EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs J Mein	**v**	Sutton-Mattocks & Co LLP

Heard at: Central London Employment Tribunal (V) **On: 2 December 2020**

Before: Employment Judge Norris, sitting alone

Appearances
For the Claimant: Mr M Rogers, Counsel
For the Respondent: Mr S Livingtone, Counsel

RESERVED JUDGMENT – PRELIMINARY HEARING

The Tribunal's decision is as follows:

1. The Claimant's claim was submitted out of time. It would not be just and equitable to extend time.
2. Accordingly, the claim is struck out and the Hearing listed for 20-23 July 2021 is vacated.

WRITTEN REASONS

1 Background

1.1 The Claimant worked as a legal secretary for the Respondent, a firm of solicitors in west London, between 29 October 2018 and 12 February 2020. On 12 June 2020 she submitted a claim form alleging disability discrimination. The disability on which she relies is back pain and her complaints are of a failure to make reasonable adjustments, disability-related harassment and direct discrimination (dismissal) because of disability.

1.2 In its ET3 response submitted in time on 21 September 2020, the Respondent contended that the claim is time-barred. It agreed with the Claimant's dates of employment and put forward various dates by which she should have presented her claim, depending on the means by which the Claimant received the ACAS Early Conciliation (EC) certificate. The latest of these was 27 May 2020 and accordingly it was argued that by any analysis the Claimant was between two and three weeks late and the Tribunal does not have jurisdiction to hear the claim. No grounds having been put forward for granting any extension, the Respondent

contended that the claim should be struck out. In the alternative, it denied or did not admit the particular allegations set out in the particulars of claim.

2 Conduct of the case

2.1 When the claim was served on the Respondent on 24 August 2020, the matter had been listed for a Preliminary Hearing (Case Management) (PHCM) to take place at 10 a.m. on 2 November 2020 by telephone and provisionally listed for a four-day Full Merits Hearing (FMH) between 20 and 23 July 2021. Standard directions were made. By the date of the PHCM, the Claimant was to have served on the Respondent a schedule of loss or remedy document and the parties were to have exchanged copies of all documents relevant to the claim. The bundle and witness statements for the FMH were not due to be produced until June 2021.

2.2 On 1 September 2020, the Respondent made an application for an order to strike out the claim. It asked that the application be dealt with in a one-hour Preliminary Hearing (PH) prior to the PHCM listed for 2 November and suggested that the standard directions be stayed in the meantime. In accordance with the rules of procedure, it copied in the Claimant. She responded on 7 September 2020, applying for the time limit for presentation of her claim to be extended on the grounds that it would be just and equitable to do so. She proposed to serve a witness statement supporting her application by 25 September 2020 and suggested using the listed hearing on 2 November 2020 for the purpose of determining that application and the Respondent's connected application for a strike out, with the stay of all other directions.

2.3 On 23 September 2020, the Claimant did indeed serve on the Respondent by email a witness statement with supporting exhibits and the parties sensibly proceeded on the basis that the remaining directions were stayed. The person who had dismissed the Claimant, Mr Walsh (the Senior Partner of the Respondent), produced a signed witness statement on 25 September 2020. On 29 October 2020 Evans Employment Law Ltd on behalf of the Respondent forwarded to the Tribunal these documents and the names of the representatives who were to appear at the PHCM.

2.4 On 30 October 2020, the parties were invited to join the PHCM via Teams telephone call. This invitation was however replaced on 1 November 2020 with one inviting the parties to join the hearing via Cloud Video Platform (CVP) in order that the matter could proceed in public to consider the jurisdictional issue identified (i.e. the time point), if that was the parties' agreed position. Regrettably, however, it proved impossible to conduct an open PH in this fashion since the Respondent's Counsel's connection kept freezing and it appeared that the Claimant was having similar issues, although before I heard from her, I converted the PH to Teams, though still "open". On the Claimant having further issues connecting to Teams, I rescheduled the hearing as a PHCM (private) telephone hearing via BT MeetMe.

