EMPLOYMENT TRIBUNALS

Claimant: **Dr C Van Den Anker**

Respondent: **The University of the West of England**

Heard at: **Newport and by CVP**

Before: **Employment Judge R Harfield**

On: **22 July 2022, 7 June 2023, 16 June 2023, 26 June 2023, 30 June 2023.**

Representation:

The Claimant represented herself (with assistance from her support worker, and her partner)

Mr Mitchell (Counsel) for the Respondent

Reserved Judgment on preliminary issues (Strike out)

Background

1. These proceedings have a long history. The claim form was presented on 16 December 2020 at the Bristol Employment Tribunal. A case management hearing took place before EJ Bax on 11 June 2021. The case was later transferred to the Cardiff Employment Tribunal. A second, 3 hour, case management hearing took place before EJ Brace on 23 September 2021. On 3 September 2021 the claimant had filed some further particulars of claim, having previously failed to meet various deadlines and extensions. EJ Brace directed the claimant to review and amend her further particulars to comply with the previous orders of EJ Bax and for there to then be further clarification in a preliminary hearing listed for a day. The claimant did not amend her further particulars. At the case management hearing on 27 October 2021 EJ Sharp worked through the claims producing a draft list of potential claims and issues. The claimant was directed to provide some further information about her protected

disclosures and harassment complaints. The claimant provided some information about the protected disclosures relied upon but it lacked specific detail.

2. On 13 January 2022 the fourth preliminary case management hearing took place before EJ Brace, again lasting 1 day. Time was spent considering the protected disclosures the claimant was seeking to rely upon and the detriments she said she had been subjected to. The complaints that required permission to amend were identified and the claimant was ordered to provide further information about her reasonable adjustments complaints, including the dates when it was asserted it was reasonable for the respondent to have taken the steps. The claimant was also directed to apply to amend her harassment complaint. EJ Brace produced an amended list of issues. EJ Brace directed that a hearing be listed to decide whether the complaints were out of time/ whether time should be extended, and/or whether any complaint should be struck out or subject to a deposit order for time limit reasons and whether the claimant should have permission to amend her claim. The claimant was directed to provide copies of documents she wanted to rely upon for issues of time/jurisdiction and to provide a witness statement setting out all the evidence she wished to rely upon as relevant to that preliminary issue.

3. The case came back before EJ Brace for a public hearing on 11 February 2022. EJ Brace heard oral evidence from the claimant as the written statement provided by the claimant was very limited. EJ Brace found that the claimant's unfair dismissal and breach of contract complaints were brought 10 days out of time. The claimant had been following the advice of her union to concentrate on her appeal which had only concluded on 11 November 2020, and EJ Brace found, in view of the claimant's disability and technical issues the claimant had with completing the ET1 claim form, it was not reasonably practicable for the claimant to have presented her claim within time and it had been filed within a reasonable time thereafter (in respect of the unfair dismissal and breach of contract complaints).

4. EJ Brace also had to decide various amendment applications. EJ Brace allowed some claimed protected disclosures to proceed and refused permission to amend for others (which lacked sufficient specificity despite two full days of case management). Likewise some protected disclosure detriments were added by way of amendment and permission to amend was refused for others (that related to protected disclosure 1). The amendments were permitted subject to issues of time and jurisdiction to be addressed at the next preliminary hearing unless the judge considered they could only be determined at a final merits hearing. An amendment to include indirect disability discrimination was refused. Permission to amend was granted in respect of direct sex discrimination and direct associative race discrimination relating to the decision to dismiss and EJ Brace also

extended time for those complaints on a just and equitable basis (paragraph 32 of the order of 1 March 2022). In respect of the harassment related to disability complaints EJ Brace allowed those to proceed that she could decipher from the claimant's amendment application of 27 January 2022 (which is largely a schedule of dates and events) and also the harassment complaints set out in what was paragraph 13.1.3 of the list of issues. The permission to amend was again subject to the issues of time and jurisdiction being addressed at a preliminary hearing unless the judge considered they could only be determined at a final merits hearing. In respect of the reasonable adjustments complaints EJ Brace granted permission to amend, again subject to time limit issues. She noted that she had not heard submissions from the parties as to whether the failures to comply with the duty to make reasonable adjustments amounted to an ongoing or continuing act, or when the claimant might reasonably have become aware from the facts known to her/ reasonably known to her or when the respondent might reasonably have been expected to comply with its duty.

5. EJ Brace listed a further public preliminary hearing. The parties were directed to disclose any documents relied on in relation to the preliminary issue of time. The claimant was also directed to set out whether she was relying on any further reasonable adjustments in respect of the physical feature/auxiliary aid complaints set out in the list of issues prepared by EJ Sharp and to also set out the dates she asserted it was reasonable for the respondent to have taken the steps identified as alleged reasonable adjustments in the list of issues prepared by EJ Sharp. The public preliminary hearing was to decide:

    - "Was any complaint presented outside the relevant time limits in the Employment Rights Act 1006 and the Equality Act 2010 and if so should it be dismissed on the basis that the Tribunal has no jurisdiction to hear it?

    - Further, or alternatively, because of those time limits (and not for any other reason), should any complaint be struck out under rule 37 on the basis that it has no reasonable prospect of success and/or should one or more deposit orders be made under rule 39 on the basis of little reasonable prospect of success?

    - Dealing with these issues may involve consideration of subsidiary issues including: whether it was "not reasonably practicable" for a complaint to be presented within the primary time limit; whether there was "conduct extending over a period"; whether it would be "just and equitable" for the tribunal to permit proceedings on an otherwise out of time complaint to be brought: when the treatment complained about occurred."

6. The case came before me on 22 July 2022. Prior to the hearing the respondent had proposed that the remaining time limit issues be held over to the final hearing. The claimant wanted the time limit issues determined and not held over to the final hearing. The position was unresolved by the date of the hearing by which time the respondent's view was that the hearing should proceed to decide whether to strike out any parts of the whistleblowing detriment and discrimination claims (other than the dismissal complaints which were to proceed to final hearing following the extension of time granted by EJ Brace) or whether to order the claimant to pay a deposit on condition of being able to continue with them. I decided that I would not determine substantive time issues once and for all (such as whether there was definitely a continuing act of discrimination). I did not have all the documents and would not be able to hear from all the relevant witnesses and was mindful of the appellate authorities that emphasise on the need for caution in embarking on that kind of decision making at a preliminary hearing. But as both parties wanted the hearing on time limits to go ahead I agreed I would hear the respondent's application to strike out parts of the claimant's claims or to order payment of a deposit.

7. The claimant attended with a file of documents which had not been provided to the respondent in accordance with the tribunal directions. I declined to take the documents or to look at them as it would be unfair to the respondent. But I said to the claimant that if, when answering questions, she wanted to tell me about what she says documents contain I would take that into account. I also had no written statement from the claimant on time limit issues other than the brief one EJ Brace had referred to. I therefore placed the claimant under oath and asked her a series of questions. Unfortunately, it look the majority of the day to ask the claimant questions, and receive her answers, about the protected disclosure detriment complaints (and even then there are some I still did not fully understand but had to move on). I therefore relisted the hearing back before me for a further two days in October 2022. Those two days were not effective as the claimant was undergoing surgery and then recuperating. In the meantime the intermediary service had been launched in the employment tribunal and a decision was made by the Regional Employment Judge to obtain an intermediary report.

8. The provision of the intermediary report necessitated a ground rules hearing before I could reconvene the part heard preliminary hearing. It was listed for 7 June 2023 but was not effective. The claimant did not attend due to difficulties receiving emails. Further, for reasons that still remain unclear Communicourt decided to send a different intermediary who had never met the claimant. The ground rules hearing was

reconvened on 16 June 2023 when the claimant and the intermediary, Ms Burden, both attended.

