EMPLOYMENT TRIBUNALS

Claimant: **Mr B Drummond**

Respondent: **Lloyds Bank Plc**

Heard by CVP in Sheffield **On: 21 October 2021**

Before: **Employment Judge Brain**

Representation

Claimant: **In person**
Respondent: **Mr J Braier of Counsel**

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is that it is not just and equitable to extend time to vest the Tribunal with jurisdiction to consider the claimant's claims. The tribunal has no jurisdiction to consider the claimant's claims which stand dismissed accordingly.

REASONS

1. The claimant presented his complaint to the Employment Tribunal on 18 March 2021. Before doing so, he went through mandatory early conciliation with Acas as required by the Employment Tribunals Act 1996. He commenced early conciliation on 6 August 2020. The conciliation ended on 19 September 2020. The relevant Acas early conciliation certificate is at page 2 of the hearing bundle.
2. The claim form was served upon the respondent on 30 March 2021. Upon the same date, the parties were served with notice of a case management preliminary hearing. This was listed to take place by telephone on 1 June 2021. The respondent presented their notice of appearance on 13 May 2021.

3. The telephone case management hearing came before Employment Judge Davies. (It was in fact adjourned from 1 June to 6 July 2021).

4. Employment Judge Davies identified the claims being brought by the claimant. Although there was some suggestion within the claim form of an equal pay case, it was ascertained that the complaints were of direct sex and direct race discrimination only brought under the Equality Act 2010. She set out in paragraph 7 of her case management minute the three complaints. It is worth repeating them here:

   (1) In January 2020 [the claimant] was scored poorly against selection criteria, placed in the bottom 5% of large corporates employees and placed at risk of redundancy. He says this is direct sex and race discrimination. On the information currently available he compares his treatment with that of Kirsten Burnard or a hypothetical comparator.

   (2) In July 2020 he was rejected for a grade C secondment opportunity. He says this is direct sex and race discrimination. On the information currently available he compares his treatment with that of Miss Edmond-Joseph or a hypothetical comparator.

   (3) In September 2020 he was not appointed to a grade E vacancy in one of the positions from which he was originally put at risk of redundancy. He says this was direct race discrimination. He compares his treatment with that of the successful candidate, Mr Leigh, who is not white British.

5. Employment Judge Davies then set out the issues for the Tribunal to decide. In summary, she identified there to be time limit issues and then, pending a determination of the time limit issues in the claimant's favour, a consideration of the merits of the claimant's complaint and (conditional upon his success with some or all of them) remedy.

6. The purpose of today's hearing was to determine whether the complaints brought by the claimant were presented to the Tribunal within the time limit provided for by the 2010 Act and if not whether it is just and equitable to extend time to vest the Tribunal with jurisdiction to consider his complaints.

7. Employment Judge Davies then made case management orders. She gave directions for the preparation for today's hearing. She also then gave directions for preparation for the final hearing which was listed for 24, 25, 26 and 27 January 2022.

8. Employment Judge Davies directed that no later than 20 July 2021 the claimant must send to the respondent a copy of his witness statement setting out all of the evidence relevant to the time limit issue only. The respondent was then directed to prepare and send to the claimant a bundle of documents to be used at the preliminary hearing. Finally, she directed that the bundle be sent to the Tribunal no later than seven days prior to the date fixed for the preliminary hearing. The parties complied with these directions.

9. I now turn to my findings of fact relevant to the time issue. I make no determination, when doing so, upon the merits of the claimant's complaints set out in paragraph 4. The strength or otherwise of the claim may be a relevant factor when deciding whether to extend time (where the Tribunal is required so to do to vest it with jurisdiction). The view I take upon this issue,

however, is that I simply do not have sufficient evidence or information upon which to make an assessment of the merits of the claims. I would need much more evidence than I have before me about the redundancy exercise and job application exercises the subject of the claim (both in terms of the claimant's own scoring and performance and those of his comparators). To entertain detailed evidence about these matters would be to conduct a mini trial. The focus at this stage needs to be upon findings of fact germane to the exercise of discretion. I therefore proceed upon the basis and assumption that the claimant's complaints are on the face of it meritorious (but without making any such finding).

