



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs S Saracevic Hujic

**Respondent:** The Chief Constable of Northamptonshire Police

**Heard at:** Bury St Edmunds (in person)

**On:** 11 September 2023

**Before:** Employment Judge Graham

**Representation**

Claimant: In person, with assistance from Mrs L Winterbottom (friend)

Respondent: Ms C Mallin-Martin, Counsel

## PRELIMINARY HEARING JUDGMENT

It is the Judgment of the Tribunal that:

1. The Tribunal does not have jurisdiction to hear the Claimant's complaints of disability and race discrimination as set out in allegations 1, 2, 3, 4, 5, 8 and 9 of the annex to the Claimant's ET1 claim form of 25 January 2023, as they were brought outside of the applicable time limits and it is not just and equitable to extend time;
2. Allegations 6 and 10 are no longer pursued by the Claimant and are dismissed upon withdrawal.
3. The Claimant's complaints of race and disability discrimination as set out in allegations 7 and 11 of the annex to the Claimant's ET1 claim form of 25 January 2023, will proceed to a final hearing.

## REASONS

### Introduction

1. As set out in the Case Management Summary of 22 June 2023 prepared by Employment Judge Palmer, this hearing was listed today to consider the

following:

- 1.1 Whether all or any of the Claimant's claims are out of time and if so, whether it is just and equitable for time to be extended to validate those claims, pursuant to s.123 of the Equality Act 2010;
- 1.2 Should any of the Claimant's claims survive, the Judge at the Preliminary Hearing will make such further Case Management Orders as are appropriate for the further Case Management of those claims.
2. I confirmed and agreed with the parties that what I was being asked to do was to consider the preliminary issue of time under Rule 53(1)(b) of the Employment Tribunal Rules of procedure, rather than a strike out under Rule 53(1)(c).
3. Before moving on to consider the issue of whether the complaints had been brought in time (and where time should be extended on a just and equitable basis), it was incumbent upon me to spend some time going over the allegations with the Claimant to first identify the complaints she was seeking to bring, and then the legal basis for the complaints. Whereas the allegations appeared in the Claimant's ET1, the legal basis for the complaints had not been identified save that they related to race and disability discrimination. It was important that these issues were clarified before addressing the matter of time limits so that I could view the totality of the allegations in sufficient detail to ensure fairness to both parties.
4. The following 11 allegations appear in the attachment to the Claimant's ET1 claim form, and the relevant legal labels were confirmed with the Claimant during the hearing:
  - 4.1 **Allegation 1** – between April and August 2021 PC Scott Renwick mimicked the Claimant's accent, singled her out during training sessions (by asking questions such as how do you use measurements in your country), excluded the Claimant, and asked how she could afford an expensive car. It is also alleged that PC Renwick asked the Claimant if it was true that East Europeans would take any job, and he allegedly told the Claimant she was not as bright as the other students, and he asked the Claimant if this was the right job for her. This treatment is alleged to be direct race discrimination (s. 13 EQA 2010), and harassment related to race (s. 26 EQA 2010).
  - 4.2 **Allegation 2** – on or around 25 April 2021 the Respondent refused the Claimant's business interest application for her to serve as deputy chair of the Bosnia Herzegovina Charity Association which she had already worked for. The Claimant said that part of the Respondent's refusal was due to her sickness absence. This treatment is alleged to be direct race discrimination, as well as a failure to implement a reasonable adjustment (s 20 & 21 EQA 2010), and discrimination arising from disability (s. 15 EQA 2010).
  - 4.3 **Allegation 3** – during May 2021 (misdated as 2022 in the ET1) the Claimant informally told Sergeant Damien Hiscock that inappropriate language and discussions were taking place in a WhatsApp group between fellow trainee officers. The Claimant asked to remain

anonymous and left the WhatsApp group. The Claimant says that Inspector Collins came into the classroom in front of the cohort and said he had been made aware of what had been said in the WhatsApp group and asked to speak to those people involved. The Claimant says this made it clear that she had complained as she had left the WhatsApp group. This treatment is alleged to be harassment related to race.

