EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102991/18

Held in Aberdeen on 11 March 2019

Employment Judge: Mr N M Hosie

Miss S Walker	**Claimant** **Represented by** **Mr M Smith, Solicitor**
British Gas	**Respondent** **Represented by** **Ms V Kerr, Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claim is time-barred and is dismissed for want of jurisdiction.

REASONS

1. The claim comprises complaints of a failure to make reasonable adjustments and harassment, in terms of the Equality Act 2010 ("the 2010 Act"). The protected characteristic is disability. The claim is denied in its entirety by the respondent and

the respondent's solicitor took two preliminary points relating to disability status and time-bar. The case came before me, therefore, by way of a Preliminary Hearing to consider and determine these preliminary issues.

2. However, at the commencement of the Hearing the respondent's solicitor advised that she now accepted that the claimant was disabled in terms of the 2010 Act, leaving only the time-bar issue to be determined.

The Evidence

3. I heard evidence from the claimant and a joint bundle of documentary productions was lodged ("P").

The Facts

4. By and large, the facts, relevant to the issue with which I was concerned, were either agreed or not disputed. Helpfully, the parties' solicitors lodged a "Statement of Agreed Facts" (P36). I was satisfied that the Statement was accurate. On the basis of the Statement, the claimant's evidence and the productions, I was able to make the following findings in fact, relevant to the time-bar issue.

5. The claimant was an employee of the respondent for over 10 years. She was employed as a Customer Services Adviser.

6. The claimant was signed off as unfit for work from 14 January 2017 until the termination of her employment.

7. The claimant did not return to work.

8. The claimant was dismissed by the respondent on the ground of capability on 22 September 2017.

9. The date of receipt by ACAS of the Early Conciliation Notification was 12 December 2017 (P18).

10. The date of issue by ACAS of the Early Conciliation Certificate was 26 January 2018 (P18).

11. The claimant's ET1 claim form was received by the Employment Tribunal on 23 February 2018 (P1-17).

12. The claimant suffered from neurological disorders throughout the relevant time for the purposes of her claim (2016-2017). These neurological disorders constituted a physical impairment which had a substantial and long-term adverse effect on the claimant's ability to carry out normal day to day activities throughout the relevant time. In consequence, the claimant was disabled throughout the relevant time, within the meaning of s.6 of the 2010 Act.

13. The claimant suffered from depression throughout the relevant time for the purposes of her claim (2016-2017). This depression constituted a mental impairment which had a substantial and long-term adverse effect on the claimant's ability to carry out normal day to day activities, and in consequence the claimant was disabled throughout the relevant time within the meaning of s.6 of the 2010 Act.

14. The claimant's line manager was Nikki Forrest. The last time Nikki Forrest spoke to the claimant was 8 August 2017.

15. The medical records, within the documentary productions (P77-180), are true copies of the originals, to the best of the claimant and respondent's solicitors' belief.

Claimant's Submissions

16. The claimant's solicitor submitted that the complaint of failure to make reasonable adjustments was in time, but if not the Tribunal should exercise its discretion in terms of s.123(1)(b) of the 2010 Act and allow the complaint to proceed on the basis that it was "*just and equitable*" to do so.

17. So far as the complaint of harassment was concerned, the claimant's solicitor accepted that it was out of time but maintained that the Tribunal should exercise its discretion in terms of s.123(1)(b).

18. In support of his submissions he referred to the following cases:-

> ***Chief Constable of Lincolnshire Police v Caston*** [2009] EWCA Civ 1298
> ***Abertawe Bro Morgannwg University Local Health Board v Morgan*** [2018] EWCA Civ 640
> ***Robertson v Bexley Community Centre*** [2003] IRLR 434

Failure to make reasonable adjustments complaint

19. In support of his submission that this complaint was in time, the claimant's solicitor set out the chronology of events as follows: -

> **Dec 2016 -** Ongoing discussions about adjustments (P47).
>
> **14/1/17-** Signed off due to depression and did not return to work thereafter. However, there was ongoing contact with Occupational Health instructed by the respondent on two occasions.
>
> **15/5/17 -** Formal assessment and marking (P105-107).
>
> **8/8/17 -** Last date of alleged harassment.
>
> **15/9/17 -** Stage 4 capability .
>
> **22/9/17 -** Dismissal.
>
> **Oct 2017 -** Moved to Orkney.

