

JB1



THE EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr F Ahmad

v British Broadcasting Corporation

Heard at: London Central

On: 26 October 2017

Before: Employment Judge Walker

Representation:

Claimant: In Person

Respondent: Mr B Randle, Counsel

JUDGMENT

The Judgment of the Tribunal is that all the Claimant's claims are struck out. The first four of five claims are struck out on the basis the Tribunal has no jurisdiction to consider them as they are out of time. The last matter was struck out with the Claimant's consent on the basis that he did not intend that matter to be a stand alone claim.

REASONS

1. There were two questions before me at this hearing. The first issue was whether time should be extended to allow the Claimant's Claim for discrimination to go forward and the second issue was whether the claims or any of them, should be struck out and/or a deposit order made.

Evidence

2. The Claimant gave evidence. Both parties submitted some documents and both parties made submissions.

Issues

3. The main issue before me today was the question of whether it was just and equitable to extend time so as to allow the Claimant's claims to go forward. The Claimant had requested an extension in his ET1 when he stated that he understood there may now be time limit difficulties, but in the circumstances he requested the Tribunal hear his claim as it would be just and equitable to do so. That statement followed immediately after a paragraph in which the Claimant explained that the process and delays had been so stressful he had suffered a heart attack on 15 February 2017, he had had a stent fitted and another artery was being treated.
4. Additionally the Respondent requested that the claims be struck out on the grounds that the tribunal had no jurisdiction to consider them. This would be inevitable in relation to any claims which were out of time, if no extension was granted. However the Respondent's application went further and asked for either a strike out on the basis there was no reasonable prospect of success or alternatively that there was little likely prospect of success and a deposit order should be made.
5. The Respondent had prepared a skeleton argument which identified five incidents from the ET1 which the Respondent thought were the claims for direct discrimination and, in some cases, also victimisation. The specific acts identified by the Respondent were:
 - 5.1 not offering the Claimant a development contract; this decision was formally communicated to the Claimant on 16th September 2016 but he was aware of it from 15th September 2016.
 - 5.2 not offering the Claimant further work from 15 October to 15 December 2016,

- 5.3 the closure of the Claimant's IT and ID accounts on 30 November 2016,
 - 5.4 issuing the Claimant with a first P45 on 19 January 2017 and
 - 5.5 issuing the Claimant with a second P45 in May 2017.
6. In the course of discussion at the commencement of this hearing this morning, when we discussed the issues and the process, this list was discussed with the Claimant. He informed me that it was correct and those were the matters for which he was seeking a remedy.
 7. The first four of those issues are all on their face out of time. Only one of them, being the claim in relation to the P45 issued in May 2017, was a matter which occurred on a date which brought it within the time limits applicable in the legislation.
 8. In the light of there being one claim in time, I raised the question with the Claimant of whether he would be arguing that there was a continuing act where the second P45 was the last act, so that all the claims were in time. He said he was.
 9. I therefore concluded that the issues before me were as follows
 - 9.1 was there a continuing act so that all issues, culminating with the issue of the second P45, were in time.
 - 9.2 if not, would it be just and equitable to extend time in relation to all or any of the claims that were out of time? This involves a consideration of the factors set out in the Limitation Act and an assessment of the balance of prejudice between the parties.
 - 9.3 in relation to any claims that were in time, should they be struck out as showing no reasonable prospect of success.
 - 9.4 should there be a deposit order made in relation to any claims by reason of there being little reasonable prospect of success.

General

10. I referred the parties to the questions in the Limitation Act. When we discussed the process to be followed, it appeared the Claimant had not expected to give evidence but he had brought some documents, so I adjourned to allow the Claimant time to copy those documents and think about his evidence. I explained to the Claimant the nature of the issues and the requirement for me to reach some conclusions on facts, particularly about the delay and the reasons for it.
11. When we resumed the Claimant gave evidence and, to facilitate that, I asked the Claimant general questions to ensure he explained the key matters about his actions after the events he complains of leading up to his issuing proceedings so that we understood the delay and the events that led to it including the Claimant's medical issues. I asked the Claimant to make sure he had said everything he wanted to say about the position.

