Case Numbers: 3201871/2019
3219774/2020

EMPLOYMENT TRIBUNALS

Claimant: **Ms M. Fuller**

Respondent: **London Borough of Tower Hamlets**

Heard at: **East London Hearing Centre (by CVP)**

On: **20-21 January 2022**

Before: **Employment Judge Massarella**

Representation
Claimant: In person
Respondent: Ms A. Stroud (Counsel)

RESERVED REASONS

This has been a remote hearing by video (CVP), which has not been objected to by the parties. A face to face hearing was not held because it was not practicable and the issues could be determined in a remote hearing.

1. NB: References to the Issue numbers in this judgment are to the final list (based on the two B-Lists) appended to this judgment.

2. I gave the following judgment orally on 21 January 2022; it was sent to the parties on 24 January 2022.

    1. 'the Tribunal accepts the two 'A-Lists' as accurate summaries of the claims contained in Cases 1 and 2, including Case 1, Issue 3(i), which I accept is a minor clarification;

    2. the following claims are out of time, and it is not just and equitable to extend time:

        2.1. Case 2, Issues 5(a) and (b);

    3. issues relating to time limits in relation to the remaining claims (i.e. whether they amount to conduct over a period, alternatively whether it is just and equitable to extend time) will be determined by the Tribunal at the final hearing;

4. the application to amend Case 1 is allowed in relation to the following issues, subject to questions of time limits, which will be determined by the Tribunal at the final hearing:

    4.1. Issues 3(d), (e) and (f);

    4.2. Issues 6(h), (j), (k), (l), (m), (n), (r), (s), (t), (u), (x), (y), (aa) and (bb)

    4.3. Issues 7(a), (b) and (c);

5. the application to amend Case 1 is refused in relation to the following issues:

    5.1. Issues 2(c), (d), (e) and (f);

    5.2. Issue 3(c);

    5.3. Issue 6(a), (b), (c), (d), (i), (o), (p), (q), (cc) and (dd);

6. Issues 6(ff) and (gg) do not raise additional claims, they are duplicates;

7. the application to amend Case 2 succeeds in relation to the following issues, subject to questions of time limits, which will be determined by the Tribunal at the final hearing:

    7.1. Issues 3(d), 4(d), 5(i);

8. all other applications to amend, contained in any of the Claimant's applications, are refused;

9. the Respondent's application for strike-out and/or deposit orders is refused.'

3. I did not give reasons on the day owing to lack of time. They are set out below.

The purpose of this hearing

4. This open preliminary hearing was listed to consider the following issues:

    4.1. to confirm what legal and factual issues are raised in each of the two claim forms;

    4.2. to consider the question of time limits in relation to the claims already pleaded; the Judge may either determine that question (in whole or in part) at the preliminary hearing, or decide that it should be left (in whole or in part) to the final hearing; and

    4.3. to consider the Respondent's application to strike the Claimant's claims out, alternatively for deposit orders to be made;

    4.4. to consider the Claimant's applications to amend the two claim forms to add new claims.

5. The final hearing remains listed on 5-8, 12 and 13 July 2022.

6. I had a bundle of documents running to just over 200 pages. I heard evidence from the Claimant, who had prepared a witness statement. She was then cross-examined by Ms Stroud.

7. Both parties provided helpful written submissions, which I have taken into account. Each then supplemented them by oral submissions.

Procedural history

The procedural steps taken by the Claimant

8. By a claim form presented on 6 August 2019, after an ACAS early conciliation period between 7 June and 8 July 2019, the Claimant claimed disability discrimination (failure to make reasonable adjustments, harassment related to disability and victimisation). The Claimant did not specify what her disability was. In its ET3 the Respondent did not concede disability and denied discrimination.

9. A preliminary hearing for case management was initially listed for 2 December 2019. However, in an order dated 15 November 2019, that hearing was postponed and an open preliminary hearing listed on 9 April 2020 to determine whether the Claimant was a disabled person within the meaning of s.6 Equality Act 2010 ('EqA') at the material time. A final hearing was listed for three days on 14-16 October 2020. Case management orders were given in relation to preparation for the preliminary hearing.

10. Because of Covid-19 travel restrictions, the Claimant's barrister, Mr Aggrey-Orleans, was unable to return to the UK from Ghana. The Claimant applied for a postponement, which was not opposed by the Respondent. On 6 April 2020 the Regional Employment Judge postponed the hearing.

11. The case came before me on 9 September 2020, to deal with the issue of disability. Unfortunately, the hearing was beset by technical difficulties and had to be postponed to what would have been the first day of the full merits hearing, 14 October 2020; the remaining two days were vacated. The full merits hearing was re-listed for three days in April 2021.

12. At that hearing, I took advantage of the fact that the Claimant had the assistance of Mr Aggrey-Orleans to ask the parties to seek to agree a list of issues. I reminded Mr Aggrey-Orleans that this must be firmly anchored in the Claimant's pleaded case. I resumed the hearing in the afternoon. Unfortunately, Mr Aggrey-Orleans had been unable to complete the process of taking instructions from the Claimant, and was hampered by not having all the papers. Ms White (Counsel for the Respondent) did not object to his being given more time to produce a draft list.

13. A number of broader issues were clarified. Mr Aggrey-Orleans confirmed that the disability relied on by the Claimant was sarcoidosis, which the Claimant describes as a chronic condition, exacerbated by the anaphylactic attacks she experienced in August 2018. He confirmed that she complained of failure to make reasonable adjustments, harassment related to disability, and victimisation. Ms White accepted that, even if the Claimant is found not to have been a disabled person at the material time (from 4 December 2018 onwards),

a final hearing of the victimisation claim, which is not dependent on her status as a disabled person, would still be required.

14. I ordered that, by 23 September 2020, the Claimant should send a proposed, draft list of issues to the Respondent. By 7 October 2020, the Respondent was to lodge a final, agreed list of issues with the Tribunal. I ordered that any outstanding points of disagreement must be clearly identified in the final list.

15. The issue of disability came before EJ Elgot at the hearing on 14 October 2020. She concluded that the Claimant was a disabled person at the relevant time. At that hearing, the Claimant indicated that she wished to apply to amend her claim. Judge Elgot ordered that, if so advised, she must make a written application to amend by 11 November 2020; by 2 December 2020, the Respondent was ordered to state in writing whether it opposed all or any of the proposed amendments, and why. If the question of amendment could not be dealt with by consent and/or written representations, then the matter would be dealt with at a further preliminary hearing.

<u>The first application to amend: 6 and 11 November 2020</u>

16. By email dated 6 November 2020, the Claimant applied to amend her claim form. She described the proposed amendment as the addition of a protected act. Attached to that email was a document entitled 'Claimant's List of Issues'. The covering email observed that this document had been drawn up in response to my order, but acknowledged that the Respondent had already asserted that it contained claims which were not pleaded in the ET1.

