EMPLOYMENT TRIBUNALS

Claimant: Mr Barry Lasoju

Respondent: XMA Ltd

Heard at: Watford Employment Tribunal **On:** 21 July 2025

Before: Employment Judge Young

Representation
Claimant: Ms Adele Akers (Counsel)
Respondent: Mr Mugni Islam-Choudhury (Counsel)

JUDGMENT having been sent to the parties on 12 August 2025 by Employment Judge Young 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. The Claimant worked as a Senior Technical Lead for a company called Tialis Essential IT Manage Ltd. His employment started in May 2011. On 13 June 2023, a TUPE transfer took place, and the Claimant's employment moved to the Respondent. The Claimant was suspended on 6 September 2023 and contacted ACAS for early conciliation purposes on 28 September 2023, and a certificate was issued the same day. The Claimant submitted his first Claim Form to the Employment Tribunal, complaining of failure to inform and consult on 17 October 2023.

2. The Claimant was dismissed on 6 October 2023 and contacted ACAS early conciliation again on 29 December 2023. The ACAS early conciliation certificate was issued on 9 February 2024. The Claimant then presented a second claim form 3302932/2024 on 8 March 2024. The Claimant is bringing claims of unfair dismissal and discrimination on grounds of age, race and disability, harassment related to disability and victimisation. He also indicated in his second claim form that his dismissal was automatically unfair as it was related to a TUPE transfer. By judgment

dated 23 November 2024, Employment Judge Gumbiti-Zimuto struck out the Claimant's first claim on the grounds that the claim was out of time.

Hearing

3. I was provided with an agreed bundle of 176 pages, including the index. Notwithstanding Employment Judge Annand's order at paragraph 16(d) [95] for the Claimant to provide a written witness statement, I was not provided with a witness statement. But I heard evidence from the Claimant, nonetheless. I was provided with a written skeleton argument from the Respondent contained in the bundle and a written skeleton argument from the Claimant on the morning of the hearing.

4. Mr Islam Choudhury requested formal acceptance of the Respondent's amended response. Ms Akers did not object and the amended response was accepted by the Employment Tribunal.

5. Having read the submissions of the Respondent, I discussed with the parties that what was being argued by the Respondent was, in effect, the rule of Henderson v Henderson and whether there had been an abuse of process. I told the Claimant, particularly that I was raising this issue now as I wanted to give the Claimant an opportunity to address the Employment Tribunal on the rule of Henderson v Henderson. The Claimant's written skeleton had not been sent to the Employment Tribunal or the Respondent. Ms Akers sent the skeleton to the Respondent and the Employment Tribunal before we proceeded any further to hear evidence and the application or submissions.

Claims & Issues

6. By order dated 19 February 2025 Employment Judge Annand listed a preliminary hearing to determine a) if the Claimant's claims are in time, and if not, to decide b) if it was reasonably practicable for the unfair dismissal claims to have been brought in time and if they were brought within such further time as was reasonable, and c) if it would be just and equitable to extend time in respect of the discrimination claims.

7. The agreed list of issues to be determined at the preliminary hearing are:

   1.Was the unfair dismissal/ automatic unfair dismissal claim made within the time limits set out in section 111(2)(a) Employment Rights Act 1996 ('ERA'), namely:

   1.2. Did the provisions of s.207B ERA serve to extend the three month time limit referred to at s111(2)(a) ERA. In particular (the following points to be considered separately in respect of the Unfair Dismissal claim and the Automatic Unfair Dismissal claim respectively):

   1.3. In accordance with s18A(8) Employment Tribunals Act 1996, is the first certificate (R249049/23/23) a valid certificate for the purpose of triggering the modified limitation regime in section 207B Employment Rights Act 1996?

1.4. If so, was ACAS EC Certificate R323885/23/68 (the "Second Certificate") a purely voluntary second certificate for the same matter, as a result of which it did not serve to extend the limitation period for bringing the Claim as prescribed by s111(2) Employment Rights Act 1996?

1.5. After applying the provisions of s.207B ERA (if applicable, following consideration of the above points), by what date ought the claim to have been made to satisfy the requirements of s111(2)(a) ERA ("Relevant Date")?

