



EMPLOYMENT TRIBUNALS

BETWEEN: Mr N Rook
Claimant

and

The Chief Constable of West
Yorkshire Police
Respondent

JUDGMENT

All claims other than the claim of failure to provide an auxiliary aid in the form of an appropriate laptop computer are dismissed as having presented out of time and not within another just and equitable period.

REASONS

1. The Claimant is a Chief Inspector with West Yorkshire Police. He presented his claim alleging various breaches of the Equality Act 2010 (EqA) on 10 February 2020. He had begun the early conciliation process on 10 December 2019 and an early conciliation certificate was issued on 10 January 2020. Over the course of two Preliminary Hearings, the Claimant has confirmed that his claims are of failure to meet the duty to make reasonable adjustments, direct disability discrimination and harassment related to disability.
2. At the first Preliminary Hearing on 24 April 2020, which was for case management only, the Tribunal ordered the Claimant to provide further information about his claim and identified that there was a preliminary issue as to whether the claim had been presented within the statutory time limit. The Tribunal ordered the parties to agree a chronology of relevant dates to assist the Tribunal in deciding the time limit point.
3. Under Section 123 EqA, a claim may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates or such other period as the Tribunal thinks just and equitable. For the purposes of the time limit, conduct extending over a period is to be treated as done at the end of the period. In relation to an allegation of failure to meet the duty to make reasonable adjustments, the time limit for the claim is determined by Section 123(3)(b). That provides that an employer's failure to do something is to be treated as occurring when the employer

decided on it. In the absence of evidence to the contrary, an employer is to be taken to decide on failure to do something when it does an act inconsistent with doing it, or, if the employer does no inconsistent act, on the expiry of the period in which the employer might reasonably have been expected to do it. In Abertawe Bro Morgannwg University v Morgan [2018] EWCA Civ 640, the Court of Appeal has confirmed that the period in which an employer “might reasonably have been expected to comply with its duty ought in principle to be assessed from the claimant’s point of view, having regard to the facts known or which ought reasonably to have been known by the claimant at the relevant time.”

4. Section 140B EqA extends the time for presenting a claim to allow for the early conciliation process.
5. A second Preliminary Hearing was listed in public on 3 August 2020 to decide the issue of time limits. At that Hearing, it became clear that the agreed chronology did not provide all the details that were needed by Section 123(3)(b). It gave only the dates on which “action/inaction first identified”. This was not sufficient to identify when the Claimant alleged time started to run for the purposes of Section 123. The Tribunal therefore made a detailed order that the Claimant provide the further information that was needed to clarify his position on this.
6. The parties agreed that, on receipt of that information, the Tribunal would reach a decision on the papers, taking into account that information, the claim form and response form, the further information provided by the Claimant under the Order made on 24 April, the Claimant’s clarification of that information at the Preliminary Hearing on 3 August, the parties’ written submissions and the evidence the Claimant and Respondent had given at the Preliminary Hearing on matters relevant to time limits.

Alleged dates of discrimination

7. From all the information before it and applying the provisions of Section 123, the Tribunal has identified the latest possible date on which the Claimant is alleging that time started to run in relation to each act of alleged discrimination. In those instances where the Claimant has given only a year or a month, the Tribunal has assumed the date was the last date of the year or month.
8. Where there is a difference between the two, the date that the Tribunal has identified for an allegation is based on the information the Claimant has provided about it in his claim or in response to the Tribunal’s Orders, not on the date given in the submissions made on his behalf at the Preliminary Hearing. The Tribunal therefore expressly rejects the argument in the Claimant’s submissions that time for presenting the claims of failure to meet the duty to make adjustments did not start to run at all whilst the Respondent was considering the issues raised by the Claimant and was taking no more than insignificant action. It also rejects the alternative contention that time did not start to run in relation to any of the adjustments until the Claimant

realised on or around 13 September 2019 that “dealing with [the Respondent’s] provision had become futile”.

