EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Gurleen Singh	**v**	**Royal Bank of Canada**

Heard at: London Central (in person)

On: 3 April 2024

Before: Employment Judge P Klimov (sitting alone)

Representation:

For the Claimant: in person

For the Respondent: Ms K Balmer, of Counsel

JUDGMENT having been announced to the parties at the hearing on 3 April 2024, and having been sent to the parties on 11 April 2024, and written reasons having been requested by the respondent on 4 April 2024, in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Background, Issues and Evidence

1. On 18 September 2023, following the ACAS early conciliation procedure between 14 August 2023 and 16 August 2023, the claimant presented this claim containing two complaints: unfair dismissal (ss. 94, 98 Employment Rights Act 1996 ("**ERA**") and disability discrimination.

2. The complaint of disability discrimination was poorly particularised and upon the respondent's application, on 24 October 2023, Employment Judge Nicolle ordered the claimant to provide by 4 November 2023 further and better particulars pursuant to the respondent's request.

3. On 31 October 2023, the respondent presented a "holding response", pending the claimant's further and better particulars, denying all the claims.

4. On 6 November 2023, the claimant's solicitors ("**Thrivelaw**") sent the claimant's further and better particulars. These were provided by way of detailed pleadings ("**the F&BP**"), running for 7 pages and containing 42 paragraphs. The F&BP was settled by Katya Hosking, a barrister at Devereux Chambers.

5. The F&BP confirmed that the claimant's complaint of disability discrimination was for failure to make reasonable adjustments (ss. 20, 21 Equality Act 2010 ("**EqA**")). It was also stated in the F&BP that for the purposes of that complaint the claimant would be relying on his disability by reason of depression. The complaint was that the claimant "*was subjected to bullying, in that Mr Kamdar had a practice of sidelining him, removing his responsibilities and leaving him with only menial tasks to perform*" and "*because of his disability Mr Kamdar's treatment of [the claimant] placed [the claimant] at a substantial disadvantage in that his mental health deteriorated and he became unwell*".

6. It was pleaded at paragraph 37 that:

> *"It would have been a reasonable step for the Respondent to have to take for HR to contact the Claimant at regular intervals to check whether he needed any support in relation to his mental health condition. The Respondent's failure to take this step was a failure to make a reasonable adjustment contrary to ss.20 and 21 of the Equality Act 2010."*

7. The F&BP also expressly stated that it was not the claimant's case that Mr Kamdar subjected the claimant to the treatment complained of because of the claimant's disability. There were no other disability discrimination complaints pleaded, nor there were any other allegations of any treatment that placed the claimant at a substantial disadvantage.

8. That was in the context of the respondent's request for further and better particulars, where it was requested to clarify the legal heads of disability discrimination complaint under EqA, with a list of specific questions for each such potential legal head. With respect to ss. 20, 21 EqA claim the respondent requested:

> *"8. In respect of any claim for failure to make reasonable adjustments, please identify any PCPs pleaded in the claim form and alleged to have been applied to the Claimant under s 19 EqA 2010 (sic) including, in particular:*
>
> *i. the nature of any such PCP;*
>
> *ii. the date on which it is alleged that the PCP was applied to the Claimant;*
>
> *iii. the person, if any, alleged to have been responsible.*
>
> *9. In relation to each alleged PCP above, please specify:*
>
> *i. how that PCP is said to have placed the Claimant at a substantial disadvantage when compared to people who do not share his particular characteristic;*

ii. what adjustment it is said should have been made to alleviate the substantial disadvantage;

iii. how the proposed adjustments would have alleviated any such substantial disadvantage;

iv. whether the Claimant requested any such adjustment and, if so, when, how and to whom."

9. On 24 November 2023, there was a case management preliminary hearing before Employment Judge Havard. The claimant was represented by Counsel, Mr Thomas Westwell of Devereux chambers.

10. The list of issues, which I was told had been agreed between Counsel in advance of the hearing, was discussed and recorded in the case summary. In particular, it was recorded that the provision, criterion or practice ("**PCP**") the claimant was relying upon was:

"*a practice by Mr Hitesh Kamdar (Head of TES Architecture & Shared Services) of bullying the Claimant, in that Mr Kamdar had a practice of sidelining the Claimant, removing his responsibilities and leaving him with only menial tasks to perform.*"

11. EJ Harvard ordered the parties to write to the Tribunal and each other by 15 December 2023, if they thought the list of issues was wrong or incomplete, otherwise "*the list will be treated as final unless the Tribunal decides otherwise.*" Neither party wrote to the Tribunal to say that the list was wrong or incomplete.

12. The respondent in its amended response contends, *inter alia*, that the claimant's claim was presented out of time and the Tribunal does not have jurisdiction to consider it, and, in addition, that the complaint for failure to make reasonable adjustments had no (or, in the alternative, little) reasonable prospect of success, and therefore should be struck out, or, in the alternative, a deposit order made as a condition of allowing the claimant to continue to pursue it.

13. EJ Havard listed a preliminary hearing in public on 5 February 2024 to consider:

(a) whether the Claimant's claims have been lodged in time and, if not, whether time should be extended;

(b) whether the Claimant's disability discrimination claim has no reasonable prospects of success and, if so, whether it should be struck out or whether it has little reasonable prospects of success and, if so, whether he should be ordered to pay a deposit as a condition of continuing to advance his claim.

14. The hearing was postponed and re-listed for 3 April 2024.

15. At the hearing, the claimant represented himself and Ms Balmer appeared for the respondent.

16. There were two bundles of documents. The respondent's bundle of 422 pages, and the claimant's bundle of 447 pages, the first 422 pages of which were the same as in the respondent's bundle. The additional pages in the

claimant's bundle were largely duplicate documents with removed redaction, which had been applied by the respondent to the documents containing references to without prejudice communications between the parties.

17. Notably, the bundles contained correspondence between the claimant and his solicitors - Thrivelaw, which ordinarily would be privileged and not disclosable. However, the claimant specifically waived privilege and insisted on those documents being added to the bundle and referred to at the hearing.

18. The claimant gave sworn evidence and was cross-examined. His wife, Mrs Cuciureanu, also provided a written witness statement. Ms Balmer said that she did not have any questions for Mrs Cuciureanu. I accepted her written witness statement in evidence, as read.

