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EMPLOYMENT TRIBUNALS

Claimant: Mr K Smith

Respondent: Quantum Care Ltd

Heard at: East London Hearing Centre

On: 3 May 2018

Before: Employment Judge Jones (sitting alone)

Representation

Claimant: Ms J Moore (Lay Representative and the Claimant's sister)

Respondent: Mr S McHugh (Counsel)

JUDGMENT

The judgment of the Employment Tribunal is that:-

- (1) The Tribunal has no jurisdiction to hear the Claimant's complaints of unfair dismissal and discrimination on grounds of sexual orientation as they were issued outside of the statutory time limits.
- (2) The claim is dismissed.

REASONS

1 The Claimant brought complaints of unfair dismissal and discrimination on the ground of sexual orientation in an ET1 presented to the Employment Tribunals on 19 December 2017. The Claimant had been dismissed from his employment with the Respondent as the Care Team Manager on 30 June 2017. The Respondent resisted the complaints. It is the Respondent's case that the Claimant was dismissed for a fair

reason, namely gross misconduct and that he was not subjected to discrimination on the grounds of his sexual orientation.

2 Today's hearing was listed by EJ Gilbert's Order on 28 February as an open preliminary hearing to consider whether the Tribunal had jurisdiction to hear his complaints given the time limits set out in section 111 of the Employment Rights Act 1996 and section 123 of the Equality Act 2010.

Law

3 It was agreed that the Claimant did not contact ACAS until 18 December 2017 and he then lodged his claim at the Employment Tribunal on 19 December 2016. The Respondent submitted that they had been presented 11 weeks and 5 days after the end of the 3-month prescribed time limit.

4 Section 111 of the Employment Rights Act 1996 states that an Employment Tribunal shall not consider a complaint of unfair dismissal unless it is presented to an Employment Tribunal before the end of the period of three months beginning with the effective date of termination. Where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months, then the claim must be presented within such further period as the Tribunal considers reasonable for the Tribunal to have jurisdiction to consider it.

5 This time limit can be affected by the early conciliation process so that the potential claimant can get an extension of the time in which to file a complaint. Section 207B(2) of the Employment Rights Act 1996 refers. However, in order to get that extension, a claimant would need to have contacted ACAS to start the conciliation process before the expiry of three months from the date of the matter complained of. As the Claimant contacted ACAS on 18 December and his dismissal was on 30 June, which was therefore after the end of the expiry of the three month time limit, he does not get the benefit of the extension of time under section 207B(2) of the ERA.

6 This means that in relation to the unfair dismissal claim, the Claimant is bound by the three-month time limit and the Tribunal only has jurisdiction to hear a complaint issued outside of that time limit where it is satisfied that it was not reasonably practicable for the complaint to be presented within time, and that it was brought within such further period as the Tribunal considers reasonable.

7 In practice this has been described as a two-stage test. Firstly, the Tribunal has to decide whether it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the relevant period. If the Tribunal is satisfied of that, the second part of the test requires the Tribunal to consider whether the complaint was presented within such further period as it considers reasonable. The burden of proving both parts of that test is on the Claimant.

How does a tribunal decide whether it was reasonably practicable for the claimant to present a claim in time? And if it was not reasonably practicable, how does it decide what is a reasonable time thereafter?

8 The law states that the question of what is or is not reasonably practicable is essentially one of fact for the Employment Tribunal to decide. In the case of *Walls Meat Co Ltd v Khan* [1978] IRLR 499 Lord Denning set out the test to be applied as follows:

“it is simply to ask this question: had the man just cause or excuse for not presenting his complaint within the prescribed time? Ignorance of his rights – or ignorance of the time limit – is not just cause or excuse unless it appears that he or his advisers could not reasonably be expected to have been aware of them. If he or his advisers could reasonably have been so expected, it was his or their fault, and he must take the consequences.”

9 In the case of *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] IRLR 119 Lord Justice May explained it as follows: *“‘Reasonably practicable’ means more than merely what is reasonably capable physically of being done..... Perhaps to read the word ‘practicable’ as the equivalent of feasible..... and to ask colloquially and untrammelled by too much legal logic – ‘was it reasonably feasible to present the complaint to the employment tribunal within the relevant three months?’- is the best approach to the correct application of the relevant subsection.’*

10 When considering if a particular step is reasonably practicable or foreseeable, it is necessary for the Tribunal, as the Court of Appeal said in the case of *Schultz v Esso Petroleum Ltd* [1999] IRLR 488, to answer this question ‘against the background of the surrounding circumstances and the aim to be achieved’. That is what the *“injection of the qualification of reasonableness”* requires.

