THE EMPLOYMENT TRIBUNALS

Claimant Ms A Conney

Respondent Tees Esk and Wear Valley NHS Foundation Trust

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

At a Public Preliminary Hearing

HELD AT NORTH SHIELDS ON 7th DECEMBER 2017
EMPLOYMENT JUDGE GARNON (sitting alone)

For Claimant: Mr J Barker Solicitor
For Respondent: Ms G Chenengo Solicitor

JUDGMENT

The Judgment of the Tribunal is that the claim, presented on 18th September 2017,
(a) of unfair dismissal, cannot be considered because it was reasonably practicable for it to be presented before 27th November 2016, and
(b) of disability discrimination, was brought more than three months after the dates of the acts complained of and it is not just and equitable to allow a longer period for them to be brought.
The claim is therefore dismissed in its entirety.

REASONS (bold print being my emphasis)

1 . The Issue and Statutory Provisions

1.1. The preliminary issue is whether I am prevented from considering the claim because it was presented outside the time limit for doing so, or whether limited exceptions to that prohibition apply

1.2. The Employment Rights Act 1996 (the ERA) includes in section 111
(2) *…an employment tribunal* ***shall not consider*** *a complaint under this section unless it is presented to the Tribunal*
(a) before the end of the period of three months beginning with the effective date of termination
(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months

1.3. The parties agree the effective date of termination (EDT) was 12th July 2016.

1.4. If this was the only relevant provision, the claim needed to be presented before midnight on 11th October 2016. However, s 207B of the ERA provides for extension of time limits to facilitate Early Conciliation (EC) through ACAS thus:

(2) In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires, the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section."

1.5. The claimant's legal representatives contacted ACAS on 5th October 2016 within 3 months of the EDT. ACAS sent the EC Certificate on 27th October 2016 (Day B). The time for presentation would now be extended to 27th November 2016. It arrived on 18th September 2017, so is nearly 10 months out of time**.**

1.6. Section 123 of the Equality Act 2010 (the EqA), so far as relevant provides

(1) Subject to section……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.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

Section 140B has the same effect as s 207B of the ERA. On the view most favourable to the claimant, the limitation period under the EqA would start at the date of termination and Ms Chenengo was content I should decide on that basis.

2 Findings of Fact

2.1. The claimant was born on 4th March 1951. She was employed as a team secretary by the respondent which is a mental health trust. She has had depression since the death of her mother in 2005 and received medication. She experiences crying, poor sleep and loss of appetite. She made this known to the respondent when she applied for employment which started on 27th May 2008. She says she carried out her duties without too much difficulty until Mr Stephen Walton became her manager in about 2013. In 2014 he radically changed her job duties. She then had sick absence for work related stress.

2.2. She raised a grievance in 2014, mainly about the changes in her job, which was upheld on appeal . The respondent agreed to change her duties to enable her to return to work. She did return in June 2015 but had further disagreements with Mr Walton . She went sick again on 29th October 2015. She raised another grievance against Mr Walton and other colleagues which was not upheld.

2.3. The claimant was referred to occupational health (OH), the last assessment being on 19th January 2016. The report stated she was not fit to return to work and no timescale was given when she may be fit to do so. Regular review meetings were held but there was no improvement in her health. A capability hearing took place on 19th May 2016 with the claimant accompanied by a trade union representative. There was still no sign of improvement in her health and she did not foresee a time when she would ever be able to return to work with the respondent in any capacity. She and her union representative said she did not think her health would improve while she remained in the respondent's employment. They did not object to her employment being terminated, which it was, and she did not appeal that decision. She says she did not object to her dismissal at that meeting because of her mental condition at the time, which for today's purposes I accept played a part.

2.4. The claimants case is that her incapacity was brought about by harassment and bullying mainly by Mr Walton. If that were the case, the fairness of the decision to terminate her employment would have to be judged using the guidance McAdie-v-Royal Bank of Scotland. That would involve considering the history of the alleged harassment. On the facts, a Tribunal would have to find the decision to dismiss on ground of ill health capability fell outside the band of reasonable responses.

