



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms J Healey

**Respondents:** (1) London Borough of Tower Hamlets  
(2) Adecco UK Limited

## RECORD OF A PRELIMINARY HEARING

**Heard at:** East London Hearing Centre

**On:** 8 February 2022

**Before:** Employment Judge Lewis

### Representation

**For the Claimant:** In person – supported by Mr Giorgio

**For the Respondents:** (1) Miss A Stroud - Counsel  
(2) Mr Hayes – Special Counsel, Adecco Group

## RESERVED JUDGMENT

1. The Claimant's employer was Adecco UK Ltd.
2. The Claimant was employed by Adecco UK Ltd from 31 January 2018 to 23 October 2020.
3. At the relevant time for the purposes of these proceedings the Claimant was a disabled person pursuant to s 6 of the Equality Act 2010, by reason of bronchiectasis and mild emphysema (described as COPD).
4. The following claims were brought out of time and are dismissed:
  - 4.1 The claims that the Respondents failed to allow the Claimant to work from home (claims under Reg 5 of the Agency Workers Regs 2010

and for failure to make reasonable adjustments s20 and 21 of the Equality Act 2010);

4.2 The claim under Reg 13 of the Agency Worker Regs 2010, rights in relation to access to employment.

5. The remaining claims are to proceed to a final hearing.

## REASONS

1. By a claim form presented on 31 December 2020, the Claimant brought complaints of unfair dismissal, disability discrimination and for holiday pay. At a preliminary hearing before Employment Judge Russell on 21 September 2021 the claims were summarised as follows: that the Claimant should have been permanently employed by the First Respondent as a Pensions Administrator and not retained on a temporary contract for almost four years, that she was not treated as well as permanent staff (which the Claimant describes as discrimination) and was paid the incorrect rate for holiday pay. The Claimant also claims that she was discriminated against because of her disability. Employment Judge Russell recorded that the Claimant relied on the physical impairment of bronchiectasis and mild emphysema (described as COPD), osteoarthritis in her left hip and osteopenia in her back. The Respondents deny all claims.

2. Reference was also made by the Claimant to a whistleblowing claim and the Claimant was ordered to make any application to amend by 14 December 2021, setting out the basis for any such claim. The Claimant was also ordered to provide further details in respect of her claims of less favorable treatment under the Agency Workers Regulations 2010 by the same date.

3. The Second Respondent had identified a number of preliminary issues which required determination and this Open Preliminary Hearing was listed to decide 3.1 the identity of the employer;

3.2 length of service;

3.3 whether the Claimant is disabled by reason of any of the three impairments relied upon; and

3.4 Whether any claim was brought out of time and, if so, whether time should be extended. This may include the Tribunal deciding to leave the issue of “continuing act” to a final hearing.

4. Case management orders were made in preparation for this hearing, including that the Respondents’ prepare a revised draft list of issues and a bundle, the Claimant was ordered to prepare written witness statement and a disability impact statement as well as providing disclosure of her relevant medical records.

5. The First and Second Respondent both assert that the Claimant was employed by Adecco. It was accepted that the dismissal -related claims had been brought in time, as had any ongoing claim for holiday pay that might arise in the 2 year period up to the bringing of the claim.

6. The Claimant gave evidence as was cross examined by both Counsel

### **Findings of fact/chronology**

7. The Claimant accepted the contents of the following documents in the bundle: Terms of engagement between the Claimant and E Personnel from January 2017, described as "Terms of Engagement for Agency Workers (Contract for Services), which she accepted accurately reflected the terms of their arrangement [93]; Contract of employment between Johann Healey and Adecco signed and dated 31 January 2018 [p108-110]; emails between the Claimant and Miriam Adams on 25 September 2020 in which the Claimant described Adecco as her employer [p 125].

8. The Claimant was aware that she had a contract with E Personnel which described the relationship as a contract for service and described her as an agency worker. She believed that she was an agency worker. She confirmed that she received pay slips from E Personnel [p101] and those showed her hourly rate and holiday pay; she received rolled up holiday pay from E Personnel so the holiday pay was paid every week and depended on the number of hours she had worked. She was aware in January 2018 that Comensura had previously coordinated Tower Hamlets temporary agency staff and that Tower Hamlets' arrangement with Comensura was changing. She was told that she needed to meet with Adecco in order to continue working at Tower Hamlets as a member of agency staff. The following day she met with someone called Lily Moore from Adecco and completed and signed the document [at p 107] registering with Adecco and the contract with Adecco [at p 108-110]. She accepted that from February 2018 onwards the contract she signed with Adecco governed her working relationship and how she would be paid. There was no break between signing the contract and starting her assignment with Tower Hamlets, the Claimant signed the contract and went straight back to work; it was possible she signed the contract on a Friday and then continued to work on the Monday.

9. The Claimant told the Tribunal that she understood that by signing the contract she became an employee of Adecco. She had read the contract and understood by signing it that she agreed to its terms. She signed the contract as she understood this would allow her to continue working in the job that she liked doing.

10. I find that the contract was an accurate and genuine reflection of what the Claimant and Adecco understood and intended their relationship to be as from 31 January 2018.

11. After signing the contract, the Claimant worked one week in hand and then when she was paid the following week she did not receive any holiday pay. She did not receive any rolled- up holiday pay from February 2018 onwards. The Claimant confirmed that she was aware of the hourly rate and the clause in the contract in respect of holiday pay and accepted that she was paid in accordance with the terms of the contract that she had signed. The Claimant stated that she had raised the question of holiday pay with Lily Moore and was assured that she would be paid the same as before and would not

suffer any financial detriment. The Claimant maintained that she should have had 30 days holiday and not 28. The Claimant complained to Adecco about the failure to pay rolled up holiday pay and was told that it did not pay rolled up holiday pay and that the rate of pay for the job was set by Tower Hamlets. The Claimant's assignment with Tower Hamlets was renewed at three-month intervals on the same terms each time.

12. The Claimant complains that the failure to pay rolled up holiday pay caused her to suffer financial difficulties and that she continued to complain about it but nothing was resolved.

**Not being allowed to work from home**

13. The Claimant accepts that she was allowed to work from home from during the first lockdown in March 2020, only returning to the office during the last week of her notice period to clear the backlog and help other staff with tasks. She accepted that it was her choice to go into the office during her last week and clarified that she does not make any complaint about going in to work during that week. The Claimant confirmed that there was no week after November 2019 when she wanted to work from home and was told she could not. The Claimant clarified that her complaint in respect of the period before November 2019 was that, unlike the permanent staff, who were aware of the policies, the suggestion had not been made to her that she might be able to work from home if she needed to.

14. The Claimant accepted that she was allowed to work from home in November 2019, before any lockdown, when she requested to work from home on an exceptional basis as a result of issues at home. She accepted that in November 2019 the First Respondent had granted each of her requests to work from home when she had made them and did not say that a request had to be made on an exceptional basis. Before November 2019 the only time the Claimant had asked to work from home was in April 2018 when she had a broken toe [paragraph 14-16 of the Claimant's witness statement]. The Claimant had assumed that the working from home policy did not apply to her as a temporary worker. The Claimant thought she could only ask to work from home if it was in exceptional circumstances and pointed to her lack of awareness of Tower Hamlets' policies as an example of how she was disadvantaged as a result of there not being a permanent manager in her department. The Claimant did not raise a grievance in April or May 2018, although she did raise with Tim Dean, the Senior Pensions Administrator, that there was no permanent manager in her department.

15. The Claimant accepted and I find as a fact there never an occasion after November 2019 when the Claimant asked to work from home and was told she could not.

**Not being informed of vacancies: March 2018, July 2019**

16. The Claimant complains that she was treated unfairly in March 2018 in not being given the opportunity to apply for a vacant position. She acknowledged that no-one applied for the position, which was not advertised, and that it was filled in around December 2018 /January 2019 by a Tower Hamlets employee who was in the redeployment pool.

17. The Claimant was notified of a vacancy within the Pensions team in July 2019 but complains that she was not given any encouragement in applying for the role and complains that she was treated unfairly in the interview process. The interview took place in 3 September 2019.

18. The Claimant also alleges that she was unfairly treated compared to permanent employees in January 2020 in respect of payments for additional work and during lock down in the period from July to September 2020 in not being provided with the correct IT equipment and having to use her own phone for work calls.

19. The Claimant resigned from the assignment with Tower Hamlets on 24 September 2020 giving 4 weeks' notice [125]. On 26 September 2020 the Claimant sought to retract her resignation [129] but was informed by Tower Hamlets on 29 September 2020 that their acceptance of her resignation still stood [129]. The Claimant sought to raise a grievance in relation to the refusal to allow her to withdraw her resignation, she complains that Adecco told her that they could not do anything about it.

20. The Second Respondent's pleaded case is that the decision as to whether to let the Claimant withdraw her resignation was a matter for the First Respondent alone.

21. Early conciliation began on 2 November 2020 in respect of both Respondents and concluded on 2 December 2020 in respect of the First Respondent and 16 December in respect of the Second Respondent. The Claimant brought her claim on 31 December 2020.

## **Disability**

22. The Claimant relies on three impairments, bronchiectasis and mild emphysema (described as COPD), osteoarthritis in her left hip and osteopenia in her back. The Claimant had provided a disability impact statement and copies of her relevant medical records, a letter from Dr Charlotte Cumby dated 2 November 2021 and a letter from Dr Thomas Oxenham dated 8 December 2021, both doctors being GPs at the James Wigg Practice. Dr Oxenham confirmed that the Claimant had been diagnosed with COPD in 2015, osteoarthritis affecting her left hip in December 2020 and osteopenia in April 2021. Both doctors made reference to the Claimant's mental health, this was not a condition relied on as a disability in this claim; however, it is relied on by the Claimant as part of her explanation for any delay in bringing these claims.

23. The Claimant was diagnosed with the COPD in 2015, she told the Tribunal that it makes her very tired and out of breath. She struggles to do household chores, housework or loading the dishwasher, for example or going up and down stairs makes her breathless and tired. She finds travelling to and from work tiring to the extent that when she gets home from work she has to sit down and rest and has no energy left, her partner has to do the chores such as cleaning and shopping.

24. The Claimant was cross examined on the content of her GP notes. She was asked about the description in those notes [84] on 23 March 2020 and in a fit note dated 23 March 2020 [92] of the COPD as being 'mild'. The Claimant was asked about the GPs reference to the Claimant stating she did not really have any symptoms at that time but felt she was in a higher risk group (and so should be shielding/working from home).

It was noted that she did not have shortness of breath when she walked and only struggled with “exertional” housework [p85 – 10 September 2020]. It was suggested to the Claimant that she had exaggerated her symptoms because she did not want to have to travel on public transport to get to work. The Claimant explained that she did not report to the doctor every time she felt really tired or out of breath but she was feeling tired at that time. The Claimant described changing a double duvet cover as exertional housework. The Claimant accepted that there was a contradiction between what she described in her statement, i.e. breathlessness, and what she was telling her doctor at the time, which was that she didn’t have respiratory symptoms, she conceded that she probably was not out of breath but she was tired.

25. The Claimant accepted that her osteoarthritis and osteopenia were both diagnosed after she had finished working at Tower Hamlets and that she had not mentioned either of those conditions to either Tower Hamlets or Adecco at the time. She completed a health assessment form in April 2020 when the government’s guidelines were for all staff to work from home if possible. She accepted that she did not mention hip pain in April 2020.

26. On 24 September 2020 the Claimant emailed some equipment request forms to Miriam Adams at Tower Hamlets and informed her that she desperately needed a chair. Ms Adams suggested that the Claimant email health and safety at Tower Hamlets and provided the email address. The Claimant duly emailed the health and safety department and informed them that she worked sitting on a hardwood chair which was becoming very uncomfortable and quite painful [128]. Tracy Gorbell from Tower Hamlets responded on 25 September 2020 with a list of approved chairs that could be ordered and a suggestion for lumbar support cushions as an alternative. The Claimant accepted that she had not mentioned any hip pain before September 2020 and also accepted that she could have requested a chair in April but did not. The Claimant did not mention any hip pain when she saw her GP in September 2020 [85], the first time she mentioned it was on 17 November 2020 [87] when she reported she had been having pain for 5-6 months, mostly at night.

27. The Claimant set out her evidence in her disability impact statement in relation to her mental health under the heading “Background”. The Claimant explained that at the time she filled in her claim form to the Tribunal her mental health was suffering. She told the tribunal that she went to a CAB after she resigned. She was aware of the existence of CABx and of trade unions, she had not carried out any internet research into ACAS or CAB despite having broadband internet access at home. She had approached a trade union in 2020.

28. The Claimant accepted that she sent a detailed email to Gemma Ransome on 21 September 2020 [119] setting out queries in relation to her pay and holiday pay but told the Tribunal that the uncertainty about the renewal of her contract was affecting her mental health and that she had a breakdown three days later.

29. It had not occurred to the Claimant to contact ACAS or a CAB until after her resignation. She accepted that she did not raise a grievance in respect of any of the matters she now complains about, apart from the decision by the First Respondent not to allow her to withdraw her resignation. Although the Claimant had raised complaints in relation to her pay and these had been looked into she did not take it any further. She joined a union in around December 2019 and was a member of about 2 months. She

asked the union to help her with her holiday pay issue but did not get a response to her request.

## Relevant law and submissions

### Identity of the Claimant's employer

30. I was referred by both Counsel to the case of **James v Greenwich Borough Council [2008]** IRLR 302 and the test of 'necessity' set out by the Court of Appeal. It was submitted that the Claimant had not put forward any positive case to suggest that the agency arrangements were not genuine and did not accurately reflect her relationship with the First and Second Respondents.

31. The Second Respondent submitted that it became the Claimant's employer on 31 January 2018 and remained her employer until 23 October 2020 when the Claimant requested her P45 from them.

32. The Second Respondent also submitted that there was no TUPE transfer when it replaced Comensura as the First Respondent's Managed Service Provider (MSP). At that time E Personnel had placed two other workers on assignments with Tower Hamlets Council, one as a paralegal and the other as a Recruitment Consultant, that these did not constitute an organised grouping of employees, and in any event it was understood that the Regulations only applied to employees.

### 33. **TUPE Regulations 2006**

#### *'Article 2 Interpretation*

"employee" means any individual who works for another person whether under a contract of service or apprenticeship or otherwise but does not include anyone who provides services under a contract for services and references to a person's employer shall be construed accordingly;

### 34. **Disability**

#### **Equality and Human Rights Commission: Equality Act 2010 Code of Practice "Code of Practice: Employment"**

##### *Appendix 1 The meaning of disability*

#### ***"What is a 'substantial' adverse effect?"***

8. A substantial adverse effect is something which is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people.

9. Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment; or because of a loss of energy and motivation.

10. An impairment may not directly prevent someone from carrying out one or more normal day-to-day activities, but it may still have a substantial adverse long-

term effect on how they carry out those activities. For example, where an impairment causes pain or fatigue in performing normal day-to-day activities, the person may have the capacity to do something but suffer pain in doing so; or the impairment might make the activity more than usually fatiguing so that the person might not be able to repeat the task over a sustained period of time.

...

***What are 'normal day-to-day activities'?***

14. They are activities which are carried out by most men or women on a fairly regular and frequent basis. The term is not intended to include activities which are normal only for a particular person or group of people, such as playing a musical instrument, or participating in a sport to a professional standard, or performing a skilled or specialised task at work. However, someone who is affected in such a specialised way but is also affected in normal day-to-day activities would be covered by this part of the definition.

15. Day-to-day activities thus include – but are not limited to – activities such as walking, driving, using public transport, cooking, eating, lifting and carrying everyday objects, typing, writing (and taking exams), going to the toilet, talking, listening to conversations or music, reading, taking part in normal social interaction or forming social relationships, nourishing and caring for one's self. Normal day-to-day activities also encompass the activities which are relevant to working life.”

35. *The Secretary of State's Guidance on matters to be taken into account in determining questions relating to the definition of disability (May 2011)*

“C4.

In assessing the likelihood of an effect lasting for 12 months, account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood. Account should also be taken of both the typical length of such an effect on an individual, and any relevant factors specific to this individual (for example, general state of health or age).”

**Time Limits  
Equality Act 2010**

36. By **s123 Equality Act 2010**, complaints of discrimination in relation to employment may not be brought after the end of

36.1 the period of three months starting with the date of the act to which the complaint relates or

36.2 such other period as the Employment Tribunal thinks just and equitable.

37 By s123(3) *EqA* conduct extending over a period is treated to be done at the end of the period. Failure to do something is to be treated as occurring when the person in question decided on it.

38 In **Commissioner of Police of the Metropolis v Hendricks [2003]** ICR 530, the Court of Appeal held that, in cases involving numerous allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken' in order to establish a continuing act. The Claimant must show that the incidents are linked to each other, and that they are evidence of a 'continuing discriminatory state of affairs'. This will constitute 'an act extending over a period'. The question is whether there is "an act extending over a period," as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed'. Paragraph [52] of the judgment.

### **The Agency Workers Regulations 2010**

39 By Regulation 18 an agency worker may present a complaint to an employment tribunal that a temporary work agency or the hirer has infringed a right conferred on the agency worker by regulation 5 [rights in relation to basic working and employment conditions], 12 [access to collective facilities and amenities], 13 [access to employment] or 17 (2) [right not to be subjected to detriment].

40 By Regulation 18 (4) an employment tribunal shall not consider a complaint under this regulation unless it is presented before the end of the period of three months beginning—

- (a) in the case of an alleged infringement of a right conferred by regulation 5, 12 or 17(2) ..., with the date of the infringement, detriment or breach to which the complaint relates or, where an act or failure to act is part of a series of similar acts or failures comprising the infringement, detriment or breach, the last of them;
- (b) in the case of an alleged infringement of the right conferred by regulation 13, with the date, or if more than one the last date, on which other individuals, whether or not employed by the hirer, were informed of the vacancy.

41 By Regulation 18(5): A tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

42 Regulation 18(6) provides: For the purposes of calculating the date of the infringement, detriment or breach, under paragraph (4)(a)—

- (a) where a term in a contract infringes a right conferred by regulation 5, 12 or 17(2) ... that infringement or breach shall be treated, subject to subparagraph (b), as taking place on each day of the period during which the term infringes that right or breaches that duty;

- (b) a deliberate failure to act that is contrary to regulation 5, 12 or 17(2) ... shall be treated as done when it was decided on.

### **Just and equitable extension**

43 In **Robertson v Bexley Community Centre T/a Leisure Link** [2003] IRLR 434 the Court of Appeal stated that there is no presumption that an Employment Tribunal should extend time unless they can justify a failure to exercise the discretion. Quite the reverse; a Tribunal cannot hear a complaint unless the Claimant convinces the Tribunal that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule.

44 In exercising their discretion to allow out of time claims to proceed, Tribunals may have regard to the checklist contained in s33 Limitation Act 1980 as considered by the EAT in **British Coal Corporation v Keeble & Others** [1997] IRLR 336. Factors which can be considered include the prejudice each party would suffer as a result of the decision reached, the circumstances of the case and, in particular, 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 party sued has cooperated with any requests of information, the promptness with which the Claimant acted once he or she knew of the facts giving rise to the course of action and the steps taken by the Claimant to obtain appropriate advice once he or she knew of the possibility of taking action

### **Conclusions**

#### **Identity of the Claimant's employer**

45 The Claimant accepted in evidence that Adecco was her employer. I have found that the contract [108-110] accurately reflected their relationship. The terms of that contract include, amongst other things, express retention of control by Adecco [clause 3]; provision for a guarantee minimum number of hours on paid assignment [clause 3]; exclusivity [clause 3]; paid annual leave [clause 6]; leave to be taken at times agreed by Adecco [clause 6]; requirement for absence to be authorised [clause 6]; disciplinary and grievance procedures [clauses 10 and 11]; provision for continuity of employment between assignments [clause 13]; provision for payment by Adecco for work done by the employee irrespective of whether the client has paid Adecco [clause 15]. I find that the Claimant was employed by Adecco and supplied by them on temporary assignment to Tower Hamlets as an agency worker.

46 The Claimant's employer for the purposes of these proceedings is the Second Respondent, Adecco UK Ltd.

#### **Length of service**

47 I am satisfied that the Claimant was employed by Adecco from 31 January 2018, she requested her P45 from the Second Respondent in October 2020 which it treated as bringing her employment to an end on 23 October 2020. Prior to 31 January 2018 the Claimant was supplied to Tower Hamlets as an agency worker by E Personnel. The Claimant's arrangement with E Personnel was under a contract for services and not as an employee and there is no continuous employment prior to 31 January 2018.

## Disability

48 I am satisfied that the Claimant is a disabled person within the meaning of the Equality Act 2021 as a result of her bronchiectasis and mild emphysema (COPD). Although the condition is described by her GPs as mild, I am satisfied that it has the effect of making normal day-to-day activities, such as housework, going up and down stairs and travelling on public transport, more than usually fatiguing for the Claimant. I remind myself that the threshold is a low one for a claimant to overcome.

49 I also had regard to Section D in respect of what constitutes normal day-to-day activities and the illustrative and non-exhaustive list of factors which, if they are experienced by a person, it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities contained in the Appendix to the Guidance.

50 I do not find that the Claimant was disabled at the relevant time as a result of the conditions of osteoarthritis affecting her left hip and osteopenia. I do not find that the Claimant has established that either of those two conditions had a substantial adverse effect on her ability to carry out day to day activities **at the time of the events in question**, nor has she established that the effects of those conditions were considered likely to be long term as at September 2020.

51 The only contemporaneous complaint the Claimant made was that she found sitting on a hardwood chair for some 7 hours at a time painful. The Claimant had requested a suitable office chair and at that time there was nothing to suggest that the pain was anything other than discomfort that would resolve if a chair was provided. I remind myself that anything which occurs after that time will not be relevant in assessing this likelihood. The Claimant did not complain to her GP about pain in her hip until November 2020 by which time she was no longer working for Tower Hamlets or Adecco.

## Time limits

52 The final issue listed for determination at this preliminary hearing is whether any claim was brought out of time and if so whether time should be extended. Early conciliation began on 2 November 2020 in respect of both Respondents, the claim form was presented 31 December 2020. It was not suggested that the claim for constructive unfair dismissal was out of time but time limits were raised in respect of the holiday pay and discrimination claims and apply equally to any claims under the Agency Worker Regulations. The primary time limit is the period of three months before the commencement of early conciliation, which is 3 August 2020.

53 I am satisfied that any claims in respect of requests to work from home are out of time. The Claimant accepted that she had been working from home since March 2020, she was allowed to work from home in November 2019 and the only period of time when she alleges was not allowed to work from home was in April 2019 [although that allegation was effectively withdrawn in evidence].

54 The complaint in relation to access to employment is also out of time, the relevant interview (which the Claimant in fact attended) took place in September 2019. It should be noted that the relevant right is that of being **informed** of the vacancy. The Claimant has not suggested that she was not informed of the vacancy- she applied for the job and

was interviewed, she complains she was not given support or encouragement in making her application.

55 I find that the only complaints that are potentially in time are the complaints in relation to the provision of IT equipment and a work phone, in the period July to September 2020; and without deciding the point, it is also arguable that the complaint in relation to payments for additional work in January 2020 is linked to these complaints and part of a series of acts. The complaints in respect of the failure to provide IT equipment and a work phone are brought as allegations of less favourable treatment under reg 5 of the Agency Workers Regs 2010 and as a failure to make reasonable adjustments under ss 20 and 21 of the Equality Act 2010.

56 I am not able to decide at this hearing whether the complaint of failure to pay the Claimant the same as a comparable employee for additional work in January 2020—brought under Reg 5 of the Agency Workers 2010- is out of time or whether this complaint is part of an act extending over a period. The Claimant argues that this is part of a series of events or a pattern of behaviour where she is overlooked or treated less favourably than permanent employees which continued through the period of working from home in lockdown when permanent employees were provided with work laptops and phones and she was not. That is a matter that will have to be decided by a Tribunal once it has heard all the evidence.

57 I do not find that it is just and equitable to extend time in relation to the complaints predating January 2020. The Claimant has not established a prima facie case that any of these earlier complaints form part of a series of events, nor has the Claimant satisfied me that it would be just and equitable to extend time in relation to these earlier complaints. On the evidence before me I do not find that she was unable to bring those complaints at or nearer to **the relevant time** because of her mental health (albeit her mental health deteriorated subsequently); she consulted a trade union in January 2020 and was aware of the CAB and availability of advice online but did not take any steps to pursue any claims; the Claimant had not raised any complaint or grievance about any of these matters; the only issue she raised at the time was her rolled -up holiday pay (and subsequently the refusal to allow her to rescind her resignation).

58 The matter has been listed for a final hearing and a further preliminary hearing for case management. The case management orders are set out in a separate document.

**Employment Judge C Lewis**  
**Date: 18 May 2022**