



# EMPLOYMENT TRIBUNALS

**Claimant:** X

**Respondents:** 1. L  
2. Z  
3. E

**Heard at:** Manchester (by CVP)

**On:** 25 January 2021

**Before:** Employment Judge Phil Allen  
(sitting alone)

## REPRESENTATION:

**Claimant:** Mr B Henry, Counsel  
**1<sup>st</sup> Respondent:** Ms R Eeley, Counsel  
**2<sup>nd</sup> & 3<sup>rd</sup> Respondents:** In person

# JUDGMENT

The judgment of the Tribunal is that:

1. The allegations of harassment made against L are not acts extending over a period which also comprise the allegations of victimisation made against L;
2. It is not just and equitable for time to be extended so that the Tribunal has jurisdiction to determine the allegations of harassment against L. As a result, the harassment claims against L are dismissed;
3. It is not just and equitable for the Tribunal to extend time so that it has jurisdiction to determine the allegations of harassment against Z and/or E. As a result, the claims against Z and E are dismissed;
4. The claims for disability discrimination are dismissed on withdrawal;
5. The victimisation claims against L will proceed to final hearing.

# REASONS

## Introduction

1. The claimant is employed by the respondent as a Band 6 Occupational Therapist and has been employed since 14 December 2015.
2. The claimant alleges that she was subjected to harassment on the grounds of sex and/or sexual orientation by Z and E in the period between September 2016 and 23 January 2018. Z and E are both employed by L.
3. After the claimant raised a Dignity at Work complaint in February 2018 (or complaints) about the alleged harassment (upon which she relies as a protected act), the claimant alleges that she was subject to victimisation by L in the period from 6 March 2018 until October 2018. That is, the claimant alleges that she has been victimised by: L and its managers in its/their conduct of procedures; and by other employees of L (who are not Z or E).
4. Following a period of ACAS early conciliation between 10 December 2018 and 10 January 2019 (for L and Z), and on 11 January 2019 (only) (for E) the claimant entered a claim at the Employment Tribunal on 15 January 2019.
5. At a preliminary hearing (case management) on 2 September 2019 Employment Judge Tom Ryan listed a further preliminary hearing to determine whether the allegations of harassment against Z and E could be considered as acts extending over a period which also comprised the acts of victimisation; and, if not, whether it would be just and equitable for the Tribunal to extend time so as to have jurisdiction to determine the allegations of harassment. When that hearing took place, on 19 November 2019, Employment Judge Sherratt declined to consider the issue identified by Employment Judge Tom Ryan (relying upon the recent EAT case of **Caterham School Limited v Mrs K Rose UKEAT/0149/19**).
6. That decision of Employment Judge Sherratt was appealed to the Employment Appeal Tribunal. A Judgment of the Honourable Mrs Justice Ellenbogen of 10 December 2020 allowed the appeal, set aside the order of Employment Judge Sherratt, and remitted the case to be heard at a preliminary hearing to determine the following issues:
  - (1) Whether the allegations of harassment made against L could be considered as acts extending over a period which also comprises the allegations of victimisation made against L;
  - (2) If not, whether it is just and equitable for the Employment Tribunal to extend time so as to have jurisdiction to determine the allegations of harassment against L; and

- (3) In any event, whether it is just and equitable for the Employment Tribunal to extend time so as to have jurisdiction to determine the allegations of harassment against Z and/or E.

7. As at the date of this hearing, the full transcript of the Employment Appeal Tribunal's Judgment is not available.

### **Claims and Issues**

8. Whilst the parties raised the issues in slightly different terms, it was common ground that the matters to be determined by the Tribunal were those set down by the EAT.

9. The claimant's representative accepted that the claims against Z and/or E were presented out of time, and therefore the question for determination in respect of the claims against Z and E was (only) whether or not time should be extended on a just and equitable basis.

10. In respect of L, the claimant contends that: the matters alleged as harassment and victimisation are acts extending over a period (as a result of which the Employment Tribunal has jurisdiction); or, if that is not the case, it would be just and equitable to extend time in relation to the harassment allegations. L's representative accepted that the allegations of victimisation brought against L were brought within time and the Tribunal does have jurisdiction to consider those claims.

