



EMPLOYMENT TRIBUNALS

Claimant: Mr M Greenwood

Respondent: 1. Chorley Borough Council
2. South Ribble Borough Council

Heard at: Manchester (by video) **On:** 31 October 2022

Before: Employment Judge Knowles

Representation

Claimant: In person
Respondents: Mr J Burke, Solicitor

RESERVED JUDGMENT UPON HEARING PRELIMINARY POINTS

The Judgment of the Tribunal is that all of the Claimant's claims are dismissed for want of jurisdiction (time limits) because:

1. The Claimant's claims of automatically unfair dismissal under Section 103A of the Employment Rights Act 1996 and detriment under Section 43B of the 1996 Act were not brought within the prescribed time limit.
2. It was reasonably practicable for those claims under the 1996 Act to have been brought within the prescribed time limit.
3. Additionally and in the alternative those claims under the 1996 Act were not presented within a further period as the Tribunal considers reasonable.
4. The claim of direct discrimination on the grounds of his philosophical belief under Section 13 of the Equality Act 2010 was not brought within the prescribed time limit.
5. That claim under the Equality Act 2010 was not brought within such other period as the Tribunal thinks just and equitable.

RESERVED REASONS

Issues

1. The issues for determination at this public preliminary hearing were set down at the preliminary hearing by telephone before Employment Judge Benson on 20 June 2022 as follows:
 - a. Was [it] reasonably practicable for the claimant to have brought his claims of unfair constructive dismissal and detriment within the requisite time period set out in section 111 and 48 of the Employment Rights Act 1996?
 - b. If not, did the claimant bring the claim within a reasonable period thereafter?
 - c. The parties agree that the claim of direct discrimination was not brought within the necessary time period set out in section 123(1) Equality Act 2010? Does the Tribunal find that it is just and equitable to extend that period to allow the claim to proceed?
 - d. If the Tribunal does find it just and equitable, by what additional period does the Tribunal consider as such?
 - e. On the basis of the above, does the Tribunal have jurisdiction to hear any of the claimant's complaints?
 - f. Any further case management orders.

2. The matter was listed with a time estimate of three hours.

Evidence

3. This hearing was undertaken remotely by video using HMCTS's cloud video platform. No technological issues arose during the hearing.
4. The Claimant attended the hearing by video and produced a witness statement (23 pages, 140 paragraphs).
5. The Claimant gave sworn oral evidence at the hearing.
6. The Respondents did not call any witnesses.
7. The parties produced a core bundle of documents (139 pages) and a supplementary bundle of documents (57 pages).
8. The parties noted to me at the commencement of the hearing that the documents produced contained without prejudice documentation to which both parties waived privilege for the purposes of this hearing.
9. The parties made oral submissions at the hearing. None of the parties produced written submissions.

10. Mr Burke appeared on behalf of both of the Respondent's. The Claimant is a litigant in person.
11. References to numbers in brackets in this Judgment are to page numbers in the core bundle.
12. The hearing began at 10:00, adjourned from 11:50 to 12:00 for a comfort break following the Claimant's evidence, and concluded following submissions from all parties at 12:44.
13. I reserved Judgment in this matter because all of the time allocated to the hearing was utilised hearing evidence and submissions leaving insufficient time for deliberations and delivering Judgment.
14. I apologise to the parties for the period of time that they have had to wait for my reserved judgment. This is a product of the matter being set down with what turned out to be insufficient time. Given the volume of evidence presented by the parties, I have needed to allocate time to deliberations and writing up which I was unable to do without splitting my time between two dates in December 2022 and January 2023, which were the only dates of availability I had. Dealing proportionately with the evidence presented required that time to be allocated.

Findings of fact

15. I made the following findings of fact on the balance of probabilities and note the following claims and assertions by the Claimant.
16. Whilst I must make findings of fact concerning evidence relevant to the time limitation issues, I must also place them into the context of the Claimant's claims and assertions although the latter would be matters for determination only at a full merits hearing.
17. For the purposes of this hearing, I do not assess the Claimant's evidence as to the merits of his claims or make findings upon that evidence. I take his evidence as to the merits of his claims at its height.
18. I summarise the Claimant's claims as follows, from considering his claim form and attached particulars (3-20) together with his amended response to the Tribunal's request for further information (62-66) and his witness statement.
19. The Claimant asserts that he was constructively dismissed and that his dismissal was automatically unfair because the reason or principal reason for dismissal was that he made protected disclosures.
20. The Claimant asserts that he began his employment on 8 April 2019.
21. Although the Claimant is claiming automatically unfair constructive dismissal, he does not assert that he resigned in circumstances that entitled him to resign and treat himself as dismissed. He does not assert that he resigned at all.
22. He describes circumstances in which a settlement agreement was reached where they agreed to part ways (para 19 particulars of claim, page 18).

