



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Minto  
**Respondent:** HSBC Group Management Services Limited  
**Heard at:** East London Hearing Centre (in public)  
**On:** 25 January 2024  
**Before:** Employment Judge Gordon Walker (sitting alone)

## **Representation**

Claimant: represented himself  
Respondent: Mr S Way, counsel

**JUDGMENT** having been sent to the parties on 31 January 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## **Introduction**

1. By claim form presented on 18 July 2023 the claimant brought claims against the respondent of unfair dismissal and disability discrimination.
2. There was a private preliminary hearing on 13 November 2023. The issues in the claim were clarified. The complaints were about the claimant's dismissal of 30 September 2022 and the events preceding that dismissal (from May 2022). All claims were potentially presented outside the statutory time limits.
3. This public preliminary hearing was listed to determine whether the claimant had brought his claims within the required statutory time limits.
4. The claimant's complaint of unfair dismissal was struck out by judgment dated 2 January 2024.

## **Claims and issues**

5. The issue for the public preliminary hearing was whether the claimant presented his disability discrimination claims (direct discrimination and

harassment) within the statutory time limit at section 123(1) Equality Act 2010 (“EA”). This included the issue whether the claims were presented within a period that the Tribunal considers just and equitable (section 123(1)(b) EA).

**Procedure, documents and evidence heard**

6. The Tribunal had a file of documents (98 pages) and heard oral evidence under oath from the claimant. The claimant did not produce a written witness statement, but he produced a written document at pages 78-83 of the file of documents, which served as a witness statement. The parties made oral submissions.
7. Adjustments were made to accommodate the claimant’s OCD, anxiety and ADHD. An initial break was given at the outset of the hearing as the claimant felt anxious. The claimant said he would notify the Tribunal if he needed further breaks. The claimant gave evidence from where he was sitting, rather than moving to the witness table. He was permitted to use his notes as an aide memoire when giving his evidence.

**Findings of fact**

8. The Tribunal took all evidence into account. Findings were only made on matters relevant to the issues to be determined at the public preliminary hearing.
9. The claimant was engaged to work for the respondent pursuant to a contract with Tapfin (which is part of the Manpower group). The claimant’s work for the respondent commenced in March 2022, probably on 7 March 2022.
10. The claimant’s work for the respondent ended on 30 September 2022.
11. The claimant was engaged to work in recruitment for early careers. The claimant said his job title was early careers attraction lead. The respondent said it was global talent attraction and recruitment marketing lead, early careers.
12. The claimant had two line managers. Ms K Lim Joon, global head of talent attraction and recruitment marketing (the functional manager) and Mr G McGowan group head of emerging talent (the entity manger).
13. On 5 September 2022 the claimant lodged a grievance. The outcome of which was communicated to the claimant by Manpower on either the 18 or 19 January 2023 (the earlier date is the respondent’s date, and latter date is the claimant’s).
14. The claimant explained in oral evidence that in February 2023 he spoke about his potential claims to a friend who is an employment lawyer and that they informed him of the time limits for presenting an employment tribunal claim. They also informed him of his right to make a data subject access request (DSAR).

15. Before February 2023, the claimant was not aware of the time limits for bringing an employment tribunal claim.
16. After the claimant's conversation with his friend, he knew that there were time limits, but he did not know how those time limits operated or were calculated. He did not do any research about the time limits. The claimant accepted under cross examination that, if had researched the issue, he would have discovered what the time limits were and how they were operated and calculated. The claimant was right to make that concession. Information about the employment tribunal time limits is readily available and accessible on the internet.
17. The claimant's oral evidence was that he decided not to research the route of putting in an employment tribunal claim, but to research the DSAR route instead. He explained that his preference was to avoid litigation which he viewed as a last resort. He wanted to obtain and collate evidence so that he could present this to the respondent, to support his case, in the hope of achieving resolution without the need for litigation. He did not think that he needed to put in a DSAR first as a necessary step before putting in an employment tribunal claim. It was his preference to do so.
18. The claimant did not realise that by putting in the DSAR, and delaying presenting his employment tribunal claim, this could impact on his ability to make an employment tribunal claim, by making it more out of time. If the claimant had researched the point online (i.e. the time limits) he would have been aware of this.
19. The claimant submitted his DSAR on 26 February 2023 and received the bulk of the documents on 23 May 2023. He received a small amount of further disclosure on 8 June 2023. On 20 June 2023, the respondent informed the claimant that it would not communicate further with him on the matter.
20. The claimant's oral evidence was that he then decided to present an employment tribunal claim. He researched how to get a lawyer on the internet and discovered that he needed to contact ACAS first. The claimant contacted ACAS on 16 June 2023, and he was told by them that he was out of time to present his claim. They advised him that it was nevertheless worth proceeding.
21. The claimant did not realise that it was still important to act promptly even though he was out of time. He did not research this issue or take advice on it. If he had done so, he would have been made aware of this.
22. The ACAS early conciliation process commenced on 16 June 2023 and completed on 3 July 2023. Fifteen days later, the claimant presented his claim.
23. Other things were going on in claimant's life at this time. He is the main breadwinner and there was pressure on him to obtain new employment. He made a large number of job applications at that time. He secured new