2.5 On the call, we discussed the chronology of the matter and I was informed by Mr Rogers for the Claimant that the Claimant had thought she had three months from the date of the EC certificate to issue her claim and when time expired on 21 May 2020, she was under the impression that the Respondent was dealing with her pending appeal, which was a significant factor. This latter point had not been apparent on the face of the Claimant's witness statement and the Respondent had not had the opportunity to give instructions to Mr Livingstone. I therefore stayed all

the directions and adjourned the hearing until 2 December 2020, to take place via CVP for three hours from 10 a.m. I deal with the conduct of the PH below.

3 Issues

The single issue for the Tribunal to decide at the PH was whether the claim was presented outside the applicable time limit and if so whether it would be just and equitable to extend time so that the claim could proceed to an FMH.

4 The Hearing

4.1 When the PH reconvened on 2 December 2020, the parties were represented as they had been the previous month. The Claimant was the only person to give oral evidence, supplementing her written witness statement. She confirmed this was true to the best of her knowledge and belief and took the oath on the Bible. She had also refreshed her memory as to the pages of exhibits that had been emailed to the Respondent and to the Tribunal. There were no supplemental questions.

4.2 Mr Livingstone began cross-examining the Claimant at 10.10. The Claimant's internet connection was intermittent at best and, following an adjournment, at 11 a.m. she connected instead via her phone with everybody else remaining via CVP with cameras enabled. I also had some questions for the Claimant once her cross examination was concluded and then there was re-examination before a further short adjournment. I heard submissions from both parties which I do not reproduce in full here but I had regard to them and address the main arguments in my findings and conclusions below.

4.3 By this stage it was 12.19 and I did not consider that this left sufficient time for me to consider all the evidence and give a reasoned determination; I therefore reserved my decision and indicated that if I found in favour of the Claimant, I would make directions to progress the matter to the FMH in July 2021, having regard to the agendas produced by the parties. For the reasons I explain below, the necessity to do so has now fallen away.

5 Law

5.1 I was not addressed by the parties in any detail on the law or the authorities in relation to extensions of time. Mr Livingstone pointed out that time limits are strictly observed in the Employment Tribunal and that while there is a wide discretion to extend time, it is well established that the exercise of that discretion is the exception rather than the rule. Mr Rogers noted that the Tribunal has to have regard to the length of and reasons for the delay and the balance of prejudice between the parties.

5.2 The Equality Act 2010 ("Act") requires complaints to be lodged with the Tribunal (in reality, for a prospective Claimant to enter EC) within three months of the act complained of or, where there has been continuing discriminatory conduct, within three months of that conduct ceasing. This period is referred to as the "primary time-limit" leading up to the "limitation date".

5.3 The date on which the Claimant enters ACAS EC is termed Day A and the date on which the certificate is issued, Day B. The rules underlying the requirement to participate in EC then provide for an extension of the time within which the prospective Claimant has to lodge their claim. The rules differ depending on the

period of time remaining before the primary time-limit expires. In a case where there is less than a month remaining, rather than "stopping the clock" as such, time is automatically extended so that a Claimant will always have a minimum of one calendar month from the date of receipt of the EC certificate within which to make their claim to the Tribunal.

5.4 The Act provides a broad "just and equitable" discretion to a Tribunal when considering whether to extend time in discrimination cases than in those such as unfair dismissal which are subject to the "not reasonably practicable" formula. Notwithstanding this, the authorities confirm that there is no presumption that a Tribunal should extend time by using its discretion unless it can justify failing to do so. The exercise of discretion does indeed remain the exception rather than the rule and the onus is on the Claimant to convince the Tribunal that it should be exercised[1]. There is no principle of law dictating how generously or sparingly the discretion should be exercised[2]. However, in *Abertawe Bro Morgannwg University Local Health Board v Morgan*[3], Langstaff J noted that a litigant can hardly hope to satisfy the burden unless they provide an answer to two questions: why the primary time-limit has not been met and, in so far as it is distinct, the reason why after the expiry of the primary time-limit, the claim was not brought sooner than it was. In other words, it is crucial for the Tribunal to identify the cause of the Claimant's failure to bring a claim in time. It is entitled to consider any material before it which will enable it to form a proper conclusion, including an explanation for the failure to present a claim in time, and such material may include statements in pleadings or correspondence, medical records or certificates or inferences to be drawn from undisputed facts or contemporary documents.

