



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4108358/2021

Held by video on 16 July 2021 with deliberations on 9 August 2021.

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Employment Judge S Walker

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Miss K Fordham

**Claimant
In person**

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Crown Office and Procurator Fiscal Service

**Respondent
Represented by:
Ms Moretti, solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:

- 1 It is just and equitable to allow the claim of victimisation under s27 of the Equality Act to proceed. A final hearing will be listed to consider this claim.
- 30 2 All other claims are out of time and the Tribunal has no jurisdiction to consider them.

REASONS

Introduction

- 1 At case management preliminary hearing on 1 June 2021, it was clarified that
35 the claimant has brought a claim of sexual harassment, victimisation and direct age discrimination against the respondent, all under the Equality At 2010 .

2 The claimant had also brought a claim of unfair dismissal, alleging inconsistent
treatment with a fellow employee. However, the claimant does not have two
years' service as is usually required to bring a claim of unfair dismissal. As the
claimant did not have legal representation, the Judge drew her attention to the
5 list of exceptions set out in s 108 (3) of the Employment Rights Act 1996. The
claimant was advised that she should indicate which, if any, of the exceptions
she was relying on and that if the Tribunal was not satisfied there was a relevant
exception, the claim would be struck out as having no reasonable prospects of
success.

10 3 It is not in dispute that each of the complaints has been presented outside the
statutory 3 month time limit and this hearing was listed to consider whether the
claims should be allowed to proceed late, considering the applicable statutory
extension provisions. The hearing would also consider whether the claim for
unfair dismissal should be struck out as having no reasonable prospect of
15 success.

Procedure at the hearing

4 At the start of the hearing, the claimant clarified that she considered she was
making a whistleblowing claim of unfair dismissal. This is a claim under s103A
of the Employment Rights Act 1996 and no qualifying service is required (
20 s108(2)(ff) . While the claimant will still need to apply to amend, I considered
that the claim should not be struck out at this stage and instead, the hearing
focussed on the issues of timebar.

5 The claimant gave evidence on her own behalf and the respondent led evidence
from Anna Conlon, who was an operational manager for the respondent and
25 took over line management of the claimant in March 2020 and Katie Woods
who was the next manager above the claimant's line manager.

6 The respondent provided an electronic bundle of documents for the hearing.
The claimant also send some documents. These included links to some emails
which it was not possible to open. It became clear during the claimant's
30 evidence that some of these emails (and some additional emails) were

important. She was permitted to forward these to the Tribunal and to Ms Moretti.

7 The claimant suggested during the hearing that she would have liked to bring a witness and had not been aware this was possible. I did not consider it was in
5 accordance with the overriding objective to allow further delay for that to be explored. I gave the claimant a significant amount of leeway to provide additional documents during the hearing. The claimant suggests now that this witness would say that the claimant had wished to take formal action about the harassment. I'm afraid that even if the witness said that, it would be at odds with
10 all the other evidence before me, including that of the claimant herself, which was that she did not wish to take any formal action at the time,.

8 As the hearing took longer than anticipated, it was agreed that parties would exchange written submissions and forward these to the Tribunal and the matter would be considered on 9 August 2021. Both parties provided written
15 submissions.

Findings in Fact

9 The following relevant facts are agreed or found to be established on the balance of probabilities.

10 The claimant was employed by the respondent from 1 April 2019.

20 11 She alleges that she was sexually harassed by a colleague, Stephen Moore, between 8 May 2019 and 1 October 2019.

12 She spoke to her trade union representative about the behaviour of Mr Moore, who suggested she raise it with her manager.

25 13 The claimant asked to speak to her manager, Stacey Ingram, and to Ms Conlon in early October 2019. She requested that she have a seat move and explained it was because the behaviour of Mr Moore made her uncomfortable.

14 The claimant said she didn't want what she had told Ms Ingram and Ms Conlon to go any further. A factor in this was that Mr Moore's wife also worked for the

respondent and the claimant didn't want to cause any problems there. She just wanted to move seats.

15 Ms Ingram and Ms Conlon were concerned about what they had been told and whether they should be taking further action. They spoke to their manager, Ms
5 Woods. Ms Woods asked Ms Conlon to arrange a meeting with her and the claimant.

16 That meeting took place on 25 October 2019. The claimant was upset and felt that Ms Ingram and Ms Conlon had breached her confidence. Ms Woods explained that they had to tell her from a management point of view. Ms Woods
10 asked the claimant for some more details. She then asked the claimant if there was anything she wanted them to do. The claimant said that she didn't want the management team to discuss it with Mr Moore, she just wanted to move seat.

17 The desk move took place sometime in November 2019.

18 On 6 November, the claimant had a further meeting with Ms Woods. Ms Woods
15 asked how things were going and the claimant said that the desk mood was good.

19 Disciplinary proceedings were commenced against the claimant in November 2019 which led to her dismissal on 20 October 2020. The stated ground for the disciplinary proceedings was that the claimant had improperly accessed case
20 records of family members and people known to her.

20 Mr Moore emailed the claimant 5 December 2019 saying "*If you've any kindness , can you stop saying good morning/good night to me. I don't want to hear it*"

21 The claimant replied the next day. That email included a statement "*Stevie, whatever is going on, I would like for it to be put behind us and to move on*"

25 22 The claimant emailed Anna Conlon on 16 December 2019. She said "*Look the more I think about it the more I do want to do something. I know you want to speak with Katie but do you think it would be possible for S & I with a manager present to sit down and talk? The only thing is I don't want Stevie knowing I*

have already come to you with regards to the other thing” She concluded. “If you don’t think this is a good idea then fine”.

23 The disciplinary hearing commenced on 27 January 2020 and was adjourned. It was then continued remotely on 24 August 2020.

5 24 The Deciding Officer was Lesley Wilkinson. She was supported by Karin Baxter from HR. The claimant was represented throughout by Stephen Murray, her trade union representative.

25 The claimant did not wish to bring up the matter of Mr Moore during her hearing. However, during the adjournment period, Mr Murray had ascertained that
10 dismissal was a real possibility as an outcome for the claimant. The claimant was persuaded by Mr Murray that she should put forward what had happened with Mr Moore as mitigation. This was because it might explain why the claimant was reluctant to ask him questions during her training period.

26 During the adjourned hearing on 24 August 2020, Mr Murray set out the
15 claimant’s concerns about Mr Moore. He explained that the claimant had *“refused to go down the sexual harassment route with the Union”* as she did not want his wife to find out.

27 Karin Baxter, said this was serious new information and she might have to discuss it separately with Lesley Wilkinson and decide next steps. She
20 appreciated that the claimant did not want it investigated but such behaviour was unacceptable . Mr Murray confirmed that the Union’s view was the same and had the claimant wished to go down this route , it would have been raised with HR and due process followed. Having given her version of events the claimant confirmed that she would prefer no action was taken. The hearing then
25 moved back to the alleged misconduct by the claimant.

28 At the end of the hearing there was some discussion about whether the alleged harassment would be taken forward. The claimant did not wish action to be taken at that time. Ms Baxter said that if the claimant was dismissed it would be difficult to take it forward. Mr Murray said that if she was dismissed, they didn’t
30 really care what happened to Mr Moore.

29 The hearing was adjourned again and resumed on 20 October 2020. Ms
Wilkinson gave her decision which was that the claimant was dismissed. She
said that regardless of the outcome of the process, the claimant could raise a
complaint about Mr Moore's behaviour and she was encouraged to participate
5 in any ensuing investigation that may take place.

30 The claimant appealed unsuccessfully against her dismissal. The hearing was
on 11 January 2021 with the decision confirmed in writing on 22 January 2021.
The appeal notification letter noted that the claimant did not wish to pursue a
formal complaint process when she first reported the alleged harassment, but
10 she was encouraged to consider providing a written statement or complaint so
that the allegations could be investigated.

31 The claimant's trade union representative, Stephen Moore, commenced early
conciliation with Acas on her behalf by contacting Acas on 19 January 2021.
The claimant was not involved in the early conciliation process herself. This was
15 carried out by Mr Moore on her behalf.

32 On 15 February 2021 The claimant was advised by her trade union
representative by email that early conciliation had come to an end without
success. He said that the only alternative was to refer it to the union legal team
to see if they would consider supporting the claimant at an Employment
20 Tribunal.

33 In his email, Mr Moore said "see email below from Acas". Below his email to the
claimant was set out a copy of an email from Ms Cousins, the Acas conciliator,
which explained the respondent's position. That email then said "As the
respondent does not wish to engage in conciliation at his time, I will have to
25 close the file today and issue the certificate to you. Once the certificate is issued
the clock will start ticking again regarding the timescale for it if you wish to
progress a claim to the Employment Tribunal."

34 This text appears to have been sent by Mr Murray from his "copfs" email account
to his personal email account on 15 February 2021. At first glance, it appears
30 as if the email from the Acas conciliator was sent on 15 February 2021.

35 The claimant spoke to Citizens Advice and also Women's Aid. She also researched the matter online and believed she had a month from 15 February 2021 to present her claim and therefore the last day to present the claim was 15 March 2021.

5 36 In fact the early conciliation certificate had been issued by email on 10 February 2021 and so the last date for presentation (in respect of the dismissal) was 10 March 2021.

10 37 Following some correspondence between the claimant and the union's legal team, the claimant was advised on 9 March 2021 that the trade union would not supporting her claim. She was provided with some paperwork. It did not include a copy of the early conciliation certificate.

38 The claimant contacted the ET helpline. When she said that she did not have her early conciliation certificate they told her that if she presented the claim without the number it would be rejected.

15 39 When the claimant was completing the form, she ticked "no" when asked if she had an early conciliation number. At that point in the form, the ET 1 form states *"nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice call Acas on 03001231100 or visit www.acas.org.uk."*

20 40 The claimant did not contact Acas at that point. Instead she ticked the box *"My employer has already been in touch with Acas"*.

41 The claim was presented on 12 March 2021. It was rejected as the claimant *"had indicated that you are exempt from early conciliation but none of the exemptions apply to your claim"*.

25 42 That rejection was intimated to the claimant on 18 March 2021. The usual letter was issued which explained that the claimant could apply within 14 days for the decision to reject to be reconsidered. That letter also states in bold ***"Please note that the relevant time limit for presenting your claim has not altered"***.

43 The claimant contacted Acas who told her that she could get the certificate from her trade union. The claimant contacted Mr Murray on 16 March 2021 and asked for a copy of the certificate. This was provided the same day. This was before she had been told that her claim

5 44 The claimant provided an amended ET1 which included the details of the early conciliation certificate number on 28 March 2021. In the covering email , the claimant said that she wished to “appeal” the rejection. This was treated as an application for reconsideration and referred to Employment Judge Gall who directed that it be accepted as at the date the defect was rectified (28 March 10 2021). That decision was intimated to the claimant on 7 April 2021.

45 The claimant called Karin Baxter on 4 March 2021 and left a message on her voicemail. She then emailed Karin Baxter on 17 March 2021 asking for to ask why she had heard nothing about an investigation into Mr Moore’s conduct. She also complained about a number of things which have happened since her 15 dismissal.

46 The claimant did not receive a reply and sent some chasing emails. On 6 May 2021, Ms Baxter replied to say that as the claimant had not raised a formal complaint no formal investigation had occurred. She asked if the claimant wished to do that now? If so, she could provide evidence and it may be possible 20 to investigate further. Ms Baxter noted that, although the claimant referred to having attempted to contact Ms Baxter , she had not record of any contact from the claimant since November until a voicemail on 4 March 2021.

Observations on the evidence

47 The claimant’s evidence was largely given in a straightforward way. 25 Unfortunately when it came to some critical dates and events between 15 February 2021 and the clam being presented on 12 March 2021 and re-presented on 28 March 2021, her recollection was a bit vague. That is understandable as she would not be aware how important this information was to the tribunal’s decision. In the end, once the claimant had provided some 30 additional emails, I was satisfied that I had most of the key dates and information to allow me to make the necessary findings.

48 One incident was particularly problematic, however, The claimant alleged that she had contacted the Employment Tribunal helpline (by which I think she means the Customer Contact Centre) on 11 or 12 March 2021 to ask them what to do if she did not have the EC certificate. She says that she was told to submit
5 the claim anyway. It would be rejected and she could then apply for reconsideration once she had the certificate. This, frankly, is implausible. The Contact Centre do not give advice and, this advice , would clearly have been misleading as it did not set out the consequences for time bar. Further, the claimant did not need the EC certificate itself, only the number to allow her to
10 complete the form. The Contact Centre staff are aware of the importance of time limits but are trained never to give advice to a party or to recommend a course of action. I am not suggesting that the claimant is lying about this but I can only conclude that she misunderstood or misremembered what she had been told. This would be consistent with the vagueness generally of her evidence about
15 when she contacted Acas or her trade union representative. The contact centre may well have told her as a matter of fact that if she presented a claim without the EC number it would be rejected. That is in fact what happened. They may have told her that she would need to apply for reconsideration if the claim was rejected. That is also factually correct. However, there are serious implications
20 for time limits. I do not accept that the call centre staff would have recommended any course of action to a caller.

49 The claimant suggested in evidence that she had called Karin Baxter repeatedly since November 2020. Karin Baxter in her response to the claimant says she had no record of any contact from the claimant since November until a voicemail
25 on 4 March 2021. Ms Baxter noted that that the claimant had the opportunity to raise the matter during the appeal process when they were in regular contact. No evidence was presented of calls to Ms Baxter and , as Ms Baxter says, if the claimant had been keen to speak to her she could have done so easily during the appeal process. Alternatively it would have been a simple matter to
30 leave a voicemail or send an email asking Ms Baxter to get in touch. I do not accept that the claimant was trying to contact Ms Baxter to make a formal complaint during this period.

50 Further, her email of 17 March is not a formal complaint. It makes a number of demands and asks why she has heard nothing but, there is no complaint. Bearing in mind that at this stage the claimant had submitted her first ET1 form, it would have been a simple matter to copy and paste the allegations into an email to Ms Baxter if she had really wished the respondent to investigate them.

51 The findings in fact above are based on the evidence at this hearing and would not bind a future tribunal determining the merits of the claim. They may hear different or additional evidence.

Relevant law

Time limits

52 Most claims to the Employment Tribunal must be made within a short time period. Under section 111 (2) of the Employment Rights Act 1996 ("the ERA") , a claim for unfair dismissal must be submitted to the Employment Tribunal before "*the end of the period of three months beginning with the effective date of termination*". Under section 123(1) of the Equality Act 2010 ("the Equality Act"), a discrimination claim must be submitted to the Employment Tribunal before the end of '*the period of three months starting with the date of the act to which the complaint relates*'. Where the act extends over a period of time , time starts to run from the last date.

53 Both provision are subject to the extension afforded under section 18A of the Employment Tribunals Act 1996 regarding ACAS early conciliation as reflected in s207B of the ERA and s140B of the Equality Act.

54 In relation to the early conciliation requirement, Day A is the day that the claimant contacts Acas and Day B is the date that the early certificate is deemed to be issued.

55 When working out the time limit to present a claim to the Employment Tribunal , the day after Day A and ending with Day B is not to be counted. However if the time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

Extension of time

56 If a claim is presented after the time limit (as extended) the Tribunal may not
consider it unless it is satisfied that the circumstances fall within the relevant
provision (if any) permitting an extension of time. These provisions are different
5 for claims of unfair dismissal and for breaches of the Equality Act.

57 For a claim under the Equality Act, the Tribunal may consider a claim presented
late if it is “just and equitable” to do so. It is for the claimant to satisfy the Tribunal
that it is just and equitable to extend time. This is a wide discretion . The Tribunal
should take account of all the relevant factors but in essence the question is
10 one of balancing the prejudice to the parties in refusing or granting the
extension.

58 Relevant factors may include (but are not restricted to) those set out in section
33 of the Limitation Act 1980:

- 15 • the length of, and the reasons for, the delay on the part of the
Claimant;
- the extent to which, having regard to the delay, the evidence adduced
or likely to be adduced by the plaintiff or the defendant is or is likely
to be less cogent than if the action had been brought within the time
allowed;
- 20 • the conduct of the Respondent after the cause of action arose,
including the extent (if any) to which he responded to requests
reasonably made by the Claimant for information or inspection for the
purpose of ascertaining facts which were or might be relevant to the
Claimant’s cause of action against the Respondent;
- 25 • the duration of any disability of the Claimant arising after the date of
the accrual of the cause of action;
- the extent to which the Claimant acted promptly and reasonably
once he knew whether or not the act or omission of the Respondent,

to which the injury was attributable, might be capable at that time of giving rise to an action for damages;

- the steps, if any, taken by the Claimant to obtain medical, legal or other expert advice and the nature of any such advice he may have received.

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59 In relation to unfair dismissal, the test is quite different and more prescriptive.

60 Under section 111(2)(b) ERA the Tribunal may only extend time for presenting a claim where it is satisfied of the following;

(1) it was “not reasonably practicable” for the complaint to be presented in time

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(2) The claim was nevertheless presented “within such further period as the tribunal considers reasonable”.

61 The expression “not reasonably practicable” means something like “reasonably feasible” . IT is not a test of The claimant does not show it would have been impossible to present the claim in time but has to do more than show there was some reasonable explanation.

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62 Generally mistakes about the right to bring a claim or about time limits will not be sufficient. A claimant is expected to take reasonable steps to find out about their rights and, if they are aware that they have a right to make a claim, to take steps to find out about time limits.

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63 If a claimant relies on ignorance, that ignorance must be reasonable

Claimant's submissions

64 The claimant submits that Ms Moretti relied on a set of minutes which are undated and are hand written. These minutes have never been agreed or signed off by claimant. She submits that the typed minutes do not match the hand written minutes for reasons such as having no date .

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65 The claimant points to page 64 of the bundle to show that she was advised to disclose the alleged harassment to management and shows that she did report it. It was not a case of having been dismissed that had then encouraged this decision.

5 66 The claimant points to page 70 of the bundle which she says shows that the HR advisor (Karin) “appreciates Kirsten’s rationale of not raising it previously, but Karin said she will have to raise this matter with her manager to consider what we do with these allegations.” The claimant says that this shows that HR advised something was to be investigated but nothing was done. She says that 10 she was under the impression that it was being dealt with by HR and had been reported.

67 The claimant says that page 70 also shows her intention to report this matter in a serious manner as it states “Kirsten asked if it was possible could the disciplinary process be dealt with first and then a discussion take place with 15 Karen and Stephen before Karin takes any action to raise this further.” The claimant says that this shows that she was more than happy to engage in discussion just not at that time as for her mental health it was better to deal with one thing at a time so as not to overwhelm and stress myself out.

68 The claimant points to page 78 which states “Lesley concluded that, regardless 20 of the outcome of this process, Kirsten would still be able to raise a complaint about Stephen Moore’s behaviours towards her and was encourage to participate in any ensuing investigation that may take place.”

69 The claimant maintained that she had contacted the HR advisor various times by telephone after my dismissal and eventually decided to email her to follow 25 up so that she had proof in writing. She says that this was after advice from Police Scotland after reporting Mr Moore’s behaviour and asking for advice on how to approach and deal with the scenario. The claimant submits that her attempts had failed with the HR department to report this despite Lesley’s statement that she could report it regardless of the outcome from the dismissal.

30 70 The claimant points to the witnesses that were called for the respondent. She says that although Ms Moretti suggested that both Anna and Katie had pulled

her for a conversation/ meeting to update her on what they had done about my situation regarding sexual harassment. It was abundantly clear this was not the case. Anna Conlon had agreed when the claimant had the chance to question her, that this meeting had in fact not taken place.

5 71 The claimant said that she was unaware of the process to invite witnesses to the hearing however, If I had been allowed to have had at least one of my witnesses namely being Ann Adamson-Eadie she would have been able to further provide evidence that the claimant did have every intention of reporting the sexual harassment in a serious manner as well as not having any support
10 from management at COPFS.

72 The claimant submitted that the only support she received was a seat move to sit opposite Mr Moore at her suggestion. She received no further support from management in any other form and was given no advice of what her options were.

15 73 The claimant submitted that she was unaware she was allowed to take her case to tribunal prior to my employment ending within COPFS.

74 The claimant submitted that the Equality act 2010 should protect employees as employers are liable for acts of sexual harassment by one employee towards another unless they take reasonable steps to prevent it. She asks, why only a
20 seat move forced by herself with no further support or advice was given?

75 The claimant submits that there is a wider public interest issue as there was a sexual culture/environment where sexual harassment was occurring and seems to have been permitted in the workplace with no repercussions for the individual carrying out these unsettling acts. She submits that her dignity was violated and
25 she felt intimidated and humiliated by the acts carried out which resulted in a hostile environment. She would like the courts to hear about it themselves.

76 Her goal is to right a wrong and help people in her circumstances to get justice.

Respondent's submissions

77 Ms Moretti set out the relevant law which I do not think is in dispute. She set out why each of the complaints is late and points out that it is for the claimant to satisfy the tribunal that an extension should be granted.

5 78 She made the following submissions on behalf of the respondent in respect of the various extensions of time:

Sexual harassment

79 The Tribunal heard from the Claimant who explained that she first reported issues with Stephen Moore to management in October 2019. The Claimant stated that she then “followed the procedures she was asked to follow” by the Respondent. The Respondent disputes this version of events.

80 Turning first to the meetings with management in October 2019. The Claimant reported her concerns regarding Stephen Moore to Anna Conlon and Stacey Ingram, both Operational Managers. The Tribunal heard evidence from Ms Conlon who explained that, during their initial meeting, the Claimant made it clear that she did not want the matter to go any further and that she did not want to escalate her concerns in any way. However, Ms Conlon explained how both her and her colleague Ms Ingram recognised that they could not sit on information such as this, despite the Claimant's wishes, and they therefore informed their line manager, Katie Woods.

81 Ms Woods then asked Ms Conlon to set up a meeting with the Claimant. When Ms Conlon sent the claimant an invite to the meeting with Ms Woods the Claimant immediately approached Ms Conlon in the office and told her she felt “betrayed” by her because she had gone to Ms Woods and said that she would not come to Ms Conlon with any future issues. The Tribunal also heard evidence from Ms Woods regarding the events that followed.

82 Both Ms Woods and Ms Conlon explained how they then met with the Claimant on Friday 25 October 2019 in order to discuss this matter and so that they could establish how best to support the Claimant. The Tribunal has had sight of both Ms Conlon's handwritten minutes of this meeting (**at page 41 – 44 of**

the Respondent's bundle) and the typed minutes (**at page 45 – 48 of the Respondent's bundle**). During this meeting, the Claimant advised that she didn't want the management team to discuss the issues with Mr Moore and that she would simply like to move seats (**see page 47 of the bundle**).

5 83 The Tribunal heard from both Ms Conlon and Ms Woods that on the Monday following their meeting on Friday 25 October 2019 the Claimant moved seats, as requested.

84 Ms Woods and Ms Conlon then met with the Claimant once again on 6 November 2019 to review progress. The Tribunal has had sight of Ms Conlon's
10 handwritten minutes of this meeting (**at page 49 of the Respondent's bundle**). At this meeting the Claimant reported experiencing no further difficulties in the office with Mr Moore and said that the atmosphere had been professional.

85 There was only one further incident involving the Claimant and Mr Moore that
15 the Claimant made her managers aware of. This involved an email sent from Mr Moore to the Claimant on 16 December 2019 (**see page 51/52**). Ms Woods was made aware of this by Ms Conlon. She took the decision to meet with the Claimant to determine what, if any, action she wanted taken. Again, the Claimant did not wish to make any form of official complaint, rather she
20 suggested that a mediation of sorts took place between her and Mr Moore. However, Ms Woods suggested that she would have a conversation with Mr Moore in the first instance and the Claimant agreed to this.

86 The Tribunal heard from both Ms Woods and Ms Conlon that the Claimant did not report any further issues to them after this point. It is submitted that both
25 Ms Woods and Ms Conlon were entirely honest and candid in their evidence and the Tribunal is invited to consider them credible witnesses.

Following the email incident in December the Claimant did not raise any further concerns with the Respondent regarding Mr Moore. The Claimant alleged that her intention was to do so following the conclusion of the disciplinary process,
30 However it is submitted that this is not credible and notably contradicts all of the documentary evidence before the Tribunal.

87 First of all it must be noted that the first time the Claimant mentioned this issue during the disciplinary process was at the reconvened disciplinary hearing on 24 August 2020, which is almost a full year after the issues first arose and a delay of that length is, of itself, out of time in accordance with the time limits set out at section 123 (1) (b) of the Equality Act 2010. The Claimant did not justify this delay except to say that she intended to raise matters after the disciplinary, but for the reasons I will address below, it is submitted that her evidence on this point was not credible.

88 The Claimant very clearly indicated at the meeting on 24 August 2020 that she did not, at any time, wish to pursue this matter further. Over the course of this meeting alone the following comments were recorded;

- The Claimant's trade union representative making clear that the Claimant "refused to go down the sexual harassment route with the Union" (**see page 59 of the Respondent's bundle**).
- The Claimant's trade union representative noting that after the Claimant had spoken to him about the issues and was advised to speak to her manager "she defended Stephen Moore" (**see page 60 of the Respondent's bundle**).
- The Claimant's trade union representative noting that, had the Claimant "wanted to pursue this route, this would have been raised with HR at the time and due process followed." (**see page 60 of the Respondent's bundle**).
- The Claimant stating that "she thought this would turn into formal proceedings and she was uneasy with that as Allison Moore might find out and she didn't want to be seen as a troublemaker. She had moved seats and that was enough." (**see page 62 of the Respondent's bundle**).
- The Claimant's trade union representative stating that the Claimant "regarded this as the end of the matter and was happy that she could

be moved and nothing more made of this. For Kirsten, the matter was finished.” (see page 62 of the Respondent’s bundle).

- The Claimant stating that “she would prefer no action was taken regarding Stephen Moore’s behaviour” (see page 63 of the Respondent’s bundle).

- The Claimant’s trade union representative stating that the Claimant “considers this matter to be resolved and is happy with the outcome. This was a clash of personalities. Stephen said that, as a Union representative, he had discussed the sexual harassment options with Kirsten and she has taken a decision that is finished.” (see page 63 of the Respondent’s bundle).

- The Claimant’s trade union representative noting that, in respect of the sexual harassment allegations, “only last week [the Claimant] still did not want to raise this”. (see page 69 of the Respondent’s bundle).

89 It is submitted that the comments made throughout this meeting made it explicitly clear that, contrary to what the Claimant alleged in her evidence, she had no intention of ever raising these issues formally or taking the matter further. The comments from her trade union representative at page 69 of the Respondent’s bundle confirm that he had discussed the matter with her “only last week” (i.e. one week before 24 August 2020) and “she still did not want to raise this”. It is submitted that the Claimant’s evidence that she had always intended on raising this matter after the disciplinary, and that this was a course of action she discussed with her Union, was not honest or truthful

90 It is submitted that the comments referred to above, particularly those which detail that “*the matter was finished*”, “*considers this matter to be resolved*” and “*he had discussed the sexual harassment options with Kirsten and she has taken a decision that is finished*” make it abundantly clear that, in the Claimant’s eyes, the matter had been resolved.

91 The Claimant referred to comments made during the meeting from the Respondent’s HR representative Karin Baxter who had noted that, given the

5 comments made during the meeting on 24 August 2020, action “may” need to be taken (**see page 63 of the Respondent’s bundle**). However, at the reconvened disciplinary hearing on 20 October 2020 it was made very clear to the Claimant that there was an onus on her to take matters forward, as she was advised that she would still be able to raise a complaint about Mr Moore’s behaviour should she wish to do so (**see page 78 of the Respondent’s bundle**). In the disciplinary outcome letter the Claimant was again “encouraged” to consider providing a written statement or complaint so that the allegations could be investigated in line with the appropriate policies and procedures. (**see page 84 of the Respondent’s bundle**). Furthermore in the minutes of the Appeal Hearing which took place on 11 January 2021, the Appeal Manager Gavin Anderson “reiterated that if Kirsten wanted to take the sexual harassment allegations further that would have been done” (**see page 98 of the Respondent’s bundle**).

15 92 The Claimant alleged in evidence that following her dismissal she contacted the Respondent to follow up on the matter. However the only evidence the Claimant produced of this on the day of the Preliminary Hearing was an email she sent to Ms Baxter on 17 March 2021, some 6 months after her dismissal and notably also 5 days after she had initially submitted her tribunal claim. Ms Baxter responded to this on 6 May in which she notes that the first record she has of the Claimant making any direct contact with her about these allegations was a voicemail that she had left on her work mobile on 4 March 2021.

20 93 Ms Baxter’s email details that, prior to that, she had no record of any emails voicemails, text messages or missed calls from the Claimant about this matter. Ms Baxter notes that this was despite the Claimant having the opportunity to raise such matters with her at any time between November 2020 to March 2020, particularly during her Disciplinary Appeal process, throughout which Ms Baxter was in regular contact with the Claimant. It is submitted that the Claimant has not been truthful in her evidence on this point.

30 94 It is therefore the Respondent’s positions that there is no truth to the Claimant’s assertions that she (a) always intended to raise her concerns after the disciplinary process or (b) had thought that matters were being dealt with by

HR due to their comments made at the meeting on 24 August. For months the Claimant made explicitly clear that she said didn't want to do anything about this matter, evidenced by the

95 testimony of both Ms Conlon and Ms Woods, and the various comments made
5 during the disciplinary process. The Respondent submits that the Claimant continued to have no intention of pursuing any sort of formal process, whether internally with them, or in a tribunal setting, and has only done so at this juncture because she was aggrieved that she had been dismissed by the Respondent.

Victimisation and Direct Age Discrimination

10 96 It is understood that the Claimant's claims for victimisation and direct age discrimination culminated in her dismissal and, as a result, time bar runs from her dismissal date. The Respondent submits that these claims are 18 days late.

97 The claimant explained that her trade union representative commenced the Acas process for her on 19 January 2021. The claimant was not directly involved
15 in the Acas process. The Acas process came to an end on 10 February 2021 . However the claimant explained that her trade union representative forwarded her an email from Acas dated 15 February 2021 advising that the case was closed. The Claimant's position is that she was not sent a copy of the Acas certificate at that time, and therefore she considered that the time limit of one
20 calendar month ran from 15 February as this was the date of the email that had been forwarded to her. The Claimant therefore believed she had until 15 March 2021 to lodge her claim.

98 The Claimant explained that her trade union then referred her case to their legal advisors for a legal assessment. The Claimant was notified of the outcome of
25 this on 4 March 2020 and was advised of her ability to pursue the claim personally.

99 The Claimant explained she called the Glasgow Tribunal office on around 10th or 11th March to report that she did not have a copy of her Acas certificate. The Claimant's evidence was that the Glasgow Tribunal office asked her no
30 questions about the circumstances of her claim, or about the time limits involved, but simply advised her to submit the claim without the Acas certificate

number. The Claimant says that the Tribunal advised her that the claim would likely be rejected but that she would then have a period of time to apply for reconsideration.

100 The Claimant explained that she then contacted Acas around the same time,
5 i.e. 10th or 11th March, to request a copy of the Early Conciliation certificate. The Claimant's evidence was that Acas advised her to contact her trade union representative for a copy of this. However, instead of contacting her trade union representative the Claimant proceeded to submit her claim on 12 March claiming exemption from Acas Early Conciliation and explained that she did
10 this on the basis of the advice she had received the Glasgow tribunal office.

101 The Claimant emailed her trade union representative on 16 March to request a copy of the Acas certificate and her trade union representative duly sent her a copy the same day.

102 The Claimant's tribunal claim was then rejected on 18 March 2021 and the
15 Claimant was given a 14 day window to apply for a reconsideration of this decision. Despite having a copy of the Early Conciliation certificate at that point, the Claimant waited 10 days before then applying for reconsideration on 28 March. The Claimant explained the reason for this delay was because she had to "decide whether she wanted to proceed".

20 103 The Respondent's position is that the Claimant's version of events are not credible. The Claimant's position was that she was aware that there was a time limit of one calendar month within which to lodge a claim after the Acas process had come to an end, but that she understood that this ran from 15 February. However, the Claimant apparently made no attempts to verify this
25 time limit with her trade union representative, or their solicitors, despite having their resources at her disposal.

104 The Respondent considers it unlikely that the Glasgow Tribunal office would have recommended that a claim be lodged without the necessary Acas details, without, at the very least, asking some further questions regarding
30 circumstances and time limits. However, even if they had done so, the

Respondent notes that the Claimant did not take appropriate steps to obtain a copy of the Acas certificate before submitting the claim.

105 The Claimant reportedly first contacted Acas to request a copy of this on 10th
or 11th March, and when they recommended that she contact her trade union
5 representative to obtain this she made no effort to do so. Instead she hastily
submitted her claim on 12 March, seemingly in full knowledge that it would be
rejected. The Respondent submits that the Claimant has not been truthful in
her evidence and the reason the Claimant submitted her claim on 12 March
was because she knew by this point that it was already late. If the Claimant
10 had genuinely believed she had until 15 March to lodge her claim, then it is
submitted that she ought reasonably to have used the period between 12 – 15
March to obtain a copy of her Acas certificate.

106 Certainly, by the time the Claimant received a copy of the Acas certificate on 16
March the Claimant would have known her claim had been presented late. It
15 is therefore the Respondent's position that by the time the Claimant received
notification on 18 March that her claim had been rejected she was well aware
that her claim was also late. Despite this, the Claimant waited a full 10 days
before making any further contact with the Tribunal. Given that the Claimant had
clearly decided before 12 March that she intended to lodge a claim with the
20 Tribunal, it is submitted that it was not necessary to take a further 10 days to
reflect upon this.

107 Turning now to the promptness with which the Claimant acted once she knew of
the possibility of taking action. It is the Claimant's position that she did not
lodge a Tribunal claim earlier in respect of her sexual harassment claim because
25 she wasn't aware that she could raise a tribunal claim while she was still
employed.

108 However, the Claimant first spoke to her trade union about issues with Stephen
Moore in October 2019. At that time her union advised her of her options (**see
page 63 of the Respondent's bundle**). We have also heard that this trade
30 union has access to an appointed firm of solicitors. The Claimant therefore had
at her disposal a trade union with a wealth of knowledge on employment issues.
It is the Respondent's position that the Claimant would have been, or ought to

have been, aware of the possibility of pursuing a legal claim at this early point in the process.

109 Nonetheless the Claimant did not take action to raise a tribunal claim, and repeatedly stated throughout the disciplinary process that she did not want to
5 take any action. It was very clearly understood by her trade union representative that the Claimant did not wish for this matter to go any further.

110 Furthermore, it is submitted that it was not reasonable for the Claimant to assert that she delayed in lodging her claim because she was waiting for the conclusion of the disciplinary process. Case law has established that the running of time will
10 not be delayed simply because internal procedures are still ongoing. In ***Robinson v The Post Office (UKEAT1209/99/1207)***, the EAT refused to extend the time limit where an internal appeal process was ongoing, stating that: “[We] can only conclude that Parliament has quite deliberately not provided invariably that the running of time against an employer should be delayed until
15 the end of domestic processes.”

111 This was followed in ***Hunwicks v Royal Mail Plc (UKEAT0003/07/ZT)***. The Tribunal’s decision, which was upheld on appeal the EAT, was that it would not be just and equitable to extend the time limit where the Claimant had had the benefit of Union advice and had delayed in lodging her claim simply because
20 internal procedures were ongoing. In this case, the Claimant attempted to rely on the Respondent’s delay in handling her grievance, asserting that if the grievance had been finalised in line with the time frame set out in the Respondent’s guidance then she would have lodged her claim in time. However, the Tribunal rejected this argument, stating that the terms of the ***Robinson*** case
25 make it clear that the running of time should not be extended until the end of the internal process regardless of any delays on the Respondent’s part.

112 In the respondent’s submission, the Claimant (or her trade union representative) knew in October 2019 that there was a potential sexual harassment claim yet the Claimant delayed in lodging the claim until 28 March 2021, which is a year
30 aa half later. The Claimant’s trade union representative and their legal advisors would have been well aware of the rules concerning time limits for tribunal claims and the Claimant could have sought specific advice on this from them had she

wished to do so. In any event, the Claimant's evidence that she was not aware that she could raise a tribunal claim while she was still in employment does not fit with her continuously saying throughout the disciplinary process that she didn't want to pursue this matter further and that she considered the matter to be "finished". The Claimant's submission that she wanted to wait for the conclusion of her disciplinary process is also not a sufficient reason for delaying the lodging of a claim, in line with the case law outlined above.

113 In respect of the delays relating to the victimisation and sex discrimination claims, as set out above, the Claimant hastily submitted her claim 2 days late claiming an exemption from Acas Early Conciliation. After her claim was rejected on 18 March she waited 10 days before taking further action. It is the Respondent's submission that there is no acceptable reason provided for this delay. The Claimant did not act with any degree or promptness or urgency even after she was had received her Acas Early Conciliation certificate and became aware that her claim had not been presented in time.

114 The Respondent is aware that the Claimant is currently unrepresented, however does not accept that this is acceptable basis for these claims to be lodged late on just and equitable grounds. The Claimant had union representation throughout her employment and they only withdrew their support shortly before she lodged her claim. In any event, the Claimant advised she remains in contact with her trade union representative. The Claimant's case was also referred to her trade union's appointed firm of solicitors. The Respondent contends that the Claimant had access to an organisation that have a wealth of knowledge on Employment Tribunal proceedings and that she would have been able to liaise with them in respect of time limits, but indeed made no efforts to do so.

115 It is the Respondent's submission that it would not be just and equitable to extend the time limit in respect of any of the Claimant's Equality Act claims, for the reasons outlined above. This is not a case where the Claimant acted alone. She had the benefit of a union official throughout her employment, and remains in contact with her representative to this day. It is further submitted that the Claimant has not been honest in her evidence when detailing the reasons for

the delays and there is therefore no justifiable excuse for the late presentation of her claims.

Unfair dismissal

116 The Claimant's ET1 claim form refers to a claim of unfair dismissal. The full legal
5 basis and particulars of this claim have not yet been specified however it is the
Respondent's position that any claim for unfair dismissal is time barred.
However the Claimant did not lodge her claim until 12 March 2021 which was
two days late, and in any event this claim was rejected by the Tribunal. The
Claimant did not resubmit her claim until **28 March 2021**. This claim is therefore
10 18 days late.

117 The Claimant's explanation for originally submitting her claim 2 days late is
because she mistakenly thought she had until 15 March 2021 to submit this.
The Claimant explained that she did not have a copy of her Acas certificate at
the time she submitted her claim, however the Respondent submits that the
15 Claimant did not make reasonable attempts to obtain this before she submitted
her claim.

118 In accordance with the case of **Stratford on Avon DC v Hughes**
UKEAT/0163/20, the question for the Tribunal is not whether the Claimant
behaved reasonably in waiting until after the expiry of the primary limitation
20 period before contacting Acas to obtain a copy of the early conciliation
certificate, but whether it would have been reasonably practicable for the
Claimant to have obtained the early conciliation certificate sooner.

119 The Respondent submits that it would have been reasonably practicable for the
Claimant to have obtained a copy of the Early Conciliation certificate much
25 sooner than she did. The Claimant was still being supported by her trade union
representative after the Acas Early Conciliation period first came to an end, as
at this point they had referred her claim for a solicitor for a legal assessment. It
was only at the start of March that the Claimant's union withdrew support, but
the Claimant admitted in evidence that she still remains in contact with her trade
30 union representative. However it was not until 16 March 2021 that the Claimant
contacted her trade union representative to request a copy of the certificate,

which was 4 days after she had already lodged her claim and 5/6 days after Acas had suggested she did so.

120 It is the Respondent's position that had the Claimant made attempts to obtain a
copy of her Acas Early Conciliation certificate as soon as she became aware
5 that this process had finished, then she would have been able to lodge her claim
on time. The Claimant was aware that there were time limits imposed on tribunal
claims which were triggered by the conclusion of the Acas Early Conciliation
process, yet she made no significant attempts to obtain a copy of the Acas
certificate before she lodged her claim and only requested a copy from her trade
10 union representative 4 days after she had already submitted her claim. In the
event that the tribunal is satisfied that it was not reasonably practicable for the
Claimant to present her claim within the time limit, it must then go on to consider
whether the claim was presented "within such further period as the Tribunal
considers reasonable".

15 121 It is submitted that the initial delay of 2 days was not reasonable, given that the
Claimant made no attempts within this time to obtain a copy of her Early
Conciliation certificate. Furthermore, even when her claim was rejected, the
Claimant waited a further 10 days before applying for reconsideration meaning
that her claim was ultimately accepted 18 days late. This was despite the
20 Claimant having obtained a copy of the Acas certificate by that point and
therefore being aware that her claim was late. The Claimant's explanation for
this delay was that she was deciding whether she wished to proceed with the
claim, however the Respondent submits that the Claimant had already made
the decision to lodge a claim at the time she originally submitted this on 12 March
25 and it was therefore not reasonable or necessary to delay for a further 10 days
to consider this again.

122 It is submitted that it was reasonably practicable for the Claimant to submit her
claim in time and that the delay of 18 days was not a reasonable delay. The
time limit should therefore not be extended.

Decision

Effect of EC

123 Day A is 19 January 2021 and Day B was 10 February 2021. Applying normal principles, the days from 20 January to 10 February would not “count”. That is
5 a period of 22 days. However, the claim, in so far as it relates to dismissal on 20 October 2020, should have been presented by 19 January 2021. As that date falls between Day A and one month after Day B, the time limit to present the claim is extended to one month after Day B, being 10 March 2021.

124 In relation to the claim of harassment, if this was found to be conduct extending
10 over a period, with the last incident on 1 October 2019, that claim should have been presented by 31 December 2019. There is no extension for early conciliation as Day A is after the expiry of the statutory time limit.

Unfair dismissal

125 The claim was presented on 28 March 2021. I require to be satisfied that it was
15 not reasonably practicable to present the claim in time and that it was then presented within a reasonable period if the claim is to be allowed to proceed. The claimant should have been presented by 10 March 2021 to be in time.

126 The claimant submits that , because of Mr Murray’s method of passing on the
20 Acas email, that she had at least a month from 15 February. I can understand why the claimant, at that point , believed that early conciliation had concluded shortly after the email from the Acas conciliator and that. as she believed that email had been sent on 15 February 2021, she had until at least the 15 March 2021 to present her claim. I have considered the fact that the claimant had trade union representation and that she should have checked the documents sent by
25 Mr Murray. However, I am prepared to accept that she genuinely believed that she had until 15 March 2021 to present her claim, that this mistake about the time limit was reasonable in light of the terms of the email and that she had taken reasonable steps to find out about time limits . Unfortunately that was based on the wrong start date. IN all these circumstances, I am satisfied that it
30 was not reasonably practicable for her to present the claim on 10 March 2021. AS at that date, she had a reasonable (but mistaken) belief that she had until the 15 March 2021 to present her claim.

127 I then have to consider whether it was presented within a reasonable period thereafter.

128 There is no explanation as to why the claimant presented her claim on 12 March 2021 without an EC number, leading to the claim being rejected. I agree with
5 the respondent that it seems likely that the claimant by that point knew the claim was late. Nonetheless, the claim form is very clear that an EC number is required. The telephone number and details of the website for Acas are provided at that point on the claim form. Had the claimant telephoned Acas, they would have given her the same advice as they did when she phoned a few days
10 later, specifically that her trade union representative had the certificate and she should contact him. Had she done that, then she would have got the certificate very quickly and could have presented the claim form then.

129 I have set out above why I do not accept that the claimant was provided with misleading advice by the Employment Tribunal contact Centre. I accept that she
15 may have telephoned them although I find it hard to understand why she searched for that telephone number instead of calling Acas whose telephone number was on the claim form.

130 There is also no satisfactory explanation as to why the claimant, having obtained the certificate number, delayed in re-presenting her claim until 28 March. She
20 says that she believed she had 14 days to apply for reconsideration. That is correct but the letter also says, in bold type, that the time limit for presenting the claim has not altered. If she was in any doubt she could have contacted her trade union representative, Acas or the Employment Tribunal. The claimant says she was stressed at the time. That may be so but she was still able to send
25 a long email to Karin Baxter on 17 March 2021. All that was required was to add the EC number to the form and to send it to the Tribunal.

131 Therefore, although I accept that it was not reasonably practicable for the claimant to present the claim of unfair dismissal on 10 March 2021, I do not accept that the claim was presented within a reasonable period thereafter.

30 132 The Tribunal therefore does not have jurisdiction to consider the complaint of unfair dismissal.

Equality Act complaints

133 These complaints have all been presented outside the statutory time limit . The
Tribunal cannot consider them unless it is satisfied that it is just and equitable
5 to extend time.

Victimisation

134 This complaint has been presented 18 days after the statutory period (extended
for early conciliation). I have accepted that the claimant was confused about the
dates following the email from her trade union representative. The layout of that
10 email is confusing and it is not unreasonable for someone reading that think that
the email from Acas was sent on 15 February 2021 and that that signalled the
end of the early conciliation period. I accept that the claimant did some research
and knew she had a month from the end of early conciliation. I also accept that
her trade union representative did not send her the early conciliation certificate
15 with the other paper work.

135 This is a different test from unfair dismissal. I have to balance the prejudice
between the parties to decide what is just and equitable. Although I consider
that the claimant could have presented the claim earlier, the fact that there is no
“good” reason for the delay is not fatal for this type of extension of time. It is
20 simply a factor. The delay is relatively short.

136 The respondent will have to face a claim it might otherwise not have to.
However, the respondent is aware of the claim and has been engaged in early
conciliation. It has not been suggested that respondent will be prejudiced in
defending the claim. Against that, the claimant will lose the right to challenge a
25 decision which she says was made because of her allegations of harassment.
This is a very serious allegation. The claimant has been dismissed. It is
important that such a charge is investigated. A hearing will be in relatively sharp
focus. The focus is entirely on the reason for dismissal. The Tribunal will not be
considered with whether the dismissal was “fair”. It will only be concerned with
30 whether the real reason for dismissal was the allegations made by the claimant.

137 On balance, I consider it is just and equitable to allow this complaint to proceed.

Sexual Harassment

5 138 This complaint has been presented almost 18 months after the last alleged act
of harassment. The claimant had the support of her trade union and was aware
that she could raise a formal complaint. She did not wish to do so. Her managers
on a number of occasions in October and November 2019 made it clear that
they would take action if she wished them to . The claimant made it clear this
was not what she wanted. In fact she was angry and upset that the matter had
10 even been mentioned to a senior manager.

139 The claimant now says that she was not aware she could bring a claim to the
Employment Tribunal while she was in employment. If that is true, she could
easily have found out the correct position from her trade union representative
or by going online as she did later to find out about time limits.. She had the
15 support of her trade union throughout.

140 I consider that the truth is, for perfectly valid reasons, she did not wish to take
any action about the matter at the time other than move seat away from Mr
Moore and that was done.

141 The reasons given by the claimant are that she did not want to cause trouble
20 between Mr Moore and his wife. That is understandable but is a choice the
claimant made at the time

142 The claimant takes issue with the accuracy of the minutes of various meetings.
However, it was not suggested that she or her trade union representative
dispute the general veracity. The claimant did not wish to raise the alleged
25 harassment during her disciplinary hearing. She was persuaded to do so but
only because it was thought it might be mitigation in her disciplinary process.
Neither she, nor her trade union representative, were raising it with a view to
the respondent taking action against Mr Moore. On the contrary, the claimant is
clear she does not want action taken. It is Ms Baxter who is expressing concern
30 that she may have to take action even if the claimant does not want her to. This

position is clarified later during the course of the appeal but the claimant is still offered the opportunity to raise a complaint. She still has not done so. Although she contacted Ms Baxter , this was after she had presented her claim , initially, and she does not make a complaint even then. She suggests that the respondent should have been taking some action. This is not consistent with the claimant's earlier attitude. The respondent was entitled to consider this matter closed.

143 Time limits to bring a claim to the Employment Tribunal are deliberately short. It is not desirable that claims are brought a long time after the relevant events not just for good industrial relations but also because the evidence becomes stale. This is particularly the case where the claimant has had every opportunity to take action but has chosen not to.

144 I do not consider it would be just and equitable to extend time now to allow her to make a complaint about sexual harassment so long after the event.

Direct age discrimination

145 This is essentially a new complaint. Although the claimant ticked the box for "age" discrimination, there were no details of the complaint in the claim form. The complaint was only articulated for the first time during a preliminary hearing on 1 June 2021 when the claimant said that she had been treated differently to Mr Murray because of her age.

146 No reason has been given for why this was not articulated at an earlier stage or, at least, in the ET1. Even if this is treated as further particulars, rather than an amendment to the claim, full details were not given until some months after the expiry of the primary time limit. This is despite the claimant having the benefit of trade union advice and having been through the early conciliation process. The respondent would have to face an entirely new claim and I do not consider this to be a critical part of the claimant's claim.

147 I do not consider it is just and equitable for this complaint to be allowed to proceed

Further steps

148 The complaint of victimisation in respect of the institution of disciplinary proceedings and ultimate dismissal will now proceed to a final hearing. Parties will be invited to provide details of witnesses and unsuitable dates so that a hearing can be listed. If either party considers that a case management hearing would be of assistance in advance of the final hearing that will be listed. Otherwise the case will simply proceed to a final hearing.

5
10 Employment Judge: Susan Walker
Date of Judgment: 16 August 2021
Entered in register: 16 August 2021
and copied to parties

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5 Firstly, I would like to just reiterate my apologies for applying to the tribunal 2 days late. This was in genuine error and as shown on the 16th of July during our video conference, I went by the date of the 15th of the month instead of going with the date on the original certificate. I can only apologise and hope that this mis-understanding can be overlooked and an exception can be made due to the surrounding circumstances.

During our video conference, Ms Moretti tried to show the tribunal that I had no intention to ever report and claim for sexual harassment. However, I believe that Ms Moretti helped show that I always intended to report the sexual harassment due to the following reasons;

Respondent's submissions

10 Decision

15 UDL – was reasonably practicable to submit in time. She could have asked the TU rep or Acas for the certificate. Was her mistaken belief about the time limit reasonable? No. Claimant is an inntelligent person who had made enquiries and knew that she had one onmth from the date of the EC certificate. It would have been easy to get the certificate or at least the number (which was all that was required> When she did ask her TU rep for it she got it the sameday. If it was not reas practicable, she did not sumit it immediately. However, did she then submit within a reasonable 20 period? She says had 14 days to ask for reconsideration.

Harassment and victimisation

Just and equitable

25 Victmistain– yes. Undesratandable Confusion around the dates, not very late didn't have the Ec certificate. repsodnent aware of the basis of the claim, had been through internal processes. Ha been to Acas. TU rep didn't send the certificate with the other documents The original TU rep email sof 15 Feb could have been taken to mena that this was th e date ythat EC stopped.

30 Age discrimination – that is an entirely new clami which does not appear to have been flagged . It did not feature in the appeal. The balance of prejcdice doe s not favour that being allowed to proceed late.

35 Harassment – claimant did not take steps to pursue this matter. She had trade union representation and I appears that she was encouraged to make a formal complaint. However she dod not wish to do so, in part because the alleged harasser's wife worked in the prganusatino. She raised it reluctantly as mitigation during the disciplinary and was encourages to make a compliant as late as the appeal in January 2021. Her only suggestion of invvovement was when R indicated it may have to take steps, She then said that she wanted a chance to submit something first. She did not , in fact, make a complaint until March 17 by which point the Et1 had been submitted for the first time.

I do not consider it would be just and equitable to a