EMPLOYMENT TRIBUNALS

Claimant: **Mr L Samnick**

Respondents: **(1) Barclays Execution Services Limited**
(2) Jeong Kim
(3) Petrus Theodorus Maria Rood a.k.a Ron Rood
(4) Konstantina Armata
(5) Claire Fordham;
(6) Faye Richardson
(7) Chris Easdon
(8) Ruth Surendran
(9) Jeremy Haworth
(10) Elyze Gonzalez
(11) Melanie Philips
(12) Sarah Hollinsworth
(13) Claire Cardosi
(14) Nicola Middleton
(15) Lindsey Brown
(16) Sonia Boniface

Heard at: **East London Hearing Centre**

On: **7 June 2022**

Before: **Employment Judge John Crosfill**

Representation
Claimant: **In person**
Respondents: **Ms C McCann of Counsel**

JUDGMENT

1. The Claimant's claim of unfair dismissal was not presented withing 3 months of the effective date of termination and it was reasonably practicable for it to have been presented in time. It follows that pursuant to Section 111 of the Employment Rights Act 1996 the Tribunal has no jurisdiction to entertain the complaint and it is dismissed.

2. The Claimant's claims against R2 – R9 have no reasonable prospects of success as the pleaded claims were presented outside the relevant statutory time limits and there is no proper basis for granting an extension of time. The claims against those individual Respondents are dismissed.

3. The Claimant's remaining claims are unaffected by this judgment.

REASONS

Recusal

1. I have made a costs order against the Claimant because of his failure to act reasonably in respect of an earlier hearing in this case. The Claimant has sought a reconsideration of that costs judgment and has included an application that I recuse myself. It is implicit that If I were to agree to that application I should not continue to have dealings with the case including providing this judgment. I have decided that there is no merit in the Claimant's application and have refused it. I will send out a judgment and reasons shortly. It follows that there is no good reason for me not to promulgate this judgment.

The Applications

2. After a preliminary hearing that took place on 17 December 2021 I made case management orders listing a preliminary hearing for 28 April 2022 in this claim to determine applications intimated by the Respondents in their ET3. The material parts of my orders were:

> *'6. This matter will be listed for an open preliminary hearing. The preliminary hearing shall consider:*
>
> *6.1. Whether the Tribunal has jurisdiction to hear any of the complaints made by the Claimant and in particular:*
>
> *6.1.1. Whether he presented his claim of unfair dismissal within the time limits imposed by Section 111 of the Employment Rights Act 1996; and*
>
> *6.1.2. Whether he presented any claim brought under the Equality Act 2010 within the time limit imposed by Section 123 of that act.*
>
> *6.2. To clarify the claims and finalise a list of issues.*
>
> *6.3. To hear any applications for orders under rule 39 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 made by the Respondents that the Claimant should pay a deposit as a condition of pursuing any claim of allegation on the basis that he has little reasonable prospects of success.*
>
> *6.4. To hear any applications for orders under rule 37 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 made by the Respondents that the Claimant's claims or any allegation should be struck out as having no reasonable prospects of success.*
>
> *7. In preparation for the said hearing the parties shall take the following steps:*
>
> *7.1. If the Claimant or any respondent seeks to rely on any evidence (which shall include both any witness statement and any documentary*

evidence) in relation to the issue of time limits they shall exchange any such evidence no later than 23 March 2022

7.2. If the Respondents contend that the claims lack particulars then they shall by no later than 21 March 2022 make a request of the Claimant for further information. The said request shall follow the format used in civil proceedings and shall refer to the numbered paragraphs of the ET1 or to the tables attached to the ET1.

7.3. The Claimant shall respond to any such request for further information by 18 April 2022. In providing his response the Claimant may not provide any information in excess of what has been specifically requested by the Respondent. For the avoidance of doubt an order that the Claimant gives details about existing claims is not to be taken as permission to amend or bring additional claims.

7.4. The parties shall seek to agree a list of issues by no later than 25 April 2022 and they shall send the list of issues to the tribunal by the same date. If there are any areas of disagreement these should be highlighted on the document.

7.5. The Respondents shall set out in writing any applications for orders under rules 37 or 39 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 and send them to the Claimant by no later than 25 April 2022'

3. The Claimant did not serve any evidence pursuant to my order at paragraph 7.1 above.

4. The Respondents served a request for further particulars pursuant to my order at paragraph 7.2 on 21 March 2022. The Claimant did not reply to that request.

5. The Respondents sent the Claimant a proposed draft list of issues on or around 11 April 2022. The Claimant has not engaged with the process of agreeing a list of issues in this claim.

6. The Respondents had already set out the applications that they were inviting the Tribunal to decide in a letter dated 16 August 2021.

7. The Claimant failed to take any steps to prepare for the hearing of 28 April 2021 and did not attend. I decided that I would not proceed in the Claimant's absence. I have made a costs order against the Claimant by reason of his failure to make a timely and properly supported application to postpone the hearing.

8. By a Case Management Order made on 28 April 2022 I listed this case for an open preliminary hearing. The notice of hearing provided that the purposes of the hearing would be:

    8.1. To identify the claims brought by the Claimant; and

    8.2. To determine whether the Claimant's claims were presented within any statutory time limit having regard to the statutory provisions for granting any extension of time.

8.3. To make case management orders for the preparation of any final hearing; and

8.4. To list the final hearing

9. Both parties had prepared a bundle for the hearing. The Respondents had provided an electronic bundle of authorities. I had made case management orders requiring the Claimant to serve any evidence he relied upon on the issue of whether his claims were presented within the statutory time limits. He had served a witness statement that was limited to setting out what he said were the reasons for presenting the claim when he did.

10. At the outset of the hearing we discussed the basis upon which the hearing should proceed. There was a material difference between the notice of hearing for the 28 April 2022 and the hearing listed for 7 June 2022. The second notice of hearing envisaged a hearing at which I would need to determine on a once and for all basis whether the claims were presented within statutory time limits. In ***Caterham School Ltd v Rose (Sex Discrimination – Continuing act)*** **[2019] UKEAT 0149/19** HHJ Aurbach explained the difference in approach of a tribunal dealing with an application to strike out a claim by reference to time limits and a tribunal determining whether a claim was presented in time.

11. Ms McCann on behalf of the Respondents stated that she was inviting the Tribunal only to deal with the applications that had been made in the letter from the Respondents dated 16 August 2021. Those applications were limited to applications under Rules 37 and 39 of Schedule 1 of the Employment Tribunals (Constitution and rules of Procedure) Regulations 2013. The applications implicitly required me to make findings as to whether the Claimant could avail himself of any extension of time on the basis that either it was not reasonably practicable to present a claim in time or that it was just and equitable to extend time. The Claimant had not included in his witness statement any evidence that would have allowed me to finally determine as a matter of fact whether any claim reliant on establishing conduct extending over a period or a series of similar acts was in time. If I had proceeded on a strict reading of the second notice of hearing I would have been driven to dismiss most of the Claimant's claims. The Claimant did not dissent from the suggestion that we proceeded on the basis of the Respondents' applications. This benefited the Claimant as to an extent the bar to his claims proceeding was lowered. Insofar as this was a departure from my order of 28 April 2022 it would not have been in the interests of justice to proceed with an all or nothing approach to the issue of whether the claims were in time when the Claimant had not put in any evidence to deal with the matter on that basis and the Respondent was not asking me to do so. My second order was not the subject of any discussion and any departure from my first order was unintentional and a slip.

