EMPLOYMENT TRIBUNALS

Claimant: **Ms Sapphire Clarke**

Respondent: **The Mossbourne Federation**

Heard at: **East London Hearing Centre**

On: **25 September 2024**

Before: **Employment Judge Sugarman**

Representation

Claimant **Self Representing**

Respondent **Grace Holden, Counsel**

JUDGMENT

The Employment Tribunal does not have jurisdiction to hear the Claimant's claims under the Equality Act 2010 as they have been brought outside the three-month time limit set out in s123(1) of the Equality Act 2010 and it is not just and equitable to extend time. Therefore, all claims under the Equality Act 2010 are dismissed.

REASONS

Background

1. Following ACAS Early Conciliation between 26 April 2023 and 7 June 2023, by way of a Claim Form presented on 28 June 2023, the Claimant, an HR Administrator, brought claims of race and sex discrimination (direct discrimination, harassment and victimisation) and unlawful deductions from wages against her former employer. The Claim Form described a number of acts but was lacking in certain particulars, including in relation to the dates of the incidents set out.

2. There was a Preliminary Hearing before Employment Judge Massarella on 6 December 2023 when the issues were discussed. The Respondent's position was that acts predating 27 January 2023 were out of time and therefore the entire discrimination case was out of time given the acts the Claimant complained about all pre-dated that date. The Case Summary records:

> *"42. I explored this issue carefully with the Claimant at today's hearing. She confirmed that she was dismissed on 12 January 2023 and that she was told that her employment was ending on that day; she was paid in lieu of notice. Further, she told me that the last incident of discrimination happened earlier, at a staff meeting on or around Tuesday 29 November 2022, which was when 'Mr Greenman gave me my period knickers and sanitary lady products in a B&M bag in front of other staff members. Consequently, it seems that the discrimination claims are even further out of time than the Respondent initially believed"*

3. The claims would have been out of time even if the dismissal had been pleaded as an act of discrimination. Employment Judge Massarella listed a further Preliminary Hearing to determine, inter alia, whether the discrimination claims had been brought in time and if not whether time should be extended.

4. The case then came before Employment Judge Knight on 15 February 2024. He dealt with a number of preliminary issues, including a privacy order application. In breach of the Tribunal's earlier order, the Claimant had failed to prepare a witness statement but was permitted to give evidence which was elicited by the Employment Judge and she was then cross-examined. Unfortunately, having heard from the Claimant, he ran out of time and the case was part-heard.

5. Somewhat unusually, due to a forthcoming period of lengthy parental leave, the matter was relisted but not reserved to himself. Employment Judge Knight instead set out within the Case Management Order his record of the Claimant's evidence and ordered the parties by 29 February 2023 to confirm whether they agreed it was accurate and if not, to set out in what way. He further ordered that the use that could be made of the record, and any disputes as to its accuracy, could be dealt with at the next hearing.

6. Thereafter, in compliance with that aspect of the Order, the Respondent set out a number of proposed corrections. The Claimant then confirmed in writing she agreed with the record.

The Preliminary Hearing on 25 September 2024

7. It was necessary for me to deal with a number of matters before dealing with the question of time limits, including an application to amend to include allegations pertaining to dismissal. I have summarised these in a separate Case Management Order. The application to amend was not successful and so the last pleaded act of discrimination remained the staff meeting on or around Tuesday 29 November 2022.

8. The Claimant confirmed she agreed with Employment Judge Knight's record of her evidence, as modified by the Respondent's corrections.

9. I discussed with the parties the use that should be made of the written record and suggested it may be preferable to start the hearing afresh, so I could hear oral evidence from both parties. Both parties urged me not to do so.

10. The Respondent made the point that starting afresh was not what had been envisaged by Employment Judge Knight on the last occasion or proposed to the parties. Mrs Holden was concerned that if I did so, given the pace of the last hearing and the likely pace of this hearing given the Claimant was a litigant in person in need of some assistance, and the fact there were other matters to deal with on this occasion, including the application to amend by the Claimant that had not been committed to writing and the fact she had attended without a bundle of documents, there was a risk the matter would be part-heard again.

11. The Claimant urged me to rely on the record of her evidence from the last occasion too. She said giving evidence had been traumatic and she was not expecting to have do so again. Indeed, she would not feel comfortable being cross-examined again and was not prepared to do so today. She was however prepared to cross examine the Respondent's witness, Mr Greenman.

