EMPLOYMENT TRIBUNALS

Claimant: Mr S Ward

Respondent: Department for Work and Pensions

HELD AT: Blackpool **ON:** 21 November 2019

BEFORE: Employment Judge Holmes

REPRESENTATION:

Claimant: Mrs L Ward, Wife
Respondent: Ms H Trotter of Counsel

RESERVED JUDGMENT ON PRELIMINARY HEARING

It is the judgment of the Tribunal that:

1.The claimant's claims that pre-date 31 December 2013 as far as 10 October 2012, i.e. nos. 41 to 58 in the Scott Schedule, if proved, have little reasonable prospect of being found to constitute conduct extending over a period for the purposes of s.123(3)(a) of the Equality Act 2010, so that they were presented in time. If they were not , there is little reasonable prospect of the Tribunal finding that it would be just and equitable to extend time for the presentation of these claims.

2.The Tribunal accordingly proposes to make deposit orders in relation to these claims, but before doing so, the claimant is invited to put before the Tribunal any information as to his means, which he wishes the Tribunal to take into consideration in determining the amount of any deposit orders.

3.The claimant is to provide any such information to the Tribunal and the respondent by **20 April 2020**.

4. The claimant's claims that pre-date 10 October 2012, i.e. nos. 1 to 40 in the Scott Schedule, if proved, have no reasonable prospect of being found to constitute conduct extending over a period for the purposes of s.123(3)(a) of the Equality Act 2010, so that they were presented in time. There is also no reasonable prospect of the Tribunal finding that it would be just and equitable to extend time for the

presentation of these claims, and they are struck out pursuant to rule 37(1)(a) of the 2013 rules of procedure.

3.The claimant's remaining successful claims are listed for remedy on **10 and 11 September 2020 at Blackpool Magistrates Court.**

REASONS

1. By a claim form presented on 21 March 2015, the claimant brought claims of disability discrimination against the respondent, his former employer. The ambit of the claims as originally presented was very wide, and sought to include claims going back in the claimant's employment history to its commencement in 1997. By orders made at a preliminary hearing held on 26 August 2016 , it was ordered that the Tribunal would hear the claimant's claims in respect of the period 13 January 2014 to the end of the claimant's employment on 28 February 2016 , i.e. the most recent claims, arising in relation to a period of his employment commencing January 2014, when he returned to work after a prolonged sickness absence, into a new role, and under new management. The claims are set out in a Scott Schedule [Pldgs: pages 273A to 273K].

2. Those claims , nos. 59 to 98 in the Schedule were heard by Tribunal in a hearing which commenced on 11 September 2017, and resumed part heard on 5 February 2018. Submissions were received on 9 February 2018, 12 February 2018, and 13 February 2018. The Tribunal convened in Chambers to deliberate on 14 and 15 March 2018, and 12 April 2018. By a judgment promulgated on 2 November 2018 ("the Liability judgment") the Tribunal found that the claimant's claims of disability discrimination in the form of failing to make reasonable adjustments by:

a) failing by 11 November 2014 to provide him with a suitable workplace chair;

b) failing to provide him with a laptop to enable him to work from home when he was unable to continue at work due to back pain;

c) failing to grant him special leave in October 2014 when delivery of his workplace chair was delayed;

all succeeded, but all the other claims heard were dismissed.

3. The Tribunal then convened a further preliminary hearing, on 21 November 2019, to consider a number of matters, including the manner in which the remaining claims should be dealt with. The preliminary hearing on 26 August 2016 had not made any determination of whether the remaining claims were presented out of time, and, if they were, whether any extension of time should be granted for their presentation. Part of the reasoning for that was that the Tribunal considered that it would need to hear the in - time claims (for some clearly were) , and some of the claims that went back more than three months before the presentation of the claims on 21 March 2015, in order to determine if any of the earlier claims succeeded. If they did, that would be potentially relevant to any argument that any of the previous, pre – 2014 claims could be said to form part of a course of conduct extending over a period of time, for the purposes of s.123(3)(a) of the Equality Act 2010.