9. We had a provisional discussion about ground rules for the final hearing and I also set some ground rules for the reconvened preliminary hearing. This included the relisting of the additional 2 days with a 3 day rest gap in between the days; the claimant bringing with her whomever she wished to support her and take notes; (subject to ongoing discussion with the claimant) limiting the tribunal day to 10am to 12pm and 2pm to 4pm; (subject to ongoing discussion with the claimant) a break of 15 minutes approximately every 45 minutes; the provision of 3 laminated cards to the claimant ("I need a break"; "I don't understand"; "I've finished" (speaking/answering the question); provision of the hearing bundle in advance (the claimant already had this); following the intermediary's guidance on asking questions; giving time to respond to questions; asking follow up questions; giving an exact time to return from a break; setting out a plan for each day. In relation to the latter point I also wrote a short case management order after every day's hearing summarising what we had covered and what was still to come.

10. The reconvened preliminary hearing then took place on 26 and 30 June 2023. The claimant attended in person and the respondent by cvp. Again we followed a format of my asking questions of the claimant under oath and she had time to say whatever she wished about the time limit issues. I also heard some evidence on oath about the claimant's means to pay any deposit order. Mr Mitchell made submissions on behalf of the respondent. I reserved my decision. We also discussed the claimant's application to amend her claim to amend the effective date of termination relied upon and general case management. These latter points are set out in a separate case management order. I have also issued a separate deposit order. This written Judgment therefore only sets out my decision and reasoning in respect of the strike out application. **It is important that the claimant also reads the separate deposit order and the case management order.** Numbers in brackets [ ] are references to the page numbers in the bundle I was given for this preliminary hearing.

Legal principles relating to deciding time limit issues at a preliminary hearing

Protected disclosure detriment under the Employment Rights Act

11. I have before me two parts of the claimant's case: the protected disclosure detriment complaints and some of the disability discrimination complaints. It is important to remember that the complaints come from two different pieces of legislation with their own rules about time limits.

12. Section 47 of the Employment Rights Act 1996 ("ERA") make it unlawful to subject a worker to a detriment on the ground of making a protected disclosure. Where the complaint being brought against the employer is about dismissal, the decision to dismiss is excluded from being a detriment. This is because dismissals are separately covered by section 103A ERA. This provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure. EJ Brace has already granted an extension of time for the claimant to bring her protected disclosure dismissal complaint. I am only concerned with the protected disclosure detriment complaints.

13. Section 48 ERA provides as follows:

"48 Complaints to employment tribunals.

(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B

(2)On a complaint under subsection… (1A) …it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

(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…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."

14. This is all subject to the extension of time limits by virtue of the Acas early conciliation regime. In very short, simplified form, the claimant needs to have entered Acas conciliation before the expiry of the original employment tribunal deadline.

15. Arthur v London Eastern Railway [2007] IRLR 58 was a protected disclosure case about time limits where Mummery LJ said:

> *"34. In my judgment, it is preferable to find the facts before attempting to apply the law. I do not think that this is a strike out situation in which assumptions have to be made as to the truth of the facts in order to decide whether there is a cause of action. It is assumed at this stage that the acts (and failures) alleged occurred and that the complainant may be able to establish a cause of action in respect of the acts within the three-month period. The question is whether he can bring in pre-14 April 2004 acts as part of the claim.*
>
> *35. In order to determine whether the acts are part of a series some evidence is needed to determine what link, if any, there is between the acts in the three-month period and the acts outside the three-month period. We know that they are alleged to have been committed against Mr Arthur. That by itself would hardly make them part of a series or similar. It is necessary to look at all the circumstances surrounding the acts. Were they all committed by fellow employees? If not, what connection, if any, was there between the alleged perpetrators? Were their actions organised or concerted in some way? It would also be relevant to inquire why they did what is alleged. I do not find 'motive' a helpful departure from the legislative language according to which the determining factor is whether the act was done 'on the ground' that the employee had made a protected disclosure. Depending on the facts I would not rule out the possibility of a series of apparently disparate acts being shown to be part of a series or to be similar to one another in a relevant way by reason of them all being on the ground of a protected disclosure."*

16. The onus of proving that it was not reasonably practicable to present a complaint within the primary limitation period is upon the employee; Porter v Bandridge Ltd 1978 ICR 943, CA 1150. It is clear from Palmer v Southend-on-Sea Borough Council [1984] 1 WLR 1129, that:

- "not reasonably practicable" is best understood as meaning "not reasonably feasible";
- the tribunal should investigate the effective cause of failure to comply with statutory time limit.

Section 123 of the Equality Act

17. Section 123 of the Equality Act sets out the time limit for discrimination complaints. It says:

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

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

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

(3) For the purposes of this section—

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

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

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

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

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

18. In Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686, it was said by the Court of Appeal:

"52*. The concepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as a complete and constricting statement of the indicia of 'an act extending over a period.' I agree with the observation made by Sedley LJ, in his decision on the paper application for permission to appeal, that the Appeal Tribunal allowed itself to be side-tracked by focusing on whether a 'policy' could be discerned. Instead, the focus should be on the substance of the complaints that the Commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the Service were treated less favourably. The question is whether that is 'an act extending over a period' as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed."*

19. As to the approach to take to applications for an extension of time on a just and equitable basis, it was said in Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] ICR 1194:

"18. *First, it is plain from the language used ("such other period as the employment tribunal thinks just and equitable") that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980, section 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see British Coal Corporation v Keeble [1997] IRLR 336), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see Southwark London Borough Council v Afolabi [2003] EWCA Civ15; [2003] ICR 800, para 33. The position is analogous to that where a court or tribunal is exercising the similarly worded discretion to extend the time for bringing proceedings under section 7(5) of the Human Rights Act 1998: see Dunn v Parole Board [2008] EWCA Civ 374; [2009] 1 WLR 728, paras 30-32, 43, 48; and Rabone v Pennine Care NHS Trust [2012] UKSC 2; [2012] 2 AC 72, para 75.*

That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)."

Strike out

20. Under Rule 37 a claim or part of a claim can be struck out on grounds that include it has no reasonable prospect of success. A claim cannot be struck out unless the party has been given a reasonable opportunity to make representations either in writing or, if requested by the party, at a hearing.

21. In E v X & Anor UKEAT 20_0079_20_1012 the Employment Appeal Tribunal reviewed the case law relating to preliminary hearings on matters relating to time limits. The principles were summarised as follows:

(a) In order to identify the substance of the acts of which complaint is made, it is necessary to look at the claim form;

(b) It is appropriate to consider the way in which a claimant sets out their case and, in particular, whether there is said to be a link between the acts of which complaint is made. The fact that the alleged acts in question may

be framed as different species of discrimination (and harassment) is immaterial;

(c) Nonetheless, it is not essential that a positive assertion that the claimant is complaining of a continuing discriminatory state of affairs be explicitly stated, either in the claim form, or in the list of issues. Such a contention may become apparent from evidence or submissions made, once a time point is taken against the claimant;

(d) It is important that the issues for determination by the tribunal at a preliminary hearing have been identified with clarity. That will include identification of whether the tribunal is being asked: (1) to consider whether a particular allegation or complaint should be struck out, because no prima facie case can be demonstrated, or (2) substantively to determine the limitation issue;

(e) When faced with a strike-out application arising from a time point, the test which a tribunal must apply is whether the claimant has established a prima facie case, in which connection it may be advisable for oral evidence to be called. It will be a finding of fact for the tribunal as to whether one act leads to another, in any particular case;

(f) An alternative framing of the test to be applied on a strike-out application is whether the claimant has established a reasonably arguable basis for the contention that the various acts are so linked as to be continuing acts, or to constitute an on-going state of affairs;

(g) The fact that different individuals may have been involved in the various acts of which complaint is made is a relevant, but not conclusive, factor;

(h) In an appropriate case, a strike-out application in respect of some part of a claim can be approached, assuming, for that purpose, the facts to be as pleaded by the claimant. In that event, no evidence will be required — the matter will be decided on the claimant's pleading;