9. The information that the Claimant provided pursuant to the Order made on 3 August included information about paragraphs 34 and 35 of his particulars of claim, which alleged failures to change his work and work environment to alleviate or reduce the consequences of his post-traumatic stress disorder (PTSD). At the first Preliminary Hearing for case management, the Claimant had been ordered to identify what specific provisions, criteria or practices he was alleging put him at a substantial disadvantage but the information he gave failed to do so. The Tribunal discussed this with his representative at the Preliminary Hearing on 3 August and he confirmed that these paragraphs of the particulars in fact contained no additional, discrete allegations of failure to meet the duty to make reasonable adjustments. It was also confirmed at the Preliminary Hearing on 3 August that the Claimant made no allegation of indirect discrimination. The Tribunal has therefore disregarded these matters in the following findings, even though they were included in the Claimant’s submissions.

Direct discrimination and harassment

10. Based on the detailed information that the Claimant provided, the dates on which he alleges that each act of direct discrimination and harassment occurred are now as follows.
11. Loss of support for application to the substantive role of Chief Firearms Instructor: 31 December 2011
12. Refusing to allow the Claimant to apply for the role of Inspectorate as he did not have public order training: 31 December 2014
13. Not putting the Claimant through to the interview stage for Chief Inspector position: 31 December 2015
14. Not choosing the Claimant to “act up” for Chief Inspector of the Contact Department role: 30 November 2017
15. Not enabling the Claimant to attend the Senior Leadership days based at Normanton Police Station: 5 March 2018
16. Comments by Chief Superintendent West that Claimant should not have been allowed to go on the tactical firearms course: 13 February 2019
17. Professional development review (PDR) that included Neighbourhood Watch objectives: 3 June 2019 (In his submissions, the Claimant argued that this is conduct extending over a period that continued up to the date of the claim, but that is contrary to the information the Claimant provided. The Tribunal is satisfied that this is an

allegation of an act in June 2019, albeit one that may have had continuing consequences for the Claimant.)

18. Comments by Superintendent McManus that the Claimant should retire and put his health first: 30 June 2019

Failure to meet the duty to make adjustments

19. The latest date on which the Claimant says time started to run in relation to the Respondent's failure to comply with the duty to make adjustments depends upon whether the Claimant alleges that the Respondent decided not to comply on a particular date ("decision") or, if he is not alleging a decision was made not to comply and in the absence of evidence to the contrary, the date on which he alleges the Respondent did an act inconsistent with complying ("inconsistent act") or, if he is not alleging that the Respondent did an inconsistent act, the date on which he says the Respondent could reasonably have been expected to comply ("reasonable expectation").
20. The Tribunal has adopted the interpretation of the information the Claimant has given that is most favourable to him, that is, the latest date for time to start to run that is consistent with the information he has provided. The following list gives the subject matter of the duty, the date from which time is said to run and how the Tribunal has identified that date.
- 20.1 Specialist monitor: 14 January 2019 ("reasonable expectation")
 - 20.2 Metal arm for monitor: 1 June 2016 ("reasonable expectation")
 - 20.3 Magic Large keyboard with yellow keys: 31 July 2016 ("reasonable expectation")
 - 20.4 Appropriate laptop: 30 September 2019 ("reasonable expectation")
 - 20.5 Dictaphone: 31 August 2019 ("inconsistent act").
 - 20.6 Adaptations to Galaxy Tablet and Surface Pro: 31 July 2016 ("reasonable expectation")
 - 20.7 TV Eye camera system and microphone: 31 July 2016 ("reasonable expectation")
 - 20.8 Jaws screen reader, Dragon dictation software, Magic Screen magnifier: 31 July 2016 ("reasonable expectation")
 - 20.9 Ground floor location close to disabled lift and facilities: 16 April 2018 ("inconsistent act" – identified from paragraph 24 of particulars of claim)
 - 20.10 Lighting degree and intensity controls: 8 February 2017 ("decision")
 - 20.11 Positioning away from window: 30 June 2018 ("decision")
 - 20.12 Access key to prevent others using office: 31 May 2017 ("reasonable expectation")
 - 20.13 Space for assistive equipment: 8 February 2017 ("decision")
 - 20.14 RNIB compliant room: 1 March 2017 ("decision")