30/10/17 - Appeal received.

12/12/17 - Took legal advice. ACAS notification (P18).

Nov/Dec 2017- Outpatient referral after moving to Orkney.

14/12/17 - Appeal hearing (by telephone).

29/12/17 - Appeal decision.

20. It was submitted that the claimant's ill health appeared to have lasted for the whole year.

21. It was submitted that: *"At least as late as December 2016 the respondent was making her aware that they were still considering adjustments"* (P47). However, the claimant was only at work for a short time after that, before she was signed off on 14 January 2017.

22. It was the respondent's position that the last time it could have made adjustments was 14 January 2017, but the claimant's solicitor submitted, with reference to **Abertawe**, at para 15 in particular, it was necessary to consider, from the claimant's point of view, when the respondent could reasonably have been expected to comply with its duty to make reasonable adjustments. It was submitted that as at 14 January the respondent could not have been aware that the claimant would not return to work. Indeed, there was an ongoing investigation into the claimant's ability to return and Occupational Health was instructed on 9 June 2017 (P65), with the report being issued on 2 August 2017 (P68).

23. The claimant's solicitor submitted that the claimant could reasonably have expected the respondent to make reasonable adjustments until her dismissal on 22 September 2017.

24. This meant that the complaint of a failure to make reasonable adjustments was in time as the EC notification was received on 12 December (P18).

25. In the alternative, the claimant's solicitor submitted that if the claim was out of time that I should exercise my discretion and allow it to proceed on the basis that it was *"just and equitable"* to do so.

Harassment complaint

26. As the last alleged date of harassment is 8 August 2017, the claimant's solicitor accepted that this complaint was out of time, by over a month.

27. However, he invited the Tribunal to exercise its discretion and allow the complaint to proceed on the basis that it was *"just and equitable"* to do so. He referred to the following in support of his submission:

- The claimant's ill health. She was signed off from 14 January 2017 which was *"a very significant health problem".*
- Evidence that she was unwell dealing with the stage 4 hearing.
- She did not take legal advice until 12 December 2017.

28. So far as the issue of whether the claimant should have known about the time limit was concerned, it was submitted that she took the view that she needed to complete the internal process first.

29. He also submitted there was no evidence that the respondent would be prejudiced were I to exercise my discretion, for example that Nikki Forrest, the claimant's line Manager, who it is alleged harassed her, would not be available to give evidence. In support of his submission in this regard, the claimant's solicitor referred to **Abertawe** at para 22.

Respondent's Submissions

30. The respondent's solicitor spoke to written submissions which are referred to for their terms.

31. In support of her submissions she referred to the following cases:-

Humphries v Chevler Packing Ltd UKEAT/0224/06/DM
Abertawe
Robinson v The Post Office EAT/1209/99
Robertson

32. The respondent's solicitor first referred to the "applicable law" and, in particular, s.s.123(1), 123(3)(b) and 123(4) of the 2010 Act.

33. She submitted, with reference to **Humphries**, that, *"a failure to make reasonable adjustments is an omission and the statutory time limits will start to run from the date that omission is made".*

34. She then referred to the following agreed facts (P36):-

"1. The claimant was signed off unfit for work on 14 January 2017 until the termination of her employment;

2. The last date that Nikki Forrest spoke to the claimant was 8 August 2017;

3. The claimant was dismissed by reason of capability on 22 September 2017;

4. The date of receipt by ACAS of the Early Conciliation Notification was 12 December 2017;

5. The date of issue by ACAS of the Early Conciliation Certificate was 26 January 2018;

6. The claimant's ET1 was received by the Employment Tribunal on 23 February 2018"

35. On that basis, she submitted, taking account of the time limit extension in s.207B of the Employment Rights Act 1996 that, *"any discrimination claim of the claimant's relating to an act that took place on or after 13 September 2017 will be in time. Conversely, any claim relating to an act that took place on or before 12 September 2017 is out of time".*

Harassment complaint

36. The last act of harassment averred occurred on 8 August 2017.This was unambiguous (P34, para 4 and P35, para 9). The harassment complaint is therefore out of time (this was accepted by the claimant's solicitor).

