IN THE EMPLOYMENT TRIBUNAL (SCOTLAND) AT EDINBURGH

Judgment of the Employment Tribunal in Case No: 4100900/2020 (V) Issued Following Open Preliminary Hearing Held at Edinburgh on 27th November 2020, 9th and 10th February 2021

Held via the Cloud Based Video Platform (CVP)

Employment Judge J G d'Inverno

Mr G Ross	**Claimant** **Represented by:-** **Mr S Smith, Solicitor**
Glasgow City Council	**Respondent** **Represented by:-** **Mrs G Riddell, Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is:-

(First) That the claimant's complaints of Unfair Dismissal and of Breach of Contract are dismissed for want of jurisdiction;

(Second) That the claimant's complaint of Disability Discrimination, being a complaint of Harassment in terms of section 26 of the Equality Act 2010, is dismissed for want of jurisdiction.

REASONS

1. This case called at Open Preliminary Hearing on the Cloud Based Video Platform at Edinburgh on 27th November 2020, for determination of the two Preliminary Issues as to Jurisdiction which are set out below. Reference is made to the Orders of the Tribunal of 27th November 2020 and the Note of Output dated 8th attached to the written copy of those Orders and sent to parties on 21st December 2020. These are referred to for their terms and the latter is incorporated herein, by reference for the purposes of brevity. Those Orders and that Note which provide relevant background should be read, in conjunction with these Reasons, as providing relevant background.

2. Each party enjoyed the benefit of professional representation, for the claimant Mr Smith, Solicitor; for the respondent Mrs Riddell, Solicitor. At the conclusion of the first day, the Hearing was adjourned, on the claimant's representative's renewed Application to a continued day, initially set down for the 7th of January 21 and subsequently postponed and substituted with the 9th February 2021, to allow for the making of Applications for Witness Orders in respect of, and the hearing of evidence from, two further witnesses, Geraldine Agbor and Vivienne Halbert. Both had acted formerly in the capacity of Trade Union representatives of the claimant in internal proceedings. In the event technical difficulties encountered on the 9th of February resulted in the first two hours of hearing time being lost with the effect that the Hearing extended into a second additional day and concluded on 10th February 21.

The Issues

3. The Preliminary Issues requiring investigation and determination at the Open Preliminary Hearing were:-

> **(First)** Whether the claimant had Title to Present and the Tribunal has Jurisdiction to Consider, in terms of section 111(2)(b) of the Employment Rights Act 1996, the claimant's complaint of Unfair

Dismissal, first presented to the Employment Tribunal (Scotland) on 11th February 2020; and

(b) **(Second)** Whether the claimant had Title to Present and the Tribunal has Jurisdiction to Consider, both in terms of section 123(1)(b) of the Equality Act 2010, the claimant's complaint of Disability Discrimination being a section 26 Equality Act 2010 complaint of Harassment, first presented to the Employment Tribunal (Scotland) on 11th February 2020.

4. For the claimant the Tribunal heard evidence on oath or affirmation from the following witnesses:-

- Mr G Ross, claimant
- Geraldine Agbor, former GMB representative of the claimant in internal proceedings and
- Vivienne Halbert, subsequent GMB representative of the claimant in internal proceedings.

5. All witnesses answered questions in cross examination and questions put by the Tribunal.

6. In the course of Case Management Discussion conducted at the outset of the Open Preliminary Hearing, on 27th November 2020, the respondent's representative, Mrs Riddell, reserved the respondent's position in relation to any evidence going to the merits of the claim, all as recorded at Order **(Third)**(b) of 27th November 2020; viz

"(b) that whereas the evidence to be led from the claimant [/on behalf of the claimant] in the course of the Open Preliminary Hearing on Time Bar set down to immediately follow, may extend, by way of background, to matters going beyond those directly informing the Preliminary Issues of Jurisdiction by reason of asserted Time Bar, the respondent's representative's intention was to restrict her cross examination to those matters which directly inform

> the Preliminary Issue and wishes it recorded that in so doing she does not accept or otherwise make concession in respect of such wider ranging portions of the claimant's evidence [/evidence led on the claimant's behalf] upon which she does not at the Open Preliminary Hearing, elect to cross examine."

7. On the first day of Hearing each party had lodged a separate bundle. In advance of the continued Hearing and upon the Tribunal's direction, parties prepared and lodged a Joint Bundle to which reference was thereafter made. The claimant's evidence on the first day of hearing gave rise to an inference that the claimant's state of health at the material times may have constituted an impediment to the timeous submission of his claims. The Tribunal had directed that proposition, in the event that it was to be stood upon in submission, be vouched by a relevant medical report. The "Councillor's Report" subsequently lodged did not go to establish such a proposition and no reference to it or to the proposition was made either in evidence at the continued Hearing or submission.

Findings in Fact

8. On the documentary and oral evidence presented the Tribunal made the following essential Findings in Fact, restricted to those relevant and necessary to the determination of the Preliminary Issues.

9. The claimant was a longstanding GMB Trade Union member and a long serving employee of the respondent, Glasgow City Council ("GCC"). He was accused of various acts of misconduct and was suspended on the 3rd of April 2018, that being the last day upon which he attended at work with the respondent.

10. The claimant was summarily dismissed on the 23rd of January 2019 for gross misconduct.

11. Geraldine Agbor is an employee of the respondent and is a Branch Convenor of the Glasgow City Council Branch of GMB Trade Union.

12. The claimant sought advice from Geraldine Agbor in his capacity as a Trade Union member.

13. The claimant first made contact with Mrs Agbor via telephone on the 1st of April 2018 and did so in relation to the events which led to his suspension from work. Mrs Agbor was in regular contact with the claimant from 1st of April 2018 until the claimant's Disciplinary Hearing which concluded on the 23rd of January 2019 with his summary dismissal. During that period of time the claimant raised concerns with Mrs Agbor about his belief that he was being victimised (in the non-statutory sense of the word) by the respondent.

14. Geraldine Agbor assisted the claimant in preparing for his Disciplinary Hearing; She and the claimant communicating regularly with the other by way of face to face and telephone discussions, and by email correspondence. Geraldine Agbor also assisted the claimant in lodging an internal complaint about "bullying and harassment" with the respondent, in July of 2019 during the period of his suspension. Geraldine Agbor represented the claimant at the Disciplinary Hearing which proceeded via adjourned sessions between the 7th and the 23rd of January 2019.

15. On the 21st of January Mrs Agbor and the claimant together completed the ACAS early conciliation process in advance of and in relation to the making of a complaint to the Employment Tribunal about "victimisation, bullying and harassment".

