



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Sehrish Ali

**Respondents:** Shervin Soltani (1)  
Sheffield City Council (2)

## JUDGMENT AT PRELIMINARY HEARING

**Heard:** in public by CVP                      **On:** 22 April 2024

**Before:** Employment Judge Ayre, sitting alone

### Appearances

For the claimant: In person

For the respondents: Adele Coupland, solicitor

## JUDGMENT

1. The claim is out of time and the Tribunal does not have jurisdiction to hear it. It would not be just and equitable to extend time.
2. By consent, the First Respondent will not be removed as a party to the proceedings.

## REASONS

### Background

3. The background to this case is set out in the Record of the Preliminary Hearing for Case Management on 22 February 2024 and I do not propose to repeat it here. At that hearing the case was listed case for a Preliminary Hearing in public today to:
  - 3.1 Decide whether the Tribunal has jurisdiction to hear the claim as it was presented more than three months after the acts complained of;
  - 3.2 Decide whether Mr Soltani shall remain a respondent to the proceedings;

- 3.3 List any further hearings that may be required; and
- 3.4 Make such Case Management Orders as the Employment Judge considers appropriate.
4. At the last Preliminary Hearing I made orders for disclosure of documents relevant to the issues to be determined at this hearing (by 8 March 2024) for the respondent to prepare a file of documents (by 4 April 2024) and for the parties to exchange witness statements by 12 April 2024.
5. On 22 February 2024 the claimant wrote to the Tribunal and the Council stating that the reasons why she had delayed in submitting her claim was because:
  - 5.1 she was recovering from an ectopic pregnancy operation in April, the recovery period being 3 months;
  - 5.2 she was grieving and the situation had an impact on her mentally and physically;
  - 5.3 she was traumatised by the way she was treated whilst pregnant at work; and
  - 5.4 She is the mother of 4 very small children who depend on her.

## **The hearing**

6. I heard evidence from the claimant, who relied upon her email of 22 February 2024 as her witness statement for the purposes of today's hearing, and who gave evidence under oath.
7. The respondent had prepared a bundle of documents running to 65 pages. I was referred by the respondent to the following authorities:
  - 7.1 *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23;
  - 7.2 *British Coal Corporation v Keeble* [1997] EAT/496/96;
  - 7.3 *Polystar Plastics Ltd v Liepa* [2023] EAT; and
  - 7.4 *Bexley Community Centre (t/a Leisure Link) v Robertson* [2003] EWCA Civ 576.
8. Both parties made oral submissions.

## **Findings of fact**

9. The claimant worked for the Second Respondent as an agency worker supplied by Reed Specialist Recruitment Limited ("Reed") from 23 January 2023 until 30 April 2023. Early conciliation started and ended on 21 August 2023. The claim form was presented on 22 August 2023. The First Respondent is an employee of the Second Respondent and was one of the claimant's managers.
10. The claimant is bringing complaints of pregnancy discrimination. It was clarified at the last Preliminary Hearing that the last acts complained of occurred on 6 April 2023.

11. The claimant discovered that she was pregnant approximately two weeks after she began working for Sheffield City Council. Sadly her pregnancy was ectopic and therefore not viable. She needed time off work for treatment for the pregnancy and to recover from that treatment.
12. The claimant's last day of work for the Council was 6 April 2023. From that date until the end of her assignment, she remained absent from work due to ill health.
13. On 6 April 2023 the claimant made a complaint to Reed about her treatment by the respondents. The complaint was set out in an email that she sent to Emily Flynn on 6 April 2023. The terms of that email are very similar to the Particulars of Claim that the claimant filed with her claim form on 22 August 2023.
14. In her email to Emily Flynn the claimant complained that what was happening to her was discrimination. She was therefore clearly aware of the concept of discrimination, and felt that she was the victim of discrimination, by 6 April 2023.
15. On 18 April 2023 Reed informed the Council about the complaint. The Council investigated and wrote to Reed on 20 April 2023 setting out its position.
16. The claimant's email to Emily Flynn was treated as a grievance. Emily Flynn's manager, Phil, had a discussion with the claimant about the grievance, which was passed to a Gavin Kendall to investigate. The claimant could not recall discussing the complaint with Mr Kendall himself.
17. The grievance was investigated by Reed and was not upheld. On 19 May 2023 Reed informed the Council by email that the claimant's grievance had not been upheld. The claimant was also informed on 19 May that her grievance had not been upheld. At that point the claimant and her partner, who has supported her throughout, began researching on the internet what further action they could take.
18. The claimant was supported throughout by her partner, who she said had 'seen things like this happening in his workplace' and who helped her by putting the claim through.
19. The claimant appealed against the outcome of the grievance. The appeal was dealt with by a Lucy Donaldson, who contacted the claimant to arrange to discuss the grievance with her. The claimant attended a Teams meeting with Ms Donaldson on 19 July at which she discussed the grievance appeal, and also spoke to her on 5 July.
20. On 1 August 2023 Reed informed the Council that the claimant had appealed against the grievance outcome.
21. The claimant received the outcome of the grievance appeal on 25 August 2023, 3 days after she presented her claim.
22. The claimant was certified by her GP as unfit for work on the following dates and for the following reasons:

- 22.1 13 March 2023 to 12 April 2023: pregnancy related anxiety and depression; and
- 22.2 6 April 2023 to 5 June 2023: pregnancy related anxiety and depression due to work
23. On 17 April 2024 the claimant's GP provided a letter stating that the claimant had sick notes for pregnancy related anxiety and depression due to work covering her from 6 April 2023 to 4 August 2023. There was no medical evidence covering the period from 5 to 22 August 2023.
24. Although the medical evidence before the Tribunal indicated that the claimant was not fit for work, it is clear that the claimant was able to work for some of the period of time covered by the fit notes (for example between 13 March and 6 April). Moreover, she was also able to write a detailed complaint to Reed, and to participate in a grievance and grievance appeal process between April and July 2023 whilst covered by fit notes. During that time period she was able to discuss her complaint with Reed, attend at least one meeting by Teams, and write an appeal against the original conclusions of the grievance.
25. The claimant is the mother to four young children who live with her. There was no evidence before me of any change in the claimant's caring responsibilities for those children between April and August last year .

## The law

26. Section 123(1) of the Equality Act 2010 provides that complaints of discrimination 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.*
27. Section 123 (3) states that:
- “(a) conduct extending over a period is to be treated as done at the end of the period;  
(b) Failure to do something is to be treated as occurring when the person in question decided on it.”*
28. By virtue of section 140B of the Equality Act 2010, ACAS early conciliation will normally extend time, but not in cases where the early conciliation itself starts more than three months after the last act of alleged discrimination.
29. Tribunals have a discretion as to whether to extend time (***Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434*** and ***Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640***) but exercising that discretion should still not be the general rule. There is no presumption that the Tribunal should exercise its discretion to extend time.

30. In ***Polystar Plastic Ltd v Liepa [2023] EAT 100*** the EAT held that, whilst there is no formal burden of proof when it comes to determining whether it would be just and equitable to extend time, if a claimant applies for an extension of time, she has to show that the extension would be just and equitable. This is in line with the general principle that it is for a party asserting a matter to establish it. In ***Abertawe Bro Morgannwg*** however, the Court of Appeal held that there is no requirement that the Tribunal be satisfied that there was a good reason for the delay, nor any general principle that time cannot be extended in the absence of an explanation by the claimant.
31. When deciding whether to exercise its discretion to extend time, the Tribunal can take into account anything that it considers relevant. Factors that may (but will not always – see ***Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23***) be relevant include:
- 31.1 The length of and reasons for the delay in presenting the claim;
  - 31.2 The extent to which the cogency of the evidence is likely to be affected by the delay;
  - 31.3 The extent to which the respondent cooperated with any requests for information;
  - 31.4 How quickly the claimant acted when she knew of the facts giving rise to the claim; and
  - 31.5 The steps taken by the claimant to obtain professional advice once she knew of the possibility of taking action.
32. The Tribunal may consider the merits of the case (***Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT 1342***), the prejudice that would be suffered by either party if the application for an extension of time were to succeed or fail, and the practical consequences of allowing or refusing an extension of time.

## Conclusions

33. I have every sympathy for the claimant. I accept that she is genuinely ill and that she has suffered as a result of the ectopic pregnancy she experienced last year and because of the way in which she perceives she was treated at work.
34. All of the allegations made by the claimant are, on the face of it out of time. The last act complained of is on 6 April 2023, and she did not issue proceedings until 22 August, more than four and a half months later. Her claims were presented approximately 6.5 weeks' late, which is a not insignificant delay. Although the claimant began early conciliation on 21 August and the certificate was issued on the same day, she does not benefit from an extension of time for early conciliation because she started early conciliation more than three months after the last act of alleged discrimination.
35. The reasons given by the claimant today for the delay in issuing proceedings are threefold:
- 35.1 Her mental health and the impact on her of the ectopic pregnancy;

- 35.2 Having to care for four young children; and
- 35.3 Waiting for the outcome of the grievance she raised with Reed.