19. Both parties presented opening skeleton arguments. I was also presented with a bundle of authorities, to which the parties referred me in their skeleton arguments and oral submissions.

20. At the end of the hearing, in making his closing submissions, the claimant said that he had found, a further EAT judgment, which he thought was supporting his case on the correct interpretation of s.207B ERA. The claimant did not produce copies of that judgment for the hearing. It was not referred to in his written skeleton, nor did he mention it at the start of the hearing when the agreed bundle of authorities was given to me. He did not tell Ms Balmer that he would be relying on another EAT authority in his closing submissions. By that stage, Ms Balmer had already made her closing submissions, and little time was left in the hearing. In the circumstances, I decided that it would be disproportionate and not in the interests of justice to adjourn the hearing to allow the claimant to produce copies of the EAT judgment and for the respondent to consider it and make further submissions.

21. Furthermore, it was my view, as will be seen in the Analysis and Conclusions section below, that the claimant's interpretation of s.207B (as articulated in his written skeleton) was plainly wrong and contrary to the established EAT case law. Therefore, I considered that it was very unlikely that the EAT judgment the claimant said supported his interpretation was indeed doing so, especially, in light of the EAT judgment in *Luton Borough Council v Mr M Haque*: UKEAT/0180/17/JOJ, and the claimant's apparent wrong reading of that judgment.

The Facts

22. I limit my findings to the facts I need to establish to decide the two issues before me.

23. The respondent is a branch of Royal Bank of Canada, a Canadian financial services company providing banking, wealth management, insurance and other financial services.

24. The claimant commenced his employment with the respondent on 6 April 2021. Before that, from August 2017, he worked for the respondent as a contractor. He was employed as a member of the Trading and Execution Services (TES) team in London, in the position of an Associate Director, also known as a Business Analyst Lead. His role was focussed on a software application called "Fortress" used by the respondent for making pre-trade checks.

The claimant's dismissal, grievances and appeal

25. On 19 April 2023, the respondent notified the claimant that his role was at risk of redundancy. That followed by three consultation meetings on 20 April, 16 May and 25 May 2023.

26. On 17 May 2023, as part of the consultation process, the claimant sent to the respondent his detailed proposal to avoid redundancy. In that document he suggested that underinvestment in Fortress had left the respondent without sufficient strong controls and wide open to regulatory risk. The claimant's concerns ("**the whistleblowing concerns**") were referred to the respondent's UK Whistleblowing Committee for further investigation.

27. On the same day, 17 May 2023, the claimant raised a formal grievance (the "**First Grievance**") about the lack of support by HR for his mental health condition.

28. On 22 May 2023, the claimant raised a further formal grievance (the "**Second Grievance**") about the alleged bullying by his manager, Mr Kamdar, and by Mr Owens (Mr Kamdar's manager).

29. On 25 May 2023, at the third consultation meeting the claimant's employment was terminated with immediate effect with a payment in lieu of notice.

30. On 1 June 2023, the claimant appealed the decision to dismiss him by reason of redundancy.

31. As there was a substantial overlap between the claimant's grievances and appeal, the respondent decided to consider them together. The respondent instructed a third-party investigator (Raphael Prais, Associate of Ibex Gale Limited) to undertake a fact-finding investigation into the claimant's complaints. The investigator conducted interviews with relevant people, including, on 10 August 2023, with the claimant.

32. On 23 August 2023, the claimant wrote to Madiha Hyder (Employee Conduct Adviser) asking for various information concerning the investigation into his whistleblowing concerns.

33. On 6 September 2023, the claimant emailed the respondent again about his grievances, appeal and whistleblowing concerns. In that email he wrote:

"*At this point I would like to inform you of the following:*

1. *I have already approached ACAS and obtained the Early Conciliation Certificate having chosen to bypass the ACAS Early Reconciliation Service.*
2. *My lawyers are in the process of filling out the ET1 form in order to make a claim for unfair dismissal and discrimination on the basis of disability.*
3. *I am discussing with my legal advisors whether my whistleblowing allegation about lack of regulatory controls could be linked to my unfair redundancy.*
4. *We are also considering raising a claim at the county court for RBC's failure to make reasonable adjustments to comply with the Equalities Act 2010.*

Please consider this as my last proactive communication with regards to the grievances and redundancy appeal. The ET1 form will be submitted to the tribunal on Friday 15th Sept at 3pm, unless this long running internal + external (Ibex Gale) investigation into my grievances and redundancy is completed and a ruling is made and I am informed of it by 5pm Thursday 14th Sept - in which case I may reconsider approaching the tribunal depending on RBC's ruling and willingness to right the wrongs." (my emphasis)

34. On 7 September 2023, Sarah Richard dit Leschery, Employee Relations Advisor, replied to the claimant, saying that the respondent would not be in a position to provide him with the outcome of his grievances and appeal by 15 September.

35. Just over an hour later, the claimant wrote back stating:

"Thank you for the update. I think I have left this matter in RBC's hands far too long. I cannot see any logical reason for RBC to delay the decision on my first grievance which is effectively an open and shut case of breaking the Equality Act 2010.

Much as I have attempted to resolve this situation amicably with RBC by requesting an amicable resolution without the need for any legal involvement, I have been met with a brick wall every time. As a result, I will be submitting the ET1 on Monday." (my emphasis)

36. On 30 November 2023, Mr Christophe Coutte, (European Head of Algo, Macro & Equity Trading and Financing), who had been appointed to consider the claimant's grievances and the appeal, wrote to the claimant with his decision not to uphold the grievances or the appeal.

The claimant's interactions with Thrivelaw

37. The following facts are taken from the claimant's correspondence with Thrivelaw and his oral witness evidence at the hearing. I am mindful that the claimant intimated at the hearing that he might be pursuing a claim for negligence against Thrivelaw, and my factual findings may "embarrass" a judge before whom that claim might come. However, the way the claimant ran his case before me on the issue why it was not reasonably practicable for him to present his claim in time, I have no option but to make the following findings of fact.

38. On 8 June 2023, the claimant approached Thrivelaw for legal advice in relation to his dismissal. He had an initial call with Ashmina Vekaria ("**AV**"), associate solicitor, and Roshini Punja ("**RP**"), paralegal.