12. Although a somewhat unusual situation, given the parties' stance and the fact I had an agreed record of the Claimant's evidence, and alive to the danger of the matter going part-heard again which would not have been in accordance with overriding objective, I decided to proceed as requested.

13. After delivering my decision on the Claimant's application to amend, I invited Mr Greenman to give evidence. Contrary to what she had said initially, the Claimant said she was not ready to cross examine because she had not anticipated the amendment application would go against her. Although not a good reason, I took an early lunch to give the Claimant time to consider what questions she wished to put. On her return, the Claimant confirmed she was ready to put questions to Mr Greenman and he was cross examined.

14. Both parties then made submissions. Given by that stage it had gone 4pm and the Claimant had to leave to attend to child care commitments, I reserved my decision.

Findings of Fact

15. The purpose of the hearing was not to decide the merits of the Claimant's complaints but to decide whether the 3-month time limit ought to be extended on the basis it was just and equitable to do so, both parties agreeing the claim was prima facie out of time given the last act occurred more than 3 months prior to ACAS Early Conciliation commencing.

16. I am not making any finding about whether the last complaint, taken together with earlier alleged acts, do or arguably could form part of a continuing act. That would be a matter for the final hearing, were time to be extended in relation to the last pleaded act.

17. The Claimant commenced employment as an HR Administrator on 28 September 2021.

18. The last act about which complaint is made is that described in paragraph 2 of the Particulars of Claim, that the Claimant was given some sensitive personal items in a plastic bag in front of other members of staff, which the Claimant avers happened on or around 29 November 2022.

19. The Claimant did not lodge a grievance about that incident, or earlier ones, at or around the time of the events or indeed at any time prior to her dismissal.

20. The Claimant visited her GP on 12 December 2022 complaining of stress at work as a result of being bullied by her manager. She mentioned having withdrawn a previous complaint and felt like she would need to complain again. She was signed off for a month and prescribed Propranolol for 28 days. Prior to this, apart from talking about matters in her personal life that were causing her stress on a couple of occasions, there is no evidence the Claimant previously suffered with poor mental health.

21. The Claimant initially said she was signed off again in January 2023 but she returned to work on the day of dismissal. That was denied by the Respondent. I was provided with no medical evidence in support of such a contention, there was no further fit note and it was contrary to the Respondent's evidence. The Claimant later said she was not sure if she had been signed off again and she then accepted she had returned to work on 3 January 2023 and worked until her dismissal, albeit she was working from home. On the evidence available, I find she was not signed off again, did not see her GP again nor was she prescribed further medication in January 2023.

22. The Claimant was dismissed on 12 January 2023. The Respondent avers the dismissal was because of on-going concerns relating to timekeeping and performance.

23. On the same day, the Claimant asked for a copy of her contract because her union wanted a copy. She said, and I accept, she was not in fact a union member but was in touch with a friend who was.

24. The Claimant asked for a copy of the grievance policy and was given it on 17 January 2023.

25. The Claimant said in evidence she did not progress a grievance at that time because her mental state was poor and she was having panic attacks and trying to wean herself of the Propanolol. I do not accept that is correct:

    25.1 I have found above she did not reattend her GP in January 2023 and was not prescribed further medication. As such, the only medical evidence she has produced is the entry on 12 December 2022 and the accompanying fit note;

25.2 there is no mention of her suffering panic attacks in the entry on 12 December;

25.3 she returned to work in early January and worked until dismissal;

25.4 on 23 January 2023, the Claimant emailed Amy Wood of the Respondent asking her to provide a reference because she had secured a new role as an HR Partner. To get to that point, she had joined an agency and had already attended an interview.

26. I find it is more likely that the reason she did not lodge a grievance, contact ACAS or progress a tribunal claim at that time is not that she was too ill but rather is the reason she gave to Ms Wood, namely that she wanted to move on with her with life and did not wish to dwell on what had gone before.

27. On 2 February 2023, in emails about alleged outstanding pay, the Claimant made reference to speaking to "my solicitor" in the coming days. Her evidence, which I accept, was that she did not pay for a solicitor but did get advice from a friend who was a solicitor, albeit not an employment expert.

28. There was a sad and no doubt very upsetting event in the Claimant's life on 22 February when her cousin was stabbed which she says "set her back a bit". Seemingly having changed her mind since 23 January, she was however well enough to contact ACAS the day after the stabbing on 23 February. When she did so, she says she was advised to put in a grievance immediately "because of the time limitation".