12. The applications I have determined are therefore limited to those made in the Respondents' letter of 16 August 2021.

13. The Claimant gave evidence and was asked questions by Ms McCann. The parties them made oral submissions. The Claimant had indicated that he had to collect his children from school and asked that the hearing not end late. There

was insufficient time to deliver an oral judgment at the conclusion of the submissions and I reserved my decision.

14. I apologise for the inordinate length of time it has taken me to provide this decision. As the parties already know I have had heavy workload not least dealing with the case management of the other joined claims. Nevertheless I am sorry for any distress caused.

Findings of fact

15. Below I make findings drawn from the evidence I heard and read during the hearing but also in respect of the procedural history insofar as it is relevant to the matters I need to decide.

16. The Claimant presented his ET1 to the Tribunal on 10 June 2021. He has named 16 individual Respondents. The dates that the Claimant contacted ACAS for the purposes of Early Conciliation are as follows:

    16.1. R1, R10- R13 Contacted ACAS on 3 March 2021, Certificate dated 18 March 2021

    16.2. R2- R9, Contacted ACAS on 26 March 2021, Certificate obtained 29 March 2021

    16.3. R14-R16 Contacted ACAS on 25 May 2021, Certificate obtained on 26 May 2021.

17. The Claimant had indicated in his ET1 that he was pursuing the following claims:

    17.1. Unfair constructive dismissal being a contravention of S39 of the Equality Act 2010. (Para 3.1)

    17.2. Direct discrimination contrary to Section 13 of the Equality Act 2010 including a claim that he was divested of opportunities (Para 3.2 and 3.3)

    17.3. Harassment related to race and disability contrary to Section 26 of the Equality Act 2010 (para 3.4)

    17.4. Victimisation contrary to Section 27 of the Equality Act 2010 (para 3.5)

    17.5. Discrimination because of something arising in consequence of disability contrary to Section 15 of the Equality Act 2010 (Para 3.6)

    17.6. Failures to make reasonable adjustments contrary to Sections 20/21 of the Equality Act 2010 (para 3.7)

    17.7. Claims that he has suffered detriments on the grounds of making protected disclosures contrary to sections 47B and 48 of the Employment Rights Act 1996 (para 3.8)

    17.8. Claims that the Respondents had infringed Sections 111 and 112 of the Equality Act and that R1 was liable for the acts of the other Respondents pursuant to Section 109 (paras 3.9-3.10)

17.9. A claim that there had been a detriment for asserting a statutory right contrary to Sections 44 and 48 of the Employment Rights Act 1996.

18. The Particulars of Claim do not set out the details of the acts and omissions said to be unlawful other than in very broad terms. The Claimant includes a schedule of 31 matters said to amount to a serious breach of contract entitling him to treat himself as having been dismissed. Paragraph 13 suggests that the dismissal contravened Section 47B of the Employment Rights Act, Section 13 of the Equality Act (race), Section 27 of the Equality Act 2010, Section 15 of the Equality Act 2010 and Section 44 of the Employment Rights Act 1996.

19. The Claimant goes on to say that 12 events subsequent to his dismissal were additional unlawful acts under the enactments I have identified at paragraph 5 above.

20. At the outset of the hearing the Claimant clarified that it was his intention to bring a claim of unfair dismissal under the Employment Rights Act 1996. He had indicated that he was bringing a claim for holiday pay due in his final payment of wages at the end of February 2021. He said that his claim for 'arrears of pay' related to a claim for sick pay for a period of 18 months during which he was absent from work. He indicated that that claim would be for an unlawful deduction from wages and not a breach of contract claim (as it would exceed £25,000). It was agreed that those claims were presented within any statutory time limits.

21. This is the second claim brought by the Claimant. He had brought an earlier complaint, Case No: 3201700/2020, against a number of the same Respondents. That earlier claim had been consolidated with claims brought by two colleagues, Mr Moune Nkeng and Mr Abanda Bella. My case management orders made in those consolidated claims show that there were considerable difficulties identifying the issues in the consolidated claims.

22. In his earlier claim the Claimant demonstrates a knowledge of the time limits as they apply to claims under the Equality Act 2010. At paragraph 6 he says:

'I apologise to the tribunal for the length of this ET1. However, I feel it is incumbent upon me to outline sufficient facts and information for the tribunal to consider all my claims as is just and equitable to do so as a 'continuum' in accordance with s.123(3)(4) EqA 2010. In this regard, I rely on the case authorities of Kingston upon Hull City Council v Matuszowicz [2009] EWHC Civ 22; [2009] ICR 1170; Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640 & Galilee v Commissioner of Police for the Metropolis UKEAT/0207/16/RN, and with express particular Betsi Cadwaladr University Health Board v Hughes & Ors UKEAT/0179/13 (para 33) –

"It is almost axiomatic that, in dealing with discrimination as with other employment situations, the facts relating to one incident generally have to be seen in context. A time in history is to be understood by what goes before and, it may be, by what comes after. The position is dynamic. There is a continuum. Here, therefore, we think that the Tribunal was fully entitled to take into account the evidence it had in respect of the insult done to the Claimant in July 2011. It should not be downplayed, as a matter of seriousness."'

23. I conducted a case management hearing on 17 December 2020 that hearing was principally concerned with seeking a mechanism for identifying the issues in the case. At that hearing the Claimant represented himself.

24. The Claimant says, and I accept, that in January 2021 he underwent tests which revealed a pancreatic cyst. He had a further procedure in June 2021 to assess whether there may be the presence of cancer.

25. On 29 January 2021 Ms Anthea Brown of Counsel wrote to the Tribunal and the Respondents stating that she had recently been instructed on behalf of the Claimant and Mr Moune Nkeng. She sought variations of some case management orders which I had made.

26. Sadly the Claimant's mother passed away on the night of 15/16 February 2021.

27. On 23 February 2021 the Claimant sent by e-mail a letter of resignation. In his letter he set out details of some matters which he said entitled him to resign and to treat himself as having been dismissed. In his oral evidence before me the Claimant accepted that he had the assistance of Ms Brown in drafting that letter.

28. I had listed a further preliminary hearing for 8 April 2021. Between 23 February and that hearing Anthea Brown corresponded with the Tribunal and the Respondents on the Claimant's behalf. It is clear from the correspondence that Anthea Brown took instructions from the Claimant about his claims. In particular on 19 March 2021 Anthea Brown set out the Claimant's position in respect of mediation and on the same day set out responses to the Respondents proposed list of issues. It appears that it was the Claimant himself that prepared a bundle for use at the hearing (in addition to one prepared by the Respondents). The fact that he prepared the bundle is evident from the index where he refers to himself in the first person.

29. A further preliminary hearing had been listed for 20/21 May 2021. The purpose of that hearing was to identify the issues and to deal with a formal application by The Respondents for orders pursuant to rules 37 or 39 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The applications to strike out claims were centred on a contention that the claims had been presented outside statutory time limits.

30. The Claimant says, and I accept, that he attended his mother's funeral. He does not give any precise dates for the period he was out of the country but says, in his particulars of claim, that he was in Cameroon March/April 2021. As I have noted above the Claimant was fully engaged with his first set of proceedings during this period. He had also contacted ACAS for the purpose of any further proceedings on the dates I have identified above.

31. The Claimant had submitted a schedule of loss in his first claim claiming millions of pounds. That was sent to the Tribunal by Anthea Brown. In that schedule the Claimant had not given any credit for any sums earned which might have mitigated the loss claimed. In its ET3 to this claim the Respondents identified mitigation of loss as an issue. They told me, and I did not understand the Claimant to say otherwise, that they had raised this issue in correspondence but that the Claimant had not responded.