(i) A tribunal hearing a strike-out application should view the claimant's case, at its highest, critically, including considering whether any aspect of that case is innately implausible for any reason;

(j) If a strike-out application succeeds, on the basis that, even if all the facts were as pleaded, the complaint would have no reasonable prospect of success (whether because of a time point or on the merits), that will bring that complaint to an end. If the strike-out application fails, the claimant lives to fight another day, at the full merits hearing;

(k) Thus, if a tribunal considers (properly) at a preliminary hearing that there is no reasonable prospect of establishing at trial that a particular incident, complaint about which would, by itself, be out of time, formed part of such conduct together with other incidents, such as to make it in time, that complaint may be struck out:

(l) Definitive determination of an issue which is factually disputed requires preparation and presentation of evidence to be considered at the preliminary hearing, findings of fact and, as necessary, the application of the law to those facts, so as to reach a definitive outcome on the point, which cannot then be revisited at the full merits hearing;

(m) If it can be done properly, it may be sensible, and, potentially, beneficial, for a tribunal to consider a time point at a preliminary hearing, either on the basis of a strike-out application, or, in an appropriate case, substantively, so that time and resource is not taken up preparing, and considering at a full merits hearing, complaints which may properly be found to be truly stale such that they ought not to be so considered. However, caution should be exercised, having regard to the difficulty of disentangling time points relating to individual complaints from other complaints and issues in the case; the fact that there may make no appreciable saving of preparation or hearing time, in any event, if episodes that could be potentially severed as out of time are, in any case, relied upon as background more recent complaints; the acute fact-sensitivity of discrimination claims and the high strike-out threshold; and the need for evidence to be prepared, and facts found (unless agreed), in order to make a definitive determination of such an issue.

Decision on strike out applications – protected disclosure detriment

25. Following EJ Brace's decision the claimant has 3 claimed protected disclosures relied upon. **Protected Disclosure 1:** Said to be: "On 26 February 2014, by way of email to the VC (Copied to Helen Langton, Dean of HAS), the Claimant reported her experience as a disabled staff member and raised issues of disability discrimination and lack of compliance with the public equality duty (Further information paragraph 7.6 reporting on mix ups, delays and a negative attitude towards disabled staff from management." There is (EJ Brace not having permitted by way of amendment other detriments the claimant had applied to add) one claimed detriment said to have been on grounds of protected disclosure 1. This is: "In the summer of 2015, the Claimant was moved to unsuitable accommodation without accessible toilet and far from her colleagues." The claimant told me this was done by her then head of department PC in consultation with her line manager, SW.

26. There is then **Protected Disclosure 2,** said to be**: "**On around 12 October 2016 – 15 October 2016 – to the VC (Stephen West) in writing by email, followed by verbal report to the DVC (Jane Harrington) in a meeting in person in her office that she was being bullied by her line manager and provided details of the race and sex discrimination complaint brought by students (the "Student Complaint") and the upset caused by the outcome to the Student Complaint." That is followed by **Protected Disclosure 3: "**On 24 October 2016, verbally to Steve Neil (Dean HAS), and by way of email Peter Clegg (HoD) in which the Claimant repeated Disclosure 2 and that she was suffering from stress and victimised as a result of Disclosure 2." Following disclosure 2 (and for most claimed detriments presumably disclosure 3 too as they are closely linked) the following alleged detriments were set out by EJ Brace. The words in italics below are the detriments set out by EJ Brace. The additional text are some short points of clarifying information recorded by me taken from the respondent or from the claimant the hearing before me or from the documents I have:

(1) *Colleagues and HR stopped communicating with her (Colleagues – Sean Watson, Peter Clegg, S Moyle and S Neil and HR – Helen Stillsbury, Judith Thorne, Louise Davies and Debbie England (paragraph 3.3 particulars of claim*)(the Claimant said this happened after it had become clear she had spoken to the VC about the Student Complaint so around 12 – 15 October 2016);

(2) September 2016 – June 2017 the claimant's line manager, Sean Watson, gave the Claimant disdainful looks and refused to engage with the Claimant about meeting her caseworker (*paragraph 3.4 particulars of claim and 4.2 further particulars);*

(3) Stephen Neil spoke openly of his disappointment that the Claimant had not come to him first (paragraph 3.4 particulars of claim);

(4) Peter Clegg refused to accept the Claimant's request for a change in line manager (paragraph 4.2 further particulars);

(5) In June 2017 Peter Clegg set up a conduct investigation leading to his request for the Claimant's dismissal (paragraph 3.5 particulars of claim and 4.2 further particulars). The Claimant asserts that the conduct issues were not significant enough to warrant a conduct procedure;

(6) Between 2017 – 2018, the Claimant was subject to a disciplinary investigation and disciplinary processes (paragraph 4.2 particulars of claim);

(7) *The Claimant's pay was withheld from June 2017 – December 2018 (paragraph 4.2 further particulars)* (According to the Respondent's ET3 the Claimant was initially absent from work 5 June 2017 to **2 December 2017** not 2018. The claimant wrote in her further particulars "phased return forced from 14 December; I started back at work 1/12/18 so half a month's pay missed." [221] is a letter dated 4 December 2017 from payroll saying the claimant exhausted full pay on 1 December and moved on to half pay." I note from [240] it does appear there was some dispute about pay as Ms Hartland wrote: "No evidence has been found to support the claim by CVDA that HR docked her pay unlawfully when she returned from sickness absence in December 2017. The finding is based on documentary evidence that demonstrates CVDA did not follow the correct UWE process". It may be that the claimant was intending to refer to 2017 not 2018 but that remains unclear to me);

(8) *The Claimant's pay was reduced to half pay (paragraph 4.2 further particulars)* (The respondent says the relevant date is 2 December 2017 [221] – see above. It is, however, possible that this is in fact a reference to the claimant dropping to half pay the second time. According to [234] the claimant was subsequently on sick leave for the second time from 26 September 2018 and moved to half pay again for the second time on 16 January 2019);

(9) *The Conduct Panel gave the Claimant a formal warning (paragraph 3.6 particulars of claim*) (the respondent says the outcome letter is dated 27/03/2018 [222-226]);

(10) *The Claimant's pay was reduced in July 2019 to nil pay (paragraph 4.1 particulars of claim and 4.2 further particulars)* (the respondent says the confirmation email is dated 29 July 2019 [279];

(11) *August 2019 the claimant's appeal was rejected (paragraph 4.2 further particulars)* (This must be a reference to the claimant's grievance appeal – see [280- 283]);

(12) *The Claimant was not allowed to return to her role with the Respondent and she was not properly advised on her employment options (paragraph 5.3 – 5.4 particulars of claim*) (Looking at paragraph 5.3 and 5.4 of the particulars of claim this seems to relate to the decision to dismiss, as the Claimant wrote: "It would have made a difference if Peter Clegg had spoken to her about options for redeployment, as he offered after rejecting mediation on behalf of the department. She was the only person who met the mediator and Peter Clegg let colleagues determine

the dismissal. She was not put in for an up to date conversation with Law even though their website had been out of date, which left her out of touch with the updated version of possible collaborations. She noticed that their department advertised 6 relevant jobs at the same time as she was rejected.";

(13) *The Claimant was told that she was not to come on to campus* (The respondent says that the Claimant previously dated this as 2018 [49]. The claimant seemed to agree it was 2018 as she told me that there was a brief period in September 2018 where she was given permission to take some leave and she says it was clear in letters exchanged with DE that she was not wanted back there. I do not have the letters the Claimant is referring to);

(14) *The Claimant received invitations to leave the Respondent's employment on early ill health retirement* (The respondent says that ill health retirement was raised in July 2019 and is referred to at [317]. The Claimant, however, appears to be referring to something else as she told me the invites to leave by way of ill health retirement came when she returned to work from a summer holiday and three leaders had said that she looked well and she was asked if she could work less. The claimant says SW in effect, asked her how much she earned and could she go on early retirement. She did not give a date for this);

(15) *The Claimant's status was questioned and she was denied access to her personal possessions by HR* (No date is given for this and despite my asking the claimant about it, it remains a very vague allegation. The claimant told me this was in the appeal but then she also said she thought it first happened in the Autumn of 2018 and was still running when she was dismissed);

(16) *Both the Conduct/ disciplinary procedure and the Claimant's grievance investigation were not independent and were flawed processes* (The respondent says the disciplinary appeal decision was dated 25 April 2018 [231-233] and the stage 4 grievance appeal decision was 15 August 2019 [109]);

(17) *Dismissal appeal outcome on 11 November 2020 (paragraph 6.3 particulars of claim).* (The respondent accepts this in in time).