4. Thus, this preliminary hearing has considered whether, in the light of the Tribunal's findings in relation to the claims that it has heard, it can reasonably be considered that these earlier claims form part of a course of conduct extending over a period of time, so as to make them, arguably at least, in time.

5. The claimant was again represented by his wife, Mrs Ward, and the respondent again by Ms Trotter of counsel. The respondent had prepared a Position Statement dated 20 November 2019, in which the issue of the claims pre – dating 2014 is addressed. For the claimant Mrs Ward had prepared a document entitled "Claimant reasons for progression of prior claims", in which she set out the claimant's arguments in relation to the earlier claims.

The remaining claims.

6. All the claimant's claims are set out in a Scott Schedule [Pldgs: pages 273B to 273K] . They are numbered 1 to 98. The Tribunal has heard and determined nos. 59 to 98, save where any have been withdrawn.

7. The remaining claims, therefore are nos. 1 to 58. No.1 is dated 1 July 1997, and is an allegation that the respondent failed to undertake a workstation assessment, and thereby failed to make reasonable adjustments, and directly discriminated against the claimant, committed discrimination arising from disability and harassed him. As observed in the Tribunal's Liability judgment, Mrs Ward had a tendency to categorise most claims as several types of discrimination, which is not to criticise her, as a lay representative, but in most of the remaining claims the claims are put on the basis of four or five types of discrimination.

8. Going through the remaining claims by number, the following dates are given for the allegations made.

No.	Date
1	01/07/1997
2 to 3 .	No date
4.	01/07/997
5 to 9	No date
10	01/07/1997
11 to 12	No date
13	01/07/1997
14 to 15	No date
16	01/07/2002
17 to 18	No date
19	01/07/2003
20 to 21	No date
22	01/07/2004
23 to 24	No date
25	01/07/2005
26 to 27	No date
28	01/07/2006
29 to 30	No date

31	01/07/2007
32 to 33	No date
34	01/07/2008
35	02/03/2009
36	2010
37	2011
38	2012
39	approx 8/20 (08/2012)
40	approx 8/20 (08/2012)
41	10/10/2012
42	02/01/2013
43	Feb 2013
44 to 45	March 2013
46	April 2013
47	14 May 2013
48	16 May 2013
49	7 May 2013
50	23 May 2013
51	29 May 2013
52	19/07/2013
53	24/07/2013
54	31/07/2013
55	approx 09/2013
56	17/09/2013
57	04/11/2013
58	December 2013

9. As can be seen, the claimant seeks to make claims going back to the first year of his Employment, then skipping 5 years, and then seeks to make them in relation to every year from 2002 to the end of 2013. The Tribunal has thus far trïed the claims from 13 January 2014.

10. Before considering the issue any further, it is important to examine and bear in mind the Tribunal's findings in relation to time issues in the Liability judgment. The earliest claims that the Tribunal considered were nos. 59 to 67, which relate to the period January to February 2014. Thereafter no. 68 relates to April 2014, nos. 69 and 70 to July 2014, nos. 71 to 77 to August 2014, nos. 78 to 80 to September 2014, and nos. 81 to 84 to October 2014. We have found claim no. 84 (wrongly given the numbering 86 in para. 135 of the Liability judgment) proven. In relation to the finding at para. 2 (b) above, that of failing to make the reasonable adjustment of providing the claimant with a laptop, which was allegation no. 66, we found, at para. 126 of the Liability judgment, that allegation proven from October 2014.

11. Hence, none of our findings are in respect of any acts or omissions which pre – date October 2014. We considered therefore, the effect of these findings upon the claims which we considered, and which pre - dated 22 October 2014, the earliest date in respect of which the claim form, as presented when it was, after ACAS early conciliation extension of time, would be in time. At paras. 40 to 53 of the Liability judgment we dealt with these issues. Whilst we held that the claims in relation to the

reasonable adjustment of providing a suitable chair were presented in time, we held that claims nos 59, 60, 61, 62, 63 and 68 were presented out of time, and we did not grant the claimant an extension of time for their presentation on the just and equitable basis.

