



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms D Harris

**Respondent:** Welsh Ambulance Service NHS Trust

**Heard at:** Cardiff (CVP) **On:** 14 June 2024

**Before:** Employment Judge R Evans

## **Representation**

For the Claimant: In person

For the Respondent: Ms J Williams

# JUDGMENT

1. The Claimant's complaints of (a) direct sex discrimination; and (b) harassment related to sex, are out of time and are dismissed for want of jurisdiction.

# REASONS

## **INTRODUCTION**

1. These are my written reasons following a request after oral reasons were delivered Preliminary Hearing on 14 June 2024. Due to administrative errors on the part of the Tribunal Office, there has been some delay in providing them following the original request to it on 1 July 2024.
2. The Claimant is DIANE HARRIS and the Respondent is the WELSH AMBULANCE SERVICE TRUST. I shall refer to them as Claimant and Respondent. The Claimant hails from the Abertillery area.

3. In miniature, the Claimant's claims in their totality appear to be:
  - a. unfair dismissal;
  - b. direct sex discrimination;
  - c. harassment related to sex;
  - d. direct disability discrimination;
  - e. failure to make reasonable adjustments;
  - f. discrimination because of something arising in consequence of disability; and
  - g. victimisation.
4. I say, "*in miniature*", because there is much more to the claim which has in part necessitated this Hearing and I shall come to that shortly.
5. Today's Hearing was listed for, *inter alia*, consideration of whether:
  - a. the Claimant's complaints of direct sex discrimination and harassment relating to sex were presented outside the time limits provided for within the *Equality Act (EqA) 2010*;
  - b. the Tribunal has jurisdiction to hear the claim;
  - c. the claim should be struck out pursuant to *Employment Tribunal Rules (ETR) 2013 rule 37*; and
  - d. alternatively, Deposit Orders should be made pursuant to *ETR rule 39*.
6. The totality of the issues are contained within the notice of Hearing of 8 March 2024 for reference.
7. The Claimant appeared in person and Ms Joanna Williams, Counsel, appeared for the Respondent. I should say that I am extremely grateful to both for their very helpful participation.
8. The Hearing is being conducted remotely by video via Cloud Video Platform (CVP). Both parties appear to have previously consented to such an approach and I considered it to have been necessary, proportionate and in the interests of justice to proceed in such a way.
9. Following this decision, I intend to give wider case management directions.

10. I should add that in anticipation of this Hearing I have read the Forms ET1 and 3, the amended pleadings and the statements. It is wrong and unreasonable to expect me to read around 300 pages in preparation, which is the bundle size plus statements and other documents. I was clear with the parties that anything else they would have to refer me to and there was no issue taken with that. I also then heard evidence from the Claimant and Mrs Anna Stein of the Respondent.

## **THE BACKGROUND**

### **Employment History/The Complaints**

11. I shall start with the background more generally.
12. The Claimant claimed to have been employed from 6 February 2006 to 2 May 2023 as an ambulance care assistant working 30 hours per week at the point of her employment ending. The Respondent says it was 1 September 2007 to 2 May 2023. Nothing turned on that.
13. The Claimant says that she was dismissed at a final formal sickness meeting on 26 April 2023. However, she said that she had not formally accepted a first formal sickness warning and complained a medical report was missing from 23 September 2022. She referred to health reports from 10 June and 29 September 2021 indicating that she was covered by the *EqA 2010* for symptoms of long COVID and a mental health condition. It was her initial claim that there had been inadequate consideration of the health evidence at the dismissal meeting.
14. In addition, the Claimant complained that grievances raised about bullying by four members of staff and sexual harassment by another had been ignored and not resolved keeping her from work. The grievances were against:
  - a. PG made on 28 February 2022;
  - b. DB made in October 2022;
  - c. LF made in October 2022; and
  - d. JS made in October 2022.
15. The Claimant has previously said that she had submitted an appeal against her dismissal but no further response beyond the provision of a P45 had been received.
16. The relevant chronology for the purpose of these reasons is as follows:
  - a. The Claimant contracted Covid in November 2020 which she says left her with long COVID. She then had periods of absence between November 2020 and the summer of 2021.

- b. The Claimant reports a diagnosis of long Covid in January 2021.
- c. It is said by the Claimant that in August 2021 Occupational Health recommended a three-month phased return with recommendations that were, she says, not complied with (such as return to light duties). This, she avers, quickly evaporated and she returned to heavy duties. She was told by her manager that she needed to complete the work.
- d. From August 2021 onwards the Claimant says that she complained about harassment related to sex by DB and was mistreated by LF and JS. In particular, from August 2021 to 14 July 2022, she complained of direct discrimination and harassment by DB with her pointing to examples of her being asked to sit on his lap and send him bikini photos as well as referring to her as, "*little sexy cat lady*". She gave examples of him invading her personal space. To be clear, the acts complained about, as contained with the CMO of 1 March 2024 (at p137 onwards) occurred in August 2021 and July 2022 only.
- e. The Claimant was absent for a long period between August 2021 and March 2022 when she returned to work.
- f. There was then a period of absence for the Claimant from August to October 2022 due to an arm and back injury.
- g. On 11 October 2022 the Claimant prepared a grievance notice concerned with a complaint about DB to her manager, LP. The complaint, recorded, *inter alia*, that she had been subject to sexist comments and innuendo by DB dating back to 2019. She did not say 2019, but that is when she commenced work in Pontypool. She provided no detail and the focus of the complaint focused largely on criticisms of her presentation as being, "*crazy ... up and down [and] ... goes on sick*". The resolution sought was for DB to, '*... attend appropriate training*'. It referenced dates in August 2021.
- h. The complaint was not submitted for a period as the Claimant wanted to hand it to her line manager who was not available, and so eventually she submitted it on 29 November 2022. The Claimant said that she could not have emailed it sooner from her work email address due to difficulties with her iPad but accepted that she could have utilised the personal account that she ultimately sent it from at an earlier stage.
- i. It is in that context that the Claimant says that she contacted ACAS in or around the early part of October 2022. There is no documentary/written evidence of this and the evidence came from the Claimant's oral evidence. She said that ACAS had told her that she had to first exhaust the All-Wales internal procedure before going to the Tribunal.

- j. From 29 November 2022 there then commenced a very slow journey and I can summarise it in this way:
  - i. the Claimant was asked on or around 14 December 2023 how she wanted to deal with the complaint, which still at that time was in very general terms, along with complaints that she had made against JS and LF;
  - ii. on 16 December 2022 the Claimant confirmed in writing that she sought facilitated conversations (i.e. informal resolutions) as regards complaints against LF and DB and sought a formal route of complaint against JS; and
  - iii. on 24 December 2022 PG, the operations manager, indicated she was on leave until 10 January 2023, and it was agreed that there would be liaison to arrange a plan.
- k. In that context, the Claimant was absent from work from 1 December 2022 owing to complaints of backache and anxiety having also been absent from work without explanation on 29 November 2022. However, on 1 December she notified the Respondent that there had been an incident on 23 November 2022 where she had injured her back.
- l. Long-term sickness meetings took place on 12 January and 15 February 2023.
- m. In between those meetings, the Claimant had a facilitated meeting with DB at which a number of others including LH, PG and a human resources representative were present. That meeting concluded and no further steps were taken by either party.
- n. The Claimant said she expected a letter confirming the outcome but that it never came.
- o. Ultimately, what followed was the Claimant being dismissed on 26 April 2024. An appeal hearing took place on 30 June 2023 but the decision to dismiss was upheld.

17. Accordingly, the Claimant sought to pursue claims for unfair dismissal, disability discrimination and sexual harassment along with a claim for victimisation. The Respondent disputed the complaint of unfair dismissal and said it was not able to understand the complaint of discrimination.

#### Procedural History

18. In terms of the procedural route the case has adopted, it can be summarised as follows:
- a. Conciliation commenced and ended on 5 May 2023.
  - b. A Form ET1 was received by the Tribunal on 3 June 2023.

- c. The response was accepted on 6 August 2023 and Employment Judge Sharp gave directions in respect of disability that day with the Respondent's name amended. Those directions made provision for the listing of a Preliminary Hearing and made clear that the Form ET1 was inadequate in setting out the claims and there was a request for further and better particulars (FBPs).
- d. In the FBPs that followed, the Claimant reported unwanted conduct by DB and bullying conduct by others, '*... up to February 2022*'. DB's conduct was allegedly in the form of sexual comments and that created a misogynistic and toxic environment. It was alleged LF had confronted the Claimant in July 2022 and on 9 February 2023 thereby exacerbating her poor mental health. There was a verbal comment allegedly made by JS on 19 October 2022 with a grievance left to expire without a formal meeting. Further allegations of discrimination arising from disability were made from October and November 2022 along with her driving licence being removed by the Driver and Vehicle Licencing Agency (DVLA). There was a complaint of a failure to make reasonable adjustments up to March 2023. In terms of sexual harassment, the complaint was made via a grievance on 1 December 2022 and a meeting was to take place on 7 February 2023. The acts were text messages between 8 and 14 July 2022 and allegations from 2019, and up to 12 October 2022. The complaint of victimisation was put shortly in the form of reports and grievances submitted on 20 October and 5 December 2022.
- e. Detailed disability evidence was provided by the Claimant as directed.
- f. At the Preliminary Hearing on 21 September 2023, the Respondent was required to provide its position in reply to the FBPs (and additional complaints) and the Claimant was to explain why complaints had not been originally pleaded and to address, amongst other things, time limits. It was acknowledged by Employment Judge Harfield that notwithstanding her efforts, the Claimant's complaints remained, '*very unclear*'.
- g. The amended Grounds of Resistance disputed the complaints of disability discrimination and the like and disputed that the complaints related to sex were capable of being pursued. It asserted that what the Claimant was attempting to do was pursue an allegation against the canvas of historically agreeing to resolve the issue by way of informal resolution.
- h. The Claimant then applied by email dated 21 February 2024 to amend her claim explaining that the issues identified at the earlier Preliminary Hearing did not amount to a new claim. The Respondent identified her response to be defective for want of compliance with Employment Judge Harfield's directions. The Claimant's explanation on 28 February 2024 was that she had mentioned her claim in brief within the Form ET1, that she had been concerned by the "*word count*" within the form, she considered her complaint of raising a grievance was in time and she insisted that she has tried to comply.

- i. What I will term as the chaotic nature of the complaints was highlighted by Employment Judge Sharpe at the Preliminary Hearing on 1 March 2024. The Claimant was given a further opportunity to pursue any amendment. Through the course of that Hearing, some of the the Claimant's claims were dismissed with her consent. Given the convoluted and challenging procedural history, the Judge skilfully set the complaints out in a coherent fashion and the Respondent indicated its intention to pursue a time limit argument. It was established that long COVID-19 and depression were disabilities with it being resolved that adjudication as to whether left arm and lower back pain amounted to disabilities should be left to the Final Hearing. Ultimately, it was the Judge's view that the Respondent's assertion that the sex complaints were time barred should be heard at a further Preliminary Hearing.

### **THE HEARING**

19. Before going any further I want to recognise that claims to the Employment Tribunal, whatever they are, are often challenging, fraught, complex and difficult to pursue. Whilst it is a tribunal service, I well-acknowledge that it may not be seen as particularly user-friendly in that the customers, that is the litigants, often do not understand the law given how vast and complex it is and access to justice may be perceived as limited because there is an absence of public funding for litigants.

### **The Evidence**

20. The Claimant provided a statement and some supporting documents as a consequence of Employment Judge Sharpe's directions. She acknowledged that she was out of time in terms of complaints of discrimination and harassment of a sexual nature. She complained of the risk of losing her job or being on the end of ill treatment. The Claimant reported the alleged conduct on 25 October 2022 and said she was not supported to submit the grievance. She pointed to the Respondent's delay in progressing the grievance. She pointed to brain fog and associated long COVID symptoms as explanatory of the delay.
21. There are additional documents then produced by the Claimant which are of lesser probative value to the matter at hand.
22. In her oral evidence, she explained her reluctance to pursue complaints due to a perceived lack of support and being moved stations. She reported her union representative support and advice was wanting and said when she had complained in 2019 her manager had sought informal resolution. She said that she had contacted ACAS in the autumn, around the start of October 2022 and that they informed her, erroneously, that she had to exhaust workplace policies first before going to the Employment Tribunal with her complaints. She had conducted some online research and conceded they had told her about time limits but said she had to pursue the internal process first. She noted that a sickness meeting minute had referred on 1 November to her intention to submit a complaint which was ultimately not done until 29 November 2022. She conceded that there was no record of her complaining about suggestions of her being moved to Cwmbran but said she gave reasons. Ultimately, there was no Employment Tribunal

complaint, she said, because she was operating upon the misapprehension provided by ACAS that everything had to be first dealt with internally. The Claimant explained friends and family had encouraged her to deal with the matter informally, but she later said it was her union representative that encouraged that. She did not agree that she had wanted to draw a line under the matter via the informal process on 9 February 2023. She wanted to pursue it formally if she had been dissatisfied with the informal process. She further explained that after 9 February 2023 she did not pursue the matter to Tribunal forthwith because of other factors such as her ill health and dealing with the other matters that are before the Tribunal under different heads of claim. She agreed that were she in a state of mind to do so she should have pursued the claim at the latest very shortly after 9 February 2023.

23. The Respondent produced a statement from an employee, Ms Anna Stein, a People Services Partner. It was confirmed that the Claimant raised a grievance in respect of DB on 29 November 2022 and that was produced for my consideration. It was clear that the incidents were raised on 29 November and that the Claimant sought informal resolution on 16 December 2022 (which had been confirmed by email). There was then a facilitated conversation which took place on 9 February 2023. No investigation was carried out. The point was made as to the antiquity of the allegations.
24. In her oral evidence, which was properly much more limited, Ms Stein acknowledged that it may often be the case that a line manager should provide support and indicated her understanding that it had been the Claimant's desire for the matter to be resolved informally on 9 February 2023. Mrs Stein confirmed that the Claimant could have pursued a formal complaint thereafter to a range of other persons and she also acknowledged that there had been some delay between 29 November 2022 and 9 February 2023 but pointed to Christmas and staff being on leave. She explained that the meeting could not be combined with a sickness meeting as they were distinct issues and she further confirmed that the formal process could have been instigated at any time as there were no time limits.

### Submissions

25. In submissions, Ms Williams was candid. She explained that there was no issue that the complaints were out of time. The brass tax was that a complaint should have been referred to ACAS by no later than 11 November 2021 and 13 October 2022 in terms of the two periods, which she said were incapable of being causally connected. She pointed to the absence of detail within the grievance complaint in November 2022. Ms Williams said that the Claimant's reasons for the delay were that:
- a. she was concerned about bringing a claim; and
  - b. she was given erroneous information by ACAS leading her to believe she had to exhaust internal procedures.



26. Even taken at face value, Ms Williams pointed to:

- a. the internal complaint having not been submitted until 29 November 2022; and
- b. that per the email of 16 December 2022 [at pP207], the Claimant wanted it to be dealt with informally via facilitated conversation and that was what duly happened on 9 February 2022 when, she says, it was apparent the process had concluded – that was the latest, or shortly afterwards, that any complaint to the Tribunal should have been brought.

27. I was told to treat what the Claimant says about what happened thereafter with great caution in the context of her evidence about wanting to pursue a more formal outcome as it had not been in her oral evidence and was not consistent with her request for informal resolution. Even if the Claimant was waiting for a letter from 9 February 2023, she waited too long in waiting until June 2023, when the Form ET1 was submitted, and she made a decision not to pursue it sooner.

28. In short, I was told by Ms Williams that it was not just and equitable to extend the time limits with the prejudice to the Respondent including witnesses having to recall in-person events from a number of months/years ago, which was an unreasonable expectation.

29. In her submissions, the Claimant explained that she believed that she was within the time limits between 9 February and 5 May 2023 when ACAS were contacted. She relied upon erroneous information from ACAS and knew no different. She did not have any evidence of chasing a letter from 9 February 2023 and conceded that she did not do so. Her approach with the complaint on 29 November 2022 was to provide a blanket account and she explained that the gap between 2021 and 2022 was contributed in part due to absence from work for a number of months before she returned in March 2022 (per p173).

## **THE RELEVANT LAW**

30. I turn to the relevant law.

### Time Limits

31. I am concerned with *section 123 EA 2010* when turning to the issue of time limits. There is obviously the provision for conciliation.

32. In a claim pursuant to the *EA 2010*, the primary time-limit is within three months of the discriminatory action as it is with a claim for unfair dismissal, *section 123(1)(a) EA 2010* applied. There is indication by the government to review whether the time limit should be revised upward to six months but there is no change in the law.

33. I remind myself that:

- a. it is not always clear precisely when a discriminatory action took place;

- b. the time runs from the discriminatory action, not from the protected act;
  - c. if the claim is late, the tribunal has a '*just and equitable*' discretion pursuant to *section 123(1)(b) EA 2010* (this being a wide discretion where the Tribunal balances the prejudice between the parties); and
  - d. where more than one discriminatory action is claimed, the three-month time-limit attaches to each action and *section 132(3) EA 2010* provides that it is the end of the period of any conduct with which I am concerned.
34. In deciding whether it would be just and equitable to extend the time limit the Tribunal will have regard to a mosaic of issues including the reasons for the delay, the actions of the parties and any prejudice which would be caused to the parties by the Tribunal's decision about extending time.
35. It is essential to pinpoint the date upon which the act of discrimination takes place, which can be very difficult. It is also wrong for a Tribunal to strike out a claim on the basis that it is time barred where it is unable to properly establish the date of the discriminatory act and in particular, whether the act is part of a continuing act or continuing state of affairs in the absence of evidence from the parties which would have to be presented at a full Hearing, *Kaur v. Edinborough Council 2013 CSIH 32, Ct Sess (Inner House)* applied. The Claimant in that case needed only to have shown, *prima facie*, that the claim was presented in time. There is Court of Appeal authority in support of this.
36. The Court of Appeal determined in *Hendricks v. Commissioner of Police for the Metropolis [2003] IRLR 96* that, '*an act extending over a period...*', can comprise a '*... continuing state of affairs*' as opposed to a succession of isolated or unconnected acts. There does however need to be a link or connection between the actions.
37. In cases where discriminatory conduct has occurred over a period of time, the time limit commences from the end of the alleged discriminatory conduct (*section 123(3)(a) EA 2010* applied). In short, the authorities (flowing from *Barclays Bank Plc v. Kaur et. al.* 1991 ICR 208, HL provide a generous interpretation. As such, continuing acts may be where an employer is responsible for an ongoing situation or a continuing discriminatory state of affairs in which linked acts of discrimination extending over a period of time occurred or where there is a repeated refusal by an employer to do something over a period of time.
38. The situation as regards time limits and omissions is more complex and is provided for in *section 123(4) EA 2010* with it providing that in the absence of evidence to the contrary, someone is taken to decide on failure to do something,
- a. when they do an action which is inconsistent with doing it; or
  - b. If they don't do anything inconsistent, on the expiry of a period in which they might reasonably have been expected to do it.

39. I note that a continuing failure to make a particular adjustment is not usually a continuing act unless the facts suggest the matter is live and continually under review.
40. I also note the decision in *Robertson v. Bexley CC* [2003] IRLR 434 and that time limits are exercised strictly and it is for an applicant to convince the Tribunal that it is just an equitable to extend.
41. It occurs to me that I should also have regard to *rule 2 Employment Tribunal Rules (ETR) 2013* and the overriding objective. I must deal with cases fairly and justly in so far as is practicable. So far as is practicable, parties should be on an equal footing, cases should be dealt with proportionately having regard to the complexity and the importance of the issues at hand. Unnecessary formality should be avoided and I should be flexible in the way I conduct the proceedings. Further, I must have one eye on expense.
42. Further, I note for completeness the decision in *Drysdale v. Department of Transport (Maritime and Coastguard Agency)* [2013] EWCA 1083 emphasises the need to provide such assistance to litigants as might be appropriate in the formulation and presentation of their cases which depended on the circumstances of each particular case. The appropriate level of assistance or intervention is to be constrained by the overriding requirement that the Tribunal has to, at all times, be, and to be seen to be, impartial as between the parties, and that injustice to either side had to be avoided. The appropriate level of assistance or intervention was properly a matter for the judgment of the Tribunal hearing the case, and the creation of rigid obligations or rules of law was to be avoided, as much would depend on the tribunal's assessment and "feel" for what was fair in all the circumstances of the specific case. There is, as *Drysdale* makes clear, a wide margin of appreciation available to a Tribunal in assessing such matters.

#### **FINDINGS AND CONCLUSIONS**

43. I have been assisted by the parties and the submissions to which I have referred. I commended both the Claimant and Ms Williams for their very helpful participation and submissions.
44. Essentially, I have to ask myself whether the claims particularised from p137 onwards in the CMO of 3 March 2024 are in time. They are as follows:
- a. On 10 August 2021 DB invaded the Claimant's personal space, smelled her hair and commented that her trousers were fitting her well when walking behind her. In the rest room he told the Claimant he would be up later (at the end of the shift) and the Claimant was to be ready. [The Claimant says currently the only potential witness she is aware of by name is SX the paramedic].
  - b. On 11 August 2021 DB called the Claimant "*Dirty Diana*" in the restroom of the station, invaded her personal space, and made a comment the Claimant should be ready with dinner at the end of the shift. He was standing very close to the Claimant and caused her to turn and then bump into him.

- c. On 12 August 2021 the Claimant told DB it was inappropriate to call her *"Dirty Diana"* and that her name was not even Diana. DB then called the Claimant bipolar. At the station later in the day there were not enough seats in the restroom and DB told the Claimant to come and sit on his lap.
  - d. On 8 July 2022 at 16:03, when the Claimant was on annual leave, DB sent the her a text message saying all bikini photos were welcome.
  - e. On 9 July 2022 at 18:45, when the Claimant was off work with a cold/sinus condition, DB sent a text messaging saying *"if you need Vicks rubbing on to your chest you know where I am, take care."* The Claimant replied saying she had oxygen and an asthma pump and could not stand the smell of Vicks and DB replied at 19:07 saying *"its not for sniffing"* (sic).
  - f. On 14 July 2022 DB sent the Claimant a text message at 10:52 saying, *"how you feeling my LSCL?"*.
  - g. On 14 July 2022 DB sent the Claimant a text message saying *"Little Sexy Cat Lady"*.
45. It is right to recognise that the DB's alleged conduct, if true, is on the face of it at least, offensive, upsetting and inappropriate. I give nothing away in saying that. The seriousness of the act can obviously weigh in the balance in terms of the just and equitable test.
46. As is often the way, some the background or chronology has been uncontroversial. However, where there is no agreement or where there is a conflict of evidence, I have made findings of fact. I do so having read the documentation filed and listened carefully to the evidence. The standard of proof is the simple balance of probabilities with no added gloss. Where I have preferred one version of events over another, it is generally because the account was better supported by other evidence and or the witness' recollection was better.
47. Ultimately, my findings and conclusions, are as follows:
- a. This is obviously a situation where the Claimant's complaints are out of time on the face of it and the issue of whether the jurisdiction is engaged pursuant to *section 123 EqA 2010*.
  - b. I am not making any findings of fact about what did or did not happen between the Claimant and DB in 2021 and 2022.
  - c. Ultimately, what I am satisfied of is that in circumstances where the alleged events occurred in August 2021, no complaint of any kind was made about them until November 2022. I accept that the Claimant was subject of a long period of sick leave but on her return to work in March 2022 there was no complaint.

- d. I am satisfied, as the Claimant's conduct whilst on periods of sick leave at the back end of 2022 makes plain, that she was able to make complaints sooner than November 2022 in respect of the August 2021 conduct, but she did not do so.
- e. The allegations in August 2021 are patently offensive and other adjectives could be properly deployed. They are however different in nature from the allegations from July 2022. The former being comments and being in the Claimant's personal space and the latter being text messages.
- f. The conduct in August 2021 was not raised beyond a very limited detail in the 29 November 2022 grievance document.
- g. Given the gap of 11 months, the lack of complaint and the difference in nature to which I have alluded to, I do not consider there to be sufficient nexus between them to consider them a continuing act. I well accept that the Claimant will have seen them as a continuing act in the context of the unpleasantness of them, but the August 2021 events occurred over a three-day period and then the events 11 months later over a seven-day period. There were no acts in-between August 2021 and her going on sick leave and no events between March and July 2022. Even taking out the period of sick leave, there are nearly four months between 22 March and 8 July 2022.
- h. Following matters allegedly occurring in July 2022, there was again no complaint for a time, again until November 2022.
- i. Today, the Claimant told me that she had sought ACAS advice in early October which would have put her within three months of the acts complained of in the July 2022. She said that ACAS told her that she must pursue an internal complaint and exhaust that before pursuing an Employment Tribunal claim. On balance, I find that she misunderstood or is otherwise mistaken about what she says she was told. I find that because:
  - i. she admitted that she was aware of the three-month time limit;
  - ii. with that in mind, she then took until 29 November 2022 to submit the grievance, which was not acting promptly or diligently; and
  - iii. the resolution she sought was an informal one with DB to have training with no mention of a complaint to the Tribunal being raised at any stage in the chronology.
- j. As I have already outlined, she wrote up her grievance on 13 October 2022 (and I accept that) but it was not submitted until 29 November 2022 for the reason of wanting to hand it to her manager. It was discussed on 1 November 2022 but yet then still took another four weeks to be submitted. I find that, notwithstanding her difficulties at the time, that the submission period was not prompt and that was unreasonably long. The reason was not a satisfactory one.

- k. Further, the fact that the Claimant sought informal resolution when she had sought formal resolution against another colleague *and* had sought for DB to have training as an outcome militates against her suggestion that she had envisaged pursuing a Tribunal claim – on balance I do not accept that to have ever been her intention up until a point after 9 February 2023. In all probability, I do not consider that she envisaged that until some time after her dismissal. I shall turn to that in due course.
  - l. The Claimant told me that she believed that she was awaiting a letter after the 9 February 2022 meeting so that she could escalate things formally and/or pursue a complaint to the Tribunal. I am not satisfied that was the case. On balance, I find that she considered that to be the end of the matter for the following reasons:
    - i. she was aware that she could pursue a formal complaint;
    - ii. at no time did she pursue a so-called outcome letter prior to the submission of her complaint to the Tribunal in February 2023;
    - iii. she did not, for example, pursue one after conciliation in May 2023; and
    - iv. she did not make a complaint to the Tribunal earlier.
  - m. It is against that canvas that I find that the Claimant considered matters to be at an end on 9 February 2023 and it was not until after she resolved to pursue other matters to the Tribunal did she reflect further and consider that she ought to pursue these complaint. I say that because she:
    - i. *was* aware of the time limits; and
    - ii. *had* shown herself capable of making and chasing complaints, informally or otherwise and I am aware that it was treated in the way she had sought.
48. I note that the allegations are serious and offensive. I am aware of the hardship to the Claimant of not being permitted to pursue the complaints and I note the efforts that she has made during the course of the proceedings to attempt to comply. Ultimately, her written evidence lacked much of the detail or justification put before the Tribunal today and there is little proper justification for the delay in bringing the complaint. The hardship to the Respondent is dealing with complaints of some antiquity when it thought that it had already done so. It would mean these proceedings would be longer, be more expensive to litigate and cause the Respondent further hardship in proceedings where there have been repeated efforts to make sense of the Claimant’s claim with a number of her complaints having been dismissed on 3 March 2024.
49. Accordingly, on the findings that I have made, having applied the relevant law I am driven to the conclusion that it would be unjust and inequitable to extend the time limit for the complaints of sex discrimination and harassment. I must refuse the application.

.....  
**Signed by Employment Judge R Evans**

**18 August 2024**

JUDGMENT SENT TO THE PARTIES ON 22 August 2024

FOR THE TRIBUNAL OFFICE Mr N Roche

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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