

**BETWEEN**

**BENJAMIN WATSON**

**CLAIMANT**

**And**

**VIRTUAL INTERNET SERVICES LIMITED**

**RESPONDENT**

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**JUDGMENT**

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**Mr Benjamin Watson appeared in person**

**Ms Claire Pizzarello (instructed by Hassans) appeared on behalf of the Respondent**

**INTRODUCTION**

1. The Claimant filed a Claim Form on Monday 4 October 2021 claiming:
  - (i) unfair dismissal (“the Unfair Dismissal Claim”); and
  - (ii) discrimination on the grounds of disability (“the Discrimination Claim”)
2. The Claimant claims that his employment with the Respondent was terminated on 2 July 2021. The Respondent contends that termination occurred on 1 July 2021.
3. In the Response, the Respondent asserts that the Claim is statute barred in accordance with section 70(4) of the Employment Act and it should be struck out entirely. Section 70(4) is however only relevant insofar as concerns the Unfair Dismissal Claim and nothing is pleaded in the Response in respect of the Discrimination Claim. In any event, and irrespective of whether a jurisdictional issue is raised by a party, a Tribunal is entitled to consider whether a claim has been presented in time and it is appropriate to do so in this case given that, even on the Claimant’s own case, the Claim (both the Unfair and Discrimination Claims) appears to have been filed out of time.
4. At the case management hearing held on 15 March 2024 I indicated I would list the issue of whether the Claim was presented in time under the Employment Act and the Equal Opportunities Act to be

determined as a preliminary issue. I suggested to the Claimant that he may wish to consider filing an application for an extension of time for the filing of the Claim which application should include any evidence he wished to rely on and, in particular, evidence explaining the reasons and circumstances surrounding the filing of the Claim Form on 4 October 2021.

5. Accordingly, by an Order dated 15 March 2024, I ordered that:
  - (i) there be a Preliminary Hearing in respect of the issue as to whether the Claimant's Claim under the Employment Act and the Equal Opportunities Act were statute barred and to hear (if any) the Claimant's application for an extension of time to the limitation period; ("the Preliminary Issue") and
  - (ii) the Claimant file and serve his application for an extension of time by 4pm on 5 April 2024
6. The Claimant filed his application on 30 March 2024 by way of an email to the Employment Tribunal ("the Application"). The Preliminary Hearing and the Application were heard on 21 June 2024.

#### **The Relevant Facts**

7. The Claimant commenced employment with the Respondent on 22 February 2016 as a Sports Support Representative. At the time of his dismissal, the Claimant's role was Customer Due Diligence Analyst.
8. On 30 June 2021, the Claimant was invited to attend a disciplinary hearing on 1 July 2021 in respect of matters relating to his performance. A file note of the disciplinary meeting on 1 July 2021 shows that Ms Lisa Parody, Human Resources Manager at the Respondent, pointed out "*the seriousness of the issues which could have had grave consequences to the Company*". The Claimant accepts that he made a couple of genuine mistakes in or around mid-June 2021 and his response when the mistakes were put to him in the disciplinary meeting was that he had "*no defence*".
9. The file note of the disciplinary meeting shows that the Claimant explained that the mistakes may have been due to a lapse in concentration caused by a condition that he suffers from known as avoidant restrictive food intake disorder (ARFID). He says it has a profound effect on his life, both physically and psychologically and, at the time of the mistakes, he was going through a particularly bad time with his condition. In hindsight, he says, he should have been on sick leave. The Company was aware of the Claimant's condition, and it was providing the Claimant with support (albeit the Claimant alleges such support was limited) in that regard. At this stage, I do not know the nature and extent of the support provided but that is not relevant to the issues to be determined now.

10. The disciplinary meeting commenced at 13:00 on 1 July 2021. The meeting was adjourned at 13:35 presumably so that the disciplinary panel could consider what disciplinary action, if any, to take. The meeting with the Claimant was reconvened ten minutes later at 13:45. The file note of the disciplinary meeting shows that in the reconvened meeting Ms Parody “*advised the Claimant that they had no option but to dismissal (sic)*”. The Claimant confirmed in his oral address that he was informed of his dismissal in the disciplinary meeting.

