EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mr Stephen Selley	AND	The Chief Constable of Devon & Cornwall Police

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Plymouth **ON** 23 June 2020
Remote Hearing - By Cloud Video Platform

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person
For the Respondent: Mr A Hodge of Counsel

RESERVED JUDGMENT

The judgment of the tribunal is that:
1. The claimant's claim for unfair dismissal is dismissed because (i) it was presented out of time, and (ii) in any event this Tribunal does not have jurisdiction to hear this claim; and
2. The claimant's claims for discrimination were presented out of time and these claims are also dismissed.

REASONS

1. Introduction:
2. The claimant has brought claims of unfair constructive dismissal, and discrimination on the grounds of his disability, limited to harassment and an alleged failure by the respondent to make reasonable adjustments. This is the judgment following a Preliminary Hearing to determine whether or not the claimant's claims were presented in time, and whether this Tribunal has jurisdiction to hear the claimant's unfair dismissal claim.
3. The Nature of This Hearing:
4. This has been a remote hearing by Cloud Video Platform to which both parties have consented. A face to face hearing was not held because it was not practicable and all

issues could be determined in a remote hearing. In addition, it was in accordance with the overriding objective and the interests of justice because it avoided the substantial delay before a relisted hearing in person could be safely arranged. All parties had to hand the claimant's written witness statement and the parties' closing submissions. The claimant's evidence in chief and his cross examination took place by video, as did the presentation of the closing submissions of the parties, who were invited to add any further comments in person to the written submissions already exchanged. There was an agreed bundle of documents to which I was referred which consisted of 53 pages, the contents of which I have recorded. The judgment is confirmed in summary above, and set out in detail in these reasons. The parties were both positive about this process and confirmed that the hearing worked well. In particular, they were grateful that any unnecessary delay and travel had been avoided by conducting the hearing today remotely.

5. I have heard from the claimant, who gave evidence. The respondent did not call any evidence in person. The parties had already exchanged their written closing submissions, and were also invited to add to those submissions at the end of the video hearing. I find the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
6. The Facts:
7. The claimant served as a police officer for exactly 30 years, initially in the Metropolitan Police, and more latterly in the Devon and Cornwall Constabulary. The claimant joined the police on 21 February 1998, and resigned as a police officer and retired on 21 February 2018. His last role before retirement was Sergeant, Crime and Justice Training Manager. At some stage in 2015 the respondent considered that the claimant had committed serious misconduct and says that it commenced a criminal investigation in 2015. The claimant disputes that he was informed of the same, but agrees that he was notified in about August 2015 that an investigation had commenced and in September 2015 was given notice that there would be an internal investigation concerning allegations of misconduct. The claimant was removed from his post. His understanding was that this was effectively a disciplinary investigation, and not a criminal investigation. In 2016 the claimant was interviewed under civil caution and says that he was not informed even then that there was a criminal investigation. It seems the respondent passed papers to the Crown Prosecution Service in about May or June 2018, and in July 2018 the CPS decided to take no further action. The claimant was informed at that stage of this decision by the CPS, but asserts that he had not previously understood the investigation to be of a criminal nature.
8. The claimant asserts that this investigative process had an adverse effect on his health. On 28 July 2016 an occupational health physician namely Dr Yarnley reported that he had examined the claimant on behalf of the Police Pensions Authority and concluded that the claimant was disabled by reason of sleep apnoea, neck pain and adjustment disorder/anxiety from performing the ordinary duties of a member of the police force, but that the disablement was not likely to be permanent.
9. The claimant received advice and support from the Police Federation during this process and before his resignation. The Police Federation sought advice from Slater and Gordon Solicitors on the claimant's behalf both in connection with the investigative process, and in connection with potential Employment Tribunal proceedings. I have been referred to an exchange of emails between Mr Reeves, Solicitor, of Slater and Gordon and Mr Purkiss the claimant's Police Federation representative on 15 May 2018. It is clear that at that stage they had been discussing a potential employment tribunal claim on behalf of the claimant and when time limits would start running. In the first email on 15 May 2018 Mr Reeves forwarded to Mr Purkiss the link to the ACAS Early Conciliation Notification Form, which would enable the claimant to obtain an Early Conciliation Certificate from ACAS as a necessary step before issuing employment tribunal proceedings. This email and the link from Mr Reeves were then immediately forwarded by Mr Purkiss to the claimant under cover of these comments: "I have spoken with the below solicitor and he is of the same view as me, in that with the ongoing investigation it could be argued that any event is ongoing. He did say however that you could notify ACAS re your retirement date to ensure."

10. The claimant does not recall ever having spoken with Mr Reeves, but I find it is clear from this exchange that: the claimant and his professional advisers had been considering employment tribunal proceedings immediately after the claimant's retirement; that they were aware of the relevant time limits; that they knew ACAS Early Conciliation was a necessary first step before issuing proceedings; that with regard to the potential discrimination claim there might be an argument the time was not running because there might be "an ongoing event"; but that the ACAS Early Conciliation process could be commenced in connection with the retirement date "to ensure", meaning to ensure that there was no subsequent limitation difficulty.
11. The respondent's internal misconduct investigation continued after the claimant's resignation. Almost one year later in January 2019 the respondent determined that there was no case to answer. The claimant was informed of this decision at that time. It seems that the respondent prepared an internal report which eventually concluded that there was no case to answer, but this has not been disclosed to the claimant. He has sought its disclosure through other avenues. It was not in the bundle of documents agreed for this hearing. The claimant has not suggested that there is anything arising from this decision or which might be included in this report which gives rise to any material change in circumstances to those pertaining as at the date of the claimant's resignation. There has been no late disclosure of any information which informed the claimant of any different circumstances to those which were pertaining and known by the claimant as at the time at which he decided to retire.
12. The claimant then commenced the Early Conciliation process with ACAS. In fact, he obtained two EC Certificates, to ensure that the respondent was named correctly. Under the first EC Certificate he made contact with ACAS on 26 March 2019 (Day A), and the EC Certificate was issued on 10 May 2019 (Day B). Under the second EC Certificate the claimant notified ACAS on 4 April 2019 (Day A) and the EC Certificate was issued on 18 May 2019 (Day B). The claimant issued these proceedings on 6 June 2019.
13. The claimant represented himself during this process. There has been no suggestion from the claimant that he was precluded from issuing proceedings any earlier because of any health or disability related issues, and the claimant has not established that this was the case.
14. There was then a case management preliminary hearing on 16 January 2020 at which I discussed the claimant's claims in detail with the claimant. I prepared a case management summary and made subsequent orders dated 16 January 2020 ("the Order") and this was sent to the parties on 28 January 2020. As recorded in that Order, the claimant confirmed that his claims were limited to a claim of unfair constructive dismissal and for discrimination on the grounds of his disability. The unfair constructive dismissal claim was not one which relied upon either health and safety reasons, nor one relating to protected public interest disclosures. As recorded in paragraph 6 of the Order, the disability discrimination claims relied upon three impairments (a long-standing neck injury, hypertension, and severe sleep apnoea), and was limited to a claim for harassment in respect of the demeaning and intimidating way in which the claimant claims he was treated, and for an alleged failure by the respondent to make reasonable adjustments, first with regard to his unreasonable workload and secondly with regard to the disciplinary process. Some of the allegations set out in the claimant's originating application date from as long ago as 2013 and 2015. The claimant's claims were expressed to relate to the position which pertained as at the date of the claimant's resignation on 21 February 2018, and it has never been suggested by the claimant that any subsequent matters (such as the January 2019 report) gave rise to any new or different claims to those relied upon as at the date of his resignation.
15. This preliminary hearing was then listed to be heard in person on 15 and 16 June 2020, but was postponed for reasons relating to the Covid-19 pandemic. With the consent of the parties it was relisted to be heard remotely today by Cloud Video Platform.
16. Having established the above facts, I now apply the law.
17. <u>The Law</u>:
18. The right not to be unfairly dismissed is in Chapter 1 of Part X of the Employment Rights Act 1996 ("the Act"). Section 111(2) of the Act provides that an employment tribunal shall

not consider a complaint of unfair dismissal unless it is presented before the end of the period of three months beginning with the effective date of termination, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

19. Section 200(1) of the Act provides: "… Part X (except sections 100, 103A, and 134A and the other provisions of that Part so far as relating to the right not be unfairly dismissed in a case where the dismissal is unfair by virtue of section 100 or 103A) … do not apply to employment under a contract of employment in police service or to persons engaged in such employment."
20. This is also a claim alleging discrimination on the grounds of a protected characteristic under the provisions of the Equality Act 2010 ("the EqA"). The claimant complains that the respondent has contravened a provision of part 5 (work) of the EqA. The claimant alleges harassment, and an alleged failure by the respondent to make reasonable adjustments. The protected characteristic relied upon is disability, as set out in sections 4 and 6 of the EqA.
21. Section 120 of the EqA confers jurisdiction on claims to employment tribunals, and section 123(1) of the EqA provides that the proceedings on a complaint within section 120 may not be brought after the end of – (a) the period of three 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. Under section 123(3)(a) of the EqA conduct extending over a period is to be treated as done at the end of that period.
22. Discrimination at work is addressed in Part 5 of the EqA. The provisions relating to Police officers are in section 42 of the EqA which provides as follows: 42(1) - For the purposes of this Part, holding the office of constable is to be treated as employment – (a) by the chief officer, in respect of any act done by the chief officer in relation to a constable or appointment to the office of constable; (b) by the responsible authority, in respect of any act done by the authority in relation to a constable or appointment to the office of constable.
23. In addition, with effect from 6 May 2014 a prospective claimant must obtain an early conciliation certificate from ACAS, or have a valid exemption, before issuing employment tribunal proceedings.
24. The relevant law relating to early conciliation ("EC") and EC certificates, and the jurisdiction of the Employment Tribunals to hear relevant proceedings, is as follows. Section 18 of the Employment Tribunals Act 1996 ("the ETA") defines "relevant proceedings" for these purposes. This includes in Subsection 18(1)(b) Employment Tribunal proceedings for unfair dismissal under section 111 of the Employment Rights Act 1996, and for the discrimination at work provisions under section 120 of the EqA.
25. Subsection 18A(1) of the ETA provides that: "Before a person ("the prospective claimant)" presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter." Subsection 18A(4) ETA provides: "If - (a) during the prescribed period the conciliation officer concludes that a settlement is not possible, or (b) the prescribed period expires without a settlement having been reached, the conciliation officer shall issue a certificate to that effect, in the prescribed manner, to the prospective claimant." Subsection 18A(8) ETA provides: "A person who is subject to the requirements in subsection (1) may not present an application to institute relevant proceedings without a certificate under subsection (4).
26. Section 207B of the Act provides: (1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a "relevant provision"). But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 207A. (2) In this section - (a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and (b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section)

the certificate issued under subsection (4) of that section. (3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted. (4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period. (5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.

27. I have been referred to and have considered the following cases, namely: Palmer and Saunders v Southend-on-Sea BC [1984] ICR 372; Porter v Bandridge Ltd [1978] IRLR 271 CA; Wall's Meat Co v Khan [1978] IRLR 499; London Underground Ltd v Noel [1999] IRLR 621; Dedman v British Building and Engineering Appliances [1974] 1 All ER 520; Cullinane v Balfour Beattie Engineering Services Ltd UKEAT/0537/10; Wolverhampton University v Elbeltagi [2007] All E R (D) 303 EAT; British Coal v Keeble [1997] IRLR 336 EAT; Robertson v Bexley Community Service [2003] IRLR 434 CA; Abertawe Bro Morgannwg University Local Health Board v Morgan UKEAT/0305/13; Department of Constitutional Affairs v Jones [2008] IRLR 128 EAT; Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327 CA; London Borough of Southwark v Afolabi [2003] IRLR 220 CA; Apelogun-Gabriels v Lambeth London Borough Council [2002] IRLR 116); P v Commissioner of Police for the Metropolis [2017] UKSC 65 and Newbould v Commissioner of Police for the Metropolis 2205178/2018.
28. In this case the claimant's effective date of termination of employment was 21 February 2018. The three month time limit therefore expired at midnight on 20 May 2018. The claimant first commenced the Early Conciliation process with ACAS on 26 March 2019 (Day A). ACAS issued the Early Conciliation Certificate on 10 May 2019 (Day B). The claimant therefore commenced the Early Conciliation process nearly one year after the expiry of the initial limitation period and he does not therefore enjoy any extension of time under the relevant provisions in section 207B of the Act.
29. The Reasons for Delay
30. The claimant has explained the reasons for the delay in issuing proceedings in his evidence today. In short, the reasons are twofold: first, the advice which he had received; and secondly, because of the prospect of retaliation. The points in more detail are as follows.
31. In paragraphs 15 to 18 of his witness statement the claimant asserts: "I knew that I needed to take steps to make a claim with the Employment Tribunal. I sought advice from Slater and Gordon, the solicitors appointed by the Police Federation throughout the disproportionate misconduct investigation carried out against me. I was advised by Slater and Gordon solicitors that the events constituting the discrimination were still ongoing and that the timescales would start once the investigation had been completed. This was reiterated by my police Federation representative Jim Purkiss. In an email dated 15 May 2018, Jim expressed his agreement with the opinion of the solicitor from Slater and Gordon's specialist employment team, which was that given the investigation any event is ongoing."
32. In my judgment this explanation is not borne out by the contemporaneous document which I have seen, namely the email on 15 May 2018. It seems to me more realistic that advice would have been given to this effect, namely that there might be an argument about ongoing discrimination depending on what happens during the investigation (which was ongoing at that time), but that it would be sensible to issue proceedings within three months from the date of retirement in order to ensure compliance with time limits. The email dated 15 May 2018 is consistent with this conclusion, and inconsistent with the claimant's assertion that he had received positive advice to the effect that the time-limit had not commenced running against him because there was a continuing act of discrimination.
33. The second reason for delay is addressed in the claimant's witness statement at paragraphs 19 to 21. The claimant asserts: "I was also warned that bringing a claim with the Employment Tribunal risked prejudicing the investigation against me. Given that the police force had already overtly used disproportionate force and tactics throughout the investigation, the prospect of retaliation was very credible. This added weight to my belief,

supported by the professional advice, that any claim brought at the same time as the investigation would give the employer reason to deliberately find against me."

34. The claimant has not adduced any evidence of this advice, which, if it were given, would be surprising to say the least. Given that the claimant had already left the police force, it seems unlikely to me that the claimant's advisers would have suggested that he should deliberately decline to issue Tribunal proceedings, or deliberately delay in doing so, and risk limitation difficulties on the grounds that this might affect the result of an internal investigation after he had resigned from the Police service.
35. The claimant also asserts in paragraphs 26 to 28 of his statement: "I believed that it would not be reasonably practicable for the complaint to be presented within three months following the effective date of termination and instead, the time-limit would run from the conclusion of the investigation. In January 2019, 12 months after leaving the force, I was advised that the investigation had been concluded and that there was no case to answer. I recognised that the three months following this date would be the limit within which I needed to make an application to the employment tribunal."
36. However, the claimant has not satisfied me that he was advised that the relevant time limit would only commence to run after the eventual conclusion of the respondent's internal investigation, the ultimate result of which was unknown at the time when he had resigned and left the Police service. In addition, the claimant has not satisfied me that the respondent's decision in January 2019 gave rise to any new cause of action, or can be said for any reason to be linked with the previous allegations raised by the claimant such as to amount to an ongoing act of discrimination.
37. The Unfair Dismissal Claim:
38. For the reasons explained in more detail below this Tribunal does not have jurisdiction to hear the claimant's unfair constructive dismissal claim and it is dismissed for this reason. Nonetheless I have also considered the out of time point in any event as follows.
39. The question of whether or not it was reasonably practicable for the claimant to have presented his claim in time is to be considered having regard to the following authorities. In Wall's Meat Co v Khan Lord Denning, (quoting himself in Dedman v British Building and Engineering Appliances) stated "it is simply to ask this question: has the man just cause or excuse for not presenting his complaint within the prescribed time?" The burden of proof is on the claimant, see Porter v Bandridge Ltd. In addition, the Tribunal must have regard to the entire period of the time limit (Elbeltagi).
40. In Palmer and Saunders v Southend-on-Sea BC the headnote suggests: "As the authorities also make clear, the answer to that question is pre-eminently an issue of fact for the Industrial Tribunal taking all the circumstances of the given case into account, and it is seldom that an appeal from its decision will lie. Dependent upon the circumstances of the particular case, in determining whether or not it was reasonably practicable to present the complaint in time, an Industrial Tribunal may wish to consider the substantial cause of the employee's failure to comply with the statutory time limit; whether he had been physically prevented from complying with the limitation period, for instance by illness or a postal strike, or something similar. It may be relevant for the Tribunal to investigate whether, at the time of dismissal, and if not when thereafter, the employee knew that he had the right to complain of unfair dismissal; in some cases the Tribunal may have to consider whether there was any misrepresentation about any relevant matter by the employer to the employee. It will frequently be necessary for the Tribunal to know whether the employee was being advised at any material time and, if so, by whom; the extent of the advisor's knowledge of the facts of the employee's case; and of the nature of any advice which they may have given him. It will probably be relevant in most cases for the Industrial Tribunal to ask itself whether there was any substantial failure on the part of the employee or his adviser which led to the failure to comply with the time limit. The Industrial Tribunal may also wish to consider the manner in which and the reason for which the employee was dismissed, including the extent to which, if at all, the employer's conciliatory appeals machinery had been used. Contrary to the argument advanced on behalf of the appellants in the present case and the obiter dictum of Kilner Brown J in Crown Agents for Overseas Governments and Administrations v Lawal [1978] IRLR542, however, the mere fact that an

employee was pursuing an appeal through the internal machinery does not mean that it was not reasonably practicable for the unfair dismissal application to be made in time. The views expressed by the EAT in Bodha v Hampshire Area Health Authority on this point were preferred to those expressed in Lawal:-

41. To this end the Tribunal should consider: (1) the substantial cause of the claimant's failure to comply with the time limit; (2) whether there was any physical impediment preventing compliance, such as illness, or a postal strike; (3) whether, and if so when, the claimant knew of his rights; (4) whether the employer had misrepresented any relevant matter to the employee; and (5) whether the claimant had been advised by anyone, and the nature of any advice given; and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time.
42. In addition, in Palmer and Saunders v Southend-on-Sea BC, and following its general review of the authorities, the Court of Appeal (per May LJ) concluded that "reasonably practicable" does not mean reasonable (which would be too favourable to employees), and does not mean physically possible (which would be too favourable to employers) but means something like "reasonably feasible".
43. Subsequently in London Underground Ltd v Noel, Judge LJ stated at paragraph 24 "The power to disapply the statutory period is therefore very restricted. In particular it is not available to be exercised, for example, "in all the circumstances", nor when it is "just and reasonable", nor even where the Tribunal "considers that there is a good reason" for doing so. As Browne Wilkinson J (as he then was) observed: "The statutory test remains one of practicability … the statutory test is not satisfied just because it was reasonable not to do what could be done" (Bodha v Hampshire Area Health Authority [1982] ICR 200 at p 204).
44. Underhill P as he then was considered the period after the expiry of the primary time limit in Cullinane v Balfour Beattie Engineering Services Ltd (in the context of the time limit under section 139 of the Trade Union & Labour Relations (Consolidation) Act 1992, which is the same test as in section 111 of the Act) at paragraph 16: “The question at “stage 2” is what period - that is, between the expiry of the primary time limit and the eventual presentation of the claim - is reasonable. That is not the same as asking whether the claimant acted reasonably; still less is it equivalent to the question whether it would be just and equitable to extend time. It requires an objective consideration of the factors causing the delay and what period should reasonably be allowed in those circumstances for proceedings to be instituted - having regard, certainly, to the strong public interest in claims in this field being brought promptly, and against a background where the primary time limit is three months.”
45. In conclusion, in my judgment it was reasonably practicable for the claimant to have issued unfair dismissal proceedings within three months of the date of his resignation and retirement. He was not precluded from doing so by any reasons of ill health or disability. Neither was he precluded from doing so by any ignorance of the relevant time limits. Indeed, the claimant had discussed the relevant time limit with his professional advisers. He was not precluded from issuing these proceedings by any inaccurate or negligent advice. On the contrary, his advisers had told him that he could issue proceedings to ensure compliance with the time limits. Following the decision of the respondent to conclude the disciplinary investigation in January 2019, there was no new evidence or information which was then before the claimant which gave rise to different circumstances to those pertaining at the time he resigned a year earlier. In addition, even if it had not been practicable for the claimant to issue proceedings before the date of that report in January 2019, the claimant still failed to issue the unfair dismissal proceedings within a reasonable time thereafter. The claimant waited for another two months before making contact with ACAS, and waited a further four weeks before issuing proceedings having obtained his Early Conciliation Certificate.
46. For these reasons in my judgment the unfair dismissal claim was presented out of time and is hereby dismissed.
47. The Disability Discrimination Claims:
48. The grounds relied upon by the claimant for suggesting that it would be just and equitable to extend the time limit are the same reasons given for the late submission of the unfair

dismissal claim and are discussed above. In summary they are twofold: first, the advice which he had received; and secondly, because of the prospect of retaliation.

49. I have considered the factors in section 33 of the Limitation Act 1980 which is referred to in the Keeble decision. I deal with each of these in turn.
    a. The first is the length of and the reasons for the delay. The delay is over a year. The reasons given, namely the advice given to the claimant, and an alleged fear of retaliation from the respondent, did not in my judgment prevent the claimant or his advisers from issuing protective proceedings within time. There was no bar or impediment, such as ill-health or wrong advice, which precluded the claimant from issuing proceedings within time.
    b. Secondly, I have considered the extent to which the cogency of the evidence is likely to be affected by the delay. This could be considerable given the claimant makes reference in his originating application to events which took place as long ago as 2013 and 2015. In the current circumstances it would be unlikely that this case could be heard until well into 2021 which would give rise to a potential delay of eight years from the earliest allegations. This could well have a serious and prejudicial impact on the cogency of the relevant evidence.
    c. Thirdly, I have considered the extent to which the parties co-operated with any request for information. The claimant alleges that the respondent has been obstructive and has still not produced a copy of the report upon which it made its decision not to proceed further in January 2019. Be that as it may, this in no way precluded the claimant or his advisers from issuing proceedings within the relevant time limits running from the date of the claimant's retirement. There has been no subsequent change of circumstances or disclosure of relevant information which makes the circumstances materially different in January 2019 to those of the claimant's allegations which he knew about at the time of his resignation nearly a year previously.
    d. Fourthly, I have considered the promptness with which the claimant acted once he knew the facts giving rise to the cause of action. The claimant has not acted promptly at all. The claimant was aware of the background facts giving rise to his cause of action (as explained in more detail in the Order) before his decision to resign and commence his retirement. The claimant and his professional advisers were aware at the time of the claimant's retirement of the ACAS conciliation process, the Employment Tribunal time limits, and the fact that they were able to issue proceedings to ensure compliance with those time limits. Even after the decision in January 2019 by the respondent not to proceed further with the investigation, the claimant still delayed. He delayed a further two months before commencing the Early Conciliation process with ACAS, and having been issued with certificates on 10 May 2019 and 18 May 2019 he delayed even further before issuing proceedings on 6 June 2019.
    e. Finally, I have considered the steps taken by the claimant to obtain appropriate professional advice. It is clear that the claimant had access to experienced professional advisers throughout, namely the Police Federation, and their appointed solicitors. There has been no suggestion that these advisers gave incorrect advice to the claimant, nor that he was precluded from issuing proceedings within time because he relied in good faith on incorrect advice.
50. It is clear from the following comments of Auld LJ in Robertson v Bexley Community Service that there is no presumption that a tribunal should exercise its discretion to extend time, and the onus is on the claimant in this regard: "It is also important to note that 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 discretion is the exception rather than the rule". These comments have been supported in Department of Constitutional

Affairs v Jones [2008] IRLR 128 EAT and Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327 CA.

51. Per Langstaff J in Abertawe Bro Morgannwg University Local Health Board v Morgan before the Employment Tribunal will extend time under section 123(1)(b) it will expect a claimant to be able to explain firstly why the initial time period was not met and secondly why, after that initial time period expired, the claim was not brought earlier than it was.
52. A decision by a claimant to delay presenting a claim while an internal grievance procedure or appeal was under way would not necessarily be a sufficient reason to extend time under the "just and equitable" principle, even if the delay had not prejudiced the employer. It is only one of the relevant factors to be taken into account, and the weight attached to it is a matter for the Employment Tribunal in the light of the facts of each case (see Apelogun-Gabriels v Lambeth London Borough Council [2002] IRLR 116)
53. However, As Sedley LJ stated in Chief Constable of Lincolnshire Police v Caston at paragraphs 31 and 32: "In particular, there is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised. In certain fields (the lodging of notices of appeal at the EAT is a well-known example), policy has led to a consistently sparing use of the power. This has not happened, and ought not to happen, in relation to the power to enlarge the time for bringing ET proceedings, and Auld LJ is not to be read as having said in Robertson that it either had or should. He was drawing attention to the fact that the limitation is not at large: there are statutory time limits which will shut out an otherwise valid claim unless the claimant can displace them. Whether a claimant has succeeded in doing so in any one case is not a question of either policy or law: it is a question of fact sound judgement, to be answered case-by-case by the tribunal of first instance which is empowered to answer it."
54. In conclusion in my judgment it would not be just and equitable to allow an extension of the relevant time limit. In my judgment the balance of prejudice favours the respondent. In short, the claimant knew of the grounds for his potential claim when he decided to resign from the police force at the time when he had access to professional advice and support. He was not precluded from doing so by ill-health, disability, ignorance of the time limits, negligent advice, nor for any other compelling reason. The claimant has not satisfied me that there are any new or different circumstances arising in January 2019 which can be said to give rise to any new or different claim at that time, and/or that this gave rise to any supportable argument that there was some new claim or some ongoing act of harassment or failure to make reasonable adjustments given that he had left the police service 11 months previously.
55. If I were to allow an extension it would put the respondent to the significant time and expense of defending these historical claims, some of which are alleged to have gone back for many years, and which the respondent may well have difficulty in meeting because of the passage of time. Applying Robertson v Bexley Community Service there is no presumption that a tribunal should exercise its discretion to extend time, and the onus is on the claimant in this regard. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of discretion is the exception rather than the rule. The claimant has failed to convince me that it would be just and equitable to extend time, and accordingly the claimant's disability discrimination claims are also dismissed.
56. The Jurisdictional Point:
57. It is clear from Section 200(1) of the Act that this tribunal does not have jurisdiction to hear the claimant's unfair dismissal claim. The claimant's unfair dismissal claim is neither a health or safety claim, nor one related to protected public interest disclosures, and with these exceptions unfair dismissal claims under Part X of the Act are excluded from the Tribunal's jurisdiction.
58. The claimant has referred to two authorities to suggest that there is jurisdiction to hear his claim, but in my judgment he is confusing his unfair dismissal claim under the Act (for which this tribunal has no jurisdiction) with his discrimination claims under the EqA (for which this tribunal clearly does have jurisdiction). The first is the case of P v Commissioner of Police for the Metropolis [2017] UKSC 65. My understanding of this decision of the Supreme Court

is that Police misconduct panels no longer benefit from judicial immunity in respect of discrimination claims. That case also held that the Chief Constable is vicariously liable for the discrimination acts of such panels. Effectively the Supreme Court interpreted section 42(1) of the EqA as applying to the exercise of disciplinary functions by misconduct panels in relation to police constables. However, this relates to discrimination claims only, and does not affect the statutory provision in Section 200(1) of the Act to the effect that Employment Tribunals do not have jurisdiction to hear claims for unfair dismissal under Part X of the Act.

59. The second case referred to by the claimant is Newbould v Commissioner of Police for the Metropolis which is a decision of Employment Judge Goodman in the London Central Employment Tribunal on 18 July 2019 under reference 2205178/2018. I have read that judgment which is not binding on this Tribunal, but in any event it confirms that Employment Tribunals do not have jurisdiction to hear an unfair dismissal claim.
60. I would therefore have dismissed the claimant's unfair dismissal claim in any event relying on Section 200(1) of the Act.
61. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 2; the findings of fact made in relation to those issues are at paragraphs 7 to 15; a concise identification of the relevant law is at paragraphs 18 to 27; how that law has been applied to those findings in order to decide the issues is at paragraphs 28 to 60.

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Employment Judge N J Roper

Dated : 24 June 2020
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