29. On the same day, the Claimant was sent an email from ACAS directing her to various links "we promised to send you", one of which was the "Bullying, harassment and discrimination" page on the website and which said:

> *"Follow this link for further information on employment tribunal time limits."*

30. She lodged a grievance the next day on 24 February 2023, just over six weeks post dismissal. It raised a number of the matters that are covered in the Claim Form. It concluded by saying she wanted it looked into formally and:

> *"I have been allocated a caseworker who will be taking over my case under the reconciliation process before tribunal"*

31. The reference to the reconciliation process is likely to be to Early Conciliation, which I find was discussed on 23 February. As such, it is clear by this stage the Claimant was or ought to have been aware that there were time limits for bringing a claim, as well as the need to go through the Early Conciliation process with ACAS.

32. The Claimant's evidence at the Preliminary Hearing was that ACAS had advised her that if the Respondent was engaging with her it wouldn't be able to issue her with a Certificate and that is why she pursued the grievance. At one point she said she was waiting for her grievance outcome before starting Early Conciliation. I do not accept that is the advice she received. Not only would that be incorrect advice and contrary to the advice ACAS makes

publicly available, but that is not what she said in her grievance letter on 24 February 2023 and furthermore she did not act in accordance with that alleged advice because, as will be seen below, she did start Early Conciliation whilst the grievance process was on-going, just a week or so after her grievance interview. Further, it would not make a great deal of sense as she could not be issued with a Certificate until she had formally notified ACAS of a dispute. There is no documentary evidence to back up her claim either.

33. Although the Claimant had been dismissed, the Respondent agreed to investigate the grievance and appointed Marilyn Smyth, an independent investigator, to investigate. Ms Smith emailed the claimant on 18 March 2023 to seek to set up a Teams meeting. Ms Smyth sent chaser emails on 21 and 24 March 2023 having had no response. On 24 March, the Claimant replied stating that she had just suffered a bereavement (her cousin sadly died) and asked for another week. In her evidence, she said her cousin died on 6 March.

34. Ms Smyth was then on holiday for a couple of weeks, retuning 17 April 2023.

35. On 31 March, the Claimant contacted the ACAS helpline again and was sent information about Early Conciliation, including a link to the online form. She did not however fill it in.

36. The Claimant was interviewed by Ms Smyth on 19 April 2023. Ms Smyth gathered further evidence from the Respondent thereafter.

37. Before being issued with a grievance outcome, the Claimant contacted ACAS to start Early Conciliation on 26 April 2023.

38. The grievance outcome was issued to the Claimant by Chrystine Gittens on 23 May 2023. She appealed it on 2 June 2023.

39. Mr Greenman's evidence was that there is not exact timescale for the completion of grievances in the grievance policy, which was not in the bundle, but the Respondent aimed to deal with grievance within 30 days if possible but 60 is more likely if holidays intervene, as they did here. He said the amount of time it took to conclude the greivance here was not unusual.

40. The Early Conciliation Certificate was issued on 7 June 2023 and the Claim Form submitted on 28 June 2023, 4 months late.

41. As an HR advisor, the Claimant was aware of the ability to bring an Employment Tribunal claim on the back of a workplace grievance. She was not however familiar with Early Conciliation nor aware of time limits as a result of her work.

42. A number of potentially relevant witnesses are no longer employed by the Respondent. Several had left prior to the Claimant's grievance being submitted in February 2023. They include:

    42.1 Jannat Ahmed, an HR officer and colleague. The Claimant said she was a witness to some of the discriminatory and relevant events;

42.2 Safiya Laviniere left the Respondent's employment on 28 February 2023. The Claimant says she witnessed some of the discriminatory events;

42.3 Maria Harding, whom the Claimant says was a witness to a discriminatory act, left the Respondent's employ on 11 October 2022;

42.4 Christine Gittens, is no longer employed by the Respondent, she responded to the Claimant's grievance and the Claimant said she had witnessed some of the discriminatory events;

42.5 Jason Diamantis, someone the Claimant identifies as a comparator, left the Respondent's employ on 31 March 2023;

42.6 Natasha Hamilton, whom the Claimant relies upon as a comparator, left the Respondent's employ on 18 July 2022.

Parties' Submissions

43. Mrs. Holden for the Respondent relied upon her skeleton argument supplemented by oral submissions. She did not accept the Claimant's health had prevented her from contacting ACAS to start Early Conciliation or from lodging a claim. Nor did she accept the Claimant had received incorrect advice from ACAS. There was no corroborative evidence for that, it was unlikely and the evidence adduced by the Claimant was not consistent with her actions. She said there was no good reason why the claim could not have been brought earlier and the Claimant had assistance from both a trade union member and a solicitor, even if that were informal.