Facts

3. I am aware that I have not heard all the evidence but for the purposes of this judgement it was necessary to rely on some factual matters, particularly relating to the delay. I therefore had to make some findings of fact. To the extent I have set out the chronology of events in relation to the claims in the ET1, I have endeavoured to limit those to matters which are not in dispute.
4. The facts I found are as follows. The Claimant is an experienced Journalist. He did work for the BBC in the Urdu Department, and he was classed as a casual/PAYE at the relevant time. A new manager, Ms Hussain, who was the Claimant's line manager, decided to restructure and recruit permanent staff. This led to a recruitment process which involved a written test and an interview. The written test was marked by an independent marker. The interview was carried out by three people including the line manager, Ms Hussain. At the end of this process 3 people were hired. The Claimant was not hired.

12. The Claimant's ET1 said he was told he had not been hired on 2 August 2016. However, the Claimant continued to do some work as a Freelancer for about another 3 weeks. Thereafter, the Respondent hired three more of the applicants. These were on a fixed term contract but became full time staff within 6 months. The Claimant was not one of the three further people hired. The Claimant was then told there would not be anymore freelance work for him. He pointed out that to the BBC that there were gaps in the rota and in his view the BBC would need additional staff to cover them, however, the BBC used some staff on overtime and brought over staff from Delhi and Islamabad to cover these gaps, which the Claimant believes would have been far more expensive for them than using staff in his position.
13. On 30 November 2016, the Claimant's access to the BBC system was closed which had the effect that he could not access internal vacancies. The Claimant says he initially tried to resolve matters by talking to the managers as indicated in the BBC procedures. This did not work.
14. On 15 December 2016, the Claimant submitted a written complaint and this was addressed by the BBC as a formal grievance. Meanwhile, on 19 January the Claimant's P45 was issued showing his last day of work as 14 October 2016. That was the last day on which the Claimant had actually done work for the BBC Urdu Department.
15. The Claimant complained that no other staff members were given their P45's and rejected the BBC's explanation for this which was that this was a routine process after a gap of a certain number of weeks.
16. On 12 April 2017, the grievance outcome letter was sent by the Respondent to the Claimant as a result of which the Claimant was told that all his grievances were rejected.
17. In May 2017, a second P45 was sent to the Claimant showing a leaving date of 15 February 2017. It was accepted by the Claimant during his evidence that this was in fact due to the Claimant having been engaged for some

translation work by the BBC and had nothing to do with the BBC Urdu department.

18. The Claimant went to ACAS on 8 June and asked for an early conciliation certificate which was issued the same day. The Claimant then applied for remission from the fees which were applicable at the time. He could not tell me the exact date when he applied or indicate when that might have been or how long that took.
19. On 19 June 2017, the Claimant filed his ET1. He thought that he filed a day or two after he got the fee remission confirmed. The Claimant had raised the question of his having had a heart attack in his ET1 and he had been directed to submit medical evidence and had done so. I therefore reviewed this with the Claimant and went through it with him.
20. The Claimant suffered a heart attack on 15 February 2017 and was taken to hospital. He was admitted to hospital ward on 16 February but was discharged a day later on 17 February and as I understand it a stent was fitted to an artery while he was in hospital.
21. On 28 March, the Claimant was readmitted to hospital briefly and it seemed that he had an adverse reaction to statins which he had been prescribed. The statins were stopped and different medication was prescribed. The hospital undertook an investigation to understand the position and he was then given appointments for a series of tests. The Claimant had an MRI, blood tests and an ultrasound. At some point he saw an endocrine specialist consultant. I also note that the Claimant had been in therapy as on 6 February there was a Therapist's Report which indicated that the Claimant had been suffering from depression. There was a later referral made in late May 2017 which resulted in him being accepted on 10 July. It is not totally clear to me what that is for but I believe that is also another referral for therapy.

22. The documents I was given show that the Claimant was very active in corresponding with the Respondent in late March and early April. That was the time when the Respondent was getting to the point of reaching a conclusion on the Claimant's grievance. The Claimant's correspondence asked for disclosure to him of the scores and documents relating to the other people who participated in the recruitment process. He wanted to be able to examine the scoring. The Respondent refused this on the basis of a concern about data protection legislation. The Claimant had envisaged that there would be data protection issues and had suggested, with reference to that legislation, that certain information was redacted so that the remaining information would not identify the individuals. I understand the Respondent refused this on the basis that, given the small number of people involved, it would be possible to identify them and even this redacted information could not be supplied without breaching the data protection obligations.
23. The Claimant received the grievance outcome letter which was dated 12 April, in mid April.
24. When asked what prompted him to start his claim, contact ACAS and then file an ET1, the Claimant said he talked to his friends and they had said that, given the BBC had changed their stance, (which was a reference to the Claimant interpreting various statements from the Respondent as contradictory), the Claimant should go to the BBC and get the scores of all ten candidates and see. The Claimant asked for this from the BBC as I have noted as part of the grievance process but it had been refused. I understand the Claimant's friends encouraged him to go to court on the basis that if he went to court, he would get this information.
25. When I asked about the extent to which he had legal assistance, the Claimant said he did not go for any legal assistance because he understood from a friend that it cost £500 for one hour and he did not have that money.
26. The Claimant did have support from the NUJ. However, he said he did not get much help from the NUJ. Originally he said they did not tell him the time