12. The dates of those claims were: no. 59 – 13/01/2014, no. 60 – 13/01/2014, no. 61 – 20/01/2014, no. 62 – 23/01/2014, no 63 – 02/02/2014 and no. 68 "approx 04/2014".

13. We considered, but dismissed on their merits, claims prior to 22 October 2014 relating to the conduct of Wendy Wallis and Sarah Smith, drawing a distinction between that period of management, and the previous one where the claims above were made in relation to the conduct of either Janette Barrett, Laura Porter or David Clayton.

14. Thus, we have already considered, as part of the determination of the claims that we have already heard, whether the later, in time claims, which have succeeded, can be considered as conduct extending over a period of time so as to entitle the Tribunal to hear claims going back to January 2014, which would otherwise be out of time.

15. The respondent accordingly invites the Tribunal not to accede to the claimant's invitation to find that the remaining claims can amount to conduct extending over a period of time, so as to satisfy s.123(3)(a) of the Equality Act 2010.

16. That requires the Tribunal to consider whether, at this stage, there are any reasonable prospects of the claimant establishing that his earlier claims could be found to have been presented in time by virtue of them, or any of them, forming part of a course of conduct extending over a period of time for the purposes of s.123(3)(a) of the Act. The Tribunal reminds itself that it is not hearing any evidence at this stage, it is only considering, on the basis of rule 37(1) of the 2013 rules of procedure whether the claimant has any reasonable prospects of showing that the claims were presented within time by virtue of this argument.

17. Consequently an analysis must be made of the successful claims, and those which it is sought now to have the Tribunal determine. As discussed above, the earliest successful claim is one of failure to make reasonable adjustments, in October 2014, in failing to grant the claimant special leave, and to provide him with a laptop whilst he awaited the delivery of his new workplace chair, which was itself an overdue reasonable adjustment.

The claim nos. 41 to 58.

18. The Tribunal accordingly goes back to review some of the claims that it is now sought to have heard, starting with the most recent, and going back through 2013.

The first is no. 58.

This allegation is that Janette Barrett in December 2013 (in the Scott Schedule, in para. 14 of the claimant's witness statement he says "in September") advised him,

incorrectly, that a new chair had been received for him to use upon his return to work.

Claim no. 57 , dated 4 November 2013 is an allegation that Janette Barrett told him that his sickness absence would “start afresh”, i.e. that his absence record would be re-set upon his return to work. In fact it was not. This is not thus a claim about Janette Barrett and what she said, it is about the respondent (who exactly is not clear) not doing what the claimant was told it would do, effectively as a reasonable adjustment to mitigate the effects of his long term sickness absence.

Claim no. 56 relates to Rachel Thorpe on 17 September 2013 gossiping about the claimant, allegedly having received information from Laura Porter that his employment was being ended. This is put as a harassment, or victimisation claim.

Similarly, claim no. 55, dated September 2013, is an allegation that Laura Porter discussed the claimant ‘s absence in a public house.

Claim no. 54 is dated 31 July 2013, and is against Janette Barrett for “raising the claimant’s hopes” about a new role, which would have been with colleagues he could not work with. This is put as a failure to make reasonable adjustments, though the Tribunal cannot see how it would be, a s.15 claim, similarly hard to understand, or harassment, which is rather more understandable.

Claim no.53 is dated 24 July 2013, and relates to (presumably, for the initials “LK” are used) Linda Kemspter telling the claimant she was actively seeking another role for him to return to. She did not do so until December 2013. This is again pleaded as a failure to make reasonable adjustments, direct discrimination (though who the comparator is unclear) s.15, victimisation and harassment. With respect to Mrs Ward, any such claim does not arise on 24 July 2013, it arises when Laura Porter fails to find the claimant such another role, as a reasonable adjustment, at the time that she ought reasonably to have done so, or , when she decided, if she did, not to do so, as some form of retaliation for any protected act(s) the claimant had done. These claims therefore arise probably later than 24 July 2013, but clearly before December 2013.

Claim no. 52 is dated 19 July 2013, and relates to the refusal of Janette Barrett to consider providing the claimant with a laptop. This is a reasonable adjustments claim, pleaded also as four other types of discrimination.

Claim no. 51 is of Laura Porter maliciously awarding the claimant a “must improve” on his End of Year report. This is put as a direct discrimination, victimisation and harassment.

Claim no. 50 is dated 23 May 2013 relates to the workstation assessment carried out by Evelyn Bird, who would not listen to the claimant, and failed to provide a properly supportive chair. This again is a claim of failure to make reasonable adjustments, and other claims.

Claim no. 49 is dated 17 May 2013, and is about Laura Porter presenting the claimant with his personnel file with annotations, and false copies of emails. These are claims of victimisation and harassment.

Claim no. 48 is dated 16 May 2013, and relates to Linda Newhouse and Martin Spencer advising the claimant that no mistakes have been made with his case and "denying" his absence of 10 October 2012. This again is put as all five types of disability discrimination, but most probably amounts, if proved, to harassment.

Claim no. 47 is dated 14 May 2013, and relates Laura Porter incorrectly advising CCAS of something (unclear from the Schedule), which resulted in PCPs not being removed. This is put as a failure to make reasonable adjustments, amongst other things.

Claim no. 46 is dated April 2013, and again relates to Laura Porter, who allegedly failed to keep the claimant informed or to correctly apply the DDA (i.e. the Equality Act), again said to be a failure to make reasonable adjustments.

Claim no. 45 is dated March 2013, again relates to Laura Porter, and is in similar terms.

Claim no. 44 is dated March 2013, relates to Laura Porter, and is in similar terms.

Claim no. 43 is dated February 2013, relates to Laura Porter, and is in similar terms.

Claim no. 42 is dated 2 January 2013, relates to Laura Porter, and is in similar terms.

The claim preceding this, no. 41, goes back to October 2012, and relates to Laura Porter again, claiming failure to make reasonable adjustments, amongst other things.

19. There are thus 16 of these claims relating to 2013, and one to October 2012. None of them are about failure to provide the claimant with the correct chair as a reasonable adjustment, none of them are about failing to provide him with leave whilst awaiting a chair, and whilst one does relate to provision of a laptop, that was not in the context of the claimant waiting delivery of a suitable chair, or to be provided one when he was in too much pain to stay at work. The successful claims relate to the period of management by Wendy Wallis and Sarah Smith. These claims mostly relate to the period of Laura Porter's management, and then, latterly, Janette Barrett.

20.Turning to the submissions, Ms Trotter invites the Tribunal to strike out the remaining claims on the basis that there is no reasonable prospect of the claimant overcoming the time limit issues. She also makes submissions as to the time that it will take to try the remaining claims, the effect of the delay, and the lack of particularity of many of the allegations.

21. Mrs Ward's written "reasons for progression of prior claims" makes reference to the respondent being put on notice of the claimant's disability, and its alleged failures over 12 years to conduct a risk assessment. When it did in 2008 it did so ineffectively. She refers to the claimant developing depression in 2002, and makes reference to the respondent's duty of care. She refers to the respondent's failure to provide the claimant with a bespoke chair for the whole period of his employment.

22. It was clear too from her oral submissions, that as the claimant disagrees with, and has sought reconsideration of, the dismissal of the claims that have been heard which pre – date October 2014, which the claimant contends should have been upheld, he seeks to link those claims to the earlier claims, i.e. to narrow the gap in time between them.