27. The respondent says that the first detriment claim related to protected disclosure 1 is considerably out of time, and it was reasonably practicable for the claimant to have brought it on time. They say that there can be no causative link to the subsequent detriments relied on for protected

disclosures 2 and 3. The claimant says that there is a link with common personalities. She says that it was part of a long standing debate with her line manager about her reasonable adjustments and access to an office and facilities was part of that. She said it was part of a wider picture with regards to reasonable adjustments when they did not happen or there was no response or insinuations about whether she had a real need. She says this first detriment was then all part of a continuing, ongoing state of affairs. She said the detrimental treatment (moving to unsuitable accommodation without accessible toilet far from colleagues) was done by Dr Clegg in consultation with Dr Watson. The claimant says the line about reasonable adjustments was used by the same managerial staff and HR staff to create a harmful situation for her and bad feeling. She gave the example of colleagues allegedly saying they carried the claimant for 6 years.

28. The respondent says that other than the dismissal appeal outcome the alleged detrimental treatment said to be related to protected disclosures 2 and 3 is also out of time. They say that the detriments are separate acts. They say time should not be extended and point out that the claimant was in dispute with the respondent from 2016 (regarding the Student Complaint) and raised her own grievance on 16 April 2018. The claimant sees all the detriments said to be related to protected disclosure 2 and 3 as being linked to the Student Complaint, and ill feeling towards her because of it, going right through to the decision to dismiss and the appeal thereafter.

29. I consider first the alleged detriment of moving the claimant to unsuitable accommodation without accessible toilet and far from her colleagues. The claimant says this happened in the summer of 2015 following an alleged disclosure in February 2014 to the VC and the Dean of HAS raising issues of disability discrimination, lack of compliance with the public equality duty, reporting on mix ups, delays, and a negative attitude towards disabled staff from management. By itself it the allegation is long out of time. The claimant argues it is brought in time as being part of a series of similar acts or failures done on the ground of her alleged second and third protected disclosures in October 2016 relating to the Student Complaint and which runs through, amongst other things, two sets of disciplinary proceedings against her.

30. When considering strike out I have to take the claimant's case at its highest which means presuming that the claimant will establish at the final hearing that she made the protected disclosures and that the detriments she complains about where materially influenced (in the minds of the people doing the things/making the decisions to act or not to act) by the making of a protected disclosure or disclosures. A finding that there is one protected disclosure, followed by a detriment, then a further different

protected disclosure and then further detriments influenced by the second protect disclosure over a period of time, all together amounting to a series of similar acts or failures is conceptually and legally possible. But here there is a claimed protected disclosure in February 2014, followed by a claimed detriment of being moved to unsuitable accommodation in the summer of 2015 and then a gap of over a year until October 2016 with the next alleged protected disclosure and detriments following protected disclosure 2 and 3 thereafter. They are protected disclosures on different topics. The type of alleged detriments are different. I accept, however, that some of the same individuals are involved. In particular, those that allegedly stopped communicating with the claimant in October 2016 included PC and SW. Likewise the complaint about SW allegedly giving the claimant disdainful looks, and PC allegedly refusing to accept the claimant's request for a change in line manager involve the same individuals. The complaints against PC also continue with, for example, PC allegedly implementing a conduct investigation against the claimant in June 2017 and his involvement in voicing opinions as to the claimant's ability to return to her role, and redeployment options later on as at the point of dismissal.

31. Given the very high hurdle for a strike out, I cannot say that the claimant has no reasonable prospect of establishing that the first claimed detriment following protected disclosure 1 then forms part of a series of ongoing similar acts or failures together with the detriments following protected disclosures 2 and 3. It is important to remember that I am only considering the time limit position; I am not considering the actual merits of the substantive allegations themselves. As I have said I have to work on the presumption that the claimant will establish she made the protected disclosures and that the alleged detriments happened and were materially influenced by the protected disclosures as alleged. The claimant's case at its highest is that all the steps were motivated by ill feeling towards her as a result of her making herself unpopular with her line management, and thereafter HR and all the other individuals who become involved in the various processes, by reason of her making disclosures about disability rights and then the Student Complaint. I cannot say that has no reasonable prospect of constituting sufficient linkage. Whether it ultimately is (if indeed the claimant actually establishes she made protected disclosures and that the detriments happened and were materially influenced by the protected disclosures) is a matter for the tribunal at the final hearing having heard all the evidence. **My decision on a deposit order on this point is set out in my separate deposit order. It is important the claimant reads this.**

32. I turn to the alleged detriments that follow the second and third claimed protected disclosures. Again, it is important to bear in mind I only have the time limit issue before me and not the substantive merits of the

claimed protected disclosures and claimed detriments. When considering strike out I have to take the claimant's case at its highest i.e. that she will establish the disclosures and the detriments including that they were materially influenced by the making of the disclosures. In view of that high hurdle I cannot find that the claimant has no reasonable prospect of establishing sufficient linkage between the detriments so as to find that they form part of a series of similar acts or failures with the last one being in time. Taking the claimant's case at its highest has the essential premise that there will be some linkage by virtue of the detriments being materially influenced in the minds of the actors involved by the claimant making claimed protected disclosures 2 and 3. Taking the claimant's case at its highest also involves accepting her assertion that the actions taken were because of ill feeling towards her because she made the alleged protected disclosure and there being a desire to secure her exit.

33. In my separate Deposit Order I address the deposit order application about the same protected disclosures and detriments.

34. That all said I would strongly encourage the claimant to think sensibly about the protected disclosure detriment complaints she is pursuing. Many of the allegations are distant in time and distant in the personnel involved from the claimant's alleged complaints about, and involvement in, the Student Complaint. The tribunal at the final hearing is ultimately going to have to be convinced that a very diverse range of actors over a long period of time, undertaking discrete roles not overtly directly related to the Student Complaint, were materially influenced by an alleged protected disclosure made in October 2016. That includes two external investigators (and there is a difference between questioning their independence and asserting they were personally motivated by the claimant's claimed protected disclosure), all the various panels involved in the sets of disciplinary processes, the appeals, the multiple stages of the claimant's grievance, and the people that were making decisions about things such as pay. On one analysis it potentially becomes a large scale conspiracy that will need to be established at the final hearing. The claimant acknowledged she was not saying there was such a conspiracy involving absolutely everyone. She described it as more of a snowball effect or the passing of a baton in a relay race. But to adopt the claimant's analogy, the tribunal will have to be convinced at the final hearing about the individual motivating factors personally held by each holder of the relay race baton for each individual complaint the claimant is making. The claimant is setting herself a huge undertaking in that regard.

Equality Act complaints (discrimination arising from disability, failure to make reasonable adjustments, harassment related to disability)

35. The direct disability discrimination complaint about dismissal is not before me as EJ Brace extended time. What is before me are the discrimination arising from disability, harassment related to disability, and reasonable adjustment complaints.

