



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Miss Walker**

**v**

**Blackpool and Fylde College &  
Others**

**Heard at:** Cambridge

**On:** 13 October 2017

**Before:** Employment Judge King

## **Representation**

**For the Claimant:** Mrs Haines (Lay Representative)

**For the Respondents:** Ms A Beale (Counsel)

## **RESERVED JUDGMENT**

1. The claimant's claims for direct discrimination, harassment, victimisation and aiding are out of time but it is just and equitable to extend time.
2. The Tribunal does not have jurisdiction to hear the claimant's claim for breach of the Human Rights Act 1998.

## **RESERVED REASONS**

1. The matter was listed for a three hour open preliminary hearing to deal with a number of preliminary matters on 13 October 2017. Both parties prepared written submissions for the tribunal on the preliminary issues.
2. At the outset of the hearing time was taken to identify what the claims were with claimant's representative before considering the preliminary matters for which the case was listed today.
3. By email dated 8 May 2017 the respondents made an application for the preliminary hearing of 15 June 2017 to consider a number of preliminary matters. These related to jurisdiction and whether the employment tribunal was the correct forum for the claims brought by the claimant. In the event that the tribunal was the correct forum to hear the claimant's claims, whether the tribunal has jurisdiction as the claims were presented

out of time under s.123 of the Equality Act 2010 and whether it would be just and equitable to extend that time. As a result of that application Judge Ord postponed the hearing fixed for 15 June 2017 to allow an increase in the time estimate to 3 hours. By notice dated 10 July 2017 the matter was listed for a preliminary hearing on 16 August 2017. Unfortunately, this notice did not contain the correct advance notification to the parties concerning the nature of the preliminary hearing and that preliminary issues would be determined.

4. By letter dated 8 August 2017 the respondents' change of solicitors, DAC Beachcroft wrote to the employment tribunal making additional application that the claim under s.112 and s.120(1)(b) of the Equality Act 2010 had no reasonable prospects of success. The respondents' representatives wanted the tribunal to consider a deposit order or strike out, unfortunately the preliminary hearing was subsequently postponed due to unavailability of judges and re-listed for 13 October 2017. Again, the order sent was not correct in that it failed to expressly state the issues to be determined at today's hearing.
5. Accordingly, I had to explore at the outset whether the parties knew of the purpose of the hearing. I recognised that another postponement was not in furtherance of the overriding objective. I was satisfied that from my initial discussion with the parties that the claimant knew the reason for the hearing and was fully prepared to deal with the matter. The claimant's representative handed to the Tribunal a number of documents which were submissions in response to the various applications. These had been typed and prepared in advance and ran to 38 pages. For ease of the parties and the tribunal these were paginated to be C1 to C38.
6. In addition, I also had typed submissions handed to the Tribunal on behalf of the respondents which ran to 8 pages. In addition, the respondent handed in some authorities which are referred to below and Part 6 of the Equality Act 2010.

### **The issues**

7. The issues to be determined at this preliminary hearing were as follows:-
  - 7.1 What are the claims that the claimant brings before the employment tribunal?
  - 7.2 Does the employment tribunal have jurisdiction to hear each of those complaints, either because they are properly brought before the employment tribunal or because they are in time?
  - 7.3 If any claims are found to be outside of the time under the Equality Act, s.123, is it just and equitable to extend time?
  - 7.4 If so, do the claims have reasonable prospects of success?

- 7.5 If not, should the claims be struck out or a deposit order made?
8. The claimant confirmed at the outset of the hearing that the claims she was bringing were as follows:-
- 8.1 Direct sex discrimination pursuant to s.13 of the Equality Act 2010. This was a claim against the first respondent (the College) and the second respondent (Jonathan Ward).
- 8.2 An aiding claim pursuant to s.112 of the Equality Act 2010, this was against the first and second respondents.
- 8.3 A claim for harassment in respect of the email dated 28 July 2016 against the first and second respondents pursuant to s26 Equality Act 2010.
- 8.4 A claim for victimisation pursuant to s.27 of the Equality Act 2010 against all three respondents. The claim of victimisation arises out of the handling of the complaint.
- 8.5 A breach of s.6 of the Human Rights Act 1998.
- 9 The claimant has confirmed that s.149 Public Sector Equality Duty reference is not a free-standing complaint but merely background information upon which the claimant would wish to rely to illustrate the seriousness of the respondents' breaches.

## The Law

### Direct Discrimination

10. S.13 of the Equality Act 2010 states:-

*“(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”*

### Harassment

11. S.26 of the Equality Act 2010 states:-

#### **“26 Harassment**

- (1) A person (A) harasses another (B) if—*
- (a) A engages in unwanted conduct related to a relevant protected characteristic, and*
- (b) the conduct has the purpose or effect of—*
- (i) violating B's dignity, or*

- (ii) *creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*
- (2) *.....*
- (3) *...*
- (4) *In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
  - (a) *the perception of B;*
  - (b) *the other circumstances of the case;*
  - (c) *whether it is reasonable for the conduct to have that effect.*
- (5) *The relevant protected characteristics are—*
  - *age;*
  - *disability;*
  - *gender reassignment;*
  - *race;*
  - *religion or belief;*
  - *sex;*
  - *sexual orientation.”*

Victimisation

12. S.27 of the Equality Act 2010 states:-

**“27 Victimisation**

- (1) *A person (A) victimises another person (B) if A subjects B to a detriment because—*
  - (a) *B does a protected act, or*
  - (b) *A believes that B has done, or may do, a protected act.*
- (2) *Each of the following is a protected act—*
  - (a) *bringing proceedings under this Act;*
  - (b) *giving evidence or information in connection with proceedings under this Act;*

- (c) *doing any other thing for the purposes of or in connection with this Act;*
- (d) *making an allegation (whether or not express) that A or another person has contravened this Act.*
- (3) *Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*
- (4) *This section applies only where the person subjected to a detriment is an individual.*
- (5) *The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.”*

Aiding

13. Section 112 of the Equality Act 2010 states:-

**“112 Aiding contraventions**

- (1) *A person (A) must not knowingly help another (B) to do anything which contravenes Part 3, 4, 5, 6 or 7 or section 108(1) or (2) or 111 (a basic contravention).*
- (2) *It is not a contravention of subsection (1) if—*
  - (a) *A relies on a statement by B that the act for which the help is given does not contravene this Act, and*
  - (b) *it is reasonable for A to do so.*
- (3) *B commits an offence if B knowingly or recklessly makes a statement mentioned in subsection (2)(a) which is false or misleading in a material respect.*
- (4) *A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.*
- (5) *For the purposes of Part 9 (enforcement), a contravention of this section is to be treated as relating to the provision of this Act to which the basic contravention relates.*
- (6) *The reference in subsection (1) to a basic contravention does not include a reference to disability discrimination in contravention of Chapter 1 of Part 6 (schools).”*