11. The Tribunal did seek clarification from the claimant's representative of the position in respect of the disability discrimination claim which had been included in the claim form. At the end of submissions, the claimant's representative clarified that the claim for disability discrimination was not being pursued and, accordingly, agreed that the claim would be dismissed on withdrawal.

### **Procedure**

12. An anonymisation order was made by Employment Judge Sherratt on 20 November 2019 which ordered that, pursuant to rules 50(1) and (3)(b) of the Employment Tribunals Rules of Procedure 2013 and Article 8 of the European Convention on Human Rights, any identifying matter which is likely to lead members of the public to identify any of the persons specified as parties to the Tribunal, either being a party or otherwise being involved with the proceedings, should be omitted or deleted from any document entered on the Register or which otherwise forms part of the public record, including the Tribunal's hearing lists. Accordingly, the letters X, L, Z and E are used to describe the parties in this Judgment (as they were at the hearing), with X being the claimant, L being the employer, and Z and E being the two individual named respondents who are employees of L.

13. The claimant was represented at the hearing by Mr Henry, counsel. Ms Eeley, counsel, represented L (that is X's employer). Z and E each represented themselves at the hearing.

14. The hearing was conducted by CVP remote video technology. Members of the public were able to attend the hearing if they wished to do so.

15. An agreed bundle of documents was prepared in advance of the hearing. The bundle ran to in excess of 236 pages.
16. In addition, the Tribunal noted the Order of the Employment Appeal Tribunal, which was not in fact included in the agreed bundle.
17. The Tribunal read only the pages in the bundle to which it was referred, either by the parties or by the statements prepared by the witnesses.
18. Witness statements were provided to the Tribunal for: X; Ms C Marshall, an HR Business Partner at L; Z and E. The Tribunal read those witness statements at the start of the hearing.
19. The Tribunal heard evidence from the claimant, who was then cross examined by the representative for L and by E, with Z relying upon L's representative's cross examination (as to an extent did E). The claimant was also asked questions by the Tribunal and re-examined.
20. Ms Marshall gave evidence and was cross examined by the claimant's representative. The Tribunal heard from each of Z and E, who were briefly cross examined by the claimant's representative.
21. After the evidence was heard, each of the parties was given the opportunity to make submissions. All submissions were delivered orally. Counsel for L provided lengthy submissions, following by brief submissions from Z and E. The claimant's representative also made submissions.
22. Judgment on the preliminary issue was reserved and accordingly the Tribunal provides the Judgment and Reasons outlined below.

**Facts**

23. In as much as the evidence is relevant to the issues which the Tribunal needs to determine, the facts are recorded below. The Tribunal was provided with other evidence which is not recorded in this Judgment.
24. The alleged harassment upon which the claimant relied was all alleged to have been by Z and E in the course of employment. In summary, the harassment alleged comprised of comments made by Z and E. The claimant alleged that these occurred in/on: September/October 2016; December 2016; 27 September 2017; 2-5 October 2017; and 23 January 2018. The last alleged act of harassment occurred on 23 January 2018, and the claimant did not allege that she had been subjected to harassment after that date on the grounds of either sex or sexual orientation by Z or E, or any other employee of L.
25. On 13 February 2018 the claimant made a Dignity at Work complaint to the respondent's HR team (121). This complaint related to the conduct of Z, albeit it recorded that comments were made by both Z and E. A second Dignity at Work complaint was made on or around 22 February 2018 which related to the conduct of E. The Tribunal was provided with a copy of a document (126) which was probably what was sent, being the document that was resubmitted when it was later identified

that the respondent could not find the original. The respondent acknowledged both complaints on 27 February 2018 (133) and identified that a formal investigation into the Dignity at Work allegations would be undertaken. The complaints raised are relied upon by the claimant as the protected act(s) for the subsequent victimisation claim.

