Case Number: 2206759/2018

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Dr A. Ahari	**v**	University College London

PRELIMINARY HEARING

Heard at: **London Central** **On: 1 April 2019**

Before: Employment Judge Goodman

Appearances
For the Claimant: in person
For the Respondent: Ms S. Omeri, counsel

RESERVED JUDGMENT

1. The claims of post victimisation termination for acts and omissions before October 2018 are out of time and the tribunal does not have jurisdiction to hear them. It is not just and equitable to extend time.

2. The claims for acts alleged as detriment as victimisation on 28 October 2018 and 6 November 2018 are struck out because they have no reasonable prospect of success.

REASONS

1. The claimant worked for the respondent for three months in 1998, from 1 June to 31 August 1998.

2. On 24 November 2018, 20 years after employment ceased, he presented claims for post- termination victimisation. The respondent denies liability.

3. The detriments alleged as victimisation begin in 1998. The last two detriments are in October and November 2018. Summarisng the list prepared by the claimant pursuant to order, dated 21 March 2019, the detriments are:

1. 15. 6.1998 – Dr Hamilton Davies made racist comments.

2. Failure to keep to terms of the agreement between June and September 1998
3. 28. 8. 1998. Dr Ingram said the claimant could not continue at the respondent, and produced a report making false allegations
4. 11.11. 1998. Dr Ingram sent a letter to the deanery harming his career
5. 8.12. 1999, Dr G Cooper of Royal College of Anaesthetists states that the London training cannot be credited, which is said to be based on or influenced by the views of Dr Ingram.
6. 28. 7. 2000 – Dr Ingram and another write to Birmingham Heartlands Hospital about the claimant's training
7. 2001 to 2004 – Dr Ingram influences the training committee of the Royal College not to review his training record.
8. 2001 Dr Ingram and another make false allegations to GMC about the claimant
9. 3.12.2002. Dr Ingram and another report to the Scottish deanery about the claimant.
10. 2006, Dr Ingram and others send a report to Mr Orton of TMPDE which he sends on to the GMC.
11. 2010 – the claimant hears that all documents in his training file in the deanery have been destroyed; it is said that this is the result of Dr Ingram and others using their authority to do so
12. 6.2.2016 - claimant writes to respondent's chief executive, Robert Naylor, about Dr Ingram, but the issue not addressed
13. 30.10.2018, Professor Munday, respondent's medical director, writes to say he will not investigate 1998 training matters
14. 6. 11 2018. Professor Levi, respondent's chief executive, states he will not investigate the issues

4. The protected acts for which he was victimised are stated to be a 1997 employment tribunal claim against a previous NHS employer in London, and a further claim in Glasgow in 2001.

5. This hearing was listed to decide the respondent's application to strike out the claim. They say all but two of the detriments alleged as victimisation are out of time; of the remaining two, they argue that there is no reasonable prospect of success. They argue that the allegations of victimisation taken as a whole do not form "conduct extending over a period" so as to bring the earlier allegations within time.

Claimant's application to strike out the Response

6. The claimant in turn applied to strike out the response on grounds first that it was late, and second that the conduct of the respondent was unreasonable.

7. I heard this application first, and decided not to strike out the response, for reasons given in the hearing and recorded then. In summary, I held that the response was presented within the 28 days allowed by rule 16, and that the respondent's conduct, which relates to service of documents and a witness statement, was not unreasonable, let alone so unreasonable as to mean the claims could not be fairly tried.

8. Written reasons for the decision have not been requested, but if either party wishes to have the full reasons in writing, a request must be made to the tribunal within 14 days of the date this decision is sent to them.

Respondent's application to strike out the Claim

9. In order to consider the application I read the claim form with a 14 page grounds of claim document, a further letter of 12 December 2018 amplifying the claim, a 20 page letter sent on 21 March 2019, and a submission of 30 pages served just as the hearing began.

