



EMPLOYMENT TRIBUNALS

Claimant: Mr K Moore

Respondent: Tesco Stores Limited

Heard at: Liverpool **On:** 27 September 2018

Before: Employment Judge Wardle

Representation

Claimant: Mr S Pinder - Solicitor

Respondents: Ms L Wedderspoon - Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that the claimant is disabled for the purposes of section 6 of the Equality Act 2010 and that his claim is in time.

REASONS

1. This case was listed for an open preliminary hearing in order to determine as a preliminary issue, whether the claimant had a disability at any relevant time and whether the claim in respect of any particular allegation was presented after the expiry of the time limit and, if so, whether the time limit should be extended.
2. In addressing these issues the Tribunal received evidence from the claimant in the form of a witness statement and disability impact statement, which was supplemented by oral responses to questions posed. The Tribunal also had before it a bundle of documents, included amongst which were the claimant's relevant medical records.
3. At the conclusion of the hearing the Tribunal informed the parties that judgment would be reserved. Subsequently having regard to the evidence, the

submissions and the applicable law it has been able to reach conclusions on the matters requiring determination by it.

4. Having heard and considered the evidence it found the following facts.

Facts

5. The claimant, who has been employed by the respondent as a shelf stacker/customer assistant in its Southport Extra store since 17 August 2013 according to his ET1 has brought a claim alleging disability discrimination comprising complaints of direct discrimination; harassment and victimisation.
6. He relies upon a medical problem diagnosed as non-freezing cold weather injury (NFCI) as his disabling condition, which impacts on his ability to have a stable body temperature and can impact upon him when working in variable temperatures, including in cold conditions and says that the condition was known to the respondent at all material times, which is not disputed.
7. According to his medical records he has suffered with the condition from 2008 onwards and as a result of it he was discharged on medical grounds from the Naval Service on 6 October 2009.
8. By his claim form and his further particulars the claimant says that by way of background evidence he experienced problems for about two years before January 2016 arising from the conduct of Mr Aiten, Mr Taylor and Ms Redmayne but principally from Mr Aiten, the Lead Night Manager. These related to his wearing his own clothes and footwear to keep himself warm and to his being the subject of regular negative comments recalling that the first time he was questioned about the training shoes he was wearing was in June 2014. He says that he was taken to Mr Aiten's office and asked about his clothing and was required to obtain a medical certificate to justify what he was wearing, which he supplied in the form of a letter from his GP dated 9 June 2014 at page 79 stating that he was unable to work in a cold environment due to non-freezing cold weather injury and that it would be beneficial if he were allowed to wear his own trainers. He also says that there was an incident involving Mr Taylor, Night Team Manager in December 2015 when he needed a kick-stool to reach some items of stock but was told that he didn't and saw Mr Taylor jumping up to grab various items such as large tins of dog food and washing up liquid which he started to throw towards him and despite reporting the incident to Mr Aiten he did nothing about it. He further says that about a week or so later he was subjected to a grossly insulting comment by Ms Redmayne, in which the term 'retard' was used, which he believed was in reference to his medical condition and that despite again complaining to Mr Aiten nothing was done.
9. Turning to the events in January 2016, which the claimant says mark the onset of the matters that underpin his disability discrimination claim he says that on or about the 16th he was wearing a large Tesco jacket whilst working on the security desk when he was approached by Mr Aiten who asked him why he had it on, to which he replied that it was because it was cold. Having

been told that he looked stupid he was then required to work on the aisles so that he did not have to sit in one place which he proceeded to do whilst continuing to keep the jacket on, which saw Mr Aiten asking him why he was doing so and upon the claimant explaining again about his illness he said that it was a stupid reason and that it was stupid to have the jacket on before asking him why he was in the business and telling him that he was costing him money and that he wanted him to go. At this point he says that he took a break but on returning to the aisle Mr Aiten started to question him about how long the illness would go on for and upon being told that it was a lifelong condition he questioned his disability and spoke of its impact on cost for the business before calling him a disabled retard and telling him that he and the company did not need him. He says that he removed himself again from the situation but on his return he was subjected to Ms Redmayne shouting at him with various complaints about work, in respect of which Mr Aiten told him to stand and take it and that if he was not happy he should leave. Feeling embarrassed and upset the claimant took himself off to the canteen only, he says, to be followed by Mr Aiten where there followed a physical confrontation involving Mr Aiten walking into the outstretched palm of the claimant twice before he retaliated by punching him. Subsequent to which he says that he attended a meeting with Mr Aiten and Anna Kelley, another manager, which he recorded and at which he explained how he had been treated.

