



# THE EMPLOYMENT TRIBUNAL

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**Claimant:** Mr Duffort  
**Respondent:** The Co-operative Group Limited  
**Heard at:** London South Employment Tribunal by video hearing  
**On:** 9 April 2024  
**Before:** Employment Judge Robinson

## Representation

Claimant: In person, with assistance from Shaun Fishenden (friend)  
Respondent: Ms Senior (Counsel)

## JUDGMENT

The judgment of the Tribunal is that:

1. the following claims were not presented within the applicable time limit:
  - a. Discrimination on the grounds of sexual orientation
  - b. Discrimination on the grounds of age
  - c. Harassment
2. It is not just and equitable to extend the time limit.
3. All of the claimant's claims (with the exception of his unfair dismissal claim) are therefore dismissed.

## WRITTEN REASONS

1. I gave the above judgment at the hearing on 9 April 2024, together with oral reasons. The judgment was sent to the parties on 10 April 2024. The Claimant has requested written reasons under Rule 62 of the Employment Tribunals Rules of Procedure 2013. My reasons were as follows.

## Introduction and background

2. The Claimant and the representative of the Respondent attended a video Preliminary Hearing of 3 hours.
3. The Claimant, Mr Duffort, was employed by the Respondent, The Co-operative Group Limited, as a Member Pioneer from 15 June 2022 until his resignation on 4 September 2023.
4. ACAS early conciliation started on 30 June 2023 and ended on 3 July 2023. The claim form was presented on 19 July 2023. The response form was received on 25 September 2023.

## Claims

5. The Claimant's claims were for:
  - a. Discrimination on the grounds of sexual orientation
  - b. Discrimination on the grounds of age
  - c. Harassment
  - d. Unfair dismissal
6. This judgment relates to (a) - (c) of those claims. The unfair dismissal claim remains live (and may be the subject of a separate application to amend by the Claimant). It therefore does not form part of this judgment.
7. The Respondent contended that the Claimant's discrimination and harassment claims were out of time because they related to conduct that was more than three months before the claim was submitted (even taking account of the ACAS early conciliation period which 'stops the clock').
8. The purpose of this hearing was therefore to hear evidence on whether the Claimant's claims had been brought within the statutory time limit and, if not, whether they had been brought within some other period which I

consider to be just and equitable.

## Procedure, documents and evidence heard

9. The parties submitted the following documents as evidence:
  - a. A Respondent bundle of documents of 143 pages
  - b. A Claimant bundle of documents of 320 pages, the first seven pages of which I accepted as the Claimant's witness statement for the purposes of this hearing.
10. I heard oral evidence from the Claimant.
11. I have carefully considered the documentary evidence that I was referred to during the hearing, together with the Claimant's oral evidence and the parties' closing submissions.

## The Law

### Extension of time

12. Section 123 of the Equality Act 2010 states that an Employment Tribunal can consider a complaint brought within the period of three months starting with the date of the act to which the complaint relates (or some other period as the Employment Tribunal thinks just and equitable.)
13. There is no presumption that an Employment Tribunal should exercise the discretion unless they can justify a failure to do so. In fact, the position (as set out in Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434, CA at [25]) is: "*Quite the reverse. A tribunal cannot hear a claim unless the claimant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule*".
14. The Court of Appeal in that case also confirmed that an Employment Tribunal has a wide discretion when considering whether it is just and

equitable to extend time.

15. Employment Tribunals may also have regard to the factors in section 33 of the Limitation Act 1980, which include:
  - a. The length of and reasons for the delay;
  - b. The extent to which the cogency of evidence is likely to be affected by the delay;
  - c. The promptness with which the Claimant acted once he knew of the facts giving rise to the cause of action;
  - d. The steps taken by the Claimant to obtain appropriate advice once he or she knew of the possibility of taking action.
  
16. However, I am mindful that Tribunals should not adhere rigidly to the checklist of potentially relevant factors. The best approach is to assess all the relevant factors in a particular case (Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23 at [37]).

### **The Facts that the Tribunal found**

17. I have made the following findings of fact on the balance of probabilities having heard the evidence and considered the documents. These findings of fact are limited to those that are relevant to the issues listed above, and necessary to explain the decision reached.

