Case Number: 3302623/2021

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms Selma Surensoy	v	Santander UK Plc

Heard at: Watford, in person **On**: 10 August 2022

Before: Employment Judge Hyams, sitting alone

Representation:

For the claimant: Mrs J Linford, of counsel
For the respondent: Mr A Mellis, of counsel

JUDGMENT ON A PRELIMINARY POINT

1. The claimant's claims of (1) direct discrimination within the meaning of section 13 of the Equality Act 2010, and (2) harassment within the meaning of section 26 of that Act, were made outside the primary time limit and it is not just and equitable to extend time under section 123(1)(b) of that Act in respect of those claims. Accordingly those claims are outside the jurisdiction of the tribunal.

2. The claimant's claim of a failure in 2018 to make adjustments which it was claimed were reasonable within the meaning of section 20 of the EqA 2010 was made outside the primary time limit and it is not just and equitable to extend time under section 123(1)(b) of that Act for that claim. Accordingly that claim is outside the jurisdiction of the tribunal.

REASONS

Introduction; the purpose of the hearing of 1 and 2 February 2022

1 The hearing of 10 August 2022 was the second preliminary hearing in this case. The first took place by telephone on 14 April 2022 and was conducted by Regional Employment Judge ("REJ") Foxwell. At that hearing, REJ Foxwell listed a preliminary hearing to take place on 10 August 2022

1.1 to decide "whether the complaints are in time";

1.2 to decide "whether Ms Surensoy has a disability";

1.3 "to consider her application to amend her claim to add a complaint of victimisation relating to events at work on 4 February 2022", and

1.4 "to give further case management directions, as required".

2 I conducted the hearing of 10 August 2022. The second issue of those listed did not need to be determined because the respondent accepted that the claimant was at some point disabled within the meaning of section 6 of, and Schedule 1 to, the Equality Act 2010 by reason of back pain. The precise point at or after which she was so disabled was, however, not admitted, but it was not necessary to decide that point at the hearing of 10 August 2022. In any event, it appeared that the claimant had suffered from back pain for some years.

3 The issue of amendment and case management are the subject of a separate document. On 10 August I informed the parties of my judgment, recorded above, that the claimant's claims of direct discrimination and harassment and in respect of claimed failures to make reasonable adjustments before 1 December 2020 were outside the jurisdiction of the tribunal because they were made outside the primary time limit and it was not just and equitable to extend time, and said that I would give my reasons for it in writing subsequently. These are those reasons.

The claims for which an extension of time was needed

4 The claim was sparsely pleaded. The claim form was presented on 3 March 2021. It was not clear from the details of the claim, in box 8.2 of the claim form, at what time the following claimed events happened:

> 'I was called a refugee not only me my colleagues [*sic*] as well from different backgrounds also day-to-day today [*sic*] in front of my other colleagues I was called " you Turk" I come from Turkey.'

5 REJ Foxwell ordered the claimant to provide further information about her claims by 27 May 2022. On that day, I was told by Mrs Linford on behalf of the claimant, the claimant sent to the tribunal the table at pages 54-65 of the bundle prepared for the hearing of 10 August 2022. (Any reference below to a page is to a page of that bundle.) That was sent in compliance with orders 9-11 made by REJ Foxwell on 14 April 2022 (page 45). It appeared that the table had not been printed out and put in the tribunal's file for the case. Mr Mellis accepted that the claimant had sent the table to the tribunal on 27 May 2022. The first four rows of the table (which were on pages 54-59) described events which took place in 2015-2017. The last event about which complaint was made in those rows occurred in "2017". Although the box on the left of the row described the event as having occurred in March 2019, that was the date when an event which, it was said in the adjacent column, made the claimant believe that the thing about which she complained had happened in "2017"; i.e. it was not said when in that year it happened. The claimed event of March 2019 was this:

> "Two years later I was moved to Muswell Hill Branch. Pauline Simpson Branch Director had disclosed to me and another member of staff that a girl in Southgate Branch two years ago had a virginal designed and that we should all get one done and laughed."

6 The table contained in addition a section (on pages 64-65) stating adjustments which the claimant claimed should have been made for her condition of back pain. That was included because REJ Foxwell had said this in paragraph 12 of his record of the hearing of 14 April 2022:

> "Ms Surensoy confirmed that the only disability complained of is her back condition/ muscular problem. This was not clear from the claim form but this information was treated as a clarification of an existing complaint of disability discrimination."

7 The section of the table at pages 64-65 contained three adjustments which it was claimed should have been (or, in the case of the third one, should be) made. It was said that the first two of those claimed reasonable adjustments should have been made in "2018". Again, it was not said precisely when in that year the adjustments should have been made. I did not see the claim in those respects as being included in the claim form, and in my view permission to amend the claim by their addition was required, but in case that was wrong I have taken them into account in these reasons on the assumption that they were in fact properly to be regarded as having been the subject of the claim as it was presented on 3 March 2021.

The evidence which I heard on 10 August 2022 and so far as relevant my findings of fact

8 The claimant gave oral evidence on 10 August 2022. She said then that she had meant to use the words "vagina design" instead of "virginal designed" in the passage set out at the end of paragraph 5 above.

9 The claimant did not do anything about the things referred to in rows 1-4 of the table on pages 54-59 until she (as she put it in paragraph 5 of the witness statement that she put before me for the purposes of the hearing of 10 August 2022) "raised a formal grievance on 10 April 2019 citing the historic events but particularly triggered by the confidential information which was disclosed about me".

10 The witness statement continued:

> "6. I more consciously realised then that the historic treatment had also been unacceptable but that I had not raised it at the time. Some of the contents of my grievance related to incidents from 2015/2016 and I had not raised this as I was new to the job and genuinely felt scared that raising my head at that point would have meant losing my job.

7. At the time of these events it was not only me being discriminated against. The examples I give in the Schedule, as upheld in the grievance appeal, show that others were also being discriminated against with the comments being made. Therefore, I did not want to be the only one to speak up and was scared of losing my job.

8. Some of these comments came at a time where refugee status was a political topic, my parents were refugees and there was a lot of hostile talk about refugees and immigrants in the build-up to the 2016 referendum. In addition to this political atmosphere, I experienced consistent and severe feelings of shame and embarrassment, akin to a bullied school student. Such feelings of embarrassment and shame were amplified by feelings of fear due to the power imbalance in relation to the top down linear corporate structure from manager to employee. As per the above, it was evident and common knowledge that such managers were being shielded from any whistleblowing attempts and other such escalations. Such facts combined with my severe emotional distress as a result of the abuse I was experiencing was part of the cause of my delay in whistleblowing or escalation beyond speaking about this to other colleagues.

9. At the time, not only I was being harassed by Ms Champion, I was also going through a hard time with my ex-partner. I was being harassed and verbally threatened by him that if I end the relationship he will kill me. Therefore, I was not in a good position to think about pursuing a formal complaints against Ms Champion as I was going through more serious problems with my personal life. And Ms Champion was well aware of my situation."

11 The claimant said that she had contacted ACAS in March 2020. There was a copy of the early conciliation certificate which ACAS had issued as a result of that contact at page 3. It showed that the claimant had contacted ACAS on 5 March 2020 and that the certificate had been issued on 31 March 2020. I asked the claimant what she understood from the certificate and the fact that it had been issued. She said that the person to whom she spoke at ACAS had said that they would provide her with a certificate but that she did not know what to do with it.

12 The claimant's grievance was investigated, and during the investigation the claimant was interviewed by the person appointed to investigate the grievance. That person was Mr David Heasman, Regional Manager. The meeting took place on 13 June 2019 and the claimant was (she accepted in cross-examination) accompanied at it by a trade union representative.

13 Mr Heasman's investigation concluded on 2 December 2019. No part of the grievance was upheld but Mr Heasman made four recommendations, one of which was that Ms Champion should be provided with (as it was said in

paragraph 15c of the grounds of resistance) "additional support around inclusion, diversity and appropriate language in the workplace." I did not have before me a copy of that recommendation and the reasons for it, but it suggested strongly to me that Mr Heasman had concluded that Ms Champion had used "[in]appropriate language in the workplace".

14 On 18 December 2019 the claimant appealed that conclusion and Mr Kiran Abrar was assigned to determine the appeal. There was plainly a delay before there was a hearing of the appeal, since that took place only on 6 May 2020. However, the claimant was then (according to the paragraph 19 of grounds of resistance) "signed off sick from 11 May 2020". That may explain the delay in the determination of the grievance appeal, but in any event Mr Abrar finally communicated his determination of the appeal in writing on 4 January 2021, and one of his conclusions was that Ms Champion had (according to paragraph 21 of the grounds of resistance) 'used inappropriate language towards the Claimant and her colleagues, including the use of the terms "refugees" and "you Turk"'.

15 On 8 February 2021, the claimant again contacted ACAS. ACAS then issued a second early conciliation certificate. It did so two days later, on 10 February 2021. The claim form was then presented on 3 March 2021.

16 In paragraph 21 of her witness statement made for the purposes of the hearing of 10 August 2022, the claimant said this:

> "I first received legal advice in January 2021 after my appeal outcome and this is the first time I was aware of the time limits for employment claims. I believed that because there was the ongoing investigation and appeal process that I was doing the right thing by allowing Santander to resolve matters internally before I issued any kind of external claim. This was especially so because I had not resigned or left my employment."

17 In paragraph 32 of that witness statement, the claimant said this:

> "I believed that I had acted reasonably in giving Santander every opportunity to resolve the matter without relying on legal processes. As soon as I realised that no meaningful outcome was forthcoming, I took steps to issue the claim quickly and within time of what I considered to be the last event."

18 The claimant then said this in that statement.

> '34. It is also important that I explain my emotional state at various times during this process. The details of my surgery are something which were, and are, particularly sensitive and I do not like discussing such private matters. It was difficult enough for me to raise these as parts of my complaint but the idea that I might have to discuss them openly with a stranger to take further advice, or in front of more strangers to bring a legal case, was particularly difficult for me to process and to come to terms with.

35. At the same time, I was seeing my GP regularly during the latter part of 2019 and then throughout 2020 (still ongoing). This escalated from the stress at work [123], which caused me to suffer from lack of sleep and poor concentration in August 2019, through to being medicated for the stress and anxiety the on-going situation was causing me [124]. I spoke to my GP in October 2019 after I discovered the confidential information breach and was given various medication [124] and referred for CBT [131].

36. As the matter progressed and there were further delays into 2020 [95-105], I saw my GP again; I was signed off work for three months and therapy treatment was postponed due to the pandemic. I continued to have a sick note throughout the end of 2020 and into 2021 after I started to go through counselling.

37. The counselling started to bring a lot of underlying personal issues to the surface and while they do not directly impact my claim, between the stress and my various other illnesses, I was in no position to consider making a legal claim until Santander's investigation outcome in 2021 [135].

38. By May 2021, my GP was referring to my mental health as being a "depressive disorder" [126] and I was prescribed a mild anti-depressant. I was starting to experience feelings of self-harm [127] and suicidal thoughts [128] brought on by the stress and anxiety and, in particular, by having to rethink about my surgery and past trauma following the unauthorised disclosure around my operation and what I had to go through with Santander with the continued victimisation.'

19 That which was said in paragraph 38 of that statement was irrelevant to the issue that I had to decide, which was whether it was just and equitable to extend time for the making of the claim. That is because what was said in that paragraph concerned events at least two months after the claim was presented.

20 However, the claimant in oral evidence several times said that she was suicidal and that that was a reason why she had not made her claim before she did. There were copies of her GP's records of consultations with her in the bundle, but they started only from 19 August 2019 onwards. They included on page 123 a statement that the "Problem" of "Stress at Work" which was recorded there was the "(First)" such reference by the claimant to that problem. Even then, the entry for that day contained this passage:

> "Discussed options. Will consider counselling and has been given numbers. Not keen on Antedepressants [*sic*] or time of[f] work. Given general advice to help deal with stress and improve sleep. Will monitor for now and let us know if things change. Discussed red flags. If deterioration in mood/concerns/worse TCB/OOH".

21 There was a letter dated 20 May 2022 from the claimant's GP's practice addressed "To Whom It May Concern", and that stated specifically that the claimant had "a history of work related stress since August 2019".

22 The claimant's witness statement contained this passage, which was not challenged:

> '30. The appeal outcome concludes that:
>
> 30.1. *Tracy admits using the term [refugees] multiple times*
>
> 30.2. *Sinem Sonmez witnessed that she found multiple use of the term refugee racist and upsetting*
>
> 30.3. *Vikas Salimee also found the use of the term unsettling*.
>
> 30.4. *There are further instance of use of language that could be perceived as racist.*
>
> 30.5. *Tracy would use the term "You Turks" with [staff who] have Turkish origins*
>
> 30.6. *Tracy said [to a gay colleague that dating a female] 'will make you normal' suggesting him to date with me.*
>
> 30.7. *I [the decision maker] can find clear evidence that inappropriate language was used […] which can be deemed as racist and discriminatory.*
>
> 30.8. *Information was disclosed […] by Tracy Champion as a regional meeting where staff absences were being discussed. […] Tracy mentioned the medical details.*
>
> 31. The appeal outcome concludes, in effect, that discriminatory language was being used and that I was correct to consider the terminology racist.'

Relevant law

23 Section 123(1) of the EqA 2010 provides:

> "(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—
>
> (a) the period of 3 months starting with the date of the act to which the complaint relates, or

> (b) such other period as the employment tribunal thinks just and equitable."

24 The factors to be taken into account in determining what is "just and equitable" for that purpose are also subject to much case law. *Chief Constable of Lincolnshire Police v Caston* [2010] IRLR 327 contains, in the headnote, a helpful comment of Sedley LJ:

> "There is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised. In certain fields (the lodging of notices of appeal at the EAT is a well-known example), policy has led to a consistently sparing use of the power. That has not happened, and ought not to happen, in relation to the power to enlarge the time for bringing employment tribunal proceedings, and Auld LJ is not to be read as having said in *Robertson* [i.e. *Robertson v Bexley Community Centre* [2003] IRLR 434] that it either had or should. He was drawing attention to the fact that limitation is not at large: there are statutory time limits which will shut out an otherwise valid claim unless the claimant can displace them. Whether a claimant has succeeded in doing so in any one case is not a question of either policy or law: it is a question of fact and judgment, to be answered case by case by the tribunal of first instance which is empowered to answer it."

25 *British Coal Corporation v Keeble* [1997] IRLR 336 has in the past been understood as being to the effect that the factors relevant when applying section 33 of the Limitation Act 1980 are to be applied in determining whether it is just and equitable to permit a claim to be made outside the primary time limit of three months (extended, if it is commenced before that period of three months ends, by any period of what is now called "early conciliation", i.e. by reason of section 140B of the EqA 2010).

26 However, in paragraph 37 of his judgment in *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 27, [2021] ICR D5, with which Moylan and Newey LJJ agreed, Underhill LJ said this:

> 'The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes [in ([1995] UKEAT 413/94]) "the length of, and the reasons for, the delay". If it checks those factors against the list in [*British Coal Corporation v Keeble* [1997] UKEAT 496/98, [1997] IRLR 336], well and good; but I would not recommend taking it as the framework for its thinking.'

27 It is clear that there has to be an evidential foundation for a decision that it is just and equitable to extend time.

28 In paragraph G[279.03] of *Harvey*, this is said:

"When considering whether to grant an extension of time under the 'just and equitable' principles, the fault of the claimant is a relevant factor to be taken into account, as it is under s 33 of the Limitation Act 1980 *(Virdi v Comr of Police of the Metropolis* [2007] IRLR 24, EAT)."

29 I was referred to by Mrs Linford, and read with care, the judgment of His Honour Judge ("HHJ") Auerbach in *Wells Cathedral School Ltd v Souter* (20 July 2021, unreported; EA- 2020-000801-JOJ). As I commented on 10 August 2022, while there are in *Miller v The Ministry of Justice*, UKEAT/0003/15/LA references to there being a "discretion" to be exercised when applying the test in section 123(1)(b) of the EqA 2010, even if that proposition is qualified by the proposition that that discretion has to be exercised judicially, in reality the test is one of judgment: deciding whether it is just and equitable to extend time for the making of the claim. In that regard, I found the following summary in the judgment of HHJ Auerbach of the competing considerations where an employee utilises an internal grievance procedure of some assistance.

'37. Mr Leach relies in particular on what was said in *Robinson* [i.e. *Robinson v The Post Office* [2000] IRLR 804] at paragraph 29. He also referred me to *Hunwicks v Royal Mail Group plc* UKEAT/0003/07/ZT at paragraph 5:

"It is clear that the advice that the Appellant says, without contradiction, that she was given by her Union was wrong. It is plain that the Union, perhaps venially, failed to appreciate that because the act complained of was so far in the past the case was not one which fell within the regime of the new regulations, so that the relevant time limit was six months and not three. Nor, even if the new regulations had applied, would it have been entirely safe advice to defer bringing proceedings until the outcome of the grievance procedure (though that would depend on what the date of the act complained of was and how long the procedure took): it remains the law that the non-exhaustion of domestic internal procedures will not necessarily be treated as a sufficient reason for extending time in cases where the Tribunal has jurisdiction to do so on the basis of what is just and equitable, and it is indeed arguable that normally it will not be – see Robinson v Post Office [2000] IRLR 804 and the observations of Peter Gibson LJ, which arguably go somewhat further, in Apelogun-Gabriels v London Borough of Lambeth & another [2002] ICR 713, particularly at page 719."

38. This latter passage says, I note, no more than that the fact that there are ongoing internal procedures will "not necessarily" be a sufficient reason and will "normally" not be sufficient. Similarly, the use, in paragraph 29 of **Robinson**, of the phrase "of itself and without more" must be read in the context of the passage as a whole, the sense of which is that the mere fact that an internal grievance process is still ongoing at the time when

the tribunal claim is presented, is not, in and of itself, necessarily enough to guarantee that an extension will be granted. But this dictum does not impose any other strictures on what features of the overall picture in the given case may lead the tribunal to conclude that an extension of time should just and equitably be made.

39. This approach surely reflects the reality that employment tribunals are not in practical reality presented merely with the bare fact of someone having initiated an internal process, or of that process being ongoing at a given point in time, as unadorned facts on their own. The reality is that there will always be some wider factual context, chronology or narrative that will be peculiar to that particular case, whether relating to the nature of the process available to the employee, how it was invoked, what the complaints were, how they were set out, how the process has unfolded so far, with what outcomes, if any, and so forth. The tribunal therefore needs to consider what aspects of the overall factual features of the process, and its context, it finds to be relevant in the given case.

40. As the authorities discuss, the tribunal also needs to have regard to the competing policy considerations. It is, in principle, desirable that parties be encouraged to resolve their disputes, so far as reasonably possible, by mechanisms short of litigation. But there is also a public policy in those who may be on the receiving end of litigation benefitting, so far as possible, from the certainty and finality which the enforcement of time limits potentially gives them.

41. Other factors that may be considered relevant, when reliance is placed on the pursuit of an internal process, cannot be exhaustively listed or identified. But, I do not see why the tribunal should be precluded from considering, if it thinks it relevant, whatever view it may form about the way the internal process has been approached by either party. That the tribunal may properly, from one case to another, form a very different general view of this, can be seen from reading the factual background to the decisions in **Aniagwu** and **Robinson**, for example.

42. In any event, it would be undesirable to require tribunals to draw a distinction between features of the case that are wholly distinct from the pursuit of the grievance process, as such, and features that were facets of, or related to, it. There may be some cases where that distinction can readily be applied, but there will be others where it cannot. Tribunals should not need to get bogged down in seeking to determine whether some feature is or is not connected to, or associated with, the grievance process, in order to determine whether it can carry weight in the scales. Nor do I accept that this approach wrongly places an evidential burden on the respondent. It is still for a claimant to advance their case for an extension, and to put forward the factual basis on which they say it is founded.

> 43. There is, in conclusion, no legal rule that, in order for time to be extended, there must be some additional feature identified as present, and weighing in the claimant's favour, that is identified as being distinct from some facet of the internal grievance process. The authorities say no more than that the mere, bare, fact that a grievance process has been initiated and pursued first, and/or may still be being pursued, is not automatically, in and of itself, enough.
>
> ...
>
> 46. I add that absence of forensic prejudice is also not something that will be presented to the tribunal as a sterile, bald proposition, or feature, devoid of any context. There will be a context in any given case, including factors such as the particular nature of the complaints or allegations, the sort of evidence that might be needed to make them good or to defend them, to what extent that might consist of documentary or witness evidence, and so on. The tribunal needs to consider in a given case how the picture looks in overall substance, as to whether, or in what way, the respondent may or may not suffer forensic prejudice if a claim that would otherwise be out of time is allowed to proceed."

The factors which I regarded as being most relevant in applying the test in section 123(1)(b) of the EqA 2010

30 The primary consideration here was that the claim was made in March 2021 in relation to events which occurred several years before then. Assuming that a failure to make reasonable adjustments for the claimant's back pain could be regarded as having been made in the claim form, the latest date of the claimed failure to make such an adjustment (except in the course of the claimed ongoing such failure) was "2018". The latest claimed directly discriminatory act was "2017". Those factors were of particular importance because they meant that the period since the last event in relation to which a claim was now sought to be made occurred was over two years, in the circumstance that the primary limitation period was three months. In regard to the claimed events of 2015, the claim was made approximately five years out of time. In addition, at least in some respects if the claim were permitted to proceed then the respondent's ability to defend the claim would be likely to be affected detrimentally to a considerable degree.

31 However, in some respects, the respondent's ability to defend the claim would not be adversely affected. That was clear from what I say in paragraph 22 above, which showed that the respondent had been able to carry out an investigation and reach what it regarded as a reliable conclusion about the truth of a substantial number of the claims of the claimant of directly discriminatory and harassing comments made by Ms Champion.

32 I therefore had to consider with care the claimant's stated reasons for the delay in making the claim. She said that it was because of her mental state, but, as

shown by what I say in paragraph 20 above, the claimant had not put before me any evidence that supported her claim that her mental state had been such that she was unable in practice before August 2019 to make a claim.

33 Even then, in that year, the claimant was able to state a grievance to her employer. She then, in the following year, approached ACAS and was issued with a certificate. She gave oral evidence to me (as recorded in paragraph 11 above) that ACAS had said that they would provide her with a certificate but that she had not known what to do with it. I found that hard to believe, but in any event, the certificate (dated 31 March 2020) stated on its face what its purpose was. The final two paragraphs were in standard terms and were these:

> "This Certificate is to confirm that the prospective claimant has complied with the requirement under ETA 1996 s18A to contact Acas before instituting proceedings in the Employment Tribunal.
>
> Please keep this Certificate securely as you will need to quote the reference number (exactly as it appears above) in any Employment Tribunal application concerning this matter."

34 In all of those circumstances, I concluded that the claimant had, in March 2020 known of the possibility of making a claim to an employment tribunal about the events about which she now sought to make a claim, and had decided not to make such a claim. She had made a claim 11 months and 3 days after the first early conciliation certificate was issued.

35 In addition, while the claimant said to me in oral evidence that she had been precluded by suicidal thoughts from making her claim, paragraph 38 of her witness statement (which I have set out in paragraph 18 above) and the documents to which it referred in the bundle showed that those thoughts did not start until after she had presented her claim in March 2021. That suggested a certain amount of inaccurate after-the-event rationalisation on the part of the claimant.

My conclusion on the issue of whether it was just and equitable to extend time

36 In all of the above circumstances, I concluded that it was not just and equitable to extend time for the making of the claimant's claims of direct discrimination within the meaning of section 13 and/or harassment within the meaning of section 26, contrary (respectively) to sections 39 and 40 of the EqA 2010 and of a failure to make reasonable adjustments in 2018. That was principally because of the passage of time and (using the words of HHJ Auerbach in paragraph 40 of his judgment in *Wells Cathedral School Ltd v Souter*) the "certainty and finality which the enforcement of time limits potentially gives" to potential respondents. It was also because the latest time when it could in my judgment have been just and equitable to extend time was in the period immediately after the issuing of the first early conciliation certificate. Even then, it would have been incumbent on

the claimant to present a claim to the tribunal within a period of weeks rather than months.

37 For the avoidance of doubt, I concluded that the fact that the claimant's following of the respondent's grievance procedure in relation to the matters which were the subject of the claims now sought to be made of direct discrimination within the meaning of section 13 and harassment within the meaning of section 26 of the EqA 2010 had led to the respondent coming to conclusions about the words used by Ms Champion in the period from 2015 to 2017 which were favourable to the claimant, was not a justification for the conclusion that it was just and equitable to extend time for the making of a claim about those words. That which was in the end conclusive as far as I was concerned was the factor referred to in paragraph 34 above, namely that the claimant had in March 2020 known of the possibility of making a claim to an employment tribunal about the events about which she now sought to make a claim, and had decided not to make such a claim.

38 However, even if I had been asked to consider whether it was just and equitable to extend time for a claim made in April 2020 in respect of the words used by Ms Champion in the period 2015-2017, I might well have concluded that the determining factor was the "certainty and finality which the enforcement of time limits potentially gives" to potential respondents in the circumstance that even then the claim would have been made three years out of time.

_____

Employment Judge Hyams

Date: 15 August 2022

SENT TO THE PARTIES ON

11 September 2022

GDJ

FOR THE TRIBUNAL OFFICE