10. By a letter dated 20 January 2016 the claimant lodged a grievance, in which he complained about Mr Aiten and Mr Taylor, which was delivered to the store on 22 January 2016 together with a Fitness for Work Certificate from his doctor which signed him unfit to attend work by reason of stress and anxiety up to 19 February 2016. At this time the respondent says that the claimant was informed that it would be commencing an investigation into his behaviour on 16 January 2016 following a complaint having been received. On 15 February 2016 Sue Rose, People Manager, met with the claimant, at which it was confirmed that the investigation into his conduct towards his Night Managers was ongoing. In relation to this the claimant had received information from a third party that Mr Aiten was conducting it, which saw Ms Rose assuring him that this was not the case and that she and Peter were undertaking the investigations into the complaint and his grievance having regard to the clear overlap between them. At this meeting the claimant's return to work was explored, in response to which he stated that he could not be around Mr Aiten or Mr Taylor at the moment, which led to an offer of his working days for 6 weeks to avoid contact with them and the claimant saying that he had a review with his GP on Thursday 18 February 2016. The claimant subsequently obtained a further fit note with a diagnosis of stress at work following a consultation on 17 March 2016 covering his absence until 25 March 2016, which was later extended to 14 April 2016.
11. In relation to the claimant's grievance a further meeting was held with him on 30 March 2016 by Cheryl Wallice, Personnel Manager, and next on 15 April 2016 by Ms Rose, during which attempts were made to respond to the concerns raised by him and to facilitate his return to work on days, which saw him saying to Ms Rose that he was happy with the way she had been with him and had treated him.

12. However, in relation to the claimant's fitness to return he was signed off following a consultation on 18 April 2016 to 18 May 2016 with the same diagnosis of stress at work. He did though return on 16 May 2016 when an attendance review meeting was held with him conducted by Lorna Elmsley, Dot.Com Manager, at which time based on the notes of the meeting there did not appear to have been any conclusions reached in respect of the complaint against him or the complaint by him relating to the events of 16 January 2016.
13. On 13 June 2016 the claimant wrote to the respondent wishing to progress his grievance to the next stage as he was unhappy with the outcome. Subsequently on 15 July 2016 Ms Rose met again with the claimant seemingly according to the notes of the meeting to deal with the complaint raised by Mr Aiten of his having sworn at him on the night of 16 January 2016, which the claimant did not deny accepting that he had told him to fuck off and the claimant's covert recording of the meeting held with Mr Aiten and Ms Kelley after their confrontation. As to the delay in concluding matters in this regard, which Ms Rose put down to a combination of factors such as the claimant's grievance, sickness, holidays and his move to days the claimant made known his dissatisfaction.
14. On 2 August 2016 Ms Rose held a further meeting with the claimant, in which she informed him that having considered everything including the claimant's recording of the meeting that she was not taking the investigation further in relation to his having sworn at Mr Aiten. She also told him that she was aware that he felt that his relationship with Mr Aiten had broken down and that as discussed they would try and find a permanent job on days. Asked if he was happy how the investigation into the complaint of his swearing had been dealt with he said that he was but that he was not sure that the issue which had pushed him into it had been closed, which saw her responding that his grievance had been dealt with by Cheryl (Wallice) but that she would be discussing her findings with Mr Aiten when he returned from holidays.
15. On 27 August 2016 Ms Rose met again with the claimant regarding the temporary hours on days that the claimant had been working since his return in May 2016 and the effect of this arrangement on his entitlement to night premiums, when she asked if he would consider going back on nights, to which he replied not with Mr Aiten or Mr Taylor as he did not feel that anything had been resolved. Matters were left with Ms Rose suggesting that mediation needed to be arranged and that they would look to set this up with Mr Aiten on Tuesday 20 September 2016.
16. On 21 September 2016 following this mediation which looked at adjustment of the night role providing for the claimant to have a weekly review with Ms Rose she met further with the claimant to discuss matters. During this meeting he stated that he was not happy with this because the grievance which he had been off sick with had not been dealt with and that he did not believe anything had been done to resolve the issues that had arisen with Mr Aiten, to which Ms Rose responded that the investigation had been concluded and Mr Aiten would not be moving from the store. In relation to the claimant returning to nights in order to preserve his night premiums he stated that he would go

away and think about it and drop off a letter the next day., which he did by raising a further Dignity at work grievance relating to the matters which he had raised in his previous grievance of 20 January 2016.