23. The parties accept that the settlement agreement did not compromise the Claimant's claims to this Tribunal under either the 1996 or 2010 Acts; the Claimant did not receive independent legal advice upon the agreement nor does the agreement contain any certificate for the purposes of the requirements of a valid compromise agreement.

24. I note that from the particulars of claim it is not clear whether or not the Claimant is claiming automatically unfair dismissal or, if he is, on what grounds. Nor is it clear what protected characteristic the Claimant is relying upon or what form of discrimination he alleges has occurred.

25. For that reason, the Tribunal wrote to the Claimant 3 March 2022 (53-54) requesting further information as follows:

1. Is the claimant bringing a complaint of discrimination under the Equality Act 2010? If so, what is the protected characteristic he relies on and what does he say was done (or omitted to be done) by either or both respondents which he believes to be an act of discrimination related to that protected characteristic?

2. Is the claimant bringing a complaint of unfair dismissal? If so, which respondent is this complaint brought against? Does he say that respondent actually dismissed him or that he resigned because of a very serious breach of contract by that respondent (constructive dismissal)? If he had been employed less than two years by that respondent by the effective date of termination, on what basis does he say he is entitled to bring a complaint of unfair dismissal?

3. Is the claimant bringing any other complaint which the Tribunal has power, or jurisdiction to deal with? If so, what is that complaint?

26. Stepping back for one moment, it is clear that the Claimant asserts his employment commenced 8 April 2019 and ended on 30 June 2019. There is no dispute between the parties that the Claimant's employment lasted less than 3 months.

27. The Claimant's response to the Tribunal's request for further information (62-66) can be summarised as follows:

a. That he is bringing a complaint under the 2010 Act based on the protected characteristic of philosophical belief and that he claimed direct discrimination had occurred under Section 13.

b. That his unfair dismissal complaint was a complaint of automatically unfair dismissal for making a protected disclosure.

28. At the preliminary hearing on 20 June 2022 it appears, on my reading, to have been further clarified that the Claimant claims that as a result of having made protected disclosures he was subject to detriments:

(i) M Lester threatened to dismiss him on 27 June 2019;

(ii) D Taylor, a manager, acted aggressively towards him both physically and verbally by way of shouting at him in an aggressive manner;

(iii) G Hall prevented him from being appointed as a surveyor at the second respondent by advising the second respondent that he was “not a good cultural fit”. In respect of this allegation, the claimant also alleges that it amounted to direct discrimination on the grounds of a philosophical belief, his belief being “that local authorities have a moral duty to the public to spend public funds lawfully and in a way which would not be morally questionable”.

29. I note that there appears to be acceptance between the parties that the Claimant has brought the above claims but also that there has not, despite the claims having developed through the provision of further information in writing and orally at the previous preliminary hearing, been any judicial determination on the issue of whether or not the Claimant should be granted leave to amend his claim to include the further claims and assertions in support of those claims set out and expressed in the Claimant's further information.

30. All parties are addressing the issue of time limitation utilising the date of presentation of the claim form, 8 December 2021.

31. Early conciliation began on 6 December 2021 and an early conciliation certificate was issued in relation to both Respondents 7 December 2021.

32. The Claimant accepts that his employment ended 30 June 2019, the termination date agreed in the document labelled settlement agreement (112-116).

33. The first two detriment claims pre-date dismissal. The assertion concerning M Lester threatening to dismiss the Claimant is dated as 27 June 2019. The assertion concerning D Taylor acting aggressively towards the Claimant is, so far as I can ascertain from the claim form, particulars of claim, further particulars of claim and previous case management order, undated. There is a complaint about the Claimant being berated by Mr Taylor that day in the Claimant's email dated 27 June 2019 (91).

34. The third detriment claim, which is also the direct discrimination claim, is asserted in the Claimant's claim form to have occurred 27 September 2019.

35. The Claimant accepted in questioning today that his claims were 26 months 8 days out of time.

36. I find that concession relates only to those events immediately before and the date of termination itself. The third detriment and discrimination event of 27 September 2019 would have an ordinary time limitation of 26 December 2019; therefore the claim was instituted approximately 23 months 17 days out of time.

