EMPLOYMENT TRIBUNALS

Claimants: **Ms A Ramatu Yamjom**

Respondent: **East London NHS Foundation Trust**

Heard at: **Watford Hearing Centre (by CVP)**

On: **28 April 2023**

Before: **Employment Judge Byrne**

Representation

Claimant: Mr C Price, of Counsel
Respondent: Mr H Sheehan, of Counsel

The Employment Judge having reserved his decision because of lack of time at the Public Preliminary Hearing now gives judgment as follows :-

RESERVED JUDGMENT

1. The Claimant's application to amend her claim made on 15 August 2020 is REFUSED.
2. The Claimant's application to amend her claim made on 22 November 2020 is REFUSED.
3. The Claimant's claims have no reasonable prospect of success as the Tribunal does not find a basis for extending time in relation to any of the claims and the claims are therefore STRUCK OUT.

REASONS

Introduction

1. The Public Preliminary Hearing was listed to consider the following matters, set out originally in the case management orders of EJ Kurrein of 4 May 2021:

1.1. Should the Claimant's application to amend her claim made on 15 August 2020 be granted?

1.2. Should the Claimant's application to amend her claim dated 22 November 2020 be granted?

1.3. Should any part of the Claimant's claim be struck out if it has no reasonable prospect of success?

1.4. Should the Claimant be ordered to pay a deposit as a condition of continuing a claim if it has little reasonable prospect of success?

2. The hearing commenced at 10am and concluded at 4.32pm. At the outset of the hearing, it was indicated that the Claimant now wished to rely only on what was characterised on the Claimant's behalf as a 'supplementary' witness statement dated 27 March 2023 and not on a witness statement dated 11 June 2021 at page 211 of the 245-page bundle that had been assembled for purposes of the hearing. The Claimant was the subject of examination-in-chief in relation to a limited number of points by Mr Price before being cross-examined by Mr Sheehan. The Tribunal then heard helpful closing submissions from both Mr Price and Mr Sheehan.

Findings of Fact

3. The Claimant was employed as a social worker by the Respondent on 3 May 2011. By the time the Claimant resigned from her position with the Respondent on 22 January 2020, she held the position of Deputy Team Manager. Her EDT was 22 April 2020.

4. The Claimant was off work on account of long-term sickness from January 2019 to May 2019. The Claimant's health issues during that period of illness related to mechanical injury to the Claimant's lower back and also an issue with her gall bladder.

5. Matters arising in the Claimant's employment that are connected to the claims brought by the Claimant caused the Claimant to contact an employment law advisor in August 2019. That advisor was involved in the submission of the Claimant's claims on 9 August 2020 and the amendment applications of 15 August 2020 and 20 November 2020 but is no longer acting for the Claimant or advising her.

6. Having resigned on 22 January 2020 and formally ended her employment with the Respondent on 22 April 2020, the Claimant commenced early conciliation through ACAS on 27 May 2020 and ACAS issued the EC certificate by email on 1 June 2020. The Claimant was in touch with her then employment law advisor at that time and had the benefit of their advice at that time.

7. On 9 August 2020 the Claimant presented the following claims: '*Detriment for making protected disclosures; Constructive unfair dismissal; Automatically unfair dismissal; and Disability Discrimination*' (8.2 of the ET1). No further detail of the claims was provided in the ET1 and it was stated therein that grounds of complaint were '*to follow*'.

8. It was agreed that all of the Claimant's claims were presented outside of time. It was agreed that they ought to have been presented no later than 26 July 2020 in order to have been presented within time.

9. On 15 August 2020 the Claimant made her first amendment application in the form of detailed grounds of complaint that elaborated on the claims presented on 9 August 2020. In the papers before me there was a suggestion on the part of the Claimant's then employment law advisor that it had not been possible to upload the grounds of complaint at the same time as the ET1 from. However, evidence in the bundle suggested that these grounds of complaints were not formulated until 14 August 2020 and the Claimant said in evidence she could not say why her then employment law advisor had taken until 15 August 2020 to submit the detailed grounds of complaint. On the evidence presented, I do not find any clear reason for the delay until 15 August 2020 in submitting the grounds of complaint.

10. The Respondent's ET3 and grounds of resistance were submitted on 2 November 2020 following the granting of an extension of time for same to be done.