Human Rights

14. Section 6 of the Human Rights Act 1998 states:-

***“6 Acts of public authorities.***

- (1) *It is unlawful for a public authority to act in a way which is incompatible with a Convention right.*
- (2) *Subsection (1) does not apply to an act if—*
  - (a) *as the result of one or more provisions of primary legislation, the authority could not have acted differently; or*
  - (b) *in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.*
- (3) *In this section “public authority” includes—*
  - (a) *a court or tribunal, and*
  - (b) *any person certain of whose functions are functions of a public nature,*

*but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.*
- (4) *.....*
- (5) *In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private.*
- (6) *“An act” includes a failure to act but does not include a failure to—*
  - (a) *introduce in, or lay before, Parliament a proposal for legislation; or*
  - (b) *make any primary legislation or remedial order.”*

15. S.7 of the Human Rights Act 1998 states:-

***“7 Proceedings.***

- (1) *A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may—*
  - (a) *bring proceedings against the authority under this Act in the appropriate court or tribunal, or*
  - (b) *rely on the Convention right or rights concerned in any legal proceedings,*

*but only if he is (or would be) a victim of the unlawful act.*
- (2) *In subsection (1)(a) “appropriate court or tribunal” means such court or tribunal as may be determined in accordance with rules; and proceedings against an authority include a counterclaim or similar proceeding.*
- (3) *If the proceedings are brought on an application for judicial review, the applicant is to be taken to have a sufficient interest in relation to the unlawful act only if he is, or would be, a victim of that act.*
- (4) *If the proceedings are made by way of a petition for judicial review in Scotland, the applicant shall be taken to have title and interest to sue in relation to the unlawful act only if he is, or would be, a victim of that act.*
- (5) *Proceedings under subsection (1)(a) must be brought before the end of—*
  - (a) *the period of one year beginning with the date on which the act complained of took place; or*
  - (b) *such longer period as the court or tribunal considers equitable having regard to all the circumstances,*

*but that is subject to any rule imposing a stricter time limit in relation to the procedure in question.*
- (6) *In subsection (1)(b) “legal proceedings” includes—*
  - (a) *proceedings brought by or at the instigation of a public authority; and*
  - (b) *an appeal against the decision of a court or tribunal.*
- (7) *For the purposes of this section, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.*

(8) *Nothing in this Act creates a criminal offence.*

.....

Part 5 - Work

16. S.39 of the Equality Act 2010 states:-

**“39 Employees and applicants**

- (1) *An employer (A) must not discriminate against a person (B)—*
- (a) *in the arrangements A makes for deciding to whom to offer employment;*
  - (b) *as to the terms on which A offers B employment;*
  - (c) *by not offering B employment.*
- (2) *An employer (A) must not discriminate against an employee of A's (B)—*
- (a) *as to B's terms of employment;*
  - (b) *in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;*
  - (c) *by dismissing B;*
  - (d) *by subjecting B to any other detriment.*
- (3) *An employer (A) must not victimise a person (B)—*
- (a) *in the arrangements A makes for deciding to whom to offer employment;*
  - (b) *as to the terms on which A offers B employment;*
  - (c) *by not offering B employment.*
- (4) *An employer (A) must not victimise an employee of A's (B)—*
- (a) *as to B's terms of employment;*



- (b) *in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;*
  - (c) *by dismissing B;*
  - (d) *by subjecting B to any other detriment.*
- (5) .....
- (6) .....
- (7) *In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment—*
- (a) *by the expiry of a period (including a period expiring by reference to an event or circumstance);*
  - (b) *by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice.*
- (8) *Subsection (7)(a) does not apply if, immediately after the termination, the employment is renewed on the same terms.”*

17. Section 40 of the Equality Act 2010 states:-

**“40 Employees and applicants: harassment**

- (1) *An employer (A) must not, in relation to employment by A, harass a person (B)—*
- (a) *who is an employee of A's;*
  - (b) *who has applied to A for employment.”*

18. Section 53 of the Equality Act 2010 states

**“53 Qualifications bodies**

- (1) *A qualifications body (A) must not discriminate against a person (B)—*
- (a) *in the arrangements A makes for deciding upon whom to confer a relevant qualification;*
  - (b) *as to the terms on which it is prepared to confer a relevant qualification on B;*

- (c) *by not conferring a relevant qualification on B.*
- (2) *A qualifications body (A) must not discriminate against a person (B) upon whom A has conferred a relevant qualification—*
  - (a) *by withdrawing the qualification from B;*
  - (b) *by varying the terms on which B holds the qualification;*
  - (c) *by subjecting B to any other detriment.*
- (3) *A qualifications body must not, in relation to conferment by it of a relevant qualification, harass—*
  - (a) *a person who holds the qualification, or*
  - (b) *a person who applies for it.*
- (4) *A qualifications body (A) must not victimise a person (B)—*
  - (a) *in the arrangements A makes for deciding upon whom to confer a relevant qualification;*
  - (b) *as to the terms on which it is prepared to confer a relevant qualification on B;*
  - (c) *by not conferring a relevant qualification on B.*
- (5) *A qualifications body (A) must not victimise a person (B) upon whom A has conferred a relevant qualification—*
  - (a) *by withdrawing the qualification from B;*
  - (b) *by varying the terms on which B holds the qualification;*
  - (c) *by subjecting B to any other detriment.*
- (6) *.....*
- (7) *....”*

19. Section 54 of the Equality Act 2010 states:-

**“54 Interpretation**

- (1) *This section applies for the purposes of section 53.*

- (2) *A qualifications body is an authority or body which can confer a relevant qualification.*
- (3) *A relevant qualification is an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular trade or profession.*
- (4) *An authority or body is not a qualifications body in so far as—*
  - (a) *it can confer a qualification to which section 96 applies,*
  - (b) *it is the responsible body of a school to which section 85 applies,*
  - (c) *it is the governing body of an institution to which section 91 applies,*
  - (d) *it exercises functions under the Education Acts, or*
  - (e) *it exercises functions under the Education (Scotland) Act 1980.*
- (5) *A reference to conferring a relevant qualification includes a reference to renewing or extending the conferment of a relevant qualification.*
- (6) *A competence standard is an academic, medical or other standard applied for the purpose of determining whether or not a person has a particular level of competence or ability.”*

20. Section 55 of the Equality Act 2010 states:-

**“55 Employment service-providers**

- (1) *A person (an “employment service-provider”) concerned with the provision of an employment service must not discriminate against a person—*
  - (a) *in the arrangements the service-provider makes for selecting persons to whom to provide, or to whom to offer to provide, the service;*
  - (b) *as to the terms on which the service-provider offers to provide the service to the person;*
  - (c) *by not offering to provide the service to the person.*