**4.4 Allegation 4** – on 21 March 2022 DC Fowley and DS Gallagher refused the Claimant's request to finish work at 3:10pm that week due to childcare. The Claimant was undertaking a training course and says that the reason she was given for the refusal was because she should have made arrangements earlier, whereas another colleague (male, British) had been allowed to leave early to collect his car. This treatment is alleged to be victimisation (s. 27 EQA 2010) for having complained in February 2022 about PC Renwick's conduct the year before.

**4.5 Allegation 5** – during April and June 2022, temporary PS Damien Gray forced the Claimant to stop taking her anxiety medication by telling her that unless she did so she would not be able to work with the public, drive Police vehicles, undertake the first aid and safety courses, that she was not safe and that her job was on the line. At this time the Claimant had returned to work following sickness absence and she says that TPS Gray did not give her a phased return which had been recommended by her GP. This treatment is alleged to be a failure to implement reasonable adjustments, discrimination arising from disability, and harassment related to disability.

**4.6 Allegation 6** – withdrawn.

**4.7 Allegation 7** – on 30 October 2022 the Respondent moved the Claimant onto half pay due to her level of sickness absence. The Claimant says that she had asked to remain on full pay and at the time of issuing her claim had no response to her request. This treatment is alleged to be direct race discrimination, a failure to implement a reasonable adjustment and discrimination arising from disability. The Respondent accepts that this allegation has been brought within time.

**4.8 Allegation 8** – this is referred to in the ET1 by the Claimant as an isolated incident. It is alleged that on 2 March 2022 during a training session on MS Teams, the trainer asked "*have we got a foreign national in the group?*" The Claimant says she did not respond but when others saw her name they asked her where she was from. This treatment is alleged to be harassment related to race.

**4.9 Allegation 9** – in January 2022 towards the end of the Claimant's 10 weeks of tutoring, she says that she was told that she was being moved from Northamptonshire to another Police station in Daventry which was closer to home. The Claimant said she did not know who moved her or why she was being moved and that there was no prior notice. This treatment is alleged to be direct race discrimination, failure to implement a reasonable adjustment, and discrimination arising from disability.

**4.10 Allegation 10** – withdrawn

- 4.11 **Allegation 11** – on 2 November 2022 the Claimant's friend (Mrs Winterbottom) contacted the Respondent to highlight concerns that the Claimant was being discriminated against. The Chief Constable replied to Mrs Winterbottom the following day to say that he had tasked the head of professional standards to look into this case as a matter of urgency and that he had also instructed that the Claimant's welfare would be assessed, and any support needed would be offered. The Claimant says that despite the email to Mrs Winterbottom, no-one got in touch with her to offer her support. This is alleged to be direct discrimination on grounds of race and disability. The Respondent accepts that this allegation has been brought within time.
5. Having considered the dates of early conciliation and the date of the ET1 claim form, it was therefore clear that I only needed to consider the time issue with respect to allegations 1, 2, 3, 4, 5, 8 and 9.

## **Hearing**

6. I was provided with a hearing bundle of 137 pages which included the ET1 claim form and the ET3 Response, as well as the Case Management Summary, the Claimant's two page witness statement on the time issue, and also the Claimant's medical records and disability statement. The bundle did not contain any documents which went to the substance of the allegations the Claimant has raised in her claim. I was also provided with a comprehensive skeleton argument from the Respondent, as well as a letter from the Respondent in which they conceded that the Claimant was disabled due to anxiety from a period in July 2022.
7. After clarifying the purpose of the hearing and the legal claims being pursued, I heard live witness evidence from the Claimant. The parties were given frequent breaks throughout the day. Closing submissions from both sides were completed after midday.
8. Given that the Claimant and her companion Mrs Winterbottom were not lawyers, I provided them with assistance in asking questions and some guidance as to the legal issues in order to create as far as possible a level playing field whilst ensuring a fair hearing to both parties.

