**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: S/4113153/2018**

**Hearing Held at Aberdeen on 23 and 24 April 2019**

**Employment Judge: Mr A Kemp (sitting alone)**

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| **Mr Jamie Robertson** | **Claimant**<br>**Represented by**<br>**Ms R Shearer**<br>**Sister** |
| **Grampian Health Board** | **Respondents**<br>**Represented by:**<br>**Mr C Reeve**<br>**Solicitor** |

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**The decision of the Tribunal is:**

**(i) that the claimant is a disabled person under section 6 of the Equality Act 2010**

**(ii) that the Tribunal does not have jurisdiction to consider the claim under section 123 of the said Act,**

**and the Claim is therefore dismissed.**

## REASONS

### Introduction

1. This case was arranged for a Preliminary Hearing on two issues, firstly whether the claimant was a disabled person under the Equality Act 2010 and secondly if so whether the Tribunal had jurisdiction to consider his claim in respect of time-bar.

### Evidence

2. The parties had prepared a bundle of documents, which was added to at the start of the hearing and during its course. Most but not all of the documents were referred to.

3. Evidence was given by the claimant himself. For the respondents evidence was given by Ms Catherine Simpson and Mr Mark Glass.

### Issues

4. The issues to be determined are as follows:

   (i) whether or not the claimant is a disabled person under section 6 of the Equality Act 2010

   (ii) whether it is just and equitable to allow the claim to proceed under section 123 of the said Act, Early Conciliation having been commenced outwith the three month period following the claimant's dismissal.

### Facts

5. The Tribunal found the following facts to have been established:

6. The claimant is Mr Jamie Robertson.

7. He commenced employment with the respondents as a Video Conferencing Analyst on 1 August 2018.

8. During his employment with the respondents and when not off work through illness the claimant's performance was considered by the respondents to be good. He was a keen worker and had a proportionately high level of work output.

9. On 19 December 2017 the claimant attended a consultant psychiatrist and was diagnosed for the first time as having Attention Deficit Hyperactivity Disorder (ADHD). He had a score of 8/9 for attention deficit and 7/9 for hyperactivity and impulsivity.

10. His condition of ADHD was manifested by symptoms such as racing thoughts, lack of ability to concentrate, poor memory, poor problem solving and an inability to sleep such that he may be awake for two, three or four days consecutively.

11. That diagnosis was communicated to his General Practitioner, including by letter dated 21 December 2017. The claimant attended his GP on 20 December 2017 and was signed as unfit for work until 25 December 2017. The claimant did not return to work thereafter. He attended his GP next on 22 January 2018 and was signed off for the period from 9 January 2018 to 6 February 2018, and then attended his GP on 7, 13 and 20 February 2018, and on 13 March 2018. For all of those meetings the claimant was given a fit note stating that he was unfit for work. There was reference to ADHD made in some of them.

12. The claimant was called to disciplinary meetings with the respondents whilst off sick. He indicated by text that he was confused about why he had to attend

such a meeting, and that he had difficulty in travelling to Aberdeen where it was to be held, he then living in Glasgow.

13. The claimant did not attend the disciplinary meeting, nor a second one that was arranged, and the third such meeting proceeded in his absence.

14. His employment was terminated by the respondents on 16 March 2018.

15. On 22 March 2018 he sent a message by WhatsApp to Mr Mark Glass, a former colleague, with regard to his dismissal and said that he was "gonna rep up". By that he meant that he was to seek representation. He asked Mr Glass about that and was directed by him to the union Unison, and the Citizens Advice Bureau.

16. On 22 March 2018 he also messaged his manager Scott Mathieson in which he (the claimant) included the comment "I guess I'll see you guys at the tribunal then".

17. On 6 April 2018 he emailed Mr Glass to say that he was "appealing my dismissal".

18. On 27 April 2018 the claimant contacted the HR department of the respondents and stated that he would like to appeal. His GP had advised him to contact a solicitor, which he informed the respondents of in his message on 27 April 2018. The claimant did not contact a solicitor as he did not believe that he could afford the cost of that.

19. 30 April 2018 he received an acknowledgement, and the same day referred to having three months to appeal, and that that was on the "grounds that I have been discriminated against. It is automatically unfair for NHS Grampian to set a timeframe for dismissal".