- (2) *An employment service-provider (A) must not, in relation to the provision of an employment service, discriminate against a person (B)—*
  - (a) *as to the terms on which A provides the service to B;*
  - (b) *by not providing the service to B;*
  - (c) *by terminating the provision of the service to B;*
  - (d) *by subjecting B to any other detriment.*
- (3) *An employment service-provider must not, in relation to the provision of an employment service, harass—*
  - (a) *a person who asks the service-provider to provide the service;*
  - (b) *a person for whom the service-provider provides the service.*
- (4) *An employment service-provider (A) must not victimise a person (B)—*
  - (a) *in the arrangements A makes for selecting persons to whom to provide, or to whom to offer to provide, the service;*
  - (b) *as to the terms on which A offers to provide the service to B;*
  - (c) *by not offering to provide the service to B.*
- (5) *An employment service-provider (A) must not, in relation to the provision of an employment service, victimise a person (B)—*
  - (a) *as to the terms on which A provides the service to B;*
  - (b) *by not providing the service to B;*
  - (c) *by terminating the provision of the service to B;*
  - (d) *by subjecting B to any other detriment.*
- (6) ....
- (7) *The duty imposed by section 29(7)(a) applies to a person concerned with the provision of a vocational service; but a*

*failure to comply with that duty in relation to the provision of a vocational service is a contravention of this Part for the purposes of Part 9 (enforcement)."*

21. Section 56 of the Equality Act 2010 states:-

***"56 Interpretation***

- (1) *This section applies for the purposes of section 55.*
- (2) *The provision of an employment service includes—*
  - (a) *the provision of vocational training;*
  - (b) *the provision of vocational guidance;*
  - (c) *making arrangements for the provision of vocational training or vocational guidance;*
  - (d) *the provision of a service for finding employment for persons;*
  - (e) *the provision of a service for supplying employers with persons to do work;*
  - (f) *the provision of a service in pursuance of arrangements made under section 2 of the Employment and Training Act 1973 (functions of the Secretary of State relating to employment);*
  - (g) *the provision of a service in pursuance of arrangements made or a direction given under section 10 of that Act (careers services);*
  - (h) *the exercise of a function in pursuance of arrangements made under section 2(3) of the Enterprise and New Towns (Scotland) Act 1990 (functions of Scottish Enterprise, etc. relating to employment);*
  - (i) *an assessment related to the conferment of a relevant qualification within the meaning of section 53 above (except in so far as the assessment is by the qualifications body which confers the qualification).*
- (3) *This section does not apply in relation to training or guidance in so far as it is training or guidance in relation to which another provision of this Part applies.*

- (4) *This section does not apply in relation to training or guidance for pupils of a school to which section 85 applies in so far as it is training or guidance to which the responsible body of the school has power to afford access (whether as the responsible body of that school or as the responsible body of any other school at which the training or guidance is provided).*
- (5) *This section does not apply in relation to training or guidance for students of an institution to which section 91 applies in so far as it is training or guidance to which the governing body of the institution has power to afford access.*
- (6) *“Vocational training” means—*
- (a) *training for employment, or*
  - (b) *work experience (including work experience the duration of which is not agreed until after it begins).*
- (7) *A reference to the provision of a vocational service is a reference to the provision of an employment service within subsection (2)(a) to (d) (or an employment service within subsection (2)(f) or (g) in so far as it is also an employment service within subsection (2)(a) to (d)); and for that purpose—*
- (a) *the references to an employment service within subsection (2)(a) do not include a reference to vocational training within the meaning given by subsection (6)(b), and*
  - (b) *the references to an employment service within subsection (2)(d) also include a reference to a service for assisting persons to retain employment.*
- (8) *A reference to training includes a reference to facilities for training.”*

Part 6 - Education

22. Section 89 of the Equality Act 2010 states:-

**“89 Interpretation and exceptions**

- (1) *This section applies for the purposes of this Chapter.*
- (2) *Nothing in this Chapter applies to anything done in connection with the content of the curriculum.*

- (3) “Pupil”—.....
- (4) “Proprietor”—
  - (a) *in relation to a school in England and Wales, has the meaning given in section 579(1) of the Education Act 1996;*
  - (b) *in relation to a school in Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.*
- (5) “School”—.....
- (6) *A reference to a school includes a reference to an independent educational institution in England; and a reference to an independent educational institution in England is to be construed in accordance with Chapter 1 of Part 4 of the Education and Skills Act 2008.*
- (7) *A reference to an independent educational institution is a reference to—*
  - (a) *an independent educational institution in England, or*
  - (b) *an independent school in Wales.*
- (8) “Independent school”—.....
- (9) “Special school” .....
- (10) “Local authority” means—
  - (a) *in relation to England, an English local authority within the meaning of section 162 of the Education and Inspections Act 2006;*
  - (b) *in relation to Wales, a Welsh local authority within the meaning of that section.*
- (11) “Education authority”, *in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.*
- (12) *Schedule 11 (exceptions) has effect.”*

23. Section 91 of the Equality Act 2010 states:-

**“91 Students: admission and treatment, etc.**

- (1) *The responsible body of an institution to which this section applies must not discriminate against a person—*
  - (a) *in the arrangements it makes for deciding who is offered admission as a student;*
  - (b) *as to the terms on which it offers to admit the person as a student;*
  - (c) *by not admitting the person as a student.*
- (2) *The responsible body of such an institution must not discriminate against a student—*
  - (a) *in the way it provides education for the student;*
  - (b) *in the way it affords the student access to a benefit, facility or service;*
  - (c) *by not providing education for the student;*
  - (d) *by not affording the student access to a benefit, facility or service;*
  - (e) *by excluding the student;*
  - (f) *by subjecting the student to any other detriment.*
- (3) *The responsible body of such an institution must not discriminate against a disabled person—*
  - (a) *in the arrangements it makes for deciding upon whom to confer a qualification;*
  - (b) *as to the terms on which it is prepared to confer a qualification on the person;*
  - (c) *by not conferring a qualification on the person;*
  - (d) *by withdrawing a qualification from the person or varying the terms on which the person holds it.*
- (4) *Subsection (3) applies only to disability discrimination.*
- (5) *The responsible body of such an institution must not harass—*
  - (a) *a student;*
  - (b) *a person who has applied for admission as a student;*



- (c) *a disabled person who holds or has applied for a qualification conferred by the institution.*
- (6) *The responsible body of such an institution must not victimise a person—*
  - (a) *in the arrangements it makes for deciding who is offered admission as a student;*
  - (b) *as to the terms on which it offers to admit the person as a student;*
  - (c) *by not admitting the person as a student.*
- (7) *The responsible body of such an institution must not victimise a student—*
  - (a) *in the way it provides education for the student;*
  - (b) *in the way it affords the student access to a benefit, facility or service;*
  - (c) *by not providing education for the student;*
  - (d) *by not affording the student access to a benefit, facility or service;*
  - (e) *by excluding the student;*
  - (f) *by subjecting the student to any other detriment.*
- (8) *The responsible body of such an institution must not victimise a disabled person—*
  - (a) *in the arrangements it makes for deciding upon whom to confer a qualification;*
  - (b) *as to the terms on which it is prepared to confer a qualification on the person;*
  - (c) *by not conferring a qualification on the person;*
  - (d) *by withdrawing a qualification from the person or varying the terms on which the person holds it.*
- (9) *A duty to make reasonable adjustments applies to the responsible body of such an institution.*
- (10) *In relation to England and Wales, this section applies to—*

