Case Number: 3325693/2017

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr A Tayel	**v**	(1) Ipswich Hospital NHS Trust (2) Colchester Hospital University NHS Foundation Trust (3) West Suffolk NHS Foundation Trust (4) Cambridge University Hospitals NHS Foundation Trust

Heard at: Bury St Edmunds **On**: 27 – 28 November 2018

Before: Employment Judge Laidler

Appearances
For the Claimant: In person
For the Respondents (1) – (4): Ms R Tuck, Counsel

RESERVED JUDGMENT

1. **Allegation which are already subject to settlement -** Issues 1(a), 8(l), 13(s) & 18(z) in Appendix 1 – paragraphs 6-7, 28, 39 & 47 of the particulars of claim – these all matters that pre-date the settlement of February 2012 and cannot be relitigated. It is an abuse of process to pursue them again in these proceedings and they are struck out.

2. **Events between 2012 – 2013 -** issues a, b, c, d - e, g, l, m, s, and z - there was no continuing act, the claims are brought some years out of time and no credible evidence has been provided by the claimant as to why and why it would be just and equitable to allow these claims to proceed which are struck out

3. **Claims in 2017 – out of time - Issues 6(i), 7(j), 10(n) & 14(t), paragraphs 23-25, 26-27, 30 and 40 of the particulars of claim -** there was no continuing act, the claims are brought out of time and no credible evidence has been provided by the claimant as to why and why it would be just and equitable to allow these claims to proceed which are struck out.

4. Claims in time – issues 11(o), 12(p), 15(u), 16(v) & 17(w) – these claims have no reasonable prospect and are dismissed. Had they not been dismissed the tribunal would have found they had little reasonable prospect and would have ordered a deposit of £500 in respect of each allegation as a condition of the claimant continuing to pursue them.

REASONS

1. This preliminary hearing was listed to determine the application of the 1st to 4th Respondents that the claims be struck out. The respondents' application was first raised at the preliminary hearing before Employment Judge Michell on 21 February 2018 and an order made that further clarity be given in relation to it. This was done in a document served by the respondents dated 26 March 2018, (in the bundle at page 97).

2. At this hearing the tribunal had a bundle of documents of 273 pages and heard evidence from:

   2.1 Michael Wallis
   2.2 Sarah Stalley
   2.3 Jackie Powell

   For the respondents and from the claimant.

3. To understand the issues in this application, it is necessary to set out the claims as clarified by Employment Judge Michell at the preliminary hearing on the 21 February 2018 at paragraphs 2 and 4 (viii) of his summary, (a) – (ff).

Claims and issues identified at the preliminary hearing

> '(2) The claimant is of Egyptian ethnicity. By a claim received by the tribunal on 5 September 2017, as particularised in his Particulars of claim dated 1 August 2017 ("POC"), the claimant asserts that he has been victimised by each of the respondents within the meaning of s27 of the Equality Act 2010 ("EQA"), following the bringing of proceedings in 2010 and 2011 in which he alleged race discrimination against R1. Those proceedings ("the Ipswich claims") were settled under cover of a settlement agreement between the claimant and R1 in 2012. However, the claimant's case is that he has been victimised as a result of having brought the Ipswich Claims in the first place…
>
> (4) …
>
> (viii) Using the paragraph numbers from the POC:
>
> a. Paragraphs 6 and 7: this is an allegation of victimisation by (just) R1;
>
> b. Paragraph 8: indicates the material that should have been disclosed;
>
> c. Paragraph 10: this is an allegation of victimisation by (just) R1. Though the acts relied on pre-date the 2012 settlement agreement, the claimant will seek to argue

that the agreement is void by reason of deception. (In the course of our discussions, I pointed out to the claimant that he may well in due course be found to have little or no prospect of successfully running such an argument before the employment tribunal. I also queried his contention that his entering into the settlement agreement was of itself an actionable act of detriment);

d. Paragraph 11: this is an allegation of victimisation by (just) R1. (As explained above, no allegation is made of detrimental treatment under ERA. The case solely concerns alleged breach of obligations under EQA);

e. Paragraph 12: explains detriment said to be caused as a result of that victimisation;

f. The words between paragraphs 12 and 13 (ie 'collusion… institution') should be deleted;

g. Paragraph 19: this is an allegation of victimisation against (just) R1 for failing to investigate the claimant's complaints about third party access to the emails referenced at paragraphs 13 – 18;

h. Paragraphs 20 – 22 can be deleted. The claimant does still wish to argue that in 2017 R1 failed to take action against Mrs Canham and Mrs Wiltshire, and that this constituted proscribed conduct for EQA purposes. In support of that argument – which is contained in his draft 12 November 2017 amendment – he will refer to the fact that he was disciplined for 2010 'Facebook issues'. but he does not advance what is in paragraphs 20 – 22 of the POC as a discrete complaint.

i. Paragraphs 23 – 25: this is an allegation of victimisation by (just) R1.

j. Paragraphs 26 and 27: this is an allegation of victimisation, against (just) R1 and R4. (R4's Grounds of Resistance accept that R4 was responsible for the recruitment exercise. I explained to the claimant the possible costs consequences of pursuing this allegation against R1, in the light of what is said on point in the various Grounds of Resistance);

k. The text between paragraphs 27 and 28 ('West… Victimisation') is background only;

l. Paragraph 28: the 'refusal' relied on as an act of victimisation is said to have been by R3 and evidenced in Essex University's academic registrar's note dated 31.08.11;

m. Paragraph 29: this is an allegation of victimisation by (just) R3;

n. Paragraph 30: this is an allegation of victimisation by (just) R3 and R4;

o. Paragraph 31: this is an allegation of victimisation by (just) R3. R3 did not 'refuse' the request; rather, it failed to respond to it; [this is accepted by the respondents as in time]

p. Paragraph 32: this is an allegation of victimisation by (just) R3. The 5.5.17 request was by email. R3 did not 'refuse' the request; rather, it failed to respond to it; [this is accepted by the respondents as in time]

q. Paragraph 33 relates to paragraph 28; paragraph 34 to paragraph 29; and paragraph 36 relates to paragraphs 33 – 35;

r. Paragraphs 37 and 38: ('Ipswich… confirms this') is background and context only;

s. Paragraph 39: this is an allegation of victimisation by (just) R2. The 'refusal' in question was between May and July 2011, (as noted in Essex University's 31.08.11 notes);

t. Paragraph 40: this is an allegation of victimisation by (just) R2 and R4. (R2 in its grounds of resistance asserts that Mrs Stalley did in fact invite the claimant to visit the laboratory. R2 was asked by me to send a copy / details of any such invite to the claimant for his consideration and Ms Tuck kindly said this would be done);

u. Paragraph 41: this is an allegation of victimisation by (just) R2 and R4. (R2's Grounds of Resistance state that R4 was responsible for the recruitment exercise. I explained to the claimant the possible costs consequences of pursuing this allegation against R2, in the light of what is said on point in R2's – but not, yet, R4's – Grounds of Resistance); [this is accepted by the respondents as in time]

v. Paragraph 42: this is an allegation of victimisation by (just) R2 and R4. Sarah Kelley did not 'refuse' the request; rather, she allegedly said in an email to the claimant and R4 that she could not herself assist and she referred the matter to R4, who allegedly did not respond; [this is accepted by the respondents as in time]

