Case No: 1801143/2020 (A)

EMPLOYMENT TRIBUNALS

Claimant	**-v-**	**Respondent**
Mr S Gregory		Health and Social Care Information Centre t/a NHS Digital

PRELIMINARY HEARING

Heard at: Leeds (by telephone) **On:** 16 December 2020

Before: Employment Judge Evans (sitting alone)

Representation

For the claimant: in person (his partner, Ms Dixon, also in attendance)
For the respondent: Mr J Boyd (Counsel)

JUDGMENT

1. The claimant's complaints of direct age discrimination, direct disability discrimination and discrimination arising from disability were presented after the end of the period provided for by section 123 of the Equality Act 2010. The Employment Tribunal therefore has no jurisdiction to hear them and they are struck out.

2. The claimant's complaints of failures to make reasonable adjustments referred to in paragraphs 40a and 40b of his amended grounds of claims were presented after the end of the period provided for by section 123 of the Equality Act 2010. The Employment Tribunal therefore has no jurisdiction to hear them and they are struck out.

REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was telephone. A face-to-face hearing was not held because all issues could be determined in a remote hearing.

Background

2. The claimant has been employed by the respondent since 1 July 2016 as a Higher Information Analyst. On 17 February 2020 the claimant presented a claim to the Employment Tribunal following a period of early conciliation beginning on 18 December 2019 and ending on 18 January 2020. The claimant's claim included various complaints of age and disability discrimination and also one of victimisation.

3. There were then preliminary hearings for case management purposes before Employment Judge Little on 9 April 2020 and 2 July 2020. The result of the orders made following those hearings was that the claimant was by consent permitted to amend his claim so as to include a complaint under section 47B of the Employment Rights Act 1996 ("the 1996 Act") that he had been subjected to detriments for making a protected disclosure as set out in his amended grounds of claim of 30 April 2020, but he was not given permission to amend his claim by reference to an "Appendix" document also filed with those amended grounds of claim.

4. The respondent then presented amended grounds of resistance and on 5 August 2020 made an application for a preliminary hearing to determine whether the Employment Tribunal had jurisdiction to hear certain of the claims which had been presented outside the applicable time limit.

5. On 13 August 2020 Employment Judge Lancaster ordered that:

> *There will therefore be a 3 hour hearing in public by telephone to determine whether the complaints (apart from victimisation and/or whistleblowing detriment) are out of time.*
>
> *Not later than 7 days before the hearing, the Claimant shall send to the Tribunal and the Respondent a statement setting out why he did not present his claim until 17th February 2020 and setting out the facts he relies upon as making it just and equitable to extend time.*

6. It was these issues that came before me on 16 December 2020. The parties had agreed a bundle running to 100 pages in advance of the preliminary hearing and the claimant had prepared a seven-page document headed "Preliminary Hearing regarding jurisdictional time points" which was, in effect, the statement ordered by Employment Judge Lancaster. During the course of the preliminary hearing the parties agreed that a further document should be added to the bundle. This was notes of a meeting held on 30 September 2019.

7. At the preliminary hearing on 16 December 2020 the claimant affirmed, confirmed the accuracy of his witness statement and was then cross-examined. The respondent did not call any witnesses, the claimant having confirmed that he accepted that the individuals listed in Mr Taylor's email at page 99 of the bundle had indeed left the respondent's employment. All references in this judgment to page numbers are to the pagination of the agreed bundle unless otherwise stated.

8. Each of the parties then made submissions. I reserved my decision because I had insufficient time to consider all the evidence and reach a decision on the day, only 3 hours having been allocated to the preliminary hearing.

The issues

9. At the beginning of the preliminary hearing there was a discussion of the issues. In particular, it was necessary to clarify exactly which parts of the claimant's claim were covered by the respondent's application to have them struck out on the basis that the Tribunal had no jurisdiction to hear them.

10. The date on which the claim was presented to the Employment Tribunal meant, in light of the dates of early conciliation, that the earliest date an act could be in time was 19 September 2019. In light of this the respondent agreed that the reasonable adjustment claim set out in paragraph 40c of the claimant's amended grounds of claim (in respect of an alleged PCP of "Requiring the Claimant to attend a hearing on a non-work day") was not out of time.

11. Accordingly, the complaints in respect of which it was agreed at the beginning of the hearing that I was to consider the issue of time were:

    11.1. Claims of direct disability and age discrimination claim relating to decisions by the respondent not to appoint the claimant to a Band 7 post made in July and November 2017;

    11.2. A claim of discrimination arising from disability relating to those same decisions;

    11.3. A claim of discrimination arising from disability relating to the contention that he was subjected to an "unmodified assessment process and placed on the redundancy list at a time of disability-related absence" in November and December 2018;

    11.4. A claim of a failure to make reasonable adjustments in respect of the alleged PCPs of "Requiring the Claimant to acquire publications experience" (which related to the period July to November 2017) and of "Requiring the Claimant to undertake an assessment interview process" (which related to the period November to December 2018).

12. There were two issues for me to consider in relation to each of these complaints:

    12.1. Did they together with the claimant's other complaints amount to "conduct extending over a period"? If so, they would be treated as done at the end of the period and so would not be out of time.

    12.2. If they were not "conduct extending over a period", had they been presented before the end of such other period as the Employment Tribunal thought to be just and equitable?

The Law

13. Section 123 of the Equality Act 2010 provides where relevant as follows.

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

(a) the period of 3 months starting with the date of the act to which the complaint relates, or
(b) such other period as the employment tribunal thinks just and equitable…

… (3) For the purposes of this section –

(a) conduct extending over a period is to be treated as done at the end of the period;
(b) failure to do something is to be treated as occurring when the person in question decided on it.

14. Turning first to the question of whether there is a "continuing act" (i.e. conduct extending over a period of time), there is a continuing act when the employer is responsible for an "an ongoing situation or a continuing state of affairs" in which the acts of discrimination occurred, as opposed to a series of unconnected or isolated incidents (Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686). The focus of the Tribunal should be on the substance of the complaint not on whether there was a discriminatory policy, rule, practice, scheme or regime – these are just examples given in the authorities of when an act extends over a period of time.

15. The Court of Appeal's decision in Aziz v FDA [2010] EWCA Civ 304 dealt with the procedural point of how the Employment Tribunal should approach the question of whether there is a continuing act at a preliminary hearing. The Court approved The Court approved the approach laid down in Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548 that the test to be applied at the pre-hearing was whether the claimant had established a prima facie case, or, to put it another way, 'the claimant must have a reasonably arguable basis for the contention that the various complaints are so linked as to be continuing acts or to constitute an ongoing state of affairs'.

16. Turning secondly to the "just and equitable" extension, the discretion given to the Tribunal to extend time is a wide discretion to do what it thinks is just and equitable in the circumstances. It entitles the Tribunal to take into account anything which it judges to be relevant. The discretion given to the Tribunal is as wide as that under section 33 of Limitation Act 1980. The Tribunal is therefore required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances. In particular, although this list is not exhaustive, the Tribunal should take into account factors such as:

    a. the length of and reasons for the delay;
    b. the extent to which the cogency of the evidence is likely to be affected by the delay;
    c. the extent to which the party sued had co-operated with any requests for information;
    d. the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and
    e. the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

17. Although the discretion is wide there is no presumption that it should be exercised so as to extend time.

Findings of fact and conclusions

18. I have taken account of all the evidence before me and the written and oral submissions made in making these findings of fact and reaching these conclusions, although I do not set them all out in these reasons.

Continuing act

19. The employees of the respondent principally implicated by the claimant in the claims set out at paragraphs 11.1 to 11.4 above are Netta Hollings, Adam Little and Pritpal Rayat (who comprised the panel which decided not to appoint the claimant in November and December 2017 and which said he should gain publications experience) and Adam Little, Pritpal Rayat and Bethan Thomas (who the claimant says identified him as a candidate for potential redundancy in November/December 2018). In addition, Michelle Ramsden and Sue McClay are implicated in relation to the reasonable adjustment claim relating to the redundancy exercise.

20. Sue McClay is also relevant because the claimant says that he "whistle blew"/did a protected act when he complained to her and to Bethan Thomas in December 2017 about the respondent's alleged failure to comply with its public sector equality duty under the Equality Act 2010. The other protected act referred to at paragraph 50d of the amended grounds of claim (page 50 of the bundle) is an undated complaint to Carl Vincent – but this appears to be a reference to what the claimant said during a grievance appeal meeting on 30 September 2019, a date which post-dates many of the claimed acts of victimisation.

21. The claimant argues that the claims set out at paragraphs 11.1 to 11.4 above should be regarded as conduct extended over a period when taken together with the acts of victimisation which he contends were committed when the respondent subjected him to the alleged detriments set out at paragraphs 50e (1) to (18) of the amended grounds of claim and the reasonable adjustment claim which the claimant says arises as a result of the grievance appeal hearing of 30 September 2019 being held on a day when the claimant would not normally have worked. The only person named in paragraph 50e (1) to (18) is James Hawkins. The statement the claimant produced for the preliminary hearing suggested that Michelle Holland, the Head of HR, is the person complained about in relation to a number of these detriments. Other individuals are also named but their relevance to each of the detriments is not clearly identified.

22. In his oral evidence the claimant accepted with admirable frankness that the involvement of Netta Hollings in the matters he complained of ended in 2017 and that of Adam Little, Pritapal Rayat, Bethan Thomas, Michelle Ramsden and Sue McClay by the end of 2018. That is to say, he did not argue that any of those individuals had been guilty of an act of victimisation or responsible for the failure to make reasonable adjustments in relation to the meeting on 30 September 2019. He was clear about that.

23. When the claimant was asked in cross examination how the allegedly discriminatory actions of those individuals were linked to the subsequent acts of victimisation of which he complained, he said that "Bethan, Adam and Pritpal are senior members of my professional group and Michelle and Sue are HR professionals". He said that they were colleagues of others who were subsequently involved "so I do believe they would have been spoken to about this and would have given their comments". When pressed further he said that Michelle Ramsden and Sue McClay worked directly for Michelle Holland, the Head of HR, who was subsequently involved. When it was put to him that this was "guilt by association", the claimant said that that was not what he was suggesting - rather he was saying that he believed that Michelle Holland would have spoken to Michelle Ramsden and Sue McClay and would have been aware of their prior involvement.

24. In his amended grounds of claim (page 52) the claimant commented as follows in relation to the issue of whether there was conduct extending over a period of time:

> 50.1 The Claimant contends there was discriminatory conduct extending over a period of time, this began with malpractice in the recruitment process and the Claimant being told that this was acceptable, that then led to a protracted grievance process including the failure by the Respondent to re-schedule the Claimant`s cancelled grievance hearing, and not ensuring grievance processes were completed within a reasonable timescale – all were ongoing acts intended to make the situation more difficult for the Claimant so that he would give up. The prolonging of the grievance process then led to the Claimant being exposed to additional acts of discrimination.

25. The claimant added little to this in the statement he prepared for the preliminary hearing, stating:

> 1. As previously outlined in the Claimant's email to the Tribunal of 30th April 2020, and at paragraphs 50.1, 50.2 and 50.3 of the Clarified and Amended Grounds of Claim, the Claimant believes the Tribunal has jurisdiction to hear the whole of his claim.
>
> 2. The detriment suffered by the Claimant through whistleblowing and victimisation are the result of events that began in 2017 and 2018. As such the Claimant contends these events are integral to his claims of whistleblowing and victimisation so should be included and heard as part of his claim at full Tribunal. The Claimant believes it would be just and equitable for the whole of his claim to proceed.

26. In his oral submissions, the claimant again said relatively little about this issue. He said his grievance had been controlled by HR professionals who were all familiar with the policies that should have been applied. He suspected that the matters complained of were not "stand alone events". He did not believe that the "degree of failure" could have been by accident: it must have been as a result of discrimination, either conscious or unconscious.

27. Taking all the pleadings and submissions together, I have concluded that the claimant has failed to put forward a reasonably arguable basis for his contention that the claims listed at paragraphs 11.1 to 11.4 are so linked with

his other claims as to be a continuing act or to constitute an ongoing state of affairs. This is for the following reasons:

27.1. Most significantly, there is the fact that none of the individuals against whom allegations are made in relation to the claims set out at 11.1 to 11.4 above are said to have been involved directly in any act of victimisation or the single claimed failure to make reasonable adjustments in respect of the meeting on 30 September 2019. Further, the indirect link which the claimant put forward really amounts to no more than this: they were colleagues of the individuals whom he claims subsequently victimised him. Even the indirect link is therefore very weak indeed;

27.2. Further and separately, the nature of the discrimination complained of varies very considerably (putting to one side the slight overlap of the reasonable adjustments claims). The claims set out at paragraphs 11.1 to 11.3 are (if expressed in general terms) about the claimant being treated less favourably or unfavourably as a result of matters related to age and disability. The victimisation claim is about (in effect) multiple alleged acts of retaliation as a result of one (or possibly two) claimed protected acts. Mr Boyd for the respondent conceded that as a matter of law acts which were said to be acts of victimisation could be linked with acts of direct discrimination/discrimination arising from disability so as to create an ongoing situation or continuing state of affairs. Nevertheless, the disparate nature of the matters complained of makes it more difficult for the claimant to argue in the absence of further contentions that there was an ongoing situation or continuing state of affair. The claimant's case in relation to the question of conduct extending over a period of time really boils down to little more than a contention that, because he believes that all of his treatment was in some way linked, there was an ongoing situation or continuing state of affairs. He asserts an overarching state of affairs but really does no more than assert it.

28. However, I find that in light of the individuals involved it is reasonably arguable that the claims listed at paragraphs 11.1 to 11.4 are so linked with one another so as to constitute an ongoing state of affair.

<u>The just and equitable extension</u>

29. It is therefore necessary for me to consider whether the claims referred to at paragraphs 11.1 to 11.4, having been presented to the Tribunal more than three months after the events to which they relate occurred, were brought within such other period as I consider just and equitable.

30. I begin by considering the length of the delay. The claim was presented on 17 February 2020. Taking into account Early Conciliation, the last day that an act in respect of which an in-time could have been presented was 19 September 2019. In light of these dates:

30.1. The complaints of direct disability and age discrimination and of discrimination arising from disability in relation to the decisions of the respondent not to appoint the claimant to a Band 7 post in July and November 2017 were presented around two years after the expiry of the three-month time limit applying to the latest of these complaints (which might of course have been extended by Acas Early Conciliation). This was

also the position in relation to the reasonable adjustment claim relating to the period July to November 2017;

30.2. The complaints of direct disability and age discrimination relating to the redundancy exercise in November and December 2018 was presented around 12 months after the expiry of the time limit applying to this complaint (which again might of course have been extended by Acas Early Conciliation). This was also the position in relation to the reasonable adjustment claim relating to that exercise;

30.3. However, in light of my finding at paragraph 28 above, all the claims should be regarded as having been presented around 12 months after the expiry of the relevant time limit.

31. What then were the claimant's reasons for the delay? In answer to questions asked at the beginning of cross-examination the claimant stated that there were two reasons for the delay. First, the effect of his disability. This reflected what he had said in the statement he had prepared for the hearing. In particular, in this he commented as follows in relation to the issue of disability:

> 10. The Claimant's disability impacted the Claimant's ability to make an Employment Tribunal claim and he was not able to submit his claim earlier as a result of his illness. It was not reasonably practicable for the Claimant to have brought his claim earlier. The Claimant believes it would be just and equitable to allow his case to proceed.

32. In his oral evidence the claimant confirmed that he had been absent from work from October 2018 until February 2019. He had not then had another significant period of absence. When asked why he had been unable to put his claim in between February 2019 and January 2020 the claimant said that he only worked part-time as a result of his disability so he could have some "degree of respite" each week and that putting a claim in would have been much more difficult and stressful than just attending work. He said that he had had a phased return to work after returning to work in February 2019 but that he had got back to working his normal pattern by around April 2019.

33. In his oral evidence the claimant also said that he was not physically or mentally capable of putting a claim in earlier than he had done, but he did not provide significant further details. The claimant is disabled because he suffers from fibromyalgia, osteoarthritis and chronic depression (paragraph 2 of the amended grounds of claim).

34. Secondly, the claimant said at the beginning of his cross-examination that he had delayed beginning his claim because he believed that it was necessary to exhaust internal grievance processes before beginning an Employment Tribunal claim. This is also what he had said in his witness statement.

35. The claimant submitted his first grievance in December 2017. This processed to a formal stage in May 2018. There was an initial grievance hearing in July 2019 which produced an outcome in August 2019. The claimant appealed and the appeal was at the end of September 2019 with an outcome letter on 9 October 2019. The claimant submitted a second grievance on 28 June 2019. There was a grievance meeting in relation to this second grievance on 4

February 2020, an appeal was heard against the rejection of that grievance on 22 April 2020 and the appeal outcome was produced on 26 April 2020.

36. In cross-examination Mr Boyd noted that the claimant's partner was an HR professional (and indeed that she had done such a good job assisting the claimant with preparing his claim form that Employment Judge Little had thought that the claimant may have had the benefit of legal assistance). He asked the claimant if he had asked his partner about his misconception that he had to exhaust the grievance procedure before beginning a claim and the claimant answered "No, not that I remember". He also said that she had not positively advised him that this was the case, although he had talked with her generally about the grievance. The claimant said that he had also not done any research about when he could or should have put a claim in. When asked why he had in fact ultimately put the claim in (on 18 February 2020) after the completion of the first grievance but before the completion of the second, the claimant said that it was "only at that point I realised employer clearly had no intention of dealing appropriately with complaints. I had exhausted ongoing process as far as I could. At that point realised no intention of providing me with some restitution for discriminatory way I had been treated".

37. The claimant could not remember exactly how or when he had looked up the process for beginning a claim but he thought it was probably when he had approached ACAS in December 2019. He had previously known about the possibility of beginning a claim in the Employment Tribunal but had not known that time limits existed. The claimant stressed on various occasions that because he worked for a large employer it was reasonable to expect that he would be treated fairly and to expect someone to "put their hand up" when he had not been.

38. In answer to further questions, the claimant said that he had at no point sought professional advice because it was expensive to do so. He said that the assistance his partner had provided had principally been around drafting the claim form but that he had discussed approaching Acas with her. He had not discovered about time limits until after he had approached Acas.

39. Taking the evidence in the round, I find that the principal reason for the claimant's delay in submitting his claim was a hope bordering on an expectation that the respondent would provide him with the redress he wished to receive through the internal grievance process and that consequently an Employment Tribunal claim would not be necessary. The claimant came close to saying this when asked why he had submitted his claim before the second grievance had concluded if in fact he believed that he had to wait until the grievance process was concluded before doing so. I do not accept that the claimant believed he was unable to begin a claim until after the grievances to which they related had concluded because:

    39.1. This is inconsistent with his submission of the Tribunal claim before the second grievance had concluded;

    39.2. Further and separately, I find it implausible that he would not have discussed his belief with his partner who was an HR professional if it had been a material cause of his delay in beginning his claim;

39.3. Further and separately, I equally find it implausible that, if this belief had been a material cause of his delay, he would not have done some basic research to establish whether his belief was correct.

40. I also do not accept that the claimant's disability was a significant factor in the delay in him presenting his claim. He had a four-month absence from work overlapping the period in question and then a phased return to work and I accept that during this period his disability might have had a very significant effect on his ability to bring a Tribunal claim. However I do not accept that his disability continued to have such an effect once he was working his normal pattern from around April 2019. The claimant provided no detailed evidence of how he had been affected. Further, as set out above, the claimant was significantly engaged in the grievance process from July 2019 onwards. I find that although he doubtless found the idea of pursuing a claim disagreeable, he could have presented a claim before the end of the relevant three-month time limits if he had wished to do so, particularly in light of the assistance that he would have known his partner would have been able to provide (and which she did, of course, subsequently provide).

41. Turning to other factors relevant to my assessment of whether it would be just and equitable to extend time:

41.1. I find that the cogency of the evidence is likely to be substantially affected by the delay. The claims would to a significant degree involve the Tribunal considering why individuals had acted as they had between July 2017 and December 2018. Given that the full hearing would not, realistically, take place before at the earliest sometime in the summer of 2021, that would mean the Tribunal considering that question in light of recollections which would be between two and a half and four years old. Such a delay would be likely to affect the cogency of the evidence substantially. This is a factor pointing away from it being just and equitable to extend time.

41.2. If a party against whom a claim has brought a claim has failed to co-operate with requests for information, this is a factor which weighs in favour of the Tribunal finding it just and equitable to extend time. However, in cross-examination the claimant accepted that he was clear in December 2017 about the facts which he says give rise to the claims relating to events in 2017 (this being demonstrated by the contents of the email which he sent on 13 December 2017 (page 90 of the bundle)). Equally, I find that he was aware of the facts which he says give rise to the claim relating to the 2018 redundancy exercise by late 2018. Consequently, any failure of the respondent to provide information did not materially affect the claimant's ability to begin his claim at an earlier date. Further, the reality is that the claimant delayed beginning proceedings for a very considerable time once he was aware of the facts which in his view gave rise to the claims in question. This is a factor pointing away from it being just and equitable to extend time.

41.3. It is relevant to consider the steps taken to obtain appropriate professional advice once a potential claimant knows of the possibility of taking legal action. The claimant was aware from the point he was aware of the facts which in his view gave rise to the claim of the *possibility* of taking legal action. However he took no advice whatsoever about how he

could bring an Employment Tribunal claim. The result of this was that he only became aware of the existence and nature of time limits when he approached Acas in December 2019. It is easy to understand why the claimant who is employed on a relatively modest salary did not pay for legal advice. However the fact remains that his partner could have given him the necessary basic advice – and indeed she did subsequently assist him in beginning his claim. Further, the claimant is self-evidently an intelligent man and could have carried out basic research on the internet. This is a factor pointing away from it being just and equitable to extend time.

41.4. The respondent says that it is prejudiced by the delay because Netta Hollings, Adam Little, Sue McClay and Michelle Ramsden have all left its employment. They all left between May and August 2019 apart from Michelle Ramsden who left on 9 December 2018. The claimant did not dispute this. If the claims had been presented within the applicable time limits the respondent would have had the opportunity to at least prepare witness statements for three of the four before they left its employment. I conclude that consequently that the delay has prejudiced the respondent: it will need to try and persuade ex-employees to co-operate with it in preparing for a hearing about events which took place some considerable time ago. They may voluntarily assist, they may not. Of course the respondent could obtain witness orders if they refuse to co-operate but the substantial disadvantage to it in having to do this and not being able to prepare detailed written statements is obvious. It is no answer to this problem to say that some or all of them will have been interviewed during the internal grievance processes. This is, overall, a factor pointing away from it being just and equitable to extend time.

41.5. It is clear that the respondent's handling of the claimant's first grievance and, to a more limited extent his second, became unnecessarily protracted and that the respondent must take the lion's share of the blame for this. Indeed, Mr Vincent seemed to accept this at the grievance appeal meeting on 30 September 2019. It seems likely that if the grievances had been handled more quickly then either the claimant would have accepted their outcome (which was to uphold a substantial part of his complaints, albeit it was not accepted that unlawful discrimination had taken place) because the outcomes of promptly run grievance procedures are more likely to be accepted, or he would have begun his claim at an earlier date. This is a factor pointing towards it being just and equitable to extend time.

41.6. The claimant also contended that a relevant factor in considering whether it would be just and equitable to extend time was what was said to him at the grievance appeal meeting on 30 September 2019. The claimant contends that during that meeting Mr Ashcroft (who had decided the grievance initially) accepted that there had been unlawful discrimination against the claimant. The claimant therefore contends, in effect, that a factor pointing in favour of time being extended is that he has a very strong claim.

41.7. I do not accept that what Mr Ashcroft said in that meeting as set out in its notes suggests that the claimant has a very strong claim. Taken in the round, what Mr Ashcroft said in that meeting is that he accepted that the claimant had been treated unfairly, probably (only very limited documents were included in the bundle) in relation to his application for a

band 7 post in November 2017, which was reflected in the fact that parts of the grievance were upheld. Mr Ashcroft made it clear, however, that he did not accept that the unfair treatment was due to age or disability. I have not of course seen the evidence in this case, but it does seem likely from what Mr Ashcroft says that the claimant would at least have shifted the burden of proof to the respondent in his claims of disability and age discrimination in relation to the failed application of November 2017. This is therefore a factor pointing towards it being just and equitable to extend time.

42. Ultimately, deciding whether it would be just and equitable to extend time requires me to weigh up the relative prejudice that extending time would cause to the respondent on the one hand and refusing to extend time would cause to the claimant on the other. Taking all of the above factors into account, I find that in this case the relative prejudice to the respondent, which will face very significant difficulties in preparing the necessary evidence at this point in relation to events which already took place between two and three and a half year ago, outweighs that to the claimant, who has obtained some vindication by the grievance process, and who may still pursue his claim of victimisation and the single claim of a failure to make reasonable adjustments. This is not a case in which the claimant was unable to bring a claim earlier because of poor health, a lack of the necessary factual information, or an inability to access the necessary legal knowledge. Rather it is a case in which the claimant has hoped and expected that he would obtain the necessary redress internally, and has only decided to pursue a Tribunal claim when he was disappointed by the outcome.

Conclusion

43. None of the claims listed at paragraphs 11.1 to 11.4 are, when taken together with the in-time reasonable adjustment claim and victimisation claims, conduct extending over a period of time.

44. None of the claims listed at paragraphs 11.1 to 11.4, having not been presented within a period of three months, were presented before the end of such other period as I think is just and equitable.

45. The Tribunal does not therefore have jurisdiction to hear the claims listed at paragraphs 11.1 to 11.4 and they are struck out.

Employment Judge Evans

Date: 8 January 2021