

THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL

CASE REF: 22186/20

CLAIMANT: Jessica Klimkinaite

RESPONDENT: Musgrave Retail Partners Limited t/a Musgrave NI

JUDGMENT ON A PRELIMINARY HEARING

The judgment of the tribunal is as follows:-

- (i) The claimant was not an employee of the respondent and therefore this tribunal does not have jurisdiction to hear a complaint of unfair dismissal against the respondent.
- (ii) The claimant has not presented her claims of unlawful disability discrimination and sex discrimination (gender reassignment) within three months of the acts complained of.
- (iii) The tribunal finds that it is not just and equitable to extend time in all of the circumstances.
- (iv) The tribunal does not therefore have jurisdiction to hear the claims of unlawful disability discrimination and sex discrimination (gender reassignment) and therefore the claimant's claims are dismissed.

CONSTITUTION OF TRIBUNAL

Employment Judge (sitting alone): Employment Judge Sturgeon

APPEARANCES:

The claimant represented herself (in person).

The respondent was represented by Mr P Ferrity, Barrister-at-Law, instructed by Ms A Brock of Elliott Duffy Garrett Solicitors (in person).

BACKGROUND

1. The claimant presented her claim form to the tribunal on 12 August 2020 claiming sexual orientation discrimination, disability discrimination and unfair dismissal. The respondent presented its response on 16 December 2020 resisting all claims in their entirety.

ISSUES

2. At a Case Management Preliminary Hearing (hereinafter "CMPH"), on 29 March 2021, a Preliminary Hearing was ordered to take place to determine the following issues:-
 - (i) Has the claimant presented her claims of unlawful disability discrimination and sex discrimination (gender reassignment) within three months of the acts complained of and, if not, is it just and equitable to extend time on all the circumstances?
 - (ii) Has the claimant brought her complaint of unfair dismissal within three months of her dismissal?
 - (iii) If not, was it not reasonably practicable for her to present her claim within the three months of her dismissal and, if so, has she lodged her complaints within a reasonable period of time thereafter?
 - (iv) Did the respondent employ the claimant and, if not, does the tribunal have jurisdiction to hear a complaint of unfair dismissal against this respondent?

SOURCES OF EVIDENCE

3. The tribunal heard evidence from the claimant. The tribunal had regard to the claimant's claim form, the respondent's response form, an agreed bundle of documentation and a bundle of authorities from the respondent. The tribunal also had regard to the oral submissions on behalf of both parties.

RELEVANT LAW

Employment Status of Agency Workers

4. The employment status of agency workers has been the subject of complex case law over recent years. Agency supplied staff may or may not be employees depending upon the circumstances. In ***Costain Building and Civil Engineering Ltd v Smith [2000] ICR 215***, one of the first agency workers cases to arise, the EAT held that an agency-supplied worker, appointed by a union as a safety representative, was not an employee. In reaching this decision, the EAT took into account the fact that the individual was paid by reference to an invoice, no tax or national insurance contributions were deducted, there was no grievance procedure, no sick or holiday pay and no provision for notice.
5. The leading case now in this matter is that of ***James v Greenwich LBC [2008] EWCA Civ 35, [2008] IRLR 302***. In this case, the Court of Appeal accepted, in full, the judgment of Elias P in his EAT decision whereby he said that the proper

question was whether it was necessary to find an employment contract in order to explain the relationship between an agency worker and a client. This question has now become known as the 'necessity' test. The Court of Appeal upheld the decisions of the tribunal and EAT that no implied contract had arisen with the client, in spite of the fact that the agency-provided individual had worked for only that one organisation for three years.

6. In **Harvey**, on Industrial Relations and Employment Law, at Division A1, it is stated as follows:-

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“.....if the agency arrangements remain genuine and continue to represent the relationships involved, it should be a rare case where direct employment with the client is found. This approach plays down the significance of the length of time served and looks for other evidence of words or conduct showing that the agency arrangements no longer reflect reality.”

7. The Agency Workers Regulations (NI) 2011 came into force on 5 December 2011. These regulations afforded agency workers rights in relation to relevant terms and conditions afforded to employees. These relevant terms and conditions include terms and conditions relating to pay, the duration of working time, night work, rest periods, rest breaks and annual leave. However, the right not to be unfairly dismissed is not extended to an agency worker. The right to bring an unfair dismissal claim is only afforded to employees.

