EMPLOYMENT TRIBUNALS

Claimant: **Gloria Pryce**

Respondent: **Airport Executive Limited**

Heard at: **Remotely via CVP for Watford Employment Tribunal**

On: **12 September and 3 October 2024**

Before: **Employment Judge L Robertson**

Representation
Claimant: **Mr J Neckles**
The claimant and (on 12 September) her daughter Monique Samuels were also present.
Respondent: **Ms P Hall, solicitor, Moorepay**
Mr Nixon (owner of the respondent) and Mr Patel (witness) were also present.

RESERVED JUDGMENT

1. The claimant's claims for a statutory redundancy payment and in respect of constructive dismissal are dismissed on withdrawal.

2. The complaints of unfair dismissal and breach of contract were not presented within the applicable time limit. It was reasonably practicable to do so. Those complaints are therefore dismissed.

3. The complaint of failure to make reasonable adjustments set out within the original claim form was not presented within the applicable time limit. It is not just and equitable to extend the time limit. The claim is therefore dismissed.

REASONS

PROCEDURAL MATTERS

1. The claim form was presented on 25 May 2023. This followed a period of ACAS conciliation between 14 March and 25 April 2023. The response was presented on or around 29 February 2024 after being re-served by the Tribunal on a different address and was accepted.

2. The case was listed for a preliminary hearing on 28 June 2024, to determine whether the Tribunal had the power to hear the claim which, it was said, appeared to be well out of time. That hearing was adjourned following preliminary discussions and re-listed for a full day on 12 September 2024.

3. At the hearing before me, Mr Neckles was representing the claimant. He explained that he was acting in the capacity of a family friend and not in a legal capacity. He informed me that he has a legal qualification, was familiar with Tribunal representation having done so for many years and assured me that he was on an equal footing with Ms Hall.

4. The claimant had, via her representatives, submitted different versions of documents in the days leading up to the hearing before me. A significant amount of time was spent at the start of the hearing discussing which version would be used at the hearing. The hearing was adjourned part-heard and re-listed on 3 October 2024.

5. Following the preliminary discussions, the following documents were before me:

    5.1. PH bundle for 12.9.24 (pages 1-248) (other than documents 30-38 which were not relevant or were without prejudice);
    5.2. Claimant's supplementary bundle of evidence (pages 249-274);
    5.3. Claimant's witness statement dated 4 June 2024 (which I shall refer to as the claimant's June witness statement);
    5.4. Claimant's supplementary witness statement dated 9 September 2024 (which I shall refer to as the claimant's September witness statement);
    5.5. Claimant's legal submissions (9 September 2024);
    5.6. Claimant's further and better/amended particulars of claims (9 September 2024) (Mr Neckles confirmed that references to 23 July 2022 should read 24 August 2022);
    5.7. Claimant's amendment notice of application and legal submissions (9 September 2024);
    5.8. Mr J Patel's witness statement dated 16 June 2024 (although this related to the late presentation of the response rather than the issues before me);
    5.9. Mr J Patel's supplementary witness statement dated 6 September 2024;
    5.10. Respondent's closing submissions (11 September 2024);
    5.11. Ms Hall's cost warning email to the claimant's solicitors (undated, but appears to pre-date the 28 June hearing).

    I made it clear to the parties that I would only read and take into account the documents to which I was referred.

6. At the hearing on 12 September 2024, there were preliminary discussions about the complaints which the claimant had brought in her claim form. The claimant had brought the following complaints in her claim form:

    6.1. 'Ordinary' unfair dismissal;

    6.2. Failure to make reasonable adjustments. The claimant relies on osteoarthritis to her wrists and scleritis as amounting to a disability, and says that work-related stress triggered and compounded those two conditions. The claimant says that the respondent had a "PCP" (a

provision, criterion or practice) (or PCPs) that employees were required to carry out their duties during their hours of work from the office. The claimant says that the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that it led to (i) her absence between 10 August 2020 and her dismissal; and (ii) her dismissal. The claimant suggests that the respondent could have adjusted her duties, hours of work and/or location of work to avoid the disadvantage; and

6.3. Breach of contract claim for wrongful dismissal.

7. Although Mr Neckles informed me that the claimant's primary position was that her further and better/amended particulars of claims document simply provided further particulars of existing claims and no amendment was needed, he had submitted an application to amend her claim in the alternative. Mr Neckles accepted that no complaints other than those identified at paragraph 6 above were set out within the claim form and, specifically, that there was no reference to the dismissal of the appeal in the claim form. As such, it was appropriate to deal with this as an application to amend her claim in relation to the complaints not listed at paragraph 6 above.