36. For discrimination arising from disability the alleged unfavourable treatment is:

(a) Forcing the claimant to go on sick leave between September 2018 until dismissal (which the claimant says was because of something arising in consequence of disability because "the consequences of having Parkinson's disease and having to justify how she performed her role")*;*

(b) Rejecting the claimant's appeal in December 2020 (which the claimant says was because of something arising in consequence of disability because her executive disorder linked to the disability of Parkinson's disease meant she was unable to provide the full information requested by the appeal panel, leading to the failure of her appeal);

The respondent accepts the rejection of the claimant's appeal is in time but asserts that the complaint about allegedly forcing the claimant on to sick leave is not and that the operative date would be September 2018.

37. For harassment arising from disability the complaints of unwanted conduct are:

(a) May 2016 – The boycotting of initiatives to implement disability rights by the Claimant's line manager who said that he would "take his hands off of me if I knew my rights and asked for his co-operation to implement them";

(b) In late November 2016, Stephen Neil said to the Claimant that "my colleagues had carried me for 6 years";

(c) In June 2017, Peter Clegg confirming a conduct investigation into the Claimant's conduct;

(d) In Autumn 2017, being subjected to a conduct investigation while off work;

(e) In January 2018, being subjected to a disciplinary process;

(f) In July 2020, being subjected to an investigation and recommendation for dismissal;

(g) Dismissal in July 2020;

(h) Rejection of appeal against dismissal in November 2020.

38. The respondent says the events prior to 13 July 2020 are discrete acts, are out of time and time should not be extended. The respondent acknowledges the last three appear to be in time as presumably the complaint about dismissal would have a similar just and equitable extension of time as given by EJ Brace to the other complaints. They state however that the complaint about being subjected to an investigation and recommendation for dismissal in July 2020 should be discounted as it appears to be the same as the complaint about dismissal.

39. The claimant does not accept that the two comments allegedly made in 2016 are out of time. She says they represent a more widespread attitude held at the time and are part of a continuing state of affairs. The claimant does not accept that (f) and (g) are the same; with one being the investigation and recommendation for dismissal and the other being dismissal itself. She says the recommendation was by SM and the decision to dismiss by JM. She observed that it cannot be right that she should have to bring a claim every 3 months where there is a continuing state of affairs. The claimant submitted it is important that the complaints get tested at a final hearing.

40. There are then the reasonable adjustment complaints. There are a large number of these and despite spending considerable time discussing them with the claimant I have to say that there are large parts of them that I still do not fully understand. I had ultimately to move on because there was otherwise a risk of the preliminary hearing not completing in what ended up being 3 days allocated to it.

41. But doing my best, and trying as best I can to rejig the complaints roughly into date order, I would summarise them as follows. The first part of each entry is a precis of the reasonable adjustment complaints distilled by EJ Sharp. The comments in brackets thereafter are my observations or record of what I was told at the hearing by the claimant:

(a) A physical feature, namely lack of accessible toilets, unsuitable workstation, long narrow office, and doors the claimant could not open (until an office move) put the claimant at substantial disadvantage.

(The claimant told me she was without an accessible toilet from 2009 until she went on to sick leave. She told me she had an unsuitable workstation

from the period June 2013 until 2018. She said a suitable workstation was one where she had a reasonable space to sit and to work and to stand and work and where she could have contact with others in her group. She said the inappropriate long, narrow office was from 2011 until the end of her working for the university. She said she had difficulty with opening her office door (due to the door handle) from December 2017 for about 6 to 9 months.)

(b) The respondent had a practice of failing to have a review system of reasonable adjustments, both those in place and those potentially required for the future. The adjustment it is said the respondent should reasonably have made and failed to make is said to be for the respondent to have a review system of reasonable adjustments.

(I am not sure as to the alleged substantial disadvantage because in EJ Sharp's case management order the pleaded substantial disadvantage appears to be one short. I do not see that the claimant has ever set out what actual practical disadvantage she personally suffered and when and how, when and why the adjustment she seeks would have reduced or removed the disadvantage for her. The claimant wrote at [183] this failure to make an adjustment was from **2009 onwards**. She said that without formal review systems, reviews for disabled staff were left at the discretion of individual line management.)

(c) The respondent had a PCP of not providing coaching on vocal cords training and teaching techniques. It placed the claimant at disadvantage compared to the non-disabled who did not face the same barriers in their performance as the disabled. A reasonable adjustment would have been to provide the coaching.

(EJ Sharp recorded the claimant saying the failure was from Spring/Summer of 2016 until dismissal. The claimant's document at [182] gives a different date of 2012 onwards. The claimant told me, based on the table she had prepared at [184] it was 2010 onwards because the table at [184] notes Access to Work recommending Dragon software in 2010. The Dragon software is noted as agreed and bought but the claimant said that the software training on how to work with it and implement it in her teaching was outstanding. The table also says voice coaching was recommended by ADWUK in 2015 but was outstanding. Ultimately, however, the amendment that was permitted by EJ Brace subject to time limit was the allegation as recorded by EJ Sharp i.e. Spring/Summer of 2016 onwards and which seems to have its principal focus on vocal cords training.

The claimant said there was a lack of communication between her line manager (SW) and the staff service for disabled staff and a lack of clarity

as to who was responsible for reasonable adjustments. She said that they were not seen as important reasonable adjustments and so were not made.)

(d) The respondent failed to provide an auxiliary aid, namely failed to supply enough support worker hours for the claimant to do her job, or provide training on using technology effectively in 2015-2016 until dismissal, which put the claimant at a substantial disadvantage compared to someone without her disability.

(The claimant confirmed the adjustment sought on using technology effectively is set out immediately above).

(I pointed out to the claimant that there did not appear to be, in the list of issues prepared by EJ Sharp, a reasonable adjustment specifically directed to providing support worker hours. This was something that EJ Brace had directed the claimant to consider (potentially because she noticed the same potential thing missing as me) but the claimant had not addressed it in her document at [182 and 183]. I pointed it out again to the claimant because it jumped out at me from the papers in this case and because it seemed to me that support worker hours was potentially an important part of the claimant's global case. The claimant referred to the reasonable adjustment of "providing reasonable adjustments as required" but that is tautological and circular (being in effect a complaint of failure to make reasonable adjustments by failing to make reasonable adjustments) and at such a high level no respondent or tribunal could sensibly understand and address what it is actually getting at.

The claimant then told me that in 2015 she was not given enough support worker hours (following her having incidents where doors locked on her and when she fell at work). She said that in 2019 a new application was made but the respondent still refused to contribute such that there was not enough support worker hours from 2015 through to her dismissal. It has to be said that did contradict somewhat with the claimant telling me at other times that as at 2019 she received funding from Access to Work for all the hours requested going forward.)

(e) The respondent had a PCP of failing to review internal conduct, capability, sickness and dismissal procedures. The PCP placed the claimant at a substantial disadvantage as she did not have the benefit of the Equality Act 2010 being applied. The reasonable adjustment to ameliorate the disadvantage would have been to review the policies.

(The claimant told me that out of date policies, particularly about disability, caused her problems in the various processes she was involved in. She said that in her second appeal chaired by Mr Dinning he made

recommendations about more up to date materials and rolling out a package of training on wider issues of HR and equality. At [182] the claimant gave the date as being 2012 onwards but she told me it was 2016 when she was reviewing her teaching methods in line with the investigation and had the first conduct investigation from 2017 onwards.

This is one of the reasonable adjustment complaints I struggle to understand. Reasonable adjustments are generally about practical, easily identifiable, substantive things that are actually going to make a difference to someone in the workplace. I still do not know what specific, substantive disadvantage the claimant says she was actually caused by out of date policies, and when, in each of the processes that she was involved in and how and why she says that reviewing the policies would have removed or reduced any actual, substantive disadvantage she was suffering.)

(f) The respondent had a PCP of failing to appoint a specialist in disability matters to educate colleagues, including HR, about disability, the relevant law and options available to support disabled persons. The PCP placed the claimant at a substantial disadvantage due to the lack of knowledge of the options for disabled persons and the law. The reasonable adjustment to ameliorate the disadvantage would have been to appoint the specialist.