10. In a letter of 14 March the claimant was told by the tribunal that if he wished to give evidence of why any claim was not presented within three months of the act complained of he must send a signed witness statement by 26 March. The claimant did not serve a witness statement or give evidence.

11. The respondent had prepared a bundle of documents which included the historic correspondence sent by the claimant and such other material, for example the payroll records for material witnesses, as was available. The claimant complained that some documents he had sent the respondent had not been included; the respondent had printed some of these and they were available at the start of the hearing, but the claimant did not take me to any of them. He stated the other material was on his laptop, but he had not printed copies. He did state at the outset that the respondent's bundle was "total chaos", but on going through the index with him, he agreed he had seen all the material before, and it seemed to me to have a logical order.

12. The respondent called evidence from Ms Adeze Iweka, interim senior employee relations adviser, concerning their records of present availability of past employees, and she was questioned by the claimant.

13. Counsel for the respondent had prepared a written skeleton argument which was printed and enlarged to 16 point type for the claimant's benefit.

Conduct of the hearing

14. The claimant had asked for adjustments for disability, namely permission to use a laptop in the hearing, which he did, and enlargement of correspondence to 16 point font. He had also notified that he had neck and back pain which meant it took some time in the morning to move freely. The hearing had been moved from 10 am to 2 pm to assist in this. I also asked him to stand and sit freely as and when he chose so as to make himself comfortable during the hearing, and he did. In addition, there were two breaks, one lasting 15 minutes for him to walk about, another, which in the event lasted 30 minutes, so he could find milk and take medication.

15. The claimant had asked for the hearing to be enlarged from three hours to six. He did not arrive for the 2 pm hearing until 2.35, having emailed at 13:56 attaching his 30 page document and saying he had been in an accident (he stated on arrival he had been locked in a hotel room) and

would be 20 minutes late. After dealing with documents, adjustments for disability, and the claimant's application and judgement thereon, the hearing of the respondent's application began at 4.10 pm. Ms Iweka was questioned by the claimant until 4.45pm. Counsel for the respondent made her oral submission from then until 5.25.pm. The claimant then asked for a break to take medication; he did not return until 6pm. As he lives in Scotland, the hearing then continued, rather than adjourn part-heard. From then until 7.15 pm he made an oral submission, and the respondent a one point reply. I am grateful to counsel for the respondent for remaining into the evening. Judgment was reserved.

Factual Summary

16. This summary is based on the claimant's grounds of claim and other documents, supplemented, where stated, by the contemporary documents.

17. At the point in 1998 when the claimant started work for the respondent he was a qualified doctor, training in anaesthesia. He had held registrar posts with other trusts. Consultants there had expressed "grave concern" with his clinical practice, and two RITA-A notices had been issued, which record adverse progress in training. The claimant complains he was not permitted to appeal either notice, but this preceded employment with the respondent.

18. In 1997 the claimant left his three year training rotation with other NHGS trusts early, and presented a claim in London Central employment tribunal for race discrimination. He is a British citizen of Azeri ethnicity, and came to this country from Iran. The outcome of that claim is not known to this tribunal.

19. In February 1998 the specialist committee of the deanery, the local NHS body coordinating arrangements within a geographical area for specialist medical training, met the claimant to make proposals to get his training back on track. The respondent agreed on 26 February 1998 to take him on a 3-6 month attachment "to help you try to reestablish yourself…as a candidate for a specialist registrar appointment". The respondent's consultant leading this arrangement was Dr Stuart Ingram. He must have been aware of the tribunal claim against the other trusts, as the claimant says he saw him at a tribunal preliminary hearing in May 1998.