Just and Equitable Extension

37. It was submitted that the Tribunal should not exercise its discretion and allow the harassment complaint to proceed, although out of time, on the basis that it is *"just and equitable"* to do so.

38. In support of her submission in this regard she referred to the claimant's, *"detailed email of 30 October 2017 to the respondent"*, in which she referred to, *"unfair and illegal dismissal"* (P73) and *"disability discrimination"* (P74), *"along with several other heads of claim".* The claimant also stated in this email, *"I view harassment as a serious offence under employment law … I had both Nikki Forrest and Healthcare RM phone me, which is contrary to the employment legislation .. if this is not resolved timeously, I intend to raise the issues with ACAS"* (P74-75).

39. It was submitted that in light of this, *"the claimant realised by 30 October 2017 that she may have an Employment Tribunal claim"*, but despite this she failed to act promptly and did not start early conciliation proceedings for approximately two months.

40. It was further submitted that, *"the claimant has acknowledged she understood what harassment was and that she could seek redress regarding harassment by going*

to ACAS. While she states that she was not aware of time limits, it is well established that once a claimant is aware of a claim they are responsible for checking time limits which could easily have been done and ignorance is no excuse".

41. It was submitted that the lengthy email on 30 October 2017 (P73-75) was inconsistent with the claimant's position that her health prevented her from taking advice in relation to her potential claims, until 12 December 2017.

42. It was further submitted, with reference to **Robinson**, that, pursuing an internal appeal rather than initiating Tribunal proceedings, was not in itself sufficient to justify a just and equitable extension.

43. She also referred to the following passage from the Judgment in **Robertson**:-

> *"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 the discretion is the exception rather than the rule."*

44. It was submitted, therefore, that as the harassment complaint was out of time and the claimant was unable to establish that it would be just and equitable to extend time, the Tribunal does not have jurisdiction and the harassment complaint should be dismissed.

Failure to make reasonable adjustments complaint

"Did the respondent do an act inconsistent with making the reasonable adjustments sought by the claimant"

45. The respondent's solicitor addressed each of the three adjustments identified by the claimant in the statement of claim (P33, para 3).

46. She submitted that the respondent had acted inconsistently with making these adjustments: in September 2016 in respect of the, *"provision of auxiliary aids, in the form of a tracker ball or different type of mouse, and wrist rests";* in September 2016 *"at the latest"* in respect of the *"regular rotation of her duties";* and *"prior to late 2016"* in respect of the *"reduction in hours".*

47. It was submitted that as the claimant accepts that the respondent could not have reasonably been expected to make reasonable adjustments from January 2017 onwards as she was absent from work (P34), *"her position must therefore be that the expiry of the period that the respondent should reasonably have been expected to make these adjustments must have been prior to January 2017. While conversation regarding reasonable adjustments was ongoing, there were no adjustments promised to the claimant which were not implemented. Instead the claimant was repeatedly told that no further adjustments could be put in place and she confirmed that she understood that to be the case as early as July 2016. The expiry of the period in which the claimant could reasonably have expected adjustments to be made must be no later than September 2016 there having been no change in circumstance since the claimant's accident in July 2016."*

48. It was submitted, therefore, that when the claimant lodged her claim in February 2018 it was significantly outwith the three-month time limit.

Just and Equitable Extension

49. The respondent's solicitor relied on her earlier submissions in this regard that it would not be just and equitable to extend the time limit.

50. She submitted even if she was unable to raise a claim in the period from January to December 2017 due to ill health, she could have raised a claim for failure to make reasonable adjustments any time from September 2016 to January 2017.

51. The respondent's solicitor referred again to the claimant's email of 30 October 2017 (P73-74) in which the claimant stated, *"before dismissing an employee, an employer should fully consider alternative ways of working to make it easier for the employee to return to work. This could involve making an adjustment to working hours or a change of duties … alternative or different duties were not considered .. on previous occasions when a staff member has returned after an illness, the management has made suitable adjustments to their employee's duties to accommodate people's medical conditions. Such actions were never discussed or considered with myself. If this is not resolved timeously, I intend to raise the issue with ACAS".*

52. It was submitted that it was clear from this that the claimant realised by 30 October 2017, at the latest, that she might have an Employment Tribunal claim. Despite this, the claimant did not start Early Conciliation proceedings for another 2½ months. The claimant failed to act promptly, therefore, once she knew the possibility of taking action.