10. It is not in dispute that the claimant was employed by the respondent between 3 November 2015 and 31 December 2020. The claimant held a grade E relationship manager role within the mid-markets team at the time of a restructure in January 2019. Following the restructure, he became a grade E associate director in the large corporates team.

11. There was then a further restructure which took place in January 2020. What the respondent terms the *"grade E population"* (which included the claimant) was scored against roles within the new structure. Unfortunately for the claimant, he scored in the lowest fifth percentile out of 85 colleagues. As a result he was placed at risk of redundancy. The January 2020 exercise forms the basis of the first of the claimant's complaints referred to in paragraph 4.

12. The claimant's contract was not in fact terminated by reason of his redundancy as he found alternative work as a secondment to cover a period of maternity leave in the corporate and institutional debt team. The secondment lasted from 23 March 2020 until 30 September 2020. During this time the claimant applied for a grade C assistant associate role in large corporates. This application was made in July 2020. The claimant was unsuccessful with his application. This is the basis of his second discrimination complaint. The claimant raised a grievance about this in August 2020. The grievance is at pages 72 to 75. The grievance was not upheld.

13. The claimant then applied for a grade E associate director position in large corporates in August 2020. Unfortunately, he was again unsuccessful. The claimant says, and I accept, that the August 2020 application was for a role very similar to that from which he had been made redundant in January 2020. It is this application which forms the basis of his third discrimination claim.

14. Naturally, the claimant was concerned that the secondment referred to in paragraph 12 was coming to an end. In September 2020 he successfully applied for a short term secondment opportunity in the respondent's real estate credit team. He was seconded to this role from 1 October 2020 until his employment terminated on 31 December 2020.

15. The claimant said in evidence that the real estate credit team were "*very good to me".* The expiry of the limited term contract in that department constituted the claimant's dismissal from the respondent's employment. It follows from what the claimant said about his experience in that department that nothing arose within it which constitutes part of his claim.

16. The claimant was informed that he had been unsuccessful with the September 2020 grade E application (referred to in paragraph 13) on or around 7 September 2020. That being the final act of discriminatory conduct

relied upon by the claimant, it follows that time began to run on or around that date.

17. By section 123 of the 2010 Act, proceedings upon a complaint before the Employment Tribunal of a breach of the 2010 Act may not be brought after the end of the period of three months. The three months' time limit begins to run from the date of the act to which the complaint relates or such other period as the Tribunal thinks just and equitable. For the purposes of section 123, conduct extending over a period is to be treated as done at the end of the period and so time begins to run then in such a case.

18. Different individuals were involved in the three complaints summarised in paragraph 4 which the claimant brings before the Tribunal. The claimant said that the different individuals involved in the three different complaints were within a close-knit management group within the respondent and operated under the same cultural mores. I do not have sufficient evidence to determine whether the three acts may be considered to be part of a series of acts or part of a continuing act such that time only begins to run against the claimant upon the conclusion of the final act. It may well be that, after hearing the evidence, a Tribunal would determine them to be specific and isolated acts in which case different time limits apply to each act. However, I shall proceed upon the assumption (and shall give the benefit of the doubt to him) that the claimant will be able to establish that the three acts in question were part of a series of acts or a continuing act and that time only began to run on or around 7 September 2020.

19. That being the case, the claimant would have to commence the process prior to 6 December 2020. The claimant did so as he made a referral to Acas as required by the 1996 Act on 6 August 2020. The period spent in Acas conciliation (of 42 days) is therefore added to 6 December 2020 to give a limitation date of 19 January 2021. It was by this date that the claimant had to submit his claim form to the Employment Tribunal. He did not do so until 18 March 2021 and is thus two months outside the time limit provided for by section 123.