37. I turn now to matters upon which I must make findings of fact on the balance of probabilities, namely the Claimant's evidence concerning the reasons why he brought the claim at the late stage he did.

38. The Claimant's claim form explains why his claim was not brought in time. The Claimant states:

- a. That he contracted life threatening vasculitis in November 2019, whereby he was given a fifty / fifty chance of survival and whilst he

had to (and was just about able to) continue working following this bout of serious illness, most of his spare time was spent seeing over a dozen different doctors and specialists at specialist care centres around the North West including numerous hospitals and the Centre for Tropical Diseases in Liverpool whereby he had a prolonged period of analysis including regular blood, biopsy, urine and other tests.

- b. COVID was another issue that held up his ability to bring a claim. With everything that happened over the past 2 years, he states that he has just not been well enough or had the energy or ability to deal with this matter. He suggests that an extension of time would be in the public interest.

39. The Claimant's witness statement is for this hearing is lengthy and recites a great deal of information about his claim. As I have already mentioned, the purpose of this hearing is not to consider the merits of the claims, the purpose is only to consider the time limitation issues.

40. Although this does not perfectly reflect the reasons set out in the claim form as to why his complaint was brought late (in that the two core points do not mention the pandemic), at paragraph 12 in his witness statement the Claimant states that there are two core reasons why his complaint was brought late.

41. At paragraph 13 he refers to the Council's failure to ensure that he received legal advice upon the termination agreement. He states that at the relevant time he felt he did not have the right to bring a claim to the tribunal because the matter seemed to have been legitimately settled.

42. At paragraph 14 he states that the second reason was his illness, which he suggests was wilfully caused by the Respondent, then at paragraph 15 suggesting that the illness was triggered by the severe stress he suffered whilst working at the Council.

43. Paragraphs 16 to 31 of the Claimant's witness statement add little to these points. The Claimant's states a number of matters that he will prove and establish but not how.

44. In paragraphs 31 to 38 of his witness statement the Claimant refers to the Respondent's conduct after the settlement agreement was entered, beginning with the asserted blocking of his employment with South Ribble Council, but also citing other post-termination issues concerning his neighbour's drains, his council tax bill, invasive species spreading into his rear garden and other issues concerning his work involving one of the First Respondent's former employees.

45. Whilst the post-termination issues extend to matters outside of his claims, and therefore do not appear directly relevant, I think they are relevant to the timing of the Claimant's claims (see further below).

46. At paragraphs 39 to 55 of his witness statement the Claimant sets out his claim of direct discrimination based on his philosophical belief. This part of the statement does not refer to issues relevant to time limitation.

47. At paragraphs 56 to 61 in his witness statement the Claimant sets out his claim of unfair dismissal, and at paragraphs 62 and 63 claims of repudiatory breach

of contract. Again, these parts do not deal with time limitation issues. The Claimant's claims of breach of contract were withdrawn by him on 20 June 2022 at a telephone preliminary hearing.

48. At paragraphs 64 to 67 of the Claimant begins what he describes in the heading as his detailed basis of claim. There is some repetition of the time limitation matters which I have set out above, but the Claimant's adds that immediately after his vasculitis diagnosis the pandemic struck. He refers to his condition causing a collapse of his immune system and that he feared being called into tribunal prior to receiving the two part vaccine because of the risk of serious illness or death.

49. From paragraph 67 the Claimant begins further background to his claims, reciting in detail matters concerning his employment with the First Respondent. The Claimant is describing a stressful work environment. I note that in paragraph 81 he explains that on 19 June 2019 he had to take time off sick with stomach problems which he states were most likely the start of his journey with vasculitis. He refers to being off ill until his return to work 27 June 2019, which was also his last day in work prior to the termination agreement 30 June 2019 which was the effective date of termination. However these matters say little which assist with time limitation issues that had not already been set out in the statement. The matters set out between paragraph 67 and 98 in the witness statement are more about the claims and add nothing about the timing of bringing the claims.

50. At paragraphs 99 to 117 in his witness statement the Claimant sets out how his illness and the pandemic impacted his ability to bring his claims on time. These matters are at the crux of the issues before me today and I therefore set them out in full here:

"SICKNESS

99. As previously explained above, one of my two reasons for bringing my Tribunal claim late was down to the action or inaction of the Respondents. I will now demonstrate that the Respondents were also responsible for the second reason why my claim was made outside of the requisite time period.