53. It was submitted that, *"the reasons presented by the claimant for submitting her claim outwith the time limit are inconsistent with her ability to set out her potential claims on 30 October 2017 …. that there were three periods of significant delay in the claimant raising her claim, even if you accept she was unable to do so from January-October 2017. These are as follows:*

(1) From September 2016 to November 2016. The claimant could have submitted her claim during this time. She was fit to attend work for the duration of this period and so was most likely fit to submit a claim.

(2) October 2017 to December 2017. Despite acknowledging she knew she could raise claims in October 2017, she did not raise her claims until December.

(3) January-February 2018. After receiving her Early Conciliation Certificate, despite having been advised her claim may be out of time, the claimant delayed almost a further month before bringing her claim."

54. The respondent's solicitor referred again to **Robertson** and reminded me that, *"the exercise of discretion is the exception rather than the rule".*

55. It was further submitted that were I to exercise my discretion and extend the time limit, the respondent would suffer, *"significant prejudice as, by the time this matter reaches the Final Hearing, the respondent's witnesses will be trying to recall matters that took place around three years ago … the claimant herself has said the events in 2016 were so long ago she struggles to remember the detail. The respondent submits if the claimant cannot recall details, there is no real prospect of managers being able to recall the detail and so a fair Hearing will not be possible."*

56. It was submitted, therefore, that the complaint of a failure to make reasonable adjustments was out of time; the claimant was unable to show that it would be just and equitable to extend time; the Tribunal therefore does not have jurisdiction; accordingly, the claim of a failure to make reasonable adjustments should also be dismissed.

Discussion and Decision

Reasonable Adjustments

57. The first issue I had to consider was whether the complaint of a failure to make reasonable adjustments was out of time.

58. The alleged adjustments were detailed in the Statement of Claim (P33):-

> "*A tracker ball or different type of mouse and wrist rests; regular rotation of her duties; a reduction in hours.*"

59. The claimant's solicitor submitted that the alleged failure was an *"ongoing omission"*, which continued throughout the claimant's employment up to her dismissal on 22 September 2018 and that accordingly the complaint, which was presented on 23 February 2018, was in time.

60. In support of his submission he relied upon s.s.123(1)(3) and 123(1)(4) of the 2010 Act. However, this was disputed by the respondent's solicitor who claimed that the complaint was out of time.

61. The respondent had addressed the issue of adjustments in the period from July to September 2016, put in place certain adjustments (P46/47) and Occupational Health advised the respondent on 19 August 2016 that the adjustments were "appropriate" (P59).

62. The claimant continued to work for the respondent until 1 November when she was signed off due to ill health until 13 December 2016 when she returned. She was signed off again due to ill health on 14 January 2017 and did not return to work prior to her dismissal, on the ground of capability, on 22 September 2017.

63. So far as the three reasonable adjustments the claimant alleges should have been made (P33), the respondent's solicitor addressed each of them separately in her

submissions. She submitted that the respondent did acts inconsistent with making the adjustments sought by the claimant.

64. So far as the *"provision of auxiliary aids"* was concerned, the respondent had provided the claimant with wrist rests but refused the claimant's request for a mouse with a roller ball in September 2016 as Occupational Health was of the view that this would *"possibly cause more strain"* (P62).

65. So far as the *"regular rotation of duties",* was concerned, despite the ongoing discussions, this was never raised by the respondent, in particular in the period up to September 2016 when they were considering adjustments, despite the claimant alleging that they were obliged to do so.

66. So far as the *"reduction in hours"* was concerned, it was accepted by the claimant that this was given, "in late 2016" (P33). It was not addressed thereafter.

67. I was satisfied that the submissions by the respondent's solicitor in this regard were well-founded.

68. I also accepted her contention that, *"there is nothing particularly complex about any of the adjustments alleged to have been sought"* and that it is likely that they could be implemented within a matter of weeks.

69. I was satisfied, therefore, that by September 2016, the respondent had acted inconsistently with making the adjustments sought.