employment on a 6-month contract through a friend which started on 21 February 2023.

24. I do not make findings of fact about whether the claimant has a disability. No documentary medical evidence produced. But, on the basis of the oral evidence provided by the claimant, I accept, for the purposes of this hearing, what I was told under oath by the claimant about his health, which is set out in the two paragraphs below.
25. The claimant has had OCD since he was 10 years old. He was on medication for his OCD in his 20s but stopped this due to the side effects. His OCD deteriorated whilst working for the respondent so that he needed to start taking medication again. In March or April 2022 he started taking Prozac. He had six weeks of bad side effects, he then noticed positive effects. But he had feedback from those close to him that he was being “intense”, and it was affecting his behaviour. He contacted his GP and was told that he was probably taking too high a dose. He therefore weaned himself off the medication. This was probably from September to the end of 2022. By February 2023 he was off his medication, and he was in a state of euphoria given that he had recovered from the most severe effects of OCD.
26. The claimant can function with his OCD. At the material time, he could apply for jobs and put in a grievance and DSAR. He said that his OCD did not affect his efficiency at work or require him to take sick leave. He said that it did not affect his ability to put in his employment tribunal claim. However, he said, and I accept, that it has an horrendous impact on him day to day and makes life very difficult for him.
27. The claimant’s claims are about his dismissal and the alleged treatment of Ms Lim Joon from May 2022 onwards. That alleged treatment of Ms Lim Joon is that she unreasonably criticised the claimant’s work on projects and rolled her eyes at the claimant during meetings. Ms Lim Joon left the respondent’s employment in September 2023.

#### Legal principles

28. Section 123(1) EA states:

- (1) *...Proceedings on a complaint within section 120 may not be brought after the end of:*
  - (a) *the period of 3 months starting with the date of the act to which the complaint relates,*  
*or*
  - (b) *such other period as the employment tribunal thinks just and equitable. ...*

29. Section 140B EA states:

**140B Extension of time limits to facilitate conciliation before institution of proceedings**

- (1) *This section applies where a time limit is set by section 123(1)(a) or 129(3) or (4).*
- (2) *In this section—*

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If the time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) The power conferred on the employment tribunal by subsection (1)(b) of section 123 to extend the time limit set by subsection (1)(a) of that section is exercisable in relation to that time limit as extended by this section.

30. In ***Jones v The Secretary of State for Health and Social Care*** [2024] EAT 2 at paragraphs 30-37, HHJ Tayler reminded tribunals that they have a wide discretion on this issue, and there is no principle of law which dictates how generously or sparingly the power should be exercised.
31. In ***Abertawe Bro Morgannwg University Local Health Board v Morgan*** [2018] ICR 194 at paragraphs 17-19 and 25, Leggatt LJ said that tribunals have the widest possible discretion. Tribunals are not required to go through a checklist of factors. The length of and reasons for delay, and whether the delay has prejudiced the respondent, are almost always relevant factors to consider. The tribunal does not need to be satisfied that there was a good reason, or any explanation, for the delay.
32. In ***Adedeji v University Hospitals Birmingham NHS Foundation*** [2021] EWCA Civ 23, the Court of Appeal repeated a caution against tribunals relying on the checklist of factors found in s 33 of the Limitation Act 1980 and said at paragraph 37 that '*The best approach for a tribunal in considering the exercise of the discretion under s 123 (1) (b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) "the length of, and the reasons for, the delay"*'.