limits. He said that they went through the grievance process with him and it seemed to be his understanding that he should go through that process first. He then referred to the fact that when he finished that process, he then spoke with the NUJ legal department and the legal people he spoke to said he was out of time and also he was told the NUJ could not assist him as he was not full time, rather he was just casual staff so he was told for this reason, he would have to pay for his own legal advice.

27. The Claimant said he did not actually research the legal position himself although he accepted that he had the skills to do so. As an experienced journalist he accepted he was used to research and he had computer and internet facilities. He would have been able to access a wide range of information online which explains their legal rights to employees.

Submissions

The Respondent's Submissions

28. The Respondent urged me to view each of the previous complaints independently as distinct acts and to look at the delay attributable to each of them. The Respondent submitted that they were all significantly out of time and that the Claimant had given very little explanation for why he did not file his ET1 earlier. The Respondent asked me to consider the merits of the claims. The Respondent argued that the delay had been significant, that the cogency of the evidence would be affected as one key witness was no longer employed by the Respondent and that the merits of the claim were very poor.

The Claimant's Submissions

29. The Claimant said that he had a serious medical condition. He could not cope with the stress of bringing a claim. He was on medication and could not focus and concentrate. The Claimant relied primarily in his medical condition as the basis for an extension. I reminded him about the questions in the Limitation Act. We discussed the delay and the reasons for it. We

discussed why the Claimant did not seek advice or research the legal position.

30. The Claimant when I asked about the extent to which he had legal assistance, said he did not go for any legal assistance because of the cost and he did not get much help from the NUJ. I took it from what he said that the Claimant may also possibly have been misled to some extent by the NUJ about the requirement to complete the grievance process before issuing proceedings. The Claimant did say he was told later that the NUJ view was that his claim was out of time. The Claimant did not seek legal advice because of the cost he anticipated.

The Law

Continuing Act

31. The law defines a continuing act as an act extending over a period and case law refers to an ongoing situation or a continuing state of affairs. There are a number of cases which refer to the nature of a continuing act and say for example, in discrimination cases, the question is whether the employer was responsible for an ongoing state of affairs where the Claimant was treated less favourably. There are references to looking for a communal connecting factor. Generally it is clear that for there to be a continuing act there must be some form of link between incidents by which the employer is responsible for matters repeating themselves or several events occurring. It is considered that in those circumstances, the effective date for the purpose of calculating whether the events are in time when considering the question of the tribunals' jurisdiction, is the date of the last of the events in the sequence.

Just and equitable extension

32. The Court of Appeal decision in *Robertson v Bexley Community Centre [2003] IRLR 434* makes it clear that an extension of time is not automatic. The case law requires the Claimant to raise something which the Tribunal considers makes it just and equitable to extend time and it is recommended in the case of *British Coal Corporation v Keeble and ors [1997] IRLR 336*,

that a Tribunal consider the factors identified in Section 33 of the Limitation Act. These are:

- 30.1 the length of and reasons for any delay
- 30.2 the extent to which evidence is likely to be less cogent than it would if the claim had been brought in time
- 30.3 the way in which the Respondent replied to any reasonable requests from the Claimant for information
- 30.4 the extent to which the Claimant acted promptly and reasonably once he knew of the possibility of bringing a claim.

Conclusion

- 33. In relation to the issue of whether there was a continuing act, I had to consider whether there were some sort of state of affairs under which the Respondent was responsible for a series of events culminating with the last act which was the second P45. I had asked the Claimant about the second P45 and it emerged that the second P45 was issued in May 2017. It related to work done by the Claimant as a translator. It was accepted by the Claimant that it had nothing to do with the Claimant's work for the BBC Urdu Department. It was clearly work for the BBC but the Claimant accepted the circumstances were such that it could not be connected to the previous events he complained of. That being his position and the facts applicable to it there is no ongoing state of affairs or ongoing situation which links the issue of that second P45 with previous events with the BBC Urdu Department. There is clearly no connecting factor and therefore there is no continuing act. This means that the previous four matters are all on their face out of time.
- 34. The next question is whether it just and equitable to extend time so as to allow the first four claims, or any of them, to be brought.
- 35. I had listed the factors set out in the Limitation Act for the Claimant and we considered those both when the Claimant gave his oral evidence and in

submissions. As noted already, the Claimant had raised the question of his heart attack in his ET1 and he had submitted medical evidence.

