



EMPLOYMENT TRIBUNALS

Claimant

Respondent

A

v

B

Heard at: Cambridge Employment Tribunal

On: 6th October 2017

Before: Employment Judge King

Appearances

For the Claimant: Mrs T Lester (lay representative)

For the Respondent: Ms L Gould (counsel)

RESERVED JUDGMENT

1. The Tribunal does not have jurisdiction to hear the claimant's claim for unfair dismissal and the claim is dismissed.
2. It is just and equitable to extend time in respect of the claimant's claims for discrimination and harassment.
3. The respondent's application for a strike out or a deposit order in respect of both claims is dismissed.

REASONS

1. The claimant brought a claim before the Employment Tribunal on 28th October 2016 for unfair dismissal and discrimination on the grounds of race and/or religion or belief. The claimant left the respondent's employ on 5th July 2015. The respondent raised issues of jurisdiction as it was common ground that all complaints were outside the ordinary time limit to present complaints. The matter was listed for a preliminary hearing to determine these issues. Eventually the matter was listed for a preliminary hearing on 6th October 2017 to deal with preliminary issues with a time estimate of three hours.
2. The claimant was represented by Mrs Lester and the respondent by counsel. The time estimate was three hours but further time was necessary to dispose of the issues and hear evidence. I heard evidence

from the claimant and from her representative. I had regard to the bundle of agreed documents in this case which ran from pages 1-106.

3. At the outset I raised concerns over the claimant's level of understanding and whether an interpreter was required as she was both illiterate and English was not her first language. She was content to proceed with the hearing and we agreed that she would be given additional support with any documents in that I or her representative would read aloud anything she needed to be referred to. Counsel for the respondent complied with their duties to this Tribunal in that they were aware of the issue and in their cross examination avoided reference to documents as much as possible. This assisted the Tribunal and indeed the claimant in her giving of evidence and as such deserves note.
4. The claimant submitted a witness statement for the purposes of the hearing but this did not deal with the issues in the case. It failed to explain in any sufficient detail the reasons for the delay in presentation of the claims. As such it was necessary for the claimant to give oral evidence to the Tribunal in more detail than would normally be permitted and the respondent did not object to this course of action. The claimant's representative also gave evidence without a statement as during the course of the hearing it was evident that she was giving evidence and could assist the Tribunal.
5. The claimant produced her original passport at the hearing and additional documents not in the bundle were relied upon by both sides. This included police reports relevant to the claimant. Given the interests of justice were that the case should conclude on 6th October 2017 I extended the time for the hearing to enable this to happen. It became apparent that the time estimate was insufficient at the start and the parties agreed to this course of action. As judgment was going to be reserved I made an order dated 6th October 2017 in accordance with Rule 50(3)(b) for the parties and witnesses etc to be anonymised. This Order stands until this is reviewed at the final hearing and the order was made by consent.
6. By email dated 8th October 2017 the claimant sent further details to the Tribunal including matters of new evidence not referred to on 6th October 2017 as well as clarification of some matters. The Respondent was sent a copy of this and given the opportunity to respond which they duly did on 10th October 2017. I have had regard to both emails in so far as they relate to evidence before this Tribunal on 6th October 2017. I attach no weight to matters of new evidence. The claimant has certainly been on notice since the preliminary hearing on 3rd March 2017 (and arguably even earlier since the filing of the response) of the purpose of the hearing and the issues that would be determined. On that occasion before Employment Judge Adamson the hearing was postponed to allow the claimant further time to prepare in the interests of justice. I see no reason why these matters could not have been raised in the preceding six months.

The issues

7. The preliminary hearing of 6th October 2017 was listed to determine the issues as set out in the preliminary order of Employment Judge Adamson on 3rd March 2017 namely:
- (i) Determine whether the complaint of unfair dismissal brought pursuant to s.98 of Employment Rights Act 1996 and also the complaints brought pursuant to the Equality Act 2010 which are understood to be either harassment and/or direct pursuant to s.26 and s.40, and also s.13 and s.39 of the Equality Act 2010, were presented within the three month time limit contained in s.111(2) Employment Rights Act 1996 and s.123(1)(a) Equality Act 2010 respectively; if not, whether the tribunal should nevertheless consider the complaints having regard to s.111(2)(b) or s.123(1)(b) as the case may be;
 - ii) If the claim was presented out of time, whether the tribunal should dismiss the claim in whole or part for that reason;
 - iii) Whether the claim either, in whole or part, should be struck out on the basis that it has no reasonable prospect of success (rule 37(1)(a) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013; or
 - iv) If the Judge considers the claimant's allegations or arguments have little reasonable prospects of success whether the claimant should be ordered to pay a deposit in respect of any of those matters pursuant to rule 79 [*Should be rule 39*].