w. Paragraph 43: this is said to be an allegation of victimisation by (just) R2 and R5. The claimant's request is said to have been made by way of a 5.05.17 email, sent to both Mr Hitchcock and Jennifer Cannon. (Ms Hirsh asked me to record R5's contention that paragraph 43 does not contain any allegation against R5 and that any attempt to add R5 would require an amendment. I duly record that contention, which can be the subject of further debate at the 11 May PH if necessary); [this is accepted by the respondents as in time]

x. Paragraph 44 refers to paragraph 39; paragraph 45 to paragraph 41 and paragraph 46 to paragraph 40;

y. The text following the further two lines of paragraph 46 and until numbered paragraph 47 is background / context only;

z. Paragraph 37: this is an allegation of victimisation by (just) R4. Dr Dobbin of Essex University allegedly made the request on behalf of the claimant on 21.12.11 and (according to the claimant), it was refused by R4 on the same day;

aa. Paragraph 48 is background and context only;

bb. Paragraphs 49 – 53 amount to an allegation of victimisation by (just) R5. The protected acts relied on are the Ipswich Claims and the fact (according to the claimant) that the claimant orally told Mr Parker in May 2010 about some of the complaints which would be later contained in those claims;

cc. Paragraphs 54 – 56: these are allegations solely against R5. As regards the failure to obtain the job, this is said to be an allegation of victimisation by (just) R5;

dd. The comment by Mr Hitchcock that the claimant '*would not fit in'* is said to be an act of direct race discrimination – ie. *'a reference to my being Egyptian and not being able to fit in*'. The comment, the claimant confirmed, is taken from an answer to question 3 of a series of questions posed by the claimant when seeking feedback. It is set out in an email dated 15.02.17 @ 11.11 am from Mr Hitchcock to the claimant. (I observed that the relevant passage from the email did not, on its face, obviously 'read' as a race related comment, but the claimant said he was '100% sure" it was);

ee. The claimant will say that the various alleged acts of victimisation were 'continuing acts' for EQA purposes;

ff. As regards any 'just and equitable' time extension, the claimant said he would rely on the fact that he had been trying to settle matters, mainly with R1 and "*even in May 2017*", in an attempt to avoid having to issue proceedings and that he *"wanted to move on"* rather than litigate. He did not propose any other basis for a 'just and equitable' extension."

4. Ms Tuck for the respondents set out in tabular form (attached to written submissions for this hearing), the allegations, the dates of them and showing by yellow highlighting matters which it is accepted are in time. A copy of that table is attached to these reasons at Appendix 1. The letters used by way of reference to the allegations relate back to the Preliminary Hearing summary referred to above.

5. The claims are of victimisation. It is accepted by the respondents that the Ipswich Claims which were settled in 2012 constitute a 'protected act', but knowledge of those claims is variously denied or not admitted by the relevant decision makers.

6. These proceedings were commenced on 1 August 2017.

7. ACAS Early Conciliation was commenced on 20 March 2017 and the certificate issued on 20 April 2017. The respondent therefore submits that the date, being three months before the ET1 was presented and from which any acts are within time is 2 May 2017.

8. It is not in contention that the claimant undertook a placement at Ipswich Hospital during the academic year 2009 / 2010. Ipswich Hospital however in its response denied that an employment relationship was created asserting that the claimant benefitted from a bursary during the placement

and was not employed by it. After this placement he presented proceedings which included claims of discrimination to the Employment Tribunal which were settled on 22 February 2012.

9. From the issues identified by Employment Judge Michell and referring back to the particulars of claim drafted by the claimant, the following issues relate to matters which occurred prior to the settlement agreement of February 2012: -

8.1 Paragraph 6 of the ET1: that on 30 January 2012, the claimant applied to the Employment Tribunal for an application for specific disclosure of communications between Essex University and Ipswich Hospital;

8.2 Paragraph 7: on 6 February 2012, Ipswich Hospital stated that they have no further documents to disclose to the claimant. As set out above this is an allegation of victimisation by just Ipswich Hospital NHS Trust;

8.3 Paragraph 28: in 2011 West Suffolk Hospital refused to provide the claimant with a contract of employment, this was identified as an act of victimisation by West Suffolk Hospital and evidenced in Essex University's academic registrar's note dated 31 August 2011;

8.4 Paragraph 39: in 2011 Colchester Hospital refused to provide the claimant with a contract of employment, this is an allegation of victimisation by just Colchester Hospital. The refusal in question was between May and July 2011 (as noted in Essex University's 31 August 2011 notes;

8.5 Paragraph 47: in 2011, Cambridge Hospital refused to provide the claimant with a contract of employment. This was identified as an allegation of victimisation by just Cambridge University Hospitals. Dr Dobbin of Essex University allegedly made the request on behalf of the claimant on 21 December 2011 and according to the claimant it was refused by Cambridge University Hospital on the same day;

10. Without prejudice to the argument that these complaints are in any event out of time, the respondents state that any of the allegations that relate to events that took place before the previous settlement dated 22 February 2012 all relate to matters which were the subject of that settlement and cannot now be relitigated. Further, the claimant has no reasonable prospect of success of showing that either the employment tribunal has jurisdiction to consider a claim that a settlement agreement is void by reason of deception or in any event that the agreement was entered into on the basis of a deception, as clarified at (viii) (c) of Employment Judge Michell's summary. In so far as such an allegation could be litigated the respondents submit it is not within the tribunal's jurisdiction.

Events between 2012 and 2013

11. This covers paragraphs 8, 10, 19, 28 and 29 of the particulars of claim and also paragraph 23 – 25 which is an allegation of victimisation against Ipswich Hospital of failing in March 2017 to provide information about events in 2010 / 2012.

12. With regard to these matters and in relation to the three-month primary limitation period, the respondent argues that there is such a gap between 2013 and 2017 that they cannot in any way be said to be part of a course of conduct and it cannot be just and equitable to extend time. It is submitted these nine allegations are not within the jurisdiction and grossly out of time.

Allegations which date from 2017

13. **ET1 paragraph 26 - 27:** this was clarified at a preliminary hearing as an allegation of victimisation against only Ipswich and Cambridge Hospitals. The allegation is that in February 2017 the Pathology Partnership advertised for a position of 'Medical Laboratory Assistant' and on 28 February,

> "the Pathology Partnership refused the claimant to participate in a recruitment exercise because of the protected acts that the claimant made against his former employer Ipswich Hospital".

14. The findings of fact which follow are from the oral evidence heard and a consideration of the documents in the bundle as identified in the paragraphs that follow.

15. In its response, the fourth respondent Cambridge University Hospitals pleaded that in 2014 pathology services across the region were amalgamated into a partnership organisation named The Pathology Partnership. It included the first 4 respondents but with its own senior management structure and its own premises. Staff were employed by the 4th respondent following a transfer of staff by means of the Transfer of Undertakings (Protection of Employment) Regulations 2016 from relevant Trusts. Cambridge accepted that it was the employer for the role advertised, (and those in paragraph 30 and 40 of the particulars of claim). It denied that the protected acts were in any way related to the claimant being unsuccessful in his application. It pleaded that those short listed for interview for the post all scored higher than the claimant during the short-listing process in which all candidates were anonymised in any event.