11. On 20 November 2020 the Claimant made her second amendment application, which sought to address '*jurisdictional issues and post-termination discrimination which were not particularised in the original claim*'. The amended claim gave the following explanation for the presentation of the claims on 9 August 2020: '*The Claimant failed to notify her Representative that she wished to proceed with her claim in the employment tribunal because of her severe illness and the drugs she was taking at the relevant period. She was suffering from Neuralgia as a result of an earlier operation and was on Amitripcyline [sic] and Morphine which affected her memory and cognitive skills. At the same time, she was suffering from severe depression caused by the Respondent's actions, for which she was prescribed Gabapentin.*'

12. The new claim for 'post-termination discrimination' related to an alleged on-going failure to investigate a grievance made by the Claimant in circumstances where the most recent piece of correspondence from to the Claimant from the Respondent concerning that grievance had been sent on 2 April 2020.

13. The second amendment application followed upon receipt of the Respondent's Ground of Resistance. Its content addresses points in the Ground of Resistance concerning time limits but it is not expressly stated that the second amendment application was prompted by, or was a reaction to, the Respondent's Grounds of Resistance. No particular reason has been offered for the delay until 20 November 2020 in the making of the second amendment application or why the

contents thereof could not have been included at the time of the first amendment application of 15 August 2020.

14. In evidence, the Claimant agreed that she maintained the explanation set out in the first amendment application of 15 August 2020 for the delay until 9 August 2020 in making her claims. Specifically, she agreed that she had provided detailed information to her then employment law advisor concerning her claims in interactions that began in August 2019 and continued into 2020, particularly around the time of her contact with ACAS in May 2020. She also agreed that her position was that her then employment advisor had been waiting for the Claimant to notify the advisor to submit the claims but that severe illness prevented the Claimant from giving the necessary consent, resulting in the late submission of the claims on 9 August 2020.

15. The Claimant gave somewhat vague and equivocal evidence as to the timing and extent of instructions to her then employment advisor concerning the substance of her claims but, looking at the evidence in the round, I am satisfied that the Claimant had provided all necessary instructions before the deadline for presentation of her claims. In any event, it has not been argued on behalf of the Claimant that incomplete instructions were a reason for the delay in presenting and then seeking to amend her claims. Rather, the reason offered for the delay was an alleged inability to '*notify*' her then employment law advisor to submit her claims due to severe illness on the part of the Claimant.

16. The sole reason offered on behalf of the Claimant for the late presentation of the claims on 9 August 2020 and also the context offered for the amendment applications of 15 August 2020 and 20 November 2020, namely severe illness on the part of the Claimant at the material time that meant she had been unable to instruct her then legal representative to submit her claims, did not stand up to scrutiny under cross-examination on behalf of the Respondent.

17. There were significant inconsistencies between the Claimant's evidence and the actual medical evidence before the Tribunal in two key respects. Firstly, the severity of illness alleged on the part of the Claimant at the material time was not supported by the content of the medical evidence before the Tribunal. Secondly, the nature of the illnesses alleged to have been suffered by the Claimant at the material time was often not supported by the content of the medical evidence before the Tribunal. I find these inconsistencies to have been significantly undermining of the Claimant's credibility as regards her state of health at the material time. Her claim to have experienced severe illness at the material time was simply inconsistent with the underlying medical evidence and I reject that she has established on the balance of probabilities that the state of her health was a material factor in the failure to present the claims within time.

18. One of the aspects of the severe illness alleged to have been suffered by the Claimant was drowsiness caused by morphine. However, the evidence showed that the Claimant was discharged from hospital on 1 March 2019 having been prescribed morphine. She said she then '*economised*' the taking of that morphine, in other words that she took it over a period of time that was not consistent with the way in which it was prescribed. However, she had used all of

the morphine by November 2019 and the medical evidence showed that, although she asked for further morphine on that occasion, she was not prescribed any additional morphine and was instead prescribed co-codamol.

