



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Ahmed

Respondent: Alternative Futures Group Ltd

PRELIMINARY HEARING

Heard at: Manchester (remote hearing in public by video CVP)

On: 3 December 2020
15 December 2020 (in chambers)

Before: Judge Brian Doyle (sitting alone)

Representatives

For the claimant: Mr R Downey, of counsel

For the respondent: Ms S Johnson, of counsel

RESERVED JUDGMENT

1. The claimant had a disability for the purposes of her disability discrimination complaint at the relevant time.
2. The complaint of disability discrimination may proceed to a final hearing so far as it relates to acts occurring between January 2019 and February 2020.
3. The complaint of disability discrimination is otherwise out of time so far as it relates to acts occurring before January 2019 and it is not otherwise just and equitable to extend time.
4. The complaint of unfair dismissal is in time.
5. The respondent's application for a strike out order or deposit order in relation to the claim is refused.

REASONS

Introduction

1. This claim contains two complaints: (1) unlawful disability contrary to sections 6, 13, 39(2)(c) and 39(2)(d) of the Equality Act 2010 and (2) unfair dismissal contrary to sections 94-98 of the Employment Rights Act 1996.
2. This is a preliminary hearing to determine the following matters: (1) Whether the claimant has or had a disability at the relevant time and, if so, when? (2) Whether her disability complaint, or any part of it, has been presented in time and, if not, whether it would be just and equitable to extend time? (3) Whether the claim, or any part of it, should be struck out as having no reasonable prospect of success? (4) Whether the claim, or any part of it, has little reasonable prospect of success and so should be made the subject of a deposit order? (5) Case management generally.
3. The Tribunal was provided with a bundle of documents for the preliminary hearing. References to the bundle are in [] below.

Disability

4. The Tribunal deals first with the question of whether the claimant has or had a disability at the relevant time and, if so, when?

Disability: relevant law

5. So far as is relevant to the case before it, the Tribunal has directed itself by reference to section 6 of and Schedule 1 to the Equality Act 2010; the statutory guidance on the meaning of disability; and relevant case law. The Tribunal derives the following legal principles from those sources, again so far as is necessary to address the claimant's case.
6. A claimant has a disability if she has a physical or mental impairment, and the impairment has a substantial (that is, more than minor or trivial) and long-term adverse effect on her ability to carry out normal day-to-day activities. This applies in relation to a person who has had a disability in the past as it applies in relation to a person who has the disability in the present.
7. The burden is on the claimant to show that she satisfies this definition of disability. Specialist or expert medical evidence is not always necessary or essential. Tribunals are able to consider the claimant's own evidence, particularly in relation to "adverse effect", and perhaps supported by her GP records. Where, as here, the Tribunal is concerned with an asserted mental impairment, it reminds itself that it is no longer a requirement that a mental impairment must amount to a clinically-recognised condition.
8. Establishing the cause of the asserted disability is not required. The focus is upon the symptoms or effects. The relevant question is whether a particular condition constitutes a disability, not what may or may not have caused it. A combination of

conditions or complaints can amount to a disability if they have the necessary substantial effect, for the necessary period. It is not necessary to determine their precise medical cause.

9. Although the structure of the definition of disability suggests that a staged inquiry may be appropriate – (1) impairment, then (2) adverse effect, followed by (3) substantiality and (4) long-term effect – the Tribunal must not lose sight of the whole picture. It may be more instructive in mental impairment cases to start by considering what adverse effects the claimant has experienced in her day-to-day activities before reflecting upon what this says about whether she has a mental impairment of the required degree and length.
10. The effect of an impairment is long-term if it has lasted for at least 12 months, or it is likely (that is, could well happen) to last for at least 12 months, or it is likely to last for the rest of the life of the person affected. If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.
11. An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if measures are being taken to treat or correct it, and, but for that, it would be likely (that is, could well happen) to have that effect. “Measures” includes, in particular, medical treatment (which includes medication and counselling).