Time Limit - Unfair Dismissal Claim

8. The law in relation to the period for presenting a claim of unfair dismissal is set out in Article 145 of the Employment Rights (Northern Ireland) Order 1996 as follows:-

“145(2) Subject to the following provisions of this Article, an industrial tribunal shall not consider a complaint under this Article unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the effective date of termination, or

(b) 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 that period of three months.”

“Not reasonably practicable” test

9. In **Harvey** on Industrial Relations and Employment Law, Division P1, it is stated as follows in relation to the '*not reasonably practicable*' formula:-

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There are two limbs to this formula. First, the employee must show that it was not reasonably practicable to present his claim in time. The burden of proving this rests firmly on the applicant (*Porter v Bandridge Ltd* [1978] IRLR 271, [1978] ICR 943, CA). Second, if he succeeds in doing so, the tribunal must be satisfied that the time within which the claim was in fact presented was reasonable (see para [276] below).

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The question of what is or is not reasonably practicable is essentially one of fact for the employment tribunal to decide, and the appellate courts will be slow to interfere with the tribunal's decision (*Palmer and Saunders v Southend-on-Sea Borough Council* [1984] 1 All ER 945, [1984] IRLR 119, CA, *Wall's Meat Co Ltd v Khan* [1979] ICR 52, CA, *Riley v Tesco Stores Ltd* [1980] IRLR 103, [1980] ICR 323, CA). The tribunal must, however, address its mind to the question of reasonable practicability, where this is the test, and not simply state that it has a 'discretion to extend time', and must, moreover, make a precise finding as to the nature of the complaint in question, and as to the relevant starting date of the limitation period governing it before proceeding to consider whether any extension is appropriate (see *Taylorplan Services Ltd v Jackson* [1996] IRLR 184, EAT).

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.....In *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] 1 All ER 945, [1984] IRLR 119, [1984] ICR 372, CA, May LJ, who gave the judgment of the court, having undertaken a comprehensive review of the authorities as they were at the time, concluded that ([1984] ICR at 384, 385):

"[W]e think that one can say that to construe the words "reasonably practicable" as the equivalent of "reasonable" is to take a view that is too favourable to the employee. On the other hand, "reasonably practicable" means more than merely what is reasonably capable physically of being done—different, for instance, from its construction in the context of the legislation relating to factories: compare *Marshall v Gotham Co Ltd* [1954] AC 360, HL. In the context in which the words are used in the 1978 Consolidation Act, however ineptly as we think, they mean something between these two. Perhaps to read the word "practicable" as the equivalent of "feasible" as Sir John Brightman did in [*Singh v Post Office* [1973] ICR 437, NIRC] and to ask colloquially and untrammelled by too much legal logic—"was it reasonably feasible to present the complaint to the [employment] tribunal within the relevant three months?"—is the best approach to the correct application of the relevant subsection."

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The possible factors why it might not have been reasonably practicable to bring the claim are many and various, and, as May LJ stated in **Palmer and Saunders**, cannot be exhaustively described see [1984] IRLR at 125, [1984] ICR at 385). Some of the most common factors relied upon by claimants are considered below, namely: (1) ignorance or mistake on the part of the claimant; (2) ignorance or mistake resulting from faulty professional advice (the *Dedman* principle); (3) ill health or disability; (4) problems with the post; (5) technological issues; (6) internal appeals; (7) other pending legal proceedings; (8) attempts to negotiate with the employer and avoid litigation; (9) discovery of new facts; and (10) commercial concerns.

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(vii) Reasons for missing the time limit: (2) Ignorance or mistake resulting from faulty professional advice (the *Dedman* principle)

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General. When it is argued that a primary time limit has been missed due to ignorance or mistake, consideration must be given to the involvement of any adviser. If there is no adviser the tribunal may enquire why not, and whether it was unreasonable for the litigant to have failed to seek advice (see further para [197] ff above). On the other hand, where a claimant has, in advance of the expiry of the primary time limit, sought and received advice from a skilled adviser, and the reason for the failure to lodge the originating application within that time limit is reliance on erroneous advice or conduct by that adviser, the general rule is that the escape clause will not be available to them. This rule applies however careful the claimant's selection of a professional adviser and however reasonable the decision to rely on professional advice. This seemingly hard doctrine, known as the *Dedman* principle after the Court of Appeal's decision in ***Dedman v British Building and Engineering Appliances Ltd* [1974] 1 All ER 520 at 526, [1973] IRLR 379** (see also the earlier decision of ***Hammond v Haigh Castle & Co Ltd* [1973] IRLR 91**), depends on a number of features being present (examined in more detail below), in particular: the adviser must be a professional or skilled adviser (not necessarily a lawyer, but advice from friends or colleagues, for example, will not count); the adviser must themselves have been at fault in the advice which they gave; and the wrong advice must have been the substantial cause of the missed deadline.