5.5 It is also often observed that the Tribunal should consider the factors under section 33 Limitation Act 1980, as confirmed in *British Coal Corporation v Keeble*[4] and others. It has been held that these factors form a useful checklist although there is no legal requirement for the Tribunal to go through the list in each case save that no significant factor should be left out of account. These factors are: 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 cooperated with any requests for information; d) the promptness with which the Claimant acted once they knew of the facts giving rise to the cause of action and e) the steps taken by the Claimant to obtain professional advice once they knew of the possibility of taking action.

5.6 When considering the prejudice to the parties, it is noted that the Respondent may suffer two types of prejudice if the limitation period is extended. Forensic prejudice is caused when the limitation period is extended by many months or even years so that memories fade, documents are lost and/or witnesses can no longer be contacted. Forensic prejudice is often crucially relevant against the exercise of the Tribunal's discretion. However, this is not necessarily the case where forensic prejudice does not exist and the only prejudice suffered by the Respondent is that

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[1] *Robertson v Bexley Community Centre* [2003] IRLR 434; *Department of Constitutional Affairs v Jones* [2008] IRLR 128; both Court of Appeal authorities
[2] *Chief Constable of Lincolnshire Police v Caston* [2010] IRLR 327 (CA)
[3] UKEAT/0305/13
[4] [1997] IRLR 336

it will have to meet a claim which would otherwise have been defeated by a limitation defence[5].

5.7 So far as ignorance of the time-limit is concerned, the same principles do apply as those that are relevant when a time point under the "not reasonably practicable" rubric. The assertion as to ignorance must be a genuine one and the ignorance itself must be reasonable. The Tribunal must address the alleged lack of knowledge in a case where ignorance is relied on, whether that ignorance is said to be of the facts that could potentially give rise to the claim or of the existence of a legal right to pursue compensation in respect of those facts. The fault of the Claimant is a relevant factor to be taken into account just as it is under section 33.

6 Evidence

6.1 In this case, the parties agree that the Claimant's date of termination was 12 February 2020 and that is the last date on which the Claimant alleges discriminatory conduct on the part of the Respondent. She had until 11 May 2020 to approach ACAS and did so on 21 April, the EC certificate being issued on the same date. Since the primary time-limit would have expired within one month of Day B, the Claimant benefited from an extension of one month from that date and accordingly had until 21 May 2020 to lodge the claim. As noted above, it was not lodged until 12 June 2020, 22 days late.

6.2 According to the claim form and her witness statement, the Claimant attended Mr Walsh's office on the evening of 12 February 2020 and was told that she was dismissed forthwith. He told her that she did not need to go to the office the following day and would pay her salary for February and, as a gesture of goodwill, also for March (she was contractually entitled to a week's notice). The following day, she phoned ACAS and says that she was told she should write a letter of appeal and email it to the Respondent before she could make a claim to the Tribunal. She entered a period of depression and was taking strong medication for her sciatica. She found writing the letter of appeal difficult and decided to wait until after she had received her salary before sending it.

6.3 The Claimant duly did receive her February salary on 25th February and the following day she emailed Mr Walsh to say that she had received her P45 but had not received the March salary; she asked when this would be paid and for correspondence confirming the reasons for her dismissal. She did not, however, assert specifically that she was seeking to appeal against that decision.

6.4 Mr Walsh's witness statement says that his mother, a care-home resident, had had a fall in the early hours of 1 March and died two days later. On the evening of 1 March, Mr Walsh had been informed by a "whistle-blower" that the requirements of his mother's care plan had not been met and records had been falsified, requiring the involvement of social services, the police and the Care Quality Commission. An inquest was to be held. Further, less than three weeks later on 18 March 2020, Mr Walsh closed the firm in response to the COVID pandemic and sent all the staff home.

6.5 Although I did not hear oral evidence from Mr Walsh, I have no reason to doubt what he says in the witness statement which is also evidenced by one of the

[5] *Miller v Ministry of Justice* UKEAT/0003/15

exhibits produced by the Claimant (an email from Mr Walsh dated 24 April 2020 to which I revert below and the Claimant's reply later that day). It was apparently only on 24 April that the Claimant became aware of Mr Walsh's mother's passing although their correspondence suggests she had been aware that his mother was unwell from February.