44. Mrs. Holden submitted it was not just an equitable to extend time because the Respondent was prejudiced evidentially given a number of relevant witnesses had now left its employment and it was more difficult to secure their cooperation and engagement.

45. The Claimant in her submissions pointed to her poor health, having been off for the whole of December 2022. She said she had been applying for jobs because she could not take working at the Respondent any longer. She pointed to her difficult personal circumstances following her cousin's stabbing and to bad advice from ACAS that she could not do anything until she had gone through the grievance process. She said the grievance process was delayed by the Respondent. She did not have previous involvement with employee relations cases and was unfamiliar with the process for starting tribunal proceedings.

The Law

46. Section 123 (1) of the EqA 2010 provides, so far as is material:

> *(1) Proceedings on a complaint within section 120 may not be brought after the end of—*

> *(a) the period of 3 months starting with the date of the act to which the complaint relates, or*
>
> *(b) such other period as the employment tribunal thinks just and equitable.*
>
> *(2) For the purposes of this section—*
>
> *(a) conduct extending over a period is to be treated as done at the end of the period;*
>
> *(b) failure to do something is to be treated as occurring when the person in question decided on it.*

47. These time limits are modified by the Early Conciliation regime by reason of s140B of the Equality Act 2010. However, where Early Conciliation is started after limitation has already expired, the conciliation period has no effect on time limits (as was accepted by Eady J in **Pearce v Bank of America Merrill Lynch** UKEAT/0067/19 at [23]). It may though be relevant to the question of a just and equitable extension.

48. In **British Coal Corporation v Keeble** [1995] UKEAT 413/94, Holland J had suggested that a tribunal should have regard to factors in section 33 of the Limitation Act 1980 which gives courts the power to extend the primary time limit in personal injury cases. Those factors are:

    a. the length of, and the reasons for, the delay;

    b. the extent to which the delay is likely to mean the evidence is less cogent;

    c. the conduct of the defendant after cause of arose and extent to which it responded to the claimant's requests for information / documents;

    d. any disability the claimant suffered from and its duration;

    e. the extent to which the claimant acted promptly / reasonably once knew he had a claim;

    f. steps taken by the claimant to get advice and nature of that advice.

49. However, in **Southwark London Borough Council v Afolabi** [2003] ICR 800, the Court of Appeal confirmed that whilst the checklist in s33 of the Limitation Act 1980 may provide a useful guide for tribunals, it need not be adhered to slavishly. In **Department of Constitutional Affairs v Jones** [2007] EWCA Civ 894, [2008] IRLR 128 , Pill LJ at para. 50 of his judgment referred to **Keeble** as "*a valuable reminder of factors which may be taken into account*" but continued: "*Their relevance depends on the facts of the particular case. The factors which have to be taken into account depend on the facts and the self-directions which need to be given must be tailored to the facts of the case as found*."

50. In **Robertson v Bexley Community Centre t/a Leisure Link** [2003] IRLR 434 the Court of Appeal held in relation to extending time: "*there is no*

presumption that [the employment tribunal] should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule."

51. That does not however mean that exceptional circumstances are required and **Robertson** does not set out any proposition of law to that effect. Subsequent cases have suggested the comments in **Robertson** need to be understood in their proper context, per HHJ Tayler in **Jones v Secretary of State for Health and Social Care** [2024] IRLR 275.

52. Indeed, in the Court of Appeal in **Chief Constable of Lincolnshire Police v Caston** [2009] EWCA Civ 1298, Wall LJ held that **Robertson** simply emphasised the "*wide discretion which an ET has…*" Sedley LJ agreed: *"…there is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised.*"

53. In **Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] ICR 1194, Lord Justice Leggatt, as he then was, said that the "*factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)*."

54. That does not mean that the absence of a good reason for the delay will automatically prevent time being extended. Leggatt LJ went on:

> *As discussed above, the discretion given by section 123(1) of the Equality Act 2010 to the employment tribunal to decide what it "thinks just and equitable" is clearly intended to be broad and unfettered. There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard.*

55. Exhausting internal procedures will not necessarily justify a delay but may be one of the relevant considerations. In **Apelogun-Gabriels v London Borough of Lambeth** [2001] EWCA Civ 1853, the Court of Appeal rejected the suggestion that there is a general principle that an extension should always be granted where a delay is caused by a claimant invoking an internal grievance or appeal procedure, unless the employer could show some particular prejudice. It held at §16:

> *"It has long been known to those practising in this field that the pursuit of domestic grievance or appeal procedures will not normally constitute a sufficient ground for delaying the presentation of an appeal."*

56. A similar point was made in **Robinson v Post Office** [2000] IRLR 804, that awaiting resolution of an internal grievance procedure would "of itself and without more" not normally be a good reason.