36. I have looked at the length of and reasons for the delay. I examined this both in relation to the claims as individual matters and also on the basis there might be a continuing act with the last incident, or one before last, being the last in a sequence of connected acts. The Claimant, having got the grievance outcome in mid April 2017, could tell me nothing about his actions for the next six or seven weeks. I do know that at one point he spoke with the NUJ legal department, who thought he was out of time to bring a claim. The Claimant was then prompted by a discussion with his friends who thought it would be worth filling a claim. It was at that point that he went to ACAS on 8 June and then applied for remission and submitted the ET1.

As I have explained, in order to consider the extent of the delay, first of all I took all four complaints as a continuing act which would be the most favourable position for the Claimant. For the avoidance of doubt, I reached no conclusion as to whether they are a continuing act, but I have simply looked at it in that way, in order to get a view as to the impact of the delay. If that were the case, the 19 January P45 received on 23 January was the last event, that would have meant time ran until 22 April. It was not extended by the ACAS Conciliation as that happened too late. Therefore the claim was brought almost 2 months too late. The Claimant's explanation as to why the P45 was a detriment and less favourable treatment or indeed was connected with anything else was difficult to understand and because I had some difficulty understanding that, and given the Respondent's submissions, I have also looked at the earlier events. Before that the key date was the closure of the Claimant's IT and ID accounts on 30 November 2016, which means time ran out at the end of February and that is means if the first three matters were a continuing act but not the fourth, the claim for those matters, was issued closer to three and a half months out of time. The outcome of his unsuccessful recruitment was notified to the Claimant even earlier in relation to those matters, looked at as separate claims, the delay was even longer.

37. In summary, the length of delay is clearly quite lengthy, being between 2 and 3½ months if first four incidents are looked at as continuing acts and even longer in relation to the failure to appoint the Claimant after the two recruitment rounds. The reasons for the delay are that the Claimant waited for the grievance outcome and, from what he told me in his evidence, he genuinely thought he would be given something to accommodate him having filed the grievance. Indeed he seemed to think that the other three individuals, who were in a similar position to him, but who did get appointed at the second round of appointments, had each raised complaints. He presumed that something of that sort would happen to him, but he did not get a favourable response or indeed any result from his grievance.
38. The Claimant did not complain of the grievance as an act of discrimination. Importantly, by the time he got the outcome of the grievance, he had suffered his heart attack and was undergoing medical tests with a view to the doctors understanding more about what had prompted his heart condition and/or his adverse reaction to the statins.
39. I have noted that the Claimant says he talked the NUJ but was told he was already out of time. I can only assume they referred to the original matters when they considered the time limits and looked particularly at the fact that the Claimant knew of his failure to get appointed in August 2016 and certainly from September 2016. That would potentially explain why the NUJ informed the Claimant that his claim would be out of time.
40. I do know the Claimant had suffered from some degree of depression, but there is no real evidence about that. The sick notes from April and May indicate that he was suffering from stress and anxiety. The Respondent accepts quite sensibly that in February after the Claimant's heart attack and indeed for some time after that, it would have been a very difficult period for the Claimant and they do not expect that that would have been a period when he would have been particularly able to issue proceedings. They rightly accept that there was a period of time within which the Claimant would

have had difficulties and it certainly would be just and equitable to extend time to take account of that.

41. Given that the Claimant did have a heart attack and related difficulties I do think that some just and equitable extension should be granted to allow for the medical problems the Claimant suffered. I would have no hesitation extending time till mid April when the Claimant got the grievance outcome letter. Therefore, the question to my mind is once the Claimant knew of the position in April, having got the grievance outcome letter, what the reasons were for the delay after that point in time.
42. At this stage, he was undergoing tests but the shock of the heart attack and the adverse reaction he suffered to his medication were largely over. At one point, in answer to questioning about a home move, the Claimant said that he had help as he could barely walk, although he gave no specific details and there was no medical evidence to support this. Nevertheless, I accept that he was still suffering to some extent medically.
43. The Claimant was, however, able to write and he sent several complex emails to the Respondent. Filing a claim is not a physical act but rather more one of using a computer and writing, which is something the Claimant would be good at and indeed as a journalist, carried out frequently. Therefore I have no particular explanation for the delay at this time although I can see that the Claimant may well have been disheartened by the NUJ telling him his claim was out of time.
44. The next question to be considered under the Limitation Act is how the cogency of the evidence would be affected. The Respondent says that they have lost one key witness who has left their employment. This is a reference to one of the three people involved in the interview panel, but that still leaves them two out of the three who could explain what happened. There has been no suggestion that the Respondent tried to contact the witness who has left to see how willing they are to give evidence. Even though they are no longer an employee, quite frequently people will do that. In the circumstances I do