20. If the claimant were able to establish a continuing act beyond 7 September 2020 to the date upon which he joined the real estate credit team, (that to being on or around 1 October 2020) then the time within which for him to submit his claim form before the Employment Tribunal was 11 February 2021. (That is, three months from 1 October plus 42 days spent in early conciliation). Again, the claimant submitted his claim around five weeks out of time.

21. It follows therefore that even upon the most generous interpretation in the claimant's favour (of a continuing act ending only on 30 September 2020) the claimant presented his complaint outside of the relevant time limit. On the face of it therefore the Tribunal has no jurisdiction to entertain his claim. However, the Tribunal does have discretion to extend time to enable the Tribunal to consider his complaints.

22. As was established in the case of **Robertson v Bexley Community Centre t/a Leisure Link** [2003] IRLR 434, CA, the onus is upon the complainant to convince the Employment Tribunal that it is just and equitable to extend the time limit. **Robertson** establishes that the exercise of the discretion is not a foregone conclusion. Indeed, to the contrary, there is no presumption that the Employment Tribunal should exercise discretion in the claimant's favour

unless he can justify a failure to present the complaint in time. The exercise of the discretion is the exception rather than the rule. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law simply requires that an extension of time should be just and equitable.

23. Within his witness statement, the claimant advanced several explanations for the timing of the presentation of his claim form. The first of these, as set out in paragraph 3 of his witness statement, was that, *"From the time I was placed 'at risk' in January 2020 until I left the bank in December 2020 I attempted to secure alternative long term employment at Lloyds. There were limits to how far I could take my claim whilst there was a possibility that a role could have been forthcoming. It would have been foolhardy to submit my ET1 until my employment had been terminated as doing so would certainly have prejudiced my position".*

24. The respondent points to the claimant as having raised two internal grievances as undermining the factual assertion in paragraph 3 of the claimant's witness statement cited in paragraph 23 of this judgment. The first of these was dated November 2019 and is at pages 68 to 71. It is not necessary to go into any great deal about this grievance. It appears to convey information which formed the basis of the equal pay claim which the claimant sought to bring. I am not convinced that the claimant bringing this grievance undermines what he says at paragraph 3 of his witness statement. After all, the redundancy exercise the subject of the first claim did not take place until January 2020 and there was no evidence that the claimant's perception of his long term future with the bank was affected by the restructure carried out in January 2019.

25. However, the respondent is on firmer ground upon their submission around the second grievance. This is dated 6 August 2020 and is at pages 72 to 75. While in no way being critical of the claimant, this is expressed in robust terms. The claimant refers in the first page to the pursuit of an unfair dismissal complaint and having already referred the matter to Acas. We know that he did so upon that day. In the concluding paragraph on page 75 he again refers to unfair and constructive dismissal complaints and his willingness to take the matter to an Employment Tribunal.

26. On 6 August 2020 he also informed Damion Harrison of the respondent's HR department that he had initiated the Acas early conciliation procedure. I refer to page 80 of the bundle. On 19 August 2020 he conveyed the message to Rebecca Amesbury of HR that he had contacted Acas and that he was *"preparing this matter for industrial tribunal and have already engaged legal counsel – Acas involvement is to demonstrate reasonableness".* I refer to pages 78 and 79.

27. The claimant was not in fact prejudiced as the respondent (notwithstanding what the claimant was saying upon several occasions in August 2020) offered him a role in a different sector of the bank with effect from 1 October 2020.

28. Further, there is no evidence that the respondent sought to undermine or sabotage the claimant's job seeking efforts outside the respondent bank. The claimant commenced a new role within the banking centre just 11 working days after the termination of his employment with the respondent. He commenced his new role on or around 17 January 2021. He applied for his

new role prior to Christmas 2020. The claimant accepted that he made reference to the respondent in the job application for his new employer. This would inevitably be the case upon any well drawn application form.