32. During the Claimant's oral evidence Ms McCann asked him about what he had done to find alternative work. The Claimant resisted answering these questions but I decided that they were relevant and should be permitted. What emerged was that the Claimant had been approached by a head-hunter prior to his resignation. He had been offered and had accepted employment. He refused to say who he was working for and I did not consider that there was anything to be gained by insisting that he did so. He was asked whether he was doing the same sort of work as he had with Barclays. He said no. He accepted that he was doing work for a financial institution at a more senior level than he had with Barclays.

33. I find that the Claimant would have known the relevance of his new employment both to his claim and to the application that I have to determine. The fact that he has held down employment at a senior level is plainly relevant to the question of whether it was reasonably practicable to bring a claim in time or just and equitable to extend time. I find that the Claimant has demonstrated that he is prepared to be evasive when questioned about matters that do not assist him. I find that this is a conscious decision.

34. I need to make findings about the Claimant's health. He relies upon the fact that the Respondents have accepted that he met the statutory definition of disability set out in Section 6 of the Equality Act 2010 by reason of having depression and anxiety. That concession has been accepted by the Tribunal and I should not go behind it. The effect of the concession is that I should accept that the Claimant's impairment(s) have a substantial effect on his ability to carry out day to day activities. Substantial means more than minor or trivial.

35. A letter from a Dr Briscoe dated 14 July 2020 makes a referral to a Consultant Psychiatrist Dr Brenner. She refers to the Claimant as having depression with some suicidal thoughts with no plans and suggested that the time had come to try anti-depressants. A letter from Dr Brenner dated 12 August 2020 reveals that the Claimant's PHI claim had been declined and that an appeal to the Financial Services Ombudsman had failed. He recorded that when he saw the Claimant his mood was low. He lacked energy and concentration. He was tearful with poor sleep and appetite. He had thoughts of self-harm but would not act on them. He had been taking Escitalopram for 2 weeks but was unhappy continuing with it. He went on to record that the Claimant had cancelled a further appointment as he was seeing somebody else. Dr Brennan speculates that the Claimant was looking for a Doctor to give him the answer he was looking for.

36. A letter from Dr Chi-Chi Obuaya, another Consultant Psychiatrist dated 12 August 2020 gives a diagnosis of a moderate depressive episode including symptoms of chest discomfort. The letter records that the Claimant had stopped taking Escitalopram because it made his heart race. He suggested that the Claimant take an anti-depressant Sertraline and he said *'I have identified Louis' risk as low and reassured him he has a relatively good prognosis'*. A follow up letter dated 4 September records Dr Obuaya informing the Claimant's GP that he had advised the Claimant to increase his dosage of Sertraline from 100mg per day to 150mg. He noted a *'marginal albeit inconsistent lifting of Louis' mood'*

37. The Claimant's private GP records refer to the history above but have no entries beyond 17 August 2020.

38. The Claimant's NHS GP records show that he consulted a GP on 14 December 2020. He was asking for a 'sick note'. He is recorded as explaining that he had been off work for a year and was engaged in tribunal proceedings. He is recorded as saying that he no longer had any thoughts of self-harm and that he had stopped taking Sertraline in September 2020. He was issued with a certificate that he was unfit for work. The notes do not assist with there being any health issues whatsoever at the material time between February 2021 and June 2021. The Claimant said in evidence that he did not know that further GP records would be relevant. It was quite clear from the terms of my orders that the Claimant would need to provide any evidence upon which he relied. I do not accept that he was unaware of the need to provide all relevant records.

39. On 10 September 2020 the Claimant was assessed as being eligible for Universal Credit by the DWP. He was informed that following a Work Capability Assessment he would not be expected to look for work. It appears that the DWP had accepted that the Claimant was unable to work at that time. On the Claimant's own account he was fit for work by March 2021.

40. The Claimant relied on a letter from Ricky Brown who describes himself as a Integrative Psychotherapist holding accreditation from the British Association for Counselling and Psychotherapy. He is not registered as a clinical psychologist with the HCPC. There are several aspects of Ricky Brown's letter that are of concern to me. The first is that he does not distinguish between what the Claimant has told him and actual matters of fact from which he might give an opinion. For example he *says 'Mr Samnick has been subject to a catalogue of harassment, prejudice and racism and has not been able to process this effectively'*. Stating in definitive terms that this conduct has occurred gives me little confidence that Mr Brown is aware of the duties an expert witness would owe to the Tribunal. In plain terms, he appears to advocate for the Claimant's position.

41. Mr Brown comments upon whether the Claimant could reasonably have been expected to comply with the case management orders that I made. In particular the case management orders I made in preparation for the first hearing of these applications on 29 April 2021. He says*: I have growing concern that my client has become suicidal, with reason enough to believe that 'Mr Samnick would take his life as a result of the unmanageable expectations and relentless trauma being endured. I have been working with Mr Samnick for approximately eighteen months, and have witnessed the deterioration in his progress since the incitement of this trial. After one particular session, Mr Samnick felt the court and judicial system in its entirety to be against him; he is unable to trust anybody, particularly a system that should be supporting him, which only exasperates his already overwhelming anxiety'.* The case management directions that I asked the Claimant to comply with were not unmanageable. They were straightforward. Mr Samnick would frequently prepared long and detailed documents when he wanted to. He had resisted me listing a hearing of this application and it was only directions that he did not wish to comply with that he failed to complete. There is no medical evidence to support any concern that Mr Samnick was suicidal from anybody with any qualifications to make that assessment.

42. Mr Brown says: '*I had met with my client in May/June 2021, and can attest to his distress and as above, suicidal state of mind, particularly informed by the rippling shock of his mother's passing and her impending funeral.'* I have no reason to doubt that the Claimant would have told Mr Brown of his mother's passing and of

his distress at that. That is something I have no doubt is within Mr Brown's expertise. It is of some concern that Mr Brown referred to a funeral as being impending in May/June. The Claimant says that that was in March/April.

43. Mr Brown does not comment upon the fact that from January to May 2021 the Claimant has the assistance of specialist Counsel to help him with the litigation. He does not comment upon the fact that the Claimant had sought and had held down employment requiring considerable intellectual strengths as a manager in a financial institution.

44. The Claimant has provided me with a research paper dealing with the correlation between depressive symptoms and T Wave abnormalities. He has included a referral on 15 March 2022 to a Rapid Access Chest Pain Clinic which shows that the reason for the referral is T wave inversion. I have reviewed this evidence and I conclude that the Claimant was suffering from chest pains from time to time. This information together with information previously submitted by the Claimant shows that no physical cause has been found for any chest pains. The inference being that the chest pains are psychosomatic. That does not mean they are not real.

45. The Claimant has told me, and I accept, that his pancreatic cyst led to him being investigated for symptoms of cancer. I have no reason to doubt that that caused him to be more anxious.

46. I have no reason to doubt that the Claimant has at times had anxiety and depression. I find that that impairment has not prevented Mr Samnick from producing voluminous correspondence during these proceedings. It has not prevented him obtaining and sustaining high level employment in a financial institution during the period in which I need to take his health into account for the purposes of the decisions I need to make.

47. The Claimant included the following in his ET1:

6. I apologise in advance to the tribunal if my submission is not within the prescribed 3-month time limit. In recent months have been through exceptional circumstances, which did not make it reasonably practical for me to submit earlier:

6. 1. In late January 2021, an MRI scans (related to my chest investigation) revealed a 7 cm cyst in my pancreas. I had biopsy by Endoscopic Ultrasound (EUS) and Fine Needle Aspiration (FNA) performed on June 9th , 2021. and I am awaiting the results.

6.2. The sudden and unexpected passing of my mother during the night of 15th 16th February 2021.

6.3. The ongoing tribunal proceedings case number 32001700/2020.

7. The mourning of my late mother, my attendance in her funeral in Cameroon from March-April 2021, the prospect of having a cancer and the ongoing ET proceedings have exacerbated the frequency and intensity of my panic attacks, which led to me exhibiting a heightened state of anxiety. One of the aspects of my condition is that I am unable to write even text messages and avoid anything that reminds me to the abuses I have been subjected to during and after the

course of my employment at R 1. I therefore rely heavily on my wife who cannot always help as she is also affected by these circumstances on top of caring for our 4 children and myself.

48. In his witness statement the Claimant disputed that any of his claims were out of time. He said:

'To find the extended time limit date to send my claim to the ET, I assumed as if my resignation was on date B (18/03/2021), I added 3 months and removed the 8 days spanned between my actual resignation date (23/02/2021) and date A (03/03/2021), which sets the time limit to bring my claim to ET in time on 10/06/2021.'

49. As I set out below the Claimant is wrong about any suggestion that his unfair dismissal claim was presented within the ordinary statutory time limit assuming that it was reasonably practicable to present that claim in time. I need to make findings about whether the Claimant actually held the belief that he professes he did. The Claimant could give me no rational explanation as to why he might have thought that the 3 month time limit ran from the end of the conciliation process.

50. The Claimant accepts that he had the assistance of specialist employment Counsel from January through to the point at which Anthea Brown submitted application to amend his claim. That spanned the period before his resignation to beyond the time he submitted his ET1 in his second claim. He accepts that she assisted him with his resignation letter. The Claimant was aware of the existence of time limits. The Claimant appears to acknowledge in his ET1 that his claims are late.

51. Against these facts I am asked to accept that the Claimant misunderstood the effect of Section 207A of the Employment Rights Act 1996 and believed that his claim was in time. I do not accept that. The Claimant clearly knew when he submitted his ET1 that the claim was presented late and that he needed to show that it was not reasonably practicable to bring a claim of unfair dismissal within the ordinary time limit.

The relevant law

Time Limits – Equality Act

52. Section 123 of the Equality Act 2010 imposes a time limit for the presentation of claims to an employment tribunal. The material parts say:

'123 Time limits

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

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

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

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, 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.

53. The leading case on the meaning of the expression 'act extending over a period' used in sub section 123(3) of the Equality Act 2010 is ***Commissioner of Police of the Metropolis v Hendricks*** **2003 ICR 530, CA** as confirmed in ***Lyfar v Brighton and Sussex University Hospitals Trust*** **2006 EWCA Civ 1548, CA.** The test is not whether the employer operated a policy practice or regime but to focus on the substance of the complaint and ask whether there was an ongoing situation or continuing state of affairs amounting to an 'act extending over a period as distinct from a succession of isolated or specific acts. Even where there is an act extending over a period it is necessary to show that that continued to a point where a complaint relying upon a single act would have been in time

54. If any claim has been presented after the ordinary time limit imposed by sub-section 123(1)(a) of the Equality Act 2010 (a period within 3 months extended by the provisions governing extensions of time for early conciliation) then the tribunal cannot entertain the complaint unless it is just and equitable to do so. The following propositions have emerged from the case law:

    54.1. The discretion to be exercised under subsection 123(2)(b) is broad – see ***Chief Constable of Lincolnshire Police v. Caston*** **[2010] IRLR 327** where Sedley LJ commented:

'There is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised. In certain fields (the lodging of notices of appeal at the EAT is a well-known example), policy has led to a consistently sparing use of the power. That has not happened, and ought not to happen, in relation to the power to enlarge the time for bringing employment tribunal proceedings, and Auld LJ is not to be read as having said in Robertson that it either had or should. He was drawing attention to the fact that limitation is not at large: there are statutory time limits which will shut out an otherwise valid claim unless the claimant can

displace them. Whether a claimant has succeeded in doing so in any one case is not a question of either policy or law: it is a question of fact and judgment, to be answered case by case by the tribunal of first instance which is empowered to answer'

54.2. ***Robertson v Bexley Community Centre t/a Leisure Link*** **[2003] IRLR 434, CA** reminds a tribunal that whilst the discretion to extend time is wide the burden is on the Claimant to show why time should be extended and as such an extension is the exception and not the rule.

54.3. In deciding whether or not to extend time a tribunal might have regard to the statutory factors set out in the Section 33 of the Limitation Act 1980 see ***British Coal Corporation v Keeble and ors*** **[1997] IRLR 336, EAT** although caution needs to be applied to avoid those factors being approached in a mechanistic manner or treating them as exhaustive ***Adedeji v University Hospitals Birmingham NHS Foundation*** **[2021] EWCA Civ 23** per Underhill LJ at paragraph 37.

54.4. Whether there is a good reason for the delay or indeed any reason is not determinative but is a material factor ***Abertawe Bro Morgannwg University Local Health Board v Morgan*** **2018 ICR 1194, CA**.

54.5. It will be an error of law for the Tribunal not to consider the relative prejudice to each party ***Pathan v South London Islamic Centre*** **EAT 0312/13**

54.6. In ***Miller v Ministry of Justice*** **[2016] UKEAT 0004/15** Mrs Justice Laing identified that:

'There are two types of prejudice which a Respondent may suffer if the limitation period is extended. They are the obvious prejudice of having to meet a claim which would otherwise have been defeated by a limitation defence, and the forensic prejudice which a Respondent may suffer if the limitation period is extended by many months or years, which is caused by such things as fading memories, loss of documents, and losing touch with witnesses.'

54.7. If the question of whether to exercise the statutory discretion is being considered at a preliminary hearing rather than a final hearing then the apparent merits of the claim may be taken into account in assessing whether to exercise the discretion. In ***Kumari v Greater Manchester Mental Health NHS Foundation Trust*** ***[2022] EAT 132****, emphasising the caution that would be needed in order to take this into account it was said;*

'The tribunal is therefore not necessarily always obliged, when considering just and equitable extension of time, to abjure any consideration of the merits at all, and effectively to place the onus on the respondent, if time is extended, thereafter to apply for strike-out or deposit orders if it so wishes. It is permissible,

in an appropriate case, to take account of its assessment of the merits at large, provided that it does so with appropriate care, and that it identifies sound particular reasons or features that properly support its assessment, based on the information and material that is before it. It must always keep in mind that it does not have all the evidence, particularly where the claim is of discrimination. The points relied upon by the tribunal should also be reasonably identifiable and apparent from the available material, as it cannot carry out a mini-trial, or become drawn in to a complex analysis which it is not equipped to perform.'

Time Limits – Employment Rights Act 1996

55. The time limit for a claim brought under Section 94 of the Employment Rights Act 1996 is set out in Section 111 the material parts of which say:

(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the effective date of termination, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(2A)Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).

56. The time limits for a claim brought under Section 48 of the Employment Rights Act 1996 are set out in sub sections 48(3)-(5) which read as follows:

(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) For the purposes of subsection (3)—

(a) where an act extends over a period, the "date of the act" means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on

and, in the absence of evidence establishing the contrary, an employer,

a temporary work agency or a hirer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

An act extending over a period/series of similar acts

57. The meaning of 'an act extending over a period' is the same as the equivalent phrase in the Equality Act 2010 see ***Commissioner of Police of the Metropolis v Hendricks*** **[2002] EWCA Civ 1686** and the discussion above.

58. In ***Arthur v London Eastern Railway Ltd*** **| [2007] IRLR 58** the Court of Appeal held that in order for time to be extended on the basis that an act ostensibly out of time forms part of a series of similar acts the Claimant needs to establish that there is at least one unlawful similar act that was presented in time.

A two-stage test

59. Where a claim is presented outside the period of 3 months it is necessary to ask firstly whether it was not reasonably practicable to present the claim in time and, only if it was not, go on to consider whether it was presented in a reasonable time thereafter. The two questions should not be conflated. There is no general discretion to extend time and the burden of proof rests squarely on the Claimant to establish that both limbs of the test are satisfied.

The meaning of "reasonably practicable"

60. The expression "reasonably practicable" does not mean that the employee can simply say that his/her actions were reasonable and escape the time limit. On the other hand, an employee does not have to do everything possible to bring the claim. In ***Palmer and Saunders v Southend-On-Sea Borough Council*** **[1984] IRLR 119** it was said that reasonably practicable should be treated as meaning "reasonably feasible".

61. ***Schultz v Esso Petroleum Ltd*** **[1999] IRLR 488** is authority for the proposition that whenever a question arises as to whether a particular step or action was reasonably practicable or feasible, the injection of the qualification of reasonableness requires the answer to be given against the background of the surrounding circumstances and the aim to be achieved.

Medical conditions

62. Illness may mean that it is not reasonably practicable to present a claim in time. – see ***Palmer and Saunders***. Where an illness is said to have made it not reasonably practicable to present a claim in time proper approach was set out in ***Schulz***, by Potter LJ at page 1210:

"….in assessing whether or not something could or should have been done within the limitation period, while looking at the period as a whole, attention will in the ordinary way focus upon the closing rather than the early stages."

"Reasonable ignorance"

63. The question of whether it is open to an employee ignorant of her rights to rely upon that ignorance as a reason why it was not reasonably practicable to present a claim in time has been the subject of a number of decisions of the higher courts. It is not sufficient to establish that the employee was ignorant of the right to bring a claim and/or the time limits for doing so. The issue of reasonableness is to be assessed by asking what the employee ought to have known see- ***Dedman v British Building and Engineering Appliances Ltd*** **[1973] IRLR 379** and ***Wall's Meat Co Ltd v Khan*** **[1978] IRLR 499.**

64. Where an employee is aware that a right to bring a claim exists it will be considerably harder to show that they ought not have taken steps to ascertain the time limit within which such claims should be presented - ***Porter v Bandridge Ltd*** **[1978] ICR 943, *Avon County Council v Haywood-Hicks* [1978] IRLR 118**.

A reasonable period thereafter

65. The question of whether an employee has presented their claim within a reasonable time of the original time limit is a question to be determined objectively by the employment tribunal taking into account all material matters see ***Westward Circuits Ltd v Read*** **[1973] ICR 301, NIRC.**

Striking out claims – generally

66. The power to strike out a claim under Rule 37(1)(a) on the ground that it has no reasonable prospect of success should only be exercised in rare circumstances ***Tayside Public*** Transport ***Co Ltd (t/a Travel Dundee) v Reilly*** **[2012] IRLR 755**, at para 30. In discrimination claims where findings of fact can depend upon whether or not it is appropriate to draw inferences of discrimination from primary facts particular care needs to be taken before striking out a claim ***Anyanwu v South Bank Students' Union*** **[2001] IRLR 305, HL.** The same cautious approach should be applied in a claim brought under S47B ERA 1996 ***North Glamorgan NHS Trust v Ezsias*** **[2007] IRLR 603**.

67. It will generally not be appropriate to strike out a claim where the central facts necessary to prove the case are in dispute. It is not the function of a tribunal such an application to conduct a mini trial. The proper approach is to take the Claimant's case at its highest as it appears from their ET1 unless there are exceptional circumstances ***North Glamorgan NHS Trust v Ezsias***. Such exceptional circumstances could include the fact that the Claimant's case is contradicted by undisputed contemporaneous documents or some other means of demonstrating that *'it is instantly demonstrable that the central facts in the claim are untrue'* ***Tayside***.

68. In ***Balls v Downham Market High School*** **[2011] IRLR 217** Lady Smith reminded tribunals that the test is not whether the claim is likely to fail but whether there are no reasonable prospects of success. That however is not the same thing as there being no prospects of success at all - see ***North Glamorgan NHS Trust v Ezsias*** at para 25 citing ***Ballamoody v Central Nursing Council*** **[2002] IRLR 288**. Another way of putting the test is that the prospects are real as opposed to fanciful see ***North Glamorgan NHS Trust v Ezsias*** para 26.

69. ***QDOS Consulting Ltd and others v Swanson*** **UKEAT/0495/11/RN** provides authority the proposition that orders under rule 37 should be made only in the most obvious and plain cases and not in cases where there is a need for prolonged and extensive study of documents and witness statements. Those propositions may also be found in the authorities above. HHJ Serota QC prior to stating those propositions drew attention to the similar position under the Civil Procedure Rules. He said (at para 45):

[45] It may be instructive to compare the position of striking out under the Employment Tribunal Rules with striking out as provided for in the Civil Procedure Rules. I note that there is a close affinity between striking out under CPR 34.2(a) [sic –there is a typo in the report], which enables the court to strike out the whole or part of a statement of case that discloses no reasonable grounds for bringing or defending a claim overlaps with Pt 24, on summary Judgment. Rule 24(2) entitles a court to give summary Judgment against a Claimant or Defendant on a claim or issue where there is no real prospect of succeeding on the claim or issue, or successfully defending the issue. The notes to CPR 24 in the White Book make this clear:

> *"In order to defeat the application for summary Judgment, it is sufficient for the Respondent to show some prospect; ie some chance of success. That prospect must be real; ie the court will disregard prospects that are false, fanciful or imaginary. The inclusion of the word 'real' means the Respondent has to have a case which is better than merely arguable. The Respondent is not required to show their case will probably succeed at trial; a case may be held to have a real prospect of success even if it is improbable. However, in such a case the court is likely to make a conditional order."*

70. Care needs to be taken when assessing whether a case has no reasonable prospects of success to avoid focussing only on individual factual disputes. A case may have some reasonable prospects when regard is had to the overall picture and all allegations taken together see ***Qureshi v Victoria University of Manchester*** **[2001] ICR 863**

71. The statements of principle derived from the cases referred to above do not in any way fetter the discretion of a tribunal to strike out a case where it is appropriate to do so ***Jaffrey v Department of the Environment, Transport and the Regions*** **[2002] IRLR 688 at para 41**.

72. In ***Chandhok & Anor v Tirkey*** **UKEAT/0190/14/KN** Mr Justice Langstaff made the following comments (with emphasis added):

"20. This stops short of a blanket ban on strike-out applications succeeding in discrimination claims. There may still be occasions when a claim can properly be struck out – where, for instance, there is a time bar to jurisdiction, and no evidence is advanced that it would be just and equitable to extend time; or where, on the case as pleaded, there is really no more than an assertion of a difference of treatment and a difference of protected characteristic which (per Mummery LJ at paragraph 56 of his judgment in Madarassy v Nomura [2007] ICR 867):

"…only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of

probabilities, the respondent had committed an unlawful act of discrimination."

