also recorded in the Order dated 22 November 2021 that it was accepted by Adecco in its grounds of resistance ( which was not before this Tribunal) that it was told by the respondent on or around 15 February 2021 that the claimant had informed them that she was pregnant and that it had subsequently ended the claimant’s assignment with the respondent with effect from 12 March 2021 in accordance with the instructions of the respondent dated 8 March 2021. Adecco denied that it had terminated the claimant’s employment.

38. The Order dated 22 November 2021 also records that the claimant challenged the decision of the Tribunal to reject her claim (in case number 1401378/2021) against the respondent as the claimant asserted that she had a valid ACAS EC certificate against the respondent and had cited EC number R142861/21/77.

39. The CMPH on 25 November 2021 concluded on the basis that the claimant was directed to write to the Tribunal with a copy of the ACAS EC certificate relating to the respondent by way of her application to seek reconsideration of the rejection of her claim against the respondent. The Tribunal further directed that in that event, the proceedings would be served on the respondent and the matter was accordingly listed for another CMPH on 2 May 2022 the stated purpose of which was to “ review the case after the potential involvement of another respondent, Taylor Made Golf Limited”. No further directions were given at the time for the future conduct of the

case against Adecco. The CMPH on 2 May 2022 was subsequently postponed and relisted for hearing on 6 June 2022.

**The claimant's email dated 25 November 2021**

40. The claimant sent an email to the Tribunal dated 25 November 2021 in which she stated that she was sending, as directed at the CMPH, a copy of the ACAS EC certificate relating to the respondent. The claimant asked the Tribunal to send her an email confirming every step which she had to take in accordance with the discussion at the CMPH. The claimant cited the case number (1401378/2021) at the top of the email. The Tribunal has confirmed that this email was received by the Tribunal on 25 November 2021. It does not however appear that the Tribunal took any action in response to this email.
41. Further, there is no documentary evidence of any further action being taken (by the claimant or the Tribunals) in respect of either of the above mentioned proceedings until December 2021.

**The Tribunal's letter dated 20 December 2021 in case number 140278/2021**

42. On 20 December 2021 the Tribunal wrote to the claimant regarding case number 1402748/2021. This email is at pages 136 – 137 of the bundle. The Tribunal asked the claimant to confirm by 27 December 2021 whether the claim in case number 1402748.2021 was a duplicate of her claim in 1401378.2021 and advised that the claim had not been served at that time. The email made no reference to the matters raised by the claimant at paragraph 8.2 of the claim form (as set out above) relating to the ACAS EC certificate/ her claim against the respondent. The claimant did not respond to this email.

**The Tribunal's letter dated 14 February 2022**

43. The Tribunal wrote to the claimant again on 14 February 2022 directing her to respond (in respect of case number 1402748/ 2021) to the Tribunal's email of 20 December 2021 and informing her that her claim had not been served at that time. The claimant did not reply to this email. The Tribunal is not satisfied that the claimant has given a satisfactory explanation to the Tribunal for not doing so as the only explanation which the claimant has given for her failure to respond was that the correspondence related to duplicate proceedings.

**The Tribunal's email dated 11 April 2022 and subsequent correspondence**

44. The Tribunal wrote to the claimant again on 11 April 2022 regarding case number 1402748/2021. The Tribunal has confirmed from the

Tribunal file that there was a letter attached to this email rejecting this claim as the claimant had not responded to the Tribunal's previous correspondence regarding the matter.

45. The Tribunal has also confirmed that the claimant subsequently wrote to the Tribunal on 12 April 2022 as follows :-

"Good afternoon

Today I received this e-mail about rejection – the reason because I didn't send document in correct time. I sent this email by post sing in letter in correct time? I am really powerless because always is the same problem with the cort- Never have e mail I sent or letters! Always I needed to sent several times! It's really an fair! It's no my fault how work office in the court. And the problem is I am really powerless. Please, try to find again my letter in the office or reception. Should be there! And please answer me you received this email!!!Never should this happen this in the court!

Beata Rutkowska"

46. On 13 April 2022 the claimant sent a further email to the Tribunal in which she stated that she wished to continue with her claim in case number 1401378/2021 and that the claim which had been cancelled was probably an error of duplication.