not accept the Respondent's suggestion that the cogency of the evidence will be affected. Moreover, having heard a lengthy grievance it is very likely that all the documentary evidence has been collected. I do not consider the cogency of the evidence would be affected by this delay.

45. There is then a question about the extent to which the Respondent cooperated with requests for information. Although some of the Claimant's requests for information and documents were refused due to the Data Protection legislation, the Respondent did investigate the grievance. I believe that has no impact. The Respondent seems to have cooperated to the extent they felt they were legally able to within the confines of the Data Protection legislation.
46. The next question is the promptness with which the Claimant acted once he knew the position. The Claimant knew from November 2016 that he was not getting work from the Respondent. His primary complaint and the real motivator behind this claim was that he wanted to work for the Respondent and that having not been appointed in either the first or second recruitment rounds, he felt that this was unfair. It is clear that he knew of that situation for some time and he got no work from the BBC Urdu department after 14th October 2016.
47. The Claimant decided to file a grievance complaint in December and indeed in that written grievance, he specifically refers to the possibility of legal proceedings. He was able to find out the legal position; it is well sign posted, as there is a great deal of information on the internet. It seems that the Claimant decided not to do that. At times the Claimant says he thought he had to follow the grievance procedure first and this did take some time. I understand it is expensive to get solicitor's advice. However, the Claimant made only a vague reference to the fact that he spoke with the NUJ legal team.
48. I have to conclude that the Claimant was not prompt in attempting to find out the legal position despite mentioning the possibility of legal action in his

December 2016 grievance letter. Given the Claimant's skill set, it is very difficult to understand why he would not have made some effort to research and understand his legal position at an earlier date. In relation to this, after learning that his grievance had been rejected, in failing to research his legal position, the Claimant has acted very slowly.

49. I am urged by the Respondent to look at the merits. It is often difficult to do so in the case of a claim for discrimination. It is well understood that frequently it takes a full hearing for the facts to be properly aired so assessing the merits is problematic. However I have regard to some specific points. The Claimant's description of events is that effectively he found the selection of others for recruitment in priority to him as unsatisfactory and he really could not understand the position. He thought he had annoyed managers by questioning the rota. He felt the explanations given to him by various managers were contradictory and suspicious and he thought one person offered a role had inferior skills to his, but was far better connected through his family, and must therefore have been selected improperly. He wished to see the full scores and all the recruiting panel's comments. He tried to do this first by asking for copies of the documentation during the grievance process and then, when he was not given that information, he discussed it with his friends and was encouraged by them to ask for it effectively as part of the litigation process.

50. The litigation which the Claimant has brought is a discrimination claim in which the protected characteristics the Claimant relies upon are his having a glass eye, and his sexual orientation, which he says is his being bi-sexual. These he says are the reasons underlying the discrimination which he believes he has suffered. The Claimant does not say that the Respondent knew he was bi-sexual, just that he supported LGBT matters as that was on his social media. He assumes that the manager, Ms Hussain, would have been influenced by other people whom he had worked with in the past whom he believed were anti LGBT rights. He has not told me of anything which was said which was disparaging about the LGBT matters although there was some suggestion he has identified some matters in the course of the

grievance process. He does not say anything was said by Ms Hussain, rather he assumes that she was influenced against him by those other people.