16. Prior to the Disciplinary Hearing outcome meeting on 23rd January 2019, Geraldine Agbor and the claimant prepared and lodged Form ET1 with the Employment Tribunal complaining of "victimisation, bullying and harassment". Mrs Agbor submitted the Form ET1 online on the claimant's behalf with the claimant's involvement and knowledge and authority (page 204 in the Joint Bundle).

17. The claimant had discussed with Mrs Agbor his growing concerns that the respondents were unlikely to resolve the bullying and harassment issues in the course of the internal grievance and the alternative need to take "legal action", that is to present a complaint to the Employment Tribunal.

18. At the time of presenting the Form ET1, Mrs Agbor had hitherto been principally focused on advising and representing the claimant in the internal proceedings.

19. At the point of first presentation of the Form ET1 by Mrs Agbor no decision restricting the scope of representation which might be extended to the claimant had been taken by the GMB. In advising and assisting the claimant in the submission of the Form ET1 and in submitting it on his behalf on 23rd January 2019 Mrs Agbor was acting in her capacity as a Trade Union shop steward. That was reflected in the placing by her of her own details in the capacity of "representative" on the ET1 Form.

20. In the course of the Disciplinary Hearing both the claimant and Mrs Agbor formed the view that the Chair of the disciplinary proceedings was not treating the claimant fairly.

21. At the disciplinary outcome meeting of 23rd January 2019, at which the claimant was present and represented by Mrs Agbor, the claimant was summarily dismissed. He was aware of his dismissal on that date.

22. The claimant's position, communicated to Mrs Agbor immediately following his dismissal, was that he considered that he had been harshly treated and that he wished the GMB to support him in making an external complaint of Unfair Dismissal both in terms of assisting him in the preparation of and submission to the Employment Tribunal of such a complaint and by way of providing legal representation for him in the Employment Tribunal proceedings.

23. Mrs Agbor made immediate contact by telephone with Rhea Wolfson, the GMB full-time officer who, as it happened, was in the City Chambers on that day and thereafter Mrs Agbor and the claimant went to the City Chambers and met with Rhea Wolfson in the foyer. At that meeting Rhea Wolfson confirmed that she would make contact with Brian McLaughlin of Unionline, the GMB's legal advisor, to discuss the claimant's case including his request for Trade Union provided legal assistance and representation in raising and pursuing external proceedings. The claimant was in the presence of both Mrs Agbor and Rhea Wolfson during that discussion and, on the balance of probabilities, knew or ought reasonably to have known that that meeting was being arranged together with its purpose.

24. At that time members seeking the provision of legal advice and support from the Trade Union in respect of external proceedings, or Trade Union shop stewards seeking the same on behalf of a member, were not authorised to make direct contact with the Union's legal advisors. Rather, the procedure to be followed was that the shop steward required to bring the request to the attention of the full-time Union Officer who in turn made contact with and raised the matter with the Union's legal advisors. The claimant and Mrs Agbor were each aware of that requirement.

25. On the 31st of January 19, Rhea Wolfson met with Brian McLaughlin, the GMB's legal advisor to discuss the claimant's case and whether the Trade Union would provide legal assistance to the claimant in raising/pursuing external legal proceedings against the respondent in the Employment Tribunal. At that meeting and following discussion and consideration of Mr Ross's case, Mrs Agbor was informed by Ms Wolfson that the GMB would not support the claimant including would not provide legal assistance to the claimant, in either the raising of claims with the Employment Tribunal or by way of representation in such proceedings.

26. On either the 31st of January or the 1st of February 2019, Mrs Agbor communicated to the claimant the decision that the GMB would not provide

him with legal advice or representation in relation to the claim/claims before the Employment Tribunal.

27. At the same time Mrs Agbor advised the claimant that the fact that the Trade Union's legal advisors had decided that his prospects of successfully pursuing a claim did not justify the provision of legal support, didn't necessarily mean that he didn't have a good claim.

28. Mrs Agbor advised the claimant that he should take steps to contact another solicitor to obtain a second opinion if he wished to take the matter forward.

29. Mrs Agbor advised the claimant that he required to contact a solicitor urgently as there was a time limit of 90 days from the date of his dismissal within which a complaint of Unfair Dismissal would require to be lodged.

30. When so advising the claimant she passed to him her bundle of case papers and provided the claimant with the contact details of three firms of solicitors which GMB members had used in the past, including the firm of Livingstone Brown and Paul Hannah, to facilitate his doing so.

31. In January of 2019, Mrs Agbor had previously advised or assisted about half a dozen other Trade Union members in connection with the making of claims to the Employment Tribunal. She was aware that there were time limits of three months less one day, measured from the date of dismissal or the date of the incident of discrimination founded upon, within which persons had a right to present complaints for the Employment Tribunals and that after the expiry of that period, a claim could be time barred.

32. Mrs Agbor was also aware of the requirement to engage in the early conciliation process before raising proceedings with the Employment Tribunal.

33. It was Mrs Agbor's practice to always tell Trade Union members whom she was assisting about the time limits which applied to the presentation of complaints to the Employment Tribunal.

34. Mrs Agbor told the claimant of the applicable time limit. Mrs Agbor told the claimant about the applicable time limit on or about the 31st of January or the 1st of February 2019 when communicating to him the decision, of which she had been advised on 31st January, that the Tribunal would not provide legal support to him in relation to raising or pursuing proceedings in the Employment Tribunal.

35. In telling the claimant, on 31 January/1st February 2019, that if he nevertheless wished to pursue claims he required urgently to contact other solicitors and in providing him with contact details for three solicitors, she did so in the context of having advised him that there was a time limit towards which time was running and of how long it was.

36. On the 28th of January 2019 the Form ET1 relating to a prospective complaint of bullying and harassment, which had been submitted by the claimant and Geraldine Agbor on 23rd of January 2019, was rejected by the Employment Tribunal for want of necessary information and a letter of rejection was sent to Geraldine Agbor via the GMB. On, or shortly after the 31st of January 2019 Geraldine Agbor passed that letter to the claimant for his personal attention and action standing the Union's decision, taken on 31st January 2019 and communicated to him, that it would not support him in Employment Tribunal proceedings.

37. On or about the 31st of January/the 1st of February 2019, at the latest, the claimant was aware and separately ought reasonably, in the circumstances, to be aware;-

    (a) Of his right to complain to the Employment Tribunal both about issues of bullying and harassment and of Unfair Dismissal;

(b) That the right to raise such complaints with the Employment Tribunal were subject to a time limit;

(c) That time limit was "90 days" measured from the date of dismissal or of the other complaint or act and that time was running on those time limits;

(d) That, although continuing to support him with ongoing internal proceedings with the respondents, his Trade Union would not support him, after the 31st January/1st February 2019, in raising or pursuing any external legal proceedings either with or without union funded legal services;

(e) that if he wished to take forward such external legal proceedings in the Employment Tribunal he would require to do so on his own behalf or with the assistance of external legal advice and support which he would require to put in place himself;

(f) that in the view of Mrs Agbor, if he wished to raise and pursue such proceedings he should urgently make contact with a solicitor and obtain a second opinion on the prospects of success of his claim; and,

(g) That the Form ET1 relating to a prospective complaint of bullying and harassment and which had been submitted by Mrs Agbor and the claimant on 23rd January 2019 had been rejected by the Employment Tribunal for want of necessary information.