100. The Settlement Agreement was executed by email on 4th July 2019 and I was diagnosed with extremely high blood pressure after being admitted to hospital on the 9th of July 2019 where I was prescribed Ramipril for high blood pressure at Chorley Hospital after experiencing severe headaches and abdominal pains. [see screenshot of health record [CB117] and note the comments made by the specialist [CB121] when I was diagnosed with vasculitis in Nov 2019 that the symptoms match i.e. high blood pressure. headaches and abdominal pains].

101. I then suffered from serious headaches and abdominal pains throughout July and August and had to take time off work at my new role at Wigan Council as per various exhibits mentioned below .

102. On an aside, on 23rd July 2019, Chorley Council updated their constitution following my raising issues with it [SB46].

103. On 06 August 2019 I passed blood through my urine, and this then turned into passing blood in my stool.

104. On 27 August 2019 I was sent to hospital for Rectal Bleeding [Euxton Medical Centre Email bottom of CB130] I was informed by the hospital that it was most likely caused by high blood pressure.

105. On 29th August I was sent to the HOT Clinic as above with symptoms including rectal bleeding [Euxton Medical Centre Email bottom of CB130].

106. 6 weeks later on 16th October, the first signs of vasculitis appeared on my skin, which indicates that my veins were bleeding into my body [date stamped photos CB136].

107. The next day on 17th October, I sent an Email to my employers taking sick leave with a crushing headache [Lower half of CB118].

108. On 23rd October, I was admitted to hospital with suspected meningitis [Email CB119].

109. On 29th October, I was admitted to hospital with vasculitis [Euxton Medical Centre Email bottom of CH130].

110. On 12th November I was formally diagnosed with vasculitis [CB121 – CB122] whereby I was told by the Doctor that I had a 50 / 50 chance of survival.

111. I then mainly worked from home, or I was off work on sick leave. The vasculitis diagnosis shows that I had become immobile as serious arthritis that was attached to the condition had stopped me from walking and seriously impeded the use of my hands and limbs. I am then placed on high dose steroids for some time. and I take time off work. spending much of my time in various hospitals and clinics.

112. 23 March 2020 was the start of the first lockdown, but weeks earlier than this. it was all over the news that the new dangerous coronavirus was spreading globally and was killing people with weakened immune systems.

113. On 05 May 2021, I Received my second dose of the Astra Zeneca vaccine but remained concerned about catching the virus due to my previous serious / underlying health issues.

114. On 06 Dec 2021 I raised the matter with ACAS 06 Dec 2021.

115. Wigan Council therefore allowed me to work from home and I should add that just because I had not yet been diagnosed with Vasculitis (as it is extremely rare). it was clear that I was already suffering from the condition.

116. There can be no doubt therefore that my condition was stress related, that Chorley Council was aware that it was causing their employees to suffer from severe stress, that the Council refused to do anything about it and that they did not care about the wellbeing of their employees and they did not provide any support whatsoever.

117. The current regime remains in power and I understand that their attitude

towards the wellbeing of their employees has not changed. They still have a high turnover of employees, particularly within their estates team and the only way that the Council's attitude will change is if the Tribunal allows my case to progress or if a similar or worse case follows this one in the future. I implore the Tribunal to not let that happen."

51. I did note during his evidence that there appeared to be large gaps in time between the circumstances described at paragraph 110 (the diagnosis 12 November 2019) and the raising of the matter with ACAS 6 December 2021. I asked the Claimant in evidence how his health had changed by 6 December 2021 and his answer was that by December 2021 he had caught and recovered from COVID-19 infection and therefore no longer feared attending a tribunal to pursue his claim.

52. I asked the Claimant twice because he had not told me how his vasculitis had improved (being put as something that had until then inhibited him from bringing a claim) but he again reiterated that his was his recovery from a COVID-19 infection that meant he was then able to bring his claim.

53. Despite my asking, the Claimant does not appear to suggest that there was a recovery from his vasculitis condition which helped him to bring forward his issues to ACAS and then to the Tribunal in December 2021.

54. Paragraphs 118 to 125 of the Claimant's witness statement concern the issues around the Claimant's job offer from the Second Respondent being, he asserts, blocked. There are no issues relevant to the time limit raised here.

55. Paragraphs 126 to 128 set out the "basis of claim" and are a repetition of matters already set out.

56. At paragraphs 129 to 133 the Claimant sets out "The matter of the open drain affecting my neighbours". It appears that the Claimant has supported his neighbours in a dispute concerning the drainage from their properties but after the Claimant becoming involved the First Respondent has refused to engage with them about the issue.