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Intuitively, the '*Dedman* principle' seems harsh: a would-be claimant who is diligent enough to secure professional advisers and reasonably places themselves in the hands of those advisers may then find they are in a worse position than had they not done so. In ***London International College v Sen* [1993] IRLR 333**, CA, Sir Thomas Bingham MR expressed misgivings about the principle on the basis that he found 'the rationale of that principle very hard to understand. If the test is whether it was reasonably practicable or practically possible or reasonably feasible to present the complaint in time, it would seem to me irrelevant whether or not the complainant had consulted a

solicitor' (at 335) (Stephenson LJ had expressed similar strong misgivings about the **Dedman** principle, *obiter*, in **Riley v Tesco Stores Ltd [1980] IRLR 103**). There is force to this criticism since on the plain wording of the legislation it might be thought that where a litigant reasonably relies upon professional, but wrong, advice and reasonably follows that advice, they are therefore reasonably ignorant of the time limit and it was not reasonably practicable for them to lodge their claim in time. On the other hand it can be argued that it would be unjust for a claimant who themselves could have been expected to meet the primary time limit to be able to hide behind an error by their adviser and gain an extension of time that otherwise would not have been available to them. Why should the finality of a time limit be impeded by negligence on the part of a professional adviser? In any event, the position has been settled, and the **Dedman** doctrine authoritatively reaffirmed, by the Court of Appeal decision in **Marks & Spencer plc v Williams-Ryan [2005] IRLR 562, [2005] ICR 1293**. Following a careful review of the criticisms of the principle, the Court of Appeal held that it remains the case, as a proposition of law, that in any situation where the reason for a missed limitation period is the fault of a skilled adviser, that fault is to be visited on the claimant and it must be held that it was reasonably practicable to submit the claim within time.

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What has now become the **Dedman** principle was first stated by Lord Denning MR in characteristically terse fashion (see *Dedman* at 381) that 'If a man engages skilled advisers to act for him – and they mistake the time limit and present [the complaint] too late — he is out. His remedy is against them.' Lord Denning repeated the principle in **Wall's Meat Co Ltd v Khan [1978] IRLR 499, [1979] ICR 52** (at 502, 56, respectively), where he said:

"I would venture to take the simple test given by the majority in [Dedman]. It is simply to ask this question: had the man just cause or excuse for not presenting his claim within the prescribed time? Ignorance of his rights — or ignorance of the time limits — is not just cause or excuse, unless it appears that he or his advisers could not reasonably be expected to have been aware of them. If he or his advisers could reasonably have been so expected, it was his or their fault, and he must take the consequences."

Thus where a claimant asserts ignorance of, or a mistaken belief regarding, the time limit, that state of mind will not be held to be reasonable and will not allow an extension of time if it arises 'from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him' (see Brandon LJ in the **Wall's Meat** case at 502, 60). On the application of this principle, the claimant in **Dedman** was debarred from proceeding with his complaint because of the failure of his solicitors to warn him about the time limit

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(c) **Reasonable time**

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Where the claimant satisfies the tribunal that it was not reasonably practicable to present his claim in time, the tribunal must then proceed to consider whether it was presented within a reasonable time thereafter. Although, as Lord Denning MR pointed out in the **Wall's Meat** case, this is 'very much a matter for the [employment] tribunal', the tribunal must nevertheless exercise its discretion reasonably and with due regard to the circumstances of the delay. The discretion does not give carte blanche to a tribunal to entertain a claim 'however late it was presented' (**Westward Circuits Ltd v Read [1973] 2 All ER 1013, [1973] ICR 301, NIRC**).

Time Limit - Disability Discrimination Claim

10. Schedule 3 (3) (1) of the Disability Discrimination Act 1995 provides that:-

“3. 1. An Industrial Tribunal shall not consider a complaint under section 17A or 25(8) unless it is presented before the end of the period of three months beginning when the act complained of was done ...”

11. Furthermore, the tribunal may extend this time limit if, in all the circumstances of the case, it considers that it is just and equitable to do so (Schedule 3 (3) (2) of the Disability Discrimination Act 1995).