17. This further grievance was referred to Mary Balkwill, Personnel Manager, to investigate and she met with the claimant on 18 October 2016, at which meeting he confirmed that in his eyes his previous grievance had not been dealt with as nobody had told him what would be put in place. At its end Ms Balkwill summarised the position as being that the claimant was unhappy with the mediation that had been undertaken as he never had the chance to discuss the events of 16 January 2016 with Mr Aiten and that decisions needed to be taken going forward in respect of whether the claimant worked nights or days and where this would be with an alternative store in Formby as an option. A further meeting took on 1 November 2016, which saw no resolution in respect of the issues around the claimant's pay or place of work although according to the investigation report into his second grievance at page 162 he agreed the next day to go to the Formby store for four weeks. Another meeting was pencilled in for 16 November 2016 but ahead of this the claimant was signed off work because of stress at work from 7 to 21 November 2016, which saw him withdrawing his agreement to move to Formby. This absence for this reason continued to be certified to 23 January 2017, although on 18 January 2017 according to the above investigation report he agreed to a phased return to work of two shifts per week on full pay but that following holidays and bereavement leave he remained absent until he was signed off again on 23 February 2017 up to 7 April 2017. In the period between the notes he was, the respondent says, informed that Mr Aiten had left the Southport store on 15 February 2017.
18. Beyond 7 April 2017 according to his medical notes the claimant continued to be certified as unfit for work because of stress at work until 13 August 2017. During this period the respondent says that it wrote to him in April 2017 to invite him to an outcome meeting in relation to his further grievance, which was held on 4 May 2017 and followed up in writing on 21 May 2017 at which time it was confirmed that it was not upheld. This outcome was .it says, appealed by him and that his appeal was heard on 29 June 2017 with further meetings being held on 5 and 21 July 2017 conducted by Louise Stamper, Employee Relations Partner. The outcome was delivered in person to him on 18 August 2017 upholding the decision taken by Ms Balkwill to reject his grievance and confirmed in writing that day at pages 161-163.
19. In advance of this the claimant says that he suffered a further act of discrimination in July 2017 when he visited the store with a friend and his young son when his discount card would not work for some reason. When discussing this with a co-worker in the vicinity, with whom he had not shared any information about his work history and problems encountered, the co-worker told him that it was because he had been sacked, which caused him to feel that he had to explain himself and led him to believe that information about his history of work and his disability had been disclosed by unnamed managers involving less favourable treatment arising from his disability and victimisation, which he says that he raised later the same day with Paul

Doddell and Carol Kelly from HR.

20. On his case he also says that when he returned to work and attended for a night shift on 2 September 2017 with agreed support that if anything happened on the night which he was unhappy about he could turn to his manager Anna (Ms Kelley) he was subjected to offensive comments by Mr Kirby, a co-worker. He says that they had been assigned to work together on the shift but that Mr Kirby said "for fuck's sake I am not working with him, he gets people fucking sacked" referring to what happened to Mark, whom the claimant believed was Mark Aiten. These comments were, he says, made loudly in front of others including Ms Kelley and that she did nothing to help by telling Mr Kirby to stop. He says that he knew that Ms Kelley did later speak to Mr Kirby about what had happened and that he was told directly that Mr Kirby was unhappy about Mr Aiten and that he would not work with him but that to his knowledge no action was taken against Mr Kirby and he was not told that he should work with him being allowed to dictate that he would not, which he considered to amount to an act of direct discrimination and one of less favourable treatment for reasons arising from his disability. Subsequently on 3 September 2017 the claimant lodged a further written grievance complaining about Mr Kirby's comments and actions and the failure of the support system that had been put in place to deal with such situations.
21. On 27 November 2017 the claimant made his early conciliation notification to Acas and on 18 December 2017 he received his Early Conciliation Certificate before presenting his claim on 15 January 2018.

