EMPLOYMENT TRIBUNALS

Claimant **Ms Tanya Tucker**

Respondent **The NHS Business Service Authority**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL
AT A PUBLIC PRELIMINARY HEARING

HELD AT NEWCASTLE **On 3 November 2020**
EMPLOYMENT JUDGE GARNON
Appearances
For Claimant in person
For Respondent Mr P Sangha of Counsel

JUDGMENT

1. The name of the respondent is amended to that shown above.

2. The claim was presented outside the time limit prescribed for doing so in circumstances where it was reasonably practicable for it to be presented within time. The Tribunal cannot consider the claim which is hereby dismissed.

REASONS (bold is my emphasis and italics are quotaions)

1. The claim presented on 4 April 2020 after Early Conciliation from 3 February to 3 March 2020 ticked the box for unfair dismissal only. The claimant was born on 2 February 1965 and employed from 14 August 2000 until, **as she says in the claim form**, 27 January 2020. The claim as drafted named Oscar Jones of GMB as her representative. It was brief, denied wrongdoing and said she had been a Union Official for Unison who believed she had been singled out for dismissal due to her union activities.

2. A lengthy response dated 10 June from DAC Beachcroft Solicitors said she was dismissed on 14 October 2019 for gross misconduct. During the pandemic it helps Judges when working from home without the paper file to have longer documents in an electronically accessible form so for completeness I have printed it and Mr Sangha's skeleton argument in the Appendix. On initial consideration under Rule 26 Employment Tribunal Rules of Procedure 2013 (the Rules) Employment Judge Arullendran issued a warning that unless the claimant explained the late issue of her claim by 10 July it would be dismissed. The claimant replied

Thank you for your letter of 24th June which was forwarded to me by the GMB.

I respond as follows and ask you to please not dismiss my case.

I was, I thought, being represented by the GMB, of which I am a member. There were 1 or 2 representatives accompanied me to all my meetings with my employer, up to and including my dismissal hearing.

After the hearing on 14th October 2019, I waited for the GMB to contact me to go to the next steps, appeal, possibly tribunal, I wasn't sure what would happen next.

I chased my representatives for information, put in my appeal letter to my employer, arranged a date for November 2019 for the appeal hearing, then my GMB branch told me my representatives weren't available. I re-arranged my hearing, but this didn't happen until Monday, 27th January 2020.

After the appeal hearing on the above date, I asked my reps what would happen next, and they said it was up to me. They had no further input.

I've never been involved in a HR process beyond internally, helping and supporting others in my employment, so didn't know what to do.

I asked a friend and she told me to contact ACAS. I did that and got my certificate. I sent my certificate onto GMB for them to progress only to receive a letter stating they weren't supporting me some time later.

Unsure what to do, I contacted a solicitor online who responded eventually and sent me the link to the Tribunal which I filled in with my details as best I could.

I'm doing this alone, with no support and no legal representation, basically trying to hold my employer to account for dismissing me after almost 20 years of service.

I'm sorry if I've wasted your time, and fully understand if you decide to dismiss my case, as I don't know what I'm doing except trying to get justice for being thrown away by my employer.

I have put a formal complaint in to the GMB as I believe they should have been more forthcoming in advising me of my options and what they would do for me. I had expected more than for someone to sit almost silently in meetings with me but that is obviously their way of working.

3. On 23 July DAC Beachcroft wrote

We write further to the Notice and Order dated 23 June 2020. We contacted the Employment Tribunal on 21 July 2020 to seek clarity as to whether this claim had been dismissed since we had not received any correspondence from the Claimant. However, the clerk confirmed that the Claimant had sent correspondence to the Tribunal without copying us into this correspondence. The clerk kindly shared the Claimant's letter of 8 July 2020. Whilst the Respondent has not been Ordered to respond to this correspondence, we would like the Judge to consider the following points when determining if this case should be struck out and dismissed on the basis that this claim is time-barred under section 111(2), ERA 1996.

