



EMPLOYMENT TRIBUNALS

Claimant: Mr M Afzal

Respondent: Commissioner of the Police of the Metropolis

Heard at: London South
Employment Tribunal (by CVP) **On:** 20 September 2022

Before: Employment Judge Barker

Representation

Claimant: In person
Respondent: Mr Hobbs, counsel

JUDGMENT

1. The claimant's claim of unfair dismissal is struck out as the Tribunal has no jurisdiction to hear it, as s200 of the Employment Rights Act 1996 prohibits police officers from presenting claims of unfair dismissal.
2. The claimant's claim for notice monies was not issued in time and was not presented within such further period as was reasonably practicable, as per s93 and s111 Employment Rights Act 1996. The claim is hereby struck out.
3. The claimant's claims arising from events in 2017 and 2018 of race discrimination, disability discrimination, sexual orientation discrimination and discrimination on the basis of religion and belief are struck out as these claims have already been presented to the Tribunal in 2018 and subsequently withdrawn by the claimant in 2019. They cannot be litigated again as this amounts to an abuse of process.
4. The respondent's application that the claims of disability discrimination, race discrimination, sexual orientation discrimination and discrimination on the basis of religion and belief from 2019 and 2020 be struck out because they have no reasonable prospects of success is refused. The respondent's application that the Tribunal make a deposit order because these claims have little reasonable prospect of success is also refused. These claims were not issued in time but were presented within such further time as was just and equitable as per s123 Equality Act 2010 and may proceed.

5. The Tribunal directs that an intermediary may be appointed by HMCTS to carry out an assessment of the communication needs of the claimant to identify any steps that may have to be taken to ensure that there is a fair hearing. The Tribunal will write to the claimant separately about this offer of help.

REASONS

1. The claimant was a probationer police constable with the respondent from 27 March 2017 until his resignation with immediate effect by email on 2 November 2020.
2. These proceedings were issued on 24 March 2021. The parties and the Tribunal, over a number of previous case management hearings and a considerable amount of correspondence, have sought to clarify the issues in the claimant's case. These attempts have been partially successful, and the claimant has clearly struggled to order his thoughts in relation to these claims.
3. The parties agree that the issues for the Tribunal to decide are as set out in the most recent list of issues from June 2022. Although the respondent produced a table for the claimant to complete, and although the claimant has been urged on a number of occasions by the Tribunal to be as brief as possible in describing his complaints, on each occasion his responses have run to several dozen pages of a detailed narrative account of the events he says took place during his time with the respondent.
4. The claimant has a diagnosis of autism, first obtained in 2018 via the charity MENCAP and also in September 2020 from a consultant psychiatrist at the Maudsley NHS Hospital. Copies of the reports relating to these assessments were in the file of documents for this hearing. The claimant himself is, however, adamant that he is not autistic and told the Tribunal that he rehearsed the answers to the psychiatric assessment so that he would get a diagnosis of "something" to protect him from dismissal. On receipt of the diagnosis he rejected it absolutely and continues to do so.
5. The Tribunal asked the claimant whether he would benefit from any adjustments being made to the hearing. He was not able to identify any that would assist. The Tribunal provided him with time to familiarise himself with documents and additional time to answer the respondent's questions, as well as breaks to recover and calm himself, as he became overwhelmed on a couple of occasions. A ten minute break was taken after the claimant began to scream and cry. On resuming the hearing, the claimant told the Tribunal that he considered crying to be "therapeutic" and that he felt better.
6. At the previous hearing on 25 May 2022, the claimant's claims were listed as: unfair dismissal; notice pay; discrimination on grounds of race, disability, sexual orientation, religion or belief, and marriage/civil partnership. The claimant suggested that marriage/civil partnership was no longer an issue in these proceedings but did not go so far as to withdraw his complaint. This is to be clarified at a subsequent preliminary hearing.
7. The issues to be decided at this hearing were discussed on 25 May 2022 and are listed in the case management orders sent to the parties on 16 June 2022 as follows:

(a) Were the discrimination claims issued in time

6.1 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

6.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

6.1.2 If not, was there conduct extending over a period?

6.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

6.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

6.1.6 Why were the complaints not made to the Tribunal in time?

6.1.6 In any event, is it just and equitable in all the circumstances to extend time?

(b) Was the notice pay claim issued in time

6.2 Was the claim for notice pay made within the time limit in article 7 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994?

6.3 The Tribunal will decide:

6.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?

6.3.2 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

6.3.3 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

(c) Can a police officer bring an unfair dismissal claim / was it brought in time

6.4 Whether the Tribunal has jurisdiction to consider the Claimant's claim for unfair dismissal having regard to section 200 of the Employment Rights Act 1996 and the decision in Commissioner of Police of the Metropolis – v- A Lowrey-Nesbitt 1999 ICR 401.

6.5 If the Tribunal finds it has jurisdiction to consider the Claimant's unfair dismissal claim:

6.5.1 Was the claim for unfair dismissal made within the time limit in section 111 of the Employment Rights Act 1996? The Tribunal will decide:

6.5.1.1 Whether the claim was made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?

6.5.1.2 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

6.5.1.3 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

(d) Strike out / deposit order / case management

6.6 If the Tribunal has jurisdiction to consider all or any of the Claimant's claims:

6.6.1 Whether they should be struck out because they have no reasonable prospects of success.

6.6.2 Alternatively, whether the Tribunal should make a deposit order because any specific allegation or argument in the claim has little reasonable prospect of success.

6.7 If appropriate, to make further case management orders for the future conduct of the litigation and to consider whether the allocation of five days for final hearing in December 2022 should be reduced or increased

8. The claimant was ordered to provide a witness statement to respond to the respondent's claims that his claims were out of time. He was asked to say why he did not contact ACAS within three months of his resignation and why he did not submit his claim form within a month of being given the Early Conciliation Certificate by ACAS. The claimant's witness statement is three pages long and he was questioned by the respondent's counsel on it. The Tribunal also asked the claimant some questions on his statement and about some of the other issues in the case.
9. The Tribunal was also provided with a file of documents in this case which was 307 pages long and an opening note from the respondent's representative.
10. During the claimant's answers to questions from the respondent's representative, it became clear that in December 2018 the claimant had issued a claim (using an ET1 form) against the respondent in the London Central Employment Tribunal, about many of the same issues that he complains about in these proceedings. The respondent had understood that although an ET1 had been drafted by the claimant's Police Federation representative in late 2018, no claim had been issued as they had no record of it. The claimant told the Tribunal that he had submitted a claim which had been accepted by the London Central Tribunal, and that following discussions with his Police Federation representatives he had withdrawn the claim by email on 25 January 2019. Although the Tribunal and the respondent were not shown a copy of the email, the claimant read aloud the contents of the email dated 25 January 2019, which clearly stated that he wished to withdraw his claim.
11. Therefore the Tribunal had an additional issue to consider, which was whether the claimant would be barred from bringing the same claims as part of this case as he brought in December 2018 to the London Central ET, and withdrew in January 2019.

The Claimant's Complaints about this Tribunal and allegations of bias

12. The claimant was sworn in to give evidence at 10.30am and his evidence was finished at 12.50. The judge began to explain that the Tribunal would take a break for lunch and that after lunch, each party would be able to make any final comments on the issues to be decided. The respondent's representative made a comment about the fact that there was now an extra issue to decide, in that it may be an abuse of process for the claimant to try to bring complaints in this claim that he had brought and already withdrawn (in January 2019). The Tribunal judge nodded at this reminder, and the claimant then made the following comments:

"I am sensing some emotion from you. You are both of the same ethnic background [the judge and the respondent's barrister are both white] and a colleague who is studying law told me that the Croydon employment tribunal has lots of discrimination of ethnic backgrounds. I feel very uncomfortable. I want a different judge. I want an ethnic background judge that is transparent."

13. The claimant was asked by the judge what the reason was for saying this. He was asked what he based these comments on - had anything been said or done that had caused him concern? His reply was:

"I am not saying you have discriminated. I feel uncomfortable. If you were in my position you would say the same thing. I want a fair case without being judged. I have seen some emotion in you that I think you might make a bad decision"

14. The claimant was asked to explain what the “emotion” he had seen was. His reply was *“I have been told by colleagues there is a lot of racism in Croydon and the judges are very difficult to work with.”* The claimant then began to shout *“I know for a fact that you will make this decision. I have been subjected to racism all my life and I am sick of it. I can’t see what people are thinking and so I want to know if you will be fair.”* The claimant began to cry and scream repeatedly. The hearing was adjourned for ten minutes to allow the claimant to compose himself. On returning to the hearing, the claimant told the Tribunal that he was feeling better.
15. The Tribunal told the claimant that it was not possible for him to request a judge from a particular ethnic background. The claimant was also told that the judge would not be recusing herself and finding another judge, as he had given her no evidence or reason as to why her conduct was a problem. Further, it was clear to the Tribunal that the reason for the claimant’s sudden complaint was that the judge had nodded in response to the respondent’s representative reminding her that there was an extra issue to consider, that of abuse of process. This was a statement of fact, and the judge had, by nodding, agreed that this was an extra issue for the Tribunal to consider. However, the claimant had clearly taken this as an indication that the Tribunal had decided that the respondent had already won in some way.
16. The claimant was told that the Tribunal would take a break for lunch and that it would be a good idea for him to think about this complaint over the lunch break. The judge told the claimant that judges were appointed by an independent panel, and underwent a lot of training in relation to discrimination, including awareness of conscious and unconscious bias. The judge emphasised that the law was applied to all parties equally in the Tribunal. The judge offered again to explain the legal tests that would be applied in this case, an offer which had been made at the start of the hearing which the claimant did not accept and did not accept on this occasion. The judge told the claimant that she had listened very carefully to the points made by both parties and had made a careful note of what had been said. The judge said that she understood that the claimant felt very strongly about the issues in the case.
17. The claimant then said that he was sorry *“if I have generated any offensive emotion in you and if I have said something to cause that.”* The judge said that it was not a problem. The hearing was adjourned for an hour for lunch. On resuming the hearing, the judge summarised the discussion that had taken place before lunch and the claimant said *“with all fairness, I wish to be treated fairly. I can’t read anyone’s mind, I wanted to be open.”* The judge said that she understood that he wished to be treated fairly, and noted that simply because someone was white, it did not follow that they would be racist.
18. The judge reminded both parties that also, either of them could ask for a reconsideration any of the Tribunal decisions or that they could appeal to the Employment Appeal Tribunal. The claimant then said *“you have already made your mind up about this, as you have just said I could appeal”.* The judge reminded him that this was not what she had just said, and that the right of appeal was a right anyone had.
19. The claimant was asked whether anything else might be helpful in terms of adjustments to the hearing. The claimant described issues he had with his emails

and his Google subscription and the effect this had on his deadlines, which are issues not within the control of this Tribunal.

20. The respondent said that if the claimant was continuing to ask that the Tribunal recuse itself, that they would object to this request. The claimant said he was not, and was prepared to carry on with the hearing.
21. At the conclusion of the discussion, the claimant apologised again to the Tribunal. He was told that this was not necessary and that the judge understood that this process was very stressful and emotional for him. He was reminded though that it was not in his interests to allow himself to shout and become hysterical again if he could avoid this, as the Tribunal needed to be able to hear and understand what he wanted to say.
22. However, the claimant struggled considerably to avoid interrupting the respondent's closing submissions and had to be reminded repeatedly to let the respondent's representative finish, and he was reminded repeatedly that he would have his opportunity to speak afterwards. The hearing concluded with both parties having made closing statements and the parties were told that a reserved decision with reasons would be sent out as soon as the Tribunal was able to do so.

The Involvement of an Intermediary in Future Proceedings

23. Having spoken to the claimant over the course of this preliminary hearing, which lasted from 10.15am until 3.15pm, with a one-hour break for lunch, the Tribunal considers that there exists communication difficulties which impede the claimant's ability to participate in the hearing and future hearings and which may jeopardise a fair trial.
24. The claimant has struggled to follow these proceedings and give best evidence, and has struggled to manage his interactions both during the hearing and in correspondence. He was clearly highly distressed and was also confused during this hearing, despite the ongoing assistance of the respondent's counsel and the best efforts of the Tribunal to ensure fair participation.
25. It is noted that the claimant vehemently denies that the diagnosis of autism from both MENCAP and the Maudsley Hospital consultant psychiatrist is correct. He is adamant that he is not autistic. However, that notwithstanding, the claimant frequently expressed his own disorientation, confusion and anxiety and his inability to follow the proceedings. He also had difficulty in providing answers to questions and in following the judge's instructions.
26. For this reason, an intermediary should be appointed by HM Courts and Tribunals Service to carry out an assessment of the claimant's communication needs and to identify any steps that may have to be taken to ensure that there is a fair hearing.

The Claimant's Complaints

27. The parties' work in drawing up a list of the claimant's complains was very helpful. The claimant has also produced extensive documents with a lengthy account of what he says happened to him while working for the respondent. He repeated a number of these accounts in answer to questions from the respondent's representative and the Tribunal.

28. It was clear that the vast majority of his complaints relate to the claimant's time at Hendon training centre and then at Colindale station. The claimant was absent due to sickness from Colindale as of 23 July 2018 and after his return at the end of December 2018, he transferred to Wembley station. The claimant's written account of his time at Wembley and his account during this hearing was that he didn't have problems at Wembley, although he did find it stressful when those who he worked with at Colindale visited Wembley, or he encountered them again during his work.
29. The claimant's complaints in these proceedings about his time at Hendon and Colindale are those set out in his 2018 application to the London Central ET, which complaints date from 2017 and 2018. There is also one ongoing complaint which started in 2018 and continued to November 2020, relating to the claimant being put on restricted duties. There are also two separate complaints relating to events in September and November 2020 following the confirmation of his diagnosis with autism.
30. From reading the claimant's narrative accounts and from listening to his evidence during this hearing, he does not complain about any other issues to do with the respondent, although he does complain about the Police Federation. The claimant's complaints about the Police Federation are dealt with separately below.
31. The table ("Scott Schedule") drawn up by the respondent from the claimant's pleadings and added to by the claimant relates very clearly to these two distinct periods of time – one period in 2017 and 2018, and then a second period in September to November 2020.
32. The Appendix table in the parties' agreed list of issues identifies the complaints as follows:
 - a. Failed officer safety training Hendon training centre 23rd August 2017;
 - b. "The trainers made life miserable and hostile" Hendon training centre Approx. 27/06/2018 – 28/11/2018;
 - c. "Subjected to hostile shouting" at Colindale Police Station Approx. 17/04/2018 – 21/11/2018;
 - d. "Subjected to belittling" at Colindale Police Station, approx. 27/03/2018 – 23/11/2018;
 - e. "Put in danger by a driver who was not trained to drive IRV" at Colindale Police Station, June 2018;
 - f. "Called a cunt" while stationed at Colindale Police Station, approx. 8/1/2018-24/3/2018;
 - g. "Told I smell of garlic" while stationed at Colindale Police Station, approx. 8/1/2018-24/3/2018;
 - h. "Various name calling" while stationed at Colindale Police Station, approx. 8/1/2018-24/3/2018;
 - i. "Penis picture put on my Met vest" while stationed at Colindale Police Station, 24/06/2018;
 - j. "Officer farting and waving the odour towards me" while stationed at Colindale Police Station, 31/12/2017-21/01/2018;
 - k. "The acts of Supt Roy" who made recommendation for dispensation to AC Ephgrave on 5/11/2020;
 - l. "Mistreated" throughout tenure at Colindale Police Station approx. 17/08/2017-26/07/2018;
 - m. Placed on restricted duties while at Colindale Station and Wembley Station, 27/03/2018-21/11-2019;

- n. "Dismissal" resigned due to the "mistreatment throughout my tenure" 2/11/2020.

The Claimant's Complaints About the Respondent After January 2019, until November 2020

33. From the information before this Tribunal it is clear, and was confirmed by the claimant in evidence, that the claimant believed that if he was diagnosed with a mental impairment or mental health condition, he would be protected from dismissal. He had been on probation for a number of years and did not appear to be likely to complete the probation process.
34. He appears to have accepted that he may be autistic in his grounds of complaint in 2018, as this was part of his earlier claim for disability discrimination.
35. From the information before this Tribunal, it would seem that the claimant only began to say that he was not autistic in late 2020, when it became clear that this may be a reason for the respondent not extending his probationary period further and that, instead of protecting him from being dismissed as a probationer, it may be a significant factor in causing this dismissal.
36. The claimant's allegations which occurred in the period from January 2019 until his resignation are (k), (l) and (m) in the List of Issues and the Further and Better Particulars. Each of these are said to be acts of direct discrimination and/or harassment on the basis of the claimant's perceived (but not actual) disability, race, sexual orientation and/or religious beliefs. They are:
- i. He alleges that he was recommended for dismissal (for "dispensation") by CS Roy Smith to AC Ephgrave in November 2020;
 - ii. He alleges he was still on restricted duties at Wembley station until his resignation;
 - iii. He alleges that he was forced to resign in November 2020 due to his ongoing mistreatment by the respondent.

The Law

37. The Employment Tribunal Rules of Procedure 2013 deal with strike out orders at rule 37 and deposit orders at rule 39. In the claimant's case, the respondent alleges that strike out is appropriate because the claims have no reasonable prospect of success (rule 37). In the alternative, the respondent alleges that a deposit order should be made because the claims have little reasonable prospect of success (rule 39).
38. Tribunals are cautioned against striking out claims at an early stage in the proceedings where there are disputed factual issues and/or where an issue is fact-sensitive, and the bar for doing so is high. In such situations, it is highly unlikely that a strike-out will be appropriate (as per *Cox v Adecco & Ors* *UKEAT/0339/18/AT*).
39. Cause of action estoppel applies where a decision in relation to a claim has been made in earlier proceedings and a party to those proceedings tries to make that claim again in new proceedings. This applies where there has been a "decision" in those proceedings and where there are no real differences in the claims being brought. Even where there has been no judicial "decision" in a claim, it may still be

an abuse of process to try to bring a claim for a second time that has been brought and withdrawn before.

