EMPLOYMENT TRIBUNALS

Claimant: Ms J Benyi

Respondent: Noolyn Care Ltd t/a Caremark (Barnet & Enfield)

Heard at: Watford Employment Tribunal (In public; by video)

On: **6 September 2024**

Before: Employment Judge Quill (sitting alone)

Appearances
For the claimant: Mr J Callen, Friend
For the respondent: Mr R Dempsey, solicitor

JUDGMENT

(1) All the complaints alleging breach of any of the inform/consult obligations [Regulation 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006, cross-referencing Regulations 13 and 14] are dismissed because the Tribunal does not have jurisdiction to hear them, because they were not presented within the time limit.

(2) This does not affect the other complaints presented by the Claimant. Furthermore, it does prevent her relying on the rights which TUPE grants to employees whose contract of employment transferred to a new employer.

REASONS

Introduction

1. There was a preliminary hearing on 6 March 2024, coincidentally also before me, which identified the following preliminary issue, and consequential matters:

4.1. Has each complaint alleging failure to inform / consult [as required by the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE")] been brought in time or out of time? [Regulation 15(12) and 15(13) TUPE]

4.2. This will include decisions as to:

4.2.1. The date of the relevant transfer

4.2.2. The dates of early conciliation

4.2.3. Whether it was reasonably practicable to bring the claim within the time limit and, if not,

4.2.4. Was it brought within such further period as the tribunal considers reasonable

4.3. Should any claim or complaint be dismissed as a result of the decision on the preliminary issues.

4.4. If any complaints have been dismissed, should the final hearing take place before a full tribunal (of three members) or a judge only.

4.5. EJ Quill's provisional opinion is that the final hearing should be reduced to three days if the inform/consult complaints are dismissed. However, the preliminary hearing judge is at liberty to decide the point afresh.

2. That hearing set dates for the public preliminary hearing and the final hearing, and made orders for each. Unfortunately, through no fault of the parties, the public preliminary hearing was postponed. Therefore (and although there was no formal written order for this), as the parties realised, the orders given for preparation for the final hearing were effectively stayed until after this new preliminary hearing date. I have set new dates for preparation for the final hearing.

3. The only orders (for disclosure of documents, for example) that the parties had to comply with for this hearing were those that were given on 6 March 2024 as the orders for preparation for this preliminary hearing.

The Hearing and the Evidence

4. I had a bundle of around 192 pages, plus index, and a written statement from the Claimant and a written skeleton argument from the Respondent.

5. The hearing was entirely remote by video. Other than some issues at the beginning with the audio at the Claimant's end (she and her representative were in same room, using different devices), there were no technical problems.

6. The Claimant was the only witness. She gave evidence on oath, and answered questions from the Respondent's representative, from me, and her own representative.

7. I gave judgment with reasons orally, and I was asked for written reasons. These are those written reasons. I also made some case management orders which are contained in a separate written document.

The Facts

8. There is no dispute that ACAS early conciliation commenced on 23 June and continued to 27 July 2023. There is no dispute that the claim form was presented on 15 August 2023.

9. The Claimant has not used a lawyer during these proceedings. She is effectively a litigant in person, though with the assistance of a friend whose details are set out in section 11 of the claim form, and who has represented her at both preliminary hearings.

10. There was a TUPE transfer from Juniper Care Ltd (company number 07653077) trading as Caremark (Enfield) ("the Transferor") to Noolyn Care Limited trading as Caremark (Barnet and Enfield) ("the Respondent")

11. This transfer occurred on 20 February 2023, and the Claimant was one of the employees who transferred as a result. There is no dispute between the parties about this point.

12. The Claimant's case is that Regulation 13A did not apply to this transfer. (That is, the old version of Regulation 13A, that was in force as of 20 February 2023). On the Claimant's case:

    12.1 There were more than 10 employees

    12.2 There was an obligation to arrange elections for employee representatives

    12.3 This did not happen

13. Although, it would also be her case that, in the event that Regulation 13A did apply, the inform/consult obligations were breached, because whatever information was received (which was not necessarily adequate) was, in any event, not received "long enough" before the transfer.