**The claimant's email dated 26 May 2022 relating to the settlement of the proceedings against Adecco.**

47. On 26 May 2022 the claimant emailed the Tribunal (page 141 of the bundle) quoting case number 1401378/2021 and naming the respondent as Adecco UK Limited. The claimant informed the Tribunal that the parties had agreed to settle the claim and that accordingly she wished to withdraw the whole of her claim against "the respondent" (Adecco) in the above-mentioned case. The claimant further stated that she and "the respondent" (Adecco) had confirmed their understanding in the ACAS COT 3 agreement that the claim would be dismissed following the withdrawal. This is no reference in this email to any claim against the respondent. The claimant executed the ACAS COT3 on 26 May 2022.
48. In a subsequent email to the Tribunal dated 9 June 2022 (referred to further below) the claimant stated that she had sent an email to the Bristol Tribunals on 26 May 2022 confirming that she was going ahead with her complaint against the respondent. There was however no documentary evidence before the Tribunal to indicate that any such confirmation was given by the claimant on 26 May 2022. Further, such

statement is inconsistent with the terms of the claimant's email dated 26 May 2022 referred to above. The Tribunal is therefore not satisfied that any such confirmation was intimated by the claimant to the Tribunal at that time.

**The claimant's email dated 7 June 2022 and associated matters**

49. On 7 June 2022 the claimant emailed ACAS. This email is at page 134 of the bundle. The claimant stated in her email that she was attaching a copy of her ACAS EC certificate relating to the respondent together with a copy of her email to the Tribunals dated 25 November 2021. The claimant also explained the background to the matter including that she had initially sent the EC Certificate relating to the respondent to the Tribunals in June 2021 and again in November 2021 and further that she had been told at the CMPH on 25 November 2021 that the hearing against the respondent would go ahead provided that she sent to the Tribunals the ACAS EC certificate naming the respondent. The claimant also stated that after she had reached an agreement with Adecco she had confirmed by email to the Tribunal that she was still going ahead with her complaint against the respondent and that she should have had a hearing on 6 June 2022 which had not however gone ahead. The claimant further stated that she had contacted the Tribunal on 6 June 2022 to ascertain what was happening and was told that the hearing had been cancelled because her email had not been sent to the Judge. The claimant concluded her email by questioning what more she could do to proceed with her claim and asked the ACAS Conciliator to let her know.
50. The Tribunal accepts that the claimant tried, unsuccessfully, to join the telephone CMPH on 6 June 2022 in case number 1401378.2021 which had previously been listed at / relisted following the CMPH on 25 November 2021 to pursue her claim against the respondent as she did not appreciate that the CMPH had been cancelled in the light of the settlement of her claim against Adecco.

**The claimant's email dated 9 June 2022**

51. On 9 June 2022 (the email referred to at paragraph 48 above) the claimant sent an email to the Tribunal (page 142 of the bundle) saying that she had sent an email to the Tribunal on 26 May 2022 asking to withdraw her claim against Adecco as they had reached an agreement. The claimant also stated that she wished however to continue her claim against the respondent as she was a victim of pregnancy discrimination whilst working for that company and that she had sent an email to the Tribunal on 26 May 2022 confirming that she wished to go ahead with her claim against the respondent. As stated above the Tribunal is not however satisfied that the claimant gave any such

notification to the Tribunal on 26 May 2022 / prior to 9 June 2022 that she wished to continue with her claim against the respondent following the settlement of the claim against Adecco.

52. The claimant also stated in her email to the Tribunal dated 9 June 2022 that she had attended a CMPH on 25 November 2021 during which she had been told that her claim against the respondent would proceed provided that she sent to the Tribunal a copy of her ACAS EC certificate which she did the same day. The claimant also explained that the EC certificate had already been sent to the Tribunal on 7 June 2021(R142861/21/77) following certification by ACAS on 4 June 2021. The claimant further stated that she had been expecting to have a hearing on 6 June 2022 which did not however go ahead and that she had therefore telephoned the Bristol office to find out what had happened. The claimant concluded her email by asking for a Judge to consider her email as a matter of urgency as she had taken all the necessary steps to take her claim further against the respondent. The Tribunal has ascertained when preparing this reserved judgment that the claimant sent a second email to the Tribunal later that day in similar terms.

#### **The Tribunals email dated 14 June 2022**

53. The Tribunal ascertained when preparing this reserved judgment that the claimant's emails dated 9 June 2022 were referred to an Employment Judge who gave directions which were sent by an email dated 14 June 2022. In summary, the email stated that whilst the claimant's position was not entirely clear it appeared that claimant did not have a relevant ACAS EC Certificate at the time that she had presented her claim against the respondent and that the claim form against the respondent was therefore a nullity requiring the claimant to issue fresh proceedings against the respondent.

#### **The claimant's claim in case number 1402030/2022**

54. On 21 June 2022 the claimant emailed ACAS (and also the Bristol Employment Tribunals) stating that in accordance with "your advice" she had made a claim against the respondent and attached a copy of her claim form. The Tribunal understands the reference to advice to be a reference to the email from the Tribunal dated 14 June 2022.
55. On 21 June 2022 the claimant presented a third claim form to the Tribunals (case number 1402030/2022) (these proceedings). This claim form is at pages 46- 57 of the bundle. The claim form contains complaints of unfair dismissal / detriment/ discrimination because of pregnancy or maternity against the respondent citing the ACAS EC

Certificate R142861/21/77. The claimant states that she was employed by the respondent between 6 January 2020 and 12 March 2021. The claimant sets out at paragraph 8.2 of the claim form her complaints of unfavourable treatment and dismissal because of pregnancy/ maternity which appear to relate to the alleged actions of the claimant's former manager at the respondent, Mr Dan Green.

56. The claimant also gave (at paragraph 15 of the claim form) a brief explanation of the previous history of the case including her previous claim against Adecco / the respondent including that following the rejection by the Tribunal on 26 May 2021 of her claim against the respondent she had submitted the required EC certificate on 6 June 2021 and on 25 November 2021 (following the CMPH) and that she had reached an agreement with Adecco on 24 April 2022.

### **The respondent's response**

57. The respondent submitted a response to the proceedings in case number 1402030/2022 (which is at pages 60 – 72 of the bundle) in which the respondent defended the claims including on the grounds that the Tribunal did not have jurisdiction to entertain the claims as they were submitted over a year after the expiry of the relevant time limits/ the claimant was not an employee of the respondent. The respondent also responded to the factual allegations raised by the claimant in the claim form including the circumstances leading to the termination of the claimant's assignment with respondent/ the associated exchange of emails between the respondent and Adecco and Mr Green's involvement in the matter.

### **The case management hearing and associated order dated 1 February 2023.**

58. The matter was the subject of a CMPH and associated Order on 1 February 2023 ("the Order dated 1 February 2023") at which the matter was listed for this Preliminary Hearing to determine the preliminary issues relating to time limits and "employment status" as referred to previously above. The Order dated 1 February 2023 is at pages 73- 93 of the bundle.

### **Other matters**

59. Miss Taggart of the respondent confirmed in evidence that Mr Green remained in the employment of the respondent.
60. The claimant stated in her evidence to the Tribunal that she had not received any professional advice regarding her claims other than the assistance which she had received from time to time from ACAS. The respondent did not challenge this evidence. The Tribunal accepts the claimant's evidence on this matter.



## CLOSING SUBMISSIONS

61. The Tribunal has had regard to the submissions of the parties including the written submissions and accompanying legal authorities (as listed below) submitted by the respondent. The principal contentions of the parties are summarised as part of the Tribunal's Conclusions referred to below.

## THE LAW

62. The Tribunal has had regard in particular to the following statutory provisions:-

(1) The complaints of unfair dismissal and/or detriment because of pregnancy, childbirth or maternity – sections 47C, 48 (3), 99, 111(2) and 230 (1) and (2) of the Act.

(2) The complaints of discrimination because of pregnancy and maternity – sections 13, 18, 39, 41, 83 (2) and 123 of the 2010 Act.

63. The Tribunal has had regard, in particular, to the following authorities relied upon by the respondent:-

**BP Chemicals Ltd v (1) Gillick and (2) Roevin Management Services Ltd 1995 IRLR 128 EAT**  
**James v Greenwich LBC 2007 ICR 577 EAT and CA [2008] ICR 545**  
**Autoclenz Ltd v Belcher and others [2011] ICR 1157 SC**  
**British Coal Corporation v Keeble [1999] IRLR 336 EAT**  
**Robertson v Bexley Community Centre [2003] EWCA Civ576 CA**  
**Pathan v South London Islamic Centre UKEAT/0312/13/DM**

64. The Tribunal also drew the attention of the parties to the Judgment in **Adedeji v University Hospitals Birmingham NHS Trust [2021] EWCA Civ 23 CA** in which the Court of Appeal gave further guidance on the just and equitable extension of time limits in discrimination cases.

## THE CONCLUSIONS OF THE TRIBUNAL

65. As indicated previously above, it was agreed at the commencement of the hearing that the Tribunal would hear the oral evidence of the parties relevant to all of the preliminary issues before making any determination on any specific issue and has done so accordingly.

66. As further indicated above, the respondent accepts for the purposes of the claimant's complaints of pregnancy and maternity discrimination that the claimant was at the relevant time a contract worker for the purposes of section 41 of the 2010 Act.

## **THE CLAIMANT'S EMPLOYMENT STATUS**

67. The Tribunal has considered first the question of the claimant's employment status (which the Tribunal has considered without prejudice/ subject to the further jurisdictional issues relating to time limits).
68. The claimant contends that she was an employee / in the employment of the respondent for the purposes of her claims of (a) unfair dismissal / detriment because of pregnancy or maternity and (b) discrimination because of pregnancy and maternity.

### **The claims of detriment and unfair dismissal**

69. The Tribunal has considered first the "employee claims" pursuant to the Act namely: - (a) the claims of detriment pursuant to section 47 C of the Act and (b) the complaint of "automatic unfair dismissal" pursuant to section 99 of the Act.
70. In both cases it is necessary for the claimant to satisfy the Tribunal that she was at the time of any "detriment"/ dismissal" an employee of the respondent.
71. The relevant provisions of section 230 of the Act provide that :-
- (1) "In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.
  - (2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied and (if it is express) whether oral or in writing".
72. The Tribunal has reminded itself that when determining whether a contract of employment is in existence, there are three key questions namely: -
- (1) Whether the worker agreed to provide his/ her work and skill in return for remuneration?
  - (2) Whether the worker agreed expressly or impliedly to be subject to a sufficient degree of control for it to be an employment relationship.
  - (3) Whether the other provisions of the contract were consistent with it being a contract of service.
73. There must be an irreducible minimum of obligations on each side consisting of control, personal performance, and mutuality of obligation.
74. In cases involving agency workers, the key issue is whether the way in which the contract is performed is consistent with the agency

arrangement or whether there are any words or conduct which entitle the Tribunal to conclude that the agency arrangements do not dictate or adequately reflect how the work was actually being performed and the reality of the relationship is consistent with the implication of a contract of employment between the worker and the end user.

### **Submissions of the parties**

75. In summary, the claimant contended that although she was referred to as an agency worker, the agency (Adecco) was only an intermediary in the search for work and that she was in reality an employee of the respondent as she carried out their instructions and the respondent paid her salary (through the agency). The claimant also contended that as she had worked for the respondent for more than 12 weeks she was entitled as an agency worker to employee's pregnancy rights as stated on the GOV.UK website.
76. The respondent denied that the claimant was an employee of the respondent for the purposes of section 230 of the Act. The respondent relied on the express terms of the signed contract of employment between the claimant and Adecco and denied that there was any express and/or implied contract between the claimant and the respondent.
77. In summary, the respondent contended that in order to establish that she had employment status it was necessary for the claimant to show that there was an implied contract of employment with the respondent by reason of the way in which the contract was performed and which was only consistent with such an implied contract.
78. The respondent further contended that, on the facts, there was no such implied contract. The respondent relied in particular on the following matters namely that :- the claimant was employed and paid by Adecco (who processed the claimant's timesheets after they had been approved by the respondent), the claimant was required to notify Adecco if she was ill / absent from work and did so accordingly, and the manner in which the termination of the claimant's assignment was handled including that the claimant remained as an employee of Adecco after the termination of her assignment with the respondent came to an end.

### **THE CONCLUSIONS OF THE TRIBUNAL REGARDING THE CLAIMANT'S EMPLOYMENT STATUS**

79. Having given the matter careful consideration, the Tribunal is not satisfied that the claimant was an employee of the respondent for the purposes of section 230 of the Act.
80. When reaching this conclusion, the Tribunal has taken into account that the claimant worked for the respondent on a continuous basis for

over 12 months and that she worked under the day to day direction of the respondent. The Tribunal has however balanced against this that the claimant had a written contract of employment with Adecco (pages 94 – 96 and paragraph 20 above) which was signed by both parties. This contract contained terms and conditions which were consistent with an employment relationship between the parties including with regard to matters such as pay, working hours, annual leave, absence from work, disciplinary and grievance procedures and termination. Further, the contract contained detailed provisions governing the terms of assignment to clients which process was under the control of Adecco and also required the claimant to work exclusively for Adecco unless otherwise agreed.

81. Further, the Tribunal is satisfied that the day to day operation of the contract was consistent/ remained consistent with such provisions such as with regard to pay (the respondent paying the claimant's salary on a weekly basis following the submission of signed timesheets from the respondent to Adecco – paragraph 20 above), the notification of absence by the claimant to Adecco ( page 116 of the bundle) the handling by Adecco of the concerns raised by the respondent relating to the claimant's performance / associated termination of the claimant's assignment with respondent and the claimant's retention in employment by Adecco following the termination of the assignment to the respondent (pages 107 -129 and paragraph 22 above).
82. Moreover, there was no evidence before the Tribunal of any material change in circumstances from which it could be inferred that an implied contract had arisen between the respondent and the claimant which was inconsistent with/ superseded the express terms of the claimant's contract of employment with Adecco. The claimant relied on the enhanced rights and protections which she acquired by reason of her pregnancy. The Tribunal is however satisfied that any such rights/ protections are statutory rights which did not give rise to a contract of employment between the claimant and the respondent.
83. In all the circumstances, the Tribunal is not satisfied that the claimant was an employee of the respondent for the purposes of section 230 of the Act and her complaints of unfair dismissal pursuant to section 99 of the Act and of detriment pursuant to section 47 C of the Act are therefore dismissed.

#### **The claims of discrimination**

84. The Tribunal has gone on to consider the claimant's claims of discrimination because of pregnancy and maternity pursuant to sections 18, 39 and 41 of the 2010 Act.
85. As stated previously above, the respondent accepts that the claimant was a contract worker for the purposes of section 41 of the 2010 Act. Having had regard to the provisions of section 41 of the 2010 Act, the

Tribunal is also satisfied, on the facts, that the respondent was a “principal” for the purposes of section 41 (5) of the 2010 Act and that the claimant was a “contract worker” for the purposes of section of section 41(7) of the 2010 Act. The Tribunal is further satisfied that the alleged acts fall within the prohibited acts identified in section 41 of the 2010 Act. The Tribunal is therefore satisfied that (subject to any jurisdictional issues as to time) the claimant has the necessary status to pursue a complaint of discrimination as a contract worker pursuant to sections 18 (pregnancy and maternity) and section 41 of the 2010 Act.

86. The Tribunal has also considered whether the claimant is in addition/ in the alternative entitled to bring a complaint of discrimination because of pregnancy and maternity pursuant to sections 18 and 39 of the 2010 Act. Section 39 of the 2010 Act offers protection to “employees” and “applicants”.

87. In section 83 of the 2010 Act “Employment” is defined as follows:-

“83 (2) Employment means

(a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work” .....

88. The provisions of section 83 (2) of the 2010 Act are therefore on the face of it, wider than under section 230 of the Act. They still however require a contract to be in place between the party doing the work and the party for whom the work is done.

### **Submissions of the parties**

89. The claimant relied on her above-mentioned submissions.

90. The respondent relied on the above mentioned submissions and, in addition, on the authority of **BP Chemicals Ltd v Gillick** referred to above, in which it was held ( considering similar provisions in the predecessor Sex Discrimination Act) that there must be a contract in place between the party doing the work and the party for whom the work is done. The respondent also contended that it was clear from the judgment in **Gillick** that the protection provided for contract workers by way of section 41 of the 2010 Act meant that it was not necessary to give an extended construction to the definition of employment for the purposes of section 83 (2) of the 2010 Act.

91. Having given the matter careful consideration, the Tribunal is satisfied that, for the reasons previously explained in respect of the “employee/ detriment” claims above, and having regard to the authority of **Gillick**, there was no direct contractual relationship (including any contract personally to do work) between the claimant and the respondent as required for the purposes of section 83 (2) of the 2010 Act.

92. The Tribunal is therefore not satisfied that the claimant was “in employment within the meaning of section 83 (2) of the 2010 Act and this element of her claim is therefore also dismissed. The claimant is however entitled to pursue her discrimination claim pursuant to section 41 of the 2010 Act (subject to any jurisdictional issues relating to time).

## THE ISSUES RELATING TO TIME

93. The Tribunal has therefore gone on to consider the preliminary issues relating to time limits. The respondent contended that the claimant’s claims were presented outside the relevant time limits and that the Tribunal therefore does not have jurisdiction to determine such claims/ that it should not extend time.

94. For the reasons previously explained above in respect of the claimant’s “employment status”, the only remaining head of claim is the claimant’s claim for unlawful discrimination because of pregnancy and maternity in her capacity as a contract worker pursuant to section 41 of the 2010 Act.

95. The respondent contended that the Tribunal does not have jurisdiction to entertain this claim as it was presented outside the statutory time limit and it is not just and equitable to extend time. The claimant contended however, that there are good reasons for any delay namely, in respect of the handling of the claimant’s ACAS EC certificate and that the Tribunal should exercise its discretion to permit her claims to proceed as it is just and equitable to do so.

96. It is agreed between the parties that (a) the last act of alleged pregnancy / maternity discrimination occurred on 12 March 2021 (b) that the claimant’s EC certificate naming the respondent (R142861/21/77) was issued by ACAS on 4 June 2021 and (c) that the claimant’s claim in these proceedings (case number 1402030/2022) was not presented to the Tribunals by the claimant until 21 June 2022. The primary limitation period (as extended by the ACAS Conciliation process) expired on 4 July 2021 and the claimant’s claim form was therefore presented nearly one year “out of time”.

97. Section 123 of the 2010 Act provides so far as relevant that :-

- (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 further period as the employment tribunal thinks just and equitable.

(2) ....

(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 upon it”

98. The Tribunal has reminded itself of the guidance contained in the authorities referred to above (including **Adedeji**) including in particular that :-

- (1) Time limits are exercised strictly in employment law cases. When a Tribunal considers its discretion to consider a claim out of time on just and equitable grounds there is no presumption in favour of the exercise of such discretion. The Tribunal must be satisfied that it is just and equitable to extend time and the exercise of such discretion will be the exception rather than the rule.
- (2) The Tribunal must consider all relevant factors including in particular, the length and reasons for the delay and also the balance of prejudice between the parties of allowing or refusing to exercise its discretion to extend time.

#### **The claimant's submissions**

99. In summary, the claimant contended that Tribunal should exercise its discretion to extend time as she made repeated attempts, notwithstanding the difficulties which she experienced as a result of her limited understanding of the English language /Tribunal system/ lack of any legal/ professional assistance, to pursue her claim against the respondent which were not progressed by the Tribunal.

100. The claimant contended in particular, that following the rejection of her original claim against the respondent in case number 1401378.2021 she obtained and submitted within the relevant period for reconsideration (submitted to the Tribunals on 7 June 2021) an ACAS EC certificate naming the respondent (R142861/21/77) and should have been allowed to proceed with her claim against the respondent at that time. The claimant also contended that when she did not receive a response from the Tribunals to her email dated 7 June 2021 she tried again in August 2021 to bring the matter to the attention of the Tribunal by further correspondence/ presenting further proceedings (in case number 1402748.2021) with an explanation for her actions. The claimant further contended that she brought the matter to attention of the Tribunal again at the CMPH on 25 November 2021 and re- submitted her ACAS EC certificate as directed by the Tribunal later that day however, this was not actioned by the Tribunal. The claimant further contended that she made it clear to the Tribunals in May/June 2022 that she wished to proceed with her claims against the respondent and that when the matter remained unresolved, she presented the current proceedings. The claimant says that she did all

that she could to progress her claim against the respondent and that, in all the circumstances, she should be given an opportunity to pursue her claim of discrimination against the respondent.

### **The respondent's submissions**

101. In summary, the respondent's position is that the claimant's claim was not presented within the relevant statutory time limit or such further period as the Tribunal should deem to be just and equitable and that the balance of prejudice weighed firmly in favour of refusing any extension of time. The respondent contended that the claimant was at fault for not submitting a claim for nearly 12 months notwithstanding that she knew that she did not have a live claim. Further the respondent would be prejudiced by the delay as the allegations primarily related to things which were said and done to the claimant which would not be reflected in contemporary documents. Moreover, as there was no grievance process the respondent does not have the benefit of meeting notes recording accounts of the events. Further as the acts are alleged to have occurred over 2 years ago memories will have faded.

102. In its oral closing submissions, the respondent further contended that the claimant was an unsatisfactory witness including that even when making allowances for her accepted language difficulties her evidence was unreliable/ inconsistent. The respondent referred, by way of example to the claimant's evidence relating to whether she contacted the Tribunal by email or telephone between June and August 2021, her refusal to accept responsibility for her own mistakes (including the claimant's refusal to accept that she had issued the second set of proceedings in case number 1402748.2021 against Adecco rather than the respondent) and the claimant's failure to give a satisfactory explanation for subsequent delays/ failure to respond to correspondence between August – November 2021 and December 2021 – April 2022.

### **The conclusions of the Tribunal regarding any extension of time**

103. The Tribunal has weighed in particular the matters referred to below when determining whether to exercise its discretion to extend time on just and equitable grounds.

### **The length of the delay**

104. The length of the delay – There has been a lengthy delay in this case. The last act complained of (the termination of the claimant's assignment with the respondent) occurred on 12 March 2021 and the claimant's claim in these proceedings was not presented until 21 June 2022, over 12 months later.



**The reasons for the delay in commencing proceedings in case number 1402030.2022.**

105. The reasons for the delay- There are several reasons for the delay in the commencement of these proceedings. Further, there are periods of delay for which the claimant has not been able to provide a satisfactory explanation such as in respect of the period between December 2021 and April 2022 during which time the claimant failed to respond to the correspondence from the Tribunal asking her to confirm whether the second of proceedings (in case number 1402748.2021) were a duplicate of the original proceedings (in case number 1401378.2021) (paragraphs 42-44 above). Moreover, the claimant has failed to acknowledge that her own errors such as mistakenly naming Adecco as both first and second respondents and omitting the name of the respondent in the second set of proceedings (case number 1402748.2021) which she presented in August 2021 (in order to “engage the attention” of the Tribunal) paragraphs 32 – 33 above) caused confusion which exacerbated the delays in this case.
106. However, viewed objectively, the Tribunal is satisfied that the overarching reason for the claimant’s delay in pursuing her claim against the respondent between June 2021 – June 2022 was the difficulties which the claimant experienced, following the rejection of the claimant’s original claim against the respondent in case number 1401378.2021 on 26 May 2021 (for failing to provide a valid EC number for the respondent), in subsequently getting the claim against the respondent accepted by the Tribunal. Moreover, the position was complicated further by the claimant’s settlement of her claim against Adecco in case number 1401378.2021 in April/May 2022 and her lack of understanding of the consequences of such settlement on the progression of her claim against the respondent.
107. Following the receipt of the letter of rejection from the Tribunal on 26 May 2021, the claimant promptly obtained a valid ACAS EC certificate naming the respondent in case number 1401378.2021 (by 4 June 2021). The claimant also sent the ACAS EC certificate to the Tribunals promptly on 7 June 2021 for reconsideration which was done both within the requisite time period for reconsideration and statutory time limits (paragraphs 26- 28 above). The ACAS EC certificate, which would have permitted the original proceedings against the respondent to have proceeded in case number 1401378.2021, was not however received/ actioned by the Tribunal at that time causing subsequent confusion and delay. Further, the true position was still not recognised following the claimant’s subsequent correspondence in early August 2021/ the submission of the second set of proceedings in case number 1402748.2021 (also in early August 2021) ( paragraphs 30,32 and 34 above) in which the claimant explained the background to the matter.