(At [182] the claimant wrote this was from 2014 onwards until 2020, a continuing state of affairs. She gave an example taken from notes of a 26 July 2016 meeting which record HS saying it had been eye opening working with ADWUK the previous year as she did not know about all the equipment out there which they could recommend and there was a big gap in their knowledge. The claimant told me the failure to make the adjustment was in 2015 by HS or DE.

I still do not know what specific, substantive disadvantage the claimant says she was actually caused by failing to appoint a specialist, and when, and how and why she says that the appointment of a specialist would have removed or reduced any actual, substantive disadvantage she was personally actually suffering. The example quote the claimant gives from HS also seems to suggest that a specialist from ADWUK was in place by 2015 and, if so, it would not have, by itself, been a continuing failure. The claimant did speak about the complications in getting Access to Work funding for support workers, particularly with the paperwork and grant levels. She also spoke about having communication difficulties at the time she moved schools, but I remain unclear in practical terms what the point is actually getting at. For the claimant's benefit I repeat my observations made above about reasonable adjustment complaints generally being about substantive, identifiable, practical things that would made a difference for the individual in the workplace)

(g) The respondent had a PCP of passing around informally information about the duties of employers. The PCP placed the claimant at a substantial disadvantage due to the lack of knowledge of the options for disabled persons and the law. The reasonable adjustment to ameliorate the disadvantage would have been to formally pass around information.

(At [182] the claimant said this failure to make reasonable adjustments was from 2009 onwards. The claimant told me this was about providing formal training materials to HR and staff on the Equality Act and employment rights/ disability awareness rather than informally circulating information about the Equality Act and employment rights.

The claimant told me that it caused her a problem in 2015 when she had to reapply for Access to Work for support worker hours. To the best I could understand it related to the claimant's allegation that the respondent refused to or was reluctant to contribute towards paying support worker hours. The claimant said it was a rolling process that she did not manage to resolve. But the claimant did also say that in 2019 she applied again and was awarded full support worker hours (but was not then allowed to return to work).

(h) The respondent had a practice that reasonable adjustments should be funded by Access to Work. This placed the claimant at a substantial disadvantage as reasonable adjustments not funded by Access to Work may not be implemented. The claimant says the adjustment that would have removed or reduced that disadvantage was to provide reasonable adjustments as required.

(At [182] the claimant wrote that the adjustments were late, rejected or retracted from 2012 to 2020. That does not, however, identify the substance of the complaint which would be about the claimant missing out on specific adjustments due to a lack of external funding by Access to Work.

The claimant did go on to identify to me that in 2016 when she applied for Access to Work funding she was told that the grant was not acceptable to the University so she had to reapply. She went on to say that when she reapplied in 2019 she was given a grant of full support worker hours so that the failure was between 2016 and 2019.

The claimant said it was linked to not allowing her back to work, even on a phased return. She said that not providing the reasonable adjustment of support worker hours also caused her stress and that the respondent then failed to do the recommended stress assessment and workload assessment.)

(i) The respondent had a PCP of failing to put sufficient effort into finding positive solutions to assist disabled employees. This placed the claimant at a substantial disadvantage as she faced conflict at work with colleagues. A reasonable adjustment to reduce or remove the disadvantage would have been to put sufficient effort into finding positive solutions.

(At [182] the claimant said this was 2012 onwards. The claimant told me that this was about a failure to deal with a hardening attitude towards her from 2016 onwards**.** She referred to being told in 2016 (after the Student Complaint) that colleagues held the view they had carried her for 6 years. She said SW also told her colleagues regarded her as receiving privileges in having an office to herself and being allowed to work from home. She said PC did not resolve the relationship issues she had with SW that included between October 2016 and January 2017 SW refusing to engage with JR at the support service for disabled staff and that SN also did not intervene even when she broke down in front of him at a meeting. She says that the respondent did not put sufficient effort into solving the relationship issues the claimant had with her colleagues, including mediation, and this continued through to PC saying at the dismissal hearing that he spoke for everyone in saying the relationship was not repairable. She said through her grievance and appeal processes colleagues were not encouraged to build good relationships with her or vice versa.)

(j) The respondent had a practice of passing on negative comments from colleagues. This placed the claimant at a substantial disadvantage as she faced conflict at work with colleagues. A reasonable adjustment to reduce or remove the disadvantage would have been to not pass on negative comments.

(At [182] the claimant said this was from 2014/2015 onwards. The claimant told me this was about SW telling her in 2015 that if she knew her rights as a disabled person he would take his hands off her. She told me it was about SN telling her in the 2015/2016 academic year that he was very disappointed in her as her colleagues had worked hard to turn the department around and she had now let the department down (this related to the Student Complaint and the claimant taking it to the VC). The claimant also said that between October 2016 and January 2017 PC told SW to be polite to the claimant which she says must mean there had been impolite attitudes to her from SW. She referred to being told in 2016 (after the Student Complaint) that colleagues held the view they had carried her for 6 years. She said SW also told her colleagues regarded her as receiving privileges in having an office to herself and being allowed to work from home. The claimant said she also had a comment that “we hope the provision of reasonable adjustments means she could take up

her teaching in 2017/2018." The claimant also said after that Steve McGinchey told her to make it easier for herself by not going to a group meeting. The claimant said the negative comments continued through HR and management in the grievances and appeals from 2017 onwards.)

(k) The respondent had a PCP of the implementation of the Student Feedback 20 day return policy without adjustment for disabled staff. This placed the claimant at a substantial disadvantage as a disabled person because waiting until a breach of the Student Feedback policy before offering aid means the disabled breach the policy earlier. The reasonable adjustment is said to be providing the support available once the policy is breached from the outset for disabled staff.

It is alternatively put as a PCP of providing marking support ad hoc with the reasonable adjustment said to be providing structured and planned marking support.

(At [182] the claimant wrote this was from 2015 onwards. The claimant told me that over 3 years she had marking support twice and was told by SM that it was not provided as a reasonable adjustment but as ad hoc support. She says that meant it was not automatically renewed and she had to ask every year if she needed it and it made it harder to organise the balanced distribution of marking.)

(l) The respondent had a practice of overlooking the claimant's line manager's failure to sign timesheets for support workers, deal with job descriptions for support workers, liaise with support workers about what would assist her, and a failure to build relationships – the claimant cites a meeting with her head of department in 2016-2017 who said the manager was not interested and another meeting on 7 October 2016 where the manager admitted to ignoring this part of his role. The PCP placed the claimant at a substantial disadvantage of preventing access to support. The reasonable adjustment to address or remove the disadvantage was for the respondent to take action when the claimant's line manager admitted or was observed to be failing to act as required towards disabled staff and their support needs.

(The claimant wrote at [183] this was from May 2016 onwards. She told me that she linked it to SW refusing to meet with JR and she also linked it to the practice of not taking forward her complaints about stress.)

(m) The respondent had a PCP of failing to implement the Respondent's policies on stress risk reduction. This placed the claimant at a substantial disadvantage as a disabled person because it caused pressure. The reasonable adjustment would have been to implement the stress reduction policies.

(The claimant at [183] wrote that little or no action was taken in this regard 2012 to 2020 instead emphasis was on performance, capability, conduct. The claimant told me that she read the policy and told PC in December 2017 or January 2018 that they should be doing a stress assessment but little happened. She says she had to do all the finding out and running around to get it done.

I do not, however, know what substantive, practical disadvantage the claimant says she was facing through any absence of implementation of policies on stress risk reduction that implementing the stress reduction policies would have addressed, in what way, and when.)

(n) The respondent had a practice of keeping records about the resources spent on reasonable adjustments. This placed the claimant at a substantial disadvantage because it was singling out the disabled and using the information against them. The reasonable adjustment would have been to not target staff whose spend was recorded.