17. On 11 November 2020, still within the time frame identified by Judge Elgot, the Claimant sent a further email to the Tribunal entitled 'Additional application to amend ET1 claim'. The Claimant identified in the covering email that she was applying to plead five further acts of victimisation, and two further allegations of failure to make reasonable adjustments.

18. On 8 December 2020, EJ Jones ordered the Respondent to provide a response no later than 15 December 2020. The Respondent lodged a response on 23 December 2020, objecting to the application.

<u>The second claim: Case number 3219774/2020</u>

19. The Claimant presented a second ET1 on 16 November 2020, after an ACAS early conciliation period between 6 and 9 November 2020. The attached particulars of complaint ran to some ten pages of closely-typed narrative. The claims were not clearly identified by reference to the causes of action.

20. On 4 January 2021, REJ Taylor ordered that the claims be consolidated.

21. By letter dated 1 February 2021, the Respondent applied for an extension of time to present its response to the second claim. The Claimant objected. By an order dated 8 February 2021, EJ Russell wrote to the parties, directing that the Claimant's applications to amend her claim form, including those referred to below, would be considered at a preliminary hearing on 12 February 2021. Time was extended for the Respondent to present its response to the second claim to 11 February 2021.

22. In its ET3, the Respondent took further time points, and made an application for a strike-out/deposit orders.

The applications to amend between presented between 25 January 2021 and 8 February 2021

23. By an email dated 25 January 2021, the Claimant presented a further application to amend her first claim in a document running to some 24 pages.

24. On 26 January at 22:18, 2 February at 18:33, 4 February 2021 at 18:05 and 20:50, the Claimant applied to make further amendments to the application of 25 January 2021.

25. On 5 February 2021 at 0:929 the Claimant produced a single document which she described as a consolidation of the applications to amend, made between 25 January and 4 February 2021.

26. Later the same day at 13:04, and again on 7 February 2021 at 14:11, she applied further to amend her consolidated application.

27. On 8 February 2021, she presented a second 'consolidation' of her application to amend the first and second claims. That document ran to 34 pages.

28. On the same day at 19:14, the Claimant lodged a completed agenda, a proposed list of issues for the first claim, a proposed list of issues for the second claim, and a further copy of her consolidated application to amend her claims.

The 12 February 2021 PH

29. The case came before me again on 12 February 2021 for further case management. I reviewed the file before the hearing, and explained to the parties that, in order to decide whether to allow the amendments, I first needed to understand what is agreed as being contained within the two original claim forms. I observed that it was possible that the Respondent may concede, or I may conclude, that some of the proposed amendments are merely further particularisation of claims already pleaded. Nonetheless, that initial exercise had not been conducted by either party, and it certainly was not possible for me to do so within the time available at that hearing.

30. Further, a formal application to amend would usually set out the original text of the claim form, and then clearly indicate what text it is proposed should be added. That is not the way that the Claimant had approached her applications to amend. Again, no one has yet conducted the exercise of identifying what was original text, and what was proposed amendment.

31. The Claimant had said in her agenda for this hearing that the three days listed in April was not sufficient to hear this case, even if no amendments were allowed. I agreed. The listing was made before she issued her second claim. It was clear to me that the final hearing could not go ahead in April. Apart from anything else, the parties would not be ready by then, the Respondent having only just lodged its second ET3.

32. I vacated one of the April hearing dates, and retained the other two for an open PH, reserved to me, to determine the Claimant's applications to amend, and to deal with the Respondent's applications in respect of time limits, strike-out and

deposit orders. One consequence of that was that a relisted final hearing would not take place before July 2022. The parties agreed with my proposal. The representatives agreed that, should all the claims go ahead, six days would be required for a final hearing.

33. I also explained that I was going to set a strict timetable for clarification of the issues in this case, clarification of the proposed amendments, and clarification of the precise nature of the Respondent's various applications, and that I was going to retain to myself oversight of that process, to ensure that the parties are ready to address the necessary issues at the April preliminary hearing.

34. In terms of the multiple applications to amend, I noted that they fell into two groups: the November 2020 applications and the January/February 2021 applications. A clear distinction between the two groups was necessary, although it is not necessary to drill down further, for example as to whether an application was first raised on 4 or 5 February 2021. Mr Aggrey-Orleans acknowledged that all the applications were made outside the relevant time limits, but that the January/February group were a further two months out of time.

35. I explained to the parties that what I required, in advance of the April hearing, was first of all a clear list of issues, one in respect of each claim form, identifying what claims they already contain. Each allegation should be concisely stated in no more than one or two sentences and listed under the relevant cause of action. I referred to these as the 'A-Lists'.

36. Those two lists should then be taken, and the proposed amendments inserted, again in concise form, under the relevant cause of action. They should be coded (for example, colour-coded) so that the Tribunal could immediately see whether the proposed amendment was raised in November 2020 or January/February 2021. A page reference to the original application should be given in each case. I referred to these as the 'B-Lists'.

37. I reminded the Claimant that this was not an opportunity further to expand her proposed claim; if anything, it was an opportunity further to focus it.

38. I also gave directions, permitting the Claimant to produce a witness statement, addressing issues relevant to time limits, and to make a more developed application to amend; and directions permitting the Respondent to set out its applications in greater detail, and for the Claimant to respond.

39. I emphasised to the parties that I would review the lists, when they were lodged with the Tribunal; if I was not satisfied that my directions had been complied with, I would convene a further telephone preliminary hearing.

<u>The 21 April 2021 PH</u>

40. The case came before me again on 21 April 2021 for a two-day open PH to decide the same issues as are still outstanding today. By this point, the Claimant was not legally represented.

41. The Claimant had sent four lists to the Respondent the evening before the telephone hearing, which reached me ten minutes before the hearing. The lists did not comply with the order: firstly, in total they were some 200 pages long,

and so were not the 'concise lists' I had asked for. The two 'A-lists' contained many allegations which were not contained in the original ET1 forms. The two B-lists were very similar to the A-lists and contained relatively few additions.

42. What the Claimant had done, in effect, was to add in all the additional matters she wished to pursue (her proposed amendments) to the A-lists, as if they were already in the original claims. Most of them raised factual allegations which were not contained in the ET1s. I explained to her that is for the Tribunal to decide whether to allow her to raise those matters.

43. I declined to accept those four documents as list of issues: they could not even form a useful starting point for a list of issues; it was clear that the process would have to begin again. Ms Bowes kindly offered to do a first draft of the lists, and the Claimant sensibly agreed that that would be a sensible way forward.