11 In the *Walls Meat* case, Lord Justice Brandon dealt with the issue of whether or not a claimant’s ignorance of his rights can affect reasonable practicability. He stated that:

“the performance of an act, in this case the presentation of the complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant or a postal strike; or the impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments mainly making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such enquiries as he should reasonably in all the circumstances have made, or from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him’.”

12 The Tribunal therefore has to consider the whole period of time from the date upon which the right to claim arose until the date on which the Claimant submitted the complaint, not concentrating just on the period at the end. The Tribunal needs to consider all the relevant circumstances including the actual knowledge the Claimant had as to his rights and what knowledge he should have had if he had acted reasonably in all the circumstances.

13 The Claimant did not seek legal advice but did have the assistance of trade union representatives in the internal process with the Respondent.

14 Lastly, the Respondent referred the Tribunal to the case of *Tesco Stores Ltd v Kayani* UKEAT/0128/16 (8 September 2016, unreported). In that case the Claimant had presented her claim 3½ months out of time. The Tribunal decided to apply the 'not reasonably practicable' escape clause and grant her an extension of time. The EAT held that the Tribunal's decision was defective on two grounds. Firstly, the Tribunal had wrongly conflated the factors relevant to the reasonable practicability aspect with those that were relevant to the determination of whether the claim had been presented within a reasonable time after the time limit had expired. The Tribunal had failed to determine the extent to which each of the particular factors and circumstances the Claimant experienced during the whole relevant period, impacted on the failure to present the claim in time, as opposed to contributing collectively to the general reasonableness of granting an extension of time. The second defect in the decision was that, although the Claimant was represented by solicitors during the period prior to the expiry of the time limit, the Tribunal did not consider the adequacy of the legal advice she received, particularly in relation to advice on fee remission, which was relevant to the question whether the claim could be presented in time. Therefore, when the Tribunal is determining the question of reasonable practicability, it is essential to consider the role of the solicitor when one is instructed as one of the relevant factors.

15 In relation to the complaint of discrimination on the grounds of sexual orientation, the law governing the Tribunal's ability to extend time is different. Section 123 of the Equality Act 2010 (EA) stipulates that discrimination complaints may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates, or such other period as the Employment Tribunal thinks just and equitable. Also, for the purposes of calculating time limits; subsection (3)(a) states that conduct extending over a period is to be treated as done at the end of the period.

16 It was not part of the Claimant's case that this was all part of one continuing act culminating in his dismissal.

What does a tribunal need to consider before using its discretion to extend time and are just and equitable basis?

17 It has been held that the words 'just and equitable' give the Tribunal a wide discretion to do what it thinks is just and equitable in the circumstances. The Tribunal can take into account anything which it judges to be relevant. However, it has also been held that time limits are to be exercised strictly in employment cases and that there is no presumption that a tribunal should exercise its discretion to extend time on the 'just and equitable' ground unless it can justify failure to exercise the discretion. The burden is always on the Claimant to convince the Tribunal that it is just and equitable to extend time as, 'the exercise of discretion is the exception rather than the rule' (*Robertson v Bexley Community Centre* [2003] IRLR 434. In the case of *Abertawe Bro Morgannwg University Local Health Board v Morgan* UKEAT/0305/13 (18 February 2014, unreported) Langstaff J stated that a litigant can hardly hope to satisfy that burden unless he provides an answer to 2 questions: the first of which is why is it that the primary time limit has not been met, and insofar as it is distinct, the second question is why, after the expiry of the primary time limit, the claim was not

brought sooner than it was. Whether a Claimant succeeds in persuading a tribunal to grant an extension in any particular case is not a question of either policy or law; but a question of fact and judgment, to be answered case by case by the Tribunal (*Chouafi v London United Busways Ltd* [2006] EWCA Civ. 689).