8. The issues for this hearing were agreed to be as follows (although there was a dispute between the parties as to the order in which those issues should be determined):

8.1. Should the claimant's application to amend her claim be granted?

8.2. Was the unfair dismissal complaint presented within the time limit set out in section 111 Employment Rights Act 1996 ("ERA")? This will include deciding what was the effective date of termination.

8.3. Was the breach of contract complaint presented within the time limit set out in Article 7 of the Extension of Jurisdiction (England and Wales) Order 1994? This will include deciding what was the effective date of termination.

8.4. If not, in relation to the unfair dismissal and breach of contract complaints, was it reasonably practicable to present the complaint to the Tribunal within the time limit? If not, was the complaint presented within such further period as the Tribunal considers reasonable?

8.5. Was the discrimination complaint made within the time limit set out in section 123 of the Equality Act 2010 ("Equality Act")? To the extent that it is necessary, this will include determination of whether the claim was brought within a further period that the Tribunal thinks is just and equitable.

9. Mr Neckles confirmed that the claim for a redundancy payment and the complaint of constructive dismissal were withdrawn. The parties were content for me to dismiss those complaints on withdrawal.

10. I informed the parties that the respondent's application for strike out or a deposit order would not be dealt with at this hearing. Consideration could be given to listing a further preliminary hearing to determine that application depending on the outcome of this hearing.

11. I heard oral evidence from the claimant and Mr Patel and oral submissions from both parties during this preliminary hearing. However, there was not enough time for me to reach a decision because of the length of time that was taken discussing preliminary matters and hearing oral evidence and so I reserved my decisions. Taking into account *Sakyi-Opare*, I decided that it was appropriate to decide the application to amend the claim first - my decision in relation to that is set out in separate Orders. Having refused that application, I decided the remaining issues as set out below.

FINDINGS OF FACT

12. The claimant's employment by the respondent began on 31 March 2007. She worked as a telephonist.

13. The claimant was absent from work due to sickness from around 10 August 2020 until her employment terminated. Most of the fit notes relate to work-related stress, or stress and joint pain. There is a reference to ear and eye problems in 2020. The last fit note before me relating to the period of the claimant's employment is for the period 11 January 2022 to 11 February 2022, and states that the claimant was not fit for work due to joint pains and stress. It is clear from the medical evidence before me that the claimant was given a diagnosis of scleritis in 2003 and had a diagnosis of osteoarthritis of wrist by February 2022.

14. The claimant's employment was terminated by way of a letter dated 9 May 2022. That letter was clear and unambiguous in that it said, "we regrettably advise you that it is the Company's decision to terminate your employment with effect from 09/05/22."

15. There was a dispute as to whether the letter was effective in terminating the claimant's employment with immediate effect, given that her employment had been terminated by reason of capability, she was entitled to 12 weeks' notice and the respondent's handbook stated that employees dismissed for capability would be dismissed with notice or payment in lieu of notice. The letter was silent as to notice or notice pay and Mr Patel acknowledged that this was an error. The handbook makes clear that the capability policy is non-contractual and the contract is silent in relation to the matter. Whether or not it was contractual, however, that does not change the effect of the letter which is to terminate the claimant's employment with immediate effect.

16. It was common ground that the letter was sent to the claimant by email on 10 May 2022.

17. Although I accept that the claimant was experiencing health problems around the time of her dismissal, I do not accept her evidence that she did not read the dismissal letter until 1 June 2024 due to the eye problems she was experiencing at the time:

    17.1. The claimant's solicitors did not assert that the claimant did not open the letter until 1 June in correspondence relating to the appeal, even though there was an issue about the appeal being submitted out of time.
    17.2. There is no reference to this in the claimant's June witness statement. The June Case Management Orders include a detailed description of the claimant's position as to when her dismissal took effect but make no

reference to reading the dismissal letter on 1 June. The first reference to this is in the claimant's September witness statement.

17.3. There is a fit note in the bundle which states that the claimant was unfit for work due to stress, eye inflammation and joint pain between 15 May 2022 and 17 August 2022. Although she was deemed unfit for work during this period, there was no medical evidence before me about the claimant's ability to read items of correspondence.

17.4. The claimant gave oral evidence that sclerosis, "prevents [her] from reading *for a long time* [my emphasis]."

17.5. The claimant's evidence was inconsistent with the documentary evidence. She said that she was unable to be on a computer and that neither she nor her daughter were looking at the claimant's emails between 9 May and 1 June 2022. However, fit notes had been sent from the claimant's personal email address to the respondent on 18 and 20 May 2022 (pages 155-156), despite Mr Patel's further response on 18 May saying, "there is no need to keep sending us the sick notes as your employment was terminated on 9th of May 2022, as per our letters and emails sent to you Gloria." I do not accept Mr Neckles' submission that the claimant's daughter had sent these emails using the claimant's email address (the claimant did not give evidence about this specifically) – the emails are sent from the claimant's email address and are signed 'Gloria'. Had the claimant's daughter sent the emails, I find it likely that at the very least she would have signed the emails with her own name. I find that the claimant was accessing and sending emails during this period.

17.6. The claimant was inconsistent in oral evidence as to whether she or her family members were reading hospital letters at this time.

17.7. Mr Patel had no actual knowledge as to when the claimant saw and read the 10 May 2022 email.

18. I find on balance that the claimant read, or had a reasonable opportunity to read, the dismissal letter on the day it was sent to her, 10 May 2022.

19. There was a dispute about whether the termination letter was also sent by first class post and recorded delivery. Given my findings about the email, it is not necessary for me to make findings about this.

20. On 1 June 2022, the claimant appealed against her dismissal. She did this by email (page 247). I accept the claimant's evidence that she saw a solicitor and instructed them on 7 June 2022. The claimant's solicitor was instructed to deal with her appeal on her behalf; the claimant did not feel well enough to deal with it personally. Her solicitor sent a further letter of appeal to the respondent on 17 June 2022, which was copied to the claimant's personal email address.

21. There were several items of correspondence before me relating to the claimant's appeal. After protracted correspondence about whether the claimant would agree to an occupational health assessment, the respondent wrote to the claimant on 20 January 2023 to advise that it could do no more in relation to the claimant's appeal and considered the matter closed (page 62). On 9 February 2023, the respondent responded to further correspondence from the claimant's solicitor, affirmed that the matter was closed and stated that the claimant's appeal can only be dismissed.

22. At the June hearing, the claimant's position appeared to be that her employment status had been uncertain throughout the appeal process such

that time for bringing a claim had not started until after the appeal had been concluded in February 2023 – that position appeared to have been abandoned before this hearing. The correspondence relating to the appeal does not indicate that the claimant's employment was continuing throughout the appeal process. Although the claimant's evidence was that the respondent advised her to file a Tribunal claim after her appeal was concluded, I do not accept this – the respondent said that, if she wished to bring a claim, it would forward any papers to its legal representatives but would welcome a discussion with ACAS.

23. I am not persuaded by the claimant's evidence that she did not receive advice about the applicable time limits until after the appeal process ended:

    23.1. The claimant had instructed a solicitor and had been made aware of the option to pursue litigation but decided not to. That litigation was in the claimant's contemplation is evident from the letter at pages 48-49. It is inherently unlikely that that legal representative would not have discussed the applicable time limits with her at that point in time. It is clear from her written evidence that she had weighed up whether or not to bring an Employment Tribunal claim around early June 2022 and decided not to.

    23.2. When the claimant was asked when exactly she had been told by her solicitor about the three month time limit for bringing claims, the claimant was initially not sure and later said that it was not until after the appeal, indicating that it was on or after 9 February 2023.

