



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Karen Conaghan  
**Respondent:** IAG GBS Ltd

## RECORD OF AN OPEN PRELIMINARY HEARING

**Heard at:** Watford (by CVP)  
**On:** 17 April 2023  
**Before:** Employment Judge Alliott (sitting alone)

### Appearances

For the claimant: In person  
For the respondent: Mr Guy Hollebon (solicitor)

## JUDGMENT

1. The claimant's claims of sexual harassment (Equality Act 2010 s.26) are out of time and the claim was not brought within such other period as the employment tribunal thinks just and equitable. Consequently, the claimant's claims of sexual harassment are struck out as there is no jurisdiction to hear them.
2. The claimant has a reasonably arguable basis for the contention that the various complaints of harassment/victimisation against Mr Aziz and/or Mr Collins are so linked with those against Mr Neta as to be continuing acts or to constitute an ongoing state of affairs.
3. The claimant is granted permission to amend her claim and the list of issues to include as a complaint against Mr Shahid Aziz that he:

“27<sup>th</sup> December 2021 – the claimant received no leaving card or acknowledgment of her contribution/existence within the company”.

## REASONS

1. This open preliminary hearing was ordered by Employment Judge Shastri-Hirst on 10 January 2023 to deal with the following issues:
  - “1. In relation solely to the following claims, were those claims made within a further period that the tribunal considers is just and equitable:
    - 1.1 The harassment/victimisation against Mr Aziz (Paragraph 53 in the list of issues).
    - 1.2 The harassment claim against Mr Collins (paragraph 54 of the list of issues).

1.3 The sexual harassment claim (paragraph 55 of the list of issues).

2. The tribunal will decide:

2.1 Why were the complaints not made to the tribunal in time?

2.2 In any event, is it just and equitable in all the circumstances to extend time?"

### **The harassment/victimisation allegations against Mr Aziz and Mr Collins**

3. The two allegations against Mr Aziz are dated 8 March 2021 and 7 May 2021.
4. The five allegations against Mr Collins are dated 29 June, 5 July, 5 July, 6 July and 6 August 2021.
5. The claimant issued her claim on 23 May 2022 following a period of early conciliation from 15 March to 25 April 2022. As such, any act complained of that happened before 16 December 2021 is, on the face of it, out of time.
6. All the acts complained about against Mr Aziz and Mr Collins are prior to 16 December 2021. As such, as single acts, they are out of time.
7. I acknowledge that the wording of the preliminary hearing suggests that Employment Judge Shastri- Hurst approached the matter on the basis that it was unarguable that the allegations against Mr Aziz and Mr Collins were out of time. However, absent a reasoned decision and clear finding that those alleged acts do not form part of a series of connected acts and/or a course of continuous conduct, I find that I am not bound by any such presumption.
8. I have taken into account the Court of Appeal's decision in Aziz v FDA [2010] EWCA Civ 304, CA as set out at paragraph 35.37 of the IDS Employment Law Handbook Discrimination at Work:

“The Court of Appeal’s decision in Aziz v FDA also dealt with a procedural issue of “considerable practical importance”: On what basis should employment tribunals approach the question whether a claim is time-barred at a preliminary hearing? The Court approved the approach laid down in Lyffar v Brighton & Sussex University Hospitals Trust [2006] EWVCA Civ 1548, CA that the test to be applied at the preliminary stage is to consider whether the claimant had established a prima facie case, or , to put it another way, “The claimant must have a reasonably arguable basis for the contention that the various complaints are so linked as to be continuing acts or to constitute an on-going state of affairs”.

9. In her claim form the claimant pleaded as follows:-

“ 28. As outlined throughout this document, the claimant was repeatedly targeted as the only female employee on her team. The claimant was bullied, spoken to in a derogatory way, given more work than other colleagues, and pressured to work additional shifts alone. The work environment was unbearable for the claimant and she felt like there was nobody to turn to for support.”

10. The claimant is alleging that she was targeted by male members of her of team on the grounds that she was female. In my judgment, she has a reasonably arguable basis for the contention that the various complaints against Mr Aziz and

Mr Collins were so linked with those of Mr Neta as to be continuing acts or to constitute and ongoing state of affairs.