Disability: the claimant’s case

12. The claimant was employed by the respondent as a carer between 1 February 2008 and 9 January 2020. She obtained fresh employment from 17 March 2020.
13. In her claim to the Tribunal and in her grounds of complaint [16] the claimant asserts that she “has had a history of mental health issues and has been diagnosed with **trauma** by her GP and psychiatrist” (the Tribunal’s emphasis supplied here and below). She refers to suffering further **stress and anxiety** as a result of the respondent’s actions in October 2017. There is a reference to her suffering from arthritis and low vitamins at that time [17]. By March 2018 there are references evidencing having a vitamin deficiency and being low on B12 and to the respondent causing her further **stress**.
14. Sometime from September 2018 the claimant refers to suffering further **stress and depression** and experiencing **flashbacks** of a **traumatic** attack on her by her brother some years previously, following her leaving an arranged marriage and estrangement from her family. The claimant experienced increasing **anxiety and depression** when she was advised that her hours might be reduced [18].
15. In January 2019 events at work led to a further episode in the claimant’s **mental health** [19]. The claimant asserts that she took time off work with **work-related stress** from December 2018 and March 2019. She refers to her **mental health disability** at this time. In April 2019, following the death of her friend, the claimant

pleads that she was treated differently by the respondent due to her **mental health condition** [20].

16. The claimant was then signed off work on **medical grounds of work-related stress** following an incident relating to a service-user in May 2019 [20]. She could not attend an investigation meeting due to **stress** and felt that she was being pressurised due to her **disability** [21]. She states that a home visit was not arranged until October 2019 and submits that (what must have been sometime between October and December 2019) she was diagnosed with **trauma** by her psychiatrist [21]. In bringing a claim of disability discrimination, her ET1 form refers to her disability as being **mental illness**.
17. At a case management hearing before Employment Judge Buchanan on 20 August 2020, and in identifying the claims and issues, the judge highlighted the disability being relied upon for the purpose of the disability discrimination complaint as **trauma** [41]. Disability was not conceded. Judge Buchanan required the claimant to give further information regarding her asserted disability and made orders accordingly, including for the preparation of a disability impact statement [44] and the disclosure of medical records and reports [45].
18. On 4 November 2020 the respondent indicated that it did not concede that the claimant was a disabled person by virtue of an impairment said to be **trauma** and it explained why [70-71]. So what do the medical records disclosed by the claimant reveal?

Disability: the evidence

19. The claimant's GP's report dated 7 September 2020 summarises the claimant's "active problems" on various dates beginning on 16 July 2010 and up to 26 May 2020 [72].
20. There are a number of medical issues listed, but the Tribunal will confine its account to those that are at all relevant to the preliminary issue it has to decide. They are: (1) anxiety with depression (16 July 2010); (2) [RFC] post-natal depression (8 August 2014); (3) vitamin D deficiency (21 March 2018); (4) vitamin B12 deficiency but no anaemia (19 July 2018); (5) tiredness symptom NOS (11 March 2019); (6) obsessive compulsive disorder (18 February 2020). The Tribunal heard no evidence to decipher the GP use of diagnostic abbreviations, which it is understood are commonly used among medical professionals. Nothing appears to hang upon those abbreviations.
21. A second group of conditions, referred to as "significant past", date between March 2014 and February 2020 [72]. They are (again, only so far as relevant): (1) post-natal depression (8 August 2014 to 13 June 2015); (2) [X] depression NOS (22 September 2017 to 5 January 2018); (3) [X] eating disorder, unspecified (25 September 2019 to 19 December 2019); (4) PTSD – Post-traumatic disorder (18 February 2020 to 13 May 2020); (5) Eating disorder (18 February 2020 to 13 May 2020).