40. In *Johnson v Gore Wood and Co 2002 2 AC 1, HL*, Tribunals are advised to take “a broad, merits-based judgment which.... takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before” (as per Lord Bingham).
41. Where bias is alleged during a hearing, the Tribunal must allow discussion of the matter by the parties with the Tribunal as to the best way to proceed. (*Locabail (UK) Ltd v Bayfield Properties Ltd and other cases 2000 IRLR 96, CA.*)
42. Discrimination complaints are subject to the time limits set out in the Equality Act 2010 at s123(1), as follows:

“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 to which the complaint relates, or
 - (b) such other period as the employment tribunal thinks just and equitable.”
43. The Tribunal must consider a number of factors in deciding whether a claim presented late can still be considered on a “just and equitable” basis.
44. These include, but are not limited to, the prejudice each party would suffer as a result of the decision reached, and the circumstances of the case, such as the length of the delay and the reasons for the delay, the extent to which the evidence might be affected by the delay and the steps taken by the claimant to obtain advice once he knew of the possibility of taking action.
45. It is not the case that it is never just and equitable to extend time where there is no good explanation for the delay. *Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194, CA* held that any explanation put forward by the claimant is a matter that the Tribunal should consider but is not the deciding issue of whether or not the Tribunal should extend time.
46. Where a claim for notice pay under s86 Employment Rights Act 1996 is presented late, the Tribunal may only extend time for its presentation when, as per s93 and s111 Employment Rights Act 1996, it was not reasonably practicable to submit the claim in time and if it was submitted within such further period as the Tribunal considers reasonable.

Application of the Law to the Facts Found

Was the claimant an employee?

47. It is the respondent’s case that the Tribunal has no jurisdiction to consider the claimant’s claim for unfair dismissal. This is because s200 of the Employment Rights Act 1996 and the decision in *Commissioner of Police of the Metropolis – v- A Lowrey-Nesbitt 1999 ICR 401* excludes police officers from being able to claim unfair dismissal and so the claimant has no right to do so. The claimant did not offer any argument on this point.

48. The Tribunal accepts that the respondent's position is correct, and as the claimant was a probationary police officer, the Tribunal has no jurisdiction to consider his claim for unfair dismissal as per s200 ERA 1996.

The Claimant's Claim Issued in December 2018

49. The claimant included his ET1 particulars of complaint from 2018 as part of his response to the respondent's request for further information in this case. It is clear that the issues in this case are essentially unchanged from the case in 2018.
50. The claimant, I find, wishes to bring again those claims presented to the Tribunal in December 2018 and withdrawn in January 2019. Rule 51 of the Employment Tribunal Rules of Procedure 2013 states that a claim "comes to an end" when a claimant informs the Tribunal that he wishes to withdraw his claim. The claimant did not say, when he withdrew his claim, that he wished to reserve his right to bring any further claim. He withdrew in unequivocal terms.
51. Having made enquiries with the Tribunal administration following this hearing, it would appear that no dismissal judgment was issued by the London Central Tribunal in 2019 following the claimant's withdrawal. There would therefore appear to have been no "decision" of the Tribunal in the claimant's case and therefore cause of action estoppel does not apply to the claimant's case as this requires a "decision" of the Tribunal to have been issued.
52. However, are the claimant's actions here an abuse of process? Is it possible for the claimant to bring again, claims he has already issued in the Tribunal and withdrawn? This claim (2301186/2021) contains the same matters and claims as the first, as far as the events of 2017 and 2018 is concerned. The claimant was advised by the Police Federation in relation to his earlier claim, and withdrew having taken advice from them.
53. Should the claims the claimant now wishes to bring in relation to 2017 and 2018 have been brought earlier? I find they should have. There are no special circumstances before the Tribunal that apply. The claimant was advised by the Police Federation but they withdrew their support for the Tribunal proceedings after they were submitted. The claimant told the Tribunal that the Federation told him that if he continued with the claims he would face "a large barrister's bill" that he would have to pay for himself. I do not accept that this was the primary reason for the claimant withdrawing his claims. As the claimant has demonstrated to this Tribunal, it is possible for a claimant to appear without legal representation and the claimant does so on this occasion.
54. I find that the more likely reason that the claim was withdrawn in 2019 was because the respondent had taken action to move the claimant from what the claimant clearly found to be a difficult and stressful working environment in Colindale Station, to Wembley Station.
55. I also find that the claimant had the expectation of receiving further assistance from the respondent as a result of the ongoing investigations relating to his diagnosis of autism at the time. He had been assessed by MENCAP on 13 August 2018 and given an 80% likelihood that he was autistic. He was diagnosed again by the NHS in June 2019 and there is a letter before the Tribunal dated 18 September 2020 from the claimant's consultant psychiatrist Dr Anastasios Galanopoulos providing a conclusive diagnosis of autism for the claimant. It was the claimant's

understanding, he told the Tribunal, that if he was diagnosed with a disability that he would be protected at work. I find that it is highly likely that the claimant withdrew his claims in 2019 as a result of his move to Wembley and his belief that his provisional diagnosis of autism would protect him in the workplace.

56. Since then, the claimant had a relatively uneventful period working at Wembley station and told me that there were “no problems” at Wembley, although he did express frustration that he was carrying out restricted duties. It is highly likely that the reason the claimant seeks to revisit his complaints from 2017 and 2018 is the change in circumstances, in that the passage of time and his conclusive diagnosis of autism caused him to understand that the respondent was about to dismiss him.
57. However, these reasons are unrelated to the claims from 2017 and 2018 themselves. There has been no change in those claims and the claimant has no new evidence to provide in relation to the issues in 2017 and 2018. He chose to withdraw the claims in 2019 and did so with advice from the Police Federation. Although his relationship with the respondent has now broken down entirely, it has done so for different reasons.
58. The claimant’s conduct in attempting to begin the claims from 2018 again amounts in all the circumstances to an abuse of process. He seeks to begin that claim again in 2021, as a result of changed circumstances and a breakdown in his relationship with the respondent for a different reason. I do not find that this amounts to justification or is excused by special circumstances.

The Claimant’s Complaints About the Respondent After January 2019, until November 2020 - the respondent’s application to strike out the claims or for a deposit order

59. It is the respondent’s application to this Tribunal that the remaining allegations be struck out because they have no reasonable prospect of success. However, as is made clear to Tribunals in a number of precedents, including *Cox v Adecco and ors 2021 ICR 1307, EAT*, that fact-sensitive cases of discrimination must be taken at their highest in deciding whether they have no reasonable prospect of success.
60. At this preliminary hearing, the claimant was wholly unable to identify facts that indicate he may be able to show that the respondent was racist, or prejudiced against the claimant on the basis of his sexual orientation or religious beliefs in 2019 and 2020. There is some evidence from which the Tribunal could conclude that his claims of disability discrimination have more than little reasonable prospects of success, taking his case at its highest.
61. In relation to the complaints of disability discrimination, it would appear that the respondent did move to end the claimant’s extended probationary period once the full and formal diagnosis of autism was received. It is also clear that the claimant did remain on restricted duties at Wembley station. Whether this was an act of direct discrimination or harassment is a matter for a full examination of the facts at a final hearing. It is also clear that the claimant resigned once he understood that a recommendation for dispensation may be made by CS Roy, but says that this was on the recommendation of his Police Federation representative, who he suggests tricked him or deliberately gave him poor advice in some unspecified way.
62. The claimant has repeatedly made complaints that the respondent is institutionally racist, but in relation to the three claims in paragraph 36, he is not able to provide

any information as to why this is the case. He makes broad allegations of institutional racism and when asked for specific examples from 2019 and 2020, refers back to his treatment in 2017 and 2018. This is despite the extensive further particulars and the extensive discussions concerning the claimant's claims. All of his evidence in this regard is from 2018 or earlier.

63. The claimant has provided the Tribunal with no information whatsoever as to how he says the respondent discriminated against him on the basis of his sexual orientation or religious beliefs in 2019 and 2020.
64. It was clear to the Tribunal during this hearing that the claimant is solely focussed on his treatment during 2017 and 2018. Despite the respondent and the Tribunal's best efforts to divert the claimant's attention to the 2019 and 2020 allegations of discrimination on the basis of race, sexual orientation, religion and belief and disability, his focus did not change. The Scott Schedule and list of issues in relation to 2019 and 2020 is extremely brief. The claimant was not able to provide any further detail of these allegations. He was not able to answer direct questions about why it was that he alleges that any of this treatment was on the grounds of those protected characteristics. This is part of the Tribunal's grounds, set out above, for directing that an assessment be done to consider whether an intermediary would be able to provide assistance in this regard.
65. As to the current state of the claimant's pleaded case, it remains unclear. It would not be in the interests of justice to allow the claims to be struck out on this basis at present. As stated by the EAT in *Cox v Adecco & Ors*, UKEAT/0339/19: "put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is".
66. It is hoped that the narrowing of the scope of the claimant's claims resulting from this judgment, and the possible future involvement of some form of assistance (either by way of an intermediary or legal advice or representation) will allow the claimant to provide the clarification needed. If the respondent considers that it wishes to re-apply for strike out or a deposit order, that would be an option open to them at that stage.

