Case No: 3314194/2019

EMPLOYMENT TRIBUNALS

Claimant: Mrs M Lewicka

Respondent: Hartwell plc

Heard at: Watford

Before: Employment Judge Tynan **On:** 10 July 2020

Appearances
For the Claimant: In person
For the Respondent: Mr Wright, Counsel

JUDGMENT

1. The Claimant is (and was at the time of the acts complained about) disabled within the statutory definition at Section 6 of the Equality Act 2010.

2. The following complaints by the Claimant are struck out on the basis that they have been brought out of time by the Claimant and it would not be just and equitable to extend time to permit the complaints to be pursued:

    a. The Claimant's complaint that she was discriminated against on grounds of race; and

    b. The Claimant's complaints that she was directly discriminated against on grounds of disability and/or subjected to unlawful disability harassment, as set out in further detail at paragraphs 28 to 30 of her 'time issues' statement dated 6 April 2020).

3. The Claimant's application to amend her Form ET1 / Grounds of Claim to include claims of Equal Pay and that the Respondent failed to comply with its duty to make adjustments under section 20 of the Equality Act 2010 is refused.

4. The Claimant is granted leave to amend her Form ET1 / Grounds of Claim to include a complaint that the Respondent victimised her as set out at paragraphs 52 to 58 of her 'time issues' statement dated 6 April 2020 and by dismissing her.

REASONS

1. On 11 February 2020 Employment Judge Bloch QC ordered that this case be listed for a one day preliminary hearing to determine the question of whether the Claimant is disabled within the statutory definition at Section 6 of the Equality Act 2010, and also to decide whether aspects of the Claimant's sex, race and disability claims are out of time (and, if they are, whether it would be just and equitable to extend time to permit those claims to proceed to a full hearing).

2. It is apparent from the case management summary that Employment Judge Bloch QC spent some time on 11 February 2020 examining the Claim to identify the complaints and issues in the case. The complaints and issues are recorded in the case management summary. The Claimant was ordered to provide further information by way of clarification of her claims (paragraph 5.4 of the Order). In providing that information the Claimant has clarified and expanded upon the details of her disability discrimination complaint and identified at least two complaints that were not explicitly identified on 11 February 2020 as forming part of her Tribunal Claim, namely an Equal Pay claim and a complaint that she was victimised by the Respondent. Linked to the question of whether aspects of the Claimant's claims are out of time, I have also treated the Claimant's Further Particulars/List of Issues/Written Submission document (pages 9 to 57 of the preliminary hearing bundle) as an application by the Claimant to amend her Form ET1/Grounds of Claim.

3. The Claimant represented herself at the preliminary hearing. She was accompanied and supported by a friend.

4. There was a single agreed bundle of documents for the preliminary comprising 19 documents running to 147 pages. In addition to her Further Particulars/List of Issues/Written Submission document the Claimant had also filed and served a statement in respect of the time issues and a separate disability impact statement, both of which she adopted as her evidence. Otherwise, the bundle largely comprises medical evidence relied upon by the Claimant (including a letter from Mr Edward Seel, Consultant Spinal Surgeon dated 19 September 2019) and various sickness certificates submitted in the course of her employment with the Respondent.

5. I adjourned the hearing to read the three substantive documents submitted by the Claimant and I have re-read them in coming to this Judgment.

6. The Respondent submitted two relatively short documents in response to the time and disability issues. There was also a single page statement by Georgina Forbes, the Respondent's Company Secretary and in-house Counsel. Ms Forbes did not attend Tribunal to give evidence and accordingly I attach limited weight to her statement in so far as she states that it will be "extremely difficult" if not "impossible" to investigate any new allegations in the Further Particulars/List of Issues/Written Submission document filed by the Claimant. The Claimant was sceptical as to the

suggestion that the Respondent might be unable to contact Mr Bradley and Mr Benson, two long serving employees who are at the heart of the Claimant's complaints.