6.6 The Claimant pursued the question of her March salary by emailing Mr Walsh again on 5 March, and on 9 March she emailed the payroll clerk, copying in Mr Walsh, on the same point. The payroll clerk informed her the following day, with apologies for any misunderstanding, that her salary would be paid on 25 March, which I understand was the date of the regular payroll run. Notwithstanding this, the Claimant says that she was being urged by friends and family to send the appeal letter as "it looked as if they had cut me off without any correspondence and possibly would not pay me at all". The Claimant does not address in her witness statement the receipt of her March salary on 25th March but says that this was the date when she first emailed the appeal letter to Mr Walsh. She has not exhibited any evidence of that email and Mr Walsh says in subsequent correspondence (his email to the Claimant of 22 May 2020) he did not receive the appeal letter until 18 April.

6.7 The Claimant confirms that she did send the appeal letter on 18 April – she says this was the second time she sent it - and asserts that she did not receive a response. However, this is not strictly accurate because as I have noted above, Mr Walsh and the Claimant exchanged emails on 24 April. Mr Walsh wrote:

"Thank you for this letter. Despite the date of your letter, I received it under cover of your email below. I'll revert as soon as I can. You'll remember that my mother was poorly. She died on 3rd March. I mention this as a reason for not replying to your earlier email: but I apologise for not replying nonetheless. I hope you are keeping safe and well."

6.8 Prior to that email exchange however, the Claimant had, on 21st April, notified ACAS of her intention to make a claim to the Employment Tribunal. Her EC certificate was issued that day and in her witness statement the Claimant says that her understanding was that this meant she had a three-month period from the date of the certificate for conciliation and/or to make Tribunal claim. She contends that ACAS "took no action and failed to contact the Respondent", implying that this was a failure by them of a duty or responsibility that they held. It appears the Claimant did not tell the anyone at the Respondent that she had secured her EC certificate or was contemplating proceedings.

6.9 On 22nd May, Mr Walsh informed the Claimant that he would make a full review of the points in her appeal letter and come back to her within three weeks. On 26 May the Claimant replied, requesting that a meeting be arranged within 14 days, i.e. by 9 June, to discuss the matter. The Claimant says, "I was getting concerned and anxious that time was running out for me to make a claim to the tribunal". On 12th June, without having had a further meeting with Mr Walsh and/or with no written response to her appeal letter, the Claimant submitted her claim.

6.10 In cross-examination, the Claimant confirmed that when she rang ACAS on 13 February 2020, they explained time-limits and told her that before she could bring a claim, she had to go through EC. She had not taken legal advice at that stage. She was vague in her answers as to when she did in fact take legal advice. She

said she thought it was when she had written the letter and sent it to the Respondent but did not receive a response (i.e. on her case after 25 March or, as I find below, after 18 April). She said she had "started ringing around to find out if I had a case or not". She said that she has not in fact taken legal advice "as such" but had spoken to Citizens Advice. She claimed that ACAS had said that she should wait regarding the formal letter of appeal and "needed" to get the response from her employer to say why they had made the decision. Then she said that she had been told only that it was "better" for her to wait and get the response from them.

6.11 The Claimant acknowledged in cross-examination that Mr Walsh had in fact responded to her 18 April email six days later. She confirmed that when she spoke to Citizens Advice, they had also advised her about time limits and EC, and on 21 April she had contacted ACAS using the website. She repeated in terms what she had said in her witness statement: "I was anxious, time was running out and I had had nothing substantial from Mr Walsh". She agreed that the ACAS website makes very clear reference to time limits and explains how they are calculated. It also urges potential claimants to take legal advice. She said she thought time was running out and that was why she used the website on 21 April.

6.12 The Claimant's evidence was also vague on the question of the chronology of her understanding. Again, she repeated in terms what she had said in her witness statement, namely that she had an understanding that she had three months from the date of the EC certificate. This meant she would have had until 21st July to issue her claim. The Claimant said however, "I didn't think it was July, for some reason I thought it was June". She said she did not know why she had made such a mistake and that she thought she had until 22 June "for some reason". She acknowledged that she had still not received the outcome of the appeal when she issued her claim on 12 June, notwithstanding that Mr Walsh had said he would come back to her in three weeks' time and that would have taken "until the end of June" (in fact, as I note above, it would have been 9 June). She suggested that Mr Walsh knew this and also that he knew that the delay would "probably put my claim right out of the window".

6.13 In answer to my questions, the Claimant asserted that she had sent the original letter of appeal – on 25 March - by email. She said that she thought from the date of the EC certificate she had three months because time has been extended so that they could have "some sort of conciliation or put in the claim". She said she had got that understanding from the ACAS and Tribunal websites and had been in a "frenzy" to see what her options were. She said that when she received the EC certificate from ACAS, it said that they had notified the Respondent. I asked her where it said this on the certificate and the Claimant took me to the certificate itself, which does not in fact say that the Respondent has been notified, only that the prospective Claimant has complied with the requirement under the Employment Tribunals Act 1996 to contact ACAS before instituting proceedings.

6.14 The Claimant continued to say that she thought she had until 22 June and that on 22 May, Mr Walsh had said he would make a full review and come back to her within three weeks. I asked why the Claimant had put the claim in on the date that she did and she said that Mr Walsh was delaying his responses to her; she thought he was just going to delay again and the time was going. She said she felt she

had to put in the claim on the 12 June "before it got too late in my mind". She repeated that it was getting late and she had to do something.

6.15 In re-examination the Claimant said that she knew ACAS told her she "had" to get a response from the Respondent to her letter of appeal before she could make the claim, which is why she kept emailing Mr Walsh to try and get a response. She was told that she "must send the letter and get a response with the reasons why she had been dismissed" because it would help her case. She could not just make a claim without trying to appeal the dismissal and that was why she kept asking him to revert to her. She understood that having received the EC certificate, ACAS would contact her employer and she did not remember telling ACAS that she did not want to engage in EC.

7 Findings and Conclusions

7.1 Taking the authorities as my starting point I remind myself that while there is indeed a wide discretion available to me to extend time, it does remain the exception and that I first need to identify why the primary time limit has not been met; once I have done so, if there is a different reason, reach a decision as to why the claim was not brought sooner than it was.

7.2 It is important to note that the allegation of direct discrimination because of disability is the last act in what is said to have been a course of conduct stretching back many months. On the face of it, therefore, while submitted on 12 June 2020 the complaint about the dismissal, itself said to be an act of direct discrimination, is three weeks out of time, the remaining complaints refer to matters arising as early as March to July 2019 (the allegations of disability-related harassment appear to date back to that period) and there are specific allegations around a failure to make reasonable adjustments with effect from August of that year. It does not appear that a formal grievance was raised by the Claimant at any stage (although she claims to have raised her manager;s conduct with Mr Walsh in August 2019, it appears that her case at its highest that this was done verbally) and therefore I am mindful that all the other complaints of disability discrimination are considerably further out of time than "just" three weeks.

7.3 I have found the Claimant's explanation for the late submission of the claim particularly unsatisfactory. As I have noted, her witness statement suggests that she contacted ACAS the day after her dismissal and was told about both EC and applicable time limits. This information is also readily available on the ACAS website, as I know from my work in private practice and my experience dealing with such cases in the Employment Tribunal as a fee-paid EJ. The page on the ACAS website about EC explain clearly how early conciliation works and about the possible extensions to the limitation date. It sets out the steps involved in the EC process and confirms that a claimant has a minimum of a calendar month from the date of receipt of the EC certificate within which to submit their claim. It observes, as the Claimant acknowledged, that time limits can be complicated and it suggests obtaining legal advice in this regard. ACAS make it very clear on their website and in the covering email when they send out the EC certificate that they cannot advise about when a Tribunal claim should be submitted and that the onus is on the claimant to ensure the claim is submitted on time.

7.4 I do not accept that an ACAS officer would have told the Claimant either that she would have to submit an appeal against her dismissal before she could bring a claim or that she had three months from the date the EC certificate was issued within which to lodge the claim. In fairness to the Claimant, she does not assert that the latter was the ACAS officer's error, but she does suggest that they advised her of the former.

7.5 I also do not accept that it was an error on the part of ACAS that the certificate was issued on the same date as the Claimant made contact, the net result being that Day A and Day B are the same date. Again, from my own professional and judicial experience, I am aware that when a prospective Claimant or their representative makes contact with ACAS, it is their decision whether they wish to participate actively in early conciliation; ACAS only offer their conciliation services, they are not required to, and do not, impose them. Sometimes, for instance, a claimant will say that they are waiting for a decision by their union's solicitors on the merits of a case, or from an insurer or similar as to whether their claim will be financially underwritten and will ask ACAS to delay making contact with the prospective Respondent. On other occasions, the prospective claimant will say that they do not wish to enter conciliation at all and the certificate will be issued forthwith. It is clear to me that the latter has happened here.

7.6 In this case, the Claimant says that she was under the misapprehension that the issue of the EC certificate was, in effect, the start of the early conciliation process, rather than the end. She says that she thought ACAS were going to contact her employer to engage in EC. It seems to me that that is not a reasonable belief for her to have held. She was unable to take me to any evidence which suggested that either the Respondent had already been notified or that ACAS had announced an intention to contact the Respondent in future. The covering email to the EC certificate, for example, of 21 April makes no mention of that proposal and nor is anybody from the Respondent copied in.

7.7 In the circumstances, I find the Claimant's assertion that she believed she had to submit a letter of appeal and/or that she had three months from the date of issue of the EC certificate within which to bring her claim is not founded on anything that she was told or could reasonably have understood from any of the literature available to her online or told to her on the phone. Indeed, quite the reverse.

7.8 However, even if that were the case, the timing of her decisions thereafter remains at best curious. In the first place, as I have noted, the Claimant says that she had been told she had to submit and to have received a response to her appeal letter before she could go to Tribunal. As I have found above, it is extremely unlikely that ACAS would have advised her wrongly that this was the requirement but in any event, there is case law[6] which confirms that a delay caused by a claimant invoking an internal appeal procedure prior to commencing procedures **may** justify the grant of an extension of time but it is one factor that must be weighed in the balance; there is no general principle that unless the employer can show some particular prejudice an extension should always be granted, particularly where, as

[6] *Robinson v Post Office* [2000] IRLR 804; *Apelogun-Gabriels v London Borough of Lambeth* [2002] IRLR 116

here, the Claimant knew or ought reasonably to have known of the time limit for bringing her disability discrimination claim.

7.9 In the event, of course, the Claimant did not await the outcome of the appeal before submitting a claim and this reinforces my finding that she was not told she should do so by ACAS, or Citizens Advice or at all. Indeed, the ACAS website specifically confirms that whilst it is a good idea to try to resolve workplace disputes by raising the problem informally or via a formal grievance, it is not necessary to do so before making an Employment Tribunal claim and that if you raise the problem with your employer first, the time limits to make the claim do not change.

7.10 The second point is that if the Claimant genuinely believed she had three months from the date of issue of the EC certificate, her subsequent explanation that she thought she had until 22 of June makes no sense at all, the certificate having been issued on 21 April. That would have been of course two months and one day later. She was unable to tell me why she had made this mistake.

7.11 The same point also arises in considering the delay occasioned by Mr Walsh saying that he was going to look into the letter of appeal. I do not accept that the Claimant sent the appeal letter twice as she claims. She has not exhibited the first email, whereas she has exhibited all the other documents relevant to the jurisdiction point in preparation for this PH. Further, although the appeal letter itself is dated 25 March 2020, the attachment to 18 April email is described as "Appeal letter to Sutton Mattocks FINAL 18.04.20". I therefore find as a fact that the Claimant started drafting the letter towards the end of March but did not finish doing so until 18th April. I do not accept her evidence that she sent it on both dates.

7.12 If the Claimant believed that she had until 22nd June to submit her claim, I do not understand why she would have become so anxious that time was running out if Mr Walsh had reverted to her by 12 June (as he had said he would in his letter of 22nd May), particularly knowing, as she did, of the challenges, both personal and professional, that he was facing at that time. She would still have had ten days left. She did not suggest before me that she chose 12 June to submit her claim because the three weeks had expired without having received his final response. Mr Walsh's email of 22 May repeats the apology for his delay and continues,

"As you can imagine, these are very challenging times during which to run our business. The conveyancing practice makes up 50% of the firm's revenues and its work has completely dried up, to the point where staff (professional and support) are significantly underutilised and, regretfully, redundancies are inevitable and that process has commenced. I have never known times like these."

7.13 The Claimant's assertion that Mr Walsh was deliberately delaying his response to her letter of appeal in order to run time out is therefore clearly misconceived. Firstly, he was not aware that she had completed EC because the Respondent had not been contacted in this regard, and secondly by 22nd May, time had already expired, through no fault of the Respondent.

7.14 Accordingly, my conclusion as to why the primary time-limit has not been met is that it was through the Claimant's errors, which cannot be laid at anyone else's door but her own and which were not reasonable. Similarly, I can see no logical or otherwise satisfactory reason such as would enable me to exercise my discretion

for why the Claimant submitted the claim when she did, and not either sooner (or indeed later).

7.15 I am mindful that the delay is a comparatively short one but that of itself is not sufficient. As I have said, some of the matters complained of occurred up to 11 months before the dismissal itself and the complaints in this regard are significantly out of time. Although the Claimant now seeks to rely on a continuing course of treatment, it is notable that she had not sought legal advice at any stage prior to the termination of her employment notwithstanding she now says she believed for months beforehand that she was being forced out by her manager Ms Goddard and even went to the lengths of seeing her GP for anxiety medication and making notes because she felt Ms Goddard "wanted [her] out". Inevitably, since these matters do not appear to have been raised internally as a grievance or externally via participative EC beforehand, these longer delays will have affected both the Respondent's ability to secure documentation and/or the memories of those who might have had relevant evidence to give.

7.16 Indeed, if the Claimant had genuinely believed she was suffering from such significant disability-related harassment and a failure to make reasonable adjustments for a disability that she now says was caused by workplace issues, it is perplexing that she did not act at all until she was dismissed. She is clearly an articulate and educated woman whom though not a lawyer herself, was working in a law firm. It would be most surprising if she was unaware of the potential for a claim against the Respondent at a far earlier stage. I have not seen any evidence that the Respondent failed to comply with any earlier requests for information prior to the Claimant's email of 26 February 2020, and as I have said, thereafter, the delay in responding to her is attributable to Mr Walsh's "personal and business turmoil" as he puts it in his witness statement.

7.17 The Claimant appears not to have followed the suggestion on the ACAS website to seek legal advice, potentially from Citizens Advice or from those whom she rang, as to the correct time limit, but even if she had just accurately read the words on the website itself, she would have known that the time limit expired one month and not three months after receipt of the ACAS certificate. Similarly, a very basic search on the government website would have unearthed an explanation of the EC requirement and tribunal procedures, including the fact that once the certificate is received Claimant will have "at least one month left" to make their claim.

7.18 Finally, I look at the balance of prejudice between the parties. Mr Rogers is of course right to say that the prejudice is substantial to the Claimant if I do not exercise my discretion to allow the claim to proceed. He is also right to say that the Respondent has identified no specific forensic prejudice although I have set out above the difficulties that I believe the Respondent is likely to encounter if required to deal now with matters dating back to March 2019 that were not canvassed contemporaneously. The greater prejudice to the Respondent is in having to meet a claim which would otherwise be defeated by limitation defence and whilst that is of lesser import, I do not disregard it entirely.

7.19 I have found that the Claimant's ignorance, if ignorance it was, in relation to the time-limit was not reasonable, assuming that it was in fact genuine. It is entirely the fault of the Claimant and not of anybody else and in particular not of the

Respondent. In the circumstances, I decline to exercise my just and equitable discretion.

7.20 The claim is accordingly struck out because the Tribunal does not have jurisdiction to hear it and time is not extended for this purpose. The hearing listed for 20th to 23 July 2021 is vacated

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Employment Judge Norris
31 December 2020

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Sent to the parties on:

12/1/21

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For the Tribunal:

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