44. I made it clear that I would not accept further lengthy documents, which would not assist the Tribunal. I also gave the Claimant a clear warning that, while this situation may have arisen in part because she was a layperson, and no longer had legal representation, it also arose in part because she had not paid close enough attention to the clear guidance and orders I had given in my earlier case management summary, and approached the exercise in the way that she wished to approach it, rather than in the way I had ordered. That was not an acceptable way for either party to conduct proceedings. I warned the Claimant that any further non-compliance might result in an unless order, or even a costs order.

45. The PH was relisted to these dates. In the interim there was further correspondence from the parties which, with some further intervention from me, eventually led to the preparation of the four lists I had ordered back in February 2021.

Findings of fact

Steps taken by the Claimant to seek legal advice

46. The Claimant was taking legal advice when she presented the first case in August 2019. She talked to her representative about the claims she wished to bring. The representative reviewed the completed claim form before it was submitted.

47. Those claims were listed in a very brief form in the first ET1. There was an obvious lack of particularisation in relation to some of the allegations (for example, 'The Project Leader begins and escalates a campaign of victimisation and harassment against me due to making a complaint against my line manager'). The project leader referred to was Ms Zena Barker (the Claimant's line manager was Ms Karen Hennessy). No request/application for further information was made by the Respondent at that or any other stage.

48. The Claimant's evidence, which I accept, was that she provided her trade union representative with a copy of her grievance, which contained details of the allegations. I also accept that her representative did not advise her that she needed to include all those details in the claim form itself. I accept this because, for all the criticisms I have previously made about the Claimant's conduct of these proceedings, one thing she cannot be accused of is lack of diligence. I

am satisfied that, if she had been advised to do something, which was in her interests, she would have done it.

49. After the presentation of the first case, the Claimant sought advice and assistance from time to time from Slater and Gordon solicitors between November 2019 April 2020, although they were never on the record in these proceedings. She paid them to do individual pieces of work. They would only have been able to do so, if they were familiar with the background to the claim as a whole. The Claimant accepted in cross-examination that she had provided them with copies of the grievance she had lodged internally. From March 2020 onwards the Claimant also instructed direct access Counsel, Mr Aggrey-Orleans, to do individual pieces of work for her from time to time.

50. One of those pieces work was to draft a list of issues in the case. The Claimant submitted that draft list of the Tribunal on 13 October 2020.

51. The Respondent wrote to her legal adviser to say that the list included claims which were not in the ET1. This was raised at the preliminary hearing before EJ Elgot, who made an order that the Claimant should make any application to amend on or before 11 November 2020. The Claimant then made that application to amend within the time specified.

52. The Claimant's evidence was that she was never advised by any of her legal representatives about time limits in the Employment Tribunal, or the requirements in respect of applications to amend. I accept Ms Stroud's submission that that is implausible. I have no doubt that both Slater and Gordon and Mr Aggrey-Orleans would have warned the Claimant that, if she wished to seek to add any claims to the existing claims, she should act promptly.

<u>The impact of the Claimant's health on her conduct of proceedings</u>

53. The Claimant's evidence in a statement was that the explanation for the delay in her making her applications to amend was because of her health:

> 'This constant state of pain has left me with a mentality, where it is now difficult for me to hold information in my head and explain in a coherent chronological order what has happened. The frequency of those emails came as a result of the fact that I was constantly receiving flashbacks to what had happened. Any time a new memory formed I had to send an email before I forgot it. It was for this reason, similarly, that I was not able to include everything in my ET1.'

54. There was no medical evidence to support that account. Such evidence as there was, was sporadic and limited. In a letter dated 23 October 2020, there was reference to two flare-ups in her condition in June and December 2019, which were 'manifest with overwhelming fatigue and painful ankle swelling'. The letter states that she 'was able to overcome this episode'. She then had another flare-up in February 2020. The letter records the Claimant stating that 'the symptoms have taken longer to manage due to a lengthy period of stress'.

55. There was then a letter dated 1 June 2021, which stated that the Claimant's symptoms had worsened in the previous two months and that she was 'troubled by marked fatigue'.

56. There was no medical evidence in the bundle in relation to the Claimant's condition between February 2020 and April 2021. The Claimant told the Tribunal that there were no further relevant medical documents which had not been included in the bundle.

57. I accept Ms Stroud's submission that there is no evidence that the Claimant was unable to make the applications to amend earlier than she did by reason of her medical condition. On the contrary, there is ample evidence of the Claimant being able to provide clear instructions to those advising her, as is demonstrated by the draft list of issues from October 2020 and the second ET1. I also accept Ms Stroud's submission that, although the Claimant is a litigant in person, she has always presented cogently and has not been inhibited in any way from producing lengthy and detailed documents for the Tribunal, as well as attending tribunal hearings to represent herself.

58. In particular, I do not accept the Claimant's evidence that her memory and concentration were so severely impaired that some of the matters which she seeks to raise by way of amendment only came to her by way of 'flashbacks'. I found that implausible.

The law

Time limits in discrimination cases

59. S.123(1)(a) Equality Act 2020 ('EqA') provides that a claim of discrimination must be brought within three months, starting with the date of the act (or omission) to which the complaint relates.

60. The three-month time limit is paused during ACAS early conciliation: the period starting with the day after conciliation is initiated and ending with the day of the early conciliation certificate does not count (s.140B(3) EqA). If the time limit would have expired during early conciliation or within a month of its end, then the time limit is extended so that it expires one month after early conciliation ends (s.140B(4) EqA).

61. S.123(3)(a) EqA provides that conduct extending over a period is to be treated as done at the end of the period. In *Caterham School Limited v Rose* UKEAT/0149/19/RN, the EAT held at [60-66] that if the Tribunal considers at a PH that there is no reasonable prospect of establishing at trial that a particular incident, complaint about which would, by itself, be out of time, formed conduct extending over a period together with other incidents, such as to make it in time, that complaint may be struck out. But if it is not struck out on that basis, that time point remains live. By contrast, a determination of whether, substantively, there is conduct continuing over a period, cannot be reached at a PH on the basis merely of consideration of whether there is a *prima facie* case on the pleadings. Definitive determination of an issue which is factually disputed requires preparation and presentation of evidence.

62. The Tribunal may extend the three-month limitation period for discrimination claims under s.123(1)(b) EqA where it considers it just and equitable to do so. That is a broad discretion. In exercising it, the Tribunal should have regard to all the relevant circumstances. They will usually include: the reason for the delay; whether the Claimant was aware of her rights to claim and/or of the time limits; whether she acted promptly when she became aware of her rights; the conduct

of the employer; the length of the extension sought; the extent to which the cogency of the evidence has been affected by the delay; and the balance of prejudice (*Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] ICR 1194).

