



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Ms T Afzal**

**v Chief Constable of West Yorkshire Police**

### PRELIMINARY HEARING

**Heard at: Leeds**

**On: 9 October 2019**

**Before: Employment Judge Davies**

**Appearances:**

**For the Claimant: In person**

**For the Respondent: Mr S Mallett, of Counsel**

### JUDGMENT

1. The claimant's claims of discrimination on the grounds of religion or belief were not brought within the time limit under the Equality Act 2010 and it is not just and equitable to extend time for bringing those claims.
2. The claimant's application to amend her claim to add a complaint of disability discrimination relating to her dismissal is refused.
3. The claimant's claims are therefore dismissed.

### REASONS

#### Introduction and Issues

1. This was a preliminary hearing in public to decide:
  - 1.1. whether the claimant's claims were brought within the time limit in s 123 of the Equality Act 2010;
  - 1.2. if not, whether time should be extended for bringing them;
  - 1.3. whether the claimant had complied with Employment Judge Maidment's order dated 19 June 2019;
  - 1.4. if not, whether her claim should be struck out for that non-compliance; and

- 1.5. whether the tribunal should make a deposit order in respect of part or all of her claim.
2. In a witness statement prepared for the preliminary hearing, the claimant also referred to a wish to bring a complaint of disability discrimination and I treated that as an application to amend her claim to add a complaint of disability discrimination.
3. The claimant represented herself and the respondent was represented by Mr Mallett (counsel). Both parties provided some documents and I made sure that relevant documents were copied, so that everybody had all the documents in front of them. With the assistance of solicitors who were not present today the claimant had also prepared a witness statement. She gave evidence and was cross-examined.

### **The Facts**

4. Based on the documents and Ms Afzal's evidence I made the following findings of fact.
5. Ms Afzal lodged an ET1 claim form on 8 March 2019. She made complaints of unfair dismissal and breach of contract, which have already been dismissed because she was a police officer and could not bring those complaints. She also made complaints of discrimination on the grounds of religion or belief.
6. At a case management preliminary hearing in June 2019, EJ Maidment summarised the nature of the discrimination complaints. There is a group of complaints relating to the claimant's period of training, which took place between November 2016 and March 2017. There is then a group of complaints that relate to unfair treatment from her line manager, a named sergeant, between May and July 2017. Then there is a complaint about the claimant being moved from that sergeant's team to a different team at around the end of July 2017. EJ Maidment recorded that the claimant did not perform any active service for the respondent after a period of sickness that began on 21 September 2017.
7. EJ Maidment also referred to a discussion with the claimant and her belief that her dismissal following a long period of sickness absence was discriminatory. EJ Maidment noted that the claimant was arguing that the earlier discriminatory treatment by the respondent had caused the sickness absence, and that was what led to her dismissal. As the Employment Judge recorded, it might be that the claimant could recover compensation for her departure from the respondent's service if that could be said to be causally linked to the earlier discriminatory act she was complaining about, but a link of that kind would not make a decision to terminate her employment itself discriminatory on the grounds of religion or belief.
8. EJ Maidment ordered the claimant to produce detailed particulars of her complaints and listed this preliminary hearing. The claimant did produce some further particulars. She grouped her complaints, covering the time period when she was doing her training, and then the period when she said her sergeant was discriminating against her and she was subsequently moved into a different team. That was done by the end of September 2017. The particulars also included a section covering the period from September 2017 to December 2018. However, that was simply a chronology of events, it did not include complaints of discrimination.
9. In respect of the first period, November 2016 to March 2017, the claimant's complaints are in the main general and vague. She accepted in her evidence that

she could not now remember people's names, the places or classrooms where particular incidents took place, or when within the five-month period particular things had happened. She estimated that about 75% of the people at the training centre were guilty of the type of conduct she was complaining about but she could not say who they were, with one or two exceptions.