1.6. Was the claim made by the Relevant Date?

1.7. If the claim was not brought by the Relevant Date, was it not reasonably practicable for the relevant claim to be made by the Relevant Date?

1.8. If so, was the relevant claim made within such further period as was reasonable?

2.The following points should be considered in respect of each separate claim in respect of an alleged contravention of Part 5 Equality Act 2010 ('EQA'), namely:

• Direct race discrimination (s13 EQA);
• Direct disability discrimination (s13 EQA);
• Harassment related to disability (s26 EqA);
• Victimisation (s27 EQA); and
• Direct age discrimination (s13 EQA)

2.1. Was the complaint made within the time limit in section 123(1)(a) EQA? In particular:

2.2. What was the date of the act to which the complaint relates ("Complaint Date")? In particular:

2.2.1 Where the complaint relates to a single alleged act, on what date was that act done?

2.2.3 Where the complaint relates to alleged conduct extending over a period, when did that period end?

2.3. Was the claim made within three months of the relevant Complaint Date?

2.4 If not, did the provisions of s.140B EQA serve to extend the three-month time limit referred to at s123(1)(a) ERA, in respect of the relevant claim, namely:

2.5 In accordance with s18A(8) Employment Tribunals Act 1996, is the first certificate (R249049/23/23) a valid certificate for the purpose of triggering the modified limitation regime in section 140B EQA?

2.6 If so, was ACAS EC Certificate R323885/23/68 (the "Second

Certificate") a purely voluntary second certificate for the same matter, that did not serve to extend the limitation period for bringing the Claim as prescribed by s123 EQA?

2.7 After applying the provisions of s.140B EQA (if applicable, following consideration of the above points), by what date ought each claim to have been made to satisfy the requirements of s123(1)(a) EQA ("Relevant Date").

2.8 In each case, was the claim made to the Tribunal by the Relevant Date?

2.9 If not, was the relevant claim made within a further period that the Tribunal thinks is just and equitable?

Findings of Fact

8. The Claimant was employed by the Respondent, a company that sells computers, computer peripheral equipment and software wholesale, as a Senior Technical Lead, from 1 May 2011 until 6 October 2023. The Claimant was TUPE transferred to the Respondent on 14 June 2023. The Claimant initially started early conciliation in respect of the Respondent on 28 September and this ended on 28 September 2023.

9. The Claimant had been advised by his union representative UNITE since the start of the TUPE process and by 28 September 2023 had been advised about Tribunal time limits and knew that his TUPE complaint was out of time. The Claimant had issued a grievance in relation to his demotion from his role and working from home before his transfer on 8 June 2023. But the Claimant gave evidence that he submitted a grievance in December 2023 and that it contained the matters he now complains of in his second claim form. He said he was awaiting the outcome of this grievance before he presented his Employment Tribunal claim. The Claimant admitted that it was clear to him that it was not going the way that the grievance should have gone, and a week after the grievance was heard, the Claimant decided to take action and contacted the Respondent to ask what was happening with his grievance and when that did not work, the Claimant contacted his union representative to ask what he should do. The Claimant did not receive the outcome of his grievance before he issued his second claim form. I find that the Claimant knew after a week that he was not going to wait for the outcome of his grievance before he took action in respect of it, as he had already decided after a week that it was not going to go his way.

10. The Claimant was suspended on 6 September 2023 but was still employed on a salary of approximately £32,299 pa. The Claimant was dismissed on 6 October 2023. The Claimant's last alleged act of discrimination took place on 6 October 2023. The Claimant's evidence was that whilst he believed discrimination had taken place, he didn't think it was that serious and had only worked with the Respondent for 3 months, and he thought he would be able to resolve the issues. He said that he was giving the Respondent a chance to deal with the issues properly by not bringing a claim at that time. The Claimant said and I accept that he

was very conscious of time limits and that he believed that he had 3 months less a day to bring an unfair dismissal claim and he had been advised of this by ACAS as well as his union representative. However, his union told him that his case did not have good prospects and they would not go on to support him in respect of any external processes following his suspension on 6 September 2023. I find the Claimant knew on 6 October that he would not be supported by his union in bringing an unfair dismissal complaint. The Claimant said that he was waiting for the outcome of his December 2023 grievance before he presented a claim and that is why he did not mention it in his first claim form. However, the Claimant admitted that his grievance was made after he submitted his first claim form on 17 October 2023. The Claimant's evidence was that he was fine with the process as he believed it was set up so that a lay person could navigate it and he did not need legal advice.

