



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms N Soruklu

**Respondent:** Shelter, The National Campaign for Homeless People

**Heard at:** East London Hearing Centre

**On:** Monday 6 July 2020

**Before:** Employment Judge Burgher

**Representation**

**Claimant:** In person

**Respondent:** Ms S Bowen (Counsel)

## JUDGMENT

The judgment of the Tribunal is that the Tribunal does not have jurisdiction to consider the Claimant's complaints which are therefore dismissed.

## REASONS

1 The matter was listed before me to consider whether any complaint was presented outside the time limits in sections 123(1) (a) and (b) of the Equality Act 2010 and if so should it be dismissed on the basis of the tribunal does not have jurisdiction to hear it.

2 The open preliminary hearing was conducted by cloud video platform (CVP).

3 The Claimant was employed as managing solicitor for the Respondent from 15 March 2017 until her effective date of termination on 20 December 2018. The Claimant was subject to disciplinary action on 18 December 2018 but before this took place she tendered her resignation on the same date. Notwithstanding this the Respondent reported the Claimant's conduct to the Solicitors Regulation Authority.

4 The Claimant suffers from bipolar affective disorder and emotional unstable personality disorder. She brings claims of disability discrimination relating to the

disciplinary action that she was subjected to and the reference by the Respondent to the Solicitors Regulation Authority.

5 ACAS were contacted in respect of the Claimant's claim on 17 December 2019 and it issued an early conciliation certificate on 19 December 2019. This was nearly a year after the last act complained of.

6 The Claimant subsequently presented her complaint to the Tribunal on 5 February 2020.

## **Evidence**

7 The Claimant gave evidence on her own behalf and had prepared a five page witness statement that she gave evidence by way of affirmation. The Claimant was subjected to cross examination and questions from the Tribunal. I was also referred to relevant pages in a hearing bundle consisting of 224 pages.

## **Facts**

8 On the medical evidence provided by the Claimant I accept that the threatened disciplinary action against the Claimant in November/December 2018 and her subsequent resignation contributed in a mania for the Claimant that developed into bipolar affective disorder.

9 Whilst the Claimant was supported during the internal disciplinary process by her trade union Representative Richard Lee, I accept that from the period December 2018 to 31 July 2019 the Claimant was severely depressed and suicidal. I accept that the mania manifested itself in the Claimant wishing to end her life not exist and she was not able to focus on bringing an Employment Tribunal complaint.

10 The Claimant's condition deteriorated and from 31 May 2019 to 31 July 2019 she was admitted to a psychiatric unit. I accept that the Claimant had lost motivation to do anything herself, as recording in her medical evidence, at this time.

11 The Claimant was discharged from psychiatric unit on 31 July 2019 and commenced a difficult period of recovery whilst living with her father. The Claimant was placed under the care of psychiatric practitioner Ms Sarah Johnson, and there will were occasions where the Claimant was of continuing low mood and not being well enough to attend meetings.

12 By 17 September 2019 the Claimant was recorded as being wanting to connect with others. It was indicating that she had an understanding of the professional body enquiry into her conduct. There was discussion about her work in the future and how to address the professional body. However, there was no discussion about making a Tribunal claim about previous employer and no explanation why.

13 The Claimant missed a number of appointments with Ms Johnson in October 2019 due to feeling unwell. However, on the 7 November 2019 she had a meeting with Ms Johnson where it is recorded.

*"Nisa reported feeling more stable and her mood is not fluctuating so much. She feels more "grounded" and cares less about what others think about her. She has*

*been spending time with a friend and went out with a group of friends last Friday which went well.*

*Lisa said that she had sent the letter to the Solicitors Regulatory body but they have requested a medical letter...*"

14 The Claimant stated that the reference to being grounded and spending time with group of friends was a lie and she said this to Ms Sarah Johnson because of pressure created by her father's changing living circumstances, he was expecting another child and she needed to move and there was insufficient space. Contrary to the Claimant's assertion, there was no subsequent record in Ms Johnson's notes recording that the Claimant had informed her that the entry of 7 November 2019 was a lie, the last reference from Ms Johnson is the indication about the session on 12 December 2019.

15 The Claimant stated that she asked her father to respond to the Solicitors Regulation Authority and that she was able to give him instructions to do so.

16 If as the Claimant asserts, she was able to lie to Ms Johnson to generate an outcome to move from her father (which she did in January 2020), I would have concluded that she would have been able to have sought and give instructions in relation to presenting a complaint to the Tribunal. However, in the absence of contradictory contemporaneous medical evidence I take Ms Johnson's entry of 7 November at face value, namely that the Claimant was feeling more grounded and on the road to recovery.

17 The Claimant stated that she had no knowledge of her mother contacting ACAS on 17 December 2019. She stated that her mother did this without her knowledge. She stated that her mother is stoic individual and was heavy-handed in trying to get everything done. The Claimant stated that she discussed a claim with her mother in January 2020 and from that period she "put her heart into it" and was willing to pursue it.

18 The Claimant accepts that there was further delay from January 2020 to 5 February 2020 when the claim was submitted. The Claimant was hit by a car accident in January 2020 and suffered injury to her hand and stated that her mother subsequently put the Claimant on 5 February 2020. In her submissions the Claimant stated that they was a delay in presented the complaint because Claimant's mother had initially contacted a solicitor who was conflicted by knowing the HR manager of the Respondent. The Claimant stated there was a delay. There was no direct evidence or collaborator the submission,

## Law

### Time limits

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

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

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

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

19 (a) the period of 6 months starting with the date of the act to which the proceedings relate, or

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

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

20 For the purposes of my consideration I considered the 20 December 2018 as the last act of discrimination, whether or not earlier acts could be said to be acts extending over a period.

21 The Tribunal's discretion to extend time is wide but emphasises that, as Auld LJ observed in Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434 at [25]:

*“there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of the discretion is the exception rather than the rule”.*

22 I also consider Sedley LJ's remarks in Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327 at [31] and [32] that there is *“no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised”* and that whether to grant an extension *“is not a question of either policy or law”* but *“of fact and judgment, to be answered case by case by the tribunal of first instance which is empowered to answer it”*.

## Conclusions

23 There has been a significant lapse of time in bringing this claim and this will have an effect on memories, including the Claimant's. The allegations being made are fact sensitive and extend back to period for which there was no contemporaneous grievance of the matters at hand for the Respondent's witnesses to refer to. I accept that having to recollect matters that took place such a long time ago for would cause prejudice to the Respondent.

24 I balanced this prejudice against the prejudice to the Claimant of not being able to pursue her important and serious claims and the effect they had allegedly had on her. There is general public policy importance of ensuring that unlawful discrimination complaints are ventilated.

25 However, the Tribunal jurisdiction to consider unlawful discrimination complaints is limited by statute and there is no presumption that time will be extended. The burden is on the Claimant to convince me that it is just and equitable to do so. Given my findings on the development of her recovery from 7 November 2019, I conclude that the claim has been presented out of time and it is not just and equitable to extend time.

26 If the Claimant instructed her mother or father to act on her behalf, or if they took it upon themselves to do so, then they ought to that acted with more speed than they in fact did. In particular, the ACAS certificate issued on 19 December 2019 would clearly have indicated to the Claimant's mother the need to present claim as quickly as possible given that it was already significantly out of time, however no claim was presented until over six weeks later.

27 Given the fact that the claims were already very out of time, the reference by the Claimant to events in January 2020 such as being hit by a car accident and fracturing her arm; and the submissions made regarding the solicitor who her mother initially sought to instruct being conflicted, do not alter my conclusion that the claims could and should have been presented far sooner than they were.

28 In these circumstances, the Tribunal does not have jurisdiction to consider the Claimant's complaints which are therefore dismissed.

Employment Judge Burgher  
Date: 6 July 2020