### Chronology

18. I think it is helpful in this case to set out my findings of fact on the chronology of this case. These dates and events were accepted by the parties and confirmed by the Claimant in his oral evidence:
  - a. Claimant commenced employment - 15 June 2022
  - b. Snapchat messages exchanged between Mr Miller (the Claimant's line manager at the time) and the Claimant - 23 June to 25 July 2022 ("**the alleged conduct**").
  - c. Mr Miller is replaced by Luke (surname not provided) as the Claimant's line manager - 14 November 2022.
  - d. Ms Hands replaces Luke as the Claimant's line manager – around March/April 2023.
  - e. Claimant first raises the alleged conduct to Ms Hands - 11 April 2023
  - f. Claimant attends an investigatory meeting - 18 April 2023

- g. Claimant attends an update meeting on grievance at which it is confirmed that Mr Miller has resigned – 20 May 2023.
  - h. Claimant raises grievance against Mr Williams regarding the investigation – 28 June 2023
  - i. ACAS notification - 30 June 2023
  - j. ACAS certificate - 3 July 2023
  - k. Outcome of grievance against Mr Williams – 18 July 2023
  - l. Claim form submitted - 19 July 2023
  - m. Claimant resigns - 4 September 2023
  - n. Response form submitted - 12 September 2023
  - o. Claimant applies to amend his claim to add constructive unfair dismissal and age discrimination - 24 September 2023 (the latter claim relating to the same alleged conduct).
19. The Claimant explained in his oral evidence that he did not raise the alleged conduct with anyone initially because it related to Mr Miller who was his line manager and the Respondent's policies stated that matters such as this should be reported to an employee's line manager. I accept and understand the Claimant's initial reluctance to raise the alleged conduct.
20. The Claimant then gave evidence that on 14 November 2022 he was given a new line manager, Luke, but that the contact he had with him was minimal and so he again did not feel able to raise the alleged conduct. The Claimant did not provide a compelling reason for why he could not have raised this matter with his new line manager.
21. It was only when Ms Hands became the Claimant's line manager in March/April 2023 that the Claimant felt comfortable to raise the alleged conduct.
22. The Claimant accepted in his evidence that he had been exploring the ACAS website in relation to a potential claim around November 2022.
23. Overall I found the Claimant to be a very bright and able individual, in the way he presented his oral evidence, his compliance with Tribunal Orders, and also the detail with which he prepared a 320 page bundle for this hearing.

## Conclusions

24. Whilst I accept that the Claimant may have been reluctant to raise the matter while Mr Miller was his line manager, from November 2022 that ceased to be the case and so that barrier fell away. I don't find that there was any reason why the Claimant could not have raised the issue with Luke after that point, or with anyone else in the organisation for that matter.
25. Given the Claimant is very bright and well-informed (particularly given how well he has prepared for this Preliminary Hearing), it is therefore relevant that he has provided no compelling reason for not taking action between November 2022 until 4-5 months later when he raised it with Ms Hands in March/April 2023. The Claimant also provided no reason whatsoever for not lodging his claim between March/April and July 2023.
26. I recognise that the Claimant is young and was not, at the time, legally represented. However, the Claimant accepted that he was aware of ACAS from around November 2022. I believe he could have identified the three month time limit for bringing claims in the Employment Tribunal at that point as it seemed clear the Claimant was contemplating his rights from November 2022 onwards.
27. I also accept Ms Senior's submissions on the balance of hardship and the impact on the Respondent in dealing with historic matters. The difficulty in parties dealing with historic matters is one of the reasons why there is a three month time limit for bringing claims to the Employment Tribunals.
28. I reiterate that the discretion to extend time limits is the exception; not the rule. The primary rule is that claims may not be brought after the period of three months starting with the date of the act to which the complaint relates.
29. It is also highly relevant that this claim is not just *slightly* out of time, it is out of time by several months, which I also factor into my consideration. ACAS was not notified until the last day of June 2023 (and the claim form then lodged on 19 July 2023) in relation to conduct which the Claimant confirmed ended on 25 July 2022. It is therefore almost a year between

the alleged conduct ending and the claim form being lodged (albeit with an ACAS early conciliation period of around 3 days which 'stops the clock').

30. It is for all of these reasons that, exercising the wide discretion that the Court of Appeal (in Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434, CA) has confirmed Employment Tribunals have, I have decided it is not just and equitable to extend the time limits in this case.
  
31. The following claims of the Claimant are therefore dismissed:
  - a. Discrimination on the grounds of sexual orientation
  - b. Discrimination on the grounds of age
  - c. Harassment

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Employment Judge Robinson

Date: 17 April 2024