26. A mediation meeting took place between the claimant and E on 6 March 2018 (140, 147 and 154). Whilst the claimant disputed some of the notes, what was not in dispute was that, at the conclusion of and as a result of the mediation, it was summarised that the claimant was withdrawing her formal Dignity at Work complaint (against E), and that was what she wanted. It was agreed that it would be said that the matter had been mediated and that both X and E were satisfied with the outcome.

27. Following the mediation, the claimant and E exchanged text messages and, on the evidence of E, had conversations. However, following E's response to the proposed minutes, the claimant concluded that the informal mediation had not delivered the desired outcome. She therefore informed Ms Kerridge of L in an email sent at 21:35 on 9 April (173) that, *"I am therefore considering reverting back to the formal Dignity at Work against [E]"*. Ms Marshall (who had picked up the correspondence) responded on 10 April at 8:47am (172) *"I am also aware of your decision in relation to [E] and I have informed the investigating officer of your agreement to place any further action against [E] in abeyance pending the outcome of the investigation after you will make a decision on next steps"*. The "investigation" referred to was the ongoing investigation into the claimant's Dignity at Work complaint against Z.

28. The claimant alleges that she was victimised in the period between 14 February 2018 and 23 March 2018 by four named colleagues (who were not Z or E). Those allegations of victimisation are set out in the claim form (25) and include: what the claimant describes as a distinct behaviour change; a confrontation about working matters; adverse comments about the workplace; not replying to text messages; cancelling visits; not signing the claimant's birthday card; not messaging the claimant on social media; and regularly going into the back office.

29. On 23 March 2018 the claimant commenced a period of sickness absence. She was not fit to work. She ultimately returned to work on 16 May 2018. On her return to work, the claimant returned to a different team on a temporary placement, that is a team which did not contain Z or E. The claimant also alleges that moving her to another team was a further act of victimisation.

30. A medical report dated 28 March 2018 indicated that the claimant had moderate levels of anxiety and moderately severe levels of depression. It recommended that the claimant move to a different team while the investigation was ongoing and on her potential return to work, if it was operationally feasible (169). A subsequent medical report of 1 August 2018 identified that the claimant had returned to work and recorded that the claimant had managed well with her return to work and with her move to the new team, albeit she remained vulnerable to further stress triggers and any exacerbation of her symptoms could again impact on her work (187).

31. The claimant's representative recorded in the chronology he prepared, that the primary limitation period for the harassment claims against Z and E expired on 22 April 2018. At the time that any claim should have been entered (or ACAS early conciliation commenced): the claimant was absent on ill health grounds; the Dignity at Work complaint against X was in progress; and there was no ongoing investigation or process in respect of the complaint in respect of E (which was in abeyance).

32. Shortly after returning to work, the claimant got married on 25 May 2018. She alleges that the lack of social media messages or cards from certain people (not Z or E) was a further act of victimisation.

33. On 5 July 2018 the outcome of the Dignity at Work investigation was confirmed to the claimant in a letter (185). This followed a conversation with the claimant. She was informed that the outcome of the complaint (in relation to Z) was that Z would be referred to a disciplinary hearing. It was not entirely clear from the evidence what, if anything, remained to take place in relation to the claimant's Dignity at Work complaint following this brief letter, it being acknowledged and accepted that the claimant would not normally be informed of the outcome of another employee's disciplinary process (albeit the letter acknowledges that the claimant might need to attend a disciplinary hearing as a witness).

34. In fact, as a result of medical issues and pregnancy, the disciplinary hearing for Z was delayed for some significant period of time. For the purposes of this Judgment it is only necessary to record that Z attributes the internal proceedings as being a partial cause for some of the health issues she face. The Tribunal finds that it was entirely appropriate for Z's disciplinary procedure to be delayed for the lengthy period that it was.

35. In October 2018 the claimant attended an internal training session at which three of the four employees who the claimant alleged had victimised her in the period between February and March, were also present. The claimant alleges they ignored her. The claimant alleges that this also amounted to an act of victimisation.