## **Findings of fact**

9. I have made the following findings of fact based upon the evidence I have heard and documents put before me.
10. The Claimant originates from Bosnia and started work with the Respondent as a Police Constable on 6 April 2021. Prior to joining the Respondent, the Claimant had served as a PCSO for Warwickshire Police. The Claimant suffers from anxiety and the Respondent concedes that the Claimant is disabled but from the end of July 2022. The Claimant's medical records show that the Claimant has experienced anxiety symptoms from at least 13 September 2021 which is the date of the first entry I was provided with.
11. As part of her training the Claimant underwent a 17 week training and induction course followed by a period of tutoring of approximately 10-11 weeks. The Claimant says that during her induction course between April

and August 2021 she was subject to inappropriate behaviour by PC Renwick concerning her national origins (see allegation 1 above). During the induction the Claimant received a two hour briefing session from the Police Federation (which is a trade union) although the Claimant says that she sat at the back of the room and she did not take it in and could not recall what they had discussed due to the treatment she had received from PC Renwick. The Claimant told me in evidence that she had been aware of the Police Federation from her previous role as a PCSO but did not have access to, or dealings with them then as PCSOs have a different trade union. Nonetheless I find that the Claimant was aware of the existence of the Police Federation and had a general awareness of the support they could offer at some point within her initial 17 week training and induction from April 2021 onwards.

12. The Claimant went on sick leave from 3 September to 27 October 2021 and her medical records show she was suffering from anxiety. The Claimant was unable to achieve Independent Patrol Status at the same time as her cohort as she had not completed her tutor period due to her absence.
13. After the Claimant returned from sickness absence she continued with her tutoring course. In January 2022 the Claimant was told that her tutoring would be moved to Daventry due to the availability of a tutor. This venue was closer to home for her (allegation 9).
14. On 9 February 2022 the Claimant made a formal complaint to the Respondent about PC Renwick's alleged earlier behaviour from April to August 2021. The Claimant says that she did so after telling colleagues (and former colleagues from Warwickshire Police) that she was unhappy and was thinking of resigning and that they had encouraged her stay on and to complain. The Claimant's complaint was investigated, and an outcome was delivered in November 2022.
15. The Claimant did not bring tribunal proceedings in February 2022 at the time of her complaint as she said she lacked confidence. The Claimant's evidence in that regard was inconsistent. It was put to the Claimant that she must have been feeling strong enough then as she had brought an internal complaint about PC Renwick, to which the Claimant said she agreed and disagreed with that as she said she did not know what to do to bring a claim and was not aware of the tribunal and deadlines.
16. At one point following questions from the Respondent she said she knew about the tribunal process from the end of 2021 and early 2022 although her oral evidence seemed a little muddled. I therefore asked the Claimant to take a moment to pause and to think as this was an important point, and to confirm that is what she was saying. The Claimant immediately agreed that it was.
17. Following an interjection and later re-examination by her companion (Mrs Winterbottom) the Claimant corrected herself and said she did not know about the tribunal process until she spoke to ACAS in November 2022. I had to ask Mrs Winterbottom to stop shaking her head when the Claimant was giving her evidence on this point as it might be interpreted that she was giving her the answer. Nevertheless, it appeared to me that the Claimant had confused the years and when she had agreed to knowing about the

tribunal process from ACAS at the end of the year and the start of the next one, she meant 2022 not 2021.

18. The Claimant had further instances of sickness absence including from 2 – 21 February and 28 February – 1 March 2022. This followed an incident where she had been headbutted at work at the end of January 2022.
19. In mid March 2022 the Claimant engaged with the Police Federation for advice and support following the decision of DS Gallagher to refuse her request to leave training early that week for childcare (allegation 4). The Claimant was assisted by Sam Dobbs (the chair of the Police Federation) who she says had given her advice about DS Gallagher's decision. It was clear to me that the Claimant had access to support from her trade union from at least March 2022. I find that even if the Claimant did not know about the tribunal process at that time, she could have asked her trade union for advice.
20. The Claimant had a further period of sickness between from 7 to 27 April 2022 following which she came back to work on a phased return. The Claimant was seen by her GP on 5 and 12 April 2022 and she was prescribed medication for anxiety and insomnia.
21. Whilst working at Warwickshire Police the Claimant had also sat as deputy chair of the Bosnia and Herzegovina Charity Association. The Claimant said that this was supported by her former employer, however the Respondent required her to submit a business interest case to gain permission in order to continue to do so. The Claimant gave clear evidence as to the importance of that role and of the charity which I understand provides advice and other support. The Claimant made a business interest application to work as deputy chair of the Bosnia and Herzegovina Charity Association in April 2022 (allegation 2). This was refused towards the end of April 2022 however the Claimant did not raise a claim about this at the material time.
22. On 7 June 2022 the Claimant's GP wrote a letter which advised that she was taking Mirtazapine to help with her anxiety and recommended that her phased return did not involve night shifts. The letter records that on 6 June 2022 the Claimant said that she had restarted her medication and things were going much better with her mental health and her phased return was working well and that she was being supported.
23. A further letter from her GP dated 23 June 2022 reported that she had been seen on 17 June 2022 and she had not collected or taken her medication and she was doing fine with no symptoms of anxiety or depression, and that her mental health was good at that time.
24. The Claimant went on sickness absence from 19 August to 19 December 2022. The Claimants' medical records indicate that she was the victim of a road traffic collision in mid August 2022, and as a result she suffered concussion and headaches and other symptoms.
25. As the Claimant remained on sickness absence the Respondent moved her onto half pay from 30 October 2022. The Claimant requested, via Sam Dobbs of the Police Federation, that this decision be set aside and that she

put back onto full pay. At the time of filing her claim on 25 January 2023 the Claimant did not have a response from the Respondent, however on or around 31 January 2023 her request was rejected.

26. The Claimant contacted ACAS on 16 November and conciliation ended on 28 December 2022. The Claimant did not bring her claim for almost a further month until 25 January 2023. Under cross examination the Claimant confirmed that she knew when she spoke to ACAS in November 2022 that her claims were significantly out of time, however she denied that she had unreasonably delayed bringing her claim until the following January. When asked the reason for the delay the Claimant's answer was unconvincing as she said she brought the claim when she did because she felt genuinely strong that it was the right thing to do, she was not embarrassed, and she had no plans but it was time consuming reading articles.
27. The Claimant was questioned in detail about her attempts to find out what she needed to do to bring a tribunal claim. The Claimant said that she did some research on her laptop and would just stare at the screen but not take any of it in. The Claimant was unclear when this was.

## **Law**

Time Limits for discrimination

28. Section 123 Equality Act 2010 provides:

### ***Time limits***

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

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

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

...

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

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

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

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

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

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

29. Section 140B Equality Act 2010 provides an extension of time to ensure that

the period between the date when the prospective claimant contacts ACAS and the date when the prospective claimant receives (or is treated as having receiving the ACAS Early Conciliation Certificate) does not count towards the three month primary limitation period.

Conduct extending over a period

30. An act will be regarded as extending over a period if an employer is responsible for an “ongoing situation” or a “continuing state of affairs” which can be contrasted with a “succession of unconnected or isolated specific acts” - **Commissioner of Police of the Metropolis v Hendricks [2003] ICR 530** (paragraph 52). When considering whether separate incidents form part of an act extending over a period, “one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents” - **Aziz v FDA [2010] EWCA Civ 304**.

31. In **Hale v Brighton and Sussex University Hospitals NHS Trust UKEAT/0342/17** the EAT considered the issue of a “state of affairs” when deciding whether separate acts relied upon formed part of a continuing act. As per Choudhury J:

*“By taking the decision to instigate disciplinary procedures, it seems to me that the Respondent created a state of affairs that would continue until the conclusion of the disciplinary process. This is not merely a one-off act with continuing consequences. That much is evident from the fact that once the process is initiated, the Respondent would subject the Claimant to further steps under it from time to time. Alternatively, it may be said that each of the steps taken in accordance with the procedures is such that it cannot be said that those steps comprise “a succession of unconnected or isolated specific acts” as per the decision in Hendricks, paragraph 52. (paragraph 42)*

...

*That outcome avoids a multiplicity of claims. If an employee is not permitted to rely upon an ongoing state of affairs in situations such as this, then time would begin to run as soon as each step is taken under the procedure. Disciplinary procedures in some employment contexts - including the medical profession - can take many months, if not years, to complete.*

*In such contexts, in order to avoid losing the right to claim in respect of an act of discrimination at an earlier stage, the employee would have to lodge a claim after each stage unless he could be confident that time would be extended on just and equitable grounds. It seems to me that that would impose an unnecessary burden on claimants when they could rely upon the act extending over a period provision. It seems to me that that provision can encompass situations such as the one in question.” (paragraphs 43 and 44)*

32. A tribunal may decide that some acts should be grouped into a continuing act, while others remain unconnected - **Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548**. In this case the Court of Appeal considered that a claimant’s 17 alleged individual acts could be divided to four continuing acts, and only one of those acts were in time.

33. In **Okoro v Taylor Woodrow Construction Limited [2012] EWCA Civ**



1590, the Court of Appeal asked itself, '*whether the allegations... focus upon events at one point in time, albeit spread over a few days, or whether they focus upon that which Mummery LJ in Hendricks called a continuing state of affairs*'.

Just and equitable to extend time

34. Where a claim is presented after the relevant time limit (here three months), a tribunal may still have jurisdiction if, in all the circumstances, it is "just and equitable" to extend time. The claimant bears the burden of persuading the tribunal that it is just and equitable to extend time - **Robertson v Bexley Community Centre [2001] UKEAT 1516/00, [2003] IRLR 434.**
35. The burden is not a high one – **Abertawe Bro Morgannwg University Local Health Board v Morgan - UKEAT/0320/15** ("Morgan 2016"):

*"As I have indicated above it is for the Claimant to persuade the Tribunal that it is just and equitable to extend time and in that sense there is clearly a burden on the Claimant; however, it is not a burden of proof which needs to be satisfied as when a party seeks to prove a fact or circumstance."* (paragraph 25).
36. As per Langstaff J in **Abertawe Bro Morgannwg University Local Health Board v Morgan - UKEAT/0305/13/LA** ("Morgan 2014"):

*"A litigant can hardly hope to satisfy this burden unless he provides an answer to two questions, as part of the entirety of the circumstances which the tribunal must consider. The first question in deciding whether to extend time is why it is that the primary time limit has not been met; and insofar as it is distinct the second is reason why after the expiry of the primary time limit the claim was not brought sooner than it was."* (paragraph 52).
37. In considering whether to exercise its discretion to extend time, a tribunal is entitled to take into account anything that it deems to be relevant - **Hutchinson v Westward Television Ltd [1977] IRLR 69.**
38. Time limits are intended to applied strictly and there is no presumption in favour of extending time, and it is intended to be the exception and not the rule - **Bexley Community Centre (t/a Leisure Link) v Robertson [2003] IRLR 434.**
39. There is a very broad general discretion conferred on tribunals to decide whether it is just and equitable to extend time - **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23** and the "best approach" is for the Tribunal to "assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular ... 'the length of, and the reasons for, the delay'" (paragraph 37).
40. There is no requirement that a claimant must always put forward a good reason for the delay or that time cannot be extended without an explanation by the claimant for that delay - **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] IRLR 1050** (paragraph 26) ("Morgan

2018”).