The Disability Issue

7. Section 6 of the Equality Act 2010. Section 6 provides:

> "(1) A person (p) has a disability if—
>
> P has a physical or mental impairment, and the impairment has a substantial and long term adverse effect on P's ability to carry out normal day to day activities."

8. Section 212 of the 2010 Act clarifies that "substantial" means more than minor or trivial.

9. There are supplementary provisions in relation to disability at Schedule 1 of the 2010 Act. Statutory Guidance has also been issued by the Secretary of State on matters to be taken into account in determining questions relating to the definition of disability. The Guidance was brought into effect on 1 May 2011 and I am required to take into account any aspect of the Guidance which appears to be relevant. Paragraph A2 of the Guidance contains a helpful analysis of Section 6(1) of the 2010 Act. In general:

- a person must have an impairment that is either physical or mental;
- the impairment must have adverse effects which are substantial;
- the substantial adverse effects must be long term; and
- the long term substantial effects must be effects on normal day to day activities.

Further, all of these factors must be considered when determining whether a person is disabled.

10. Paragraph 2 of Part 1 of Schedule 1 to the 2010 Act clarifies that the effect of impairment is long term if it has lasted for at least 12 months, is likely to last for a least 12 months, or is likely to last for the rest of the life of the person affected.

11. It is the Claimant's case that she has a physical impairment, namely chronic low back pain. Whilst the Respondent disputes that the Claimant is disabled for the purposes of the 2010 Act, it concedes that the Claimant suffered from low back pain during the period from 22 February 2017 until the end of her employment on 2 January 2019.

12. The Claimant underwent an MRI Spine Lumbar procedure on 27 February 2017 (page 123 of the preliminary hearing bundle). The clinical explanation for the procedure was documented as "Left sciatica". In other words, there was an established clinical condition, rather than pain first being experienced from that date. The MRI Request Form (page 124 of the preliminary hearing bundle) refers to "shooting pain down and up the spine" and notes that the Claimant had been involved in a road traffic accident in the past. No further history was documented at that time nor can I find any other detailed reference to the Claimant's medical history prior to 2017 in the other medical evidence in the bundle, except that on being discharged from the spine surgical clinic in September 2019 her Consultant Spinal Surgeon at that time, Mr Seel referred to a five year history of back pain (page 96 of the preliminary hearing bundle).

13. The Claimant was 36 years of age at the time of the February 2017 scan which revealed "early disc degeneration at L5/S1 with a minor bulge extending to the left side but without neural compression" and "disc degeneration at L5/S1 with a small central disc bulge". I do not consider the reference to a "minor bulge" to provide any particular assistance in understanding how the impairment may have been impacting the Claimant i.e. whether it gave rise to substantial adverse effects. The disc bulge was noted to be just touching the left S1 nerve root "which may be accounting for the patient's symptoms". In May 2017 the Claimant underwent a lumbar facet injection. It was identified that this would provide pain relief (page 99 of the preliminary hearing bundle). She was signed off work for one week at this time. She was also advised to avoid heavy lifting and bending.

14. The Claimant self-certified herself unfit for work on 27 and 28 July 2017 due to sciatica, stating that she was unable to walk, sit, move or drive or sleep.

15. On 6 February 2018 the Claimant was referred for a transvaginal ultrasound scan as she had been suffering with right side pelvic pain. She was taking pain killers at this time to manage her pain (page 97 of the hearing bundle). The scan showed no change in her condition (page 117 of the preliminary hearing bundle). On 17 May 2018 the Claimant underwent a further medical procedure under local anesthetic, possibly a repeat of the May 2017 procedure – it is described as "Lumbar Medial Branch Blocks" at page 114 of the preliminary hearing bundle. She was advised to avoid heavy lifting or strenuous exercise. On 7 June 2018 it was reported that there had been a significant reduction in her back pain following this procedure, but that she had elected to proceed with radiofrequency by way of further treatment of her back condition.