18 In the case of *British Coal Corporation v Keeble* [1997] IRLR 336 the EAT held that the discretion to grant an extension of time under the just and equitable formula is as wide as that given to the civil courts by section 33 of the Limitation Act 1980 to determine whether to extend time in personal injury cases. Under that section the court 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 (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued had cooperated with any request for information; (d) the promptness with which the Claimant acted once he or she knew of the facts giving rise to the cause of action; and (e) the steps taken by the Claimant to obtain appropriate professional advice when he or she knew of the possibility of taking action. There is no legal requirement on the Tribunal to go through such a list in every case provided of course that no significant factor has been left out of account by the Employment Tribunal in considering whether to exercise its discretion. (*London Borough of Southwark v Afolabi* [2003] IRLR 220). There is no requirement for a tribunal to expressly rehearse these factors and ‘balance them off’.

19 The Tribunal was aware that there are at least two types of prejudice that the Respondent may suffer if time is extended on a just and equitable basis in this case. Firstly, the Respondent will have to meet a claim which has been issued outside of the time limit and secondly, it may suffer what *Harvey* refers to as ‘forensic prejudice’ especially if limitation is extended by many months or years; caused by fading memories, loss of documents and losing touch with witnesses who have moved on. Although such forensic prejudice could be crucial to the exercise of discretion, if there is no such forensic prejudice to the Respondent, that will not be decisive in favour of an extension of time and, may not be relevant at all. Of course, the prejudice to the Claimant of time not been extended is that he does not have his complaint of sexual orientation discrimination heard.

20 If the Claimant asserts ignorance of the right to make a claim, the assertion must be genuine and ignorance, whether of the right to make a claim at all or the procedure making it, or the time limit within which it must be made, must be reasonable.

21 The Claimant relies on his mental health as the reason for his failure to issue both complaints. The Tribunal are referred by the Respondent to the case of *Asda Stores Limited v Kauser* EAT/0165/07 in which the EAT overturned the tribunal’s decision and Lady Smith stated that “something that is more than mere stress was needed to elide the statutory time limit”. The Respondent submitted that in the letter from the GP dated 12 March 2018, the doctor makes reference to the Claimant suffering from ‘stress’ and ‘work stresses’ around the relevant time and that this did not meet the test.

22 The reasons put forward by the Claimant for failing to issue a claim in time are some of the factors to be considered when a tribunal is considering whether to use its

discretion to extend time. The Tribunal is to take a multifactorial approach, with no single factor been determinative of the issue. The Tribunal is also to consider the balance of prejudice as set out above and the potential merits of the claim.

Evidence

23 The Claimant gave sworn evidence at today's hearing as did his representative, Ms Moore. The Tribunal also had a copy of a letter from the Claimant's GP dated 12 March 2018. Both parties made submissions.

Facts

24 The allegations of misconduct, which the Respondent investigated, were serious and the Claimant was invited to a disciplinary hearing on 26 June 2017. The Claimant was summarily dismissed on 30 June 2017 for gross misconduct. The Respondent's case is that the allegations of discrimination were raised for the first time in the Claimant's appeal letter on 3 July 2017. The appeal hearing took place on 24 July. The Claimant attended the appeal hearing and was accompanied. He received a letter from the Respondent dated 30 July in which he was informed that his appeal had been unsuccessful.

25 The Claimant conducted correspondence with the Respondent in which he sought a copy of the transcript of the appeal hearing. The Respondent mistakenly sent him a copy of a reference for another employee instead of the transcript and the Claimant had to point this out to them. The Claimant finally received the transcript from the Respondent sometime in August.

26 Following his dismissal, the Claimant was initially out of work and signed off sick. He informed the Tribunal today that at the time, he wanted to forget everything and that he was 'struggling'. His evidence today was that he had been struggling even before the appeal against his dismissal and that he had said this to the trade union representative who represented him at that hearing. It was his evidence today that he found the appeal very difficult, was emotional and felt 'close to being sectioned'. Miss Moore confirmed in her evidence that she had been worried about the Claimant after his dismissal and that he 'was at breaking point'.