63. The limitation period in a claim for a failure to make reasonable adjustments was considered by the Court of Appeal in *Hull City Council v Matuszowicz* [2009] ICR 1170. For the purposes of claims where the employer was not deliberately failing to comply with the duty, and the omission was due to lack of diligence, it is to be treated as having decided upon the omission when, if it had been acting reasonably, it would have made the reasonable adjustments. The Court acknowledged that imposing an artificial date from which time starts to run is not entirely satisfactory, but pointed out that the uncertainty and even injustice that may be caused could, in appropriate cases be alleviated by the Tribunal's discretion to extend the time limit where it is just and equitable to do so.

64. The fact that the Claimant was pursuing internal resolution by way of a grievance is a factor which may be taken into account, although it is not determinative (*Apelogun-Gabriels v London Borough of Lambeth* [2002] IRLR 116 at [16]).

Strike-outs and deposit orders

65. The rules of procedure are Rules 37(1)(a) and 39(1) of sch.1 Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.

66. In *Malik v Birmingham City Council*, UKEAT/0027/19, 21 May 2019, Choudhury P. reviewed and summarised the authorities on striking out, at [30] onwards:

> **'30. It is well-established that striking out a claim of discrimination is considered to be a Draconian step which is only to be taken in the clearest of cases: see *Anyanwu & Another v South Bank University and South Bank Student Union* [2001] ICR 391. The applicable principles were summarised more recently by the Court of Appeal in the case of *Mechkarov v Citibank N.A* [2016] ICR 1121, which is referred to in one of the cases before me, *HMRC v Mabaso* UKEAT/0143/17.**
>
> **31. In *Mechkarov*, it was said that the proper approach to be taken in a strike out application in a discrimination case is that:**
>
> > **(1) only in the clearest case should a discrimination claim be struck out;**
> >
> > **(2) where there are core issues of fact that turn to any extent on oral evidence, they should not be decided without hearing oral evidence;**
> >
> > **(3) the Claimant's case must ordinarily be taken at its highest;**
> >
> > **(4) if the Claimant's case is "conclusively disproved by" or is "totally and inexplicably inconsistent" with undisputed contemporaneous documents, it may be struck out; and**
> >
> > **(5) a Tribunal should not conduct an impromptu mini trial of oral evidence to resolve core disputed facts."**
>
> **32. Of course, that is not to say that these cases mean that there is an absolute bar on the striking out of such claims. In *Community Law Clinics Solicitors Ltd & Ors v Methuen* UKEAT/0024/11, it was stated that in appropriate cases, claims should be**

> **struck out and that "the time and resources of the ET's ought not be taken up by having to hear evidence in cases that are bound to fail."**
>
> **33. A similar point was made in the case of *ABN Amro Management Services Ltd & Anor v Hogben* UKEAT/0266/09, where it was stated that, "If a case has indeed no reasonable prospect of success, it ought to be struck out." It should not be necessary to add that any decision to strike out needs to be compliant with the principles in *Meek v City of Birmingham District Council* [1987] IRLR 250 CA and should adequately explain to the affected party why their claims were or were not struck out.**

67. There is more latitude in respect of deposit orders. When determining whether to make a deposit order, a tribunal is entitled to have regard to the likelihood of the party being able to establish the facts essential to his/her case, and, in doing so, to reach a provisional view as to the credibility of the assertions being put forward. As Elias J, as he then was, made clear in *Jansen van Rensburg v The Royal Borough of Kingston-Upon-Thames* (UKEAT/0096/07/MAA at para 27):

> **'…the test of little prospect of success in rule 20(1) is plainly not as rigorous as the test that the claim has no reasonable prospect of success found in rule 18(7). It follows that a tribunal has a greater leeway when considering whether or not to order a deposit.'**

68. Although this case was decided under the previous rules, the same principle continue to apply. There is more recent guidance in the case of *Hemdan v Ishmail*, UKEAT/0021/16. Simler P reviewed the legal principles to be applied when considering whether or not to make a deposit order. She said at paragraph 12:

> **'the test for ordering payment of the deposit order by a party is that the party has little reasonable prospect of success in relation to a specific allegation, argument or response, in contrast to the test for a strikeout which requires a tribunal to be satisfied that there is no reasonable prospect of success. The test, therefore, is less rigorous in that sense, but nevertheless there must be a proper basis for doubting the likelihood of the party being able to establish facts essential to the claim or the defence. The fact that a Tribunal is required to give reasons for reaching such a conclusion serves to emphasise the fact that there must be such a proper basis.'**

69. She went on at [13]:

> **'the assessment of the likelihood of a party being able to establish facts essential to his or her case is a summary assessment intended to avoid cost and delay … a mini-trial of the factors to be avoided … where there is a core factual conflict it should be properly resolved at a full merits hearing where evidence is heard and tested.'**

<u>Amendment</u>

70. In deciding whether to exercise its discretion to grant leave for amendment of an originating application, the Tribunal should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. Although not a checklist, relevant circumstances are likely to include:

    70.1. the nature of the amendment, i.e. whether it is a minor matter such as the correction of errors or a relabelling of facts already pleaded or a substantial alteration, introducing a new cause of action or making new factual allegations which change the basis of the existing claim;

70.2. the applicability of statutory time limits. It is essential for the Tribunal to consider whether the complaint is out of time and, if so, whether the time limit should be extended under applicable statutory provisions;

70.3. the timing and manner of the application; why the application was not made earlier, particularly where the new facts alleged must have been within the knowledge of the Claimant when the claim was originally presented (*Selkent Bus Co Ltd v Moore* [1996] IRLR 661).

71. Where a new cause of action is added, it is dated back only to the date of the application to amend, not to the date of the original ET1. There is no doctrine of 'relation back' in an Employment Tribunal claim. If there is a time limit issue in relation to the application to amend, there is no rule that it must be definitively decided before the amendment can be granted; it may be sufficient for the Claimant to show a prima facie case that he or she will be able to satisfy the time limit point later (*Galilee v Commissioner of Police for the Metropolis* [2018] ICR 634).

72. If the new claim involves a substantially different factual enquiry from the old, it cannot properly be characterised as a relabelling (*Reuters Ltd v Cole*, UKEAT/0258/17/BA at [27]). In *Abercrombie v Aga Rangemaster Ltd* [2014] ICR 209, Underhill LJ stated this important consideration at [48]:

> **'Consistently with that way of putting it, the approach of both the Employment Appeal Tribunal and this court in considering applications to amend which arguably raise new causes of action has been to focus not on questions of formal classification but on the extent to which the new pleading is likely to involve substantially different areas of enquiry than the old: the greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that it will be permitted.'**

73. In *Vaughan v Modality Partnership* [2021] IRLR 97 at [24], HHJ Tayler reviewed the authorities on amendment. The following principles emerge:

73.1. the *Selkent* factors are not a checklist, but must be considered in the context of the paramount consideration, which is the relative injustice and hardship in refusing or granting an amendment [12-14, 16];

73.2. that balancing exercise should be underpinned by consideration of the real, practical consequences of allowing an amendment [21];

73.3. the fact that an amendment would introduce a complaint which is out of time is a factor to be taken into account in the balancing exercise, but is not decisive [15];

73.4. the Tribunal may need to adopt a more inquisitorial approach when dealing with a litigant in person [19];

73.5. a minor amendment may correct an error that could cause a Claimant great prejudice if the amendment were refused because a vital component of a claim would be missing [24.1];

73.6. an amendment may result in the Respondent suffering prejudice because they have to face a cause of action that would have been dismissed as out of time had it been brought as a new claim [24.1];

73.7. a late amendment may cause prejudice to the Respondent because it is more difficult to respond to and results in unnecessary wasted costs [24.3];

73.8. where the prejudice of allowing an amendment is additional expense, consideration should generally be given to whether the prejudice can be ameliorated by an award of costs, provided that the other party will be able to meet it [27].

