EMPLOYMENT TRIBUNALS

Claimant		Respondents
Ms Isabel Matthews	v	**1. Department for Work & Pensions**
		2. Mr Ian Sheasby
		3. Mr Sean McGinn

Heard at: **Leeds** **On:** **27 July 2020**

Deliberations 30 July 2020

Before: **Employment Judge T R Smith**

Representation:

Claimant: **Ms Jackson (non- practising lawyer)**

Respondent: **Mr Tinnion (of counsel)**

RESERVED JUDGMENT

The following grounds as set out in the further particulars dated 26 November 2019 are struck out as they are out of time and it would not be just and equitable to extend time, namely grounds 1 to 3, ground 4 limited to the period up to 04 June 2018 but not thereafter, grounds 5 to 22, ground 23 limited to the period up to 04 June 2018 but not thereafter. Grounds 25 to 36 are not struck out.

REASONS

1. **Issues.**

   At a preliminary hearing held on 17 March 2020 the Tribunal determined, having heard representations, that there would be a public preliminary hearing, the purpose of which was to determine whether the alleged acts or omissions of the Respondent whilst the Claimant worked at the Respondent's Bristol and then Leeds office were presented in accordance with section 123 of the Equality Act 2010. If not, the Tribunal would consider whether it would be just and equitable to extend time.

2. **Evidence.**

   2.1. The Tribunal initially had before it a bundle totalling 223 pages. At the hearing the Claimant sought to add a number of pages, numbered 224 to

page 235 to the bundle. Following a short adjournment to take instructions, Mr Tinnion indicated he was content that those documents were added. Accordingly, the Tribunal granted the Claimant permission to add the documents to the bundle.

2.2. The Tribunal had before it a statement from the Claimant dated 14 June 2020 and a statement from Ms Suzanne Lloyd dated 17 July 2020, filed on behalf of the Respondent.

2.3. The Tribunal heard oral evidence from the Claimant and Ms Lloyd.

2.4. The Tribunal noted the Claimant was a disabled person. In the circumstances the Tribunal offered additional breaks which were taken. She was given a 30-minute break during the course of cross-examination. Regular checks were undertaken by the Tribunal with both the Claimant and Ms Jackson as to the Claimant's health during the hearing.

2.5. The Tribunal should make a few general comments as regards the oral evidence.

2.6. The Claimant was nervous and frequently did not answer direct questions. However, the Tribunal drew no adverse inference from that behaviour and considered that it was the way she was comfortable in answering questions, that is setting out the background, to put her eventual answer in context.

2.7. The Tribunal found the Claimant relayed what she now considered to be the truth, although as the Tribunal has noted, later in its judgement, it did not accept her evidence in respect of knowledge of Employment Tribunals or that her trade union did not mention the possibility of Tribunal proceedings.

2.8. The evidence of Ms Lloyd was based on documentation she had seen. She had no personal dealings with the Claimant. She gave evidence as to how she believed the Respondent's policies and procedures should operate. Of course, that was not to say that was how they actually operated in practice. Whilst the Tribunal accepted Ms Lloyd's evidence it was of relatively limited value.

2.9. A reference in this judgement to "the Respondent" is a reference to the First Respondent unless otherwise indicated.

2.10. A number in brackets is a reference to a document in the bundle.

3. **Background**

3.1. The Claimant resigned without notice on 10 July 2019 and contacted ACAS that same day in respect of early conciliation. Early conciliation concluded on 30 July 2019 and the Claimant presented her claim form on 01 October 2019.

3.2. The Claimant worked as a claims manager at the Respondent's Bristol premises from 25 March 2016 until she transferred to Leeds on 23 October 2017.

3.3. In Bristol the Claimant was managed by Mr Jim Carter and Ms Christine Mason.

3.4. When the Claimant transferred to Leeds, on or about 23 October 2017, she was then managed by the Second Respondent, Mr Ian Sheasby. Again, the Claimant worked as a claims manager.

3.5. The Claimant then transferred from the Respondents Leeds office to Sheffield, on or about 04 June 2018.

3.6. In Sheffield the Claimant was managed by Mr Vernon Martin, Mr Jerry Reardon and then by the Third Respondent Mr Shaun McGinn. In Sheffield the Claimant worked as a correspondence manager.

3.7. Whilst Ms Jackson was to argue, relying upon an internal email (165) that when the Claimant moved from Leeds to Sheffield she was effectively still managed from Leeds, because Leeds was regarded as her cost centre, the Tribunal concluded on the evidence before it, the Claimant worked wholly independently of Leeds and had no contact with Leeds management after she transferred to Sheffield and was managed by managers at Sheffield.

3.8. When the Claimant worked in Bristol and Leeds, she processed disability claims.

3.9. When she moved to Sheffield, she went into an entirely different department within the Respondent, known as the Service Excellence Group, which dealt with complaints.

3.10. The Claimants original claim form was extremely lengthy, totalling some 48 pages. Pursuant to an order of the Employment Tribunal dated 26 November 2019 she provided particulars ("the further particulars") of each alleged factual incident she contended gave rise to discrimination and thereafter the type of discrimination that arose (67 to 99) from that scenario. It was abundantly clear that the Claimant had received some professional assistance in the drafting of that document. It was this document that all parties worked from in looking at what was said to be the incidents of discrimination for the purpose of assessing time.

4. **Submissions.**

4.1. Both advocates provided the Tribunal with written submissions. Between the advocates they referred to just over 40 authorities. Some of the authorities referred to by Ms Jackson were first instance decisions and are therefore not binding on this Tribunal.