20. At or around this time the claimant had conducted online research on making a tribunal claim.

21. He received a reply from the respondents on 30 April 2018 which stated that he had 20 working days to appeal under the relevant policy, which was attached to the email. It added "The three months which you are referring to is with regards to lodging a claim to an employment tribunal. The below link will assist you with lodging a claim and the contact number for ACAS who can advise you on this process." The link was to a government website with information on lodging tribunal claims. The information on that website included that there was normally a three month time limit for making a claim, and that before a claim could be made "you must tell [ACAS] that you intend to make a claim to the tribunal." It provided the telephone number for ACAS.

22. During the period of his employment with the respondents the claimant was not on medication. He had assessments for his fitness to receive it, including an ECG. Medication was commenced on 9 May 2018.

23. For an initial period of one to two weeks the claimant suffered a more substantial reaction to the medication, which generally exacerbated his symptoms. Thereafter his symptoms gradually improved, and the dosage of it was increased.

24. In about late May 2018 he had an opportunity to apply for a new position which existed at a company where a friend worked. He attended an informal interview for that post, held in a public house at around that time, and was offered the post. He started in that new position on 11 June 2018.

25. At around the same time the claimant was texting his mother and sister. On 11 June 2018 he stated that he had not slept in four days, and that he was stressed.

26. At the same time the claimant remained working in his new role, and considered that he performed reasonably well in it. The role involved working in resolving issues in IT networks, using a computer and telephone. He

attended the company's office initially for an induction process, and then worked largely from home, but also at their office on occasion. The work was a full-time one but with variable hours.

27. On 13 June 2018 he prepared and presented a Claim Form to the Tribunal. It called as respondents "Ashley Catto", who worked in the respondents' HR department, and gave the respondents' address in Aberdeen.

28. The form sought a remedy for unfair dismissal, disability discrimination and other payments. He gave a rationally argued reason for the claim being made at paragraph 8.2 where asked for the background and reasons for the claim.

29. The form asked for an early conciliation reference number, stating that "nearly everyone should have this number", and giving the ACAS telephone number and email address. The claimant left that part blank and ticked a box stating "My claim consists only of a complaint of unfair dismissal which contains an application for interim relief (See Guidance)". The claimant considered that that box was the closest description to his own circumstances.

30. The Tribunal rejected the Claim Form by letter dated 18 June 2018, which indicated that the reason for that rejection was because the claimant had not complied with the requirement to contact ACAS before instituting relevant proceedings.

31. The Claim Form presented by the claimant was drafted by himself, acting alone. He did not seek interim relief in it. He did not have the service to claim unfair dismissal.

32. On receipt of the letter from the Tribunal rejecting his claim the claimant sought the assistance of his family, particularly his sister and mother. His messages to them continued. Later in June 2018 he indicated in such messages that he was not coping, and was on autopilot. His messages

indicated a very low mood, and the possibility of suicidal ideation on 27 June 2018.

33. His sister assisted him in completing the application for early conciliation, which was received by ACAS on 4 July 2018.

34. An early conciliation certificate was issued on 3 August 2018.

35. A Claim Form was presented to the Tribunal on 8 August 2018, and accepted subject to issues of timebar being resolved. The part of the form for giving the background and reasons for it was blank. The respondent was given as “NHS (Ashley Catto, HR Department)”.

36. The claimant worked in his new employment for a period of three months. It terminated during his probationary period. He had worked primarily from home, but also attended the offices of the employer.

37. A letter from his GP dated 30 August 2018 indicated that he was having sleeping difficulties. The claimant was again signed as unfit for work from 13 September 2018 to 10 April 2019.

**Submissions for Claimant**

38. The following is a short summary of the submission made. Although an ET1 had been submitted initially it was wrong, including as to the identity of the respondents. When messages had been sent in March and April 2018 the claimant had not been on medication, which did not start until 9 May 2018. It only worked when taken, and there were occasions when it was not. He had not told his family about the dismissal or the first ET1 until in June 2018. Text messages in June 2018 indicated that he had had no sleep for days, and was not coping. There had been messages about his appealing the decision, not about taking a tribunal claim. He had been confused about that. Although he had started a new job he had not sought that, and there were issues from the

texts to his mother and sister, including about falling asleep at his desk. He had had issues with attending the disciplinary hearing. He appeared to be different on the outside. The statistics did not show quality of work, only quantity. The line manager had not been called but was the person who could give the best evidence.