Conclusion: the claims contained in the original ET1s

74. The parties have, between them, produced a satisfactory summary of the legal and factual issues contained in the two ET1s. These were contained in the A-lists, and their substance is shown in the non-italic, non-underlined text of the final list of issues appended to this judgement.

75. There was one minor issue which Ms Stroud addressed me on, which was in relation to Claim 1, Issue 3(i). Ms Stroud objected to the addition of reference to Ms Barker's alleged 'refusal' to put in writing her instructions to the Claimant to tidy up Ms Barker's spreadsheet, because that was not specifically referred to in the original pleading. I reject regarded this as a simple clarification of the sort that might have been provided as a case management hearing to clarify the issues. It is a minor point and completes an existing allegation. if an amendment is required, I allow it.

Conclusion: time limits in relation to the original claims

Case 1

76. In fairness to the Claimant, Ms Stroud had done her own calculation of the cut-off point in terms of time limits in relation to the original claims and reduced the number of claims which the Respondent contends are out of time. In Case 1, she accepts that only Issues 3(a) and (b), 6(a) and (b) are out of time. As for Issue 3(c), this starts on 9 January 2019, but Ms Stroud accepts it may continue into the period which is in time. If that is right, the same must be true of 3(b), which relates to the same time period ('from 9 January 2019').

77. However, there is a further potential time point: the reasonable adjustments claims set out under Issues 2(a) and (b) may or may not be in time: it will be for the Tribunal to decide whether these are instances where the alleged failure to make reasonable adjustments was deliberate, and by way of a positive decision (in which case time will run from that point); or by reason of a lack of diligence (in which case time will run from the point which the adjustment ought reasonably to be made). Because there was no evidence before me which would enable me to make that determination, I leave the matter for the Tribunal to consider at the final hearing. Of course, if the claims are out of time, the Tribunal may consider exercising its discretion to extend time, but that will be a matter for it.

78. I have concluded that it would not be appropriate to make a definitive determination of time limits in relation to Case 1. There is an arguable case that the allegations may be found to amount to conduct extending over a period and, not having heard any evidence from either party which would enable me to

determine the issue at this preliminary stage, it should be left for the final hearing.

Case 2

79. Case 2 was issued on 16 November 2020. Ms Stroud's position is that all the complaints with the exception of Issues 5(c) and 5(f) are out of time.

80. I have concluded that issues 5(a) and (b) should not be permitted to go forward. In my judgment, they relate to discrete decisions taken by individuals against whom no other allegations are made; it is not arguable that they may constitute conduct extending over a period. The delay is considerable, and the Claimant has provided no good explanation for why she was not able to present those claims earlier (indeed in the first ET1). I have rejected her explanation that she was not advised about time limits; nor have I accepted that ill-health provided a good reason for not acting sooner. I consider that the prejudice to the parties is evenly balanced, and, in the Claimant's case, slight: she has numerous other claims which she is able to pursue. Taking all those factors into consideration, I do not consider that it is just and equitable to extend time in relation to those two allegations.

81. In relation to the other matters which, on their face, are out of time, Ms Stroud accepted that it was unclear when the decisions were taken in relation to not renewing the Claimant's contract; it would not be possible to say without evidence from the Respondent when that occurred. She also accepted that the Respondent could have led documentary evidence as to when those decisions were taken, but had not done so. Consequently, I also leave the issue of time limits in relation to those matters to the final hearing.

Conclusion: the applications to amend

82. I begin by making some general observations about the applications to amend.

83. All the proposed amendments are substantial: they add additional factual matters and significantly expand the ambit of the Tribunal's factual enquiry. All the applications are out of time, the January/February 2021 applications are two months further out of time than the November 2020 application. As for the manner of the applications, the November 2020 application was, at least, presented within a deadline set for the Claimant by EJ Elgot. On the other hand, it was presented in a form which was unclear. The January/February 2021 applications were unsatisfactory in every respect, in particular the piecemeal nature of the applications and the failure to refer back to the original pleadings.

84. I have borne these factors, none of which are helpful to the Claimant, in mind when reaching my decisions below. I have also borne in mind that the authorities are clear that these considerations are not determinative: just as important are the practical consequences of allowing/not allowing the amendments. In relation to that, I make a general observation that, while there is always some prejudice to the employer when amendments are allowed (in that there are more claims to defend), the Respondent did not identify any specific factors in this case, beyond that general disadvantage. It was not suggested, for example, that witnesses would not be available, or that allowing any of the amendments would endanger the relisted trial dates in July 2022.

Case 1

85. I have concluded that it is just to allow the amendments to go forward which relate to the conduct of Ms Barker. My main reason for doing so is that the original claim form clearly contains an allegation that Ms Barker began and escalated a campaign of harassment and victimisation against the Claimant, from 9 January 2019. I bore in mind that there was no request/application for further information by the Respondent. Had it made such a request, and had the Claimant not complied, the position might have been different. Ms Stroud argued that making such requests can be counter-productive for respondents, in that it can lead to an avalanche of further information. That is indeed a risk, but it is not a good reason for not addressing an obvious gap. Nor was there any definitive clarification as to what the Claimant meant at the initial preliminary hearings; I suspect that that process was overtaken by the Claimant's proposal to make an application to amend. As a result, the Claimant was never required by the Respondent, or the Tribunal, to explain what she meant by the original pleading. In the event, she did so in her applications to amend.

86. In my judgment, with two exceptions, these amendments are necessary because, without them, the allegation contained in the original claim form cannot properly be understood. I accept that they amount to further particulars, albeit provided very late in the day. For this reason, I permit the Claimant to amend her claim to include the issues listed in paragraphs 4.1 and 4.2 of my judgment, all of which relate to Ms Barker.

87. There are two exceptions: I have refused the application to add Issues 3(c) and 6(i) because they are still not properly particularised (the emails in question are not identified) and it Is not proportionate to give the Claimant a further opportunity at this stage to provide clarification: it would inevitably disrupt the progress of this case towards the long-delayed final hearing. The same considerations apply to Issue 6(b), which I have also excluded.

