



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms N Ross

**Respondent:** London Fire Commissioner

**Heard at:** London Central

**On:** 18<sup>th</sup> February 2025

**Before:** Employment Judge MJ Reed

## Representation

Claimant: Mr Alan Roberts, Counsel

Respondent: Mr Andrew Carter, Counsel

# JUDGMENT

The application to strike out the claim is refused. The Tribunal will consider at the final hearing whether the claim was presented within the statutory time limit.

# REASONS

## Background

1. The background to this case is the claimant's allegations of serious sexual harassment, sexual orientation harassment, direct sex discrimination, victimisation, protected disclosure detriment and unfair dismissal against the London Fire and Rescue Service.
2. These allegations cover a long period of time, with some allegations relating to events that occurred in 2009 and 2010.
3. Within the list of issues agreed by the parties the allegations fall into two groups. A small number of very serious allegations occurring in 2009 and 2010 and then further allegations in the period between 2020 and the claimant's resignation on 7<sup>th</sup> June 2024.

## Application to strike out

4. The gap between the two sets of allegations has led to the respondent's application to strike out the allegations relating to the 2009 to 2010 period. The essential point can be put shortly: that these allegations are self-evidently long outside the Employment Tribunal's three-month statutory deadline to bring claims of this nature, see section 123 Equality Act 2010. The respondent argues that, since there are no allegations pleaded between 2011 and 2019, there can be no question of any conduct extending over a period. All of this, the respondent suggests, mean that the claimant has no reasonable prospect of either establishing that the claim is brought in time or persuading the Tribunal to extend time. Therefore, it argues, it should be struck out.
5. The claimant's response to the application can also be put shortly. She says that she suffered significant further discrimination between 2010 and 2020 and that this amounted to a conduct by the respondent extending over a period, meaning that time did not start to run until her resignation and that her claims are therefore in time. Many of these factual allegations were set out in her first claim. The claimant argues that although these allegations were later withdrawn (at least in the sense that she no longer seeks a remedy in respect of them) she should still be able to rely on them for the purposes of establishing a continuing act.

## Relevant law

### *Time limits*

6. The strike out application concerns claims brought under the Equality Act 2010. It deals with time limits at section 123 as follows:

#### **123 Time Limits**

- (1) Subject to section 140B, proceedings on a complaint under 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) [This subsection relates to claims brought by serving members of the armed forces and is not relevant to this case.]
- (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.

7. S123 therefore establishes a statutory time limit of three months, starting from the act complained of. If, however, there is conduct extending over a period, that three month time limit in relation to that conduct will only begin when that conduct ends. Conduct extending over a period is often referred to as a 'continuing act'
8. Guidance on the correct approach to determining whether there has been conduct extending over a period has been provided by the Court of Appeal in *Hendricks v Metropolitan Police Commission* [2003] IRLR 96. This established that a conduct extending over a period requires that there a) be a series of incidents that are linked to each other and b) that these incidents reflect an 'ongoing situation or a continuing state of affairs'. This will often arise from the application of a discriminatory policy, rule or practice, but that is not required. Conduct extending over a period is to be contrasted with a succession of unconnected or isolated specific acts.
9. I accept the respondent's submission that the sole fact of continued employment is not enough to lead to an ongoing situation or continuing state of affairs for this purpose.
10. Further guidance can also be drawn from the Employment Appeal Tribunal in *E v X and others; L v X and others* UAEAT/0079/20 & UAEAT/0080/20. There Mrs Justice Ellenbogen distilled a number of key principles at paragraph 50.

### *Strike out*

11. Strike out is dealt with at rule 38 of The Employment Tribunal Procedure Rules 2024:

### **38 Striking Out**

(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds—

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim, response or reply (or the part to be struck out).

(2) A claim, response or reply may not be struck out unless the party advancing it has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

(3) Where a response is struck out, the effect is as if no response had been presented, as set out in rule 22 (effect of non-presentation or rejection of response, or case not contested).

(4) Where a reply is struck out, the effect is as if no reply had been presented, as set out in rule 22, as modified by rule 26(2) (replying to an employer's contract claim).