16. Sarah Stalley gave evidence to this tribunal. She found this a very distressing experience and her representative requested a break in proceedings for her to prepare herself before giving evidence. After an appropriate break the hearing resumed. The claimant expressed some concerns that Mrs Stalley still appeared to be distressed and visibly

shaking. The judge asked Mrs Stalley directly if she was willing and able to proceed with her evidence and she was very clear that she 'wanted to get closure'. Having heard that response and as the respondent's solicitor and counsel were present and had the opportunity to talk to Mrs Stalley in the break and did not request a further break, the judge was satisfied that the cross examination of Mrs Stalley should continue which it did and she clearly answered the questions put to her by the claimant and the judge.

17. Mrs Stalley set out in her witness statement at paragraph 7 and the tribunal accepts that the short listers were herself and Marisa Ashton. Her recollection is that there were over 50 candidates for the role, that the short listing was anonymous, and they did not see personal details until after they had given the applicant a score. All they saw was the candidate number and previous work history. The tribunal accepts her evidence to this tribunal that she did not recognise the claimant from the short-listing information. Once the score was given it could not be changed. The final score given is an average of the score given by both short listers. It is only after they have given the scores that the applicant's personal details are revealed. Sarah Stalley and Marisa Ashton subsequently interviewed 18 of the shortlisted applicants.

18. The claimant was able to put questions in cross examination to Mrs Stalley at this hearing. He asked questions about whether she kept records of the non-short listing and she confirmed she did not print off any paper records. He then focused his questions on requesting feedback and who Mrs Stalley's line manager was. The Judge asked Mrs Stalley whether she believed she could have identified the claimant from the career information and she did not believe that she could.

19. Mrs Stalley's evidence was very clear and the tribunal accepts her explanation of the shortlisting and interview process

20. **ET1 paragraph 30**: that on 31 January 2017, the claimant was invited to an interview for the post of Medical Laboratory Assistant at West Suffolk Hospital chaired by Mr Michael Wallis. The claimant did not get the job and his request for feedback was allegedly denied. This was clarified as an allegation of victimisation by just the West Suffolk and Cambridge University Hospitals.

21. This tribunal heard from Mr Wallis who chaired the interview panel. He telephoned the claimant on the day of the interview to tell him that he had not been successful. The tribunal accepts that it had been his intention to give feedback. However, the claimant interrupted him before he could do so to ask that he reveal the score of the successful candidate and as Mr Wallis was not prepared to do that even though pressed by the claimant, the claimant then hung up on him. His attendance note of that conversation was seen in the bundle at page 231 and is dated 31 January 2017 at 18.10. The tribunal accepts that as a contemporaneous note he made.

22. **Paragraph 31 of the ET1**: that on 4 May 2017 the claimant re-requested feedback on the application. This was confirmed to be an allegation of victimisation by only the West Suffolk Hospital. It was further clarified that they did not refuse the request but failed to respond to it.

23. From the evidence heard at this hearing, the tribunal finds that the claimant emailed Sarah Stalley and Portia Pullen on 2 May 2017 about not being invited to interview after his February application and also not being successful in his 31 January 2017 interview, (page 250). On 4 May Mrs Stalley forwarded the communication to HR telling the claimant she was doing so. On 4 May the claimant asked Mrs Stalley and Mrs Houghton, Deputy Director of Workforce of the West Suffolk Hospital about three applications including one from 2012 and the two mentioned above, (although incorrectly referring to an interview on 31 January 2016).

24. On 4 May 2017, Mrs Houghton replied that when the claimant was interviewed in January for a post in Pathology at West Suffolk, the service was managed by Pathology Services supported by Cambridge University Hospital for recruitment processes. Any interview records would be held by those two organisations and that the West Suffolk Hospital held no information.

25. On 4 May 2017, the claimant replied that the 2012 and 2017 issues were not his only issues against the West Suffolk Hospital.

26. On 9 May 2017, Mrs Houghton replied repeating that the 2016 interview was not the responsibility of West Suffolk and that no records were retained from the 2012 exercise. If the claimant wished to discuss his claim for his alleged substantial losses he was invited to contact Sara Ames of Legal Services.

27. **Paragraph 32 of the particulars of claim**: that the claimant made a Subject Access Request on 5 May 2017 which was refused because of the protected acts he had made.

28. This was clarified to be an allegation of victimisation by just the West Suffolk Hospital and again that it was not that it had refused the request but that it had failed to respond to it.

29. From the evidence heard at this tribunal, it is clear that in the email of 5 May 2017 the claimant was referring back to the subject access request he had made on 21 February 2017 to Mr Wallis. He complained in the email that West Suffolk Hospital had 'failed to comply with its legal obligations'.

30. While Mr Wallis had been located at West Suffolk Hospital since 2015, he was employed by Cambridge University Hospitals until May 2017 when he transferred by way of TUPE transfer to Colchester.

31. West Suffolk Hospital has no record of receiving any request in or around 21 February 2017. On 20 February 2017 at 09:02 hrs (page 235), the claimant did make a request of others, namely Lauren Toure (Interim Head of Operations, Public Health England), Laura Ryall, Peter Hitchcock (Colchester University Hospital) and Portia Pullen. This was immediately acknowledged by Lauren Toure who stated that the request would need to be sent to a Public Health England email address.

32. **Paragraph 40 of the ET1**: that in April 2017, Colchester Hospital advertised the position of Medical Laboratory Assistant and the claimant applied for the position and contacted Mrs Stalley in order to request an informal visit to the laboratory on 21 April 2017 which he alleges was denied by Jackie Powell. This was clarified as an allegation of victimisation against Ipswich Hospital and Cambridge Hospital.

33. From the documents and evidence at this tribunal, the claimant emailed Sarah Stalley on 21 April 2017 @ 1356 hrs requesting a visit to the laboratory. She replied on 23 April 2017 @ 1407 hrs that she would let Jackie Powell the Site Manager at Colchester arrange the visit for him. Jackie Powell replied to Sarah Stalley and others on 23 April @ 1406 hrs that she was 'happy' to show the claimant around the lab. This was confirmed in her witness statement for this hearing. When Sarah Stalley replied to the claimant that Jackie Powell would arrange the visit for him it appears that was not copied into Jackie Powell and no further action was taken by her and neither was she contacted by the claimant. The tribunal accepts the evidence of Jackie Powell that she did not recall this until she was asked to provide her witness statement. She was happy to show people around and there was no reason why she would not. She believed it must have 'slipped her mind' as she was 'going through a horrible time' during that period. The tribunal accepts that until she received Sarah Stalley's email of the 23 April 2017 she did not know of the claimant or that he had brought claims for discrimination.

34. There were then email exchanges between Jackie Powell and the claimant in August 2017. The chronology is not that clear from the emails that tribunal had in the bundle at pages 266-268. What is clear however is that by email of 4 August 2017, Jackie Powell wrote to the claimant stating that she was based at Colchester where the vacant posts were and if he was interested in the Colchester post she was still happy to meet with him at 10:00 am on 10 August. She was meant to be on annual leave but came back in to do this visit. The claimant did not attend the appointment arranged in August. This was confirmed in an email from Jackie Powell of 18 August 2017 to Tanya Muncey at Colchester Hospital, (page 272).

