EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms J Snow	v	**Platanos Trust**

OPEN PRELIMINARY HEARING

Heard at: London South **On: 7 December 2020**

Before: Employment Judge Truscott QC

Appearances:

For the Claimant: **No appearance or representation**
For the Respondent: **Mr S Way of Counsel**

JUDGMENT on PRELIMINARY HEARING

1. The claimant's application to postpone the hearing is refused.

2. The claimant's claim is treated as one that the Tribunal should have rejected under Rule 12(1)(b).

3. In any event, the claimant's claim for a redundancy payment, whether statutory or contractual is struck out, and

4. The claimant's claims for unfair dismissal, sex discrimination and for a contractual redundancy payment (in so far as not already struck out) are struck out as the tribunal has no jurisdiction to hear them because:
   a. The claim of unfair dismissal was presented outside the primary time limit contained in section 111(2) of the Employment Rights Act 1996 and it was reasonably practicable for the claim to be presented within the primary time limit.

   b. The claim of sex discrimination was presented outside the primary time limit contained in section 123(1)(a) of the Equality Act 2010 and it is not just and equitable to extend the period within which the claim falls to be lodged.

5. The hearing fixed for 22 and 23 March 2021 is discharged.

REASONS

Preliminary

1. This has been a remote hearing on the papers because of emergency arrangements made following Presidential Direction because of the Covid 19 pandemic. The form of remote hearing was fully audio. A face to face hearing was not held because it was not practicable and specific issues could be determined in a remote hearing.

2. This Preliminary Hearing is to determine the following issues, as set out by Employment Judge Nash at the last Preliminary Hearing on 24 June 2020 [40]:
   a. Were the claims of unfair dismissal, sex discrimination and for a contractual enhanced redundancy payment presented within the time limit and, if not, should time be extended to permit the tribunal to hear the claims? The claim for a statutory redundancy payment was made in time.
   b. Should the claim have been rejected under rule 12(1)(b) of the Employment Tribunal Rules 2013 because there was a substantive defect in that the claimant had presented the claim form without accompanying documents on 8 March 2019.
   c. Case management if appropriate.

3. The respondent also submitted that the Tribunal should determine the respondent's application of 10 November 2020 for the claimant's claim for a redundancy payment to be struck out [74-76].

4. The respondent was represented by Mr S Way, barrister.

Background

5. The claimant was dismissed on notice on 18 July 2018 for redundancy [45]. She was paid a statutory redundancy payment of £10,336.43 and was not required to work her notice period.

6. The claimant commenced ACAS Early Conciliation on 7 January 2019. The Early Conciliation Certificate was issued on 7 February 2019 [1].

7. The claimant began her claim by submitting an ET1 through the tribunal's online system. The ET1 was received by the tribunal on 8 March 2019 [2]. The claimant ticked the boxes for unfair dismissal, sex discrimination and a redundancy payment [7]. She provided no details of her claim, stating instead in the box where she was invited to set out the background and details of her claim: "*Will up load separate claim as saved claim yesterday but tried to get back in and not letting me so started again*" [8]. In the Additional Information section the claimant wrote: "*Add in later*" [13]. The claimant indicated that her claim was for compensation and a recommendation by ticking the appropriate boxes on the form [9].

8. The Tribunal accepted the claimant's claim on 25 April 2019 and sent a copy to the respondent [14-15]. A Preliminary Hearing was listed on 20 September 2019 [16].

9. The respondent defended the claim by submitting an ET3 on 23 May 2019 [18]. The respondent's detailed grounds for defending the claim were set out in a full Grounds of Resistance [25-28]. In the Grounds of Resistance, the respondent alleged, *inter alia*, that the claimant's claims were out of time [27, paragraph 30 ff.].

10. As a result of the respondent's stance that the claimant's claims were out of time, the Preliminary Hearing listed for 20 September 2019 was postponed [29]. A Preliminary Hearing to determine whether the claimant's claims were out of time was listed for 14 November 2019 [30].