(At [183] the claimant wrote that this failure to make a reasonable adjustment was from 2016 onwards. She wrote (and also explained to me) that the recording was hours of contact time with the Disabled Staff Support Service. She told me that in the first hearing in the conduct procedure HS put on the table a list of spending records and she was number one in making use of the service which was being evaluated for how efficient it was. She said it was held against her that she had made use of the service and she was being targeted. She told me that the hearing was in March 2018. She said it was one example of an ongoing practice of not supporting disabled staff.)

(o) The respondent had a PCP of paying half pay sick pay which placed the claimant at a disadvantage as she received half pay (where a non disabled person would be on full pay). A reasonable adjustment to ameliorate the disadvantage would be to pay full pay sick pay.

(The claimant says it would have been reasonable for the respondent to take this step from September 2018 through to 14 October 2020 [182] The claimant says the decision was made by SM who had a discretion she could have exercised in the claimant's favour.

The claimant said this was related to issues around getting adjustments in place and her being absent on work related stress. The claimant says it was also related to, in April 2020, not being permitted by SM to return to work as the viability of a return was not considered realistic and that SM and DE were placing barriers on her return to work. [284,287, 291]. She says it is also linked to the stage 3 hearing outcome of 14 July 2020 [291]

which would be within time. The claimant says that here again there was not an open attitude to the possibilities of a return to work but an expectation of a proposal for dismissal. She says it links to the decision to dismiss.)

(p) The respondent had a PCP of not permitting a phased return to work. The PCP placed the claimant at a disadvantage as she was not in work when a non disabled person would have been in work. A reasonable adjustment would have been to permit a phased return to work.

(The Claimant at [182] said this was obstruction by DE in a letter by email of 17 June 2019**.** There she also talks of it being followed by a meeting with SM and JT which she says became the first of the disciplinary meetings leading to dismissal in July 2020. The claimant told me that this was linked with what she had been saying in relation to sick pay and SM not allowing her to return to work and it involves the same people. She told me that it followed on through to dismissal).

(q) The respondent had a PCP of paying zero pay sick pay which placed the claimant at a disadvantage as she received zero pay (where a non disabled person would be on full pay). A reasonable adjustment to ameliorate the disadvantage would be to pay full pay sick pay.

(The claimant says it was reasonable for the respondent to make this adjustment from 1 August 2019 and it continued through to 14 October 2020 [182]. The claimant says the decision was made by SM who had a discretion she could have exercised in the claimant's favour. The claimant said it was similarly related to issues around getting adjustments in place and the claimant being absent on work related stress.)

42. The law relating to time limits in individual reasonable adjustment complaints (being a complaint about an omission) is particularly complicated. Following Kingston upon Hull City Council v Matuszowicz [2009] ICR 1170 and Abertawe Health Board v Morgan [2018] ICR 1194 time starts to run when an employer, positively decides not to make an adjustment to it. Alternatively, in the absence of evidence about such a decision, time runs from the date of either when the respondent did an act inconsistent with deciding to make a reasonable adjustment or on the expiry of the period in which the respondent might reasonably have been expected to make an adjustment. These factors should be viewed from the perspective of the claimant (who may not know what the respondent knows). The law relating to the concept of whether there can be a continuing omission potentially remains somewhat unclear and is not something on which I heard legal submissions about. Its application is also likely to be fact sensitive.

43. It is again important to remember I only have the time limit issues before me and not the substantive merits of the claimant's complaints. To take what appears to be the earliest complaint, on the claimant's case the complaint about the lack of accessible toilet appears to potentially date to some time around 2009 as being the date the respondent either refused the adjustment (if indeed there was a refusal) or the period expired in respect of which the respondent reasonably ought to have made the adjustment. At its most generous to the claimant, she accepted it was resolved by the time she went on her first period of sick leave in June 2017, making it some 3 years out of time. The claimant submits it is part of a continuing state of discriminatory affairs.

44. Given I am only concerned with time limits not with the substantive merits and have to take the claimant's case at its highest, I cannot say that the claimant has no reasonable prospect of success in establishing that it is part of a continuing act that continues through to a complaint that is in time (or in respect of which relating to dismissal time has or would be extended in accordance with EJ Brace's earlier decision). The strongest link is likely to be with other practical things about the claimant's work circumstances, such as the proportions of her office or the complaint about a failure to provide vocal cord training which importantly the claimant says continued through to the time of her dismissal. The Tribunal at the final hearing would need to hear evidence and legal submissions as to whether such complaints themselves can in fact be continuing omissions or whether a date of a failure to make each reasonable adjustment crystalised in, for example, 2011 (office proportions) and 2015/2016 (vocal cord training). I also have to factor in the claimant's argument that, she will say, there was a reluctance by line managers and HR to make some adjustments, or keep them under review, or a reluctance to make those that were deemed of lesser importance. That of course all depends on hearing evidence and making findings of fact, but I must currently take the claimant's case at its highest in that regard.

45. I would apply the same overall analysis to the other reasonable adjustment complaints that seem to be about substantive things: the proportions of the claimant's office; the allegedly unsuitable workstation; vocal cord training and teaching techniques; marking support; support worker hours; and the office door handle. I therefore from a time limits perspective (rather than an assessment of the substantive merits) cannot say they have no reasonable prospect of success. I set out my analysis on the deposit order application in my separate Deposit Order.

46. There is then a series of more ethereal reasonable adjustment complaints about the management structure and practices. This includes the complaint about a failure to make reasonable adjustments by not having a review system of reasonable adjustments, the complaint about failure to

implement stress reduction policies, the complaint about not funding adjustments not funded by Access to Work, the complaint about not having formal training materials on disability matters, the complaint about not appointing a specialist in disability matters, and the complaint about failure to review internal conduct, capability, sickness and dismissal procedures. I have already made some observations about whether these as a matter of legal analysis and specificity truly are viable reasonable adjustment complaints. However, the strike out application is only before me on time limit issues, not on the substantive merits. On the claimant's strongest argument these were omissions that were ongoing or outstanding as at the point of dismissal (albeit perhaps less so the complaint about appointment of a disability specialist given ADWUK's later involvement). In particular, for example the complaint about a failure to review internal dismissal procedures if indeed despite my reservations truly is a viable reasonable adjustment complaint, could arguably continue through to dismissal. Again also taking the merits at their highest it is possible that such management philosophies (if ultimately made out on the evidence) could be seen as sufficiently linked so as to constitute a continuing discriminatory state of affairs. For those reasons, and taking the claimant's case on its merits at its highest, I cannot say that such allegations have no reasonable prospect of success in relation to the time limit issues. My reasoning in relation to the deposit order application is set out in the separate Deposit Order.

47. I would, however, encourage the claimant to try to think practically and pragmatically about the volume of complaints she is bringing, particularly the reasonable adjustment complaints. A substantive merits assessment is not before me but I have set out some of my struggles to understand how the complaints the claimant is making slot into the legal framework for reasonable adjustment complaints, despite the many days of case management the claimant has received from a succession of judges. The claimant will need to make good her prima facie case on all the elements that make up a reasonable adjustment complaint for each individual complaint she is bringing. It is a big undertaking for any litigant. I would encourage her to consider focusing on the complaints that are about more practical things that she says would have made a difference. It is generally a position of strength, not weakness, to concentrate on the stronger parts of a claim that is being brought and makes the litigation process far more manageable.

48. There is then a group of complaints that focus on the claimant's line management and the relationship between the claimant and her colleagues and line managers. In particular, the complaint about passing on negative comments by colleagues, the complaint about not taking action in respect of the alleged failings by the claimant's immediate line manager, the alleged comments in May and October 2016, and the

complaint about insufficient efforts to find positive solutions to conflict between the claimant and her colleagues. Again, the substantive merits of the complaints are not before me. Some of the reasonable adjustment complaints, for example, are difficult on the face of them to understand as reasonable adjustment complaints given the technicalities of a reasonable adjustment complaint. But taking the claimant's case at its highest and focusing on time limit issues rather than the substantive merits, I cannot say the complaints have no reasonable prospect of success. Many of these complaints are by themselves very old. However, taking the claimant's case at its highest there is a potential link through to the decision to dismiss the claimant, given it was about, on the face of it, whether it was viable to return the claimant back into the school or whether relationships with colleagues were too badly damaged. That continues through to the rejection of the claimant's appeal against dismissal which it is accepted was in time. My deposit order decision is set out separately.