2.5. I am satisfied that, in her evidence today, the claimant was honest and doing her best to recollect events accurately, but her recollection is not reliable, especially as regards the times and order of events. In late 2015 she told her union representative all about the conduct of Mr Walton and her representative advised she raise a grievance about " bullying and harassment". When it was rejected, she appealed. Quite rightly, the respondent took the view the substance of the grievance appeal was so intertwined with the question of whether her employment should be terminated, that the appeal outcome and dismissal decision should be dealt with together. The appeal was rejected on the same day as the dismissal was decided upon, ie 19th May . Termination took effect at the end of a 9 week notice period . However, all the facts needed to decide whether to bring a claim were known to the claimant and her union, which was Unison, in May.

2.6. I do not criticise the lack of detail of the bullying and harassment in her claim form because Mr Barker, in drafting it, knew the time limit issue was the first hurdle and further particulars could be given later. The claim expressly alleges harassment

under section 26 of the EqA and, impliedly, discrimination contrary to section 15. The claimant was dismissed because of her absence. Her absence arose in consequence of her disability. The respondent was aware of her disability. Therefore, the respondent would have to show dismissing her was a proportionate means of achieving a legitimate aim, in other words the burden of proof would be on the respondent. That would have been clear to any legal adviser considering the merits of this claim shortly after the dismissal happened.

2.7. The claim form says the claimant was '*unable to issue tribunal proceedings at that time by virtue of the requirements to pay fees to lodge a claim'*. Helpfully, she has provided a witness statement for today which elaborates upon this argument. The critical paragraphs are in italics below:

At the time of my efforts at early conciliation, I was supported by a Legal Expenses Insurer. I also enjoyed support from my trade union. However, neither the legal expenses insurer nor the trade union was willing to support my claim through an employment tribunal. Both the trade union and legal expenses insurers stopped helping me in early 2017. The legal expenses insurer was willing to offer the services of its solicitors but only were I to pay their costs privately which I could not afford.

2.8 The timing of events is crucial, and the claimant's answers to questions from me and Ms Chenengo in some respects are not consistent with such documents as exist or what I know to be probable from my experience. Armed with all the relevant facts , Unison would have appraised the likely chances of success of a claim .The claimant recalls it taking what I know to be the normal course of action, which is to take legal advice from its solicitors, almost certainly Thompsons, who have specialist employment lawyers. This probably started as early as May or June. All solicitors are very cautious not to miss time limits. The claimant accepts she was told Unison would not back her case because it was not thought to have a sufficient chance of success. That advice, on what I have seen, was a sound assessment.

2.9. Many claims were brought with the backing of trade unions during the four years the unlawful fee regime remained in place. If this case were to succeed on a full liability basis compensation for the unfair dismissal and the discrimination would run to tens of thousands of pounds. The amount at stake was sufficient to justify Unison paying the fees if it believed the case had a reasonable prospect of success. There was no fear the respondent would or could not pay any award made and re-imburse the fees if she won. As I said earlier, the EqA claim was one in which the burden of proof rested on the respondent. Any sensible legal adviser would take that into account. Only if they still believed, there was no good prospect of success, would they refuse to back the claimant. It is far more likely than not, the claimant would have been told, either by Unison or Thompsons, why they were not prepared to back her. She maintained in was not until early 2017 that Unison withdrew "support". While her union representative may well have continued to talk to her and offer her "moral support", I cannot accept she did not realise by August/September 2016 that her union would not fund her case. I believe that is why she turned to the legal expense cover she has under her household insurance. The insurer, DAS, also uses skilled employment lawyers to advise.

