

Tribunal Time Limits: No extension of tribunal time limits for an ex-employee who claimed that he had misunderstood the ACAS early conciliation rules

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The Court of Appeal has upheld a tribunal's decision that it was not just and equitable to extend time limits by three days where the ex-employee claimed that he had misunderstood the early conciliation rules

THE FACTS

Mr Adedeji was employed by the University Hospitals Birmingham NHS Foundation Trust as a consultant surgeon. After a long capability and conduct procedure, he resigned. He brought constructive dismissal and race discrimination claims. The claims were brought three days outside the tribunal time limits. Mr Adedeji had withdrawn from ACAS early conciliation and been provided with an early conciliation certificate. He said that he had believed, mistakenly, that the time limits could be extended if he contacted ACAS again. However, he had twice received legal advice that this was incorrect as well as advice about the date by which he had to submit his claim. The tribunal held that his claims were out of time and it declined to extend the time limits. Mr Adedeji appealed unsuccessfully to the EAT. He appealed to the Court of Appeal, which heard his appeal in relation to the time limits for his claim of discriminatory constructive dismissal.

The Court of Appeal dismissed his appeal. The ACAS early conciliation certificate was valid, and so the only way that the time limits could have been extended would have been for Mr Adedeji to have persuaded the tribunal that there was a reason why the extension would be just and equitable. He had not managed to do so.

WHAT DOES THIS MEAN FOR EMPLOYERS?

Claimants applying for time limits to be extended in discrimination claims have to persuade the tribunal that it would be "just and equitable" to grant the extension. The tribunal is likely to take the length of delay into account, and Mr Adedeji was only three days out of time. A tribunal will often extend time limits when the delay is short. However, this case shows a strict approach to time limits (which will be welcome to employers). The facts that Mr Adedeji was "highly educated" and had twice chosen not to follow legal advice weighed heavily against his application.

[Olufunso Adedeji v University Hospitals Birmingham NHS Foundation Trust 2021 EWCA Civ23](#)

Authors



Hilary Larter

Leeds

+44 (0)113 251 4710

hlarter@dacbeachcroft.com



Ceri Fuller

London - Walbrook

+44 (0)20 7894 6583

cfuller@dacbeachcroft.com



Zoë Wigan

London - Walbrook

+44 (0)20 7894 6564

zwigan@dacbeachcroft.com