



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss McGauley  
**Respondent:** Dimensions UK Limited  
**Heard at:** Southampton (VHS)  
**On:** 4 February 2022  
**Before:** Employment Judge Rayner

## Representation

**Claimant:** In person  
**Respondent:** Miss C Goodman, Counsel

**JUDGMENT** having been sent to the parties on 11 February 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The Claimant, Mrs Donna McGauley filed her claim to the Employment Tribunal on 3 September 2020. She claims that she was discriminated against on grounds of disability by her employer. The Respondent is a company called Dimensions.
2. The Respondent accepts that the Claimant was a disabled person at the material times. The Claimant suffered from a number of impairments one of which was a mental health impairment of mixed anxiety and depressive disorder.
3. The hearing today was listed to determine whether or not the Claimants claims of disability discrimination were filed out of time, and if they were to consider whether or not it would be just and equitable to extend time in respect of those claims.

4. The Respondent argues both that the Claimant's claims are out of time, and that it would not be just and equitable to extend time in this case.

### **The Evidence**

5. Both the Claimant and her daughter-in-law Mrs D Masters provided witness statements to the Tribunal. I heard sworn evidence from both of them.
6. I was provided with an agreed bundle of documents which included some of the Claimant's medical records.
7. In addition, I have received a full and helpful skeleton argument on behalf of the Respondents from Ms Charlotte Goodman of counsel.

### **The Provision of The Claimants Medical Records**

8. Prior to today's hearing the Claimant had been ordered to provide a disability impact statement and relevant medical records to the Respondent and the Tribunal.
9. The Claimant had provided her medical records to the Respondent and as a result the Respondent has conceded that the Claimant was a disabled person at the material times.
10. The Respondent's skeleton argument set out the chronology of the events relevant to the time point and states at paragraph 31 as follows: *The Claimants GP letter supports the Claimants evidence that her health deteriorated from March April 2020. It does not deal with the reasons for the Claimants delay between July 2019 and February 2020.*
11. During the course of cross examination of the Claimant, she was asked by Counsel about this particular period of time.
12. The Claimant told the Tribunal that during this period of time she had been very unwell with her mental health and she stated that she had been sectioned in July 2019 and had been detained in hospital for 10 days then sent home under the care of the Bristol recovery team with medication reviews and counselling. She said she had fluctuating capacity and knew there was a case to deal with, but that once she was taken to hospital it took some time to find the right medication for her. She stated that from June to August 2019 was the worst time as this was when she could not get the right medications.
13. In response to a question from me about whether there were any medical records for that period of time or otherwise for 2019 as they were not in the bundle, Mrs Masters stated that there were, but they had not been included in the bundle. She then arranged to email to them, and I took a break to read them.
14. Having reconvened having received the documents Miss Goodman, Counsel for the Respondent explained that these documents had been disclosed to

the Respondent and sent to her, but were not in the bundle and she had overlooked them. She had reviewed them during the break and accepted that they were relevant to the issues. She apologised to the Tribunal.

### **The Chronology of Relevant Events**

15. There is no dispute between the parties about the chronology in this case and the claims and the relevant dates are summarised very helpfully in the case management order of Employment Judge Goraj of 27 July 2021.
16. The Claimant was employed by the Respondent from 2016 and remained in employment with the Respondent as a locality manager at the time of the case management orders being made.
17. The Claimant contacted ACAS on 15 April 2020 and the early conciliation certificate was issued on the 29 May 2020. The Claimant filed her claim on the 3 September 2020.
18. The particular allegations of discrimination are set out in the case management order as follows
  - a. It is alleged that between March 2018 in July 2018 the Respondent lined somebody else up to take over the Claimant's job because of her disability of depression and osteoarthritis; this is put as an allegation of direct discrimination and for discrimination for a reason arising from disability
  - b. In March 2018 and July 2019 the Respondent allocated the Claimant additional work to make her resign because of her disability . This is put as an allegation direct discrimination and discrimination for a reason arising from disability
  - c. The Respondent placed the Claimant and the performance review in July 2019. This is put as discrimination for a reason arising from disability
  - d. That from May 2020 onwards the Respondent failed to agree to the Claimant's request to work from home
  - e. In March 2018, the Respondent require the Claimant to return to work on a full-time basis, this claim is put as a failure to make reasonable adjustments;
  - f. in July 2018 until July 2019 the Respondent required the Claimant to attend meetings in Bath in person. This is put as a claim of failure to make reasonable adjustments.
  - g. From 11<sup>th</sup> May 2020 and onwards the Respondent's practice of failing to respond to or agree to the Claimant's requests to work from home as advised by occupational health. This is put as a claim of a failure to make a reasonable adjustment.
  - h. The Claimant alleges harassment by reason of the allegations of discrimination, but also relies on treatment in June and July 2019 by Helen Orford, being repeated telephone calls and threats to remove the Claimant's sick pay
  - i. The Claimant also makes an allegation of an unauthorised deduction from the Claimant's wages of £210 from 2019.

19. The Respondent asserts that the last date of an alleged act of discrimination is 16 July 2019. This is the date on which the Claimant was told that she would not receive further sick pay, because she had not provided an update on her sickness absence.
20. I accept that this was the last date on which the Claimant alleges a discriminatory act took place, as did the Claimant in cross examination.
21. The Claimant's claim was brought 14 months after the final date of the alleged discrimination or 11 months out of time.

### **The medical records and findings of fact**

22. From about October 2018 the Claimant's GP has recorded the Claimant as suffering with a hip problem that affected her mobility.
23. In June 2019 the GP records the Claimant suffering with mixed anxiety and depressive disorder and records a review. The notes state that the Claimant had told her GP that she had a history of depression and mental illness and that she was at that time suffering with *awful anxiety*. She stated that she was under pressure at work but everything was getting on top of her. The GP records longstanding issues with depression and notes the Claimant telling the GP that symptoms *have got worse since her father died two years previously*. The Claimant had been taking setraline since then. She stated she was struggling at the moment and did not feel that the job supported her adequately. She states that she is talking to a counsellor.
24. On 25 June 2019 the Claimant attended for a face to face consultation. The GP recorded mixed anxiety and depressive disorder and records that the treatment the Claimant is reporting sounds like she is a victim of bullying. At this point the GP has recorded the Claimant reporting frequent suicidal thoughts. The notes record that the Claimant has been dealing with anxiety and depression for many years and records the GP's opinion that she almost certainly qualifies as disabled within the meaning of the Equality Act 2010.
25. On 3 July 2019 following a telephone consultation it is recorded that the Claimant remains off work with anxiety and stress; that she is suffering further anxiety and that her employer has been ringing her and emailing her daily. The notes record the Claimant stating that she is sick with panic; that she had called her union and was waiting an answer and that the GP had advised the Claimant that it was not appropriate for her manager to be phoning her daily when she was off work sick with stress.
26. At this point the Claimant remained signed off work with stress.
27. On 18 July 2019 the notes record that the Claimant's daughter in law Mrs Masters had contacted the GP surgery because she was concerned that her

mother in law's mental health was getting worse. She reported that the Claimant had shut herself away and that she was refusing to speak to her family.

28. On or about the 22 July 2019 the notes record that the Claimant had booked herself into a hotel room and that she subsequently stated that it had been her intention to kill herself although on the intervention of her family she did not act on her intentions.
29. On the 25th of July following a face to face consultation, the notes record that that the Claimant was *sick with worry* because of threatening behaviour from managers at work patient was referred to the pcls and given the crisis team number.
30. The Claimant was sectioned and detained in hospital under the Mental Health Act.
31. She was subsequently referred on the 20th of August to be assessed for admission to a link house, where remained about 10 days following admission. I understand this to be a support for those in mental health crisis.
32. By September 2019, the Claimant was back home, but reported ongoing pain from her hips; that she was still taking medication and that she was not sleeping well due to pain. On 24 September 2019 her sick note was extended and her GP records that she seemed to be *very stuck*. On the 25 September, the GP noted that the Claimant was still struggling but she was not helped by the pain but that she was determined to move forward that she wanted to return to work but that this would be difficult with her current manager. Her fit note was extended.
33. The GP notes record that on the 30 October 2020 the Claimants recent grievance about her work was not upheld and that the Claimant was expected to return to work.
34. On 6 November the Claimant took an overdose. The notes of 8 November 2019 record her admission to hospital two days previously, and also note that whilst she was not medically fit to leave the ward she had discharged herself.
35. On the 14 November 2019 the medical notes record that this had been a significant overdose and that the Claimant had nearly died but that she was now undertaking private therapy that she was on medication and that she wanted to live.
36. On 25 February 2020 the Claimant was signed off work for one month, the reason being psychosis NOS.
37. The Claimant had repeat sick notes on the 25 March 2020 for one month and the 23rd of April for one month for the same reason.

**Findings of Fact of other Matters**

38. Against this background of very poor health, the Claimant took the following steps in respect of her concerns with her treatment at work.
39. The Claimant submitted subject access requests in both June and July 2019, and on 1 August 2019 she submitted a written grievance about discrimination and a failure to make reasonable adjustments. She attended a grievance meeting on 4 October 2019.
40. The Claimant accepted in cross examination that by August 2019 when she filed her grievance she believed that she may have been discriminated against on grounds of her disability.
41. The Claimant also accepted in cross examination that the last incident of discrimination had been July 2019 .
42. The Claimant told me and I accept that in October 2019 she was primarily concerned with the internal procedures at work. This is corroborated by the conversations she had with her GP at the time.
43. I find that that the Claimant's mental health was extremely poor and deteriorating from June 2019 as is indicated by her being admitted to hospital and referred to a specialist therapeutic unit where she received treatment for 10 days. I find that during this period of time the Claimant had significant difficulty in managing her own affairs and had severely reduced capacity to manage her own affairs. This impacted upon her ability to make any decisions about her treatment at work or what if any further action by litigation or otherwise, to take to address the issues.
44. I find that whilst the Claimant started to slowly recover her mental health towards the end of the summer of 2019, that she remained extremely fragile, and that her disability continued to impact upon her ability to deal with any steps in relation to her treatment at work through to October 2019.
45. Whilst recovering from a serious deterioration in her mental health, the Claimant did take steps to address her concerns about her treatment by using the internal procedures at work. I find that she did this despite the fact that her health was extremely poor during the period from July 2019 until December 2019.
46. During this period of time she attended a hearing in respect of her grievance.
47. There was then a further deterioration on health after the Claimant had her grievance dismissed.
48. One result of this is that the Claimant made the Respondents aware of her concerns about possible disability discrimination and a lack of reasonable adjustments at an early stage. A formal procedure was followed and presumably records kept.

49. I accept the Claimant's evidence that she felt able to deal with some matters with the assistance of her family and thought it was because of this that she was able to deal with her grievance process. I find that in dealing with the grievance, the Claimant was at the limit of what she could manage to do. The impact of her mental health impairment was to reduce her capacity to deal with more than one type of challenge to her perceived ill treatment or discrimination.
50. I find that, by November 2019, the Claimant's mental health had again deteriorated and that she was unable to deal with her affairs at all until some time in 2020. I accept the Claimant's evidence and the evidence of Mrs Masters that her health fluctuated significantly during this time period and that there was a further serious deterioration in the Claimant's mental health or an onset of psychosis in February 2020.
51. The Claimant took some steps with the assistance of her daughter in law Mrs Masters, but I find that her health was significantly impaired until at least the end of May 2020.
52. During the period from July 2019 until May 2020, I find therefore that the Claimant's ability to deal with the day to day activity of managing a complaint about treatment at work, dealing with the process of seeking and taking advice, processing the advice and then deciding whether and how to act, and then taking those steps, was severely impaired, as a result of her disability.
53. I conclude that this is the primary cause of her not filing any claim to the ET during this period of time.
54. Despite the Claimant's ill health, she did take various steps to find out what her rights were, and whether or not she was reasonable to think that she might have been discriminated against on grounds of disability.
55. I accept the Claimant's evidence and that of Mrs Masters, that when she did seek advice about her situation, her primary question was whether or not she might have been discriminated against on grounds of disability.
56. I find that this was a reasonable approach for her to take at that time, given her poor mental health and the fact that her grievance had been dismissed. Having suffered severe depressive episodes, it was not unreasonable for her to want an independent assessment of whether or not her concerns and complaints were objectively reasonable and rational.
57. Both the Claimant and Mrs Masters have made reference to Mrs Masters stepping in to assist the Claimant and even take over her affairs from about February 2020.

58. I find that around this time they took advice from ACAS and from two private firms of solicitors. Part of the reason for taking the advice was about the possibility of lodging an Employment Tribunal claim. Neither had any experience of filing an ET claim, and I find as fact that neither knew that there were time limits for filing a claim, or what those time limits were at any stage of the process before they filed the claim.
59. Further I find that their lack of awareness of time limits was not because they had failed to take action, or seek advice. It was because the advice they received did not leave them with an understanding that there were time limits.
60. Both the Claimant and Mrs Masters have explained to me and I find as fact that the advice which the Claimant received from the legal advisors led her to believe that she must exhaust all the internal work procedures before considering any other form of legal action.
61. I have not of course been told what advice was given, but I find both witnesses have given honest and full accounts of events as far as they are able, and I conclude on balance that if either of them had been aware of a time limit, or the need to act more quickly before exhausting internal procedures, that Mrs Masters would have taken steps to ensure that it was complied with.
62. I also accept the Claimants evidence that during the process over conciliation and in the subsequent months she felt that she lacked capacity to consent to an ET1 being filed on her behalf.
63. I accept the Claimant's evidence that this was a period from April 2020 until September 2020. I accept the Claimant's evidence that during this period of time she was, on occasions, uncontactable for weeks on end due to depressive episodes.
64. I accept that Mrs Masters had provided a great deal of assistance to the Claimant, both in helping her to manage her mental health and in dealing with day to day matters, as well as assisting her with the process of addressing her problems at work.
65. However Mrs Masters is not the Claimant, and although she may have taken over some of her mothers affairs, this was done on an informal basis, by a daughter in law looking after her mother in law.
66. The Claimant also spoke to the Citizens Advice Bureau on a number of occasions and I accept Mrs Masters characterization of the advice received as being confirmation of the Claimant's views that the treatment she had received might be disability discrimination.
67. I accept the Claimants evidence that she considers that a large part of the reason why she did not file her claim during some stages in the chronology was not due to poor health, but was due to the fact that she simply did not



know that there was a time limit for applying or for making a claim to the employment tribunal and did not know that there was a three month time limit.

68. I also accept Mrs Masters evidence that she did not become aware of the fact that there was a time limit until after the claim was filed and that when she did become aware of it, she thought, as a result of her calculations that she had in fact complied with it.
69. I also find that the Claimant and Mrs Masters understood that they were required to engage with ACAS having been advised at some point that they should approach ACAS to assist in progressing matters, but that they did not understand that there was any time pressure or time limit for them to do this. I observe that the Claimant remained employed but signed off work.
70. The Claimant did approach ACAS and when she did there was then a lengthy period of ACAS conciliation . It is during that period of time that she says she did not have capacity to file her claim or instruct any one else to do so.
71. Part of the chronology in this case coincides with the early stages of the national lockdown as a result of the Covid 10 pandemic. Lockdown started in March 2020, with significant impact on ordinary daily life for most people.
72. The lockdown period also coincided with a particularly difficult period of time for Mrs Masters, as set out in her witness statement and not repeated here. I accept her evidence and the fact that she was dealing with a number of challenging issues concerning the death of a parent and her children's schooling. She rightly prioritized these matters.
73. Mrs Masters has, I find, been a significant source of support for the Claimant both whilst her mother was in crisis but also once her mother started to recover. I find the Claimant relied upon Mrs Masters advice and assistance, and that her daughters support was important to her when she was making decisions about her treatment at work and what to do about it.

### **The legal principles**

74. Section 123 Equality Act 2010 provides that claims of discrimination should be brought within the period of three months starting with the date of the last act to which the complaint relates or be such other period as the Employment Tribunal thinks just and equitable
75. I have reminded myself that time limits are to be strictly observed and that an extension of time will be the exception rather than the rule. The Respondent has referred me to *Bexley Community Centre T/A Leisure Link v Robertson* [2003] EWCA Civ 576 at paragraph 25, which remind me that there is no presumption that a Tribunal should exercise their discretion unless they can justify a failure to exercise discretion, but rather that a Tribunal cannot hear a complaint unless the Claimant convinces the Tribunal that is just and equitable to extend time.

76. When considering whether or not to exercise discretion to extend time the Tribunal may take into account any relevant matter. The discretion is wide and may include any or all of the following:
- a. consideration of the length and reasons for the delay, which may include any relevant factors including the Claimants health, her knowledge of the procedures and the availability and quality of advice sought;
  - b. the extent to which the cogency of the evidence is likely to be affected by the delay;
  - c. the extent to which the party sued had cooperated with requests for information;
  - d. the promptness with which the Claimant acted once they knew of the possibility of taking actions;
  - e. the steps taken by the Claimant to obtain professional advice they knew at the possibility of taking action;
77. I also remind myself that there does not necessarily have to be a good reason proven by the Claimant for the delay in order to find that it is just and equitable to extend time.

### **Conclusions**

78. The Claimant has suffered with poor mental health by reason of anxiety and depression for many years. I conclude that during the summer of 2019 and until February 2020 the Claimant's mental health impairment was such that she was significantly restricted in her ability to deal with any of the steps necessary for making a claim to an employment tribunal.
79. Whilst the Claimant did at some stages during that chronology have the capacity to deal with some aspects of her treatment at work I conclude that dealing with the grievance for example, and making applications for subject access so that she could receive documentation, exhausted her limited personal resources and energy. The reality of the Claimant's mental health disability is that her capacity to deal with matters was severely reduced.
80. Given the provisions of the Equality Act 2010 which also applied to court procedures, and the purpose of the legislation, I conclude that it is entirely just and equitable to extend time throughout the period from July 2019 until February 2020 in the first instance.
81. I have then considered the time frame from February 2020 until the claim was filed in September 2020.
82. I conclude that the Claimant took reasonable steps towards pursuing the claim of disability discrimination and that her lack of understanding or knowledge of the existence of a three month time limit or the time limits for applying to ACAS were understandable and genuine and arose not from failings of the Claimant but from the complexity of the situation and the impact of the Claimant's mental health impairment upon her.

83. I also conclude that whilst the Claimant was at some points during the chronology capable of making decisions for herself, the reality of the entire period is that the Claimant's capacity and ability to deal with any issues connected with litigation was severely impaired.
84. Put simply, because of her mental health impairment and because of its impact upon her she required significantly longer than a person who was not disabled to manage her affairs; to make decisions about the steps she wished to take and to give instructions and take advice so that a claim could be filed.
85. I conclude that when able to do so, the Claimant did take reasonable steps to find support and advice and to investigate in a rational and sensible way whether or not she had any grounds for challenging her treatment at work. When her health permitted, she did take those steps as indicated by the approach to ACAS; the lengthy period of conciliation and her eventual filing a claim to an Employment Tribunal.
86. Not only was the Claimant suffering throughout the period with an impairment which had fluctuating impacts upon her but the later stages coincided with the national lockdown which had many unforeseen consequences and which in the Claimants case limited the assistance which Mrs masters could provide.
87. The Claimant has provided a satisfactory explanation as to why she did not file her claim within time and why she did not file her claim until 3 September 2020.
88. I have however also considered the relative prejudice to the parties of the delay.
89. I conclude that the prejudice to the Claimant of not being able to pursue complaints of disability discrimination against her employer outweigh the prejudice to the Respondent of having to deal with these matters out of time.
90. The Respondent was made aware of the Claimant's concerns about her treatment at work when the Claimant raised her grievance in the autumn of 2019. The Respondent has been aware throughout that the Claimant has suffered with poor mental health because of her absences from work. It is not suggested in this case that the delay caused a deterioration of evidence or that the Respondent will not be able to answer the claims. The Respondent has been able to provide a full and detailed response to the Claimant's allegations in their response to the tribunal.
91. In the circumstances of this case, I conclude that it is just and equitable to extend time so that the Claimants claims can be pursued .

Employment Judge Rayner

Date: 31 March 2022

Reasons sent to parties: 12 April 2022

FOR THE TRIBUNAL OFFICE

Note - Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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