27 In the GPs letter, there is no mention of the Claimant being at breaking point at this time or suffering symptoms of breakdown. The letter records that there were a couple of occasions in 2017 when the Claimant sought advice from GPs at the surgery. On 6 July he consulted Dr Farmah and mentioned that he was 'feeling low again and had been fired from his work and was awaiting a tribunal' which would indicate that he intended from as early as July, to bring an Employment Tribunal case against the Respondent. The letter also stated that the Claimant was signed off a further period and was continued to be 'managed on antidepressants'. The GP notes in his letter that the Claimant had further consultations with Dr Ahmed as well as himself, Dr Moshin on 14 August. He noted that the Claimant was struggling mentally and that his antidepressants were increased during this time. He also stated that the whole period had a significant impact on the Claimant which was evident from the contact he had at the surgery and that it is likely that it was compounded by the fact that he had a history of psychiatric illness.

28 The Claimant confirmed that he had a formal diagnosis of depression. He has, according to Ms Moore, been hospitalised as a result of his mental illness and has been on suicide watch at other times. I was not told that he had been hospitalised following his dismissal and during the period of time up to the date on which he contacted ACAS or issued the ET1.

29 At the same time, Ms Moore found the Claimant a job as a receptionist at a doctor's surgery in August. The Claimant spoke to his GP about whether this was advisable and he was advised that it would be good for him to go back to work as staying away from work could worsen his condition. The Claimant started his employment as a receptionist at the GP surgery on 29 September 2017. The surgery received an anonymous telephone call about the Claimant sometime after he started and he was suspended for two weeks while the allegations were investigated. After two weeks, the suspension was lifted and the Claimant returned to work.

30 When he first started working at the surgery, he worked 37 hours per week. He is in a much more junior position than he had been at the Respondent as he gets paid less and I was not told that he was responsible for managing anyone. After working there for about a month, the Claimant asked whether his hours could be reduced as he was finding it difficult. The surgery found that it was unable to accommodate the Claimant's request and his medication was increased in December. The Claimant continues to work at the doctor's surgery. He continues to work 37 hours per week. The Claimant confirmed that he is on the following medication: Deloxetine which was increased from 30mg to 60mg in December 2017, Dihydrocodeine and Meloxicam which are both prescribed for pain management.

31 It is the Claimant's case that he was not sure about his right to issue a complaint in the Employment Tribunal and that he did not know about the three-month time limit. It is his evidence that he only began to look into the possibility of bringing a complaint in the Employment Tribunal when his medication was changed in December. Ms Moore offered to help him with the process. They got together at her house to complete the appropriate forms for contacting ACAS and the Employment Tribunal. From the Claimant's research online, he believed that he had two years in which to issue the complaints against the Respondent.

32 The Claimant had a trade union representative with him during the internal hearings. The Claimant and his family were unhappy with the way one of the representatives acted and have made a formal complaint with the trade union. Another trade union representative accompanied him to the appeal hearing. I was also informed by Ms Moore that there were internal discussions with the Claimant about resolution of his complaints with the Respondent but that those broke down in July before the Claimant's appeal was heard. The Claimant was able to take part in those discussions. Miss Moore informed the Tribunal that she had encouraged the Claimant to take up this claim at the Employment Tribunal but that he felt unable to do so after his dismissal. She stressed that he had been significantly impacted by what had happened at work and that the Tribunal should take this into account.

33 It was the Respondent's case that the motivation for issuing the claim was the Respondent's decision to reinstate Ms Luckin who had been the manager the Claimant

complained about while employed. This occurred on 4 December 2017. The Claimant strongly denied that this was related in any way to his decision to issue his claim and stated that he was aware that Ms Luckin returned to work in January. It is the Respondent's case that if the Claimant had been aggrieved about the alleged incidents of sexual orientation discrimination that he now relies on which occurred before October 2016, he would not have waited until after his dismissal before bringing his complaints. Also, if he had considered that his dismissal was unfair and in any way related to his sexual orientation, he would have brought his complaints, as indicated to his GP, well before December 2017. It was the Respondent's case that the Claimant's complaint was vexatious and ill-founded and that the Claimant's intent was to cause maximum reputational damage to the Respondent and was not based of any sense of injustice. The Respondent referred to the disparaging and inflammatory comments about the Respondent made by Ms Moore and her husband, Darren Moore on Facebook. The comments have since been taken down.