4.2. The Tribunal must express its thanks to both advocates. Both advocates worked collegiately to assist the Tribunal.

4.3. Mr Tinnion cross-examined the Claimant in a sensitive manner.

4.4. It was clear that Ms Jackson had done a great deal of work to support the Claimant and although, as she frankly admitted she was not an experienced employment lawyer, skilfully constructed submissions on behalf of the Claimant. The Claimant greatly benefited from her support and effort. Because of her hard work the Tribunal has not found this easy judgement to reach.

4.5. Given written submissions were made, the Tribunal does not intend to record each and every detail. What follows is a brief summary of the relevant submissions. Merely because a particular submission has not been

directly referred to does not mean it was not taken into consideration when the Tribunal reached its judgement.

5. **Mr Tinnion**

5.1. Mr Tinnion stressed it was for the Claimant to establish the Tribunal had jurisdiction such that her claims were brought within time as set out in the Equality Act 2010 and if not, it was for her to establish it was just and equitable for the Tribunal to extend time.

5.2. It was for the Claimant to establish a continuing act and this would normally require some degree of coordination or common thread. It was not sufficient for a Claimant simply to assert there was a continuing act, the Tribunal was required to investigate that assertion. He stressed the Tribunal had to draw a distinction between a continuing act, where time ran from the last act, and one that which had continuing consequences where time ran from the one-off act.

5.3. He contended it was clear that all the discriminatory acts at both Bristol and Leeds were out of time.

5.4. He accepted the Tribunal did not have to adopt an "all or nothing" approach when considering a series of acts and the Tribunal could find some of the acts formed part of a wider continuing act, whilst others were one-off acts.

5.5. A continuing act would still be out of time if the last act in the continuous act was out of time and he relied upon **South Western Ambulance NHS Foundation Trust -v-King [2020] UKEAT/0056/19**

5.6. Mr Tinnion submitted that time in respect of a reasonable adjustment complaint ran from the date on which the employee might reasonably have expected the employer to make the adjustment, assessed from the Claimant's point of view: **Abertawe Bro Morgannwg ULHB-v- Morgan [2013] UKEAT/0097/13.**

5.7. On the question of extending time Mr Tinnion stressed the need for finality.

6. **Ms Jackson.**

6.1. Ms Jackson submitted that the Tribunal should focus on the substance of the allegations to determine whether the Respondent was responsible for an ongoing situation or a continuing state of affairs in which the discrimination occurred.

6.2. She said that there could still be a continuing act even if the acts relied upon were different types of discrimination and there was no rule of law that required the same person to be involved in each incident for there to be a continuing state of affairs. The Claimant was badly treated throughout her employment with the Respondent and that was a continuing state of affairs and sufficed.

6.3. She made a bold submission that a continuing state of affairs existed provided the matters the Claimant now complained of were referred to in her letter of resignation, which she contended should have been treated by the Respondents as a formal grievance. To support this contention, she

relied upon paragraph 163 of the case she did not produce a copy of, entitled **Lunes -v- Marks and Spencer 220/1980/2018** [the Tribunal has not been able to locate this decision].

6.4. She said a failure to make reasonable adjustments was a breach of an obligation which constituted a continuing state of affairs and continued every day the duty was breached.

6.5. She referred to the well-known case of **Chohan -v-Derby Law Centre [2004] IRLR 685** which endorsed the approach taken in **British Coal Corporation -v- Keeble** as to the factors a Tribunal could reasonably take into account when considering whether it would be just and equitable to extend time.

6.6. If she was wrong on her primary submission Ms Jackson urged the Tribunal to consider that the Claimant was a vulnerable employee and therefore, for understandable reasons an allowance should be made for the fact that she put up with apparent discriminatory treatment for a long time before making a complaint to a Tribunal. The Tribunal should not fall into the trap of assuming that an employee must make a complaint at the first opportunity and she relied upon, **Jhuti -v- Royal Mail 220098/2015.**

Discussion and findings

7. **Introduction**

7.1. The Tribunal began by reminding itself that it was a draconian step to strike out part of a discrimination claim without the benefit of a full hearing, given by their very nature such cases are fact sensitive and often require the drawing of inferences from primary facts.

7.2. In an application such as this it is for the Claimant to show that she has a reasonably arguable basis for the contention that the various complaints are so linked as to be continuing acts or to constitute an ongoing state of affairs.

7.3. The starting point is always the words of the statute which read as follows: –

Section 123 of the EQA 2010 states:

"Proceedings on a complaint…may not be brought after the end of –

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

(b) such other period as the Employment Tribunal thinks just and equitable…

(3) for the purposes of this section – (a) conduct extending over a period is to be treated as done at the end of the period; (b) 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."

8. **The Tribunal's approach.**

8.1. Firstly, the Tribunal has sought to carefully identify each alleged discriminatory act complained of, and when it took place.

8.2. Secondly, the Tribunal has then sought to determine whether each alleged discriminatory act was a one-off act or a continuing act. If there were a series of one-off acts then time would run from the end of each act. If there was a continuing act then time ran from the last act. Although the Tribunal has looked at each act individually, having done so, it then looked to see whether those individual acts taken together could amount to a continuing act.

8.3. Thirdly if an act was out of time the Tribunal then addressed its mind to whether it would be just and equitable to extend time.

8.4. The first task was relatively easy given the Tribunal has the information in the further particulars and the real issue was whether there was a continuing act or series of continuing acts. It is for this reason the Tribunal has looked at these two issues together. Of course, merely because the Claimant said there was a continuing act does not mean there was a continuing act, a bare assertion was not enough, there must be a prima facie case

8.5. Before looking at each individual act it is appropriate the Tribunal pauses to remind yourself of what is or is not a continuing act and the legal guidance provided to the Tribunal by the superior courts. It is this law that it has applied to its deliberations.