### Conclusions

33. The claimant's engagement with the respondent ended on 30 September 2022. The claimant did not contact ACAS before the primary limitation period of 29 December 2022. There is no extension of time pursuant to section 140B EA. The statutory time limits at section 123(1)(a) EA required the claimant to present any claim about the ending of his engagement by 29 December 2022.
34. The claimant presented his claim on 18 July 2023, nearly seven months late. This is a considerable delay in the context of the length of the primary limitation period.

35. I considered the reason for the delay. The Tribunal does not have to be satisfied that there is any, or a good, reason for the delay, in order to conclude that the claim was presented within a just and equitable period within the meaning of section 123(1)(b) EA.
36. The reasons for the delay were as follows:
- a. The first period was until the end of January 2023. The reason the claimant did not put in his claim was because he did not know about the time limits, and he was awaiting the outcome of the grievance process. This was a quasi-internal process, run by Manpower, rather than the respondent. The claimant was also applying for new roles at this time. During this period the claimant was weaning himself off, or had recently weaned himself off, his Prozac medication.
  - b. In the second period from February 2023 until 8 June 2023, the reason the claimant did not put in his claim was because he chose to put in a DSAR instead and was awaiting the outcome of that. The claimant was aware of the time limits for presenting an employment tribunal claim but chose not to research these. In this period the claimant was off his medication. He was feeling euphoric. This did not prevent him from performing in his new role or his ability to put in a claim.
  - c. In the third period from 8 June 2023 the claimant did not put his claim in as he was unaware that he needed to act promptly, even after he contacted ACAS. He was aware that his claim was out of time but did not research the point further. The claimant was not on medication during this period either. His health did not prevent him from putting in a claim.
37. I conclude that the first period of delay until the end of January 2023 was reasonable, given that the claimant was undergoing a quasi-internal grievance process, he was unaware of the time limits for presenting an employment tribunal claim, and he was weaning himself of his medication.
38. I conclude that the second period of delay was not reasonable. It was a personal choice made by the claimant to try to resolve the dispute without recourse to litigation. He was aware of the time limits but chose not to research those. It was not reasonable for the claimant to fail to research the impact that his choice might have on his ability to litigate in the employment tribunal. The claimant's health was not a relevant factor at this time as he was off his medication, and he said it did not affect his ability to put in a claim.
39. The third period of delay was not reasonable. The claimant did not explain why he waited between 8 and 16 June 2023 to contact ACAS. The claimant was told by ACAS on 16 June 2023 that his claims were out of time. He still did not research the issue or act promptly to present his claim. The claim was presented 15 days later.
40. I considered the prejudice to the parties.

41. I find that the delay has affected the cogency of the evidence. This is because of the length of the delay and the nature of the factual allegations (such as rolling eyes at the claimant in meetings) which are unlikely to be documented events but will depend on witness testimony and the memories of those present at the time. Further, the respondent's main witness left its employment in September 2023. Whilst that witness would always have left their employment before the final hearing, the delay has caused further prejudice to the respondent. If the claim had been presented in time, the witness would still have been employed by the respondent at the date of the case management preliminary hearing and therefore would have been able to provide instructions whilst still an employee about the factual allegations as clarified at that hearing. I conclude that the respondent has suffered forensic prejudice by the delay.
42. If I conclude that the period of time for presentation of the claim was not just and equitable, the claimant will be precluded from advancing his claims, which self-evidently causes him prejudice.
43. Considering the relevant matters as set out above, I conclude that the claim was not presented within the time limit at section 123(1) EA. The period of time for presentation of the claim was not just and equitable. There was considerable delay of seven months. The five-and-a-half-month delay from February 2023 was not reasonable; it was due to the personal choices of the claimant. The respondent has suffered forensic prejudice by the delay. The claimant is prejudiced by not being able to advance his claims against the respondent. But that is a consequence of his personal choices.

**Employment Judge Gordon Walker  
5 March 2024**