11. Consequently, in my judgment, it would not be appropriate to deal with the time limit questions at this preliminary hearing. For the avoidance of doubt, it will be open to the respondent to argue at the full merits hearing that any or all of the allegations against Mr Aziz and Mr Collins are out of time, do not form part of a connected series of events or a course of continuing conduct and/or that time should not be extended on a just and equitable basis.

### **The sexual harassment (Equality Act 2010 section 26) claims**

12. The alleged conduct complained about was in September 2019 and on 27 November 2019. They are, therefore, in excess of two years out of time. There is no suggestion that they form part of a series of connected acts and/or a course of continuous conduct thereafter.
13. I have a wide discretion to allow an extension of time under the “just and equitable” test in s123 Equality Act. I take into account that there is no presumption that I should exercise my discretion in favour of a claimant and that it is for the claimant to convince me that it is just and equitable to extend time. It has been said the exercise of the discretion is the exception rather than the rule.
14. I have taken into account the following matters. The length of the delay is sizeable in the context of employment tribunal proceedings. The reason for the delay is that the claimant was in her probation period, was keen to fit in to the team and did not want to take the matter any further. She claimed she was ignorant of her rights. However, I note that the claimant did escalate it to a manager, Mr Spender and told me that she was considering taking the matters to HR at the time. The claimant is clearly a highly intelligent and articulate individual. She has a degree in sociology and took a one-year Master’s in International Business Management. The claimant was a member of the GMB union at the time. I find it surprising that the claimant was ignorant of her rights to bring a claim to the employment tribunal. In any event, the claimant had access to potential legal advice via her union and could have researched the issue on Google. I do not find that her protestations of ignorance of her rights was reasonable.
15. The claimant said that the onset of covid and lockdown meant that matters went on hold. I do not accept this as an excuse. Had she wanted to bring a claim earlier, she could and should have done so.
16. At that time issues relating to the claimant’s health did not arise
17. In my judgment, the claim of sexual harassment has not been brought within a time that is just and equitable. Consequently, I strike it out as there is no jurisdiction to hear it.

### **Amendment**

18. In paragraph 30 of her witness statement prepared for the purposes of this hearing, the claimant makes an application to amend her claim and the list of

issues to allege against Mr Shahid Aziz the failure to send her a leaving card or acknowledge her contribution/existence with the company.

19. At the time of the making of her claim the claimant was unaware that Mr Aziz, apparently, decided not to send her a card, money or acknowledge her time at the company. The claimant only became aware of this having seen the respondent's response in July 2022.
20. I accept that at the preliminary hearing on 10 January 2023 before Employment Judge Shastri-Hurst, the claimant had an opportunity to include this allegation as against Mr Aziz. However, I take into account that the claimant is representing herself and the list of issues was, apparently, compiled by reference to the claimant's claim form (rather than the response) which may explain why the allegation was not made against Mr Aziz.
21. Again, I have a discretion as to whether to allow the amendment. I have taken into account the following matters:
  21. I accept that the reason for this application is probably in order to bring a claim against Mr Aziz that is within time. However, the factual allegation has already been made in the original claim form and was characterised as a claim against Mr Meta. The information that it was Mr Aziz who, apparently, took the decision was only available to the claimant once she had the response. It does not appear to have been raised at the preliminary hearing on 10 January 2023 due to an oversight by a litigant in person.
  22. I do not consider that the amendment, if allowed, will delay the matter or increase costs. The respondent has clearly looked into the matter and its defence to the claim against Mr Meta was that it was someone else who made the decision. In my judgment, there is no real prejudice to the respondent by allowing his evidence.
  23. I have further taken into account that at the full merits hearing it would be odd if the tribunal concluded that the unwanted conduct had taken place, that it related to sex but the claim failed because the claimant did not bring the claim against the correct individual.
24. Consequently, I grant permission for the amendment.

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**Employment Judge Alliott**

2 May 2023

Date:.....

Sent to the parties on: 22 May 2023

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For the Tribunal: J Moossavi

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