

## Be wary of events post-dating the presentation of an Employment Tribunal claim

In *Sakyi-Opare v Albert Kennedy Trust*, the EAT held that an Employment Tribunal erred in deciding a claim was out of time because it did not first consider the claimant's application to amend her claim, which included events that post-dated her claim.

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In the recent case of *Sakyi-Opare v Albert Kennedy Trust*, the Employment Appeal Tribunal (EAT) held that an Employment Tribunal erred in deciding a claim was out of time because it did not first consider the claimant's application to amend her claim, which included events that post-dated her claim.

The claimant was a social work student at Brunel University. As part of her course, she had a placement with the respondent, an LGBTQ+ youth homelessness charity. On 24 May 2018, the respondent notified the claimant that her placement could not continue because her supervisor had resigned and no one else could be found.

On 5 October 2018, the claimant filed an Employment Tribunal claim for discrimination and harassment on the grounds of religion. The claimant claimed that the respondent had complained to her university about negative comments she had allegedly made which portrayed her as prejudiced against LGBTQ+ people and called into question her suitability as a professional social worker. The claimant disputed the allegations she says were made against her and claimed that they were made because of her religion. The claimant claimed the allegations resulted in professional suitability proceedings being commenced against her by the university.

The claimant was invited to a meeting under the proceedings by her university on 22 January 2019 to discuss the concerns raised by the respondent. Not long after, at an Employment Tribunal Preliminary Hearing on 1 March 2019, the purpose of which was to consider whether the claimant's claim had been presented in time/time should be extended to hear it, the claimant made an application to amend her claim to include the events of the meeting of 22 January 2019.

Taking the last act complained of in the claimant's claim form, which was on 24 May 2018, the claim had been presented well out of time. The claimant argued that the university's professional suitability proceedings, which were ongoing, had been triggered by the respondent's allegations against her and so the claim was in time because there was a "continuing act". In the alternative, she argued that it was just and equitable to extend time.

The Employment Tribunal held that the claimant's claim was out of time and it was not just and equitable to extend time. The claimant appealed to the EAT. The EAT ruled that the Employment Tribunal had been wrong not to consider the claimant's application to amend first. The EAT determined that there is no reason why a claimant cannot amend their claim to include a cause of action that occurs after the presentation of a claim and only after determination of that application should the Tribunal consider time limit issues.

The case is a stark reminder to employers that events which post-date a claim may very well end up being included in the claim and may mean that a claim, which on first glance appears out of time, is actually in time. As with all matters, when events pan out, they are not always as simple as they first seem.



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