20. The attachment began on 1 June 1998. The claimant says his salary was low because Dr Ingram would not permit him to work on the on-call rota, as he would not be supervised on call, and he complains too that another consultant, Dr Hamilton-Forbes, asked where he got his ugly accent from. He also complains that he did not have the two monthly end of attachment meetings planned with Dr Ingram and Dr Hulf. Other than that, he understood his relations were satisfactory, until an incident on 9 July 1998 when a patient died of complications of anaesthesia. It is not stated anywhere whether this was through any fault, whether of the claimant or Dr Hamilton-Forbes, the anaesthetists concerned. The claimant says he 'voiced concern' about Dr Hamilton-Forbes in respect of this case and others, but

the nature of his concern is not explicit in any of his documents, whenever written.

21. Towards the end of three months, on 28 August 1998, Dr Ingram, Dr Hamilton -Forbes and Dr Grundy met the claimant. Dr Ingram's contemporary note of the discussion is just over two pages long. In his view, consultants had had difficulty establishing a rapport with the clamant. Dr Hamilton-Forbes said the claimant was conscientious and had good theoretical knowledge but was difficult to teach, defensive, and saw things in black and white. He was given advice about how to present his CV, and the realism of his ambition to be a consultant, t the effect that he was then 43 and it would take at least another 3 years to conclude his training and pass the final exam; it was suggested he consider staff grade posts rather than consultant posts. The claimant's account of this meeting is that Dr Ingram stammered, and said: "that he was concerned about my complaint to the tribunals and that he would not be happy with me continuing with my employment at (the respondent)". Then there was a short conversation with Dr Hamilton-Forbes.

22. In a letter a few days later to North West Thames Deanery, on 4 September, Dr Ingram attached his note of the meeting, and commented "I learnt yesterday that Dr Ahari has written to the personnel department…indicating his intention of starting a grievance procedure against the trust". He also expressed regret the attachment had failed, irritation that this had damaged his own credibility with colleagues, and commented: "further attempts to appease Dr Ahari would be a complete waste of time. I do not think anything could usefully be done and if he wishes to resort to legal challenge, so be it". This meeting note is the report identified as an act of victimisation.

23. After leaving the respondent the claimant passed the final academic examination, and later worked at Stoke Mandeville for just under 2 years, and then at Birmingham Heartlands Hospital, where he resigned after 2 months, then for 9 months at Glasgow University. He says that in 2009 he found he had not got a training post in Oxford because of a reference written by Dr Ingram in November 1998: the letter is in the bundle and quotes extensively from the meeting note.

24. In 2000, some months after his resignation there, Birmingham Heartlands Hospital referred the claimant's case to the GMC (General Medical Council, the medical profession's regulator). The claimant says he learned from papers later obtained from the GMC that Dr Ingram had "made false allegations" about him, and had stated his training in London had been unsatisfactory, and had conspired with the Birmingham consultants.

25. In January 2001 the claimant lodged a grievance about Dr Ingram with the Royal College of Anaesthetists, which included an allegation of: "victimisation further to a hearing at an Industrial Tribunal". There is no further detail, and so the complaint to the Royal College may not have been pursued.

26. The claimant has not worked as a doctor since 2001.

27. In February 2001, at the time the claimant left their employment, Glasgow University contacted the London deanery, saying they had concerns about the claimant's clinical practice and were collecting material to write to the GMC. They obtained information from Dr Ingram.

28. Working from the document in the bundle setting out the GMC findings in May 2006, it seems that in 2001 the claimant was invited by the GMC to undergo a performance assessment, but instead he asked for voluntary erasure from the register, which was effective from April 2002.

29. In 2005 a Glasgow Employment tribunal heard the claimant's victimisation claim against Glasgow University and a private hospital, and dismissed the claim when the claimant did not attend the hearing. The EAT dismissed his appeal.

30. In May 2006 the claimant attended a GMC hearing of an application by him to restore his name to the register. He learned from the papers that several previous employers had acted on a report from Dr Ingram about him. He says he withdrew from the hearing after a day and a half. The panel nevertheless considered the application on its merits and rejected it, recommending he did not apply again for 12 months. The decision indicates they relied on concerns raised at five different hospitals, and two incidents at Heartlands.