29. Whatever apprehension the claimant may have had about the respondent potentially retaliating against him either during his employment (by not offering him a long-term role) or after it terminated at the end of 2020 proved unfounded. The claimant knew this to be the case by virtue of him having obtained alternative employment with effect from the middle of January 2021. He knew then that the respondent had not sabotaged his application for employment elsewhere for otherwise he would not have been confirmed in his new role.

30. The claimant said that he did not submit his claim form to the Employment Tribunal until 18 March 2021 for fear that the respondent may prejudice his employment in his new role and lead to the termination of it during the probationary period. This was difficult evidence to understand because it is of course open to an employer to dismiss an employee with less than two years of service without fear of an unfair dismissal complaint (unless the complainant can bring themselves within one of the exceptional circumstances where the two years' service requirement does not apply). There is, I think, much in Mr Braier's point that once the claimant had secured his new employment in the same sector there was realistically no danger from the respondent. In my judgment, the claimant's concerns were overblown for the reasons given earlier (that alternative employment was found for him within a different sector of the bank and the bank had not sought to jeopardise his new employment in any case). The concerns expressed by the claimant in paragraph 3 of his witness statement constitute, in my judgment, an unsatisfactory and unconvincing explanation for delay. They cannot weigh in the balance in the claimant's favour accordingly.

31. The second matter referred to by the claimant is in paragraph 4 of his witness statement. He says that *"Although my claim references three specific instances where I intend to demonstrate that I have been discriminated against, my evidence bundle contains supplementary supporting documentation collected throughout 2020, including proof of a cover up. This was a case of systemic discrimination occurring over a 12 month period."*

32. For the reasons already given, I am prepared to take the claimant's case at its height and credit the alleged act of discrimination as being a series of act or a continuing act ending either on 7 or 30 September 2020. Thus, this weighs in the balance in the claimant's favour in that I shall take time as starting to run from 30 September 2020.

33. In the fifth paragraph, the claimant repeats his concern that he had to wait until he had secured an alternative external role as he could not take the risk that his former employer [the respondent] would attempt to sabotage the recruitment process. As I have said, I do not find this to be a satisfactory explanation. At all events, the claimant knew that the respondent had not sabotaged the recruitment process when he commenced his new role on 17 January 2021. At that point, he was still within time to bring his complaint even if time were to run against him from the earlier date of 7 September 2020.

34. In the same paragraph, the claimant says that he *"submitted [his] ET1 on 18 March 2021, being the earliest possible date I could address this issue, but still within three months of my termination date".* It is not clear why the claimant latched on to 18 March 2021 as the earliest date upon which he could attend to matters. Plainly, this is not the case. In evidence, he said he that he had a three months' probationary period with his new employer. That being the case, the probationary period would have expired on or around 16 April 2021. (As I have already observed, getting past the probationary period would not give the claimant security of employment in any case). Be that as it may, it makes no sense for the claimant to have presented his complaint on 18 March 2021 if he wished to await the expiry of his probationary period.

35. The claimant's factual assertion that the claim only crystallised once his employment was terminated is in effect a plea of ignorance about the relevant law. To repeat, by section 123 of the 2010 Act, the period of three months starts with the date of the act to which the complaint relates or the end of the period where the complaint relates to conduct extending over a period. It is simply incorrect to say that time only starts to run from the end of employment in a discrimination case. If that were the case, then employers may be visited with stale claims from employees about matters going back years prior to and unconnected with the end of employment.

36. In **Bowden v Ministry of Justice** [2017] UK EAT/0018/17 it was held that where ignorance of a time limit is relied upon by a complainant, the jurisprudence that has developed around unfair dismissal law is relevant.