- 20.15 Various practices relating to attending off-site internal meetings: 31 May 2017 (“reasonable expectation”) or, in relation to Senior Leadership Team meetings, 31 May 2018 (“reasonable expectation”)
 - 20.16 Practice relating to parking bay: 31 May 2017 (“reasonable expectation”)
 - 20.17 Provision of support worker: 30 June 2019 (“inconsistent act”)
 - 20.18 Provision of secretarial support: 30 April 2019 (“decision”)
 - 20.19 Adjustments relating to firearms course assessment:
 - a. Correct paper: 14 January 2019 (“decision”)
 - b. Appropriate folders: 14 January 2019 (“inconsistent act”)
 - c. Appropriate environment for laptops/aids: 14 January 2019 (“inconsistent act”)
 - d. Requirement to pass exam without retakes: 31 January 2019 (“decision” said to have been taken “soon after the conclusion of the course”, which the Tribunal has assumed took place on 14 January 2019)
 - e. Requirement that Claimant not access course materials during exam: 31 January 2019 (“decision” said to have been made “soon after the conclusion of the course”, which the Tribunal has assumed took place on 14 January 2019)
 - f. Requirement that Claimant could not defer the exam: 14 February 2019 (“decision” said to have been made “soon on or after 31 January 2019”)
 - g. Policy of not allowing for any of the Claimant’s infirmities: 31 January 2019 (“decision” said to have been made “soon on or after 14 January 2019”)
21. In summary, the Claimant says that time started to run in relation to the various acts of discrimination he alleges over an extensive period beginning in December 2011 and running up to 30 September 2019. Taking into account the extension for early conciliation provided by Section 140B EqA, the earliest date on which an unlawful act could have occurred and been presented in time in the Claimant’s claim was 11 September 2019. Only the alleged failure to make reasonable adjustments by providing an appropriate laptop computer is alleged to have been presented in time. (Whether it has in fact been presented in time will need to be decided on the basis of the evidence at a Hearing.)
22. The Tribunal has considered whether all or any of the allegations should be viewed as part of “conduct extending over a period” ending with the failure to make adjustments by providing an appropriate laptop computer, with the consequence that those other allegations should also be viewed as having been presented in time. The Tribunal has concluded that the other allegations cannot properly be viewed in that way. The alleged acts of direct discrimination and harassment are each of a different nature and involve different alleged discriminators. The alleged failures to meet the duty to make adjustments involve the alleged actions or inactions of a number of different people and relate to a diverse range of aspects of the Claimant’s working environment.

Some other just and equitable period

23. The Tribunal has then considered whether the claim has been presented within a further just and equitable period. The Tribunal reminds itself that there is no presumption that it should exercise its discretion to allow a late claim. It is for the Claimant to establish that it has been presented in another just and equitable period (Robertson v Bexley Community Centre trading as Leisure Link (2003) IRLR 434).
24. The Tribunal has considered the length of and reasons for the delay.
25. The length of delay in bringing the allegations ranges from around 8 years, in the case of the earliest act of alleged direct discrimination, to around 10 weeks in relation to the alleged failure to provide a Dictaphone. A large majority of the allegations have been presented several months at least out of time.
26. In his evidence about the reasons for his delay in presenting his claim, the Claimant explained his disabilities and the effect they had upon him and his work and summarised the various difficulties he had with securing adjustments. In summary, he confirmed that his depression and anxiety developed after an incident at work in December 2010 and he was identified as having PTSD in 2017. He developed keratitis, affecting his vision, in October 2013. In May 2014 he requested a laptop to assist him with his impairment and around January 2016 he contacted Sergeant Aldred of the Agile Working Project for help in resolving his information technology issues. An Access to Work (ATW) assessment was carried out in April 2016, which recommended the provision of various pieces of equipment, including some to which this claim relates.
27. From May 2016 to January 2017 he was off work on sick leave. During this time he contacted the Police Federation for advice and arranged some counselling through them. ATW carried out another assessment in February 2017. They noted the items still to be actioned from their previous recommendations and added some additional recommendations. Following this, some further aids were provided by the Respondent. In March 2017 a representative of the RNIB came to offer the Claimant support and training to help him with his visual impairment. He provided a report that noted that some of the equipment and software recommended by ATW still had not been provided. The Claimant raised shortcomings with the equipment provided on numerous occasions in the period from April to September 2017.
28. In 2018 the Claimant was diagnosed with fibromyalgia. The Claimant's office was moved in April 2018 and he made repeated complaints about the unsuitability of his new office in the period to June 2018. A third ATW assessment in November 2018 recommended the provision of various pieces of IT and other equipment and a support worker. Some of the equipment was provided but some was not, or was provided but did not function or was unsuitable. The Claimant raised issues about this with the IT department. In February 2019, he raised that his laptop had been broken for months and he needed authorisation for the repair to be paid for. He had to chase this on 3 March 2019. He was still trying to resolve IT issues in June 2019.

In the same month he was told that he would have to employ his own support worker. A Dictaphone with which he had been supplied was taken away to be formatted in July 2019 but did not work after it was returned to him a fortnight later.

29. On 13 September 2019 the Claimant attended a hospital appointment at which the doctor told him he was “not a well man”. This was the point at which the Claimant realised he was getting more poorly as a result of the lack of support and failure to make reasonable adjustments. He also realised it was going to cause him pain and illness to achieve the amendment of the PDR he considered to have been discriminatory. Every time he had thought the adjustments were unachievable he had had a glimmer of hope that things were moving again. On each request he had made he had felt he was being unreasonable asking or chasing but had not complained because he did not want to feel like “the problem child”. He realised that he had tried his best to fight for the adjustments he needed and had failed.
30. After the hospital appointment, on 16 September 2019, the Claimant went off sick from work. He attended Socrates counselling services in December 2019 to February 2020. In January 2020 he began the early conciliation process by contacting ACAS and on 10 February 2020 he presented his claim. A psychiatric report submitted in evidence by the Respondent confirms that in February 2020 the Claimant was formally diagnosed with PTSD and depression.
31. The Claimant’s disabilities, although extensive, did not prevent him from working for most of the period during which the alleged unlawful acts occurred in a senior role. There was no evidence before the Tribunal that the Claimant’s disabilities prevented him from presenting a claim in time. He was clearly mentally unwell from 16 September 2019, as he was unfit to attend work from that date. From the psychiatric report that the Tribunal saw, it accepts that he had depression at this time. The Claimant gave no evidence, however, on whether and how his mental ill-health affected him obtaining of legal advice and presenting his claim. It did not prevent him or someone on his behalf contacting ACAS under the early conciliation procedure on 10 December 2019.
32. The Tribunal accepts that some delay in the Claimant presenting his allegations relating to the failure to provide the various technical aids he said he needed is understandable and reasonable, given that some progress was being made in providing these, albeit that in the Claimant’s view a complete and sustained overall solution was never achieved. The Claimant himself confirmed, however, that by 16 September 2019 he understood that he had lost the battle to resolve these issues. He provided no evidence on whether and when he then sought assistance with bringing a claim to the Tribunal. (According to the Claimant’s submissions, he sought assistance from the Police Federation after his hospital appointment on 13 September 2019, but this was not mentioned in his witness statement.) By the time he presented his claim, he was represented by a firm of solicitors but the Tribunal was not informed when he first sought and obtained their advice.

