Reserved judgment

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**Respondent**
	AND
Dr A Ahari	University Hospitals Birmingham NHS Foundation Trust

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Birmingham **ON** 15th February 2019

EMPLOYMENT JUDGE Richardson

Representation
For the Claimant: in person
For the Respondent: Ms Stanley, Counsel

JUDGMENT

The judgment of the Tribunal is that

(1) The claimant's claims are time barred.
(2) It is not just and equitable to extend time.
(3) The claims are dismissed.

REASONS

Background and proceedings

1. The background to the current claim is detailed. The claimant relies on the entirety of the following historical background in his current claim. In summary, the chronology is as follows:

2000

2. The claimant was employed by the respondent's predecessor Birmingham Heartlands & Solihull Hospital NHS Trust as a locum anaesthetist for further training and services for a period of 2 months late February – late April 2000.

The claimant is an Iranian of Azerbaijani ethnicity. The claimant claimed that he resigned because the concerns he raised with the respondent about incidences of sub-optimal patient treatment that were not dealt with adequately; concurrently some of the claimant's colleagues raised concerns about his practice.

3. Following information received by the GMC about the claimant's practice from Dr Hopkinson, medical Director, and Professor Griffiths, Director of Public Health NHS Executive, the GMC in 2001 formally invited the claimant to undergo an assessment by the GMC Screener in early 2002. At the claimant's request his name was removed from the Medical Register in April 2002 and no screening took place. The claimant requested that a Dr Rosser investigate the conduct of the claimant's colleagues with regard to allegations of race discrimination. Dr Rosser refused the application as the claimant was no longer on the medical register.

4. In 2005 the claimant submitted a completed application for the restoration of his name to the medical register. His application was considered by the GMC's Fitness to Practice Panel (FPP) in May 2006 which rejected the claimant's application after having heard evidence from some of the claimant's former colleagues and taking into account witness statements of others about the claimant's medical competence.

2006 proceedings and appeal to the EAT

5. The claimant brought tribunal proceedings in May 2006 in the Birmingham Employment Tribunals against the respondent for, inter alia, race discrimination and (constructive) unfair dismissal. He alleged that the witnesses at the FPP had given false testimony. His 2006 claims were considered by Employment Judge Ahmed sitting alone at a pre-hearing review, now called a preliminary hearing.

6. The issues before Employment Judge Ahmed were:

(i) whether the claims of discrimination in February – April 2000 were out of time;

(ii) whether the letter sent by Dr Hopkinson to Dr Griffiths in September 2000 was part of a continuing act of discrimination originating during the course of the claimant's employment;

(iii) whether anything arising during or in connection the GMC hearing in May 2006 constituted part of a continuing act of discrimination originating on or before April 2000;

(iv) did all of the above form part of one continuing act;

(v) if not, was it just and equitable to extend time in respect of the (race) discrimination claims; and

(vi) was it reasonably practicable to have brought the remaining claims of unfair dismissal, breach of contract and unlawful deduction of wages in time.

7. Employment Judge Ahmed dismissed all of the claimant's claims in a judgment sent to the parties on 14th December 2006. For the purposes of this hearing, specifically, he dismissed the claim of race discrimination because, on the evidence before him, any potential act of race discrimination must have occurred before July 2002. The complaints were principally against Dr Carnie and Dr Hopkinson but also included other former work colleagues of the claimant. The claimant relied on the evidence that Dr Carnie gave at the FPP as a continuing act and also the final act of discrimination allegedly by Dr Carnie giving evidence to the FPP. He alleged that all the witnesses giving evidence of their experience of working with the claimant in February – April 2000 had lied to the FPP.

8. Employment Judge Ahmed found that there was not a hint of race discrimination in the evidence of Dr Carnie to the FPP. He found that the claimant could not rely on the GMC proceedings to bring a claim which was manifestly out of time to introduce all sorts of issues which he complains of and which have nothing whatsoever to do with the GMC hearing. The GMC hearing arose because the claimant applied to have his name restored on the medical register. The claim was stale, four years out of time. No satisfactory explanation had been given for the delay in issuing proceedings. It would have been prejudicial to the respondent to permit the claims to proceed after so many years. The Judge determined that there was no continuing act and it would not be just and equitable to extend time.

9. Employment Judge Ahmed noted furthermore that the doctors who had given evidence at the FPP were immune from suit in any event.

10. The claimant also brought proceedings in the London Central Employment Tribunals in August 2006. Those proceedings, focussing on the FPP allegations in May 2006, were also dismissed by Employment Judge Buckley at a pre hearing review in December 2006 on the basis that the issues raised were the same issues already raised before Employment Judge Ahmed whose judgment had already been given. That decision was not appealed to the EAT.

11. The claimant appealed Employment Judge Ahmed's decision to the EAT. The issue before HHJ Peter Clark was whether the witnesses before the FPP were immune from suit on the basis of qualified immunity or absolute immunity. In a fully reasoned judgment handed down on 1st April 2008 HHJ Clark held that the FPP was a quasi judicial body; witnesses before the FPP had absolute immunity from suit. The claimant did not appeal to the Court of Appeal.

12. The claimant had already brought employment tribunal proceedings in 1997 and 1998 in the Glasgow Employment Tribunals against former employer(s). This was not disputed.

More recent complaints

13. The claimant alleges that the conduct of his former colleagues in 2000 and in giving evidence in 2006 to the FPP were motivated by race discrimination. In addition, more recent complaints were raised relating to correspondence the claimant had had with Dr Rosser in 2015 and 2016, and with Dr Blieker and Dame Moore in 2016. There was a further event relied upon in connection with a patient, Patient P whom the claimant had treated in 2000.

Patient P - 2010

14. The background to the issue regarding the Patient P, in 2010 is that the claimant contacted Patient P, whom he had treated in 2000 at Birmingham Heartlands. The care of this patient had been in issue at the time that the claimant left the respondent's employment. In 2010 the claimant visited Patient P who informed him that someone from the respondent had also visited Patient P at his home and had made negative comments about the claimant's medical treatment of P, when in fact, the claimant believed he had saved P's life. The claimant believed from the description given to him by Patient P that the persons who had visited Patient P sometime between 2008 – 2010 were not former surgeon colleagues of the claimant. The claimant relies on this event as an act of victimisation for having brought proceedings for racial discrimination in 1997, 1998 and 2006.

Correspondence with Dr Rosser, Dame Moore and Dr Blieker

15. In November 2015 the claimant had written to Dame Julie Moore asking her to open an investigation into the events arising in 2000 during his employment. Dame Julie forwarded the claimant's letter to Dr Rosser. Dr Rosser responded to the claimant on Dame Moore's behalf on 29th November 2015 stating that from what he could see, the events in 2000 had been appropriately investigated by a number of institutions including the GMC (in 2006). Dr Rosser confirmed that he could see no benefit in any further investigations taking place.

16. Dr Rosser also commented in his response of 29th November 2015 that the claimant had signed his letter to Dame Moore earlier that month as "Dr A Reza Ahari MD, MSc, FRCA" and had quoted his GMC number. Dr Rosser pointed out that the claimant's name had been erased from the Medical Register and had not been restored in 2006 and that it was an offence to hold out that the claimant had a licence to practise. Dr Rosser quoted S49A of the Medical Act which sets out the penalty for pretending to hold a licence to practise and copied his letter to the GMC. The claimant claims that this was an act of victimisation for having brought tribunal proceedings in 1997, 1998 and 2006.

17. On 25th March 2016 the claimant wrote to Dr Blieker, Consultant Anaesthetist at the respondent hospital. It was an enquiry regarding retraining/observation to enable a return to work. A copy of the letter was not

provided by the claimant. He explained that he was enquiring about attending as an observer with a view to returning to work. On 29th March 2016 Dr Blieker replied confirming that she only dealt with doctors who had already been accepted onto a training programme. The letter had therefore been forwarded to the Clinical Director. The claimant had no further correspondence from Dr Blieker and claims that her failure to respond further was an act of victimisation for the tribunal proceedings he had raised in 1997, 1998 and 2000.