22. A third group of conditions is addressed as “minor past” [72-73]. They cover various dates and periods between 20 July 2010 and 26 February 2020. Again, so far as is relevant only, there are various and multiple references here to “stress at work”, “stress at home”, “low mood”, “bereavement”, “hair loss”, “dry cough”, “dizziness symptom”, “[X] assault by fight” (October-November 2012).
23. Finally, the GP summary also shows a repeat prescription for an anti-anxiety medication in or around 2019 [73]. The claimant’s detailed medical notes are then found at pages [74-101], with tests and results at [101-111]. There are 6 relevant “active” referrals recorded at [111], being so far only as relevant: (1) mental health worker (September 2010); (2) psychologist (November 2012); (3) psychiatric referral (January 2016); (4) psychologist (January 2019); (5) mental health crisis team (October 2019); (6) mental health team (February 2020).
24. Separately from those medical records is a run of referrals and reports, starting in September 2010, from (only so far as is relevant) various NHS agencies concerned with psychological therapies, urgent care centre (October 2012), oral and maxillofacial surgery (October 2012), the Criminal Injuries Compensation Authority, and mental health and wellbeing services [112-204]. There is a reference here to **anxiety and post-traumatic stress** in or around October 2012 following an assault upon her [134] and **post-trauma symptoms** in or around June 2013, although at that time being discharged from psychological treatment [138].
25. The claimant’s disability impact statement [205-210] describes her as becoming unsettled mentally around 2012 when she had difficulties in her home and private life. She refers to problems of “anxiety with depression”, “lower moods”, “post-natal depression”, “a relapse in my general mental health”, “difficulties with low mood, anxiety, sleep and fleeting suicidal thoughts”, “depressed”, “nervy”, “dipped mood”, “stress”, “anxiety”, “depression”, “helpless and low esteem”. The cause appeared to vary (sometimes due to work and sometimes not), and the symptoms fluctuated and recurred over time.
26. The adverse effect of this is described by the claimant variously as “not function normally”, “hard to go into work”, “impact on personal life”, “could not go out as much”, “could not ... enjoy family life with kids”, “hair loss”, “dizzy spells”, “suicidal thoughts”, “erratic sleep”, “flashbacks”, “negative thoughts”, “not socialising much”, “sleeping most of the day”, “emotionless”, “sitting at home watching tv”, “feelings of being disappointed in myself”, “lacking motivation [and] concentration”. She lists the adverse effects that she relies upon at paragraph 39 of her disability impact statement [209].
27. An eating disorder was diagnosed in September 2019 and a diagnosis of trauma in December 2019. The claimant was referred to Safe Haven (a crisis care mental health service) and the John Elliott Unit (a mental health unit), both based at local NHS hospitals.
28. Recognising that the claimant herself relies upon **trauma** as her disability in support of her claim, what evidence is there from the medical records of such **trauma**?

29. First, the GP summary refers to “PTSD – Post-traumatic stress disorder” as part of her “significant past history” between the dates 18 February 2020 and 13 May 2020 [72]. Second, that is amplified in a note of a GP consultation on 18 February 2020 and a prescription of propranolol and fluoxetine and a referral to mental health services [75]. Third, at a GP consultation on 11 February 2020 there is a reference to the claimant “undergoing trauma counselling” following suicidal ideation and an assessment by the John Elliott Unit “at home”. This suggests that she was on a waiting list for counselling [75-76].
30. Fourth, something of the origins and possible cause of this history can be gleaned from a “psychological therapies services referral” dated 27 September 2010 [112]. That is backed by a reference in a letter dated 3 May 2011 from a Primary Care Counsellor to “traumatic events that occurred” and a referral for cognitive behaviour therapy (CBT) [116]. Fifth, following on from this, in June 2013 a Primary Care Counsellor is recording that he had seen the claimant on 8 occasions for counselling, initially to deal with “Post Trauma symptoms following an assault by her brother”, and that “she has begun to overcome the symptoms of trauma”, with a “significant improvement in psychological well-being”, resulting in a discharge from this service [138].
31. However, sixth, by October and November 2019 the medical records are recording eating disorder symptoms and a referral from the early intervention team regarding depression. There is here a fresh reference to “trauma” experienced by the claimant in her work situation [162]. Seventh, this is placed in a preceding context in a letter dated 15 February 2019 from “Thinking Ahead (Your Mental Health and Wellbeing Service)” to the claimant’s GP [165]. This letter rehearses the claimant’s mental health history, including any traumatic experiences, and refers back to events in 2010 and 2012. Eighth, and later that year, a similar letter dated 19 December 2019 records that the claimant had attended 6 sessions of low intensity CBT; did not indicate a risk to self at the last appointment; that CBT consultation had been to focus on trauma-focused therapy, but that at present she would be best placed with, and discharged to, the eating disorder service [179].

Disability: respondent’s submissions

32. Counsel for the respondent reminded the Tribunal that the burden of proof was upon the claimant to establish her disability. In case management, emphasis was placed on the claimant’s pleaded claim, and the requirement of her to “nail her colours to the mast” and to disclose all medical records and evidence so far as her reliance upon “trauma” as a disability was concerned. That disclosure did not lead to a concession by the respondent. It was clear that something more was needed, but nothing further was produced by the claimant, despite being seen by Safe Haven, the John Elliott Unit and a psychologist.
33. Counsel suggested that the claimant’s medical summary identified an eating disorder, but that a diagnosis of trauma or PTSD was made only later in that record and post-dating the termination of her employment. A list of minor past conditions does not meet the test of disability and the documents to which the claimant has been taken in evidence in the main relate to an eating disorder.