38. On 4th February 2019 Mrs Agbor wrote to the respondent to request an internal appeal against dismissal on behalf of the claimant (page 31 of the Joint Bundle), in which internal procedures and matters she continued to represent the claimant in her capacity as a GMB shop steward.

39. In the period from 31st January up until in or about August 2019 the claimant continued to be in regular contact with Mrs Agbor by way of telephone discussions, face to face meetings and email correspondence in connection with preparing his internal appeal against the decision to dismiss him. On a number of occasions in the period between 31st January and late April 2019 including, at least once during February and once during March, Mrs Agbor asked the claimant how he was getting on in identifying and appointing a solicitor further to her having provided him with contact details. On each of those occasions the claimant responded by indicating that he had the matter in hand and was just waiting "*to hear back from them*".

40. In the course of a further meeting to discuss preparation for his internal appeal, in or about the second last week of April 2019, possibly on or about the 21st or 22nd of April, Geraldine Agbor again asked the claimant how he was getting on with the external lawyers. On this occasion the claimant advised her that he hadn't taken forward that process and didn't have an external lawyer in appointment. Mrs Agbor was concerned by that response because she knew, in the event that the claimant had not taken any action to submit a complaint of Unfair Dismissal to the Employment Tribunal, that there would only be a few hours remaining within which he would be permitted to do so. The claimant asked Mrs Agbor in the second half of April to help him lodge an Unfair Dismissal claim which, in the circumstances of the imminent expiry of that time limit she sought to do acting, however, in a personal capacity and not her capacity of GMB shop steward, because of the earlier communicated decision that the Union would not support the claimant in the making of such a claim.

41. Mrs Agbor encountered difficulties in attempting to submit the ET claim form online which exercise she undertook with the cooperation and knowledge and authority of the claimant. At the end of that exercise she believed that the claim had been successfully lodged. She informed the claimant however that as she was not representing him in relation to the claim it was his details and not hers that were on the Form and that any correspondence issued by the

Tribunal in relation to the claim would be sent to him and he would have to deal with it himself or through a solicitor whom he appointed.

42. No record of receipt of that Application is held by the Employment Tribunal.

43. The claimant's internal Appeal Hearing was scheduled to take place on the 1st of May 2019 before the respondent's Personnel Appeals Committee. That Appeal Hearing was postponed on the day at the claimant's request.

44. The claimant's internal Appeal Hearing was rescheduled for the 28th of August but was postponed, on that occasion, by the respondent.

45. Mrs Agbor continued to represent the claimant in relation to his internal Appeal against dismissal until August/September 2019 when she required to reduce her workload due to ill health. At that point Vivienne Halbert, Branch Secretary of the Glasgow City Council Branch of GMB, assumed the role of representative of the claimant in the internal proceedings.

46. The Appeal Hearing was set down for and ultimately proceeded on the 21st of January 2020.

47. On 19th December 2019 Mrs Halbert contacted the Trade Union full-time officer to advise that due to her own ill health, she would not be able to represent the claimant at his Appeal Hearing and alternative GMB representation was put in place for the claimant.

48. The claimant's Appeal Hearing took place on the 21st of January 2020.

49. The Appeal against dismissal was refused and the claimant's Effective Date of Termination remained 23rd January 2019.

50. In or about early February 2020 Mrs Halbert who was aware that GMB would not support external legal action on the part of the claimant but who felt strongly that the claimant had been treated harshly, decided to assist the

claimant in a personal attempt to lodge a complaint with the Employment Tribunal.

51. On 10th February 2020 Mrs Halbert completed the ACAS early conciliation process on the claimant's behalf (page 184 in the Joint Bundle). On 11th February 2020 Mrs Halbert, with the claimant's cooperation and input submitted an ET1 giving notice of a complaint of Unfair Dismissal and Wrongful Dismissal (Breach of Contract) and of Disability Discrimination, on the claimant's behalf. It was that Application, date stamped as received on 11th February 2020 which was before the Tribunal for consideration at Open Preliminary Hearing.

52. In so submitting an Application on 11th February 2020 Mrs Halbert did not do so in her capacity as a GMB representative.

53. The claimant, having been advised of an upcoming Preliminary Hearing in the claim, went to meet with a Unionline solicitor to seek legal representation. At that meeting he gained the understanding that the Trade Union were prepared to provide him with legal representation at the Preliminary Hearing. When the claimant informed Vivienne Halbert of that fact she was surprised because she knew of the earlier decision not to support Employment Tribunal proceedings, but was pleased.

54. Shortly thereafter the claimant was advised by Unionline that upon reviewing the papers, they had decided not to represent him.

55. The claimant sought and put in place new representation in June 2020 with Messrs Livingstone Brown who continue to represent him.

56. In the 22 month period from 1st April 2018 to 11th February 2020 including throughout the whole of the statutory limitation period measured from the date of his dismissal 23rd January 2019, the claimant had continuous access to Trade Union representation and advice.

57. In the three month limitation period and beyond the claimant had contact details of three firms of solicitors and potential sources of external legal advice.

58. Throughout the statutory limitation period the claimant was able to access the internet on his mobile telephone.

59. During the entirety of the statutory limitation period the claimant took no steps to make enquiry of his Trade Union advisors, or of any of the potential sources of legal advice with which he had been provided nor to inform himself in relation to presenting a complaint to the Employment Tribunal, nor as to confirming his understanding of the existence or duration of any statutory limitation period which might restrict his rights to present such complaints.

60. Throughout the currency of the statutory limitation period the claimant, in particular, did not ask or make enquiry of Geraldine Agbor, his Trade Union representative in internal proceedings about such matters despite having regular opportunities on which to do so and despite being asked by Geraldine Agbor in both February and March 2019 about how he was progressing making contact with any of the lawyers, whose contact details she had provided to him with a view to his pursuing such proceedings, following his Trade Union's decision not to support him in the pursuit of further raising of Employment Tribunal proceedings.

61. While the claimant did make initial contact with one of the solicitors whose details Mrs Agbor had provided him with he did not pursue that option or seek advice from that solicitor in relation to Employment Tribunal proceedings.

62. In June 2020, the claimant made contact with another of the solicitors/firm of solicitors whose details had been provided by Mrs Agbor, the same being his present representatives in these proceedings.