36. On 9 November 2018 the claimant's union representative emailed the respondent expressing concern that the claimant's temporary placement had not been made permanent, and highlighting that the Occupational Health advice was that she should not be moved back into her substantive team.

37. On 19 November 2018 (206) the claimant signed the case form with her union, being the form seeking advice about the claimant's position. In her witness statement the claimant states that she had lost all confidence in the Dignity at Work process and sought legal advice. The respondents dispute that was the real reason why she sought advice at this time, relying upon the timing of the request. The Tribunal finds that the primary trigger for the claimant seeking legal advice through her union was her concern about the possible end of her temporary assignment, rather than the processes in relation to the Dignity at Work complaint.

38. On 28 November 2018 there was a meeting between senior employees of the respondent, the claimant and her union representative (197). Those minutes start

with a senior employee of the respondent saying she “*could not apologise enough for the amount of time it has taken to deal with [the claimant’s] Dignity at Work complaint*”. The notes go on to record that a meeting had taken place on 23 November with the claimant and her trade union representative to discuss the investigation report. An issue had also been identified, which is that the report referred to two people and yet the investigation had only addressed one of them (being Z). The witness who gave evidence on behalf of L at the hearing had no knowledge of this meeting or of the investigation report that had been discussed. As a result of the meeting, L determined that a new investigation would be undertaken in relation to E. At the meeting it was also confirmed to the claimant that she could remain permanently with the team to which she had been temporarily assigned. In her claim form the claimant appears to allege that this of itself was an act of victimisation, albeit the claimant’s representative’s chronology records the training event in October 2018 as being the last alleged act of victimisation.

39. E’s evidence was that she thought that matters had been resolved in the mediation meeting on 6 March 2018, and she only discovered that an investigation was being undertaken in relation to her in January 2019. Following the investigation into the claimant’s allegations regarding E and a disciplinary hearing, E was ultimately given a final written warning on 23 May 2019. Z was given a final written warning on 1 November 2019.

40. After the claimant completed her initial form, her local union branch referred the request to the Regional Office on 1 December 2018. The claimant’s evidence (which was disputed, but is accepted by the Tribunal) was that she first received advice about Tribunal time limits and the early conciliation process between 5 and 10 December 2018. She entered into ACAS early conciliation on 10 December 2018. The union’s request for advice was referred to solicitors on 7 December 2018 and advice was received on 21 December 2018. The claimant says that a claim was not entered at this stage because early conciliation was ongoing (albeit this was only early conciliation against Z and L as the claimant’s union had omitted to enter into early conciliation in relation to E). After early conciliation concluded on 10 January 2019 (or in the case of E on 11 January 2019), the claimant confirmed her instructions to commence proceedings on 14 January 2019 and the claim was submitted on 15 January 2019.

41. The claimant confirmed that she had access to and received advice from her trade union representative throughout the entire period described. In her evidence the claimant emphasised that she had wished to resolve matters internally first and had been trying to make it stop and seek an apology.

42. The claimant’s witness statement made no reference to any contention that Z and E were involved in the victimisation. In responses to questioning, however, the claimant did suggest that they may have had some involvement in the victimisation, as she did not really know what was behind the other employees of L treating her in the way that she alleged. As she accepted, the claimant did not have any genuine evidence that linked Z and E to the acts of victimisation upon which she relied. Z and E denied that they did so. It was not in dispute that Z and E did not have any involvement in the management decisions, that is those around the claimant’s move

away from her department and (if it is an allegation of victimisation) being permanently relocated to the alternative team.

### The Law

43. In relation to continuing acts of discrimination, section 123(3) of the Equality Act 2010 records that:

*“For the purposes of this section –*

- (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.”*

44. L’s representative relied upon three authorities in respect of continuing conduct: **Commissioner of Police of the Metropolis v Hendricks [2003] ICR 530**; **Lyfar v Brighton & Sussex University Hospitals Trust [2006] EWCA Civ 1548**; and **Aziz v FDA [2010] EWCA Civ 304**.