35. **Paragraph 41 of the ET1**: that on 2 May 2017, the claimant was informed that his application was unsuccessful despite the fact he met the essential and desirable criteria and no interview was provided because of his protected act. This allegation was clarified as that of victimisation against Ipswich Hospital and Cambridge University Hospital.

36. Jackie Powell's evidence to this tribunal which the tribunal accepts was that she participated in the short-listing process with Carole Harvey. The short-listing process is anonymous. The Trust's TRAC system automatically anonymises names and personal details following receipt of the application through the NHS jobs website. All the short listers see is the applicant's education history and previous job experience and supporting information. She did not recognise the claimant from the short-listing details that she had. The claimant emailed Mrs Stalley about this on 2 May 2017 at page 250 as already referred to above.

37. **Paragraph 42 of the claim form**: on 4 May 2017, the claimant re-requested feedback on the application but Colchester Hospital refused to respond. This is an allegation of victimisation by Ipswich Hospital and Cambridge University Hospitals. It was clarified by Employment Judge Michell that Sarah Stalley did not *"refuse"* the request, rather she said in an email to the claimant and Cambridge University Hospitals that she could not herself assist and referred the matter to Cambridge. The claimant's email was at page 250. He asked why he had not been invited for interview and why he was not given the opportunity to compete in a recruitment exercise and when the decision not to invite him for interview was made. Sarah Stalley replied that she was forwarding the request to Portia Pullen in recruitment at Cambridge University Hospitals and copied to HR representative Tanya Muncey. She was sorry she was not able to help the claimant personally but, *"I have not been involved with the West Suffolk Hospital or Colchester recruitment activity"*.

38. The claimant emailed Sarah Stalley again and Liz Houghton asking for the names of the people who made the decision not to select him for interview at Ipswich Hospital in 2017, West Suffolk Hospital 2012 and Colchester Hospital 2017.

39. Liz Houghton replied on 4 May 2017,

> "When you were interviewed in January for a post in pathology at West Suffolk the service was managed by Pathology Services supported by Cambridge University Hospital for recruitment purposes. Therefore, any interview records will be held by these two organisations, not West Suffolk, therefore, you will need to approach them for this information."

40. **Paragraph 43 of the claim form**: on 5 May 2017, the claimant made a Subject Access Request to Colchester Hospital which was refused and has been refused to date. This was clarified as an allegation of victimisation by Colchester Hospital and Public Health England (although all claims against Public Health England were struck out by Employment Judge Finlay at the hearing on 4 July 2018).

41. The claimant's request was said to have been made by way of a 5 May email sent to both Mr Hitchcock and Jennifer Canham. It appears to be the email at page 263 of the bundle. It provided,

"On 20 February 2017, I made a request under the Data Protection Act. The request was sent to Mr Hitchcock. The request is attached.

Colchester Hospital failed to comply with its legal obligations.

Could you please look into this matter and provide me with my request?"

42. On 10 May 2017, Jennifer Canham thanked the claimant for his email and stated that although they had the same email addresses, Peter Hitchcock worked for Public Health England which is an organisation separate to Colchester Hospital. Any documentation he requested with regard to communication with Mr Hitchcock should be directed to Public Health England as she and her colleagues at Colchester were unable to assist with this.

43. As the claimant had not been employed by Colchester Hospital, there was, she advised, no employment record for her to provide to the claimant in response to the Subject Access Request. There was recent correspondence which she had received from ACAS and she had responded accordingly advising the person that the claimant had named was not an employee of Colchester and requested further information should this be appropriate. There had been no further correspondence from ACAS. If the claimant had applied to work at Colchester Hospital, she asked that he provide her with the role applied for.

44. By email of 10 May the claimant replied that the request had been sent to Peter Hitchcock and alleged he had an employment contract with Colchester Hospital and was also a sub-contractor.

45. On 25 May, Ms Canham replied that she had not failed to comply with his request and explained the arrangements as follows. Colchester Hospital did not have an employee by the name of Peter Hitchcock and as already stated, he was employed by Public Health England. She had asked if the claimant would provide information detailing a specific application which he had made but he had not provided that information so his request to Colchester Hospital was closed.

The claimant's oral evidence

46. The claimant was called to give evidence primarily with regard to the reasons why he says it is just and equitable to extend time. Of relevance to that issue was his knowledge of his various claims. He also gave evidence as to his means with regard to the related issue of whether or not a deposit should be ordered.

47. Counsel initially put to the claimant the nine allegations that pre-dated 2017 to established when he knew about these matters. It was confirmed that the compromise agreement between the claimant and Ipswich Hospital is dated 21 February 2012. The claimant accepted that clause 3.1 of that agreement was correct in so far as it identified the claims that were settled as follows:

'The terms of this agreement are offered by the Trust without any admission of liability and are in full and final settlement of case numbers 1503010/2010 and 1501473/2011 and all and any claims or rights of action that the Trainee has or may have against the Trust or any of its employees arising out of their placement with the Trust, or its termination, whether under common law, contract, statute or otherwise, whether such claims are, or could be, known to the parties or in their contemplation at the date of this agreement in any jurisdiction and including, but not limited to, the claims specified in Schedule 1 (each of which is intimated and waived) but excluding any claims by the Trainee to enforce this agreement, any personal injury claims which have not arisen as at the date of this agreement or any claims in relation to accrued pension entitlements'

48. The Agreement also contained at 3.2 confirmation that the claimant had received independent legal advice on the terms and effect of the agreement and that before receiving it he had:

'(d)… disclosed to the Adviser all facts or circumstances that may give rise to a claim against the Trust or its officers or employees and that he is not aware of any other facts or circumstances that may give rise to any claim against the Trust or its officers or employees other than those claims specified in clause 3.1'

49. The claimant was taken to the ET1 of 1 August 2017 and paragraph 8 where the claimant made reference to an email from Dr Dobbin to Mr Keeble of 22 January 2012. He believed he had received this late 2012 or the beginning of 2013, not as a result of a Subject Access Request, but as part of litigation in the County Court between the claimant and the University of Essex. He quotes part of the email in that paragraph of the ET1 as follows,

"I enquired as to whether any of our partner hospitals were prepared to accommodate him and none of them have been able to give positive response. I am therefore emailing you to ask whether the offer of extra time at Ipswich still stands in light of time passed and the current reorganisation of pathology services. Kirstie Sceats of the Academic Section will then include this information in an imminent letter to Ahmed".

The claimant gave evidence, which the tribunal accepts, that this email forms the basis of his allegation of fraud and misrepresentation to enter into the settlement agreement which he classes in these proceedings as victimisation.

50. Paragraph 10 of the ET1: 'Malice'. The claimant confirmed this also related to the same email which he had known about since 2013.

51. Issue 1, paragraphs 6 and 7 of the ET1: this also related to the allegation of a criminal fraudulent settlement and deception. These allegations referred to February 2012 and the claimant confirmed and the tribunal accepts he had known about these before he entered into the settlement agreement.

52. Issue 4, paragraph 11: referred to 'dishonesty' by Ipswich Hospital when it replied to the claimant he believed in response to a 31 July 2012 Subject Access Request that all available documents had previously been

released to the claimant's solicitors as part of previous claims against the trust.

53. Issue 5, paragraph 19: this was an alleged failure to investigate various complaints made by the claimant in December 2013 which the claimant accepted he knew the facts of by December 2013.

54. There are then three complaints about not being given a contract.

54.1 Issue 8, paragraph 28 of the ET1 is in 2011 and the claimant accepted it had been made clear to him at that time that he was not to be awarded a contract.

54.2 Issue 13, paragraph 39 was a claim against Colchester Hospital refusing to provide the claimant with a contract in 2011 which date the claimant confirmed was correct, and

54.3 paragraph 47 was another refusal in 2011 by Cambridge Hospital and again the claimant confirmed the date was correct.

55. Issue 9 - paragraph 29: interview in December 2012. The claimant accepted and the tribunal is satisfied that he knew that he had not been short listed in December 2012. The claimant relies on the email of 22 January 2012 (paragraph 48 above) which was disclosed to him in June / July 2013.

56. Issue 6, ET1 paragraph 23 – 25: the complaint to Ipswich Hospital of 20 March 2017. The claimant's evidence was that this was him asking that they investigate matters from 2011 – 2012 as they had refused to investigate despite saying they would get back to him.

57. Issue 10, paragraph 30: this was the unsuccessful interview of 31 January 2017. The claimant accepted Mr Wallis told him on that day that he had not been successful.

58. Paragraphs 26 – 27, the February 2017 short listing: the claimant accepted he found out on 17 February 2017 that he had not been short listed.

59. Issue 14, paragraph 40: this relates to the informal visit to the laboratory in an April 2017 advert.

60. The tribunal is satisfied from hearing the claimant's evidence that he knew that there was a three month time limit within which to bring claims to the employment tribunal. He confirmed that he had been in litigation with the University of Essex in the County Court and that there was other litigation in the Employment Tribunal against an Academy. He accepted and it is clear that he has knowledge of issuing proceedings. He believed he had successfully issued another claim in 2012, he filled in the ET1 forms and submitted them on his own behalf.

The claimant's means

61. The claimant is now employed in security and intelligence in the Prison Service. He earns approximately £20,000 per annum. He is married and his wife works as a teacher.

62. The house is in Mr Tayel's wife's name as is the mortgage which she has always paid.

63. The claimant spends approximately £200 month on petrol. He did not know how much was spent on food, it could be £600 - £800 per month. They have two children aged 9 and 13. His wife pays for everything and they have never had a joint account. He has never had knowledge of what his wife earns. The only bill in the claimant's name is BT for £23 a month line rental.

64. The claimant does have a car, but it was purchased by his wife.

65. The claimant's monthly income varies between £1,400 and £1,700 net. He gives his wife some money for childcare and after school clubs and breakfast clubs of approximately £200 per month. By the 15th or 20th of the month he has only £20 left and then starts to borrow money until he gets paid.

66. The claimant started working for the Prison Service on 14 August 2017. He has no savings or other assets.

67. The claimant accepted he had received compensation from the University of Essex but could not remember how much. He had £23,000 in legal fees that had been covered by a loan and had to pay that back. It then appeared that the compensation may have been £5,000 plus legal fees.

68. The claimant confirmed he had been successful in a claim against an Academy and recovered approximately £2,000. He believed he had recovered approximately £3,000 in another claim in 2012.

69. The claimant confirmed that it was a 100% correct that he had delayed issuing these proceedings as he was trying to settle his dispute with the respondents. He made reference to an email to Ipswich Hospital on 19 April 2016 at 06:56 hrs in which he had requested a placement**.** This was not in the bundle but handed up separately. In this email the claimant set out how he had graduated at the University of Essex in 2011 with a biomedical science degree. He had searched for training opportunities to qualify as a 'fully fledged biomedical scientist' without success. He continued:

'I was not aware of the foreseeable difficulties of finding placement following graduation.

I therefore respectfully request that if you could be in a position to provide me with a placement in order to complete the registration portfolio and assist me in order to obtain a job and be able to provide for my young family.

We had a legal dispute which was settled in February 2012. I have no intention whatsoever of initiating another legal dispute in relation to settlement. I simply wish to move on.

I am requesting an unpaid placement in order to be able pursue a career as a biomedical scientist

I am more than happy to payback what you have paid me by way of compensation in due course…'

70. The claimant asserts that there was a misleading response by Ipswich Hospital to that email that they do not provide the Pathology Service since it was transferred to the Transforming Pathology Partnership in 2014 (email of 19 April @7.54).

71. The claimant's emphasised that he had offered to pay the compensation he received from Ipswich Hospital of £30,000 and in return they were to give him a placement, so he could get his registration. That was from a settlement in 2012. When asked where the £30,000 now was, the claimant said it had gone, he had borrowed money for legal representation and spent £13,000 - £15,000 in legal fees. He was offering to pay it back even though he did not have it. He did not have any money whatsoever, but he was more than happy to sign any agreement with them to repay the £30,000 to settle this claim and get his registration. The tribunal cannot accept that these emails demonstrate that the claimant was attempting to settle proceedings. He was requesting a placement. In fact in the email of 19 April 2016 he said he had no intention of issuing proceedings not that he was trying to settle any claim he believed he might have.

72. The claimant also referred to an email sent by him on 31 May 2017 before issuing these proceedings. That was not in the bundle but handed up. It is headed 'racial discrimination – victimisation – detriment'. It made allegations of 'an unlawful sanction' imposed on the claimant by Ipswich Hospital in 2010 and that the claimant had made complaints in 2013 and 2017 to the hospital. He concluded that they had 'destroyed my career' and 'I am exploring all options in order to settle this dispute with you without resorting to Court'. He alleged he had suffered more than £100,000 in losses and under a heading 'Resolution' asked if they were willing 'to provide me with a fully paid placement in order to allow me to sign off the portfolio register with HCPC and pursue a career as a Biomedical Scientist?' The claimant explained to this tribunal he was not seeking the £100,000 just the placement so he could 'move on'. It was the seeking of that placement not an attempt to settle litigation.

73. The basis on which the claimant sought a just and equitable extension was as the claimant explained to Judge Michell that he would rely on the fact

that he had been trying to settle matters mainly with Ipswich Hospital and even in May 2017 in an attempt to avoid having to issue proceedings and that he wanted to *"move on"* rather than litigate. It is expressly recorded he did not propose any other basis for a just and equitable extension.

The respondent's oral submissions

74. Counsel had submitted detailed written submissions which were added to orally as set out below.

75. The 18 allegations listed in the table were categorised as follows (the letters referring to the identification of the issues by E J Michell as set out above at paragraph 3):

75.1 the 5 that are within the primary limitation period have been highlighted in yellow (issues o, p, u, v and w);

75.2 there are 13 out of time, 9 of which relate to matters said to have occurred in 2011 – 2013 (issues a, b, c, d - e, g, l, j, l, m, n, s, t and z.) Four of these, (a, l, s and z) relate to events before the February 2012 settlement agreement.

75.3 This tribunal has no jurisdiction to consider allegations of misrepresentation or fraud, leading to entry into that settlement agreement. If it can be litigated at all it is not within the tribunal's jurisdiction and in any event, it is grossly out of time;

75.4 Issues b, c, d-e, g and m, relate to matters in 2012 and 2013. In the context of the three-month primary limitation period and the gap between 2013 and 2017, it was submitted there can be no argument that these matters were part of a continuing course of conduct and it cannot be just and equitable to extend time. It was submitted that these 9 allegations are not within the jurisdiction and are grossly out of time.

75.5 There are 4 further allegations from 2017 that are out of time but which it is submitted fall into a different category as they are not grossly out of time;

75.6 Item i, the communication on 20 March 2017 with regard to not having answers to a Subject Access Request made in July 2012 with regard to events in 2011, it was submitted was an historic matter and it cannot be brought into time by repeating a request that had originally been made five years earlier.

Submissions with regard to the other three that are out of time

76. Issue j, the February short listing by Mrs Stalley. The tribunal is asked to accept the fact that short listing is carried out by using the TRAC system with the details of candidates anonymous. It has little or no reasonable prospect of success. The primary submission however, is that this claim is out of time. The claimant submitted his ET1 on 1 August 2017. The

email is at page 233 indicating he was told on 17 February 2017 that he was not to be short listed.

77. Issue n - In January 2017, the post was advertised, and the claimant was interviewed. The tribunal is asked to take note of the fact that the claimant knew on 31 January 2017 that he had been unsuccessful. This allegation is out of time, it was a distinct recruitment process. The claimant had knowledge of all the facts to bring the claim. He could have done so in February, March or April but did not start ACAS Early Conciliation until 20 March until 20 April. He could have brought the claim by 20 May but did not do so until 1 August. It is out of time and should be dismissed for that reason.

78. It is not just and equitable to extend time when the claimant is an experienced litigant against these and other respondents. He is very well aware of time limits and how to bring claims to the Employment Tribunal. He provides no good reason for the delay. There is a real risk in this case that the cogency of the evidence will be affected and in particular the respondent lacks the interview notes and detailed scores. The respondents have not contributed to any delay.

79. Issue t is out of time by a short period. This is the allegation that Ms Powell refused the claimant's request for a laboratory visit. Her response of 23 April shows she was happy to show the claimant around. In August she responded making arrangements. It is not disputed she was on annual leave and was coming in to show the claimant around. Whilst it is out of time by a matter of a few days, it is a very weak claim and that can be taken into account as any prejudice to the claimant by not allowing it to proceed is limited.

The claims that are in time – no or little reasonable prospects.

80. Some of these post-date the ACAS Early Conciliation certificate. The respondents submit that they all relate to the provision of information and feedback from historic interviews and are different matters to the preceding matters with regard to not being short listed and not getting the job.

81. Referring to paragraph 19 of the written submissions, Counsel applied either for strike out or a deposit on the basis that they have no or little reasonable prospects of success.

82. These allegations are all from May when the claimant wrote asking for feedback as to why he had not got the job on 31 January.

83. Issue o: is against the West Suffolk Hospital. The claimant has been told on numerous times that this post was based at West Suffolk Hospital but was a post responsible to the Cambridge University Hospitals. Having been given that warning and told that at the preliminary hearing, the claimant persists against West Suffolk. This is misconceived and should

be struck out. The claim is not brought against a relevant employer and is misconceived.

84. Issue p: again, is just against the third respondent, West Suffolk Hospital. It relates to the Subject Access Request. It is submitted there are no reasonable prospects. There is nothing whatsoever indicating a link and between the failure to respond to the Subject Access Request that was not sent to the right person with any protected act.

85. Issue u: short listing process by Miss Powell in April 2017, the claimant was informed on 2 May that he was unsuccessful. There was anonymous short listing and Miss Powell was not challenged on that part of her statement at paragraph 7. This claim has no reasonable prospects.

86. Issue v: is pursued only against Ipswich Hospital. The claimant was told that it was not being advertised by Ipswich Hospital and they did not have the information he was seeking. The factual background is set out at paragraph 15 of the written submissions.

87. Issue w: 5 May Subject Access Request is misconceived. Mr Hitchcock is the employee of Public Health England. There was correspondence about the Subject Access Request. The mere fact of resending that and the claimant getting a reply does not set out a fresh claim of victimisation within the jurisdiction of this tribunal.

The claimant's oral submissions

ACAS Early Conciliation

88. The claimant asked that the tribunal consider recent authorities which he stated supported his view that the tribunal could deal with matters before and after he had gone to ACAS to invoke Early Conciliation. He referred to:

Science Warehouse Limited v Mills UKEAT/0224/15

Drake International Systems Ltd v Blue Arrow Limited UKEAT/0282/15

Mist v Derby Community Health Services NHS Trust UKEAT/0170/15

The claimant was to bring the authorities on the last day but did not do so. He did not take the tribunal to specific paragraphs or principles he relied upon other than stating that he could rely on the ACAS EC in relation to matters which occurred after it.

Time points

89. The claims started in 2012 to date and are a continuous act of victimisation. The tribunal can see the 'power' of the email of Mrs Stalley

and from her evidence that she is fully aware of the concept of victimisation. The claimant asserted that he has been victimised from 2012 to date.

90. The settlement agreement was carried out fraudulently. An email generated between HR and Pathology where Mrs Stalley is saying they sought advice from HR, but they never disclosed that email with regard to the claimant's training that the University of Essex contacted all hospitals and all hospitals made informed decisions about the claimant's issues. They did not give the claimant his registration. All of these hospitals the claimant is suing, he has applied for jobs at. They are his educators and training providers and are assisting in discrimination.

91. The claimant argued that it was an act of victimisation by settling with him. The fraud is classed as victimisation. The claim was settled knowing there was no other alternative for the claimant in relation to further training and obtaining his certificate as without that he cannot work as a medical scientist. He will always have a low wage and not the career of his choice. All of the respondents knew that and made an informed decision not to offer the claimant training or give him his registration. Any reference he makes to fraud he meant victimisation which the tribunal has jurisdiction to hear as the claimant was an employee.

92. The claimant had a contract of employment with Ipswich Hospital. He has a 'powerful' document to show to the tribunal that he has been victimised. He also makes an application to strike out the responses as they have no defence to the claims. The reason they did not give him the job is victimisation. In his view the claimant is very well qualified and was the best applicant, but the respondents did not like it.

93. The respondents chose not to pursue paragraphs 1 – 6 of Mrs Stalley's witness statement as it goes back to 2011 and the claimant has evidence to show that every word from Mrs Stalley is inaccurate. It is absolutely inaccurate. There is evidence generated after the claimant left the hospital. There is no single document to show he was not performing well. In fact, they said on 6 July 2010 he was doing well, two months before the placement ended. There is flesh to his claim that there was a continuing act of victimisation. These are all partners and the law of partnership is engaged.

94. All the hospitals are in partnership as the Pathology Partnership. The claimant had made it clear in the ET1 that they formed a partnership to provide pathology and all the named respondents are his educators. His claim is a continuing act of victimisation and it is not misconceived.

95. The claimant wished to refer to a case of Cox v Ministry of Justice [2016] ICR 470. He stated that Mrs Cox was a catering manager at Swansea Prison and one of the prisoners dropped a bag of rice and she suffered an injury. She went to make a claim in the County Court and the case was dismissed. She appealed to the Court of Appeal and they allowed her

appeal. The Ministry of Justice appealed to the Supreme Court. The prisoner was found to be under the direction or control of the Prison and the MoJ in control. What the prisoner did formed part of the operational activities of the Prison and Mrs Cox won her claim. This is exactly the same as the claimant's case he submitted. He has been victimised and racially discriminated against. He should be entitled to his remedies and aggravated damages.

96. The Subject Access Request which the claimant made was to the four individual respondents, West Suffolk Hospital, Colchester, Ipswich and Cambridge and all of them were copied in to Mrs Stalley's email of 23 April 2017 and no one of them released the email to him. They have refused as there is a damaging email. The claimant has the email from the solicitors for the respondents and it is just the tip of the iceberg. The claimant referred to page 238 of the bundle, being the email at 13:49 hrs from Sarah Stalley. This email was indeed addressed to Caroline Wiltshire, Sharon Rawlinson at Colchester Hospital, Tanya Muncey at the Pathology Partnership and Jackie Powell and referred to the informal visit. The email stated,

"Dear all

Need some help here please with HR backing urgently. This person has a background of complaints and financial settlements regarding discrimination. Caroline, I will let you advise Sharon. I have been heavily involved in disciplinary cases with him in the past. He is not suited to working in the lab due to his behavioural issues.

Do you think it should be me doing this bearing in mind his history? But I will have to allow him to visit, but would it be better to get Jackie to do it with another pair of eyes?

Please let me know as I have to reply to him."

97. The claimant submitted that Jackie Powell works for Colchester Hospital and they refused to disclose anything. Tanya Muncey is assisting Cambridge Hospital. They never responded. This is all about the Subject Access Request and the non-response is victimisation. The claimant submitted this email from Sarah Stalley was so powerful and his claim should go ahead.

98. The claimant stated that if his claim was found to be out of time, could the tribunal or the County Court order Ipswich Hospital to provide him with a placement and the answer was 'no'. The claimant always wanted to pursue his chosen career in Bio-medical Science. He had never been after a financial settlement. He offered to repay the £30,000 settlement which he never had as it went in legal fees, as without the registration he cannot work as a bio-medical scientist. This is malice to the core. He was saying that as the tribunal has tangible evidence that they have fraudulently failed to disclose. It is a species of deception. The HR of Ipswich knew there was no other alternative for the claimant to have a placement. The only reason for out of time is that the claimant genuinely wanted to settle with Ipswich up to 17 or 21 May 2017. That would mean

settlement with all the respondents. They all work under the direction and control of Ipswich. The claimant is here seeking justice and does not have any other alternative but to come to the Employment Tribunal. Out of time should not really apply at all, the claim is a continuous act from 2012 to now.

Relevant law

Equality Act 2010

27 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.

99. It is quite clear from the case law that the tribunal must enquire whether the alleged victimisation arises in any of the prohibited circumstances covered by the Act, if so did the employer subject the claimant to a detriment and if so what that because the claimant had done a protected act. Knowledge of the protected act is required and without that the detriment cannot be because of a protected act.

100. Section 123

Time limits

(1) Subject to sections 140A and 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.

101. The tribunal has a wide discretion in considering whether it is 'just and equitable' to extend time. It entitles the judge to take into account anything he/she considers relevant. Time limits are still to be strictly applied and there is no presumption of an extension of time. It is for the claimant to persuade the tribunal that in all the circumstances one should be granted.

102. The discretion to grant an extension of time under the 'just and equitable' formula has been held to be as wide as that given to the civil courts by s 33 of the Limitation Act 1980 to determine whether to extend time in personal injury actions. Under that section the court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular:

102.1 the length of and reasons for the delay;

102.2 the extent to which the cogency of the evidence is likely to be affected by the delay;

102.3 the extent to which the party sued had co-operated with any requests for information;

102.4 the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and

102.5 the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

103. Whilst these factors will frequently serve as a useful checklist, there is no legal requirement on a tribunal to go through such a list in every case, provided no significant factor has been left out of account.

104. There are two types of prejudice which a respondent may suffer if the limitation period is extended. The first is the obvious prejudice of having to meet a claim which would otherwise have been defeated by a limitation defence, and the second is that which it may suffer caused by such things as fading memories, loss of documents and losing touch with witnesses.

The latter will be very relevant in the exercise of the discretion, telling against an extension of time, and it may well be decisive. However, the converse does not follow. If there is no forensic prejudice to the respondent, that is not decisive in favour of an extension, and depending on the tribunal's assessment of the facts, may well not be relevant at all. It will always depend on the way the tribunal sees the facts.

105. In determining whether there has been a continuing course of conduct the tribunal should focus on the substance of the allegations and whether there was an act extending over a period as distinct from a succession of unconnected or isolated specific acts. One relevant but not conclusive factor will be whether the same or different individuals were involved in those incidents.

140B Extension of time limits to facilitate conciliation before institution of proceedings

(1) This section applies where a time limit is set by section 123(1)(a) or 129(3) or (4).

(2) In this section—

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

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

(3) In working out when the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If the time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) The power conferred on the employment tribunal by subsection (1)(b) of section 123 to extend the time limit set by subsection (1)(a) of that section is exercisable in relation to that time limit as extended by this section.

Employment Tribunals Act 1996

18A Requirement to contact ACAS before instituting proceedings

(1) Before a person ("the prospective claimant") presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter.

This is subject to subsection (7).

(2) On receiving the prescribed information in the prescribed manner, ACAS shall send a copy of it to a conciliation officer.

(3) The conciliation officer shall, during the prescribed period, endeavour to promote a settlement between the persons who would be parties to the proceedings.

(4) If—

(a) during the prescribed period the conciliation officer concludes that a settlement is not possible, or

(b) the prescribed period expires without a settlement having been reached, the conciliation officer shall issue a certificate to that effect, in the prescribed manner, to the prospective claimant.

(5) The conciliation officer may continue to endeavour to promote a settlement after the expiry of the prescribed period.

Employment Tribunal Rules 2013

106. Striking out

37. (1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response 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 or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question 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 shall be as if no response had been presented, as set out in rule 21 above.

107. Deposit Orders

39. (1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.

(2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

(3) The Tribunal's reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.

(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21.

(5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—

(a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and

(b) the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders),

otherwise the deposit shall be refunded.

(6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order.

Conclusions

Allegation which are already subject to settlement - Issues 1(a), 8(l), 13(s) & 18(z) in Appendix 1 – paragraphs 6-7, 28, 39 & 47 of the particulars of claim

108. These matters all pre-date the settlement of February 2012 and cannot be relitigated. The claimant entered into a settlement agreement under which he agreed to accept a sum of money (£30,000) in full and final settlement of the identified proceedings and also 'all and any other claims' he might have against the Trust. When entering into that settlement agreement the claimant had the benefit of independent legal advise on its content and effects. It is not now open to the claimant to seek to bring claims that pre date that settlement agreement. They are matters caught by the agreement which 'are or could be known to the parties or in their contemplation at the date' of that agreement. It is abuse of process to seek to do so and those claims are struck out.