**Submissions for Respondents**

39. The following is also a short summary of the submission made, which were provided in writing and supplemented orally. The respondents argued that the claimant was not disabled. The evidence from their witnesses was clear that he performed as expected at work, and showed that the claimant had exaggerated his condition for the purposes of the claim. It was argued that it was not just and equitable to extend jurisdiction. There had been a claim lodged, which would have been in time had it included EC details. The form provided information. It was reasonable to expect it to have been completed. The claimant was someone familiar with IT issues, and had started a new role in networks two days beforehand. Early conciliation had not been started until 4 July 2018. Delay would lessen the ability of witnesses to recall detail. The case was time-barred. Reference was made to the cases of ***Goodwin, Kapadia, Robertson,*** and ***British Coal*** referred to below.

**Law**

40. Section 4 of the Equality Act 2010 ("the Act") provides that disability is one of the protected characteristics.

41. Section 6 of the Act provides that:

> "**6 Disability**
>
> (1) A person (P) has a disability if—
>
> (a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(2) A reference to a disabled person is a reference to a person who has a disability.

(3) In relation to the protected characteristic of disability—

(a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;

(b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.

(4) This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—

(a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and

(b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.

(5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).

(6) Schedule 1 (disability: supplementary provision) has effect."

42. Further provisions as to the definition of disability is found in Schedule 1 to the Act which provides so far as material to this case that:

"The effect of an impairment is long-term if

(a) It has lasted for at least 12 months

(b) It is likely to last for at least 12 months……..

An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day to day activities if-

(a) Measures are being taken to treat or correct it and

(b) But for that, it would be likely to have that effect."

43. Guidance is given in the EHRC Code of Practice Appendix 1, and in formal "Guidance on Matters to be taken into account in Determining Questions relating to the Definition of Disability" issued in 2011, which includes where a person can reasonably be expected to modify behaviour to reduce the effects of an impairment, in Paragraph B7.

44. The onus is on the claimant to prove that he is a disabled person under the Act (***Kapadia v London Borough of Lambeth [2000] IRLR 699***). In applying the test about substantial adverse effect, a tribunal must take into account the definition of 'substantial' in s212(1) of the Act namely 'more than minor or trivial'. Guidance was provided in ***Goodwin v Post Office [1999] IRLR 4,*** with four questions to be addressed of (i) whether there was a physical or mental impairment (ii) does that have an adverse effect on ability to carry out day to day activities (iii) is that effect substantial and (iv) is that effect long term?

45. The provision on timebar is found in section 123 of the Act, which provides:

"**123 Time limits**

(1) [Subject to section 140A and 140B] proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable."

46. Before proceedings can be issued in an Employment Tribunal, prospective claimants must first contact ACAS and provide it with certain basic information to enable ACAS to explore the possibility of resolving the dispute by conciliation (Employment Tribunals Act 1996 section 18A(1)). This process is known as 'early conciliation' (EC), with the detail being provided by regulations made under that section, namely, the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 SI 2014/254. They provide in effect that within the period of three months from the effective date of termination of employment EC must start, doing so then extends the period of time bar during EC itself, and is then extended by a further month for the presentation of the Claim Form to the Tribunal. If not, then a Tribunal cannot consider a claim unless it was not reasonably practicable to have done so in time, and then if EC starts, and the Claim is presented, within a reasonable period of time.

47. What is just and equitable depends on all the circumstances. The burden of proof is on the claimant as explained in ***Robertson v Bexley Community Centre [2003] IRLR 434***., in which the Court of Appeal also said at para 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 and equitable to extend time. So, the exercise of discretion is the exception rather than the rule."

48. In ***Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327***, the Court of Appeal dismissed any suggestion that those comments in Robertson were to be read as encouraging tribunals to exercise their discretion in a restrictive manner.