- (a) *a university;*
  - (b) *any other institution within the higher education sector;*
  - (c) *an institution within the further education sector.*
  - (d) *a 16 to 19 Academy.*
- (11) *In relation to Scotland, this section applies to—*
- (a) *a university;*
  - (b) *a designated institution;*
  - (c) *a college of further education.*
- (12) *A responsible body is—*
- (a) *in the case of an institution within subsection (10)(a), (b) or (c), the governing body;*
  - (aa) *in the case of an institution within subsection (10)(d), the proprietor (within the meaning of the Education Act 1996);*
  - (b) *in the case of an institution within subsection (11)(a) or (b), the governing body;*
  - (c) *in the case of a college of further education under the management of a board of management, the board of management;*
  - (d) *in the case of any other college of further education, any board of governors of the college or any person responsible for the management of the college, whether or not formally constituted as a governing body or board of governors.”*

24. Section 92 of the Equality Act 2010 states:-

**“92 Further and higher education courses**

- (1) *The responsible body in relation to a course to which this section applies must not discriminate against a person—*
  - (a) *in the arrangements it makes for deciding who is enrolled on the course;*

- (b) *as to the terms on which it offers to enrol the person on the course;*
  - (c) *by not accepting the person's application for enrolment.*
- (2) *The responsible body in relation to such a course must not discriminate against a person who is enrolled on the course in the services it provides or offers to provide.*
- (3) *The responsible body in relation to such a course must not harass a person who—*
  - (a) *seeks enrolment on the course;*
  - (b) *is enrolled on the course;*
  - (c) *is a user of services provided by the body in relation to the course.*
- (4) *The responsible body in relation to such a course must not victimise a person—*
  - (a) *in the arrangements it makes for deciding who is enrolled on the course;*
  - (b) *as to the terms on which it offers to enrol the person on the course;*
  - (c) *by not accepting the person's application for enrolment.*
- (5) *The responsible body in relation to such a course must not victimise a person who is enrolled on the course in the services it provides or offers to provide.*
- (6) *A duty to make reasonable adjustments applies to the responsible body.*
- (7) *This section applies to—*
  - (a) *a course of further or higher education secured by a responsible body in England or Wales;*
  - (b) *a course of education provided by the governing body of a maintained school under section 80 of the School Standards and Framework Act 1998;*
  - (c) *a course of further education secured by an education authority in Scotland.*

- (8) *A responsible body is—*
- (a) *a local authority in England or Wales, for the purposes of subsection (7)(a);*
  - (b) *.....*
  - (c) *.....*
- (9) *In this section—*
- *“course”, in relation to further education, includes each component part of a course if there is no requirement imposed on persons registered for a component part of the course to register for another component part of the course;*
  - *“enrolment” includes registration for a component part of a course;*
  - *“maintained school”.....*
  - *“services” means services of any description which are provided wholly or mainly for persons enrolled on a course to which this section applies.”*

25. Section 94 of the Equality Act 2010 states:-

**“94 Interpretation and exceptions**

- (1) *This section applies for the purposes of this Chapter.*
- (2) *Nothing in this Chapter applies to anything done in connection with the content of the curriculum.*
- (3) *A reference to a student, in relation to an institution, is a reference to a person for whom education is provided by the institution.*
- (4) *A reference to a university includes a reference to a university college and a college, school or hall of a university.*
- (5) *A reference to an institution within the further or higher education sector is to be construed in accordance with section 91 of the Further and Higher Education Act 1992.*
- (6) *“Further education”—*

- (a) *in relation to England and Wales, has the meaning given in section 2 of the Education Act 1996;*
  - (b) *in relation to Scotland, has the meaning given in section 1(3) of the Further and Higher Education (Scotland) Act 1992.*
- (7) *“Higher education”—*
- (a) *in relation to England and Wales, means education provided by means of a course of a description mentioned in Schedule 6 to the Education Reform Act 1988;*
  - (b) *in relation to Scotland, has the meaning given in section 38 of the Further and Higher Education (Scotland) Act 1992.*
- (8) *“College of further education” has the meaning given in section 36 of the Further and Higher Education (Scotland) Act 1992.*
- (9) *“Designated institution” has the meaning given in section 44 of that Act.*
- (10) *“Local authority” means—*
- (a) *in relation to England, an English local authority within the meaning of section 162 of the Education and Inspections Act 2006;*
  - (b) *in relation to Wales, a Welsh local authority within the meaning of that section.*
- (11) *“Education authority” has the meaning given by section 135(1) of the Education (Scotland) Act 1980.*
- A reference to conferring a qualification includes a reference—*
- (a) *to renewing or extending the conferment of a qualification;*
  - (b) *to authenticating a qualification conferred by another person.*
- (12) *Schedule 12 (exceptions) has effect.”*

26. Section 96 of the Equality Act 2010 states:-

**“96 Qualifications bodies**

- (1) *A qualifications body (A) must not discriminate against a person (B)—*
  - (a) *in the arrangements A makes for deciding upon whom to confer a relevant qualification;*
  - (b) *as to the terms on which it is prepared to confer a relevant qualification on B;*
  - (c) *by not conferring a relevant qualification on B.*
- (2) *A qualifications body (A) must not discriminate against a person (B) upon whom A has conferred a relevant qualification—*
  - (a) *by withdrawing the qualification from B;*
  - (b) *by varying the terms on which B holds the qualification;*
  - (c) *by subjecting B to any other detriment.*
- (3) *A qualifications body must not, in relation to conferment by it of a relevant qualification, harass—*
  - (a) *a person who holds the qualification, or*
  - (b) *a person who applies for it.*
- (4) *A qualifications body (A) must not victimise a person (B)—*
  - (a) *in the arrangements A makes for deciding upon whom to confer a relevant qualification;*
  - (b) *as to the terms on which it is prepared to confer a relevant qualification on B;*
  - (c) *by not conferring a relevant qualification on B.*
- (5) *A qualifications body (A) must not victimise a person (B) upon whom A has conferred a relevant qualification—*
  - (a) *by withdrawing the qualification from B;*
  - (b) *by varying the terms on which B holds the qualification;*
  - (c) *by subjecting B to any other detriment.*

- (6) .....
- (7) .....
- (8) .....
- (9) *The appropriate regulator—*
  - (a) *must not specify any matter for the purposes of subsection (7) unless it has consulted such persons as it thinks appropriate;*
  - (b) *must publish matters so specified (including the date from which they are to have effect) in such manner as is prescribed.*
- (10) *The appropriate regulator is—*
  - (a) *in relation to a qualifications body that confers qualifications in England, a person prescribed by a Minister of the Crown;*
  - (b) .....
  - (c) .....
- (11) *For the purposes of subsection (10), a qualification is conferred in a part of Great Britain if there are, or may reasonably be expected to be, persons seeking to obtain the qualification who are or will be assessed for those purposes wholly or mainly in that part.”*

27. Section 97 of the Equality Act 2010 states:-

**“97 Interpretation**

- (1) *This section applies for the purposes of section 96.*
- (2) *A qualifications body is an authority or body which can confer a relevant qualification.*
- (3) *A relevant qualification is an authorisation, qualification, approval or certification of such description as may be prescribed—*
  - (a) *in relation to conferments in England, by a Minister of the Crown;*
  - (b) .....

