EMPLOYMENT TRIBUNALS

Claimant: **Dr S A Joseph**

Respondent: **Cumbria, Northumberland, Tyne and Wear NHS Foundation Trust**

PUBLIC PRELIMINARY HEARING

Heard on: **26 August 2020**

Before: Employment Judge Sweeney

Appearances

For the Claimant, Paul McGowan, solicitor
For the Respondent, Dr Edward Morgan, counsel

JUDGMENT having been given to the parties on 26 August 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided.

REASONS

Background and case management

1. For the purposes of these proceedings, the Claimant contacted ACAS on **22 February 2020**. An EC Certificate was issued on **05 March 2020**. He presented a Claim Form (ET1) to the Employment Tribunal on **19 March 2020**. In the Claim Form he made the following complaints:

    1.1. A complaint under section 111 Employment Rights Act 1996 ('ERA') of unfair constructive dismissal - both generally, under section 98(4) and automatically under section 103A of the ERA;

    1.2. A complaint under section 48 ERA that the Respondent subjected him to detriments on the ground that he had made a protected disclosure in contravention of section 47B;

2. In response to orders of the Tribunal, the Claimant wrote on **11 June 2020** providing answers to questions asked of him and attaching a document entitled

'*Clarification In Respect Of Detriment Claims Raised'*. That attached document identified 7 detriments in respect of his claim under section 48 ERA. Of those 7 detriments, it was accepted by him that the complaint in respect of detriment number '3' had been presented out of time. Of the other detriments 1, 2 and 4-7 it was contended that they were 'ongoing' (in the sense that they continued beyond the date of termination of employment of his employment).

3. In his letter of 11 June 2020, the Claimant also accepted that his claim of unfair dismissal had been presented outside of the relevant statutory time period.

4. At a private preliminary hearing on **18 June 2020**, Employment Judge Aspden listed the case for a public preliminary hearing by CVP, the purpose of which was to determine:

   4.1. Which, if any, of the allegations of detrimental treatment set out in the Claimant's document entitled '*clarification of detriment claim made*' are part of the existing complaint under section 48 ERA actually made by the Claimant?

   4.2. If any of those allegations are not part of the existing complaint under section 48 made by the Claimant and the Claimant seeks permission to amend his claim to add any of those allegations as further complaints of detrimental treatment contrary to section 47B, should permission be granted?

   4.3. Was the unfair dismissal complaint presented outside the time limits in sections 111(2)(a) & (b) ERA and, if so, should it be dismissed on the basis that the Tribunal has no jurisdiction to hear it?

   4.4. If the Judge considers it appropriate to decide this issue: were any of the complaints under section 48 ERA presented outside the time limits in section 48 and if so should the claim be dismissed on the basis that the Tribunal has no jurisdiction to hear it?

   4.5. Further, or alternatively should any of the complaints under section 48 ERA be struck out under rule 37 on the basis that it has no reasonable prospects of success (including – but not limited to – because there is no reasonable prospect of the tribunal deciding that the claims are in time)?

   4.6. Alternatively, should an order be made under rule 39 requiring the Claimant to pay a deposit as a condition of continuing to advance any of the allegations of detrimental treatment contrary to section 47B on the basis that the allegation has no reasonable prospects of success?

5. In a subsequent email to the Tribunal dated **12 August 2020**, the Claimant withdrew his complaint of detriments 1, 2 and 4 – 7 and confirmed that he was pursuing a single claim of detriment, namely, detriment number 3 and that he had been subjected to that detriment on **06 June 2019**.

6. This meant that the issues identified in paragraphs 4.1 and 4.2 no longer applied. The reference to detriments (plural) was now to be read as a reference to a single detriment (number 3) which, it was agreed, featured as part of the original Claim Form and was said to have occurred on **06 June 2019**.

7. This Public Preliminary Hearing was conducted remotely using Cloud Video Platform ('CVP'). The Claimant was represented by Mr Paul McGowan, solicitor and the Respondent by Dr Edward Morgan, counsel. A bundle of documents consisting of 53 pages had been sent to the Tribunal along with the Claimant's witness statement on **12 August 2020**. The Claimant gave evidence and was cross-examined.

Findings of Fact

8. The Claimant, Dr Suresh Joseph, is a Consultant Psychiatrist of considerable experience. He has been a consultant since 1998 and has held many senior positions within the medical profession. From December 2008 to February 2014, he was Medical Director of the Respondent's predecessor (Northumberland Tyne and Wear NHS Foundation Trust). In that role, in addition to clinical matters he had what might be referred to as management responsibilities under 'MHPS' ('Maintaining High Professional Standards' In the NHS). From time to time he was required to serve as a (joint) decision maker in cases involving fitness to practice, or in cases involving internal appeals and GMC referrals. He has in the past given evidence in tribunal and has had occasion to provide instructions to legal representatives on various issues.

9. Although he retired from the position of Medical Director in 2014, he continued to practice as a consultant psychiatrist. In that capacity, he continued to be employed by the Respondent on a part-time basis from **01 April 2017** until his resignation on **30 June 2019**. He is a man of considerable reputation and, I have no doubt whatsoever, integrity.

10. In **2011**, Dr Joseph was appointed to sit as a member of the 1st tier tribunal. He started sitting regularly on the 1st tier tribunal after he retired from his position of medical director in **2014**. As a tribunal member he understands among other things judicial processes, the need to observe time limits and the concept of issues relating to tribunal jurisdiction. After he resigned his employment with the Respondent on **30 June 2019** Dr Joseph increased the number of 'sittings' on the tribunal. He accepted that he was reasonably familiar with the basic concepts of legal proceedings and the concept and importance of time limits applying to legal actions.

11. Prior to his resignation, Doctor Joseph had raised concerns regarding practices within the Trust as described in his witness statement. He was concerned that these practices were putting patients at risk. Indeed, he resigned partly or largely because he was unhappy by what he considered to be the Trust's failure to act on his concerns. On **17 April 2019**, Dr Joseph submitted a letter of resignation. His decision to resign was a considered one and was not taken or made lightly by him.

12. On **05 June 2019**, Dr Joseph met with the then Group Medical Director, Dr Richardson. Dr Joseph was prepared to withdraw his resignation and stay with the Respondent if his concerns were addressed and if there was a commitment to change. Dr Joseph says that Dr Richardson agreed to speak to Dr Nadkarni. However, the following day (**06 June 2019**) he says that Dr Richardson telephoned him to say that Dr Nadkarni did not agree to the withdrawal of the resignation as it had already been accepted. This decision of Dr Nadkarni forms the basis of the detriment complaint (number 3 referred to above). For the purposes of this public preliminary hearing I am not required to and do not make any findings in relation to the matter complained of and it would not be right for me to do so.

13. On **22nd September 2019,** Dr Joseph wrote a three-page letter to Mr Ken Jarrold, who was Chairman of the Northumberland Tyne and Wear NHS Foundation Trust [**page 31-33 of the bundle**]. His correspondence was, as he agreed in cross-examination, focused and detailed. That, he said, had been his intention. By setting out a detailed account he hoped that the Trust would take action about what he described as members of staff working beyond their competence.

14. He sent an email on **29 November 2019** reminding Mr Jarrold that he had heard nothing from him or from the Medical Director, Dr Nadkarni [**page 34-35 of the bundle**]. In this email Dr Joseph pointed out that it was now nearly nine months since he initially raised his concerns and approaching three months since he had written to Mr Jarrold. He added:

    "After I left the Trust's employ it was still my hope that an adequate investigation would be carried out. Unfortunately, this has not been the case. I don't particularly wish to escalate this by taking it outside the Trust. I wonder if you have any suggestions as to a way forward?"

15. This email was, said Dr Joseph, a polite inquiry. I agree with that description. It is very much in keeping with Dr Joseph's overall respectful and restrained approach. He was raising issues of real importance, firmly but always politely and professionally in the hope that they would be addressed.

16. As a consultant psychiatrist, Dr Joseph must be and was vigilant with respect to his own mental health, not least, so as to ensure that his health does not adversely impact on his ability to practice, or indeed on his ability to sit as a member of the 1st tier tribunal. If he had any concern that his mental health was impacting on his work he knew to raise it and (had it been the case) would indeed have raised it with appropriate individuals, including the person identified as the 'responsible officer'. At no time (either before or after his resignation) was Dr Joseph's mental health such that it adversely impacted on his fitness or ability to practice or sit on the tribunal or to give him cause to believe that it had.

17. Within the bundle of documents [**page 37-38 of the bundle**] is a letter dated **25 November 2019** from Professor McAllister-Williams, Honorary Consultant Psychiatrist and Professor of Affective Disorders. Professor McAllister-Williams

reviewed Dr Joseph on **12 November 2019** at the Regional Affective Disorders Service in Newcastle. Professor McAllister-Williams said, among other things:

“Dr Joseph reported that he was “okay”. However, he has had a difficult last few months…. he resigned from his post three months ago. This has been an extremely stressful period for him and he, understandably, feels significant upset and anger over what has happened. He described that his sleep was very much affected at the time and that he found that things were ‘getting to him’ more than normal. However, at the present time he describes his mood as okay, that he is functioning well, for example, doing hospital tribunals, he is able to gain pleasure from activity, sleeping well, and his concentration is good. His energy is also not a problem if he is in a “positive frame of mind”.

18. The letter went on to identify the medication which Dr Joseph had been prescribed, gave a brief mental state description, concluding that ‘*cognitively he was grossly intact*’ and referred to ‘*work related stress that has now largely resolved following leaving his post’*. Professor McAllister-Williams recommended for the present that Dr Joseph continue on his current medication, that he was looking at various options open to him for other avenues of work either in the UK or possibly in India.

19. Dr Joseph emailed Professor McAllister-Williams on **04 December 2019** [**page 44 of the bundle]**. In that email, he says:

“This is just to update you; I’d prefer to just carry on without any medication change for the moment but felt it was sensible to keep you in the picture.

I haven’t felt great over the last three weeks since I saw you. I had just come back from India and wasn’t too bad just then. As time has gone on, I’ve been quite tense and unnecessarily anxious. For example, about tasks that would normally be routine. Everything feels like an additional burden. I’ve been working for the Tribunal 2-3 days a week these past three weeks, and while I have managed ok it has felt a strain. I’ve decided to take a few weeks off now and that is quite a relief. Mood has been a bit low, looking at the negative side of things, and tending to ruminate. I’ve tended to wake during the night and sometimes can’t get back to sleep for a while. My concentration is not good; consequently my mental efficiency is low, I take breaks and things take longer to get done.

The issues I raised with the Trust have been on my mind a lot. After the letter from the Chair, which I think I told you about, there was another silence and I had to send another reminder. I have now heard (yesterday) that someone has been commissioned to carry out the independent inquiry. That is a relief, and I’m hoping I can now put this aspect to the back of my mind. I do have a strong and continuing sense of resentment at having to give up a job I enjoyed and did well, because no-one would listen. This is my perspective of course. The inquiry is only looking at the clinical issues; I’ve not raised matters relating to myself.

This is all concerning, but I’d like to wait a bit longer before resorting to any change in medication. I’m hoping the establishment of the inquiry will prove to be a bit of a turning point. But I wanted to keep you in the picture. I will let you

know how things are in another month or so. I don't think I need another appointment just yet."

20. It is clear from the above and indeed from his own evidence that Dr Joseph was under some strain. Unsurprisingly, given his expertise, he had insight into his mental health and well-being, how it was affecting him and how it should be treated. However, it is also clear from his own account that, albeit under some stress and feeling the effects of depression, he was functioning well enough to be able to continue to sit as a member of the first tier tribunal for 2-3 days a week. He was also well enough to travel to India. In cross examination, Dr Joseph said that *while he managed, he felt the strain*. He said this when discussing the reference to everything being 'an additional burden' on **page 44 of the bundle**. I find that to be an accurate description of how he was feeling throughout the whole of the period in question from his resignation up to the date of presentation of his complaint – and indeed, on the balance of probability, to the present day: he felt the burden of making the disclosures, which imposed a strain on him, creating anxiety and tension but not so such an extent that he was unable to function.

21. I had noted in paragraph 41 of Dr Joseph's witness statement that he had referred to not having 'the mental capacity' to look into what he could do about his own position. When asked him what he meant by this, he clarified that the was not using this phrase in a medical sense, but that the concerns he had as to the events that transpired at the Trust were impelling for him and that he felt a sense of injustice. I find that Dr Joseph was able to make inquiries about what he could do about his own position and that he was sufficiently knowledgeable of legal processes to be able to seek appropriate advice about his own position and to take action with or without such advice.

22. Dr Joseph in his email to Professor McAllister-Williams refers to the passage of time; that he had had to send a reminder to the Trust; that the issues which he had raised were clinical issues; that he had not raised matters relating to himself. I conclude from this (and indeed from other aspects of his evidence such as the fact that he has given evidence at a tribunal hearing and that he had senior managerial experience) that he was aware that he could have raised issues relating to his personal position, namely complaints of the sort pursued in this tribunal.

23. That email was sent over 5 months after the date of his resignation and just short of 6 months after detriment number 3. In that time, Dr Joseph had increased the number of 1st tier tribunal proceedings and had, certainly since mid-November been sitting 2-3 days a week.

24. Moving on to 2020, on **13 January** Dr Joseph wrote to the Care Quality Commission ('CQC') regarding: 'whistleblowing concern: Psychiatric Liaison team (PLT) and Crisis Home Treatment team (CRHT), South Tyneside: services provided by CNTW NHS FT'.

25. He received a reply from the CQC on **16 January 2020** registering receipt of his complaint.

26. In about mid-February 2020, Dr Joseph first sought legal advice on his personal position. On **22 February 2020**, he commenced the Early Conciliation procedure by contacting ACAS as a first step in bringing these proceedings.

27. In paragraph 1 of the Details of Complaint, Dr Joseph said: '*The reason for making the claim at this particular time is because of developments and new information that have become available'*. In cross -examination by Dr Morgan he was asked what this new information or development was. Dr Joseph said:

    "The developments were that I felt I could not progress further. I had contacted CQC. They had responded and reassured me that what I was raising not insignificant and secondly the Trust had established an independent investigation. That was confirmation that what I was doing was right all along. The new information was the CQC becoming involved and secondly the Trust's independent investigation which only materialised towards the end of January."

28. When asked by Dr Morgan what his concerns regarding his mental health were around September or October 2019, Dr Joseph said:

    "My concern was that I had gone from being very well to suffering a number of or noticing a number of symptoms and recognised that if they did not improve they could lead on to a more significant mental health issue."

29. When asked when he first started thinking about time limits, Dr Joseph said that this was in February 2020 because up until then:

    "it was not in my mind to make a claim; because of my concern about patient safety, my preoccupation was to get those addressed."

30. Dr Joseph added that he had no intention of bringing proceedings in the employment tribunal until late January/early February 2020 but that he had a sense of injustice before then. He was aware of the existence of time limits in tribunal proceedings albeit he was not aware of the specific limits applicable to the complaints which he has in fact brought.

Relevant Law

31. Section 111(2) Employment Rights Act 1996 (ERA) provides that:

    "Subject to the following provisions, an Employment Tribunal shall not consider a complaint under this section unless it is presented to the tribunal

    (a) before the end of the period of three months beginning with the effective date of termination, or

    (b) *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*."

32. Section 48(3) ERA is couched in similar terms. That section makes provision for claimants to present complaints of detriment (in contravention of various provisions) to the Employment Tribunal.

33. Under both sections, there are two considerations: first, the employee must show that it was not reasonably practicable to present this claim in time; second, if he succeeds in doing that, the employment tribunal must consider the time within which the claim was in fact presented to be reasonable.

34. What is reasonably practicable is a question of fact in every case. The onus of proving that it was not reasonably practicable to present the play in time rests on the claimant: **Porter v Bandridge** [1978] I.C.R. 943.

35. Whilst the issue may be a question of fact for the tribunal to decide, nevertheless the provision should be given a liberal construction in favour of the employee: **Dedman V British building and engineering Appliances Ltd** [1974] I.C.R. 53, CA.

36. In **Wall's Meat Co Ltd v Khan** [1979] I.C.R. 52, CA, Shaw LJ said:

 "the test is empirical and involves no legal concept. Practical common sense is the keynote and legalistic fitments they have no better result than to introduce the lawyers complications into what should be in a layman's pristine province."

37. Occasionally, a complainant may contend that it was not reasonably practicable to present a complaint because he or she was ignorant of the right to make a claim, or that he was ignorant of the existence of time limits or the length of the applicable time limits. In considering such matters, it is clear from the decision in **Porter v Bandridge** held that the correct test is not whether the claimant knew of his rights but whether he ought to have known of them. In **Wall's Meat Co Ltd v Khan**, Lord Denning M.R. said:

 *"I would venture to take the simple test given by the majority in **Dedman's** case [1974] I.C.R. 53, 61. It is simply to ask this question: Had the man just cause or excuse for not presenting his complaint within the prescribed time? Ignorance of his rights — or ignorance of the time limit — is not just cause or excuse, unless it appears that he or his advisers could not reasonably be expected to have been aware of them. If he or his advisers could reasonably have been so expected, it was his or their fault, and he must take the consequences."*

38. It may also sometimes be that a complaint says that he did not present his claim because he was pursuing an internal appeal, or some other form of resolution or inquiry even. *In* **Bodha (Vishnudut) v. Hampshire Area Health Authority** [1982] I.C.R. 200 the EAT held:

 "we do not think that the mere fact of a pending internal appeal, by itself, is sufficient to justify a finding of fact that it was not 'reasonably practicable' to present a complaint to the industrial tribunal."

This was approved by the Court of Appeal in ***Palmer v Southend-on-Sea Borough Council*** [1984] I.C.R. 372

39. It is well recognised that illness may prevent a complainant from presenting a claim in time. Ordinarily a tribunal would expect to see medical evidence supporting the existence of the illness and/or demonstrating that the illness prevented the claimant or impeded the Claimant in presenting the claim in time. The extent of medical evidence necessary will inevitably vary from case to case and will be dependent entirely upon the facts peculiar to the particular case.

40. In the case of **Schultz v Esso Petroleum Co Ltd** [1999] ICR 1202, CA, observed that the tribunal must have regard to all the surrounding circumstances. Those circumstances can include the fact that a complainant had been trying to avoid litigation by pursuing other remedies. Further, although it is necessary to consider what could have been done during the whole of the limitation period, attention will ordinarily focus on the closing stages rather than the earlier period. Although its effects would have to be assessed in relation to the overall period of limitation, the weight to be attached to a period of disabling illness may vary according to whether it occurred in the earlier weeks or the far more critical weeks leading up to the expiry of the limitation period.

41. In the case of ***Palmer v Southend-on-Sea*** May LJ reviewed the extensive case law up to that point, citing with approval principles derived from authorities such as **Dedman** and **Walls Meat** including, in the latter case, the statement by Brandon LJ that an impediment of ignorance of rights or time limits may make it not reasonably practicable to present a claim in time only if the ignorance is itself reasonable. It will not be reasonable if the belief or error arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made, or from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him.

42. May LJ stated that when considering the statutory provision, the overall test is whether it was reasonably feasible to present the complaint to the employment tribunal within the relevant three months.

> *"We think that one can say that to construe the words "reasonably practicable" as the equivalent of "reasonable" is to take a view too favourable to the employee. On the other hand "reasonably practicable" means more than merely what is reasonably capable physically of being done …. Perhaps to read the word "practicable" as the equivalent of "feasible" as Sir John Brightman did in* ***Singh's case*** *[1973] I.C.R. 437 and to ask colloquially and untrammelled by too much legal logic — "was it reasonably feasible to present the complaint to the industrial tribunal within the relevant three months?" — is the best approach to the correct application of the relevant subsection."*

43. The Court of Appeal suggested that albeit a question of fact for the employment tribunal, the tribunal may wish to consider the manner in which and reason for which the employee was dismissed, including the extent to which, if at all, the employer's conciliatory appeals machinery has been used; that it will no doubt

investigate what was 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. The Court of Appeal suggested that it may be relevant for the tribunal to investigate whether at the time when he was dismissed, and if not then when thereafter, the complainant knew that he had the right to complain; and in appropriate cases whether there has been any misrepresentation about any relevant matter by the employer to the employee.

44. The Court further observed that it will frequently be necessary to know whether the complainant was being advised at any material time and, if so, by whom; of the extent of the advisers' knowledge of the facts of the case and of the nature of any advice which they may have given to him. The Court added that it will probably be relevant in most cases for the tribunal to ask itself whether there has been any substantial fault on the part of the complainant or his adviser which has led to the failure to comply with the statutory time limit.

45. If a complainant satisfies a tribunal that it was not reasonably practicable to present the claim within time, the tribunal must go on to decide whether the claim was in fact presented within such further period as it considers reasonable.

Discussion and conclusion

46. It was not in dispute that the complaints of unfair dismissal and section 48 detriment have been presented out of time. The relevant dates are: [alleged detriment **06 June 2019**; dismissal **30 June 2019**; expiry of primary time limit at the latest **29 September 2019**; presentation of ET1, **19 March 2020**] Section 207B provides for an extension of time limits to facilitate the conciliation (EC) before institution proceedings. However, it is accepted that in this case, the EC extension of time provisions have no application. It is agreed that EC conciliation started after the expiry of the statutory time period.

47. As I have found, Dr Joseph's decision was a considered one. In brief, he resigned because he had concerns regarding patient safety. Things which he regarded as essential for safeguarding the interests of patients and which should have been in place were not. It is not for me today to determine whether Dr Joseph was right or wrong about what he said should have been in place. I approach the matter on the basis that the issues he was raising were significant. I do not make any observation on the merits of the complaints, albeit I have absolutely no doubt that they were genuinely held and expressed and I recognise the serious nature of the matters raised by him. Mr McGowan submitted that I should take into account the seriousness of the allegations; that they are not made lightly and that the Claimant can reasonably be expected to have raised them elsewhere before bringing proceedings in the employment tribunal.

48. I agree and I do take those matters into account. The issues raised were of a serious nature and Dr Joseph was raising matters with the Trust and then the CQC. Admirable that may be, however, it did not prevent or make it more

difficult for Dr Joseph to commence ACAS conciliation or to prepare and submit a form ET1. Dr Joseph was not endeavouring to resolve matters with respect to his own personal position as an alternative to litigation in the employment tribunal.

49. I have asked what, if any, obstacle (in the widest possible sense) was placed in Dr Joseph's way that might reasonably have prevented or inhibited him from presenting his complaint in time.

50. Mr McGowan says I must look at the picture as a whole and in context. I agree, and I have done just that. I acknowledge that Dr Joseph found the circumstances stressful overall. I acknowledge that he had, as his first priority patient safety and this was his focus throughout. It was that, not his own position that occupied his mind – and I dare say still does. The fact that he raised matters within the Trust and then the CQC did not prevent or inhibit him from presenting a claim in the employment tribunal in any way.

51. The letter from Professor McAllister-Williams at **page 37-38** of the bundle was the only independent medical evidence advanced and relied on by Dr Joseph in support of his contention that it had not been reasonably practicable for him to present the Claim Form within the statutory time frame – and even then reliance on this letter was given a very light touch by Dr Joseph. He did not in fact go as far as to say that he was prevented through illness from presenting a claim.

52. Nevertheless, I acknowledge that Dr Joseph has suffered from depression from about mid-2013. However, his depression was under control. Not everyone can say that they have good insight into their mental health as Dr Joseph has. He said in evidence that he was in a position to monitor it, alongside other professionals in the field. I have found that he was under a strain but was managing. He was able to function and was not prevented or inhibited through ill-health from commencing EC conciliation or from presenting a form ET1 at any time since his resignation. Undoubtedly, Dr Joseph was finding things more difficult than normal due to the anxiety of the situation but he continued to sit regularly on the 1st tier tribunal, and Dr McAllister-Williams confirmed that, as of 12 November 2019 he was functioning well and his concentration was good (Dr Joseph's own words). That there is no evidence that he was not functioning equally sufficiently well in the period prior to this examination by Dr McAllister-Williams.

53. Dr Joseph does not say he was ignorant of his right to bring proceedings against the Trust and I have concluded that he was aware that he could pursue complaints in the employment tribunal. Nor does he does say he was ignorant of the existence of time limits, only that he was not aware of the specific limits. In any event, I have to consider whether such ignorance (even if it were strenuously advanced, which it is not) was reasonable. Given that Dr Joseph is clearly an extremely capable individual, with managerial as well as clinical experience, and has familiarity with legal processes and the need to observe time limits (whatever they may be) and that he had the wherewithal and resources to seek advice and to act, I conclude that any such ignorance would

not be reasonable ignorance in his case. Knowing that he had the right to complain to an employment tribunal, he was in a position to make a simple inquiry relating to time limits. Indeed, he was conscious of the passage of time as evidenced in his email to Professor McAllistair-Williams yet took no action until March 2020. The reason he took action at that point was that it was only from about February 2020 that he considered bringing a complaint about what he has described as his 'personal situation'. In my judgment, Dr Joseph was could reasonably have taken action about his personal situation (meaning pursuing proceedings in the employment tribunal). The fact is that he had not intended, until much later in time, to do so.

54. The key evidence was that of Dr Joseph himself. He said that he did not 'intend to pursue a claim' until January/February 2020. He did not say, nor was it submitted on his behalf that he only realised he could bring proceedings about his position in January/February 2020. That was not his case at all. He had, in fact, been exercised about his own position for some time: he had a burning sense of injustice and had expressed to Professor McAllister-Williams that he had raised only 'clinical' issues. He was aware that he could have taken action in respect of his own position.

55. Even though Dr Joseph's own evidence was that he had not intended to bring a claim until January/February 2020, I agree with Mr McGowan that the events between June 2019 and January/February 2020 are not immaterial when considering whether Dr Joseph can satisfy me that it was not reasonably practicable to present the claim in time. What those events reveal (as confirmed by his own evidence) is that Dr Joseph's intention, during that period, was to ensure that an investigation into the practices was undertaken. That reflects admirably on Dr Joseph. He is, I have no hesitation in saying, a man of obvious integrity. He did not come to this tribunal to obfuscate, to seek to explain the inexplicable. He is telling it how it was. He does not say that he was ignorant of his right to proceed before the tribunal. He says that he only turned his attention to potential employment tribunal proceedings once the Trust confirmed an investigation would be undertaken and once the CQC had acknowledged his complaint.

56. I have had regard to the cumulative effect of the strain he was under in the period June 2019 to January 2020 and his desire to pursue matters internally within the Trust and then the CQC, but taking these things together Dr Joseph has not satisfied me that it was not reasonably feasible to commence EC conciliation or to complete a form ET1. There was insufficient evidence of any obstacle or barrier to presentation in July, August or September 2019 (or thereafter). I conclude that it was perfectly feasible or practicable for him to contact ACAS and to complete the simple ET1 online within the relevant 3 month period. The reason he did not was that he had not intended to do so. It was only a feeling of vindication that led him to do that in February 2020.

57. In the end, it came down to a choice exercised by Dr Joseph to prioritise his patient safety concerns over his own rights. On the evidence before me, I conclude that it was reasonably feasible for Dr Joseph to have prioritised those

issues and at the same time to have presented a complaint within the statutory time period.

58. My conclusion that Dr Joseph has not satisfied me that it was not reasonably practicable to have presented his complaint within the primary time limit is decisive of the jurisdictional issue. Had I been satisfied that it was not reasonably practicable to have presented it within the primary time limit, I would then have to consider whether the complaint had been presented within a reasonable period thereafter, I conclude that it had not. The primary time limit (in respect of the unfair dismissal claim) expired at the latest on 29 September 2020. Dr Joseph was functioning well in November 2020 and had heard from the Trust by then that there was to be an investigation into the matters raised. Further, by 04 December 2019 he was telling Dr McAllister-Williams that he had not taken action relating to himself. The implication, and my conclusion from this, is that he had contemplated taking action in relation to himself. He was conscious of the passage of time and was put on inquiry of time limits by 04 December 2019 at the very latest and ought to have made inquiries by then.

59. However, it was not until February 2020, just over 3 months later, that he decided to take action in respect of his personal situation by commencing the early conciliation process. That is some two months after his letter to Professor Williams-McAllister and is, in my judgement, an unreasonable period of time, being some 5 ½ months after expiry of the primary time limit.

60. In those circumstances the tribunal does not have jurisdiction to consider either complaint and they are herewith dismissed.

Employment Judge **Sweeney**

Dated 5 October 2020