63. In the period from his suspension up until the determination of his internal Appeal proceedings and including throughout the period of statutory

limitation, the claimant was anxious about the manner in which he had been treated and about the consequences of his dismissal.

64. That anxiety in the claimant's particular circumstances, did not amount to nor constitute an impediment which resulted in it not being reasonably practicable for him to present or which otherwise prevented him from presenting, timeously, his complaints to the Employment Tribunal.

65. The claimant's position in evidence was that he was ignorant of either the existence and duration of any applicable time limit or at least of the duration of any applicable time limit and that but for that ignorance he could and would have timeously presented his Applications.

66. Such ignorance or mistaken belief that the claimant might, in fact have been under as to the existence or duration of the time limits applicable to the presentation of his complaints arose principally from his own fault in the particular circumstances prevailing. It was not, in the circumstances, reasonable ignorance.

Applicable Law and Submissions

67. The prescription of the Tribunal's statutory jurisdiction, and in consequence parties' Title to Sue' is regulated in respect of complaints of Unfair Dismissal and Breach of Contract and in complaints of Discrimination, respectively by the terms of section 111 of the Employment Rights Act 1996, ERA and section 123 of the Equality Act 2010 (EqA). Those provisions are in the following terms:-

Employment Rights Act (ERA) 1996 section 111

"***Complaints to employment tribunal***

(1) A complaint may be presented to an employment tribunal against an employer by any person that [he?] was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, 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 of three months."

Section 123(1) of the Equality Act 2010 (EqA)

*"'**123 Time Limits***

(1) ([Subject to section 140A] 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"

68. Useful guidance, some of it binding upon the Employment Tribunal at first instance, as to the interpretation and application of those provisions is to be found in a number of case authorities, including the following to which parties' representatives variously referred the Tribunal in submission and all of which the Tribunal found relevant and instructive in relation to the competing predications of fact to which parties' representatives respectively invited the Tribunal to apply their ratios:-

Authorities referred to for the Claimant

1. **Dedman v British Building and Engineering Appliances Limited** [1973] IRLR 379 CA

2. **Marks and Spencer Plc v Williams-Ryan** [2005] EWCA Civ 470 per The Master of the Rolls at paragraph 32

3. **John Lewis Partnership v Sharman** UKEAT/0079/11ZT, per Underhill P (as he then was) at paragraph 9

4. **Chohan v Derby Law Centre** [2004] UKEAT0851_03_0704 per HH Judge McMullen at paragraphs 12 to 16

5. **Virdi v The Commissioners of Police for the Metropolis** [2007] IRLR 24 per HH Judge Serota

Authorities referred to for the Respondent

6. **Walls Meat Company Limited v Khan** [1979] IRLR 499 CA per Denning LJ MR

7. **Bexley Community Centre (trading as Leisure Link) v Frances Robertson** [2003] EWCA Civ 576

8. **Chief Constable of Lincolnshire Police and Natasha Caston** [2009] EWCA Civ 1298

9. **Dedman v British Building and Engineering Appliances Limited** [1974] (C.A.) ICR 53 (per Denning LJ MR)

10. Employment Rights Act 1996 section 111(1) and (2)

11. Equality Act 2010 section 123(1)(a) and (b)

69. Each of parties' representatives prepared and provided, to each other and to the Tribunal, a written text of the oral submissions which they each made including full case citations and quotations. The full terms of those submissions were considered by the Tribunal, are available, both to the parties and in the record, and accordingly, are only summarised here.

Submissions for the Claimant

70. The principal submission advanced by Mr Smith, on behalf of the claimant and which was predicated upon inviting the Tribunal to prefer the evidence of Mr Ross over that of Mrs Agbor on material issues of fact, comprised the following elements, viz;

(a) that throughout the entirety of the relevant statutory limitation periods and extending beyond the expiry of the same up until in or around February 2020, the claimant was reasonably ignorant of the existence and duration of any time limits which might restrict his rights to make Applications to the Employment Tribunal, or at least,

(b) was reasonably ignorant of the duration of any such time limit,

(c) such as to constitute an impediment, for the purposes of section 111 of the ERA, which rendered it not reasonably practicable for

him to timeously submit his complaints of unfair Dismissal and Breach of Contract; and separately,

(d) so as to result in it being just and equitable, for the purposes of section 123(1)(b) of the Equality Act 2010, that his claim of section 26 EqA Harassment be considered though late it, having been presented on 10th February 2020,

(e) both of which claims also fell to be regarded, for the purposes of both sections, as having been presented within such further period as was reasonable, in the particular circumstances of this case;

(f) But for that "reasonable ignorance", submitted Mr Smith, Mr Ross could have and would have timeously presented his complaints to the Employment Tribunal.

71. Under the general proposition set out above Mr Smith made a number of particular submissions:-

(a) That the evidence of Mrs Agbor, which directly contradicted that of the claimant should be regarded as "uneven" in relation to whether she had communicated to the claimant the decision of his Trade Union, taken on 31st January 2019 not to support him in external Employment Tribunal legal proceedings and, of a time limit of 90 days measured from the date of his dismissal within which he would require to himself take steps to instigate such proceedings in order to avoid potential time bar,

(b) That in consequence the evidence of Mr Ross should be preferred to that of Mrs Agbor not only on that material matter but on any other material matters in respect of which their evidence stood in conflict and accordingly, that the Tribunal, on

the basis of Mr Ross's to be preferred evidence, should find in fact that he was wholly unaware:-

(i) of any steps taken by Mrs Agbor on his behalf, on 23rd January 2021, in submitting an ET1 in respect of allegations of bullying, harassment and "victimisation" in which she identified herself as the claimant's representative, or

(ii) of the subsequent rejection of that claim by the Employment Tribunal in terms of its correspondence of 28th January 2021, or

(iii) of her attempted submission of an ET1 in respect of a complaint of Unfair Dismissal, on that occasion in the claimant's own name, in or about the last two weeks of August 2021 and incorporating the claimant's contact details,

(iv) or of the existence or duration of any time limit which, if not complied with, had the potential to restrict his right to present any such complaints of Unfair Dismissal, Breach of Contract or section 26 EqA Harassment; or,

(v) of any duty or requirement on him to take steps, in his own interest and on his own behalf, to instigate a claim within the three month statutory time limit from 24th January 2019 to 22nd April 2019 in respect of a complaint of Unfair Dismissal or similar time period in respect of the complaint of Harassment;

(vi) That the claimant's subsisting ignorance of the above was reasonable in the circumstances because, being a Trade Union member and his Trade Union continuing to provide him with representation and assistance in the internal grievance, disciplinary and appeal against dismissal processes, and he having left the whole matter in the hands of his Trade Union representative, Mrs Agbor, he was reasonably entitled to assume, without any enquiry or subsequent checking on his behalf and in the absence of any communication to the contrary, and notwithstanding any conscious input on his behalf to the process of doing so, that his Trade Union would have addressed his interests by amongst other matters raising relevant external legal proceedings on his behalf

(c) Under reference to **Dedman v British Building and Engineering Appliances Limited** (number 1 on the above list) and **Walls Meat Company Limited v Khan** (number 6), that if the Tribunal were to find that there was fault on the part of the GMB in either failing to successfully lodge a claim with the Employment Tribunal or in failing to inform the claimant that he himself would have to lodge a claim, then that would require a departure from the accepted rule that "skilled advisors" generally take on the legal responsibility for any failure to lodge in time viz; per Lord Denning at page 61 in **Dedman**:- "*but what is the position if he goes to skilled advisors and they make a mistake? The English Court has taken the view that the man must abide by their mistake …. he was not entitled to the benefit of the escape clause: see* ***Hammond v Haycastle and Company Limited*** *[1973] ICR 148. I think that was right. If a man engages skilled advisors to act for him – and they mistake*

the time limit and present it too late – he is out his remedy is against them."

(d) That on the authority of **Dedman** the onus sat with the claimant to show why the **Dedman** rule should be departed from to allow any claim under the ERA to proceed.

(e) Under reference to **Marks and Spencer v Williams-Ryan** (number 2 on the list), that the fact that advice has been taken does not automatically mean that it was not "reasonably practicable" for the claimant to have lodged the claim in time and that each case must depend on its own facts. The case of **Williams-Ryan** being one in which the Tribunal having found in fact that a claimant had been advised by the Citizens Advice Bureau that she should exhaust her employer's internal appeal procedure and had not been told that she had a right to complain to an Employment Tribunal let alone that there was a time limit for presenting such a complaint. The ET, sustained by the EAT, regarded those facts as resulting in it not being reasonably practicable for the claim to be timeously presented and allowed it to proceed nearly four months after the date of dismissal – per the then Master of the Rolls at paragraph 32:- "There is no binding authority which extends the principle in **Dedman** to a situation where advice is given by a CAB. I would hesitate to say that an employee can never pray in aid the fact that he was misled by advice from someone at a CAB. It seems to me that this may well depend on who it was who gave the advice and in what circumstances."

(f) Thus, submitted Mr Smith, the Tribunal, notwithstanding the general **Dedman** rule, must look at what advice (if any) was given and what the circumstances were. If the Tribunal is satisfied that no advice was given a Finding in Fact which he

invited the Tribunal to make based upon Mr Ross's evidence, then, he submitted the **Dedman** rule did not apply at all.

(g) Under reference to the **John Lewis Partnership v Sharman** (number 3 on the list) per Underhill P, as he then was, at paragraph 9:-

> *"The starting point is that if an employee is reasonably ignorant of the relevant time limits it cannot be said to be reasonably practicable for him to comply with them. ….. in the present case the claimant was unquestionably ignorant of the time limits, whether one considers his own knowledge or that of himself and his father. The question is whether that ignorance was reasonable. I accept that it would not be reasonable if he ought reasonably to have made enquiries about how to bring an Employment Tribunal claim, which would inevitably have put him on notice of the time limits. The question thus comes down to whether the claimant should have made such enquiries immediately following his dismissal. …"*

That if the evidence of the claimant is accepted, then the Tribunal would find that he had received no advice either from his Trade Union representative or from any other source during the prescriptive limitation period, about timescales or time limits and instead, that he simply allowed the internal appeal to run its likely course and thus, that he is entitled to say that it was not reasonably practicable for him to have lodged his claims in time, because he was "reasonably ignorant, in those circumstances of the timescales.

72. In relation to the second part of the test contained within section 111(2)(b) of the ERA, Mr Smith submitted that on the claimant's evidence, which he urged the Tribunal to accept over that of Vivienne Halbert, the Application, with

which the Tribunal was concerned, had been lodged by Vivienne Halbert on the claimant's behalf on the 10th of February 2020 in her personal capacity as a friend and not as a Trade Union representative, but without any reference to consultation with or input from the claimant. Thus it had been presented at a time when the claimant remained ignorant of any issue or potential issue of time bar and thus clearly fell to be regarded as having been presented within "such other period as the Employment Tribunal thinks just and equitable in relation to the discrimination elements and "within such further period as the Tribunal considers reasonable" in relation to the Unfair Dismissal and Breach of Contract elements.

73. Regarding the test under section 123 EqA in relation to what is now recorded as a complaint of section 26 Harassment and the applicable different test of "justice and equity" Mr Smith submitted;

(a) that the Tribunal could, and should weigh in the balance in this regard the fact that there had been an attempt in January of 2019, by Mrs Agbor in her then subsisting capacity of the claimant's Trade Union representative, to submit a similar Application, albeit one subsequently rejected by the Tribunal, in January of 2019.

(b) he submitted that the Tribunal could and should take account of that factor notwithstanding the fact that he invited the Tribunal to hold, in terms of Mr Ross's evidence, that that step was taken without the claimant's knowledge input or specific authorisation and without any reference to him it being. It was, nevertheless, evidence of steps taken, if not by him, then on his behalf, to attempt to present an Application, in the first five or six days of the statutory limitation period, albeit that following the rejection of that Application by the Tribunal on the 28th of January 2019 no further steps were taken, either by the claimant or by anyone on his behalf to resubmit an Application until 10th of February 2020, some ten months later.

(c) that in relation to the justice and equity test, the authorities suggested a different approach to the weight to be attached to and the consequences of the involvement of a "skilled advisor"

(i) Under reference to **Chohan v Derby Law Centre** (number 4 on the list) he relied upon the "Legal Principles" set out by HH Judge McMullen at paragraphs 12 to 16:-

> "*12. A Tribunal demonstratively taking the wrong approach or not taking account of a fact which it should have done, errs in law …*
>
> *13. The availability of legal advice is a relevant question …*
>
> *14. The use of a checklist under the Limitation Act is often useful …*
>
> *15. Although it is not a requirement that a Tribunal go through the checklist, failure to consider a significant factor will amount to an error of law …*
>
> *16. The failure by a legal advisor to enter proceedings in time should not be visited upon the claimant for otherwise the defendant would be in receipt of windfall …"*

And at paragraph 19 – "*where the issue turns upon the steps taken by the applicant to obtain and act upon legal advice, Steeds*

v Peverel indicates that wrong advice, or the existence of an implied case against negligent solicitors, ought not defeat an applicant's contention that the claim ought to be heard."