57. It appeared to me listening to the Claimant give evidence that although he had initially moved on from his dispute concerning work matters, believing them to have been validly settled, ongoing satellite issues including that relating to his neighbours drains have influenced his decision to begin litigation about his employment matters. Whether or not the First Respondent's approach to the issue concerning his neighbour's drains is linked to their prior history with the Claimant, he clearly believes that to be the case and feels strongly about it, dedicating much of his evidence to these matters. Although the Claimant does not refer to the issues as directly influencing the timing of his claim, from the evidence I heard today I believe that the dispute with the First Respondent concerning his neighbour's drains were part of the trigger for the bringing of the claim when it was eventually brought, i.e. I believe that it is more likely than not that a substantial part of the trigger for the claims brought in December 2021 was the satellite dispute concerning his neighbour's drains, not the termination of the employment with the First Respondent or events that lead to that, or the asserted blocking of employment with the Second Respondent.

58. Relatively few documents have been produced to me concerning the

Claimant's health. These are:

- a. Page 117 – A print of current repeat medicines including Ramipril (for high blood pressure) capsules from 9 July 2019 and a Ventolin inhaler from 15 March 2022.
- b. Page 118 - Email to Wigan Council (his then employer) 17 October 2019 concerning sick leave for headache and catarrh.
- c. Page 119 – Email to Wigan Council 23 October 2019 concerning sick leave following having to go into hospital with suspected meningitis / blood poisoning.
- d. Page 120 – photos of the rash from above.
- e. Page 121 – 122 – Medical report 13 November 2019 (see below).

59. The medical report produced by the Claimant (there is only one) dated 13 November 2019 confirms a possible diagnosis of vasculitis. It does not refer to life expectancy nor is there any mention of a 50 / 50 chance of survival as the Claimant has stated in evidence. The report refers to legions on the Claimant's legs and arms. The report refers to the Claimant's blood pressure. It concludes with some prescriptive medicines and a suggested follow up in 4 weeks time.

60. The Claimant was asked questions about this report in cross examination and suggested that from then onwards he was either in bed doing a few hours of work each day or off work sick.

61. However there has been little if any independent evidence produced to me of that being the Claimant's situation after his diagnosis.

62. He has carried on working. There is no independent evidence of absence from work other than the emails concerning absence from his work for Wigan Council for brief periods in October 2019.

63. On the Claimant's verbal evidence alone, I simply cannot find that on the balance of probabilities that the Claimant has been bedridden since October 2019 and unable to bring a claim as he makes out. I believe the suggestion that that has been the case to be an exaggeration for the purposes of answering the time limitation point which he faces.

64. I reiterate that the Claimant was unable to explain, when I asked him, how his health had improved to allow him to bring his claim in December 2021.

65. I have no independent medical evidence post-dating the report in November 2019. That report does not indicate illness which would prevent someone from bringing a claim.

66. I do not doubt that the Claimant has had health scares which were very concerning to him. But he has simply not presented any evidence to support the degree of impact he asserts.

67. The Claimant was questioned about his understanding of the settlement agreement and why he believed the First Respondent was in breach of a duty to provide him with legal advice. However, when reviewing the emails which were sent to the Claimant at the time and the Claimant's responses to those emails, it can clearly be seen that the Respondent had initially drafted a compromise agreement which would require the Claimant to take independent legal advice

upon its terms and that it was the Claimant who advised the Respondent that he did not need advice and would deal with the agreement himself because he felt he was “sufficiently competent”. The Claimant does have some limited legal training, albeit in the property field.

68. I can see however that right from his return to work 27 June 2019, the Claimant was writing to the First Respondent asserting his rights. At 14:30 he wrote “*I hereby reserve the right to present any correspondence between the parties and any evidence to the Courts (particularly when it comes to dealing with the matter of costs), the Employment Tribunal and to appropriate third parties due to the public interest factors involved*”. At 15:54 he wrote “*In parallel to this, please accept this and my last email as a formal complaint under your internal employment grievance policy whereby failure to arrive at a satisfactory conclusion, I will turn to the Union, ACAS, the Employment Tribunal and even the Courts if necessary unless a resolution between the parties can be found within a reasonable timescale. I am hereby putting my legal expenses insurers on notice and I retain the right to present the correspondence between the parties to the Courts if necessary*”. In these respects the Claimant was, at the very first instances, displaying a knowledge of employment law processes beyond what is commonly seen from a litigant in person.

Submissions

69. The Respondent made submissions concerning the key dates, which are set out above.

70. The Respondent submitted that it was reasonably practicable for the Claimant’s claim of unfair dismissal to have been brought within the time limit. They note that in relation to the settlement agreement, the Claimant waived the right to legal advice. This did not prevent the Claimant bringing his claim because he was not aware that the agreement was not enforceable until the preliminary hearing in June 2022 meaning that when he brought his complaint, he still believed the agreement was valid. In relation to the Claimant’s illness, there is no medical evidence that he suffered from that when he left. The medical evidence first mentions this as around 23 October 2019. He was not suffering during the prescribed period. He was employed by Wigan Council. If able to undertake his work duties, he could have brought his claim. It was not in any event brought within a reasonable period thereafter. There is no evidence he was vulnerable to COVID-19. The Tribunal was functioning during the pandemic, remote hearings were available, and the Claimant could have taken legal advice. The Claimant acknowledges that it was a simply process that that it did not take him long to put in his claim. The pandemic was not until March 2020. The Claim was brought 2 years out of time.

71. In terms of the claim of discrimination, the Respondent noted that the Second Respondent was not party to the settlement agreement. There is no medical evidence suggesting the claim could not have been brought earlier. The Claimant would have had the opportunity to bring his claim notwithstanding the pandemic. The evidence will have been affected due to the delay; the hearing could be dealing with matters 4 years earlier. The Claimant was aware of all of the facts and has legal training. He was able to research points of law. The Second Respondent would be caused significant prejudice. The claims lack merit and that can be taken into account.

72. The Claimant submitted that the Respondent's entire case rests on the 3 month point. The pandemic issue has been taken out of context, his illness was central to everything. The pandemic prevented treatment because clinics were suspended. The Claimant submitted that he is still ill now and is on the same medication. His symptoms started whilst working for the first Respondent. He was visiting hospital. He was in the most at risk group. The virus would have been deadly. Whilst he did continue working he was not attending the office or meetings and mainly undertook transactions by email. He was capable of doing non-taxing duties from bed. He submitted that he was only just capable of keeping his job. His legal experience is purely in property matters. He could not face the clock ticking to a tribunal hearing. I feel better, my mental health has improved and my chances of becoming seriously ill with COVID are not as acute.

The Law

The time limits

73. In relation to claims of unfair dismissal, Section 111(2) provides that:
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.

74. In relation to claims of unlawful detriment, Section 48(3) of the Employment Rights Act 1996 provides that

An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, 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.

75. Section 123 of the Equality Act 2010 contains the following provisions concerning time limits:

(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.

Extending the time limits

76. There are provisions under the Early Conciliation regime for time limits to be extended where, within the ordinary time limitation, a claimant notifies ACAS of his claim. These are not relevant to this matter because the Claimant notified ACAS of his claims outside of the ordinary time limit.

Under the reasonably practicable principles

77. S.111(2)(b) ERA should be given a 'liberal construction in favour of the employee' (***Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA***).

78. What is reasonably practicable is a question of fact and thus a matter for the tribunal to decide. An appeal will not be successful unless the tribunal has misdirected itself in law or has reached a conclusion that no reasonable tribunal could have reached. In ***Wall's Meat Co Ltd v Khan 1979 ICR 52, CA*** the test was put as follows - '*The test is empirical and involves no legal concept. Practical common sense is the keynote and legalistic footnotes may have no better result than to introduce a lawyer's complications into what should be a layman's pristine province. These considerations prompt me to express the emphatic view that the proper forum to decide such questions is the [employment] tribunal, and that their decision should prevail unless it is plainly perverse or oppressive*'

79. The onus of proving that presentation in time was not reasonably practicable rests on the claimant. That imposes a duty upon him to show precisely why it was that he did not present his complaint' (***Porter v Bandridge Ltd 1978 ICR 943, CA***).

80. In ***Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, CA***, the Court of Appeal conducted a general review of the authorities and concluded that '*reasonably practicable*' does not mean reasonable, which would be too favourable to employees, and does not mean physically possible, which would be too favourable to employers, but means something like '*reasonably feasible*'. Lady Smith in ***Asda Stores Ltd v Kauser EAT 0165/07*** explained it in the following words: '*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*'.

81. Case law has established that issues as to ignorance of rights, ignorance of fact, faulty advice, illness, disability and internal proceedings may all be matters which might be taken into account.

82. In a case where the '*not reasonably practicable*' formula applies, the question of tribunal jurisdiction is not settled by a finding that it was not reasonably practicable to present a claim within the prescribed time limit. The employment tribunal must then go on to decide whether the claim was presented 'within such further period as the tribunal considers reasonable' — S.111(2)(b) ERA. In other words, the escape clause will only come to the claimant's aid if the tribunal decides that the period between the expiry of the time limit and the eventual presentation of the claim was reasonable in the circumstances. In ***University Hospitals Bristol NHS Foundation Trust v Williams EAT 0291/12*** the EAT emphasised that this limb of S.111(2)(b) does not require the tribunal to be satisfied that the claimant presented the claim as soon as reasonably practicable after the expiry of the time limit in order to allow the claim to proceed. Rather, it requires the tribunal to apply the less stringent test of asking whether the claim was presented within a reasonable time after the time limit expired.

Under the just and equitable principles

83. The onus is on the Claimant to satisfy the tribunal that it is just and equitable to extend the time limit (***Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434 Court of Appeal***). There is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.

84. Case law has made it clear that the Tribunal may be guided, in making a determination on time limits, by matters such as the length of, and reasons for, the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has cooperated with any requests for information; the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action. Cases have also made it clear that lists such as these are only a guide and in some cases some of those factors may not be relevant. Case law has also suggested that the length of, and reasons for, the delay; and whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh) are almost always relevant.

85. in ***Southwark London Borough Council v Afolabi 2003 ICR 800, CA***, it was stated that there are two factors which are almost always relevant when considering the exercise of any discretion whether to extend time: the length of, and reasons for, the delay; and whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).

Conclusions

Was [it] reasonably practicable for the claimant to have brought his claims of unfair constructive dismissal and detriment within the requisite time period set out in section 111 and 48 of the Employment Rights Act 1996?

86. I do not consider that the Claimant's understanding of the purported settlement agreement had any relevant impact upon whether or not it was reasonably practicable to bring the complaint in time.

87. The Claimant was aware that he had potential rights before the Tribunal and made that expressly clear in writing to the First Respondent.

88. The Claimant's act of opting to sign a termination agreement is indicative of the exercise of a choice not to pursue those rights.

89. I do not consider it contributes to the question for the Claimant to suggest he erroneously believed that agreement was valid for the purposes of pursuing those rights.

90. He was advised by the First Respondent, in the initial draft, that the agreement required him to take independent legal advice upon its terms and effect but asserted that he felt he was "sufficiently competent" and waived that right.

91. I do not consider that the Claimant's misunderstanding of the legal affect of the agreement relevant to whether or not he could have taken advice and could have pursued his rights. It is clear he chose not to do so at the time.

92. There is no evidence of serious illness preventing a claim based upon the first detriment or dismissal prior to the expiry of the relevant time limit (26 September and 29 September 2019 respectively).

93. There is evidence of an early onset of mild symptoms causing a few days off work but nothing more.

94. I do accept that the Claimant became very unwell soon after the beginning of the 3 month time limit for bringing a claim based upon the detriment relating to the blocking of a job offer from the Second Respondent which he says took place on 27 September 2019. I can see that in October some severe symptoms are showing and that the Claimant was under investigation concerning his symptoms.

95. I therefore find that it was reasonably practicable for the complaints concerning pre-dismissal detriments and unfair dismissal to have been brought within the ordinary time limit but that the post-dismissal detriment coincided with illness which had to become the Claimant's priority and meant it was not reasonably practicable for the complaint of post-dismissal detriment to be brought within the relevant time limit.

96. This means that the Claimant's complaints of pre-dismissal detriment and of unfair dismissal are out of time and are dismissed.

97. The next question needs addressing only in relation to the post-dismissal detriment complaint.

If not, did the claimant bring the claim within a reasonable period thereafter?

98. I do not consider that the Claimant's complaint concerning post-dismissal detriment was brought within a reasonable period after the expiry of the ordinary time limit on 26 December 2019.

99. The complaint was not brought until 8 December 2021, more than 23 months out of time.

100. The Claimant's evidence concerning his capacity to bring proceedings during that period is simply insufficient to explain this extended period of delay.

101. It would be a rare and exceptional case requiring rare and exceptional evidence to establish that delaying for this 23 month period was a reasonable period.

102. In fact, the Claimant's case is that he was ill during the ordinary time limit and remains ill. He has not provided any evidence as to how his illness or its symptoms have changed at all during the period of delay.

103. The Claimant's illness appears to have been managed sufficiently for him to carry on working during the period of delay.

104. There is no independent evidence of anything concerning his illness

preventing him from bringing his claim far earlier in this 23 month period.

105. I simply cannot find that the vasculitis meant that a 23 month delay was a reasonable period of delay on the circumstances of this case.

106. I find the Claimant's suggestion that it is his recovery from COVID-19 which enabled him to bring his claim nothing more than a convenient argument.

107. The Claimant is an educated professional man more than able to research legal matters and engage in matters which may involve litigation.

108. I do not accept that the Claimant believed that if he brought proceedings he would be at risk of serious illness or death because he would have to attend Tribunal.

109. The Claimant has not presented any independent evidence to me that he was at severe risk from COVID-19.

110. Even were that to be the case, the Claimant was in a position to find out whether or not issuing proceedings would mean he would have had to attend a Tribunal hearing or whether that might have been dealt with another way, such as by video hearing.

111. The settlement agreement has no bearing on the timing of the institution of proceedings because the Claimant did not become aware that it was ineffective until after he brought his proceedings. He could have brought the proceedings before he realised that, and in fact he did.

112. There is nothing in the evidence before me to suggest that this is a case where anything more than a brief delay in issuing proceedings would be permitted under the exercise of the discretion.

113. Perhaps, had it been the case, the Claimant had issued proceedings in January or February 2020 then the case may have been different and that a short period of a few weeks would have been considered a reasonable period for the Claimant's immediate health concerns to have been investigated.

114. Such a period would, in any event, have expired before the material onset of the pandemic and lockdown in the UK.

115. But in this case there is no independent evidence that his condition was not being managed well enough for him to continue working and fulfil the brief steps required to bring a claim for a period of 23 months.

116. The Claimant's claims concerning post-dismissal detriments are therefore dismissed because they are out of time.

The parties agree that the claim of direct discrimination was not brought within the necessary time period set out in section 123(1) Equality Act 2010? Does the Tribunal find that it is just and equitable to extend that period to allow the claim to proceed? If the Tribunal does find it just and equitable, by what additional period does the Tribunal consider as such?

117. The act of discrimination relied upon by the Claimant appears to be the First

Respondent's Chief Executive suggesting to the Second Respondent that he would not be a good cultural fit for employment by them and the Claimant states that this occurred on or around 27 September 2019.

118. The ordinary time limit would therefore expire 26 December 2019.

119. The settlement agreement point has no relevance to this issue.

120. As set out above, that had no bearing on the practicability of bringing a complaint.

121. But furthermore, the settlement agreement would not have covered things that happened more than 3 months after it was signed, and would not have prevented the Claimant pursuing rights against the Second Respondent who was not party to the agreement at all.

122. There is a period shown in the medical evidence during which the Claimant was undergoing tests for worrying symptoms of vasculitis, which was from around 23 October 2019 to 12 November 2019.

123. But there is no independent evidence of any medical activity thereafter.

124. I may have exercised my discretion to allow an extension of a few weeks after the expiry of the ordinary time limit in the light of those initial symptoms and their investigation.

125. But it would not be just and equitable to extend the time limit by 23 months.

126. The medical evidence simply does not suggest that such a period would be just and equitable.

127. I do not consider that the pandemic would make any difference for the reasons set out above.

128. In any event, I consider that the period within which it may be just and equitable to extend time to be limited to a few weeks only and would in any event have expired before the material onset of the pandemic and lockdown in the UK.

129. There would be considerable prejudice to the Respondent in allowing the claim to proceed this far outside of the time limit. So many years have passed that the evidence of witnesses will be materially affected.

130. I doubt that there is any great prejudice to the Claimant in not exercising the discretion in circumstances where he had previously, in my view, chosen not to exercise his rights and where he appears, in my view, to now pursue those rights partly because of ancillary issues relating to his neighbours' drains.

131. In all the circumstances, whilst it may have been just and equitable to extend the period for bringing the claim by a few weeks, to the end of February 2020 at most, it would not be just and equitable to extend the period to 8 December 2021 and allow this claim to proceed.

132. According to the Claimant's claims of discrimination are dismissed because they are out of time and it would not be just and equitable to extend time to 8

December 2021 to allow them to proceed.

On the basis of the above, does the Tribunal have jurisdiction to hear any of the claimant's complaints?

133. No; all of the Claimant's claims are dismissed against all Respondents because they are all out of time and time has not been extended to allow them to proceed.

Employment Judge Knowles
3 January 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

4 January 2023

FOR THE TRIBUNAL OFFICE