11. The disciplinary note goes on to state that:

*“LP advised [the Claimant] that he had a right to appeal, and if he wishes to do so in writing to Andrew Anthony within the next 5 days. [The Claimant] commented that this is a joke and said he would speak to his Representative then claimed he was being punished and proceeded to march out of the room”*

*Additional notes from Susan Gemmel on subsequent events:*

*SG followed [the Claimant] out of the meeting room to make sure he was ok. [The Claimant] lost control in reception and through (sic) his security tag on the floor repeatedly remarked that this was a complete joke expressing with some profanity, saying he was f\*\*\* screwing, and that the situation was c\*\*\*.*

*SG advised [the Claimant] to leave the building and escorted him outside to try and calm the situation down to no avail. [The Claimant] returned to the office in a frenzy demanding to get into the office building to collect his belongings. 888 security controlled the situation and assured [the Claimant] that he would get his belongings and asked if he had a locker key and what belongings he had on his desk.”*

12. A letter dated 1 July 2021 (“the Termination Letter”) was handed to the Claimant on 1 July 2021. The Claimant said in his oral address that the Termination Letter was handed to him either in the disciplinary meeting or shortly after. Whenever the exact time might have been, the Termination Letter was handed to the Claimant on 1 July 2021. The Termination Letter states as follows:

*“Further to the disciplinary meeting held on 1<sup>st</sup> July 2021 with regards to your recent performance, I can confirm that, unfortunately, we have no alternative but to terminate your employment with the Company with immediate effect”*

13. At paragraph 15 and 16 of his Claim Form, the Claimant states the disciplinary meeting:

*“...resulted in my being terminated for these mistakes. I accepted that I made a mistake and explained my situation at the time that this had happened, but using this and the previously unfair disciplinary I was dismissed”.*

14. An appeal was heard on 14 July 2021. The appeal panel decided to uphold the decision to terminate the Claimant's employment and notified the Claimant of its decision on 15 July 2021.

15. The Claimant explained at the hearing that he instructed solicitors "a few days" after the appeal. He explained that the instructions to his solicitors were limited to drafting a first letter and dealing with the response for a fixed fee. In his application, the Claimant states that:

*"Despite seeking legal advice, I was not made fully aware that I had to submit by the 1st of October 2021. Had I been fully aware I definitely would have submitted my application by that date. I had only paid the solicitor a set fee to write the initial letter and any subsequent responses, of which there were none due to the other party ignoring the correspondence.*

*I was told that if they had not responded by Friday then I needed to submit my application. I was just not aware of the significance or consequence of the date.*

*I wanted to wait until the end of the day Friday to give them as much time as possible to respond to the letter my solicitor sent, which I might add was disappointingly not sent until the 27th [September] not allowing much time for a response, hence I wanted to leave as much time as possible for a response.*

*I had the form filled out Friday afternoon but I wanted to check one part with my solicitor so I called them but got the answerphone as they had closed for the weekend.*

*It wasn't until Monday morning that the solicitor called me and told me that I needed to submit it already and I submitted it at 11am on the 4th October."*

16. By a letter dated 27 September 2021 the Claimant's solicitors issued a letter to the Respondent on behalf of the Claimant claiming unfair dismissal and disability discrimination ("the Letter of Claim"). In the Letter of Claim, the solicitors confirmed that "they were instructed to act for the Claimant in relation to issues arising from the termination of his employment on 1 July 2021..." The Letter of Claim also stated that "the Claimant will file a claim form in the Employment Tribunal on 1 October 2021 in the absence of a response prior to that date."

17. In an email dated 28 September 2021 from the Claimant's solicitors to the solicitors for the Respondent, the Claimant's solicitors confirmed that their instructions were limited "to drafting a letter of claim and attempting a quick settlement. Should this matter be issued in the Tribunal, the Client will be representing himself....".

18. The Claimant explained at the hearing that he had hoped that the letter from his solicitors had been issued sooner and not at the “last minute” and that he was waiting to the last minute to hear back from the Respondent because he wanted to give the Respondent as much time as possible to respond to his letter.
19. The Claimant said that he did not know why the “1 October 2021” had been put in the letter from his lawyers and was not told about the 3 months period for the filing of claims. He said the importance of that day was never highlighted but he did say that he was told by his lawyers that if he had not received a response from the Respondent by the end of the day (Friday 1 October) that he needed to submit the form.
20. The Claimant confirmed that the Claim Form was “ready to go” on 1 October 2021 but that there was one thing (although he could not recall what exactly) in the Claim Form he wanted to check with his lawyers before filing it. He tried to speak with his lawyers on Friday afternoon but could not reach them. When his solicitor called back on Monday morning, he was advised that he should have already filed the Claim Form. The Claimant filed the Claim Form shortly thereafter on the morning of 4 October 2021.