18. On 11th June 2016 the claimant wrote to Dame Moore asking her to re-open the investigation he had requested into the events that occurred during his employment February – April 2000 and the GMC FPP hearing in 2006. Dame Moore undertook a preliminary review of the claimant's request and supporting documentation and refused to open any further investigation. Dame Moore set out full reasons in writing for her decision. Those reasons were:

18.1 that the claimant had not provided additional grounds to justify another investigation – at the time of the investigation in 2000 the claimant had not participated and had resigned, circumventing the investigation which he now seeks to re-establish 15 years later;

18.2 that 15 years had passed and a number of key witnesses were no longer employees of the Trust and that it was not appropriate for the Trust to dedicate considerable resource to investigate issues which had already been investigated by the appropriate professional regulator;

18.3 Dr Rosser's concerns about the claimant including his medical qualifications and GMC registration number on correspondence was justified and did appear to fall within the ambit of S49A(1) Medical Act. It was appropriate for Dr Rosser to make the claimant aware of that fact;

18.4 the claimant's apparent attempt to reach some form of financial settlement with the Trust was refused on behalf of the Trust. Public funds could not be used for that purpose - it was a matter for the clamant to exercise his right to a legal remedy which the Trust did not seek to fetter.

19. The claimant alleges that Dame Moore's refusal to re-open investigations into the 2000 and 2006 events were an act of victimisation because of the proceedings that the claimant brought in 1997, 1998 and 2006.

20. On 28th October 2018 the claimant wrote again to Dr Rosser providing him with 'further evidence' in support of the claimant's request for an investigation into the conduct of the claimant's former colleagues in 2000 and at the FPP hearing in 2006. Dr Rosser neither acknowledged nor replied to the claimant. The claimant claims that this is an act of victimisation for having brought the 1997, 1998 and 2006 tribunal proceedings.

Application for review 2018

21. On 5th November 2018 that claimant asked Employment Judge Ahmed to review his judgment of 9th October 2006 for which full reasons had been sent on 14th December 2006.

22. Employment Judge Ahmed identified that the application for a review/reconsideration contained either: (i) allegations that were the subject of proceedings in the Birmingham Employment Tribunals in April 2006 or (ii) were allegations which were not raised then but are fresh matters which were not the subject of litigation in 2006. Given the passage of time and the fact that the tribunal file for the case was no longer available, Employment Judge Ahmed could not say which category the grounds for the application for review fell into. However Employment Judge Ahmed rejected the application for review on ground (i), if it applied, because the matter was res judicata. In respect of (ii), if these were fresh claims, no basis for review arose as they would have to be the subject of fresh proceedings.

23. On 6th November 2018 the claimant filed an appeal in the EAT challenging Employment Judge Ahmed's refusal of the application for review/reconsideration. The outcome of that appeal is not yet available.

24. The claimant filed the current proceedings on 6th November 2018. These proceedings are in time in respect to the allegation that Dr Rosser's failure to respond to the claimant's letter of 28th October 2018.

Summary of claims

25. In summary after a good deal of discussion at the preliminary hearing, the claimant confirmed that his complaints related to the following;

(i) false statements made between 2008 – 2010, by unknown persons in the employment of the respondent, to a former patient about the claimant's medical treatment of that patient in 2000;
(ii) lies told by witnesses in 2000 and in the FPP hearing in 2006 about the claimant;
(iii) the response the claimant had had from Dr Rosser in 2015 to a letter requesting he open up an investigation into 2000 and 2006 issues;
(iv) the lack of any response at all from Dr Rosser in 2018 in reply to another request to open an investigation into the conduct of the claimant's colleagues in 2000 and 2006; and
(v) the responses of Dame Moore and Dr Blieker in 2016 to the claimant;

all of which were claimed as acts of direct race discrimination and/or victimisation under S13 and S27 Equality Act 2010. The protected acts relied upon were the

tribunal proceedings the claimant brought in 1997, 1998 and 2006.

26. The respondent seeks a strike out of the claimant's claims based on limitation, estoppel/res judicata, witness immunity (in respect of the 2006 proceedings) and that the claims are vexatious and/or have no reasonable prospect of success.

Medical evidence

27. I was provided with copy documents in support of the claimant's defence to the respondent's lack of jurisdiction/strike out application to explain the reason for not pursuing his claims earlier. The claimant informed me that he had several disabilities. The evidence the claimant relies on is:

27.1 11th June 2012 letter from Dr McGhee of the Townhead Health Centre, Glasgow which confirmed that the claimant had been attending the Health Centre since 2001 with a variety of physical and mental health problems. Dr McGhee stated that for all of that time, the claimant's physical and psychological health had been impaired and his ability to function in a normal fashion had been severely compromised. The claimant had ongoing anxiety and depression; he had had prolonged periods of episodic intense depression, panic attacks, severe sleep disturbance, emotional instability and inability to function normally and had been prescribed and consumed large quantities of psychotropic medication. He had been homeless since 2010, had been the victim of anti-social behaviour and multiple violent assaults which had triggered additional medical conditions. The claimant continued to experience fear and disorientation and is easily fatigued. He had been seen by psychiatrists and had been assessed for clinical psychology.