39. The claimant told them that he had already instructed a firm of solicitors to advise him with respect to him leaving the respondent's employment, and that the same firm may also be advising him on his potential personal injury claim. The claimant said that he wanted Thrivelaw to focus on disability discrimination aspect of his potential claim.

40. Thrivelaw told the claimant that it would not be cost effective to have two firms acting for the claimant as there would likely to be a significant overlap. They offered to advise the claimant on employment law, however, if he wanted advice on both employment and personal injury aspects, Thrivelaw recommended the claimant another firm, Oakwood Solicitors.

41. On 8 June 2023, Thrivelaw sent to the claimant a follow up email confirming their conversation. The claimant did not reply.

42. On 15 June 2023, Thrivelaw sent the claimant a reminder email. The claimant replied on the following day, saying that Oakwood Solicitors had advised him that his personal injury claim might not be viable just yet. The claimant said that he wanted Thrivelaw to assist him but would prefer to wait the outcome of his grievances and appeal before taking it further. He said that he would come back in a couple of weeks.

43. On the same day, 16 June 2023, RP emailed the claimant reminding him about the time limit of 3 months less one day and telling him that he needed to commence ACAS early conciliation before the expiry of the time limit, otherwise the claim would be out of time and there would be limited legal recourse. The claimant did not respond.

44. On 27 June 2023, RP emailed the claimant asking if he had received the outcomes of his grievances and appeal. The claimant said that he would come back following his grievances and appeal meeting with the respondent, scheduled for 29 June 2023.

45. On 7 July 2023, Thrivelaw emailed the claimant, asking about the outcome of the meeting and enquiring whether he still needed their assistance.

46. On the same day, 7 June 2023, the claimant responded explaining that the respondent was conducting further investigations into his complaints and asking Thrivelaw to set him up as a client. He said that although he did not need any immediate legal advice, he did not want to delay things in case the need arose. He said that if the respondent would offer him a settlement agreement, he would want Thrivelaw to advise him on its terms. Meanwhile, he was going to dis-instruct his former solicitors.

47. On 10 July 2023, RP sent the claimant a new client form to complete. RP advised that Thrivelaw would not be able to commence any work for the claimant until after they have received a signed Client Care Letter, which would be issued to the claimant once he had confirmed his instructions.

48. As the claimant did not reply, RP followed up on 16 July 2023 by email.

49. On 19 July 2023, the claimant responded stating that he would complete and return the form the following week. The claimant did not send the form back.

50. On 31 July 2023, RP sent a reminder to the claimant. RP asked whether the claimant still wanted Thrivelaw to act for him. RP said that if he did not respond within 7 days, they would proceed to close his file.

51. On the same day, the claimant responded asking to be set up as a client and saying that he had completed the form.

52. On 1 August 2023, RP confirmed to the claimant that he had been set up as a client of the firm, but before Thrivelaw could carry out any work for him, a Client Care Letter needed to be signed, and that in turn required the claimant to confirm the scope of his instructions. RP reminded the claimant of the time limits.

53. On the same day, 1 August 2023, the claimant responded to RP. He thanked her for the reminder regarding the time limit and said that based on this, he calculated the last day to approach ACAS as being 24 August 2023. He also said that he would wait until 14 August to hear back from the respondent about the outcome of the investigation into his grievances and appeal, but if the respondent did not come back by that date, he would ask Thrivelaw to approach ACAS on his behalf.

54. On 7 September 2023, the claimant emailed RP and AV stating that he felt that he had no choice, but to pursue the matter through the Employment Tribunal, and that he wanted to add a whistleblowing complaint to his complaints of unfair dismissal and discrimination. The claimant requested another free 15-minute consultation.

55. On the same day, 7 September 2023, RP responded to the claimant, stating that Thrivelaw could not offer another free consultation, but if the claimant wanted to proceed with the claim, Thrivelaw could set up another call once the claimant had signed the Client Care Letter. RV said that she would be able to send to the claimant a Client Care Letter on Monday (11 September 2023).

56. On 8 September 2023, the claimant responded stating that he was happy to pay for advice and asking to be sent a Client Care Letter covering further legal advice and assistance with preparing the ET1 Form.

57. On 12 September 2023, Thrivelaw sent to the claimant a Client Care Letter. The claimant replied, saying that he would sign the form on that same day and asking to advise on next steps.

58. Having not received a response, on 13 September 2023, the claimant wrote again asking for "*some consultation time today or tomorrow*" and saying that he was keen to submit ET1 "*as soon as*".

59. AV respondent a half an hour later asking the claimant to upload relevant documents and prepare a brief chronology of events. In that email AV said:

> *"As for the next steps, we will carry out an assessment of the potential claims along with the merits of such claims. Thereafter, we can help you draft an ET1 Claim Form/Particulars of Claim – the assessment of potential claims/merits will help us in preparing this.*
>
> *[...]*
>
> *Can you also confirm if you have contacted ACAS? Once we have assessed your deadline, we can also advise you of the time limits."*

60. On the same day, at 8:44pm, the claimant emailed AV, saying that he had all documents and event details ready because: "*As a matter of fact, I have been doing this for my own benefit for a while now so it required only a little touch-up and inclusion of the events from the last couple of weeks.*" He filled in a table of events and referred AV to two further spreadsheets containing relevant events, which he said he had uploaded together with all other relevant documents. With respect to the ACAS dates, the claimant wrote:

> *"Re ACAS, I was made redundant on 25th May 2023 and approached ACAS on 14th August 2023. They issues (sic) the Early Conciliation Certificate on 16th Aug 2023."*

61. On 14 September 2023 at 10:12am, Anabelle Olivier, trainee solicitor, replied to the claimant acknowledging receipt of the uploaded documents and saying that if she had any questions whilst preparing legal advice for the claimant she would reach out to the claimant by email.

62. On Monday, at about 7.04pm 18 September 2023, AV emailed the claimant, stating that Thrivelaw did not consider that the claimant had a meritorious claim. She also informed the claimant that the deadline to submit a claim was 16 September 2023, based on the fact he had approached ACAS on 14 August 2023 and received the ACAS Early Conciliation Certificate on 16 August 2023.