2.10. A letter of 26th September 2016 attached to her statement shows DAS was initially prepared to consider her case. They would have referred it to a lawyer for advice. DAS would be contractually obliged to provide advice and representation unless the legal advice they received was the claim had no reasonable prospect of

success. At this point the claimant was comfortably inside the limitation period. Like Thompsons, the solicitors engaged by DAS would be acutely aware of the risk to themselves of allowing the limitation period to expire without explaining to the claimant why they were not prepared to issue on her behalf. In many cases, claimants paid the issue fee of £250 to ensure their claim was in time, even though they later, after a case management hearing or disclosure of documents, withdrew when the chances of success looked poorer, without have to pay the hearing fee. It is clear throughout the limitation period sources of funding would have been available to the claimant if her claims had a reasonable prospect of success. Neither Unison nor DAS were even prepared to pay the issue fee. The part of the above italicised paragraph I do not accept is the date which the claimant gives for union and DAS decision not to fund her claim. I believe the documentary evidence I have seen combined with my experience of how solicitors well versed in employment law would work, shows it is more likely they abandoned the case, for good cause, before the limitation period expired , told the claimant they were doing so and told her why.

2.11. If the claimant had been determined pursue her claim, although her only income was retirement pension, she accepts she could have borrowed money from family She may also been able to apply successfully for remission of fees.

2.12. The claimant's statement continues:

I therefore had to consider the other options open to me. I rang ACAS and spoke to the Conciliator. I explained my position . It was explained to me that were I to issue proceedings I would have to pay fees to the employment tribunal. I understand that this would have cost approximately £1200

2.13. Of this telephone call, there is a little documentary evidence in the form of a manuscript note by the claimant, who cannot give the date of the call. The note mentions remission, and, in a contradictory way, the need to submit a claim outside of the limitation period but, in the next line , of the claim having to be lodged " by Friday"'. It is clear the claimant was told in a " type B" case there was an issue fee of £250 and a hearing fee of £950. She writes " *frivolous-unreasonable behaviour*" and at the foot of the page, "*notes pick upon time-limit, could ask the court for costs against me*" .In reply to Ms Chenengo asking whether the claimant had been put off issuing by the issue fee, the hearing fee , the costs she may incur in instructing any lawyer or the possibility of costs against her , she replied it was '*the whole thing*".

2.14. I think this conversation probably took place very shortly before or after the limitation period ran out. No-one was prepared to back the claimant's case, in my view because they thought it weak. Payment of fees may have been an added disincentive but it was not the operative cause of the advice given to the claimant that this was a claim too risky to pursue. It is very common for claimants who have an subjective view that they have been wronged, not to see that qualified advisors objective assessment that not enough evidence can be brought to win, is correct . So it was with the claimant, whose statement continues

I sought advice from the Law Society and was advised to seek advice from a solicitor although they could not give me any recommendation . I sought free initial advice from a local firm of solicitors in concert, Bennett Richmond .I hoped that they might be willing to take my case on a no win no fee arrangement. The solicitor that I met told me that he could not offer such an arrangement giving the names of other local employment specialist who might be willing to help me .

Thereafter following the advice and Bennett Richmond I contacted Beacham Peacock Solicitors, Michael Lewin and Browell Smith. None of them were willing to take the case on a no win no fee arrangement

I also telephoned other solicitors for a discussion about my case

I was very clear that I wanted to pursue my case. Ideally, I wanted to have legal advice and support. However, I would have been happy to press on with my case regardless.

***The one thing** that put me off was having to find money. I could not find money to pay solicitor's costs. I could not find money to pay the Tribunal fees.*

2.15. Bennett Richmond, as the claimant confirmed, do not take employment cases but pointed her to solicitors whom I know to have such expertise. None of them were prepared to take her case, but by then they would have known they had to overcome the fact it was out of time . They had no basis to argue fees were unlawful. The claimant heard about the Supreme Court decision (see below) on the television news on the evening it was given on 26th July 2017. Further paragraphs of her statement deal with why it took 6 more weeks for her to issue proceedings. I will not go into this further because that delay is not so long as would prevent me from reaching a decision in her favour, if that were the only concern.

3 The Relevant Case Law

3.1. Starting with the ERA claim, there is ample case law to the effect "reasonably practicable" means reasonably feasible or "do-able". The burden of proving it was not reasonably do-able rests on the claimant. Schultz –v-Esso Petroleum 1999 IRLR 488 says the main focus should be on the closing stages of the three month period.