11. The Claimant contacted ACAS a number of times in relation to trying to conciliate with the Respondent but did not raise with ACAS the fact that he already had an ACAS early conciliation certificate or ask for advice about needing a second certificate. The Claimant admitted in evidence that he was told by ACAS before the issue of the second certificate that the Respondent did not want to conciliate. The Claimant believed based upon his own logic, that he would need to contact ACAS again before he issued a claim form in relation to his unfair dismissal complaint, as he had not been dismissed when he first contacted ACAS. The Claimant did admit in evidence that he considered the tactics of the 2 claim forms and only sought advice on this after the issue of the second claim form. The Claimant's evidence was that he was told by ACAS that the Employment Tribunal would sort it out at that point. I find that the Claimant knew at the time he contacted ACAS the first time what the time limits were in relation to his discrimination complaints and when the time limits would expire.

12. The Claimant issued an ET1 form 3311850/2023 on 17 October 2023 naming the Respondent. The Respondent's ET3 response to that first claim form was presented on 6 March 2024. In that ET3, the Respondent argued that the Claimant's complaint was out of time and the Employment Tribunal had no jurisdiction to hear the claim. The Claimant's evidence was that it was only when the Claimant received the Respondent's ET3, that he realised that he would need to consult lawyers. I accept the Claimant's evidence on this point. The Claimant did not, however, contact lawyers until he first received the date for a case management preliminary hearing following receipt of the Respondent's ET3 response form. I find that there was nothing preventing the Claimant from contacting lawyers earlier.

13. The Claimant was listed for a preliminary hearing initially for 12 June 2024 and then relisted for 26 September 2024. However, the Claimant's first claim form was struck out because the inform and consult complaint was presented out of time and struck out for lack of jurisdiction by EJ Gumbiti-Zimuto at the preliminary hearing on 26 September 2024, and judgment was issued on the same date. The claim in summary was that the Respondent had failed to inform and consult with the Claimant in respect of a measure that changed the Claimant's contract. The Claimant had detailed the BPSS check as the measure that he was not informed of or consulted on 29 December 2023 when he contacted ACAS. The

Claimant's first ET1 refers to being told about the BPSS checks after the TUPE transfer in July 2023. The first claim form also says that he was told on 27 September 2023 that the BPSS checks would take place annually [171].

14. The Claimant contacted ACAS again on 29 December 2023 and the ACAS early conciliation certificate was issued on 9 February 2024 [4]. The claim form was presented on 8 March 2024, which included race discrimination, automatic unfair dismissal based upon the TUPE transfer and age discrimination. The Claimant then applied on 5 November 2024 [105-106] to amend his claim to include victimisation, further race discrimination complaints and harassment complaints, and that application to amend to include those claims was granted by EJ Annand at the case management preliminary hearing on 9 January 2025 [93-104]. Following contacting ACAS the second time, the Claimant chased the Respondent regarding the outcome of his grievance. The Claimant's evidence was that he waited until after 5 January 2024, even though he had by then contacted ACAS and knew that the Respondent did not want to conciliate was because he believed that he had up to a month after the issue of the ACAS early conciliation certificate, and so he used that time to wait before bringing a claim.

The Law

Early conciliation

15. Under section 18A Employment Tribunal Act 1996 ('ETA') it states:

"Requirement to contact ACAS before instituting proceedings

(1) Before a person ("the prospective claimant") presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter. This is subject to subsection (7).

(2) On receiving the prescribed information in the prescribed manner, ACAS shall send a copy of it to a conciliation officer.

(3) The conciliation officer shall, during the prescribed period, endeavour to promote a settlement between the persons who would be parties to the proceedings.