27.2 On 9th September 2014 Dr J Crorie of the the Mount Florida Medical Centre wrote that the claimant had suffered a serious assault on 18th February 2014 and had suffered severe injuries which resulted inter alia with double vision. The claimant was at that time suffering from anxiety, stress and physical symptoms relating to the assault. Dr Crorie stated that the claimant was not fit to work currently and for the foreseeable few months.

27.3 On 31st August 2018 Dr Lough of the Tinto Medical Practice wrote to confirm that the claimant was suffering from symptoms relating to cervical disc prolapse in March 2016 from a back injury in May 2015 and has had a degree of osteoarthritis for the past 6 years. He had a right foot injury in April 2010 and complex facial fractures and bone and joint problems, particularly the shoulders and hip over the past six years. Dr Lough refers to the claimant's mobility which is restricted with pain and limitation of his joints. Recommendations were made for the claimant to be provided with permanent and damp free accommodation.

27.4 On 12th February 2019 Dr Russell of Tinto Medical Practice wrote in respect of the claimant's attendance at the preliminary hearing. Dr Russell described the claimant's medical issues with particular reference to long standing history of back and neck problems including lumbar, thoracic and cervical pain. The claimant had experienced recent episodes of vertigo. Dr Russell could not comment on the extent to which the claimant's ailments would render him incapable of participating in an employment tribunal hearing but he confirmed that the conditions were pre-existing to the hearing during which he became unwell on 5th February 2019.

Submissions

28. I heard oral submissions from both parties and was also provided with written submissions by the respondent. I have retained the detailed note that I took of the submissions and I have referred to them again in reaching my conclusions below.

The law on limitation

29. The relevant law, this being a claim brought under section 120 of the Equality Act 2010, is contained in section 123 of that Act, dealing with time limits, is as follows:

> *"(1) 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.*
>
> *(2) Proceedings may not be brought in reliance on section 121(1) after the end of—*
>
> *(a) the period of 6 months starting with the date of the act to which the proceedings relate, 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."*

30. A wide discretion is thereby afforded to an Employment Tribunal in deciding whether, in all the circumstances of the case, it considers that it is just and equitable to extend time. The authorities considering the same, wide discretion available under the previous discrimination legislation remain valid.

31. In the case of **Robertson v Bexley Community Centre t/a Leisure Link** [2003] IRLR 434, the Court of Appeal said this, at paragraph 25:

> *"It is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule. It is of a piece with those general propositions that an Appeal Tribunal may not allow an appeal against a Tribunal's refusal to consider an application out of time in the exercise of its discretion merely because the Appeal Tribunal, if it were deciding the issue at first instance, would have formed a different view. As I have already indicated, such an appeal should only succeed where the Appeal Tribunal can identify an error of law or principle, making the decision of the Tribunal below plainly wrong in this respect."*

32. The burden is therefore on the Claimant to provide an explanation as to why he did not bring his claims within the statutory time limits.

33. With regard to extension of time, a complaint may be brought after the end of 3 months if it is brought within such other period as the tribunal thinks just and equitable (EqA 2010 S123(2)(b)). Each case must be considered on its own merits; there is no restrictive or liberal policy to extend time: Chief Constable of Lincolnshire Police –v- Caston [2010] IRLR 327 per Sedley LJ.

34. It is a matter of weighing up all relevant factors which the claimant should set out and give evidence upon. The Court of Appeal has encouraged employment tribunals to consider the factors set out in S33 of the Limitation Act 1980 Coal Corporation –v- Keeble [1997] IRLR 336

(a) length & reason for the delay;
(b) extent to which cogency of the evidence is likely to be affected by the delay;
(c) the extent to which the party sued had cooperated with any request for information;
(d) the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action;
(e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

35. The 'Keeble factors' are reminders to the tribunal and their relevance depends on the facts of the particular case. The factors that have to be taken into account depend on the facts and the self-directions that need to be given and must be tailored to the facts of the case as found.

36. The onus is on the claimant who must ensure that there is evidence available to the tribunal on all the factors it will need to consider. The claimant's mental impairment may be a relevant consideration. The tribunal may have regard to all the material before it including pleadings, correspondence and medical reports.

37. Ill health or pressing personal issues that prevent the claimant from concentrating on making a claim are common grounds but the tribunal will need to be convinced by clear evidence.

Conclusions

Is there an act of discrimination extending over a period of time?

38. Apart from the latest event in October 2018 (Dr Rosser's letter) the claimant's claims are substantially out of time. The claimant relies on all the allegations commencing in 2000 and ending with Dr Rosser's alleged failure to reply to the claimant's letter in October 2018 as one 'continuing act'.

39. The question is whether there is an act extending over a period, or whether there is a succession of unconnected or isolated specific acts, time for which would begin to run from the date when each specific act was committed.

40. The burden of proof is on the claimant to prove either by direct evidence or by primary facts and inferences which could be reasonably drawn, that the

numerous incidents of discrimination which he alleges, were linked to one another and that they were evidence of a continuing discriminatory state of affairs covered by the concept of a "act extending over a period".

41. I turn first to the oldest claims of 2000 and 2006 which were considered and rejected by Employment Judge Ahmed in 2006. Employment Judge Ahmed found that there was no continuing act between 2000 and the FPP Proceedings. The FPP proceedings had been initiated by the claimant's application to have his name restored to the register.

42. Employment Judge Ahmed also found that witnesses to the FPP hearing had immunity from suit. That judgment was appealed to the EAT unsuccessfully. HHJ Clarke's decision in 2008 was not appealed to a higher court. HHJ Clarke ruled that the witnesses at the FPP were immune from suit. The FPP was a quasi-judicial body and these witnesses had absolute immunity, not qualified immunity. HHJ Clarke also concluded that as absolute immunity applied to the witnesses at the FPP hearing, their evidence could not be relied upon as part of any continuing act; the claimant could not rely on the alleged acts of discrimination to overcome the limitation hurdle in his claim of unlawful race discrimination.

43. The claimant claimed that immunity from suit does not apply where the witnesses at the FPP were motivated by malice. He claimed that the conduct of his colleagues in 2000 and 2006 "*went beyond malice*". There was no evidence whatsoever to support this very serious allegation against several medical professionals. I find that the allegation of malice is an expression of the claimant's personal opinion unsubstantiated by any other historic fact.

44. I understand that the claimant still feels deeply aggrieved by perceived wrongs done to him some 18 years ago which he believes have not been adequately investigated, however, he cannot keep returning to the same complaints about the same people in an attempt to resurrect and relitigate perceived wrongs. That is the law. The claims of race and victimisation in respect of the 2000 and 2006 allegations are res judicata and persons against whom the claimant makes allegations, being those who gave evidence in 2006 to the FPP about the claimant's medical practice in 2000 have absolute immunity from suit. These claims cannot be part of any 'continuing act' and are dismissed.

45. The next event is the claim that in 2010 the claimant discovered that somewhere between 2008 and 2010 persons unknown from the respondent had visited Patient P and had made false statements to Patient P about the medical treatment he had received from the claimant in 2000. I do not accept this as the

commencement of a series of 'continuing acts', between 8 and 10 years after the index event in 2000. The claim of victimisation is too vague to be the start of an act extending over a period: there is no evidence of the purpose of the respondent's visit to Patient P and whether the unidentified persons had any knowledge of the tribunal proceedings in 1997, 1998 and 2006. There is insufficient evidence of a connection between the claimant's previous tribunal proceedings and the alleged visit to Patient P. There is also nothing to link the visit to Patient P by unknown persons to Drs Rosser and Blieker and Dame Moore. I dismiss the claim that the visit to Patient P was part of any continuing act. I dismiss the claim that the Patient P element of the claimant's complaint is an act of victimisation at all.

46. I turn then to the later claims. The 2018 complaint about Dr Rosser is in time in that it was filed in time. The content of the complaint in 2018 against Dr Rosser is that he did not reply to the claimant's letter of 28th October 2018 asking Dr Rosser to review the 2000 and 2006 issues which would also include new evidence provided by the claimant. The claimant believes that lack of response to his request that the 2000 / 2006 issues be re-opened is an act of race discrimination/ victimisation for having brought the proceedings in 1997, 1998 and 2006.

47. The conduct of Dr Rosser in 2015 and Dame Moore and Dr Blieker in 2016 are also alleged to be acts of victimisation for the bringing of proceedings for race discrimination in 1997, 1998 and 2006 by the claimant. The three claims are substantially out of time. Is there an act extending over a period of time commencing in 2015 in respect of Dr Rosser's refusal to investigate the 2000 and 2006 issues, up to the date of the filing of the current proceedings after Dr Rosser's alleged failure to respond at all to the October 2018 letter? I find there was no continuing act for the following reasons:

47.1 Dr Rosser and Dame Moore, both in executive positions within the respondent, made respectively an executive decision not to reopen any investigation citing in each case plausible reasons for reaching their respective executive decision. In Dame Moore's case, she gave full, justifiable reasons in her letter of 29th June 2016 (set out above) why she rejected the claimant's request for an investigation into the 2000 and 2006 conduct of his former colleagues;

47.2 there was no evidence whatsoever to suggest that those executive decisions were not made in good faith. There is nothing to link those reasons which were substantially for business/appropriate use of resource reasons with earlier tribunal proceedings. There is no evidence of what knowledge Dr Rosser, Dr Blieker and Dame Moore had of the earlier proceedings in 1997, 1998 and 2006;

47.3 in so far as Dr Rosser referred in his reply to the claimant on 29th November 2015 to S49A of the Medical Act (1983) it cannot be said that in reminding the claimant of his duty and reporting a suspected breach of duty to the GMC, that Dr Rosser had acted inappropriately knowing, as he did, that the claimant had not been restored to the medical register. There were grounds for Dr Rosser to have a concern that there may have been a breach of S49A because the claimant's title and GMC registration number had been included as a foot note to his correspondence which was potentially misleading and could suggest that he was a practising doctor when he was not. It was appropriate that Dr Rosser made the claimant aware of Dr Rosser's concerns and the potential breach of the Medical Act;

47.4 the letter from Dr Blieker in March 2016 explained that she was not the right person to deal with the claimant's enquiry on re-training/observations; she explained she had passed the claimant's enquiry to the right person, a colleague. The colleague then did not contact the claimant. The failure by Dr Blieker's colleague not to contact the claimant is not conduct by Dr Blieker. Understandably, Dr Blieker did not correspond further with the claimant; she could not help him and she had said so. This was not a failure to reply to the claimant - Dr Blieker had made a timely reply. In the circumstance of her explanation, no further correspondence from her could have been reasonably expected by the claimant. The claimant had not followed up with the colleague whom Dr Blieker had named;

47.5 Dr Rosser's email from 2015 was no longer his email address in 2018 and therefore he did not receive the claimant's correspondence of 28th October 2018. There was no documentary evidence to support this submission by the respondent which came late during the proceedings, although I was given a full explanation as to when Dr Rosser changed his email address and what his current address is. I was informed that the email address current in 2015 was no longer used and had not been monitored for 2 years. The claimant had used this old email address. The out of office response had provided two different re-direction addresses which were obviously not noticed by the claimant. There was no entry in the respondent's mail room log for the relevant period that shows any post from the claimant was received by the respondent. This is a plausible explanation for Dr Rosser not replying to the claimant;

47.6 Even without this explanation, the fact that Dr Rosser did not reply to the claimant's October 2018 letter would be insufficient to be reasonably viewed as an act of victimisation without more evidence. There may be many reasons why an email does not receive a reply. One explanation is given above; furthermore, emails sometimes go into junk mail; emails can be accidentally deleted or simply not be seen by a busy person in a pressurised day. Failure to respond does not mean a deliberate failure to respond because of a malign intent to treat the claimant unfavourably, without some evidence to connect the omission to the imputed motive.

47.7 The allegations are against three different people with significant lapses of time (for the purposes of limitation in employment tribunal proceedings) between the alleged conduct in 2015, 2016 and 2018. Whilst Dame Moore deals with the same matter as Dr Rosser (the request for an investigation), Dr Blieker's response is on a completely different subject.

48. For the reasons above, I do not find there was an act extending over a period of time under S123(3).

Application just and equitable extension S123(2)(b)

49. I then turn to the question of whether it is just and equitable to extend time. The claimant's explanation for not bringing his claims relating to 2010 – 2018 earlier and in time was that he had been very unwell and had not been able to file proceedings earlier. He cited a catalogue of personal catastrophes and problems he had experienced over the years in addition to his many medical issues. One can be sympathetic to the claimant's personal predicament in relation to his marriage, his home, and the violent attacks that he sustained, but the medical information on his inability to file his complaints on time in 2015/2016/2018 was limited. The earlier medical evidence is irrelevant because the 2006 FPP hearing is barred as a basis for these proceedings and the 2010 incident is, as I have found, not an incident of victimisation. The period of 2015 – 2018 is the only remaining period to which this judgment on medical evidence can relate. The medical evidence was:

49.1 in 2014 Dr Crorie referred to the claimant being assaulted in 2014 and having suffered severe injuries which resulted inter alia in double vision. Dr Crorie also referred to the claimant not being fit to work. The claimant must however, have made sufficient recovery from the assault and medical aftermath to have put together an evidential case to Dame Moore and Dr Rosser in 2015 and again in 2016, with supporting documents, to request an investigation into his former colleagues' conduct. He was also sufficiently fit to consider undertaking training or observation which was the purpose of his letter to Dr Blieker in March 2016;

49.2 the medical letter from Dr Lough in August 2018 was aimed at the claimant getting suitable damp free accommodation and is not useful in establishing the claimant's ability to file tribunal proceedings in 2015 or 2016. The medical letter of February 2019 from Dr Russell also does not explain why the claimant was not able to file proceedings in 2015 and 2016;

49.3 the medical evidence does not in any way explain the delay between the alleged acts of victimisation/discrimination in 2015/2016 and the claimant filing proceedings in late 2018;

49.4 the cogency of the evidence would be a serious concern if the 2015-2018 claims were to proceed. In any inquiry into his former colleagues' conduct, the claimant would have to rely on the background events in 2000 and 2006. After over 19 years since the claimant resigned from the respondent's employment and 13 years since the FPP hearing, it is doubtful that there could be a fair hearing as many of the individuals accused of discriminatory conduct against the claimant no longer work for the respondent or have retired. Dame Moore has retired. It is inevitable that memories and clarity of thought will have dissipated over the years. The claimant alleged that memories could be adequately refreshed by reading the transcripts of the FPP hearing. I do not agree. It was evident reading witness statements to the FPP that there were some memory issues in 2006 concerning the events which took place in 2000. In any event the claimant cannot rely on the FPP transcripts.

49.5 the claimant cannot overcome the insuperable hurdle of witness immunity and issue estoppel. The events in 2000 and 2006 are the index events from which all the claimant's claims flow. The 2000 and 2006 events are not only very stale, they are barred as the bases of any claim now brought by the claimant for discrimination. That was stated by HHJ Clarke in 2008. To allow the claim to proceed after so many years after the index events of 2000 and 2006 would be prejudicial to the respondent and unfair.

50. For the reasons above, I do not find it just and equitable to extend time . The tribunal has no jurisdiction to hear the claimant's claims which are dismissed in their entirety.

51. In addition to the above finding on the extension of time point, because of the earlier decisions of the EAT and the employment tribunal, and, based on my conclusions about the more recent 2015 – 2018 claims which arise out of the 2000/2006 events, I would add that even if all of the more recent claims had been made in time and the issue was not whether or not to extend time, I would have struck the current proceedings out on the basis that they are vexatious and an abuse of process and also on the basis that they have no reasonable prospect of success.

52. The claimant is now an experienced litigant and is aware of the effect of the earlier judgments of the employment tribunal and EAT. He continues to repeat his claims despite his knowledge of the legal status of the 2000/2006 FPP claims. That is both vexatious and an abuse of process.

53. With regard to the merits of the claim and prospects of success, the authorities make it clear that it is only in the rarest of cases that a discrimination complaint will be struck out at the preliminary hearing stage particularly where there is a dispute of fact. Here there is no dispute of fact as to the letters that were written in 2015, 2016 and 2018. The allegation is that the conduct of Drs Rosser and Blieker and Dame Moore was motivated by the claimant bringing tribunal proceedings in 1997, 1998 and 2006. I have found that in the light of the contemporaneous documentary evidence

the claimant has not established any facts from which an inference of discrimination under S27 could be inferred. There was no victimisation. For this reason I would also dismiss the claims on the basis that they had no reasonable prospect of success.

Employment Judge Richardson

Signed on 13th March 2019