88. I have allowed the amendments at Issues 7(a), (b) and (c). These are additional protected acts, for the purposes of the victimisation claim. The first two of them were raised for the first time in the list of issues for the hearing before EJ Elgot; the third was proposed in the November 2020 amendment application. I am not satisfied that there is any prejudice to the Respondent in allowing the amendment. The question of whether protected acts were or were not made will not add greatly to the complexity of the hearing: they are all said to be contained in documents, and the Tribunal ought to be able to resolve relatively swiftly whether those documents do indeed contain protected acts. By contrast, the Claimant would be significantly disadvantaged if there was a genuine protected act, which she was not allowed to rely on.

89. I have refused the remaining amendment applications in relation to Case 1. In doing so, I have had regard to the general observations I have made above as to considerable delay, the timing and manner of the application and, in particular, the extent to which permitting the applications would further expand the ambit of the Tribunal's enquiry.

90. Dealing first with the application to add additional reasonable adjustments (Issues 2(c), (d) and (f)), the proposed adjustments do not relate to the PCPs identified by the parties: they would require a wholesale re-pleading of the

reasonable adjustments claim and give rise to a different and greatly expanded factual enquiry. The Claimant already has a valid claim under this cause of action, subject to the considerations of time which I have flagged up above. In all the circumstances, I have concluded that is not just to allow these amendments.

91. I have refused the amendment application in relation to the other victimisation allegations set out at para 5.3 of my judgment. As for Issues 6(a), (c), (d), (o), (p) and (q), (cc) and (dd), all the adverse factors set out above apply to these proposed amendments; they would all greatly expand the ambit of the Tribunal's enquiry. I am not persuaded by the Claimant that is necessary or proportionate to add these complaints, in circumstances where she already has an extensive, and wide-ranging claim which will proceed before the Tribunal.

92. Issues 6(ff) and (gg) are duplicates, and I have struck them off the final list.

Case 2

93. I have permitted the Claimant to amend Case 2 to include Issues 3(d), 4(d) and 5(i). Despite the fact that all the same factors mitigate against the amendment being allowed, in my judgement these three issues relate closely to the issues surrounding the termination of the Claimant's employment and there is no substantial prejudice to the Respondent in dealing with them.

Conclusion: the Respondent's strike-out/deposit order application

94. Despite Ms Stroud's valiant attempts to persuade me otherwise, this is not one of those cases where the position is so clear-cut that I can be satisfied that any of the Claimant's claims (which I must take at their highest) have no reasonable prospects of success. There are core issues of fact which will turn on oral evidence. No documents were put before me which conclusively disproved the Claimant allegations, or which were totally and inexplicably inconsistent with them. Indeed, the Respondent did not put before me any contemporaneous documents which were said to go to those tests.

95. Nor am I persuaded that it is appropriate to make deposit orders in this case. In the absence of contemporaneous documents, Ms Stroud's submissions on this application were, of necessity, quite generalised. I did not consider that I was in a position to make an assessment at this stage of the merits of the Claimant's case. I was satisfied that that is a matter which ought properly to be left to the full merits hearing.

Employment Judge Massarella
Date: 31 January 2022

APPENDIX: FINAL LIST OF ISSUES

Claims which were contained in the original ET1s are shown in plain text.

Claims raised for the first time in the November 2020 application to amend are underlined.

Claims raised for the first time in the January/February 2021 applications to amend are underlined and italicised.

Claims which have not been permitted to go forward, as a result of this Judgment, are struck through.

References to pages in the bundle used for this hearing, where the original text of the amendment can be found, are shown in brackets. The parties will provide it as a separate supplementary bundle, so that the Tribunal may cross-refer to it, as necessary.

CASE 1

Disability: the Claimant is disabled by reason of sarcoidosis

Disability discrimination: failure to provide reasonable adjustments (section 21 Equality Act 2010)

1. There is a disagreement between the parties as to what the correct PCP is. It will be for the Tribunal to determine the correct PCP

    a) It is the Claimant's position that the correct PCP is – did the Respondent operate a PCP that staff had to work in the office?

    b) It is the Respondent's position that the correct PCP is – did the Respondent operate a PCP that staff had to work in the office if their performance was deemed to be unsatisfactory?

2. Did the Respondents fail to take such steps as were reasonable to have to take to avoid the substantial disadvantage, in particular, did they fail to consider and/or make the following adjustments:

    (a) permitting the Claimant to work from home within a reasonable time from 18th September 2018 when the Claimant made her application to work from home~~;~~

    (b) providing the Claimant with homeworking equipment within a reasonable time from 18th September 2018 when the Claimant made her application to work from home.

    ~~(c) On 25 October 2018 not requiring the Claimant to meet the same performance targets as other employees without a physical disability that caused them fatigue (p. 28, paragraph 2)~~

    ~~(d) On 25 October 2018 not enforcing fortnightly performance management one-to-one's upon the Claimant (p.28, paragraph 2)~~

    ~~(e) On 25 October 2018 allowing the Claimant to recover from the Sarcoidosis relapse before raising her performance targets in line with the expectations of the team. (p.28, paragraph 2)~~

~~(f) On 16 November 2018 not placing the Claimant on a Formal Stage of Sickness Absence from 18 October 2018 (p. 28, paragraph 3)~~

Disability discrimination: harassment (section 26 Equality Act 2010)

3. Did the Respondent engage in unwanted conduct relating to the Claimant's disability with respect to the following acts:

   a) Karen Hennessey's conduct towards the Claimant at a one to one meeting on 4th December 2018.

   b) Zina Barker's conduct towards the Claimant from 9th January 2019?

   ~~c) *From 9th January 2019 Zina Barker sending the Claimant intimidating emails styled as a 'management instruction' (p. 78, paragraph 1)*~~

   d) *Zina Barker instructing the Claimant to complete 125 cases per day by 18 January 2019 without any complaint and belittling the Claimant's performance in an open office. (p. 64, paragraph 2)*

   e) *On 28 January 2019 Zina Barker instructing the Claimant to make arrangements to remain at Mulberry Place until further notice starting from 29 January 2019 while the Claimant's colleagues on the project worked at Mulberry Place and Albert Jacob House.(p. 63, paragraph 2)*

   f) *Between 9th January 2019 (p. 69, paragraph 2) and 20th March 2019 (p. 72, paragraph 3) Zina Barker giving the Claimant different instructions from those given to her colleagues*

   g) On 12/3/2019 Roger Jones/Karen Hennessey/Michael Alderson withheld the router, vital homeworking equipment, from the Claimant and Michael Alderson required the Claimant to attend a work update meeting on 14 March 2019.

   h) On 14/3/2019 Roger Jones'/Karen Hennessey's/Michael Alderson's refusal to allow the Claimant to work from home allegedly until her performance standard improves without Karen Hennessey/Michael Alderson/Zina Barker providing the Claimant with evidence of poor performance in the work update meeting.

   i) On 1/4/2019 Zina Barker's refusal to put in writing her instructions to the Claimant to tidy up Zina Barker's spreadsheet.

   j) On 28/6/2019 Karen Hennessy telling the Claimant that the Claimant's homeworking was removed by management, Roger Jones/Michael Alderson/Karen Hennessy due to inadequate performance without providing evidence of inadequate performance.