Time Limit - Sex Orientation Discrimination (Gender Reassignment) Claim

12. Regulation 41(1) of the Employment Equality (Sexual Orientation) Regulations (NI) 2003 provides that:-

*“(1) An Industrial Tribunal shall not consider a complaint under Regulation 34 (Jurisdiction of Industrial Tribunals) unless it is presented to the tribunal before the end of :
(a) the period of three months beginning when the act complained of was done; ...”*

13. The tribunal may extend this time limit if, in all the circumstances of the case, it considers that if it is just and equitable to do so (*Regulation 41(3) of the Employment Equality (Sexual Orientation) Regulations (NI) 2003*).

Whether Just and Equitable to Extend Time

14. The power to extend the time limit on “*just and equitable*” grounds is a broad discretion to be exercised on the part of the tribunal. There is no presumption in favour of an extension of time. The onus remains on the claimant in each case to persuade the tribunal that it is just and equitable to extend time in all the circumstances of the case, given the overall context that time limits provided by statute are generally meant to be obeyed.

15. In **Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327**, Sedley LJ stated:

“There is no principle of law which indicates how generously or sparingly the power to extend time is to be exercised.”

16. Langstaff J stated in **Abertawe Bro Morgannwg University Local Health Board v Morgan UKEAT/0305/13** that a claimant applying for an extension of time must provide an answer to two questions:

“The first question in deciding whether to extend time is why it is that the primary time limit has not been met; and, insofar as it is distinct, the second is the reason why after the expiry of the primary time limit, the claim was not brought sooner than it was.”

17. In **British Co Corporation v Keeble [1997] IRLR 336**, the EAT confirmed that the discretion to grant an extension of time on *“just and equitable”* grounds is as wide as the discretion given to civil courts under the Limitation Acts. On that basis, the tribunal is required to consider the hardship and prejudice which each party would suffer as a result of either granting or refusing the extension and to have regard to all the other relevant circumstances, in particular:
- (a) the length of and the reasons for the delay;
 - (b) the extent to which the cogency of the evidence is likely to be affected by the delay;
 - (c) the extent to which the parties sued had co-operated with any requests for information;
 - (d) the promptness with which the claimant acted once he or she knew of the facts given rise to the cause of the action; and
 - (e) the steps taken by the claimant to obtain appropriate professional advice once she knew of the possibility of taking action.
18. Whilst a useful guide, the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account (**London Borough of Southwark v Afolabi 2003 ICR 800**).
19. In the recent case of **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWWCA Civ23**, the application of the above so called *“Keeble factors”* received further consideration by Underhill LJ. He cautioned against *“a rigid adherence to a checklist”* which can *“lead to a mechanistic approach to what is meant to be a broad general discretion.”* He commented that the best approach for a tribunal in considering the exercise of the just and equitable discretion is to assess all the factors in the particular case that it considers relevant, including, in particular, the length of, and the reasons for, the delay.
20. Overall, the tribunal should adopt a multifactorial approach and no single factor alone is determinative on principle as to whether the discretion to extend time should be exercised under the just and equitable formula.

SUBMISSIONS OF THE PARTIES

Claimant's submissions

21. In summary, the claimant's submissions were as follows:-

- (i) The claimant confirmed to the tribunal that she was not an employee of the respondent. The claimant accepted and confirmed that she was an agency worker. Despite this acceptance, it was the claimant's submission that the respondent should take responsibility, as though it were the direct employer, in relation to the claimant's unfair dismissal claim.
- (ii) The claimant very firmly put the reason for her delay, in lodging her claim form to the tribunal, down to the fact that she believed that the solicitor, whom she had instructed, was dealing with her claim and would ensure it was lodged on time.

Respondent's submissions

22. The respondent's representative made the following submissions:-

- (i) At no stage was the claimant an employee of the respondent. She was, at all times, an agency worker.
- (ii) Given that the claimant was not an employee, the respondent submitted that an unfair dismissal claim cannot arise as the claimant has no legal right to bring such a claim if she is not an employee.
- (iii) If the tribunal is minded to find that the claimant was an employee, the respondent submitted that the claimant's claim of unfair dismissal was grossly out of time, that it had not been presented within three months of the claimant's dismissal, that it was reasonably practicable for the claimant to have lodged it within the three months of dismissal and, even if it was not reasonably practicable to have been made within three months, it was not made within a reasonable period of time thereafter.
- (iv) In relation to the claimant's discrimination claim, the respondent submitted that the delay in lodging this claim was also extreme.
- (v) The respondent contended that even if the claimant was relying on her solicitor's failure to lodge a claim, on her behalf, up until October 2019, there was still a considerable period of time between October 2019 until the claimant actually lodged his claim in August 2020. The respondent's submission was that no compelling reason was put forward for this delay.
- (vi) The respondent contended that if the tribunal were to accept the claimant's discrimination claims, on the just and equitable basis, there would be a clear prejudice to the respondent. They would have to defend a claim which took place over three years ago, the memories of those involved will now have faded considerably therefore meaning that their evidence would be less compelling and more difficult to recollect.