74. In the case **Benjamin Cole v Great Ormond Street Hospital for Sick Children's Trust** UKEAT/0356/09 Mr Smith relied on the statement of HH Judge Serota:-

"*When assessing whether time should be extended the fault of the claimant is plainly relevant, as it is under section 33. So if the failings are those of the solicitor and not the claimant that is highly material. But the errors of his solicitors should not be visited on his head, as the* ***Steeds*** *case and the authorities to which it refers makes abundantly clear. So whatever the reasons why the solicitors failed in their duty would be immaterial when assessing the claimant's culpability, save perhaps for the possibility, which I consider to be wholly fanciful* [in this case] *that they were acting on his instructions and therefore he was indeed personally to blame for the late submission ……. "this is an important consideration in the exercise of discretion. I find that passage of some assistance here as well because bearing in mind that the claimant, a lay person, placed the matter in the hands of someone who was held out as a skilled representative in Employment Tribunal cases, it is difficult to see how she could be at fault for any neglect, misunderstanding or misapprehension of the law on the part of her advisor …… it seems to me as a matter of general principle, where a client places her case in the hands of an advisor who is held out as competent to conduct proceedings on her behalf, I would not expect that such a litigant would reasonably be expected to do such things in ordinary circumstances as to issue proceedings herself."*

75. In reliance upon HH J Serota's remarks, Mr Smith submitted that if the evidence of Mr Ross was accepted then the Tribunal would find "that he left

matters entirely in the hands of his Branch advisors in terms of his "GMB membership matters", with that generalisation being taken to include the raising of external legal proceedings on his behalf, then his failure to take any steps himself, in terms of making internet searches on the law, speaking to a solicitor or trying to lodge a claim directly on his own behalf, was not relevant to the application of the test incorporated in section 123 of the Equality Act.

76. Beyond the above and in relation to the factors which, on the authority of **Keeble** the Tribunal was bound to take into account Mr Smith submitted as follows:

(a) In relation to the length of and reasons for the delay it was accepted that the delay, on one view in excess of a year, was a lengthy one but that the main reason for the length of the delay was the time taken to hold the claimant's internal appeal.

(b) That fact fell to be considered against the background of the claimant's ignorance that those proceedings did not operate to extend any statutory time limit albeit he accepted that the Hearing, when first set down to proceed on the 1st of May 2019 was postponed due to the claimant's decision not to take part in it; but in any event,

(c) that if it were accepted that the claimant did not know that he had to take steps to progress his own claim, because the GMB did not tell him that he had to, then that would be a complete explanation of the delay with the result that it was a factor which should not weigh against the exercise of discretion in favour of extending the time limit

(d) In relation to the extent to which the cogency of the evidence was likely to be affected by the delay, he submitted that the facts of the case, insofar as they might relate to the merits of the claims, being substantially documented, any detrimental effect

of the passage of time on oral evidence would be less in this particular case than might otherwise and ordinarily be the same.

(e) In relation to the extent to which the parties sued had cooperated with any request for information, Mr Smith submitted that that was a neutral factor in the present case.

(f) In relation to the promptness with which the claimant had acted once he or she had known of the facts giving rise to the cause of action, he submitted that the claimant fell to be seen as having acted promptly because a claim was ultimately submitted on his behalf albeit without his knowledge or authority by Mrs Halbert at a time when he continued to remain ignorant of any time bar issue.

(g) In relation to the steps taken by the plaintiff to obtain appropriate professional advice once he or she had known of the possibility of taking action, he submitted as above.

77. Mr Smith concluded by inviting the Tribunal in the particular circumstances of this case to hold, in fact and in law, that the claimant's complaints of Unfair Dismissal and Breach of Contract should be considered by the Tribunal because it had not been reasonably practicable for the claimant to have submitted his claim within the principal statutory time period allowed and, separately, that it was just and equitable to allow the claimant's complaint of section 26 Equality Act Harassment because of the protected characteristic of Disability to proceed.

Submissions for the Respondent

The Complaint of Unfair Dismissal and the Claim for Breach of Contract

78. On the material issues of fact of whether the claimant's Trade Union representative, Mrs Agbor, had informed the claimant, on or shortly after the 31st of January 2019, of the Trade Union's decision not to support him in the

presentation or pursuit of external legal proceedings in the Employment Tribunal and further had passed to him, for his attention and action, the Tribunal's letter of 28 January 2019 rejecting the Application submitted by her on 23 January either with the case papers, or shortly thereafter, Mrs Riddell invited the Tribunal to accept, and prefer the evidence of Mrs Agbor to that of the claimant. She did so on the basis that;

(a) Mrs Agbor remained confident both in examination in chief and in cross examination that she had most certainly;

(i) told the claimant of that decision,

(ii) had advised that in those circumstances if he wished to proceed with an Employment Tribunal claim he must urgently contact other solicitors to advise him and take those matters forward on his behalf or take them forward on his own behalf and, that in doing so,

(iii) she had also passed to the claimant her bundle of case papers including the Tribunal's letter of 28th January 2019, and provided him with contact details of three firms of solicitors, including the details of the firm that now represented him, to facilitate him doing so; and,

(iv) had at the same time advised him of the existence and duration of what she described as a 90 day time limit measured from the date of his dismissal within which he required to raise such proceedings.

(b) The claimant's evidence was in contrast, she submitted, certainly unreliable and, in parts incredible.

(i) The claimant's starting position had been that he had never raised with Mrs Agbor the question of external proceedings before the Employment Tribunal nor had she ever discussed such matters with him either in relation to his complaints of bullying and harassment, or of Unfair Dismissal;

(ii) that she had never advised him of the existence of any time limits or the duration of the same,

(iii) that he was completely unaware of the fact that on the morning of 23rd of January, before attending the disciplinary outcome meeting with Mrs Agbor and at a time where prior to any decision being taken by the Trade Union to restrict the scope of its support to the claimant, she, Mrs Agbor, had submitted a complaint to the Employment Tribunal on his behalf in relation to allegations of bullying, harassment and victimisation;

(iv) nor, he maintained, had he any knowledge of a subsequent Application in respect of a complaint of Unfair Dismissal said to have been submitted online by Mrs Agbor in his own name in April of 2019 nor, at the time, or of that submitted by Mrs Halbert on 11 February 2020.

(v) in cross examination Mr Ross's evidence, at its highest, had become that he "had no recollection of such discussions or conversations, but did accept that Mrs Agbor had passed to him a

bundle of case papers shortly after his dismissal, and

(vi) that he had made initial contact although he had not pursued the same, with a solicitor whose details he accepted had probably been provided to him by Mrs Agbor and, separately,

(vii) that he was aware, including throughout the statutory limitation period, of a right on his part to raise proceedings in the Employment Tribunal both in relation to issues of bullying and harassment and to complain of Unfair Dismissal

79. Mrs Riddell invited the Tribunal to hold, as a matter of fact, that the claimant did know not only of his right to complain to the Employment Tribunal of Unfair Dismissal but also of the relevant 90 day time limit, which failing and in any event, on his own evidence ought reasonably to have known of the same.

80. She further invited the Tribunal, let it be assumed that the Tribunal accepted the claimant's evidence that he was ignorant of the above, to hold that that ignorance was not reasonable in the circumstances.

81. Under reference to the terms of section 112(2) of the ERA which provide that a Tribunal "shall not consider" an Unfair Dismissal claim unless it is presented in time, or unless they are satisfied that it was not reasonably practicable for the claimant to have submitted his claim within the relevant time period and that the claim was then submitted within a further reasonable period, Mrs Riddell invited the Tribunal to dismiss the claim for Unfair Dismissal and Breach of Contract, first presented on 11th February 2020, for want of Jurisdiction and Title to Sue, the Effective Date of Termination of the claimant's employment being 23rd January 2019 and the primary limitation period provided for in terms of section 111(2)(a) of the ERA having expired

on the 22nd April 2019. Under the above proposition Mrs Riddell submitted as follows:-

(a) the burden of proof sat with the claimant to prove that it was not reasonably practicable for his complaint to be presented timeously and that on the Findings in Fact made by the Tribunal that the two limbs of the statutory test set out within section 111(2)(b) of the 1996 Act were met.

(b) in relation to the first limb, the burden of proof was on the claimant and, submitted Mrs Riddell the claimant had failed on the facts to discharge that burden.

(c) Under reference to **Walls Meat Company Limited v Khan** (number 6 on the list of authorities) that in seeking to determine whether it was or was not reasonably practicable to bring the claim within the statutory period a Tribunal required to look at the entire period and ask itself why it was not possible for the claimant to have got the claim in well before the expiry of that period

(i) per Brandon LJ's Judgment in **Walls Meat Company** at page 499:-

> "*The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with or inhibits such performance. The impediment may be physical, for instance the illness of the complainant or a postal strike; or the impediment may be mental, namely the state of mind of the complainant in the*

form of ignorance of or mistaken belief with regard to essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ***ignorance on the one hand, or the mistaken belief on the other, is itself reasonable.*** *Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such enquiries as he should reasonably in all the circumstances have made, or from the fault of his solicitors or other professional advisors in not giving him such information as they should reasonably in all the circumstances have given him.*

82. The respondent's representative submitted that the Tribunal should not be satisfied on the evidence either that it had not been reasonably practicable for the claimant to timeously submit his complaints of Unfair Dismissal and Breach of Contract nor that it was, in the circumstances of his actual or reasonably implied knowledge and of his having failed to establish that there had been any material failure on the part of his Trade Union which had the effect of absolving him from any continuing obligation to act in his own interests, that it was just and equitable that his section 26 EqA complaint be considered though late. She submitted separately and in any event, that the elapse of in excess of 13 months from the expiry of the relevant time period in respect of the section 26 EqA claim and of 11 months in respect of Breach of Contract and Unfair Dismissal, before an effective first presentation of the complaints, should not be regarded as "*such further period as was reasonable in the circumstances*".

Discussion and Disposal

83. The applicable law was rehearsed by both parties' representatives in their helpful submissions which included reference to the instructive and largely uncontroversial case authority. Neither were parties representatives significantly at large on the application of that authority. Rather, it was upon the competing evidence of the claimant on the one hand and that of his two Trade Union representatives and upon the material Findings in Fact which each invited the Tribunal to make on the evidence, that dispute ultimately focused.

84. Read short, the claimant's representative, for his part, invited me to prefer the evidence of the claimant on all material matters and, upon it, to find that throughout the entirety of the relevant statutory limitation periods and extending beyond their expiry up until in or about February 2020, the claimant was reasonably ignorant of the existence and duration of any time limits which might restrict his rights to make applications to the Employment Tribunal and or was reasonably ignorant of the duration of any such time limit, such as to constitute an impediment for the purposes of section 111 of the Employment Rights Act which rendered it not reasonably practicable to timeously present his complaints of Unfair Dismissal and Breach of Contract; and separately, when taken together with a further period of time which he submitted the Tribunal should consider reasonable, so as to result in it being just and equitable, for the purposes of section 123(1)(b) of the EqA, that his claim of section 26 EqA Harassment be considered by the Tribunal though late. But for that asserted "reasonable ignorance, the claimant's representative submitted, the claimant could have and would have timeously presented his complaints to the Employment Tribunal.

85. For her part the respondent's representative invited the Tribunal to prefer the evidence of Mrs Agbor over that of the claimant and, that of Ms Halbert, when in conflict with the claimant's, and, in so doing to find that the claimant had failed to discharge his burden of proof in relation to the essential matters of

fact upon which the Tribunal required to be satisfied and, on the contrary, to find in fact based upon Mrs Agbor's evidence, that the claimant:-

(a) had in fact been aware, throughout the statutory period, both of his right to complain to the Employment Tribunal to both Unfair Dismissal and section 26 EqA Harassment but also of the applicable time limits;

(b) the same in circumstances in which he had been informed of his Trade Union's decision that it would not provide legal support or advice to his raising or pursuing such claims before the Employment Tribunal; and thus,

(c) was not entitled to assume that they had done so or to blame them for his own failure to take action in his own interests and on his own behalf.

86. Which failing, and in the alternative, let it be assumed that the Tribunal accepted that the claimant was and had remained ignorant of his rights and was reasonably entitled to have been and remain so ignorant notwithstanding his access to and contact with both Trade Union representatives and at least one legal advisor during the statutory periods that;

(a) In those circumstances the Tribunal should find that the claims had not been submitted with "such further time as was reasonable and on that separate ground the Tribunal should decline to hold that it was not reasonably practicable for the ERA complaints to have been timeously submitted nor that it was just and equitable, in the circumstances, for the EqA complaint to be considered though late.

87. As reflected in the Findings in Fact made, I preferred the evidence of Ms Agbor and the material parts of Ms Halbert over that of the claimant on the material issues including the state of the claimant's knowledge, actual

and or implied at material times. Ms Agbor was clear and consistent that she had, as a matter of fact, advised the claimant; of the Trade Union's decision that it would not provide him with legal advice or support or otherwise support him in pursuing external proceedings before the Employment Tribunal, that the fact of that decision did not necessarily mean that the claimant didn't have a pursuable claim and thus that he, the claimant, should take steps to put in place external legal representation to pursue/raise such proceedings or take them forward himself and that he should do so urgently because there was a "90 day" time limit which applied to the raising of such proceedings; and, that she had provided him with the names and contact details of three firms of solicitor/solicitors whom she knew had agreed to act directly on behalf of Trade Union members in the past in order to facilitate his doing so. I found the evidence of Ms Agbor to be both credible and reliable on these matters and I accepted it.

88. Although I did not regard the claimant as an incredible witness, *per se*, I found his evidence on these material matters to be unreliable and in some respects implausible. On the one hand his position both in evidence in chief and stood upon in submission was that he had no knowledge whatsoever of any applications/attempted applications to the Employment Tribunal made by Ms Agbor on his behalf or for him in his name nor of the rejection letter of 28th January from the Tribunal in respect of the application containing the EqA 2010 complaint submitted by Ms Agbor on his behalf on the morning of 23rd January, nor of his Trade Union's decision not to provide him with legal advice or support in the pursuit of Employment Tribunal proceedings, nor of the subsequent application containing a complaint of Unfair Dismissal which Ms Agbor attempted to make on his behalf in April of 2019, nor, as he appeared to suggest at one point in his evidence of the application submitted in his name by Ms Halbert in August of 2020, at the time of its being submitted. His position was that he became aware of the existence of such applications only after he had made enquiry of ACAS in relation to any Early Conciliation Certificates issued in his name. On the other hand he conceded in cross examination that he had indeed received a bundle of case papers in or about the end of January/beginning of February 2019 following his

dismissal on the 23rd of January 19. He also accepted that he had in fact made contact with a solicitor some time in the period between January and April 2019 and that the details of that solicitor had probably been provided to him by Ms Agbor. In relation to the submission of a Form ET1 on his behalf on 23rd January 19 and the attempted submission of a Form ET1 in his name in April 19, both by Ms Agbor, the claimant's position in cross examination became that of having no recollection of any personal involvement by him in either of those processes or of ever having had sight of the Tribunal's letter of 28th January 19 rejecting the first application or of otherwise hearing of or being told about the fact of that rejection. Likewise he indicated that he had no recollection of being told by Ms Agbor of the fact that he needed to get or put in place other legal representation in respect of raising and pursuing his claims at the Employment Tribunal or to attend to doing so himself, or that he should do so urgently because of the "90 day time limit" which applied to the raising of such claims, or of her passing to him the contact details of three potential sources of external legal advice and representation, albeit that he did accept that he did make initial contact with one of those potential sources identified, in the period between January and April 2019 and that, in 2020 he ultimately instructed another of the firms whose details Ms Agbor had provided him with.

89. The claimant's position was that he being a member of a Trade Union, had contacted the Trade Union and asked for help and assistance and that he had thereafter left and was entitled to leave matters entirely in the hands of his Trade Union representatives to progress on his behalf that being a situation which he said applied equally to the raising of proceedings on his behalf before the Employment Tribunal as it did to the provision of non-legal advice and representation in relation to internal proceedings. His position was that having done so he was entitled as a Trade Union member, and in the absence of being informed to the contrary, that his Trade Union would take all necessary steps to protect his interests including the provision of legal advice and services in relation to or otherwise in the raising of external proceedings before the Employment Tribunal on his behalf, in order to protect his interests. It was his position that he was not to be blamed or prejudiced,

in those circumstances, by any failure on the part of his Trade Union to do that.

90. On the evidence presented and the Findings in Fact made I have determined that the claimant was not only aware of his right to raise proceedings before the Employment Tribunal and of the relevant time limits within which he required to do so at first instance but also, insofar as he may have been proceeding on any such assumption as set out above, that he had in fact been informed to the contrary, that is to say that he had been told by Ms Agbor on the 31st of January/1st February 2019 that she had been advised, that his case having been considered by the Trade Union's legal representatives the Union had decided that it would not provide the claimant with legal advice or support in relation to or otherwise in the raising and pursuing of external legal proceedings before the Employment Tribunal. Separately, and even absent such a Finding in Fact I do not consider that the claimant was reasonably entitled to proceed on the basis of the above assumption, in the circumstances presented.

91. As found in fact at the material time the position within the claimant's Trade Union was that shop stewards did not have the authority to directly approach the Union's legal representatives with requests that assistance be provided to a member. Rather, the procedure was that the shop steward or other part-time officer required to bring the request for legal advice/assistance to the attention of the relevant full-time Union officer who was the only person with the authority to approach the Union's legal advisors with such a request. It was also the case that there was no automatic entitlement to the provision of legal advice or support or of other support in relation to external proceedings an individual decision being taken in each case based upon the relevant facts and circumstances and the assessment of the Union's legal advisors. The claimant was aware of that procedure and requirement. Following the disciplinary hearing at which he was dismissed the claimant accompanied Mrs Agbor to a meeting, in the foyer of Glasgow City Chambers with the full-time Union officer at which Mrs Agbor conveyed to the full-time officer the claimant's request that he be provided with Trade Union finance legal advice

and assistance in the raising and pursuit of proceedings before the Employment Tribunal.

92. Separately, the position of the claimant's two Trade Union representatives falls to be distinguished from that of a professionally instructed legal advisor. Neither was held out by the Trade union as being skilled in the conduct external legal proceedings on behalf of members nor did they so represent themselves. Rather, as the claimant was aware and as they confirmed to him any request for legal advice and support require to be presented to the Trade Union's legal advisors in accordance with the authorised procedure. Further, a Trade Union officer has no implied authority to raise proceedings on behalf of another person without that person's consent or knowledge. The claimant's position that he proceeded throughout the relevant statutory periods on an assumption that his Trade Union advisors would raise such proceedings to protect his position sits uncomfortably with his denial/lack of any recollection of his personal involvement in the preparation and submission either on his behalf or in his name of applications in January and or April 2019 by Mrs Agbor.

93. While the Tribunal has discretion to extend time limits for the presentation of claims in circumstances where facts which satisfy the statutory tests are established, there is no presumption in favour of it doing so. The onus of proof sits squarely with the claimant to establish those facts.

94. The basis upon which the claimant seeks to satisfy the Tribunal that his claims respectively fall within the saving provisions of section 111(2)(b) of the Employment Rights Act 1996 and section 123(1)(b) of the Equality Act 2010 is that throughout the relevant statutory time limit periods and beyond, he was justifiably ignorant of the time limits pertaining to the raising of the relevant proceedings but for which ignorance (impediment) he could and would have raised his claims timeously. He separately contended that he was entitled, by virtue of his Trade Union membership and having sought and received assistance in relation to internal proceedings, to rely upon his Trade Union, to also raise external proceedings to protect his interests without further input

from himself and that they had failed to do so in circumstances resulting in it being just and equitable that his EqA claim be considered though late. On the evidence presented and the Findings in Fact made I find that the claimant has failed to discharge his onus of proof and so satisfy the Tribunal, and that his complaints, both under the Employment Rights Act 1996 and the Equality Act 2010, fall to be dismissed for want of jurisdiction.

Employment Judge: Joseph d'Inverno
Date of Judgment: 17 March 2021
Entered in register: 22 March 2021
and copied to parties

I confirm that this is my Judgment in the case of Ross v Glasgow City Council and that I have signed the Judgment by electronic signature.