## **THE LAW**

### **Unfair Dismissal Claim**

21. Section 70(4) of the Employment Act provides that:

*“The tribunal shall not entertain a complaint presented under this section unless it is presented before the end of the period of three months beginning with the effective date of termination unless the tribunal is satisfied that in the circumstances it was not practicable for the complaint to be presented within that period.”*

22. The “effective date of termination” is defined in the Employment Act. Section 64(5)(b) provides:

*“in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect”.*

23. The burden of proof in establishing that it was not practicable to present a Claim for unfair dismissal in time is on the Claimant. As Waller LJ explained in *Porter v Banbridge Limited* [1978] IRLR 271:

*“the onus of proving that it was not reasonably practicable to present the complaint within a period of three months was upon the employee. That imposes a duty upon him to show precisely why it was that he did not present his complaint. He has to satisfy the tribunal that he did not know of his rights during the*

*whole of the period of 11 months and that there was no reason why he should make enquiries or should know of his rights during that period”*

24. The factors distilled from relevant authorities which the Tribunal may take into account when assessing practicability include the substantial cause of a claimant’s failure to comply with the time limit, whether the failure was due to a physical or mental impediment, such as illness, whether and when the claimant knew of their rights, whether the claimant has been advised by anyone and the nature of the advice given and whether there was any substantial fault on the part of the claimant or their advisors which led to the failure to present the claim in time.

25. In *Wall’s Meat Co Ltd v Khan* [1979] ICR 52; LJ Brandon said that:

*“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.”*

26. In *Marks & Spencer plc. v Williams – Ryan* [2005] EWCA Civ 470 the Court of Appeal set out some of the applicable legal principles derived from case law: firstly, that the wording “reasonably practicable”:

*“20 ....should be given a liberal interpretation in favour of the employee...21. In accordance with that approach it has repeatedly been held that, when deciding whether it was reasonably practicable for an employee to make a complaint to an employment tribunal, regard should be had to what, if anything, the employee knew about the right to complain to the employment tribunal and of the time limit for making such a complaint. Ignorance of either does not necessarily render it not reasonably practicable to bring a complaint in time. It is necessary to consider not merely what the employee knew, but what knowledge the employee should have had had he or she acted reasonably in all the circumstances.*

*So far as that question is concerned, there is a typically lucid passage in the judgment of Brandon LJ in *Wall’s Meat Co Ltd v Khan* [1979] ICR 52 at page 61 which I would commend:*

*"With regard to ignorance operating as a similar impediment, I should have thought that, if in any particular case an employee was reasonably ignorant of either (a) his right to make a complaint of unfair dismissal at all, or (b) how to make it, or (c) that it was necessary for him to make it within a period of three months from the date of dismissal, an industrial tribunal could and should be satisfied that it was not reasonably practicable for his complaint to be presented within the period concerned.*

*For this purpose, I do not see any difference, provided always that the ignorance in each case is reasonable, between ignorance of (a) the existence of the right, or (b) the proper way to exercise it, or (c) the proper time within which to exercise it. In particular, so far as (c), the proper time within which to exercise the right, is concerned, I do not see how it can justly be said to be reasonably practicable for a person to comply with a time limit of which he is reasonably ignorant.*

*While I do not, as I have said, see any difference in principle in the effect of reasonable ignorance as between the three cases to which I have referred, I do see a great deal of difference in practice in the ease or difficulty with which a finding that the relevant ignorance is reasonable may be made. Thus, where a person is reasonably ignorant of the existence of the right at all, he can hardly be found to have been acting unreasonably in not making inquiries as to how, and within what period, he should exercise it. By contrast, if he does know of the existence of the right, it may in many cases at least, though not necessarily all, be difficult for him to satisfy an industrial tribunal that he behaved reasonably in not making such inquiries."*

*...if an employee takes advice about his or her rights and is given incorrect or inadequate advice, the employee cannot rely upon that fact to excuse a failure to make a complaint to the employment tribunal in due time. The fault on the part of the advisor is attributed to the employee. There is a certain amount of authority relevant to this proposition. In Dedman...Scarman LJ at page 64 concluded his judgment as follows:*

*When one turns from the general to the particular. Mr Dedman's case is hopeless. He knew he had rights and he was being advised by solicitors well before the expiry of the time limit. There was no reason why he could not present his complaint in time. It was practicable to do so; the fact if it to be so that his solicitors overlooked the time limit did not make it impracticable, though it may give him a right to damages against them."*

27. Accordingly, mere ignorance of the right to bring a claim, or of the time limit or procedure for making a claim, will not satisfy the reasonably practicable test. A claimant must show that his ignorance of the relevant time limit was reasonable so that it will not have been reasonably practicable for the claimant to have complied with it. A claimant's ignorance will not be reasonable if they ought reasonably to have made enquiries about how to bring a tribunal claim before the relevant time limit expired. Whether it was reasonable for a particular claimant to be ignorant of the relevant time limit will be a question of fact for the tribunal to decide.

