



EMPLOYMENT TRIBUNALS

Claimant: Ms Jeantia Christie Pepa-Nsana

Respondents: Nottinghamshire County Council

Record of an Attended Hearing at the Employment Tribunal

Heard at: Nottingham

Heard on: 29 September

and 2,3,4,5 & 6 October 2023

Before: Employment Judge M Butler

Members: Mrs C Hatcliff
Mr A Greenland

Appearances:

Claimant: Mr J Townend, Lay Representative
Mr B Frew, Counsel

JUDGMENT

The unanimous Judgment of the Tribunal is that:

1. The claims of direct race discrimination and victimisation arising out of alleged incidents in 2008, November 2009, March 2013, January 2018, April 2020 and January 2021 are dismissed as they were submitted out of time, it is not just and equitable to extend time and the Tribunal has no jurisdiction to hear them.
2. The claims of direct race discrimination and victimisation arising out of an incident on 2 December 2021 are not well-founded and are dismissed.
3. The claim of less favourable treatment under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 is not well-founded and is dismissed.

REASONS

Background

1. The Claimant was employed by the Respondent, Nottinghamshire County Council, as a Recruitment and Advertising Assistant from 14 September 2004. Her employment is continuing although she was redeployed as a Senior Reablement Worker from May 2022.
2. Early conciliation began on 6 December 2021 and ended on 16 January 2022. Her claim was presented on 28 January 2022. She claims race discrimination, victimisation and suffering less favourable treatment because of part time working.
3. The Respondent's defence is that some of the claims are out of time and the Tribunal has no jurisdiction to hear them and, in any event, there has been no discrimination, victimisation or less favourable treatment of the Claimant on any basis.

The Issues

4. The issues the Tribunal must decide were identified by the parties at a Preliminary Hearing before Employment Judge Brewer on 22 June 2022. The agreed list of issues as recorded by Employment Judge Brewer is appended to this Judgment.

The Evidence

5. We heard oral evidence from the Claimant and, for the Respondent, from Ms S Thompson, Senior Practitioner for the Business Hub and Recruitment Team, Mr S Brooks, Team Manager for the Business Hub and Recruitment Team, and Ms S Stevenson, Group Manager for the Business Service Centre. All witnesses produced witness statements and were cross-examined.
6. The Claimant was cross-examined at length by Mr Frew in relation to all of the issues before us. The Respondent's witnesses were not cross-examined in relation to the issues, Mr Townend seemingly content to ask questions calling for conjecture on the part of the witnesses as opposed to requiring justification for their actions.
7. There was an agreed bundle of documents comprising 711 pages, a number of which were blank and many of which we were not referred to. References to page numbers in this Judgment are to page numbers in the bundle.

The Facts

8. There was a degree of conflict in the evidence given by the parties and, where such conflict arose, we preferred the evidence of the Respondent's witnesses. We found the Claimant's oral evidence to be often inconsistent with her pleaded case and not corroborated by the documents produced to us. She was further completely unable to explain why a particular act or incident had occurred because she is black other than to make references to having to view matters in an unspecified or vague context. We give examples of these matters below.
9. In 2008 the Claimant requested 15 days leave to visit the Congo which was granted. She subsequently requested additional leave of 5 days making a total of 20 days. That request was refused but she did not return to work at the end of the authorised 15 days leave period. Her evidence is that she advised Ms Thompson that she was ill with Malaria and could not return. She was unable to produce that email preferring to say that the Respondent would have it in her personal file.
10. In relation to this same incident, she cites a Mr McDonald as a comparator but admitted in cross-examination that this was a mistake and her comparator would be any white colleague.
11. In relation to her sickness absence in November 2009, the Claimant firstly said that a Ms Clifton was the correct comparator and subsequently just a few minutes later that Ms Clifton was not the

correct comparator and did not offer an alternative comparator.