- (vii) In any event, the respondent contended that the claimant's claim form lacked any detail as to the type of disability discrimination or sexual orientation discrimination that the claimant alleged she had suffered.

RELEVANT FINDINGS OF FACT

23. Having considered the evidence given by the claimant and the content of the relevant documents referred to by the parties along with the submissions of both parties, the tribunal found the following relevant facts:
- (i) It is common case between the parties that the claimant not an employee of the respondent organisation but rather an agency worker.
 - (ii) The claimant's P45 clearly records her employer as being Premier People and **not** Musgrave NI.
 - (iii) It is common case that the claimant's assignment with the respondent organisation was terminated on 25 July 2018.
 - (iv) The tribunal accepts that the claimant attended with a solicitor in or around 31 July 2018 to make enquiries about bringing an employment tribunal claim.
 - (v) The tribunal also accepts that this solicitor informed the claimant that he would pass the matter to a barrister for an opinion on the merits of the claimant's potential claim.
 - (vi) The claimant asserted that she waited for several weeks but heard nothing further back from the solicitor.
 - (vii) Having heard nothing from her solicitor, after six months, the claimant confirmed that she became suspicious as to the progress of the case and that she wrote to the solicitor asking for an update. The claimant provided no evidence to the tribunal of this letter/email. However, the tribunal has no reason to doubt that the claimant took this action and so accepts the claimant's evidence on this point.
 - (viii) Despite receiving no feedback from the solicitor, the claimant continued to wait to see if the solicitor would revert back to her with an update.
 - (ix) By October 2019, over 14 months after the event, the claimant confirmed that she had heard nothing further and so booked an appointment with the solicitor to get an update on his case.
 - (x) At this stage, the solicitor informed her that she had no case and would not be progressing the matter.
 - (xi) Thereafter, the claimant went to the Labour Relations Agency who advised her to contact the Law Society to make a complaint against this solicitor. The claimant duly lodged a complaint against the solicitor which was upheld, by the Law Society, on 27 July 2020. The tribunal was provided with evidence of this complaint and the outcome.

- (xii) The claimant has provided no evidence to demonstrate that she attempted to secure alternative assistance, from either a solicitor or another suitably qualified person, after October 2019 and up until she lodged her claim on 12 August 2020.
- (xiii) It is common case that the claimant lodged an unfair dismissal claim and discrimination claim herself, with the tribunal, on 12 August 2020, just over two years since her assignment had been terminated and almost 22 months outside of any statutory three month time limit within which to bring either an unfair dismissal claim and/or a discrimination claim.
- (xiv) The tribunal was provided with medical evidence, from the claimant, during this period in question. However, the tribunal finds that there were no mental impairments, documented within the claimant's medical evidence, which would have prevented her from lodging a tribunal claim during this period of time.

CONCLUSIONS

24. Having applied the relevant principles of law, to the relevant facts as found, the tribunal concludes as follows in relation to the issues which this tribunal must deal with:

Did the respondent employ the claimant and, if not, does the tribunal have jurisdiction to hear a complaint of unfair dismissal against this respondent?

25. By the claimant's own admission, she was not an employee of the respondent company. However, the claimant wanted the respondent to assume responsibility for the claimant as though she were an employee so that the claimant could bring an unfair dismissal claim. The claimant did not produce any evidence to show that the claimant was an employee or that she could be construed as same.
26. The tribunal concludes that the claimant was, at all times, an agency worker assigned to the respondent company through Premier People.

Has the claimant brought her complaint of unfair dismissal within three months of her dismissal?

27. Given the tribunal's finding that the claimant was not an employee of the respondent organisation, the tribunal has no jurisdiction to hear a complaint of unfair dismissal. The tribunal therefore does not need to consider whether or not the claimant's complaint of unfair dismissal has been brought within three months of her dismissal.
28. However, even if the tribunal is wrong in relation to the status of the claimant, and the claimant was an employee, this tribunal would have concluded, in any event, that the claimant's complaint was not brought within three months of her dismissal.
29. The tribunal has arrived at this conclusion as the claimant's assignment came to an end on 25 July 2018 but yet the claimant did not lodge an unfair dismissal claim until 12 August 2020, over two years after the event and almost 22 months outside of the statutory time limit.

If not, was it not reasonably practicable for her to present her claim within the three months of her dismissal and, if so, has she lodged her complaints within a reasonable period of time thereafter?

30. Arising from the decision in **Dedman**, the law is very clear that if reliance is placed on the conduct of a professional adviser to present a claim, it should be held that it was reasonably practicable for a claimant to present a claim on time.
31. Based on the tribunal's findings of fact that the claimant attended with a solicitor, on 31 July 2018, and that the claimant left this matter in the hands of the same solicitor until October 2019, accordingly, applying the principle in **Dedman**, this tribunal would have found that it was reasonably practicable for the claimant to present her claim on time.
32. However, even if this tribunal had concluded that it was not reasonably practicable for the claimant to have brought her claim before October 2019, if she was under the understanding that the solicitor was progressing her claim, the claimant provided no evidence to the tribunal nor could the tribunal determine from its own examination of the evidence and documentation as to why the claimant did not lodge her complaint within a reasonable period of time thereafter.
33. It was open to the claimant, anytime from October 2019, to seek further legal or expert advice in relation to her claim. The claimant provided no evidence as to why she did not or could not do so.
34. Accordingly, even if the tribunal had concluded that the claimant was an employee, which it does not, the tribunal would have concluded that this claim was not lodged within such further period as the tribunal considers reasonable.

Has the claimant presented her claims of unlawful disability discrimination and sex discrimination (gender reassignment) within three months of the acts complained of and, if not, is it just and equitable to extend time on all the circumstances?

35. The claimant's discrimination claims should have been presented by 25 October 2018. The claims were not presented until 12 August 2020. The duration of the delay is therefore considerable.
36. Up until October 2019, the claimant's explanation for not presenting her discrimination complaints was that she believed that a solicitor was properly dealing with these complaints and actively taking them forward. The tribunal accepts this explanation. As soon as the claimant was made aware, in October 2019, that this was not the case, she still did not lodge the claims until August 2020 some nine months later.
37. The claimant has provided no reasonable explanation for the delay from the period October 2019 until August 2020.
38. In considering the factors set out in the *Keeble* case (referred to above), I considered (a) the length of and the reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (d) the promptness which the claimant acted once she knew of the facts giving rise to the cause of

action and (e) the steps taken by the claimant to obtain appropriate professional advice once she knew the possibility of taking action. Factor (c), the extent to which the parties sued had cooperated with any request for information, is irrelevant to this case.

39. Although there is no legal requirement for the tribunal to go through the list of **Keeble** factors in every case, the tribunal considers that the claimant has provided no reasonable explanation for the delay from October 2019 to August 2020.
40. The tribunal also considers that if these claims were permitted under the just and equitable principle, these matters occurred almost three years ago and the weight of any evidence which could be attached to any party giving evidence would be diminished given the fact that memories naturally fade over time.
41. While the tribunal acknowledges that the claimant acted promptly in attending with a solicitor after the alleged incident on 25th July 2018, giving rise to any potential cause of action, the claimant provided no compelling reason to the tribunal why she continued to seek advice from this solicitor when the solicitor was clearly not progressing her case.
42. I also took into account the fact that the claimant has not demonstrated that she acted promptly in securing alternative assistance once she knew that her first solicitor had not progressed the matter.
43. Applying the principles in **Adedeji v University Hospitals Birmingham NHS Foundation Trust**, which is to assess all relevant factors, I also considered the medical evidence presented by the claimant to assess if there were any mental impairments affecting the claimant during this period of time. As identified in the relevant findings of facts, there were none nor did the claimant indicate or refer me to any evidence indicating that there were any.
44. The tribunal has also taken into account the hardship and prejudice which the respondent would suffer if it had to defend a case, the circumstances of which occurred over three years ago.
45. For all of these reasons, the tribunal finds that it is not just and equitable, in all the circumstances of this case, to extend the time limit. Accordingly, the tribunal concludes that it has no jurisdiction to determine the claimant's discrimination claims.
46. All of the claimant's claims are therefore dismissed for want of jurisdiction.

Employment Judge:

Date and place of hearing: 25 May 2021, Belfast.

This judgment was entered in the register and issued to the parties on:

