



EMPLOYMENT TRIBUNALS

Claimant: Fatima Turay

Respondents: Phew Foods Limited and others

Heard at: London Central (by CVP) **On:** 13 January 2023

Before: Employment Judge N Walker

Representation

Claimant: Ms C Mallin-Martin of Counsel

Respondent: Ms A Ahmad of Counsel

WRITTEN REASONS

The Preliminary Hearing

- 1 The purpose of this Open Preliminary Hearing was to consider three matters.
 - 1.1 What act or acts does the Claimant say were committed by each of the Respondents and when?
 - 1.2 Did those act or acts amount to conduct extending over a period so that the claim or any part of it is in time?
 - 1.3 If not, does the tribunal consider it just and equitable to extend time?
- 2 The Claimant had supplied a schedule of the acts complained of, and it was accepted by the Claimant and all Respondents that the last event was her resignation and that accordingly the claim is out of time by reference to the primary time period. The ET1, was due around 22nd or 23rd of January 2022. For the purposes of this application, I will treat 23 January 2022 (being the later date and thus more favourable to the Claimant) as the relevant date.
- 3 In the light of the fact that, even if the acts complained of amounted to conduct extending over a period, the claim cannot be in time, the most important issue is whether or not this Tribunal considers it just and equitable to extend time. I therefore focused on that question first.

The Law

- 4 Section 123 of the Equality Act 2010 provides:

(1) *Subject to section 140B, proceedings on a complaint within section 120 may not be brought after the end of—*

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

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

(3) *For the purposes of this section—*

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) *In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—*

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

- 5 The case of the Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327 noted that the Tribunal has a broad discretion over this question. The case of Abertawe Bro Morgannwg University Local Health Board v Morgan UKEAT/0320/15 addressed the burden which lies on the Claimant to satisfy the tribunal that it is just and equitable to extend time. At the Court of Appeal it was pointed out that there is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the Claimant.
- 6 The Limitation Act has been referenced as a useful guide to the factors which should be considered, but it is no more than that. It is clear that the Tribunal should normally consider factors such as the length of delay and the reasons for it as well as whether the delay has prejudiced the responsibility to investigate the claim will defend it but the most important factor is the balance of prejudice test.
- 7 It is also reasonable to look at the potential merits of the claim.
- 8 The case of Miller v Ministry of Justice UKEAT/0003/15 identified two types of prejudice which Respondents will inevitably suffer when there is an extension of time, the first of which being the obvious prejudice of having to defend a claim which otherwise would have been defeated by a limitation defence and the second being the forensic prejudice of fading memories, loss of documents and losing touch with witnesses.

The Evidence

- 9 I had a bundle of documents and a witness statement from the Claimant. The Claimant gave evidence. The Respondent did not submit any witness evidence.