3.2. In Palmer v Southend on Sea Borough Council 1984 IRLR 119 the Court of Appeal held to limit the meaning of "reasonably practicable" to that which is reasonably capable physically of being done would be too restrictive a construction. The best approach is to ask "Was it reasonably feasible to present the complaint within three months?" The question is one of fact for the Tribunal taking all the circumstances into account. It will consider **the substantial cause** of the failure to comply with the time limit, eg had the claimant been physically prevented by illness, a postal strike, or something similar. It may be relevant to investigate whether and when, she **knew** he had the right to complain. It will frequently be necessary to know whether she was being advised at any material time and, if so, by whom. It will be relevant in most cases to ask whether there was any substantial fault on the part of the claimant or advisor which led to the failure to comply with the time limit.

3.3. Having taken, in good time, the preliminary steps necessary before issuing a claim by undergoing EC the claimant failed to issue. She says the **most** important factor in her failure was the requirement for issue fees of £250 and hearing fees £950. A Supreme Court decision, R (on the application of Unison) v Lord Chancellor [2017] UKSC 51, held such fees were unlawful and struck down the legislation which introduced them. It held the fees put people off making or continuing claims, even those likely to succeed. Lord Reed placed emphasis on low value claims thus:

*96. Furthermore, it is not only where fees are unaffordable that they can prevent access to justice. They can equally have that effect if they render it **futile or irrational** to bring a claim. …. Many claims which do seek a financial award are for modest amounts, as explained earlier. If, for example, fees of £390 have to be paid in order to pursue a claim worth £500 (such is the median award in claims for unlawful deductions from wages), **no sensible person** will pursue the claim unless he can be virtually certain that he will succeed in his claim, that the award will include the reimbursement of the fees, and that the award will be satisfied in full**. If those conditions are not met, the fee will in reality prevent the claim from being pursued, whether or not it can be afforded.** In practice, however, success can rarely be guaranteed. In addition, on the evidence before the court, only half of the claimants who succeed in obtaining an award receive payment in full, and around a third of them receive nothing at all.*

97. As explained earlier, the statistical evidence relating to the impact of the Fees Order on the value of awards, the evidence of the Council of Employment Judges and the Presidents of the ETs, the evidence collected by the Department of Business, Innovation and Skills, and the survey evidence collected by Acas, establishes that in practice the Fees Order has had a particularly deterrent effect on the bringing of claims of low monetary value. That is as one would expect, given the futility of bringing many such claims, in view of the level of the fees and the prospects of recovering them.

3.4. In Biggs-v-Somerset County Council 1996 IRLR 203 , the Court of Appeal considered a case where the claimant had not issued a claim of unfair dismissal in 1976 because , at the time , an employee who worked less than 16 hours per week, as she did , could not claim. The House of Lords in 1994 set that rule aside as incompatible with European Law , whereupon the claimant issued her claim . It was held the change in the law did not make it not reasonably practicable to issue in time.

3.5. From the time the Unison decision was given, it was anticipated by lawyers Tribunals would be asked to permit claims issued out of time to be heard based on the argument the unlawful fees made it not reasonably practicable to issue. For the unlawful fee regime to be a relevant consideration, it must have had at least **some** effect on the particular claimant's decision not to issue. I will return to **how much** effect in my conclusions. Also it must be reasonable for the particular claimant to believe it to be a sufficient factor to dissuade him or her from issuing the potential claim in time. The examples given by Lord Reed above are not the only ones where it would be reasonable not to issue. An employee who has been unfairly dismissed after only two years continuous employment may find another equally paid job very quickly. His compensation would be a basic award and compensation for loss of statutory rights which may well not even equal the fees payable.

3.6. In my view , there are three parts to the ERA time limit issue: (a) what were the **substantial causes** of the claimant not issuing in time? (b) did fees, or any other factor , render it "not **reasonably** practicable" to issue in time? (c) if so, was the claim presented within such further period as the Tribunal considers reasonable?