63. Later that evening, the claimant submitted his ET1. In cross-examination the claimant said (and I accept his evidence on this) that having put his children to bed, he sat in front of his computer at about 11pm and submitted the ET1 at 11:57pm.

64. On 19 September 2023, the claimant had various email exchanges with Thrivelaw. Notably, he wrote:

> *"I understand from your advice that to prove harassment and/or discrimination under the Equality Act 2010 ["EqA 2010"] you can show you were dismissed or subject to a detriment due to a protected characteristic. Is there no employment law that protects employees from bullying/harassment behaviour which may not be related to a protected characteristic?" (my emphasis)*

65. He also uploaded a 27-page draft transcript of his meeting with the investigator.

66. In subsequent correspondence with Thrivelaw, on 29 November 2023, referring to the late filling of his ET1, the claimant wrote:

> *"You quoted in the document "2023.09.18 - Advice to Gurleen Singh.pdf" that "In terms of the next steps, if you want to lodge a claim in any event, we can do so as soon as possible (ideally today) and try to argue it would be just and equitable for the ET to allow you to pursue a claim for discrimination".*
>
> *Furthermore in your email dated 19 Sept 2023, you mentioned, "Given that you've lodged a claim and have therefore 'stopped the clock'...".*
>
> *If 'stopping the clock' was the only objective, I could have stopped the clock on 14th, 15th or even 16th Sept and we wouldn't be facing this issue. You had all the documents with you on 13th evening. There was no reason for you to hold on to the advise of 'stopping the clock' un l the evening of 18th Sept, especially when in the 'Event Details.xlsx' document that I uploaded contained very clearly the date for "ACAS issues Early Reconciliation Certificate to GS" as 16th Aug 2023." (my emphasis)*

67. On 8 December 2023, Thrivelaw stopped acting for the claimant due to a conflict of interest.

68. On 24 January 2024, Jodie Hill, Managing Partner of Thrivelaw, responding to the claimant's complaint against the firm wrote:

> *"Given the timing of your instruction and provision of the documents, I consider Monday 18 September 2023 to be as prompt as the fee earners could have provided a full advice in the circumstances. I note that this meant you were out of me for your claims. However, this has not impacted your ability to succeed in those claims as I understand they are without any merit in any event, which was confirmed independently by Counsel on a conference call on 2 November 2023." (my emphasis)*

The Law

The Primary Time Limit

69. Section 111 of the Employment Rights Act 1996 states:

> **"*111 Complaints to employment tribunal***
>
> *(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.*
> *(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—*
> *(a) before the end of the period of three months beginning with the effective date of termination, or*
> *(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."*

70. Section 123 of the Equality Act 2010 states:

> *"**123 Time limits***
>
> *(1) 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."

71. Section 207B of the **ERA** provides:

"*207B Extension of time limits to facilitate conciliation before institution of proceedings*

(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a "relevant provision").

(2) In this section -

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section."

72. Section 140B of the EqA contains identical, *mutatis mutandis*, "*Extension of time limits to facilitate conciliation before institution of proceedings*" provisions to s.207B ERA,

73. In *Luton Borough Council v Mr M Haque*: UKEAT/0180/17/JOJ, Naomi Ellenbogen QC, deputy Judge of the High Court (as she then was), having reviewed the relevant statutory provisions held at [18]

"Sub-section 207B(3) applies in every case: as its wording makes clear, it establishes the method by which to work out when it is that a time limit set by a relevant provision expires. By contrast, sub-section 207B(4) expressly applies only in the circumstances to which it refers. Those circumstances are "where a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B". If, determined in accordance with sub-section 207B(3), the expiry date would fall within the period specified in sub-section 207B(4), that latter sub-section operates to extend the time limit in the manner provided. As a matter of construction, the two sub-sections are, on their face, to be applied sequentially, as I explain further below."

74. Having reviewed further relevant materials, including *Hansard* HL, Deb, 26 Feb 2013, col 982-3., paragraph 65 of the Explanatory Notes to the Enterprise and Regulatory Reform Act 2013, and the commentary in *Tolley's Employment Handbook* and in *Harvey on Industrial Relations and Employment Law*, at [29] Ellenbogen J said that there was "*no conflict between sub-sections 207B(3) and (4)*", and "*no basis in such circumstances for sub-section 207B(4) to override sub-section 207B(3)"*, and *"[o]nce it is clear that the sub-sections operate sequentially, the expiry of the time limit may be readily calculated."* (*my emphasis*)

Application of Section 111(2)(b)

75. The following key rules can be derived from the authorities:

    a. s.111(2)(b) ERA "*should be given a liberal interpretation in favour of the employee*" — *Marks & Spencer Plc v Williams-Ryan* [2005] EWCA Civ 470, [2005] I.C.R. 1293, [2005] 4 WLUK 376.

    b. what is reasonably practicable is a question of fact and thus a matter for the tribunal to decide. Lord Justice Shaw said in ***Wall's Meat Co Ltd v Khan*** 1979 ICR 52, CA: "*The test is empirical and involves no legal concept. Practical common sense is the keynote….*".

    c. the onus of proving that presentation in time was not reasonably practicable rests on the claimant. "*That imposes a duty upon him to show precisely why it was that he did not present his complaint*" — *Porter v Bandridge Ltd* 1978 ICR 943, CA.

    d. if an employee misses the time limit because he or she is ignorant about the existence of a time limit, or mistaken about when it expires in his or her case, the question is whether that ignorance or mistake is reasonable. When assessing whether ignorance or mistake are reasonable, it is necessary to take into account any enquiries which the employee or his or her adviser should have made - *Lowri Beck Services Ltd v Brophy* 2019 EWCA Civ 2490, CA

    e. Even if a claimant satisfies a tribunal that presentation in time was not reasonably practicable, that does not automatically decide the issue in his or her favour. The tribunal must then go on to decide whether the claim was presented "*within such further period as the tribunal considers reasonable*".

Meaning of 'reasonably practicable'

76. Lady Smith in *Asda Stores Ltd v Kauser* EAT 0165/07 explained it in the following words: "*the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done*".