The law

8. Dealing first with the issue of time, the law is set out in the respective Acts to which the claim relates.

Unfair Dismissal

9. The provisions concerning time limits in respect of unfair dismissal claims is set out in S111 Employment Rights Act 1996 as follows:

s111 Complaints to employment tribunal

- (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.*

10. The provisions concerning extension of time in order to facilitate ACAS early conciliation before institution of a proceedings are set out in s.207(b) of the Employment Rights Act 1996. Claims for unfair dismissal are relevant proceedings pursuant to s.18(1) of the Employment Tribunals Act 1996. Section 207B of the Employment Rights Act 1996 states as follows:-

s207B Extension of time limits to facilitate conciliation before institution of proceedings

- (1) *This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a “relevant provision”).*

...
- (2) *In this section—*
 - (a) *Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and*
 - (b) *Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.*
- (3) *In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.*
- (4) *If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.*
- (5) *Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.*

Direct discrimination/harassment

11. The provisions concerning time limits in respect of discrimination and harassment claims is set out in s123 of the Equality Act 2010 as follows:

- (1) *Subject to sections 140A and B, proceedings on a complaint within 120 may not be brought after the end of—*
 - (a) *the period of three months starting with the date of the act which the complaint relates; or*
 - (b) *such other period as the employment tribunal thinks is just and equitable.*
- (2) ...
- (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 upon it.*
- (4) *In the absence of evidence to the contrary, a person (P) is to be taken to decide on a 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.*

12. The provisions relating to the extension of time to facilitate early conciliation before instituting proceeding are set out in s.140B of the Equality Act 2010. Discrimination complaints are relevant proceedings within the meaning of s.18(1) of the Employment Tribunals Act 1996. Section 140B of the Equality Act 2010 states:

140B Extension of time limits to facilitate conciliation before institution of proceedings

- (1) *This section applies where a time limit is set by section 123(1)(a) or 129(3) or (4).*
- (2) *In this section—*
 - (a) *Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996*

(requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

- (b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.*
- (3) In working out when the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.*
- (4) If the time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.*
- (5) The power conferred on the employment tribunal by subsection (1)(b) of section 123 to extend the time limit set by subsection (1)(a) of that section is exercisable in relation to that time limit as extended by this section.*

Strike out

13. The provisions relating to whether a claim should be struck out on the basis of no reasonable prospect of success are set out in Rule 37(1)(a) Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 which states as follows:

37 Striking out—

- (1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—*
 - (a) that it is scandalous or vexatious or has no reasonable prospect of success;*
 - (b) - (e) ...*
- (2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.*
- (3) ...*

Deposit Order

14. The provisions relating to whether a claimant should pay a deposit as the claims have little reasonable prospect of success are set out in rule 39 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 as follows:

39. Deposit orders—

(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party (“the paying party”) to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.

(2) The Tribunal shall make reasonable enquiries into the paying party’s ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

(3) The Tribunal’s reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.

(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21.

(5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—

(a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and

(b) the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders),

otherwise the deposit shall be refunded.

(6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order.

15. I have also had regard to the cases of *Porter v Bandridge Limited [1978] ICR 943* and s 33 of the Limitation Act 1980 as modified by the case of *British Coal Corporation v Keeble and others [1997] IRLR 336*.

