EMPLOYMENT TRIBUNALS

Claimant: **Ms H Blake**

Respondent: **Capital City College Group**

Heard at: London Central Employment Tribunal
On: 7 February 2025

Before: Employment Judge Keogh

Representation
Claimant: In person
Respondent: Mr C Baran (Counsel)

JUDGMENT

1. The claimant's complaint of unfair dismissal is struck out as it was presented out of time and the Tribunal does not have jurisdiction to hear it.

2. The claimant's remaining complaints of discrimination are struck out as they were presented out of time and it is not just and equitable to extend time, therefore the Tribunal does not have jurisdiction to hear them.

REASONS

1. The claimant brings claims of unfair dismissal and discrimination arising from attendance management procedures adopted by the respondent during her employment. She was employed from around 22 August 2025 to 5 March 2024 when her employment was terminated as a result of a stage 3 sickness outcome. The claimant had at that time been off sick from work since 26 June 2023.

2. The claimant commenced ACAS early conciliation on 15 July 2024 and obtained a certificate on 19 July 2024. She presented her claim on 19 August 2024.

3. The claimant ticked boxes in her claim form at section 8.1 for unfair dismissal and disability discrimination. In the particular at section 8.2 she refers to direct disability discrimination, and indirect disability, sex and race

discrimination, and a failure to make reasonable adjustments. The attached particulars of claim do not clarify the precise claims being brought.

4. In her claim form she notes in respect of time limits:

   *"*I raised my grievance on 5 March 2024 to Director of HR and the first meeting with the investigator and union representative was held on 11 March 2024. My intention was to submit a claim for the employment tribunal within the time limit based on the outcome of the grievance procedure.

   On the 15 July 2024 I contacted ACAS for an Early Conciliation Certificate as I had not received any further information about the outcome of my grievance. I received an email from the Director of HR on 31 July 2024 informing me that the grievance was not upheld and as I am no longer an employee the matter is now concluded."

5. The respondent contended in its response that the claim was out of time, and on 17 September 2024 made an application to strike out the claim on the basis that it was time barred.

6. On 29 October 2024 the claimant was ordered to provide further information in relation to her allegations of discriminatory conduct, which she did. In her further information document she sets out various detriments alleged to have occurred during her employment relating to the attendance management process. She sets out a chronology of events and refers variously to discrimination and bullying behaviour. There I no specific mention of sex or race. Again the precise claims pursued are not clear. She states in this document that the alleged conduct by her line manager and head of department occurred from September 2021 to June 2023 (which coincides with the date she went off sick).

7. A preliminary hearing took place on 9 January 2025 which the claimant did not attend. Her application to postpone the hearing was refused as she had not provided relevant medical evidence. This hearing was listed to determine whether the claims were brought out of time, if so should the Tribunal exercise its discretion to extend time or should the claims be dismissed, and case management if appropriate.

8. A further application was made to postpone today's hearing. That application was refused by the Tribunal by order dated 3 February 2025.

9. The claimant today sent two documents relating to her health. The respondent noted these ought to have been sent prior to the hearing but did not object, subject to having time to consider them.

10. The documents are a letter dated around 27 March 2024 relating to her asthma condition and a GP fitness note showing that the claimant was signed off sick from 21 January to 21 April 2024 as a result of stress and anxiety.

11. The claimant gave oral evidence on oath. She had not prepared a witness statement, however the respondent did not object to her giving evidence provided time was permitted to take instructions thereafter (which was duly provided). The claimant was asked neutral questions by me, and was given the opportunity to add whatever she wished. She was then cross examined. The claimant was distressed during the course of giving evidence and at one point thought she could not proceed. The respondent indicated it would ask no further questions. The claimant agreed to proceed with submissions.

12. In her oral evidence the claimant explained the some of the difficulties she says she had from September 2021 to June 2023. She alleges that there was a bullying culture and that there was a failure to make reasonable adjustments on each occasion an occupational health report was received and made recommendations. The claimant was candid that she considered putting in a grievance as early as 2022. On 25 August 2022 she had a meeting with her line manager in which she was dissuaded from putting in a grievance, although she accepts she was sent a grievance form. She was significantly unwell at this time. Prior to going off sick in June 2023 she had a sickness absence meeting where she was accompanied by a union representative. She accepts that she had access to union support and advice throughout this period.

13. I asked questions to understand what complaints the claimant made about the dismissal. In summary, the claimant said that the dismissal was procedurally unfair. When asked whether the dismissal was an act of discrimination or not the claimant indicated that had something been done to address the problems she was experiencing up to 2023, the outcome of the sickness process might have been different. She did not suggest that the dismissal itself was an act of bullying related to her disability. The claimant accepted in cross examination that she understood the time limits and the need to contact ACAS. She had contacted ACAS at various points, including at the time of her dismissal. At that point she was advised she could put in a grievance and await the outcome. She assumed she would have an outcome within the three month time limit. She sent several chasing emails. When she did not get a response, she contacted ACAS on 15 July 2024. She accepted that the grievance was not to do with the dismissal itself. On union advice she did not appeal the dismissal. The grievance was around 10 pages in length, and the claimant prepared it herself. The claimant asserted that while she knew about the time limits, her conditions at the time prevented her from acting on that. She still suffers from those conditions to the same extent. It is not necessary to set out the detail the claimant provided about her conditions in this judgment, however I have considered her evidence about this carefully.

14. I heard oral submissions for both parties. During the course of submissions the claimant attempted to give further evidence in relation to her medical conditions. I explained that she could not give further

evidence at that stage, as the respondent would not have any opportunity to challenge it.

The law

15. In relation to time limits for unfair dismissal, section 111(2)(b) Employment Rights Act 1996 provides:

> *"(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.*
>
> *(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a)."*

16. Section 207B provides:

> *"(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a "relevant provision").*
>
> *(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 a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.*
>
> *(4) If a time limit set by a relevant provision 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) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section."*

17. On the question of reasonable practicability, where an employee knows of a right to claim there is an obligation to seek information on those rights (**Trevelyans (Birmingham) Ltd v Norton** [1991] ICR 488. In **Walls Meat Co Ltd v Khan** [1972] ICR 52 it was considered that the presentation of a complaint would not be reasonably practicable it there was some impediment which reasonably prevented, or interfered with, or inhibited, such performance. This could include illness, or a physical impediment such as a postal strike. It could also include a mental impediment, including ignorance or a mistaken belief with regard ot essential matters, provided that ignorance or mistaken belief was reasonable. It would not be reasonable if it arose from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made.

18. Claimants must make their applications as quickly as possible once the obstacle which has prevented them making claims in time has been removed. There is no discretion to entertain a claim however late it is presented (**Westward Circuits Ltd v Read** [1973] 2 All ER 1013). The Tribunal must look at the particular circumstances of the case and ought not to focus on the extent of the delay without regard to those circumstances (**Marley (UK) Ltd v Anderson** [1994] IRLR 152). The question whether a further period is reasonable requires an objective consideration of the factors causing the delay and what period should reasonably be allowed in those circumstances for proceedings to be instituted, having regard to the strong public interest in claims being brought promptly (**Cullinane v Balfour Beatty Engineering Servies Ltd** UKEAT/0537/10).

19. Section 123 of the Equality Act 2010 provides:

> *"(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 other period as the employment tribunal thinks just and equitable.*
>
> *…*
>
> *(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 on it.*
>
> *(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—*
>
> *(a) when P does an act inconsistent with doing it, or*
>
> *(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it."*

20. Section 140B deals with ACAS early conciliation and provides the same extensions of time as section 207B Employment Rights Act 1996 in the case of unfair dismissal.

21. In **Adedeji v University Hospitals Birmingham NHS Foundation Trust** [2021] EWCA Civ 23 the Court of Appeal advised a caution against tribunals relying on the checklist of factors found in section 33 Limitation Act 1980. The Court of Appeal said 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 "the length of, and the reasons for, the delay"'. Relevant factors also include the potential merits of the claim. The overarching question is the balance of prejudice, considering the hardship each party would suffer as a result of granting, or refusing to grant and extension of time.

22. In **Jones v Secretary of State for Health and Social Care** [2024] EAT 2 the Employment Appeal Tribunal reminded litigants that the propositions of law for which **Bexley Community Centre (trading as Leisure Link) v Robertson** [2003] ILR 434 was authority were that the employment tribunal had a wide discretion to extend time on just and equitable grounds and that appellate courts should be slow to interfere. The practice of referring to Auld LJ's comments that time limits in the employment tribunal were "exercised strictly" and that a decision to extend time was the "exception rather than the rule" out of context should cease. The EAT's decision in **Jones** has been successfully appealed, nevertheless the EAT's observation on this point stands.

Conclusions

Unfair dismissal

23. The effective date of termination in this matter is 5 March 2024, such that the claimant should have commenced ACAS early conciliation by 4 June 2024. ACAS was not notified until 15 July 2024, some 5 weeks late. As the time limit had already expired before ACAS was contacted, no extension of time is derived from section 207B. The claim form presented on 19 August 2024 was therefore around two and a half months out of time.

24. The first question is whether it would have been reasonably practicable to present the claim form (or at least to contact ACAS) by 4 June 2024. It is notable that when the claim was presented, the claimant explained the delay in presenting the claim form as waiting for the grievance outcome. There is no mention in the claim form of any delay being caused by the claimant's conditions. The respondent submitted that the Tribunal should focus on the medical evidence provided to it and not on the claimant's presentation during the hearing. The medical documentation does not provide any evidence that the claimant was unable to prepare a claim form, and the claimant was able to prepare a detailed grievance.

25. I reject the respondent's suggestion that the Tribunal is limited to the medical documentation sent by the claimant today. The claimant has given live oral evidence as to her condition and its impact on her, and has been cross examined. The Tribunal is entitled to assess that evidence and take it into account. However, on the claimant's own case her conditions are longstanding and, she says herself, are still the same today as they were at the time of her dismissal. She has nevertheless been able to prepare a 10 page grievance, and has also been able to participate in these proceedings, including providing a 6 page document of further information within the limited time set out by the Tribunal for her to do so. She has been able to contact ACAS appropriately and also had the benefit of union advice and support. In the circumstances, while I fully accept it would have been more difficult for the claimant to complete a claim form than a litigant without her conditions, nevertheless there was nothing to prevent her from commencing ACAS early conciliation on time, particularly given that she knew to contact ACAS and did so when she was dismissed. There is insufficient medical evidence to suggest that had she commenced conciliation within the following three months after her dismissal, which she knew full well she had to do, she would not have been able to present her claim form within a month of the end of ACAS conciliation period.

26. In so far as the claimant relies on awaiting the outcome of the grievance, she candidly accepts she knew the time limits and assumed she would receive an outcome in time. When that did not happen, she waited a further five weeks before contacting ACAS again to commence the conciliation process. As the respondent submits, this is not a case where the claimant was ignorant of her rights. Moreover, the grievance was not to do with the dismissal, so the outcome could have had no bearing on her decision whether to bring a claim for unfair dismissal or not.

27. In the circumstances I must conclude that it was reasonably practicable for the claimant to present her claim on time. The Tribunal therefore has no jurisdiction to hear it and it must be struck out.

<u>Discrimination complaints</u>

28. If all the claims referred to in the claimant's claim form, attached particulars of claim and further information are taken at their highest, the claimant is complaining about disability discrimination and possibly sex and race discrimination during the period September 2021 to June 2023, which is when she went off sick. The claimant is clear in her further information that this is the period of detriments, and essentially confirmed this during her oral evidence. Her position is that the outcome of the sickness absence process might have been different if something had been done about the conduct about which she now complains, and that the dismissal was procedurally unfair, but was not in itself an act of discrimination. All the possible complaints of discrimination therefore relate to a period between September 2021 and 26 June 2023 when the claimant went off sick.

29. Under section 123 Equality Act 2010, such complaints are subject to a three month time primary time limit, subject to any extension for ACAS early conciliation and also subject to the Tribunal's discretion to extend time if it is just and equitable to do so.

30. Assuming there is a continuing course of conduct tying together all allegations in the period (taking the claimant's case at its highest), the latest the primary time limit would expire was 25 September 2023. As for the unfair dismissal claim, there is no extension afforded from ACAS early conciliation as this did not commence during the primary three month time limit. The claim was presented on 19 August 2024 and was therefore around 11 months out of time, which is a significant delay.

31. The claimant has not provided a good explanation for the delay. I accept that in around August 2022 when the claimant first considered putting in a grievance she was significantly unwell. She was however receiving union support during the following year, and had union support at a meeting just a few days before going off sick. The claimant has not provided evidence that during this period she was so unwell she could not have presented a claim form if she wanted to do so. At the very least I find she would have been well enough to present a claim form at the time she finally presented her 10 page grievance, in March 2024. The claim form eventually presented was much shorter than this and was presented five months later.

32. There is some prejudice to the claimant if she is unable to pursue her claims, however she has had ample opportunity to do so in a more timely manner and has enjoyed union support and advice which she could have utilised to assist her. I find there is considerable prejudice to the respondent in having to deal with stale matters from 2021 to June 2023 if the claims were allowed to proceed, particularly when the first opportunity it had to investigate anything as best it could was 10 months after the end of this period in March 2024. The claim was not brought until some 5 months later.

33. I do not take into account the merits of the claim at this stage, as the nature of the claims are still unclear. However it is a factor to consider that should the claims proceed, there would be a further delay for case management and to prepare a list of issues as the respondent still needs to understand the precise nature of the claims against it. This is despite the claimant having already been given an opportunity to provide further information as to her complaints. Until such time as the claims are clarified the respondent will not be in a position fully to investigate them, which will likely cause further prejudice.

34. I take into account that the claimant has been very unwell, however I consider that the overall prejudice to the respondent should I allow the claims to proceed outweighs the prejudice to the claimant if they are struck out. In the circumstances I do not consider it is just and equitable to extend time. The discrimination complaints are therefore struck out as the Tribunal does not have jurisdiction to hear them.

Employment Judge Keogh

Date 10 February 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

18 February 2025

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FOR THE TRIBUNAL OFFICE