3.7. I view point (c) as requiring consideration of two time "gaps". The first is between the date of the Supreme Court judgment on 26th July 2017 and the date of issue. Some claimants who have advice from lawyers or unions could reasonably be expected to have known of the judgment almost as soon as it was published. Others may reasonably not have found out about it for several weeks. I would not expect an unrepresented claimant to take less than a few weeks to work out how then to proceed. The second time gap is between the date of the events to which the claim relates and the date of issue. Again, each case will depend on its own facts. Some cases involve evidence which is mainly the recollection of witnesses as to what they did and why. Other cases depend largely on documentary evidence. If witnesses cannot be expected to remember events, or if documents have been discarded in the normal course of business, due to the passage of time, it may not be reasonable to consider a claim despite the fact the claimant is not to blame for the delay. Much of the relevant evidence in this case would relate to events put forward as harassment by Mr Walton dating back to 2014. Other events are said to have taken place in 2016. As they were the subject matter of grievances there should be records to help refresh the memory of witnesses. Even if I do not reach issue (c) on the ERA test, it may be relevant under the EqA test

3.8. This brings me to the different test for the EqA claim. Although the anti-discrimination legislation at the time was more restrictively worded, the guidance to which I and many others still look as a starting point is British Coal Corporation -v- Keeble 1997 IRLR 336 Mrs Keeble was made redundant in 1989. At that time, British Coal's voluntary redundancy scheme was based on a retirement age of 60 for women and 65 for men. There was provision for abatement of the amount payable for women aged 55 and upwards, whereas the abatement only commenced at age 60 in the case of men. The result was that if she had been a man, her payments under the voluntary scheme would not have been subject to abatement.

3.9. When Mrs Keeble learned her payments would be reduced, she took advice from her union who said nothing could be done. However, the union representative later became aware of the European Court's decision in *Barber* [1990] IRLR 240 that discrimination on grounds of sex in voluntary redundancy payments was contrary to Article 119 of the EC Treaty. He took counsel's advice and, as a result, Mrs Keeble issued in July 1991, 22 months after her dismissal. British Coal took the preliminary point the application was out of time A tribunal, without hearing evidence, held it was "just and equitable" to extend the time limit. On appeal, the EAT said the tribunal would be assisted by the factors mentioned in s.33 of the Limitation Act 1980, which deals with the exercise of discretion by courts in personal injury cases. It requires consideration of **the prejudice each party would suffer** as the result of the decision and regard to **all the circumstances of the case** 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 requests for information;

(d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action; and

(e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.

3.10. Like Biggs, and this case, Keeble featured a change in the law. When Keeble returned to the tribunal, it took account of, but distinguished, Biggs on the grounds the essential part of that decision was that it was always possible for a claimant to argue provisions of UK legislation were incompatible with Article 119, and therefore it was "reasonably practicable" to present a complaint in time. In contrast, in Keeble, the issue was whether it was "just and equitable" to hear the complaint. The tribunal said the case law under s.33 of the Limitation Act. established ignorance of legal rights is relevant to the exercise of the tribunal's discretion, as is erroneous legal advice. The tribunal balanced the degree of prejudice to the claimant caused by the operation of the limitation period against the prejudice to the employers if the case were allowed to proceed. On that basis, the tribunal ruled it was just and equitable to allow the claim to proceed.

3.11. British Coal appealed. The EAT chaired by Mrs Justice Smith (as she then was), dismissed the appeal. It cited the statement by Lord Justice Neill in Biggs - "*it would be contrary to the principle of legal certainty to allow past transactions to be reopened and limitation periods to be circumvented because the existing law at the relevant time had not been explained or had not been fully understood*" as intended to apply only in the context of the "reasonably practicable" test . It was not intended to apply to all limitation periods, so as to require the tribunal to leave out of account in the exercise of its discretion to extend time any mistake as to the state of the law or the claimant's rights. Her Ladyship said " *It seems to us that if* ***the only reason*** *for a long delay is a wholly understandable misapprehension of the law, that must have been a matter which Parliament intended the tribunal to take into account when considering "all the circumstances of the case*". It was right for the tribunal to bear in mind the need for legal certainty and finality in litigation, but that was only one factor in considering what was just and equitable in all the circumstances. Smith J added