Findings of Fact

16. The claimant is a British citizen of Pakistani origins. She came to this country approximately 17 years ago but has not learnt to read or write English. She is illiterate. She is able to speak in English and understand every day terms. This is self-taught over the years.
17. The claimant has no access to legal aid in this case. She is represented through her friend Mrs Lester who started to act for her in June 2016.
18. The claimant was employed by the respondent from 1st January 2001 as a domestic assistant. She resigned by letter dated 24th June 2015 giving notice so that her employment came to an end on 5th July 2015. This is the effective date of termination for the purposes of the unfair dismissal complaint.
19. The claimant was a victim of domestic violence in July 2008 in that her husband assaulted her and she was for a period residing at a women's refuge. The claimant was married with a son.
20. On 11th April 2015 the claimant returned home from work to find that her husband and son had left. She was left a note to say that he was leaving her and took her son away from her. She has had no access to him since. The claimant's husband had not paid the rent on their property and she was told that she would be evicted on 11th May 2015 as a result. She reported this to the police as she was concerned her husband would take her son back to Pakistan.
21. On 13th April 2015 the claimant's husband presented a petition for divorce to the family court. During the summer of 2015 divorce proceedings were ongoing. During this period the claimant sought advice from the Citizen's Advice Bureau from April 2015 – May 2016. She did not think to ask them about her employment rights at that time. The decree nisi was granted in August 2016 and as such proceedings continued for over 12 months in the family court.
22. The claimant was provided with emergency accommodation by the YMCA between 14th May 2015 and 26th June 2015 whereby they assisted with the letter of resignation. On 14th June 2015 she reported an assault at work to the police.
23. The Claimant resigned by letter dated 24th June 2015. She did not write this letter herself but it was written on her behalf by the YMCA where she resided at the time. The reason given was said to be that she felt unsupported by her supervisor during an assault at work. Further that incidents had occurred since which made her feel unsafe. The claimant

made no reference to racial factors or motivations in this letter. She says that she did tell the YMCA about these issues.

24. The respondent produced a letter dated 1st July 2015 which the claimant says she did not receive at the relevant time and which I note is not addressed to any postal address. This refers to a meeting on 30th June 2015 and that as she failed to attend and although they had taken statements they consider that there is insufficient evidence of an independent nature to take the matter further. I make no findings as to whether the claimant received this letter or the contents of the meeting or statements. However, this is relevant only in so far as it relates to the passage of time and any action taken by the respondent in respect of the allegations at the time and how this impacts on their ability to prepare the case now for hearing.
25. She was then provided with emergency accommodation between 3rd October 2015 and 20th November 2015. She did highlight to the staff at the YMCA the issues she was having at work. The YMCA have confirmed that they would not have been in a position to support her during an employment tribunal. They were supporting her with her housing needs. At this time she was in emergency housing.
26. During this period of time (although dates are unclear) from the claimant's evidence she did return to Pakistan. The claimant brought her original passport to Tribunal and this is stamped with an entry into Pakistan on 6th December 2015 and an exit stamp on 31st January 2016. This would tie with the claimant's recollection that she went to Pakistan for about 6 weeks.
27. After her return from Pakistan, the Claimant found alternative accommodation with another Pakistani lady but she did not permit the claimant to use her address for benefits purposes. She then terminated the arrangement as she did not wish to get involved in the claimant's affairs.
28. The claimant was isolated and had few friends. Another friend had supported her through for some time during this period did not wish to assist her further so the claimant tried to locate Mrs Lester.
29. In May 2016 the claimant managed to get back in touch with Mrs Lester. She asked for help from her friend who helped her install the Facebook app on her mobile phone. She was originally blocked by Mrs Lester as she used an unknown alias.
30. By the time she sent the email dated 5th June 2016, the claimant's representative was acting for the claimant and she wrote to the respondent setting out the basis for the claimant's complaints. This letter was sent to the NHS director and to her local MP and the Police. This email set out in some detail the complaints which have subsequently formed part of this complaint to the Tribunal. A subsequent complaint was sent on 2nd August 2016 to TD at the respondent.

31. Around this time the claimant's representative had her own personal issues to contend with in connection with her daughter's education as she decided in around May 2016 to home school her and became her tutor. Mrs Lester was helping her prepare for her 11+ grammar school exams in September 2016 and in her evidence, refers to this as the reason why she waited between August and October 2016 to present the claim.
32. A complaint against the police in respect of their handling of the assault complaints was also made. It was felt by the claimant that they did not treat her complaint seriously enough.
33. During the period of dismissal and May 2016 the claimant had also been the victim of rape by her husband. He used her son to coerce the claimant into sexual relations. He also persuaded her to disown her own family in Pakistan so that she could save her marriage which again was an empty promise. Dates are not clear but the promises made by the claimant's husband did not materialise and the claimant's concessions did neither stop the divorce nor permit her access to her son.
34. The claimant's representative says that she filed a complaint with the tribunal in August 2016 but that this was rejected because she had no ACAS early conciliation number. This would be properly so if no ACAS early conciliation had taken place but there is no evidence before me to support this suggestion. I am also told there were issues with the application for remission of tribunal fees but again I have seen no evidence to this effect. The claimant's representative cannot be precise as to dates to assist the Tribunal with either matter. There is no paper trail to support the assertions made.
35. The claimant's representative gave evidence that she sought ACAS advice in the summer of 2016 and also had access to a legal advice helpline which she sought advice from. The claimant's representative was aware of ACAS and of the existence of the tribunal process through previous personal experience some years ago. This was however prior to the introduction of ACAS early conciliation.
36. The claimant commenced ACAS early conciliation on 16th September 2016 and the certificate was issued on 3rd October 2016. The claim was presented to the Tribunal on 28th October 2016.
37. The claimant produced a schedule of incidents following the preliminary hearing in March 2017 which she relies upon to form the basis of her discrimination/harassment complaints. I make no findings of fact as to whether the incidents relied upon did occur but for the purposes of these proceedings it is noted that the first incident relied upon is said to be April/May 2013(corrected in the hearing to 2014) and the last incident 15th December 2016. However, there are four incidents that are said to have occurred post termination. The last in time relied upon is the failure to meet the claimant in May 2016. Matters on 5th June 2016, June 2016 and

15th December 2016 are relied upon as information only and not as claims. The last in time is therefore May 2016. Taking the Claimant's case at its highest and that this was a course of conduct the last incident was in May 2016. Other incidents predate the dismissal in July 2015.

38. The ordinary time limit for bringing a claim of discrimination or harassment was in this case at the latest was 30th August 2016 if the acts in May 2016 are included as a continuing act. Proceedings were not commenced during that period and ACAS early conciliation was not commenced. Any acts before this time (unless a continuing act) were also out of time.
39. Given the effective date of termination set out above, the ordinary time limits for bringing a claim of unfair dismissal in this case was 4th October 2015. Proceedings were not commenced during that period and ACAS early conciliation was not commenced. If the last act relied upon for the discrimination and harassment claims was prior to the termination then this would be the last date for limitation if the May 2016 events are not part of the continuing act.
40. The respondent submitted that the manager handling this matter is suffering from a terminal illness and further that one of the alleged assailants is no longer employed by the Trust. It therefore considers it would be extremely prejudiced in the bringing of the evidence. It did however take statements at the relevant time and did not adduce any evidence in support of this submission.

Conclusions

Unfair dismissal

41. Turning first to deal with the unfair dismissal claim in respect of time.
42. Given the findings of fact above and indeed the agreed facts in this matter, the claim for unfair dismissal was presented outside the ordinary time limit for bringing such claims in accordance with s.111 of the Employment Rights Act 1996. The extension provided for under the ACAS early conciliation extension is not applicable in this case.
43. The onus of proving that the presentation in time was not reasonably practicable rests on the claimant. There is a duty imposed upon the claimant to show precisely why it was that she did not present her complaint on time in accordance with *Porter v Bandridge Limited [1978] ICR 943*.
44. The claimant's claim was presented almost twelve months outside the ordinary time limit for such claims. It is therefore clear that the claimant's claim is out of time.
45. I turn now to whether it was reasonably practicable for the complaint to be presented within the time limit. Given the findings of fact above, it is clear

that the claimant was seeking advice in respect of her family matters with the Citizen's Advice Bureau. Whilst she had also sought guidance from the YMCA, I accept that they were not the appropriate forum to provide any such advice since they were dealing with her housing matter only. I accept that matters relating to the employment tribunal are outside of their jurisdiction.