12. In considering an application to strike out on the grounds that a claim has no reasonable prospect of success it is important to bear in mind the difficulties of assessing the strength of contested claim on a preliminary basis. This point has been made on a number of occasions in the Employment Appeal Tribunal (see, in particular, *Ezsias v North Glamorgan NHS Trust* [2007] IRLR 603). Where there is a crucial core of disputed facts that will need to be resolved it will only be in exceptional cases that it is appropriate to conclude that a party has no reasonable prospect of succeeding. In general, when assessing strike out the case of the party against whom the application is made should be taken at its highest. This does not mean, however, that there is any absolute prohibition against strike out, whether in relation to discrimination claims or otherwise.

#### *Concessions and withdrawal*

13. A claim, or part of a claim to the Employment Tribunal may be withdrawn by a claimant. Such a withdrawal must, however, be 'clear, unequivocal and unambiguous', see *Segor v Goodrich Actuation Systems Ltd* UKEAT/0145/11.

#### *The current position of the case*

14. Before considering the application to strike out further, it is important to deal the nature of the case before the Tribunal and, in particular, whether allegations against the respondent in the period 2010 to 2020 form any relevant part of the claim.
15. This was a matter of significant dispute at the hearing. The respondent's position, as set out above, is that there were no live allegations in respect of that period. The claimant disagreed. It is therefore necessary to consider the history of the claim
16. The first claim was brought by the claimant on 18<sup>th</sup> February 2024, p6. Particulars of claim were attached to the ET1, p18-61.
17. The first claim made claims of direct discrimination on grounds of sex, harassment related to sex, harassment related to sexual orientation, victimization and protected disclosure detriment.
18. The narrative of the claim began in February 2007 when the claimant began training at the Southwark Training Centre. She alleged she had been provided with an unsuitable uniform and her requests to alter it had been denied. She said that inappropriate and harassing comments were made by one of the instructors regarding the ill fit of the uniform. The claimant said that she complained about these matters.

19. In June 2007 the claimant was posted to Croydon Fire Service as a firefighter. She alleged that she suffered verbal harassment, including being told that she was 'lucky you are here, we didn't want a woman' and being advised not to join Women in the Fire Service or the Fire Brigade Union Women's Action Committee because they were known as 'man-haters'.
20. The most serious allegations made by the claimant in this claim relate to incidents in 2009 and 2010.
21. The claimant alleged that in 2009 she experienced harassment from a colleague, who made suggestive comments towards her and, when she did not return this interest, there was further harassment. This culminated in an alleged incident in which the claimant alleges this colleague attempted to kiss and touch her inappropriately; having to be physically rebuffed.
22. The claimant also alleged that in 2010 the same colleague was caught filming another female firefighter in the shower using his mobile phone. The claimant believes she was also filmed, as did other female colleagues. The incident was reported. The man involved was suspended and subject to an investigation. As a result, the claimant alleges, she was seen as a troublemaker and ostracized. A few weeks later a 'CCTV in operation' poster was displayed in the women's wash facilities.
23. It is not useful for present purposes to set out in full the allegations made in the claim form. It is sufficient to note that the claimant raised further allegations in the period from 2010 to February 2024 when the claim was presented. In particular she alleged that:
  - a. In 2010 another colleague made unwelcome sexual advances towards her, including pressuring her to kiss him on the cheek. He went on to send her texts and emails asking her to go out to drinks and get in touch.
  - b. That from 2010 until June 2017 (when she moved to Battersea Fire Station) male colleagues made regular references to rape and to having rape kits in their cars.
  - c. That colleagues made crude and derogatory comments regarding the sexual relationship between the claimant and her boyfriend.
  - d. That, when the claimant was a Fire Rescue Instructor between April 2011 and April 2012 it was suggested that she had been given the role in exchange for sexual favours; her expertise was dismissed and that nothing was done to protect her from this.
  - e. Similar comments and behaviour occurred when she was working as a USAR Trainer between April 2014 and April 2015.
  - f. The claimant was regularly questioned about a female colleague's sexual orientation and it was repeatedly suggested they were in a relationship.
  - g. That the claimant's authority and expertise was frequently undermined and she was not supported in managing members of her watch.
24. In late 2020 / early 2021 the claimant successfully applied to move into Fire Investigation. She began work in this role on 14<sup>th</sup> June 2021. She encountered an issue with the female accommodation at Dowgate Fire Station where Fire Investigation was based. She alleges that the accommodation was used to

store equipment and mattresses, which made it unsuitable for use as accommodation. Further, men frequently used the female bathroom and on one occasion in August 2021 the claimant found a male firefighter sleeping in the female accommodation. The claimant alleged that she raised these issues, but was belittled and rebuffed.

25. The claimant also alleged that she continued to suffer incidents of harassment.
26. Ultimately these matters culminated in the claimant resigning on 7<sup>th</sup> June 2024.
27. There was a case management hearing on 28<sup>th</sup> May 2024, p194-197. At that stage, however, it was apparent that the claimant was likely to resign and to bring a further claim. As a result there was limited progress with case management and a list of issues was not produced.
28. The second claim was brought by the claimant on 13<sup>th</sup> September 2024, p91. Again, particulars of claim were attached to the ET1, p105-161.
29. The approach taken in the the second set of particulars of claim was set out in their first paragraph, p105. This explained that the claimant intended to adopt 'a single consolidated set of particulars'.
30. The particulars also noted that 'Further, the Claimant proposes to withdraw aspects of her First Claim which are less significant than others. The Claimant will address this in a separate document.'
31. This position was also set out in an email from the claimant's solicitor to the respondent and the Employment Tribunal. The key paragraph read as follows:

With regard to the firm claim, save for paragraph 36 which is a new allegation, up to the date of submission of the first claim the remainder of the matters contained in the firm claim are clarifying changes. Post the submission of the first claim, the remainder of the contents constitutes additional claims bringing up to present day. The Claimant requests that this is accepted as a consolidated claim. Any matter not referenced in the attached is withdrawn. The attached reflects before the Claimant's first and second claim. Should the Employment Tribunal require paragraphs of withdrawals in relation to the first claim, we are able to provide this. Moving forward, it is proposed that this document is relied upon as a consolidated claim.
32. The claimant then applied to amend the particulars of claim on 19<sup>th</sup> September 2024. The amended particulars of claim have been produced, p276-311.
33. There was a second case management hearing on the 21<sup>st</sup> November 2024. The claimant's application to amend her particulars of claim was granted (save in respect of paragraphs 38-39). A draft list of issues had been produced by both parties and was adopted by the Tribunal, p210 & p213-221
34. It is clear from the documents and the list of issues that the claimant intended to narrow the scope of her claim. The list of issues sets out four allegations prior to 2020:

- a. Harassment by colleague in Autumn 2009 involving attempts to sexually touch the claimant
  - b. Recording the claimant and other women in the showers.
  - c. The respondent failing to deal with these matters by reporting to the police, taking disciplinary action or keeping records.
  - d. The incident involving 'CCTV in operation poster'
35. These allegations are put as harassment (issues 1.1 to 1.4) and direct discrimination (issue 6.1 & 6.2). The claimant's objection to the poster incident are also relied upon as a protected act for the purposes of the victimisation claim.
36. Chronologically the next allegation contained in the list of issues relates to February / March 2020.
37. Mr Carter, on behalf of the respondent argues that these documents and the case management hearing amount to a withdrawal of those parts of the claim not included in the consolidated pleadings.
38. Mr Roberts, on behalf of the claimant, argues that the claimant sought to focus on the most important of her allegations, but suggests that there has not been a withdrawal of the factual matters set out in the first claim. He argues that the claimant is entitled to rely on these for the purposes of establishing that there has been conduct extended over a period.
39. In these circumstances, I have concluded that the claimant's withdrawal of the allegations in her first claim was not sufficiently 'clear, unequivocal and unambiguous' to amount to an indication that she was not relying on these factual matters to establish that there had been conduct extending over a period. It seems to me that there is a real difference between withdrawing an allegation in the sense that it is no longer pursued as something for which a remedy is sought from the Tribunal and withdrawal in the sense that a claimant is formally indicating that they do not rely on a factual allegation for the purposes of suggesting there has been conduct extending over a period.
40. In this claim, while it was clear that the claimant was not seeking to pursue certain claims in that first sense, it was not clear that she intended to concede that these were not matters indicating that there was not conduct extending over a period.
41. There is considerable force in the point made by Mr Roberts that, in a case of this nature, with a long history of allegations of varying seriousness, it is desirable for parties to focus on the most significant allegations and those that are likely to make a real difference to the final outcome between the parties. Parties are often, and rightly, encouraged to take a pragmatic and proportionate approach to litigation. Where efforts are made in this direction, I think it right for the Tribunal to be cautious before concluding that a concession has been made that might have gone beyond what the party actually intended. As then President Langstaff noted in *Segor* the Tribunal must take the greatest of care to ensure that a party that seeks to abandon a central and important point that the understands the significance of what is being said and that there is clarity about what is conceded. It seems to me that this applies as much to the question of a concession that allegations will not be relied upon to establish a

continuing act as it does to the withdrawal of a claim in the more common sense.

*Conclusion on strike out*

42. The above decision as to the extent of the claimant's withdrawal is, in my view, central to the outcome of strike out application. Since I have concluded that the claimant can rely on the factual allegations relating to the period between 2010 and 2020 for the purposes of arguing that there was conduct extending over a period, the temporal gap in the allegations relied upon by the respondent no longer exists.
43. At this stage I do not find that any part of the claim has no reasonable prospects of success. The truth of the factual allegations relied upon by the claimant and whether there was conduct extending over a period in such a way that her claims were brought in time will be a matter for the Tribunal to determine at the merits. These are precisely the sort of issues that are not suitable for a preliminary assessment in the context of a strike out decision. There remain substantial and important disputes of fact. Consideration of whether there has been a conduct extending over a period will require substantial fact finding. Further, if some claims are found to have been brought out of time, there will need to be consideration of whether it is just and equitable to extend time. That analysis will also require extensive fact finding.
44. Although Mr Carter argued that it would be appropriate to draw an inference against the claimant on the basis that the withdrawal of the allegations indicated that she accepted that she would not be able to prove the allegations that had been withdrawn, I do not accept that this would be appropriate in this case. There may be many reasons why a claimant might withdraw some elements of their claim. These include that they recognise the allegations originally made are untrue or that they recognise they do not have the evidence needed to prove them. But they also include many other possibilities, including as Mr Roberts suggested, a pragmatic desire to limit the scope of a substantial claim in order to reduce the time and costs it will require to resolve. I am simply not in a position to determine which of many possibilities is the case in this case and so it would be inappropriate to draw any inference.

**Case management orders**

45. Following my decision appropriate case management orders were discussed. Both counsel agreed that it was important that the factual points the claimant relied upon in support of her contention that there had been conduct extending over a period were clearly identified, so that the respondent understands the case they have to meet.
46. By the **18<sup>th</sup> March 2025** the claimant must produce a document setting out the factual allegations relied upon in this regard.
47. By the **15<sup>th</sup> April 2025** the respondent must reply to this document, setting out a) any request for further information to clarify the allegations and b) identifying any point it will take that the claimant seeks to rely on matters outside those identified in either claim.



48. By the **15<sup>th</sup> April 2025** the claimant must identify any further request she has for further information relating to these matters.
49. By the **29<sup>th</sup> April 2025** both parties should seek to respond to any request for further information.
50. On the **6<sup>th</sup> May 2025** there will be a further case management discussion. At that hearing the Tribunal and parties will consider whether any further case management orders are appropriate and seek to finalise the list of issues. The parties should cooperate with the aim of presenting the Tribunal with an agreed draft list of issues.

---

Employment Judge Reed

---

Date: 10<sup>th</sup> March 2025

SENT TO THE PARTIES ON

8 May 2025

.....  
FOR EMPLOYMENT TRIBUNALS