The Claimant's Claim for Notice Pay – Was it presented too late and does it have no reasonable prospect of success?

67. The claimant claims for notice pay following his resignation on 2 November 2019. It is the respondent's case that this claim (and in fact all of the claimant's claims issued in these proceedings in 2021) has been brought to the Tribunal too late, as it was presented to ACAS Early Conciliation on 12 February 2021 outside the three month period for the claimant to do so, which expired on 1 February 2021. The ET1 claim form was then also not presented sufficiently promptly after ACAS Early Conciliation finished, which was on 15 February 2021. The ET1 was not presented to the Tribunal until 24 March 2021.
68. The claimant's witness statement which was prepared for these proceedings deals almost exclusively with the periods of time around the submission of his first claim in 2018. The final paragraphs of his witness statement prepared for this hearing, states:

"It is only to the time I have been affected by the mental distress, anxiety, bullying, health problems, the cause of diabetes, ketosis due to the stress caused at work, constant time pressures with narcissistic, Ostracised, hostile

environment thus made to feel I have a disability such as autism (diagnosis letter sent dated 24th January 2020) and pressured to take an autism test and be diagnosed with whilst the negativity. The true causes of the mental health at Metropolitan Police of those involved that I wished to pursue this claim with integrity and honesty of those matters that has deeply affected me for lifetime. Only when I have been able to and known to submit the claim I had submitted to the best of my ability whilst having no qualified or prior knowledge of submitting the claim whilst being oblivious to the court set procedures of deadlines; in affect has been due to my health and condition at the time.

The aligned symptoms, time pressure at work, Hostile environment, anxiety and depression, low self-esteem due to the Met Federation conducts, confusion of systematic approach to the procedures and deadlines all have been the part at play to the position I was in whilst suffering from the physical mental health at the time into submitting the Employment Tribunal claim and to ACAS as I did NOT have the available details and explanations to 'HOW' 'WHEN' 'WHO' to submit the claim TO, thus leading to these challenges I have submitted the claim with a 'BLANK' knowledge ONLY when I have been able to; whilst working Full Time under pressure at Metropolitan Police.

69. On 21st June 2022, the Claimant sent an email explaining why his ET1 was issued out of time, which stated

"I was misled and confused by the dates and deadlines for the submission of my claim. I did NOT have a very helpful federation representative to allow me to follow and pursue the claim and I was under a lot of distress in which I still was facing anxiety and depression at the time.

I was assigned to PC Dan Lichters who represented me was unavailable and at times very dismissive to my claims and I did my best to submit my claims and on time but he had confused me with the dates whilst working full time and completing other tasks.

I did not know the dates and it was very unclear to me with Dan Lichters who did not give me a clear understanding of submitting an employment tribunal claim whilst smirking at me and stating he won a large case and to Google his name as he won large sums of money and is still in the job.

I sincerely did my best to get the dates and on time whilst going through anxiety and depression and working at Wembley Police station."

70. The evidence that the claimant was busy working full time and so could not submit the claim in time in 2021 is not accepted, as the claimant told the Tribunal he was not working then, following his resignation in November 2020. He has submitted no medical evidence from that time in February 2021 to support those assertions. He has submitted no evidence that his Federation representative misled him over the dates and deadlines involved. However, it is clear that he had Police Federation involvement at the end of his employment.

71. The claimant has litigated in the Employment Tribunal before, with Police Federation representation. It is therefore not reasonable for him to assert that he was entirely ignorant of the deadlines involved. It was also not reasonable for him to have seemingly made no enquires, or no online searches, as to what those deadlines might be.

72. On the balance of probabilities the claimant has not established that it was not reasonably practicable for him to have approached ACAS by 12 February 2021, or submitted his claim form within one month of ACAS Early Conciliation finishing.

The test to extend time in breach of contract claims involves claimants having to show that it was not reasonably practicable to comply with the relevant deadlines and the claimant has not done so on this occasion.

The Claimant's Allegations Against the Police Federation

73. It is the claimant's repeated case that the Police Federation put pressure on him to resign and refused to support him in pursuing his complaints at the time of his resignation in November 2020. His witness statement states:

"I am of Asian gay male background and I have constantly been treated lesser of than a white Caucasian male at work and in the federation who are in charge of the disciplines of the federation in which are clearly biased, prejudice and discriminate against ethnic backgrounds and will Not allow them to succeed in any way in complaints or funding of a case.

I truly feel that I have been subjected to discrimination within the federation with lack of support and confidence in my claims in how to submit, unknown clear deadlines to submit my application whilst under pressure working full time.

On previous occasions when appointed to a federation who was available at the time, I only had those federation members who were dominantly white Caucasian had told me 'you should resign', after intensive 7 weeks internal certificate of knowledge of Policing, the training school of upto 12+ weeks in learning practical and knowledge then after the successful completion of training assigned to Borough the federation had told me to resign."

74. The Federation are not parties to these proceedings. The respondent cannot be held liable for any acts or omissions of the Police Federation. It may be appropriate to consider, at a future case management hearing, whether the claimant wishes to apply to join the Police Federation as a party to the proceedings, given the allegations he has repeatedly made against them. This may be possible under s112 Equality Act 2010, which makes any person who knowingly aids any act of unlawful discrimination liable for the discriminatory act himself. Alternatively, rule 34 of the Employment Tribunal Rules of Procedure 2013 allow a Tribunal to add a party where there are issues between that person and any of the existing parties which it is in the interests of justice to have decided in the proceedings.

The Claimant's Discrimination Claims to this Tribunal – Are they presented too late?

75. The claimant approached ACAS to engage in early conciliation eleven days late. Early conciliation ended on 15 February 2021, but the claimant did not submit his ET1 claim form until 24 March 2021. In assessing whether to allow a just and equitable extension of time for these claims to be presented, the Tribunal must consider the prejudice each party would suffer as a result of the decision reached, and the circumstances of the case, such as the length of the delay and the reasons for the delay, the extent to which the evidence might be affected by the delay. In the claimant's case, the length of the delay was not significant. The evidence would not be affected by an eleven day delay in starting ACAS Early conciliation, or a delay of a few weeks in submitting the ET1 thereafter.

76. The relative prejudice suffered by the parties falls in favour of allowing the claims to proceed. The claimant would be without a remedy for his complaints altogether were the discrimination claims rejected, as all of his other claims have been struck out for a number of reasons, as set out in this judgment. It is clear that the claimant

has experienced a number of issues at work and it is in the interests of justice to allow those claims to be considered by the Tribunal. It is clear that the claimant has also struggled with difficulties elsewhere in his personal life and that these have significantly affected his mental health. The circumstances of the case are that the Tribunal should exercise its discretion in the claimant's favour in relation to this issue and allow a just and equitable extension of time.

Next Steps:

The claimant's remaining claims

77. The claimant's remaining claims that may continue are as follows: That the following three allegations are incidents of direct discrimination and/or harassment on the grounds of perceived disability discrimination, race discrimination, sexual orientation discrimination and/or discrimination on the basis of religion and belief:
- i. He alleges that he was recommended for dismissal (for "dispensation") by CS Roy Smith to AC Ephgrave in November 2020;
 - ii. He alleges he was on restricted duties at Wembley station from January 2019 until his resignation;
 - iii. He alleges that he was forced to resign in November 2020 due to his ongoing mistreatment by the respondent.

The offer of an intermediary to help the claimant with communication

78. The claimant will be offered the opportunity to have an intermediary to help him participate in the Tribunal process to help him understand and communicate with the Tribunal. He will be asked whether he would like to have this help and assistance. The Tribunal will write to the claimant separately about this.

The next hearing

79. There is to be a case management preliminary hearing with a time estimate of three hours on a date to be notified to the parties by the Tribunal in due course. This is to consider further information that the claimant needs to provide about the remaining three allegations in his case, and whether the Police Federation be joined as a party to the proceedings, the length of the listed final hearing (currently 5 days in December 2022), as well as any other case management orders.
80. The Tribunal will direct whether or not there also needs to be a "ground rules" hearing to set appropriate directions for how the claimant may best participate in these proceedings in future.

