# EMPLOYMENT TRIBUNALS

**BETWEEN**

| **Claimant** | **and** | **Respondent** |
|---|---|---|
| **Mr N Stoddart** | | **Commissioner of Police of the Metropolis** |

## PRELIMINARY HEARING

**HELD AT** **London South** **ON 17 January 2017**

**EMPLOYMENT JUDGE BALOGUN**

**Appearances**

**For Claimant: In Person**
**For Respondent: Sarah Keogh, Counsel**

## JUDGMENT ON PRELIMINARY ISSUE

The claim is struck out for want of jurisdiction as it was presented out of time.

**REASONS**

1. By a claim form presented on 24 October 2016, the claimant claims disability discrimination, namely, failure to make reasonable adjustments pursuant to section 20 of the Equality Act 2010 (EqA). The sole purpose of this hearing was to determine whether that complaint had been presented in time.

2. Section 123(1) EqA provides that a complaint under the Act must be presented before the end of 3 months beginning with the date of the act complained of or such other period as the employment tribunal considers just and equitable. This period is subject to a separate extension under the ACAS early conciliation scheme. The claimant's first contact with ACAS for the purposes of early conciliation was 22 August 2016 and conciliation closed on 28 September 2016. Hence acts falling within the primary time limit are those occurring on or after 23 May 2016.

3. The claimant is employed by the Metropolitan police as a Detective Sergeant. His claim, in summary, is that, as a result of an accident at work, he became disabled and sought various work place adjustments, in particular, in respect of his location. When these were not forthcoming, the claimant lodged a FAW (Fairness at Work) complaint in March 2015. In the context of a breach of the duty to make reasonable adjustments, the acts complained of will either involve something done, a failure to

do something or a failure to do it reasonably. In this case we have a combination of all of these and so the first thing that falls to be determined is the date of each act.

Pay Decision

4. The claimant complains that the Assistant Commissioner failed to exercise his discretion to extend his period of full pay during his sickness absence between 2/4/14 - 2/9/14. That decision was confirmed in a letter dated 14 October 2014. The was a further decision not to extend full pay to the Claimant in respect of sickness absence between 3/8/15 – 14/12/15. That decision was confirmed to him on 9 October 2015.

Return to Haringay

5. The claimant complains that the respondent failed to make a reasonable adjustment by requiring him to return to recuperative duties in Haringey Borough contrary to his GPs recommendation that he work closer to home and avoid a long journey to work. The decision was confirmed in an email to the claimant dated 24 October 2014 and he returned to Haringay on 3 November 14, where he remained until he went off sick in May 2015. He never returned to Haringay as on his return from sickness in December 14, he was temporarily assigned to Bromley. The FAW was unsuccessful and the decision that the claimant work from Haringay was upheld at all stages.

Transfer to Marlowe House, Sidcup

6. On or before 28 January 2016, a decision was taken by the respondent to transfer the claimant to Marlow House in Sidcup. The claimant contends that this was a further failure to make adjustments and contrary to medical advice. The formal transfer took effect from 11 April 2016 and on 25 May 2016, the respondent confirmed that the date of posting would be 1 August 2016.

Chair

7. The claimant complains that the respondent delayed in providing him with a special orthopaedic chair. A requisition was made for the chair on or before 19 January 2016 and it was not delivered and installed until 6.5.16. The claimant says that it would have been reasonable for the chair to have been delivered and installed by 16 February 2016 but the long stop date is 6.5.16.

8. The claimant raises other complaints about the respondent but as they are not causes of action in this case I do not have to consider them.

Conclusion

9. On the question of whether any of the complaints constitute continuous acts, I have had regard to *Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548* in which the Court of Appeal held that the correct test to apply, in relation to a series of separate allegations, some of which would be out of time, that were alleged to constitute an act extending over a period was whether the allegations suggested a continuing discriminatory state of affairs.

10. The pay issue and chair issue were discreet matters. As far as the location issues were concerned, there were large gaps between each decision and each was, it appears, done independently of the others and by different individuals. The first decision was October 14', the one after that was April 15', then December 15', then January 16'. The confirmation on 25 May 16' of the claimant's posting date to

Marlow House was not, in my view, a new decision but confirmation of the January 16' decision. In light of the above, my view is that none of the acts are continuous.

11. Hence as none of the acts complained of occurred on or after 23 May 2016, all of the complaints are out of time.

12. Turning to the question of whether time should be extended, I remind myself that that the exercise of the discretion is exceptional and that the claimant has the burden of satisfying me that there are good reasons for me to do so. The Tribunal's jurisdiction to extend time on the basis that it would be just and equitable to do so has been held in *British Coal Corporation v Keeble [1997] IRLR 336* to be as wide as that given to the civil courts by section 33 of the Limitation Act 1980. The tribunal is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension and to have regard to all the other circumstances, in particular the length of and reasons for the delay, the extent to which the cogency of evidence is likely to be affected by delay, the extent to which the party sued has cooperated with any requests for information, the promptness with which the Claimant acted once he or she knew of the facts giving rise to the cause of action and the steps taken by the Claimant to obtain appropriate advice once he or she knew of the possibility of taking action. However, there is no legal requirement to go through such a list in every case provided of course that no significant factor has been left out of account by the Tribunal in exercising its discretion.

13. The claimant's case on this is, in effect, that he believed the acts to be continuous and that he therefore had 3 months from 25 May 2016 to lodge his claim. It is trite law that ignorance of the law is no defence and that applies as much to this issue as any other. The claimant did not seek advice in a timely manner. He confirmed in evidence that he knew back in November 2014 that the issues he had about his location was a matter he could raise at tribunal. He chose not to do so on that occasion. Although he was advised by his union to pursue the matter internally, that did not preclude him from pursuing an ET claim, even if it was only as a protective measure. He did not carry out any due diligence into the time limits, even though he had access to union and legal advice and access to the internet.

14. I also take into account the balance of prejudice between the parties and accept the respondent's submissions that the cogency of the evidence will be affected by the delay due to memories fading and the need for disproportionate expenditure in defending the claim.

15. Taking all of these matters into account, I find that there are no just and equitable reasons to extend time.

Judgment

16. The claim is struck out for want of jurisdiction as it is out of time.

**Employment Judge Balogun**

1 March 2017