Or claims may have been brought so repetitively concerning the same essential circumstances that a further claim (or response) is an abuse. There may well be other examples, too: but the general approach remains that the exercise of a discretion to strike-out a claim should be sparing and cautious. Nor is this general position affected by hearing some evidence, as is often the case when deciding a preliminary issue, unless a Tribunal can be confident that no further evidence advanced at a later hearing, which is within the scope of the issues raised by the pleadings, would affect the decision."

73. ***ED & F Man Liquid Products Ltd v Patel and another*** **[2003] EWCA Civ 472** concerned an application to set aside a default judgment. The Defendant contended that the test was the same as that for summary judgment made under Part 24 of the Civil Procedure Rules. The test to be applied under that rule is whether a claim or defence has "no real prospect of succeeding". There is no material distinction between this test and the test under Rule 37 of the ET procedure rules. The Court of Appeal explain what is meant by the requirement to take a case at its highest. Potter LJ giving the judgment of the Court said, at para 10 (with emphasis added):

"…..where there are significant differences between the parties so far as factual issues are concerned, the court is in no position to conduct a mini-trial: see per Lord Woolf MR in Swain v Hillman [2001] 1 All ER 91 at 95 in relation to CPR 24. However, that does not mean that the court has to accept without analysis everything said by a party in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporary documents. If so, issues which are dependent upon those factual assertions may be susceptible of disposal at an early stage so as to save the cost and delay of trying an issue the outcome of which is inevitable.."

Striking out claims – time limits

74. In ***Aziz v First Division Association (FDA)*** **[2010] EWCA Civ 304** The Court of Appeal set out the proper approach when a tribunal is asked to consider striking out a claim on the basis that there is no jurisdiction and where that is resisted by the claimant by suggesting that the event complained of forms part of conduct extending over a period. The Court said:

'34. One issue of considerable practical importance is the extent to which it is appropriate to resolve issues of time bar before a main hearing. Obviously there will be a saving of costs if matters outside the jurisdiction of the ET are disposed of at an early stage. On the other hand a claimant must not be barred from presenting his or her claim on any issue where there is an arguable case.

35. The Court of Appeal considered the correct approach to this matter in Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548. In that case the claimant complained of 17 incidents of racial discrimination over a period of many months. The question of time bar was dealt with at a pre-hearing review. The claimant gave oral evidence on that occasion. Having heard the claimant's evidence, the ET allowed five of the claimant's complaints to proceed but

dismissed the other 12 complaints as being out of time. The EAT and the Court of Appeal both upheld that decision. Hooper LJ gave the leading judgment, with which Hughes LJ and Thorpe LJ agreed. Hooper LJ stated that the test to be applied at the pre-hearing review was to consider whether the claimant had established a prima facie case. Hooper LJ accepted counsel's submission that the ET must ask itself whether the complaints were capable of being part of an act extending over a period.
36. Another way of formulating the test to be applied at the pre-hearing review is this: the claimant must have a reasonably arguable basis for the contention that the various complaints are so linked as to be continuing acts or to constitute an ongoing state of affairs: see Ma v Merck Sharpe and Dohme Ltd [2008] EWCA Civ 1426 at paragraph 17.'

Discussion and conclusions

The unfair dismissal complaint

75. A claim of unfair dismissal may only be brought against an employer – R1 in this case. The Claimant resigned without notice on 23 February 2021. He contacted ACAS on 3 March 2021 and obtained an Early Conciliation Certificate on 18 March 2021. He presented his claim to the employment tribunal on 10 June 2021. Upon the proper application of Section 207A of the Employment Rights Act 1996 the last date that the Claimant could have presented his claim within the ordinary time limit was 6 June 2021. I checked my own calculation using one of the many free online calculators which can be found in seconds by doing an internet search.

76. It follows that unless the Claimant can show that it was not reasonably practicable to have brought the claim by 6 June 2021 and that it was brought in a reasonable time thereafter the Tribunal cannot entertain that complaint. The Claimant had prepared evidence in relation to that point and I was able to make the findings set out above.

77. The Claimant has relied on a number of different arguments. These are:

    77.1. That he was unaware of the proper method of calculating the time limit and got it wrong; and

    77.2. That his mental health condition exacerbated by:

        77.2.1. The death of his mother and attending her funeral; and

        77.2.2. The death of an uncle; and

        77.2.3. Concerns about his own health; and

        77.2.4. Dealing with his first claim

Meant that it was not reasonably practicable to have brought the claim in time.

78. I have found above that the Claimant did not make the mistake that he alleged was in his mind at the time he presented his claim. I find that that is just something the Claimant has seized upon in order to address the Respondents' application. I need not decide the point on that basis.

79. As I have set out above the test of reasonable practicality requires me to have regard not only to what the Claimant actually knew or believed but to what they ought reasonably to have known or believed about their rights and how to enforce them – see the cases on reasonable ignorance set out above.

80. In this case the Claimant had instructed specialist Counsel to assist him with his first claim. She also assisted him to draft his resignation letter. The Claimant is a highly paid professional. He has given no adequate explanation as to why he could not have asked Anthea Brown when the time limit would expire for bringing a claim of unfair dismissal.

81. Even if the Claimant could not have afforded a few additional minutes of Anthea Brown's time I find that without her assistance the Claimant was aware of the existence of a time limit. He could with no difficulty whatsoever have used a search engine to find out how Section 207A operated.

82. I do not accept that the Claimant's ill health had any great impact on his ability to carry out the necessary legal research. His ET1 in this case and in his first case is full of legal references including references to time limits. There are numerous calculators on the internet and it takes just seconds to find one. The Claimant was working through most of the period when time was running against him. His role is senior and carries a great deal of responsibility. If he could carry out that role he was well enough to undertake some basic research.

83. I have accepted that in principle ill health might mean that it is reasonably practicable not to bring a claim in time.

84. I am prepared to accept that the Claimant had anxiety and depression and that the death of his mother and uncle (who I understand died some time later) as well as the stress of dealing with tribunal proceedings would have made the symptoms worse. However, I find that these symptoms were not so grave as to prevent the Claimant from engaging with his first claim and preparing and giving instructions to progress that claim. The Claimant has subsequently demonstrated an ability to provide numerous long and complex documents during a time when Mr Brown suggests he is more anxious rather than less.

85. The Claimant was capable of producing a complex ET1 on 10 June 2021. He has not explained why if he could do that on 10 June 2021 he could not have done it any earlier. There is no evidence that anything changed in that timeframe.

86. I do not accept that there is sufficient medical evidence that would allow me to find that it was not reasonably practical for the Claimant acting for himself to bring his claim in time. At the very worst it would have made in marginally harder for the Claimant to complete an ET1.

87. Whilst I would have found against the Claimant on this point even if he had not had specialist Counsel acting for him in his earlier claim the fact that he did is a further reason why I would find that it was reasonably practicable to have brought the claim in time. The Claimant was highly paid when working for the Respondent. He says that he is in a higher role. He will not say what he earns. He has not provided me with sufficient evidence to show that it was not reasonably practical for him to have instructed Anthea Brown to prepare and submit an ET1 on his behalf on the basis that her fees were unaffordable. I would have found against the Claimant on this alternative basis had it been necessary to do so.

88. As I have found that it was reasonably practical for the Claimant to present his unfair dismissal claim in time the question of whether it was presented a reasonable time thereafter does not arise. Dealing with the Respondents' application under rule 37 I find that the Claimant has no reasonable prospects of showing that his claim was presented within the time limit imposed by Section 111 of the Employment Rights Act 1996 and that it should be struck out.