77. In ***Wall's Meat Co Ltd v Khan*** Brandon LJ explained it in the following terms: "… *The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical … or the impediment may be mental, namely, the state of mind of the complainant of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the*

mistaken belief on the other, is itself reasonable. Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such enquiries as he should reasonably in all the circumstances have made, or from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him." (Pages 60F-61A)

78. The focus is accordingly on the claimant's state of mind viewed objectively.

79. The so-called ***Dedman*** principle (see, *Dedman v British Building & Engineering Appliances* [1974] 1 W.L.R. 171, [1973] 11 WLUK 21) says that a claimant who puts his or her case into the hands of a skilled adviser (such as a solicitor) cannot plead ignorance if the adviser gets it wrong.

80. In ***Wall's Meat Co Ltd v Khan***, Lord Justice Brandon clarified the ***Dedman*** principle, explaining that ignorance or a mistaken belief will not be reasonable if it arises either from the fault of the complainant or from the fault of his or her solicitors or other professional advisers in not giving him or her such information as they should reasonably in all the circumstances have given him.

81. In *Riley v Tesco Stores Ltd* [1980] IRLR 103 CA Waller LJ said at paragraph 37:

"… If you have retained a skilled adviser and he does not take steps in time, you cannot hide behind his failure. There may be circumstances, of course, where there are special reasons why his failure can be explained as being reasonable. …"

82. In *Trevelyans (Birmingham) Ltd v Norton* [1991] ICR 488 Wood J in the EAT said at page 491C:

"… if [a complainant's] advisers give him unsound advice or fail to give him proper advice, or fail to give him advice on a relevant issue, then the failure of those advisers is the failure of the applicant and does not provide a good excuse for the escape clause. …"

83. In *Governing Body of Sheredes School v Davies* EAT 0196/16, HHJ Shanks in the EAT held that where the failure to present the claim in time had arisen from the employee's solicitors' failure to advise about the deadline it was an error of law by the ET judge to find that it was not reasonably practicable to present the claim in time. The Shanks J said at [13] that the Judge should have considered what advice the solicitors ought to have given to the claimant and what would have happened if they had given it. Shanks J also held that had the ET Judge considered those matters "*there was only one possible conclusion she could have reached, namely that it was reasonably practicable for [the claimant] to present his claim before [the expiry of the limitation period].*"

84. A claimant's illness as the reason for not submitting a claim in time will usually only constitute a valid reason for extending the time limit if it is supported by medical evidence, particularly if the claimant was aware of the time limit. Medical evidence must not only support the claimant's illness, but also

demonstrate that the illness prevented the claimant from submitting the claim in time (see *Midland Bank Plc v Samuels* (1992) EAT 672/92). However, the Tribunal may also consider the claimant's own evidence as to her health condition (see *Norbert Dentressangle Logistics Ltd v Hutton* EATS 0011/13).

85. A mere stress is unlikely to be sufficient. In ***Asda Stores v Kauser*** Lady Smith stated at paragraph 24: "*….It cannot be sufficient for a Claimant to elide the statutory time limit that he or she points to having been "stressed" or even "very stressed". There would need to be more*".

Just and equitable extension

86. In *Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA*, the Court of Appeal held that when employment tribunals consider exercising the discretion under S.123(1)(b) EqA: "*there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule*." The onus is therefore on the claimant to convince the tribunal that it is just and equitable to extend the time limit. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law simply requires that an extension of time should be just and equitable — *Pathan v South London Islamic Centre EAT 0312/13*.

87. The relevant principles and authorities were summarised in *Thompson v Ark Schools* [2019] I.C.R. 292, EAT, at [13] to [21], and in particular that:
    a. Time limits are exercised strictly;
    b. The onus is on the claimant to persuade the tribunal to extend time;
    c. The decision to extend time is case- and fact-sensitive;
    d. The tribunal's discretion is wide;
    e. Prejudice to the respondent is always relevant;
    f. The factors under s33(3) Limitation Act 1980 (such as the length of and reasons for the delay and the extent to which the Claimant acted promptly once he realised he may have a claim) may be helpful but are not a straitjacket for the tribunal.

88. In *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] EWCA Civ 640 and the EAT's decision in *Bahous v Pizza Express Restaurants Limited* UKEAT/0029/11/DA it was held that the absence of an explanation for the delay does not prevent the Tribunal from exercising its discretion and extending the time limit, and the Tribunal is not obliged to infer that there was no acceptable reason for the delay (see para 25 in ***Abertawe***). However, the reason or the absence of a good reason for the delay is a relevant factor (see para 19 in ***Abertawe***).

89. More recently, in *Jones v. The Secretary of State for Health and Social Care*, 2024 EAT 2 HHJ Tayler having reviewed the relevant authorities, gave further guidance to the employment tribunals, in particular at [30] he said:

> *"It remains a common practice for those who assert that the primary time limit should not be extended to rely on the comments of Auld LJ at paragraph 25 of* ***Bexley Community Centre (t/a Leisure Link) v Robertson*** *[2003] EWCA Civ 576, [2003] IRLR 434, that time limits in the Employment Tribunal are "exercised strictly" in employment cases and that a decision to extend time is the "exception rather than the rule" as if they were principles of law. Where these comments are referred to out of context, this practice should cease. Paragraph 25 must be seen in the context of paragraphs 23 and 24:*

90. He then set out the well-known passages from these two paragraphs in full, concluding that read in the context it means that the Employment Tribunal has a wide discretion to extend time on just and equitable grounds and that appellate courts should be slow to interfere, and no more.

91. Later, at [35] he said:

> *"35. Without meaning any disrespect to Auld LJ, there might be much to be said for Employment Tribunals focusing rather less on the comments in* ***Robertson*** *that time limits in the Employment Tribunal are "exercised strictly" and an extension of time is the "exception rather than the rule"; and rather more on some of the other Court of Appeal authorities, such as the concise summary by Leggatt LJ in* ***Abertawe Bro Morgannwg University Local Health Board v Morgan*** *[2018] EWCA Civ 640, [2018] ICR 1194 at paragraph 17-19:*

92. He then quoted those paragraphs in full, emphasising at [36] what Leggatt LJ said at [25] of Abertawe:

> *"As discussed above, the discretion given by section 123(1) of the Equality Act 2010 to the employment tribunal to decide what it "thinks just and equitable" is clearly intended to be broad and unfettered. There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard".*

Analysis and Conclusion

Was the ET1 presented in time?