41. The Tribunal's discretion when extending time is as wide as that of the civil courts under *section 33* of the Limitation Act 1980 - ***British Coal Corporation v Keeble [1997] IRLR***. This requires courts to consider factors relevant to the prejudice that each party would suffer if an extension were refused, including:

1. The length of and reasons for the delay.
2. The extent to which the cogency of the evidence is likely to be affected by the delay.
3. The extent to which the party sued had co-operated with any requests for information.
4. The promptness with which the claimant acted once they knew of the possibility of taking action.
5. The steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action.

42. Similarly in ***Morgan 2018*** it was observed by Leggatt LJ that:

*“...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).”* (paragraph 19)

43. The Court of Appeal in ***Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23*** has cautioned tribunals against rigidly adhering to the checklist of potentially relevant factors and advised against the adoption of a mechanistic approach. When exercising the s. 123(1)(b) discretion, tribunals should assess all relevant factors in a case, including "the length of, and the reasons for, the delay". although some factors may be customarily relevant (such as the length of the delay and the reason for it), the factors that are actually relevant in a given case will be case-sensitive and must be determined by the tribunal on the basis of the given facts - ***Miller v Ministry of Justice UKEAT/0003/15/LA***. Here the EAT identified two types of prejudice a Respondent may suffer where a limitation period is extended. The first is the obvious prejudice of having to defend a claim which would otherwise have been defeated by a limitation defence. The second is the forensic prejudice a Respondent may suffer by extending the limitation period by months or years. Such prejudice may include fading memories, lost documents or losing contact with potential witnesses.

44. In ***Concentrix GVC Intelligent Contact Ltd v Obi [2022] EAT 149*** where there had been no reason for the delay and the claimant was aware of the time limit, however the tribunal found that the delay did not cause any genuine prejudice to the Respondent, whereas if the extension had not been granted, the claimant would not have been able to receive any

remedy. However the EAT held that it would be an error for a tribunal to fail to consider the potential “forensic prejudice” arising from historical allegations that would be brought in if an extension of time were allowed.

45. In **Watkins v HSBC Bank Plc** **UKEAT/0018/18/DA** the EAT held that where a claimant has a mental impairment this may place them at a substantial disadvantage when deciding whether to bring a claim or not, and this may be a relevant factor to take into account when considering whether it contributed to delay in bringing a claim.
46. It is not wrong in principle to take into account the merits of a proposed claim and to weigh this in the balance of the overall factors - **Kumari v Greater Manchester Mental Health NHS Foundation Trust** [2022] EAT 132. However when considering an extension of time on a just and equitable basis a tribunal should not conduct a mini-trial.
47. In the case of **E v X and others** **UKEAT/0079/20** HHJ Ellenbogden reviewed previous authorities and identified a number of key principles to be applied when time points are being considered at a preliminary hearing:
- 1) *In order to identify the substance of the acts of which complaint is made, it is necessary to look at the claim form: **Sougrin**;*
  - 2) *It is appropriate to consider the way in which a claimant puts his or her 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: **Robinson**;*
  - 3) *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: **Sridhar**;*
  - 4) *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: **Caterham**;*
  - 5) *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: **Lyfar**;*
  - 6) *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: **Aziz**; **Sridhar**;*
  - 7) *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: **Aziz**;*

8) *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: **Caterham** (as qualified at paragraph 47 above);*

9) *A tribunal hearing a strike-out application should view the claimant's case, at its highest, critically, including by considering whether any aspect of that case is innately implausible for any reason: **Robinson** and paragraph 47 above;*

10) *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 it fails, the claimant lives to fight another day, at the full merits hearing: **Caterham**;*

11) *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: **Caterham**;*

12) *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: **Caterham**;*

13) *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: **Caterham**.*

## Conclusion and decision

48. I start by reminding myself of the relevant dates. The Claimant first contacted ACAS on 16 November 2022. The date of the ACAS Certificate is 28 December 2022. The Claimant filed her ET1 on 25 January 2023. Therefore anything which occurred prior to 17 August 2022 would appear to be *prima facie* out of time. Allegations 1, 2, 3, 4, 5, 8 and 9 all allegedly occurred prior to this date.

49. The Claimant did not address whether there had been a continuing state of

affairs in her ET1 and witness statement or her oral evidence. The most which the Claimant said was that the discrimination was continuing. In her submissions (given orally by Mrs Winterbottom) the Claimant appeared to accept that the complaints were on the face of it out of time. I have nevertheless gone on to consider whether there was an “ongoing situation” or a “continuing state of affairs.”

50. I have noted that each incident relies upon a different alleged perpetrator, the causes of action vary between race and disability discrimination, including victimisation, harassment, failure to implement reasonable adjustments, discrimination arising from disability and direct discrimination. There are considerable gaps between many of the allegations, for some this gap is around five months or so, and there is no direct or indirect connection between these acts and the closest in time allegation which concerns the decision to move the Claimant onto half pay on 30 October 2022. The most that can be said is that the perpetrators are all employees of the Respondent, there is nothing beyond that. The complaints consist mainly of bare assertions, and I have noted that the Claimant herself used the words “isolated incident” to describe allegation 8 which concerns the trainer asking on a Teams call if there were any foreign nationals in the group.
51. The only two allegations which appear linked in any way is that the Claimant had complained in February 2022 about PC Renwick’s conduct (allegation 1) and as a result she felt that her request to leave early due to childcare reasons was refused the following month by DS Gallagher in March 2022 as victimisation. Even that complaint was many months out of time in any event and there is no suggestion as to how DS Gallagher knew that the Claimant had made a complaint about PC Renwick, or why she would seek to victimise the Claimant for doing so.
52. I therefore find that there was a “succession of unconnected or isolated specific acts” and as such complaints 1, 2, 3, 4, 5, 8 and 9 have been brought out of time.
53. I have gone on to consider whether it would be just and equitable to extend time. The burden is on the Claimant to persuade me that it is. Time limits are intended to be adhered to strictly, and an extension is the exception and not the rule. The Claimant is not required to provide a reason for the delay, and if she does it does not have to be a good one, but I have a wide discretion and I am required to take all of the relevant factors into account including any reason the Claimant has given.
54. The Claimant says that she lacked confidence to bring a claim earlier, however the fact that she brought an internal complaint in February 2022 is indicative that she could have brought a claim then but did not do so.
55. Whereas the Claimant has told me in her oral evidence that she did not know how to bring a claim until November 2022 when she spoke to ACAS. I have rejected that evidence. I find it implausible that the Claimant did not know from at least March 2022 about the possibility of bringing a tribunal claim, or that she did not know who to ask. The Claimant was able to recall clearly that there had been a session from the Police Federation in her induction, she recalled how long it lasted and she recalled where she sat in the briefing. The Claimant has said that she did not take in any of that

briefing, however I find that to be unrealistic given what the Claimant was able to recall.

56. I also noted that the Claimant has been able to recall a considerable amount of detail with respect to each of the eleven allegations she has brought including the names of alleged perpetrators, dates of the alleged incidents, as well as details as to what was said and done. It did not therefore seem realistic that the Claimant would have not been able to take in what the Police Federation had said to her in the briefing during her induction or that she would stare at the laptop screen when researching tribunals without taking in some of what she was reading.
57. I also take into consideration the Claimant's experience as deputy chair of an organisation which provides advice and support, and again I find it unlikely given that experience of helping others that the Claimant would have been unaware of where to go to for advice and support for herself even if she did not know about the tribunal process.
58. In my view the Claimant was aware of where she could go for advice, and she had access to her trade union even if she did not know the correct process for bringing a tribunal claim.
59. The Claimant has admitted that she knew in November 2022 that her claims were significantly out of time, but she did not provide a credible reason why she then waited until 25 January 2023 to bring her claim. I find that continued delay on the part of the Claimant to have been unreasonable.
60. Whilst it was not explicitly referred to by the Claimant in evidence I have considered her mental health over the period in question. Whilst there were periods where the Claimant was unwell there were many periods where she was back at work and performing her full hours or a phased return. There were GP records that the Claimant had been feeling better in June 2022 where it recorded that her health was good. Not all of the sickness absence was disability related, one period related to the Claimant having been headbutted at the end of January 2022 and another related to the Claimant being in a road traffic collision in August 2022, however there were considerable periods of time in the interim, where the Claimant could have brought her claim. I also note that during this time the Claimant was able to progress her internal complaint against PC Renwick and to take part in that process and she was advised and supported by the Police Federation in March and November 2022.
61. I have gone on to consider the issue of prejudice. There will be prejudice to the Claimant if time is not extended as she will be denied the opportunity to bring 7 of her 9 remaining complaints, although much of that prejudice is limited as a number of them may have little reasonable prospects of success in any event. I have not conducted a mini trial of the evidence as that would not be appropriate, however I have looked at the Claimant's claim as a whole as it appears in her ET1 and the annex, as well as what she told me at the start of the hearing about each allegation and the causes of action she is bringing.
62. I have taken the Claimant's allegations at their highest. However, in my view some of the complaints appeared to be either weak or to have low

prospects. Allegation three, where the Claimant alleges that Inspector Collins had harassed her in May 2021 in relation to her race, is one such example. It is difficult to see how Inspector Collins' asking to speak to the alleged WhatsApp participants whom the Claimant had reported could amount to harassment related to her race.

63. The Claimant's complaint that the refusal of the business interest application amounts to direct race discrimination may also have low reasonable prospects of success given the high level of sickness absence the Claimant had accrued which is documented, and what appeared to be cogent reasons for the refusal at that time by the Respondent which the Claimant has described to me.
64. I have observed that a number of the other allegations may also have low prospects of shifting the burden of proof to the Respondent, however I do not propose to go through each allegation with a commentary on merits. I have not heard evidence on the claims themselves, and it is of course not possible to make a proper determination of the merits of the claims at this stage, nevertheless taking those claims at their highest it was appropriate for me to consider their merits in the overall mix of factors when considering the prejudice to the Claimant if the extension of time is not granted.
65. In any event at least two of the Claimant's complaints will in any event proceed to a final hearing where she will have her day in court, and she will be able to present those two discrimination complaints. Should the Claimant succeed then she will be able to obtain a remedy for discrimination.
66. Conversely the Respondent will suffer two forms of prejudice if time is extended. The first is having to defend claims which are clearly out of time, in some cases by eighteen months or so where there were numerous opportunities for the claims to have been brought much earlier. Secondly there will be some forensic prejudice as some of the matters are so historic, memories will have faded, and documents may not have been preserved. The Respondent has not suggested that any specific documents have been lost, nevertheless it is inevitable that due to the passage of time memories will not be as fresh and some material may have been lost or deleted.
67. Looking at all the matters in the round, I have formed the conclusion that it would not be just and equitable in these specific circumstances to extend time for allegations 1, 2, 3, 4, 5, 8 and 9. I find that the Claimant was in a position to bring her claims either within the time limit, or at least by March 2022 when she had engaged with her trade union. The Claimant by her own admission was aware that her claims were out of time in November 2022 but she then continued to delay bringing her claim until January 2023.
68. Accordingly, allegations 1, 2, 3, 4, 5, 8 and 9 are dismissed.

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Employment Judge Graham

Date 11 September 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

19 October 2023

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FOR THE TRIBUNAL OFFICE