14. However, I do not need to make findings of fact about the number of employees, or about what purported efforts to inform/consult were made, or about what information was supplied, and to whom, and when. Those are all matters which would potentially be relevant to the substantive merits of the claim if it proceeds, but are not relevant to the decision for today, which is about time limits only.

15. The Claimant was aware before 20 February 2023 of the possibility of a TUPE transfer, and was aware by no later than 20 February 2023 of the actual transfer,

and that it had occurred on 20 February 2023. In her witness statement, she states:

> On 15 February Shuchi Puli and Angela Cazak of Noolyn Care Ltd visited our offices to introduce themselves and the company taking over. I met Shuchi Puli who told me that my employment would be as Field Care Supervisor, on a salary of £24,000. An effective demotion and a cut in salary of 20% from £30,000.

16. The details of the Claimant's treatment by the Respondent after the transfer will potentially be in dispute and will be subject to findings of fact at the final hearing. I make no findings about whether the Respondent did say those things, but I do find that - assuming that it did – the Claimant knew, on 15 February 2023 that these words had been uttered. By 20 February 2023, she knew everything that had been said to her, or written to her, pre-transfer, by the Transferor and by the Respondent.

17. The Claimant's version of events is summarised in the document from the previous preliminary hearing. Suffice to say that, in the Claimant's opinion, the Respondent was potentially failing to acknowledge her correct job title, status, duties, contractual pay entitlement, and contractual entitlement to non-cash benefits.

18. In terms of the Claimant's written statement, and her answers to questions, I accept that all the facts that she has stated are true to the best of her knowledge and recollection.

19. Around 20 February 2023, the Claimant was aware of the existence of the legislation whose correct title is Transfer of Undertakings (Protection of Employment) Regulations 2006. Whether she knew that exact name or not, she knew that there was legislation such that, because of a transaction between the Transferor and the Respondent, her employment transferred, and she had certain rights. She did not necessarily know, at the time, what all of those exact rights were, but she knew that she had some rights in the situation.

20. After the transfer, the Claimant became concerned that the new employer (the Respondent) was not acknowledging her contractual rights. She discussed this with various people, including Mr Callen. She kept diary notes in March 2023, and forwarded relevant emails to Mr Callen.

21. On 12 April 2023, at 6.52pm, the Claimant emailed the Respondent [Bundle 163]. The email included:

> It is coming for two month since Noolyn Care LTD took over Caremark (Enfield).
>
> I have not received a letter to say that my contractual arrangement was being carried over from Juniper Care Limited (this was £32,500 per annum plus use of the company vehicle).

22. Following some further discussions (the Claimant's notes of which are [Bundle 164]), the Claimant's email of 18 April 2023 included:

> It seems my salary has been reduced to £24,000 per annum but I was never given any advice in writing to that effect. And I have not received a draft contract to consider. There was no opportunity for discussion before these changes being implemented.
>
> I am very worried and upset that my salary has been reduced by over 25% and it appears that I am expected to provide a car for work from that reduced salary.
>
> I cannot see that the correct procedure has been followed and I have approached ACAS for advice.
>
> It would seem appropriate that we both seek and follow ACAS advice to ensure that all correct procedures are followed.

23. The Claimant mentions in her statement:

> 8. The takeover of the Caremark Enfield business by Noolyn Care was my first awareness of TUPE. And I was not at all aware of ACAS at that time.

24. I accept that that is true. However, while she had not been aware of ACAS before, or immediately after, 20 February, she had discovered the existence of ACAS before mid-April. She had been on their website, and made several calls to advisers. As she said orally, she spoke to different advisers each time, and recounted what had happened / was happening from scratch each time. She states, and I accept, that she always mentioned that (i) there had been a TUPE transfer and (ii) that it had occurred on 20 February 2023.