19. The Claimant also claimed to have had suffered severe side effects in relation to a different medication, namely amitryptiline. However, the medical evidence showed that it was prescribed at regular intervals during a period from June/July 2019 until a final prescription in March 2020 when she was given a prescription for 28 tablets. There were two difficulties with the Claimant's evidence in relation to this medication. First, there was nothing in the various medical notes between June/July 2019 to March 2020 that indicated that the Claimant raised anything with her doctors as regards side effects. Secondly, the Claimant asserted in evidence that the medication was prescribed not only to help her sleep, but also more broadly for '*stress and anxiety*'. However, the relevant medical notes show that it was only prescribed to help her sleep. The Claimantthen gave evidence of taking the 28-tablet prescription irregularly between March and the end of June 2020 in a manner that was not consistent with how the medication was prescribed. Specifically, she took it over three months instead of one month. However, again, there was nothing in the underlying medical records to support the Claimant's contention that she had side effects of any kind in relation to the medication in question or that she reported any side effects to her doctors. In any event, even on the Claimant's own account, she had stopped taking the medication by the end of June 2020.

20. The Claimant gave evidence of being prescribed the drug Gabapentin for pain but she denied that it was prescribed for depression. This was inconsistent with the explanation given in the amendment application of 15 August 2020 that she was prescribed the drug for severe depression. She claimed to have experienced side effects from this drug but, as with her account in relation to amitryptiline, there was a dearth of evidence in the medical notes documenting the reporting of any side effects. The Claimant agreed that she received a final prescription for this drug in early March 2020. As she had done with amitryptiline, she said she '*economised*' her use of that drug but that she had certainly finished using it by the end of June 2020.

21. The Claimant sought to rely on a visit to A&E on 11 June 2020 where she had attended due to chest pain. She claimed she had been told she had high blood pressure and that she had acid reflux and that she was told to buy Gaviscon. However, the relevant medical evidence made no mention of any of these matters and simply recorded that the Claimant was discharged from hospital without any record of a particular diagnosis and no record of any drugs having been prescribed to the Claimant. I do not find this matter to demonstrate severe illness on the part of the Claimant at the material time.

22. The Claimant sought to rely on an occasion on 29 June 2020 where she was diagnosed with '*mild gastritis*' after a biopsy that was described in relevant medical notes as being '*reassuringly unremarkable*'. Again, this was an occasion when the Claimant's account did not tally with the relevant medical notes. She gave an account of this matter being related to '*stress*' but this is not documented in the relevant records. She also claimed to have been prescribed extensive

medication in relation to this matter, whereas the medical notes only show a single one-week course of Clarithromycin prescribed on 10 July 2020. I do not find this matter to demonstrate severe illness on the part of the Claimant at the material time.

23. The Claimant sought to rely on '*stress*' that she said she was experiencing at the material time. However, there was no medical document before the Tribunal showing any referral to psychological or psychiatric treatment. When asked in cross-examination why this was the case, the Claimant stated that she wished to '*reserve the reasons*' for that to herself and refused to elaborate further as to why there was an absence of such evidence. She reiterated that amitryptiline and gabapentin were for her stress and anxiety. However, the actual medical evidence did not disclose them as having been prescribed for this purpose.

24. There was medical evidence in the bundle (191, 202, 202, 209/245) diagnosing '*work-related stress*' in December 2019 and in March 2020. When it was put to the Claimant that this could not reasonably have been said to have continued after she ended her employment, she disagreed and maintained that the stress had continued because of the unresolved grievance she had lodged and because of her inability to find new employment. While I accept that there is medical evidence to show that the Claimant was experiencing '*work-related stress*' as recently as March 2020, I find a dearth of medical evidence to support the contention that this continued beyond that time.

25. While I accept that the Claimant was on different prescribed medications in 2020 and that she had various interactions with doctors and hospitals, looking at the evidence in the round, for all of the reasons set out above, I am not satisfied that the Claimant has established that medical issues prevented her from notifying her then employment law advisor to present her claims until the point at which they were presented.

Conclusions

Should the Claimant's application to amend her claim made on 15 August 2020 be granted?

26. Selkent Bus v Moore [1996] IRLR 661 provides that three matters in particular fall to be considered in an amendment application: the nature of the amendment; relevant time limits; and the timing and manner of the amendment. However, this is a non-exhaustive list of potentially relevant factors and, in balancing the respective hardship and injustice to each party of allowing or disallowing an amendment, relevant factors are to be identified and weighed having regard to the particular circumstances of the case at hand.

27. I turn first to the factors on the Claimant's side of the balancing exercise.

28. As regards the nature of the amendment, it was argued on behalf of the Claimant that it was, essentially, the provision of further particulars of the claims that that been presented on 9 August 2020. However, I am satisfied that it was substantial amendment application inasmuch as it sought to set out a factual matrix for what

was, in effect, a short list of headline claims outlined in the ET1 submitted on 9 August 2020.

29. The next matter of relevance is time limits. It was accepted on behalf of the Claimant that the amendment application related to claims that were out of time when they were presented on 9 August 2020. The relatively short period of time between the relevant time limit of 26 July 2020 and 9 August 2020 and the further short period of time between the presentation of the claims and the first amendment application of 15 August 2020 were pointed to on behalf of the Claimant. It was further argued on behalf of the Claimant that evidence concerning the Claimant's state of health at the material time should be sufficient to persuade the Tribunal that, depending on the nature of the individual claims brought, it was not reasonably practicable for the Claimant to bring her claims before the point in time that they were actually brought or that it was just and equitable to extend time for the period until they were actually brought.

30. I accept that there was a relatively short period of time between the relevant time limit of 26 July 2020 and 9 August 2020 and a further short period of time between the presentation of the claims and the first amendment application of 15 August 2020. However, the findings of fact that I have set out above are such that I find that the Claimant has not established that her state of health at the material time was a material reason for these delays. Nor, on the evidence presented, do I find any other explanation has been established for these delays.

31. The next matter of relevance is the timing and manner of the amendment application. It was argued on behalf of the Claimant that the amendment application was made very soon after the initial presentation of the claims on 9 August 2020. While I accept this point, it is also the case that I have already, in the findings of fact, found that that no satisfactory explanation has been provided for why the content of the amendment application of 15 August 2020 could not have been submitted at the same time as the presentation of the claims on 9 August 2020.

32. I accept that there is nothing to suggest that the claims sought to be brought by the Claimant are not arguable or that there is anything concerning the merits of the claims that should count against the Claimant.

33. I accept that there is a public interest in discrimination claims being heard.

34. I accept that if the amendment application is not granted, the Claimant would be severely hampered in advancing the claims made on 9 August 2020.

35. I turn next to the factors on the Respondent's side of the balancing exercise.

36. I accept that the amendment application is a substantial one, entailing the setting out of a factual matrix for what was, in effect, a short list of headline claims outlined in the ET1 submitted on 9 August 2020.

37. As regards the matter of time limits, I accept that the claims are out of time and that, on the findings of fact I have made, no satisfactory explanation has been provided for either the delay in the presentation of the claims on 9 August 2020 or the making of the amendment application on 15 August 2020.

38. In relation to the timing and the manner of the application to amend, I have accepted that although the application to amend was made at an early stage, no satisfactory explanation has been offered for why the content of the amendment application of 15 August 2020 could not have been submitted at the same time as the presentation of the claims on 9 August 2020.

39. I accept that the cogency of the evidence the Respondent may seek to call may be affected to some degree in the event that the amendment application is granted and that matters are not helped by the significant delay in the hearing of the amendment application. However, I note that the delay in the hearing of this amendment application cannot be said to be the fault of the Claimant.

40. I accept that, in the event of the granting of the amendment application, the Respondent will be put to additional cost. The Respondent will likely require to amend its pleadings, disclose additional evidence and call further witnesses.

41. I accept that, in the event of the granting of the amendment application, the Respondent will also face the prejudice of losing the statutory defence inherent in the time limits, which was a matter that was specifically identified as prejudicial by HHJ Tayler in Vaughan v Modality Partnership [2021] ICR 535.

42. I move next to the identification of where the balance of injustice and hardship lies in this particular case.

43. I conclude that the balance of prejudice and justice lies in favour of the Respondent and against the granting of the Claimant's amendment application. I find that, on the particular facts of this case, a particularly weighty factor is the Claimant's failure to provide a satisfactory explanation for presenting her claims out of time on 9 August 2020 or for the failure to present the content of the amendment application of 15 August 2020 at the same time as the claims that were presented on 9 August 2020. As will be set out later in this judgment, I find that the Claimant has not demonstrated that it was not reasonably practicable for her to present relevant claims before 9 August 2020 or that it would be just and equitable to extend time for the necessary period in relation to other relevant claims. I conclude that these matters outweigh the factors that fall in the Claimant's favour and so I refuse the amendment application.

Should the Claimant's application to amend her claim made on 20 November 2020 be granted?

44. Bearing in mind the principles set out in the *Selkent* case, I turn first to the factors on the Claimant's side of the balancing exercise.

45. As regards the nature of the amendment, it was argued on behalf of the Claimant that it was, essentially, an explanation for the delay in the presentation of the claims that that been presented on 9 August 2020, together with a fresh claim of post-termination discrimination. I accept that the nature of the amendment is relatively limited in scope and certainly more limited than the amendment application of 15 August 2020. Nevertheless, it does include the

making of an entirely new claim in the form of an allegation of post-termination dismissal.

46. The next matter of relevance is time limits. It was accepted on behalf of the Claimant that the amendment application related to claims that were out of time when they were presented on 9 August 2020 and that this was also the case in relation to the fresh claim of post-termination discrimination. The relatively short period of time between the relevant time limit of 26 July 2020 and 9 August 2020 and the further relatively short periods of time between the presentation of the claims and the first amendment application of 15 August 2020 and second amendment application of 20 November 2022 were pointed to on behalf of the Claimant. It was further argued on behalf of the Claimant that evidence concerning the Claimant's state of health at the material time should be sufficient to persuade the Tribunal that, depending on the nature of the individual claims brought, it was not reasonably practicable for the Claimant to bring her claims before the point in time that they were actually brought or that it was just and equitable to extend time for the period until they were actually brought.

47. I accept that there was a relatively short period of time between the relevant time limit of 26 July 2020 and 9 August 2020 and a further short period of time between the presentation of the claims and the first amendment application of 15 August 2020. However, the delay from 15 August 2020 until 20 November 2022 is more considerable. Furthermore, the findings of fact that I have set out above are such that I find that the Claimant has not established that her state of health at the material time was a material reason for these delays. Nor, on the evidence presented, do I find any other satisfactory explanation for these delays.

48. The next matter of relevance is the timing and manner of the amendment application. It was argued on behalf of the Claimant that the amendment application was made relatively soon after the initial presentation of the claims on 9 August 2020. While I accept this point to some extent, it is also the case that I have already found that that no satisfactory explanation has been provided for why the content of the amendment application of 15 August 2020 could not have been submitted at the same time as the presentation of the claims on 9 August 2020 or for the delay until 20 November 2020 in the making of the instant amendment application.

49. I accept that there is nothing to suggest that the claims sought to be brought by the Claimant are not arguable or that there is anything concerning the merits of the claim that should count against the Claimant.

50. I accept that there is a public interest in discrimination claims being heard.

51. I accept that if the amendment application is not granted, the Claimant would be severely hampered in advancing the claims she wishes to make.

52. I turn next to the factors on the Respondent's side of the balancing exercise.

53. I accept that the amendment application is a somewhat substantial one, entailing additional detail that built on the amendment application of 15 August 2020 (which comprised the provision of a factual matrix for what was, in effect, a short

list of headline claims outlined in the ET1 submitted on 9 August 2020), as well as the making of a new claim of post-termination discrimination.

54. As regards the matter of time limits, I accept that the claims are out of time and that, on the findings of fact I have made, no satisfactory explanation has been provided for either the delay in the presentation of the claims on 9 August 2020 or the making of the amendment applications on 15 August 2020 and on 20 November 2020.

55. In relation to the timing and the manner of the application to amend, I have noted that the amount of time between 15 August 2020 and 20 November 2020 is reasonably considerable and that no satisfactory explanation has been offered for why the content of the amendment application of 20 November 2020 could not have been submitted at the same time as the presentation of the claims on 9 August 2020 or, failing that, by the time of the first amendment application on 15 August 2020.

56. I accept that the cogency of the evidence the Respondent may seek to call may be affected to some degree in the event that the amendment application is granted and that matters are not helped by the significant delay in the hearing of the amendment application. However, I note that the delay in the hearing of this amendment application cannot be said to be the fault of the Claimant.

57. I accept that, in the event of the granting of the amendment application, the Respondent will be put to additional cost. The Respondent will likely have to amend its pleadings, disclose additional evidence and call further witnesses.