51. The process for recruitment involved three people on the interview panel and an independent scorer of the written test. As I have noted, the Claimant is relying on some confusing feedback to say that the Respondent changed its position, particularly as to the relative impact of these stages. On one aspect he is certainly right in that the Respondent's representative today said the Respondent wished to amend as it had referred in their pleading to the written test score but had got that score wrong in the pleading and referred to too low a score for the Claimant. Despite that, they always accepted that the Claimant passed the written test.
52. Importantly, in submissions the Claimant said that he blamed his treatment on the fact that he had pointed out gaps in the rota and he felt that that prompted an adverse response against him. I believe that that was after the initial recruitment round but before the situation when his IT and ID accounts were closed and he was sent the P45. On that basis, on the Claimant's submission the later parts of his claims were not motivated due to the protected characteristics he relies upon, but his activities in questioning the rota.
53. In terms of his eye condition, the Claimant relies on it being visibly possible to see his glass eye and he says that the reason he believes he would be discriminated against due to his eye is that it would be unattractive on TV and this was a multimedia role which he explained involved being able to carry out a variety of activities, some of which would have been doing broadcasts.
54. The Claimant has slight difference between his eyes. It is certainly not the case that there is any obvious visual unattractiveness or difficulty but this is not about my own perception. I have been given nothing from the Claimant to indicate that he has a basis for this belief. There is no evidence that the

Respondent's managers who were responsible for the selection were influenced by that. Indeed the Claimant accepts he has no specific comment or evidence to support his case and he accepts the BBC has a good track record and is an organisation which aims to be inclusive and generally is so.

55. So I am faced with a situation where the Claimant has a distinct complaint about his having failed to get appointed to a permanent role when six other staff members were appointed. He feels he should have done as well as some of the individuals who were appointed, and he cannot understand why not. He partly blames his having questioned the rota for having upset managers. That is not a discriminatory matter. For the Claimant to succeed in a claim that he was discriminated against on the core complaint, which is that he was not recruited, he would have to demonstrate that the three managers who held the interview, Ms Juliana Iooty, Ms Hussain and the Digital Manager Mr Nguyen, all together came up with a result which was damaging for him and did so, not because of his performance but on the basis of his protected characteristics, when he had little or no dealings with two of them and there is nothing he drew to my attention to support his belief about his protected characteristics being an issue.
56. Having looked at it in the round, I have to balance the prejudice to the Claimant against the other factors and look at it overall. It is important to note that these days it is rare to have direct and obvious evidence because in this era, it is rare for there to be overt and blatant discrimination. Rather it is more often unconscious or hidden. But there would need to be some evidence to which the Claimant could point which would give some indication that those protected characteristics are potentially the reasons for his treatment. I appreciate the Claimant relies on what he regards as inconsistencies with the Respondent's behaviour. Set against that, the Respondent has designed a process which should have overridden individual prejudices. It is going to be difficult for the Claimant to explain how three managers would have responded in a discriminatory way when conducting the interview, even if he can say that there were biased people

who might have influenced one of those three people. Faced with that background it would be a difficult claim.

57. I have to look at the whole position overall in order to consider the balance of prejudice. The factors in the Limitation Act are aimed at assisting in the assessment of the balance of prejudice between the parties. That means considering the delay, which in my view is really only the delay after the April grievance outcome, and the failure on the Claimant's part to investigate his legal position, as well as the prejudice each party will suffer. As in most cases, the Claimant is particularly disadvantaged in a more obvious way than the Respondent because the Claimant loses the opportunity of the claim. In this case, the Respondent would face a potentially long and complex claim, which they say has little obvious merit, were it to go ahead.
58. The Claimant's case is borne out of his dissatisfaction with the recruitment process. He had difficulty understanding the process and feels he has not been treated fairly. He would like to see a full explanation of all the results to understand it. He had a difficult medical condition in February and March 2017, but by April he was in a better position. As a journalist, he was well able to find out about and understand the time limits and make sure that he complied with the legal procedure.
59. My conclusion is that while the Claimant suffers clear prejudice in not being able to bring his claim, I believe the overall balance of prejudice favours the Respondent. They should not have to suffer a lengthy, difficult and complex claim which has little obvious merit when the circumstances are as they are as I have just described, namely the Claimant having chosen not to investigate and research his legal position despite having threatened legal action in December and the Claimant not doing anything to further a claim from mid April (when he received the grievance outcome) until 8 June. The Claimant only initiated the claim in June when his friends suggested he should do so in order to get sight of the recruitment documentation because he could not believe he had been unsuccessful as against one other

applicant in particular. Overall, I do not believe it is just and equitable to extend time.

60. Having concluded that the first four matters should be struck out as being out of time and it not being just and equitable to extend time, I was left with one claim which was in time being the second P45. I raised this with the Claimant and he agreed that as a stand alone issue, that was not a matter which he was claiming amounted to discrimination and he agreed that matter should be struck out as well and therefore the entire claim is struck out.

Employment Judge Walker
15 November 2017