8.6. In **Hendricks v Commissioner of Police for the Metropolis 2003 IRLR 96 CA** the Court of Appeal said that in determining whether there was an act extending over a period, as distinct from a succession of unconnected or isolated specific acts, the focus should be on the substance of the complaints that the employer was responsible for and whether it was an ongoing situation or a continuing state of affairs.

8.7. **Hendricks** addressed the point raised in previous authorities that to establish a continuing act there had to be a practice, policy, rule or regime for there to be a continuing act. However, it always has been clear that there can be a "policy" even though it is not of a formal nature or expressed in writing and even though it is confined to a particular post or role. In addition, the mere repetition of the request cannot convert a single managerial decision into a policy, practice or rule: **Cast v Croydon College 1997 IRLR14.**

8.8. The decision in **Hendricks** was followed in **Lyfar v Brighton and Sussex University Hospitals Trust 2006 EWCA Civ 1548** which stressed the correct test was whether the acts complained of were linked and whether there was evidence of a continuing discriminatory state of affairs. In other words, there must be some form of connection. **Aziz –v- FDA 2010 EWCA Civ 304** suggested a relevant factor in assessing whether there was a

continuing act was when the same person or persons responsible for each of the acts.

8.9. Where, as here it is said is been a failure to make reasonable adjustments consideration should be given as to whether the Claimant realised the start date had occurred, or the Respondents decision had not been communicated to the Claimant, or the Respondent lulled the Claimant into a false sense of security by professing to continue to consider the reasonable adjustments at a time long after a moment had arrived : **Hull City Council – v- Matuszowicz 2009 ICR 1170 CA.** Section 123 (4) EQA 10 is now helpful on this very difficult point.

9. **The Further Particulars**

9.1. It is important to record that the Tribunal determined that the proper approach in this application, when looking at the allegations, was that the Claimant only needed to show a prima facie case that her claim as particularised, taken at its highest, was capable of substantiating her allegations.

9.2. The Tribunal is therefore not making any findings of fact on the merits, or otherwise, of those specific allegations.

9.3. In the further particulars the Claimant sought to rely upon 36 factual situations which, she said, gave rise to various acts or omissions which amounted to discrimination in various forms.

9.4. The Respondent did not seek a strike out, on the basis of limitation, in respect of factual situation 23 (for the period 18 September 2018 to 25 April 2019), 24 (appointment of line manager 15 November 2018) and 26 to 36.

9.5. Thus, the area the Tribunal had to direct its attention to be the factual situations 1 to 22 inclusive, part of 23 (for the period 10 January 2017 to 15 February 2018, part of 24 (assignment a mentor June 2017) and 25.

9.6. It is therefore helpful to set out those factual situations which gave rise to the various alleged discriminatory acts.

9.7. The Tribunal has utilised the wording of the Claimant in respect of the factual situations although, where necessary, so they are more comprehensible to the reader, has on occasions added or edited an occasional word.

9.8. The Claimant could not provide any evidence that any of the managers against whom she complained of at Bristol, Leeds and Sheffield were friends or closely connected. There were no complaints against Mr Carter once the Claimant moved from Bristol to Leeds and no complaints against Mr Sheasby, the Second Respondent, when the Claimant moved from Leeds to Sheffield. On each occasion when the Claimant moved offices, she was allocated different line managers, and indeed when she moved to Sheffield, she was given a different job. The Tribunal found that once the Claimant transferred from office to office her previous line manager ceased to have any involvement in her employment at the next office.

9.9. Ground One: The Claimant was given a written warning for unsatisfactory attendance 21 September 2017.

9.10. The Tribunal determined this was a one-off act, albeit it was an act that had continuing consequences until the Claimant's appeal against the decision was upheld on 09 May 2018. In the further particulars the Claimant does not assert it was a continuing act. This complaint is on its face out of time.

9.11. Ground Two: The omission to provide a handover of the Claimant to new management when the Claimant initially transferred from Bristol to Leeds and then from Leeds to Sheffield. This included the omission to transfer the Claimant's complete personnel file and update the Respondent's standard operating platform system ("SOP") on each transfer.

9.12. The Claimant transferred from Bristol to Leeds on 23 October 2017 and then from Leeds to Sheffield on 04 June 2018. Although the Claimant said there was only a handover in July 2019 in respect of her transfer from Leeds to Sheffield the Tribunal did not accept that evidence, given she moved in June 2018. There would be no reason why a handover would be delayed for some 13 months. It would have been pointless to seek to perform a handover when the Claimant had been working at Sheffield for so long as it was unlikely that management at Leeds could give any information to management at Sheffield that had not already been discerned from the Claimant. The Tribunal concluded that the discrepancy was explainable either as a simple error in the Claimant's memory or a typographical error.

9.13. The Tribunal determined that these allegations, the handovers and supply of information, were one off acts although accepted they were acts that had some continuing consequences for the Claimant in that she was required to repeat information that she'd already discussed with previous line managers. Even though there were some continuing consequences they were not continuing acts. Having regard to the date of the transfers this complaint was on its face out of time.

9.14. Ground Three: The transfer of the Claimant to Leeds in 2017. The Claimant in effect contended she should have been given a wider choice as regards transfer options. It appeared that she contended she should have been transferred from Bristol direct to Sheffield.

9.15. The Tribunal has already noted the Claimant transferred to Leeds from Bristol in October 2017. Looking at the Claimant's case at its highest there may have been some continuing consequences for her in terms of, she claimed, the cost of commuting from where she was living in Sheffield to Leeds, but in the Tribunal's judgement this was a one-off act with continuing consequences and not a continuing act. In any event the Claimant finally moved to Sheffield, her desired location, in June 2018 so even if there was a continuing act this complaint was on its face out of time. The Claimant in her further particulars did not suggest this was a continuing act after she moved to Sheffield

9.16. Ground Four: From 23 October 2017 until dismissal a failure to continue/restore previous auxiliary aids that had been in place in Bristol which included a fixed workstation, noise cancelling headphones, raised desk, adjusted lighting (natural light), being seated next to a window with an operable window blind, and a desk fan.

9.17. The Claimant did not break down in her evidence exactly what auxiliary aids were or were not provided at Leeds but appeared to suggest there were none. In the Tribunal's judgement the Tribunal would have expected that such adjustments should have been in place within three months of the commencement of her employment at Leeds. In other words, by the end of January 2018. In Sheffield the Claimant had a designated workstation and some other adjustments were accommodated. She was not provided with a fan, on her account until approximately May 2019 and not all the adjustments undertaken for her at Bristol had been complied with at Sheffield when she resigned. The Tribunal concluded that any complaint for failure to make reasonable adjustments at Leeds was out of time as she could reasonably have expected those adjustments to be made within 3 to 4 months of her starting work, applying section 123(4). At Sheffield the position was different in that it appeared, on the Claimant's case, she was only provided with what she considered to be reasonable adjustments on a piecemeal fashion. There was no direct refusal. She was led to believe things were being considered. She was told equipment was being ordered. Her view was reasonable given equipment was being supplied on a piece meal basis at Sheffield. All the adjustments the Claimant had at Bristol were never supplied to the Claimant, she claimed, before she resigned from her post in Sheffield. There were still remedial measures being implemented as at the time the Claimant resigned. The Tribunal is satisfied that by allowing the situation to continue that potentially was a continuing act, see **Littlewoods Organisation Plc –v- Traynor 1993 IRLR 154**. Thus, in respect of the failure to make reasonable adjustments, by which the Tribunal means the provision of auxiliary aids, at Sheffield this aspect of the complaint was not out of time. The other aspects of the complaint are on their face out of time.

9.18. Ground Five: Hot desking policy in flexible working space/Open Plan offices from October 2017. The Claimant accepted there was a considerable overlap between this and ground four.

9.19. The Tribunal is not satisfied that the Claimant was required to hot desk at Sheffield. She accepted she had a designated desk. There was no application of a hot desk policy to the Claimant in Sheffield. Her desk may have been used by visiting managers when she was absent due to ill-health but that did not mean she did not have a designated workspace. On the Claimant 'account she may have been required to hot desk in Leeds but that ceased on her transfer to Sheffield.

9.20. Thus, if there was a hot desking policy at Leeds any complaint in respect of the same was out of time. On the Claimant's own evidence, she is not shown a prima facie case of a requirement to hot desk at Sheffield.

9.21. Ground Six: A failure to investigate the Claimant's grievance dated 30 October 2017 against the Second Respondent.

9.22. On the Claimant's own case she never raised a formal grievance via the Respondents grievance policy. The Tribunal has specifically addressed this "grievance" later in its judgement. For the reasons set out therein there was no "grievance". The Claimant has not shown, on a prima facie basis, that there was a grievance and therefore there can be no failure to investigate. The complaint was on its face out of time. She also said she made a

number of informal complaints. To the extent the Tribunal was taken to those documents, which are referred to below these were not grievances either. In any event the Claimant would be expected to institute proceedings within a reasonable period time if she said she had raised grievances and they had been ignored. It was not the Claimant's case that she was led to believe that these apparent grievances were being investigated.

9.23. Ms Jackson urged upon the Tribunal that the 20-page letter of resignation from the Claimant, (again which was not before the Tribunal), was a grievance which she contended meant that time in respect of all discriminatory acts referred to therein ran from the date of that grievance. The Tribunal rejected that submission. If that were the case it would mean that an employee who been employed for some 20 years and then resigned and set out therein one-off acts of discrimination occurring throughout that period could rely upon all of them. That is not the Tribunal's understanding of the law. One of the face of matters even if a prima facie complaint could be established this complaint is out of time.

9.24. Ground Seven: An email dated 24 November 2017 sent by the Second Respondent to the Claimant stating, *"I don't need to tell you that the worse your absence record gets the harder it will be to make a move happen"*. This was in the context of the Claimant was seeking a relocation from Leeds to Sheffield and being told that her sickness record could adversely impact upon obtaining such a move.

9.25. The Second Respondent was one of the Claimant's managers at Leeds. Even assuming this was a discriminatory act it was common ground the Claimant moved to Sheffield on 04 June 2018. At that time the Second Respondent ceased to be the Claimant's manager. He had no further direct or indirect involvement in the Claimant's employment. In the Tribunal's judgement this was a one-off act and not a continuing act. Even if the Tribunal was wrong and it was a continuing act it was common ground before the Tribunal that the Claimant was able to move from Leeds to Sheffield, whatever her sickness record may have been in June 2018. Her sickness record did not prevent her moving from Leeds to Sheffield. The complaint on its face is out of time. The Claimant in her further particulars did not suggest this was a continuing act.

9.26. Ground Eight: an absence management meeting on 15 November 2017, at which the Claimant contended she was denied trade union representation and broke down because she had to explain her medical and personal history to another manager.

9.27. In the Tribunal's judgement this again was a one-off act. It was not a continuing act. The complaint was on the face of matters out of time. The Claimant in her further particulars did not suggest this was a continuing act.

9.28. Ground Nine: From October 2017 a failure to expeditiously appoint the Claimant to a role in Sheffield, although, so the Claimant contended, it had been accepted the Claimant was suitable for a role in Sheffield. Whilst it was the Claimant's case, supported by an internal email that the Claimant had been requesting a transfer since the summer of 2016, so if there was a continuing act from the summer of 2016 any discriminatory conduct ended on transfer in June 2018. If in the alternative, as the Claimant argued, she should have been transferred direct from Bristol to Sheffield then such a

transfer should have taken place on or about the date when she moved to Leeds namely in October 2017. In the circumstances given the Claimant did, eventually, obtain her desired transfer this complaint on its face was out of time. The Claimant in her further particulars did not suggest this was a continuing act after she transferred to Sheffield

9.29. Ground Ten: On 28 November 2017 the Claimant suffered a panic attack at work and the following day was asked by the Second Respondent what she was doing to help herself.

9.30. Looked at its highest, assuming the comment made by the Second Respondent was discriminatory this was a one-off act. The Second Respondent ceased to have any managerial responsibility for the Claimant following her transfer to Sheffield. This complaint was on its face is out of time. The Claimant in her further particulars did not suggest this was a continuing act.

9.31. Ground Eleven: An email dated 04 December 2017 from the Second Respondent threatening the Claimant with a final written warning.

9.32. This was an email from the Second Respondent to the Claimant as regards her attendance. The Claimant contended that the email should not have been written while she had a pending appeal against her first written warning for attendance and when reasonable adjustments had not been put in place.

9.33. Even assuming the Claimant's analysis of the email was correct this was a one-off act. The complaint was on its face out of time. The Claimant in her further particulars did not suggest this was a continuing act.

9.34. Ground Twelve: A failure by the Second Respondent to respond to the Claimants request dated 19 December 2017 to raise a grievance with regard to lost flexitime.

9.35. The relevant email was in the Tribunal bundle (153) and could be viewed as an informal grievance. Assuming the Second Respondent did nothing as the Claimant contended, she could have reasonably expected some form of action at the latest, and to be generous to her, within three months. If the Second Respondent took no action then time ran from that failure to act. There was no suggestion before the Tribunal the Second Respondent stated he would look into the matter or sought to fob the Claimant off. It followed therefore that this complaint on its face was out of time. The Claimant in her further particulars did not suggest this was a continuing act.

9.36. Ground Thirteen: On or about 18 January 2018 the Second Respondent told the Claimant that she had the *"choice*[sic] *to lose her job move to Leeds".*

9.37. The Tribunal concluded this was a one-off act. The Claimant in her further particulars did not suggest this was a continuing act.

9.38. Ground Fourteen: in February 2018 the Claimant emailed the Second Respondent with a number of grievances and requests which were ignored by the Second Respondent who instead threatened the Claimant with regard to not attending a keeping in touch meeting.

9.39. The relevant emails appear in the bundle (156 to 158) and it was noticeable that HR were copied in. The emails disclosed the Claimant was unhappy as regards delay in her transfer but did not ask for a grievance to be raised and, on the correspondence before the Tribunal, HR did not take it as a grievance. The email from the Second Respondent simply explained why he wanted the Claimant to attend the keeping in touch meeting and referred to guidance issued by the Respondent which he'd already forwarded to her in respect of such meetings. Even allowing for the fact that discrimination is fact sensitive the Tribunal considered it generous to regard this as an act of discrimination but gave the Claimant the benefit of the doubt. Even doing so there was none no ongoing act. This was a one-off act. The matter was therefore on its face out of time. The Claimant in her further particulars did not suggest this was a continuing act.

9.40. Ground Fifteen: By an email dated 21 February 2018 from the Second Respondent to Ms Imelda Garrod, which in summary the Second Respondent said to Ms Garrod that he believed the Claimant's mental state made communication sometimes difficult and that she had severe mental health problems.

9.41. Without making a finding of fact it was not easy to comprehend how this was said to be an act of discrimination given Mr Garrod was involved in the Claimant's concerns and the Claimant had previously asserted that information about her health was not being passed from manager to manager so she had to repeat her story. Further it was her case that she was ill.

9.42. Again, giving the Claimant the benefit of the doubt if this was an act of discrimination it was a one-off act and not a continuing act. The matter was therefore on its face out of time. The Claimant in her further particulars did not suggest this was a continuing act.

9.43. Ground Sixteen: An email from the Second Respondent dated 02 March 2018 stating the Claimant had three options namely to sit with the team, join the trainees or sit with another team. The Second Respondent said he was prepared to consider a very short phased return to work but would need a new occupational health assessment to justify this.

9.44. The Tribunal concluded that on the face of the email it was at its highest a one-off act with continuing consequences. The Claimant wished to sit on her own, and a decision that she would sit with others was potentially therefore an act with continuing consequences. However, the Tribunal was never told whether this arrangement was implemented and even if it had ceased when the Claimant transferred to Sheffield. Thus, this matter is on its face out of time. There is no suggestion of this practice continuing at Sheffield. The Claimant in her further particulars did not suggest this was a continuing act.

9.45. Ground Seventeen: an internal email exchange between Ms Imelda Garrod, and HR dated 05 March 2018 indicating that the Claimant's *"resilience"* needed to improve and HR indicated that they were not sure whether Sheffield would take a transfer of the Claimant and the same adviser was not convinced the Claimant would return to work, and remain at work, if transferred.

9.46. The Tribunal determined this was a one-off act. The Claimant in her further particulars did not suggest this was a continuing act.

9.47. Ground Eighteen: The Claimant relied upon a series of emails between March and April 2018 whereby the Second Respondent indicated to the Claimant she would initially transfer to Sheffield for three months with a view to making the move permanent and that Sheffield might be prepared to take on the Claimant permanently, if she impressed them.

9.48. Looking at this at its highest, assuming it was a discriminatory act it was a one-off act. The Claimant herself in her further particulars does not appear to regard the above as a continuing act having indicated that the concern, she took objection to ended in June 2018.

9.49. Ground Nineteen: The Claimant relied upon what she said were grievances she raised with the Second Respondent between 17 April 2018 and 08 May 2018 which she said were never resolved to her satisfaction and simply forwarded by the Second Respondent to Ms Imelda Garrod. The Claimant regarded the matter as continuing as at the date of her resignation.

9.50. It would appear the Claimant was referring to the emails at 173/174 where she makes vague comments that the Second Respondent was asking *"inappropriate"* questions and was *"manipulative"* but without explaining exactly what her concerns were. Reading the emails in their entirety it appears the Claimant 's concerns related to the fact she was being asked for information in order to effect a transfer to Sheffield. The Second Respondent appeared to regard this as a matter either as a grievance or matter better dealt with by more senior management as he forwarded the same to Ms Garrod with the words *"good luck*". Looking at its highest if this was a grievance the Claimant reasonably could have expected it to be investigated within three months. There was no suggestion that Ms Garrod told the Claimant she was investigating or sought to fob off the Claimant. On the information before the Tribunal there was no investigation. It may well be that as the Claimant was moved to Sheffield in the June 2018 the parties with regard to the matters been resolved. At its very highest time would run three months after the email which would have been August 2018. This was not a continuing act. On the face of the matter it is out of time.

9.51. Ground Twenty: An email from the Second Respondent to various internal staff, including HR, dated 27 April 2018 complained that the Claimant would not attend meetings unless her demands were met but he was uncertain of what they were and the Claimant was prone to bursting into tears and refused to communicate by phone.

9.52. Even if the Tribunal was to regard this as a discriminatory act any discrimination ended when the Second Respondent cease to have line management control for the Claimant when she transferred to Sheffield in June 2018. On the face of matters this complaint was out of time.

9.53. The Claimant in her further particulars did not suggest this was a continuing act.

9.54. Ground Twenty-one: An email from the Second Respondent dated 30 April 2018 requesting a *"reasonable adjustment move"* from Leeds to Sheffield and expressing concern whether the Claimant could maintain attendance.

9.55. On the basis of the documentation it appeared the Second Respondent was seeking to achieve the transfer the Claimant was seeking. The Claimant appeared to object to the concerns he expressed as regards her attendance. Without making a finding of fact it was certainly arguable whether that was an act of discrimination but even if it was it is a simple one-off act and not a continuing act.

9.56. The Claimant in her further particulars did not suggest this was a continuing act.

9.57. Ground Twenty-two: The Claimant raised an informal grievance by email to Ms Imelda Garrod on 9 May 2018 but the grievance was not investigated although an investigation was promised and the email was then forwarded to the Second Respondent, one of the subjects of the grievance.

9.58. The Tribunal did not appear to have the complete email exchange. The closest the Tribunal could find to the issues raised by the Claimant were at 173/174. On 10 May 2018 Ms Garrod stated she would look at the issues the Claimant had raised and would answer those questions. What was not clear was whether the Claimant contended the answers given that were incomplete or inaccurate or that no answers were ever given. On the assumption that no answers were given and bearing in mind there was no suggestion that Ms Garrod thereafter misled the Claimant as to progress in seeking to answer her questions, it would have been reasonable for the Claimant to have expected a response, at the latest within three months. This matter was therefore out of time.

9.59. Ground Twenty-three: Ignoring OH and other recommendations.

9.60. The occupational health recommendations were not before the Tribunal.

9.61. There may well have been occupational health recommendations whilst the Claimant was at Sheffield. The Tribunal have already indicated that it would be prepared to accept that in relation to reasonable adjustments to the Claimants workstation it was arguable that was a continuing act. There was a suggestion in the further particulars that on the Claimant's case recommendations are made by occupational health while she was at Sheffield and were not fully complied with. In the circumstances on the limited evidence the Tribunal concluded that in relation to occupational health or other professional recommendations made whilst the Claimant was at Sheffield it was arguable there was a continuing act. Thus, the Tribunal did not accept the Respondent's submission that time should be limited from the 18 September 2018 but determined it should be from when the Claimant transferred to Sheffield namely 04 June 2018. There was a common thread of managers and activities whilst the Claimant was at Sheffield.

9.62. Ground Twenty-four: From June 2018 assigning Ms Rebecca Lawson as the Claimant's mentor who she asserted was a known bully and despite a complaint on 15 November 2018 about Ms Lawson then assigning that person as her line manager.

9.63. The Respondent only sought a strike out as regards the assignment of Ms Lawson as the Claimant's mentor. The Tribunal considered potentially this went further as the Claimant complained not only of being assigned Ms Lawson but then as to her subsequent conduct and the Tribunal noted the

Respondent accepted any acts or omissions whilst Ms Lawson managed her were potentially continuing acts.

9.64. Ground Twenty-five: This is a somewhat confused allegation and overlaps with twenty-four. In essence the Claimant appears to suggest from June 2018 there is a failure to adequately and expeditiously deal with her concerns with regard to her line manager Ms Lawson. It is arguable from the way the Claimant has constructed her case that these were ongoing issues with her line manager at Sheffield. It is therefore arguable that there was a continuing act.

9.65. The Tribunal noted the Claimant in her further particulars made express distinctions between one-off and continuing acts. The Tribunal has recorded where the Claimant has not stated there was a continuing act. This is a factor the Tribunal was entitled to take into account, given the further particulars of were professionally drafted in reaching its conclusions.