46. I have taken into consideration the claimant's case that she was ignorant of her rights to claim unfair dismissal, but that ignorance must itself be reasonable. Given that the claimant was receiving legal advice in relation to other matters during the relevant period, it was not reasonable for the claimant not to have been aware of her rights. The correct test is not whether the claimant knew of her rights but whether she ought to have known of them. Whilst I have much sympathy for the claimant and her personal situation at that time, I do not find that this prevented her from being put on enquiry earlier so it was reasonably practicable for her to have presented her claim in time.
47. All the facts were known to the claimant at the relevant time. Whilst she was illiterate and unable to make enquiries in her own right, she was able to raise orally with relevant legal advisers issues that she was currently suffering from.
48. I have seen no relevant medical evidence to suggest that the claimant was suffering from a mental health condition or disability which prevented her from bringing proceedings within the relevant time.
49. Even if I am wrong and it was not reasonably practicable for the claimant to present the claim in time, I have now gone on to consider whether the claim was presented within a further reasonable period.
50. I find that based on the findings of fact once the claimant was able to articulate her situation to Mrs Leicester in May 2016, it was reasonably practicable for her to present her claim at that time. Certainly, the email of 5 June 2016 sets out in detail the claimant's claims and indeed those matters are later to form the basis of the complaint before this employment tribunal. I therefore find that the claimant should have presented her claim closer to the 5 June 2016 at the latest. Had I found that in the particulars circumstances of the claimant, it was not reasonably practical for her claim to be presented prior to the 5 June 2016 I would have found it to be reasonably practicable at that point. By May 2016 the claimant had contacted Mrs Lester. Mrs Lester had some previous experience of ACAS and indeed the employment tribunal service. A minor delay during this period may not have been fatal, however the delay in a further 4 months before presenting the complaint is in my view unreasonable. It was reasonably practicable for the claimant to present her claim within this period.
51. I must however stress that whilst I accept Mrs Leicester had personal circumstances ongoing during this period, and that indeed she did her very

best to assist the claimant in difficult circumstances, I nevertheless find that it was reasonably practicable to present the claim before its eventual presentation in October 2016.

52. It therefore follows that the tribunal does not have jurisdiction to hear the complaint of unfair dismissal. I have not gone into the merits of that claim which may well have been with merit had it not been for the significant delay in bringing them before the employment tribunal.

Discrimination/harassment

53. Turning now to deal with the claims of discrimination and harassment, there is a different legal test in this regard. It is not in dispute that the claims are outside the ordinary time limit for bringing such complaints in accordance with s.123 of the Equality Act 2010. The majority of the complaints occurred prior to resignation in this case. The one complaint that post-dates the dismissal relates to May 2016 when Mrs Lester attempted to resolve the matter with the respondent on the claimant's behalf.
54. I have had some difficulty trying to determine whether in this case we are dealing with a conduct extending over a period as to be treated as done at the end of that period or whether the matters prior to resignation were distinct acts of discrimination. The claimant has not produced any evidence to substantiate the allegations relating to May 2016. In my view where there is a significant period of time between the acts which relate to the employment and post employment discrimination it is not a continuing act of discrimination. Whilst I accept it is theoretically possible for a continuing act of discrimination to begin during employment relationship and continue into post termination conduct I do not feel that this is the case in this scenario.
55. It is under this test for discrimination/harassment where the employment tribunal has a greater discretion to extend the time for presenting the claim where it is just and equitable to do so.
56. In exercising my discretion to allow an out of time claim to proceed I have regard to the checklist contained in s.33 of the Limitation Act 1980 (as modified by the Employment Appeal Tribunal in *British Coal Corporation v Keeble and Others [1997] IRLR 336*. This requires the tribunal to consider the prejudice that each party would suffer as a result of the decision reached and have regard to all the circumstances of the case and in particular the length of and reasons for the delay, the extent to which the cogency of evidence is likely to be affected by the delay and the extent to which the party sued has co-operated with any requests for information, the promptness of which the claimant acts once she knew of the facts giving rise to cause of action and the steps taken by the claimant to obtain appropriate advice once she knew of the possibly of taking action.

57. In this case, I have regard to the fact that one of the alleged assailants is no longer employed by the Trust. I also have regard to the extreme circumstances to which the claimant was subject during the relevant period. She was homeless, isolated, illiterate, raped and subject to bereavement all within the relevant period. She had difficulty tracking down her only remaining friend Mrs Lester and this did not occur until June 2016. I therefore consider that it is just and equitable to extend time from the ordinary limitation period of October 2015 until June 2016.
58. I have then gone on to consider whether it is just and equitable for me to extend time further from the period in June 2016 to October 2016. I have in mind that during this period the claimant was represented by a lay representative. ACAS has advised the claimant's representative that the claims were out of time and left her with the feeling that further action was futile.
59. I have had regard to the length and reasons for the delay. Whilst the length of the delay is quite extraordinary, so are the circumstances relating specifically to this claimant. The respondent was able to obtain statements from the witnesses at the relevant time. It was aware that the claimant had resigned in response to the alleged assault and also its failure to act upon it. The respondent relies on the fact that it was unaware that it was racially motivated. This will be a matter of evidence before the final hearing, but it is relevant in my view that the respondent is a large employer and that it had a procedure for dealing with assaults on members of staff.
60. The respondent submitted that the claimant's manager is currently suffering from ill health. It would nevertheless be possible to take a witness statement from him and to produce this as evidence in the employment tribunal should he be too ill to attend. The tribunal can then attach such weight as it feels sufficient in these circumstances. There are members from the respondent's Human Resources team who would be able to provide evidence. It would not be normal to call the alleged assailants in any event although I note one is no longer employed by the respondent. Statements were taken at the time which would detail the contemporaneous evidence. The claimant could rely on the police reports made by the claimant which form the evidence in this bundle with regard to the matters raised at that time. I do not accept that it would be prejudicial to the respondent to the extent submitted and I must weigh up this against the prejudice against the claimant.
61. Given that we are dealing with an extremely vulnerable claimant and that the allegations relate to a physical assault which was allegedly racially motivated and the surrounding circumstances, I consider it would be just and equitable to extend time in this case in respect of the discrimination/harassment claims.
62. Here I do not accept that the further delays between June and October 2016 were fatal. This would not have changed the respondent's position regarding its witness evidence.