109. Further the claimant has no reasonable prospects of success of showing either that the tribunal has jurisdiction to consider a complaint that the settlement agreement is void for deception or that the agreement was entered into on the basis of a deception. They are not claims over which this tribunal has any jurisdiction. Accordingly, they are dismissed.

Out of time allegations

Events between 2012 – 2013 - issues a, b, c, d - e, g, l, m, s, and z. (Four of these, a, l, s and z relate to events before the February 2012 settlement agreement so these conclusions are further and in the alternative to the above conclusions already given)

110. The allegations in the preceding paragraph which pre-dated the settlement agreement and issues 2(b), 3(c), 4(d-e), 5(g) and 9(m) on Appendix 1 (paragraphs 8, 10, 19, 28 and 29 of the particulars of claim) are allegations concerning events in the period 2011 – 2013. It is clear on any analysis that they are grossly out of time.

111. The claimant's position at this hearing is that he did not bring a claim sooner as he was trying to settle, they are continuing acts and he did not wish to issue a claim in 2016 as an act of goodwill.

112. The tribunal does not accept there were attempts to settle but in any event that had would not, of itself, be a reason to extend time. Tribunals are aware that claims are issued and that negotiations continue. It does not explain why these claims were not brought until 2017 some 4 years since the end of 2013.

113. The claimant has not shown an arguable case of a continuing course of conduct when there is a gap between 2013 and 2017 in the acts complained of. The matters in 2011 – 13 primarily concern his placement/contract. The first alleged act in 2017 is the failure to appoint the claimant in January and is a distinct act to those alleged in 2011 – 2013 involving different people.

114. There was no continuing act, the claims are brought some years out of time and no credible evidence has been provided by the claimant as to why and why it would be just and equitable to allow these claims to proceed which are struck out

Claims in 2017 – out of time - Issues 6(i), 7(j), 10(n) & 14(t), paragraphs 23-25, 26-27, 30 and 40 of the particulars of claim

115. Issue 6 is an allegation that in March 2017 Ipswich Hospital failed to provide information or investigate events in 2010 – 2012. This is an attempt by the claimant to in effect revive an earlier complaint by asking for a further investigation about it. If there was a failure which he considered discriminatory in 2010 – 2012 then a claim should have been

brought about it then. It was of course 2012 that the original settlement agreement was entered into. The claimant cannot argue that there is in effect a new cause of action by repeating a request albeit 5 years later. That is an abuse of process. The claim is also out of time. The claimant did not issue until August. He has provided no justification for not doing so as his arguments that he was trying to settle have not been accepted by this tribunal. It is not just and equitable to extend time. There is no continuing course of conduct. This claim is dismissed.

116. Issue 7 is a complaint about a rejection by Cambridge University Hospitals on 28 February 2017. The claimant knew he had not been shortlisted and there is no justifiable reason why the claim was not brought in time. It also has little reasonable prospects as the shortlisting was anonymous. It is not part of a continuing course of conduct. It is dismissed.

117. Issue 10 concerns the interview on 31 January 2017 chaired by Mr Wallis at which the claimant was not successful. He has accepted in evidence he knew that day he was not successful. He therefore had all the facts he needed to bring his claim in time. It is an isolated matter not connected to other claims. It is out of time and dismissed

118. Issue 14 that the claimant did not have an informal visit to the laboratory. The request was in April 2017. Whilst the claim is out of time by only a few days the tribunal takes into account the weaknesses in the claim in determining it is not just and equitable to extend time. Any prejudice to the claimant is very limited. Mrs Powell was happy to show the claimant around. She came in in August to do so even though she was on annual leave, but the claimant did not attend. It is not just and equitable to extend time and the claim is dismissed.

Claims in time – issues 11(o), 12(p), 15(u), 16(v) & 17(w)

119. Issue 11 (o): is an allegation of victimisation against only the West Suffolk Hospital. This is a further request for feedback following the interview on the 31 January 2017 when the claimant was not successful. The claimant has been told on numerous times that this post was based at West Suffolk Hospital but was a post responsible to the Cambridge University Hospitals. This was also made clear to the claimant at the preliminary hearing. This is misconceived West Suffolk did not 'refuse' to respond but indicated to the claimant it was not the entity that had any information. The claim is not brought against a relevant employer, the claimant has not made any connection to his protected act by those with whom he was in contact is misconceived and is struck out as having no reasonable prospects.

120. Issue 12 (p): this is just against the third respondent, West Suffolk Hospital in relation to the Subject Access Request of 5 May 2017. It refers back to a request of the 21 February 2017 to Mr Wallis which West Suffolk has no record of receiving. There is no reasonable prospect of the claimant

establishing a link between the failure to respond to the Subject Access Request that was not sent to the right person with any protected act. The claim is dismissed.

121. Issue 15 (u): victimisation by Colchester and Cambridge concerning the shortlisting process by Miss Powell in April 2017. The claimant was informed on 2 May that he was unsuccessful. As stated at paragraph 15 above Cambridge accepts in its response that it was the employer in respect of that advertised role. The claimant was warned at the preliminary hearing on 21 February 2018 of the cost risks of pursuing this allegation against Colchester. There was anonymous short isting and Miss Powell was not challenged on that part of her statement at paragraph 7. The claimant has again not pointed to any evidence to show that Miss Powell was aware of the protected act at the shortlisting stage or influenced by that in anyway. The tribunal has accepted her evidence that she was not able to identify the claimant at the shortlisting stage. As a claim of victimisation this claim has no reasonable prospects and is struck out.

122. Issue 16 (v): A claim of victimisation against Colchester and Cambridge for failure to answer a further request for feedback of the 4 May 2017. As set out at paragraphs 37 – 39 above the claimant was directed to Cambridge for the information he sought. He cannot show any link to any protected act. The people he was writing to did not hold the information he sought. The claim has no reasonable prospects and is dismissed.

123. Issue 17 (w): a further allegation of victimisation by Colchester allegedly refusing to reply to a 5 May 2017 Subject Access Request. This was a re sending of a 20 February 2017 request. Paragraphs 40 – 45 above set out the chronology. The respondents are able to explain why they had not answered the request. The mere fact of resending that and the claimant getting a reply does not set out a fresh claim of victimisation within the jurisdiction of this tribunal. The claimant cannot establish any link to a protected act. The claim has no reasonable prospects and is dismissed.

Deposit application

124. The respondents applied in the alternative for deposits to be ordered in relation to these five claims that were in time. The tribunal is satisfied that if it had not dismissed these claims it would have found that they had 'little reasonable prospect' such as to entitle the tribunal to order the claimant to pay a deposit in respect of each one as a condition of continuing to pursue those allegations.

125. Having heard the very unsatisfactory evidence of the claimant with regard to his means, which was at times evasive and lacking in any particularity even though warned that his means would be considered the tribunal

would have made an order of a deposit of £500 in relation to each of these five allegations had they not been dismissed.

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Employment Judge Laidler

Date: ……8 March 2019……..

Sent to the parties on:.12 March 2019.

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For the Tribunal Office