10. The claimant was at work until September 2017 when she went off sick. In July 2017 she put in a detailed grievance about the second group of complaints, relating to her then sergeant. She told me in her evidence that she did so because a Muslim colleague had told her she could put in a grievance. It is a lengthy and detailed complaint. The claimant wrote it herself. After she had put the grievance in, the colleague who had been helping her became unavailable so she contacted the Police Federation. The Police Federation then helped the claimant with her grievance. With the exception of one element, the grievance was rejected. The claimant did not appeal. She did discuss whether to do so with the Police Federation, but she said to me that she felt too down and felt that she would lose any appeal and she did not want to pursue it.
11. There is no dispute that the claimant was suffering from mental ill-health at around this time. She produced copies of her GP records, which showed that she first consulted her GP in September 2017, when her GP noted that she had worsening stress and prescribed propranolol. The GP records show that after that the claimant regularly attended the GP. She was prescribed citalopram in early 2018 and has continued to suffer with mental ill-health since then. Undoubtedly, that has had a significant impact upon her, worse at times and somewhat better at other times. The claimant drew my attention to an email she sent to the Chief Inspector in September 2018, where she described in detail some of the symptoms she was currently experiencing and some of the symptoms she had had since being off sick. She said in that email that the symptoms had varied from time to time. I do not underestimate the effect of her mental ill-health on her.
12. Having said that, I note that the claimant was involved in a road traffic accident in May 2018. She contacted the Police Federation and through them contacted lawyers whom she instructed to present a personal injury claim on her behalf relating to that road traffic accident. She also travelled to Pakistan for two weeks during this period, and she continued dealing with other legal proceedings relating to a family matter in which she had separate solicitors instructed.
13. Her employment came to an end towards the end of 2018. In a letter dated 25 October 2018, she was told that her services were to be dispensed with. She then resigned, as foreshadowed in that letter, and her period of service came to an end on 7 December 2018.
14. The claimant had by that time already contacted ACAS to start early conciliation. She did so on 9 November 2018 and a certificate was issued on 9 December 2018. Her claim form was presented on 8 March 2019.
15. The claimant told me in her evidence that the Police Federation refused to help her with bringing an Employment tribunal claim. She was not clear why they had said they could not help; she thought it was "some vague excuse" they had given.
16. Her evidence was that she did not know at the time she put in her grievance that she could make a complaint of discrimination to a court or a tribunal of some kind. She said that she was unaware that people did so. I was doubtful about that. The claimant is clearly an intelligent and educated person who worked as a police

officer. I found it extremely unlikely that she would not have been aware, at least in principle, that a person who had believed they had been discriminated against because of their religion or belief could bring legal proceedings to complain about that. I find that she was aware of this possibility.

17. The claimant said that she brought an employment tribunal claim at the time when her service with the respondent came to an end because a colleague told her that she could bring such a claim.
18. In August 2019 the claimant was able to instruct a Legal Aid solicitor to help her with her employment tribunal proceedings. Before that she had contacted lots of solicitors but had not been able to get any help. Her solicitor dealt with her by telephone. She thought the first time she had spoken to them was 24 September 2019. It was they who had helped her with the witness statement. The witness statement included a paragraph indicating that the claimant now believed her dismissal was discriminatory, both on the grounds of religion and belief but also because of disability. She said in one paragraph that she acknowledged that she had not fully particularised her claim and included disability as a protected characteristic. She said that she did not know at the time that her mental health would constitute a disability. It is those comments in the witness statement that I treated as an application to amend the claim. However, I noted that despite the fact that the claimant was legally represented, her solicitors had not submitted a proper amendment application.
19. I have already noted that there is no complaint in the ET1 claim form or in the claimant's further particulars that her dismissal was an act of discrimination on the grounds of religion or belief. I agree with EJ Maidment's indication that there is a difference between a complaint that prior acts of religion or belief discrimination caused the ill-health absence that led to the termination of the claimant's employment and a complaint that the dismissal was itself discriminatory on the ground of religion or belief. If the prior complaints of discrimination succeeded, a person might recover compensation for the loss of their employment if the absence that led to it was caused by those earlier acts. That does not mean that the dismissal was discriminatory.

### **Legal Principles**

20. The time limits for bringing claims of discrimination are governed by s 123 Equality Act 2010, which says that a claim cannot be brought after the end of (1) the period of three months (plus early conciliation extension) starting with the date of the act to which the complaint relates, or (2) such other period as the tribunal thinks just and equitable.
21. As regards extending time, the tribunal has a wide discretion to do what it thinks is just and equitable in the circumstances, but bearing in mind that time limits are exercised strictly in employment cases, and that there is no presumption that a tribunal should exercise its discretion to extend time. The factors that are to be considered by the civil courts under s 33 of the Limitation Act 1980 in determining whether to extend time in personal injury actions may provide a helpful checklist: see *Southwark London Borough Council v Afolabi* [2003] IRLR 220, CA. Under that section the court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular: (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay;

(c) the extent to which the party sued had co-operated with any requests for information; (d) the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and (e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

22. The principles to be applied in deciding whether to allow an amendment are well-established: see in particular *Selkent Bus Company Ltd v More* [1996] ICR 836 and *Cocking v Sandhurst (Stationers) Ltd* [1974] ICR 650. Essentially, the discretion to amend must be exercised judicially and taking into account all the relevant circumstances. The tribunal should consider the nature of the amendment: does it simply add detail to existing allegations, does it apply a new label to facts already pleaded, or does it make entirely new factual allegations that change the basis of the existing claim? If the amendment seeks to add a new complaint or cause of action, the tribunal should have regard to any applicable time limit for bringing such a claim. However, that is just one factor in deciding whether to allow the amendment; it is not by itself determinative. The tribunal must also consider the timing and manner of the application, including the length of and reasons for any delay in making the application. Having considered the relevant facts and circumstances, fundamentally the tribunal must balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.