70. s.123 of the 2010 Act is in the following terms:-

> **"*123 Time limits***
>
> *(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 ….*
>
> *(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"*

71. I arrived at the view, therefore, that the 3-month time limit for presenting the complaint of a failure to make reasonable adjustments started to run in September 2016.

72. The ACAS notification was not made until 12 December 2017 (P18) and the claim form was not presented until 23 February 2018, which was well out of time.

73. For the sake of completeness, I also record that, even if this is incorrect, I am of the view, with reference to s.123(1)(4)(b), that, in the particular circumstances of this case and as the matter of adjustments was first considered by the respondent in August 2016, the claimant could reasonably have expected the adjustments to have been made by September 2016.

74. I am also satisfied that the submissions by the respondent's solicitor in this regard (paras 23 and 24 of the written submissions) are well-founded.

75. In arriving at this view, I was mindful of the guidance in the case law and in particular the following passages from the Judgment of the Court of Appeal in **Abertawe**:-

> *"**14** Section 123(3) and (4) determine when time begins to run in relation to acts or omissions which extend over a period. In the case of omissions, the approach taken is to establish a default rule that time begins to run at the end of the period in which the respondent might reasonably have been expected to comply with the relevant duties. Ascertaining when the respondent might reasonably have been expected to comply with its duty is not the same as ascertaining when the failure to comply with the duty began. Pursuant to section 20(3) of the Equality Act, the duty to comply with the requirement relevant in this case begins as soon as the employer is able to take steps which it is reasonable for the employer to have to take to avoid the relevant disadvantage. It can rarely be seen, however, that if time began to run on that date, a claimant might be unfairly prejudiced. In particular, the claimant might reasonably believe that the employer was taking steps to seek to address the relevant disadvantage, when in fact the employer was doing nothing at all. If this situation continued for more than 3 months, by the time it became or should have become apparent to the claimant that the employer was in fact sitting on its hands, the primary time limit for bringing proceedings would already have expired.*
>
> ***15** This analysis of the mischief which section 123(4) is addressing indicates that the period in which the employer might reasonably have been expected to comply with its duty ought in principle be assessed from the claimant's point of view, having regard to the facts known or which ought reasonably to have been known by the claimant at the relevant time. This is further supported by the decision of the Court of Appeal in **Kingston upon Hull City Council v Matuszowicz [2009] EWHC Civ 22; [2009] ICR 1170**. In that case the Court of Appeal considered the effect of the predecessor provision (which was in materially identical terms) to section 123(4) of the Equality Act in relation to a claim based on failure to make reasonable adjustments by finding alternative employment for the claimant. On the facts, the duty (and hence the failure to comply with it) was said to have arisen by, at the latest, August 2005 and to have continued until 1 August 2006, when the claimant's employment ended (see para 25). Although the Court of Appeal did not find it necessary to reach any conclusion about the date on which time began to run, Lloyd LJ (with whose Judgment the other members of the court agreed) considered that the relevant date may have been 28 July 2006 – observing that, at any rate during the period of April to July 2006, the employer was representing to the claimant that the question of his possible redeployment was being taken seriously (see paras 28-29). This illustrates, first of all, that the date by which the employer might reasonably have been expected to comply with a duty to make reasonable adjustments for the purpose of the test in what is now section 123(4)(b) of the Equality Act may be*

> *different from the date when the breach of duty began. Secondly, the approach of Lloyd LJ supports the view that the date by which the employer might reasonably have been expected to comply with the duty should be determined in the light of the facts as they would reasonably have appeared to the claimant – including in that case what the claimant was told by his employer."*

76. In the present case, I was satisfied that the claimant could reasonably have expected the adjustments to have been made by September 2016.

77. The complaint is, therefore, out of time.

Just and Equitable Extension

78. The 3-month time limit for bringing a discrimination claim is not absolute: Employment Tribunals have discretion to extend the time limit for presenting a complaint where they think it "just and equitable" to do so – s.123(1)(b) of the 2010 Act. Tribunals thus have a broader discretion under discrimination law than they do in unfair dismissal cases as the Employment Rights Act 1996 provides that the time limit for presenting an unfair dismissal claim can only be extended if the claimant shows that it was *"not reasonably practicable"* to present the claim in time.