28. In *Marks & Spencer plc v Williams-Ryan* [2005] EWCA Civ 470, the Court of Appeal upheld a tribunal's decision to extend the deadline for a claimant who delayed filing a tribunal application while awaiting the outcome of an internal appeal. The claimant had received a letter from her employer mentioning her right to bring a tribunal claim but did not indicate any specific deadline. The Court of Appeal found that the letter could have reasonably misled the employee into believing she could wait until after the internal appeal to file a claim.

#### **The Discrimination Claim**

29. Section 68 of the Equal Opportunities Act provides as follows:

*“Time limits for bringing proceedings in the Tribunal or Supreme Court.*

*68.(1) The Tribunal shall not consider a complaint– (a) under section 69 (jurisdiction of the tribunal) unless the complaint is presented to the Tribunal within the period of three months beginning when the act complained of is alleged to have been done; or*

*...*

*(3) The Supreme or the Tribunal may nevertheless consider any such complaint or claim which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.*

*(4) For the purposes of this section and section 66 (questioning of employer by Director of Employment) or 65 (questioning of employer etc.)-*

*(a) ....*

*(b) any act extending over a period shall be treated as done at the end of that period, and*

*(c) a deliberate omission shall be treated as done when the person in question decided*

*upon it,*

*and in the absence of evidence establishing the contrary a person shall be taken for the purposes of this section to decide upon an omission when he does an act inconsistent with doing the omitted act or, if he*



*has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.*

30. The Tribunal's discretion when considering whether it is just and equitable to extend time is wide but there is no presumption in favour of extending time and should not do so unless the Claimant shows that it is just and equitable to do so. To permit an extension of time is the exception rather than the rule. The Tribunal is entitled to take into account anything that it deems relevant (*Hutchinson v Westward Television Ltd* [1977] IRLR 69) and the Tribunal's discretion is as wide as that of the civil court under the Limitation Act

31. As far as I can see the following are the principles that can be distilled from the authorities; namely:-

- (a) there is no presumption that a tribunal should exercise its discretion to extend time on the just and equitable ground;
- (b) the exercise of the discretion is the exception rather than the rule since time limits should be enforced strictly;
- (c) whether a claimant succeeds in persuading a tribunal to grant an extension is not a question of either policy or law; it is a question of fact and judgment to be answered case by case;
- (d) the claimant has to satisfy answers to two questions:-
  - a. why is it that the claim was not filed in time; and
  - b. why is it that after the expiry of the time limit the claim was not brought sooner than it was.
- (e) the tribunal should consider the prejudice which each party will suffer as the result of the granting or refusing of an application to extend the time limit, including:-
  - (i) the length of and the reasons for the delay;
  - (ii) the extent to which the cogency of the evidence is likely to be affected by the delay;
  - (iii) the extent to which the respondent has co-operated with any requests for information;
  - (iv) the promptness with which the claimant acted once they knew of the facts giving rise to the cause of action;
  - (v) the steps taken to obtain legal advice once they knew of the possibility of taking legal action;
- (f) the prejudice a respondent suffers is two-fold one: (i) of having to meet a claim which would otherwise be defeated by the limitation defence; and (ii) by having to deal with a case which will be extended for an unknown period with the knock-on effects of fading memories, loss of documentation and witnesses' unavailability;
- (g) the tribunal can take into account anything which it judges to be relevant when making its decision; and;
- (h) it is for the Claimant to persuade the tribunal to exercise its discretion;