Law

22. The relevant law for the purposes of determining these issues is to be found in the Equality Act 2010 (the 2010 Act). Section 4 lists 'disability' as one of the protected characteristics. Section 6(2) defines a 'disabled person' as a person who has a disability and by section 6(1) a person has a disability if he or she has 'a physical or mental impairment' which has 'a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities'.
23. Such definition is added to by paragraph 2(1) of Schedule 1 to the 2010 Act in which it is stated that the effect of an impairment is long-term if - (a) it has lasted for at least 12 months (b) it is likely to last for at least 12 months or (c) it is likely to last for the rest of the life of the person affected and by paragraph 2(2) in which it is stated that if an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day to day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.
24. It is further supplemented by paragraph 5(1) which provides that an impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day to day activities if - (a) measures are being taken to treat or correct it and (b) but for that, it would be likely to have that effect and paragraph 5(2) which provides that "measures" includes, in particular, medical treatment and the use of a prosthesis or other aid. However, sub-paragraph (1) is by paragraph 5(3) stated not to apply (a)

in relation to the impairment of a person's sight, to the extent that the impairment is, in the person's case, correctable by spectacles or contact lenses or in such other ways as may be prescribed.

25. In addition guidance entitled 'Guidance on matters to be taken into account in determining questions relating to the definition of disability' (2011) (the 'Guidance') has been issued under section 6(5) of the 2010 Act, which under paragraph 12 of Schedule 1 to the 2010 Act an adjudicating body must take account of as it thinks relevant.
26. In relation to time limits section 123(1)(a) provides that a complaint of work-related discrimination must be presented to the employment tribunal within the period of three months beginning with the date of the act complained of. However, there is not an absolute bar on claims being presented outside this time limit as section 123(1)(b) allows for a claim to be brought within 'such other period as the employment tribunal thinks just and equitable'. In addition section 123(3)(a) provides that conduct extending over a period is to be treated as done at the end of the period.

Submissions

27. Ms Wedderspoon in submissions on behalf of the respondent focused firstly on the effects of the claimant's contended for physical impairment of non-freezing cold weather injury pointing to the fact that there is an evidential requirement on him to lead evidence on what particular day to day activities would be affected by his condition and suggesting that his section 6 impact statement failed to lead such evidence. She further submitted that his oral evidence about the effects of the condition on him when he spoke of his no longer being able to ride a motor-cycle because of dexterity problems or to participate in water sports because of having to keep warm and dry did not point to an impact on his ability to carry out normal day to day activities as described in paragraphs D2 and D3 of the Guidance. She further submitted that the claimant's wearing of trainers as a result of the condition was of no significance as a lot of people use them as footwear and pointed out that he had had no time off work with the condition as his fit notes all related to unfitness by reason of stress before concluding that his discharge from the Naval Service back in October 2009 because of the condition had to be seen in the context of his specialised role as a Marine Officer involved in recruit training and his inability to cope with cold conditions during training and that in regard to the effect of the condition at the date of the alleged discriminatory acts he did not get over the hurdle of showing that the condition had a substantial and long term adverse effect on his ability to carry out normal day to day activities.
28. Turning to the issue of whether the claim in respect of any particular allegation was presented after the time limit imposed by section 123(1)(a) of the 2010 Act she submitted that a number of the claimant's allegations were out of time suggesting that having presented his claim on 15 January 2018 any allegation that predated 28 August 2017 was out of time seemingly having regard to the timing of his early conciliation notification to Acas on 27

November 2017. She further submitted that the claimant could not establish that there was an act extending over a period because he could not show that there was any ongoing situation as the incidents he complains about were separate ones over a period of time concerning a number of different individuals pointing to the schedule of allegations which the respondent had compiled at pages 169-171, which demonstrated the long gaps between the various allegations. In relation to them she suggested that they were sporadic in nature referring to the gap of 18 months between the first incident in June 2014 when the claimant was questioned and criticised for wearing a coat and trainers and the second incident in December 2015 involving Ms Redmayne, a different perpetrator, and Mr Aiten. She also pointed out that no individuals were named by him following the alleged incident on 16 January 2016 until March-April 2016 and referred to the gap of six months to October 2016 when he was allegedly questioned about his hours and shift patterns by Matthew Ashton and the further gap of seven months to May 2017 relating to the prolonged and unacceptable handling of his second grievance by Ms Balkwill, each of whom were different perpetrators as were those individuals involved in the alleged incidents in July 2017 relating to his attempting to use his store discount card and in September 2017 relating to the offensive comments made by a co-worker on his return to work and the failure by management to address this with the individual concerned. In her submission this schedule pointed to a series of unconnected isolated acts and that there was no continuing act of discrimination. She also submitted that it would not be just and equitable to extend time because the claimant had been in receipt of trade union advice certainly from 15 July 2016 and there was no adequate explanation as to why he had failed to pursue a claim earlier.

29. In submissions on behalf of the claimant Mr Pinder began by dealing with the time point taken by the respondent and in so doing referred to the schedule of allegations prepared by the respondent, which has as the last act the alleged failure by Ms Kelley on or after 3 September 2017 to support the claimant on his return to work and to take action against Mr Kirby following his comments on 2 September 2017. He submitted that this provided a limitation date of 2 December 2017 and that in circumstances where this time limit was due to expire within the early conciliation period beginning on 27 November 2017 and ending one month after the receipt of the early conciliation certificate on 18 January 2018 the claim's presentation on 15 January 2018 meant at the very least that these acts must be in time. Moreover he submitted all the matters that led up to them need to be given in evidence in order to give context pointing out that even the last act involving Mr Kirby refusing to work with the claimant and accusing him of getting people sacked dated back to the incident which the claimant had with Mr Aiten in January 2016 and which he says goes back to his disability.
30. In relation to the question whether the claimant had a disability at any relevant time he submitted that he had a long-standing medical condition of non-freezing cold weather injury and that the test for determining whether he was disabled by reason of the condition was not to do with whether he was signed off with the condition but rather its effect on his ability to carry out normal day-to-day activities and the degree and duration of this. He further

submitted that the condition amounted to a physical impairment and pointing to the claimant's impact statement he submitted that in cold conditions he was uncomfortable and suffered problems with physical mobility and dexterity. He also pointed to the difficulties experienced by the claimant in dealing with changes in temperature, which he can only address by wearing extra clothing.

31. In relation to everyday activities he accepted that the claimant's mention of no longer being able to participate in water sports was not a normal day-to-day activity but submitted that the impairment did have an effect on his ability to carry out ordinary leisure activities pointing to his mentioning that he was a motor cycle enthusiast but that he could no longer ride a motorbike because of the effect of the condition on his hands and feet in terms of his physical dexterity. He also submitted that the condition was a serious life-long one.
32. Turning back to the time limitation point he repeated that the last allegations on 2 and 3 September 2017 were in time in any event and submitted that in terms of a continuing state of affairs that the claimant had encountered problems over a number of years, which became more serious in January 2016 involving the physical confrontation with Mr Aiten and his subsequently lodging a grievance, which saw further problems arising in respect of his hours and shifts. He submitted that there was enough to show that in accordance with section 123(3)(a) of the Equality Act 2010 dealing with time limits that this was conduct extending over a period and that it ought to be treated as having been done at the end of the period pointing in support to the cases of *Aziz v FDA* 2010 EWCA Civ 304 and *Commissioner of Police of the Metropolis v Hendricks* 2003 ICR 530.
33. In respect of the former case he submitted that it was authority for the proposition that it does not have to be the same persons involved in the incidents giving rise to the alleged discrimination but that there is a thread and that in this case the persons and managers were in the same workplace. In respect of the second case he submitted that it was authority for the proposition that focus should be on the substance of the allegations that the respondent was responsible for an ongoing situation or continuing state of affairs in which discrimination occurs and that the claimant's further particulars containing 16 paragraphs of allegations and explaining the connection between them showed as much, which the respondent's managers never got to grips with as evidenced by the claimant raising a further grievance in September 2016, which was allowed to drag on until August 2017 before an outcome was delivered by Ms Stamper, in which she described her remit as being to investigate whether there were any grounds to believe that as a result of Mr Aiten's actions on 16 January 2016 the claimant had been moved from nights to days and as such been impacted financially and in his personal life. Having regard to these matters and the claimant subsequently being subjected to offensive comments linked to the incident with Mr Aiten he submitted that this was a case with some of the clearest examples of a continuing act.
34. He further argued that it would in any event be just and equitable for time to be extended to allow for the acts prior to 2 and 3 September 2017 to be

considered submitting that it was necessary to think of the balance of prejudice. In this regard he suggested that there was no question of the quality of evidence being impaired as even if it were decided that the only thing in time is the incident on 2 September 2017 and its aftermath it would still be necessary for the tribunal to go through the evidence relating to the earlier acts. He also resisted the suggestion that the fact that the claimant was receiving advice from his trade union from the middle of 2016 meant that he should have rushed in with his claim and submitted that he was entitled to use the respondent's internal procedures and to wait and see how matters progressed with the trigger for his claim being that he felt let down again by the events of 2 September 2017, which required him to lodge a further grievance.

Conclusions

35. In order to satisfy the definition of disability to be found in section 6 of the 2010 Act it is for the claimant to show that (i) he/she has an impairment that is either physical or mental (ii) the impairment affects his/her ability to carry out normal day-to-day activities (iii) the adverse condition is substantial and (iv) the adverse condition is long-term. In addressing these questions tribunals are directed that the questions should be posed sequentially. Furthermore it is established law that the time at which to assess the disability i.e. whether there is an impairment which has a substantial adverse effect on normal day to day activities is the date of the alleged discriminatory act and that this is also the material time when determining whether the impairment has a long-term effect. In the present case it was common ground that the date of the last alleged discriminatory act was 2 September 2017 when the claimant says that he was subjected to offensive and embarrassing comments by Mr Kirby in refusing to work with him and was left unsupported by management in this situation.
36. Turning to the requirements in order to satisfy the definition of disability as set out above the Tribunal was firstly satisfied that at the material time of 2 September 2017 the claimant was suffering from a physical impairment in the form of non-freezing cold weather injury ('NFCI'), which it accepted was a serious condition impacting upon his ability to have a stable core body temperature, which the claimant has suffered with since 2008/9.
37. Secondly it was satisfied that this physical impairment did affect the claimant's ability to carry out normal day-to-day activities finding him to be a credible witness and accepting his evidence as given in his impact statement that in cold weather or cold environment the condition makes him less able to conduct ordinary activities involving physical mobility, dexterity and the like. In response to questioning he expanded on the effect of his condition by explaining that his core body temperature does not register heat and that he was susceptible to his body overheating, without his noticing, causing him to become dehydrated and lackadaisical but that his biggest issue with the condition was that for every 20 minutes spent in the cold his body took two weeks to recover, which impacted on his mobility in terms of his ability to walk and his dexterity in terms of what he could and could not do with his hands

giving the example of his no longer being able to ride a motor cycle, which was a social activity that he previously enjoyed. He also explained that he has to be careful where he goes and what he does as he has to keep a constant temperature at all times giving as an example of a further social activity that he can no longer enjoy of going on a ride at a theme park, the impact of which on his blood flow can lead his body to go into shock.

38. Thirdly having regard to the Appendix to the 'Guidance' containing an illustrative and non-exhaustive list of factors, which if they are experienced by a person, it would be reasonable to regard as having a substantial adverse effect on normal day to day activities in terms of the effects of the claimant's condition upon his mobility and dexterity as explained by him and focusing not on what he can do but what he cannot do it was satisfied that cumulatively at least these adverse effects on normal day-to-day activities were substantial as being more than trivial or minor.
39. Fourthly and finally it was satisfied that the effect of the claimant's impairment was long term as it was one that on the evidence the claimant had suffered from for many years up to and including the time of the last alleged discriminatory act on 2 September 2017 and that paragraph 2(1)(a) of Schedule 1 to the 2010 Act providing that the effect of an impairment is long-term if it has lasted for at least 12 months was met.
40. The Tribunal accordingly found that the claimant had discharged the burden on him to show that he satisfied the definition of disability to be found in section 6 of the 2010 Act in that he has a physical impairment which has a substantial and long-term effect on his ability to carry out normal day-to-day activities.
41. Turning finally to the question as to whether the claim in respect of any particular allegation was presented after the expiry of the time limit and, if so, whether the time limit should be extended the general rule is that a complaint of work-related discrimination must be presented to the employment tribunal within three months beginning with the date of the act complained of. In this case the last act complained of took place on 2 September 2017 and the claimant's claim has an early conciliation notification date of 27 November 2017 and an early conciliation certificate issue date of 18 December 2017. Having regard to the fact that the time limit is effectively extended by the early conciliation process by one month after the date of the receipt of the certificate until 18 January 2018 in this case it is clear that in so far as this last act is concerned that the claim having been presented on 15 January 2018 is in time.
42. In terms of the earlier allegations, which are said to have begun in January 2016, the Tribunal was satisfied that there was a thread running through the separate allegations up to and including the events on 2 September 2017 in that they all linked back to the incident involving Mr Aiten on 16 January 2016 and the grievance that the claimant subsequently lodged and that the respondent's actions in handling matters thereafter up to and including the last in time act were capable of being viewed as a continuing state of affairs,

which led it to conclude that the state of affairs complained of was to be treated as done on 2 September 2017 with the result that the claimant's claim in so far as it relates to matters prior to this date was within its jurisdiction.

Employment Judge Wardle
23 October 2018

JUDGMENT & REASONS SENT TO THE PARTIES ON
26 October 2018

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS