



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs A Zaidi

**Respondent:** National Westminster Bank plc (1)  
Mr M Camichel (2)  
Mr P Dugan (3)  
Mr M Henson (4)

## OPEN PRELIMINARY HEARING

**Heard at:** Central London via CVP video link On: 9 July 2021

**Before:** Employment Judge Sutton QC

### Appearances

**Claimant:** Christopher Milsom, counsel

**Respondents:** Rs.1 & 2: Andrew Sugarman, counsel  
R.3: Christopher Stone, counsel  
R.4: James Boyd, counsel

## JUDGMENT

### Introduction

1. The claimant, Mrs Amna Zaidi, was formerly employed by National Westminster Bank plc [hereafter 'the Bank'] latterly in the position of Programme Manager. Her term of employment commenced on 14 August 2013 and ended on 30 November 2020.
2. By a claim received by the Tribunal on 14 October 2020 the claimant raised the following headings of complaint:-

- i direct discrimination on the grounds of sex and/or race s.13 Equality Act 2010;
- ii victimisation s.27 Equality Act 2010;
- iii detriment and/or automatically unfair dismissal ss. 47B and 103A Employment Rights Act 1996;
- iv failure to make reasonable adjustments s.21 Equality Act 2010;
- v discrimination arising in consequence of disability s.15 Equality Act 2010;
- vi unfair dismissal s.98 Employment Rights Act 1996.

The complaints were made against the Bank as employer and, in respect of certain of them, against three individual respondents.

#### Earlier Case Management

3. A full hearing of liability issues has now been listed for 10 days, commencing on 20 October 2021. At a case management hearing conducted by Employment Judge Palca on 1 March 2021 it was directed that certain preliminary issues should be determined in advance of that hearing, namely :-
- i. whether the claimant was disabled within the definition of s.6 Equality Act 2010 and if so when that disability commenced;
  - ii. whether the claims against Mr Camichel, Mr Henson and Mr Dugan should be :-
    - (a) dismissed on the basis that they are out of time and it would not be just and equitable to extend time;
    - and/or
    - (b) struck out under rule 37(1)(a) of the Employment Tribunal Rules of Procedure 2013, on the basis that they were scandalous, vexatious and/or had no reasonable prospect of success;

#### Disability conceded

4. At the start of this hearing, the Tribunal was informed that it had been conceded by the respondents that the claimant was disabled at the point of the first alleged unlawful act related to disability. On the basis of that concession, which the Tribunal accepts, the first of the above preliminary issues no longer arises for determination.

The position of Mr Camichel

5. It was also explained at the start of the Preliminary Hearing that the Bank accepts vicarious liability for Mr Camichel's alleged conduct and does not seek to advance a reasonable steps defence. On that footing, the claimant withdraws her complaint against that party and invites the Tribunal to dismiss the same upon withdrawal. Judgment will be entered accordingly.

The position of Mr Dugan and Mr Henson

6. The claimant initially understood that these individuals were either employees or engaged in their personal capacity by the Bank. When it transpired that each was in fact engaged via a personal service company, the complaints against them were expressed on the basis of agency, alternatively that the Bank knowingly helped them commit the alleged contraventions.
7. For its part, the Bank denies that either Mr Henson or Mr Dugan was its employee or agent and contends that they were instead third party contractors for whom they have no vicarious liability. It accepts, however, that that determination will for the Tribunal to make at the full merits hearing and does not seek a preliminary ruling on the point.
8. Mr Dugan disputes that he was the Bank's agent and seeks a preliminary ruling from the Tribunal that the claim against him should be struck out under Rule 37. Mr Henson no longer seeks such a ruling.
9. Both Mr Dugan and Mr Henson maintain their argument that the Tribunal lacks jurisdiction to entertain the complaints against them on the basis that the claim was presented out of time and that it would not be just and equitable to extend time.

Conduct of the Open Preliminary Hearing

10. Without objection from the parties, the hearing had been arranged to be conducted by CVP video link. Members of the public were able on request to observe the proceedings by being given access to the CVP platform.
11. It was directed at the outset of the hearing that the first portion of the day would be used by the Tribunal to read counsels' written submissions and the key documents highlighted in them. The hearing resumed at noon, when the claimant was called to give evidence. Thereafter, the hearing was taken up with submissions on the issue of jurisdiction. Given time constraints, it was directed that the application to strike out, pursued by Mr Dugan alone, would be held over for consideration at a further hearing if the issue of jurisdiction was resolved in the claimant's favour.