79. In determining whether I should exercise my discretion and allow the late submission of the complaint of a failure to make reasonable adjustments, I found the guidance in **British Coal Corporation** to be helpful. In that case the EAT suggested that Employment Tribunals would be assisted by considering the factors listed in s.33 of the Limitation Act 1980. That section deals with the exercise of discretion in civil courts and personal injury cases and requires the court to consider certain factors.

Prejudice

80. Where I to decide not to exercise my discretion to extend the time limit, then the claimant will be prejudiced as her claim will be dismissed. On the other hand, were I to allow the claim to proceed, then the respondent will be prejudiced in having to defend proceedings and considerable expense will be incurred not only in conducting the proceedings, but also in investigating matters which occurred some years ago. As the respondent's solicitor submitted, were I to exercise my discretion and allow the claim to proceed, by the time the case reaches a Final Hearing witnesses will be required to recall events which happened some three years ago.

Alternative Remedy

81. Were I to decide not to exercise my discretion and dismiss the claim, the claimant is unlikely to have any other remedy open to her.

Conduct of the Claimant

82. Although the claimant was signed off work due to ill health for a lengthy period prior to her dismissal, it was significant, as the respondent's solicitor submitted, that on 30 October 2017, some 6 weeks after her dismissal, she was able to send a lengthy email to the respondent (P73-76).

83. In that email she detailed a number of complaints, including, *"unfair and illegal dismissal, disability discrimination and breach of contract".* She also referred in that email to the employer's duty to consider making reasonable adjustments and alleged that she was, *"constantly harassed".* She also advised that she intended *"raising the issues with ACAS".*

84. It was clear, therefore, that she was aware at that time of her right to raise Employment Tribunal proceedings and while it was not clear that she was aware of the three months' time limit it could readily have been established by reasonable

enquiry. However, there appeared to be a lack of proactive attention to the matter, as she did not notify ACAS until 12 December 2017.

85. Further, as the respondent's solicitor submitted, with reference to **Robinson**, the claimant's decision to await the outcome of the internal appeal is not, in itself, sufficient to justify a just and equitable extension. Parliament deliberately has not provided that the running of time should be delayed until the end of the domestic process and reasonable enquiry would establish this. Nevertheless, it was a factor I put into the balance when I considered the justice and equity of the matter.

Length of Time

86. Clearly this was a significant factor as were I to exercise my discretion and allow the claim to proceed by the time of a Final Hearing witnesses would be required to recall events that occurred 3 years ago. In my view there is merit in the submission by the respondent's solicitor that there would be a concern as to whether there could be a fair Hearing, in such circumstances.

87. While I was mindful that I had a wide discretion to extend the time limit and that the just and equitable "escape clause" is much wider than that relating to unfair dismissal claims, I was also mindful of such cases as **Robertson** in which the Court of Appeal stated that when Employment Tribunals consider exercising this discretion:

> *"There is no presumption that they should do so unless they can justify a 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 the discretion* ***is the exception rather than the rule****" (my emphasis)*

88. In my view, having regard in particular to the claimant's detailed email of 30 October, despite her ill health there was no impediment to the claimant submitting her complaint of a failure to make reasonable adjustments in time and the length of the delay is also a material factor.

89. I arrived at the view, therefore, in all the circumstances and weighing all these factors in the balance, that it would not be just and equitable to exercise my discretion and extend the time limit in respect of the complaint of a failure to make reasonable adjustments.

Harassment

90. It was accepted by the claimant's solicitor that this complaint was out of time, the last act complained of being 8 August 2017**.**

91. The length of the delay in this regard was of less significance although the claimant did not have the benefit of legal advice until 12 December, there was no impediment to her submitting a claim in time.

92. For the same reasons as I have given in relation to the complaint of a failure to make reasonable adjustments, I am of the view that it would not be just and equitable to exercise my discretion and extend the time limit in respect of the harassment complaint.

93. Accordingly, the claim is time-barred, the Tribunal does not have jurisdiction and it is dismissed.

Employment Judge: **Nicol Hosie**
Date of Judgment: **07 May 2019**
Entered in Register: **10 May 2019**
And Copied to Parties