4. Did the conduct at 4a)-j) have the purpose or effect of:

   (i) violating the Claimant's dignity; or

   (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

5. In deciding whether the conduct has the effect referred to at 5; each of the following must be taken into account –

(i) the perception of the Claimant;

(ii) the other circumstances of the case;

(iii) whether it was reasonable for the conduct to have that effect.

Disability discrimination: victimisation (section 27 Equality Act 2010)

6. Did the Respondent subject the Claimant to a detriment, namely

~~a) On 18th October 2018 Karen Hennessey requiring the Claimant to attend fortnightly one to one meetings with her between October 2018 and March 2019 (p. 27, paragraph 3)~~

~~b) *In October/November 2018 setting targets which the Claimant found difficult to meet because she was recovering from a relapse of Sarcoidosis (p.90, paragraph 1)*~~

~~c) *On 16th November 2018 Michael Alderson placing the Claimant on a formal stage of sickness absence management from 18 October 2018 (p. 79, paragraph 1)*~~

~~d) On 12th December 2018 Roger Jones' suggestion that the Claimant's one to one meetings be attended by 2 managers including Karen Hennessy and Zina Barker (p. 29, paragraph 1~~

e) On 17th December 2018 Zina Barker instructing the Claimant to withdraw her complaint against Karen Hennessy

f) On 17th December 2018 Zina Barker trying to trick the Claimant into sending an email to Karen Hennessey to reconcile.

g) Zina Barker's treatment of the Claimant from 9th January 2019.

h) *From but not limited to 9 January 2019 Zina Barker instructing the Claimant to raise her queries in the team meeting rather than provide the Claimant with direct guidance (p. 59, paragraph 3)*

~~i) *From 9th January 2019 Zina Barker sending the Claimant intimidating emails styled as a management instruction (p. 77, paragraph 3)*~~

j) *Between 9th January 2019 (p. 65, paragraph 3) and 20th March 2019 (p. 68, paragraph 4) Zina Barker giving the Claimant different instructions from those given to her colleagues*

k) *Zina Barker telling the Claimant on 10th January 2019 that she wanted to review the Claimant's work, that she had completed less cases than her colleagues and that she was not communicating with her colleagues (p.59, paragraph 4)*

l) *On 10th January 2019 Zina Barker setting the Claimant unachievable time limits to complete her work. (p. 64, paragraph 1)*

m) *On 25th January 2019 Zina Barker failing to respond to the Claimant's email then on 28th January 2019 giving the appearance that the Claimant was not complying with her instructions or completing work on time (p. 76, paragraphs 2&3)*

n) *On 28 January 2019 Zina Barker instructing the Claimant to make arrangements to remain at Mulberry Place until further notice starting from 29 January 2019 while the Claimant's colleagues on the project worked at Mulberry Place and Albert Jacob House.(p. 62, paragraph 4)*

o) On 31 January 2019, Karen Hennessy's requirement that the Claimant update her Lync or send her an email when the Claimant was away from her desk as she needed to know where the Claimant was at all times. (p. 29, paragraph 2)

p) *On 11 February 2019 Karen Hennessy allowing the Claimant to come into work for 15 minutes after the installation of her homeworking phone line (p. 79, paragraph 2).*

q) *On 18th February 2019 Karen Hennessy requiring the Claimant to use her work phone to contact a work colleague on the project (p. 80, paragraph 6)*

r) *On 21st February 2019 Zina Barker enticing the Claimant to finish work before 4pm on 28th February 2019 and, when the Claimant sought her line manager's permission to finish work before 4pm, Zina Barker reprimanding the Claimant in an email (p. 65, paragraph 2)*

s) *On 28th February 2019 and 22nd March 2019 Zina Barker delaying the Claimant from starting her annual leave (p. 73, paragraph 2)*

t) *On 5th March 2019 Zina Barker complaining to the Claimant's line manager and alleging that the Claimant had made a rude remark 'that was heard over the phone' in the afternoon of 28/2/2019. (p. 73, paragraph 1)*

u) *On 5th and 6th March 2019 (p. 73, paragraph 3) (and on one further occasion (p. 83, paragraph 2) Zina Barker failed to provide the Claimant with work*

v) On 12/3/2019 Roger Jones/Karen Hennessey/Michael Alderson withheld the router, vital homeworking equipment, from the Claimant and Michael Alderson required the Claimant to attend a work update meeting on 14 March 2019.

w) On 14/3/2019 Roger Jones'/Karen Hennessey's/Michael Alderson's refusal to allow the Claimant to work from home allegedly until her performance standard improves without Karen Hennessey/Michael Alderson/Zina Barker providing the Claimant with evidence of poor performance in the work update meeting.

x) *In the Work Update Meeting on 14th March 2019 Zina Barker claiming that the Claimant was not meeting performance targets (p. 74, paragraph 1)*

y) *In March 2019 Zina Barker inviting only the Claimant from the team to the isolated training room for training related to the project. (p. 75, paragraph 4)*

z) On 1/4/2019 Zina Barker's refusal to put in writing her instructions to the Claimant to tidy up Zina Barker's spreadsheet.

aa) *On 12th April 2019 Zina Barker intimating that the Claimant's actions would cause the project to fail (p. 76, paragraph 1)*

bb) *On 12th April 2019 Zina Barker giving the appearance that the Claimant's behaviour was inappropriate for contacting a colleague on his personal mobile (p. 77, paragraph 2)*

~~cc) On 16 April 2019 Karen Hennessy requiring the Claimant to attend fortnightly one to one meetings with her again. (p. 30, paragraph 1)~~

~~dd) On 7 June 2019 the Investigating Officer, Marcia Van-Loo, altering the Claimant's complaint about Zina Barker (p. 29, paragraph 3)~~

ee) On 28/6/2019 Karen Hennessy telling the Claimant that the Claimant's homeworking was removed by management, Roger Jones/Michael Alderson/Karen Hennessy due to inadequate performance without providing evidence of inadequate performance.

ff) ~~Between 9th January 2019 and 20th March 2019 Zina Barker giving the Claimant different instructions from those given to her colleagues (page 65, paragraph 3) [duplicate of allegation above]~~

gg) ~~From 9th January 2019 Zina Baker sending the Claimant intimidating emails entitled management instructions (p. 77, paragraph 3)) [duplicate of allegation above]~~