11. At that Preliminary Hearing on 14 November 2019, the claimant stated for the first time that she had provided details of her complaint in a separate document [32, paragraph 1]. The preliminary hearing was re-listed for 23 January 2020. The claimant was ordered to file and serve "*copies of the documents she says she uploaded with her claim form when she presented it online together with any information there may be as to proof of her uploading these documents*" by 28 November 2019 [33].

12. On 26 November 2019 the claimant forwarded to the tribunal and the respondent's representative an email from 8 March 2019 confirming that her ET1 had been submitted [49]. She also sent an email to the tribunal and the respondent stating that "*when I submitted by ET1 form I made a note for details to be added due to problems attaching the file due to technical difficulties, however sent as soon as possible after. I have searched for the sent email however been unable to locate it*." [59-60].

13. Later on 26 November 2019, the claimant sent a further email, forwarding an email which the claimant had sent to the tribunal (without copying in the respondent) on 1 April 2019 with the subject line "*Miss Snow details of claim*" [65]. On 27 November 2019 the claimant emailed the tribunal and the respondent to state that "*the email dated the 1st April are the original details I thought I submitted with my original ET1 claim form due to technical difficulties as stated I resent the claim details on the 1st April*." [61]

14. A preliminary hearing was then listed for 24 June 2020 to determine whether the claimant's claims were out of time [35]. That hearing took place by telephone before Employment Judge Nash [39]. Employment Judge Nash considered that it was not possible to determine whether the claimant's claims were in time [41, paragraph (11)] and re-listed the Preliminary Hearing for 7 December 2020. Employment Judge Nash made further orders in preparation for this Preliminary Hearing, including that the claimant "*will set out in writing by how much she says she is owed by way of a redundancy payment and how she has calculated this*" by 15 July 2020 [43, paragraph 3.1].

15. Having not received any communication from the claimant by 15 July 2020, the respondent wrote to the claimant on 23 July 2020 to request the ordered details of her claim for a redundancy payment [72]. That request was repeated on 6 November 2020 [72]. No response was received to either email.

16. The respondent applied on 10 November 2020 for the claimant's claim for a redundancy payment to be struck out [74-76] and requested that the application be determined at this Preliminary Hearing.

17. On 6 December 2020 the claimant sent an email to the tribunal in the following terms:

> "Sending my sincere apologies for this late response, a package was delivered to my home yesterday on the 05/12/2020 which I managed to very briefly skim through, to my horror realising the case is tomorrow with all that I have had going on dates have slipped my mind due to being severely unwell with covid. This year has been a ery difficult challenging time for me, not only dealing with a pandemic aswell as the loss of family members due to covid (uncle, cousin and close friend) and also the anniversary of the passing of my father. This has has had a huge impact on my mental and physical well-being humongousley. I am aware it has been postponed in the past due to my mental well-being. I am really not wanting to in convenience all party concerned but however I am totally not in any fit state to attend/join the hearing tomorrow and however how much this is important to me for still feeling very strongly about how unfairly I was treated by platanaos as well as feeling devastated that they keep stating that I chose voluntary redundancy which is not the case when at the time I wanted to retain my job as I had worked there for over 20 years and was very willing to continue my service to the school and the community. I really want my voice heard about the truth of what happened during the reconstructuring process and prior. If the case is till to go ahead without me I would just like to confirm that the previous emails I have sent with my evidence of emails from the judge setting a deadline to add my claim details wich i met those deadline and have also provided an email showing evidence of this. If needed I am happy to send proof of my covid results which were positive. Your sincerely miss Jayne K Snow."

18. Although not expressly stated as such, the Tribunal took this email to be a request for this Preliminary Hearing to be adjourned because the claimant is not able to attend.

Submissions

19. The Tribunal received written and oral submissions from the respondent.

Law

20. Rule 12 of the Employment Tribunal Rules 2013 states, in relevant part, that:

> (1) The staff of the tribunal office shall refer a claim form to an Employment Judge if they consider that the claim, or part of it, may be—
>
> …
>
> (b) in a form which cannot sensibly be responded to or is otherwise an abuse of the process;
>
> …
>
> (2) The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub-paragraphs (a), (b), (c) or (d) of paragraph (1). *(emphasis added)*

21. Rule 12(2) is in mandatory terms. If a claim, or part of it, meets the threshold in rule 12(1)(b) it must be rejected.

22. In **Trustees of the William Jones's Schools Foundation v. Parry** [2018] ICR 1807, Lord Justice Bean said rule 12(1)(b) requires the respondent to be able to give a sensible response to a claim. In so doing, there is no "*general rule that the respondent to a claim in an employment tribunal must always be treated, for the purposes of rule 12(1)(b), as having detailed knowledge of everything that has occurred between the parties. If, for example, a claimant brings a claim for sex or race or disability discrimination without giving any particulars at all, or attaching the particulars from someone else's case, that ET1 might well be held to be in a form to which the employer could not sensibly respond and thus properly rejected under rule 12(1)(b).*" (paragraph 32)

Striking out

23. Rule 37 states, in relevant part:

> 37.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—
> …
> (c) for non-compliance with any of these Rules or with an order of the Tribunal;
> (d) that it has not been actively pursued;

24. Judge Richardson said,in **Weir Valves & Controls (UK) Ltd v. Armitage** [2004] ICR 371, at paragraph 17, the guiding consideration as to whether a claim should be struck out for disobedience with an order is the overriding objective:

> "This requires justice to be done between the parties. The court should consider all the circumstances. It should consider the magnitude of the default, whether the default is the responsibility of the solicitor or the party, what disruption, unfairness or prejudice has been caused and, still, whether a fair hearing is still possible. It should consider whether striking out or some lesser remedy would be an appropriate response to the disobedience."

25. In **Rolls Royce PLC v. Riddle** UKEATS/0044/07/MT, Lady Smith said, at paragraph 19, a case may be struck out as not actively pursued in one of two circumstances:

> "The first of these is where there has been "intentional and contumelious" default by the claimant and the second is where there has been inordinate and inexcusable delay such as to give rise to a substantial risk that a fair trial would not be possible or there would be serious prejudice to the respondent"

26. The importance of tribunals adopting a structured approach when considering whether to strike out a pleading, and carrying out a careful and dispassionate analysis of the factors indicating whether a fair trial is or is not still possible and whether a strike out is or is not a proportionate penalty, has been stressed in a number of cases. For example, in **Arriva London North Ltd v. Maseya** UKEAT/0096/16 *(12 July 2016, unreported)* Simler J (as she then was) stated: 'There is nothing automatic about a decision to strike out. Rather, a tribunal is required to exercise a judicial discretion by

reference to the appropriate principles' (para 27). That case concerned a tribunal's decision to strike out a response to a disability discrimination claim on the grounds that the respondents had conducted the proceedings in a scandalous and unreasonable manner by pursuing a 'false defence' and deliberately failing to disclose documents. Allowing the respondents' appeal, Simler J held that, on the facts, there was no justification for categorising the response as 'false', and no basis for concluding that there had been a deliberate failure to disclose relevant documents. In reaching these conclusions, the tribunal had failed to analyse the facts properly and had fundamentally misunderstood the nature of the cases put forward by the claimant and the respondent. Moreover, it had crucially failed to consider the authorities on striking out and the principles to be applied. It did not properly investigate whether a fair trial was still possible and did not consider the question of proportionality. Simler J found that the problems regarding amendments to the response and the disclosure of documents, which were at the heart of the decision to strike out, were all capable of resolution without causing undue delay, so that there was nothing to prevent a fair trial from taking place. Further, and in any event, she held that the draconian sanction of strike out was disproportionate in the circumstances. The case was accordingly remitted to a fresh tribunal for a full hearing on the merits. Again, in **Baber v. Royal Bank of Scotland plc** UKEAT/0301/15 (18 January 2018, unreported), Simler J expressed similar views on the draconian nature of striking out orders when setting aside an order striking out the claimant's unfair dismissal claim for non-compliance with case management orders. Pointing out that such orders are neither automatic nor punitive, she held that not only did the tribunal fail to identify the extent and magnitude of the claimant's non-compliance with the order, merely stating that there had been non-compliance, but it had not examined whether a fair trial was still possible or whether a lesser sanction could be imposed (see para 56).

Time Limits

27. Section 111(2) of the Employment Rights Act 1996 (ERA 1996) provides:
"an Employment Tribunal shall not consider a complaint…unless it is presented to the Tribunal before the end of the period of three months beginning with the effective date of termination."

28. The primary time limit is extended by section 207B ERA 1996 to account for the mandatory period of ACAS Early Conciliation.

29. A Tribunal may only extend time for presenting a claim where it is satisfied of the following:
"It was "not reasonably practicable" for the complaint to be presented in time
The claim was nevertheless presented "within such further period as the Tribunal considers reasonable" (Section 111(2)(b), ERA 1996.)

30. There are two limbs to this formula. First, the employee must show that it was not reasonably practicable to present the claim in time. The burden of proving this rests on the Claimant (**Porter v. Bandridge Ltd** [1978] ICR 943 CA). Second, if she succeeds in doing so, the Tribunal must be satisfied that the time within which the claim was in fact presented was reasonable.

31. In **Dedman v. British Building Engineering Appliances Ltd.** [1974] ICR 53 Lord Denning held that ignorance of legal rights, or ignorance of the time limit, is not just cause or excuse unless it appears that the employee or his advisers could not reasonably be expected to have been aware of them. If he or his advisers could reasonably have been so expected, it was his or their fault, and he must take the consequences. Scarman LJ indicated that practicability is not necessarily to be equated with knowledge, nor impracticability with lack of knowledge. If the applicant is saying that he did not know of his rights, relevant questions would be:

> 'What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived? Should there prove to be an acceptable explanation of his continuing in ignorance of the existence of his rights, it would be inappropriate to disregard it, relying on the maxim "ignorance of the law is no excuse".

The word "practicable" is there to moderate the severity of the maxim and to require an examination of the circumstances of his ignorance'

32. This approach was endorsed in **Walls Meat Co. Ltd. v. Khan** [1979] ICR 52. Brandon LJ dealt with the matter as follows:

> 'The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant or a postal strike; or the impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made, or from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him'.

33. **Palmer & Saunders v. Southend-on-Sea Borough Council** [1984] ICR 372 CA followed this line and talked in terms of reasonable possibility at page 384-385.

34. The issue was considered more recently in **Marks & Spencer plc v. Williams-Ryan** [2005] ICR 1293 CA, where Lord Phillips MR, having reviewed the authorities, upheld the **Dedman** principle as a proposition of law (at para 31):

> *'[In Dedman] the* employee had retained a solicitor to act for him and failed to meet the time limit because of the solicitor's negligence. In such circumstances it is clear that the adviser's fault will defeat any attempt to argue that it was not reasonably practicable to make a timely complaint to an employment tribunal.'

35. The question in **Williams-Ryan** was whether a claimant could rely on the escape clause where she had received advice from a CAB. Holding that there was no binding authority equating advice from a CAB with advice from a solicitor, Lord Phillips MR stated (at para 32):

'I would hesitate to say that an employee can never pray in aid the fact that he was misled by advice from someone at a CAB. It seems to me that this may well depend on who it was who gave the advice and in what circumstances. Certainly, the mere fact of seeking advice from a CAB cannot, as a matter of law, rule out the possibility of demonstrating that it was not reasonably practicable to make a timely application to an employment tribunal.'

35. The Equality Act 2010 provides:

123 Time limits

(1) [Subject to section 140A and 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.

36. Harvey provides a non-exhaustive list of factors which may prove helpful in assessing individual cases:

- the presence or absence of any prejudice to the respondent if the claim is allowed to proceed (other than the prejudice involved in having to defend proceedings);
- the presence or absence of any other remedy for the claimant if the claim is not allowed to proceed;
- the conduct of the respondent subsequent to the act of which complaint is made, up to the date of the application;
- the conduct of the claimant over the same period;
- the length of time by which the application is out of time;
- the medical condition of the claimant, taking into account, in particular, any reason why this should have prevented or inhibited the making of a claim;
- the extent to which professional advice on making a claim was sought and, if it was sought, the content of any advice given.

Discussion and decision

Should the hearing should go ahead in the claimant's absence?

37. The Tribunal decided that the hearing should go ahead in the claimant's absence for the following reasons:

a. The decision as to whether to go ahead in the claimant's absence is discretionary, and to be exercised in accordance with the Overriding Objective in Rule 2 of the Employment Tribunal Procedure Rules:

"…to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing;

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c) avoiding unnecessary formality and seeking flexibility in the proceedings;

(d) avoiding delay, so far as compatible with proper consideration of the issues; and

(e) saving expense."

b. This is the third Preliminary Hearing listed in this case to determine matters which remain outstanding from the claimant's claim form submitted on 8 March 2019. At the first Preliminary Hearing on 14 November 2019 the claimant was not prepared to deal with the case, having attended without any papers. At the second Preliminary Hearing on 24 June 2020 the issues to be determined at this hearing were explained to the claimant clearly. The claimant has had more than adequate notice of the issues which the tribunal is to resolve at this Preliminary Hearing. It would be disproportionate to adjourn this hearing to list a fourth Preliminary Hearing in a case of this complexity to determine these issues.

c. Nor would doing so involve doing justice to the respondent, which has attended each Preliminary Hearing prepared and ready to deal with the matters which it contends should mean that the claimant's claim is summarily disposed of. The Overriding Objective requires that justice be done to both parties. Adjourning this hearing, and further delaying determination of the issues which remain outstanding, would not do justice to the respondent.

d. The claimant's request for an adjournment in her email of 6 December 2020 is wholly inadequate. The claimant appears to contend that she is unable to participate in the hearing because of medical issues, specifically that she has been unwell with Covid-19. The claimant has not provided any medical evidence to substantiate her claim. It is not sufficient for the claimant to make an application to adjourn a hearing on medical grounds without supporting evidence (if authority is needed for this trite proposition, see **General Medical Council v. Hayat** [2018] EWCA Civ 2796, per Coulson LJ at paragraph 42: "*The courts have generally supported tribunals who have refused to adjourn hearings when presented with medical evidence that was inadequate or insufficient*").

e. The claimant has had more than adequate notice of this hearing and yet applied to adjourn at the last minute because the date had "slipped my mind". The date of this hearing was fixed at the Preliminary Hearing on 24 June 2020, which the claimant attended. She has received repeated reminders of the hearing in correspondence from the respondent:

    i. On 23 July 2020 [72]
    ii. On 6 November 2020 [73]
    iii. On 10 November 2020 [77]
    iv. On 16 November 2020, when the respondent sent the hearing bundle to the claimant by email.
    v. On 1 December 2020, when the respondent sent its skeleton and authorities bundles to the claimant by email.

f. In the light of that background, there is no question of the claimant having had inadequate notice of the hearing today. The claimant acknowledges that she had simply forgotten about the hearing. That is not a sufficient basis on which to further delay resolution of the issues to be determined at this Preliminary Hearing.

38. For those reasons, the Tribunal exercised its case management discretion to refuse the claimant's request to adjourn the hearing and should determine the issues listed at paragraphs 1 and 2 above in the absence of the claimant.

Matters to be determined

Should the claimant's claim have been rejected under rule 12(1)(b)?

39. The claimant's claim consisted only of her ET1. No further details were provided with the ET1. The email of 1 April 2019 is therefore not part of the claimant's claim.

40. Even taking into account the knowledge of the relationship between the parties, the claimant's claims could not be sensibly responded to for the following reasons:

a. Unfair dismissal. The respondent knew that the claimant had been dismissed for redundancy. However, the claimant had accepted an offer of voluntary redundancy. In those circumstances, without an explanation from the claimant as to how her dismissal was alleged to be unfair notwithstanding the fact that the reason for the dismissal was the claimant's decision to accept voluntary redundancy, her claim made no sense. There was no apparent dispute between the claimant and respondent that the claimant would be dismissed for redundancy.
b. Sex discrimination. There are no background facts from which the respondent can be considered to understand the nature of the claim that was made. The claimant had not raised any complaints of sex discrimination to the respondent. The claim was made only be ticking the box titled "sex discrimination" without any further details being provided.
c. Redundancy payment. The claimant had been paid a statutory redundancy payment of £10,336.43. In those circumstances, without knowing what further sums the claimant claimed were due as a redundancy payment, and the basis on which those sums were due, the claimant's claim was entirely unintelligible. There was (and remains) no explanation as to the nature or amount of the further payment alleged to be due from the respondent.

41. On 24 June 2020 Employment Judge Nash found that the claimant's claim might be for a contractual redundancy payment. Notwithstanding that finding, this Tribunal is not precluded from a finding that such a claim in the claim form could not be sensibly responded to. Employment Judge Nash expressly reserved her view on that issue (see paragraph 1.5 on [42]).

42. It follows from the foregoing that the claimant's claims should have been rejected pursuant to Rule 12(2).

Should the claimant's claim for a redundancy payment be struck out?

43. The claimant was ordered by Employment Judge Nash on 24 June 2020 to provide details of her claim for a redundancy payment. Although Employment Judge Nash found that the claimant's claim was sufficiently broad to include a claim for a contractual redundancy payment, the direction relates to any sums owed by way of

redundancy payment, and therefore encompasses both a claim for a statutory redundancy payment and a claim for a contractual redundancy payment.

44. The reason for that order was clear. Without clarification of the basis for the claimant's claim for a redundancy payment, her claim is unintelligible. The respondent cannot respond to a claim for which no information has been provided. This was made clear to the claimant at the hearing, and in the order. The claimant cannot have been in any doubt as to the reasons for the order, or the importance of her complying with it. The order was not onerous and required the claimant only to provide the most basic details of her claim.

45. In those circumstances, the only appropriate sanction is to strike out the claimant's claim for a redundancy payment (whether statutory or contractual). The claimant has been on notice of the deficiencies in her claim since the respondent submitted its Grounds of Resistance on 23 May 2019. In over 18 months since that date, she has provided no further clarity as to what she claims or why.

46. The claimant has provided no explanation for her failure to comply with the order, despite the respondent prompting compliance on two occasions. The claimant's prolonged failure to comply with this order constitutes an intentional and contumelious default, such that the claimant is no longer actively pursuing her claim for a redundancy payment.

Are the claimant's claims out of time?

47. The time bar issue applies to the claims for unfair dismissal, sex discrimination and breach of contract for an enhanced redundancy payment. If a claim for a statutory redundancy payment has been properly brought (in respect of which the Tribunal has decided that it has not), then such a claim is in time.

48. The primary limitation period for the claimant's claims expired on 7 March 2019:
    a. The claimant's effective date of termination was 9 October 2018. Absent any extension for ACAS Early Conciliation, the primary time limit would have expired on 8 January 2019.
    b. Day A for ACAS Early Conciliation was 7 January 2019. Day B for ACAS Early Conciliation was 7 February 2019. The period between the day after day A and day B is 31 days. The primary limitation period was therefore extended until 8 February 2019 as a result of section 207B(3) ERA 1996.
    c. This time limit falls between Day A and one month after Day B. The time limit was therefore further extended to one month after Day B by section 207B(4) ERA 1996, i.e. to 7 March 2019.

49. The claimant's claims for unfair dismissal, sex discrimination and for any breach of contract claim were therefore brought one day out of time. Although a claim for a statutory redundancy payment would be within time, a claim for a contractual redundancy payment is a breach of contract claim and therefore would be subject to the three month time limit set out above.

50. The claimant has offered no explanation as to why her claims were brought out of time. The respondent will make further submissions following any explanation

provided to the claimant at this Preliminary Hearing. However, the Tribunal noted the following:

a. No matter which test is to be applied to extend the time limits to bring claims, the claimant must provide some adequate explanation as to why her claim is out of time.
b. The claimant has been on notice that her claims were brought out of time since the respondent submitted its Grounds of Resistance. She has provided no explanation at all in that time.
c. The claim which the claimant presented out of time was wholly inadequate, for the reasons as set out above. It would have been eminently possible for the claimant to have submitted a claim of this form much earlier than she did.

_____
Employment Judge Truscott QC
Date 7 December 2020