One off acts with ongoing consequences: discrimination time limits in *Ahmed v Capital Arches* [2025] EAT 133

By Joseph England
3PB Barristers

Summary

1. In Ahmed v Capital Arches Group Limited [2025] EAT 133, the EAT considered an ET's decision that claims were presented out of time and the refusal to extend time on the 'just and equitable' basis. In doing so, the EAT analyse the distinction of events that occur as one off events with ongoing consequences rather than conduct extending over a period.

2. It will be particularly relevant to cases involving a complaint about a change in duty, demotion or failure to promote. The case suggests that such events are most likely best seen as one off acts despite their ongoing consequences, unless there is an underlying discriminatory policy being implemented by the employer.

3. References in square brackets within this article are to paragraphs of the judgment.

Factual Background

4. Mr Ahmed was employed by Capital Arches from October 2018, went off sick in June 2021 and issued a claim in October 2022. "He ticked the boxes to indicate that he was pursuing complaints of age, race, disability and religion or belief discrimination" [5]. Mr Ahmed operated as a litigant in person at all times and there were 4 PHs in total (the eventual dismissal of all claims at the 4th).

5. At the 2nd PH, he was ordered to provide an application to amend and set out properly particularised complaints [8]. The 3rd PH considered that application and particulars and set down directions for a 4th PH to consider "whether the complaints of direct discrimination were out of time" [14]. Much of the EAT's decision was concerned with what time period of claims were permitted to proceed from this 3rd PH.

6. At the 4th PH [19], the Tribunal concluded, as per the EAT's summary,

> "that the claim was presented "almost four years after the expire of the primary limitation period" which was "a very long delay". He went on to consider the claimant's explanations for the delay, all of which he considered to be unconvincing and not credible, for reasons that he set out in some detail".

7. In fairly well trodden ground for claims presented so late, the Tribunal concluded,

> "I find that if I were to allow the claim to proceed, this would be seriously prejudicial to the respondent. The events in question are more than five years old. Memories fade. The bulk of the claimant's allegations are about verbal conversations in July 2018 between him and his former colleagues, who the respondent says are no longer employed by it, and some had left some years ago. To defend the claim the respondent would have to trace those former employees and persuade them to come and give evidence for the respondent". [22]
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> "The judge recognised that if he refused to extend time the claimant's entire claim would stand dismissed; but this could not "by itself" be a valid reason to grant an extension." [23]

The Appeal

8. As above, much of the EAT's decision was concerned with what time period of claims were permitted to proceed from the 3rd PH. This was a matter of interpreting the 3rd PH's Order and no error was found in this regard [40-53].

9. Of wider relevance was an analysis of the distinction between a one off act (here, the decision to change the claimant's duties) which could "itself be characterised as conduct extending over a period for as long as it continued to have an effect on the claimant" [35] and a one off act that simply had a discreet crystallisation.

10. HHJ Auerbach in the EAT summarised the trite legal position:

> "The correct legal approach to such issues has been considered in several authorities over the years, notably in *Barclays Bank v Kapur* [1991] 2 AC 355 (HL) and *Sougrin v Haringey Health Authority* [1992] ICR 650 (CA). These establish that there is a distinction between conduct extending over a period, and a one-off act which is not such conduct, even though, after it has occurred, it has continuing consequences" [36]

11. A more recent review of this legal position was also considered: *Parr v MSR Partners LLP* [2022] ICR 672; [2022] EWCA Civ 24. *Parr* concerned a Claimant "demoted from the status of equity partner in the respondent firm to that of ordinary partner" [36]. HHJ Auerbach summarised *Parr* as a case in which the Court of Appeal:

> "held that there was no logical reason to treat a demotion differently from a dismissal. Both were correctly analysed as one-off acts with continuing consequences, and as not being conduct extending over a period. Bean LJ noted at [43] that the authorities drew a distinction between a case in which an employer applies an ongoing policy which inevitably means that an individual is barred from valuable benefits – which would be a continuing act of discrimination – and one which involves the exercise of a discretion in the particular case." [37]

12. The EAT concluded:

> "on the claimant's case this was a one-off act analogous to the decision not to promote in *Sougrin*. In terms of the distinction explored in *Parr*, it was never a part of the claimant's case that [his manager] was following an underlying general policy or practice of the respondent about the duties that were to be allocated to different employees by reference to race or religion, as opposed to [his manager] having taken a specific decision in his case. That decision was correctly viewed in law as being, for the purposes of the claimant's claim, a discrete decision or act with continuing consequences" [39].

13. The appeal was therefore dismissed, the EAT having re-affirmed the distinction of one off events with ongoing consequences, such as the majority of changes in duty, demotions or failures to promote, as opposed to those that represent an underlying discriminatory policy.

14. One more minor and separate ground of appeal concerned the Claimant's argument that the hearing was not fair because the Respondent did not call his line manager despite serving a witness statement from her at an earlier PH and he did not therefore get a chance to cross examine her. This sense of grievance is not uncommon for some litigants in person who feel they have not had their chance to question a key person integral to their claim.

15. The EAT emphasised that the PH on time limits was "was not a full merits hearing, and its purpose was not to consider the underlying complaints on their merits" [67], and, "while it is proper to permit both parties to call witnesses for a hearing on time points of this type, it is common that a respondent does not do so" [70].

16. Further, finding that there was no suggestion that the Respondent had sought to rely upon the earlier served witness statement, nor that the Tribunal had relied upon the statement (notwithstanding that the Claimant had filed it at the Tribunal), nor that there was any, "suggestion that the claimant made any application at the hearing in light of her not having attended" [71], the EAT found no error or unfairness on this point.

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Joseph England

Barrister
3PB Barristers

020 7583 8055
joseph.england@3pb.co.uk

3pb.co.uk