93. It appears that until this hearing the claimant's position was that his ET1 had been presented outside the primary 3-month time limit. However, he argued, with respect to his unfair dismissal complaint - it was not reasonably practicable for him to present it in time, and he presented it within a reasonable period thereafter; and with respect to his ss.20, 21 EqA complaint - although he did not present it within the three months' period, he did present it within "*such other period as the employment tribunal thinks just and equitable*", or using the usual terminology – it is just and equitable to extend time limit.

94. However, having done some further research for this hearing, the claimant has changed his position, and now contends that his claim was in fact

presented within the primary limitation period of 3 months, as extended by s.207B. In paragraph 84 of his skeleton argument, he explains his contention as follows:

> *"84.In this case the following calculation applies:*
>
> *a. Effective Date of Termination was 25 May 2023.*
>
> *b. Primary limitation period would have expired on 24 August 2023.*
>
> *c. Day A is 14 August 2023 when the Claimant approached ACAS.*
>
> *d. Day B is 16 August 2023 when ACAS issued the EC Certificate.*
>
> *e. Days when the clock was stopped: Day B – Day A is calculated as the number of days between Day A and Day B, including the day after Day A until Day B. As a result, the conciliation took place for 2 days. Pursuant to subsection 207B (3) above, the primary limitation period is extended by 2 days to 26 August 2023.*
>
> *f. Turning to subsection (4), this applies because the claimant went to ACAS on 14 August 2023 and one month after receiving the EC certificate was on 16 September 2023, and the original time limit was due to expire on 24 August 2023 which is between these two dates. As a result, the time limit is extended by one calendar month from 26 August 2023 to 26 September 2023 making the claim in time."*

95. In other words, the claimant contends that on the correct reading of s.207B ERA if s.207B(4) is engaged, one month should be added both to the Day B date under s.207B(4) and the date of the expiry of the time limit period calculated under s.207B(3), and the extended time limit is the one whichever gives a later date.

96. In support of this contention, the claimant relies on the EAT judgment in ***Luton BC v Haque***, saying that s.207B(3) and (4) apply "*cumulatively not in the alternative*". He also relies on two first-instance ET decisions *Booth v Pasta King* 1401231/2014 and *Riley v Liverpool Brewing Company* 2401667/2022.

97. Firstly, I do not accept that in ***Luton BC v Haque*** the EAT held that sub-sections 207B(3) and (4) apply "*cumulatively*". As I have quoted above, Ellenbogen J said (at [18]) that *"[a]s a matter of construction, the two sub-sections are, on their face, to be applied sequentially*…" (*my emphasis*), which is different to "*cumulatively*", within the meaning the claimant seeks to ascribe to that term.

98. I do not read the EAT judgment as suggesting that the one month's extension under s.207B(4) should be added to both the period ending one month after Day B and to the primary limitation period, as extended by the application of s.207B(3), and then a comparison made as to which of the two produces a longer period, and the end of the longer period should be taken as the end of the extended time limit.

99. Although, at [21] Ellenbogen J said:

"Sub-section 207B(4) furthers that intention by ensuring that a prospective claimant should always have at least one month from the end of the early conciliation period in which to bring a claim. Otherwise, a prospective claimant who contacts ACAS towards the end of the unmodified time limit would have little time in which to commence proceedings, should conciliation fail. It does not follow from that intention that there should be no entitlement to any longer period and I consider that clear wording to that effect would have been required in order to achieve any such aim and/or to disapply sub-section 207B(3) in circumstances in which its wording is otherwise of general application." (my emphasis)

all the Judge is saying there, as I read it, is that if the application of s.207B(3) produces a longer period (without adding one month to the end of it, as the claimant suggests), than the application of s.207B(4), section s.207B(4) cannot be read as overriding s.207B(3), thus applying a shorter period.

100. In that case, as noted at [8] of the EAT judgment, the respondent argued that when the two subsections produce different limitation periods, "*sub-section 207B(4) takes precedence and is the applicable limitation period.*" That was the issue before the EAT, which Ellenbogen J rejected as the correct application of s.207B.

101. This, in my view, is unsurprising, given the underlying legislative purpose of these provisions, that is not to dissuade prospective claimants from fully engaging with the ACAS conciliation service (see paragraphs 24 – 25 of the EAT judgment).

102. The ET judgments the claimant relies upon are not binding on me. I, however, do not read ***Booth v Past King*** as supporting the claimant's arguments. On my reading, it perfectly accords with the EAT's reasoning in ***Luton BC v Haque***, and in fact it was cited with approval at [16] of the EAT judgment.

103. With respect to the ***Riley*** judgment, it does appear that the Employment Judge Ross in that case decided (at [37] and [38]) that one month's extension under s.207B(4) should further extend the extended period under s.207B(3). I do not agree with his construction of s.207B. I note that at [37] the Judge said that: *"case law from the Employment Appeal Tribunal has determined that these 2 provisions apply cumulatively not in the alternative. See Luton Borough Council v Haque 2018 ICR 1388, EAT."* However, as I have noted above, ***Luton BC v Haque*** does not say "*cumulatively*", but "*sequentially*".

104. The respondent in ***Riley*** applied for a reconsideration of that judgment (see EJ Ross' judgment on reconsideration dated 10 February 2023 – available on the online Register of the ET decisions). Ultimately, the issue became a moot point, because the Judge decided that Day B was 1 February and not 31 January and therefore the claim form, which had been presented on 1 March, was in time under s.207B(4).

105. More importantly, I find that adopting the claimant's construction of s.207B(4) would be impermissibly reading into the statute the words which are simply not there.

106. To remind, s.207B(4) reads:

> *"(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period." (my emphasis)*

107. In my judgment, "*that period*" refers to "*the period beginning with Day A and ending one month after Day B*."

108. The claimant's construction means that s.207B(4) should be read as:

> *(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period or at the end of the period calculated under sub-section 207B(3), whichever is longer." (my emphasis)*

109. I see no proper basis for me to read those additional words into the statute.

110. For completeness, I find such construction will go against the grain of the underlying legislative purpose. As noted above, the underlying policy is to encourage the parties to conciliate and not to dissuade prospective claimants from engaging in the ACAS early conciliation process by fearing that the running limitation clock will catch them out. On the claimant's construction, prospective claimants would be able to get themselves an extra month to file a claim by simply approaching ACAS and asking for a EC certificate to be issued on the same day and without engaging in any conciliation whatsoever.

111. I accept that the system is not completely "foolproof" and can still be "gamed". For example, if the limitation clock stated to run on 1 September, and a prospective claimant approached ACAS on 1 September and received the EC certificate on the same day, he or she would not benefit from the extension under s.207B(3) or s.207B(4). The end date of the limitation period would be 30 November, and that would be the same if the claimant goes to ACAS and obtains the EC certificate on the same day up to and including 30 October. However, if the claimant approaches ACAS on the last day of the primary limitation period and gets the EC certificate on the same day (30 November), he/she does get a month's extension until 30 December. This, however, also acts as a safety net for people who might be genuinely ignorant of the applicable time limits and the requirement to conciliate before lodging a tribunal claim.

112. In the main, the system is designed to encourage the parties to conciliate via ACAS before resorting to tribunal litigation. If, as in the present case (see paragraph 33 above), a prospective claimant does not wish to conciliate via ACAS, I see no policy reason why he or she should be given the benefit of a time limit extension, which has been designed for that specific purpose.

113. It follows, I find that the claimant's claim was presented outside the primary limitation period of three months.

Was it reasonably practicable to present the claim in time?

114. The claimant says that it was not reasonably practicable for him to present his claim before the expiry of the primary limitation period because of his depression and negligence of his solicitors in not presenting the claim on his behalf on or before 16 September and/or not advising him that he should have presented it by that date.

115. Dealing with the solicitors' negligence argument first. I make no determination whether or not the claimant's solicitors were negligent in law. It is not a matter for me to decide.

116. However, applying the legal principles set out above (see paragraphs 79-83) to the facts of this case (see paragraphs 37-67) it is, in my view, beyond any doubt that even if the claimant is right, and his solicitors were negligent in not presenting the claim on his behalf before the expiry of the primary limitation period and/or in not advising him earlier than 18 September that the time limit was 16 September, this cannot sensibly result in the conclusion that it was not reasonably practicable for the claimant to present his claim in time.

117. On the contrary, the claimant presented his claim a few hours after being told that the time limit had expired, and it took him less than an hour to fill in and submit the ET1 form online. Therefore, if he had been told by his solicitors before the expiry of the primary limitation period that the time limit would expire on 16 September, I find that he would have presented his claim before the deadline. In fact, he says that himself in his correspondence with Thrivelaw (see paragraph 66 above).

118. The claimant did not argue, and there was no evidence presented to show, that it was not reasonably practicable for his solicitors to present the claim on his behalf before the expiry of the primary limitation period. It appears they had received the claimant's documents and information about the relevant dates on 13 September (see paragraphs 60-61 above).

119. Turning to the claimant's depression, I find the claimant's evidence as to why his depression made it not reasonably practicable for the claimant to present his claim in time highly unsatisfactory.

120. Having accepted in cross-examination that his depression, as such, did not stop him from submitting the claim in time, he then argued first that because of his depression he had wrongly assumed that the deadline was 24 September 2023, i.e. one month after the expiry of the primary limitation period. He, however, provided no satisfactory contemporaneous evidence to support his contention that he held that view and that it had been formed because of his depression.

121. On the balance of probabilities, I find that he did not believe that the deadline was 24 September 2023. Considering the extensive correspondence between the claimant and his solicitors (including specifically on the time limit issue), and between the claimant and the respondent about him lodging a Tribunal claim, it appears very strange that that date (i.e. 24 September) is not

mentioned anywhere, nor there are any other implicit indications in that correspondence that the claimant was acting on the understanding that 24 September was the deadline for submitting his claim.

122. On the contrary, the contemporaneous documents point in the opposite direction, that is that the claimant knew all along that the deadline was 16 September and was working towards that date. It is implicit in his correspondence with the respondent (see paragraphs 33-35). Additionally, on 13 September, he asked Thrivelaw to submit his claim "as soon as".

123. In any event, even if the claimant operated under that erroneous assumption, considering that he had the benefit of solicitors assisting him in that matter and advising on the time limits as early as June, it would have been reasonably practicable for the claimant to check with Thrivelaw whether his understanding that 24 September was the deadline was in fact correct.

124. When asked about that at the hearing, the claimant said that his depression stopped him from asking Thrivelaw when the time limit expires. I reject that. It is simply implausible. The claimant's depression did not stop him from engaging in extensive preparation of his claim, including uploading various documents, filling in a chronology form, recording events in spreadsheets, answering questions about the ACAS conciliation dates, reviewing and submitting a 27-page transcript of his meeting with the investigator, and yet, he says, it stopped him from asking a very simple question. As can be seen from the claimant's correspondence with Thrivelaw (see, in particular, paragraph 53 above) the claimant was very alive to the fact that the limitation clock was running against him.

125. Furthermore, in the same period, the claimant was able to engage with his grievances and appeal process, articulating his complaints and arguments. He was able to engage socially with his family, going on holidays abroad. His wife's evidence (see paragraphs 18 and 28 of her witness statement) is that at the relevant time the claimant was "*the problem solver crafty holiday whizz*", and was able to organise holidays using a combination of a gift passes and loyalty points. Although this evidence may not serve as direct evidence against the claimant on the time limit point, it still shows that on his own evidential case his cognitive abilities were not affected to such an extent as to render him incapable of asking his solicitors a very simple question – by when should I submit my ET claim?

126. Finally, the claimant said in his evidence that his depression made him to trust people with authority more than he should. He argued that he trusted his solicitors and they let him down. I do not see how the claimant trusting his solicitors could be said to have made it not reasonably practicable for him to present the claim in time.

127. Firstly, it is quite normal for people to trust their solicitors. That is why solicitors have professional and fiduciary duties to their clients. More importantly, whether or not the level of trust the claimant placed in his solicitors was in some way affected by his depression, does not take this

argument any further than the claimant's first ground - the alleged negligence of his solicitors.

128. I see no logical basis for distinguishing between the already rejected argument that it was not reasonably practicable for the claimant to submit his claim in time because his solicitors got it wrong and let him down (regardless of how much trust the claimant had in them and what made him to trust them to that extent), and the argument that it was not reasonably practicable for the claimant to submit his claim in time because he trusted his solicitors, who got it wrong and let him down, more than he should have done, and the reason for such "excessive trust" was his depression.

129. In sum, I do not accept that it was not reasonably practicable for the claimant to present his claim before the expiry of the primary limitation period.

130. It follows, that the complaint of unfair dismissal was not presented within the applicable time limit, and it was reasonably practicable for the claimant to do so. Accordingly, the Tribunal does not have jurisdiction to consider it.

131. The complaint of unfair dismissal is therefore dismissed for want of jurisdiction.

Is it just and equitable to extend time?

132. During the closing submissions I asked the claimant why he says it would be just and equitable to extend time. He answered – because that would allow him to "*bring [the respondent] to justice*". I do not accept that, in and of itself, it is a valid reason to extend time.

133. In deciding whether I should exercise my discretion and extend time I have regard to all the circumstances of this case and in particular the following factors.

134. The claimant had the benefit of legal advice from early on in the process. As I found, it was reasonably practicable for him to submit the claim within the primary limitation period.

135. The claimant is an intelligent and articulate person. I do not accept that his depression in any way hindered his ability to submit the claim in time.

136. I find that he made a conscious and calculated decision to wait and see how things progressed with his grievances and appeal before incurring legal costs. He knew all along about the time limit and that the clock was running against him. He waited until the last few days before the expiry of the primary limitation period and then put the matter into the hands of his solicitors.

137. As soon as he was told that the time limit had expired without his solicitors submitting a claim on his behalf, he acted very promptly and submitted his

claim within few hours after that. It took him less than an hour to do that online.

138. Although the delay was only 2 days, the claim was still submitted late. Although, as stated above (see paragraph 91 above), the EAT's most recent guidance to the Tribunals is to focus "*rather less on the comments in **Robertson** that time limits in the Employment Tribunal are "exercised strictly" and an extension of time is the "exception rather than the rule*"", even without "strictly" the time limits are still what they are – the statutory time limits, and it would be an error of law on my part to regard them as no more than a sort of "jurisdictional best before" dates.

139. Looking at the merits of the claimant's ss. 20, 21 EqA complaint, and without falling into the trap of conducting a mini-trial on the merits, I find that as pleaded, it is most likely to be found misconceived. That is because what the claimant relies upon as the alleged PCP, is very unlikely to amount in law to a valid PCP. I accept Ms Balmer's submissions that the alleged PCP is not capable of being a PCP in law because what is being alleged is personalised and targeted conduct towards the claimant by his manager, and not towards any other employees, whether or not they shared the claimant's protected characteristic. Ms Balmer submits: "*[a]ny alleged personal bullying of the claimant by Mr Kamdar, even if true, would not be conduct capable of amounting to a PCP or being applied to an actual or hypothetical comparator.*" I agree.

140. It is also notable that the claimant's solicitors and Counsel thought that the claimant complaint was without merit (see paragraphs 62 and 68 above), and that the claimant himself was asking whether his complaint of "bullying" could be formulated without relating it to a protected characteristic (see paragraph 64 above).

141. Although the claimant said at the hearing that he would be seeking permission to amend his reasonable adjustments complaint, he did not present an application to amend, formulating the amendments he wished to make. However, based on what he told me at the hearing, it appears that the claimant was planning to fundamentally change his reasonable adjustments complaint and plead two brand new PCPs (not providing performance goals, and not using responses to the survey for individual development and support purposes). This would change his reasonable adjustments complaint beyond all recognition.

142. I accept that the case law (see, for example, *Cox v Adecco Group UK & Ireland and or*s 2021 ICR 1307, EAT) tells me that if the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test of balancing the justice of permitting or refusing the amendment, taking account of the relevant circumstances.

143. However, firstly, I am not dealing with an application to amend, but the question whether it is just and equitable to extend time for the complaint as

currently pleaded. Even if the possibility of such future application to amend is to be taken into account, I find that the balance of hardship and injustice most likely would lie in favour of the respondent. Unlike in ***Cox v Adecco***, the claimant's ss.20, 21 EqA complaint was formulated in the F&BP by a specialist employment barrister from a leading set, it was reviewed and confirmed in the list of issue by another specialist employment barrister from the same chambers. Therefore, allowing the claimant to amend his reasonable adjustments complaint would be giving the claimant not even a second by the fourth bite of the cherry.

144. Whilst at the first glance, it might appear that the extension would not cause any "forensic" prejudice to the respondent, I find the respondent would be significantly prejudiced, both in terms of having to defend a rather vaguely formulated complaint of subjecting the claimant to "bullying" and "sidelining" (and thus having to gather potentially wide-ranging evidence about the claimant's day-to-day work and interactions with his manager), and having to prepare to deal with the intimated application to amend to introduce further PCPs, which, if allowed, would make the respondent's task of gathering relevant evidence even more laborious and costly.

145. During the hearing, the claimant also said that he had submitted a new claim against the respondent, suggesting that because there was such other claim in the tribunal's system it would be just and equitable to allow this claim to proceed, so both claims could be heard together. The claimant did not give any further details of his second claim.

146. I do not accept that it would be just and equitable to extend time for that reason. Firstly, neither the respondent, nor the Tribunal had been made aware of the second claim until the claimant mentioned it at the hearing. It appears that the second claim is yet to be processed by the Tribunal and served on the respondent.

147. Furthermore, considering that the second claim was submitted after the first claim, it is most likely to be too (and even more) out of time than the first claim. I do not see how it can be said to be just and equitable to extend time for one out of time claim because there is another even more out of time claim making its way through the system.

148. Stepping back and looking at these factors and all other circumstances of the case, I find that it will not be just and equitable to extend time.

149. It follows that the claimant's complaint under ss. 20, 21 EqA was not presented within the applicable time limits under s123(a) or (b) of the EqA. The complaint is therefore dismissed for want of jurisdiction.

150. Accordingly, the claimant's entire claim stands to be dismissed for want of jurisdiction.

Employment Judge Klimov

16 April 2024

Sent to the parties on:

26 April 2024

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For the Tribunals Office

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