The Respondent asserts that the Claimant has failed to satisfy the burden of proof that it was not reasonably practicable to present her claim in time. Within the Claimant's correspondence, she has merely suggested that GMB did not advise her of the Tribunal deadline. The

Respondent contends that mere ignorance of the Tribunal deadlines is not a sufficient reason to extend the tribunal deadline. Information surrounding tribunal deadlines is easily accessible on the internet and/or from free advice services such as ACAS or the Citizens Advice Bureau. Further, as we understand it, the Claimant was a trade union representative and Branch Secretary for Unison and therefore, the Respondent does not accept that the Claimant would not have an awareness of the relevant deadlines.

It appears that the Claimant is not satisfied with the advice received from GMB. It is our view that GMB are skilled advisers and if the Claimant asserts she has received negligent advice, it is not appropriate to extend the time limit, to the detriment of the Respondent. Rather, the Claimant should seek redress as a negligence claim against GMB.

Finally, the prejudice on the Respondent if this claim is allowed to continue would outweigh any prejudice to the Claimant. As a matter of public policy, allowing this claim to continue is not a suitable use of spending from what is the public purse given that the Respondent is an NHS Trust.

We trust that this case will now be dismissed however, if the Employment Judge is not minded to dismiss this case on the papers, we would request a 2 hour public preliminary hearing to be held to deal with this issue prior to the Respondent incurring significant legal fees in defending this case to a final substantive hearing.

4. The issues to be decided at this hearing are
(a) whether the claim was presented before the end the relevant time limit?
(b) if not, was it reasonably practicable for it to have been?
(c) if not, was it presented within a reasonable time after?
Rule 53 of the Rules empowers me to issue a final judgment even at a preliminary hearing if the issue I decide is determinative of the whole case.

5. The Law

5.1. Section 111(2) Employment Rights Act 1996 (the Act) provides a complaint of unfair dismissal must be presented to the tribunal –

a) *before the end of 3 months beginning with the effective date of termination, or*

b) *within such other period as the tribunal considers reasonable 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.*

5.2. Section 207B entitled: "*Extension of time limits to facilitate conciliation before institution of proceedings*" extends time limits to enable ACAS Early Conciliation(EC). In effect the claimant must contact ACAS to commence EC within the three month time limit or it must be not reasonably practicable for her to do so. Only then does she obtain a limited further extension.

5.3. The law of unfair dismissal is in Part 10 of the Act. Whether the reason for dismissal relates to conduct or trade union activities the time limit is the same. Section 97 defines the effective date of termination("EDT") which is, in lay terms, **the date of dismissal NOT the date of the conclusion of any internal appeal.**

5.4. Reasonably practicable means reasonably feasible or "do-able". The burden of proving it was not reasonably do-able rests on the claimant, see Porter-v-Bandridge 1978 ICR 943. In Palmer-v-Southend on Sea Borough Council 1984 IRLR 119 the Court of Appeal held the best approach is to ask "Was it reasonably feasible to present the complaint within three months?" The question is one of fact for the Tribunal taking all the circumstances into account. It will consider **the substantial cause** of the failure to comply with the time limit. It may be relevant to investigate whether and when, the claimant knew she had the right to complain, whether she was being advised at any material time and, if so, by whom, and whether there was any substantial fault on the part of the claimant or advisor which led to failure to comply with the time limit. Time **limits** are just that, not loose targets and I have no general discretion to waive them under the Act

5.5. Dedman-v-British Building 1973 IRLR 379 held where **either the claimant or her advisers** were at fault in allowing the time limit to pass without, it was reasonably practicable to present in time. As with other mistaken beliefs of law they will only render it not reasonably practicable to have presented in time if the mistaken belief is in itself reasonable, Wall's Meat-v- Khan 1978 IRLR 499. If the mistaken belief results from the fault of her advisers in not giving her all the information the claimant will not be able to rely upon it. Similar points were made in Riley -v-Tesco Stores1980 IRLR 103

5.6. Porter-v-Bandridge Ltd 1978 ICR 943 held the correct test is not whether the claimant knew of her rights, but whether they ought to have This extends to knowledge of time-limits too. Trevelyans (Birmingham)Ltd-v-Norton 1991 ICR 488 held when a claimant knows of her right to claim unfair dismissal, she must to seek information and advice about how **and when** to enforce that right. In Sodexo Health Care Services Ltd-v-Harmer EATS 0079/08 the claimant submitted 23 days late because she wrongly assumed the time limit would not start running until the end of the appeal process. The Scottish EAT said the crucial question was whether, in the circumstances, she was reasonably ignorant of the time limit. Given she knew of a time limit but had failed to make proper inquiries about it, the only answer to the question whether she was reasonably ignorant of the start date of the time limit was no.

5.7. In John Lewis Partnership-v-Charman EAT 0079/11, a claimant was young inexperienced and knew nothing about employment tribunals or the right to claim unfair dismissal prior to his termination. The Employment Appeal Tribunal (EAT) upheld the judge's decision to permit the claim saying the claimant was ignorant of the correct time limits and the relevant question was whether that ignorance was reasonable. This case is one of the rare examples of a reasonable ignorance of the law being held to be sufficient. It is generally difficult for a claimant who knows of the existence of the right to claim to persuade an employment tribunal she behaved reasonably in not making inquiries as to how, and within what period, to exercise the right In Marks and Spencer plc-v-Williams-Ryan 2005 ICR 1293 the claimant believed she had to exhaust the internal appeal procedure before she could bring a claim and had this confirmed by the Citizens Advice Bureau. Her employer had provided her with material about an unfair dismissal claim but not mentioned the time limit. The tribunal allowed her claim to proceed out of time. Lord Phillips (then Master of the Rolls) said: '*Were these conclusions on the part of the tribunal* ***perverse****? I have concluded that they were not. I think the findings were* ***generous*** *.., but not outside the ambit of conclusions a tribunal could properly reach on all the facts before them.*' Perverse" means no reasonable Tribunal could have reached the conclusion

5.8. In Lowri Beck Services Ltd-v-Brophy 2019 EWCA Civ 2490, the Court of Appeal considered the effect of a misunderstanding as to the date of dismissal. The claimant had dyslexia, which according to unchallenged medical evidence was severe and affected 'his ability to memorise new information, to understand, or to retain verbal instructions unless backed up by an extra explanation or confirmed in writing'. He had been supported for much of his life by his brother, particularly when dealing with any official documents or processes. Following a disciplinary investigation and hearing, he was told by telephone on 29 June 2017 he was being dismissed with immediate effect. He was also told this would be confirmed by letter and he would then have five days to appeal. On 6 July 2017 he received a letter dated 4 July, phrased in terms of informing him of the decision rather than confirming what he had already been told. It was only after receipt of this letter that he told his brother about the dismissal. The brother, acting on the basis the dismissal had taken place on 6 July, presented an unfair dismissal claim out of time. An employment judge considered the letter of 4 July was unclear and contradictory, accepted the brother had genuinely and reasonably believed the dismissal was on 6 July and concluded it had not been reasonably practicable to present the claim in time. On appeal, both the EAT and the Court of Appeal held the tribunal had been entitled to reach this decision.

6. Findings of Fact

6.1. I heard evidence on affirmation today which I can summarise briefly. The claimant confirmed most of what she wished to say was in her email quoted at paragraph 2 above.

6.2. At the dismissal hearing on 14 October her Branch Secretary Oscar Jones and a full time official of GMB, a Mr Walker, were present. The charge against her was serious and the outcome of dismissal with immediate effect announced that day. It was confirmed by latter on 18 October. As the claimant said today Mr Jones and Mr Walker told her as they were leaving to make sure she got her appeal in, which she did on 21 October.

6.3. At this point the time limit was running. An appeal hearing was to have taken place in November but was postponed at the GMB's request. At this point, if not earlier, the union must have, certainly should have, known the "clock was running down". The claimant is highly critical of her union but it is not my task to express opinion on that. She took no external advice at that time. Nor did she contact ACAS. She said today her mental health declined **after** the appeal result was given on 27 January 2020, but the damage was already done. Her time for contacting ACAS to commence EC expired on 13 January 2020.

6.4. In fact, after she was given the appeal outcome, she acted promptly. She took more time than reasonable between getting her EC Certificate on 3 March and issuing on 4 April. However, the problem which she could not surmount today was there is no reasonable explanation for neither her nor her union to have contacted ACAS before 13 January 2020.

7. Conclusions

7.1. I have cited the cases in 5.7 and 5.8 to show the claimant there are cases where ignorance of the correct time limit has been held to be reasonable. However, this case does not approach that level. The claimant had been involved in HR process internally and as a Union Branch Secretary herself, was aware of the right to claim and must, or should have,

been aware of the importance of associated time-limits. The GMB gave her representation at assistance at the key meetings and if she was unaware, they certainly should have been.

7.2. The fact the claim form gave 27 January 2020 as the EDT convinces me she, and maybe her union, made an error of thinking the time limit started at the end of the appeal, which many cases have held is wrong. She and/or her advisors ought to have known that. This is not one of the more esoteric points about time limits, it is basic, well publicised and easily accessible on many online advisory sites

7.3. On that basis, I find it was reasonable practicable to present in time and I have no further discretion to exercise. The Tribunal cannot consider her claim which is hereby dismissed

Employment Judge T.M.Garnon
Judgment authorised by the Employment Judge on 3 November 2020

Appendix

The response form

Preliminary Issues

1. The respondent will contend that the tribunal does not have jurisdiction to hear the claim because the claim is time-barred under section 111(2), ERA 1996. The claimant was dismissed with immediate effect on 14 October 2019. The claimant failed to contact Acas until 3 February 2020. When the claimant contacted Acas, the time limit to bring this claim had already passed. Despite this, the early conciliation certificate was issued on 3 March 2020, but the claimant failed to issue her claim until 4 April 2020. The claim form does not set out any reason why it was not reasonably practicable for the claim to be presented in time and the respondent contends that the delay in doing so after the expiry of the primary time limit was unreasonable.

Parties

2. *The North of England Commissioning Support Unit ("NECS") has no separate legal corporate status but it operates as a discrete organisation in carrying out its activities in the NHS. It is operationally and financially accountable to NHS England and Improvement but its staff are employed under contracts of employment with the NHS Business Services Authority (NHSBSA). NECS provides services to NHS Trusts, Sustainability Transformation Partnerships, Clinical Commissioning Groups and Integrated Care Systems. The services include support with procurement, communication and marketing, business support functions, medicine optimisation, turning data into insight and intelligence, system wide transformation, and developing health and social care partnerships.*

3. *The claimant was employed by NHSBSA since 1 April 2013, when she was TUPE transferred to NECS on the abolition of her previous employer, a Primary Care Trust. The claimant worked for the respondent until 14 October 2019, when she was summarily dismissed as a result of gross misconduct. The claimant's employment and its termination were managed by NECS. Any reference to 'the respondent' in these Grounds of Resistance means the management of NECS, acting for and on behalf of the NHSBSA.*

4. *The claimant initially worked as a Band 3 Administrator within the Continuing Health Care Team (CHC), before moving to the role of Band 4 Administrative Officer within the Commissioning Delivery Team on 1 February 2016. The claimant was responsible for delivering an administrative service to senior managers, as part of the wider NECS administrative team .*

5. *The claimant was a trade union representative and the Branch Secretary for Unison. The allegations and subsequent dismissal of the claimant were in response to actions taken regarding invoices raised by the claimant for Unison. However, the respondent denies that the claimant's dismissal was because she was a trade union member. Her trade union membership did not have any impact on the respondent's decision to dismiss her.*

Background

6. *In July 2015, the Finance Planning and Analysis Team identified a potential discrepancy when they noted two invoices from Unison for expenses, with a combined value of over £14,000, had been paid from the CHC staff expenses budget. There was no budget for this expenditure, and so additional investigations were initially undertaken within the Finance Planning and Analysis Team.*

7. *This matter was raised with the respondent's Counter-Fraud Lead and on 23 July 2015 a referral was made to the NHS Local Counter Fraud Specialist (LCFS). The Counter Fraud investigation was lengthy due to the complexity of the case and the cross-organisational nature of the matter, since the invoices originated from Unison. In addition to this, delay was impacted by the LCFS service transferring from Deloitte to NHS England.*

8. *A police investigation was taking place into potentially related matters. When a police investigation is taking place, the respondent is usually required by the police to ensure that any suspension or disciplinary action will not compromise the LCFS or police investigations. This also contributed to the delay in the investigation. In November 2018, both the LCFS and the police confirmed that their investigations would not be compromised if the claimant was suspended.*

9. *The claimant was suspended from work on 19 November 2018 at which time she was informed that an investigation would be taking place with regard to the Unison invoices. Prior to the claimant being suspended, she was working as normal.*

10. *The investigation was then commissioned on 3 December 2018. David Craig (NECS Corporate Accountant) was initially identified as the Investigating Officer, but on 9 December 2018, the claimant raised a concern with this, and it was agreed that Martin Barnes (Senior Finance Manager) would be appointed as the Investigating Officer. This was confirmed to claimant on 17 December 2018.*

11. *The investigation concerned the two invoices received by the respondent from Unison in June 2015:*

11.1 *Invoice 1501, dated 10th June 2015, for 'Partnership Chair expenses reimbursement' between April 2013 and April 2014 of £4,269.94; and*

11.2 *Invoice 1502, dated 10th June 2015, for 'Partnership Chair expenses reimbursement' between April 2014 and January 2015 of £10,087.75;*

12. *The investigation was conducted in line with the respondent's Disciplinary Policy and consisted of interviews with the claimant and witnesses, combined with a review of the respondent's invoice validation system, known as the Oracle ISFE system, and the invoices in question, to gain a full understanding of the issues.*

13. *The Investigating Officer prepared a comprehensive investigation report, outlining the findings of his investigation, which confirmed that on the balance of probabilities based on all of the evidence, the two invoices originating from the claimant's Branch of Unison (Northern Region Health Commissioning) totalling £14,357.69, were:*

13.1 *prepared by the claimant in her capacity of Branch Secretary, for expenses she knew the respondent was not liable to pay to the Union; and*

13.2 *approved by the claimant using the log-in details of her Line Manager Sandra Larkin in contravention of both the rules in relation to self-approval, and outside the delegated authority given to the claimant by her manager.*

14. *Further, the investigation findings suggested that the claimant had deliberately attempted to obscure her involvement by dealing personally with all subsequent queries from the respondent's finance team at the time and within these dealings she had either left the correspondence unsigned or marked generically as from the 'Treasury Team'. Once the invoices were paid by the respondent, the investigation found that the claimant, within her capacity at Unison, ensured that the funds were transferred from the Unison central subscriptions account to the claimant's Branch.*

15. *The investigation report, dated 10 July 2019, recommended consideration to be given as to if it was appropriate to refer this matter to a disciplinary hearing for consideration.*

16. *The completed investigation report was then submitted by to Ailsa Nokes, Account Director (Commissioning Manager) who was responsible for reviewing the actions and recommendations arising from the investigation and for determining the next steps.*

17. *On 9 August 2019, the claimant was sent a letter inviting her to a disciplinary hearing. It was confirmed in this letter, that the disciplinary hearing was to determine the allegation that she had committed financial irregularities in relation to two invoices submitted by Unison in June 2015 totalling £14,357.69 for reimbursement of the Northern Region Health Commissioning (NRHC) Branch Partnership Chair. Prior to the disciplinary hearing, the claimant was provided with full details and evidence of the allegations against her.*

18. *On 2 September 2019, the disciplinary hearing took place in the presence of the disciplinary panel. The respondent's HR manager, Sherryll Davison, attended to provide HR advice to the panel. The panel was chaired by Chris Sharpe, Finance Director and Ailsa Nokes, Account Director. The claimant was represented at the disciplinary hearing by Oscar*

Jones and accompanied by Alan Walker, both GMB Representatives. The claimant was provided with the opportunity to respond to the allegations against her and present her case.

19. *The disciplinary panel were unable to make a decision at the hearing on 2 September 2019 because further investigation had to be done as the claimant raised an issue about the invoices being raised and paid twice. Further, the claimant suggested that key witnesses had not been interview who would have supported her case. Therefore an adjournment was requested to allow for additional investigation to take place. The additional investigation provided further witness evidence supporting the findings of the original investigation, and directly contradicting the claimant's stated version of events.*

20. *The disciplinary hearing reconvened on 14 October 2019 and the further evidence was discussed with the claimant in detail. Again, the claimant was given the opportunity to put forward her case and respond to the allegations. The claimant denied generating the invoices and denied approving the invoices with her line manager's log-in detail. Despite this, based on the evidence and the information provided by the witnesses, the disciplinary panel upheld the allegation against the claimant. The respondent had a reasonable belief that the claimant's actions were so serious that they constituted gross misconduct and the claimant was therefore summarily dismissed with immediate effect.*

21. *By letter dated 18 October 2019, Chris Sharpe, Director of Finance, confirmed the decision which had been taken to dismiss the claimant without notice on 14 October. The claimant was informed of her right to appeal against this decision. There was a slight inaccuracy towards the end of this letter; the letter stated that the claimant had 5 days to appeal the 'warning'. This was an administrative error which was rectified.*

22. *By letter dated 21 October 2019, the claimant appealed against the decision to dismiss her for gross misconduct.*

23. *The claimant attended an appeal hearing on 27 January 2020. The disciplinary appeal hearing was conducted in accordance with the respondent's disciplinary policy. The key grounds raised in the claimant's appeal were that the disciplinary process was biased because of her trade union activities and that there was no definitive evidence supporting the allegation that she had produced and/or approved the invoices. The management case was that the claimant was not singled out for her trade union activities and further, given the evidence in this case, the disciplinary panel reasonably concluded that, on the balance of probabilities, the allegation was proven.*

24. *The claimant failed to provide any substantive evidence to support her allegation that bias, related to her union activities, had affected the disciplinary process or the outcome.*

25. *By letter dated 31 January 2020, Stephen Childs, Managing Director of the respondent, confirmed the decision not to uphold the claimant's appeal. The decision to dismiss the claimant with effect from 14 October 2019 remained.*

Pleadings

26. *The respondent denies that the claimant was unfairly dismissed. The respondent had a reasonable belief, on reasonable grounds, that the claimant had committed gross misconduct. It conducted a reasonable investigation and acted reasonably in all the circumstances in treating the gross misconduct as sufficient reason for dismissing the claimant. By virtue of section 98(2)(b) of the ERA 1996, conduct is a potentially fair reason for dismissal.*

27. *If, which is denied, a Tribunal finds that the dismissal was procedurally unfair, the respondent will rely on Polkey v AE Dayton Services Ltd [1987] ICR 142 to argue that the claimant would have been dismissed in any event and to seek a reduction in any award for compensation accordingly.*

28. *Further and in the alternative if, which is denied, a Tribunal finds that the dismissal was unfair, any compensation awarded should be reduced to reflect the claimant's contributory conduct.*

29. *For the avoidance of doubt, the respondent denies that the reason or principal reason the claimant was dismissed was that she was an active member of a trade union or for any other reason falling within section 152(1) of the Trade Union and Labour Relations (Consolidation) Act 1992.*

Counsel for the respondent's skeleton argument filed yesterday

INTRODUCTION

1. This Skeleton Argument is produced on behalf of the Respondent for the telephone public Preliminary Hearing listed to take place on the 03.11.2020, which is to consider whether the ET has jurisdiction to consider the C's claim of unfair dismissal or whether it is time-barred [31].

BACKGROUND

2 The Claimant's claim to the ET is of unfair dismissal. C was employed as an Administration Officer. R asserts that the C was fairly dismissed for gross misconduct. The allegations against the C were of committing financial irregularities by preparing and approving invoices in her capacity as GMB Branch Secretary for expenses that she knew the R was not liable to pay the GMB [21-24].

3 A brief procedural chronology is as follows:

14.10.2019 C summarily dismissed (Effective date of termination, "EDT")

21.10.2019 C lodged appealed

27.01.2020 C attends Appeal Hearing; appeal dismissed

31.01.2020 R confirms decision to dismiss

03.02.2020 ACAS Notification ("Day A") [20]

03.03.2020 ACAS Certificate issued ("Day B") [20]

04.04.2020 ET1 received by the ET [1]

23.06.2020 EJ Arullendran Rule 27(1) – Initial Consideration [25-26]

08.07.2020 C's letter [27-28]

23.07.2020 R's letter [29-30]

TIME-LIMIT/JURISDICTION

4. *Section 111(2) ERA 1996 provides that a complaint of unfair dismissal must be presented to the tribunal –*

c) *before the end of 3 months beginning with the effective date of termination, or*

d) *within such other period as the tribunal considers reasonable 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.*

5. Section 207B ERA 1996 is titled: "Extension of time limits to facilitate conciliation before institution of proceedings". It extends a time-limit because of having to go through compulsory ACAS EC.

SUBMISSIONS

Reasonably practicable

6. *In **Palmer & Saunders v Southend on Sea Borough Council** [1984] ICR 372 (CoA), it was held that the words "reasonably practicable" are equivalent to the words "reasonably feasible".*

7. *The time-limit to bring an unfair dismissal claim had already passed when the C contacted ACAS for EC (Day A) and there was a further delay once the certificate was issued before the ET Claim Form was presented to the ET.*

8. *In her letter, dated 08.07.2020, the C has given insufficient/unsatisfactory reasons for the aforementioned delay, which, it is submitted, do not explain why it was not reasonably practicable/feasible for the C to present her claim form in time.*

Ignorance of rights

9. *In **Dedman v British Building and Engineering Appliances Ltd** [1974] ICR 53 (CoA), it was held that where a claimant pleads ignorance as to their rights, the ET must ask: what opportunities they had for finding out their rights? Were those opportunities taken? If not, why not? Was the claimant misled or deceived?*

10. *In **Porter v Bandridge Ltd** [1978] ICR 943 (CoA), it was held that the correct test is not whether the claimant knew of their rights, but whether they ought to have known of them.*

11. *These principles extend to knowledge of time-limits too. In **Trevalyns (Birmingham Ltd v Norton** [1991] ICR 488 (EAT) it was held that when a claimant knows of their rights to complain of unfair dismissal, they are under an obligation to seek information and advice about how to enforce that right.*

12. *Even if the C's point that she has not been involved in a HR process beyond internally is correct, such knowledge is sufficient for the C to be deemed to be aware that there is an external process and the importance of associated time-limits.*

13. *Any suggestion of ignorance of rights is not reasonably open to the C. C herself was a Branch Secretary of GMB and did have trade union representation/assistance at the key meetings. The C ought to have known of her rights.*

Adviser's fault

14. *In **Marks and Spencer plc v Williams-Ryan** [2005] ICR 1293 (CoA), it was held that where a claimant has retained a solicitor to act for them and fails to meet the time-limit because of the solicitor's negligence , the solicitor's fault is unlikely to mean that it was not reasonably practicable to bring the claim in time.*

15. *Trade union representatives are treated as advisers and can generally be assumed to know of relevant time limits and the need to present claims in time (**Times Newspapers Ltd v O'Regan** [1977] IRLR 101 (EAT).*

16. *The C states that she is dissatisfied with her union representation and having to wait after the disciplinary hearing on 14.10.2019 for the GMB to contact her to "go to the next steps, appeal, possibly tribunal, I wasn't sure what would happen next."*

17. *The C does not say what she did when she says she was unsure what would happen next. The C cannot reasonably blame her advisers, but even if she could it does not mean that it was not reasonably practicable/feasible for her to have complied with timelimits.*

18. *C references only receiving a letter from the GMB informing her that they would not be supporting her in her potential claim after she sent her certificate onto the GMB (which would not have been before the 03.03.2020, the date it was issued). It is unclear then why C nominated Oscar Jones of the GMB as her representative on her ET1 Claim Form presented on 04.04.2020 [9].*

19. *The C references contacting a solicitor online but does not say when and why it was not earlier than it was, which seems to be some point after receiving the ACAS certificate on the 03.03.2020.*

OUTCOME

20. The ET should find that the claim has been presented out of time in circumstances where it was reasonably practicable for the C to have done so. Alternatively, if the ET concludes that it was not reasonably practicable for the C to have done so, then the ET should find that the claim was not presented within a reasonable period. Accordingly, the ET does not have jurisdiction to consider the claim of unfair dismissal, which should be dismissed.