



EMPLOYMENT TRIBUNALS

Claimant
Ms N Siddiqui

-v-

Respondent
Telecom Services Centres Ltd
t/a Webhelp UK

PRELIMINARY HEARING

Heard at: Nottingham **On:** 30 November 2017

Before: Employment Judge Evans (sitting alone)

Representation

For the Claimant: In person
For the Respondent: Mr Milligan, Solicitor

JUDGMENT

1. The Claimant is refused permission to amend her claim.
2. The Tribunal does not have jurisdiction to hear the claims of unlawful discrimination which the Claimant has presented to the Tribunal.

REASONS

Background

Issues for the hearing on 30 November 2017

1. On 27 April 2017 the Claimant presented a claim against the Respondent for unfair dismissal, discrimination on the grounds of religion or belief, discrimination on the grounds of race and discrimination on the grounds of sex. The grounds of claim attached to the Form ET1 comprised 149 numbered paragraphs but did not identify with any clarity which acts (or omissions) the Claimant argued amounted to acts of discrimination on the grounds of sex, race, religion or belief or whether the discrimination was direct, indirect, harassment or victimisation.
2. The Respondent presented a Response defending all the claims. In the Response it argued that all the discrimination claims were out of time.
3. The Preliminary Hearing which took place before me on 30 November 2017 was listed on 10 October 2017:

- 3.1. To determine whether the Tribunal had jurisdiction to hear the Claimant's claims of discrimination;
- 3.2. To make further case management orders.
4. In the event, it was also necessary for me to deal with an application by the Claimant to amend her claim.
5. At the hearing on 30 November 2017 the Claimant represented herself. It is worth noting, however, that she explained to me that she has qualified both as a solicitor and as a barrister, albeit she has not practised since 2011. She explained that when she did practice it was not in the area of employment law. The Respondent was represented by Mr Milligan.
6. I had before me an agreed bundle of 204 pages. In addition, the Claimant produced a further 15 pages of documents on the day of the hearing. Mr Milligan had no objection to the late production of these documents. References to the bundle are all to the agreed bundle of 204 pages unless otherwise stated.
7. Mr Milligan also provided me with a number of authorities: Ahmed v Ministry of Justice UKEAT/0390/14/RN, Bexley Community Centre v Robertson [2003] EWCA Civ 576, University of Westminster v Dr G N Bailey OBE UKEAT/0345/09/JOJ, British Coal Corporation v Keeble [1997] IRLR 336 and Apeloguns-Gabriels v Lambeth London Borough Council [2002] ICR 713.

Procedural history

8. A closed telephone Preliminary Hearing took place on 28 June 2017 [page 46]. Employment Judge Britton explained that there was:

.. no point continuing with the current directions until the out of time point is further considered and second there is a proper scheduling of the Claimant's claims, her having had the opportunity to reflect on the relevant sections of the Equality Act 2010 commencing with direct discrimination at Section 13 and thence in particular dealing with harassment at Section 26 and possibly victimisation at Section 27. I have read her the relevant sections of the Equality Act 2010. I have urged her to think closely on whether or not all the discrimination protected characteristic heads of claim are actually viable in this case or whether in fact her claim is principally really one of sex discrimination.
9. EJ Britton ordered the Claimant to prepare a "Scott Schedule" by 25 August 2017. He also ordered her to prepare a statement dealing with the "out of time issues" by the same date. A further Preliminary Hearing was listed for 10 October 2017.
10. The Claimant prepared and served a Scott Schedule running to 25 pages [page 52]. It sets out 16 "acts/detriments" said to amount to unlawful discrimination, the first of which took place on 17 November 2015 and the last of which took place on 22 December 2015. At paragraph 17 the Claimant comments, under the heading "summary":

It was not just one incident which led me to believe that [Harley Farquhar] discriminated against me but a whole serious [sic] of events from 17 November 2015 to 22 December 2015 which are summarised here in numerical order and which culminated in my completely unfair demotion.
11. The Claimant also prepared and served a "Claimant's statement re time issue" [page 77].

12. The closed telephone Preliminary Hearing on 10 October 2017 took place before Employment Judge Hutchinson:
- 12.1. At paragraph 7 of the Case Management Summary EJ Hutchinson noted that the Scott Schedule sought to introduce new factual matters not previously pleaded in the ET1 at paragraphs 2,6,7,15 and 16. EJ Hutchinson commented: "If [the Claimant] wants to amend her claim she must write to me as soon as possible setting out the amendments that she seeks and the basis upon which she applies for the amendments". The Claimant did not do this.
- 12.2. At paragraph 8 of the Case Management Summary EJ Hutchinson noted that: "the Scott Schedule also seeks to make claims of age discrimination. No such claim has been made before. The Claimant said to me that she did not wish to proceed with any claim of age discrimination and I said that I would note that".
- 12.3. At paragraph 9 of the Case Management Summary EJ Hutchinson noted: "It can be seen clearly from the Scott Schedule that the matters of discrimination which she complains of arose over a period between 17 November 2015 and 22 December 2015. The Claimant then went off sick and she remained absent until her resignation".
13. EJ Hutchinson then went on to list a further preliminary hearing for 30 November 2017 to deal with the issues set out at paragraph 3 above.

The Preliminary Hearing on 30 November 2017

The discussion at the beginning of the hearing

14. At the beginning of the hearing before me on 30 November 2017:
- 14.1. Mr Milligan for the Respondent and the Claimant agreed that the issues that needed to be dealt with were as set out in paragraph 3 above;
- 14.2. The Claimant confirmed that she had not made any application to amend her claim as EJ Hutchinson had told her she would need to do if she wished to pursue the new factual matters raised in paragraphs 2,6,7,15 and 16 of the Scott Schedule and accordingly those new factual matters were not pursued;
- 14.3. The Respondent indicated that it regarded the pleadings as satisfactory – that is to say it did not propose to seek an order requiring the Claimant to clarify her case as set out in the Scott Schedule further;
- 14.4. It was agreed that the Claimant would give evidence, that Mr Milligan and she would then make submissions in relation to the issue of time, and that I would then make a decision on that issue before proceeding to deal with case management orders.

The Claimant's application to amend her claim

15. The Claimant adopted her witness statement [page 77] as her evidence in chief and her cross examination by Mr Milligan began. By his first question he asked the Claimant to confirm that the acts of discrimination of which she complained had all taken place between 15 November and 22 December 2015. The Claimant answered "yes and no". It was put to the Claimant that the position was quite clear because of the contents of the Scott Schedule: all alleged acts of discrimination had taken place between 15 November and 22 December 2015. However she stated that in fact she

believed that the Respondent's management had "by implication" become involved in the discrimination because of their failure, in the Claimant's view, to deal properly with the grievance she had raised.

16. At this point I called a halt to the cross examination. I pointed out to the Claimant that in her grounds of claim she characterised the way her grievance had been dealt with as negligent (paragraphs 121 and 123) and as being a miscarriage of justice (paragraph 134). She had also referred to a lack of "due care and impartiality" (paragraph 137). However she had not alleged discrimination on the part of management in the way they had dealt with the grievance that she had raised either in the ET1 or at either of the Preliminary Hearings that had taken place. Further, she had not referred to any act or omission after 22 December 2015 as being an act of discrimination in the Scott Schedule. Accordingly, I told her that if she wished to now argue that the way the Respondent had dealt with her grievance in 2016 amounted to act(s) of unlawful discrimination then she would need to apply to amend her Claim.
17. The Claimant initially said that she was arguing that the person who heard her grievance (Qamar Hussain) and the person who decided her appeal (Holly Reilly) were simply negligent, but on further reflection she changed her mind and said that she wished to apply to amend her claim to include allegations of discrimination against them.
18. I therefore adjourned to give the Claimant time to prepare her application to amend. The adjournment lasted 20 minutes.
19. The Claimant's application which was handwritten was as follows:

The Claimant would like to amend her original pleadings to state that by ignoring blatant acts of discrimination by Mr Farquhar, despite clear evidence, the Sky Sales Management perpetuated the effects of that discrimination and thereby became a party to that discrimination.

The Claimant has not included this allegation before although she has stated throughout her case that the management acted negligently. The Claimant feels that the negligence was so acute and apparent that it becomes discrimination.

The lateness of this application is due to the confusion in the Claimant's mind as to when negligence is so blatant that it becomes discrimination.

20. The Claimant clarified that the reference to "Sky Sales Management" was a reference to Mr Hussain and Ms Reilly.
21. The Claimant's application was therefore to the effect that Mr Hussain committed an act of discrimination when he rejected her grievance and Ms Reilly committed an act of discrimination when she rejected the Claimant's appeal against the grievance outcome. The Claimant did not explain whether the discrimination was direct, indirect, harassment or victimisation. She also did not explain whether it was discrimination because of sex, race, belief or religion.
22. I asked the Claimant to specifically confirm that the last alleged act of discrimination was the refusal of her appeal against the grievance outcome by a letter dated 16 June 2016. She said that it was but that she had not received that letter until mid-July.
23. I asked Mr Milligan what he had to say about the application. He said that he opposed it. He referred to the case of Selkent Bus Co Ltd v Moore [1996] IRLR 661. He said that taking account of all the circumstances and balancing the hardship of

allowing the amendment against the injustice and hardship of refusing it, I should refuse the application.

24. The discretion to permit amendments is one that should be exercised 'in a manner which satisfies the requirements of relevance, reason, justice and fairness inherent in all judicial discretions' (Mummery, J, as he then was, in Selkent). There is no time limit for making an amendment.
25. Having heard from the Claimant and Mr Milligan, I considered the matter, and took into account factors including the following:
- 25.1. The Application was a substantial one. Previously the Claimant had made clear she did not allege discrimination on the part of Mr Hussain and Ms Reilly, although she was dissatisfied with the way in which they had dealt with her grievance and grievance appeal. She was now proposing to argue something altogether different.
- 25.2. The fact of delay. Accepting the Claimant's argument that the last act of discrimination took place in mid-July 2016, the claims were as a minimum being presented 15 months after the events to which they related and more than six months after she had presented the Claim. There was no satisfactory explanation for this delay.
- 25.3. The timing and manner of the application. The Claimant had had every opportunity to allege discrimination on the part of Mr Hussain and Ms Reilly when she had presented her Claim, at both the previous preliminary hearings, and when she had prepared her Scott Schedule. She had not done so and, I find, her decision not to do so was deliberate. Rather she only raised the point during cross-examination relating to whether the discrimination claims she had presented were out of time. In these circumstances, I find that the application was driven above all not by a conviction that Mr Hussain and Ms Reilly had committed acts of discrimination but rather by a hope that if the amendments were permitted it would be more likely that all of her discrimination claims would be allowed to proceed. I do not accept that the application resulted from the Claimant suffering from "confusion".
- 25.4. The vagueness of the amendment: the Claimant did not make clear either the nature of the discrimination alleged or whether it was on the grounds of sex, race, religion or belief. Whilst this deficiency would have been capable of being remedied, it added to my view that the reason for the application was the potential time limit issue in relation to her existing discrimination claims rather than anything else.
- 25.5. The change to the nature of the factual enquiry relating to the way the grievance and grievance appeal were dealt with. The Claim as pleaded in the Scott Schedule and Claim would require these to be examined only in the context of the constructive unfair dismissal claim and only as part of the chain of event leading up to the Claimant's resignation. The Claimant stated in paragraph 138 of her grounds of claim:

I had tried to retain my job and have my S.M.E. status back until my very last Welfare Meeting on 25th January 2017. I had hoped that with the Sky Sales under a new Management, my case would be reopened and reinvestigated from afresh especially as there is clear evidence that HR had finalized her Grievance Appeal without investigating three crucial incidents. I was told for the final time on 25th January that this will not be done, leaving me with no option but to resign and seek justice via courts.

- 25.6. The Claimant alleges, essentially, procedural failings (not investigating three particular incidents) and that appropriate weight was not given by the decision makers to different bits of documentary evidence available to them. In the context of a constructive dismissal claim, such matters would be capable of being considered primarily by reference to contemporaneous documents (of which the Claimant assured me there were many). However the nature of the enquiry would be substantially different if the reason why Mr Hussain and Ms Reilly acted (or failed to act) as they did took centre stage as it would in a claim of discrimination claim. Ms Reilly has left the Respondent's employment and so the Respondent would be placed at a substantial disadvantage.
26. I decided that I should not exercise my discretion to permit the amendment and therefore refused the Claimant's application on the grounds that the injustice and hardship which would be caused by allowing the application outweighed the injustice and hardship caused by refusing it when the factors above were taken into account. Without the amendment being allowed, the Claimant could still pursue her argument that she had been constructively dismissed as a result of events including how the grievance and grievance appeal were dealt with and, frankly, her assertions that Mr Hussain and Ms Reilly had committed acts of discrimination in the way they had dealt with the grievance and grievance appeal lacked all conviction. On the other hand, if the application were allowed, the Respondent would have to deal in detail with exactly why Mr Hussain and Ms Reilly had acted as they did, notwithstanding the fact that Ms Reilly was no longer their employee.
27. Having dealt with the Claimant's application to amend, her cross-examination by Mr Milligan resumed.
28. Once the Claimant's cross-examination had concluded, I gave her the opportunity to add anything to her evidence that she might have added as a result of questions asked in re-examination by a representative.
29. At the conclusion of the Appellant's evidence, Mr Milligan made his submissions relating to why the Appellant's claims of discrimination for the period November/December 2015 should not be allowed to proceed. The Appellant then made lengthy submissions about why they should. I outline their respective submissions below.
30. After the submissions I reserved my judgment – unfortunately, as a result of the need to deal with the Claimant's application to amend, there was no time for judgment to be given extempore on the day.

The law relating to the extension of time under the Equality Act 2010

31. Section 123 of the Equality Act 2010 provides where relevant as follows.
- (1) Subject to sections 140A and 140B, proceedings on a complaint within section 120 may not be brought after the end of –*
- (a) the period of 3 months starting with the date of the act to which the complaint relates, or*
- (b) such other period as the employment tribunal thinks just and equitable...*
- ... *(3) For the purposes of this section –*
- (a) conduct extending over a period is to be treated as done at the end of the period;*
- (b) failure to do something is to be treated as occurring when the person in question decided on it.*

32. The discretion given to the Tribunal to extend time is a wide discretion to do what it thinks is just and equitable in the circumstances. It entitles the Tribunal to take into account anything which it judges to be relevant. The discretion given to the Tribunal is as wide as that under section 33 of Limitation Act 1980. The Tribunal is therefore required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances. In particular the Tribunal should take into account factors such as:
- 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 co-operated with any requests 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 once he or she knew of the possibility of taking action.
33. Although the discretion is wide there is no presumption that it should be exercised so as to extend time.

Submissions in relation to the issue of delay

34. Mr Milligan for the Respondent went first. There was a written document with the Respondent's case in relation to the issue of time [page 121] but Mr Milligan made full oral submissions which included the following points:
- 34.1. **Length and reason for the delay:** the claim was more than 12 months out of time. The Claimant had no adequate explanation for the delay: (1) the decision in relation to the grievance was final by no later than July 2016; (2) there was no evidence after that which the Claimant could rely on to the effect that the Respondent was prepared to consider the matter further; (3) the medical evidence did not suggest that she was at any point too ill to be able to submit a claim; (4) the legal advice the Claimant said she had received was clearly erroneous and as a qualified solicitor and barrister it was incumbent on her to ascertain the correct time limit.
 - 34.2. **Cogency of evidence:** it was now more than two years since the events of which the Claimant complained. Recollections were bound to be affected. Further the fact that Mr Farquhar, the main protagonist, was no longer employed by the Respondent, along with the fact that virtually all of those involved had also left, would severely affect the cogency of the evidence available.
 - 34.3. **Promptness with which Claimant acted once she knew the facts:** this was extremely problematic for the Claimant as a qualified solicitor and barrister. She was aware of the possibility of a claim from December 2015 and yet she had brought a claim until more than two years later.
 - 34.4. **Steps taken by Claimant to seek legal advice:** the Claimant alleged she had got 30 minutes telephone advice from a no-win no-fee solicitor. That advice was erroneous. She should have checked the relevant time limit herself.
 - 34.5. **Prejudice:** the prejudice to the Respondent was that it would have to try and defend the actions of employees which had taken place more than two years ago – so memories would have faded – in circumstances where they

could not rely on nearly all of the relevant individuals to co-operate because they were no longer employees. Further, the Claimant would not be left without a claim if time was not extended: she would still be able to pursue her claim of constructive unfair dismissal.

35. The Claimant's submissions were contained primarily in "the Claimant's response to the issues raised" [page 124]. I do not set these out in full here although I have taken the whole of that document into account. In those submissions the Claimant said amongst other things that:
- 35.1. The reason for the delay in presenting her claim was her "legitimate belief that she needed to exhaust all her internal avenues open to her before initiating her claim";
 - 35.2. This legitimate belief stemmed from legal advice, which had also been to the effect that not only did all internal avenues have to be presented before a claim was begun but also that she needed to resign before bringing a claim;
 - 35.3. Although she was legally qualified, she had not practised since 2011 and "her area of expertise was not Employment Law but Civil Litigation and mostly Housing, Debt and Welfare Benefits" so she was "no more at an advantage than any other lay person in this situation";
 - 35.4. The Respondent would not be prejudiced if the claim went ahead; she, on the other hand, would suffer very great prejudice if she was not able to pursue her claim, given the effect of the events she complained of on both her finances and her health.
36. The Claimant repeated these points in her oral submissions. She also added further points including the following:
- 36.1. She had continued to try and resolve her dispute with the Respondent after the outcome of the grievance appeal;
 - 36.2. She had suffered a "breakdown" in the autumn of 2015 as evidenced by a medical report [page 15 of the Claimant's bundle];
 - 36.3. Although many of the relevant employees had left the Respondent's employment, she did not intend to call any witnesses (beyond herself) and the case could be decided largely by reference to the documents.

Findings

37. These are my findings in relation to matters relevant to my assessment of whether it would be just and equitable to extend time. I have taken account of all the evidence before me in making these findings although of necessity I do not refer to all of it in this decision.
38. **The length of the delay:** the last act of alleged discrimination took place on 22 December 2015 and so that last day for a claim to be presented (subject to any ACAS early conciliation extension) was 21 March 2016. The Claim was presented on 27 April 2017. In principle, therefore, it was more than 12 months out of time.
39. **The reasons for the delay:** the Claimant's explanation for the delay was that she had received legal advice to the effect that in order to bring a claim she had to wait until all avenues were exhausted internally and that also she would have to resign. Mr Milligan did not challenge the fact of this advice in cross examination and so I accept that it was given to the Claimant. However I find that, putting to one side the issue of why the Claimant accepted it unquestioningly (to which I return below), it does not explain coherently the whole of the delay in presenting a claim. By a letter dated 16 June 2016 [page 195] the Respondent rejected the Claimant's appeal against the grievance outcome. The letter written by Ms Reilly concluded:

You have now exhausted all internal appeal procedures, therefore this decision is final.

40. This letter was received by the Claimant no later than mid-July. It was consistent with the Respondent's grievance procedure [page 192]. The Claimant tried to re-open the matter with the Respondent and Ms Reilly agreed to meet the Claimant to discuss matters. However the Claimant raised issues about the scope of a possible meeting on 22 July 2016 [page 44] and on 23 July 2016 Ms Reilly emailed the Claimant saying that she understood the Claimant did not wish to attend the arranged meeting and stated [page 45]:

In light of your position, the proposed meeting will not be re-scheduled. Whilst you intimate you have more questions about the outcome of the appeal hearing, I wish to make it clear that my decision in the grievance appeal is final. There is no further right of appeal under our procedures and therefore it is not appropriate to engage further in correspondence with you regarding the decision.

41. Whilst it is true that, after Ms Reilly left the employment of the Respondent, the Claimant tried to re-open the matter in September and October 2016, nothing the Respondent said or wrote could, realistically, have been understood by the Claimant as an agreement on its part to re-open the grievance. The Claimant was clutching at straws. I find that by 23 July 2016 she knew that to all intents and purposes the grievance procedure had concluded and that her belief that she had to exhaust all internal avenues before proceeding with a claim only explains her delay until that point.

42. The Claimant also relied on her medical condition in the autumn of 2017 as being one of the reasons for the continuing delay. This point did not come to the fore in her written submissions but by the time of the hearing she had produced a letter from her GP and in her oral submissions referred to a "breakdown" in the autumn of 2016. The letter dated 23 November 2017 [Claimant, page 15] states that she was diagnosed with depression in the summer of 2016 and:

In October 2016 she started counselling and this caused a bit of a relapse and she really struggled in November and December 2016. She was very tearful and anxious as well as her other symptoms during this time. She felt unable to function normally.

43. The Claimant has not included her medical records in the bundle and it is not clear to what extent the letter written more than a year after the period to which it relates is based on the Claimant's retrospective account to the GP of how she felt or is based on contemporaneous medical records. However, in any event, during her cross examination the Claimant accepted that her medical condition did not prevent her at any point from presenting a claim. She said that she could at any point have presented a claim: "absolutely, if I'd known it would impact on my case adversely". Consequently I find that her medical condition did not prevent her from bringing a claim at any point between December 2015 and the date on which her Claim was presented.

44. So far as the reason for the delay between 23 July 2016 and the date on which her employment terminated (28 February 2017) was concerned, I find that this was caused by a mixture of her belief that she would have to resign in order to present a claim (she wished to preserve her employment) and her continuing to clutch at straws that the grievance might be re-opened. I find that in January the Claimant concluded that Mr McDowell would not re-open the grievance case and then resigned on notice. However I also find that she had no realistic basis at any point after the email from Ms Reilly of 23 July 2016 to think that the Respondent would be prepared to re-open the grievance appeal.

45. The last period of delay from 28 February 2017 to 24 April 2017 was I find caused by the Appellant going through ACAS early conciliation (she contacted ACAS on 2 March 2017) and organizing her ET1 form.
46. **The cogency of the evidence:** I find that the cogency of the evidence is likely to be severely affected by the delay in a way which prejudices in particular the Respondent. There are various reasons for this, in particular the passage of time (the events took place two year ago). In addition, the potential witnesses for the Respondent are less likely to have a clear recollection of events than the Claimant, because the events will by and large have been less significant to them than they were to the Claimant.
47. Further, most of the Respondent's witnesses (including in particular Mr Farquhar who was the object of the original grievance and Ms Reilly who heard the grievance appeal) are no longer in the Respondent's employment. They may or may not wish to co-operate with the Respondent in the preparation of witness statements given that they are no longer employed by it and a party who has to rely on witness orders to obtain its evidence will invariably be at a disadvantage when compared to one who does not.
48. **The promptness with which the Claimant acted once she knew of the facts giving rise to the cause of action:** the Claimant knew about the possibility of bringing a complaint by no later than December 2015. There was a very considerable delay until April 2017 before a claim was begun. However the Claimant did seek professional advice in January 2016 and pursue a grievance in relation to the relevant matters in the first half of 2016.
49. **Professional advice:** Her account is that she knew about the possibility of bringing a complaint of discrimination by December 2015. Her account (which I have accepted) is that she received 30 minutes free advice in early 2016 and was told that she could not bring a claim until all internal avenues had been exhausted and she had resigned. Putting to one side the fact that the advice she received was self-evidently wrong, I make the following findings in relation to her attempts to obtain advice and the advice she obtained:
- 49.1. Her account of the advice is vague. She was unable to name the firm who provided it and did not produce a copy of any attendance note she had taken at the time. I find that the advice that she received was of a general nature and not detailed.
- 49.2. Before the phone call to the firm that advised her she says she did not know what the limitation period for any claim was. However the advice she obtained did not include advice as to limitation periods. I make this finding because when I asked her what her understanding was of limitation periods after she had spoken to the firm who had given her the advice she said "they didn't specify time limits, they said raise grievances, and if that doesn't work you need to appeal". I then asked her what she had thought the time limit was for any claim after the phone call of advice and she said "as long as it takes". She said that at no point before she had begun proceedings had she become aware that there was a time limit.
50. **The issues of the extent to which the party sued has co-operated with requests for information:** I find that this is not relevant because the Claimant has not alleged any such failure on the part of the Respondent in these proceedings.

Conclusions

51. I have concluded that it would not be just and equitable to extend the time limit for the Claimant to pursue her claims of discrimination. Accordingly I find that the Tribunal has no jurisdiction to hear them.
52. I have reached this decision for reasons which include the following:
- 52.1. The claims are very substantially out of time – more than a year;
- 52.2. The reasons for the delay are unsatisfactory, particularly when they come from a qualified lawyer: (1) the Claimant had no reasonable basis for thinking that there were internal avenues remaining to be explored after 23 July 2016 – her attempts to pursue the matter further after that date amounted to clutching at straws; (2) her health did not prevent her from bringing a claim at any point; (3) that part of the advice which might have justified delay post 23 July 2016 (that she would have to resign in order to bring a claim of discrimination) was sufficiently bizarre that as a qualified lawyer she should have taken steps to find out whether it was correct, particularly given the very general nature of the advice that I have found she was given; (4) there was as such no coherent reason for the delay in presenting her claims after 23 July 2016;
- 52.3. The cogency of the evidence available to the Tribunal will be substantially reduced as a result of the delay and for the reasons set out in my findings above this will prejudice the Respondent more than it will prejudice the Claimant;
- 52.4. Although by seeking legal advice in January 2016 the Claimant acted with reasonable promptness, her efforts in this regard were completely undermined by her failure to take advice in a way which was appropriate in the circumstances in light of her professional qualifications as a lawyer. The Claimant says that she has experience of civil litigation. All civil litigators know that whenever one considers the possibility of a claim the first things that one does are to identify the relevant time limit, to diarise it, and to create reminders of one kind or another to make sure that the time limit does not pass without the necessary decisions about whether to pursue a claim being taken. Consequently, the Claimant acted with quite extraordinary negligence (albeit she owed a duty of care to nobody but herself) when she failed to take advice in relation to the question of limitation when she spoke to solicitors in January 2016 or to identify such time limits by herself (a simple google search would have sufficed). Her suggestion that she did not identify any time limit for her claim then or, she says, at any point prior to presenting it when she must have known that such a time limit would exist is quite extraordinary.
- 52.5. I conclude that that the prejudice suffered by the Respondent in having to defend the claims of discrimination in light of the passage of time and the problems it will experience in obtaining detailed witness evidence in relation to the events of late 2015 is, when all the above factors are taken into account, greater than that will be suffered by the Claimant if she is not able to pursue her claims of discrimination.

Employment Judge Evans

Date: 14 December 2017

Case No: 2600358/2017
JUDGMENT & REASONS SENT TO THE PARTIES ON

15 December 2017

EMPLOYMENT TRIBUNALS