9.66. In addition, the Tribunal noted that the Claimant held different people to account in respect of the alleged discriminatory treatment at Bristol, Leeds, and Sheffield (see paragraph 7 of her statement) which is a relevant factor when determining whether an act is a continuing act

9.67. In reaching the above conclusions the Tribunal has accepted the submission of Ms Jackson that the mere fact that the Claimant, in respect of various factual scenarios, had relied upon different heads of discrimination did not impact upon the fact there could still be a continuing act.

9.68. The Tribunal has also stood back and considered whether a number of apparently discrete acts could provide evidence of a policy, rule or practice. Ms Jackson submission that as all the alleged discrimination took part whilst the Claimant was employed by the Respondent and thus was responsible for the discrimination, meant that everything was a continuing act was not a submission the Tribunal accepted. That was to misunderstand the decision in **Hendricks**. In reaching this conclusion the Tribunal took into account the important fact that various acts of discrimination took place at different locations under different managers. There was no central thread. The Tribunal could have been persuaded that there was a thread in respect of the alleged acts of management at Bristol and then a separate thread at Leeds (and in particular the acts of the Second Respondent) so there were continuing acts but even doing so the Claimant was still out of time.

9.69. When the Claimant made requests even if similar requests to management at Bristol and Leeds those managers considered matters afresh. Thus, even if there were refusals of similar requests, given they were considered afresh by different management there was no continuing act.

9.70. There was no degree of coordination between management at Bristol and Leeds. There therefore was no form of policy or practice that operated against the Claimant. It is simply not good enough in law for the Claimant to merely assert there was a continuing act or a continuing state of affairs. It was for the Claimant to demonstrate a prima facie case for such an assertion and save where found otherwise the Tribunal found the Claimant had not discharged that low burden.

9.71. In the circumstances the Tribunal then went on to consider the third question posed to itself, namely that of whether it will be just and equitable to extend time.

Time

10. **Just and equitable.**

10.1. Having made the determinations set out above the Tribunal then had to ask itself whether it would be just and equitable to extend time in respect of any complaint that were out of time.

10.2. It may be helpful at this stage the Tribunal to summarise the relevant legal principles.

10.3. The Tribunal has a very wide discretion in determining whether or not it is just and equitable to extend time. It is entitled to consider anything it considers relevant. When considering the discretion, there is no presumption that the Tribunal should exercise its discretion unless it can justify a failure to exercise that discretion. On the contrary, the Tribunal cannot hear a complaint unless the Claimant convinces the Employment Tribunal that it is just and equitable to extend time. The discretion is the exception rather than the rule: **Robertson –v- Bexley Community Centre 2003 IRLR 434 CA.**

10.4. If there are circumstances which otherwise render it just and equitable to extend time the length of extension of time required is not, of itself, a limiting factor unless the delay would prejudice the possibility of a fair trial: **Afolabi –v- Southwick London Borough Council 2003 EWCA Civ 15**

10.5. In exercising its discretion, the Tribunal may have regard to the checklist in Section 33 of the Limitation at 1980 as modified by the EAT in **British Coal Corporation –v- Keeble 1997 IRLR 336.**

10.6. The Tribunal has in reaching its decision looked at the following factors.

11. **Length of the delay**

The acts or omissions relied upon by the Claimant at Bristol and Leeds started from September 2017 and continued up to her transfer to Sheffield on 04 June 2018. It follows therefore that looking at matters from the Claimant's most favourable perspective, the last complaint at Leeds was approximately 13 months out of time, some considerably longer. This was not case where the delay was a few days or weeks. With some allegations it was years.

12. **Extent of the cogency of the evidence being affected**

12.1. The Tribunal had to bear in mind that the passage of time will inevitably lead to memories fading. Discrimination claims are fact sensitive and often rely upon the drawing inferences This is a factor that points to the necessity of holding a trial close to the events giving rise to the allegations. That prejudice is likely to be more pronounced in this case as the Claimant herself has complained that the Respondents did not keep notes of meetings or, if they did, the notes were inaccurate (226). Of course, there

will be some documents in existence that will help to refresh witnesses' memories such as emails. The Tribunal also accepted that there are cases where the allegations went back a considerable period but that did not mean it might not be just and equitable to extend time. However, even making these allowances the Tribunal was entitled to take into account the effect of delay on the cogency of the evidence in determining whether or not to exercise its discretion. There has been some delay here and it would affect the cogency of the evidence.

12.2. Coupled with the passage of time is the fact the Respondent stated that four employees had left their employment. Two were trade union officials and it is difficult to envisage the Respondent would have called those officials as witnesses. If there was any prejudice it was to the Claimant not the Respondent. This was not a factor that assisted the Respondent.

12.3. The Respondent referred to the fact that Ms Imelda Garrod and Ms Jane Haji Yousef had left their employment. Ms Yousef does not significantly feature in the Claimant's narrative, being a Regional Manager the Claimant appeared never to have met in Bristol, and the Tribunal does not consider that her absence would cause substantial prejudice to the Respondent.

12.4. The Respondent is on better ground in respect of Ms Garrod. She does appear to be a significant player in the Claimant's narrative.

12.5. If Ms Garrod has retired (as Ms Lloyd suggested) there was a reasonable possibility that she could be traced as no doubt she will be in receipt of a pension. Of course, whether she would be willing to cooperate with the Respondent would be another matter, even though the Respondent would have the option of a witness order.

12.6. The Tribunal concluded that in terms of the passage of time affecting the memory of witnesses there was a medium level of prejudice and in terms of none availability of witnesses there was a low to lower middle level of prejudice.