Facts

- 10 The Claimant worked for the Respondent from approximately 13 May 2021 to June or July 2021 when she left but a week later approximately she re-joined. No one appears to have an exact record of that gap in her employment. According to the Claimant's resignation when she ended her employment, it was the 3rd resignation. I have no information about the second resignation.
- 11 The Claimant's resignation was submitted by e-mail on Saturday 23 October 2021. In that e-mail the Claimant said she would not be coming in anymore. Her e-mail said both that she had been unhappy for a long time and also thanked the Respondent for the opportunity to grow within the business and "ongoing support from you and all the team".
- 12 Given the date of the resignation, the Claimant should have gone to ACAS or filed an ET1 by 22nd or 23rd of January 2022. In fact, the Claimant initiated the ACAS process against the First Respondent (which was the company which employed her) on 10 May 2022 and that conciliation continued until 18 May 2022. The Claimant submitted the ET1 against the First Respondent on 18 May 2022. She then discovered that she could bring claims against private individuals and decided to do so in relation to three individuals which she did by filing a second tribunal claim. The Claimant applied to ACAS on the 23rd of May and received certification from them on 25th May and filed an ET1 against them on 26th May 2022.
- 13 Both claims are before me. The Claimant's claim has been dismissed against an individual respondent so that there is now a claim against the former employing company and the second and third Respondents, who are individuals she had worked with.
- 14 I was encouraged to consider the Claimant's application for a just and equitable extension in two stages. First, I was encouraged to look at the primary period. That is the period when the Claimant was required under the standard rule to institute her Tribunal claim or contact ACAS. i.e., from her employment ending up to 23 January. In that period, the Claimant explained that she was feeling low. It is clear that the Claimant had been on antidepressant medication since April 2021. In May 2021 she was assessed with severe anxiety and moderate depression and that appears to have remained the case. As I have noted, her employment with the Respondent commenced on 13 May 2021.
- 15 On 23 October 2021, the Claimant left the employment of the First Respondent and on 5 November 2021, (i.e., approximately two weeks later), she suffered an experience which she regarded as a sexual assault. I have no information about precisely what occurred, and it is not for me to label it officially as such. What is clear is that the Claimant suffered a traumatic experience.
- 16 The Claimant reported this experience to the police on 5 December 2021. Thereafter the Claimant was dealing with the police but on 30 December 2021 the Claimant went to hospital having taken a staggered overdose of co-codamol. She was allowed home on 1 January 2022 into the care of the Community Mental Health Treatment Team who are a crisis team who visited her daily to ensure she took her medication. The Claimant was discharged by the crisis team on 21 January 2022 according to her letter of 8 August 2022 sent to the Employment Tribunal.
- 17 During December 2021 and into January 2022 the Claimant was involved with contacting the police and following up on the sexual assault report she had made. As I have noted, the Claimant should have contacted ACAS or tried to file an ET1 by 23rd January 2022. Given the overdose and the fact that the Claimant was under care of the crisis team for much of this time, I have no doubt that the Claimant was still suffering from the trauma that led her to overdose and that it is just and equitable to

extend time in relation to this first period.

- 18 I am then asked by the Claimant to look at the second period which is the time between the date when she should have filed and the date when she actually did. The question is how long the just and equitable extension should apply for. The Claimant did not bring her claim until May 2022, so it is necessary to examine the period between the end of January 2022 and May 2022 and to balance the prejudice to the parties of an extension.
- 19 There are two documents from the Claimant which explain the reasons for the delay, being the Claimant's application for an extension of time and her witness statement as well as some letters of support from a rape survivors support organisation called NIA and a letter and records from the Claimant's GP and hospital. The Claimant gave evidence and was questioned about her situation.
- 20 The Claimant wrote to the Employment Tribunal on 8 August 2022 asking for a just and equitable extension of time. In her application letter of 8 August 2022, the Claimant explains firstly why she could not submit the claim in the primary time limit before the deadline expired and then argues that she had further difficulties in the period between 23 January to 10 May 2022 which is the period that concerns the extension. The matters that she puts forward in that letter and which asks the Tribunal to consider are that although she was discharged from the crisis team, she was still suffering significantly from these psychiatric symptoms. She says that before submitting the claims she tried to look for work, arranging 3 trial shifts, but because of the severity of her symptoms she could not attend and stopped her work search. She has a work coach who was aware of it and it was then she realised she needed to make a claim. She explained that she lives on her own as a single adult and as a care leaver she has no parent, legal guardian or partner to assist her with submitting the claim. She also refers to the difficulty of writing a detailed statement and filling out forms in relation to the events experienced while in the First Respondent's employment and additionally states that she had applied for legal aid during the period and was denied twice by her union and another organisation. She says she is not well versed in legal proceedings, and this was her first ever claim for compensation. She was not aware of the deadlines and the possibility of claiming compensations from individuals alongside the company. She was denied aid from the union because she wasn't registered with them long enough and denied aid from the other organisation as they do not provide legal advice. She submitted the claim without legal aid after going through that process she finally received legal aid on 20 July 2022.
- 21 Employment Judge Norris held a preliminary hearing for case management purposes on 3 October 2022. EJ Norris both ordered this hearing and gave directions for the preparation for it. In preparation for this hearing, the Claimant was to submit a witness statement. EJ Norris made clear in her order what the Claimant's witness statement should address. Specifically, the order states:
- "This statement must say when the Claimant knew about her right to bring a claim and specifically what prevented her from starting the proceedings earlier than she did This should include the Claimant's evidence in relation to both the period before the deadline expired and the period between the expiry of the deadline and 10 May 2022".*
- 22 In her witness statement the Claimant says that between the date of the expiry the deadline in January 22 and the date of the ACAS submissions in May 2022 she was slowly improving her day-to-day life although she was unable to attend therapy appointments or socialise and solely relied on her medication to feel better. The Claimant produced a GP's letter which explains the Claimant's interaction with their practice and states the Claimant was referred to the NEFLT Psychology Service on 28 February 2022. It is not clear she would actually have received their services for a while after this, however.