24. I do not accept that the claimant was advised that the time limit for bringing a claim about her dismissal started to run after her appeal was concluded:

    24.1. Legal representatives practicing in employment law can reasonably be assumed to know the applicable time limits and that the time for bringing a claim about a dismissal starts to run when the employment ends, not after an appeal is concluded. The claimant's position is implausible and unsupported by written correspondence from her legal representative.

    24.2. The claimant's own evidence is inconsistent. At paragraph 5 of her September witness statement, she says that she came to learn later that she had 3 months from the 24th August 2022 (the date the claimant says her dismissal took effect after a period of 12 weeks' notice) to submit her claim to an Employment Tribunal. At paragraph 7 of the same witness statement she says she was told by her solicitor that the three month time limit would start on the date her appeal was concluded (9th February 2023), taking the deadline to 8th May 2023, and that with a one month extension for ACAS early conciliation the deadline for presenting her claims was 25th May 2023.

25. I find on balance that the claimant's legal representative advised the claimant correctly as to the applicable time limits for bringing a claim relating to her dismissal prior to their letter of 17 June 2022.

26. The claimant's position was that after instructing solicitors she, "left all matters to be dealt with on [her] behalf by [her] solicitor." I do not accept this as solicitors rely on their client's instructions to be able to take action.

27. When asked in oral evidence about how her health conditions affected her between receiving her dismissal letter and mid-August 2022, she said that she had a lot of doctor and hospital appointments in May, June and July and a flare up of her scleritis had started in April 2022 and that sometimes it takes a long time to get well. I accept this. She attended the Emergency Department in relation to her eye on 8 April 2022. She had a further outpatient eye clinic appointment on 4 May 2022.

28. When asked in oral evidence about how her health conditions affected her ability to instruct her solicitors between receiving her dismissal letter and mid-August 2022, the claimant said that, during this period, she was mainly liaising with her solicitors via her daughter but confirmed that her daughter kept her informed about what was happening and her solicitor's advice and communicated the claimant's instructions to her solicitor. I accept this.

29. The claimant was able to instruct her solicitors during late July; on 26 July 2022 her solicitor was able to respond to the respondent's correspondence received the previous day. She was also able to instruct her solicitor in early August 2022 - the claimant's solicitor sent an email on 8 August 2022, having taken instructions from the claimant. Her solicitor also sent correspondence on 31 August 2022 after taking the claimant's instructions.

30. I find on balance that the claimant read emails sent to her about her appeal on 25, 26 and 27 July 2022 and 8 August 2022. I make that finding because, on 8 August 2022, her solicitor asked that the respondent deal with them directly (page 55-56) and it is likely that they did so at the claimant's request.

31. I find that the real reasons for the claimant's decision not to bring a claim sooner were: the financial implications; her belief that the respondent would be likely to reinstate her if her solicitors were to deal with her appeal; and her intention to pursue settlement discussions in order to try to avoid litigation.

32. The claimant's supplementary witness statement stated that her reported sickness absence conditions (scleritis, osteoarthritis of wrist and work-related stress) became more pronounced and debilitating between 15 September 2022 and 25 May 2023:

    32.1. The claimant's supplementary witness statement states that her scleritis worsened greatly between 15 September 2022 and 25 May 2023. Her evidence was that she had severe and constant bilateral eye pain which radiated to her forehead and jaw, and her eyes were light sensitive and watery all the time and she had difficulty seeing due to inflamed eyes;

    32.2. Due to her osteoarthritis, she was physically unable to use her hands to write or type anything; and

    32.3. Her work-related stress and physical health conditions left her depressed.

33. When asked in oral evidence about how her health conditions affected her ability to instruct her solicitor between September and November 2022, the claimant said that things were not good during that period and there were long delays in talking to her solicitor as she was more focussed on her health. Based on Mr Neckles' submissions, it is clear that not all of the appeal-related

correspondence was before me. According to those submissions, however, the claimant's position was that there was a delay in arranging an occupational health assessment until around December 2022, which was on the part of the respondent and not the claimant.

34. When asked about how her health conditions affected her ability to instruct her solicitor between December 2022 and February 2023, the claimant said that at times she spoke to her solicitor and at times her daughter did so on her behalf. She was able to instruct her solicitor to send an email to the respondent on 19 December 2022 and 16 January 2023 (as per Mr Neckles' submissions). She was able to instruct her solicitor in relation to the respondent's letter of 20 January 2023, enabling them to respond on 3 February 2023 (pages 63-64).

35. I also note that she was able to instruct her solicitor to commence ACAS early conciliation on 14 March 2023 and in relation to her claim which was presented on 25 May 2023. I also find that was able to instruct her solicitor thereafter; there was no evidence to the contrary. There is no medical evidence that the claimant was unable to read correspondence or instruct solicitors at any stage. Although the claimant had health problems and gave oral evidence that sclerosis prevented her from reading for a long time, I find on balance that she was able to read emails and documents and instruct her representatives throughout the period from her dismissal to September 2024, although at times her daughter assisted her with this.

36. Mr Patel was a part-owner of the respondent during the periods relevant to the claim and dealt with the claimant personally thoughout. I accept Mr Patel's clear and cogent evidence that he and Mr Sharma reached the decision to dismiss the claimant on 9 May 2022. On 4 December 2023, the shares in the respondent were sold and Mr Patel resigned.

37. The claimant ceased to be represented by her solicitors before the June hearing – she was unsure of the date on which they ceased to be instructed but thought it was the day before that hearing.

RELEVANT LAW

CLAIMANT'S APPLICATION TO EXTEND TIME LIMITS FOR HER EXISTING TRIBUNAL CLAIM

UNFAIR DISMISSAL AND BREACH OF CONTRACT COMPLAINTS

38. The time limit for presenting an unfair dismissal claim is set out at section 111 of the ERA, the relevant sections of which are as follows:

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, 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 with the effective date of termination, or

(b) within such further 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.

39. The time limit for presenting a breach of contract claim is set out at Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the 1994 Order"), the relevant sections of which are as follows:

Subject to article 8B, an employment tribunal] shall not entertain a complaint in respect of an employee's contract claim unless it is presented—

(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or

(b) where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has terminated, or

…

(c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.

40. I have not included the provisions relating to an extension of time for early conciliation as early conciliation was not commenced within the primary time limit.

41. Following *Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372*, the term 'reasonably practicable' means something like 'reasonably feasible'. As Lady Smith in *Asda Stores Ltd v Kauser EAT 0165/07* explained: 'the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done'.

42. Following *Marks and Spencer plc v Williams-Ryan [2005] EWCA Civ 470, [2005] ICR 1293*, the question of what is reasonably practicable should be given, "a liberal interpretation in favour of the employee."

43. In *Schultz v Esso Petroleum Co Ltd 1999 ICR 1202, CA*, the Court of Appeal accepted that illness may justify the late submission of claims. The Court held, "whenever a question arises as to whether a particular step or action was reasonably practicable or feasible, the injection of the qualification of reasonableness requires the answer to be given against the background of the surrounding circumstances and the aim to be achieved … in assessing whether or not something could or should have been done within the limitation period, while looking at the period as a whole, attention will in the ordinary way focus upon the closing rather than the early stages."

44. In *Bodha v Hampshire Area Health Authority 1982 ICR 200, EAT*, it was held that the existence of an impending internal appeal was not in itself sufficient to justify a finding that it was not reasonably practicable to present a complaint to a tribunal within the time limit. This view was expressly approved by the Court of Appeal in *Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, CA*.

45. If the Tribunal decides that it was 'not reasonably practicable' to present a claim within the prescribed time limit, the Tribunal must then go on to decide whether the claim was presented 'within such further period as the Tribunal considers reasonable'. This is essentially a question of fact for the Tribunal to determine.

EQUALITY ACT

46. The Claimant has brought a complaint of failure to make reasonable adjustments pursuant to sections 20 and 21 Equality Act. The time limits provisions of the Equality Act are set out at section 123, which states:

(1) Subject to section 140B 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.

…..

(3) 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.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

47. The three month time limit set out in section 123(1)(a) is not absolute. An employment tribunal has discretion to, in essence, extend the time limit for presenting a complaint where it thinks the complaint was brought within such other period as the Tribunal thinks just and equitable. Although this is a broader discretion than is the case in unfair dismissal claims, it is not without limits. In *Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434 (at para 25)*, the Court of Appeal stated:

"It is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule."

48. There is no requirement for exceptional circumstances to exist before time may be extended, simply that it must be just and equitable to do so. The Court of Appeal emphasised that there is no need to go through every factor set out in the s33 Limitation Act 1980 'checklist' recommended in *British Coal Corporation v Keeble [1997] IRLR 336*. Underhill LJ stated at paragraph 38 of his judgment: *"The best approach for a Tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time including……the length of, and the reasons for, the delay."*

49. In *Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] ICR 1194*, it was held that section 123 gave the tribunal the widest possible discretion to extend time, with no list of factors to consider. However, the length of and reasons for the delay would almost always be relevant, as would prejudice to the respondent. The discretion's width meant that there was limited scope to challenge it on appeal, unless the tribunal had erred in principle (paras 18-20).

50. That case also held that there was no justification for reading into s.123 a requirement that the tribunal had to be satisfied that there was a good reason for the delay, let alone that time could not be extended absent an explanation from the employee. 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. However, the identification of reasons and the weight given to them were matters for the tribunal (paras 25-26).

51. In *Secretary of State for Justice v Alan Johnson [2022] EAT 1 (28 September 2021, unreported)*, the EAT held (at paragraph 23) that prejudice caused to the respondent may be a reason which weighs against a just and equitable extension, even in relation to prejudice which is not the fault of either party.

52. Delay caused by a claimant invoking an internal grievance or disciplinary appeal procedure prior to commencing proceedings may justify the grant of an extension of time but it is merely one factor that must be weighed in the balance along with others that may be present: *Robinson v Post Office [2000] IRLR 804, EAT*.

CONCLUSIONS

53. I considered the legal principles set out above, in addition to those set out in both representatives' helpful written and oral submissions. I have not reproduced the contents of those submissions in this Judgment in the interests of brevity. Suffice it to say that I fully considered all the submissions made, together with the statutory and case-law referred to, and the parties can be assured that they were all taken into account in coming to my decision.

WAS THE UNFAIR DISMISSAL COMPLAINT PRESENTED WITHIN THE TIME LIMIT SET OUT IN SECTION 111 ERA 1996? THIS WILL INCLUDE DECIDING WHAT WAS THE EFFECTIVE DATE OF TERMINATION.

54. Mr Neckles conceded that this claim was presented outside of the relevant time limit.

55. A letter of dismissal only takes effect when the employee has read the letter or had a reasonable opportunity of doing so. I have found that the claimant read, or had a reasonable opportunity to read, the dismissal letter on 10 May 2022. I have also found that the dismissal letter was clear and unambiguous and terminated the claimant's employment with immediate effect. The effective date of termination of the claimant's employment was therefore 10 May 2022.

56. Pursuant to section 111 ERA, a complaint of unfair dismissal must (subject to any extension of time) be presented before the end of the period of three months beginning with the effective date of termination. ACAS early conciliation was not commenced within the primary time limit and therefore does not extend the time limit. The time limit for presenting her claim therefore expired on 9 August 2022. Her claim was presented on 25 May 2023, and was therefore out of time.

WAS THE BREACH OF CONTRACT COMPLAINT PRESENTED WITHIN THE TIME LIMIT SET OUT IN ARTICLE 7 OF THE EXTENSION OF JURISDICTION (ENGLAND AND WALES) ORDER 1994? THIS WILL INCLUDE DECIDING WHAT WAS THE EFFECTIVE DATE OF TERMINATION.

57. Mr Neckles conceded that this claim was presented outside of the relevant time limit. For the same reasons as set out above in relation to her unfair dismissal complaint, the effective date of termination of the claimant's contract of employment (the contract giving rise to the claim) was 10 May 2022.

58. Pursuant to Article 7(a) of the 1994 Order, a breach of contract complaint must (subject to any extension of time) be presented before the end of the period of three months beginning with the effective date of termination. ACAS early conciliation was not commenced within the primary time limit and therefore does not extend the time limit. The time limit for presenting her claim therefore expired on 9 August 2022. Her claim was presented on 25 May 2023 and was therefore out of time.

IF NOT, IN RELATION TO THE UNFAIR DISMISSAL AND BREACH OF CONTRACT COMPLAINTS, WAS IT REASONABLY PRACTICABLE TO PRESENT THE COMPLAINT TO THE TRIBUNAL WITHIN THE TIME LIMIT? IF NOT, WAS THE COMPLAINT PRESENTED WITHIN SUCH FURTHER PERIOD AS THE TRIBUNAL CONSIDERS REASONABLE?

59. As set out above, these two complaints were presented over 9 months late. Although I accept that the claimant was experiencing health problems at the time, I have found that the claimant was, between her dismissal and the expiry of the time limit, instructing her solicitor in relation to the appeal. This was at times done directly and at other times via her daughter, but the claimant at all times was giving the instructions. In particular, I found that the claimant's solicitor sent an email on 8 August 2022 in relation to the appeal – the day before the expiry of the three month time limit - having taken instructions from the claimant. Had she wanted to bring a claim, she could have instructed her solicitor to do so within the time limit - that is in fact what she did in May 2023. Alternatively, she could have drafted the claim herself to save legal costs – perhaps with the assistance of her daughter.

60. I found that the claimant was legally represented and decided not to bring a claim sooner than she did in the knowledge of the applicable time limits. The

claimant accepted that she had given instructions to her solicitor to progress her appeal and settlement rather than commencing a Tribunal claim. The respondent did not mislead the claimant or her solicitor about the applicable time limits. There was no evidence that the respondent did anything to impede, discourage or prevent the claimant from presenting claim in time.

61. The claimant was legally represented and in these circumstances I conclude that the existence of an on-going appeal process is not in itself sufficient to justify a finding that it was not reasonably practicable to present a complaint to a tribunal within the time limit.

62. I conclude that, by exercising reasonable diligence, claim could and should have been presented in time.

63. The complaints of unfair dismissal and breach of contract were not presented within the applicable time limit. It was reasonably practicable to do so. Those complaints are therefore dismissed.

WAS THE DISCRIMINATION COMPLAINT MADE WITHIN THE TIME LIMIT SET OUT IN SECTION 123 OF THE EQUALITY ACT 2010? TO THE EXTENT THAT IT IS NECESSARY, THIS WILL INCLUDE DETERMINATION OF WHETHER THE CLAIM WAS BROUGHT WITHIN A FURTHER PERIOD THAT THE TRIBUNAL THINKS IS JUST AND EQUITABLE.

64. This relates to the complaint for failure to make reasonable adjustments leading up to and including the claimant's dismissal.

65. Under section 123, a failure to do something is to be treated as occurring when the person in question decided on it. I accepted Mr Patel's clear and cogent evidence that he and Mr Sharma reached the decision to dismiss the claimant on 9 May 2022. I am not making any findings or conclusions about whether the respondent failed to make any reasonable adjustments, but 9 May 2022 was the date when the respondent decided not to make any adjustments which should reasonably have been made.

66. Section 123 provides that (subject to any extension of time) complaints may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates. ACAS early conciliation was not commenced within the primary time limit and therefore does not extend the time limit. The time limit for presenting her claim therefore expired on 8 August 2022. Her claim was presented on 25 May 2023 which is over 9 months after the primary three month time limit expired.

67. That being the case, I must determine whether the claim was brought within a further period that the Tribunal thinks is just and equitable – often referred to as an 'extension of time'.

68. It is for the claimant to satisfy the Tribunal that the complaint was brought within such other period as was just and equitable. She had ample opportunity to do so. I am entitled to take into account all of the circumstances in reaching this decision, including the length of and reasons for the delay. There is no requirement that the Tribunal must be satisfied that there was a good reason for the delay or that time could not be extended without an explanation for the delay.

69. The respondent's decision to dismiss the claimant was confirmed by letter of the same date (9 May 2022), and the date of its decision was therefore reasonably apparent to the claimant and her representatives. Although I have accepted that the claimant was experiencing health problems between her dismissal and 25 May 2023, I found that she was able to instruct her solicitor and read emails and documents throughout this period. This was at times done by the claimant herself and at other times with the assistance of her daughter. In particular, I found that the claimant's solicitor sent an email on 8 August 2022 in relation to the appeal – around the time of the expiry of the three month time limit - having taken instructions from the claimant. Had she wanted to bring a claim, she could have instructed her solicitor to do so within the time limit - that is in fact what she did in May 2023.

70. The reasonable adjustments complaint relates to matters about which she was aware and were within her contemplation at the time of her dismissal. Taking into account the claimant's preference to avoid litigation, it is unlikely that the claimant would have pursued her reasonable adjustments complaint if her appeal had succeeded. Whilst there is a public interest in encouraging the internal resolution of disputes without the need to issue a Tribunal claim, the fact that the claimant invoked the internal appeal procedure prior to commencing proceedings is a factor of limited weight in my decision as to whether the grant of an extension of time is justified. This is because of my earlier findings that the claimant was legally represented and decided not to bring a claim sooner than she did in the knowledge of the applicable time limits. The claimant accepted that she had given instructions to her solicitor to progress her appeal and settlement rather than commencing a Tribunal claim.

71. I recognise that if I do not extend time for these claims, the claimant will experience prejudice in that she will not have these matters determined and, if the Tribunal were to decide the claims are well founded, would not have a remedy for unlawful acts. However, that was a risk the claimant took when she decided against pursuing these complaints in the Tribunal in a timely manner.

72. I recognise that if I were to extend time, the respondent would face prejudice of having to defend complaints which were brought outside of the time limit. There was further delay caused by the late presentation of the ET3 (which was explained by the respondent and accepted). By the time of the hearing, the claimant's dismissal was almost 2.5 years earlier. There would be further delay before a final hearing could take place. Although the claimant was able to give evidence, her recall of the events was at times poor. Although the respondent was able to lead evidence on the relevant issues for this hearing, Mr Patel's recall of the events was also, at times, poor. Further, Mr Patel has retired and has to date been willing to assist the respondent by doing so. However, Ms Hall submitted that Mr Patel's generosity may not be available in the future. Mr Nixon – the current owner of the respondent – has never employed the claimant.

73. Much of the factual background that may have a bearing on the complaints could be established by reference to documents. However, establishing some facts and the reasons why the respondent chose to act in the way that it did would be dependent on the recollections of individuals – and it was evident that this evidence had degraded in the long period before the claimant made her application to amend her claim. Even where witnesses believed their evidence

to be accurate, the passage of time left their evidence more vulnerable to being considered unreliable. I consider that the delay has caused real and significant prejudice to the respondent's ability to defend the claims.

74. In that event, there would also be prejudice to retired Mr Patel. I acknowledge that the fact that he is not a party means that he is not exposed to the possibility of having a judgment made against him personally. Nevertheless, if the application were to be granted, the Tribunal would in time reach conclusions about the lawfulness of his conduct, in a public forum and in a public judgment. Deciding those matters on evidence that has degraded would be prejudicial to him.

75. The respondent would face the greater prejudice if this complaint were allowed to proceed. This was a lengthy delay (over 9 months), the claimant was legally represented and aware of time limits, and the reason for the delay was, in essence, that the claimant had changed her mind about wanting to pursue a claim after her preferred resolutions did not materialise. All of those factors above weigh against granting an extension of time as does the public interest in the enforcement of time limits. Having weighed these factors in the balance I conclude that the complaint was not brought within such other period as was just and equitable. It would amount, in essence, to allowing the claimant to change her mind after several months had passed, long after the expiry of the primary time limit and it is not just and equitable to allow her to do so.

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Employment Judge L Robertson

Date:11 November 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

20/11/2024

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FOR EMPLOYMENT TRIBUNALS

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