(4) If—

(a) during the prescribed period the conciliation officer concludes that a settlement is not possible, or

(b) the prescribed period expires without a settlement having been reached, the conciliation officer shall issue a certificate to that effect, in the prescribed manner, to the prospective claimant.

(5) The conciliation officer may continue to endeavour to promote a settlement after the expiry of the prescribed period.

(6) In subsections (3) to (5) "settlement" means a settlement that avoids proceedings being instituted.

(7) A person may institute relevant proceedings without complying with the requirement in subsection (1) in prescribed cases. The cases that may be prescribed include (in particular)— cases where the requirement is complied with by another person instituting relevant proceedings relating to the same matter; cases where proceedings that are not relevant proceedings are instituted by means of the same form as proceedings that are; cases where section 18B applies because ACAS has been contacted by a person against whom relevant proceedings are being instituted.

(8) A person who is subject to the requirement in subsection (1) may not present an application to institute relevant proceedings without a certificate under subsection (4)

. . . .

(11) The Secretary of State may by employment tribunal procedure regulations make such further provision as appears to the Secretary of State to be necessary or expedient with respect to the conciliation process provided for by subsections (1) to (8).

(12) Employment tribunal procedure regulations may (in particular) make provision—

(a) authorising the Secretary of State to prescribe, or prescribe requirements in relation to, any form which is required by such regulations to be used for the purpose of providing information to ACAS under subsection (1) or issuing a certificate under subsection (4);

(b) requiring ACAS to give a person any necessary assistance to comply with the requirement in subsection (1);

(c) for the extension of the period prescribed for the purposes of subsection (3);

(d) treating the requirement in subsection (1) as complied with, for the purposes of any provision extending the time limit for instituting relevant proceedings, by a person who is relieved of that requirement by virtue of subsection (7)(a)."

16. In Compass Group UK & Ireland Ltd v Morgan [2016] IRLR 924, the EAT answered the question of the remit of an ACAS early conciliation certificate in the context of an ACAS early conciliation certificate issued before a claim had crystallised and in that case, the subsequent constructive dismissal claim where the Claimant had not resigned at the date of the ACAS certificate. Simler P held "*the question of construction raised by Mr Milsom is whether there is any temporal or other limit on the applicability of an EC certificate in the context of 'relevant proceedings relating to any matter' that are commenced in relation to a cause of action that only crystallises after the EC process is complete. The question, accordingly, is: what is meant by 'relating to any matter'? In our judgment, these are ordinary English words that have their ordinary meaning.*

Parliament has deliberately used flexible language capable of a broad meaning both by reference to the necessary link between the proceedings and the matter and by reference to the word 'matter' itself. We do not consider it useful to provide synonyms for the words used by Parliament. Provided that there are or were matters between the parties whose names and addresses were notified in the prescribed manner and they are related to the proceedings instituted, that is sufficient to fulfil the requirements of s.18A(1)." [paragraph 21]

17. In the EAT case of Revenue and Customs Comrs v Serra Garau [2017] ICR 1121, Mr Justice Kerr considered in the context of a claim of an unfair dismissal and disability discrimination claim whether more than one certificate can be issued by ACAS under the statutory procedures and what effect, if any, a second such certificate has on the running of time for limitation periods. Kerr J concluded at paragraph 21 that "*a second certificate is not a certificate falling within section 18A(4). The certificate referred to in section 18A(4) is the one that a prospective claimant must obtain by complying with the notification requirements and the Rules of Procedure scheduled to the 2014 Regulations"*.

18. Section 207B of the Employment Rights Act 1996 provides:

"*Extension of time limits to facilitate conciliation before institution of proceedings*

(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a 'relevant provision'). But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 207A.

(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."

19. Section 140B of the Equality Act 2010 is almost the exact same provision but refers to the time limits contained in section 123 of the Equality Act

2010

"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
(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."

20. The EAT in Luton Borough Council v Haque [2018] ICR 1388 held the time limit only expired on the corresponding date of one month after the date of the issue date of the ACAS early conciliation certificate, if the primary time limit plus the stopped clock time fell on a date within the start of the ACAS early conciliation period and the ACAS early conciliation certificate issue date plus one month.