58. I accept that, in the event of the granting of the amendment application, the Respondent will also face the prejudice of losing the statutory defence inherent in the time limits, which was a matter that was specifically identified as prejudicial by HHJ Tayler in Vaughan v Modality Partnership [2021] ICR 535.

59. I move next to the identification of where the balance of injustice and hardship lies in this particular case.

60. I conclude that the balance of prejudice and justice lies in favour of the Respondent and against the granting of the Claimant's amendment application. I find that, on the particular facts of this case, a particularly weighty factor is the Claimant's failure to provide a satisfactory explanation for presenting her claims out of time on 9 August 2020 or for the failure to present the content of the amendment application of 15 August 2020 at the same time as the claims that were presented on 9 August 2020 or for the failure to make the second amendment application before 20 November 2020. As will be set out later in this judgment, I find that the Claimant has not demonstrated that it was not reasonably practicable for her to present relevant claims before 9 August 2020 or that it would be just and equitable to extend time for the necessary period in relation to other relevant claims. I conclude that these matters outweigh the factors that fall in the Claimant's favour and so I refuse the amendment application.

Should any part of the Claimant's claim be struck out if it has no reasonable prospect of success?

61. The Claimant's amendment applications have been refused. The next matter to be considered is whether the claims made on 9 August 2020 should be struck out on the basis that they have no reasonable prospect of success. On 9 August 2020 the Claimant presented the following claims: '*Detriment for making protected disclosures; Constructive unfair dismissal; Automatically unfair dismissal; and Disability Discrimination*'.

62. I find that the Claimant's claims should be struck out on the basis that they have no reasonable prospect of success for the reason that the Claimant has not shown that, in relation to the first three claims, it was not reasonably practicable to bring the relevant claims within time or that, in relation to the fourth claim, it is just and equitable to extend time for the necessary period.

63. For claims requiring a 'not reasonably practicable extension', the burden of proof in showing that it was not reasonably practicable to present the claim in time rests upon the Claimant; see Porter v Bandridge Ltd [1978] ICR 943 CA. If the Claimant does succeed in doing so then the Tribunal must also be satisfied that the time in which the claim was in fact presented was in itself reasonable. One of the leading cases is Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119 CA in which May LJ referred to the test as being in effect one of "*reasonable feasibility*" (in other words somewhere between the physical possibility and pure reasonableness).

64. In Adsa Stores Ltd v Kauser EAT 0165/07 Lady Smith described the reasonably practicable test as follows: "*the relevant test is not simply looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done*".

65. A number of factors may need to be considered. The list of factors is non-exhaustive but may include:

    65.1. The manner and reason for the detriment/dismissal;

    65.2. The extent to which the internal grievance process was in use;

    65.3. Physical or mental impairment (including illness – see Shultz v Esso [1999] IRLR 488 CA, a case concerning a claimant suffering from a depressive illness, as to the approach for the Tribunal to adopt when determining the "reasonably practicability" question).

    65.4. Whether the Claimant knew of his rights. Ignorance of the right to make a claim may make it not reasonably practicable to present a claim in time, but the claimant's ignorance must itself be reasonable. In such cases the Tribunal must ask: what were the claimant's opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived? See Dedman v British Building and Engineering Appliances Ltd 1974 ICR 54 CA. In other words, ought the claimant to have known of his rights? Ignorance of time limits will rarely be acceptable as a reason for delay and a claimant who is aware if his rights will generally be taken to have been put on enquiry as to the time limits.

    65.5. Any misrepresentation on the part of the Respondent;

65.6. Reasonable ignorance of fact;

65.7. Any advice given by professional and other advisors. A Claimant's remedy for incorrect advice will usually lead to a remedy against the advisors and the incorrect advice unlikely to have made it not reasonably practicable to have presented the claim within the statutory time limit. See for example: Dedman (cited above); Wall's Meat Co Ltd v Khan 1979 ICR 52 CA.

65.8. Postal delays/losses

65.9. The substantive cause of the Claimant's failure to comply.

66. The relevant law is to be borne in mind in addressing three key questions.

67. The first question is whether the claims were brought outside the relevant time limit. The second question is whether it was reasonably practicable to bring the claims within that time limit. And then thirdly (if applicable) if it was not reasonably practicable to bring the claims within the relevant time limits, the question arises as to whether they were brought within such further period of time as the Tribunal considers reasonable.

