



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss H Patel

**Respondent:** Lloyds Bank Plc

**Heard at:** London South (by video)

**On:** 4 July 2023

**Before:** Employment Judge G Cawthray

## **Representation**

**Claimant:** In person – not legally qualified

**Respondent:** Ms Whittington, Counsel

# RESERVED JUDGMENT

It was not reasonably practicable for the claim to have been presented within the time limit and it was presented within a further reasonable period.

# REASONS

## **Introduction**

1. The public preliminary hearing today had been scheduled by the Tribunal of its own volition to determine whether or not the claim should be struck out on the basis of it being out of time.

## **Issues**

2. At the outset of the hearing I clarified with the parties that the issues for determination were:
  - a. Was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

- b. If it was not reasonably practicable for the claim to be made within the time limit, was it made within a reasonable period?

### **Evidence/Procedure**

3. A Notice of Hearing had been sent to the parties on 6 February 2023.
4. I had been provided with a Bundle of 82 pages, which largely contained pleadings and letters from the Tribunal to the parties.
5. There had been no directions made for the provision of any witness statement or exchange of any documentation.
6. At the outset of the hearing Ms. Whittington explained that she had some gaps in knowledge about what had taken place as it appeared there may have been correspondence between the Claimant and Tribunal that the Respondent had not been copied into.
7. I explained that I had sought to ascertain the timeline of events by review of the Tribunal file papers available to me. I read out my note of the chronological events to the parties, but noted this may not be complete. The key timeline events as ascertained by my review of the Tribunal file are included within my finding of facts below.
8. I asked both parties if they felt comfortable to continue with the hearing today, in view of the fact that the Claimant had not provided a written witness statement and that some of the timeline had not been clear to the Respondent.
9. The Claimant explained that she understood the issues to be determined today, that she was able and willing to explain her position and that she was happy to continue
10. Ms. Whittington was very clear that she wished to continue, had some questions for the Claimant and was ready to give submissions.
11. The Claimant affirmed and gave oral evidence. She was then asked questions by Ms. Whittington and myself.
12. During the course of the hearing the Claimant referred to an email that I had not been provided with. The Claimant sent a copy to myself and Ms. Whittington.
13. Both Ms. Whittington and the Claimant gave oral submissions.

### **Facts**

14. There is some dispute on the effective date of termination and whether it was 25 or 27 May 2022.
15. The Claimant engaged in ACAS Early Conciliation between 11 July – 16 August 2022. The deadline for submission of the ET1 would be 29 September 2022 (with an end date of 25 May 2022) or 1 October 2022

(with an end date of 27 May 2022) as extended by ACAS Early Conciliation based on the respective effective dates of termination. The Respondent accepted that for the purpose of this hearing they were not taking dispute that the last date for submission of the claim was 1 October 2022.

16. The ACAS Early Conciliation certificate contains the Claimant's address.
17. The Claimant submitted her ET1 on 10 September 2022. The claim is for unfair dismissal.
18. The Claimant completed the ET1 online, she used the interactive form that meant she completed the form in sections online. She did not download a copy of the ET1 and complete it as a PDF.
19. The Claimant did not provide her address within the ET1. At the boxes for the Claimant's address it states n/a other than the postcode, which includes the postcode SW55 9QT.
20. The Claimant's oral evidence was clear and consistent. She explained that when completing the online form there was information within the online ET1 form which stated that if someone was not able to provide an address or lived abroad that a default postcode could be used. The Claimant explained the postcode contained within her ET1 is the default postcode provided, she did not make the postcode up.
21. The Claimant lived in a shared house and had concerns about Tribunal correspondence being sent via the post to her house. In the past a house mate had opened the Claimant's post, and she had addressed this directly with the person at the time and had not reported the matter.
22. In view of the information in the form, the Claimant chose not to input her address, and the ET1 contains what the Claimant calls the default postcode. The Claimant ticked the box indicating that she wished to be communicated with by email.
23. During the course of the hearing Ms. Whittington shared a screen of a current form ET1 that she accessed from the government website. It was not clear if Ms. Whittington had downloaded the form or was sharing the screen of an interactive online form.
24. The ET1 on the screen, as does the Claimant's ET1, stated at the top of the form "You must complete all questions marked with an "\*"". There was no information on the screen about non-completion of the address section. The Claimant accepted that is what was stated on the form shown to her by Ms. Whittington, but added that she had completed the form online, some time ago, and repeated the information she saw when completing the form
25. I had no evidence before me, other than the Claimant's oral evidence, about the forms as they were in September 2022 and when any updates or changes may have been made to any online forms.

26. Form T420, which is the Guidance for completing an ET1, is contained on the government website and does not make any reference to the non-provision of an address.
27. The ET1 form was reviewed by administrative staff at Fox Court, an administrative building separate to London South Tribunal.
28. At 12:54 on 14 September 2022, Mrs. Ambreen Ali of Fox Court Employment Tribunal Team emailed the Claimant as set out below:

*“Dear Miss Patel,*

*This email is in relation to your Employment Tribunal Claim submitted on 10/09/2022, which we acknowledge receipt.*

*We are in the middle of processing your claim and have noticed that you have not supplied your new postal address. Your postcode on your claim form is SW55 9QT. In order for us to send you correspondence, please supply us your full postal address.*

*I look forward to your reply by 21/09/2022.”*

29. The Claimant replied at 23:23 on 14 September 2022 stating:

*Good Evening,*

*Please can you let me know what I will receive in the post and if it will be alot of post. The only reason I ask I live in a shared house, and would really prefer email as a form of communication. Is email a possibility or not.*

*Kindest Regards.*

*Hinal.*

30. Mrs. Ali replied to the Claimant at 09:15 on 15 September 2022 stating:

*Dear Miss Patel,*

*Thank you for replying back. Email is certainly a possibility and we will send all correspondence to you via email as per your preference. Once a claim is accepted we send out acceptance letter to the claimant and we also write to the Respondent inviting them to respond to the claim. You will receive both these letters via email. Please also note that once your claim is accepted, your file will be sent to London South Employment Tribunal in Croydon who will be handling your claim.*

31. Based on the emails from Mrs Ali, the Claimant considered there was no difficulty with her ET1 and that she would be sent correspondence via email.

32. The claim was accepted by the administrative staff at Fox Court.
33. On 23 September 2022 the Claimant was informed by way of standard letter that her claim had been accepted. On the same date the claim was served on the Respondent.
34. The Respondent submitted its response on 21 October 2022. The response did not raise any concern or make any comment about the lack of an address within the ET1 and contained a substantive response.
35. On 25 October 2022 an administrative member of staff based at the London South Tribunal noticed that no address had been included. They emailed the Claimant at 12:53 on 25 October 2022 as below:

*Hello Ms Patel*

*Please provide your full postal address in order for your claim to proceed.*

*Please also confirm when you moved into your new address and update ACAS of your new address.*

*Please respond ASAP.*

36. The Claimant replied at 23:35 on 25 October 2022 stating:

*Hello,*

*As I mentioned to one of your colleagues before – Ali Ambreen, due to being in a shared household and not really having secure access to my post, I did not provide my postal address. She did say “Email is certainly a possibility and we will send all correspondence to you via email as your preference”. So please can you tell me is it ok for you to still use my email as main form of communication. Also, I am going to be away from the country mid next month for about 2-3 months due to a personal matter, however I would still like to proceed with my case as normal, so please can I ask, how will this work, as email will be my best form of communication overseas. ACAS have my address and if you can check with them for me to pass all security checks and to proceed. Please let me know if this is ok.*

37. At 08:55 on 26 October 2022 Ms Charles emailed the Claimant:

*Dear Ms Patel*

*Thank you for your response.*

*Yes, we can send all correspondence via email, however your claim is not valid without a postal address on the ET1 form.*

*Please confirm your full postal address and I will refer your file to a Judge for a decision on your claim.*

38. On 28 October 2022 at 20:17 the Claimant provided her full address, which is the same as set out on the ACAS Early Conciliation certificate. In the email the Claimant repeats her request for all correspondence to be sent via email.

39. On 31 October 2022 Ms. Charles emailed the Claimant at 12: 44 stating:

*Dear Ms Patel*

*Thank you for confirming your address.*

*Our records show that your preferred method of contact is via email.*

*The Tribunal will always email any correspondence if an email address is provided.*

*The ET3 will be actioned this week and your claim referred to a Judge regarding your address.*

40. On 2 November 2022 Employment Judge Wright undertook a rule 26 referral and, noting an address had not been provided, directed the claim to be rejected.

41. On 2 December 2022 the Tribunal emailed the Claimant notifying her that her claim had been rejected due to there being no valid address on the claim form.

42. On 5 December 2022 the Claimant requested the rejection be reconsidered.

43. Employment Judge Curtis undertook a reconsideration and on 18 January 2023 and determined, upon reconsideration, to accept the claim form with effect from 28 October 2022, the date the Claimant provided her address to the Tribunal. The letter notifying the Claimant of the outcome of the reconsideration was sent to the Claimant on 27 January 2023.

44. For completeness, I found that there was no physical impediment, such as ill-health, which prevented or delayed the Claimant's submitting her ET1 or providing her address.

## **Law**

45. Rules 8 and 10 of the Employment Tribunal (Constitution & Rules of Procedure) Regulation 2013 state as below:

**Presenting the claim**

8.—(1) A claim shall be started by presenting a completed claim form (using a prescribed form) in accordance with any practice direction made under regulation 11 which supplements this rule.

(2) A claim may be presented in England and Wales if—

(a) the respondent, or one of the respondents, resides or carries on business in England and Wales;

(b) one or more of the acts or omissions complained of took place in England and Wales;

(c) the claim relates to a contract under which the work is or has been performed partly in England and Wales; or

(d) the Tribunal has jurisdiction to determine the claim by virtue of a connection with Great Britain and the connection in question is at least partly a connection with England and Wales.

(3) A claim may be presented in Scotland if—

(a) the respondent, or one of the respondents, resides or carries on business in Scotland;

(b) one or more of the acts or omissions complained of took place in Scotland;

(c) the claim relates to a contract under which the work is or has been performed partly in Scotland; or

(d) the Tribunal has jurisdiction to determine the claim by virtue of a connection with Great Britain and the connection in question is at least partly a connection with Scotland.

**Rejection: form not used or failure to supply minimum information**

10.—(1) The Tribunal shall reject a claim if—

(a) it is not made on a prescribed form;

(b) it does not contain all of the following information—

(i) each claimant's name;

(ii) each claimant's address;

(iii) each respondent's name;

(iv) each respondent's address;

(c) it does not contain one of the following—

(i) an early conciliation number;

- (ii) confirmation that the claim does not institute any relevant proceedings; or*
  - (iii) confirmation that one of the early conciliation exemptions applies.*
- (2) The form shall be returned to the claimant with a notice of rejection explaining why it has been rejected. The notice shall contain information about how to apply for a reconsideration of the rejection.*

46. Section 111(2) of the Employment Rights Act 1996 states:

**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.*

47. It is well established that time limits should be adhered to strictly (relevant case being *Robertson v Bexley Community Centre 2003 EWCA CIV 576*.)

48. The test for extending time under section 111(2) of the Employment Rights Act 1996 has two limbs to it, both of which must be satisfied before a Tribunal will extend time.

49. Firstly, the Claimant must satisfy the Tribunal that it was not reasonably practicable for the complaint to be presented before the end of the 3 month primary time limit.

50. If the Claimant clears that first hurdle, she must also show that the time which elapsed after the expiry of the 3 month time limit before the claim was in fact presented was itself a 'reasonable' period.

51. The burden of proof is upon the Claimant to establish that it was not reasonably practicable for her to submit her claim within the extended time limit. As set out in *Porter v Bandridge Ltd 1978 ICR 943 CA* “[there is] a duty upon him to show precisely why it was that he did not present his complaint”.



52. What is reasonably practicable is a question of fact - "*The test is empirical and involves no legal concept*" (Wall's Meat Co Ltd v Khan 1979 ICR 52, CA) Shaw LJ. 16. It is not a question of reasonableness but whether it was impracticable to present a claim in time (*Trusthouse Forte (UK) Ltd v Halstead EAT 213/86, EAT*).
53. In *Adams v British Telecommunications plc 2017 ICR EAT* the Employment Appeal Tribunal considered an appeal involving presentation of a second claim. The EAT confirmed that the focus in such a situation must be on the second claim, and that the fact that a claimant was able to present an ET1 within time does not preclude the discretion being exercised. In that case, A had presented her unfair dismissal claim the day before the expiry of the time limit but it was rejected and returned to her three days later because the early conciliation number on the ET1 was inaccurate. An employment judge had ruled that the tribunal had no jurisdiction to hear the claim because the 'not reasonably practicable' discretion was not engaged. The EAT allowed the appeal. Mrs Justice Simler, President of the EAT, held that the judge had been right to conclude that she had no power to accept the inaccurate ET1, but that the employment judge had erred in her consideration of whether it was reasonably practicable for the claim to have been presented in time. She should have taken into account the fact that the Claimant had made a genuine mistake which led her to believe that she had correctly presented her claim. The need to include an accurate EC number, and the fact that a simple slip would render the ET1 defective in its entirety, would not have been obvious to the Claimant. The EAT was satisfied, weighing these factors against the fact that the Claimant had left it late to present her claim in the first place, that the Claimant should have benefited from the tribunal's discretion to accept the late claim.
54. Even if the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within the 3 month time limit, if the period of time which elapsed after the expiry of the time limit was longer than was 'reasonable' in the circumstances of the case, no extension of time will be granted.
55. In considering whether a claim was submitted within a further reasonable time means a Tribunal must consider all the circumstances of the particular case, including what the claimant did; what he or she knew, or reasonably ought to have known, about time limits; and why it was that the further delay occurred.

## **Conclusions**

56. I have set out below my conclusions, and it must be noted that I have only been able to reach my conclusions by applying the law to the facts as I have found them based on the evidence available to me. It is not permissible for a Tribunal to undertake a wider fact finding enquiry outside what is readily known and presented to it.
57. It is important to acknowledge in this claim that the Claimant properly engaged with ACAS for the purposes of Early Conciliation, and indeed

provided ACAS with her address. She submitted a claim using the online submission method approximately 20 days in advance of the deadline.

58. I do not accept that on 14 September 2022, following the email from Mrs Ali, that she was aware that not inputting her address into the claim form could result in difficulties in relation to her claim continuing. There was no clear information provided by Mrs Ali about the potential consequences of non-provision of her address.
59. The Claimant believed, as of 15 September 2022, that the Tribunal would correspond with her via email and that her claim was progressing. I consider that belief, based on her oral evidence and the contemporaneous emails, to be a reasonable belief.
60. Indeed, the claim was accepted. The Claimant was told the claim was accepted on 23 September 2022. The claim was served on the Respondent and a response was submitted on 21 October 2022. The Respondent did not raise any concerns about the lack of an address and provided a detailed response.
61. There was nothing to alert the Claimant to the fact there may have been a problem until Ms Charles emailed the Claimant on 25 October 2022. It was only at that point that I consider the Claimant to have specifically become aware of the difficulties with the fact she had not put her address into the claim form. The Claimant acted promptly and emailed the Tribunal her address on 28 October 2022.
62. The Claimant provided a clear rationale for not inputting her address into the ET1, and this was influenced by her concerns about receiving postal communications and the information in the form.
63. I consider that the Claimant would have provided her address in close proximity to 14 or 15 September 2022, before the deadline for submitting the claim expired, if the email correspondence from Mrs. Ali had been clearer, and explained that non provision may have impacted the ability for her claim to continue.
64. I note the Respondent's submissions that they consider it very unlikely that the online form gave any guidance regarding non-provision of the address. As explained, I am only able to reach my decision based on information readily known and presented. There was no evidence presented, other than that given orally by the Claimant, which I found to be clear and consistent. There was no evidence of the online form that was in place at the time, and no evidence in regards to any possible updates.
65. Also, it strikes me that it would seem an odd thing for the Claimant to withhold her address and in put a random postcode, particularly in view of the fact she had engaged with ACAS and was seeking to comply with the process.
66. On first glance, it seems that one could easily reach a conclusion that it was reasonably practicable for the Claimant to present a properly completed ET1 in time when considering the Claimant had presented a claim form in good time.

67. However, I have had careful regard to the principles set out in the *Adams* case in considering all of the facts and whether or not it was reasonably practicable for the Claimant in this case to present the claim on time.
68. The Respondent submitted that the case of *Adams* was distinguishable from the present case, submitting that there had been a genuine error on the Claimant's part in that case relating to an ACAS Early Conciliation number, and that in the present case the Claimant had made a deliberate decision to not provide her address, and that the decision was in non-compliance with the Employment Tribunal (Constitution & Rules of Procedure) Regulations.
69. I consider that that Claimant made a choice not include her full address, but did so for a sound rationale based upon her belief at the time. She was not aware of the potential adverse consequences. The impediment in this case was that the Claimant did not know, in view of the information provided to her, that withholding her address and using a default address would result in her claim being rejected.
70. I considered Ms. Whittington's submission that it matters not that the Claimant provided her address as soon as she was told she must provide it in order for her claim to continue as that would mean any Claimant could point to mere ignorance to defeat the time limits.
71. I do not accept such a submission in view of the facts of this particular case. The Claimant took all the proper steps and engaged in the process. On the evidence available, this is not a case of ignorance of the need to provide an address that is akin to ignorance of time limits more generally.
72. In considering the entire factual scenario, I have concluded that it was not reasonably practicable for the Claimant to present her second claim on time. The second claim in this sense being the provision of her address on 28 October 2022.
73. As I have concluded that it was not reasonably practicable for the Claimant to present her claim in time, the next question for determination was whether or not the Claimant presented the second claim in a further reasonable period.
74. In this case, the date of rectification, i.e. the second claim, was ruled by Employment Judge Curtis to be 28 October 2022, the date the Claimant provided the Tribunal with her address. This was just three days after she became aware that an address was required for her to continue with her claim. I consider that she engaged sensibly with the Tribunal via correspondence in this period and submitted her second claim within a reasonable period.
75. Accordingly, I conclude that it was not reasonably practicable for the claim to have been presented within the time limit and it was presented within a further reasonable period.

76. The Claimant's claim of unfair dismissal will continue and separate case management orders will be sent to the parties.

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Employment Judge G Cawthray

Date 7 July 2023