108. Further, the ACAS EC certificate was not subsequently actioned by the Tribunal, including after the CMPH on 25 (not as stated 22) November 2021 (at which the matter was raised again by the claimant), notwithstanding that (a) the claimant duly submitted a further copy of the ACAS EC certificate to the Tribunal (the same day) as directed by the Tribunal (paragraphs 36-40 ) and (b) that the proceedings in case number 1401378.2021 were listed for a further CMPH (initially on 2 May 2022 subsequently postponed to 6 June 2022) at the CMPH on 25 November 2021. This was done in the expectation that the claimant would provide a copy of the relevant ACAS EC certificate and that the respondent would then become part of the proceedings in case number 1401378.2021 and that further directions would therefore be required for the future conduct of the combined cases.
109. The position was complicated further by the claimant's settlement of her claim against Adecco in May 2022 and her mistaken belief that she was able to continue with her claim against the respondent in case number 1401378.2021 as evidenced by her attempted attendance at the (cancelled) CMPH hearing on 6 June 2022 and her subsequent emails to the Tribunal dated 9 June 2022 and associated correspondence (paragraphs 51-52 above).
110. The respondent is critical of the claimant. The respondent describes the claimant as an unsatisfactory witness as identified above.
111. Having given the matter careful consideration, the Tribunal accepts that there have been shortcomings in the way in which the claimant has conducted parts of the proceedings against the respondent (as referred to at paragraph 105 above) which have contributed to the confusion and delay.
112. The Tribunal is however, satisfied that, viewed objectively overall, notwithstanding the claimant's apparent difficulties with the English language, limited knowledge of the Tribunal system and absence of professional representation, she made repeated ( albeit unsuccessful) attempts between June 2021 and June 2022 to pursue her claims against the respondent / draw the problems relating to the acceptance of her ACAS EC Certificate/claim against the respondent to the attention of the Tribunals including in June, August and November 2021 (paragraphs 27, 28, and 30 - 34 above) and again in April – June 2022 (paragraphs 45 - 52 and 54 – 56 above . The claimant's concerns were not however, recognised/ addressed as the relevant pieces of the jigsaw relating to the case and in particular, the effect of the submission of the ACAS EC certificate in June/ November 2021 naming the respondent in case number 1401378.2021 were not fitted together to give the overall picture.

113. The Tribunal has gone on to consider the question of prejudice. The claimant would suffer prejudice if the Tribunal refused to exercise its discretion to extend time as she would be unable to pursue her claim of discrimination, pursuant to section 41 of the 2010 Act, against the respondent.
114. The respondent would however, also be potentially prejudiced if the Tribunal acceded to the claimant's request to extend time as it would be required to defend proceedings which were brought over twelve months after the alleged acts occurred (last act March 2021) and nearly a year after the expiry of the statutory time limits (4 July 2021) and for which delay it was not in any way responsible.
115. Having given the matter careful consideration, the Tribunal is satisfied that, notwithstanding the lengthy delay, the balance of prejudice in this case weighs in favour of granting the claimant an extension of time to pursue her claim which she would not otherwise be entitled to advance.
116. When reaching this conclusion, the Tribunal has given careful consideration to the respondent's concerns regarding the cogency of the evidence and its ability to defend the things which were alleged to have been "said and done" to the claimant after such a lengthy delay.
117. The Tribunal has however balanced against such concerns that the respondent's central witness in this case is the respondent's manager, Mr D Green, whom the respondent has confirmed remains in its employment. Further, the allegations in this case principally relate to the reasons for the termination of the claimant's assignment with the respondent / the events leading up to such termination and in respect of which a number of contemporary documents have been included in the bundle for the purposes of the Preliminary Hearing (at pages 107 – 121 of the bundle). These documents include exchanges between the parties / Adecco in which the claimant intimates her concerns relating to her alleged treatment / the respondent's explains its concerns relating to the claimant's performance/ associated matter. Further, the respondent was put on notice by Adecco in June 2021 (paragraph 29 above) that the claimant was seeking to pursue a complaint of discrimination against it.
118. In all the circumstances, the Tribunal is not satisfied, notwithstanding the passage of time, that the cogency of the evidence is likely to be seriously adversely affected in this case.
119. Finally, the Tribunal has stepped back and weighed up all of the above matters.
120. The Tribunal has reminded itself that when considering whether to exercise its discretion to permit an out of time claim to proceed on just and equitable grounds not only is there no presumption in favour

of such an extension but also that it should be the exception rather than the rule.

121. Having carefully weighed up all of the above, the Tribunal is however satisfied for the reasons explained in respect of each of the headings identified above, that it is appropriate to exercise its discretion to allow the claimant's claim pursuant to sections 18 and 41 of the 2010 Act to proceed as it has been presented, in all the circumstances, within such period as the Tribunal considers just and equitable.
122. The claimant's complaint of discrimination by the respondent of her as a contract worker because of pregnancy and maternity pursuant to sections 18 and 41 of the 2010 Act is therefore allowed to proceed and will be subject to directions for the future conduct of the case as contained in an associated case management Order to be provided under separate cover.

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Employment Judge Goraj  
Date: 22 June 2023

Judgment sent to the parties on 07 June 2023

For the Tribunal Office