45. The first of these is authority for the fact that the Tribunal should not, when considering what amounts to a continuing act, focus on the concepts of policy, rule, scheme, regime or practice. The focus should be upon whether the alleged discriminator was responsible for an ongoing situation or a continuing state of affairs. The question is whether what is alleged is an act extending over a period, as distinct from a series of unconnected or isolated specific acts.

46. The second of the authorities highlights that Tribunals should look at the substance of the complaints in question as opposed to the existence of a policy or regime and determine whether they can be said to be part of one continuing act by the employer.

47. L’s representative placed reliance on the third of these authorities because it showed that one relevant factor is whether the same or different individuals were involved in the incidents. L’s representative accepted, and the claimant’s representative highlighted, that this was not a conclusive factor. The respondent’s representative confirmed that, despite the fact that acts were committed by different people, it could still be a continuing act.

48. The second relevant area of law is the just and equitable extension. That is provided for in section 123(1)(b) of the Equality Act 2010 which states that proceedings may be brought in, *“such other period as the Employment Tribunal thinks just and equitable”*.

49. **Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434** is a case in which the Court of Appeal stated in relation to the Tribunal and the potential exercise of the discretion *“There is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A Tribunal cannot hear a claim unless the claimant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than*



*the rule*". The onus to establish that the time limit should be extended lies with the claimant.

50. The most important part of the exercise of the trust and equitable discretion is to balance the respective prejudice to the parties.

51. L's representative highlighted the factors contained in section 33 of the Limitation Act 1980 as explained in the case of **British Coal Corporation v Keeble [1997] IRLR 336**. Those factors are:

- the length of, and reasons for the delay;
- the extent to which the cogency of the evidence is likely to be affected by the delay;
- the extent to which the relevant respondent has cooperated with any request for information;
- the promptness with which the claimant acted once she knew of the facts giving rise to the cause of action; and
- the steps taken by the claimant to obtain appropriate advice once she knew of the possibility of taking action.

52. Subsequent case law has emphasised that these are of factors which should usually be taken into account, but their relevance depends upon the facts of the particular case, and it is wrong to put a gloss on the words of the Equality Act to interpret it as containing such a list. This has recently been reinforced by the Court of Appeal in **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23**. L's representative also relied upon this as an authority in which a relevant factor was the impact with which the cogency of evidence had been reduced because of the length of time since the alleged events occurred; not just as a result of the period of delay between the date when the claim could have been entered and when the claim was actually sent to the Tribunal.

53. L's representative also referred to **Aniagwu v London Borough of Hackney [1999] IRLR 303** and **Robinson v The Post Office [2000] IRLR 804** regarding internal procedures and the impact that had on the application of the just and equitable discretion. An unexhausted internal process is a relevant factor to consider. In the latter of these cases, the EAT said that an employee who awaits the outcome of an internal process and delays issuing Employment Tribunal proceedings, must realise that she is running a real danger. It observed that Parliament had not provided that the running of time should be delayed until the end of the internal procedures.

### **Conclusions – applying the law to the facts**

#### *The first question – harassment and victimisation as continuing conduct*

54. The first question which this Tribunal was required to answer as a result of the order of the Employment Appeal Tribunal cited above, was whether the allegations

of harassment made against L can be considered as acts extending over a period which also comprise the allegations of victimisation made against L.

55. An allegation of victimisation by its nature differs significantly from an allegation of harassment. They are allegations of a different type of discrimination, arising due to a different reason. Victimisation relies upon a protected act. Whilst this does not stop the victimisation allegations from being a continuing act with the harassment allegations, it is a factor to be taken into account.

56. The conduct complained of was committed by entirely different people. That is four employees of L were contended to have victimised the claimant, and members of management were alleged to have victimised the claimant in the decisions about the changes to the team in which she worked. Z and E are not alleged to have committed the acts of victimisation. Whilst the claimant suggested in evidence that Z and E might have had some background influence on the alleged acts of victimisation, there was no evidence to support that contention. The alleged acts of victimisation were conducted by entirely different people to the alleged acts of harassment.

57. The alleged acts occurred at different times which do not overlap. The last alleged act of harassment occurred on 23 January 2018. The victimisation was not alleged to have started until 14 February 2018.

58. The harassment alleged is about comments made to, or in front of, the claimant. The victimisation alleged is different, it is not an allegation that similar comments were made to, or about, the claimant. The victimisation is, in summary, alleged ostracisation.

59. Taking into account the matters outlined in paragraphs 54-58 and applying the words of the statute, the Tribunal finds that it is not correct to describe the alleged victimisation as conduct extending over a period which also comprised the alleged harassment. Together they were not a continuing state of affairs or an ongoing situation. Looking at the substance of the complaints, the alleged victimisation is not conduct extending over a period which included the alleged harassment.

*The second question – just and equitable extension and L*

60. The second question which the Tribunal was required to determine by the Employment Appeal Tribunal's order, was whether it was just and equitable for the Tribunal to extend time so that it had jurisdiction to determine the allegations of harassment against L.

61. In summary the key factors against the exercise of the extension are:

- Time limits are there for a reason and the exercise of the discretion should be the exception rather than the rule;
- The harassment complaints should have been entered at the Employment Tribunal by 22 April 2018 but in fact were not entered until

15 January 2019, being almost nine months late – the delay in this case was a considerable one;

- The claimant was fit enough to attend work from 16 May 2018 and therefore was fit enough to work for many months before she entered a claim;
- The claimant had access to a trade union official throughout the period and could have sought legal advice, in the way that she did, at any time;
- The cogency of evidence about the allegations will inevitably have reduced over time. Both Z and E emphasised this in their evidence. The harassment allegations are primarily about conversations which took place where faded recollection is important and will not be aided by contemporaneous records;
- The claimant was aware that her allegations in relation to Z would be proceeding to a disciplinary hearing from 5 July 2018, but still took no action to seek advice until November 2018;
- In relation to E, the claimant chose to initially withdraw that complaint, and subsequently not to have the complaint investigated until the investigation involving Z had concluded. Whilst the claimant was able to ask for the matter to be held in abeyance and to ask to proceed with an investigation against E after the meetings in November 2018, the delay in the internal processes being undertaken in respect of E was a delay which followed from the decisions made by the claimant;
- Information about Tribunal time limits is generally available to all and, for the claimant as a member of a Union with access to her representative, she was in a better position to access such information (or at least no worse a position) than any other potential claimant; and
- The claimant will still be able to pursue her victimisation claims against L. Those claims include the decisions made about where she worked, which were the trigger for her seeking advice.

62. The key factors in favour of exercising the discretion and extending time on a just and equitable basis, in summary, are:

- The claimant was unwell and off work on ill health grounds at the time at which the claim should have been entered;
- The claimant's reason for the delay is that she wished to resolve matters internally and had not been advised of Tribunal time limits – she acted in ignorance, she did not deliberately delay (and the reason is a laudable one);

- Once the claimant sought legal advice and once it was provided, the claimant moved relatively quickly in entering her claim;
- The period between 10 December 2018 and 10 January 2019 was a period when ACAS early conciliation was being undertaken and it was appropriate for a claim not to be entered in that time. The claimant therefore acted promptly once she knew of the time limits;
- The internal procedures undertaken by the respondent will have ensured that documentation was prepared about individual recollections which will assist witnesses in recalling what occurred;
- L clearly took a significant amount of time to deal with the claimant's Dignity at Work complaint about Z, highlighted by the effusive apology given in the meeting of 28 November 2018 and the fact that an investigation report only appears to have been shared with the claimant on 23 November 2018, being over nine months after the claimant had raised a Dignity at Work complaint. The claimant acted quickly after this report was seen;
- The claimant will lose something extremely significant, that is the ability to pursue her (potentially meritorious) harassment claims. It was made clear by her representative that the claimant placed a particular emphasis on the harassment claims; and
- The only prejudice suffered by L is in respect to the cogency of evidence, as L is not otherwise prejudiced by the delay.

63. The balance between the factors outlined at paragraphs 61 and 62 is very fine and is not one which the Tribunal finds is straight forward to resolve. However, after applying the above factors, and in particular taking account of the lengthy delay and the impact that delay will have had upon recollections and the cogency of evidence, the Tribunal has determined that it would not be just and equitable to extend time for the claimant's harassment claims against L. Accordingly, the Employment Tribunal does not have jurisdiction to consider the claimant's harassment claims against L, and those claims are dismissed.

64. There is one factor which the Tribunal has not taken into account in exercising its discretion. That is that the first of the harassment allegations dates back to September 2016, and accordingly there is arguably a greater impact on the cogency of the evidence for the historic matters. As they are contended to be part of a course of conduct which continued to 23 January 2018, the Tribunal has focussed on the impact of the delay between 22 April 2018 and late November 2018, not the impact of any delay prior to 22 April 2018.

*The third question – just and equitable extension and claims against Z and E*

65. The final question which the Employment Tribunal is required to answer is whether it is just and equitable to extend time so that the Tribunal has jurisdiction to determine the allegations of harassment against Z and/or E.

66. All of the factors which have been addressed in relation to L also relate to the exercise of this discretion in respect of the allegations against Z and/or E, with the exception of one.

67. There is one further factor to add to those which suggest that the just and equitable test should not result in an extension of time for the claims against Z and E. There is no fault ascribed to either Z or E for the time taken in the process and/or for any delay arising from it. The fact that L took a long time to resolve the claimant's Dignity at Work complaint is not a factor relevant to the exercise of the discretion against the two named individual respondents (at least inasmuch as it is a factor which indicates how the relevant party cooperated with requests for information, as opposed to the extent to which it explains why the claimant did not enter a claim earlier).

68. Both Z and E gave evidence about the impact that these issues, and the delay in their being resolved, had upon them personally and their health. The cogency of their evidence will have been reduced by the delay, and the delay has also impacted significantly upon their ability to put the events behind them. For E this is a further relevant factor in considering the discretion, as she thought that matters had been resolved in the mediation meeting on 6 March, and only discovered that an investigation was being undertaken in relation to her in January 2019. That delay was no fault of E's and the impact on her recollection would be more significant for someone who had thought that matters had been resolved, as opposed to someone (such as Z) who knew that they needed to remember what had occurred because procedures were ongoing.

69. Consistent with the decision explained at paragraph 63 (in respect of L), applying the above factors, and in particular taking account of the lengthy delay and the impact that delay will have had upon recollections and the cogency of evidence, the Tribunal has determined that it would not be just and equitable to extend time for the claimant's harassment claims against Z and E. Accordingly, the Employment Tribunal does not have jurisdiction to consider the claimant's claims against Z and E, and those claims are dismissed. Having reached its decision in respect of the claims against L, the Tribunal has no doubt that time should not be extended on a just and equitable basis for the claims against Z and E (for which the factors in the balance weigh more against extending time on a just and equitable basis).

### **Summary and future conduct of the claim**

70. For the reasons explained above, the Tribunal does not have jurisdiction to consider: the claims of harassment against L; or the complaints against Z and E. The claims of victimisation against L will proceed to hearing.

71. It was agreed at the end of the preliminary hearing that a further preliminary hearing (case management) is required to make case management orders so that the claim is ready for hearing. It was agreed that the preliminary hearing would only be listed after this Judgment was issued.

72. The parties will be notified of a date and time for a preliminary hearing (case management) which will be conducted by telephone (which will only need to involve

the claimant and L, as the remaining parties). That hearing will be listed for one hour before an Employment Judge sitting alone.

73. The parties are encouraged to attend that hearing having agreed a List of Issues and appropriate orders, if at all possible. The parties should also be ready to discuss whether the full 14 days for which the case is currently listed will be required to determine the claims which remain.

Employment Judge Phil Allen  
1 February 2021

RESERVED JUDGMENT AND REASONS  
SENT TO THE PARTIES ON  
9 February 2021

FOR THE TRIBUNAL OFFICE

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