31. In 2010, four years later, the claimant learned that training records on him by the respondent and by the London deanery had been destroyed.

32. The claimant applied again to the GMC to restore his name to the register in 2012, but withdrew before it was considered. He says this was because a flood at his flat destroyed his papers.

33. In July 2016 the claimant wrote to the respondent's then chief executive, Sir Robert Naylor, detailing in 8 pages shortcomings in the period of employment with the trust, and "unreasonable improper and detrimental" acts adverse to his training and medical registration, by Dr Ingram and others. He added that this was victimisation because he had brought claims to the employment tribunal or considered complaining to them. He said he had witnessed a patient die unnecessarily during his time at the respondent hospital, as a result of "two bad apples supported by one big bad apple". Professor A R Mundy, as Corporate Medical Director responsible for Quality and Safety, was asked to reply, and did so in September 2016. He asked for more information about the patient death (such as the patient's name) so he could investigate that. Otherwise he could not investigate concerns about 1998 because:

> "The hospital that you worked at was demolished some years ago and training records are not required to be kept for that long. If you consider that adverse decision making has adversely affected your career I would consider this a matter best discussed with a legal representative".

The claimant did not reply at the time, so nothing further happened.

34. Over two years later, on 22 and 28 October 2018, the clamant did respond to Dr Mundy, with 28 attachments. The text of these is not in the bundle, but the attachments' dates show that most postdate 1998 by some way, and so were about the claimant's subsequent career, not the patient death. The letter recites the history of the claimant's employment and subsequent career, and how "Dr Ingram has been involved in my career for 20 years", had sent an adverse report to the GMC, and by himself or through another had written to other hospitals about him, conspiring, in 2000 and 2001. He had learned the full extent of this in 2006. He asked for an investigation of this, and of the defects in training in his three month attachment. He also described the adverse (and fatal) incident on 9 July 1998, but did not name the patient, or the procedure, or identify the errors.

35. Dr Mundy replied on 31 October 2018, and it is quoted at length here because this reply is pleaded as an act of detriment, and one which is in time:

> "Having reviewed your letter and documents, I have to advise you that there is nothing that we can do now to change the outcome for you, because of the passage of time.
> Whilst you have provided some details of the patient who you say had an early death due to a staff member's anaesthetic technique (in 1998), I do not have enough information to allow us to identify the patient and therefore, I cannot take this matter further. You do not state whether you raised this issue at the time it happened in 1998, and again because of the time that has passed for you to draw this to our attention, it is unlikely, even with the patient details, that we can investigate as we may not hold the patient records.
> If you are not satisfied with the decisions of the GMC regarding yourself, you would have to take any concern directly to them. Again, this may be time limited. Likewise if you have concerns regarding an individual and their fitness to practice, that would be a matter for you to raise with the GMC.
> Please be assured, I would be happy to cooperate with any external agencies regarding any matter you have raised. However, whilst I am grateful you to write to me with your concerns, I will not enter into further correspondence with you in this matter".

36. That same day the claimant wrote to Professor Marcel Levi, now the respondent's chief executive. The letter substantially reproduces the same material as the letter to Professor Munday, then adds that Professor Mundy has, in failing to investigate, "supported the improper conduct of Dr Ingram and Dr Hamilton Davies, including conspiracy and victimisation". For more than 20 years he had been racially discriminated against and victimised by a number of employees of (the respondent) "because I had complained to the employment tribunals". He estimated his losses at between £1.4 and £1.8 million.

37. Professor Levi replied on 6 November 2018 (and this, a refusal to investigate 1998 or Dr Ingram's actions thereafter) is the last detriment alleged as an act of victimisation):

> "I have carefully studied your letter and all documentation. However, this all took place 20 year ago and it is not really possible for me to do meaningful investigation on something that happened so long ago. Most people involved may not even work here at UCLH any more. I'm terribly sorry but I'm afraid I cannot help you with this".