7. Was the treatment of the Claimant at 6 above because the Respondent did a protected act, namely:

a) The Claimant's complaint to Michael Alderson on 27th September 2018 in the presence of Karen Hennessy that the Claimant had told Karen Hennessey about her disability and Karen Hennessey's response had been to say that (p. 24, paragraph 3) she was not interested [p. 81, paragraph 3] and all she wanted to know was that the Claimant does not take any time off work unless she is nearly dead (p. 25, paragraph 1)

b) The Claimant's grievance dated 7th December 2018 where the Claimant raised concerns that Karen Hennessey's conduct could flare up the Claimant's disability. The Claimant relies on the passage in her grievance stating: "The only thing I kept thinking in my head is that I tried to keep calm as I did not want my health to flare up with the stress of the situation." (p. 28, paragraph 4)

c) The Claimant's grievance dated 27th March 2019 where the Claimant complained that she was unlawfully discriminated against because of her disability because her need to work from home was not treated as a reasonable adjustment. The Claimant relies on the passage in her grievance where she says "Karen stated that anyone who applies to work from home needs to be able to meet targets before working from home. However, I did not and do not see myself as being in the same position as other people in terms of my disability." (p. 29, paragraph 4)

d) Did the Claimant's complaint's on 7th December 2018, 27th September 2018 and 27th March 2019 amount to a protected act, i.e. did the complaint contain an allegation

(whether or not express) that Karen Hennessey had contravened the Equality Act 2010 and/or was the allegation made in bad faith.

~~8. The Claimant's application in the email on 26 January 2021 to amend her job title to Revenue Assistant (p. 83, paragraph 3)~~

Time limits

9. The Tribunal will need to determine if:

   a) there is a series of linked acts and/or a continuous course of conduct so that any claims which were presented out of time claims can be considered to have been brought in time; and/or

   b) whether it would be just and equitable to extend time in respect of these claims

CASE 2

Disability – the Claimant is disabled by reason of sarcoidosis

Disability discrimination: victimisation (section 27 Equality Act 2010)

1. Protected acts: did the Claimant do a series of protected acts, namely:

   a) the Claimant's complaint to Michael Alderson on 27th September 2018 in the presence of Karen Hennessy that the Claimant had told Karen Hennessey about her disability and Karen Hennessey's response had been to say that she was not interested and all she wanted to know was that the Claimant does not take any time off work unless she is nearly dead.

   b) the Claimant's grievance dated 7th December 2018 where the Claimant raised concerns that Karen Hennessey's conduct could flare up the Claimant's disability. The Claimant relies on the passage in her grievance stating: "The only th1ithng I kept thinking in my head is that I tried to keep calm as I did not want my health to flare up with the stress of the situation."

   c) the Claimant's grievance dated 27th March 2019 where the Claimant complained that she was unlawfully discriminated against because of her disability because her need to work from home was not treated as a reasonable adjustment. The Claimant relies on the passage in her grievance where she says "Karen stated that anyone who applies to work from home needs to be able to meet targets before working from home. However, I did not and do not see myself as being in the same position as other people in terms of my disability."

2. Did the Claimant's complaints on 27th September 2018, 7th December 2018 and 27th March 2019 amount to protected acts, i.e. did the complaints contain allegations (whether or not express) that Karen Hennessey had contravened the Equality Act 2010 and/or was the allegation made in bad faith.

3. Did the Respondent subject the Claimant to a detriment as a result of the protected act on 27th September 2018, namely

   a) Karen Hennessy's telling the Claimant that "anyone who applies to work from home needs to be able to meet targets before working from home" (point 15 page 3 of the Claimant's particulars of claim)

b) Not redeploying the Claimant to an alternative position by the end of the Claimant's fixed term contract on 4/9/2021.

c) Not extending the Claimant's contract on 4th September 2020.

d) *Not promoting the Claimant into a new permanent position from 4th September 2020 (amendment (p. 84, paragraph 2)*

4. Did the Respondent subject the Claimant to a detriment as a result of the protected act on 7th December 2018, namely

a) Karen Hennessy's telling the Claimant that "anyone who applies to work from home needs to be able to meet targets before working from home" (point 15 page 3 of the Claimant's particulars of claim)

b) Not redeploying the Claimant to an alternative position by the end of the Claimant's fixed term contract on 4/9/2021.

c) Not extending the Claimant's contract on 4th September 2020.

d) Not promoting the Claimant into a new permanent position from 4th September 2020 (p. 84, paragraph 2)

5. Did the Respondent subject the Claimant to a detriment as a result of the protected act on 27th March 2019, namely

~~a) On 2/10/2019 the head of Revenue Services Roger Jones informing the Claimant that there was genuine concern about her performance to be managed in line with the Council's guidance on Standards for Managing Employee Performance and that her performance would be managed in one to one meetings with Michael Alderson.~~

~~b) Neville Murton not inviting the Claimant to an interview to hear her appeal to him dated 16/10/2019 concerning the outcome of her grievance complaint.~~

c) Michael Alderson implementing fortnightly one to one meetings with the Claimant between 5th November 2019 and 1st September 2020.

d) Michael Alderson did not provide the Claimant with any work to do for hours on 16/4/2020, 20/4/2020, 4/6/2020, 15/6/2020 whilst she was working from home. The Claimant contends that she suffered stress causing her Sarcoidosis to waver

e) After the Claimant exceeded Michael Alderson's targets by far between 20/4/2020 to 6/5/2020 Michael Alderson gave the Claimant short workloads from 12/5/2020 between 12/5/2020 to 14/5/2020, 14/5/2020 to 18/5/2020, 19/5/2020 to 1/6/2020, 1/6/2020 to 4/6/2020, 4/6/2020 to 5/6/2020, 5/6/2020 to 15/6/2020, 15/6/2020 to 17/6/2020, 17/6/2020 to 19/6/2020 which gave a distorted view of the Claimant's weekly performance while she was working from home. The Claimant contends that she suffered stress causing her Sarcoidosis to waver

f) On 19/8/2020 Karen Hennessey's refusal to comment in the Claimant's appraisal in her HR records about the Claimant's work performance relating to whilst she had been working from home.

g) Not redeploying the Claimant to an alternative position by the end of the Claimant's fixed term contract on 4/9/2021.

h) Not extending the Claimant's contract on 4th September 2020.

i) *Not promoting the Claimant into a new permanent position from 4th September 2020 (p. 84, paragraph 2)*

~~6. The Claimant's application in the email on 26 January 2021 to amend her job title to Revenue Assistant (p. 83, paragraph 3)~~

Time Limits

7. The Tribunal will need to determine if:

a) there is a series of linked acts and/or a continuous course of conduct so that any claims which were presented out of time claims can be considered to have been brought in time; and/or

b) whether it would be just and equitable to extend time in respect of these claims.