- (c) .....
- (4) *An authority or body is not a qualifications body in so far as—*
- (a) *it is the responsible body of a school to which section 85 applies,*
  - (b) *it is the governing body of an institution to which section 91 applies,*
  - (c) *it exercises functions under the Education Acts, or*
  - (d) *it exercises functions under the Education (Scotland) Act 1980.*
- (5) *A qualifications body does not include an authority or body of such description, or in such circumstances, as may be prescribed.*
- (6) *A reference to conferring a relevant qualification includes a reference—*
- (a) *to renewing or extending the conferment of a relevant qualification;*
  - (b) *to authenticating a relevant qualification conferred by another person.*
- (7) *A reference in section 96(8), (10) or (11) to a qualification is a reference to a relevant qualification.*
- (8) *Subsection (11) of section 96 applies for the purposes of subsection (3) of this section as it applies for the purposes of subsection (10) of that section.”*

Jurisdiction

28. Section 114 of the Equality Act 2010 states:-

**“114 Jurisdiction**

- (1) *The county court or, in Scotland, the sheriff has jurisdiction to determine a claim relating to—*
- (a) *a contravention of Part 3 (services and public functions);*
  - (b) *a contravention of Part 4 (premises);*



- (c) *a contravention of Part 6 (education);*
  - (d) *a contravention of Part 7 (associations);*
  - (e) *a contravention of section 108, 111 or 112 that relates to Part 3, 4, 6 or 7.*
- (2) *Subsection (1)(a) does not apply to a claim within section 115.*
  - (3) *Subsection (1)(c) does not apply to a claim within section 116.*
  - (4) *Subsection (1)(d) does not apply to a contravention of section 106.*
  - (5) *For the purposes of proceedings on a claim within subsection (1)(a)—*
    - (a) *a decision in proceedings on a claim mentioned in section 115(1) that an act is a contravention of Part 3 is binding;*
    - (b) *it does not matter whether the act occurs outside the United Kingdom.*
  - (6) *The county court or sheriff—*
    - (a) *must not grant an interim injunction or interdict unless satisfied that no criminal matter would be prejudiced by doing so;*
    - (b) *must grant an application to stay or sist proceedings under subsection (1) on grounds of prejudice to a criminal matter unless satisfied the matter will not be prejudiced.*
  - (7) *In proceedings in England and Wales on a claim within subsection (1), the power under section 63(1) of the County Courts Act 1984 (appointment of assessors) must be exercised unless the judge is satisfied that there are good reasons for not doing so.*
  - (8) *.....*
  - (9) *.....*

29. Section 116 of the Equality Act 2010 states:-

**“116 Education cases**

- (1) *A claim is within this section if it may be made to—*
  - (a) *the First-tier Tribunal in accordance with Part 2 of Schedule 17,*
  - (b) *the Special Educational Needs Tribunal for Wales in accordance with Part 2 of that Schedule, or*
  - (c) *an Additional Support Needs Tribunal for Scotland in accordance with Part 3 of that Schedule.*
- (2) *A claim is also within this section if it must be made in accordance with appeal arrangements within the meaning of Part 4 of that Schedule.*
- (3) *Schedule 17 (disabled pupils: enforcement) has effect.”*

30. Section 118 of the Equality Act 2010 states:-

**“118 Time limits**

- (1) *Subject to sections 140A and 140AA proceedings on a claim within section 114 may not be brought after the end of—*
  - (a) *the period of 6 months starting with the date of the act to which the claim relates, or*
  - (b) *such other period as the county court or sheriff thinks just and equitable.*
- (2) *If subsection (3)... applies, subsection (1)(a) has effect as if for “6 months” there were substituted “ 9 months ”.*
- (3) *This subsection applies if—*
  - (a) *the claim relates to the act of a qualifying institution, and*
  - (b) *a complaint relating to the act is referred under the student complaints scheme before the end of the period of 6 months starting with the date of the act.*
- (4) *.....*
- (5) *.....*
- (6) *For the purposes of this section—*

- (a) *conduct extending over a period is to be treated as done at the end of the period;*
  - (b) *failure to do something is to be treated as occurring when the person in question decided on it.*
- (7) *In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—*
- (a) *when P does an act inconsistent with doing it, or*
  - (b) *if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.*
- (8) *In this section—*
- *“immigration authority”, “immigration provisions” and “relevant decision” each have the meaning given in section 115;*
  - *“qualifying institution” has the meaning given in section 11 of the Higher Education Act 2004;*
  - *“the student complaints scheme” means a scheme for the review of qualifying complaints (within the meaning of section 12 of that Act) that is provided by the designated operator (within the meaning of section 13(5)(b) of that Act).”*

31. Section 120 of the Equality Act 2010 states:-

**“120 Jurisdiction**

- (1) *An employment tribunal has, subject to section 121, jurisdiction to determine a complaint relating to—*
  - (a) *a contravention of Part 5 (work);*
  - (b) *a contravention of section 108, 111 or 112 that relates to Part 5.*
- (2) *An employment tribunal has jurisdiction to determine an application by a responsible person (as defined by section 61) for a declaration as to the rights of that person and a worker in relation to a dispute about the effect of a non-discrimination rule.*
- (3) *An employment tribunal also has jurisdiction to determine an application by the trustees or managers of an occupational*

*pension scheme for a declaration as to their rights and those of a member in relation to a dispute about the effect of a non-discrimination rule.*

- (4) *An employment tribunal also has jurisdiction to determine a question that—*
  - (a) *relates to a non-discrimination rule, and*
  - (b) *is referred to the tribunal by virtue of section 122.*
- (5) *In proceedings before an employment tribunal on a complaint relating to a breach of a non-discrimination rule, the employer—*
  - (a) *is to be treated as a party, and*
  - (b) *is accordingly entitled to appear and be heard.*
- (6) *Nothing in this section affects such jurisdiction as the High Court, the county court, the Court of Session or the sheriff has in relation to a non-discrimination rule.*
- (7) *Subsection (1)(a) does not apply to a contravention of section 53 in so far as the act complained of may, by virtue of an enactment, be subject to an appeal or proceedings in the nature of an appeal.*
- (8) *In subsection (1), the references to Part 5 do not include a reference to section 60(1).”*