Discrimination Time Limits

21. The time limits in respect of discrimination and victimisation complaints are set out in Section 123 (1) (b) Equality Act 2010 (EQA) as;-

"(1) [Subject to [section 140B]2 proceedings]1 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."

22. In the EAT decision of British Coal Corporation v Keeble (1999) EAT, Smith J at paragraph 8, page 3 refers to the section 33 Limitation Act 1980 list being equally applicable to Employment Tribunals when considering the exercise of its discretion under the just and equitable jurisdiction. The list includes the length of and reasons for the delay; the effect of the delay upon the cogency of the evidence; the extent to which the party sued has cooperated with any requests for information; the promptness with which the Claimant acted once he knew of the facts giving rise to the cause of action; the steps taken by the Claimant to obtain appropriate professional advice once he knew of the possibility of taking action.

23. In Robertson v Bexley Community Centre [2003] IRLR 434, 437 at paragraph 25 Auld LJ provides further guidance in stating:

"When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is not presumption that they should do so unless they can justify a failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint 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."

24. In Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23 the Court of Appeal held the Employment Tribunals should not slavishly follow the Keeble factors, but that they are to be taken as the starting point for Tribunals' approach in respect of the just and equitable extension. The best approach for a tribunal in exercising the discretion is to assess all the factors in the particular case that it considers relevant to the facts of that case, including and in particular the length of and the reasons for the delay.

25. In terms of relevant factors, as well as the length of delay and the reasons for it, other relevant factors will usually include the balance of prejudice between the Claimant and the Respondent. In Miller and ors v Ministry of Justice and ors and another EAT 0003/15, Mrs Justice Elisabeth Laing set out five key points derived from case law on the 'just and equitable' discretion. In terms of the balance of prejudice, she explained that the prejudice that a respondent will suffer from facing a claim which would otherwise be time-barred is 'customarily' relevant. Elisabeth Laing J elaborated that there are two types of prejudice that a respondent may suffer if the limitation period is extended: (i) the obvious prejudice of having to meet a claim which would otherwise have been defeated by a limitation defence, and (ii) the forensic prejudice that a respondent may suffer if the limitation period is extended by many months or years, which is caused by such things as fading memories, loss of documents, and losing touch with witnesses.

Unfair Dismissal Time Limits

26. The time limit in respect of unfair dismissal is set out in section 111 of ERA.

Sections 111(2) & 111(2A) states "*An employment tribunal shall not consider a complaint under this section (111 of the ERA 1996) 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 207 B (applies for the purposes of subsection 2A) extension of time limits to facilitate conciliation before institution of proceedings"

27. In the seminal case of Palmer and another v Southend on Sea Borough Council [1984] ICR 372, May LJ prompts Tribunal to have regard to the surrounding circumstances of each case in determining whether the Employment Tribunal has jurisdiction pursuant to section 111 EAT, and the following are named as examples of relevant circumstances at page 125 paragraph 34-35 of the decision. This list is by no means exhaustive:

- What was the substantial cause of the Claimant's failure to comply with the statutory time limit;

- Whether the Claimant has been physically prevented from complying with the limitation period?

- Whether at the time of dismissal and if not when thereafter, did the Claimant know he had the right to complain he had been unfairly dismissed?

- Whether there has been any misrepresentation about any relevant matter to the Claimant?

- Whether the Claimant was being advised at the relevant time and if so by whom?

28. Furthermore, the Court of Appeal concluded in Palmer that what was "reasonably practicable" means what was reasonably feasible.

29. Subsequently, Lady Smith giving judgment in the EAT in Asda Stores Ltd v Kauser EAT 0165/07 summarised the test reasonable practicable test as follows *"The relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done"* [paragraph 17]

30. A claimant's complete ignorance of his right to claim unfair dismissal may make it not reasonably practicable to present a claim in time but the claimant's ignorance must itself be reasonable. In Dedman v British Building and Engineering Appliances Limited 1974 ICR 53 the Court of Appeal stated the relevant questions to ask when considering the time limits were what were the opportunities for finding out the employee's

rights; and did the employee take them; if not, why not; were they misled or deceived.