12. When the Claimant was proposing to adopt her sister (page 155), she asked for adoption leave and Ms Thompson confirmed this would be granted on production of relevant documents by way of confirmation. The Claimant did not produce any relevant documents before leaving for the Congo and requested that her adoption leave commence the day after she had left without any notice being given to the Respondent that she would not be at work. In her evidence, she said that the subsequent letter confirming that she might be treated as being absent without approval was not unreasonable in the circumstances but still maintains it was an act of discrimination.
13. In reply to Mr Frew's question as to why her colour was the cause of the alleged discrimination she suffered, the Claimant could not find an answer and was given the lunch adjournment to find what she was looking for in the bundle. After lunch, she said it was because she was scrutinised more than her white colleagues but then admitted that she did not know whether any of those colleagues were being scrutinised or ever had been.
14. Throughout her evidence, the Claimant was unable to explain the link between her colour and the various allegations of discrimination. Her fallback position was to refer to them having to be viewed in context. When pressed on what she meant by context in re-examination she said: *"By context, I mean everything that went around what we are discussing"*. This was not helpful.
15. In relation to less favourable treatment as a part-time worker, the Claimant referred only (at paragraph 58 of her witness statement) to the Respondent alleging her part-time working impacted her availability for training. We are not convinced this was an attempt to suggest this was less favourable treatment as a part-time worker as elsewhere she relies on lack of training compared to her white colleagues as race discrimination. She also names Ms C Mather as a comparator who was also a part-time worker.
16. In contrast, we found all of the Respondent's witnesses' evidence to be given in a straightforward manner without delay in answering questions and supported by documentary evidence where appropriate. We accept that evidence as being honestly given.
17. In relation to the issues before us, and considering the evidence and documents produced, we find the following facts on the balance of probabilities:
 - 17.1. The Claimant was born in the Congo on 9 July 1975 and describes herself as being black. The Respondent is a large public authority. The Claimant commenced employment with the Respondent on 14 September 2004 under the new deal scheme and worked as a Recruitment and Advertising Assistant from October 2007 until she was redeployed in May 2022 as a Senior Reablement Worker, a role she continues in.
 - 17.2. In May 2008, her Grandmother having died, she requested 15 days leave to attend the funeral in the Congo. This was granted. Subsequently before the leave began, the Claimant requested to extend that leave for a further 5 days. That request was refused for staffing reasons. Despite this, the Claimant did not return to work at the end of her 15 days approved leave and did not advise her Line Manager, Ms Thompson, of the reason for her failure to return. On 10 June 2008, Ms Thompson wrote to the Claimant advising her she had been absent with authority. At a meeting on 19 June 2008, Ms Thompson accepted the Claimant's explanation for her absence and authorised the additional leave of 5 days. Ms Thompson did not classify this additional leave as sickness leave because the Claimant had not told her she was ill. The Claimant had previously, in January 2008, failed to return to work at the end of authorised leave when she went to France and was warned about being absent without approval in future.
 - 17.3. On 18 June 2008, the Claimant emailed Ms Thompson and Ms J Bryan, Team Leader (Advertising) to advise she intended to adopt her *"baby sister"* and that she would keep them informed. She wrote to them again on 24 June 2008 giving details of the adoption process.

On 29 September 2008, Ms Bryan asked for an update but no progress had been made. Ms Bryan and Ms Thompson met with the Claimant on 5 November 2008 and set out the documentary requirements to enable adoption leave to be granted. On 16 December 2008, the Claimant wrote to Ms Bryan and Ms Thompson to say that the adoption had taken place on 15 December 2008 and her sister was now placed with her (page 173). She asked that her adoption leave commence from 17 December 2008. No documentary evidence of the adoption has ever been provided to the Respondent.