Other sources of help for the claimant

81. The following information is for the claimant: the following information pages indicate which charities may be able to provide him with free legal advice and assistance:

<https://www.london.gov.uk/what-we-do/business-and-economy/employment-rights-hub/find-advice-near-you>

Employment Judge Barker

Date 2 November 2022

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EMPLOYMENT TRIBUNALS

Claimant: Mr M Afzal

Respondent: Commissioner of the Police of the Metropolis

Heard at: London South
Employment Tribunal (by CVP) **On:** 20 September 2022

Before: Employment Judge Barker

Representation

Claimant: In person
Respondent: Mr Hobbs, counsel

JUDGMENT

1. The claimant's claim of unfair dismissal is struck out as the Tribunal has no jurisdiction to hear it, as s200 of the Employment Rights Act 1996 prohibits police officers from presenting claims of unfair dismissal.
2. The claimant's claim for notice monies was not issued in time and was not presented within such further period as was reasonably practicable, as per s93 and s111 Employment Rights Act 1996. The claim is hereby struck out.
3. The claimant's claims arising from events in 2017 and 2018 of race discrimination, disability discrimination, sexual orientation discrimination and discrimination on the basis of religion and belief are struck out as these claims have already been presented to the Tribunal in 2018 and subsequently withdrawn by the claimant in 2019. They cannot be litigated again as this amounts to an abuse of process.
4. The respondent's application that the claims of disability discrimination, race discrimination, sexual orientation discrimination and discrimination on the basis of religion and belief from 2019 and 2020 be struck out because they have no reasonable prospects of success is refused. The respondent's application that the Tribunal make a deposit order because these claims have little reasonable prospect of success is also refused. These claims were not issued in time but were presented within such further time as was just and equitable as per s123 Equality Act 2010 and may proceed.

5. The Tribunal directs that an intermediary may be appointed by HMCTS to carry out an assessment of the communication needs of the claimant to identify any steps that may have to be taken to ensure that there is a fair hearing. The Tribunal will write to the claimant separately about this offer of help.

REASONS

1. The claimant was a probationer police constable with the respondent from 27 March 2017 until his resignation with immediate effect by email on 2 November 2020.
2. These proceedings were issued on 24 March 2021. The parties and the Tribunal, over a number of previous case management hearings and a considerable amount of correspondence, have sought to clarify the issues in the claimant's case. These attempts have been partially successful, and the claimant has clearly struggled to order his thoughts in relation to these claims.
3. The parties agree that the issues for the Tribunal to decide are as set out in the most recent list of issues from June 2022. Although the respondent produced a table for the claimant to complete, and although the claimant has been urged on a number of occasions by the Tribunal to be as brief as possible in describing his complaints, on each occasion his responses have run to several dozen pages of a detailed narrative account of the events he says took place during his time with the respondent.
4. The claimant has a diagnosis of autism, first obtained in 2018 via the charity MENCAP and also in September 2020 from a consultant psychiatrist at the Maudsley NHS Hospital. Copies of the reports relating to these assessments were in the file of documents for this hearing. The claimant himself is, however, adamant that he is not autistic and told the Tribunal that he rehearsed the answers to the psychiatric assessment so that he would get a diagnosis of "something" to protect him from dismissal. On receipt of the diagnosis he rejected it absolutely and continues to do so.
5. The Tribunal asked the claimant whether he would benefit from any adjustments being made to the hearing. He was not able to identify any that would assist. The Tribunal provided him with time to familiarise himself with documents and additional time to answer the respondent's questions, as well as breaks to recover and calm himself, as he became overwhelmed on a couple of occasions. A ten minute break was taken after the claimant began to scream and cry. On resuming the hearing, the claimant told the Tribunal that he considered crying to be "therapeutic" and that he felt better.
6. At the previous hearing on 25 May 2022, the claimant's claims were listed as: unfair dismissal; notice pay; discrimination on grounds of race, disability, sexual orientation, religion or belief, and marriage/civil partnership. The claimant suggested that marriage/civil partnership was no longer an issue in these proceedings but did not go so far as to withdraw his complaint. This is to be clarified at a subsequent preliminary hearing.
7. The issues to be decided at this hearing were discussed on 25 May 2022 and are listed in the case management orders sent to the parties on 16 June 2022 as follows:

(a) Were the discrimination claims issued in time

6.1 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

6.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

6.1.2 If not, was there conduct extending over a period?

6.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

6.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

6.1.6 Why were the complaints not made to the Tribunal in time?

6.1.6 In any event, is it just and equitable in all the circumstances to extend time?

(b) Was the notice pay claim issued in time

6.2 Was the claim for notice pay made within the time limit in article 7 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994?

6.3 The Tribunal will decide:

6.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?

6.3.2 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

6.3.3 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

(c) Can a police officer bring an unfair dismissal claim / was it brought in time

6.4 Whether the Tribunal has jurisdiction to consider the Claimant's claim for unfair dismissal having regard to section 200 of the Employment Rights Act 1996 and the decision in Commissioner of Police of the Metropolis – v- A Lowrey-Nesbitt 1999 ICR 401.

6.5 If the Tribunal finds it has jurisdiction to consider the Claimant's unfair dismissal claim:

6.5.1 Was the claim for unfair dismissal made within the time limit in section 111 of the Employment Rights Act 1996? The Tribunal will decide:

6.5.1.1 Whether the claim was made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?

6.5.1.2 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

6.5.1.3 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

(d) Strike out / deposit order / case management

6.6 If the Tribunal has jurisdiction to consider all or any of the Claimant's claims:

6.6.1 Whether they should be struck out because they have no reasonable prospects of success.

6.6.2 Alternatively, whether the Tribunal should make a deposit order because any specific allegation or argument in the claim has little reasonable prospect of success.

6.7 If appropriate, to make further case management orders for the future conduct of the litigation and to consider whether the allocation of five days for final hearing in December 2022 should be reduced or increased

8. The claimant was ordered to provide a witness statement to respond to the respondent's claims that his claims were out of time. He was asked to say why he did not contact ACAS within three months of his resignation and why he did not submit his claim form within a month of being given the Early Conciliation Certificate by ACAS. The claimant's witness statement is three pages long and he was questioned by the respondent's counsel on it. The Tribunal also asked the claimant some questions on his statement and about some of the other issues in the case.
9. The Tribunal was also provided with a file of documents in this case which was 307 pages long and an opening note from the respondent's representative.
10. During the claimant's answers to questions from the respondent's representative, it became clear that in December 2018 the claimant had issued a claim (using an ET1 form) against the respondent in the London Central Employment Tribunal, about many of the same issues that he complains about in these proceedings. The respondent had understood that although an ET1 had been drafted by the claimant's Police Federation representative in late 2018, no claim had been issued as they had no record of it. The claimant told the Tribunal that he had submitted a claim which had been accepted by the London Central Tribunal, and that following discussions with his Police Federation representatives he had withdrawn the claim by email on 25 January 2019. Although the Tribunal and the respondent were not shown a copy of the email, the claimant read aloud the contents of the email dated 25 January 2019, which clearly stated that he wished to withdraw his claim.
11. Therefore the Tribunal had an additional issue to consider, which was whether the claimant would be barred from bringing the same claims as part of this case as he brought in December 2018 to the London Central ET, and withdrew in January 2019.

The Claimant's Complaints about this Tribunal and allegations of bias

12. The claimant was sworn in to give evidence at 10.30am and his evidence was finished at 12.50. The judge began to explain that the Tribunal would take a break for lunch and that after lunch, each party would be able to make any final comments on the issues to be decided. The respondent's representative made a comment about the fact that there was now an extra issue to decide, in that it may be an abuse of process for the claimant to try to bring complaints in this claim that he had brought and already withdrawn (in January 2019). The Tribunal judge nodded at this reminder, and the claimant then made the following comments:

"I am sensing some emotion from you. You are both of the same ethnic background [the judge and the respondent's barrister are both white] and a colleague who is studying law told me that the Croydon employment tribunal has lots of discrimination of ethnic backgrounds. I feel very uncomfortable. I want a different judge. I want an ethnic background judge that is transparent."

13. The claimant was asked by the judge what the reason was for saying this. He was asked what he based these comments on - had anything been said or done that had caused him concern? His reply was:

"I am not saying you have discriminated. I feel uncomfortable. If you were in my position you would say the same thing. I want a fair case without being judged. I have seen some emotion in you that I think you might make a bad decision"

14. The claimant was asked to explain what the “emotion” he had seen was. His reply was *“I have been told by colleagues there is a lot of racism in Croydon and the judges are very difficult to work with.”* The claimant then began to shout *“I know for a fact that you will make this decision. I have been subjected to racism all my life and I am sick of it. I can’t see what people are thinking and so I want to know if you will be fair.”* The claimant began to cry and scream repeatedly. The hearing was adjourned for ten minutes to allow the claimant to compose himself. On returning to the hearing, the claimant told the Tribunal that he was feeling better.
15. The Tribunal told the claimant that it was not possible for him to request a judge from a particular ethnic background. The claimant was also told that the judge would not be recusing herself and finding another judge, as he had given her no evidence or reason as to why her conduct was a problem. Further, it was clear to the Tribunal that the reason for the claimant’s sudden complaint was that the judge had nodded in response to the respondent’s representative reminding her that there was an extra issue to consider, that of abuse of process. This was a statement of fact, and the judge had, by nodding, agreed that this was an extra issue for the Tribunal to consider. However, the claimant had clearly taken this as an indication that the Tribunal had decided that the respondent had already won in some way.
16. The claimant was told that the Tribunal would take a break for lunch and that it would be a good idea for him to think about this complaint over the lunch break. The judge told the claimant that judges were appointed by an independent panel, and underwent a lot of training in relation to discrimination, including awareness of conscious and unconscious bias. The judge emphasised that the law was applied to all parties equally in the Tribunal. The judge offered again to explain the legal tests that would be applied in this case, an offer which had been made at the start of the hearing which the claimant did not accept and did not accept on this occasion. The judge told the claimant that she had listened very carefully to the points made by both parties and had made a careful note of what had been said. The judge said that she understood that the claimant felt very strongly about the issues in the case.
17. The claimant then said that he was sorry *“if I have generated any offensive emotion in you and if I have said something to cause that.”* The judge said that it was not a problem. The hearing was adjourned for an hour for lunch. On resuming the hearing, the judge summarised the discussion that had taken place before lunch and the claimant said *“with all fairness, I wish to be treated fairly. I can’t read anyone’s mind, I wanted to be open.”* The judge said that she understood that he wished to be treated fairly, and noted that simply because someone was white, it did not follow that they would be racist.
18. The judge reminded both parties that also, either of them could ask for a reconsideration any of the Tribunal decisions or that they could appeal to the Employment Appeal Tribunal. The claimant then said *“you have already made your mind up about this, as you have just said I could appeal”.* The judge reminded him that this was not what she had just said, and that the right of appeal was a right anyone had.
19. The claimant was asked whether anything else might be helpful in terms of adjustments to the hearing. The claimant described issues he had with his emails

and his Google subscription and the effect this had on his deadlines, which are issues not within the control of this Tribunal.

20. The respondent said that if the claimant was continuing to ask that the Tribunal recuse itself, that they would object to this request. The claimant said he was not, and was prepared to carry on with the hearing.
21. At the conclusion of the discussion, the claimant apologised again to the Tribunal. He was told that this was not necessary and that the judge understood that this process was very stressful and emotional for him. He was reminded though that it was not in his interests to allow himself to shout and become hysterical again if he could avoid this, as the Tribunal needed to be able to hear and understand what he wanted to say.
22. However, the claimant struggled considerably to avoid interrupting the respondent's closing submissions and had to be reminded repeatedly to let the respondent's representative finish, and he was reminded repeatedly that he would have his opportunity to speak afterwards. The hearing concluded with both parties having made closing statements and the parties were told that a reserved decision with reasons would be sent out as soon as the Tribunal was able to do so.

The Involvement of an Intermediary in Future Proceedings

23. Having spoken to the claimant over the course of this preliminary hearing, which lasted from 10.15am until 3.15pm, with a one-hour break for lunch, the Tribunal considers that there exists communication difficulties which impede the claimant's ability to participate in the hearing and future hearings and which may jeopardise a fair trial.
24. The claimant has struggled to follow these proceedings and give best evidence, and has struggled to manage his interactions both during the hearing and in correspondence. He was clearly highly distressed and was also confused during this hearing, despite the ongoing assistance of the respondent's counsel and the best efforts of the Tribunal to ensure fair participation.
25. It is noted that the claimant vehemently denies that the diagnosis of autism from both MENCAP and the Maudsley Hospital consultant psychiatrist is correct. He is adamant that he is not autistic. However, that notwithstanding, the claimant frequently expressed his own disorientation, confusion and anxiety and his inability to follow the proceedings. He also had difficulty in providing answers to questions and in following the judge's instructions.
26. For this reason, an intermediary should be appointed by HM Courts and Tribunals Service to carry out an assessment of the claimant's communication needs and to identify any steps that may have to be taken to ensure that there is a fair hearing.

The Claimant's Complaints

27. The parties' work in drawing up a list of the claimant's complains was very helpful. The claimant has also produced extensive documents with a lengthy account of what he says happened to him while working for the respondent. He repeated a number of these accounts in answer to questions from the respondent's representative and the Tribunal.

28. It was clear that the vast majority of his complaints relate to the claimant's time at Hendon training centre and then at Colindale station. The claimant was absent due to sickness from Colindale as of 23 July 2018 and after his return at the end of December 2018, he transferred to Wembley station. The claimant's written account of his time at Wembley and his account during this hearing was that he didn't have problems at Wembley, although he did find it stressful when those who he worked with at Colindale visited Wembley, or he encountered them again during his work.
29. The claimant's complaints in these proceedings about his time at Hendon and Colindale are those set out in his 2018 application to the London Central ET, which complaints date from 2017 and 2018. There is also one ongoing complaint which started in 2018 and continued to November 2020, relating to the claimant being put on restricted duties. There are also two separate complaints relating to events in September and November 2020 following the confirmation of his diagnosis with autism.
30. From reading the claimant's narrative accounts and from listening to his evidence during this hearing, he does not complain about any other issues to do with the respondent, although he does complain about the Police Federation. The claimant's complaints about the Police Federation are dealt with separately below.
31. The table ("Scott Schedule") drawn up by the respondent from the claimant's pleadings and added to by the claimant relates very clearly to these two distinct periods of time – one period in 2017 and 2018, and then a second period in September to November 2020.
32. The Appendix table in the parties' agreed list of issues identifies the complaints as follows:
 - a. Failed officer safety training Hendon training centre 23rd August 2017;
 - b. "The trainers made life miserable and hostile" Hendon training centre Approx. 27/06/2018 – 28/11/2018;
 - c. "Subjected to hostile shouting" at Colindale Police Station Approx. 17/04/2018 – 21/11/2018;
 - d. "Subjected to belittling" at Colindale Police Station, approx. 27/03/2018 – 23/11/2018;
 - e. "Put in danger by a driver who was not trained to drive IRV" at Colindale Police Station, June 2018;
 - f. "Called a cunt" while stationed at Colindale Police Station, approx. 8/1/2018-24/3/2018;
 - g. "Told I smell of garlic" while stationed at Colindale Police Station, approx. 8/1/2018-24/3/2018;
 - h. "Various name calling" while stationed at Colindale Police Station, approx. 8/1/2018-24/3/2018;
 - i. "Penis picture put on my Met vest" while stationed at Colindale Police Station, 24/06/2018;
 - j. "Officer farting and waving the odour towards me" while stationed at Colindale Police Station, 31/12/2017-21/01/2018;
 - k. "The acts of Supt Roy" who made recommendation for dispensation to AC Ephgrave on 5/11/2020;
 - l. "Mistreated" throughout tenure at Colindale Police Station approx. 17/08/2017-26/07/2018;
 - m. Placed on restricted duties while at Colindale Station and Wembley Station, 27/03/2018-21/11-2019;

- n. "Dismissal" resigned due to the "mistreatment throughout my tenure" 2/11/2020.

The Claimant's Complaints About the Respondent After January 2019, until November 2020

33. From the information before this Tribunal it is clear, and was confirmed by the claimant in evidence, that the claimant believed that if he was diagnosed with a mental impairment or mental health condition, he would be protected from dismissal. He had been on probation for a number of years and did not appear to be likely to complete the probation process.
34. He appears to have accepted that he may be autistic in his grounds of complaint in 2018, as this was part of his earlier claim for disability discrimination.
35. From the information before this Tribunal, it would seem that the claimant only began to say that he was not autistic in late 2020, when it became clear that this may be a reason for the respondent not extending his probationary period further and that, instead of protecting him from being dismissed as a probationer, it may be a significant factor in causing this dismissal.
36. The claimant's allegations which occurred in the period from January 2019 until his resignation are (k), (l) and (m) in the List of Issues and the Further and Better Particulars. Each of these are said to be acts of direct discrimination and/or harassment on the basis of the claimant's perceived (but not actual) disability, race, sexual orientation and/or religious beliefs. They are:
- i. He alleges that he was recommended for dismissal (for "dispensation") by CS Roy Smith to AC Ephgrave in November 2020;
 - ii. He alleges he was still on restricted duties at Wembley station until his resignation;
 - iii. He alleges that he was forced to resign in November 2020 due to his ongoing mistreatment by the respondent.

The Law

37. The Employment Tribunal Rules of Procedure 2013 deal with strike out orders at rule 37 and deposit orders at rule 39. In the claimant's case, the respondent alleges that strike out is appropriate because the claims have no reasonable prospect of success (rule 37). In the alternative, the respondent alleges that a deposit order should be made because the claims have little reasonable prospect of success (rule 39).
38. Tribunals are cautioned against striking out claims at an early stage in the proceedings where there are disputed factual issues and/or where an issue is fact-sensitive, and the bar for doing so is high. In such situations, it is highly unlikely that a strike-out will be appropriate (as per *Cox v Adecco & Ors UKEAT/0339/18/AT*).
39. Cause of action estoppel applies where a decision in relation to a claim has been made in earlier proceedings and a party to those proceedings tries to make that claim again in new proceedings. This applies where there has been a "decision" in those proceedings and where there are no real differences in the claims being brought. Even where there has been no judicial "decision" in a claim, it may still be

an abuse of process to try to bring a claim for a second time that has been brought and withdrawn before.

40. In *Johnson v Gore Wood and Co 2002 2 AC 1, HL*, Tribunals are advised to take “a broad, merits-based judgment which.... takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before” (as per Lord Bingham).
41. Where bias is alleged during a hearing, the Tribunal must allow discussion of the matter by the parties with the Tribunal as to the best way to proceed. (*Locabail (UK) Ltd v Bayfield Properties Ltd and other cases 2000 IRLR 96, CA.*)
42. Discrimination complaints are subject to the time limits set out in the Equality Act 2010 at s123(1), as follows:

“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 to which the complaint relates, or
 - (b) such other period as the employment tribunal thinks just and equitable.”
43. The Tribunal must consider a number of factors in deciding whether a claim presented late can still be considered on a “just and equitable” basis.
44. These include, but are not limited to, the prejudice each party would suffer as a result of the decision reached, and the circumstances of the case, such as the length of the delay and the reasons for the delay, the extent to which the evidence might be affected by the delay and the steps taken by the claimant to obtain advice once he knew of the possibility of taking action.
45. It is not the case that it is never just and equitable to extend time where there is no good explanation for the delay. *Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194, CA* held that any explanation put forward by the claimant is a matter that the Tribunal should consider but is not the deciding issue of whether or not the Tribunal should extend time.
46. Where a claim for notice pay under s86 Employment Rights Act 1996 is presented late, the Tribunal may only extend time for its presentation when, as per s93 and s111 Employment Rights Act 1996, it was not reasonably practicable to submit the claim in time and if it was submitted within such further period as the Tribunal considers reasonable.

Application of the Law to the Facts Found

Was the claimant an employee?

47. It is the respondent’s case that the Tribunal has no jurisdiction to consider the claimant’s claim for unfair dismissal. This is because s200 of the Employment Rights Act 1996 and the decision in *Commissioner of Police of the Metropolis – v- A Lowrey-Nesbitt 1999 ICR 401* excludes police officers from being able to claim unfair dismissal and so the claimant has no right to do so. The claimant did not offer any argument on this point.

48. The Tribunal accepts that the respondent's position is correct, and as the claimant was a probationary police officer, the Tribunal has no jurisdiction to consider his claim for unfair dismissal as per s200 ERA 1996.

The Claimant's Claim Issued in December 2018

49. The claimant included his ET1 particulars of complaint from 2018 as part of his response to the respondent's request for further information in this case. It is clear that the issues in this case are essentially unchanged from the case in 2018.
50. The claimant, I find, wishes to bring again those claims presented to the Tribunal in December 2018 and withdrawn in January 2019. Rule 51 of the Employment Tribunal Rules of Procedure 2013 states that a claim "comes to an end" when a claimant informs the Tribunal that he wishes to withdraw his claim. The claimant did not say, when he withdrew his claim, that he wished to reserve his right to bring any further claim. He withdrew in unequivocal terms.
51. Having made enquiries with the Tribunal administration following this hearing, it would appear that no dismissal judgment was issued by the London Central Tribunal in 2019 following the claimant's withdrawal. There would therefore appear to have been no "decision" of the Tribunal in the claimant's case and therefore cause of action estoppel does not apply to the claimant's case as this requires a "decision" of the Tribunal to have been issued.
52. However, are the claimant's actions here an abuse of process? Is it possible for the claimant to bring again, claims he has already issued in the Tribunal and withdrawn? This claim (2301186/2021) contains the same matters and claims as the first, as far as the events of 2017 and 2018 is concerned. The claimant was advised by the Police Federation in relation to his earlier claim, and withdrew having taken advice from them.
53. Should the claims the claimant now wishes to bring in relation to 2017 and 2018 have been brought earlier? I find they should have. There are no special circumstances before the Tribunal that apply. The claimant was advised by the Police Federation but they withdrew their support for the Tribunal proceedings after they were submitted. The claimant told the Tribunal that the Federation told him that if he continued with the claims he would face "a large barrister's bill" that he would have to pay for himself. I do not accept that this was the primary reason for the claimant withdrawing his claims. As the claimant has demonstrated to this Tribunal, it is possible for a claimant to appear without legal representation and the claimant does so on this occasion.
54. I find that the more likely reason that the claim was withdrawn in 2019 was because the respondent had taken action to move the claimant from what the claimant clearly found to be a difficult and stressful working environment in Colindale Station, to Wembley Station.
55. I also find that the claimant had the expectation of receiving further assistance from the respondent as a result of the ongoing investigations relating to his diagnosis of autism at the time. He had been assessed by MENCAP on 13 August 2018 and given an 80% likelihood that he was autistic. He was diagnosed again by the NHS in June 2019 and there is a letter before the Tribunal dated 18 September 2020 from the claimant's consultant psychiatrist Dr Anastasios Galanopoulos providing a conclusive diagnosis of autism for the claimant. It was the claimant's

understanding, he told the Tribunal, that if he was diagnosed with a disability that he would be protected at work. I find that it is highly likely that the claimant withdrew his claims in 2019 as a result of his move to Wembley and his belief that his provisional diagnosis of autism would protect him in the workplace.

56. Since then, the claimant had a relatively uneventful period working at Wembley station and told me that there were “no problems” at Wembley, although he did express frustration that he was carrying out restricted duties. It is highly likely that the reason the claimant seeks to revisit his complaints from 2017 and 2018 is the change in circumstances, in that the passage of time and his conclusive diagnosis of autism caused him to understand that the respondent was about to dismiss him.
57. However, these reasons are unrelated to the claims from 2017 and 2018 themselves. There has been no change in those claims and the claimant has no new evidence to provide in relation to the issues in 2017 and 2018. He chose to withdraw the claims in 2019 and did so with advice from the Police Federation. Although his relationship with the respondent has now broken down entirely, it has done so for different reasons.
58. The claimant’s conduct in attempting to begin the claims from 2018 again amounts in all the circumstances to an abuse of process. He seeks to begin that claim again in 2021, as a result of changed circumstances and a breakdown in his relationship with the respondent for a different reason. I do not find that this amounts to justification or is excused by special circumstances.

The Claimant’s Complaints About the Respondent After January 2019, until November 2020 - the respondent’s application to strike out the claims or for a deposit order

59. It is the respondent’s application to this Tribunal that the remaining allegations be struck out because they have no reasonable prospect of success. However, as is made clear to Tribunals in a number of precedents, including *Cox v Adecco and ors 2021 ICR 1307, EAT*, that fact-sensitive cases of discrimination must be taken at their highest in deciding whether they have no reasonable prospect of success.
60. At this preliminary hearing, the claimant was wholly unable to identify facts that indicate he may be able to show that the respondent was racist, or prejudiced against the claimant on the basis of his sexual orientation or religious beliefs in 2019 and 2020. There is some evidence from which the Tribunal could conclude that his claims of disability discrimination have more than little reasonable prospects of success, taking his case at its highest.
61. In relation to the complaints of disability discrimination, it would appear that the respondent did move to end the claimant’s extended probationary period once the full and formal diagnosis of autism was received. It is also clear that the claimant did remain on restricted duties at Wembley station. Whether this was an act of direct discrimination or harassment is a matter for a full examination of the facts at a final hearing. It is also clear that the claimant resigned once he understood that a recommendation for dispensation may be made by CS Roy, but says that this was on the recommendation of his Police Federation representative, who he suggests tricked him or deliberately gave him poor advice in some unspecified way.
62. The claimant has repeatedly made complaints that the respondent is institutionally racist, but in relation to the three claims in paragraph 36, he is not able to provide

any information as to why this is the case. He makes broad allegations of institutional racism and when asked for specific examples from 2019 and 2020, refers back to his treatment in 2017 and 2018. This is despite the extensive further particulars and the extensive discussions concerning the claimant's claims. All of his evidence in this regard is from 2018 or earlier.

63. The claimant has provided the Tribunal with no information whatsoever as to how he says the respondent discriminated against him on the basis of his sexual orientation or religious beliefs in 2019 and 2020.
64. It was clear to the Tribunal during this hearing that the claimant is solely focussed on his treatment during 2017 and 2018. Despite the respondent and the Tribunal's best efforts to divert the claimant's attention to the 2019 and 2020 allegations of discrimination on the basis of race, sexual orientation, religion and belief and disability, his focus did not change. The Scott Schedule and list of issues in relation to 2019 and 2020 is extremely brief. The claimant was not able to provide any further detail of these allegations. He was not able to answer direct questions about why it was that he alleges that any of this treatment was on the grounds of those protected characteristics. This is part of the Tribunal's grounds, set out above, for directing that an assessment be done to consider whether an intermediary would be able to provide assistance in this regard.
65. As to the current state of the claimant's pleaded case, it remains unclear. It would not be in the interests of justice to allow the claims to be struck out on this basis at present. As stated by the EAT in *Cox v Adecco & Ors*, UKEAT/0339/19: "put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is".
66. It is hoped that the narrowing of the scope of the claimant's claims resulting from this judgment, and the possible future involvement of some form of assistance (either by way of an intermediary or legal advice or representation) will allow the claimant to provide the clarification needed. If the respondent considers that it wishes to re-apply for strike out or a deposit order, that would be an option open to them at that stage.

The Claimant's Claim for Notice Pay – Was it presented too late and does it have no reasonable prospect of success?

67. The claimant claims for notice pay following his resignation on 2 November 2019. It is the respondent's case that this claim (and in fact all of the claimant's claims issued in these proceedings in 2021) has been brought to the Tribunal too late, as it was presented to ACAS Early Conciliation on 12 February 2021 outside the three month period for the claimant to do so, which expired on 1 February 2021. The ET1 claim form was then also not presented sufficiently promptly after ACAS Early Conciliation finished, which was on 15 February 2021. The ET1 was not presented to the Tribunal until 24 March 2021.
68. The claimant's witness statement which was prepared for these proceedings deals almost exclusively with the periods of time around the submission of his first claim in 2018. The final paragraphs of his witness statement prepared for this hearing, states:

"It is only to the time I have been affected by the mental distress, anxiety, bullying, health problems, the cause of diabetes, ketosis due to the stress caused at work, constant time pressures with narcissistic, Ostracised, hostile

environment thus made to feel I have a disability such as autism (diagnosis letter sent dated 24th January 2020) and pressured to take an autism test and be diagnosed with whilst the negativity. The true causes of the mental health at Metropolitan Police of those involved that I wished to pursue this claim with integrity and honesty of those matters that has deeply affected me for lifetime. Only when I have been able to and known to submit the claim I had submitted to the best of my ability whilst having no qualified or prior knowledge of submitting the claim whilst being oblivious to the court set procedures of deadlines; in affect has been due to my health and condition at the time.

The aligned symptoms, time pressure at work, Hostile environment, anxiety and depression, low self-esteem due to the Met Federation conducts, confusion of systematic approach to the procedures and deadlines all have been the part at play to the position I was in whilst suffering from the physical mental health at the time into submitting the Employment Tribunal claim and to ACAS as I did NOT have the available details and explanations to 'HOW' 'WHEN' 'WHO' to submit the claim TO, thus leading to these challenges I have submitted the claim with a 'BLANK' knowledge ONLY when I have been able to; whilst working Full Time under pressure at Metropolitan Police.

69. On 21st June 2022, the Claimant sent an email explaining why his ET1 was issued out of time, which stated

"I was misled and confused by the dates and deadlines for the submission of my claim. I did NOT have a very helpful federation representative to allow me to follow and pursue the claim and I was under a lot of distress in which I still was facing anxiety and depression at the time.

I was assigned to PC Dan Lichters who represented me was unavailable and at times very dismissive to my claims and I did my best to submit my claims and on time but he had confused me with the dates whilst working full time and completing other tasks.

I did not know the dates and it was very unclear to me with Dan Lichters who did not give me a clear understanding of submitting an employment tribunal claim whilst smirking at me and stating he won a large case and to Google his name as he won large sums of money and is still in the job.

I sincerely did my best to get the dates and on time whilst going through anxiety and depression and working at Wembley Police station."

70. The evidence that the claimant was busy working full time and so could not submit the claim in time in 2021 is not accepted, as the claimant told the Tribunal he was not working then, following his resignation in November 2020. He has submitted no medical evidence from that time in February 2021 to support those assertions. He has submitted no evidence that his Federation representative misled him over the dates and deadlines involved. However, it is clear that he had Police Federation involvement at the end of his employment.
71. The claimant has litigated in the Employment Tribunal before, with Police Federation representation. It is therefore not reasonable for him to assert that he was entirely ignorant of the deadlines involved. It was also not reasonable for him to have seemingly made no enquires, or no online searches, as to what those deadlines might be.
72. On the balance of probabilities the claimant has not established that it was not reasonably practicable for him to have approached ACAS by 12 February 2021, or submitted his claim form within one month of ACAS Early Conciliation finishing.

The test to extend time in breach of contract claims involves claimants having to show that it was not reasonably practicable to comply with the relevant deadlines and the claimant has not done so on this occasion.

The Claimant's Allegations Against the Police Federation

73. It is the claimant's repeated case that the Police Federation put pressure on him to resign and refused to support him in pursuing his complaints at the time of his resignation in November 2020. His witness statement states:

"I am of Asian gay male background and I have constantly been treated lesser of than a white Caucasian male at work and in the federation who are in charge of the disciplines of the federation in which are clearly biased, prejudice and discriminate against ethnic backgrounds and will Not allow them to succeed in any way in complaints or funding of a case.

I truly feel that I have been subjected to discrimination within the federation with lack of support and confidence in my claims in how to submit, unknown clear deadlines to submit my application whilst under pressure working full time.

On previous occasions when appointed to a federation who was available at the time, I only had those federation members who were dominantly white Caucasian had told me 'you should resign', after intensive 7 weeks internal certificate of knowledge of Policing, the training school of upto 12+ weeks in learning practical and knowledge then after the successful completion of training assigned to Borough the federation had told me to resign."

74. The Federation are not parties to these proceedings. The respondent cannot be held liable for any acts or omissions of the Police Federation. It may be appropriate to consider, at a future case management hearing, whether the claimant wishes to apply to join the Police Federation as a party to the proceedings, given the allegations he has repeatedly made against them. This may be possible under s112 Equality Act 2010, which makes any person who knowingly aids any act of unlawful discrimination liable for the discriminatory act himself. Alternatively, rule 34 of the Employment Tribunal Rules of Procedure 2013 allow a Tribunal to add a party where there are issues between that person and any of the existing parties which it is in the interests of justice to have decided in the proceedings.

The Claimant's Discrimination Claims to this Tribunal – Are they presented too late?

75. The claimant approached ACAS to engage in early conciliation eleven days late. Early conciliation ended on 15 February 2021, but the claimant did not submit his ET1 claim form until 24 March 2021. In assessing whether to allow a just and equitable extension of time for these claims to be presented, the Tribunal must consider the prejudice each party would suffer as a result of the decision reached, and the circumstances of the case, such as the length of the delay and the reasons for the delay, the extent to which the evidence might be affected by the delay. In the claimant's case, the length of the delay was not significant. The evidence would not be affected by an eleven day delay in starting ACAS Early conciliation, or a delay of a few weeks in submitting the ET1 thereafter.

76. The relative prejudice suffered by the parties falls in favour of allowing the claims to proceed. The claimant would be without a remedy for his complaints altogether were the discrimination claims rejected, as all of his other claims have been struck out for a number of reasons, as set out in this judgment. It is clear that the claimant

has experienced a number of issues at work and it is in the interests of justice to allow those claims to be considered by the Tribunal. It is clear that the claimant has also struggled with difficulties elsewhere in his personal life and that these have significantly affected his mental health. The circumstances of the case are that the Tribunal should exercise its discretion in the claimant's favour in relation to this issue and allow a just and equitable extension of time.

Next Steps:

The claimant's remaining claims

77. The claimant's remaining claims that may continue are as follows: That the following three allegations are incidents of direct discrimination and/or harassment on the grounds of perceived disability discrimination, race discrimination, sexual orientation discrimination and/or discrimination on the basis of religion and belief:
- i. He alleges that he was recommended for dismissal (for "dispensation") by CS Roy Smith to AC Ephgrave in November 2020;
 - ii. He alleges he was on restricted duties at Wembley station from January 2019 until his resignation;
 - iii. He alleges that he was forced to resign in November 2020 due to his ongoing mistreatment by the respondent.

The offer of an intermediary to help the claimant with communication

78. The claimant will be offered the opportunity to have an intermediary to help him participate in the Tribunal process to help him understand and communicate with the Tribunal. He will be asked whether he would like to have this help and assistance. The Tribunal will write to the claimant separately about this.

The next hearing

79. There is to be a case management preliminary hearing with a time estimate of three hours on a date to be notified to the parties by the Tribunal in due course. This is to consider further information that the claimant needs to provide about the remaining three allegations in his case, and whether the Police Federation be joined as a party to the proceedings, the length of the listed final hearing (currently 5 days in December 2022), as well as any other case management orders.
80. The Tribunal will direct whether or not there also needs to be a "ground rules" hearing to set appropriate directions for how the claimant may best participate in these proceedings in future.

Other sources of help for the claimant

81. The following information is for the claimant: the following information pages indicate which charities may be able to provide him with free legal advice and assistance:

<https://www.london.gov.uk/what-we-do/business-and-economy/employment-rights-hub/find-advice-near-you>

Employment Judge Barker

Date 2 November 2022

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