57. HHJ Auerbach in **Wells Cathedral School Ltd v Souter** UKEAT/0836/20 (20 July 2021, unreported) held that **Robinson** and **Apelogun-Gabriels** did not establish a rule of law and reminded tribunals there is a need to strike a balance between the benefits of resolving disputes without recourse to litigation and the need to ensure finality in legal proceedings and the need to avoid prejudice to the other party.

58. Ill health may justify a delay in presenting a claim if it has caused or contributed to a claimant not presenting a claim in time, as was the case in **Caston**.

59. A mistake or ignorance of the right to bring a claim or how to do so may also be a relevant factor and a provide an acceptable reason for late submission. It is usually necessary to consider whether the mistake or ignorance was genuine and reasonable (**Perth and Kinross Council v Townsley** [2010] 8 WLUK 208). In **Adedeji v University Hospitals Birmingham NHS Foundation** [2021] EWCA Civ 23, the claim was lodged 3 days late as he believed by restarting early conciliation he would get a further extension of time but had twice been told that was not the case. The Court of Appeal upheld the tribunal's decision not to extend time – the mistake was not a reasonable one in the circumstances.

60. The length of the period a claim is out of time will likely be relevant but a short period of time does not necessarily mean that an extension will be granted, whilst a long delay does not necessarily mean it will be refused, as **Adedeji** demonstrates. In considering delay, it is likely to be important to consider what the consequences of any delay are.

61. In **Miller v MoJ and Thompson v MoJ** UKEAT/0003/15/LA, Laing J in the EAT held that if there was forensic prejudice to the respondent, that may be "crucially relevant". However, the converse is not necessarily true so that if there is no forensic prejudice, that is not necessarily decisive and "may not be relevant at all".

62. Although some care may need to be taken, particularly in discrimination claims, the merits may also be a relevant factor, as long as they are assessed properly by reference to identifiable factors, taking into account that the tribunal does not have all the evidence at a preliminary stage (**Kumari v Greater Manchester Mental Health NHS Foundation Trust** [2022[EAT 132.)

Conclusions

63. It is not in dispute that the claims advanced by the Claimant are brought outside the 3 month time limit specified in s123(1) Equality Act.

64. The last incident about which complaint is made took place on or around 29 November 2022. As such, the Claimant ought to have contacted ACAS at the latest by 28 February 2023. She did not do so until nearly 2 months later on 26 April 2023. By that stage, her claim was already out of time.

65. The conciliation period lasted from 28 April 2023 – 7 June 2023. That did not, however, "stop the clock". The limitation period continued to run, albeit I accept the Claimant needed a Certificate to lodge her claim and wished to go through Early Conciliation before lodging. However, despite now being very late, on 7 June when the Certificate was issued, it still took her another 3 weeks to lodge her claim, meaning it is lodged 4 months out of time, 7 months after the last act of discrimination. That is considerably late in the context of a primary limitation period which is 3 months long.

66. The Claimant has proffered a number of reasons for the failure to submit the claim in time.

67. One of those reasons is her poor mental health. She says she was not well enough to progress a grievance earlier than she did, nor to initiate the claim. However, I am not satisfied that is right or that her health provides a good reason for the failure to submit the claim on time.

68. The Claimant was signed off in December 2022 with stress. However, she returned to work in January and continued working until her dismissal on 12 January. She did not go back to her GP. She was able to successfully apply for a new role having attended an interview by 23 January 2023. She wrote an eloquent email to the Respondent seeking a reference stating her desire to move on which I have found was her state of mind at the time. She was able to write a detailed grievance on 24 February 2023 and was able to engage with the independent investigator. There is no medical evidence her health was any worse in January- March than it was April – June 2023.

69. The Claimant also relies on ignorance of the correct time limit coupled with incorrect advice from ACAS. As to the latter, my finding above on the balance of probabilities is that she did not receive incorrect advice from ACAS. She was likely told it was prudent to lodge a grievance but that is not the same as being told that she must await the completion of the grievance process, or the Respondent's failure to engage with it, before starting Early Conciliation. I do not accept that is what she was told.