- 17.4. The Claimant then remained absent from work until sometime in January 2009 when the Respondent was apparently notified (we are not told when or by whom) the Claimant was too ill to engage in the disciplinary process for being absent without authority as notified to her in a letter not produced but referred to at page 175. Several Occupational Health appointments were ignored by the Claimant although her GP wrote to Ms Thompson on 25 April 2009 (page 180) indicating the Claimant had miscarried during her mid-trimester whilst in France at the end of February 2009.
- 17.5. Having failed to attend a number of arranged Occupational Health appointments, the Claimant eventually attended an appointment on 30 September 2009 the outcome of which was that she was fit to engage in the disciplinary process notified to her. The Respondent, through Ms Bryan and Ms Cope made a welfare visit to the Claimant on 18 December 2009 followed by a meeting with Ms Bryan on 23 December 2009 where holiday leave was granted to the Claimant of 12 days between 24 December 2009 and 14 January 2010 and from 15–19 February 2010. An emergency payment to the Claimant was also approved as her Employment Support Allowance had ceased on 17 December 2009. The proposed disciplinary hearing never took place.
- 17.6. At a review meeting on 4 March 2010 with Ms Bryan and Ms Cope the Claimant, totally inconsistently with her previous statement about the adoption to Ms Bryan and Ms Thompson, said (page 200) the adoption was still “going ahead” and she was planning to pick it up whilst on maternity leave and she was still awaiting paperwork.
- 17.7. The Claimant took maternity leave in 2010 and returned to work in July 2011 when she was pregnant again. She took further maternity leave and returned to work on 2 April 2013. She had reduced her hours of work and, in accordance with their usual practice, Ms Thompson allocated work to her in advertising with which she was familiar. Some of the previous tasks undertaken by the Claimant’s team had fallen away. She was at no time denied any training and we accept the Respondent’s evidence that there were certain difficulties arranging training for the Claimant due to her maternity leave and reduced hours of work.
- 17.8. In January 2018, when the Claimant returned from her 3rd period of maternity leave, she was not treated less favourably than her colleagues in terms of access to training. As the Claimant accepted in evidence, not every colleague was trained in every task undertaken by the team which had gone through changes including being merged with the Payroll Team. The Claimant received such training as was possible given her reduced hours.
- 17.9. In April 2020, the Claimant was working from home and complaining about stress given that she was working from home at the same time as bringing up three small children. Covid lockdown had commenced and, after discussion with Ms Thompson, the Claimant was granted time off with full pay for 13 weeks followed by 5 weeks unpaid and 2 weeks paid leave. This did not amount to less favourable treatment as, in effect, the Claimant was given what she asked for and agreed in evidence this was the case.
- 17.10. In January 2021, Ms Thompson noted the Claimant was not producing the volume of work expected of someone working her hours. This was not a complaint by Ms Thompson but a call to ascertain whether the Claimant needed further training or support given that the Claimant had not reached the minimum volume of work output expected of someone in her position. Ms Thompson did raise with the Claimant that there were some gaps in her training

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but it had been difficult to balance training with her absences on maternity leave and sickness. This was a reasonable step taken by the Claimant's Line Manager. Ms Thompson met with the Claimant on 1 February 2021 to discuss her training plan.

17.11. On 15 February 2021, the Claimant commenced long term sickness absence due to stress. During that absence she invoked the Respondent's Employee Resolution Procedure which begins as an informal process complaining about being discriminated against on maternity and racial grounds due to lack of training (page 326).

17.12. The Respondent investigated the Claimant's complaint in a robust and thorough manner and the outcome given by Mr Brooks (page 367) on 10 May 2021 was that her complaint was not upheld. Prior to receiving that outcome, on 6 May 2021 (page 365), the Claimant escalated her complaint to the Respondent's Formal Employee Resolution Procedure. After a further thorough and detailed investigation, Ms Stevenson sent an outcome letter to the Claimant on 9 September 2021 (page 443) confirming that her complaint was not upheld.

17.13. On 17 September 2021, the Claimant appealed that outcome (page 451) and the appeal was heard by a panel chaired by Mr S Edwards, Service Director Youth Families and Social Work. On 2 December 2021, Mr Edwards sent an outcome letter to the Claimant (page 479) confirming there was no evidence of discrimination against the Claimant.

17.14. Throughout the Employee Resolution process, both informal and formal, the Claimant was assisted and accompanied by her Trade Union representative.

Submissions

18. Mr Frew made detailed oral submissions lasting 35 minutes. Mr Townend made oral submissions lasting just under 10 minutes restricted to the issue of a continuing act and alleged failures in the Employee Resolution process as the Respondent had failed to consider disciplinary action against Ms Thompson. We do not rehearse those submissions here but have taken them into account in reaching our conclusions.

The Law

19. The Claimant's protected characteristic is race.

19.1. Section 13 of the Equality Act 2010 ("EqA")

"Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.

(5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

(6) *If the protected characteristic is sex—*

(a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;

(b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.

(7) *Subsection (6)(a) does not apply for the purposes of Part 5 (work).*

(8) *This section is subject to sections 17(6) and 18(7)."*

19.2. Section 27 of the Equality Act 2010 ("EqA")

"Victimisation

(1) *A person (A) victimises another person (B) if A subjects B to a detriment because—*

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) *Each of the following is a protected act—*

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) *Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*

(4) *This section applies only where the person subjected to a detriment is an individual.*

(5) *The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.*

19.3. Section 123 of the Equality Act 2010 ("EqA")

"Time limits

(1) *[F1Subject to [F2[F3section] 140B]] proceedings on a complaint within section 120 may not be brought after the end of—*

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

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

(2) *Proceedings may not be brought in reliance on section 121(1) after the end of—*

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

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

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

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

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

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

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

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

19.4. **Section 136 of the Equality Act 2010 (“EqA”)**

“Burden of proof

(1) *This section applies to any proceedings relating to a contravention of this Act.*

(2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

(3) *But subsection (2) does not apply if A shows that A did not contravene the provision.*

(4) *The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.*

(5) *This section does not apply to proceedings for an offence under this Act.*

(6) *A reference to the court includes a reference to—*

(a) *an employment tribunal;*

(b) *the Asylum and Immigration Tribunal;*

(c) *the Special Immigration Appeals Commission;*

(d) *the First-tier Tribunal;*

(e) *the [F1Education Tribunal for Wales];*

(f) *[F2the First-tier Tribunal for Scotland Health and Education Chamber] .”*

19.5. **Regulation 5 of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000**

“Less favourable treatment of part-time workers

5.—(1) *A part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker—*

(a) *as regards the terms of his contract; or*

(b) *by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.*

(2) *The right conferred by paragraph (1) applies only if—*

(a) the treatment is on the ground that the worker is a part-time worker, and

(b) the treatment is not justified on objective grounds.

(3) In determining whether a part-time worker has been treated less favourably than a comparable full-time worker the pro rata principle shall be applied unless it is inappropriate.

(4) A part-time worker paid at a lower rate for overtime worked by him in a period than a comparable full-time worker is or would be paid for overtime worked by him in the same period shall not, for that reason, be regarded as treated less favourably than the comparable full-time worker where, or to the extent that, the total number of hours worked by the part-time worker in the period, including overtime, does not exceed the number of hours the comparable full-time worker is required to work in the period, disregarding absences from work and overtime.”

20. We were referred to and have considered case law as we deem relevant to the issues in this case and as highlighted below.

Discussion and Conclusions

21. We preface our discussion with the comments that we viewed the Claimant's evidence with a degree of circumspection. We have considered above some of the issues of inconsistency and lack of collaboration in her evidence. But we found some of her evidence to be unreliable. For example, her account of her adoption of her sister changed from her statement to the Respondent in December 2008 that the adoption had completed and the child had been placed with her, to over a year later when she said it was still going ahead, had been completed, she was still awaiting the paperwork at a time when the child was clearly not with her. The Respondent's doubt about her account seems entirely justified (page 185).

22. Further, whilst we appreciate that the Claimant was a litigant in person at the Preliminary Hearing before Employment Judge Brewer, the Judge clearly spent a considerable period of time clarifying the issues. This included the Claimant identifying her comparators for her direct discrimination claim only for her to admit in evidence that they had been identified by mistake.

23. The Claimant's allegation of less favourable treatment as a part-time worker was paid scant attention during this hearing or, indeed, in her pleaded case. The one reference to it in her witness statement provides Ms Mather as a comparator but she was also a part-time worker and, therefore, an inappropriate comparator.

24. We have also highlighted the Claimant's acceptance that some of the matters of which she complains were based on the quite reasonable acts of the Respondent.

25. It is also the case that the Respondent's witnesses were simply not cross-examined at all in relation to the vast majority of the issues before us. Indeed, Mr Townsend's cross-examination was very narrow and did not address the majority of the issues before us.

26. Apart from the allegation concerning the outcome of her complaint on 2 December 2021, all of the Claimant's claims of discrimination are out of time. She relies on the acts dating from 2008 onwards and culminating in the letter of 2 December 2021 as continuing acts. Mr Townsend argues they are continuing acts as the same managers of the Respondent were involved in each episode. Mr Frew submits that there was no continuing state of affairs from 2008 onwards. In ***Hendricks v Metropolitan Police Commission [2002] EWCA Civ 1686***, the Court of Appeal said the question is whether the employer is responsible for an ongoing situation or a continuing state of affairs in which the acts of discrimination occurred, as opposed to a series of unconnected or isolated incidents. The issue for the Claimant is that unlike the Judgment of the Court of Appeal in ***Lyfor v***

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Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548, she cannot identify that any of the acts of which she complains were discriminatory such that those acts should be grouped together. Accordingly, we find there was no continuing act in this case.

27. There has been no argument from the Claimant that it is just and equitable to extend time so as to allow her claims to proceed. However, for completeness, we address that issue here.
28. In **Bexley Community Centre v Robertson [2003] EWCA Civ 576**, the Court of Appeal said that exercising a discretion to extend time is the exception rather than the rule. Further, it is for the Claimant to establish that it is just and equitable to extend time. In **Polystar Plastics Ltd v Liepa [2023] EAT 100**, the EAT referred to the those matters which should be considered in deciding whether to exercise the discretion to extend time. These include:
- (i) The length and reasons for the delay;
 - (ii) The extent to which the cogency of the evidence was likely to be affected by the delay;
 - (iii) The promptness with which the Claimant had acted once she had known of the facts giving rise to the cause of action;
 - (iv) The steps taken by the Claimant to obtain advice;
 - (v) The merits of the claim.
29. In this case, as we have seen, memories of events in 2008 have faded. The delay is almost 14 years. The Claimant says she puts her case in the hands of her Union and discovered she was out of time sometime after February 2021 (she does not say when) and then delayed until January 2022 before presenting her claim. The Claimant was represented throughout until sometime in 2021 by her Union. Most importantly, as our findings of facts show, we consider the merits of her claims to be poor. Accordingly, we do not consider it just and equitable to extend time.
30. As the Claimant has submitted there is a continuing act of discrimination, in the events such argument is upheld, we consider the merits of her claims of direct race discrimination and victimisation.
31. Pursuant to section 136 EqA and the Judgment in **Igen Ltd v Wong [2005] IRLR 258 CA**, the burden of proof rests with the Claimant to prove facts from which inference could be drawn that the Respondent has treated the Claimant less favourably on the grounds of her race and, if she can, to then consider whether the Respondent can discharge the burden with a non-discriminatory explanation.
32. We refer to our findings of fact and to the lack of credibility in the Claimant's evidence. Put simply, we find no evidence at all from which we can infer that she has suffered less favourable treatment on the grounds of her race. In fact, the facts, based on the evidence of both parties and the documents in the bundle show, in our view, a quite remarkable leniency and support of the Claimant even in times when she was absent for long periods without communicating with the Respondent and when, even at this hearing, she could still offer no evidence that she had adopted her sister, a process for which she took leave without authority.
33. Following the Judgment in **Chapman v Simon [1994] IRLR 124**, we are obliged to confine our discussion to the issues raised by the Claimant in her claim form. When asked to explain why she claims her treatment was less favourable because of her race she was unable to do so to any degree apart from saying the alleged acts of discrimination (which we find were not discriminatory) should be viewed in some unexplained context.
34. The Respondent's witnesses were not cross-examined on any of the issues before us. Thus, their evidence stands unchallenged but we considered there to be more than enough in terms of lack of credibility or unreliability in the Claimant's evidence to support our findings.
35. We conclude that there was not a single act of discrimination by the Respondent or even one from

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which, on the Claimant's evidence, we could infer any discrimination took place.

- 36. Since we do not find the Claimant's evidence to be convincing, even if their complaints were found to be protected acts, since she relies on the same detriments as in her discrimination claim, we cannot find she has suffered such detriments. Accordingly, her claim of victimisation fails and is dismissed.
- 37. The claim of less favourable treatment by virtue of being a part-time worker was not pursued at all and there were no submissions in respect of it. The Claimant does make some reference to a lack of training, wrongly citing another part-time worker as a comparator, but this was done in the context of maternity leave and what happened when that leave ended. Maternity discrimination is not a claim before us.
- 38. It remains something of a mystery as to why, on behalf of the Claimant, Mr Townend confirmed this claim under the Part Time Workers Regulations was being pursued when it clearly has not been pursued and was not reference after he said it was being pursued. That claim must be dismissed.
- 39. In conclusion, the claims are ones as set out above which we have no jurisdiction to hear or which are not well-founded. They are accordingly all dismissed.

Employment Judge M Butler

- Date: 15 December 2023

JUDGMENT SENT TO THE PARTIES ON

....18 December 2023.....

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FOR THE TRIBUNAL OFFICE

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APPENDIX

The Issues

40. The issues the Tribunal will decide are set out below.

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation some of the complaints may not have been brought in time.

1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

1.3 Was the part-time worker detriment claim made within the time limit in regulation 8(2) of Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000? The Tribunal will decide:

1.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act complained of?

1.3.2 If not, was there conduct extending over a period?

1.3.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.3.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.3.4.1 Why were the complaints not made to the Tribunal in time?

1.3.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. **Direct race discrimination (Equality Act 2010 section 13)**

2.1 The claimant is black and she compares her treatment with that of white colleagues.

2.2 Did the respondent do the following things:

2.2.1 In 2008, during a period of personal difficulties the respondent's Sarah Thompson put the claimant on unauthorised leave. The comparator for this claim is Ian MacDonald;

2.2.2 In November 2009 when the claimant had been off sick, send her notification that she would be going to a preliminary investigation hearing for disciplinary matters. |The comparator for this claim is Abbey Clifton;

2.2.3 in March 2013 after the claimant had returned from maternity leave, restrict her to undertaking only advertising duties whereas her colleagues were able to do all of the duties within their job description. The comparators for this claim are Claire Mather and Abbey Clifton

2.2.4 in January 2018 when the claimant had returned from her third period of maternity leave, her team was undergoing a process of integration provide her colleagues with training on new duties whilst denying the claimant such training. The comparator for this claim is Claire Mather;

2.2.5 in April 2020 when the claimant asked for leave during a period where she was working from home and looking after three children, grant that leave only after a discussion with Sarah Thompson who had instead suggested that the

claimant take sick leave. The claimant relies on a hypothetical comparator for this claim;

2.2.6 in January 2021 Sarah Thompson discriminated against the claimant by complaining about her work. The comparator for this claim is Claire Mather;

2.2.7 on 2 December 2021 send the claimant the outcome of her grievance appeal which was rejected? The claimant relies on a hypothetical comparator for this claim.

2.3 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated.

2.4 If so, was it because of race?

2.5 Did the respondent's treatment amount to a detriment?

3. **Victimisation (Equality Act 2010 section 27)**

3.1 Did the claimant do a protected act as follows:

3.1.1 complain of discrimination during a discussion in May 2008;

3.1.2 complain of discrimination in 2013 after her returned from maternity leave;

3.1.3 complain of discrimination in her grievance commenced in February 2021?

3.2 Did the respondent do the following things:

3.2.1 In 2008, during a period of personal difficulties the respondent's Sarah Thompson put the claimant on unauthorised leave;

3.2.2 In November 2009 when the claimant had been off sick, send her notification that she would be going to a preliminary investigation hearing for disciplinary matters;

- 3.2.3 in March 2013 after the claimant had returned from maternity leave, restrict her to undertaking only advertising duties whereas her colleagues were able to do all of the duties within their job description;
- 3.2.4 in January 2018 when the claimant had returned from her third period of maternity leave, her team was undergoing a process of integration provide her colleagues with training on new duties whilst denying the claimant such training;
- 3.2.5 in April 2020 when the claimant asked for leave during a period where she was working from home and looking after three children, grant that leave only after a discussion with Sarah Thompson who had instead suggested that the claimant take sick leave;
- 3.2.6 in January 2021 Sarah Thompson discriminated against the claimant by complaining about her work;
- 3.2.7 on 2 December 2021 send the claimant the outcome of her grievance appeal which was rejected?
- 3.3 By doing so, did it subject the claimant to detriment?
- 3.4 If so, was it because the claimant did a protected act?
- 3.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

4. **Remedy for discrimination or victimisation**

- 4.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
- 4.2 What financial losses has the discrimination caused the claimant?
- 4.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
- 4.4 If not, for what period of loss should the claimant be compensated?

- 4.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
 - 4.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
 - 4.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
 - 4.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 4.9 Did the respondent or the claimant unreasonably fail to comply with it?
 - 4.10 If so is it just and equitable to increase or decrease any award payable to the claimant?
 - 4.11 By what proportion, up to 25%?
 - 4.12 Should interest be awarded? How much?
5. **Part-time workers, less favourable treatment (Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000)**
- 5.1 Did the respondent failed to train the claimant to the same degree that it trained its full-time workers?
 - 5.2 If so, was that less favourable treatment:
 - 5.2.1 as regards the terms of her employment, or
 - 5.2.2 by subjecting her to a detriment?
 - 5.3 If so, was that on the ground that the claimant worked part time?
 - 5.4 If so, was the treatment justified?

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