23. What then, can the "conduct extending over a period of time" falling within the definition of s.123(3)(a) be? On a wide reading, of course, the claimant would say "a course of disability discrimination", but that is, with respect, too broad a formulation. Whilst the claimant may view all this as discrimination, "conduct" is a rather more narrow word. ***Hendricks*** cited below is authority for the proposition that a Tribunal should not apply the concepts of 'policy, rule, practice, scheme or regime' too literally, particularly in the context of an alleged continuing act consisting of numerous incidents occurring over a lengthy period (***Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686, [2003] IRLR 96 at para 51–52***). According to Mummery LJ, these terms were mentioned in the previous authorities as examples of when an act extends over a period, and 'should not be treated as a complete and constricting statement of the indicia' of such an act. In cases involving numerous allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what he has to prove, in order to establish a continuing act, is that (*a*) the incidents are linked to each other, and (*b*) that they are evidence of a 'continuing discriminatory state of affairs'. This will constitute 'an act extending over a period'.

24. Where the Tribunal has difficulty is in accepting that these various alleged acts of discrimination in 2013 and those found in October 2014 were linked to each other. They may be, or some of them may be, but the connection is not obvious.

25. That is not, however, to say that the Tribunal can at this stage say that there are no reasonable prospects of the claims, or some of them, going back to 2012 actually being found to constitute conduct extending over a period of time. Whilst the full Tribunal did in fact find (paras. 44 to 46 of the Liability judgment) that the allegations, if proven, in relation to Janette Barrett, and Laura Porter at claims no. 59, 60, 61, 62 and 63 would not form part of conduct extending over a period of time, it does not automatically and inexorably follow that it will do so in respect of any other prior claims.

26. The Tribunal, sitting as the Employment Judge alone in a preliminary hearing, reminds itself that it is not determining whether the claims do or do not constitute conduct extending over a period of time, which can only be done by hearing the evidence, and finding further facts. The Tribunal's task at this stage is confined to considering whether there is any reasonable prospect of the claimant establishing this. The Tribunal is helpfully reminded of the distinction between the two tasks by the EAT judgment in ***Caterham School Ltd v Rose [UKEAT/0149/19/*RN**)** . The Tribunal is limited , on what is an application for striking out under rule 37(1)(a), to considering whether, on the pleadings , and the Tribunal would add in this particular instance, somewhat unusually, on the basis of its findings in relation to claims it has already determined, there is a *prima facie* case , described as a shorthand for "no reasonable prospects of success".

27. Applying that test, the Employment Judge's view is that the Tribunal is, at the very least likely to find in relation to those untried claims which go back over 10 months before any of the three proven claims, that they do not amount to conduct extending over a period of time. The claimant's contentions that he can , in effect, jump the gap back from October 2014 to December 2013, and establish conduct extending over a period to time back to , say, January 2013, or October 2012, when Laura Porter placed the claimant on a PIP, will have an uphill struggle, and these contentions have little reasonable prospects of success.

28. The claims not amounting to conduct extending over a period of time, however, is not the only issue upon which the Tribunal has to determine the claimant's prospects of success. If he fails in that argument, he can apply to the Tribunal for the exercise of its discretion to allow the claims to proceed on the basis that it would be just and equitable for him to do so. The Tribunal rejected any such application in its Liability judgment in relation to the claims before it relating to any period pre – October 2014, which did not relate to the period of management by Wendy Wallis and Sarah Smith.

29. Again that is not to say that the same result would apply again in relation to the earlier claims, were they to be found to have been presented out of time. The same considerations will need to be taken into account under the principles referred to in para. 48 of the Liability Judgment. Again, it cannot be said to be a foregone conclusion that the Tribunal would rule the same way again, as it will be considering a different timescale, and different claims. It must, however, be at least likely that the same conclusion will be reached, so upon this issue too the claimant has little reasonable prospects of success.

Strike out and deposit orders considered.

30. The Tribunal therefore cannot accede to the respondent's application that these remaining claims be struck out as having no reasonable prospects of success. That leaves, however, that the Tribunal considering, the necessary grounds being established, making deposit orders in respect of the 17 claims identified above. The Tribunal has power, under rule 39 of the 2013 rules of procedure, to make an order for a deposit of £1000 in respect of each claim ("allegation or argument" is the wording in the rule) that the claimant wishes to pursue. The effect of such an order is to require the claimant, as a condition of continuing to advance his claims, as specified, to pay a deposit in respect of any allegation or argument. Failure to pay a deposit by the stipulated date results in the specified allegation or argument being struck out. Further, if after a deposit is paid, a Tribunal decides the allegation or argument against the paying party for substantially the reasons given in the deposit order, the paying party will be regarded as having acted unreasonably in pursuing the specific allegation or argument, for the purposes of rule 76 (i.e. for the purposes of an application for costs) , unless the contrary is shown. In short, therefore a deposit order is "a shot across the bows" for a party, increasing the possibility, but not the certainty, of a costs order if any of the claims fail for the reasons that the Tribunal has found them to have little reasonable prospects of success.

31. In making deposit orders, however, the Tribunal is required, under rule 39(2) of the 2013 rules of procedure, to make reasonable enquiries into the ability of the paying party to pay. The claimant is therefore invited, if he wishes his means to be

taken into account, to provide to the Tribunal and the respondent details of his income, assets, liabilities and outgoings. Further the Tribunal can have regard to the totality of the deposit orders (see ***Wright v Nipponkoa Insurance (Europe) Ltd UKEAT/0113/17***) if a number are to be made in respect of a number of allegations. As will be clear from any Order made, the claimant can choose to pay the ordered deposit in respect of all , or only some, of the 17 specified claims, whereupon those in respect of which a deposit is not paid will be struck out.

The claim nos. 1 to 40.

32. The Tribunal turns now to the remaining claims, i.e. no. 40 to no.1. Claim no. 40 goes back to August 2012, and relates to a different manager, Jo Mackintosh. Presumably claim no. 39 does too. The latter relates to the claimant being placed on a PIP, the former to an alleged request for a transfer. They are pleaded as reasonable adjustments claims, amongst other things. Neither of them relates to the provision of a suitable chair, or laptop or special leave. They are wholly different in type, and over two years away from the proven acts of discrimination. The Employment Judge considers that there is no reasonable prospect of these claims being found to be part of conduct extending over a period of time so as to link with the proven acts of discrimination in October 2014, and, further no reasonable prospect of the claimant successfully invoking the just and equitable extension. The period of delay to March 2015 is considerable, the reasons for it (the claimant fearing for his job, but not expressly threatened with dismissal if he grieved, which did not stop him from grieving in 2013) are not good ones, and there is likely to be, and was as at March 2015, a serious risk to the cogency of the evidence. These claims are struck out.

33. The claims that precede these in the Scott Schedule fall into two categories. The first, going backward, no 38 is one of three claims, nos 38 to 36, made in respect of three consecutive years, where no date is specified, and the same claim of failure to make reasonable adjustments is made, on the basis of the claimant having allegedly told his (unspecified) managers of his increasing discomfort. He was “forced” to use a Pledge chair. The allegation is of the failure to advise the claimant of the help they could provide. It is not of failure to provide a specific chair, a laptop or special leave. there is no reasonable prospects of these claims being found to be part of conduct extending over a period of time so as to link with the proven acts of discrimination in October 2014, and, further no reasonable prospect of the claimant successfully invoking the just and equitable extension. The period of delay to March 2015 is considerable, the reasons for it (the claimant fearing for his job, but not expressly threatened with dismissal if he grieved, which did not stop him from grieving in 2013) are not good ones, and there is likely to be, and was as at March 2015, a serious risk to the cogency of the evidence. These claims are struck out. If not struck out on this basis, it is considered that these claims are inadequately particularised, and that a fair hearing in respect of these claims, given their antiquity and the lack of any prior grievance, should be struck out pursuant to rule 37(1)(e) of the 2013 rules of procedure.

34. Claims no. 35 to no. 5 go back through the years 2009, 2008, 2007, 2006, 2005, 2004, 2003, 2002, 2001 and 2000. Whilst there are some specific dates – usually 1 July is chosen, for all the years back to 2000, a trio of claims is made, with only the one date, and the remaining two claims having no dates. These are generic claims of

failure to make reasonable adjustments (and the other four types of discrimination) , in the form of the claimant making his unspecified manager aware of his discomfort, being told to look out for another chair, of failure to carry out WSAs, and allegations of the claimant being told to put up and shut up. There is no reasonable prospect of these claims being found to be part of conduct extending over a period of time so as to link with the proven acts of discrimination in October 2014, and, further no reasonable prospect of the claimant successfully invoking the just and equitable extension. The period of delay to March 2015 is considerable, the reasons for it (the claimant fearing for his job, but not expressly threatened with dismissal if he grieved, which did not stop him from grieving in 2013) are not good ones, and there is likely to be, and was as at March 2015, a serious risk to the cogency of the evidence. These claims are struck out. If not struck out on this basis, it is considered that these claims too are inadequately particularised, and that a fair hearing in respect of these claims, given their antiquity and the lack of any prior grievance, should be struck out pursuant to rule 37(1)(e) of the 2013 rules of procedure.

35. Finally, claim nos. 1 to 4 going back to 1998, are in similar terms. There is no reasonable prospect of these claims being found to be part of conduct extending over a period of time so as to link with the proven acts of discrimination in October 2014, and, further no reasonable prospect of the claimant successfully invoking the just and equitable extension. The period of delay to March 2015 is considerable, the reasons for it (the claimant fearing for his job, but not expressly threatened with dismissal if he grieved, which did not stop him from grieving in 2013) are not good ones, and there is likely to be, and was as at March 2015, a serious risk to the cogency of the evidence. If not struck out on this basis, it is considered that these claims too are inadequately particularised, and that a fair hearing in respect of these claims, given their antiquity and the lack of any prior grievance, should be struck out pursuant to rule 37(1)(e) of the 2013 rules of procedure.

Future conduct of the claims subject to deposit orders.

36. If the deposits are paid, these 17 claims, however, can proceed to a hearing. It seems unlikely that this can be held before the remedy hearing in the claims that the claimant has succeeded with. It is presumed that the claimant would prefer to press on with that hearing, and have remedy determined, rather than await the outcome of any hearing of his further claims, if pursued. In that case, consideration can be given at the conclusion of the remedy hearing, if the deposits have been paid and the remaining claims re pursued, to further case management of the remaining claims.

37. This is only a provisional view, and the Tribunal, when actually making the deposit orders can also issue any further case management orders for the remaining claims at that time, in the light of any further representations made by the parties.

Conclusion.

38. The Tribunal understands the claimant's, and Mrs Ward's, perception of how he was treated by the respondent throughout the whole of his employment, about which they understandably feel strongly. There is frequent reference by the claimant to the respondent's "duty of care". As has been explained, however, whilst that concept has application in the law of negligence, it has none in disability discrimination. As the

claimant doubtless appreciates, the law on discrimination claims is highly technical, and the Tribunal's rules on time limits are strictly applied.

39. The respondent's arguments as to why all the remaining claims should not be heard, however, go further than the Tribunal can consider on this application. The remaining claims, if the claimant pays the deposits on all of them, may not add very much, in financial terms to his existing, successful claims, and it may seem disproportionate to have them heard. The Tribunal, however, does not consider that it can, or should, seek to prevent the claimant from litigating them, if he is prepared to accept the risk at which the making of deposit orders will then put him. The Tribunal can see no basis at this stage, however, on the material before it, for striking out the 2013 claims (and one 2012 claim) if the claimant is intent upon proceeding with them, and prepared to pay the deposits that will, subject to any further representations from the claimant, be ordered.

Employment Judge Holmes

Dated: 18 March 2020

RESERVED JUDGMENT SENT TO THE PARTIES ON
19 March 2020

FOR THE TRIBUNAL OFFICE