

RadcliffesLeBrosseur



Employment Briefing

January 2010

Case of the month

In all discrimination cases there are time limits for bringing a claim. The usual rule is that a claim should be brought no later than three months after the act complained about happened. There is an escape clause for late applications. The tribunal may extend time if in all the circumstances it is just and equitable to do so. Aggrieved employers receiving a late application need to understand how this test works. In **Chief Constable of Lincolnshire Police v Natasha Caston [2009] EWCA Civ 1298** employers spent a considerable amount pursuing fruitless appeals to the EAT and Court of Appeal against a tribunal's decision to allow a late claim to continue. The case makes clear attitude of courts to such decisions. It was a disability discrimination claim but the principles are relevant to every form of discrimination.

The employment judge agreed the extension because he found that at the crucial time the claimant had undoubted mental problems which amounted to an exceptional circumstance making it just and equitable to allow the late claim. The decision was attacked because the judge prefaced his decision by quoting favourably a textbook, which said that tribunals had adopted a "liberal", approach suggesting he was following such an approach. That was a mistake of law said the employers who also said he should have taken a "strict" approach to the application.

The employment judge had reviewed the law and the relevant principles which included the prejudice that may be suffered by each party; the length and reasons for the delay; the risk to the cogency of the evidence; the extent parties had co-operated with providing information; the promptness of the claimant

to act once the error was recognised and the steps taken by the claimant to get professional advice. The employment judge had relied in particular on the length of the delay and promptness to act.

Both the appeal courts decided that, whilst the employment judge might have been better advised to have omitted the reference to the text book, on analysis there was adequate material on which he could exercise a discretion and he had done so on the basis of that material. Further once a judge has material on which he can properly exercise discretion it will be rare for another judge to interfere because "it is of the essence of a judicial discretion that two judges may exercise it differently without either being wrong".

**First published in The Grapevine Magazine
January 2010
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Further Information

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