70. She was directed by ACAS to its website and the section on time limits on 23 February and she mentioned being allocated a caseworker who would be taking on her case under the "reconciliation" process before the tribunal in her grievance on 24 February. Thus, by that date at the latest, she was aware of her right to bring a claim in the tribunal, that there were time limits and the need to go through early conciliation. She had, at the very least, been referred to guidance about time limits which she could easily have looked up.

71. At the end of March, she was sent further information by ACAS about Early Conciliation. However, it seems she did not read it and she did not contact ACAS to start that process until 26 April 2023. By that stage, she still had no grievance outcome so cannot have been awaiting it before contacting ACAS.

72. The Claimant worked in HR and was aware from her role of her ability to bring a claim in the employment tribunal. She was an intelligent woman with access to both a trade union representative and a solicitor as friends. She was able to use the internet to research her rights.

73. There is much straightforward information available on the internet about time limits and early conciliation, aside from the information the Claimant had been specifically directed to.

74. It is more likely she decided not to bring a claim initially because she had made the decision to move on and had secured a new job, but then changed her mind and decided to lodge a grievance which she hoped would resolve matters without the need to bring proceedings. If she did genuinely believe she had to await the conclusion of the grievance process, or the Respondent not to engage with it, which I do not accept, I do not accept that belief or her ignorance generally of time limits was reasonable.

75. I have had regard to the incident involving her cousin and his very sad untimely death. However, that was not the reason she failed to progress the claim earlier, even if some of her focus was diverted to it. Indeed, she was able to contact ACAS the day after her cousin was stabbed. I have no doubt it was an upsetting time but it did not prevent her contacting ACAS or lodging a claim.

76. Overall, I am not satisfied there was a good reason for the delay. However, I am conscious that is not a reason on its own for refusing to extend time, rather I must weight it in the balance. I do take into account that there was a grievance process which the Claimant was following and that was a factor in her failure to present the claim in time, even if she had not been wrongly advised in relation to it. Similarly, some of the time which makes up the delay was spent in Early Conciliation, which is understandable and I do not hold that period of time against the Claimant.

77. However, she did not then act promptly when Early Conciliation had concluded. She waited another 3 weeks, without any good reason, before lodging her claim. She had received a grievance outcome by that stage too.

78. I take into account the Respondent's conduct post dismissal. The grievance did take about 3 months to deal with. However, given the circumstances, the period of time it took was not excessively long and there were reasons for it. I do not think its conduct culpable in the sense that it is a factor I ought to hold against it. There is no evidence, for example, it deliberately delayed the process so as to create time limit difficulties for the Claimant or that it gave her bad or misleading advice. Indeed, given the Claimant did not lodge a grievance until 6 weeks post dismissal, it could reasonably have declined to deal with it at all.

79. I have considered the prejudice to both parties. I am conscious that the Claimant will be obviously prejudiced if she is found to be time barred as it means she cannot proceed with her complaints under the Equality Act 2010. The Respondent is conversely prejudiced if time is extended because it will lose a limitation defence it is otherwise is entitled to.

80. However, the Respondent is also forensically prejudiced. The last pleaded act of discrimination is 28 November 2022. There are other acts the Claimant relies on predating that. There was no contemporaneous complaint and the Claimant's grievance was not lodged until nearly 3 months later on 24 February 2024. That meant the Respondent was unable to gather evidence about the events about which she complains contemporaneously. Then, she

did not then contact ACAS for another 2 months and did not lodge a claim for a further 2 months after that.

81. As a result, a number of likely relevant witnesses have left the Respondent's employment which will make it more difficult, though not impossible, for the Respondent to muster the relevant evidence and defend the claims.

82. The allegations the Claimant makes are ones that are likely to be dependent on oral evidence and recollection. This is not a case that can be determined on the documents. The period of the delay is likely to have caused a degradation of witnesses' memories to some extent, though there is no direct evidence as to decay of particular witnesses' memories on particular issues.

83. I am conscious that the case is at an early stage and it is a discrimination case so it is fact sensitive. It is difficult to take any clear view of the merits one way or the other on the basis of what I have seen and therefore I do not place weight on this as a factor.

84. Overall, balancing the prejudice to both sides and taking into account the other material factors, I have concluded that it is not just and equitable to extend time. The delay is significant, there is no good reason for it, the Claimant has not acted promptly even after being alerted to the existence of the fact there were time limits for bringing a claim and the balance of prejudice favours the Respondent.

85. As such, I decline to extend time and is my judgment that the Tribunal has no jurisdiction to hear the claims under the Equality Act 2010.

Employment Judge Sugarman
Dated: 15 October 2024