The remaining claims

89. In respect of the alleged dismissal the Claimant brings the additional claims I have listed above. They are detailed at paragraph 13 of his Particulars of Claim. As I read the Particulars of Claim the Claimant is relying upon the dismissal as being the unlawful act that entitles him to bring those claims and not the individual actions he has set out at rows 1-18 of his table 2. Rows 1-18 refer to matters raised in his first claim.

90. The Claimant then adds rows 19-31 and says that those are further unlawful acts prior to his resignation. Paragraph 19 lists the claims he says arise from these facts.

91. Finally the Claimant lists in Table 3 acts he says post date his resignation. Again he says that the claims that arise are those listed in paragraph 19. Table 3 has a column headed 'Aided by' . In that column the Claimant identifies various Respondents.

92. As I understand the Claimant's case he is saying that the matters in Table 2 entitled him to treat himself as dismissed. That dismissal is one unlawful act of which he complains as well as saying that the matters raised from row 16 – 31 being freestanding claims in both cases under the jurisdictions listed in paragraph 19. The time limit for a constructive dismissal claim relying on discriminatory conduct (or unlawful conduct of a type brought under Section 48) will run from the date of the (constructive) dismissal – see ***Lauren De Lacey v Wechseln Ltd ta The Andrew Hill Salon*** **UKEAT 0038 20 VP**.

93. The approach taken by the Claimant in his Particulars of Claim is very unhelpful. What is particularly disappointing is that the Particulars of Claim were drafted at a point where the Claimant knew or ought to have known that he needed to give proper particulars of each claim he makes. The Claimant wholly fails to do that. To give some examples:

    93.1. In paragraph 19 he says that the acts or omissions raised in Table 3 give rise to claims under Section 15 of the Equality Act 2010. He does not say what the 'something arising from his disability he says was a cause of his treatment; and

93.2. He says that all of the acts in Table 3 give rise to claims under Section 20/21 of the Equality Act 2010. He does not say what policy, criterion or practice placed him at any substantial disadvantage.

93.3. He refers at paragraph 19 to Section 112 of the Equality Act 2010 and refers to individuals aiding the acts set out in Table 3 but he does not say what those individuals did to aid any basic contravention.

94. The Claimant had been asked for further information about his claims but had failed to provide any.

95. Having regard to the dates that the Claimant approached ACAS for the purposes of Early Conciliation any claim arising from the acts in Table 2 would require the Claimant to either obtain an extension of time or to show that those acts formed part of conduct extending over a period (for the Equality Act claims) or an act extending over a period or that the act was part of a series of similar acts one of which was in time (for the purpose of claims brought under the Employment Rights Act 1996). I shall refer to such claims as potentially out of time.

96. The effect of Section 207A of the Employment Rights Act 1996 (and Section 140B of the Equality Act 2010) is that:

96.1. For R2 any act prior to 25 February 2021 is potentially out of time; and

96.2. For R3-R9 any act prior to 8 March 2021 is potentially out of time; and

96.3. For R10 – R13 any act prior to 27 February 2021 is potentially out of time; and

96.4. For R14 – R16 any act prior to 26 February 2021 is potentially out of time.

97. I need to deal with the issue of whether the Claimant has any reasonable prospects of success in showing that the claims identified in Table 3 are sufficiently linked with the earlier claims referred to at paragraphs 13 and 16 of the Particulars of Claim. I shall use the term 'sufficiently linked' as shorthand for the test I have set out in my self-direction above and include the question of whether any potentially out of time allegation is part of a series of similar acts.

98. The position of the individual respondents and R1 are not the same. R1, the corporate Respondent is liable for any unlawful acts or omissions of R2 – R16 arising in the course of their employment – see Section 109 of the Equality Act 2010. R1 has expressly disavowed the statutory defence provided within that section.

99. In the Claimant's first claim I was required to decide when time started to run against an individual whose unlawful act formed part of conduct extending over a period. I held that time would run against the individual from the latest date of any act or omission by them and not from date that the conduct extending over a period comprised of acts of third parties ended. My reasons are fully set out in my judgment dated 1 March 2023 between paragraphs 45 and 68. As that judgment is in the public domain there is no reason to repeat my reasons here but I adopt those reasons.

100. In Table 3 the Claimant has suggested that for each of the 5 acts or omissions the person or persons responsible were aided by all of the remaining Respondents. I shall return to the question of whether I need to take the assertion that all of the Respondents aided all acts at face value below. In terms of when time runs against an individual respondent said to have committed an unlawful act under Section 112 of the Equality Act 2010 I consider that the same approach should be taken as if they had directly committed an unlawful act. The time limit must run from the date they did the thing that was unlawful. That is the date on which they aided the act of another. Some forms of aid might be conduct extending over a period. Whether that is the case is a question of fact.

101. In order to find that there was a sufficient link between the table 3 claims and the table 2 claims I need to deal with each Respondent separately. Table 3 has a column 'Who'. On any fair reading of the Particulars of Claim that is a reference to the person who did the act and/or omission complained of. The references in that column are limited to R10 to R16 plus R1 who would in any event be liable for the acts of the named Respondents pursuant to section 109 of the Equality Act 2010.

102. Ms McCann argued that the resignation of the Claimant broke any course of conduct and that any acts after the resignation could not be considered part of conduct extending over a period or a series of similar acts with anything that occurred before the resignation. I am not satisfied that as a general proposition that will always hold true. It is easy to think of conduct that straddles a resignation that might amount to a sufficient link. Sexual harassment either side of a resignation might be one example. I consider that each case will depend on its own facts. On a strike out application the test is whether the Claimant has established a reasonably arguable basis for showing a sufficient link between acts. I need to apply the guidance in ***Aziz v First Division Association (FDA)*** where it was said that one relevant but not conclusive factor is whether the same individuals or different individuals were involved in the incidents.

R1, R10-R16

103. There are 5 allegations in Table 3. The first concerns a suggestion that there was *'a deliberate failure to investigate my grievances'*. That is said to have been something done by 5 people R10 – R16. The poverty of the pleading is particularly apparent. The reader has no idea what each of those individuals is said to have done wrong. The allegation is said to give rise to 8 or perhaps 9 causes of action described in paragraph 19 of the particulars of claim.

104. In Table 2 there are some allegations made against R10 - R15. R16 is not mentioned. The causes of action are the same and are those specified in paragraph 19.

105. In ***Cox v Adecco & others*** **UKEAT/0339/19/AT** HHJ Tayler cautioned tribunals about making orders to strike out claims where the issues are unclear. In the present case the list of issues prepared by the Respondents, but not acted upon by the Claimant does set out the claims that have been brought. The draft list highlights the absence of particulars in respect of some claims but the basic claims are clear. Nevertheless the claims are put in general terms.

106. The Table 3 claims as against R1, R10-R16 are all apparently presented within the relevant statutory time limits. The claim that there was a failure to make payment of accrued but untaken holiday is expressed as occurring 'Since 23 February 2021'. In reality any failure to pay would relate to the next payment date 28 February 2021 at the earliest.

107. As I have said there are claims against R1, R1-R15 in table 2 which rely on the same causes of action. Claims involving the same people of the same type might support a conclusion that it is reasonably arguable that there is a sufficient link between the claims. I consider that at present I do not have sufficient information about the claims brought to allow me to make a proper assessment. Whilst ***Cox v Adecco & others*** is not directly on point the caution that is urged before striking out a claim is of general application.

108. I consider this situation to be highly unsatisfactory. Had the Claimant responded to the Respondent's request for further information and engaged in agreeing a list of issues then I would not be in the position I am.