34 The Respondent noted that Siven is no longer employed by the Respondent and he would need to be a witness if the discrimination claims were allowed to proceed. Also, the discrimination complaints relate to a period of time well before the Claimant's dismissal. The Claimant's complaint was that after he blew the whistle on incidents that occurred in the home he became a target for homophobic comments and gestures from Ms Luckin and possibly Ms Guillard and other colleagues. The Claimant made a formal complaint to the regional manager Siven who did not take it seriously and further, made comments that were unsympathetic and could be considered homophobic, toward the Claimant. It is the Claimant's case, that Ms Luckin retaliated by making complaints about him which alleged that he had committed gross misconduct. It is likely that the complaints of less favourable treatment on the grounds of his sexual orientation relate to the treatment that he received from Ms Luckin and Siven which occurred before he submitted his grievance in 2016.

Decision

Unfair dismissal complaint - was it reasonably practicable for the Claimant to have issued his complaint of unfair dismissal in time?

35 The Tribunal accepts that the Claimant has a history of depression and suffers from mental ill-health. At the same time, the Claimant has worked and at the time of his dismissal, had been employed by the Respondent for almost 10 years. The Claimant had been a manager for the Respondent.

36 The Claimant had a trade union representative with him at the appeal hearing and does not appear to have asked that person how he could take the matter further. The Claimant made no searches of the Internet and did not seek advice from the Citizens Advice Bureau or anywhere else about his rights in relation to his dismissal. I accept that Miss Moore was encouraging him to take up the case at the Employment Tribunal and was willing and able to assist him in doing so after his dismissal.

37 Was it impracticable for the Claimant to issue a claim by reason of his disability? I had little evidence of the Claimant being so unwell at the time of his dismissal and up to December, to support a conclusion that he was unable to do so by reason of his ill-health and disability. While he was clearly upset and distressed by his dismissal, he

Claimant was able to write a letter of appeal against his dismissal and attend the appeal hearing. It is likely that this was distressing and upsetting for him but that would not be the same as being so unwell as to make it impracticable for him to issue his complaint.

38 It is likely that the Claimant was suffering from stress at the time of his dismissal and his unemployed status would have caused him some additional anxiety. This would have been even more so considering the length of the Claimant's employment with the Respondent and the fact that he believed that he was innocent of the misconduct allegations found against him. However, given how aggrieved he was, it was unclear to the Tribunal why he did not instruct Miss Moore to bring a claim on his behalf or to find out how to do so between July and September.

39 Also, the Tribunal was not presented with sufficient evidence to show whether the Claimant's depression worsened after his dismissal or stabilised. The GP's letter states that the Claimant's antidepressants were increased in August and that he was struggling mentally. At the same time, I note that the Claimant sought employment in a job in which he continues to be employed. The Claimant began his employment at the GP surgery on 29 September. The GPs letter does not say that the Claimant's dismissal caused him psychiatric illness but referred to him having a background of psychiatric illness. I interpret that as saying that given his background psychiatric illness, his dismissal caused him more stress and anxiety than it would someone who had not had that background.

40 The Claimant was not hospitalised after his dismissal. He was able to give instructions regarding his appeal. He was able to apply for and succeed at an interview for a job and to hold that job down. The job is full-time.

41 The Claimant clearly thought about issuing his claim in July as he mentioned it to the GP.

42 I did not have evidence that could lead me to conclude that it was not reasonably practicable for the Claimant to have issued his unfair dismissal complaint between July and September. I had insufficient evidence to enable me to conclude that the Claimant's ill-health was of such severity in the period following his dismissal and up to 29 September, which would have been the primary time limit for his complaint of unfair dismissal, to conclude that it made it impracticable for him to have issued it.

43 In the circumstances, it is this Tribunal's judgment that it was reasonably practicable for the Claimant to have issued his complaint of unfair dismissal within the three-month time limit.

44 The Employment Tribunal has no jurisdiction to hear the Claimant's complaint of unfair dismissal. The complaint is dismissed.

The complaint of sexual orientation discrimination

45 The Claimant was not misled about his right to complain to the Employment Tribunal by his trade union representative and he did not seek legal advice about this.

46 The Claimant was unhappy about the way he was spoken to by his manager, Ms Luckin and others as he considered that he was being harassed or treated differently on the grounds of his sexual orientation. He also considered that the grievance he raised in October 2016 had not been taken seriously by the Respondent. Yet he did not bring a claim at the Employment Tribunal.

47 I first considered the Claimant's reasons for not issuing his complaint of sexual orientation discrimination within three months of the acts complained of. The Claimant's complaints of sexual orientation discrimination relate to comments made by members of staff and the Deputy Manager, Ms Luckin which are not dated in the ET1 and of the further comments made by Siven, a senior manager within the Respondent, when the complaints were escalated to him. It is disputed between the parties whether the Claimant raised issues of sexual orientation discrimination in the grievance in October 2016. Today the Respondent's position was that a complaint of discrimination on the grounds of sexual orientation was first presented by the Claimant in his appeal against dismissal.

48 It is likely therefore that the Claimant's complaints of sexual orientation discrimination relate back to pre-October 2016. The Claimant was clearly unhappy about the alleged comments made to him which believes were related to sexual orientation. He had access to the trade union and was supported by his family in dealing with matters that came up at work but he did not bring this to the Tribunal or make enquiries of the union about any action that he could take. He did not seek legal advice. He did not make searches on the internet.

49 The Claimant's reason for not doing so was his mental ill-health. I considered that the Claimant was a person who suffers from depression. He has a background of psychiatric illness. The Claimant continued working until his dismissal on 30 June 2017. From the GP's letter it is my judgment that the Claimant's condition has been successfully managed on antidepressants and continued to be so for the past year, even though he has suffered some stresses connected with work and his dismissal.

50 In my judgment, the Tribunal would expect that either the Claimant or family members would have done some searches on the internet or sought advice at the CAB or at local solicitors about his rights in relation to how he was being treated at work. It was not reasonable for the Claimant to have taken no action in that regard. In making that assessment, I am looking at the whole period of time from the approximate dates in 2016 when he was working and was distressed and upset by what was happening at work, up to the date on which the claim was issued. Throughout that period he was out of work between 1 July and 29 September. At all other times it is likely that he was working and functioning.

51 I was not entirely convinced that the Claimant's mental state had been the main reason for the Claimant's delay in issuing his complaint. It is likely that the reinstatement of Ms Luckin after the investigation of a totally separate complaint, may have been related to his decision to issue this complaint. The Claimant sees Ms Luckin as being responsible for his dismissal and would have been outraged that she was reinstated – even if her suspension had been for a different complaint. In today's hearing, the Claimant appeared to know exactly when she returned to work in January

even though he had not been there since July. The decision to lift her suspension or reinstate her occurred in December and the claim is issued in December. In my judgment, it is highly likely that the Claimant was paying close attention to the Respondent's reaction to the latest complaint against Ms Luckin her and the decision to reinstate her or to lift her suspension is a large part of his motivation for bringing this claim at the time that he did.

52 In my judgment, the cogency of the evidence would be affected if time were extended. It is now 2018 and if this matter were to proceed the witnesses would be asked to recall statements made in 2016. Also, Siven is no longer employed by the Respondent and I was not told whether it is still in touch with him.

53 The prejudice to the Claimant if time was not extended in relation to this complaint is that he will not be able to bring these complaints before the Employment Tribunal. The prejudice to the Respondent is that it may not be able to defend the complaint in relation to Siven and the witnesses to the comments allegedly made by the others made have difficulty with their recollection. Also, the dates upon which the alleged comments by Ms Luckin and the Claimant at the colleagues were made are not specified in the claim form and that this may give the Respondent some difficulties in defending the claim. The Claimant would need to provide further details. There is a dispute between the parties as to whether the Claimant raised complaints of sexual orientation discrimination in his grievance in 2016 or whether they were raised for the first time in the letter of appeal against his dismissal.

54 Taking all the above into consideration, it is this Tribunal's judgment that the Claimant's allegations of sexual orientation discrimination relate to incidents that occurred in the period before October 2016. That means that his claim was issued over a year later, in December 2017. For most of that time the Claimant was employed and working. It was not clear to the Tribunal why the Claimant failed to issue complaint on this matter, in the ensuing period. The Claimant has suffered from depression throughout this period, which is managed successfully by anti-depressants and although he is likely to have suffered additional stress at the time of his dismissal, the Tribunal was not persuaded that it was just and equitable to extend time in this case.

55 It is this Tribunal's judgment that the Claimant has failed to persuade it that it would be just and equitable to extend time to allow him to pursue his complaints of discrimination on grounds of sexual orientation.

56 The Tribunal's judgment is that it has no jurisdiction to hear the Claimant's complaint of less favourable treatment and/or harassment on the grounds of sexual orientation. The complaint is dismissed.

Employment Judge Jones

5 June 2018