36. The medical evidence before me indicates that the claimant was certified as unfit to work between 13 March 2023 and 4<sup>th</sup> August 2023. It does not comment on whether the claimant was able during that period to take steps to enforce her rights by issuing proceedings in the Employment Tribunal. What the evidence before me does show however is that the claimant was, notwithstanding the sick notes, able to work for some of the time (namely between 13 March and 6 April 2023). The claimant also gave evidence that, whilst covered by the sick notes, she was able to write a detailed email of complaint to Emily Flynn at Reed, to participate in a grievance and appeal process, to discuss her complaint with Reed, and to attend at least one Teams meeting with Lisa Donaldson, the appeal hearer. She was also able, in May 2023, to carry out research on the internet into discrimination.
37. The claimant's operation was in late March 2023, and the recovery time from the operation was three months. This would have taken her to late June, which was still within the three month time limit for starting early conciliation. In addition, there was no medical evidence covering the period after 4 August 2023.
38. The claimant accepted in evidence that she wrote the substance of her claim on 6 April 2023 when she sent her grievance to Emily Flynn. The particulars of claim largely replicate the content of the grievance. At the time she wrote her grievance the claimant knew of the existence of discrimination law, as she clearly expressed that she felt she had been discriminated against. She was also aware, at that time, of all of the facts that gave rise to her claim. There is some force in Ms Coupland's submission that, having written the grievance on 6 April 2023, it would not have taken much for the claimant to issue a claim based upon that grievance, as hers was.
39. I accept without hesitation that caring for four young children would be a challenge for anyone, and in particular for someone who is suffering from ill health. There was no evidence before me however, nor any suggestion by the claimant, that there had been any change in her caring responsibilities during the period between April 2023 and August 2023 such that they had become more onerous. The claimant had previously been able to work full time whilst caring for four young children, so it cannot in my view be said that it was the caring responsibilities in themselves that caused the delay in issuing proceedings. The claimant also referred several times during the hearing to the support that she had received from her partner.
40. The third explanation given by the claimant for the delay was that she was awaiting the outcome of the internal grievance she raised through Reed. That does not, in my view, amount to a credible explanation. The claimant had the outcome of her initial grievance on 19 May 2023. At that she point knew it had not been upheld and carried out research into discrimination on the internet. She was well within time to issue proceedings at that stage but waited a further three months. When she finally issued proceedings on 22 August, she did so before receiving the outcome of the grievance appeal, which she said she was not aware of until 25 August.

41. The claimant had knowledge of discrimination and of her rights to go to Tribunal before the expiry of the three month limitation period. She was able to research her rights in May 2019, on the internet, and had the support of her partner. This is not a case in which the claimant became aware of her rights, or of new information causing her to think that she may have a claim after the expiry of the initial three months. Rather she was aware of discrimination and believed she had been discriminated against by 6 April.
42. Nor is this a case in which it can be said that the respondent was asked for information and refused to cooperate. The evidence before me suggests that when Reed asked the respondent for information as part of its internal grievance process, that information was provided promptly by the respondent.
43. I accept what the claimant told me about not being aware of the time limit for bringing a claim until she contacted ACAS on 21 August 2023. Her lack of knowledge was, however, not reasonable for a claimant who thought she had been discriminated against on 6 April 2023, knew her grievance had not been upheld on 19 May 2023 and was able to carry out internet research shortly thereafter. I take judicial notice of the fact that time limits for bringing claims are easily found through an internet search.
44. The delay in this case is, in my view, likely to have an impact on the cogency of the evidence. Much of the claim turns upon a conflict of oral evidence as to what happened in meetings in which only two people, the claimant and the First Respondent were present. Those meetings took place more than a year ago already and memories will have faded.
45. The prejudice to the respondents if I were to extend time would be significant. The First Respondent faces allegations of discrimination in his personal and individual capacity. Allegations of discrimination are serious matters for individuals. The Second Respondent will be put to expense, in terms of legal fees, if it has to defend claims which are out of time.
46. Whilst I accept that there would be prejudice to the claimant if I were not to extend time, the prejudice would be no more than faces any claimant who presents a claim out of time.
47. I have also considered, in reaching my decision, the merits of the claim, although I have placed limited weight upon this. Whilst it is clear to me that the claimant feels very strongly that she has been discriminated against, the respondents have, on the face of the pleadings a plausible defence to the claim. Moreover, the claimant's complaints of discrimination have been investigated by an independent third party, Reed, who did not uphold them either at original grievance or at appeal stage.
48. I have reminded myself that I have a wide discretion to extend time in discrimination claims, but also that time limits exist for an important public policy reason, and that there is no presumption that time will be extended.

49. Taking all of the above into account, it is my decision that it would not be just and equitable to extend time in this case. Accordingly, as the claim was presented out of time the Tribunal does not have jurisdiction to hear it.
50. The parties agreed that, in light of this decision, the First Respondent should remain a party to the claim, so that he has the benefit of this judgment.
51. Given my findings above, it was not necessary to deal with any of the other issues.

Employment Judge Ayre

22 April 2024

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