## Jurisdiction: Statutory provisions

12. Section 123 Equality Act 2010 provides as follows:
- (1) ...(P)roceedings 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.
  - (2) N/A
  - (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.

### Guidance

#### Conduct extending over a period

13. Where it is alleged that there is a continuing state of affairs, the test at the interlocutory stage is whether there is a reasonably arguable basis for the contention that the various complaints are so linked as to be an ongoing state of affairs: Ma v Merck Sharpe and Dahme Ltd [2008] EWCA Civ 1426 at [17].
14. The concept of a ‘continuing state of affairs’ is to be construed broadly. In Commissioner of Police of the Metropolis v Hendricks [2003] ICR 530f it was emphasised that the focus should be on the substance of the complaint (in that case) that the respondent had been responsible for an ongoing situation or a continuing state of affairs in which the claimant was treated less favourably. The question was whether that is “an act extending over a period” as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed.
15. Where a claimant seeks to add a party to a claim which is presented within time the fact that the amendment application is outside the limitation period is immaterial. This is because the application is treated as relating back to the date of the original application: Cocking v Sandhurst and anor [1974] ICR 650.

Extension of Time

16. Guidance on the approach to be adopted by Tribunals in relation to the issue of whether time should be extended on 'just and equitable' grounds pursuant to s.123(1) of the Equality Act 2010 was provided by the Court of Appeal in Abertawe Bro Morgannwg University Local Health Board v Morqan [2018] ICR 1194. Leggatt LJ, as he then was, said as follows:-
18. First, it is plain from the language used ("such other period as the employment tribunal thinks just and equitable") that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980, section 123(1) of the Equality Act 2010 does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see *British Coal Corp v Keeble* [1997] IRLR 336), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see *Southwark London Borough Council v Afolabi* [2003] ICR 800, para 33.....
19. That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).
17. As Mr Milsom rightly emphasised with reference to the decided cases, factors which have weighed with Tribunals as being of particular relevance to the exercise of the discretion include :-
- (i) the pursuit of an internal process.
  - (ii) disability or ill health, particularly as regards mental health conditions, if the health condition provided a real impediment to the giving of instructions and the formulation of a claim.
18. It is clear from the Morqan case that The Tribunal should weigh the respective prejudice suffered by the parties in the grant or refusal of an extension to the primary limitation period. It may be relevant to give weight to the (prima facie) merits of the complaint, the prejudice caused to the Claimant if a complaint is struck out and the prejudice (if any) to the respondent caused by the delay in presenting the claim.
19. Mr Milsom invited the Tribunal to have regard to the Employment Appeal Tribunal's recent guidance in the different context of allowing amendments to a claim, where it was stressed that questions of prejudice must be focussed on reality rather than assumptions. It requires a practical focus on matters such as whether witnesses remember the events and have access to the appropriate records. Vaughan v Modality Partnership [2021] IRLR 97.

20. Recent guidance from the Court of Appeal on the proper approach for a Tribunal to adopt in the exercise of the just and equitable discretion is provided in Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23. The Court of Appeal endorsed the guidance in Morgan referred to above. Underhill LJ also observed :-

32. .... that the fact that the grant of an extension will have the effect of requiring investigation of events which took place a long time previously may be relevant to the tribunal's assessment even if there is no reason to suppose that the evidence may be less cogent than if the claim had been brought in time.

37. ....The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) "the length of, and the reasons for, the delay"."

21. Mr Milsom and Mr Stone advanced conflicting arguments as to the ramifications, in terms of the Bank's potential liability, of a finding that the complaints against the individual respondents were time-barred. Mr Milsom, while noting that there was no decided case which authoritatively resolves the point, contended that such a finding might block his client's arguments against the Bank. He therefore asked the Tribunal to place this factor in the scales as a weighty matter of prejudice to his client.

22. In support of his argument, Mr Milsom cited judgment of Underhill LJ in Reynolds v CLFIS (UK) Ltd [2015] where it was observed that 'it is fundamental to the scheme of the legislation that liability can only attach to an employer where an individual employee or agent for whose acts he is responsible has done an act which satisfies the definition of discrimination'.

23. Mr Stone, in his submissions, examined the provisions of the Equality Act 2010 addressing secondary liability, and argued that the claimant's remedy against the Bank would be unaffected by the finding of a time-bar against the individual respondents. The fact that a complaint of discrimination was no longer actionable against the individuals did not negate the vicarious liability of the Bank as principal.