- 23 The Claimant did in fact get some support as she also told the Tribunal that as a result of her report to the police, she was put in touch with NIA, which refers to itself as East London Rape Crisis, an organisation which assists women in such circumstances. NIA's letter of 27 October 2022 describes their function as supporting survivors to access information about their rights and options, liaise with the police and court services, attend court and police interviews, and empower and support victims/survivors to make informed choices to retain as much control as possible over their own lives and safety. They say they offer tailored support to women accessing their services based on their individual needs. NIA state the Claimant was had been known to them since December 2021. She accessed their women's workshops between January 2022 and February 2022 and began receiving support from their short term casework team and counselling team in April 2022 which remains ongoing (as at 27 October 2022). The Tribunal understand this support included some group sessions and a 1:1 online which the Claimant did attend.
- 24 In her evidence the Claimant explained that in March 2022 the alleged perpetrator of the sexual assault was interviewed by the police and at that time he made an allegation that the Claimant's report was a malicious allegation. Eventually the Claimant's complaint and the alleged perpetrator's charge of malicious reporting were both dropped by the police, although the Claimant has now made an application for the police to reconsider reviving her allegation. Nevertheless, there were times in March which would have been difficult for the Claimant.
- 25 In her witness statement the Claimant says that in April 2022, when she started to see progress in her health, she began to apply for jobs feeling as though she might return to work. She said she had arranged some trial shifts and then realised the concept of returning to work was triggering her post traumatic stress disorder and causing flashbacks of her previous work experience. Instead of going to the trial shifts, she agreed with her work coach that she would try social prescribing which she was also not able to attend and then she agreed to submit fit notes in the light of her health conditions. The Claimant was required to keep a journal for the purposes of her work search which would have set out the steps she had taken to find work, but she did not produce this to the Tribunal. She told the Tribunal that she had asked her work coach to write a letter of support but unfortunately that person was unwell and so did not have the opportunity to write the letter of support.
- 26 Without the Claimant's journal, I do not have exact details of the dates when the Claimant was asked to carry out the trial shifts. The Claimant thought that she got the point of looking for jobs around about April.
- 27 The Claimant was hazy about all the dates, and she got one date completely wrong saying the discharge from the Crisis Team was in February when there is clear documentary evidence it was on 21 January 2022. I don't criticise her for this as it can be difficult to recall dates, but, where possible, I have tried to establish dates from other records.
- 28 According to the GP's letter, the Claimant sought fit notes in January, and again on 17 March 2022 and consulted her GP on 31 March 2022 as a result of which the dosage of her anti depression medication, sertraline, was increased. She was then issued with a fit note for the period from 4 April to 4 May due to ongoing low mood and inability to work. She consulted the practice again on 12 May regarding anxiety and panic symptoms and again on 23 May when she consulted again regarding PTSD symptoms and a referral was made to the secondary care mental health team. She was seen in hospital on 3 July 2022 following an overdose of paracetamol.
- 29 If the period when the Claimant began to research her legal options was triggered by the Claimant having been unable to attend the trial periods after which the Claimant agreed to submit fit notes, it was probably in late March rather than April as the

Claimants received her first fit note from 4 April. She had previously applied for a fit note in January and on 17 March, but in the light of her explanation about the progress with her work coach, I take it that the fit note she obtained was the relevant one.