16. The radiofrequency treatment was unsuccessful and on 15 January 2019, two weeks after her employment with the Respondent had ended, the Claimant was seen by Mr Nana Osei, a Consultant Orthopaedic Spinal Surgeon who referred her for core stability physiotherapy and functional rehabilitation, initially for 10 sessions. He further noted that she may wish to consider osteopathy (page 111 of the preliminary hearing bundle).

17. On discharging her from the surgical clinic in September 2019 Mr Seel noted that the Claimant had by then had four injections in total and was taking a variety of medications. I have already referred to the fact that he described the Claimant as having had a five-year history of back pain. He recommended that the Claimant should be seen in the pain management clinic, for non-surgical treatment. Her back condition and pain were evidently ongoing.

18. On 18 December 2019, nearly a year after her employment with the Respondent had ended, the Claimant underwent a sacroiliac joint injection, again under anesthesia. Unless the procedure was delayed until January this year, it seems to have been repeated on 24 January (page 104 of the preliminary hearing bundle).

19. There is extensive medical evidence in the preliminary hearing bundle to support that the Claimant has a physical impairment, namely sciatica and back pain in the lumbosacral area. The Claimant's evidence is that since May 2012 she has had serious debilitating issues with her back. Having regard to Mr Seel's letter of 19 September last year when he discharged the Claimant from the spinal clinic, I find that the impairment dates back over five years, namely to in or around the first year of the Claimant's employment with the Respondent. The back pain she experienced was sufficient to warrant her being referred to a consultant spine surgeon in February 2017 who recommended an injection and epidural. She has potentially undergone six lumbar injections since then, at least two of which were performed whilst she was employed by the Respondent. Other than the injections, the Claimant has been mainly reliant upon prescription medication to manage her back pain, though she has had advice on pain management as well as stability physiotherapy and functional rehabilitation.

20. Other than noting the pain associated with her condition, and advising against heavy lifting, bending and strenuous exercise, the medical evidence in the preliminary hearing bundle does not identify any other effects, their likely duration or how they impact normal day to day activities. Instead these matters are addressed in the Claimant's disability impact statement (pages 75 to 86 of the preliminary hearing bundle). As is often the case in my experience, the statement tends to describe the current effects rather than how the effects were experienced during the Claimant's employment with the Respondent. Equally, Mr Wright's questions of the Claimant were more focused on her current situation. Be that as it may, I find that her condition is essentially unchanged from what it was during her employment with the Respondent, certainly in 2017 and 2018. I note that in self-certifying herself unfit for work in July 2017 the Claimant reported being unable to walk, sit, move, drive or sleep.

21. I accept the Claimant's evidence that she experiences pain daily (and find that she has done for approximately five years) and that the pain is more than minor even with treatment, pain management and prescription medication. I find that the Claimant has regularly experienced the pain as debilitating, and that it has adversely impacted her general mobility and on occasion caused her not to leave the house. The Claimant had a short commute to work when she was employed by the Respondent and likewise has a short commute in her current employment – approximately 15 to 20 minutes by car. I accept her evidence that longer distances in the car are (and were) problematic for her. I also accept that sitting in one position for longer than 30 minutes is (and was) painful - she is provided with an ergonomic chair by her current employer to help her in this regard – and that she cannot stand for long periods. She said that her job with the Respondent involved more standing and walking than her current job, and I accept her evidence that this fatigued her and aggravated her pain, particularly towards the end of her working day. She continues to experience difficulty with her weekly shop, needs some support from her daughter and friends in walking her dogs, must exercise due care when lifting and carrying everyday objects, and takes muscle relaxants and pain killers to be able to sleep. Again, I am satisfied that this has been an ongoing state of affairs for some years. Mr Wright questioned the Claimant about various activities which she is able to do, including cooking, dressing, climbing stairs, driving and maintaining reliable attendance at work. He rightly acknowledged that in determining whether a Claimant is disabled for the purposes of the 2010 Act the focus is on what they cannot do or have difficulty doing rather than what they can do. The fact the Claimant manages her pain and undertakes a range of day to day activities does not mean her condition does not give rise to significant adverse effects

22. The Claimant states, and I accept, that if she failed to take her prescription medication (what she describes as a 'poly pharmacy' of medication) she would have significant difficulty sleeping and with mobility. I find that had she not had lumbar injections, physiotherapy, pain management advice and prescription medication her day to day activities during her employment with the Respondent would have been more fatiguing and that she would have experienced increased difficulties sitting, moving and picking up and carrying objects of moderate weight. It is clear to me that by 27 February 2017, and in fact for some time prior to then, the Claimant's physical impairment was causing substantial adverse effects and that these adverse effects were effects on her normal day to day activities namely, walking, climbing stairs, sitting in a chair, driving, lifting, food shopping, walking her dogs and sleeping. They are long term effects, having been experienced by her for much of her employment with the Respondent.

23. Paragraph D22 of the 2011 Guidance notes that pain or fatigue may not directly prevent someone from carrying out one or more normal day to day activities, but may still have a substantial adverse effect on how the person carries out those activities. One of the examples given is a woman who works as a teacher and develops sciatic pain which is attributed to a prolapsed inter-vertebral disc. At the Appendix to the Guidance is an illustrative and non-exhaustive list of factors which, if they are experienced

by a person, it would be reasonable to regard as having a substantial adverse effect on normal day to day activities. The list includes the following:

- difficulty waiting or queuing, for example, because of pain or fatigue when standing for prolonged periods;
- difficulty using transport; for example, because of physical restrictions, pain or fatigue...
- a total inability to walk, or an ability to walk only a short distance without difficulty; for example, because of physical restrictions, pain or fatigue; and
- difficulty picking up and carrying objects of moderate weight, such as a bag of shopping or a small piece of luggage with one hand.

These are all factors in the Claimant's case to varying degrees even if they do not present every day and their effects vary in severity from day to day.

24. Having regard to the 2010 Act and the 2011 Guidance I am satisfied that the Claimant's physical impairment has adverse effects which are substantial and long term, and that those adverse effects impact her normal day to day activities.

25. For all the reasons above I am satisfied that the Claimant is disabled within the statutory definition at Section 6 of the Equality Act 2010 and that she was disabled by 2016, if not before then.

The Time Issues

26. Putting aside any new claims that might result if the Claimant was to be given leave to amend Form ET1 and her Grounds of Claim, certain of her complaints are plainly out of time. She addresses the time issues in her statement at pages 58 to 74 of the preliminary hearing bundle. The Respondent's response is at pages 90 and 91.

27. An early conciliation certificate was issued on 25 March 2019. The Claimant presented her complaints to the Tribunal on 24 April 2019, namely on the last day of the one-month period to present a complaint following early conciliation. The Claimant had notified her complaints to Acas on 4 March 2019, meaning that any acts or omissions prior to 5 December 2018 are potentially out of time (unless they form part of a continuing act of discrimination extending beyond that date).

28. The complaints of sex discrimination / sex harassment relating to Mark Benson's alleged conduct and treatment of her extend over a period of approximately 18 months from October 2016 to March 2018. On their own and assuming they can be regarded as a continuing act extending over a period of time, such that the time for pursuing any complaint in relation to them runs from the date of the last act complained of, any complaint in

relation to them would seem to be 8 months out of time. However, the Claimant also complains that she has been victimised for having raised a grievance about Mr Benson's conduct and asserts that his conduct and the subsequent detriments to which she alleges she was subjected *"are transparently inextricable links of an unbroken causal chain and in logic a 'seamless and continuous sequence' of events …"*.

29. Amongst other decisions, the Claimant relies upon the Court of Appeal's Judgment in Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530, subsequently approved by the Court of Appeal in Lyfar v Brighton and Sussex University Hospitals Trust 2006 EWCA Civ 1548, CA, that Tribunals should not take too literal approach to the question of what amounts to 'continuing acts' when considering time issues under section 123(3)(a) of the Equality Act 2010. Hendricks was cited with approval by the Court of Appeal in Aziz v FDA 2010 EWCA Civ 304, CA where the Court noted that in considering whether separate incidents form part of an act extending over a period, one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents. Aziz dealt with the procedural issue of how Tribunals should approach time-bar issues at preliminary hearings and approved the approach in Lyfar that the test was whether the Claimant had established a prima facie case, or a reasonably arguable basis for the contention that the various complaints are so linked as to be a continuing act or to constitute an ongoing state of affairs.

30. There is no suggestion in section 123(3)(a) or that I can see in any of the authorities that acts of direct discrimination may not form part of a continuing act together with acts of victimisation or indeed other forms of discrimination. The detriments alleged by the Claimant following her sex discrimination grievance commenced during the grievance process and she alleges culminated in her dismissal. Two of the alleged detriments concern actions seemingly taken in response to the grievance, namely initially moving the Claimant to another department and subsequently to another branch, and a further two or three of the alleged detriments are attributed to Mr Peter Bradley whom I understand to have decided the grievance against Mr Benson. In the circumstances I consider that the Claimant has put forward a reasonably arguable basis for her contention that the various complaints are so linked as to be a continuing act. The Tribunal may, of course, conclude otherwise at the final hearing, but in my Judgment, it means that the complaints of direct sex discrimination and harassment related to sex, the particulars of which are set out at pages 28 to 30 of the preliminary hearing bundle, should be permitted to go forward. If the Tribunal subsequently decides that they are not, or not all, part of a continuing act then certain of the complaints may be out of time.

31. The Claimant's complaint of race discrimination concerns a one-off act alleged to have occurred in March 2017. It has therefore been brought approximately 21 months out of time. The complaints of disability discrimination referred to in paragraph 29 of the Claimant's 'time issues' statement extend over a period of nearly five months from 22 February 2017 to 8 July 2017. Assuming they can be regarded as a continuing act extending over a period of time, such that the time for pursuing any

complaint in relation to them runs from the date of the last act complained of, the complaint was brought nearly 18 months out of time.

32. Where a claim would otherwise be out of time the Tribunals have a wide discretion to allow an extension of time under section 123 of the Equality Act 2010. There is no presumption that they should do so and it is for a Claimant to demonstrate that the discretion should be exercised in their favour. I have due regard to the list of factors in section 33 of the Limitation Act 1980, namely:

    a. the length of, and the reasons for, the delay on the part of the Claimant;

    b. the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the parties is or is likely to be less cogent than if the action had been brought within time;

    c. the conduct of the Respondent after the cause of action arose;

    d. the duration of any disability of the Claimant arising after the date of the accrual of the cause of action;

    e. the extent to which the Claimant acted promptly and reasonably once she knew whether or not the acts or omissions of the Respondent might be capable at that time of giving rise to a Tribunal claim; and

    f. the steps, if any, taken by the Claimant to obtain legal or other professional advice and the nature of any such advice she may have received.

33. I refer to my findings and conclusions above on the disability issue. In her 'time issues' statement the Claimant states that she is "very depressed", though there is nothing in her medical notes to support that she has been diagnosed with or treated for depression. Nevertheless, I have found that she is in pain daily and that this can be debilitating. I note and accept her evidence that her prescription medication makes her tired and drowsy and impacts her concentration and motivation. However, those adverse effects did not prevent her from pursuing a detailed workplace grievance, including a grievance appeal, nor did it preclude her from preparing a second potential grievance, albeit she decided against submitting it. She also participated fully in the redundancy consultation process and pursued an appeal against her dismissal. Furthermore, in my judgment it does not explain the lengthy delay in pursuing claims in respect of these matters, particularly following the outcome of the grievance appeal on 25 April 2018. I conclude that her health issues were not a material factor in the delay.

34. In the course of giving evidence, the Claimant disclosed that she has been in regular contact with the Citizen's Advice Bureau who have supported her through the grievance, grievance appeal and redundancy process and have also assisted her in this litigation. She said she has had in the region of twenty meetings or interactions with the Citizen's Advice Bureau and confirmed that she had sought their advice following both the outcome of her grievance and grievance appeal.

35. The grievance procedure was an opportunity for the Claimant to raise any matters of concern. She accepted at Tribunal that at the conclusion of the appeal she understood that she had exhausted the Respondent's internal procedures available to her. I am satisfied from her numerous interactions with the Citizen's Advice Bureau that she understood that her recourse was to the Employment Tribunals and that there were time limits for bringing any claims. I understand her reasons for not doing so; she wished to avoid the inevitable stress of litigation with her employer, which she also feared might render the working relationship untenable. She found herself in the unenviable position that many workers do and, I find, made a conscious decision not to pursue a claim in the knowledge that her complaints might become time-barred.

36. This case is listed for a final hearing in April next year. If the race and disability discrimination complaints are permitted to go forward the Tribunal will be considering matters alleged to have taken place in 2017. To give just one example, Mr Benson would have to address an allegation that he called the Claimant a "stupid foreigner" on 3 March 2017. He and Mr Bradley have left the Respondent's employment, adding to the Respondent's difficulties in defending themselves against the allegations, regardless of whether or not they are able to contact them. Messrs. Benson and Bradley are not named as individual respondents and may have little incentive in co-operating with the Respondent.

37. I am not persuaded that it would be just and equitable to permit the Claimant to her pursue the race and disability complaints referred to out of time. Whether or not she raised these as part of her grievance, I find that she made a conscious decision at the conclusion of the grievance appeal, with the benefit of extensive input and advice from the Citizen's Advice Bureau, not to pursue matters further and it seems that she only changed her mind some eight or so months later after she was made redundant. In the circumstances I shall order the complaints to be struck out on the basis that the Tribunal has no jurisdiction to hear them.

The Application to Amend Form ET1 / Grounds of Claim

38. The final question is whether the Claimant should be permitted to amend her claim form to include complaints of Equal Pay, breach of section 20 of the Equality Act 2010 and victimisation.

39. The three broad factors I must consider in answering that question are: the nature of the amendment; whether or not the complaint is brought in time; and the timing and the manner of the application to amend. The merits of

a claim are not a central consideration when deciding whether to grant an amendment. Before I go on to consider the Presidential Guidance on Case Management (which reflects the Employment Appeal Tribunal's decision in Selkent Bus Company Limited v Moore [1996] ICR 836), I first consider how the Claimant's complaints were put by her when she presented her claim form on 24 April 2019 and at the case management preliminary hearing on 11 February 2020. In ATE v Office of National Statistics [2005] IRLR 201, the Court of Appeal was of the view that a general description of the complaint in form ET1 will not suffice and that an employer is entitled to know the claim it has to meet. In considering whether form ET1 contains a particular complaint, reference must be made to the claim form as a whole. The question of whether form ET1 contains or does not contain a particular claim is a question of fact.

40. I am satisfied that form ET1 includes, and was understood by Employment Judge Bloch QC, to include a complaint that the Claimant was victimised, namely that she was subjected to the detriments referred to at paragraphs 52 to 58 of her 'time issues' statement dated 6 April 2020 and dismissed. As such, the Claimant does not strictly require leave to amend form ET1 / her Grounds of Claim, rather it is a matter of clarifying (or, at the highest, re-labelling) the issues in the case. However, so that there should be no residual doubt on the matter I shall give the Claimant leave to amend her Claim to include the complaint of victimisation aforesaid.

41. I cannot discern in form ET1 any complaint that the Respondent failed to comply with its duty to make adjustments. I agree Mr Wright's submission that the disability discrimination complaint most obviously indicated in form ET1 and at the hearing on 11 February was one of discrimination arising from disability pursuant to section 15 of the 2010 Act. The specific matters complained of and recorded at paragraphs 12 to 14 of Employment Judge Bloch QC's case management summary are out of time and I have decided that it would not be just and equitable to allow them to be pursued out of time. As regards the introduction of a complaint that the Respondent failed in its duty to make reasonable adjustments, I do not regard this as a mere re-labelling exercise, but instead a substantive amendment to the existing complaints. The Equal Pay complaint is very slightly less clear cut since the Claimant refers in form ET1 to having been treated unfairly in relation to her pay. However, as I have said already, there was a thorough exploration of the Claimant's complaints on 11 February 2020 when it was not identified that she was pursuing an Equal Pay complaint. Whilst it was anticipated at the hearing that the Claimant would provide further information in relation to her identified complaints, it was not in my view anticipated that she would raise new grounds of complaint. That does not, of course, preclude me from allowing her to do so.

42. The proposed amendments here involve a substantial alteration to the existing claim by the introduction of two new causes of action, and in the case of an Equal Pay claim would involve different case management and possibly additional hearings. The pay issues are said by the Claimant to have been ongoing throughout her employment, but that she became aware of them in or around 2017. On the basis that she presented her

Claim to the Tribunal on 24 April 2019 and that her Particulars/List of Issues/Written Submission document of 6 April 2020 is to be treated as her application to amend her Claim, any Equal Pay claim is nearly one year out of time. The complaint that the Respondent failed in its duty to make reasonable adjustments is set out at pages 34 to 35 of the preliminary hearing bundle. The alleged failure to make adjustments relates to medical appointments in 2017; a sickness absence in May 2018; the redundancy consultation process in late 2018; risk assessments; the lack of a dedicated parking space; and redeployment on redundancy. However, the legal basis of her complaints is not always clear. The disadvantages which the Claimant claims she experienced are expressed in fairly general terms and it is not entirely clear how the claimed for adjustments would, in each case, avoid the disadvantages. I am also unclear as to what alternative part-time employment the Claimant says she should have been offered and why this goes beyond the fairness or otherwise of her dismissal and is a matter within the ambit of section 20 of the Equality Act 2010. Be that as it may, as with any Equal Pay complaint the Claimant wishes to pursue, her various section 20 complaints are at least one year out of time and in the case of the claimed adjustments in respect of the 2017 medical appointments and May 2018 sickness absence, between two and three years out of time.

43. I weigh in the balance that the Tribunals have a discretion to extend time for bringing Equal Pay and discrimination complaints where it is just and equitable to do so. However, I refer to my findings and conclusions above in relation to the existing complaints that are out of time and which equally apply to these new complaints. The Claimant does not indicate when she was first advised that she might have grounds to pursue these further complaints - it would be inappropriate for me to speculate in this regard. I simply observe that the Claimant has had significant support and input from the Citizen's Advice Bureau since early 2018 and ample opportunity therefore to identify, formulate and pursue any claims.

44. As to the timing and manner of the application to amend, it is obviously pursued nearly a year after the Claim was presented and after there has already been a case management preliminary hearing to identify the complaints and issues in the case.

45. I have regard to the fact that essential rights are conferred on workers under the Equality Act 2010, and further that there is a weighty public interest that such rights should be given effect to. Nevertheless, the Equality Act 2010 itself provides that any claims in respect of such rights should ordinarily be pursued within prescribed time limits. I acknowledge the injustice and hardship to the Claimant of not allowing the amendments, but in this case, I consider that these are outweighed by the injustice and hardship to the Respondent of having to defend complaints which are significantly out of time and which, even now, are insufficiently particularised notwithstanding 78 pages of written submissions from the Claimant. As regards her pay concerns the Claimant will still be able to pursue her claim under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations, that claim having been brought in time. Otherwise, having regard to the overall justice and equity of the matter, I have decided that the Claimant should not be permitted to amend

her form ET1 and Grounds of Claim to include a claim of Equal Pay or that the Respondent failed to comply with its duty to make adjustments under section 20 of the Equality Act 2010.

_____

Employment Judge Tynan

Date: 15 July 2020

ORDER SENT TO THE PARTIES ON

.....30 September 20.....

FOR THE TRIBUNAL OFFICE