109. I am not going to make any orders striking out the claims against R1, R10-16 as it is at least possible that when particulars are provided there may be some claims where the Claimant is able to show a sufficient link between table 3 and table 2 claims. What I shall do is to make case management orders requiring the Claimant to provide proper particulars of his claims as I have previously ordered. The Respondents will then be at liberty to renew their applications if so advised.

110. I shall not make any deposit orders in respect of these Respondents for the same reasons. It is premature to do so.

R2-R9

111. It is the Respondent's pleaded position that R6, Faye Richardson, left R1's employment in December 2019. The Claimant has not ever said that he disagreed with that. If that is true then there could be no claim against her after that date unless she was acting as an agent of R1. The Claimant has not identified anything said or done by her after that date and did not suggest before me that the Respondents are wrong about her dates of employment.

112. The Claimant says that R2-R9 aided all of the acts in table 3. He has been asked to explain what those people did but has not responded. It is clear that including R6 was entirely baseless. I am driven to the conclusion that the Claimant has just included her name because of his previous dealings with her.

113. In Row 1 of Table 3 the Claimant alleges that there was a deliberate failure to investigate his grievances and his appeal. He lists acts on 2 March 2021 to 18 June 2021 although he does not say what he is complaining about. What is alleged is a deliberate omission. I do not consider it is possible to knowingly help a person with an omission but I can put that to one side. The Claimant has had opportunities to explain how he would put this claim. Firstly he was asked to give further information. Secondly he had an opportunity before me. He has included a claim against R6 where he cannot contradict the Respondents' account that she was not an employee at the material time.

114. Row 2 refers to R15 'covering up independence of grievance investigators' on 21 May 2021. In their ET3 the Respondents explain that on that date R15 wrote to

the Claimant and told him that hearing managers in grievance and appeal cases always received HR support. The Claimant clearly views that as 'covering up'. I should put aside the merits of that claim at this stage. In Table 3 the Claimant suggests that all of the Respondents 'aided' the sending of that letter. I am of the view that that there is no prospect of showing that R2-R9 aided R15 in writing her letter.

115. In the bundle before me was an e-mail from Melanie Phillips, R11 sent on 3 March 2021 acknowledging the Claimant's resignation. She says:

Thank you for your letter dated 23 February 2021, in which you resign from your position of Vice President within the Model Validation team with immediate effect. We will process your resignation accordingly, including making a payment for the 14 ½ days holiday which you have accrued but not used up to 23 February 2021.

Please can I ask you to confirm whether you have any Barclays property (eg laptop, building pass, mobile phone, etc) which will need to be returned? Similarly, I am conscious that you have been out of the office on sick leave since September 2019 and therefore you may have personal belongings in a locker or desk in the office. Given the current restrictions on building access at the moment, when it is appropriate to do so, we can either arrange for you to have access to the office to drop off any Barclays property and pick up any personal property, or we can arrange for a courier to do the same. Please can I ask you to confirm any Barclays/personal property which needs to be returned and your preference for the method by which it is returned?

Finally, I note the issues you have raised within your resignation letter. Please can I ask you to confirm whether you would like these issues to be referred to an independent manager for investigation through Barclays' internal grievance process?

116. Rows 3 and 4 of Table 3 outline claims that R10 (which must really be R11) had failed to make arrangements for collection of personal property and that the Claimant had not received any holiday pay. In the ET3 it is accepted that there was a delay in processing the Claimant's final payment. Putting to one side the merits of the claim advanced against R1 and R10 the Claimant then pleads that all of the remaining Respondents aided those omissions. That includes R6 who left R1's employment in December 2019. I am of the view that there is no prospect of showing that that R2-R9 did anything to aid these particular omissions.

117. Row 5 of Table 3 refers to a further letter from R15. The complaint is that R15 confirmed the involvement of the Respondents in maintaining the state of affairs. The allegation is very hard to understand. It is plainly a reference to a letter written by R15. The 'confirmation' the detriment complained of. There is no explanation of how R2-R9 have aided that letter being written and I find that there is no prospect of establishing that they did.

118. To establish a reasonably arguable case bringing the claims Table 2 claims against R2-R9 into time (without any just and equitable extension) the Claimant must show that there were acts or omissions by those Respondents post dating 25 February 2021 for R2 and 8 March 2021 for R3-R9. He also needs to show that there is a sufficient link between those claims and the earlier claims.

119. The allegations of aiding set out in Table 3 are bare assertions. The Claimant has not set out any details of any act or omission that post-dated the events set out in Table 2. I have considered whether the Claimant should be given a further opportunity to clarify his claim. I do not think that it is in the interests of justice to do so. The Claimant has had ample opportunity to explain his case. He has brought claims against R6 which are fanciful. There is no reason to think that his claims against R2,3,4,6,7,8,or 9 are any better. The Claimant can maintain the same claims against R1.

120. I find that the Claimant has not established any reasonably arguable basis for a sufficient link between claims which are in time and those potentially out of time in respect of these individual respondents.

121. I shall apply those conclusions to Employment Rights Act claims. There is no provision from bringing a claim under Section 44 against an individual other than an employer. It follows that claims under that section cannot be pursued against R2-R9. Section 47B(1A) does permit a claim to be brought against a fellow worker. However, my findings are that the Claimant has not set out any act or omission that postdates the earliest date that a claim would have been potentially in time which would fall within that section. I do not consider that the mere assertion of 'aiding' in Table 3 is sufficient to establish any such claim. I do not consider that the claims of 'aiding' have any realistic prospects of success. The Table 2 claims are out of time and the test of reasonable practicality is the same for the unfair dismissal claim. For the same reasons as I give above the claims under Section 47B were presented outside of the time limit in Section 48 of the Employment Rights Act 1996 and the tribunal has no jurisdiction to entertain them.

122. For the Equality Act claims I need to consider whether the Claimant has any reasonable prospects of success in persuading a tribunal that it would be just and equitable to extend time for the Equality Act claims.

123. I have set out above my reasons for deciding that it was reasonably practicable for the Claimant to have brought his claims in time. The test in Section 123 of the Equality Act 2010 is different but the reasons for any delay are a relevant consideration. I rely on my findings above and conclude that the Claimant has not given any good explanation why he did not present his claim against R2-R9 within the time limits imposed by Section 123. I place particular emphasis on the fact that the Claimant was working in a senior managerial role. If he could do that he could have completed an ET1. I do not accept that any of the health difficulties I have acknowledged interfered with his ability to do so.

124. A matter that I consider that a tribunal would be bound to have regard to when considering whether it is just and equitable to extend time is the fact that a refusal to extend time in respect of an individual respondent does not by itself prevent the claim proceeding against the corporate respondent.

125. I would accept that the delays between the table 2 claims and the presentation of the ET1 are short. Often the fact that there is just a short delay would point towards a lack of any forensic prejudice. On the Claimant's pleaded case if time were extended to the date of his resignation then the Tribunal, as against these individual Respondents, will have to deal with matters going back to 2016. Whilst

many factual disputes may be resolved in the other proceedings there may be issues which are said to be distinct.

126. I accept that if a tribunal refused to extend time the Claimant would not be able to pursue his case against these individuals. That causes obvious prejudice.

127. I have heard the evidence directed towards whether it is just and equitable to extend time. I find that having regard to all of the circumstances it would not be just and equitable to give the Claimant any extension. He could have and should have brought his claim on time and there was no good reason why he could not do so.

128. It follows that the claims against R2-R9 brought under the Equality Act 2010 that require an extension of time have no reasonable prospects of success.

129. I shall make further case management orders in due course.

Employment Judge Crosfill
Date: 22 March 2023