## **DECISION**

32. The first matter that I must decide is the “effective date of termination” (in relation to the Unfair Dismissal Claim) and the date of the “act complained of” (in relation to the Discrimination Claim) given that the 3-month period begins to run from these dates.
33. Turning first to the “effective date of termination” the Claimant submits in his Claim Form that the date of termination was 2 July 2021. At paragraph 2 of the Details of Claim filed with the Claim Form the Claimant states that he was notified of the dismissal on 1 July with the termination taking place on 2 July 2021. He relies on the ETB Termination of Employment Form filed by the Respondent which provides the date of termination as 2 July 2021. This is consistent with the letter from his lawyers dated 27 September 2021 which put the date of termination as 2 July 2021. I do not however accept that this is correct.
34. The effective date of termination is a question of fact and is to be determined in a practical and common-sense way having regard to what the parties understood at the time of dismissal. The date must be ascertainable and for the dismissal to be effective it must be communicated to the employee.
35. From the evidence before me, I have no doubt in concluding that the effective date of termination in this case was 1 July 2021 on the basis that:
- 32.1 the Claimant was informed of his dismissal on 1 July 2021;
- 32.2 the Termination Letter handed to the Claimant at the disciplinary meeting confirmed that termination was with immediate effect i.e. on that day;
- 32.3 the Claimant’s conduct after the conclusion of the disciplinary meeting clearly demonstrates that he also understood his employment had been terminated with immediate effect: he collected his belongings and left the building;
- 32.4 In his oral address, the Claimant confirmed the date of termination as 1 July 2021 and that the Claim Form was based on the ETB Termination Form. The date provided in the ETB Notice of Termination Form is not determinative of the effective date of dismissal which is a statutory concept and a matter of fact.
- 32.5 Plainly, both parties understood that dismissal took place on 1 July 2021.
36. Turning now to the Discrimination claim, time starts to run from the “act complained of” but the Discrimination Claim is somewhat confusingly set out in the Claimant’s Claim Form and the “act complained of” not precisely pleaded.

37. At paragraph 10 of the Brief Details of Claim the Claimant states that he believes *“the Respondent failed to make reasonable adjustments to take into account the affect this disability has on me and performance”*. A duty to make reasonable adjustments requires employers to make adjustments to attempt to reduce or remove an individual's disadvantage caused by a disability. Taking a disability into account when considering performance is not, to my understanding, a reasonable adjustment. A disability may be a factor when considering what, if any, disciplinary action to take following a disciplinary process but there is no “reasonable adjustment” to be made at that stage.

38. At paragraph 17 of the Brief Details of Claim, the Claimant states that he has been treated differently by the Claimant because he is aware of other employees who have made genuine mistakes and have not been dismissed. For this part of the claim, the “act complained of” is therefore the dismissal itself and is therefore also 1 July 2023.

39. Finally, at paragraph 19 of the Brief Details of Claim the Claimant states:

*“As the company [was] aware my disability, reasonable adjustments should have been made to support and assist me. No adjustments were offered or made.”*

40. The Claimant does not state however what adjustments should have been made by the Respondent or how the reasonable adjustments made by the Respondent were inadequate. However, a claim in respect of a failure to make reasonable adjustments, if proved, would be continuing right up to the termination i.e. 1 July 2021.

41. Accordingly, having found that the date of “the act complained of” and “effective date of termination” are both the 1 July 2021, the Claim Form had to have been received by the Tribunal on or before Thursday 30 September 2021. The Claim Form has therefore been filed 4 days out of time.

#### **Extension of time**

42. I now turn to consider whether an extension of time should be granted for the filing of the Claim.

43. Relevant to both tests is the substantial cause or reason for the delay in filing the Claim Form, the Claimant’s knowledge of his legal rights (or knowledge that he ought to have had) and the steps taken by the Claimant to obtain legal advice.

44. The Claimant clearly knew that he had employment rights from the moment that he was dismissed. Following his dismissal he immediately responded by saying that he would be speaking to his Representative. In or around mid-July, only a few days after his unsuccessful appeal, he instructed

solicitors. As set out in the Letter of Claim, the Claimant's solicitors were instructed to act for the Claimant "in relation to issues arising from the termination of his employment on 1 July 2021". Solicitors were therefore engaged by the Claimant for most of the limitation period. Whilst I readily accept that the instructions may have been limited to the issue of the Letter of Claim and negotiation of any potential settlement it would have been incumbent on the Claimant's solicitors to advise on applicable time limits in respect of any potential claim.