37. Where a complainant wishes to bring a complaint of unfair dismissal, such must be presented to the Employment Tribunal within three months of the effective date of termination. As with discrimination claims brought under the 2010 Act, the Employment Rights Act 1996 (which provides the statutory protection against being unfairly dismissed) provides an escape clause. However, whereas under the 2010 Act a Tribunal may extend time where it is just and equitable so to do, under the 1996 Act a stricter test applies. That is to say, time will only be extended to consider an unfair dismissal complaint where the complainant can establish that it was not reasonably practicable to have presented the claim in time and that the claim was presented within a reasonable time.

38. **Bowden** was in fact a complaint brought under the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000. That is legislation which provides protection against discrimination upon the grounds of part time worker status. A just and equitable extension of time provision is provided for within the regulations. **Bowden** is therefore directly analogous to the instant case. Very similar principles operate upon a consideration of an extension of time under the 2000 Regulations as under the 2010 Act.

39. In **Bowden**, the Employment Appeal Tribunal (HHJ Richardson) set out Brandon LJ's speech in **Wall's Meat Co Limited v Khan** [1978] IRLR 499. In **Wall's Meat**, a distinction was drawn between ignorance on the one hand and reasonable ignorance on the other. It was held that in the context of an unfair dismissal complaint a complainant may expect little sympathy where they know of their right not to be unfairly dismissed but make no reasonable enquiries to vindicate those rights. A complainant may expect more sympathy where the ignorance is reasonable (perhaps because they were misled by the

employer or there was some reasonable and understandable confusion about their rights). It is clear however that ignorance of the time limit in and of itself would rarely be acceptable as a reason for delay. If simple ignorance were to be an adequate excuse, then the time limits may as well not exist.

40. We can see from page 1 of the grounds of claim which accompanied the claimant's claim form that he has impressive credentials. He has achieved very impressive grades in secondary school culminating in a degree with a very prestigious university. The way in which the claimant presented himself before me demonstrates that he is an extremely intelligent and articulate individual.

41. Furthermore, the claimant said in his claim form that he had representation from Daniel Hibbert of Hibbert Professionals. It was suggested to the claimant by Mr Braier that Daniel Hibbert is in fact a HR and employment law consultant. The claimant maintained that he was not and that he worked for SkyBet.

42. I need not make a determination upon this issue. However, I have seen correspondence between the respondent's solicitor and Mr Hibbert. From this, it may be readily discerned that Mr Hibbert is very familiar with employment law and practice. His letters were very good and of a standard which one may expect from somebody with a great deal of familiarity in this area.

43. The claimant said that Mr Hibbert did not come on the scene until around the time that he issued the claim form. He says that he knows Mr Hibbert as a personal friend. The claimant said that he had sought advice upon one occasion from a solicitor at around the time that he initiated Acas early conciliation in early August 2020.

44. In my judgment, for the reasons given in paragraph 40, the claimant himself was well able to investigate the position around time limits. He said in evidence given under cross-examination that he was *"aware of a three month time limit but I thought it related to the final act of discrimination. I had the final date of employment in my head".* Mr Braier asked him whether the claimant had been advised about time limits by the solicitor to whom he spoke in the summer of last year. The claimant was prepared to answer the question after I had counselled him about the nature of litigation privilege. The claimant replied that his belief that time started to run from the end of employment was based upon his interpretation after discussion with Acas. It follows that the claimant was not seeking to pray in aid that he had been given bad advice by his solicitor, Mr Hibbert or Acas but rather that he had misinterpreted what Acas had said and conflated the ending of employment with the ending of the discriminatory conduct.

45. Mr Braier took me to the case of **Inchcape Retail Ltd v Shelton** [2019] (UK EAT/0142/19). This may be viewed to some degree as updating the **Wall's Meat** case and bringing the jurisprudence into the internet age. The Employment Tribunal recognise that it is not difficult for an educated person to find out the relevant information by using the internet.

46. I am satisfied that the claimant is a very well educated and intelligent individual. He could easily have found out about the time limits had he applied himself. Further, he appears to have a longstanding friendship with

Mr Hibbert. I accept that factually the claimant did not involve Mr Hibbert until it was too late. Nonetheless the facility of asking Mr Hibbert was always open to the claimant. As Mr Hibbert was a friend of his and the claimant knew of his knowledge of employment law. Further, the claimant has spoken to a solicitor. It appears from his evidence given in cross-examination that he was aware that time ran from the end of the discriminatory act but wrongly interpreted this as being the same thing as the end of employment. That is not reasonable ignorance.

47. Section 123 of the 2010 Act does not set out any list of factors to which a Tribunal is instructed to have regard in exercising the discretion whether to extend time for just and equitable reasons. In **Adedeji v The University Hospitals Birmingham NHS Foundation Trust** [2021] EWCA Civ 23 Underhill LJ cited with approval the judgment of Leggatt LJ in **Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] EWCA Civ 640. In that case, Leggatt LJ said (in paragraph 19) that, "*the factors which are almost always relevant to consider when exercising any discretion whether to extend time are:*

(1) The length of, and reasons for the delay; and

(2) Whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)."

48. In **Abertawe**, the Court of Appeal rejected the proposition that in the absence of an explanation from the claimant as to why they did not bring the claim in time and an evidential basis for that explanation, the Tribunal could not properly conclude that it was just and equitable to extend time. The Court of Appeal held that the discretion under section 123 of the 2010 Act for a Tribunal to decide what it thinks to be just and equitable is clearly intended to be broad and unfettered. There is no justification for reading into the statutory language any requirement that the Tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation for the delay from the claimant. The most that can be said is whether there is any explanation or apparent reason for the delay and the nature of any reason are relevant matters to which the Tribunal ought to have regard. However, there is no requirement for a Tribunal to be satisfied that there was a good reason for the delay before it can conclude that it is just and equitable to extend time. However, as **Robertson** establishes, there needs to be something to convince the Tribunal that it is just and equitable to extend time.

49. A Tribunal will fall into error when considering whether it is just and equitable to extend time if the focus is simply upon whether the claimant ought to have submitted their claim in time. Tribunals must weigh up the relative prejudice that extending time would cause to the respondent. Of course, some prejudice will always be caused to the employer if an extension of time is granted given that the case would otherwise be dismissed.

50. In the case of **Miller and others v The Ministry of Justice and others** (UK EAT/0003/15) (another case concerning the Part Time Workers Regulations) the Employment Appeal Tribunal (Laing J) said (in paragraph 12) that, "*there are two types of prejudice which a respondent may suffer if the limitation period is extended. They are the obvious prejudice of having to meet a claim*

which would otherwise have been defeated by limitation defence and the forensic prejudice which a respondent may suffer if the limitation period is extended by many months or years, which is caused by such things as fading memories, loss of documents and losing touch with witnesses".

51. In paragraph 13 she goes on to say that the prejudice to a respondent of losing a limitation defence is *"customarily relevant"* to the exercise of this discretion. It is obvious that if there is a forensic prejudice to a respondent that may well be *"crucially relevant"* in the exercise of the discretion, telling against an extension of time. She held that forensic prejudice may well be decisive. However, the converse does not follow. In other words, if there is no loss of '*crucially relevant'* forensic prejudice to the respondent that is not decisive in favour of an extension. The absence of forensic prejudice may well not be relevant at all. It will very much depend upon the way in which the tribunal sees the facts.
52. In this case, the respondent did not adduce any evidence as such of forensic prejudice. There is no evidence that, for example, key witnesses are unavailable attributable to the delay who otherwise may have been able to be called to give evidence or that important documents have been lost or destroyed which would have been preserved had the claimant brought his claim timeously. That said, I find compelling Mr Braier's submission that the events with which the Tribunal would be concerned were time to be extended go back (upon the earliest complaints) to January 2020.
53. If time is now to be extended, the respondent would be expected to call evidence dealing with what appears to be a complex redundancy exercise which took place getting on for two years ago. It is inevitable, in my judgment, that in those circumstances the witnesses to be called by the respondent would suffer from memory fade when expected to give evidence about a large scale redundancy exercise involving a significant number of employees. Similar observations may be made about the second and third complaints albeit that they happened more recently. I surmise that a number of candidates applied for each of the positions the subject of the second and third complaints. In fact, this is inevitably the case given that two others were successful whereas the claimant was not. It is probable that there were other candidates as well. To expect busy officials to bring to mind the circumstances of recruitment exercises going back now getting on for 18 months ago in my view inevitably creates a forensic prejudice to the respondent.
54. Upon the facts of **Adedeji,** the complainant was only three days out of time upon the last of his complaints. However, there were other claims arising from events six and 12 months prior to the presentation of the claim form. In paragraph 32 of the case report Underhill LJ held that, "*a Tribunal can properly take into account the fact that, although the formal delay may have been short, the consequence of granting an extension may be to open issues which arose much longer ago."*
55. In this case, of course, the claimant was not only just out of time upon any of his complaints. He was significantly out of time even giving him the benefit of the doubt that time did not start to run until the end of September 2020.
56. The end of the state of affairs giving rise to his most recent claim ended (being generous to the claimant) at the end of September 2020 which was a period getting on for almost six months prior to the date upon which he submitted his

claim form. That is getting on for double the time limit prescribed by Parliament for dealing with Employment Tribunal claims. Parliament prescribed a short time limit for good reason. It is a safeguard employers being troubled by stale claims upon issues which arose a long time ago.

57. The claimant has not advanced any good explanation for the delay. That is of course not decisive per **Abertawe**. What can be said however is that the explanations advanced by the claimant are unsatisfactory. It is also erroneous for me to focus simply upon whether the claimant ought to have submitted his claim in time.

58. It is for me to weigh the relative prejudice that extending time would cause to the respondent against the prejudice to the claimant of not extending time. Of course, if I do not extend time then the claimant is significantly prejudiced as that will be the end of the claim. However, that in and of itself cannot be a decisive factor as otherwise time extensions will always be readily granted. It does not follow that because there is no forensic prejudice to the respondent then an extension of time ought to be granted.

59. I am satisfied that there is forensic prejudice here to the respondent. The cogency of the evidence is more than likely affected by the delay. The delay is significant. There is in reality no reason for the delay let alone any good reason for it.

60. The claimant is simply able to point to nothing which may be weighed in the balance in his favour. His ignorance was not reasonable. His apprehension about the respondent's acts were not reasonable. There was nothing to stop him, whatever his concerns about the respondent, putting his claim form in once he secured new employment. As Mr Braier submitted, the difficulty which the claimant finds himself is of his own making. He has not been misled by the respondent or any advisor upon the issue of time limits. To the contrary, it appears that he was correctly told by a solicitor and/or Acas that time begins to run at the end of the discriminatory conduct which the claimant misinterpreted. To adopt Mr Braier's expression, the claimant has *"nothing in his locker"* to persuade the Tribunal to extend time. It is for him to convince me that time ought to be extended. Nothing was advanced to persuade me that it should be.

61. The claimant's case in reality amounts to no more than this – *"I am significantly out of time, I submitted the claim upon a random date with no rhyme or reason for delay and now wish the Tribunal to extend time to enable me to pursue the matter."* There is frankly no logic to the claimant having submitted his claim on 18 March 2021. Given that the onus is upon him to convince the Tribunal that it is just and equitable to extend time and the exercise of discretion is the exception rather than the rule, there is simply nothing to which the claimant can point to convince the Tribunal to exercise discretion in his favour.

62. In the circumstances, I am driven to the conclusion that as a matter of law it is proper to refuse to extend time in order to vest the Tribunal with jurisdiction to consider the claimant's complaints. In the circumstances, the Tribunal has no jurisdiction to consider them. The hearing listed for January 2022 shall therefore be vacated.

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Employment Judge Brain

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Date 8 November 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

Date 12 November 2021