31. In the case of Porter v Bandridge Limited [1978] ICR 943 the Court of Appeal confirmed that the correct test is whether the claimant ought to have known of their rights.

32. In Lowri Beck Services Ltd v Brophy 2019 EWCA Civ 2490, CA, Lord Justice Underhill in the Court of Appeal summaries the position on ignorance of rights, crucial facts and mistake as essentially that if an employee misses the time limit because he or she is ignorant about the existence of a time limit, or mistaken about when it expires in his or her case, the question is whether that ignorance or mistake is reasonable (see 'Ignorance of rights' and 'Ignorance of crucial fact' below). If it is not, then it will have been reasonably practicable for the employee to bring the claim in time. Notwithstanding, in assessing whether ignorance or mistake are reasonable, it is necessary to take into account any enquiries which the employee or his or her adviser should have made.

The rule of Henderson v Henderson

33. Sir James Wigram VC giving judgment in the case of Henderson v Henderson 1843 3 Hare 100 ChD established the rule of Henderson v Henderson as *"where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case*".

34. An updated exposition of the rule of Henderson v Henderson is summarised in Lord Bingham's judgment in Johnson v Gore Wood and Co 2002 2 AC 1, HL. In essence, Lord Bingham conveys that Tribunals should have a broad merits-based approach considering all the relevant circumstances. It is not enough for a Tribunal to say that a party should have raised the claim/argument earlier: *"The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter"*. But he also adds "*there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party*".

35. The question for an Employment Tribunal is explained by Lord Bingham as *"The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all."*

Analysis & Conclusions

36. I considered both skeletons of Ms Adele Akers and Mr Mugni Islam-Choudhury and received case law. I heard submissions from both counsel.

37. Dealing first with the Claimant's discrimination, harassment and victimisation complaints. Most of those complaints took place on or before the Claimant's suspension of employment on 6 September 2023 and therefore before the Claimant contacted ACAS early conciliation on 28 September 2023, and so he knew of the factual matrix applicable to his discrimination complaints. Ms Akers' written submissions point to the last act of discrimination to take place was the failure to disclose to the Claimant that the BPSS checks only comprised of the basic modules until the Claimant was issued with the termination letter on 6 October 2023. However, the claim form refers to the Claimant's knowledge of the BPSS checks only immediately after the transfer [12]. So, according to the claim form, the Claimant had an awareness of the Respondent's failure to disclose BPSS checks before 6 September 2023. I found that the Claimant had been advised of time limits by his union representative during the TUPE process. The Claimant was out of time in respect of some of his discrimination complaints by the time he presented his first claim form on 17 October 2023, as some of the complaints dated back to April 2023.

38. The Claimant cannot rely on his second ACAS early conciliation certificate in order to extend time in respect of his discrimination, harassment or victimisation complaints in accordance with Revenue and Customs Comrs v Serra Garau, and so in those circumstances, it is only the Claimant's first ACAS early conciliation certificate that applies for the purposes of extending time. The Claimant's ACAS early conciliation certificate was issued on 28 September 2023, and so, because of section 140B (3) EQA, the Claimant does not benefit from any stopped clock extension of time. In the circumstances, for any acts of discrimination for which the primary time limit expired between 28 September 2023 and 28 October 2023, the Claimant would benefit from the one month extension of time to 28 October 2023 to present his claim to the Employment Tribunal. However, any acts that took place after 29 July 2023 the time limit would have expired after the ACAS early conciliation certificate issue date plus a month. Potentially, the latest date time would start from (if the alleged acts of discrimination amount to continuing acts) would be on 6 October 2023. So the latest expiry date of the primary time limit would be on 5 January 2024. Thus, applying Haque, the Claimant does not get the s140B(4) one month extension following the issue of the ACAS early conciliation certificate because the primary limitation period date (5 January 2024) falls outside 28 October 2023 (which is the corresponding date one month after the issue date of the ACAS early conciliation certificate).

39. Thus, the latest date for the expiry of the time limit is 5 January 2024. The Claimant did not present his claim form until 8 March 2024, and he is therefore approximately 2 months out of time.

40. In those circumstances, I have to consider whether to exercise my broad discretion on a just and equitable basis to extend time for the Claimant. I have had regard to the case law, represented to me by both counsel, in coming to my decision.

41. Whilst the Claimant did not have legal advice at the time he contacted

ACAS or presented his first claim, the Claimant was employed at the time he contacted ACAS the first time and so had an income of approximately £32,299. Whilst I heard no evidence on the Claimant's outgoings, the Claimant was not prevented from consulting solicitors for legal advice due to a lack of income.

42. Furthermore, I was not convinced by the Claimant's other reason for not seeking legal advice, that is, because he thought he could navigate the system himself. The Claimant knew from 6 October 2023 that his union were not going to represent him in respect of any external processes and so to pursue the Employment Tribunal process without legal assistance was a risk he took upon himself. It was only when he realised that he could not navigate the system when he received the Respondent's ET3 in response to his first claim form that he decided to consult lawyers. It was the Claimant's choice; nothing was preventing him from consulting lawyers earlier.

43. The Claimant was in possession of all the facts that he needed to be able to bring his claims for discrimination, harassment and victimisation. The Claimant said early on in his evidence that he was considering the tactics of bringing a second claim and it seems to me that there was an element of tactics that the Claimant employed in order to be able to extend time in relation to his discrimination, harassment and victimisation complaints by not mentioning firstly any of those matters in this first claim form and secondly not conciliating in respect of his first ACAS early conciliation certificate because he knew that he was already out of time. I have to consider whether those complaints of discrimination, harassment and victimisation were matters that fell within the orbit of the first ACAS early conciliation certificate and so were matters that the Claimant could have raised in his first claim form. I conclude that those discrimination, harassment and victimisation complaints that form the basis of the second claim form and the Claimant's amendment are "matters" that fall within the meaning of section 18A(1) of the Employment Tribunals Act 1996, applying the reasoning of Simler J in the EAT decision of Compass Group UK & Ireland v Morgan [2016] IRLR 924 and so fall under the Claimant's first ACAS early conciliation certificate.

44. It seems to me that if there are matters within the meaning of section 18A, then the Claimant could have and should have raised them in his first claim form. The Respondent raised the issue of Henderson v Henderson in their skeleton argument, although they did not name the case. I gave both parties an opportunity to address me on the rule of Henderson v Henderson.

45. Ms Akers tried to persuade me that the Claimant did not know that he could bring the claims without an ACAS early conciliation certificate; however, I pointed out that was not the evidence that the Claimant gave. The Claimant gave evidence that initially he was awaiting the outcome of his grievance, and that is why he did not mention the claims in his first claim form. However, when I asked the Claimant when he raised his grievance in relation to the first in time discrimination matter, the Claimant explained that he didn't raise those matters until December 2023 after his dismissal. Furthermore, the Claimant accepted that he did not wait for the

resolution of his grievance raised before his dismissal before contacting ACAS or presenting a claim form because he said that he knew within a week of the grievance having been heard that the grievance was not going his way. The Claimant made a decision to take various forms of action, which included contacting the Respondent and chasing the matter, contacting the ACAS helpline to seek advice or contacting his UNITE union rep. I conclude by the Claimant's actions that he had decided that he did not need to wait for the outcome of a grievance before he took any action and that he did not wait for the outcome of any of his grievances before he issued proceedings and in any event, not in relation to the first claim form.

46. I was not convinced by the Claimant's argument that he did not think it was serious enough to bring a claim in relation to the first allegation of discrimination in time, and that he thought he needed more to bring a claim and that he would be inclined to brush off the alleged discrimination or that because he had only been with the Respondent for 3 months at that point or that he was giving the Respondent a chance to deal with his grievance as the actual reasons why the Claimant did not present his discrimination, harassment and victimisation complaints in the first claim form. I do not accept that argument because, firstly, the Claimant was aware of time limits by the time he contacted ACAS, so he knew time limits were important, and he didn't want to miss the time limits, and so he should have known that he should bring a claim at the first opportunity. Secondly, the Claimant did not give the Respondent a chance to deal with his grievances properly, as he went to the Employment Tribunal before he actually got a decision on his grievance; he could not have really decided to wait until he received the outcome before bringing a claim if he had not received a decision in respect of his grievance when he brought his second claim form.

47. The Claimant's knowledge of the essence of his Equality Act 2010 complaints at the time of the presentation of his first claim form, coupled with his decision to tactically wait to bring his Equality Act 2010 complaints, speaks to the rule of Henderson v Henderson. However, I do not conclude that it goes so far as to amount to unjust harassment and without more, I could not find that the rule of Henderson v Henderson was breached.

48. Ms Aker's skeleton dealt mostly with the balance of prejudice argument that the Respondent was not prejudiced. I am bound to consider Millers and others v Ministry of Justice and ors and another EAT 0003/15 Laing J in considering both the prejudice of the Respondent having to defend a claim that would otherwise be struck out due to lack of jurisdiction and the forensic prejudice. There is a gap of nearly 11 months with respect of some of the discrimination matters dating back to April 2023. Adedeji requires me to consider the date of the event with respect to the exercise of discretion. The obvious fading of memories in respect to this time period is a prejudice to the Respondent.

49. Relying on taking a broad merits approach in relation to all my findings and conclusions, it is in those circumstances that I conclude it is not just and equitable to extend time. The Employment Tribunal has no jurisdiction

to consider all the Claimant's complaints of victimisation, harassment and discrimination.

Unfair dismissal

50. The Claimant was out of time by approximately 2 months in relation to both his automatic unfair dismissal and unfair dismissal complaints, as the first ACAS early conciliation certificate is the only certificate that applies. I make this conclusion because I consider myself bound by Revenue and Customs Commissioner v Serra Garau where Kerr J held that if there is a valid ACAS early conciliation certificate, there cannot be a valid subsequent certificate. It follows that although the Claimant did not know of his unfair dismissal complaint when the ACAS early conciliation certificate was issued, he would still be able to include that unfair dismissal complaint in his first claim form, which came after his dismissal. It is worth noting that the Claimant does refer to his "termination" of employment in his first claim form as he knew by 17 October 2023 he had been dismissed. At no point before me did the Claimant (who was lgall represented) argue that his unfair dismissal complaint was contained in his first claim form.

51. I accept that the Claimant was under the mistaken belief that he would have to go back to ACAS to be able to bring an unfair dismissal complaint but I do not accept that it was reasonable for the Claimant to have used all his 3 months less a day in these circumstances, as he did not have a discussion with anyone about the issue. The Claimant was not able to explain why he did not discuss the fact that he had already had an ACAS early conciliation certificate with the conciliator or why he did not contact ACAS earlier to get a second certificate and then issue his claim earlier.

52. I am conscious that the Claimant was a litigant in person when he presented his first claim form; however, the decision to wait to contact ACAS again and issue his claim at the last moment was something that the Claimant had decided for himself without any advice on the matter, and he did not seek advice on the matter. The Claimant could have sought legal advice, but he decided not to. Having regard to Lowri Beck Services Ltd v Brophy I do not accept that it was a reasonable step to take, bearing in mind that the Claimant was very conscious about the time limits. The Claimant was told early on during the second period of conciliation that the Respondent was not prepared to conciliate a second time but the Claimant still did not present his claim form for unfair dismissal, he did not seek any legal advice and did not ask ACAS about the need for the issue of a second ACAS early conciliation certificate, even though he had presented his claim form by 5 January 2024, he would have been in time. This leads me to conclude that it was reasonably practicable for the Claimant to have presented his unfair dismissal in time. There was nothing preventing the Claimant from presenting his claim in time, even though he was under a misapprehension about the law regarding the ACAS early conciliation certificate.

53. Even if I had found it wasn't reasonably practicable in considering whether to extend the discretion to say that the time period within which the Claimant presented his claim after the expiry of the time limit was a

reasonable period, I conclude the period was not. It was a period of 2 months during which the Claimant did not provide any reasonable explanation for why he waited for an extra 2 months.

54. The Claimant's complaints are dismissed for want of jurisdiction.

Approved By:

Employment Judge Young

Date 19 September 2025

REASONS SENT TO THE PARTIES ON

23 September 2025

FOR THE TRIBUNAL OFFICE

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