45. The only real reason offered by the Claimant for the delay in filing the Claim Form was that he was not made fully aware that he had to submit the Claim Form by 1 October 2021 and was not aware of the consequences of not doing so. In other words, he was ignorant of the fact that he needed to do so. Irrespective of whether his solicitors provided the Claimant with advice concerning the limitation period or if the advice given was inadequate or incorrect, the Claimant cannot rely upon that fact "to excuse a failure to make a complaint to the employment tribunal in due time. The fault on the part of the adviser is attributed to the employee" (Marks & Spencer Plc v Williams- Ryan [2005] EWCA Civ 470).
46. I am conscious that the Claimant appears to have been advised by his solicitors that the limitation date was 1 October 2021. It appears to me that the solicitors mistake stems from the fact that they considered the effective date of termination to be 2 July 2021. Therefore, was the Claimant's ignorance reasonable? In my view, it would have been had he followed his solicitor's advice and filed on 1 October 2021. If he had done so, I would have in all likelihood concluded that his ignorance of the need to file by 30 September 2021 was reasonable (having been so advised by a skilled advisor) and therefore it was not reasonably practicable to do so. However, he did not do so and choose, not for any practicable reasons, to wait until the 4 October 2021 to file.
47. No evidence has been produced of the advice provided by the Claimant's solicitors to the Claimant, but I also have some difficulty in accepting the submission that he had not been made fully aware of the need to submit the Claim Form by (erroneously) the 1 October 2021. He plainly had been made aware of the need to do so albeit perhaps he did not understand the reason for it. In the Letter of Claim it was stated that the Claimant would file a claim form on 1 October 2021 and so therefore it can be drawn from that that the Claimant's solicitors must have at the very least discussed with the Claimant the need to file by this date. Indeed, in his own address to the Tribunal, the Claimant confirmed that he was told by his solicitors that, if a response was not received from the Respondent, he should file the claim on 1 October 2021. If the Claimant did not understand the significance of this date and the need to do so he could have and should have asked his solicitors, the onus was on him to find out.
48. The Claimant plainly had plenty of opportunities to ask his solicitors about time limits and if he was not aware of the limitation period it is because he did not do so. As re-iterated in the Employment Appeals Tribunal in *Cygnets Behavioural Health Limited v Britton* [2022] EAT 108 "a person who is considering

*bringing a claim for unfair dismissal is expected to appraise themselves of the time limits that apply; it is their responsibility to do so.”*

49. By the Claimant’s own evidence he left the preparation of the Claim Form to the very last minute (having been advised by his solicitors of the need to file by 1 October). Where a Claimant does so he does so at his own peril. In terms of practicality, the Claimant candidly confirmed that the Claim Form was ready to be filed on 1 October 2021. No evidence has been provided by the Claimant to show that he was prevented in any way from filing the Claim Form earlier for any practicable reason. He explained that he wanted to ask his solicitors a question in relation to the Claim Form but that could have should have been done a lot earlier. Furthermore, the fact that he was checking a matter to do with the Claim Form with his solicitors on 1 October he evidence of the fact that they were still very much involved and still available to the Claimant to answer any questions he may have had. The Claimant just left it too late.
50. I have also considered the Claimant’s condition and whether it may be a possible practicable reason for the delay in filing the Claim Form. The Claimant has however never said (and certainly not produced any evidence) that his condition meant that it was not reasonably practicable to file the Claim Form in time. Any such suggestion would of course be contrary to the very clear evidence provided by the Claimant himself to the tribunal that he was trying to provide the Respondent with as much time as possible to respond to the Letter of Claim and to also ask his solicitors about something in the Claim Form before filing it.
51. Accordingly, my only possible finding is that the Claimant has not succeeded in discharging the burden of satisfying the Tribunal that it was not reasonably practicable for him to present his Claim for unfair dismissal within 3 months of his termination of employment.
52. Turning now specifically to whether I should extend the time in respect of the Discrimination Claim I have found this decision much more difficult to make. I do not consider the delay to be serious and is relatively minor and plainly the delay will not have caused any effect on the cogency of evidence.
53. A particularly relevant factor is of course the engagement by the Claimant of solicitors (as set out fully at paragraph 44-50). It was the Claimant’s decision to wait until the last minute for a response and I do not consider the reason for waiting until Monday (i.e because he needed advice in respect of one aspect of the Claim Form) to be a good reason for not having filed the Claim Form by, at the very latest the 1 October 2021, albeit that that was outside the time limit. The preparation and completion of the Claim Form could and should have been completed well in advance of the end of the limitation period.
54. I have also considered the prejudice to both parties. In not granting the extension I would be in effect putting an end to the claimants claim to damages. Equally however granting an extension would mean

that the Respondent would have to face a claim (and incur the costs of defending a claim) which would otherwise be statute barred.

55. On balance, and for the reasons set out above, I do not consider it appropriate in this case to grant an extension of time in respect of the Discrimination Claim.

56. Accordingly, the Claimant's claim is dismissed in its entirety.

**CHRISTOPHER ALLAN**

**CHAIRMAN**

**15 AUGUST 2024**