49. I turn next to the group of complaints about the 2017/2018 conduct investigation and proceedings. Again, by themselves the allegations are out of time. On the face of the documents those disciplinary proceedings were about matters such as whether the claimant had properly engaged in the Access to Work reassessment application and the completion of paperwork for recharging support worker costs to Access to Work, not communicating to management in a timely manner, that marking had not been completed on time, engagement with line management to document the claimant's reasonable adjustments, and not adhering to deadlines set by PC. The claimant's case taken at its highest on the merits is that these actions were, in some way, related to her disability (as they are harassment related to disability complaints).

50. The claimant says that the whole approach initiated by PC was punitive rather than supportive of her. In her appeal letter (which later became the grievance) the claimant alleged there was a cynical attitude towards the potential impact of agreed adjustments. One of the linking factors that the claimant consistently relied upon in her submission to me was the fall out from the Student Complaint. I struggle to see, however, how that would operate by itself as a link in the disability discrimination complaints which I have to consider separately to the protected disclosure complaints as they are two different types of claim that are founded in two separate pieces of legislation. It is not possible to link protected disclosure detriments and disability discrimination complaints together to argue they all form part of one continuing act/state of affairs. I do, however, accept taking the claimant's case at its highest that the claimant was also complaining about management's attitude towards her as a disabled person and to her reasonable adjustments. A breakdown in a relationship can be materially influenced by more than one thing (and indeed it is possible for one thing

to have a knock on effect on another such as for example the Student Complaint souring or further souring relationships over other things such as reasonable adjustments). Indeed the grievance appeal chair made such an observation at [282] about the interdependence of reasonable adjustments and relationship issues. Moreover as I am looking at time limit issues I have to work on the basis that the claimant will make good her assertion that the conduct she complains of was related to disability.

51. On that basis I cannot find, taking the claimant's case at its highest, that there is no reasonable prospect of the claimant establishing a continuing state of discriminatory affairs that continues through to the later dismissal process and decision to dismiss. There is clearly a substantial gap in time. However, a theme running through the subsequent grievance process was the breakdown of relationships and the potential difficulties re-integrating the claimant/ the viability of workplace mediation. This in turn linked into and overlapped with the process of considering whether and how the claimant could return to work administered by DE and SM (see for example the letter from DE of 17 June 2019 at [273] where she said amongst other things the return to work consideration process needed to consider the realistic prospects of the claimant's return to the Department if mediation was not possible). That then fed into the process that ultimately led to the claimant's dismissal [284].

52. There is the reasonable adjustment complaint about being allegedly targeted for use of the Disabled Staff Support Service which on one analysis would be a one off event either in 2016 or March 2018 (the claimant was unclear about this). However, again taking the claimant's case at its highest she says that one linking theme was an alleged souring of reactions to making reasonable adjustments which continued through to dismissal/appeal. On that basis I again cannot say this meets the high hurdle of there being no reasonable prospect of success of the claimant, if she establishes her case on its substantive merits, also establishing that it was part of an ongoing act of discrimination.

53. The claimant then makes a complaint of discrimination arising in consequence of disability in saying that from September 2018 through to dismissal she was forced on to sick leave. She told me this was linked to the disciplinary process (because it was connected to not having enough support worker hours and having the reasonable adjustments that she needed) and also the failure to make reasonable adjustments or to regularly discuss them. She said she was forced on to sick leave by Dr McGinchey, programme leader, and it was part of a discussion that was superficially about adjusting the claimant's workload, what she would teach in the academic year just starting, an offer not to go to the department away day but was in reality a negative reaction to her returning to work. She said it may also have involved PC, SW, SN and

SM. She also makes a reasonable adjustment complaint about not being permitted a phased return to work from 17 June 2019 through to dismissal.

54. Again, taking the claimant's case at its highest I cannot say that she has no reasonable prospect of establishing at final hearing that such complaints (if made out on their merits) are part of a continuing state of discriminatory affairs that includes a later event that is in time (or for which time was extended). On the claimant's case at its highest there is an ongoing alleged theme of a negative attitude towards her as a disabled person, and in accommodating adjustments for her, and a wish not to accommodate her return but to secure her exit. The letter from DE of 17 June 2019 at [276] did require the claimant to remain on sick leave or otherwise refrain from work until 31 July 2019 and throughout the processes thereafter the respondent did not (they say for justifiable reasons and the claimant says not) consider the claimant's return to work as viable. For example, SM's letter of 19 March 2020 [284] said a proposed return to work at the end of April 2020 was not considered viable.

55. The claimant also makes a reasonable adjustment complaint about being paid half pay sick pay and zero pay rather than full pay sick pay in the period September 2018 to October 2020. I can see from the documents that particular consideration was given to the claimant's circumstances. For example, in June 2019 [276] DE wrote that it was not considered by the respondent to be a reasonable adjustment to continue paying the claimant through the return to work consideration process other than goodwill extension of half pay from 18 July to 31 July 2019. On 29 July SM declined to further extend sick pay [278]. Part of the rationale included that the claimant had allegedly said she could not say with any certainty whether and if she would be able to return, and that it was not considered that the respondent had failed to make reasonable adjustments for the claimant, that they had not caused the dispute between the claimant and her colleagues that was causing the claimant stress. The decision on sick pay does on the face of it appear to have been closely allied to the consideration of whether and how the claimant could return to work, and the breakdown in relationships with colleagues and managers which continued through to the decision to dismiss the claimant and her appeal. Part of the claimant's case is that there was a linked theme of resentment to her as a disabled person, to her adjustments, and a desire to secure her exit. On that basis I cannot say that the claimant has no reasonable prospect of establishing (if she establishes the substantive merit of her complaints) that it formed part of a continuing state of discriminatory affairs through to the events in respect of which time has been extended or are within time.

56. There is then the complaint about, in July 2020, being subjected to an investigation and recommendation for dismissal. The claimant was in fact originally invited to a formal stage 3 meeting in a letter of 19 March 2020 [284] and my understanding is that an investigation report had by then already been prepared and the letter said by that stage the respondent considered it was in a position whereby it may reasonably terminate the claimant's employment. My understanding is the covid pandemic then caused delays with the claimant being sent a further letter dated 12 June 2020 with an invite to a meeting on 3 July 2020. I therefore do not know why the claimant has pleaded the act of disability related harassment of subjecting her to an investigation and recommendation for dismissal as being in July 2020 as opposed to earlier dates. But taking the claimant's case at its very highest on merits there is some scope for her to argue that she remained under investigation and recommendation for dismissal in July 2020 prior to the decision to dismiss and which were discriminatory actions in their own right (if made out on their substantive merits). For example, SM presented the case against the claimant at the meeting on 3 July 2020 prior to JM making her decision [292 -293] and the letter also records that up to date enquires about redeployment had been made. I therefore do not accept the respondent's submission that the complaint can be disregarded as being a duplicate of the complaint about the decision to dismiss. I also cannot say that the complaint, on time limit grounds, has no reasonable prospect of success. It is closely linked to the decision to dismiss made on 14 July 2020 in respect of which time has been extended.

57. For these reasons and given the high threshold of a strike out decision on time limit issues, I decline to strike out any of the elements of the claimant's claim that are before me on time limit issues. I would however continue to encourage the claimant to reflect on whether she wishes to continue to pursue all of the multiple elements of her protected disclosure detriment and discrimination complaints. It is also important that the claimant reads my separate Deposit Order and case management order.

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Employment Judge R Harfield
Dated: 6 September 2023

JUDGMENT SENT TO THE PARTIES ON 8 September 2023

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche