EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000071/2024

Held in Glasgow on 17, 18 and 19 July 2024

Employment Judge M Kearns
Tribunal Members Ms P McColl & Mr A Grant

Mrs C McBain	**Claimant** **In Person**
Beaumont PPS Limited	**Respondent** **Represented by:** **Mrs M Peckham - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous Judgment of the Employment Tribunal was to dismiss the claims.

REASONS

1. The claimant was employed by the respondent from 18 June 2018 until 26 October 2023, initially as a business development manager and latterly as a business development co-ordinator. The claimant gave birth to a son on 19 December 2021. From December 2021 to December 2022, the claimant took maternity leave. She returned to work on 14 February 2023 after a period of annual leave. Having complied with the early conciliation requirements, the claimant presented an application to the Employment Tribunal on 23 January 2024 in which she claimed discrimination because of pregnancy/maternity and sex.

Issues

2. The following issues arise for determination by the Tribunal:

Time Bar

a. Whether the claimant's claims or any of them have been presented out of time?

b. If so, whether they are part of conduct extending over a period with in time claims?

c. If not, whether it would be just and equitable to extend time?

Pregnancy/Maternity Discrimination

d. The claimant's complaints of pregnancy/maternity and sex discrimination were set out in chronological order in EJ Wiseman's Note of the 21 March 2024 Preliminary Hearing as follows:

"2. The claimant brings complaints of discrimination because of pregnancy/maternity and sex following her return to work.

3. The complaints brought under section 18 Equality Act are:

(i) At a meeting on 18 October 2022 to discuss the return to work, the claimant was advised she would be returning to a different role which the claimant considered a demotion;

(ii) Following the meeting Ms Bradley commented to the claimant (in relation to having children) that she "wouldn't be that stupid";

(iii) The claimant was not invited to attend the respondent's Christmas event in December 2022 and

(iv) The claimant was denied the annual pay rise and bonus whilst on maternity leave.

4. *The complaints brought under section 13 Equality Act are:*

   (i) *The claimant returned to work on 14 February 2023 and was told not to discuss her child with her husband (who also works for the respondent);*

5 (ii) *The claimant signed a new contract when she returned to work which confirmed she was not entitled to any bank holidays;*

   (iii) *The claimant, when she complained about not receiving a pay rise or bonus, was told by Mr Lawrie that the enhanced*

10 *maternity pay should be seen as a bonus and*

   (iv) *The claimant, during the grievance process, learned her husband had been asked if he wanted to pay his commission into her bank account.*

5. *The complaint brought under section 26 Equality Act is:*

15 (i) *Mr Lawrie commented (at the formal grievance hearing on the 19 October 2023) that enhanced maternity pay should be seen as a bonus."*

Evidence

3. The parties each produced a bundle of documents for the hearing. The

20 claimant gave evidence on her own behalf. The respondent called Mr Stephen Lawrie, its managing director and Mrs T Bradley, its office and commercial manager. We comment on the evidence in our discussion section below.

Findings in fact

4. For the purpose of adjudicating on time bar, the following material facts were

25 admitted or found to be proved.

5. The respondent is an agency that sources promotional materials for clients. It employs ten people. The claimant began working for the respondent as a business development manager in June 2018. Whilst working there, she met

and married her husband, Mr David McBain who also worked for the respondent as a business development manager. In or about May 2021, the claimant advised the respondent that she was expecting a baby and that her expected week of childbirth was 25 December 2021. The respondent's managing director, Mr Lawrie was supportive. The claimant went on annual leave on 6 December 2021. Her baby was born on 19 December 2021. Because of the rules on compulsory maternity leave, the claimant's leave cannot have started any later than 19 December 2021, that being the date the claimant's child was born. The claimant took ordinary and additional maternity leave of one year, which (according to both the claimant and the respondent) ended on 24 December 2022 (J119). She then used annual leave until 14 February 2023, when she returned to work. During the claimant's maternity leave, the respondent chose to enhance her statutory maternity pay by adding a total of around £7,000 without any obligation to do so.

6. In or about the week before 13 October 2022, while the claimant was still on maternity leave, the claimant's husband came to see Mr Lawrie in visible distress and shared with him that he was in financial difficulties which he was finding extremely stressful. He said he had gone up a tax bracket and indicated this was causing him hardship. Mr Lawrie was very friendly with the claimant's husband and he was concerned about him. Mr Lawrie paid for the respondent's accountants to check his tax code for him. However, they confirmed it was correct. Mr McBain put Mr Lawrie under pressure to help and Mr Lawrie suggested that instead of paying his commission to him, he could pay it to the claimant. Mr Lawrie then summarized the suggestion in an email to Mr McBain dated 13 October 2022 (J228). Mr McBain confirmed he wished to proceed as suggested. Mr Lawrie assumed Mr McBain had discussed it with the claimant and had her consent. He corresponded with Mr McBain about it but when he ran it past his accountant, he was told that it was not possible and it therefore did not happen. The claimant's sex formed no part of Mr Lawrie's reason, conscious or unconscious for the discussions and email correspondence with Mr McBain. He was responding to a request for help that the claimant's husband had made of him. If the request had been made the other way round (by the claimant (had she been a close friend of

Mr Lawrie) in relation to her husband's account), Mr Lawrie would have made the same assumption about his knowledge and consent. The claimant did not know about this email exchange until she found a copy of it in a bundle of her husband's documents in October 2023 after she had put in her grievance to the respondent. At that point in time, both the claimant and her husband were the subject of disciplinary proceedings for gross misconduct.

7. Prior to her maternity leave, the claimant had worked as a full time business development manager with basic hours of 37.5 per week over five days. In or about October 2022, whilst still on maternity leave, the claimant made a flexible working request (J110) for reduced hours of Tuesday, Wednesday and Thursday from 8.30am to 5pm (to begin on her return from maternity leave). The respondent met with the claimant on 18 October 2022 to discuss her request. After discussions between the parties, it was agreed by the claimant that she would return to work as a business development co-ordinator, working the days and hours she had requested. Her pay was at the same level as for her previous post but pro-rated to reflect her reduced hours. The respondent explained to the claimant that if the role was to be done over three days instead of five, they would need to make an adjustment to the role (but not the pay grade) so that she would not (initially at least) be the first point of contact for key accounts. The reason for this was that the respondent's key accounts (15 of which produce 80% of their turnover) require the availability of the business development manager ("BDM") allocated to that account five days a week. The drinks industry is very fast moving and promotional materials ordered by the respondent's customers need to be priced, ordered and delivered on tight deadlines. If a customer cannot get hold of their allocated BDM, they may go elsewhere. If an employee were to work as a first point of contact for a key account Tuesday to Thursday and a customer attempted to contact that employee on a Friday, it would be the following Tuesday before the employee would get back to them, by which time, the customer may have gone elsewhere. The respondent suggested that this could be kept under review and that there was potential to evolve roles within the company. When the claimant returned the respondent gave her a key

account to manage as a first point of contact with her husband to test how the arrangement would work.

8. The claimant told the respondent that she was happy with the adjusted job role in an email dated 1 November 2022 (J118) and at a subsequent meeting on 7 November 2022 (J119) to finalise the agreed outcome to her flexible working request. She had a brief informal meeting with Mr Lawrie on 3 November 2022 when she was in the office on a visit. At that meeting, the claimant asked Mr Lawrie for clarification on how the role would work. She left him with the impression that she was happy with it. On 10 November 2022 she signed a letter agreeing to the permanent variation of her contract (J122).

9. After discussions in January 2023 between Mr Lawrie and Mrs Bradley the claimant was awarded a 6% pay rise. This was applied to the claimant's salary at that time. However, the pro-rating of the claimant's hours/days had been miscalculated, with the result that it appeared that the pay rise had not been applied. This was a genuine error by the respondent and as soon as the claimant pointed it out in her grievance process in October 2023, it was promptly rectified and the difference paid to her.

10. With regard to bank holidays, the claimant's flexible working request was for her normal working days to be Tuesday, Wednesday and Thursday and these days were agreed between the parties. One effect of this was that Mondays were no longer part of the claimant's normal working week. A number of bank holidays occur on a Monday. Notwithstanding this, the respondent calculated the claimant's pro-rata holiday entitlement with an allowance to include public holidays. The claimant's full time contractual holiday entitlement was 33 days (inclusive of all public holidays). The respondent made the same pro-rata miscalculation with this that they had made with the claimant's hours. They forgot about the shorter hours on a Friday and calculated using days and not hours: 3/5 x 33 = 19.8. Mrs Bradley then rounded the claimant's pro-rated holidays up to 20 days. If the holidays had been calculated instead according to hours, it would have been: 24/37.5 x 33 = 21.12. However, the claimant still received the majority of public holidays and the reason she did not receive one more was due to an error and not to discrimination.

11. The claimant has a cousin who is Head of HR for a company. After the claimant's meeting on 18 October 2022 to discuss her flexible working request with the respondent and again after her return to work in February 2023, the claimant consulted her cousin for advice. She was aware of her rights and of the time limits for making a tribunal claim.

12. The claimant returned to work on 14 February 2023. Her line manager, Mrs Bradley asked her if she could keep the chat in the office to a minimum. She did so because other employees had told her that the claimant's chattiness had distracted them from their work in the past. The request had nothing to do with the claimant's sex. The claimant was unhappy about the request but she did not raise it with the respondent as an issue at the time.

13. The claimant was suspended from work on 9 September 2023 pending investigation of an allegation of gross misconduct. On 11 October 2023 the claimant received a letter from the respondent inviting her to a disciplinary hearing. On the same date, the claimant lodged a grievance with the respondent in which she made a number of allegations of pregnancy and sex discrimination relating to her pregnancy/maternity leave and return to work on 14 February 2023.

14. The claimant's grievance hearing took place on 19 October 2023. It was chaired by Mr Lawrie, the respondent's managing director. One of the claimant's grievances was that she had not received a pay rise or bonus during her maternity leave. With regard to the pay rise, this decision had not been made during the protected period. Employee pay rises had been decided upon by the respondent in January 2023, after the claimant's maternity leave had ended. Mr Lawrie had, in any event, decided to give the claimant a pay rise of 6%. The reason the pay rise had not been effectively applied was a genuine calculation error. It was not because of the claimant's pregnancy, maternity or female sex.

15. With regard to the bonus, the claimant's contract states (J54): *"There is a non-guaranteed bonus scheme in operation in respect of your employment, payment of which is subject to company performance".* In 2019 the claimant

had received a bonus of £1,000. In 2020 and 2021, she had received around £500. She did not receive a bonus in 2022, having been on maternity leave for the whole calendar year. In relation to this the following conversation took place between Mr Lawrie and the claimant at the grievance hearing:

SL: When you were considering this as a grievance did you consider the money paid to you during maternity that was over and above statutory maternity pay?

CM: Yes

SL: Doesn't make any difference? Wouldn't consider that a bonus?

CM: Would consider that enhanced maternity pay, my maternity pay wouldn't be affected by any pay rises or bonuses.

SL: But it was not statutory.

CM: No it wasn't statutory, it was enhanced.

SL: At the company's discretion you got enhanced, you don't view that as a bonus?

CM: I view that as maternity pay.

SL: You wouldn't say on one hand didn't get bonus but on the other

CM: I understand where you're coming from but for me maternity pay was separate from anything else."

16. During this conversation, Mr Lawrie's tone was professional, measured and calm. He did not sound aggressive. This aspect of the claimant's grievance was not upheld by him.

17. Following a disciplinary procedure (unrelated to the claimant's grievance), the claimant was dismissed for gross misconduct on 26 October 2023. The claimant does not claim that her dismissal was unfair.

18. The claimant's grievance outcome letter was sent to her on 15 November 2023. On 25 November 2023, the claimant notified ACAS in relation to early

conciliation. She received her early conciliation certificate on 8 December 2023. The claimant presented her ET1 to the Employment Tribunal on 23 January 2024. Allowing for the 'stop the clock' provisions of the early conciliation rules, the limitation period relevant to the ET1 ran from 10 October 2023. Any act prior to that date is out of time.

19. The primary limitation period in relation to the claimant's claims arising from her maternity leave and return to work expired at midnight on 13 May 2023. The claimant had taken advice from her cousin in HR and she knew her rights. She was also aware of the time limits for making a claim. However, she did not complain to the respondent about any of the matters she now litigates until her grievance sent to the respondent on 11 October 2023, the same date she received an invitation to attend a disciplinary hearing. The reasons why the claimant did not – within the primary limitation period - litigate the complaints of maternity and sex discrimination she now makes were as follows: When the claimant returned to work on 14 February 2023, she was feeling vulnerable as a new mother leaving her child for the first time. Also, her own mother had been seriously ill during her maternity leave. The claimant had discussed with her husband taking action against the respondent but she agreed with him that she would not because they both needed their employment with the respondent. She took the view that 'no-one is going to complain about a current employer' and that the tribunal time limits were unfair. At that time, she had a lot going on and did not want to add to it. Once the claimant's disciplinary process was underway following her suspension on 9 September 2023, the claimant felt she had 'nothing to lose'. There was no longer anything holding her back.

Applicable Law

20. Section 123(3)(a) Equality Act 2010 provides:

"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.*
>
> *……..*
>
> (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) *……"*

Discussion and Decision

Determination of claims brought in time

21. The claimant first notified ACAS in relation to early conciliation of these complaints on 25 November 2023. She received her early conciliation certificate on 8 December 2023. The claimant presented her ET1 to the Employment Tribunal on 23 January 2024. Allowing for the 'stop the clock' provisions of the early conciliation rules, the limitation period relevant to the ET1 ran from 10 October 2023. Any act prior to that date is out of time.

22. The claimant argues that there were three acts of discrimination falling within the 'post 10 October 2023' limitation period and that these form 'conduct extending over a period' with the earlier acts complained of, with the result that the whole claim is in time. She points to (i) the conversation with Mr Lawrie at the grievance hearing on 19 October 2023 where he said that enhanced maternity pay should be seen as a bonus; (ii) the continuing lack of a pay rise and (iii) 'the email correspondence between Mr Lawrie and her husband in October 2022 relating to commission being paid into her bank account' (J225 - 228.). This, she says she only found out about in October 2023. (With regard to (iii), we noted that the email correspondence had

occurred the previous year (October 2022) and we consider the fact that the claimant only found out during the limitation period as a factor in the context of whether to exercise the just and equitable discretion. We therefore consider it in that section below.)

5

23. We considered points (i) and (ii) above as follows: Section 123(3)(a) Equality Act 2010 provides that *“Conduct extending over a period is to be treated as done at the end of the period.”* The test for ‘conduct extending over a period’ was set out by the Court of Appeal in Hendricks v Commissioner of Police of the Metropolis [2003] IRLR 96 CA. That case is authority for the proposition that, in determining whether there was a continuing act (now ‘conduct extending over a period’): *“the focus should be on the substance of the complaint that* [the respondent] *was responsible for an ongoing situation or a continuing state of affairs in which [female ethnic minority officers in the service] were treated less favourably. The question is whether that is ‘an act extending over a period’ as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed.”*

10

15

24. As set out in Harvey on Employment Law (Division Q Statutes – annotation to section 123 Equality Act 2010), *“under this extension it may be possible in some cases to run together acts constituting different types of discrimination (eg discrimination arising from disability and failure to make reasonable adjustments)* [or here; maternity and sex discrimination] *in order to establish conduct extending over a period, provided that as a matter of fact there is a connection between them: Robinson v Royal Surrey County Hospital NHS Foundation Trust UKEAT/0311/14 (30 July 2015, unreported) at [65] (obiter). However, a claimant may not run together discriminatory acts with others which are not discriminatory: South Western Ambulance Service NHS Foundation Trust v King [2020] IRLR 168, EAT.”* The EAT concluded in South Western Ambulance NHS Foundation Trust v King [2020] IRLR 168 that where a series of acts are alleged to amount to discrimination, a finding that one or more was not discriminatory will mean that act cannot be considered to be part of any continuing act.

20

25

30

25. With this in mind, we addressed the alleged discriminatory act[s] said to have occurred within the limitation period counting back from the ET1 to determine whether they amounted to acts of discrimination; and if so, whether they amounted to conduct extending over a period with the earlier acts complained of.

(i) The conversation with Mr Lawrie at the grievance hearing on 19 October 2023 where he said that enhanced maternity pay should be seen as a bonus;

26. The statutory position in relation to bonuses during ordinary and additional maternity leave is explained clearly in the Equality and Human Rights Commission's Statutory Code of Practice on Employment as follows:

"Pay and conditions during maternity leave

8.37 Employers are obliged to maintain a woman's benefits except contractual remuneration during both ordinary and additional maternity leave. Unless otherwise provided in her contract of employment, a woman does not have a legal right to continue receiving her full pay during maternity leave.

8.38 If a woman receives a pay rise between the start of the calculation period for Statutory Maternity Pay (SMP) and the end of her maternity leave, she is entitled to have her SMP recalculated and receive any extra SMP due. She may also, as a result of recalculation following such a pay rise, become eligible for SMP where previously she was not. Employers are reimbursed all or some of the cost of SMP.

Equality Act 2010 refs: Sch. 9, Para 17(5) Sch. 9, Para 17(5) Sch. 9, Para 17(2)(a), 17(6) Sch. 9, Para 17(2) (b)&(c) ss.72-76

Non-contractual payments during maternity leave

8.39 The Act has a specific exception relating to non-contractual payments to women on maternity leave. There is no obligation on an employer to extend to a woman on maternity leave any non-contractual benefit relating to pay, such as a discretionary bonus. For the purposes of this

exception, 'pay' means a payment of money by way of wages or salary.

8.40 However, this exception does not apply to any maternity-related pay (whether statutory or contractual), to which a woman is entitled as a result of being pregnant or on maternity leave. Nor does it apply to any maternity related pay arising from an increase that the woman would have received had she not been on maternity leave.

8.41 Any non-contractual bonus relating to the period of compulsory maternity leave is not covered by the exception, so the employer would have to pay this. Neither does the exception apply to pay relating to times when a woman is not on maternity leave."

27. In this case, the respondent exceeded SMP by more than £7,000, which would have covered any recalculation in light of a pay rise had this occurred during the claimant's maternity leave. It would also have covered any bonus due for the two week period of compulsory maternity pay that follows the week of childbirth. (In this case, almost the whole two week compulsory maternity leave period from 19 December 2021 was covered by the 2021 bonus, which the claimant received (J212)). In relation to recalculating for the pay rise, by the time the pay rise was applied in January 2023, the claimant's maternity leave was finished and she was on annual leave and receiving holiday pay. The assumption underlying Mr Lawrie's discussion with the claimant at the grievance hearing (that he had already given her money well in excess of any bonus) was a position he was entitled to take standing the law on remuneration during maternity leave.

28. More to the point however, it is difficult to see how Mr Lawrie's discussion with the claimant at the grievance hearing - which related to a complaint *she* had raised - could itself be an act of less favourable discriminatory treatment, or indeed, harassment. The claimant had raised a grievance and Mr Lawrie needed to investigate it with her. Obviously, this would involve asking her questions about why she thought she was entitled to a bonus in circumstances where she had already received a substantial discretionary

sum from the respondent in respect of the same period of time. With regard to the manner in which Mr Lawrie discussed the point, the claimant played the Tribunal her recording of the conversation and the Tribunal members each separately concluded from that recording that Mr Lawrie's tone was professional, calm and measured and that it did not sound aggressive or inappropriate. The claimant complained in her evidence in chief that Mr Lawrie had repeated the question about her enhanced maternity pay and the bonus three times in the grievance hearing and had also reiterated it in the grievance outcome letter. We did not consider that there was anything untoward about the exchange. We concluded that his conduct did not amount to either unfavourable nor less favourable treatment. Indeed, in the absence of any inappropriate behaviour, the Tribunal could not understand how it could be an act of unfavourable or less favourable treatment for an employer to reasonably investigate a complaint an employee had raised and to then give her an outcome about it in the circumstances of this case. This head of complaint appears misconceived. It does not succeed and is dismissed. Since the act complained of was not discriminatory, it cannot form part of 'conduct extending over a period' for the purposes of section 123 Equality Act 2010.

29. With regard to the harassment complaint in relation to the same facts, we did not conclude that Mr Lawrie's conduct had the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. Having listened to the claimant's recording and considered the transcript and her evidence, there were quite simply no facts from which the Tribunal could conclude that to be the case. Accordingly, this head of complaint does not succeed and it cannot, therefore form part of 'conduct extending over a period' for the purpose of extending time.

(ii) The continuing lack of a pay rise

30. With regard to the complaint about the pay rise, as submitted by Mrs Peckham, the relevant decision was not taken within the protected period for the purposes of section 18 and in the absence of an alternative claim of sex discrimination, the claim must be dismissed.

31. Even if the claimant had brought an alternative claim and even if the lack of pay rise had continued into the primary limitation period (post 10 October 2023), on the basis of the evidence it heard and the facts it found above, the Tribunal would have accepted without hesitation the respondent's explanation that it made a genuine error in calculating the claimant's pro-rated hours and that the claimant's pregnancy, maternity and/or sex were no part of the reason for it for the following reasons: The Tribunal noted that the same pro-rating error made by Mr Lawrie with the claimant's hours had been made by Mrs Bradley in relation to the calculation of bank holidays, according to the method she described in her evidence. We also noted that as soon as the claimant brought the pay rise position to the respondent's attention it was promptly rectified. Where there was a conflict in the evidence, the Tribunal preferred the evidence of the respondent's witnesses. They testified in a measured and careful way. Mr Lawrie in particular made a number of appropriate concessions and drew attention to mistakes he had previously made which were against his own case. For example, he said that the total additional maternity pay paid to the claimant was £7,000 and not £9,000 as he had previously said. By contrast, we found that the claimant more than once presented events in an unfair way, omitting important facts which undermined her case. For example, the claimant stated that her return to work meeting on 18 October 2022 had "come out of nowhere" and that she had been "told she would be given a lesser job role", without making clear at the outset that the meeting had arisen in response to her making a flexible working request to reduce her hours; and that she had been offered terms on which this could be accommodated for her consideration to which she agreed, rather than presented with a fait accompli. Furthermore, her statement (issue 4(ii) in the PH Note (J10)) that she had *"signed a new contract when she returned to work which confirmed she was not entitled to any bank holidays"* was simply wrong (J54). Her previous full time holiday allowance of 33 days inclusive of bank holidays had been pro-rated to 20 days inclusive of bank holidays. The new contract stated for the avoidance of doubt that there was no *additional* entitlement to bank holidays (the pro-rated figure being already inclusive of them).

32. We accordingly concluded that none of the acts in the ET1 said to have occurred in the 'post 10 October 2023 limitation period' were discriminatory.

33. As discussed above, The EAT held in South Western Ambulance NHS Foundation Trust v King [2020] IRLR 168 that where a series of acts are alleged to amount to discrimination, a finding that one or more was not discriminatory will mean that it cannot be considered to be part of any continuing act. Since the Tribunal concluded that no none of the acts complained of in the ET1 as occurring in the 'post 10 October 2023 limitation period' were discriminatory, it follows that the claim is out of time.

Whether some other period would be just and equitable

34. The claimant's alternative case on time bar was that if the earlier claims were presented out of time, then it would be just and equitable to extend time to allow them to be heard. In these circumstances, the burden of proof is on the claimant to persuade the tribunal that an extension of time should be granted.

35. The length of the delay in presenting the claim was more than eight months. The reasons the claimant gave as to why she presented her ET1 when she did and not during the primary limitation period (which would have expired on 13 May 2023) were that she needed her employment with the respondent. She also said she had had a discussion with her husband and had agreed with him that she would not take action at that time because they both needed their employment. The implication of her testimony on this was that if she had raised a grievance or tribunal claim in time, she and/or her husband would have been victimised by the respondent. However, there did not appear to be any proper basis for this concern. The claimant appears to have been aware of her rights, having discussed them with her cousin in HR well before the end of the primary limitation period on 13 May 2023. When she did raise her grievance with the respondent in October 2023, it was handled reasonably and appropriately. The respondent has access to legal advice on employment law and it would have been reasonable for the claimant to expect that the respondent would be careful to avoid anything that could amount to victimisation.

36. A further reason the claimant gave was that she was in a vulnerable state on her return to work. She was a new mother, leaving her child for the first time and her own mother had been seriously ill during her maternity leave period. These are understandable reasons for not raising a grievance and/or tribunal claim on her return to work at the beginning of the limitation period in February or March 2023. However, it was not apparent from the claimant's evidence that her vulnerability had continued as an impediment to the same extent by the end of the limitation period in early May 2023. We were relieved to note from her submissions that her mother was involved in her childcare arrangements, suggesting that she had thankfully recovered by that time. The claimant knew of her rights before the end of the limitation period and was aware of the time limits.

37. In relation to (iii) above, the email correspondence between Mr Lawrie and the claimant's husband in October 2022 regarding commission being to the claimant (J228) which she only found out about in October 2023; we noted that the claimant did not call her husband to testify regarding this. The respondent did not, therefore have the opportunity to explore what discussions if any had taken place between the claimant and her husband concerning it. The claimant stated that she had no knowledge of the matter herself until October 2023. Although she might have called her husband, the claimant did not do so and therefore she failed make the best evidence available regarding the background to the correspondence and her husband's role in the matter. We considered the fact that this matter had only come to the claimant's attention in October 2023 as a factor in the context of whether to exercise the just and equitable discretion. However, in all the circumstances, we did not conclude that this assisted the claimant in relation to the balance of prejudice.

38. Whilst Tribunals have a wide discretion to allow an extension of time under the 'just and equitable' test, the exercise of the discretion is still the exception rather than the rule and it is for the claimant to persuade the Tribunal that it should be exercised. We have taken into account the claimant's evidence and submissions and those of the respondent and the matters set out above. We

have considered the prejudice each party would suffer if the discretion were exercised or not exercised. The prejudice to the claimant in not extending time is that she loses the opportunity to litigate the remaining undetermined claims. The prejudice to the respondent in extending time is that time has elapsed since the events in question and it was clear from the evidence that the memories of the respondent's witnesses had been affected. They were being requested to recall matters, some of which happened almost two years ago in circumstances where (since the claimant had not complained at the time) they did not realise at the time that they were likely to be the subject of a future dispute. For example, Mr Lawrie did not recall that he had been present along with Mrs Bradley at the meeting on 18 October 2022 to discuss the claimant's flexible work request. Mr Lawrie also testified that he had advised the claimant verbally of her pay rise decided upon in January 2023 but he could not remember when or how. The delay in presenting the case was around eight months. During the whole of that time we are satisfied that the claimant knew her rights and was aware of the time limits. The claimant had advice from her cousin who is a head of HR and was aware of her legal rights. Thus, she was advised of the possibility of taking action and elected not to do so. The reasons given for the delay, whilst understandable at the beginning of the limitation period, were not shown to have been operative at the end of it – around early May 2023. Balancing the respective prejudice to the parties in all the circumstances we are not persuaded that it would be just and equitable to exercise the discretion. It follows that the claimant's remaining discrimination claims are out of time and the Tribunal has no jurisdiction to hear them.

Employment Judge:	**M Kearns**
Date of Judgment:	**25 July 2024**
Entered in register:	**25 July 2024**
and copied to parties	