33. Given the extended period over which the Claimant believed the Respondent had been failing to meet its legal duties towards him in relation to technical aids, the Tribunal would have expected him to consult the Federation and obtain advice on bringing a claim without delay, once, as he put it, he realised his fight for technical adjustments was lost. In fact, he did not approach ACAS under the early conciliation procedure until almost 3 months after he reached that realisation and his claim was not presented until almost 5 months after that realisation. In the absence of evidence, the Tribunal is unable to conclude that there were good reasons for this delay.
34. Some of the other alleged failures to make reasonable adjustments, such as those relating to the firearms course in January 2019 and failure to give the Claimant a suitable office, and all the allegations of direct discrimination and harassment relate to specific decisions or events that happened many months or even years before the claim was presented. The Claimant has provided no good reason for his substantial delay in raising these allegations.
35. The Tribunal has considered the extent to which the cogency of the evidence is likely to be affected by the delay. In this context, it has taken into account evidence given at the Preliminary Hearing by the Respondent's solicitor. She confirmed that nine individuals who were directly involved with dealing with adjustments the Claimant was seeking in relation to his IT equipment and other aids, parking and transport needs and workspace have left the Respondent's employment. Seven of these individuals were made redundant, one resigned and one resigned following a disciplinary issue. The Tribunal accepts that it is highly likely that some or all of these individuals would not be prepared to assist the Respondent in providing information or evidence to enable it to defend the claim and that, even if they were, their recollection of events many months or even years ago would be unreliable. Even those alleged discriminators who are still employed by the Respondent are likely to struggle to remember what was said and done at a time likely to fall anywhere between two and ten years before the Hearing of the claims.
36. In his submissions, the Claimant points out that he has been able to produce a paper trail of evidence in relation to the various adjustments he sought. In her evidence, however, the Respondent's solicitor has confirmed that emails from anyone involved in making adjustments for the Claimant that were sent in 2011 and 2012 might not be available due to the deletion of accounts when the Respondent changed its email system. Further, the email accounts of the nine individuals who have left the Respondent's employment will have been deleted two months after they left, including any emails in those accounts relating to adjustments for the Claimant. The Tribunal accepts that the Respondent's ability to defend the claims would be significantly prejudiced, if they were allowed to proceed, by its inability to access all the relevant documentation to give a full picture of how it handled these matters.
37. Taking all these matters into account, the Tribunal concludes that the claims relating to all matters other than the failure to provide an appropriate laptop computer have been presented out of time and have not been presented within another just and equitable period and must be dismissed.

Next steps

38. A further Preliminary Hearing is now necessary to make case management orders to progress the claim.
39. As noted above, the Tribunal has reached its present decision on the basis of the Claimant's alleged dates on which time started to run for presenting his claims. In the further information he provided after the Preliminary Hearing on 3 August, the Claimant stated that the Respondent might reasonably have been expected to provide him with an appropriate laptop computer by 30 September 2019 and on that basis the Tribunal took that as the date on which he is alleging that time started to run for his claim of failure to meet the duty to provide that auxiliary aid.
40. In the information the Claimant originally gave pursuant to the Tribunal's Order of 24 April 2020, however, he said that action/inaction in relation to an appropriate laptop was first identified in April 2017. In his witness statement for the purposes of the Preliminary Hearing on 3 August, he gave details of how the Respondent had failed to provide him with an appropriate laptop from May 2014 onwards. At the forthcoming Preliminary Hearing, the Tribunal proposes to clarify with the Claimant why he alleges that time did not start to run until 30 September 2019 in relation to the failure to provide this auxiliary aid. It may decide to make a Deposit Order under Rule 39 of its Rules of Procedure if it concludes that the Claimant has little reasonable prospect of establishing that time did not start to run until that date.
41. The Tribunal must make reasonable enquiries into the paying party's ability to pay a deposit and take that into account when deciding the amount of the deposit. The Tribunal has therefore directed that the Claimant provide a statement of means in advance of the next Preliminary Hearing.

Employment Judge Cox
Date: 12 October 2020
Judgment and reasons sent to the
parties on
Date: 14 October 2020