63. Indeed whilst the respondent is so entitled to have jurisdictional issues dealt with as preliminary issues in this case, but it is this which has caused significant delay in this case coming to a hearing. Whilst this is not the fault of the respondent, it is also not the fault of the claimant and to deny her claims on the basis of matters as they now stand 12 months after the claim was presented would be unjust.

No reasonable prospects of success

64. The respondent accepts that this is a high test and one which is more relevant to the issue of unfair dismissal. Given that I have found that the claim for unfair dismissal is out of time and that it was reasonably practicable to present the claim in time, thus the tribunal has no jurisdiction to hear the complaint, I do not consider it appropriate to go into further detail in connection of the unfair dismissal complaint.
65. Turning now to the discrimination and harassment claims, I note that the contemporaneous documents from the time both in respect of the claimant's letter (although not written by her) and that the police records show no reference at all to any racial matters. It is however not possible for me to say without hearing evidence as to the claims themselves that the discrimination complaints have no reasonable prospects of success. Neither party adduced evidence in this case as to what actually happened in the alleged incidents and this is a matter reserved for the final hearing but this does impact on my ability to make a factual determination as to merits of the claim. It is often with discrimination cases that this is better left to a final hearing.
66. I therefore do not find based on the findings of fact above and the claimant being illiterate so as to not have written those contemporaneous documents that this is persuasive. I therefore do not find that the claimant's claim have no reasonable prospect of success and I therefore do not strike out the claimant's claims for discrimination and/or harassment.

Little reasonable prospects of success

67. As to the lesser test that the claimant's claim has little reasonable prospects of success, as stated above I have not heard evidence on the merits of the claimant's claims. I am invited to take the claimant's claim at its highest. The fact that neither the resignation letter nor the police documents refer to any racial motivation does not in my view preclude the claim from having either little reasonable prospects of success for the reasons set out above. The claimant did not write these herself and would not have been able to read what others wrote at that time.
68. I have not heard any witness evidence from the claimant or indeed the respondent's witnesses about what occurred at the relevant time. I

therefore feel unable to say that the claimant's case has little reasonable prospects of success.

- 69. This would be a matter for the Tribunal at final hearing to determine based on the evidence before it. There are clear disputed facts in this case. This does not mean that the claimant's claims will succeed but neither does it mean that they will fail, it means that I am not convinced by the respondent's suggestion that the claims have little reasonable prospects of success.
- 70. Notwithstanding this, even if I had been able to say that this was the case, the claimant's financial means are very limited. Any deposit order would have been for a minimal amount of less than £10 per claim. I do not however consider this to be an appropriate case for a deposit order.

Summary

- 55. It therefore follows that the tribunal does not have jurisdiction to hear the claimant's claim for unfair dismissal. This claim is dismissed.
- 56. The claimant's claim for direct discrimination and harassment on the grounds of race or religion/belief proceeds to a final hearing. It is just and equitable in the circumstances of this case for the time limit to be extended for these claims.
- 57. The respondent's applications for a strike out or a deposit order are dismissed.
- 58. As agreed with the parties if any of this claim should proceed to a final hearing I would make case management orders to prepare this case for final hearing and a listing has been made with the parties already as is the policy in this region.

Employment Judge King

Date: 04.01.2018

Sent to the parties on:

.....
For the Tribunal Office