32. Section 123 of the Equality Act 2010 states:-

**“123 Time limits**

- (1) *Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—*
  - (a) *the period of 3 months starting with the date of the act to which the complaint relates, or*
  - (b) *such other period as the employment tribunal thinks just and equitable.*
- (2) *Proceedings may not be brought in reliance on section 121(1) after the end of—*
  - (a) *the period of 6 months starting with the date of the act to which the proceedings relate, or*

- (b) *such other period as the employment tribunal thinks just and equitable.*
  - (3) *For the purposes of this section—*
    - (a) *conduct extending over a period is to be treated as done at the end of the period;*
    - (b) *failure to do something is to be treated as occurring when the person in question decided on it.*
  - (4) *In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—*
    - (a) *when P does an act inconsistent with doing it, or*
    - (b) *if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.”*
- 33. In addition, I was referred to a number of cases by the respondent *Virdi v Commissioner of Police of the Metropolis [2007] IRLR 24*, *Mayer and Baker Limited trading as Sanofi-Aventis Pharma v Okerago [2010] IRLR 394*, *Roberston v Bexley Community Centre trading as Leisure Link [2003] IRLR 434* and *British Coal Corporation v Keeble [1997] IRLR 336* to which I have had regard.
- 34. The claimant has also referred me to the same cases in her submissions in so far as she has dealt with the points the respondents make. The claimant also refers to *Remploy Limited v Mrs KL Brain UKEAT/0465/10 CEA*, *Deadman v British Building and Engineering Appliances Limited [1973] IRLR 379* both in relation to whether it is just and equitable to extend time. I have had regard to these.

### **Findings of fact**

- 35. The claimant was a student at the first respondent college between September 2010 and February 2016. The first respondent is a higher education institute.
- 36. The second respondent is a lecturer at the first respondent who taught the claimant. The third respondent is the deputy principal of the first respondent.
- 37. The claim relates to an email communicating a decision from a third party (not a party to these proceedings) not to allow female cadets access to interviews conducted at the first respondent's premises for vacancies within the third party organisation.

38. Mr Brian Phipps an employee of the third party sent an email dated 18 July 2016 to the second respondent who is an employee of the first respondent in which he stated

*"I am open to meet ALL the prospective candidates ... [my employer] is an equal opportunities company but we WILL NOT offer places for the female because we cannot offer the appropriate on board environment to make it work."*

39. On 18 July 2016 Johnathan Ward the second respondent forwarded Brian Phipps' email to ten male deck officers and copied it to the claimant who was the only female deck officer along with the following message:-

*"This is the email that I received from Brian Phipps. He is expected to arrive mid – afternoon, a copy of his email. Please can you email me that you either do or DO NOT wish to attend. Sophia, sorry about omission good luck."*

40. It is these emails that form the basis of this complaint. The claimant commenced tribunal proceedings against Mr Phipps and his employer within the requisite time limit. This claim proceeds and is listed for a final hearing in May 2018.
41. In respect of the claims before this Tribunal, the claimant commenced ACAS early conciliation on 17 January 2017. The certificate was issued by ACAS on 17 February 2017. The claimant's claim was submitted to the employment tribunal on 31 March 2017.
42. At the time of the email on 18 July 2016 the claimant was in fact a job applicant. She was not an applicant for a job with any of the respondents in this case, but they were assisting with the facilitation of a job following the completion of her course. The claimant had at the request to the first and second respondents sent her curriculum vitae and covering letter in June 2016 to the first and second respondents. At the time of the acts the claimant was a former student. This was not disputed between the parties.
43. In the claimant's claim the claimant highlighted and indeed accepted that her claims were out of time asking for the employment tribunal to exercise its discretion to hear the claims as it was just and equitable for that extension to be given.
44. The claimant explained that there was uncertainty as to whether to bring the claim before the County Court or the Employment Tribunal. The claimant relies on this in order to explain the fact that the claim was presented outside of the ordinary time limit for presentation of such claims.
45. The claimant did not receive any contact from the ACAS conciliator appointed in her case until 15 February 2017. The claimant's

representative made a formal complaint on 1 March 2017 to ACAS concerning the delays. During this period, there were discussions between the parties as to settlement. The claimant did not proceed with her claim at that point as she thought it might be entirely possible to resolve the same. These are matters which the claimant has not herself given evidence on but which the claimant's representative has done so on her behalf.

## Conclusion

46. Taking each of the complaints in turn, the first issue to determine is whether the tribunal has jurisdiction to hear each of the complaints, i.e. because they are properly brought before the employment tribunal and/or brought in time.

## Direct Discrimination

47. In this regard the claimant relies on s.13 of Equality Act 2010.
48. The critical issue is whether this case falls within the contravention of Part 5 Equality Act 2010 (Work) under which jurisdiction is given to the employment tribunal to determine the complaint under s.120 Equality Act 2010. In the alternative, whether it is a claim which falls within the contravention of Part 6 Equality Act 2010 (Education) in which the County Court would be the appropriate forum.
49. The respondent's representative helpfully provided Part 6 of the Equality Act to this Tribunal. At the relevant time the claimant was not a student of the first respondent. The respondent refers to the fact that provision preventing discrimination by institutions within the higher and further education sectors such as the first respondent are contained in s.91 of the Equality Act 2010. Having regard to this section, it is not applicable in these circumstances. The case does not relate to the claimant as a student either in her admission or treatment. The treatment complained of arises after she ceased to be a student which is an undisputed fact between the parties.
50. In accordance with s.94 of the Equality Act 2010 a reference to a student is a reference to a person for whom education is provided by the institution (my emphasis). At the relevant time the claimant was not being provided with education by the institution (the first respondent) under s.94(3) Equality Act 2010.
51. Whilst the respondent has not sought to rely on s.92 or s.93 of the Equality Act 2010, these were provided to me in the extract of Part 6 relating to education. I have had consideration of the same and do not consider that this is a case which relates to either the provisions of s.92 of the Equality Act 2010 concerning enrollment into courses or indeed s.96 concerning qualifications bodies since at the relevant time the claimant was not a person who was seeking a relevant qualification.