The tribunal heard extensive evidence. They made detailed findings of fact as to the circumstances in which the applicants had decided to volunteer for redundancy and the effect upon them of the misleading information they had been given as to their entitlement under the scheme. They considered the attitude of the applicants to the possibility of making a claim and the advice they had taken in 1989. They considered the promptness with which the applicants made their claims when they learned that the law was not as they had previously been told. They considered the prejudice which the women would suffer if their claims were not allowed to proceed and they considered the absence of any prejudice to the employers, other than the loss of their limitation defence. ***They said that the claim appeared unanswerable apart from the limitation point. Mr Napier, who has appeared today on behalf of the appellants, has conceded that that is so.***

3.12. In Keeble, the strength of the case was a factor, so in other cases, I believe . could the weakness of a case. By analogy with another area in which relative prejudice has to be considered by Tribunals, whether to grant leave to amend, in Woodhouse-v-Hampshire Hospitals HH Judge McMullen said

It is true in the assessment of the balance of hardship and balance of prejudice there may in all the circumstances include an examination of the merits – in other words, there is no point in allowing an amendment to add an utterly hopeless case. …

4 Conclusions

4.1. This case is not an example of the dilemma Lord Reed was addressing in the paragraphs quoted above. If the claimant obtained a judgment, the respondent would be likely to pay the amount ordered which would have been far more than the fees. Borrowing Lord Reed's terminology, no reasonable claimant would have concluded it would have been" *futile or irrational*" to bring a claim at the time and any " *sensible person* "would have risked issuing if she had a good argument.

4.2. On issue (a), the claimant **knew in May 2016** she could claim . She knew **about time limits**. She embarked upon EC. Why did she not issue within the limitation period? I conclude she took on board the opinion of skilled advisors that her claim stood not enough reasonable prospect of success and feared , with good cause, costs being awarded against her . Had she issued and the respondent had applied for a deposit order, I may well on these facts have ordered one. Fees were for her only an added disincentive. In my view, fees would have to be a significant operative cause. If some benefactor had said " I'll pay your fees , but not any costs you incur or any awarded against you" , I find she still would not have risked issuing

4.3 On issue (b), up to 27th November had her case been worth bringing she would have had funding from her union or legal expense insurer. Even without it, she could have found the £250 issue fee or applied for remission. It was reasonably practicable for her to issue in time . Under the ERA I have no further discretion to exercise, am unable to consider her claim which must be dismissed.

4.4. As issue (c) impacts on the EqA claim too, I will deal with it. The test is different and affords a greater degree of discretion and flexibility. Neither time gap is great. The claim was presented within 6 weeks of the Supreme Court judgment and relates to events which are documented in the grievances. Of the factors listed in s33 of the Limitation Act, the only one which causes the claimant a problem is the reason for the delay. As in the ERA claim, the predominant reason for not issuing in time was a view reasonably taken by her and her advisors that her case was factually weak. The fees were not a **substantial** cause of her failure, only an "added disincentive".

4.5. When fees were introduced one stated intention of Government was to deter unmeritorious claims. As the Supreme Court pointed out, the regime deterred meritorious claims in equal measure, which is why the legislation introducing them was struck down. Now Tribunals have to grapple with questions of extending time under both the tests under the ERA and the EqA, I believe we still must look at all the facts and circumstances in every case. In my view, although not in the Limitation Act list, the strength of the case sought to be brought out of time is a relevant consideration. In this instance, I can see for myself the major difficulties the claimant would have to overcome, but my view is fortified by two specialist employment law

advisors, each fully appraised of all the facts, having formed the view it was not even worth risking the issue fee. The unlawful fees were not the main, let alone **the only reason** (per Smith J in Keeble), for not issuing in time. Moreover, there is considerable prejudice to the respondent in having to face months after the EDT a claim which was and still is weak. In all the circumstances, it would not be just and equitable to consider her claim now.

_____

Employment Judge Garnon

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 12th DECEMBER 2017