25. The Claimant had also printed off comments about TUPE, and parts of the legislation itself, from the internet. She attempted to absorb the information, but found it difficult to take in all of the information and to understand how it might apply to her situation. The issue for her was not about fluency in the English language, but that she regarded the wording as being very technical, and formed the opinion that legal or Human Resources expertise was needed to understand it all properly.

26. In re-examination, it was put to her, and she agreed, that the information about inform/consult obligations was not on the "first level" of the websites (in particular the "gov.uk" sites) that she looked at, but rather was only to be found by looking deeper, through further levels.

27. As per paragraphs 15 to 23 of the Claimant's witness statement, following the advice from friends and ACAS, and her own on-line research, she wrote to the Respondent to assert her rights, and to seek the Respondent's confirmation that it acknowledged those rights. It appeared to her that the Respondent was potentially willing to accept its TUPE obligations, but then – on the Claimant's case – between around 26 April and 2 May 2023, she received communications in which the Respondent purported that her employment only began on 20 February 2023. I

do not need to decide if that happened or not, but, assuming that it did, the Claimant knew about it in late April and by 2 May at the latest.

28. The Claimant states, and I accept, that while her discussions with ACAS included the advisers telling her that TUPE acted to preserve her contractual rights, and that one option was to have a dialogue with the Respondent to assert those rights, and another option was to resign and seek to allege constructive unfair dismissal, ACAS never informed her about the Transferor's inform/consult obligations, or that the Respondent might potentially be liable for a breach of those.

29. While I accept that that is factually accurate, as the Claimant confirmed during her evidence, she did not tell ACAS that she wanted to discuss with them what had happened pre-transfer, or defects in information she had (or had not) been given pre-transfer. My finding is that her conversations with ACAS were focused on what her rights were post-transfer; that is what she asked them about, and that is what their replies addressed.

The Law

30. The law which I have to take into account is as follows.

31. The relevant extracts from the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") upon which the Claimant relies are set out in the case management order from the 6 March 2024 hearing. The tribunal's jurisdiction to hear those complaints is conferred by Regulation 15(1) of TUPE. Regulation 15 includes:

> (12) An employment tribunal shall not consider a complaint under paragraph (1) … unless it is presented to the tribunal before the end of the period of three months beginning with—
>
> (a) in respect of a complaint under paragraph (1), the date on which the relevant transfer is completed; …
>
> or 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 the period of three months.
>
> (13) Regulation 16A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (12).

32. The provisions about early conciliation match those in other legislation. Where a potential claimant commences early conciliation within the 3 month period mentioned in Regulation 15(12), then that potentially affects the time limit by which a claim needs to be presented. However, where the 3 month period mentioned in Regulation 15(12) has already expired before the potential claimant contacts ACAS, then this does not "stop the clock" or change the time limit deadline.

Reasonable Practicability

33. The wording of what is sometimes known as an "escape clause" (that is about the circumstances in which the Tribunal will still have jurisdiction when a claim has been presented late) are "*where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of three months*"; similar words are used in several pieces of legislation. Many of the cases which analyse that phrase are dealing with unfair dismissal complaints. Given the similarity of the wording, the appellate guidance for those other pieces of legislation applies to Regulation 15 TUPE too.

34. When a claimant argues that it was not reasonably practicable to present the claim within the time limit, there are questions of fact for the tribunal to decide. In other words, whether it was, in fact, reasonably practicable or not. The onus of proving it was not is on the claimant. When analysing the question, the phrase "*not reasonably practicable*" should be given a liberal interpretation in favour of the Claimant.

35. If the tribunal is satisfied that it was not reasonably practicable to present the claim within the time limit, then it is necessary to decide a second issue: was the period between the expiry of the time limit and the eventual presentation of the claim reasonable in the circumstances. The Claimant does not have to act as fast as would be reasonably practicable within this second period of time. However, in order to get to this stage, the claimant has to have been able to demonstrate that it was not reasonably practicable to present the claim within the original three month period (as extended by early conciliation, if applicable).

36. The fact that an employee pursued an internal appeals procedure is a relevant circumstance which can, and should, be considered by the tribunal. However, generally speaking, it is not usually enough by itself to make it "not reasonably practicable" for the complaint to be presented within the prescribed period, even if the employer is slow to announce the outcome. See the Court of Appeal's review in *Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372*.

37. It might be that the claimant argues that it is not simply the fact that there was an internal appeals procedure, but that there was something else as well. For example, that the employer, or somebody else, misled them into thinking that the clock would not start running until the internal process was concluded, or into thinking that they were obliged to wait until the internal process was concluded before presenting a claim.

38. In *Porter v Bandridge Ltd 1978 ICR 943, CA*, the Court of Appeal held that the correct test is not whether the claimant knew of her rights but whether she ought to have known of them.

39. Similarly, when a claimant is ignorant about (or makes a mistake about) a fact which is relevant to the calculation of time limit, the question is whether that ignorance (or that mistake) is reasonable. The assessment of reasonableness has to take into account that a potential claimant ought to be aware of the importance of not missing a time limit.

40. Put another way, even if it is true that the claimant did not know the true facts at the time, then that does not necessarily mean that it was not reasonably practicable to issue the claim in time. The claimant must also show that the ignorance was reasonable and that she could not reasonably have been expected to have discovered the true situation in time to present the claim during the limitation period. Furthermore, ignorance of the true facts must be the actual reason for failing to issue the claim sooner.

41. Fault on the part of the claimant's adviser may be a relevant factor when determining whether it was reasonably practicable for the claimant to present the claim within the prescribed time limit. It is important to consider all the circumstances and the type of adviser involved.

42. A mistake made by a solicitor or barrister acting for the claimant is likely to deemed to be a mistake made by the claimant. As per *Wall's Meat Co Ltd v Khan 1979 ICR 52, CA*, ignorance or a mistaken belief will not be reasonable if it arises either from the fault of the claimant or from the fault of the solicitors in not giving him such information *as they should reasonably have given the claimant.*

43. In *Northamptonshire County Council v Entwhistle 2010 IRLR 740, EAT*, Underhill P noted that there could be some circumstances where – despite having used solicitors to advise him on the matter – a claimant might show that it had not been reasonably practicable to issue the claim on time. In other words, there might be cases where the adviser's failure to give the correct advice was itself reasonable, such as where the employee and his or her solicitor had both been misled by the employer on some factual matter, such as the date of dismissal. Entwhistle reminds tribunals to carefully analyse the exact facts of the case before them and to apply the wording of the legislation to those facts, and not to rely solely on what appellate courts have decided in different cases with seemingly similar sets of facts.

44. Of course, where the source of the information is not a legal professional, then that raises the issue of whether the Claimant acted reasonably by relying on the information received from that particular source.

45. In terms of lack of knowledge of a particular right, or of the ability to enforce that right via an employment tribunal claim, with the passage of time the existence of Employment Tribunals and the right to bring claims of unfair dismissal and other types have become well known. As such, prospective claimants might often

struggle to persuade an Employment Tribunal that they were unaware of the right (and that such ignorance was reasonable). Those who aware of such rights are deemed to be on notice of the need to find out as to how and when such a claim may be made: Trevelyans (Birmingham) Limited v Norton [1991] ICR 488 EAT

> From the cases, it is our view that the following general principles seem to emerge. The first, as time passes, so it is likely to he much more difficult for applicants to persuade a tribunal that they had no knowledge of their rights in front of industrial tribunals to bring proceedings for unfair dismissal […] Second, that where an applicant has knowledge of his rights to claim unfair dismissal […] then there is an obligation upon him to seek information or advice about the enforcement of those rights.

46. That case was more than 30 years ago, and pre-dated the advent of the internet, and the widespread access to the internet via phones, laptops and other devices. A tribunal might need to receive a lot of strong evidence before it concluded that a particular individual was unaware of the possibility of using an internet search engine to find out what rights they potentially had in relation to a particular dispute at work. Where an individual accepts that they did some research, it might seem surprising if their argument is that they did not find out about the existence of employment tribunals and, in general terms, their role.

47. In any event, where, in broad terms, the claimant alleges that they did not know something the Tribunal must carefully analyse, and find facts about, what it is that the claimant says they did not know about

47.1 Is it that they did not know that they had the right in question, because, if so, it follows that they would not have realised that there was a time limit

47.2 Is it that they were aware of the right but did not know about the method of enforcement and/or the time limit. Because, if they knew about the right, further findings of fact would be necessary to analyse why, in that case, they did not also find out – promptly – about everything they needed to do to enforce the right. Knowledge of the right to make a claim does not, as a matter of law, mean that ignorance of the time limits will never be reasonable. It is likely, however, to make it more difficult for the employee to show that their ignorance was reasonable.

47.3 Is the argument that they did not know about a particular factual issue, and it was only when they discovered the truth about that factual issue that they came to consider the possibility of claiming. In that case, issues such as did they do enough to investigate the factual circumstances, and did the employer deceive them in any way might become relevant. Though – in any event – a crucial question will be whether – assuming it is true that the claimant was unaware of that factual issue – that ignorance is sufficient to show that it was not reasonably practicable to bring the claim. Put another way, why was the situation different

after the claimant discovered the fact in question in comparison to the situation when they did not know about it.

Analysis and conclusions

48. I do take into account that the claimant's first language is not English. That is a point made in the case management summary from the March hearing. On that occasion, and again today, I have had the opportunity to interact with the claimant. I am satisfied that she can speak English well and she can write English well, as statements and correspondence to the respondent and makes clear. It is possible, of course, that – as with any other litigant or witness – she had some assistance with the preparation of some of the documents. However, quite apart from the fact that her interactions with me show that she understands English well (and quite apart from the fact that she does not argue otherwise, subject to the points made in the orders from the preliminary hearing), the nature of her duties for her employer were such that she needed to be proficient in English, and she is, in fact, proficient in English.

49. The transfer date was 20 February 2023. The period mentioned in Regulation 15(12) therefore expired on 19 May 2023. The Claimant had not commenced early conciliation by then. Since the claim was not presented by 19 May 2023 (and since early conciliation had not started by then), I have to decide if it was not reasonably practicable to present the claim by 19 May 2023. If (and only if) I decide that point in the Claimant's favour, I need to decide whether the fact that the claim was presented on 15 August 2023 means that it was presented within such further period that I consider reasonable.

50. I proceed on the assumption, for today's purposes, and without formally deciding, that there were more than 10 employees. The Claimant's argument – which I assume to be true for present purposes – is that there were no "appropriate representatives" within the definitions in Regulation 13(3)(a) or (b)(i) of TUPE and, therefore, her former employer had been obliged to arrange for elections, as required by Regulations 13(3)(b)(ii) and 14 of TUPE. It is the Claimant's case that she was unaware of the inform/consult obligations and (therefore) unaware that these obligations had (on her case) been breached.

51. However, for time limit purposes, it makes no real difference if there were not more than 10 employees (meaning that, based on the law in force as of 20 February 2023, Regulation 13A TUPE applied). The specific details of the inform/consult obligations would differ, but it would still be the Claimant's case that those obligations were not properly complied with, and that she was unaware of the (alleged) breach, because she was unaware of what the actual obligations were.

52. In any case, regardless of the number of employees, and regardless of whether Regulation 13A applies or not, the enforcement method is via Regulation 15, and

the time limit clock starts on 20 February 2023, and (for the reasons mentioned above) the time limit expired on 19 May 2023.

53. By 20 February 2023, the Claimant did know that there had been a change in employer, and had been told that TUPE applied to the situation. She did already know what the pre-transfer employer had done and what it had failed to do. I take the point that she did not know at the time about the obligation to arrange elections (or, in the alternative, to inform/consult the employees directly if Regulation 13A applied); however, she did know that there had been no elections, and she did know what information about the transfer she had received, and she knew when she had received it.

54. While I accept the Claimant's account that, when doing her on-line research, the details of inform/consult obligations could only be found by looking through several layers of information, the fact is (and she and her representative acknowledged this) that the information actually is there, on the sites that she visited, such as the gov.uk sites and the ACAS website.

55. Provided sufficient digging is done, a person can discover online (and that is not the only source of information, but is the one I am discussing now, and is a source which the Claimant used) detailed information about TUPE and what rights it gives to employees, and – relevantly for present purposes – what the inform/consult obligations were, when they are supposed to be carried out, and how a potential claimant might seek to enforce the rights. I do not doubt that some websites are potentially more aimed at lawyers and HR professionals; however, many are aimed the general public. Furthermore, the Claimant did have the opportunity to discuss with ACAS (which she did several times) and with friends, and friends of friends, which she also did.

56. The claimant spoke to ACAS several times. She spoke to different advisers each time and she went through the description of events each time starting from scratch, each time informing at the ACAS officer that there had been a transfer on 20 February 2023. The Claimant invites me to infer that it was not reasonably practicable to present the inform/consult claim in time based (partially) on the fact that, since ACAS did not inform her of that claim, her ignorance of that possible claim (and therefore the applicable time limits for it) was reasonable.

57. I do not agree with that. It is not reasonable to assume that if a person raises one particular issue about TUPE (in this case, whether the Transferee was breaching the Claimant's contract of employment, by failing to correctly acknowledge what that contract had been pre-transfer and/or by failing to accept that the pre-transfer contract was preserved by TUPE) then an ACAS officer will proactively mention every single aspect of TUPE, regardless of whether it seems relevant to the query or not.

58. Both the Claimant's claim form to the Tribunal and her witness statement today refer to information that she allegedly received on 15 February (so pre-transfer) about what her pay and job title would be post-transfer. I am making no point about whether or not the fact that she had that information would be relevant to the success or failure of an inform/consult claim (not least because, on the Claimant's case, Regulation 13A did not apply). I am simply commenting that – as the Claimant accepts – when she spoke to ACAS, the issue that she was raising was not about whether the issue of any (purported) changes to her contract should have been flagged up pre-transfer; the issue was whether any (purported) changes to her contract were lawful.

59. She spoke to ACAS and her friends about her opinion that the new employer, the transferee, the Respondent, was not properly paying her and was not properly recognising her job title and/or her rights to use of company vehicle and other benefits.

60. My assessment is that a reasonable person would realise that any (potential) legal complaint about what the Transferee did (or failed to do) <u>after</u> the Relevant Transfer is a separate issue to any (potential) legal complaint about what the Transferor did (or failed to do) <u>before</u> the Relevant Transfer. Furthermore, my assessment is that it is not reasonable to expect that if an ACAS officer (or a friend) has been asked about the Transferee's post-transfer conduct, and failed to respond by giving advice, or asking questions about, the Transferor's pre-transfer conduct, then there is no relevant claim that could be brought based on the Transferor's pre-transfer conduct.

61. To the extent that the Claimant argues that the comments/suggestions made by ACAS were lacking or defective in any way, I do not agree. She was given information about the possibility of writing to the employer and the possibility of resigning and alleging constructive dismissal. She did the former, and decided not to do the latter (because of subsequent events and discussions).

62. The Claimant was told that she potentially could seek to address these issues with the employer by writing to the employer, setting out her position. Whether she was specifically told to raise a grievance is not particularly relevant today. Employment lawyers might recognise the act of writing to an employer to disagree with their actions, and to assert what they needed to do to rectify matters as the bringing of a "grievance". However, the technicalities the terminology do not matter. I accept that it is common sense that, having written to the employer, the employee will wait for a time to see what the response is.

63. That is what the Claimant did in this case. However, it is important to be clear that the things the Claimant was waiting for a response about is whether the Respondent would agree with her about contractual (etc) rights post-transfer. In terms of any allegation that Transferor or Transferee had breached any pre-

transfer obligations, it was already too late for any such breach to be rectified. The transfer had already occurred, so there was no longer the opportunity to do anything pre-transfer.

64. Her correspondence did not expressly make assertions about failure to inform/consult. The Claimant's argument that it was not reasonably practicable to present the claim in time because it was reasonable to await the employer's response fails partially for that reason; it is not true that she was awaiting any response from the Respondent about inform/consult obligations (eg whether it admitted a breach, and was willing to offer apology/compensation, or else whether it denied a breach and was able to persuade the Claimant that there had not been a breach). However, the argument also fails because it did respond to her mid-April correspondence, including but not limited to, the 26 April and 2 May 2023 (alleged) responses described in the Claimant's witness statement. Whether she agreed with the Respondent's position or not, she knew its position significantly earlier than 19 May 2023 (and soon enough to present a claim, or commence early conciliation, if that is what she had decided to do).

65. I agree with the Respondent's submission that the Claimant's comments to the Respondent from mid-April to early May (especially the sentence written on 18 April 2023: "*I cannot see that the correct procedure has been followed and I have approached ACAS for advice*") show that the Claimant had researched what the TUPE process was. In any event, the Claimant accepts that she did so.

66. To the extent that the Claimant submits, in broadbrush terms, that it was reasonable for her to be unaware that a claim had to be submitted within 3 months of the transfer date (because nobody, including ACAS, told her this, and because her on-line research did not reveal it), the submission misses the point. Complaints which rely on her post-transfer rights do <u>not</u> have to be brought within 3 months of transfer. Had she resigned, for example, an option that she discussed with ACAS, she would neither have had to resign (an alleged constructive dismissal) less than 3 months post-transfer, nor bring a complaint of unfair dismissal less than 3 months post-transfer. Similarly, any complaint alleging unauthorised deductions from wages (based on the pre-transfer entitlement to wages) would not have to be brought within 3 months of the transfer. Those were the types of claim potentially arising from the matters which the Claimant did discuss with ACAS, and there was – therefore – no reason for ACAS to inform her (incorrectly, as it would have been) that she needed to commence early conciliation less than 3 months after the transfer, for those types of claim.

67. Information to the Claimant that she needed to commence early conciliation less than 3 months after the transfer would have been accurate had there been any discussion about bringing a claim under Regulation 15 of TUPE. However, that is not the type of claim that the Claimant was flagging up in March, April and early May. While I accept that the Claimant had not discovered that this was the type of

claim that she could potentially bring, I do not accept that that lack of knowledge was reasonable given that she had correctly identified sources of information which contained that information (albeit that time and effort had to be allocated in order to find and comprehend the relevant information on those websites).

68. The Claimant has brought a claim which alleges that she was actually dismissed by the Respondent. I am making no decision about the merits of that claim today, save to say that nothing I decide today about time limits for the inform/consult complaints affect the arguments that she might seek to make in support of that complaint. Relevantly, she does not seem to have been given misleading advice by ACAS (or friends), either in relation to the time limits for bringing that particular complaint, or at all.

69. In summary, the Claimant's ignorance of the fact that a claim for breach of inform/consult obligations had to be brought within 3 months of 20 February 2023 (or of the fact that early conciliation had to begin within that period, at the least) was not reasonable. It was reasonably practicable to present the claim in time.

70. It is not necessary for me to decide whether presenting the claim on 15 August 2023 means that it was brought within such further time as was reasonable. Although, the fact that it was 3 months late would obviously have been a relevant factor in my decision.

Outcome and next steps

71. The final hearing remains as previously listed, and the orders made/varied for that hearing are contained in a separate document.

Employment Judge Quill

Date: 16 September 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON
16 September 2024

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FOR EMPLOYMENT TRIBUNALS