52. Turning now to Part 5 (work) under s.39 Equality Act 2010, it is clear that the claimant was not an employee of any of the respondents in this case at the relevant time. Therefore s.39(2) and S.39(4) are not applicable.
53. Turning to s.39(1), this is not relevant as in my view the respondents in this case are not the parties deciding to whom to offer the employment.
54. I am conscious that the claimant is represented by a lay representative. Whilst that lay representative may have held some legal qualifications as a legal executive in the past, the claimant is not a lawyer. It is not for the Tribunal to identify the claims that the claimant may have but the Tribunal can look at the claims that the claimant has brought and assign those claims to particular sections of the legislation under which the claim is brought when determining the issues.
55. The fact that a claimant alleges harassment for example but does not specify s.26 of the Equality Act 2010 does not preclude the Tribunal from labelling this claim as a harassment claim falling within s.26 of Equality Act 2010.
56. In the preliminary hearing, I went through with the parties the relevant provisions of the Equality Act to determine whether any of the same would apply. The only other provision which may be relevant is that contained in s.55 of the Equality Act 2010. This relates to employment service providers and is for the avoidance of doubt contained within Part 5 (work) of Equality Act 2010. The key question here is whether the first respondent is an employment service provider.
57. Turning to s.56(2) of the Equality Act 2010 the first respondent was in my view providing a service for finding employment for persons and providing a service for supplying employers with persons to do the work. I have had regard to s.56(5) that this section does not apply in relation to training or guidance for students of an institution which s.91 applies. However for the reasons already stated I do not find that s.91 does apply because at the relevant time the claimant was not a student of the first respondent.
58. On the facts of this case, I find that the first respondent was an employment service provider so that s.55(1) may apply.
59. The question then arises as to whether the interviews that the first respondent was helping to facilitate fall within s55(1) Equality Act 2010. Equally s.55(2) may also be applicable in that the claimant was excluded from participating in the interview process. The question is therefore whether the claimant was being discriminated against by the college not providing that service or by subjecting her to any other detriment. This is a matter for a final hearing.
60. I therefore find that in terms of the jurisdiction since this is not a case falling within Part 6 (Education) Equality Act 2010, the County Court is not



the correct forum. I find that the Employment Tribunal is the correct forum. It would appear that the claimant's case falls within s55 so as to give the Tribunal jurisdiction but I make no findings as to whether the respondent has so discriminated.

61. Turning now to the question of time, the claimant accepts her claims are out of time.
62. The email which is the subject of these proceedings was dated the 18 July 2016, the second respondent forwarded this email on, again on the 18 July 2016. The interviews took place subsequently.
63. The ordinary time limit for bringing a claim in the Employment Tribunal is as set out in s.123 of the Equality Act 2010 which states that a claim may not be brought after the period of three months starting with the date of the act to which the complaint relates or within such other period as the employment tribunal thinks just and equitable.
64. The claimant did not present her claim for direct discrimination within this period, nor did the claimant commence ACAS early conciliation to benefit from the extension of time contained in the ACAS early conciliation provisions. ACAS early conciliation was commenced on 19 January 2017 and proceedings were not submitted to the Employment Tribunal until 31 March 2017.
65. Therefore it follows that the claim is out of time. I will therefore need to consider whether it is just and equitable to extend time in respect of the direct discrimination claims.

Aiding claim pursuant to s.112 of the Equality Act 2010

66. The s.112 of the Equality Act 2010 claim, is one which is properly brought before the Employment Tribunal. The Respondent accepts that this is the correct forum for the claim but that it is also out of time and does not have reasonable prospects of success.
67. The claim is in the correct forum so this is a claim properly to be decided by the Tribunal. Turning now to the question of time, the claimant accepts her claims are out of time.
68. The email which is the subject of these proceedings was dated the 18 July 2016, the second respondent forwarded this email on, again on the 18 July 2016. The interviews took place subsequently.
69. The ordinary time limit for bringing a claim in the employment tribunal is as set out in s.123 of the Equality Act 2010 which states that a claim may not be brought after the period of three months starting with the date of the act to which the complaint relates or within such other period as the employment tribunal thinks just and equitable.

70. The claimant did not present her claim for aiding within this period, nor did the claimant commence ACAS early conciliation to benefit from the extension of time contained in the ACAS early conciliation provisions. ACAS early conciliation was commenced on 19 January 2017 and proceedings were not submitted to the Employment Tribunal until 31 March 2017.
71. Therefore, it follows that the claim is out of time. I will therefore need to consider whether it is just and equitable to extend time in respect of this aiding claim.

### Harassment

72. This is not a case falling within s.40 of the Equality Act 2010 as B was not an employee of A or applying to A for employment. Therefore, this case can only fall within s.55(3) which contains the harassment provisions relating to employment service providers. As such this is a claim which may properly fall within the Employment Tribunal's jurisdiction.
73. The claim is in the correct forum so this is a claim properly to be decided by the Tribunal. Turning now to the question of time, the claimant accepts her claims are out of time.
74. The email which is the subject of these proceedings was dated the 18 July 2016, the second respondent forwarded this email on, again on the 18 July 2016. The interviews took place subsequently.
75. The ordinary time limit for bringing a claim in the Employment Tribunal is as set out in s.123 of the Equality Act 2010 which states that a claim may not be brought after the period of three months starting with the date of the act to which the complaint relates or within such other period as the Employment Tribunal thinks just and equitable.
76. The claimant did not present her claim for harassment within this period, nor did the claimant commence ACAS early conciliation to benefit from the extension of time contained in the ACAS early conciliation provisions. ACAS early conciliation was commenced on 19 January 2017 and proceedings were not submitted to the employment tribunal until 31 March 2017.
77. Therefore, it follows that the claim is out of time. I will therefore need to consider whether it is just and equitable to extend time in respect of the harassment claims.

### Victimisation

78. This relates to a failure to deal with the complaint about the email. In particular that the third respondent failed to respond to the claimant's concerns in her letter dated 11 August 2016.

79. For the same reasons as set out in direct discrimination this is a case which could fall within s.55(4) of the Equality Act 2010.
80. The claim is therefore in the correct forum so this is a claim properly to be decided by the Tribunal. Turning now to the question of time, the claimant accepts her claims are out of time.
81. The letter to which the victimisation complaint relates is the letter dated 11 August 2016.
82. The ordinary time limit for bringing a claim in the employment tribunal is as set out in s.123 of the Equality Act 2010 which states that a claim may not be brought after the period of three months starting with the date of the act to which the complaint relates or within such other period as the employment tribunal thinks just and equitable.
83. The claimant did not present her claim for victimisation within this period, nor did the claimant commence ACAS early conciliation to benefit from the extension of time contained in the ACAS early conciliation provisions. ACAS early conciliation was commenced on 19 January 2017 and proceedings were not submitted to the Employment Tribunal until 31 March 2017.
84. Therefore, it follows that the claim is out of time. I will therefore need to consider whether it is just and equitable to extend time in respect of these victimisation claims.

Article 6 of the Human Rights Act 1998

85. The Employment Tribunal does not have jurisdiction to hear a free-standing complaint for breach of the Human Rights Act 1998. The Employment Tribunal will take into account Article 6 of the Human Rights Act 1998 as appropriate when looking at the other claims brought by the claimant.
86. The claimant has already confirmed that she does not bring a claim in respect of s.149 of the Equality Act 2010, the public sector equality duty.
87. The Tribunal has no jurisdiction to hear the free-standing complaint for Human Rights Act breaches. I have therefore gone onto consider the remaining issues for the claims of direct discrimination, harassment, victimisation and aiding all contrary to the Equality Act 2010 against these respondents.

Extension of time

88. Turning now to the issue of time, is it just and equitable to extend time? This question applies to all of the Equality Act claims as all of the claims brought before the Employment Tribunal are out of time.

89. In this regard I have regard to the comments of the Court of Appeal in Robertson v Bexley Community Centre trading as Leisurelink [2003] IRLR 434 at paragraph 25 that:-

*“The exercise of the tribunal’s discretion is the exception rather than the rule.”*

90. I have however had regard to the fact that there are Tribunal proceedings relating to these facts already before the Tribunal. The Tribunal could therefore add the current respondents to the in-time claim either of its own initiative or by application of the claimant or the other respondents in that case. This is to be borne in mind.

91. I have also considered s.33 of the Limitation Act 1980 and the case of *British Coal Corporation v Keeble [1997] IRLR 336* to examine the factors as to whether the Tribunal should extend its discretion in a case such as this. The factors are as follows:-

- a) The length of and the reason 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 party sued have co-operated with requests for information.
- d) The promptness of which the plaintive acted once he/she knew of the facts giving rise to the cause of action.
- e) The steps taken by a plaintive to obtain appropriate professional advice once he or she knew of the possibility of taking action.

The length of and the reason for the delay

92. The claimant’s evidence is that the primary reason for the length of and cause of the delay is the claimant’s uncertainty as to whether these proceedings should be brought before the Employment Tribunal or the County Court.

93. To some extent I sympathise with the claimant in this regard since the matter is not entirely clear. It does require an in-depth analysis of the Equality Act 2010 and one which has occupied much of the Tribunal’s time in the hearing and a considerable amount of analysis thereafter.

94. However, the claimant was aware that there was a three month time limit in which to bring proceedings. Indeed, the claimant has brought other proceedings in relation to the third party before the Employment Tribunal. These were in time and she explained to the Tribunal that she could not issue two cases of this nature at the same time given the work involved and she looked at both and focused on the in-time claim as she thought

(albeit wrongly) that the County Court was the correct forum with its longer time period for limitation for this claim.

95. The length of the delay is significant in that it is some months since the last possible act. However the claimant could simply apply to join these respondents to that in-time claim.

The extent to which the cogency of the evidence is likely to be affected by the delay

96. Whilst the matters are now significantly old as they arise from emails and interviews which took place over 18 months ago. This is not entirely uncommon for proceedings in an Employment Tribunal or indeed a court of law.
97. I am not persuaded that the cogency of the evidence is likely to be affected by the delay particularly where other proceedings are ongoing and parties will be providing evidence as part of these other proceedings. Further more much of the evidence in this case is documentary evidence.

The extent to which the party sued have co-operated with requests for information

98. It is submitted by the claimant that the respondent caused significant delays for the ACAS conciliators in their role of contacting the respondent and then further in relation to the offers made. The difficulty in accepting that submission is that this would then involve an in depth analysis of correspondence subject to the without prejudice rule.
99. It does not matter for the purposes of the claim whether or not this is correct. Certainly, the claimant was complaining as far back as August 2016 in respect of the matters which form the basis of this complaint. The claimant had the required information and did not have to make copious requests for information from the respondent.

The promptness of which the plaintive acted once he/she knew of the facts giving rise to the cause of action

100. Certainly, by the time the claimant's representative submitted the form to ACAS on 17 January 2017 she was aware that the correct forum for these proceedings was the Employment Tribunal. There would be no need to take such a step if limitation was in fact approaching in respect of the County Court. ACAS early conciliation is unique to the Employment Tribunal forum.
101. I am informed that the delay between 17 February 2017 and 31 March 2017 was as a result of ongoing negotiations. The certificate was issued in effect automatically on 17 February 2017. Had the claimant sought to bring proceedings without this certificate she would not doubt have had the claim rejected for not having the ACAS early conciliation

number. The claimant could not have issued the claim prior to 17<sup>th</sup> February 2017 without that certificate.

102. There was a further delay of 5 weeks once the claimant had the ACAS early conciliation certificate. This delay has been explained by the claimant to this Tribunal as set out above.

The steps taken by a plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action

103. The claimant was during this period taking the advice of the claimant's lay representative. She had a legal background. Whilst she is not a legal advisor as such, she had sufficient understanding to know how to bring an Employment Tribunal claim, the time limits for the same and had to examine in detail the Equality Act 2010 and whether the County Court or the Employment Tribunal was the correct forum for such a complaint. This was not an easy task.
104. This is not a case where the claimant was ignorant of her rights. She had already brought an Employment Tribunal claim against another third party as arising out of the email correspondence. In addition, whilst she was represented by a lay representative that lay representative had some legal background.

Summary

105. Taking into account all of these factors and the prejudice to either party of the case proceeding or being dismissed at this stage, I am persuaded that it would be just and equitable to extend time to allow the claimant to bring her claims. The fact that there are in-time claims arising out of the same facts to which the respondents could be joined and that the matter is complex are persuasive. A fair hearing is still possible.
106. The respondent sought to argue that the County Court was the correct forum which I do not accept but this is an arguable point and as such the claimant should not be prevented from proceeding with these claims because of her misunderstanding of the correct forum in a complex manner.

Prospects

107. Turning now to consider whether any of the claims should be struck out as they do not have no reasonable prospects of success or in the alternative a deposit order made as they have little reasonable prospects of success.
108. The submissions made focused primarily on the time and forum issues to be determined today. I heard no evidence and I am not persuaded on the little time the parties devoted to this issue in the hearing, that the claims have little or no reasonable prospects of success. I am conscious that claims of discrimination often turn on their facts and the correct time to

decide such matters is the final hearing when the Tribunal can make a proper assessment of the factual basis of the case before it.

109. I therefore do not conclude that the claims have reasonable prospects of success or otherwise. I am simply not in a position to make this determination at this point in the case. The issue was not given sufficient time by either party given the complexity and time taken up on the jurisdiction issues. The issues for the final tribunal have not been determined. It may be that the Tribunal when looking at case management of the case determines that this issue should be resolved before the final hearing. In my view it is not in furtherance of the overriding objective as the issue of s112 is a narrow legal issue and this arises out of the same facts. As such it is my view that this issue is one to be determined at the final hearing.
110. I did raise with the parties as to why this claim was not joined with the other claim arising out of the same facts. It seems to me to be in furtherance of the overriding objective that the two claims be joined together to have one hearing arising out of the same emails so that the claimant has to only give evidence once. I have therefore asked that a listing be sent to the parties for a closed preliminary hearing on the first available date for both cases to consider the following:
  - 110.1. Whether to join the cases together?
  - 110.2. In respect of this claim, to clarify the claims of direct discrimination, harassment, victimisation and aiding and provide further and better particulars if so required at the hearing of each claim and/or to enable the Tribunal with the parties assistance to prepare a list of issues for the final hearing;
  - 110.3. To give case management directions for the preparation of the case;
  - 110.4. To list the case for final hearing.

Summary

111. The claimant's claims for direct discrimination, harassment, victimisation and aiding are out of time but it is just and equitable to extend time.
112. The Tribunal does not have jurisdiction to hear the claimant's claim for breach of the Human Rights Act 1998.

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Employment Judge King

Date: .....21 December 2017.....

Sent to the parties on: .....

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For the Tribunal Office