34. The occupational health evidence references only what the claimant self-reported as opposed to what is contained in the medical records as diagnosis. The medical practitioners were not identifying trauma or PTSD at the relevant time. The claimant's own disability impact statement (see paragraph 24) does not support any suggestion that anything was being reported to the medical practitioners or that it was linked to any earlier traumatic events. There is a diagnosis of bulimia, but yet the claimant does not rely upon an eating disorder to establish her status as a person with a disability, and no link is made with trauma or PTSD. The matters that she reports – such as hair loss, vitamin deficiency, loss of mood, etc – are all linked to eating disorder.
35. Counsel submitted that the claimant has not established that she has a disability at the relevant time. Her disability discrimination complaint must be dismissed.

Disability: claimant's submissions

36. The claimant's counsel referred the Tribunal to the case management summary regarding the question of disability [39-48]. It is submitted that in order to establish an impairment it is not necessary to establish a medical condition. Reliance is placed upon the whole of the definition of disability. The fallacy of the respondent's position, it is said, is that the respondent is focusing upon whether the claimant has an impairment.
37. While the respondent draws attention to the claimant's eating disorder, she is suffering from trauma. That is evident from her medical records. She underwent CBT treatment for trauma, which was separate from her subsequent referral to The Willows regarding her eating disorder. The occupational health evidence refers to the claimant reporting, displaying or exhibiting symptoms of trauma. The evidence is consistent with a diagnosis of trauma.
38. There is a diagnosis of trauma, submits counsel. Trauma is itself an impairment. It has a long-term adverse effect. It is likely to recur. It is a continuing condition. The evidence points to the 2012 assault from which the claimant suffered trauma or PTSD. The medical records support such a finding. The same impairment as then adversely affects her now as at December 2019. It is a continuing condition between 2010 and 2019. The claimant satisfies the definition of a disabled person.
39. Counsel contends that "trauma" is simply a label attached to a panoply of medical conditions. This is clear from the medical history and the medical records. Cause is not relevant, says the case law – it is effect that matters: *Walker v Sita Information Networking Computing Ltd* [UKEAT/0097/12](#); [2013] EqLR 476. If the condition has the necessary effect then it is an impairment and consequently a disability. There is strong evidence of this extending over a period time. The definition is satisfied and the claimant has a disability from 2012 onwards, especially once the effects of medication and counselling are discounted.

Disability: discussion and conclusion

40. The Tribunal has before it a very detailed medical history, so far as is relevant, starting with the challenging personal and private circumstances arising from the

failure of claimant's arrangement marriage in 2010; the consequent estrangement from her family; and in 2012 an injurious assault upon her by her brother that resulted in court proceedings and a restraining order against him. From those dates onwards the GP records and other medical documentation capture a challenging and variable mental health experience for the claimant, sounding in both her personal and family life and her quality of life at work.

41. Undoubtedly, the Tribunal would have been greatly assisted by an expert medical witness report that interrogated the medical evidence and which sought to explain whether the claimant's medical history can be characterised as one of trauma or PTSD creating (or reflecting) substantial and long-term adverse effects upon the claimant's day-to-day activities. Although the threshold question – does the claimant have a disability and, if so, when? – would remain for the Tribunal (and not the expert witness) to answer, the Tribunal would have been greatly assisted by an independent and expert assessment and synthesis of the medical evidence.
42. Nevertheless, that is not what the Tribunal has and it must do its best with the material presented to it, being the medical evidence in the round and the claimant's own disability impact statement.
43. The Tribunal is concerned to establish whether the claimant has a disability as at the relevant time of the alleged discrimination against her. While the claimant was employed by the respondent between February 2008 and January 2020, her complaints of disability discrimination appear to arise no earlier than October 2017; continue through 2018 and 2019; and culminate with her dismissal in early 2020.
44. On the basis of the medical history described above, on the balance of probabilities, and accepting that the claimant bears the burden of proof, the Tribunal is satisfied that throughout the period 2017 to 2020 the claimant had a disability arising from a mental impairment, having a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities. The Tribunal accepts the claimant's counsel's submission that it is not necessary for her to establish a medical condition that in turn amounts to a mental impairment. It is sufficient to look at the substantial and long-term adverse effects that the claimant has experienced upon her ability to carry out normal-day-to-day activities at work, at home, and in her private and personal life. The Tribunal notes that the focus of the contested issue at the preliminary hearing was not upon such adverse effects or whether they were substantial or long-term or whether they impacted upon her ability to carry out normal day-to-day activities. The focus was upon the question of whether the claimant had a mental impairment or whether the adverse effects upon her (to use a shorthand here) were caused by a medical condition.
45. The Tribunal has stood back from the medical evidence to look at the bigger picture. It has taken a constructive and purposive approach to the evidence and to the application of the statutory definition to it. It has had regard to the labels attached to the claimant's medical history and at relevant times, but it has taken care not to be distracted by those labels. The Tribunal agrees that "trauma" is simply a label that has been used to describe and explain a host of mental health conditions suffered by the claimant. This is clear from the medical history and the medical records. Cause is not relevant. It is effect that matters. There is more than