24. Mr Sugarman, on behalf of the Bank, reserved his client's position on the point and indicated that it would be a live issue for the full merits hearing.

### **Complaints against Mr Dugan and Mr Henson**

25. An agreed List of Issues was produced at the case management hearing on 1 March 2021 and is produced as a schedule to Employment Judge Palca's Order. The allegations advanced against in the case of Mr Dugan and Mr Henson are recorded as follows:-

As against Mr Dugan

26. Direct race/sex discrimination

- i. undermining of the Claimant at a meeting on or around 14 March 2019 [List of Issues §1(v)];
- ii. publicly stating in the advent of the 1.2.2.7 programme release on Wednesday 10th April 2019 that the Claimant had lost stakeholders; [List of Issues §1(v)]
- iii. improper conduct of the Claimant's 1:1 meetings [on or around dates] [List of Issues §1(viii)]
- iv. inappropriate conduct at leadership team meetings [on or around dates] [List of Issues §1(ix)]

As against Mr Henson

27. Direct race/sex discrimination

- (i) Allocation of the claimant's duties to Mr Dugan [List of Issues §1(i)]  
*[In the Particulars of Claim, this is said to have occurred between January and April 2019].*
- (ii) Treatment of the claimant at the Wholesale leadership meeting on 7 February 2019 [List of Issues §1(ii)]
- (iii) undermining the claimant at a budget meeting on 14 February 2019 [List of Issues §1(iii)]
- (iv) bypassing the Claimant regarding a job opportunity on or around 18 February 2019; [List of Issues §1(iv)]
- (v) at a 1:1 on 25 March 2019, failure to respond to the Claimant's follow-up email expressing concern and his subsequent efforts to avoid speaking to her [List of Issues §1(vi)]
- (vi) publicly stating in the advent of the 1.2.2.7 programme release on Wednesday 10th April 2019 that the Claimant had lost stakeholders; [List of Issues §1(vii)]
- (vii) failure to respond to the Claimant's email of 8 May 2019: [List of Issues §1(x)]
- (viii) re-allocation of the Claimant's responsibilities during the course of her absence and/or the failure to conduct a return to work interview: [List of Issues §1(xi)]

*[In the Particulars of Claim [§19] it is explained that the claimant returned to work on 10 June 2019].*

28. Victimisation/PIDA detriment

- (ix) Failure to engage with the claimant's efforts to remedy workplace relations- [List of Issues 7(ii)].

*This allegation relates to May and June 2019. [Particulars of Claim §§18-19]*

29. Discrimination Arising in Consequence of Disability

- (x). Failure to respond to the Claimant's efforts to facilitate a return to work plan: [List of Issues § 12(i)];

*This allegation relates to May and June 2019. [Particulars of Claim §§18-19]*

**Findings**

30. The following findings are derived from the claimant's evidence, in her witness statements (her disability impact statement being adopted as part of her evidence-in-chief along with an additional statement prepared for the purposes of this hearing), her answers in cross-examination and a review of the contemporaneous documents referred to in course of the hearing and in counsel's submissions. The claimant impressed as a sincere witness, who provided an articulate and clear account of the background events.
31. The meetings that the claimant complains about in relation to Mr Dugan occurred prior to 4 April 2019 when he went on holiday. He did not see the claimant on his return and up to the point when he left the bank on 22 September 2019. He has not provided services to the Bank since that date. Mr Henson's assignment ended in February 2020 and he has not provided services to the Bank since that date. The last of the claimant's complaints raised in these proceedings about his conduct pertained to events in June 2019
32. The Claimant submitted her claim on 14 October 2020. ACAS early conciliation commenced on 4 August 2020. An EC certificate was issued on 4 September 2020. Taking into account the period of ACAS early conciliation, events prior to 14 June 2020, fall outside the primary limitation period.
33. The claimant was referred, in the course of cross-examination, to excerpts from her GP records. At a meeting with her GP on 28 June 2019, the claimant explained her feelings of displacement and being bullied at work. Her GP advised her to contact ACAS for employment law advice.



34. The claimant confirmed that, following initial contact with ACAS, she consulted a solicitor at Slater and Gordon, a firm with specialist employment law expertise, before the submission of her grievance on 25 July 2019. That firm provided advice to the claimant up to the point of presentation of her claim in these proceedings. Mr Howard, formerly of that firm, continues to advise her in the current proceedings.
35. As was apparent from the medical notes, the claimant was unwell with stress, anxiety and symptoms of depression for a significant period following the departure of Mr Dugan and Mr Henson from the Bank. The pattern of her illness meant that, at times she felt unable to communicate effectively and deal with day-to-day activities such as responding to emails. However, during the period when she was pursuing her grievance, the claimant fairly acknowledged that she was able to formulate a detailed and well-structured account of events in her grievance and to give instructions to her solicitors, albeit with the assistance of her husband.
36. The claimant explained that she was intent on trying to find an internal resolution to her complaints. To this end, she submitted a grievance on 25 July 2019. She also utilized the Bank's procedures for raising whistleblowing concerns. Issues which the claimant raised in these internal processes substantially foreshadowed the substance of the complaints raised in the current proceedings and were specifically expressed as complaints of sex, age or racial discrimination.
37. On 23 September 2019, the claimant reported to her GP that she had been in touch with ACAS and had taken out a grievance. She said she was 'feeling stronger' and was keen to return to work. She said that there was 'clear evidence of further bullying by management protecting her manager etc'.
38. On 31 October 2019, the claimant's GP noted that the claimant was feeling worse. She felt 'when she whistleblow in the past' there was no positive outcome and that nobody at work was responding to her grievance. She is recorded as saying that she 'either needs to resign to take them to court or be dismissed'. At that juncture, the claimant's GP diagnosed her with depression and prescribed a 3 weeks course of citalopram.
39. This treatment proved beneficial, and by the time of the next review, the claimant's GP issued a phased return to work certificate. The claimant noted that the stance of her employer was 'to deny everything' and that she was threatened with stopped pay.
40. The claimant was notified of the outcome of her grievance on 13 November 2019. She submitted an appeal against that determination on 20 November 2019
41. On 6 February 2020, the claimant reported to her GP that there had been some improvement in her mood but that she had been provided with a redundancy letter, providing the option of redeployment or dismissal. It was noted that the grievance was ongoing.
42. The claimant was notified of the outcome of her grievance appeal on or about 5 March 2020. In that decision letter, The appeal manager, Fiona Walmsley, noted that the scope of the appeal related to:-
  - (i) removal of the claimant from her role and allowing the same to be given to new recruit;

- (ii) bullying by Mr Henson and Mr Dugan;
  - (iii) discrimination on the grounds of gender;
  - (iv) inappropriate action and lack of timeliness on the part of the claimant's managers in responding to her original grievance;
  - (v) failure to conclude grievance quickly leading to stress and financial disadvantage.
43. Having conducted what, on the face of the decision letter, appears to have been an extensive reconsideration of the underlying evidence, Ms Walmsley upheld aspects of the grievance appeal. In particular, she found that certain of Mr Dugan's behaviour did 'tip over' into bullying of the claimant. She pointed out that, given that Mr Dugan no longer worked for the bank, she was unable to progress the matter formally
44. In relation to the complaint of discrimination, Ms Walmsley noted that the claimant had been unable to provide any specific examples to illustrate why she felt she had been discriminated against. She noted that the claimant attributed her concern to 'instinct' rather than any specific language used which indicated a reason related to age, sex or race.
45. Have conducted interview with relevant parties and reviewed data on recruitment practices, Ms Walmsley concluded there was 'no evidence' to support the discrimination complaints.
46. In cross-examination, the claimant acknowledged that this decision drew a line under her complaints of discrimination against Mr Dugan and Mr Henson and that there was no prospect of any internal process reaching a contrary view to the appeal manager.
47. In a consultation with her GP on 25 June 2020, the Claimant is recorded as having said 'grievance lost but she won the appeal. They are now looking to unfairly dismiss her'. In a consultation in August 2020, the GP observed 'currently mood is 'not too bad but she has severe anxiety symptoms, feels restless, as if she has constantly to be on the move'
48. The claimant's claim was received by the Tribunal on 14 October 2020. The claimant said her priority had previously been to try and ensure that the Bank provided a safe environment for her to return to. She considered that her complaints about Mr Dugan and Mr Henson were part and parcel of her overall complaint about the Bank's treatment of her. Until she submitted her claim she said she did not appreciate that a complaint could have been brought against them individually.

## Submissions

49. Written submissions were provided by counsel for the claimant, Mr Dugan and Mr Henson. These were developed orally in the course of the hearing.

On behalf of the claimant.

50. Mr Milsom, for the claimant, invited the Tribunal to regard the allegations against Mr Dugan and Mr Henson as part of a continuing act or state of affairs extending into the primary limitation period. Alternatively, Mr Milsom contended that it would be just and equitable for time to be extended. He flagged the following matters in particular:-
- (i) the delay was attributable to a constructive engagement in the Bank's internal grievance processes;
  - (ii) a further internal grievance in which the claimant challenged pay and bonus awards as against the Bank, as well as her appeal against redundancy, showed that she was engaging in sensible attempts at internal dispute resolution through to the end of her employment in November 2020;
  - (iii) the claimant's deterioration in health and the effects of her disability;
  - (iv) the lack of any clear evidence that the material delay occasioned prejudice to either Mr Dugan or Mr Henson. Even if the claim as against Messrs Henson and Dugan had been presented within three months of the last acts complained of (July 2019) it would still need to be heard long after their departure from the Bank;
  - (v). the complaints are on their face meritorious.

On behalf of Mr Dugan

51. On behalf of Mr Dugan, it was submitted that the claimant had served a witness statement in which she gives two essential reasons for not submitting her claim against Mr Dugan in time:
- (i) she was seeking to use the Bank's internal grievance procedures;
  - (ii) she was suffering from serious ill health.
52. Mr Stone contended that neither of those reasons adequately explained a delay which extended until October 2020 (when the claim was issued). As the claimant acknowledged, the grievance process in respect of his client was fully concluded by 5 March 2020.
53. In respect of her health, the claimant does not maintain that she was not well enough to submit a claim against Mr Dugan in time. She clearly was well enough to submit her grievances. She was not diagnosed with "anxiety with depression" until 31 October 2019. The claimant was, in any event, supported by solicitors who either did or should have explained to her the relevant time limit to bring a claim against Mr Dugan and who would have been able to submit a claim on her instructions.
54. Mr Stone contended that the following matters weighed against the grant of an extension of time:-

- (i) the period of delay from April 2019 until October 2020 is substantial.
- (ii) the investigation of stale issues is undesirable in principle: Adedeji
- (iii) the period of delay will impact upon the cogency of evidence that can be presented by Mr Dugan, especially as the claimant's claims against him are reliant upon what was said during meetings that took place before April 2019. The Tribunal's findings will therefore be heavily dependent upon witnesses' recollection of events and their oral evidence.
- (iv) In order to comply with the time limits, the claimant should have brought her claim prior to the date when Mr Dugan stopped working for the Bank, and over a year before the claim was in fact brought.
- (v) If the claimant cannot pursue a claim against Mr Dugan as an individual named respondent she suffers no prejudice On the basis (contrary to Mr Dugan's case) that he was an agent of the Bank's, the claimant can pursue her claim against that party in respect of Mr Dugan's alleged actions even he is released from the proceedings.
- (vi) the claimant has identified no loss which is specifically attributable to her alleged treatment by Mr Dugan. Neither is there any suggestion that Mr Dugan's actions contributed in any way to the claimant's ultimate dismissal.
- (vii) conversely, if the claim is allowed to proceed against Mr Dugan as an individual respondent, he will be exposed to the significant time and cost demands of involvement in a substantial claim.

On behalf of Mr Henson

55. Mr Boyd substantially adopted the submissions which Mr Stone had earlier advanced. He emphasised the following points in addition:-

- (i) relative prejudice and the cogency of evidence are central factors in the resolution of the 'extension of time' discretion;
- (ii) the ultimate outcome of the claimant's grievance, in which she raised complaints of discrimination, was known in early March 2020. The pursuit of an internal process cannot therefore provide a convincing reason for the delay in presenting the complaint until some 6 months later in October 2020;
- (iii) the claimant's state of health does not provide a sufficient explanation for the delay given her ability to formulate a detailed grievance and give instructions to her solicitors;
- (iv) the claimant suffers no prejudice in terms of her claim against the Bank if Mr Henson is released from the proceedings;
- (v) the cogency of the evidence, and the ability of Mr Henson to mount his defence to the allegations is inevitably undermined by the delay and the associated 'degradation of memory'.

## Discussion and Conclusion

56. The causes of action against both individual respondents accrued at the latest in July 2019. The allegations against Mr Dugan and Mr Henson do not comprise part of a continuing course of conduct extending beyond the period of their engagement with the Bank. The complaints they face are, instead, discrete and time specific. They are distinct from the issues which the claimant later raised by way of subsequent grievance against the Bank, addressing amongst other matters the circumstances surrounding her dismissal.
57. The presentation of the claim on 14 October 2020 was very substantially outside the primary limitation period. Whether the Tribunal has jurisdiction to entertain the claim as against Mr Dugan and Mr Henson therefore depends upon whether there are just and equitable grounds for extending time.
58. As a starting point in reaching a conclusion on the exercise of that discretion, it is necessary to consider the reasons for the delay in presenting the claim as against the individual respondents. It is clear that the claimant was significantly unwell during part of the period in question and that her illness escalated to diagnosed depression. The claimant was, however, able to pursue a grievance which entailed the provision of a detailed account of her complaints against the individual respondents.
59. Having been prompted to do so by her GP and later by ACAS, the claimant was able to consult specialist solicitors at a comparatively early point in the material period. Those solicitors will, it must be inferred, have been fully aware of the potential for lodging a timely complaint against the individual respondents as well as the risks of not doing so from a jurisdictional standpoint. Accordingly, and although the Tribunal has considerable sympathy for her experiences, the claimant's period of ill health does not of itself provide a compelling explanation as to why she stayed her hand in presenting her claim until October 2020, in respect of events which, at their latest, had taken place in July 2019.
60. On the other hand, the period of delay associated with the pursuit of the internal grievance which addressed substantially the same subject matter as the present claims against the individual respondents is undoubtedly one which merits an extension of time on just and equitable grounds. It was entirely sensible to try to avoid Tribunal litigation if an alternative means of resolution could be found.
61. But by March 2020, it was fully apparent to the claimant, and no doubt to her legal advisers also, that the scope for internal resolution of the relevant complaints had been exhausted. At that point, given the lapse in time since the expiry of the primary limitation period, there was a burden upon the claimant to instigate her proceedings with reasonable promptness. In the event, a number of months elapsed before she did so.
62. It is argued on the claimant's behalf that the release of the individual respondents will impede her in the claim against the Bank, whether in a formal legal sense or evidentially. It is apparent that the legal implications of the claims being time-barred against the individual respondents is a novel point, in respect of which there has been limited if any

authoritative judicial guidance. It is also clear that the point, which has not been fully addressed in the parties' submissions at this hearing, may be of central significance at the full hearing. The Bank has understandably chosen to keep its powder dry in terms of the submissions it intends to advance on this issue.

63. But even if Mr Milsom were correct in his submission that the release of the individual respondents from the proceedings on jurisdictional grounds would operate as a block to his client's claim against the Bank in terms of its secondary liability for their conduct, and with due respect to his submissions I am not convinced that he is, I would not regard this as a strongly persuasive 'prejudice' factor which should tip the scales in favour of a grant of an extension. Instead it would be in the nature of a collateral consequence of Tribunal's decision on jurisdiction, which it would not be just or equitable to visit upon the individual respondents.
64. It is right to say that the individual respondents have not pointed to any particular category of evidence which has been lost to them through the passage of time. But the allegations are substantially concerned with matters where the quality of recollection will inevitably be an important part of the Tribunal's factual inquiry. An assessment of what occurred and why may well be undermined by the significant passage of time which has elapsed since the material events.
65. It is fair to have some regard also to the inherent prejudice that parties suffer through the unnecessarily protracted experience of facing litigation over highly serious allegations. The statutory time limit no doubt reflects in part a recognition of the need for some proper degree of expedition in the conduct of proceedings and the achievement of finality in litigation in the interests of all parties, as well as the administration of justice.
66. In terms of the apparent merits of the claimant's complaints against the individual respondents, the Tribunal has already noted the findings of the appeal grievance manager. But for the purposes of this determination on jurisdiction, the Tribunal has proceeded on the assumption that the complaints are credible ones taken at their highest and that the claimant should be given the benefit of any doubt as to their merits, at least at this juncture in the proceedings.
67. The decision in this case is relatively finely balanced, not least because of the compelling evidence of the claimant's illness during the material period of delay and the sensible and proper steps she took to achieve resolution of her complaints through the internal procedures of the Bank. But taking due account of the submissions and in all the circumstances, the Tribunal concludes that it would not be just and equitable to extend time in this case and that the claims against the two remaining individual respondents are time-barred. Judgment dismissing those claims will be issued accordingly.

EJ Sutton QC  
18 July 2021

Sent to the parties on:

20/07/2021.

For the Tribunal Office