68. The first question that arises is whether the claims were brought outside the relevant time limits. It is clear on the evidence that the claims were not presented within the relevant time limits.

69. The next question for consideration is whether it was reasonably practicable to bring the claims within time. Looking at the evidence in the round, I find that it was reasonably practicable to do so. Given the findings of fact that I have made earlier in this judgment, the Claimant has not demonstrated any particular impediments to her bringing her claims within time, whether for medical reasons or any other reason.

70. Those being the findings of the Tribunal, the third question does not arise for consideration and, given the conclusions the Tribunal has reached, the judgment of the Tribunal is that the relevant claims were not brought within time and should, therefore, be struck out on the basis that they have no reasonable prospect of success

71. For claims requiring a 'just and equitable extension', I have regard to the fact that a time extension is said to be the exception rather than the rule because there is a statutory time limit (Robertson v Bexley Community Centre [2003] IRLR 434). I also take account of the fact that there is no presumption in favour of an extension and that it is for the Claimant to persuade the Tribunal that there is a basis for extending time. I have regard to the fact that it is a question of fact and judgement on a case by case basis and there is no principle of law which dictates how generously or how sparingly the Tribunal should exercise the power to extend (Chief Constable of Lincolnshire v Caston [2010] IRLR 327). I further take account of the fact that, in identifying where the balance of prejudice lies in relation to a decision as to whether time should be extended, the discretion is a broad one meaning that all relevant factors should be considered, including in particular the length of and reasons for the delay (Adedeji v University Hospitals Birmingham NHS Foundation Trust. [2021] EWCA Civ 23)

72. I turn first to the factors on the Claimant's side of the balancing exercise.

73. It was accepted on behalf of the Claimant that the claims were out of time when they were presented on 9 August 2020. However, the relatively short period of time between the relevant time limit of 26 July 2020 and 9 August 2020 was pointed to on behalf of the Claimant. It was further argued on behalf of the Claimant that evidence concerning the Claimant's state of health at the material time should be sufficient to persuade the Tribunal that it was just and equitable to extend time for the period until they were actually brought.

74. I accept that there was a relatively short period of time between the relevant time limit of 26 July 2020 and the presentation of the claims on 9 August 2020. However, the findings of fact that I have set out earlier in this judgment are such that I find that the Claimant has not established that her state of health at the material time was a material reason for this delay. Nor, on the evidence presented, do I find any other explanation has been established for this delay.

75. I accept that there is nothing to suggest that the claims sought to be brought by the Claimant are not arguable or that there is anything concerning the merits of the claims that should count against the Claimant.

76. I accept that there is a public interest in discrimination claims being heard.

77. I accept that if an extension of time is not granted, the Claimant will experience the prejudice of being prevented from advancing her claim.

78. I turn next to the factors on the Respondent's side of the balancing exercise.

79. I accept that the claims are out of time and that, on the findings of fact I have made, no satisfactory explanation has been provided for the delay until 9 August 2020 in the presentation of the claims.

80. I accept that the cogency of the evidence the Respondent may seek to call may be affected to some degree in the event that an extension of time is granted and that matters are not helped by the significant delay in the hearing of this strike out application. However, I note that the delay in the hearing of this application cannot be said to be the fault of the Claimant.

81. I accept that, in the event of the granting an extension of time, the Respondent will be put to all of the costs associated with a full defence of the claim.

82. I accept that, in the event of the granting an extension of time the Respondent will also face the prejudice of losing the statutory defence inherent in the time limits.

83. I move next to the identification of where the balance of injustice and hardship lies in this particular case.

84. I conclude that the balance of prejudice and justice lies in favour of the Respondent and against extending time in relation to the relevant claim. I find that, on the particular facts of this case, a particularly weighty factor is the Claimant's failure to provide any satisfactory explanation for presenting her claim out of time on 9 August 2020. I conclude that this matter outweighs the factors

that fall in the Claimant's favour to the extent that the balance of prejudice falls in favour of the Respondent. I therefore refuse to extend time in relation to the disability discrimination claim brought by the Claimant and, for that reason, strike it out as having no reasonable prospect of success.

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Employment Judge Byrne
Date: 20 June 2023

JUDGMENT SENT TO THE PARTIES ON

20 June 2023

GDJ
FOR THE TRIBUNAL OFFICE