#### **Application of the law**

23. Applying those principles in this case, I start with the question of time limits. The claims of discrimination on the grounds of religion or belief were clearly not brought within the time limit. The last act of discrimination complained of took place, at the latest, in September 2017. There is no complaint that the dismissal itself was an act of discrimination on the grounds of religion or belief. The claimant did not contact ACAS until November 2018 and she did not lodge her claim until March 2019. That is about 18 months after the last of the events she is complaining about. I therefore have to consider whether it is just and equitable to extend time for bringing those claims. There is a very long delay in bringing them, against the background that the primary limit is 3 months.
24. The claimant's real arguments are that she did not know that she could bring a tribunal claim, that she could not get a solicitor or legal help, and that she was suffering from mental ill-health during the relevant period.
25. Dealing with the first two of those points, the claimant clearly knew or believed that she had been discriminated against because of her religion or belief by July 2017. She put in a detailed grievance about one part of her treatment at that time. As explained above, I have found that she must have known in general terms that a person could bring a complaint of discrimination in a court or tribunal of some kind if they had been discriminated against because of their religion or belief.
26. The claimant clearly had access to advice. The Police Federation were helping with her grievance and she could have asked them about how to make a complaint of discrimination. Many people bring tribunal claims without having legal advice or solicitors. Not having a solicitor is not generally a good reason for not bringing a claim in time. Information about bringing tribunal claims is widely available and in this case the Police Federation were an obvious source of advice to the claimant.

27. Turning to the question of the claimant's mental ill-health, as described above she was suffering from mental ill-health throughout this period. It had a significant impact on her, greater at some times than others, but it did not prevent her from carrying out a range of actions including writing and putting in a detailed grievance, instructing solicitors to bring a personal injury claim, continuing to participate in family proceedings and travelling overseas. While I do not under-estimate the impact of her mental ill-health on her, it seems to me that the claimant was not so ill throughout this period that she was unable to bring a tribunal claim.
28. The very long delay clearly has a significant impact on the cogency of any evidence. The claimant fairly accepted that her own recollection is not good. The respondent's ability to understand the allegations and respond to them must be severely affected. If the claimant cannot identify who acted in a discriminatory way and when, even in broad terms, they did so, it makes it very hard for the respondent to investigate that and to call evidence about it. That is most severe in respect of the first set of allegations but it has some force for all of the allegations.
29. Turning then to the balance of hardship and injustice, clearly there is a significant hardship and prejudice to the claimant if I do not extend time. It means that she will not be able to bring her claim of discrimination on the grounds of religion or belief at all. But here I find that the prejudice to the respondent is greater. These claims are not just a little out of time but are very substantially out of time, particularly set against the three-month primary time limit. There would be real difficulties with the evidence and with responding to those claims if I allow them in at this late stage. The claimant's mental ill-health was not such as to prevent her altogether from bringing the claims and she had access to a range of advice, including from colleagues and the Police Federation. Weighing all of those matters I find that the balance lies in favour of not extending time. It would not be just and equitable to do so.
30. That brings me to the amendment application. This is an application to bring an entirely new claim. The claimant does refer to her dismissal and her ill-health in her claim form, but she does not make a complaint, either explicitly or implicitly, that her dismissal was discriminatory because of her mental ill-health. It is now seven months outside the time limit for bringing a complaint of disability discrimination in relation to her dismissal. The claimant says that she did not realise she could bring a claim of disability discrimination until her solicitor told her, but she did have access to a range of advice, including the Police Federation, and she could have carried out research herself. Even when she did instruct a solicitor, no proper amendment application was made and still has not been made. This is simply something that was slipped into the claimant's witness statement that was meant to be dealing with the out of time issues.
31. The impact of allowing this amendment on the cogency of the evidence would be less, because the dismissal is much more recent and is a defined event on which the respondent can properly gather evidence. Ultimately, this is again a question of balancing the hardship and injustice to each party. If I do not allow the amendment, the claimant cannot now bring this complaint, but if I do allow it the respondent will face a new claim brought seven months outside the time limit for bringing the claim. The time limits are there for a reason. Balancing all the relevant factors I am not persuaded that the balance lies in favour of

allowing the claimant to amend her claim to include a complaint of disability discrimination at this late stage.

32. It is not necessary to deal with any of the remaining issues, because all of the claims are dismissed.

**Employment Judge Davies**

**6 November 2019**