- 30 I note that the Claimant did not consult the GP for PTSD until 12 May, which was after she had applied to ACAS in relation to the First Respondent. Nevertheless, I am satisfied that the Claimant was looking for jobs in March 2022, and when she was unable to work the trial shifts, she got a fit note and then began to research the employment claim options, which would have been in early April.
- 31 The Claimant referred to the fact that she was unaware originally of the possibility of action against her employer and didn't know what an employment tribunal was apart from hearing of it on TV shows. She was not aware of the ACAS originally. She did confirm however, in her evidence to the Tribunal that she had a laptop and access to the Internet throughout this time. She also told the Tribunal that when she googled, she found multiple entries about the Tribunal, and it was relatively easy to find out what she had to do to bring an employment tribunal claim.
- 32 The Claimant stated in her witness statement that with regard to the legal aid, she tried to obtain assistance. From her evidence it is clear that she joined a union, but they required her to be a member for a minimum period of time before she could access legal assistance and then she tried a charitable organisation who were unable to assist. Eventually thought it best to submit the claim as soon as possible regardless of whether she got legal aid. She submitted most of documents on her own with some indication as to how it should be written from legal advisors.
- 33 After she left the First Respondent's employment, the Claimant also dealt with other matters such as her application for Universal Credit. It is not clear when she applied.
- 34 The Claimant was vague about the dates as I have explained and when she tried to recall during her evidence, she got dates wrong. Notwithstanding the order made by EJ Norris the Claimant has not in her witness statement identified when she became aware of the possibility of a tribunal claim.
- 35 The Claimant did explain that she thought her medication took about three months to make a difference and she was more energetic after this and able to get up and get dressed but didn't go out much. Again this points to the Claimant being in a better place in early April after three months on medication. Having considered the evidence carefully, it seems clear that by early April the Claimant was in a much improved place. By then she had managed her Universal Credit application and the police situation and during April she had what was called pre-trial therapy after having been on workshops in January and February, which were video calls with groups of other survivors.
- 36 When the Claimant googled, and she was able to review the contents of the Citizens Advice Bureau website, she realised she needed to put in her claim as soon as possible. She did try to get some assistance as I have noted from the union who wouldn't help immediately and also from a charitable organisation called "we are advocate", but they couldn't assist.
- 37 After the Claimant filed her claim, she did her more research and realised that she could also claim against individuals and then she decided to pursue the named individual Respondents. She said she didn't know that she could apply to the Tribunal to add parties, so she just brought an additional claim.
- 38 It is clear that the Claimant's depression is not over. She had a further overdose of paracetamol in July 2022. I recognise that she does have mental health issues and the Claimant also refers to having had alcohol issues.
- 39 The Respondent was unaware of the Claimant's complaints until the ET1 was served

on them by the Tribunal by a letter dated 20 June 2022. According to the Respondent's Grounds of Response, following the receipt of the Claimant's claim, the Respondent carried out an internal investigation and from that it was satisfied that the events complained of did not take place.

Submissions

The Respondent's Submissions

- 40 The Respondents submitted that the question for Tribunal was that set out in section 123(1)(b) being whether to exercise the just and equitable discretion to exercise time. The Respondent reminded the Tribunal of the time when the Claimant applied to ACAS being 10 May 2022 and obtained the ACAS certificate on 18 May 22 then filing her ET claim on 18 May 2022. The resignation was in October 2021 and the claim should have been brought by 22 January 2022, so it was out of time by four months. The last act set out in the schedule of conduct relied on by the Claimant was potentially 22 October.
- 41 The Respondent argued that the witness statement which the Claimant was required to produce after the Preliminary Hearing for case management purposes was required to explain to the Tribunal what was going on but lacked sufficient information.
- 42 The Respondent makes no comment on the degree of illness or mental capacity suffered by the Claimant but does say that the Tribunal should look at what the Claimant was able to do. The Respondent argued that what was required was for the Claimant to submit an application to ACAS which was involved ticking a box and providing a name on a drop down menu. It would have taken 5 to 10 minutes to do this and the Claimant access to a computer and the Internet.
- 43 The Respondent suggested that the Claimant's witness statement relied upon her not knowing about her right to claim but not knowing about her claim is not considered to be a valid argument in relation to a just and equitable extension.
- 44 The Respondent argued that the Claimant was in fact well able to have brought her claim earlier as at the same time the Claimant was engaging in many other problems which were more difficult; for example, filing a police report and statement of what happened with regard to the traumatic assault and applying for Universal Credit.
- 45 The Claimant was applying for and engaging in counselling and reached out to an advocate service. She was liaising with her work coach and keeping an online diary. She was put in touch with social prioritising, and she was completing job applications in the hospitality industry. All of those activities were time consuming and required online access, uploading documents and so forth.
- 46 The Respondent referred to the Claimant's witness statement in which the Claimant says she was unaware of the requirement to bring a claim against her employer within three months. The Respondent argues that the Claimant doesn't say that even if she had known about the claims, she couldn't have brought one.
- 47 The Respondent argued that there was a clear motivation for the Claimant's application, being that the Claimant needed to get some money. In the light of this, the Respondent submitted that it was not appropriate for there to be a just and equitable extension.
- 48 As regards the prejudice the Respondent argued that it was relevant to talk about the prejudice to the Claimant, but the Claimant had prioritised the police matters above the tribunal claim.
- 49 As regards the prejudice to the Respondent the passage of time and the number of

individual allegations were significant. There would be a question of who was in the kitchen at the time of the alleged incident, and they would have to think about issues which had taken place over 12 months ago. The complaints were generally about individual's behaviour and there is no documentation so that there were often only two people involved and it would be the question of their perception of what happened. It would not be possible to look at the documents. Taking all that into account, there was clear prejudice to the respondent being their ability to defend the claim after this length of time.

- 50 The Claimant been discharged by the mental health crisis team on the 21st of January and had gradually improved since then and continue to improve in February and March. She was engaged in more cumbersome problems, and it was not in line with the evidence before the tribunal the Claimant was unable to comply with the time limits as she clearly dealt with the sexual assault issues for much of the time

The Claimant's Submissions

- 51 The Claimant's Counsel had prepared a skeleton argument which referred the Tribunal to the background and to the case law.
- 52 The Claimant's Counsel's skeleton argument referred to the case of Watkins v HSBC Bank PLC UKEAT/0018/18/ DA which is an unreported case dated 4 July 2018 in which the EAT commented about the manner in which the ET had addressed an extension of time. The relevance of the case was that the employment judge had said that the medical evidence did not demonstrate any physical or mental impairment preventing the Claimant issuing proceedings sooner and in time. The EAT considered this a perverse conclusion as the medical evidence showed the Claimant was highly distressed by tiredness and frustration, struggling to concentrate, finding it difficult stop crying, upset and disturbed by his own emotions. The EAT said in such circumstances he was at a significant disadvantage in deciding whether to take legal action and in researching that action and that was a factor which the employment judge was bound to take into account. Furthermore, there was no balancing of prejudice in the employment judge's reasons. The Claimant submitted she was similarly not able to address the litigation earlier than she did.
- 53 The Claimant reminded the Tribunal there is no need for a good reason for delay. However, the Claimant argued there was plainly a good reason as she was not well at this time. Although in December she had been well enough to engage with the police, she took an overdose at the end of December and was admitted to hospital. Far from the Claimant being able to juggle both the criminal matter she was dealing with and her employment issues, the fact was that she was preoccupied with the criminal matter was partly why she couldn't address the employment tribunal matter. She plainly felt dissatisfied and unhappy about her treatment and resigned because of it. When the Claimant was feeling better in April, there was very good evidence to show why she couldn't engage in the exercise of researching her claim at that time.
- 54 As regards the Claimant's state of health from April, she was engaged with a work coach and needed to go back to a job but found she struggled and reacted very adversely to doing the trial shifts. The Tribunal does not have to be persuaded that she had advanced a proper reason or particularly good one. If the Tribunal finds she could not work because she was so affected, she is entitled to compensation for it. The Claimant has explained the process of trying to cobble together her claim even though she couldn't get advice. The Claimant had some very good reasons not to start the claim in January and very good reasons thereafter.
- 55 As regards the balance of prejudice, the Claimant would be damaged because she could not pursue the claim out of time and that is the sort of prejudice the tribunal should consider seriously. The Respondent did not put in any evidence and therefore the Tribunal cannot take account of any arguments due to lack of witnesses. Moreover,

the Respondent admitted in their grounds of response that following receipt of the claim they took steps to investigate which led them to conclude that the events did not take place and therefore they had the benefit of that investigation. There must therefore be some paper trail which the Respondent can rely on. The Claimant does not accept that the Respondent would be particularly prejudiced by this situation.

Conclusions

- 56 First, I considered the reasons for the delay. The Claimant's reasons for her delay are, as I have noted, compelling and clear for the period up to the end of February 2022.
- 57 I was informed that the police told the Claimant that they were not going to proceed with the allegation against the alleged perpetrator which she had reported, and she has now sought a review of this decision. It is immaterial to this judgement whether or not the criminal matter proceeded. What is relevant is that the Claimant suffered a traumatic experience and that her mental health was such that for some time after it, she was not in a place where it would be just and equitable to expect her to have filed her claim.
- 58 The period that concerns me is from February 2022 through to May 2022 when the Claimant did file her claim. I have considered the Claimant's reasons for the delay in filing her claim during that period. I have considered how the Claimant's mental health improved.
- 59 There is a lack of detail about events over this period. In her letter of 8 August, the Claimant makes little reference to the dates of events after February 2022. I understand that she was mainly addressing the position up to the 23rd of January 2022, but she did address the period after that. The Claimant was specifically ordered to prepare a witness statement which says when she knew about her right to bring a claim and specifically what prevented her from starting the proceedings earlier than she did. However, the witness statement is also vague about the position.
- 60 It is nevertheless clear that the Claimant's mental health gradually improved, and she started applying for jobs in March 2022. The Claimant didn't consider the troubles she had encountered during her employment with the First Respondent were such that she was inclined to Google the position until she experienced difficulty with the trial shifts. The Claimant did not supply dates or sufficient detail to be clear exactly when those trial shifts took place, but I am certain that it was no later than early April 2022.
- 61 When the Claimant did find information, it was quickly obtained and readily available. At that stage, the Claimant preferred to get legal support, but was unable to find that support. It is not at all an unusual in the Tribunal for people to file claims themselves, which is exactly what the Claimant did eventually.
- 62 I remind myself that the Claimant does not have to have a good reason for the delay although that is one factor which is generally considered and frequently relevant. I take no account of the Respondent's submission about the Claimant's motivation. If the claim were brought in time, she would be entitled to bring a claim and the tribunal would determine it, subject to the rules and the law. Her reason for claiming is irrelevant.
- 63 It is important to balance the question of the hardship that the parties will suffer if the claim is either allowed to proceed or the just and equitable extension is not granted. It is clear that the Claimant will suffer a loss of the opportunity to bring her claim if she is denied the full extension that she seeks.
- 64 The Claimant's claim was broken down into a Schedule of allegations with dates and details of who did it and whether the allegation is background or a claim. There are

35 allegations of which the Claimant has now confirmed a number are background, leaving 21 allegations. Two of those are allegations of conduct by a respondent who has been dismissed from the proceedings, so it is not clear if they are to progress.

- 65 I note that most of the Claimant's remaining complaints are verbal comments and that a number have no overt relationship with sex. Sometimes the Claimant says that the reason she concludes that it relates to her sex is that she didn't witness anyone else being treated that way. For example, in one complain the Claimant objects to the co-workers making comments when she was in a bad mood but she says that she didn't see her co-workers making comments when a male employee was in a bad mood. Some of the allegations she makes could indeed be efforts to assist her rather than any less favourable treatment. For example, she complains about being asked about her leadership skills and she complains about being told that that after her promotion she will be in charge. She draws assumptions about the reason for these comments which are far from obvious. The Claimant makes assumptions at other times, for example she complains about being asked by a co-worker if she can finish his job when he was going to Sainsbury's which she interprets as disrespectful and when another employee says that the only reason that he agreed to her promotion was her willingness to learn which she interprets as an effort to asset power over her as she was promoted by another manager. The Claimant then rolls her interpretation of this comment which she assumes is a power game into a claim for direct discrimination. The merits of the claim on its face are weak.
- 66 I note there is no evidence from the Respondent and the Claimant indeed points out that the Respondent did confirm in the Grounds of Resistance attached to its ET3 that it investigated after receiving the claim. However, the allegations are all verbal and dependant on memory. The Claimant did not use the grievance procedure so the Respondent did not learn about the claim until it was served by the Employment Tribunal and that would have been sometime after it was received in mid-May 2022.
- 67 Therefore, the claim would have been notified to the Respondent approximately a year after some of the events that took place in June 2021 and certainly about 6 1/2 months after the later ones. By the date of any hearing, the complaints will be very old allegations and there will be inevitable prejudice.
- 68 I have therefore balanced the prejudice that the Respondent may suffer if the Claimant is allowed to proceed with the prejudice the Claimant will suffer if she is denied the opportunity to claim.
- 69 I have come to the conclusion that notwithstanding the Claimant's fragile mental health, the balance of hardship is such that the claim should be struck out. In reaching this conclusion I have assumed that the Claimant would be able to demonstrate some continuing act so that I have taken the date of the last claim rather than looking at the individual claims and I refer to the dates of events only to point out the difficulty for the Respondent of responding to these allegations, given the delay.
- 70 Although the Claimant was in a very difficult position during the primary period, her health improved to the point where she was certainly able to focus on her position by early April 2022. She took six weeks or so to do so which is a lengthy and unexplained delay. However, that alone is not a reason to deny her the full extension she needs. I appreciate the Claimant will lose her chance of a claim.
- 71 Nevertheless, given the nature of the allegations she has raised, which are allegations which depend on individual witness recollections, there is a clear hardship to the Respondent if it is required to face these allegations after this time. I bear in mind the case of Miller v Ministry of Justice UKEAT/0003/15 which as I noted identified two types of prejudice which Respondents will inevitably suffer when there is an extension of time, the first of which being the obvious prejudice of having to defend a claim which otherwise would have been defeated by a limitation defence and the

second being the forensic prejudice of fading memories, loss of documents and losing touch with witnesses.

- 72 In this case, it is accepted that these allegations are not the type where there are likely to be documents which can assist. I do not ignore the fact that the Respondent carried out an investigation, but it was based only on the ET3 claim form and I do not consider that would be of much use in crystallising the evidence given the nature of the claims. Given the nature of the assertions themselves, the Respondent will be significantly disadvantaged by “the forensic prejudice of fading memories” as well as the prejudice of having to defend a case that would otherwise be stopped by time limitation, and it is difficult to see how it could properly defend itself if the extension were granted in full.
- 73 The balance of hardship is such that the extension of time should be refused, and I do refuse it.

Employment Judge N Walker

Date: 03/02/2023

REASONS SENT TO THE PARTIES ON

03/02/2023

FOR THE TRIBUNAL OFFICE