THE EMPLOYMENT TRIBUNALS

Claimant
Ms Alexandra Claxton-Mayer

Respondents
Gateshead Council ("the LA")
The Frontline Organisation ("Frontline")
University of Bedfordshire ("the University")

JUDGMENT OF THE EMPLOYMENT TRIBUNAL
AT A PUBLIC PRELIMINARY HEARING by telephone

HELD AT NEWCASTLE by CVP ON 24 MARCH 2021
EMPLOYMENT JUDGE GARNON
Appearances
Claimant in person
The LA Ms B. Clayton of Counsel
Frontline Ms J. Connolly of Counsel
The University Mr S. Ahmed of Counsel

JUDGMENT

1. The claim against the third respondent is withdrawn, but will not be dismissed under Rule as the claimant reserves the right to proceed in a Civil Court.

2. The claims against the first and second respondent were presented outside the time limit for doing so. It is not just and equitable to hear them notwithstanding that, so they are dismissed.

NOTES AND REASONS

1. The claims are under the Equality Act 2010 (EqA) relying on the protected characteristic of disability. At a Private Preliminary Hearing (PrPH) on 7 January 2021, I recorded not all claims were against all respondents. Rules 51 and 52 of the Employment Tribunal Rules of Procedure 2013 (the Rules) provide

51. Where a claimant informs the Tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end, subject to any application that the respondent may make for a costs, preparation time or wasted costs order.
52. Where a claim, or part of it, has been withdrawn under rule 51, the Tribunal shall issue a judgment dismissing it (which means that the claimant may not commence a further claim against the respondent raising the same, or substantially the same, complaint) unless—
(a) the claimant has expressed at the time of withdrawal a wish to reserve the right to bring such a further claim and the Tribunal is satisfied that there would be legitimate reason for doing so; or
(b) the Tribunal believes that to issue such a judgment would not be in the interests of justice.

As explained below, and I clarified to the claimant today, any claim against the University should be pursued under Part 6 of the EqA in the courts. She agreed to withdraw this claim and reserved to right to do so. I embolden some key dates for the time limit issue I am to decide today.

2. The claimant was diagnosed as having epilepsy in 2018. The LA accept she is a disabled person. Frontline is a registered charity which recruits trains and supports people to become social workers. It did not employ the claimant. She participated in the 2019 cohort of its Frontline Leadership Development programme,"Fastrack Social Work". She started a placement with the LA's Children and Families Social Work team as a trainee social worker on **1 or 2 September 2019.** She informed Frontline of her epilepsy prior to commencement of the course by completing a Health Self-Disclosure Form dated **4 April 2019** and had an Occupational Health (OH) report dated **26 June 2019**. On **29 August 2019** she attended a meeting at the Gateshead Civic Centre to discuss the management of her epilepsy during her placement with Julie Henry (Frontline Practice Tutor), Lesley Holden (Chief Children and Families Social Worker of Gateshead Social Services), Joanne Ormston (Frontline Liaison Officer) and Clare Archibald (Consultant Social Worker of Gateshead Social Services). This meeting discussed what reasonable adjustments could be made and agreed a plan to manage her epilepsy. She says the agreed actions were not implemented and the only adjustment put in place was she could ask other students to accompany her on home visits. This informal arrangement depended on other students being available which was difficult to organise, because they had to complete their own work. Also, she was instructed by Ms Archibald only students who knew the particular family should accompany her.

3. The claimant says it was clear to Ms Archibald and Allan Brownrigg (Head of Region, Frontline) **by 20 December 2019 at latest** the arrangements for home visits were not effective. She had told Ms Archibald this repeatedly and asked for improvements. She was upset to be told by Mr Brownrigg that if he had been aware of the regularity of her seizures prior to the course starting she may not have been accepted. She requested a support worker to accompany her on a number of occasions including at a "cause for concern" meeting on **15 January 2020**, and at a meeting with Ms Archibald on **10 February 2020**. She was informed all reasonable adjustments were in place.

4.The outcome of a Progress Review 2 Meeting (attended by Ms Archibald and Ms Henry) on **14 February** was Ms Archibald recommended the claimant fail the first part of her Frontline training because of 'lack of depth''. On **3 March 2020** she was advised through the University of her fail of Stage 1 of the course.

5.She claims

(a) direct discrimination by Frontline in (i) applying the cause for concern process in response to her absences due to epileptic seizures,(ii) Mr Brownrigg referring to her epileptic seizures and related absences as a cause for concern when non-disabled fellow students had not been subjected to this process despite having similar levels of absence (iii) failure to discuss a support plan to better manage her seizures, all in breach of Frontline Policy on Health and Disability and Performance Review, and less favourable treatment of her compared to non-disabled students.

(b) Frontline and the University discriminated against her because of something arising in consequence of her disability by failing her. Ms Archibald's report of the meeting on 14 February 2020 illustrates this was because of the impact of her epilepsy related absences had on the depth and breadth of her work which resulted from the ineffectiveness of the adjustments.

(c) Frontline and the LA breaching s 20/21 by failing to provide a support worker to accompany her.

6. The last act of alleged discrimination was on 3 March 2020. On **2 March 2020** the claimant submitted an initial complaint to Frontline and on 4 March a second complaint. She hoped to resolve maters by internal procedures. She was initially told she would receive an outcome within 21 days and have the chance to appeal, so did not seek legal advice. She was a member of Unison who told her the case was very complicated and may have to be brought under the "Education" provisions of Part 6 EqA. She was informed on **5 June** the investigating officer had finished her investigation then told on **2 July** Frontline had re-opened it but she did not hear the outcome until **17 July**. She was informed the delay was in part due to the Covid19 pandemic. She lodged an internal appeal on **23 July**. This was later rejected.

7. She sought legal advice. **On 29 July** she was told to claim in the Court and the Tribunal. She started Early Conciliation (EC) with ACAS that day. ACAS issued an EC Certificate on **26 August**. She presented her claim on **24 September 2020**

8. In February 2020 she submitted the same complaints to the University. It informed her she would have to lodge a Stage 1 academic appeal and they would not consider it until Frontline had finished investigating. On **14 September 2020** she was told her academic appeal was rejected on the basis her complaint did not fall into their grounds for appeal.

9. She told me today in 2019/20 she had caring responsibilities for her grandmother, who lived far away, was very ill and needed the claimant to make arrangements with her carers and GP. Her grandmother passed away on 5 July 2020 and the claimant had to arrange a "remote" funeral.

10. The key points of LA's amended grounds of resistance are
10.1. It accepts it is an employment service provider in a work placement as discussed in para 61(2) of Blackwood-v-Birmingham & Solihull Mental Health NHS Foundation Trust 2016 EWCA Civ 607, and within the meaning of sections 55 and 56 of the EqA, so the ET has jurisdiction to hear her claim (subject to the time point). In that case Underhill L.J. said

61. It may be helpful after so lengthy a discussion if I summarise what I believe to be the effect of sections 55 and 56, construed so as to give effect to the relevant Directives. The starting-point in any case is to identify the nature of the student's complaint – that is, whether it is about discriminatory access to a work placement or about discrimination occurring during the placement.
(1) If the claim is about access *– either that the university has failed to provide a placement at all or that it has done so in a discriminatory way – it can only be brought under section 91, and thus in the County Court. The primary claim will inevitably be against the university, because it is the university that has the responsibility for the provision of access, and it is hard therefore to see any role for sections 109 and 110; but if the provider has induced or aided that contravention it will be secondarily liable under section 111 or 112 and the student can proceed against it (in the County Court) as well as, or instead of, the university.*

(2) If the claim is about discrimination by the provider in the course of the work placement, the provider will typically have done the act complained of as a principal and will thus be primarily liable for that discrimination under section 55, with the forum for any proceedings being the Employment Tribunal. There may be untypical cases where the act was done by the provider as the agent of the

university. In those cases both the university and provider will be liable, by virtue of sections 109 (2) and 110 (1) respectively, but the liability will still arise under section 55, so the ET will still be the correct forum whether the claimant chooses to proceed against only one of them or against both. The university may of course also in a particular case be liable, depending on the facts, under sections 111 or 112 as having induced or assisted the discrimination. Any such claim will, again, have to be brought in the ET: see sections 114 (1) (e) and 120 (1) (b).

10.2. She last attended her placement on 2 March 2020 and did not commence EC until 29 July 2019. In order for her claim to continue I would have to find it just and equitable to extend time.

10.3. The LA concedes she is disabled and it had knowledge of it from the start of the placement. The LA admits it has a practice within the meaning of s.20(3) of requiring Student Social Workers to undertake unaccompanied home visits and that practice placed her at a substantial disadvantage because she would be in a vulnerable position were she to have had a seizure in someone's home.

10.4. The crux of its defence is
18. Notwithstanding the above, it is denied that, contrary to s.21 Equality Act 2010, the LA failed to make reasonable adjustments. The LA agreed with the Claimant that she should be accompanied when undertaking home visits and arrangements were put in place to enable this to happen. The LA denies the Claimant was limited by having to rely on other students to accompany her on home visits; Claire Archibald (consultant social worker employed by the LA) and other deputy consultant social workers were available to support the Claimant on these visits. Further, it was agreed that the Claimant could undertake visits to schools without accompaniment from social services and that she could conduct appointments at the LA's offices without direct accompaniment.

19. The Claimant is put to strict proof she was unable to attend specific home visits as a result of not having someone to accompany her. The LA seeks further and better particulars of the following:
(a) The dates and subjects of the home visits that the Claimant says she was unable to attend as a result of not having someone to accompany her.
(b) In relation to each such visit, the identity of person that the Claimant informed at the time about the lack of a person to accompany her, the date that the Claimant informed the said person, the manner in which the Claimant informed the said person and what the person said in response.
The LA reserves the right to plead further upon receipt of the said further and better particulars.

20. It is noted that the Claimant has produced a document dated 26 November 2020 in response to the above request for further and better particulars. Although this purports to answer the queries raised by the First Respondent the Claimant has not answered directly either a. or b. above. The Claimant has not identified any occasions on which a home visit could not be carried out because there was a lack of a person to accompany her. If there are no such occasions (which appears to be the position) then it is evident that the measures put in place alleviated the substantial disadvantage and there was no failure to make reasonable adjustments by the First Respondent. As a result the claim against the First Respondent has no reasonable prospect of success or alternatively little reasonable prospect of success and this matter should be considered as part of the Preliminary Hearing requested at paragraph 13 above.

21. Without prejudice to the foregoing, the Claimant refers in the penultimate paragraph of the document dated 26th November 2020 to discussions of 'concerns regarding the problems related to

making visits and the ineffectiveness of the adjustments that had been put in place with Gateshead and Frontline Staff on a number of occasions'. The Claimant is asked to provide further and better particulars as follows. In relation to each discussion: the date of the discussion(s), the identity of the person(s) with whom the conversation occurred, the identity of any witness(es) to the conversation, the manner in which the Claimant discussed the issue with the said person (e.g. in person, by telephone, by email) and what the person said in response.
The LA reserves the right to plead further upon receipt of the said further and better particulars.

10.5. The LA admits on 14 February 2020 the claimant attended a Progress Review 2 Meeting and was informed of concerns:*" Alex has not been able to offer a consistent service to her service users and therefore there are pieces of work which have not been completed as planned. Overall Alex's practice experience is not as in-depth as it was planned it would be. Alex has not for example completed a Child in need assessment and she has not completed consistent planned interventions with families. It is therefore with regret Alex cannot pass this first part of her placement.* It denies the decision to refer concerns to Frontline was because of something arising in consequence of her disability. She had not made sufficient progress, due to absences, not all disability related, and a personal lack of confidence. Further or alternatively the treatment was a proportionate means of achieving the following legitimate aims:
a. Compliance with the Agreement.
b. Ensuring students on the Course are ready, safe, competent and able to work with a degree of autonomy to progress to year two with the concomitant additional risks that is associated with it.
c. Ensuring the Student Social Workers meet the requisite standards so that they are able to progress to become safe and competent social workers and thereby meet the needs of the community they serve.

10.6. The University's decision the placement was unsuitable for the claimant was an access decision within the meaning of paragraph 61(1) of Blackwood, so the ET has no jurisdiction.

11. The pleading was drafted by Ms Clayton on 10 December 2020. The claimant had applied to add claims by letter dated 19 November. On 7 January 2021 I had been sent documentation but not that letter. I have now seen it. She confirms Ms Archibald of the LA and Mr Brownrigg of Frontline, were fully aware of the inadequacy of the informal arrangements put in place to support her carrying out home visits at the latest by 20 December 2019 and despite her request that these be re-considered nothing was done which prevented her successful completion of the course. Many absences and difficulties in carrying out unaccompanied home visits arose from her disability. Her absences would have been significantly reduced if the LA and Frontline had implemented the agreed measures. The claimant's letter of 26 November includes
The demand from Gateshead I identify home visit appointments that I missed because of the ineffectiveness of the reasonable adjustment put in place is based on a misunderstanding of how this adjustment was intended to operate.
I was responsible for arranging home visits. This involved making initial arrangements taking into account the availability of members of the family concerned as well as with, often multiple, outside agencies. It was very often the case that once I'd gone through a difficult process of organising a time that was possible for family members and outside agencies to attend I discovered, on checking the diaries of colleagues, there was no-one from the placement available to accompany me. This resulted in me having to begin the process again significantly increasing the length of time and effort I had to put in to arrange home visits.

It was very clear to both Gateshead and Frontline staff that these arrangements were not working, I discussed my concerns regarding the problems related to making visits and the ineffectiveness of the adjustments that had been put in place with Gateshead and Frontline staff on a number of occasions. These discussions included my suggestion of alternative reasonable adjustments, including the possibility of approaching Access To Work requesting provision of a support worker- this suggestion was dismissed out of hand.

12. I said in January the claimant had probably done as well as she could to provide further information. There remained "gaps" in the detail. A vital area of dispute would be whether, as Frontline and the LA argue, she was insufficiently pro-active in seeking people to accompany her. This will involve examination of factual details she asserts and, in order for a trial to be fair to both sides, witnesses for the respondents to be able to recall what happened, why and when. Ms Clayton's response was clear too. I said on 7 January and again at the start of today's hearing, my preliminary view was her time limit point not would succeed, because several factors existed which explained some delay. It appeared to me then the delay was less in duration and more excusable than I now see it was. For example, I did not know about her being a union member or the number of opportunities she had to claim well before her placement ended

13. Frontline's response says the whole claim is time-barred. It accepts at the meeting on 29 August 2019 a plan was agreed to support the claimant but denies it did not implement the actions agreed. It accepts the Cause for Concern process was initiated following a meeting on 20 December 2019 and second Cause for Concern meeting took place on 15 January 2019 to explore the reasons for the claimant's high number of absences from the placement. Epilepsy was not the only reason for them. She failed Stage 1 of the programme on account of her being unable to demonstrate an ability to meet all of the required elements of the Professional Capabilities Framework. The decision to fail her was taken in February 2019 by Ms Archibald.

14. The University's response cites Nwabueze-v-University of Law 2020 EWCA Civ 1526. On 7 January I thought the claimant was probably claiming against the university as a "qualifications body" under s 53 and 54 but it may well fall within one of the exemptions to the statutory definition. Mr Nwabueze argued the University of Law is not legally defined as a university. Lord Justice Bean ruled it was, so the claim could be brought only in the county court. The University of Bedfordshire clearly has the status of a University .

15. On 7 January I ordered the claimant was to send to the Tribunal and each respondent such further information as she could provide in reply to the requests made in paragraphs 19 and 21 of the LA's amended response. On 31 January she wrote including " *I do not have particular dates to provide the tribunal for home visits that were not carried out. As I managed my own diary, and the responsibility was given to me to arrange home visits, I would not have recorded visits I was unable to arrange.*" This is not a sustainable argument. The claimant must have known her placement and success on the course was in jeopardy if she did not do enough home visits so making a record of failed attempts, and why they failed, was vital. She lists some dates of discussion of concerns about making home visits and the ineffectiveness of adjustments starting with 29 August 2019 then
(i) On 9 October a supervision with Ms Archibald discussed she was anxious about the impact of her epilepsy and carrying out unaccompanied visits. Ms Archibald said she would speak to Lesley Holden about when it would be appropriate for me to lone work.

(ii) On 20 December 2019 Ms Archibald told her could not go on unaccompanied home visits and it was her responsibility to find other students to accompany her who had worked with the families
(iii) In early January she had an informal conversation with Ms Archibald saying after working with Gateshead Access to Employment Service for her adult placement, she believed there could be further reasonable adjustments made for home visits. Ms Archibald responded all reasonable adjustments had been made.
(iv) In the 'Cause for Concern' Meeting on 15 January with Mr Brownrigg and Ms Archibald she raised the difficulties in making unaccompanied home visits and said she wanted to have a further reasonable adjustments eg the provision of a support worker to accompany her. Mr Brownrigg responded there would be difficulties with this due to the nature of the social work role. When she suggested exploring Access to Work as an option he said he would contact them.
(v) On 10 February Ms Archibald stated she could now approach the deputy consultant social workers to accompany her on home visits. She said she was not sure how this would work as the deputy consultant social workers have their own caseloads.
(vi) At her Progress Review 2 meeting on 14 February with Ms Archibald and Julie Henry she raised she had heard nothing further to Mr Brownrigg stating he would contact Access to Work. She received the 'Cause for concern' 15 January 2019 meeting minutes that day
(vii) On 21 February she sent an email to Mr Brownrigg explaining the difficulties of having to arrange visits around other's diaries He responded to by email asking for another discussion the following week. A risk assessment had been recommended in regard to home visits on 29 August and in an Occupational Health Report of 26 June 2019. None was carried out during her placement.

16. Taking her case at its highest, she was aware of the problem, attributed it to failure to make reasonable adjustments and knew, or should have known, she could have brought such a claim before her placement was terminated. The delay I must look at starts in September 2019 when agreed adjustments did not come about. From then, she raised them and nothing was done. On her own case, by the end of 2019 she had "hit a brick wall".

17. Ms Clayton replied on 19 March saying the further information still failed to give detail. She responded in relation to the meetings listed. Ms Lesley Holden, an important witness for the LA has been on long term sick for some months and it is not known when she may return. Ms Connolly said Mr Brownrigg left Frontline on 25 September 2020. Had the LA and Frontline known earlier a claim was on its way, evidence could have been gathered and recorded while memories were fresher. Both Counsel said there was no reason to explain why, already out of time, the claimant waited from ACAS issuing an EC Certificate on **in late August** to **24 September 2020** to present her claim. The claimant said she had four weeks, which is right, but she does not have to use it all. She was advised by a solicitor on 29 July to issue in the courts and the Tribunal. She was granted legal aid in early August, her case was taken on by a solicitor on 11 August 2020 and on 13 August, court proceedings were issued but withdrawn before service. She informed the solicitor she was starting a new job on 7 September and legal aid ended from 8 September. She started EC **on 29 July** but my experience during the pandemic has been of delays at ACAS contacting prospective respondents, and sometimes not contacting them at all. Also, the Tribunal staff have been unable to serve claims as swiftly as before. The more time passes between events which could have been brought as claims and respondents being alerted to the need to gather evidence the greater the chance of the quality of evidence being irreversibly impaired.

The Law and My Conclusions

18. Section 123 includes:
(1) Proceedings on a complaint within section 120 may not be brought after the end of—
(a) the period of 3 months starting with the date of the act to which the complaint relates, or
(b) such other period as the employment tribunal thinks just and equitable.
(3) For the purposes of this section—
(a) conduct extending over a period is to be treated as done at the end of the period;
(b) failure to do something is to be treated as occurring when the person in question decided on it.
(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
(a) when P does an act inconsistent with doing it, or
(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

19. "Extending over a period" has been considered in many cases notably Cast-v-Croydon College 1998 IRLR 318 Hendricks-v-Commissioner of Police for the Metropolis 2003 IRLR 96. Matuszowicz-v-Kingston-Upon-Hull City Council 2009 IRLR 289 held failure to make reasonable adjustments is an omission, not an act, and time starts to run when an employer says it will not take a step or fails for a longer time than reasonable to do anything positive. The claimant in that case gave the employer some time to remove what he saw as the impediments to doing the job. The argument he should have realised earlier they would not and brought the claim earlier was said by Sedley LJ to *"demand a measure of poker faced insincerity which only a lawyer could understand or a casuist forgive".* This case is different. As I said in paragraph 16 above by 20 December 2019, the claimant was getting nowhere and must have known that. She has an arguable case she was also subjected to harassment on that day by Mr Brownrigg on that day. She could have brought two claims then.

20. Mummery L.J. said Stockton Council–v-Aylott the duty to make reasonable adjustments is at the heart of the legislation. Baroness Hale said in Archibald-v-Fife Council

57. … the Act entails a measure of positive discrimination, in the sense that employers are required to take steps to help disabled people which they are not required to take for others. It is also common ground that employers are only required to take those steps which in all the circumstances it is reasonable for them to have to take.

58. … The control mechanism lies in the fact that the employer is only required to take such steps as it is reasonable for them to have to take. They are not expected to do the impossible.

21. Smith-v-Churchills Stairlifts held the test of what is reasonable is objective. The respondent also has to know, or ought to have known, what more steps were needed. In Newham Sixth Form College-v-Sanders 2014 EWCA Civ 734 Laws L.J. said

14. In my judgment these three aspects of the case -- nature and extent of the disadvantage, the employer's knowledge of it and the reasonableness of the proposed adjustments -- necessarily run together. An employer cannot, as it seems to me, make an objective assessment of the reasonableness of proposed adjustments unless he appreciates the nature and the extent of the substantial disadvantage imposed upon the employee by the PCP. Thus an adjustment to a working practice can only be categorised as reasonable or unreasonable in the light of a clear understanding as to the nature and extent of the disadvantage. Implicit in this is the proposition, perhaps obvious, that an adjustment will only be reasonable if it is, so to speak, tailored to the disadvantage in question; and the extent of the disadvantage is important since an adjustment which is either excessive or inadequate will not be reasonable.

22. HH Judge Richardson said in General Dynamics -v-Carranza EAT/0107/14

The Equality Act 2010 now defines two forms of prohibited conduct which are unique to the protected characteristic of disability. The first is discrimination arising out of disability: section 15 of the Act. The second is the duty to make adjustments: sections 20-21 of the Act.
In many cases the two forms of prohibited conduct are closely related: an employer who is in breach of a duty to make reasonable adjustments and dismisses the employee in consequence is likely to have committed both forms of prohibited conduct.

23. This was approved by Elias LJ in Griffiths-v-The Secretary of State for Work and Pensions 2015 EWCA Civ 1265 which confirms an employer cannot show the s 15(2) defence if it has failed to make reasonable adjustments which might have prevented the "something" which caused the unfavourable treatment. As Elias LJ said *"An employer who dismisses a disabled employee without making a reasonable adjustment which would have enabled the employee to remain in employment - say allowing him to work part-time - will necessarily have infringed the duty to make adjustments, but in addition the act of dismissal will surely constitute an act of discrimination arising out of disability. The dismissal will be for a reason related to disability and if a potentially reasonable adjustment which might have allowed the employee to remain in employment has not been made, the dismissal will not be justified".* However, if it has done all that is reasonable there is usually little more to be done to justify dismissing or subjecting the employee to some detriment.

24. The claimant may well get to the point where the LA and Frontline have to show the ending of her placement was in no way influenced by something arising in consequence of her disability. Whether it can is likely to be a finely balanced decision depending largely upon whether reasonable adjustments had been made. It has to have a fair opportunity to show all it knew was needed was done.

25. If a claim is out of time, it may still be just and equitable to hear it. In British Coal Corporation-v-Keeble 1997 IRLR 336 Dame Janet Smith drew an analogy with s.33 of the Limitation Act 1980, provides a broad discretion for a Court to extend the limitation period of three years in cases of personal injury. It requires the court to consider **the prejudice which each party would suffer** as the result of the decision to be made and also to have regard to all the circumstances of the case and in particular, (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 plaintiff acted once he or she knew of the facts giving rise to the cause of action; (e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action. Her Ladyship added *It seems to us that if **the only reason** for a long delay is a wholly understandable misapprehension of the law, that must have been a matter which Parliament intended the tribunal to take into account when considering 'all the circumstances of the case'.* (bold is my emphasis)

26. Before the coming into force of EqA Robertson-v-Bexley Community Centre held there must be exceptional reasons for extending the primary time limit. I do not believe this is still good law. The wording of the time limit provisions in earlier statutes was different. I do not believe Parliament would have changed wording in place for 35 years had it not meant to relax the rigidity in Robertson. Using internal processes is not automatically reason for not issuing in time but is a relevant factor Robinson-v-The Post Office. Of the tests in Keeble, I view as very important the extent to which the memories of witnesses, for or against the claimant, are impaired by the passage of time.

27. On 15 January 2021 in Adedeji-v-University Hospitals Birmingham NHS Foundation Trust Underhill L.J. said Keeble did no more than suggest a comparison with the requirements of the Limitation Act might help 'illuminate' the task of a tribunal by setting out a list of potentially relevant factors. It did not say that list should be used as a framework and that was how it had too often been read. Rigidly applying them as a checklist could lead to a mechanistic approach to what is meant to be a very broad general discretion. The best approach in considering the exercise of the just and equitable discretion is to assess all the factors in the particular case a tribunal considers relevant.

28. Time limits are short because discrimination cases are fact sensitive so it is necessary for witnesses to be able to remember what was said or done, why **and** the context in which it was. The sooner an employer is made aware a claim may be made, the sooner enquiries can be made of witnesses and the results recorded in writing, whilst events are still as fresh as possible in their memory. Internal procedures may result in prompt records being made, but not always.

29. I accept the claimant is not legally trained and her complaint involves complex issues of legal liability and venue for her claim. At completion of the ET1 she was unclear on these issues. In her covering letter to her ET1 she did say based on her own research she thought the time limit was six months less one day which is wrong. Any errors of law were far from the only reason for delay. She was not given clear information about how to go about internal procedures which were delayed, but she knew that was happening . She had access to union advice, knew about Access to Work and could and did research online, often effectively. I accept she had responsibilities relating to her grandmother, but despite being advised by the solicitor on 29 July to submit a claim to the Tribunal took another eight weeks to do so.

30. All in all, she is a very pleasant lady who tolerated a bad situation for far too long. My sympathies are with her but each week that passed without her making a note of key events, such as home visits she could not arrange, brings us to the point not even she can now give specifics. The respondents' witnesses will not be able to answer questions about what happened, when and why. All too often I see spurious time limit arguments from respondents, indeed I dealt with one on the day of writing these reasons. However, in this case the prejudice the respondents would suffer would be facing a case in which the cogency of the evidence it needs to bring to defend itself is likely to be greatly affected by the delay and irreparably so. The Tribunal will be faced with diametrically opposed views of the parties and no reliable basis to decide which is the more likely. With regret, and narrowly, I have concluded extending time would not be just and equitable.

Employment Judge T.M. Garnon
Orders authorised by the Employment Judge on 25 March 2021