



## EMPLOYMENT TRIBUNALS

**Claimant**  
Dr Gueorgui Kolev

v

**Respondent**  
Middlesex University

**Heard at:** Watford by CVP

**On:** 17 March 2021

**Before:** Employment Judge Alliott (sitting alone)

**Appearances:**

**For the Claimant:** In person

**For the Respondents:** Mr Shane Crawford (Counsel)

### RECORD OF AN OPEN PRELIMINARY HEARING

**COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals**

**“This has been a remote hearing not objected to by the parties. The form of remote hearing was CVP. A face to face hearing was not held because it was not practicable and no-one requested the same.”**

### JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claims of sex discrimination/harassment/victimisation arising out of alleged treatment prior to 7 October 2019 are out of time and it is not just and equitable to extend time. Accordingly, those claims are struck out.

### REASONS

1. This preliminary hearing was ordered by Employment Judge Lewis on 18 October 2020 to determine the following issue:

“To consider any application for strike out or deposit orders.”

2. The claimant was employed by the respondent as a Senior Lecturer in Behavioural Economics. The claimant's claim form states that he was employed on 1 January 2014 whereas the respondent's response puts his date of employment as 1 September 2013. The claimant was summarily dismissed for gross misconduct on 20 December 2019.
3. For the purposes of early conciliation, Day A was 19 March 2020 and Day B was 16 April 2020. The claimant presented his claim form on 15 May 2020.

Accordingly, all events prior to the date of dismissal, namely 20 December 2019, are prima facie out of time.

4. In his claim form the claimant presents claims of unfair dismissal, sex discrimination and a claim for notice pay. The claim form also identifies, “bullying, harassment, victimisation”.
5. At paragraph 9 of the details of claim the claimant has asserted:

“The dismissal was because I exposed repeatedly the wrongdoings they committed while I was working for them – my dismissal was an act of retaliation by crooked administrators.”
6. Mr Crawford, on behalf of the respondent, has taken this to be an allegation of automatically unfair dismissal – section 103A whistleblowing.
7. The respondent’s application for a strike out order and/or deposit order relates to the claimant’s allegations of sex discrimination/harassment and victimisation.
8. The claimant is a litigant in person. He is obviously highly intelligent and well qualified. That said, in discussion with the claimant during the course of this hearing, it has not always been easy to identify the treatment that the claimant is complaining about in support of his sex discrimination claims.
9. Mr Crawford, on behalf of the respondent, has prepared a draft list of issues which includes a list of the alleged treatment that he has drawn from the claimant’s claim form. This identifies 14 alleged acts (a) – (n). By reference to those 14 issues, they can be broken down into different groups as follows:-
  - 9.1 Five of them relate to the claimant not being successful when he applied for promotion. The claimant was notified that he had been unsuccessful following various applications in July 2016, February 2017, 28 February 2018, 28 January 2019, and 22 February 2019. As regards the last of those, on 22 February 2019, the three-month primary limitation period would have expired on 21 May 2019. Accordingly, the claim form was just short of a year out of time.
  - 9.2 Five issues relate to the respondent’s handling of two grievances made against the claimant and one grievance made by the claimant. The grievances against the claimant were dealt with between March and June 2018. The grievance by the claimant was dealt with in February 2019. Consequently, the three-month primary limitation period would have expired in May 2019 and, again, the claim form is approximately one year out of time.
  - 9.3 One item of treatment relates to the respondent allegedly being hostile to the claimant when he returned from sick leave in February 2018 and the claimant told me that this hostility resumed in November 2018. As regards this allegation, the primary limitation period would have expired in about February 2019 and, accordingly, the claim form is in excess of one year out of time.

- 9.4 One issue relates to the claimant being denied sabbatical leave in September 2019. The claimant told me that this also encompassed a complaint that he had been denied sabbatical leave following a request in June/July 2019. The three-month primary limitation period would have expired in December 2019 and the claim form is, accordingly, five months out of time.
- 9.5 The final two issues relate to the instigation of the disciplinary investigation on 7 October 2019 and the dismissal of the claimant on 20 December 2019. It was agreed by Mr Crawford on behalf of the respondent, that those last two issues are in time.
10. I have endeavored to ascertain from the claimant what treatment he was complaining about in support of his allegations of sex discrimination / harassment/victimisation. He told me he did rely upon the three occasions when his applications for promotion failed. He told me that he was not sure if his gender had any influence in so far as the handling of the grievances by and against him were concerned. He complained of his treatment when off sick in February 2018 and on his return to work in February 2018 with a three/four-month investigation into him when he was not told what he was being investigated about. He says that he was subjected to unwarranted behaviour, repeated about a year later, which he characterises as bullying and harassment in November 2018. He relied on the denial of being offered a sabbatical in June and July and September 2019. He made a generalized allegation against the respondent's Dean, Anna Kypranou, accusing her of orchestrating all the treatment that the claimant complains about.
11. As regards all alleged treatment of the claimant prior to 7 October 2019, I find that these were prima facie out of time in that they occurred in excess of three months prior to 20 December 2019.
12. As regards the denial of promotion, Mr Crawford drew my attention to the case of Amies v Inner London Education Authority [1977] ICR 308 EAT, in support of the proposition that rejection for promotion is usually considered a single act – so the date of promotion of the comparator is the date on which the alleged discrimination is said to have taken place.
13. Section 123 Equality Act 2010 provides as follows:
- “123 Time limits
- (1) Proceedings on a complaint within section 120 may not be brought after the end of –
- 
- (a) The period of three 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.
- ...
- (2) For the purposes of this section –

- (a) Conduct extending over a period is to be treated as done at the end of that period;”
14. Having found that all events prior to 7 October 2019 are prima facie out of time, I need to consider whether there was a continuing act of discrimination extending over a period of time or a series of distinct acts up until the claimant’s dismissal on 20 December 2019.
  15. Where there is a series of distinct acts, the time limit begins to run when each act is completed. In my judgment, all of the acts complained about by the claimant do form a series of distinct acts. The outcomes of the applications for promotion, the outcomes of the grievances and the alleged denial of the claimant’s application for a sabbatical all crystallised on a date and so were known by the claimant. As regards the bullying/harassment in February 2018 and November 2018, again, these had an end point.
  16. I have taken into account the case of Aziz v FDA [2010] EWCA Civ 304, CA (a race discrimination case) where the Court of Appeal noted that in considering whether separate incidents form part of an act extending over a period, “one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents”.
  17. From the claimant’s claim form it can be seen that the claimant complains about the actions or motives of a number of individuals. Not only the Dean, Anna Kypranou, but also the Deputy Deans, Tracy Cockerton and Heather Clay, along with Praveen Kujal (the claimant’s Head of Department) and Mariana Dodourova and Thomas Lange. In addition, Laurent Pech, is complained about.
  18. As regards the failure of the claimant to gain promotion, it is likely that further individuals will have been involved in the assessment of, and rejection of, the claimant’s applications. The number of individuals alleged to have acted in a discriminatory way towards the claimant supports my conclusion that these were a series of distinct acts and not a continuing act extending over a period.
  19. Further, leaving aside the issue of sabbatical leave, the last of the acts complained about was in February 2019 and there is a significant gap between then and 7 October 2019.
  20. Further, the instigation of the disciplinary process against the claimant on 7 October 2019 appears to have been in the context of a meeting at which the claimant was complaining about not being granted a sabbatical when it came to light that he had taken a full-time appointment at Coventry University. Whilst that may be a matter of dispute between the parties and I make no finding, in my judgment it would appear that the instigation of the disciplinary proceedings were of a totally different nature to the alleged treatment relied upon by the claimant in support of his other sex discrimination claims.
  21. Accordingly, in my judgment, there was no continuing act of discrimination and the incidences relied upon by the claimant were a series of distinct acts for each of which time would start running when completed.

22. Having concluded that all alleged treatment prior to 7 October 2019 was prima facie out of time I went on to consider whether it would be just and equitable to extend time. The claimant told me that he had researched extensively on the internet and was under the impression that he could not present a claim to the employment tribunal until he resigned or his employment had come to an end., That is obviously totally incorrect. It is clear that the claimant had union advice during the relevant periods as they were involved in the grievances. The claimant also told me that in February 2018 rather than complain he “kept his mouth shut and carried on with business as usual”. The claimant is an intelligent and articulate man who, if he considered that he had been discriminated against on the grounds of his sex, could and should have been able to instigate a claim relating to these distinct acts sooner.
23. I take into account that some of the claimant’s allegations relate as far back as 2016 and most relate to events some time ago. Any delay is the enemy of justice in that recollections inevitably fade over time.
24. Accordingly, I do not consider it to be just and equitable to extend time for these claims.

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**Employment Judge Alliott**

Date: 21 April 2021

Sent to the parties on:  
26 April 2021  
For the Tribunal