38. As to the people involved, Dr Ingram retired in 2002 and died suddenly in 2016. Dr Hamilton-Davies ceased employment with the respondent in 2015 and is now employed at Barts, but working for the respondent one day a week under a service level agreement. Dr Hulf, who shared supervision of the claimant with Dr Ingram in 1998, retired in 2010 after 32 years' service and her current address is not known.

39. The claimant began another employment tribunal claim, against Birmingham Heartlands Hospital in 2018. This was struck out on grounds that it was out of time following a hearing in Birmingham on 15 February 2019, judgement being sent to the parties on 13 March 2019. The reasons also show the claimant had commenced a claim in 2006 in London Central Employment tribunal which had been struck out because it duplicated the findings of an earlier Birmingham tribunal.

40. In oral submissions the claimant said he had had a number of health difficulties, had been assaulted, and had endured substandard accommodation and a period of homelessness. The detail and dates are not known, except for some recent (from January 2019) housing difficulties set out in the 1 April 2019 submission, which he says impaired his preparation for this hearing. There was no medical evidence.

Relevant Law

41. The time limit for these claims is set out in the Equality Act 2010 at section 123:

"(1) proceedings on a complaint… 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) (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 it".

42. There is much case law on what is "conduct extending over a period". To connect separate events, there may be an underlying rule or principle which has been applied. **Hendricks v Metropolitan Police Commissioner** supports the view that this may be "an underlying discriminatory state of affairs". The question was whether there was an 'act extending over a period', as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed. As it may be necessary to find facts to establish whether there is such a state of affairs, tribunals should be cautious in making decisions at a preliminary hearing on whether conduct has extended over a period. They should analyse the issue by taking the claimant's (factual) case at its highest, and by having regard to clear and uncontested documents. The Claimant must have an arguable case that the incidents are linked, and not just a bare assertion that there is a continuing act – **Ma v Merck Sharp & Dome Ltd (2008) EWCA Civ 1426.**

43. In order to constitute a continuing act, if there is a series of incidents, the incidents complained of must be unlawful; if they are not, they cannot be relied on to keep time running, which may result in the claim being time-barred **Oxfordshire County Council v Meade UKEAT/0410/14.**

44. It is also important to distinguish between the continuance of the discriminatory act itself (e.g. the schemes and practices in the above cases), and the continuance of the *consequences* of a discriminatory act, for it is only in the former case that the act will be treated as extending over a period - **Barclays Bank plc v Kapur [1989] IRLR 387.**

45. If a claim is out of time, and a tribunal is considering extending time because just and equitable, it must take account of the factors listed in **Keeble v British Coal Corporation**, so, the length of delay, the reason for any delay, the effect of delay on the cogency of the evidence, whether anything was concealed from the claimant, and then consider whether it is still possible to have a fair trial. It must nevertheless bear in mind that time limits are there for a reason and generally enforced – **Robertson v Bexley Community Centre (2003) EWCA Civ 576**. In **Afolabi v Southwark Borough Council (2003) ICR 800**, an extension was allowed after a delay of 9 years because the evidence to support his claim had only recently come to light – the claimant then started the claim within three months of finding the evidence – but it was stated to be wholly exceptional.

46. Because discriminators rarely admit that they are discriminating, or may not be conscious that they are discriminating, the equality act provides a special burden of proof in section 136.

> "(2) If there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred,
> (3) but subsection (2) does not apply if A shows that A did not contravene the provision."

47. This states the test set out in **Igen v Wong**, to the effect that the tribunal must set out what facts the claimant has established, and whether

discrimination can be inferred from those facts. If it could, the burden shifts, and it must then consider the respondent's explanation. A bare difference of protected characteristic coupled with unfavourable treatment is not enough, there must be something more to make the inference – **Madarassy v Nomura International (2007) ICR 867**. In some cases, especially where there is a hypothetical comparator, it may be best to focus on the explanation – **Shamoon v Royal Ulster Constabulary (2003) UKHL 11**.

48. Rule 37 (1) (a) of the Employment Tribunal Rules of Procedure states that at any stage of the proceedings a tribunal may strike out all part of a claim on grounds, inter alia, "that it has no reasonable effect of success".

49. At a preliminary hearing a tribunal does not hear and test evidence, save perhaps of reasons for delay. Equality act claims are especially fact sensitive and in **Anyanwu v South Bank Students Union (2001) IRLR 305**, it was held that they should not be struck out without hearing evidence of the facts, although the view was expressed that:

> "I would have felt that the claim should be struck out if I had been persuaded that it had no reasonable prospect of succeeding at trial. The time and resources of the employment tribunal will not be taken up I haven't yet evidence in cases that are bound to fail".

In **Patel v Lloyds Pharmacy Ltd UKEAT/0418/12**, it was pointed out that the correct approach was to take the claimant's case at its reasonable highest and then decide whether it could proceed. It was not right to wait in case "something may turn up".

Submissions

50. The respondent submits that all but two of the acts of vicitmisation are out of time, some by 20 years, others 13 years. They were decided by different people. The claimant has only asserted an underlying state of affairs, an assumption that others had noted that Dr Ingram had conspired with others. In others acts and omissions, there is no evidence of a protected act, or that the actors knew of the protected act. Claims with no reasonable prospect of success cannot form part of a discriminatory state of affairs.

51. Further, it is argued there is no reasonable prospect of success in the two matters which are in time – the decisions were made for the reasons given, mainly lack of evidence to investigate, and not because of any earlier tribunal claims. Any claim that Professors Levi and Mundy conspired with other staff is purely speculative and the claimant has not demonstrated an arguable case.

52. As for whether it is just and equitable to proceed out of time, the respondent points out that (1) the several previous tribunal claims show the claimant must be aware of time limits and tribunal procedures, (2) the respondent is handicapped by the death of Dr Ingram, and (3) the lack of any documents other than those already held by the claimant from the GMC

materials. (4) The allegation against Dr Hamilton -Forbes is 20 years old; he is also asked to give evidence at that distance as to Dr Ingram's state of mind in 1998.

53. The claimant, invited to make a submission in reply, found it difficult to focus on the legal points, tending to go over the facts and the delays in getting evidence. In answer to specific questions he said he did not argue a just and equitable extension, though he added he had had various housing troubles, periods of homelessness, and had been assaulted more than once, He asserted there had been a conspiracy to destroy the evidence, deliberately to harm him, an intention could be inferred from events. Dr Hamilton Forbes was still available, and he felt Ms Hulf could be traced. The 20 year delay was not relevant because of the documents. He then said he had his own notes of the 1998 meeting with Dr Ingram, which he had sent to Professor Levi in 2018, but not to anyone else before then. They were not produced. The conduct was that of a linked group of people, which had extended to 2018. This conspiracy had ruined his career and kept him unemployed for 16 years.

Discussion and Conclusion

54.I begin with the last two acts, which are in time. Does the claimant have any reasonable prospect of success showing Professor Mundy and Professor Levi refused to investigate his allegations of bad faith on the part of Dr Ingram because he had brought proceedings in the employment tribunal alleging breach of the Equality Act? It is true that they will have known that he had brought proceedings at some stage, because the claimant said so in his letters to them. It will have been equally clear to them that he was not talking about any recent matter. Most of his long letter was about 1998, or the material sent to subsequent employers in 2001-2. The last matter he mentioned was the GMC hearing in 2006, apart from saying the GMC had also been influenced in 2012 by earlier documents. The respondent (by Professor Mundy) had stated in 2016 (and after Dr Ingram's death in retirement) that all the material had been destroyed, and that if he criticised decisions made then he should see a lawyer. They were only prepared to investigate the patient death allegation, if he would give more detail, which he did not. The claimant has no reasonable prospect of establishing that either's refusal to investigate his claim that Dr Ingram and others had discriminated or acted unfairly was because he had brought a tribunal claim against another London NHS Trust in 1997, or in Glasgow in 2001. This bare assertion cannot withstand the fact that an investigation at such a distance would be pointless and fruitless, as almost all the documents needed were long gone, the personnel were retired, no one would be able to remember very well what had happened, and he had been given "clear feedback" at the time. Underlying this is the unexpressed but implied view that he could have brought a claim long before if he thought it was discriminatory, unfair, or victimising, so that there had been no injustice requiring investigation so long after the event.

54. Those are clear enough reasons why they would not investigate at the end of 2018 events which had occurred 20 years before, which may have

affected GMC decisions taken 6 and 12 years before, and had apparently gone unchallenged since then. The claimant's bare assertion that they decided as they did in 2018 because they knew he had brought tribunal claims some years before – without detail of what the claims were about or what the outcome was – would be defeated by the obvious merits of the reasons they did give, in a context where there was in fact no duty on them to investigate matters to do with his training so long after he had left. That would be the respondent's explanation of why their decision did not breach the Equality Act, (even supposing the claimant could establish any facts from which victimisation could be inferred), and there is no other part of the claimant's account to make them doubt the explanation . The claimant can only establish that they turned him down, and that he had told them he had brought claims. That is not enough to show the claims were the reason for the turn down. In any case, any inference that (hypothetically) could be drawn would be defeated by the explanation. These allegations are dismissed as having no reasonable prospect of success.

55. In any case I hold they are not linked to earlier events as part of conduct extending over a period. There is no evidence either knew the 1998 clinicians complained of, or had worked with them, though they may have done as juniors. They had no access to documents other than those the claimant had sent them. They were not linked to the much earlier events, which collectively are about Dr Ingram's reports to others adversely affecting the claimant's career. The only link with the earlier detriments alleged is that they were being asked to investigate those matters. That is separate conduct. They had no duty to investigate. They might reasonably think that any appeal or opportunity for grievance had long passed, or that the claimant had other opportunities for redress, such as legal action, or review by the GMC. The request to investigate, and the refusal to do so, is conduct distinct from the conduct of Dr Ingram, and others influenced by him, on which the claimant relies in the other allegations of victimisation and discrimination.

56. The earlier events are undoubtedly out of time. It falls to consider whether discretion should be extended to allow then to proceed out of time. The delay is all on the part of the claimant. Even if he relies on later finding out about Dr Ingram's reports to other trusts or the GMC, he found out in 2006 (or 2011, when he says he went through the documents and appreciated their significance) and could have brought a claim within three months then, not in 2018. He knew about tribunals and time limits; it turns out he has brought other tribunal claims in the interim period; he is intelligent and computer literate. As for the effect on the evidence, the result of delay is that the respondent now has no training records (the suggestion that they were destroyed as an act of victimisation is to say the least implausible, asthere is no reason why they should keep them so long), the principal witness has died, the other witnesses concern 1998 facts, and their recollections of that period will be unreliable. The delay substantially prejudices the respondent in defending the claims.

57. There is no reason why the time should be extended, given that there cannot be a fair hearing at this distance of the underlying allegation that the claimant was treated unfairly in 1998 as an act of race discrimination, and

without fact finding on the merits of Dr Ingram's 1998 opinion as to the claimant's clinical ability and teamwork, the tribunal would not be able to decide whether his subsequent reports to others were made in good faith or were because the claimant had brought tribunal proceedings in 1997.

58. The tribunal does not think it just and equitable to allow the claims to proceed out of time.

59. In consequence the claims are all struck out. The hearing listed for 8 days in September 2019 will not take place.

_____

Employment Judge Goodman

Date: 16 April 2019

JUDGEMENT AND REASONS SENT to the PARTIES ON

18 April 2019

.....
FOR THE TRIBUNAL OFFICE