49. In ***British Coal Corporation v Keeble [1997] IRLR 336*** the EAT considered a series of claims made for sex discrimination where the just and equitable issue arose, and referred to earlier proceedings in similar cases at paragraphs 8 and 9 stating:

> "…….The EAT also advised that the industrial tribunal should adopt as a checklist the factors mentioned in s.33 of the Limitation Act 1980. That section provides a broad discretion for the Court to extend the limitation period of three years in cases of personal injury and death. It requires the court to consider the prejudice which each party would suffer as the result of the decision to be made and also to have regard to all the circumstances of the case and in particular, inter alia, to –
>
> (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;
>
> (e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.
>
> The decision of the EAT was not appealed; nor has it been suggested to us that the guidance given in respect of the consideration of the factors mentioned in s.33 was erroneous."

50. In ***Southwark London Borough Council v Afolabi [2003] ICR 800*** the Court of Appeal confirmed that whilst that checklist provided a useful guide for Tribunals it did not require to be followed slavishly. It added that there are normally two factors which are almost always relevant – (i) the length of and reasons for the delay and (ii) whether the delay has prejudiced the respondents such as by preventing or inhibiting it from fully investigating a claim while matters are fresh.

51. That was generally followed in ***Abertawe Bro Morgannwyg University Local Health Board v Morgan [2018] ICR 1194*** where the Court of Appeal referred to Parliament having given Tribunals the widest possible discretion.

52. The Tribunal requires to consider potentially relevant factors such as the balance of convenience, which includes any prejudice suffered or that may be suffered by the respondents, and the chance of success, as discussed in **Rathakrishnan v Pizza Express (Restaurants) Ltd [2016] IRLR 278**, which was an EAT case which also reviewed the earlier authorities. It was there stated:

> "What has emerged from the cases thus far reviewed, it seems to me, is that the exercise of this wide discretion (see ***Hutchison v Westward Television Ltd [1977] IRLR 69***) involves a multi-factoral approach. No single factor is determinative."

In that case the claim was 17 days late, and some evidence was heard with regard to whether or not the claim had prospects of success. The Employment Judge had rejected the argument that the claimant had feared reprisals for making a claim, which the Judge did not accept, and held that in that situation the claim was not within his jurisdiction. The EAT held that the absence of a good explanation was not determinative, but a factor to be weighed in the balance with others:

> "Turning to the particular facts of this case, it seems to be that the question of balance of prejudice and potential merit of the reasonable adjustment claim was a relevant consideration for the tribunal and they were wrong not to weigh those factors in the balance but instead to terminate the exercise having rejected the claimant's explanation for the delay."

**Observations on the evidence**

53. The claimant gave evidence clearly and articulately, but his evidence was not always consistent. His evidence that at work with the respondents he had had difficulties with quality, not completing work, or reports, was I concluded somewhat exaggerated. He had stated that he had been concentrating on his mental health which was why the claim was late, but that stood against the other evidence that he started a new job and completed an initial ET1 Claim Form, which was rejected. The issue is considered further below.

54. I considered that the witnesses for the respondents were both credible and reliable. Ms Simpson did not have much direct evidence of the claimant's work, but had not been aware of any issue and it is likely that she would have been had such an issue arisen. Mr Glass was a former work colleague, who gave his evidence in a very straightforward manner. He was clearly friendly towards the claimant both whilst at work and afterwards, and was surprised when the claimant was dismissed, and gave him helpful advice in a message, as well as indicating that he would like to meet up with him later. His evidence was that the claimant worked perfectly well and that the issues the claimant alleged were not his own experience.

55. Mr Mathieson the line manager was not called to give evidence, and it did appear to me that he may have been better placed than Ms Simpson to give evidence as to the claimant's performance at work. That was a matter that I took into account. On balance however I considered that the combination of the evidence of the two witnesses for the respondents was sufficient to establish that whilst at work, and not off ill, the claimant had worked to a reasonable standard and the issues that he claimed had arisen as a result of ADHD had not happened, at least to the level claimed by the claimant.

56. Where there was a difference, I preferred the evidence of the respondents.

**Discussion**

57. This has not been a straightforward case to decide. There are arguments both ways on each of the two issues. It was also a case well handled by the two representatives. It is not easy for a family member to act as the representative, but Ms Shearer did so with obvious care. Mr Reeve had also helpfully prepared a written submission and agreed to give that submission orally before Ms Shearer gave hers, given that she was not legally qualified. Both of them are to be commended for the manner in which the case was presented.

