



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106349/2022

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Held via Cloud Video Platform (CVP) in Glasgow on 15 May 2023

Employment Judge I McFatridge

10 **Mr Richard Reed**

**Claimant
Represented by:
Mr D Robson -
Solicitor**

15 **Chris O'Brien**

**First Respondent
Represented by:
Mrs K Singh -
Consultant**

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Mrs Ann-Marie Campbell

**Second Respondent
Represented by:
Mrs K Singh -
Consultant**

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Mr John Sutherland

**Third Respondent
Represented by:
Mrs K Singh -
Consultant**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

35 (1) The claims of Unfair dismissal and Disability discrimination having been submitted out of time are dismissed.

(2) The claimant's application to amend his claim so as to include claims of Unfair Dismissal and Disability discrimination is refused.

(3) The claimant's application to include Nevis Range Development Company Ltd. As an additional respondent is refused

40 (4) The claims are dismissed

REASONS

1. A claim was presented to the Tribunal on 21 November 2022 by a Ms Eliza Sandford naming three respondents namely Mr O'Brien, Ms Campbell and Mr Sutherland. She ticked the boxes to state she had been unfairly dismissed and suffered discrimination on the grounds of disability. At box 8.1, she also stated "victimisation". She also attached a multiple claim form where she indicated she was making a claim on behalf of Mr Reed who is the claimant dealt with in this judgment (hereinafter referred to as "the claimant"). A paper apart was attached which also referred to a fourth respondent namely Nevis Range Development Company Limited albeit that company were not listed as a respondent in the claim form. In the paper apart, she makes reference to herself making a claim of unfair constructive dismissal and disability discrimination by association relying on the alleged disability of Mr Reed who she describes as her partner. The details of the claims provided were inspecific and there was nothing at all to suggest what claims were being made by Mr Reed. A preliminary hearing was held following which Judge O'Donnell issued a note and order for additional specification to be provided. Further details of the orders made are set out below.
2. On 27 February 2023, the claimant's representative sent to the Tribunal further particulars in respect of Ms Sandford's claim and also a fresh paper apart setting out the claimant's claim. In addition to this, a Scott Schedule was produced in respect of the claimant. On 15 March, the respondents' representatives wrote to the Tribunal confirming that they considered the document lodged on behalf of the second claimant, Mr Reed, pointed to an amendment and that they opposed the amendment. They set out their arguments as to why the claims should not be allowed to proceed at some length. The respondents also set out their amended response.
3. The parties were asked if they were happy for the amendment application to be dealt with on the papers but the respondents indicated that they wished a hearing. A further preliminary hearing then took place. At that hearing, the

first claimant Ms Sandford withdrew her claim of unfair constructive dismissal and it was agreed that her remaining claims were sufficiently specified to proceed to a hearing.

4. The employment judge noted that “the further particulars of Mr Reed’s claim
5 lodged on 27 February 2023 have therefore to be treated as an application to amend his case to substitute those particulars (including the Scott Schedule) as the basis of his claim. This amendment also seeks to add the additional respondent, Neves Development Company Limited.” The employment judge thereafter decided to fix a preliminary hearing in order to deal with the issue
10 of whether or not the amendment be allowed. He noted that Nevis Development Company Limited were not currently a party and he therefore sisted them as an interested party so that they might if so advised attend the hearing so as to protect their interests. He did not add them as a respondent.
5. At the hearing which took place by CVP, Mr Robson appeared for the
15 claimant, Mr Reed. Ms Kaur Singh appeared for the three respondents. She did not appear for Nevis Development Company Limited and there was no representation on behalf of that company. At the outset of the hearing, I had understood both parties to be relying solely on legal representations. During the course of his representations, Mr Robson indicated that the claimant was
20 present and able to give evidence. This was in response to a question from myself in relation to whether he had brought any medical evidence to the Tribunal. In the circumstances and given there was no medical evidence, I decided that It would be in line with the overriding objective to allow the claimant to give evidence even although, as an experienced representative I
25 would have thought that Mr Robson would have led this evidence at the start of the hearing. Thereafter, Mr Robson said he also wished to give evidence and unusually I permitted him to give evidence himself. This was immediately followed by the evidence of the claimant. Unfortunately, I was unaware at the time Mr Robson was giving evidence that the claimant was in the room with
30 Mr Robson at the same time however at the end of the day nothing turns on this.

6. On the basis of the evidence and the productions, I made the following factual findings in relation to the matter before me.

Findings in fact

7. The claimant previously worked for the Nevis Range Development Company Limited. The managing director of that company was a Mr O'Brien, the first respondent. The other two respondents are managers with that company.
8. The claimant has had a number of depressive episodes over the years. Past experience has suggested to him that the NHS has little to offer him when he is suffering from such an episode. In the past, he has found that the medication he has been prescribed does not agree with him. He has also attended various types of counselling but found this to be ineffective. As a result, he his way of dealing with what he considers to be a depressive incident involves him isolating himself from human contact for a period of around a month. As he puts it, he needs to go down to bottom before he can start coming up again. He describes his depression as not something that he has to live with in his everyday life but something which comes from time to time. Generally, he finds that if he completely removes himself from society, he will start coming back after a month.
9. The claimant is on friendly terms with Mr Robson who he has known for many years. Mr Robson describes himself as an expert specialist employment solicitor with more than twenty years experience. Mr Robson and the claimant had various conversations when his difficulties with his employer arose. As per the Scott Schedule, this was on or around 20 December 2021.
10. The claimant asked his partner to advise that he was unable to attend work, self certifying himself for 28 days. The claimant was in virtual continual contact thereafter with Mr Robson during the various stages of the absence management process and subsequent settlement negotiations involving the claimant and his employer. The claimant has set out his position in respect of the various interactions which took place over the period from December to May in his Scott Schedule. These include him submitting a 33 page grievance document in or about February 2022.

11. The claimant was subsequently dismissed on or about 19 May albeit it is the claimant's position that he did not open his email until 25 May.
12. The claimant describes himself as a very driven person who loves to work outdoors. He described the job with the Nevis Range Development company as his dream job. He was extremely upset to lose his job. He was also concerned that he lived in a small community and that others knew what was going on. He was also concerned that his partner, Ms Sandford, who also worked for Nevis Range Development Company Limited, was suffering as a result of her association with him. He described himself as feeling that she had a target on her back. He decided that he wanted to leave the Fort William area. Another reason for doing this is that he was due to be joining the volunteer mountain rescue team and he felt that he could not do it as he would not be safe to do the work in his present mental state and he could not face explaining to people his situation. He moved away to Northumberland. He describes himself as going deeper into depression. He was aware of the time limits for raising tribunal proceedings having discussed this on numerous occasions with Mr Robson.
13. During the period from May onwards, Mr Robson tried to contact him. His partner suggested to Mr Robson that he should contact the claimant and at least take him out for a pint. Mr Robson emailed the claimant and tried to contact him on numerous occasions without success. Mr Robson was concerned as he believed the claimant was having suicidal thoughts at this time.
14. At this point in time, Mr Robson's own situation was that the legal firm he had previously been associated with had gone bankrupt. He checked with the Law Society and noted that since he did not hold appropriate insurance cover, he could not himself go on record as representing anyone. In or about August 2022, Ms Sandford resigned. She completed the ET1 form herself and Mr Robson looked this over for her and it was lodged. Ms Sandford's position was that because she knew the owners of the Nevis Range Development Company Limited, she did not wish to raise proceedings against them. At that point, no details could be lodged for the claimant since they were still not in

contact with Mr Robson. The claim form was accepted on 23 November 2022. Early conciliation is noted to have started on 9 September and the acas certificate granted on 21 October 2022.

Observations on the evidence

5 15. I had no doubt that both witnesses were trying to assist the Tribunal by giving honest evidence. There was a distinct lack of detail in both witnesses' evidence and the claimant did not say where he was living after he left Fort William. He did not say when contact with Mr Robson was restored. He did not say when his mental health had improved to the extent that he could
10 instruct Mr Robson. There was no explanation why it was that given Ms Sandford was happy to include the claimant in her own claim which she lodged in November she could not have raised proceedings on behalf of the claimant then. There was no attempt to lodge any medical evidence on behalf of the claimant and given that the claimant's evidence was that he had not
15 consulted the NHS in respect of his mental illness, it would appear that none would exist.

Discussion and Decision

16. At the outset of the case, the claimant's representative indicated that the claimant had not in fact made a formal application to amend so as to include
20 Nevis Range Development Company Limited as a respondent to the claim. I advised him that the Tribunal had understood that he was making such an application given that he had listed Nevis Range Development Company Limited as a fourth respondent in the document he had submitted setting out Mr Reed's claim. In addition, it appeared to be common ground that Nevis
25 Range Development Company Limited were in fact Mr Reed's employer and given that he was intending to make a claim of unfair dismissal, such a claim would require to be made against the employer. Mr Robson sought an adjournment in order to take instructions and thereafter confirmed that he did wish to amend so as to include a claim against Nevis Range Development
30 Company Limited. He said he did so on the basis that he believed that they had deep pockets. He indicated that the claimant's primary desire was to

make claims against Mr O'Neill and the two individual respondents he said had assisted him and that he would only proceed to seek recovery against Nevis Range Development Company Limited if the individual respondents could not pay any compensation ordered.

- 5 17. I attempted to discuss with Mr Robson the legal basis on which claims were being made against the three individual respondents. I pointed out to him that this was not clear from the paper apart and Mr Robson indicated that he understood that it was clear from the Scott Schedule. Having checked the Scott Schedule, the Scott Schedule does not say anything either however
10 during the course of the hearing, I put it to Mr Robson that what he was saying was that the Tribunal had jurisdiction under section 39 of the Employment Act on the basis that discrimination had been carried out by the employer and that the individual respondent's liability rose under section 111 and/or 112 of the Equality Act. Mr Robson indicated that this was correct and I thereafter
15 proceeded on the basis that this was part of the claim albeit it is not specifically mentioned anywhere.
18. Mr Robson made reference to the case of Kaur v Edinburgh City Council. I indicated that I would be taking into account that judgment making my decision however albeit I appreciated that this was a matter of some
20 controversy. I also said that it appeared to be there were two issues of timebar here. The first is whether the claims were timebarred ab initio in that by the time the first ET1 was submitted, they were simply outwith the relevant statutory period. The second was that in exercising my discretion as to whether or not to accept the amendment, I required to take into account the
25 timing and manner of the application to amend.
19. Having confirmed this, Mr Robson's position was that he accepted that he was in some difficulty with regard to the unfair dismissal claim. It was difficult to argue that the claimant met the high hurdle of proving that it had not been reasonably practical to submit his claim within the initial three month time limit.
30 He very much accepted that the claimant had been aware of time limits. It was however his position that the Tribunal should exercise its discretion to allow the disability discrimination claim on just and equitable grounds. It was

his position that the claimant had been unable to submit his claim within the initial three month period because of his mental illness. It was his position that this had been caused by the respondent. It was his position that if the Tribunal did not extend time then the respondents would benefit from their own wrongdoing in that they had caused the mental ill health which had resulted in the claimant being unable to submit his claim on time.

20. The claimant's representative also referred to the balance of prejudice. He noted that the respondents had already submitted an amended response. They had already carried out the necessary work in dealing with the claim. When dates had been fixed for the final hearing, Judge O'Donnell had noted that the hearing would take five days of dealing purely with Ms Sandford's claim and seven days if it was also dealing with the claimant's claim at the same time. Dates had already been fixed. There was really very little prejudice to the respondent if the claim were allowed to proceed. On the other hand, if the claim was not allowed to proceed, there would be considerable prejudice to the claimant.

21. The respondents made a fairly brief submission in response. They essentially relied on the matters set out in their original letter objecting to the application to amend sent on 20 March 2023. The claimant conceded that he was aware of the time limits. They pointed out that no medical evidence had been led in respect of the claimant's mental ill health. The evidence was that the claimant had not even sought any treatment in respect of his mental ill health. Given that Mr Robson's evidence had been that the claimant was having suicidal thoughts, this would appear to have been somewhat unreasonable. They disputed that there would be no detriment to the respondent if the claim was allowed. Although they had submitted further and better particulars of their response, there would still be a considerable number of witnesses to be interviewed. The case would be longer and more complex.

22. It appeared to me that although the preliminary hearing was about an amendment, there were distinctive and unusual aspects to this case which made it different from the usual situation where an application to amend is made.

23. In the normal course of events, a claim is lodged with the Tribunal and the Tribunal requires to apply the various rules regarding time limits for claims before deciding whether those claims can proceed. If at a later stage an application to amend is made, then the decision as to whether or not to grant that amendment is purely one of discretion where the Tribunal is applying the overriding objective. There is a line of authority that in determining whether or not to exercise the discretion to allow an amendment, the Tribunal requires to take into account the timing and manner of the application to amend. The usual point however is that the Tribunal is not applying the statutory rules at that stage since the Tribunal already has jurisdiction. The situation in this case is different. The claimant submitted a claim to the Tribunal in November 2022 against three individuals, none of whom are his employer, and providing absolutely no detail whatsoever in relation to what he is claiming. Neither the Tribunal nor the respondent were aware of what the claim was about until the claimant submitted his further particulars on 27 February 2023. It appeared to me therefore that the first stage would be for me to determine whether the Tribunal had jurisdiction to hear these claims given the various time limits involved.
24. With regard to the claim of unfair dismissal, the relevant time limit is contained in section 111 of the Employment Rights Act 1996. Section 2 states: “...*an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal:*
- (a) *before the end of the period of three months beginning the effective date of termination or;*
 - (b) *within such period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.”*
25. Provisions exist for that time limit to be extended to take account of early conciliation under section 292A of the Trade Union and Labour Relations (Consolidation) Act 1992 however these are of no benefit to the claimant in

5 this case given that early conciliation was not commenced until more than 3
months after the effective date of termination of employment. Even if we
accept the claimant's position that his dismissal was not effective until he
opened his email on 25 May 2022 then the initial three month period expired
10 on 24 August 2022. The onus on demonstrating that it was not reasonably
practicable for the claim to have been submitted during the initial three months
period lies on the claimant. In this case, I was satisfied that the claimant had
not in any way met that test. It was clear that the claimant was well aware of
the applicable time limits. He was in touch with a specialist employment
15 solicitor. His partner was well aware of what was going on and able to
represent him. I was of no doubt that the claimant was genuine in his own
belief that he was suffering from a depressive episode but the fact of the
matter is that there was absolutely no medical evidence whatsoever
supporting his contention that his mental ill health made it not reasonably
20 practicable for him to submit the claim on time. Many individuals are upset
about losing their job and still manage to submit their claim in time. Individuals
suffering from depression submit claims within the time limit every day of the
week at the employment tribunal. As noted above, there was no detailed
evidence as to when the claimant became mentally well enough to instruct Mr
Robson directly rather than via his partner. There did seem to be the
25 suggestion that he was still unwell at the time the initial claim went in. In the
circumstances, it appears to me that the Tribunal had no jurisdiction to hear
any claim of unfair dismissal made by Mr Reed given the day that the
Employment Tribunal claim form naming him was submitted.

25 26. Dealing briefly with the issue of amendment, I should say that my view is that
it would not be appropriate to exercise my discretion in this case so as to add
Nevis Range Development Company Ltd as an additional respondent. The
reason that they were not added to the initial ET1 lodged on behalf of Mr Reed
(or at least naming him as an additional claimant) was that Ms Sandford did
30 not want to lodge a claim against them since she considered that she was on
friendly terms with other members of and owners of that company. It appears
she is still of that view given that she has accepted somewhat late in the day
that she cannot make a claim of unfair dismissal against individuals who are

not her employer. It appeared to me that this was not a case where the claimant has mistakenly sued the wrong party. It appeared that the claimant or at least those acting on behalf of the claimant at the stage the ET1 was submitted had made a conscious decision not to proceed against Nevis Range Development Company Ltd. It appears that the decision to include them has been made very late in the day and indeed was only confirmed following an adjournment at the commencement of today's hearing. Mr Robson in submission said that the claimant was only including them because they had deep pockets and he did not have the same personal relationship with them as his partner Ms Sandford. The application to add them comes very late in the day.

27. It is clear that this would change things substantially for the company. If they were sisted as additional respondents then they would be entitled to submit their own ET3 response. Ms Kaur Singh made it clear that she was not representing the company at this hearing. It may well be that they would wish to instruct their own representative. There may well be issues in relation to them wishing to take advantage of a statutory defence in order to repudiate vicarious liability. There is a strong likelihood that the dates already fixed for hearing in September might be lost. There is certainly a possibility that further complex litigation would be caused. In all the circumstances, I am not prepared to add Nevis Range Development Company Ltd as an additional respondent.

28. Given this decision, the unfair dismissal claim could not proceed in any event even if I had not already decided it was timebarred. That does however leave the possibility of the discrimination claim proceeding against the original three named respondents only on the same basis as the claim made by Ms Sandford and which I have clarified during the hearing as being a claim under section 111 and/or section 112. The issue is however that it would appear that there are also timebar issues in relation to the disability discrimination claim and indeed if I decide that the disability discrimination claim was not timebarred ab initio whether it is appropriate to allow the amendment so as to include it on the usual Selkent principles.

29. During his submission the claimant's representative conceded that the discrimination claim was submitted outwith the statutory three month period however, notwithstanding this, I considered it appropriate to look carefully at the relevant dates and the law. So far as jurisdiction is concerned, the appropriate section of the Equality Act is section 123 which states: "*subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of:*

- (a) *the period of three months starting from the date of the act to which the complaint relates, or*
- 10 (b) *such other period as the employment tribunal thinks just and equitable."*

....

- (3) *For the purposes of this section:*
- 15 (a) *conduct extending over the period is to be treated as done at the end of the period.*

30. In the claimant's schedule, the last act complained of is dated 4 August. As noted above, early conciliation commenced on 9 September and clearly this incident took place within three months of that. If this amounted to an averment that the claimant was the victim of discrimination, then clearly there is an argument that this was part of a course of conduct which included the earlier acts of alleged discrimination. This would have the effect that the whole of the claimant's claim would have been lodged in time had the initial complaint of disability discrimination being made at the time the ET1 was submitted.

31. A quick examination of the Scott Schedule however shows that the last act alleged which actually involves the claimant was his dismissal on 19 May. The claimant's own evidence at the hearing was that immediately after this he absented himself from the Fort William area and had no contact with anyone including his partner. He states that in fact he only found out about his

dismissal on 25 May when Mr Robson contacted him and told him to open his email. All of the incidents after 19 May are allegations that the respondents took some action against the claimant's partner. These are presumably the allegations which are the subject of the claimant's partner's own claim. It therefore did not appear to me that reading the claims made in the Scott Schedule and taking them at their highest, these could amount to acts of disability discrimination against the claimant. If I am wrong in this, then I would not be in a position to make a finding that the claim was timebarred at the point the ET1 was submitted since the issue of whether or not this act was part of a conduct extending over a period would require further evidence and it would only be possible to do this at a final hearing.

32. My initial view however based on the information currently before me is that these claims do not amount to stateable claims of disability discrimination against the claimant. The claimant was not there and there was no treatment of the claimant. The treatment complained of was solely directed against his partner.

33. The claimant's representative appeared in his submissions to accept that the claim was on the face of it submitted outwith the three month period so it would appear that he was not seeking to argue the continuing act point however I mention this for the sake of completeness.

34. The claimant's position at the hearing was that time should be extended on just and equitable grounds. His arguments were similar to those deployed in respect of the unfair dismissal claim although he considered that whilst this arguments may not be sufficient to meet the not reasonably practicable test, they were more than sufficient to meet the test of just and equitable relevant for the discrimination claim. Once again, the claimant was essentially relying on his mental ill health as being the reason why he did not submit his claim or engage in early conciliation during the initial three month period. Once again, this relies essentially on the claimant's own evidence that he was so mentally unwell over this period that he could not take these actions. Once again, the claimant's evidence was that he did not consult any medical professional and there is no medical evidence whatsoever in relation to what the claimant was

feeling. The Tribunal had the evidence of the claimant himself corroborated to some extent by the evidence of his legal advisor with whom he had been in sporadic contact prior to his dismissal. His legal advisor's position was that he had been unable to contact the claimant during the three month period and presumably is therefore unable to give any report on his mental health over this time.

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35. The period of delay in this case is fairly substantial. The claims are directed not against an employer but against three individuals. Whilst the claimant's representative once again argued there is little prejudice to the respondent, I find that this is not the case. The position of all three respondents was that they had been carrying out their duties and had become involved in the dismissal of an employee. No claim was lodged within the period following his dismissal however following his partner's resignation in August, the claim is subsequently submitted on behalf of the present claimant Mr Reed but with absolutely no detail. This is not the appropriate way to conduct litigation.

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36. Whilst there is undoubtedly a prejudice to the claimant if he is unable to pursue a claim which he considers to be justified, the background situation is that he was being fully advised by an employment law expert during the course of the disciplinary process and the negotiations leading up to this. Following his dismissal, he decides to completely absent himself from the scene. He now blames this on his mental health but is not prepared to provide one scintilla of medical evidence to back this up. Finally after some months and well outside the usual time limit, the claimant's partner submits her own claim and adds the claimant's name to this without providing any detail whatsoever as to what the respondents are supposed to have done. It is noteworthy that even at this stage, the particulars of claim do not clearly set out exactly how the Tribunal has jurisdiction over these individuals and if I am correct in saying the claim is under section 111 or section 112, what acts of the respondents are said to have contributed to this. Taking everything in account, I do not consider that it would be just and equitable to extend time in those circumstances. Accordingly, that would mean that the claim of disability discrimination requires to be dismissed as the Tribunal has no jurisdiction to hear it.

37. If I am incorrect in this however and if it were to be decided that in some way the claimant had successfully invoked the jurisdiction of the Tribunal by lodging a claim within the time limit contained in section 123 on the basis that it should be just and equitable to extend that time limit, I would have no hesitation in finding that the claimant's further application to amend his claim should be refused on the usual Selkent grounds. The situation here is in some ways unusual and other ways not unusual. What is not at all unusual is a claimant who considers that they have health issues and finding themselves in a dispute with their employers extending over a period and where they are eventually dismissed in circumstances which they consider to be discriminatory as well as unfair. It is the type of case the Tribunal deals with all the time.
38. What is unusual in this case is the peculiar way in which the claimant and his representative have chosen to go about the litigation. No claim whatsoever is submitted during the initial three month period following the claimant's dismissal. Early conciliation has not commenced.
39. The claimant's partner subsequently resigns around three months after the claimant has been dismissed and subsequent to that commences early conciliation on behalf of herself alone making claims against three of their mutual employer's managers. The claimant is included in this claim on the basis that it is a multiple but the paper apart to the claim does not mention anything at all in respect of the claimant, Mr Reed.
40. Subsequent to this, after an employment judge has made an order to that effect, the claimant issues an application to amend so as to set out claims of unfair dismissal and disability discrimination. The terms of the amendment are not particularly clear. They do not clearly set out how the three individual respondents are liable. The only acts which are complained of are acts of the employer. Incidentally, it was the cause of some puzzlement at the hearing as to why the claimant's representative initially sought to deny that he had ever made an application to include the employer whilst at the same time seeking to amend to include a claim of unfair dismissal. There is a Scott Schedule lodged which gives a fair amount of detail but it is likely that if the

amendment were accepted, further case management work would be required in order to identify the precise legal basis on which each of the individual respondents are said to be liable.

41. Going through the various matters mentioned in Selkent, I find that as far as
5 the extent of the amendment is concerned, it is a major one. The claimant is
adding entirely new heads of claim albeit to an existing claim which doesn't
have any specified heads of claim. So far as the timing and manner of the
amendment is concerned, it is concerning to note that these further particulars
10 were only provided after they were ordered by an employment judge. Neither
the claimant nor Mr Robson gave any clear evidence as to when the claimant
had become sufficiently fit to return from his self imposed exile from society
but it would appear that the respondents were not told even the basics of the
claim against them until March 2022, some ten months after the claimant had
15 left employment. I also consider that the way the claimant has conducted this
litigation as set out above to be quite inexplicable. This is especially the case
given that throughout the whole process, the claimant has had access to a
skilled legal advisor.

42. With regard to the balance of prejudice, there is no doubt that the prejudice to
20 the claimant if he is not permitted to pursue his claim if a valid one would be
severe. On the other hand, the claimant has only himself to blame for this.
Whilst he may genuinely have felt that he was going through a period of
mental ill health and whilst he may genuinely have wished to absent himself
from society, from the complete absence of any medical evidence, I do not
think I can accept it as a proven fact that he was too unwell over this period
25 to instruct either his partner or Mr Robson to deal with his claim. The prejudice
to the respondents is arguably less in that if the amendment were allowed,
they would have the opportunity of defending themselves at a hearing.
Having been said, it would appear that the hearing involving the claimant's
partner would have been fixed for five days but has been fixed for seven but
30 to allow for the claim made by the claimant to also be dealt with. That is
another two days of hearing time. Furthermore, I accepted the evidence of
the respondent's representative that whilst an amended response had been

submitted, there was no doubt that if the amendment were allowed, further work would have to be done in order to deal with it and this will involve the respondents in additional expense.

5 43. It is also clear to me that the individual respondents must have been placed in a situation of additional stress due to the way the case has been dealt with so far by the claimant and his representative and their complete ignoring of the usual employment tribunal norms.

10 44. In all the circumstances, even if I had found that the disability discrimination claim were not timebarred from the outset, I would not have been prepared to grant the claimant's application to amend for the reasons stated above. In those circumstances, I consider that it is appropriate to dismiss the claimant's claims in their entirety.

15 **Employment Judge: I McFatridge**
Date of Judgment: 12 June 2023
Entered in register: 12 June 2023
and copied to parties