sufficient evidence of a mental health condition, variously described but falling under an umbrella term of “trauma”, extending over a period time. The condition has the necessary effect, it amounts to an impairment and, once the effects of medication and counselling are discounted, the claimant has demonstrated that she had a disability at the relevant times (which for present purposes means 2017 to 2020).

Time limits

46. The Tribunal turns next to the question of time limits.
47. As it appears to the Tribunal, the claimant is complaining of various matters that arose in October 2017, March 2018, September 2018, the Winter of 2018/19 (including 24 January 2019) and a grievance arising in January and February 2019. The claimant was off work between December 2018 and March 2019 before returning to work. Her complaints continue to cover April 2019 and May 2019, before she was again absent from work. Her complaints resume as at October 2019 and December 2019, before the events surrounding her dismissal in January 2020 and February 2020 arise.
48. The claimant’s employment was terminated on 9 January 2020. She exercised a right of appeal that was determined on 4 February 2020. She gave notice of early conciliation on 7 February 2020 and Acas issued an early conciliation certificate on 10 February 2020. The claimant presented her ET1 claim to the Tribunal on 24 March 2020.
49. The issue here is whether complaints accruing before 25 December 2019 are in time (subject to any extension afforded by the early conciliation provisions) and, if not, whether it would be just and equitable to extend time?

Time limits: relevant law

50. Section 123 of the Equality Act 2010 provides that proceedings on a complaint to an employment tribunal 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. For these purposes (a) conduct extending over a period is to be treated as done at the end of the period and (b) failure to do something is to be treated as occurring when the person in question decided on it. 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.

Time limits: respondent’s submissions

51. The respondent’s counsel submits that it is for the claimant to set out her stall. This limits the claimant to allegations made in relation to the last 3 months of her employment – and all else is out of time. She was otherwise on sick leave.

52. There is no reason, it is contended, to extend time on the just and equitable ground. When examining the ET1 and the ET3 it can be seen that the complaints involve different people and significant gaps, with no linkage between the different periods. The claimant had access to a trade union representative throughout her employment and had been a trade union member for some time. Her trade union warned her that her complaints were out of time and it withdrew from representing her.
53. Nevertheless, the claimant delayed in making a claim. She was applying for other jobs; writing to her employer; going back and forth between medical practitioners – all despite knowing that her claim was out of time and having researched the position on the internet and with Acas.
54. The dismissal complaint alone is in time. Applying the balancing act required by the Limitation Act, all else is out of time and the respondent is entitled to its limitation defence. If not, then it will need to rely upon additional witnesses, whose memories of the relevant events will have faded. The Tribunal should not grant an extension of time.

Time limits: claimant's submissions

55. The claimant's counsel sought to put the claimant's case as being based upon a series of continuing acts. She relies upon a sequence of adverse treatments of her from the beginning of 2019. Her complaints should not be timed out as a preliminary issue, but only as a result of hearing evidence and making findings of fact at a final hearing. In any event, if time-barred, the claimant asks the Tribunal to exercise its just and equitable discretion. Looking at the allegations cumulatively, it was reasonable for the claimant to wait and see what happened. This needs to be explored in evidence. The focus is upon the events leading up to the dismissal.

Time limits: discussion and conclusion

56. The Tribunal notes that the claimant does not now seek to rely upon events pre-dating January 2019. The Tribunal considers that she is right to do so. It is difficult to treat the events of 2017 and 2018 as being of themselves conduct extending over a period such as to be treated as done at the end of that period; and the position is no stronger when attempting to treat them as a series of acts articulated with the 2019 and 2020 allegations. There is no adequate explanation as to why the claimant could not have acted in relation to the period 2017 and 2018 at that time, particularly as she was a trade union member. There are also no obvious grounds for a just and equitable extension of time.
57. The 2017 and 2018 complaints are thus out of time and the Tribunal has no jurisdiction in relation to them. Of course, all other things being equal, they are part of the context and background to any subsequent timeous complaints and to that extent may be part of the evidential matrix – but the claimant may not rely upon them as causes of action.
58. The Tribunal takes a different view of the allegations spanning the whole of 2019 and leading to her dismissal in January and February 2020. These complaints are

more obviously conduct extending over a period that is to be treated as done at the end of the period. Those complaints are of a piece which, although interrupted by at least two periods of sick leave, lead inevitably towards the denouement of the claimant's employment. The Tribunal has jurisdiction to determine them without the need for a just and equitable extension of time.

Strike out and/or deposit order

59. The Tribunal can then turn to the respondent's application for a strike out and/or deposit order. Both matters can be taken together.

Strike out and/or deposit order: respondent's submissions

60. The respondent's counsel referred the Tribunal to the witness statement of Mr Griffiths. (The Tribunal notes that it did not take evidence from him at the preliminary hearing).

61. Under the claimant's contract of employment she had no single place of work. Her hours increased rather than reduced. The respondent engaged with her appropriately and reasonably in relation to her occupational health. Her text messages reveal no grievances or difficulties. There was a change of hours due to business need. No grievance resulted. When she suffered a bereavement in April 2019 she was allowed to take leave. There was no discrimination. Similarly, in the respondent's attitude to her participation in strike activity.

62. There was an investigation of the claimant in relation to the "DM" incident. It was reasonable for the respondent to do so. Yet she was not dismissed for a conduct reason but for a capability reason. There was no case to answer regarding DM. There was a fair and reasonable investigation. During this time the claimant was attending job interviews and undertaking a training course as well. She had no intention of returning to work. She was referred to occupational health and this was appropriate action by the respondent. It considered her grievance and her grievance appeal. This is not a reasonable adjustment claim but one of alleged direct discrimination.

Strike out and/or deposit order: claimant's submissions

63. The claimant's counsel deals first with the unfair dismissal complaint. The burden is upon the respondent to establish the reason for the dismissal. Here that reason was capability, although the claimant's case is that it was disability and that there was no proper assessment of her. If the reason was disability, then it is both unfair and discriminatory. As pleaded in paragraph 16 onwards of the complaint, there was a change of attitude towards the claimant on the part of the respondent. There is evidence from which a Tribunal can draw an adverse inference of discrimination on the ground of disability. There is an arguable case to be explored in the evidence. It is impossible to say that there is little or no reasonable prospect of success. It is not plain and obviously so. The facts are in dispute.

Strike out and/or deposit order: discussion and conclusion

64. The Tribunal can deal with this part of the preliminary hearing briefly. What proceeds to a final hearing is (1) an unfair dismissal complaint and (2) a direct disability discrimination complaint that is now much reduced in scope and extent. The Tribunal is unable to say that either claim has little or no reasonable prospect of success. It has heard no evidence and made no relevant findings of fact. The discrimination claim, at least, is best decided only after the evidence has been tested and factual findings made. It is inextricably bound up with the unfair dismissal complaint. The Tribunal can see no reason to treat either complaint differently from the other.
65. The application to strike out the claim or to make it the subject of a deposit order is refused. The claim, as now subject to the time limitation decision, shall proceed to a final hearing.

Case management

66. The claim now needs to be listed for a final hearing and be subject to case management orders for that purpose. Having reflected on the matter, this is best done via a telephone conference call of 1 hour with the parties' legal representatives. The judge will ask the Regional Employment Judge to make the necessary arrangements.

Judge Brian Doyle
DATE 15 December 2020

JUDGMENT SENT TO THE PARTIES ON
18 December 2020

FOR THE TRIBUNAL OFFICE