58. On the first issue of disability, I concluded that the claimant has met the test set out above. Whilst the respondents' evidence concentrated on the time when he was at work, including the statistical evidence from August to October 2017 when he was not off work, and worked at a high level in terms of quantity of work, that did not take account of the later period of absence, from 20 December 2017 to the end of his employment, nor the little evidence that there was of his providing fit notes to his employers, and of discussions about deferring disciplinary hearings as he was not able to travel, he stated. I also took account of the terms of the report dated December 2017 which confirmed two reasonably high scores indicative of the condition, and the evidence of the effect of the condition on the claimant including in particular racing thoughts, lack of sleep, lesser ability to concentrate, and a tendency to focus on one particular detail. Having regard to the statutory test and the guidance, it appeared to me that there was a mental impairment, being ADHD, that did have an adverse effect on carrying out normal day to day activities, and that it was long-term, indeed it was there from birth, and permanent, albeit only diagnosed in December 2017.

59. The more difficult question was whether or not it was "substantial" as that term is defined in section 212(1) of the Act, and taking account of the Guidance documents referred to. Whilst I was driven to agree with Mr Reeve

that there had been some exaggeration, for example Mr Glass stated that the claimant had not been a poor performer at work, and had not had to undertake reports save very occasionally, as referred to above, taking matters across the timeframe of all the employment, up to termination, I concluded that the effect had been substantial, and was to continue to be so. There was a material level of sleep deprivation as evidenced in messages the claimant sent, albeit after termination. There is some evidence of the difficulties the claimant had generally when off work, and he was signed off work from 20 December 2017, such that he did not return to work. The reasonably high scores evidence in the consultant's letter following the consultation on 19 December 2017 were also indicative of symptoms likely to have a substantial effect.

60. I then turned to the issue of jurisdiction. The claimant accepted that the early conciliation was started on 4 July 2018, and that that was late by 20 days. The law makes clear that there is a balancing exercise between the parties, where there is no single factor that is determinative but where issues such as the reason for the delay, prejudice, the chances of success for the claim and others relevant to that case are all weighed in the balance.

61. The basic principle is that there is a three month time limit, and that early conciliation should be started within that time. If not, a claimant risks being unable to pursue the claim as the tribunal only has jurisdiction if able to conclude that it is just and equitable to allow it to be received.

62. There was a reason for the delay given by the claimant, which is that he was seeking to focus on his mental health issues, and the medication which started on 9 May 2018 caused an initial reaction. I required to take into account that the claimant was a disabled person, that he had started medication on 9 May 2018, with initially a reaction to that for a period of about two weeks, and that there was evidence from texts of his being of very low mood at times, including having what may have been suicidal ideation in late

June 2018. The disability included poor sleep, lack of concentration, and related issues as set out above.

63. On the other hand, there was the evidence from messages he sent shortly after the dismissal, indicating that he would see the respondents in tribunal, and an email to him on 30 April 2018, which was before medication started, referring him to the three month limit for a claim and giving details of a government website to progress it. Mr Glass, who was clearly friendly towards him, gave him details as to Unison and the CAB, and although he was not a member of the former, he could have contacted the latter.

64. More significantly however, although the claimant said that he was concentrating on his mental health at this stage, and not thinking particularly of making a claim, he had been interviewed, informally, for a new role, and started that new role on 11 June 2018. He had a period of induction initially in an office. He was able to function well enough to do so. It was working in an IT networking job.

65. Two days later, whist undertaking induction in that role, he completed the first Claim Form in the manner I have described. The background and reasons for the claim he set out were perfectly rational, and not indicative of having serious problems with completing such a form at that time. He had he said in evidence read the government guidance to which he had been directed, and the form itself had referred to the need for an EC certificate number, but he did not follow that up, instead ticking a box for something that did not apply to his case. There was an individual named as respondent, but that kind of error is not unusual. The form had itself referred to the need for an Early Conciliation certificate number, and provided on the part that he had completed details about how to contact ACAS.

66. That evidence tended to negate the evidence he had given that he had simply been focusing on his health. He had obtained, and started, a new role and he had taken some steps at least to pursue a claim in Tribunal. It indicated that

he was able to cope with the requirements of a working life, and was not so badly affected by his condition that he was not able to think reasonably well about making a claim. This was not a case where someone was unaware of the need to make a claim within a time limit, nor being substantially unable to attend to the steps needed to make a claim. There is little required of a prospective claimant in commencing early conciliation, and it was apparent from the form and website that it was required for his own claim.

67. The claimant was also an articulate person when giving evidence. He is clearly highly intelligent. He is also clearly very familiar with completing documents online, with sending messages by email and otherwise, and with making telephone calls. Whilst I do accept that he has had ADHD, and that that can and did affect his day to day activities sufficiently to result in his being a disabled person under the Act as indicated above, I do not consider that that of itself is a sufficient explanation for the failure to present the claim timeously. It could firstly have been presented earlier than it was, he having been directed on how to do so at least by the email of 30 April 2018, and before his medication had commenced. By late May 2018 he was functioning well enough to be offered employment after an interview, however informal, then to commence a full time role on 11 June 2018 as described. He was also functioning to a level that allowed him to complete the Claim Form that he did then present on 13 June 2018, albeit defectively.

68. When considering prejudice, the delay was of 20 days. That is unlikely to have a material effect on the evidence of itself. On the other hand, the respondents would lose the benefit of the timebar provision, which applies subject to the just and equitable extension as explained in the case of Robertson. More significantly, they would be required to investigate at this stage a claim that, as I shall come to, presently provides no specification at all of what is said to be unlawful and why. Such an investigation would be required over a year after the events involved, and that is I consider bound to be less effective than would have been the case had the Claim been presented timeously simply by that passage of time.

69. I considered also the issue of the chances of success. The claim as framed, being the second one presented, has very little substance indeed. The basis of it is not clearly set out. There is no background or reasons provided, only a tick in the box that there is a claim for disability discrimination. Some detail is given in the box for additional information, but not in relation to the substantive claims for discrimination. Whilst the fact of the claimant being a disabled person is a start, that does not mean that any claim would be likely to succeed, nor can it be said that there are reasonable prospects of success. There would require to be at the very least further and better particulars of the claim, if not an amendment, and that would be required over a year after the dismissal. Those matters would then require investigation by the respondents. They would suffer prejudice by being required to investigate a claim that at present they cannot know the detail of (as their Response Form stated).

70. The Agenda document provided by the claimant for the preliminary hearing held in the case (which was before the tribunal in the bundle of documents provided) does not provide any further assistance. Under section 2.1 asking for specification of the nature of the discrimination claim and under which section of the 2010 Act it is made, is only written “disability discrimination”. Under the heading of other claims is written “unfair dismissal” for which the claimant does not have the necessary service.

71. At best the chances of success can be said to be present, in the sense that the claim is not one that has no reasonable prospects of success at all, but as matters stand at present I consider that the prospects are not good. There is so little information to go on. Whist one can see the outline of an argument that the respondents ought to have known of his disability from one of the GP fit notes provided which referred to ADHD, and an argument that to dismiss when the employee was off work ill may have been discriminatory, the detail of that claim, the statutory provisions founded upon by the claimant and the principal facts for each of them, including for example any comparator, and

the provision, criterion or practice that might be relied upon, at this stage are not provided.

72. Taking all of the matters in the round, it appeared to me that it is not just and equitable to allow the claim to proceed. The balance favours the respondents in my judgment. I do not consider that there has been a sufficient explanation for the delay having regard to the circumstances I have set out, but especially the commencing of the new role and completion of one Claim Form in mid June 2018. I consider that the respondents would suffer prejudice, and I do not consider that it can be said that the prospects for the claim are good. It is not just and equitable to allow this Claim to proceed in light of that, in my judgment.

**Conclusion**

73. The claimant's claims as set out above must therefore be dismissed for want of jurisdiction.

**Employment Judge:** **Alexander Kemp**
**Date of Judgment:** **29 April 2019**
**Entered in register:** **30 April 2019**
**and copied to parties**