13. **Extend of the failure of the Respondent to co-operate**

13.1. The Claimant also referred to the Respondent not supplying copies to their policies and procedures (paragraph 184 of her proof). The first request the Claimant appears to make is on 03 June 2019, quite late in the day, and the Claimant appeared to accept that she was told that if she called into the office, she could collect them. Whilst the Claimant had been signed off work, she did go into work on 14 June 2019. Before the Tribunal she complained she could not download full copies of the policies because they had a number of embedded links. She did not tell the Tribunal what was so vital about these policies. The Claimant accepted that following the involvement of Ms Jackson she received policies by post, although contended they were incomplete.

13.2. Whilst there may have been rather officious behaviour by the Respondent as regards the collection of policies these requests were made late in the day. The Tribunal was not satisfied the policies were crucial to the Claimant drafting her claim form. Further it was satisfied that if there were

failures to comply with subject access requests that they were not such as to significantly impact upon the Claimant drafting her claim form, evidenced by the delay in her reporting matters to the Information Commissioner. Such delays as there were by the Respondent were not significant and not a factor that would justify an extension of time, to the extent sought by the Claimant.

14. **When was the Claimant aware she had a claim, could go to a Tribunal and how promptly did she act?**

14.1. The Claimant is an educated, intelligent woman. Her academic achievements were such that she gained entry to university, although due to financial pressures did not complete her degree.

14.2. Employment with the Respondent was not the Claimant's first job. She had worked in a variety of jobs including the hospitality industry, as a caseworker in the Home Office dealing with visas, and as an undergraduate adviser at the University of Bristol, before joining the Respondent. The Tribunal have concluded that she therefore had reasonable knowledge and experience of the working environment.

14.3. The Claimant undertook, when she started work with the Respondent, an online learning module which included equality and diversity. A copy of the contents of that module was not before the Tribunal. The Tribunal however considers it could reasonably infer that such training would give an overview of acts or omissions that were prohibited under the Equality Act. Thus, from starting her job in 2016 the Claimant would have known that the treatment that she says she received was a breach of the Equality Act.

14.4. The Claimant's evidence was that she did not know about Employment Tribunals or time limits, or that she had a claim, until she took advice from Ms Jackson, a family friend in approximately June 2019.

14.5. The Tribunal concluded that was inherently implausible and rejected that evidence for the following reasons.

14.6. Firstly, the media frequently feature Employment Tribunal decisions. Tribunals have been in existence for decades and a reasonably intelligent person would know of their existence.

14.7. ACAS also appear in the news media and the Tribunal did not accept the Claimant would not know that they provided advice. The Claimant did not deny that she knew there were organisations that might provide advice such as the Citizens Advice Bureau but was adamant she never sought such advice.

14.8. Secondly the Tribunal noted that in an email from the Claimant to Mr Sheasby dated 02 January 2018 (216 to 217), written in the context that she was stating that she believed the Respondent's behaviour impacted upon her attendance she said, *"I am not sure what's going on in terms of my attendance but I got some legal advice."* The Claimant's explanation when cross-examined that this was from a volunteer who worked in an organisation that provided health assistance which she described as being similar to the citizens advice bureau. Whilst she may not have had advice from a qualified solicitor, from January 2018 she knew there were

agencies who could provide assistance to those with employment difficulties and had been able to obtain such advice.

14.9. Thirdly the Tribunal noted that in an email from the Claimant to Ms Garrod dated 09 May 2018 (225 to 226) she made specific complaints about the Respondent not following equality law and the failure to make reasonable adjustments. She contended that the way she was being treated by the Respondent was having a detrimental effect upon her health. She further said that she believed that her treatment went against *"employment law"* and that she was being victimised and potentially discriminated against and said, *"I have had other people look over it and there is a strong case for all this…"*

14.10. The Tribunal concluded that at the latest from 09 May 2018 the Claimant knew that there had been a breach of equality law and even taken some advice. This is the latest date; the Tribunal having already noted the Claimant would have some limited knowledge of equality and diversity following her induction with the Respondent in 2016.

14.11. Fourthly in an internal email between the Claimant and one of her managers, Mr Gerry Readon dated 05 September 2018 (219), when discussing workplace adjustments, she stated *"I was hoping I could not have to go down the grievance and Tribunal route and wanted to give CSP a chance to reimburse me first and I would accept that as a form of apology as it would help me get back on my feet finally"* Given the context of the email the Tribunal is satisfied that the Claimant knew of the existence of Employment Tribunal's at the latest by 05 September 2018 and that they had jurisdiction in relation to employment disputes.

14.12. Fifthly in a document which the Claimant accepted she prepared in approximately March 2019 (204 to 205), when she was absent due to ill-health, she showed a coherence of thought and detailed logical expression of her concerns. She specifically referred to the obligation of an employer to make reasonable adjustments and discrimination which again points against the Claimant only knowing of Employment Tribunal's and their jurisdiction in June 2019 as she claimed. The email was also relevant to an allied matter, namely that although the Tribunal had noted the Claimant had periods of sickness, there were emails in the bundle which showed that even while sick, she could collate her thoughts and send and comprehend written documentation.

14.13. Sixthly even without trade union support the Claimant would have had ample opportunity to discovered for herself the existence of Employment Tribunals and time limits as such information is easily accessible from the Internet. Although the Claimant had difficulties in her private life the Claimant accepted that she always had access to a laptop so she could use a reputable search engine.

14.14. Seventhly at the latest, within three months of starting work with the Respondent she became a member of the PCS, one of the largest unions in the public sector.

14.15. She knew that a trade union could provide her with advice on workplace issues including obtaining legal advice and indeed they referred her for legal advice as regards injury claim in 2018.

14.16. Whilst employed by the Respondent she was in touch with, in total, six union accredited advisers. She accepted she knew the trade union was a recognised trade union in the workplace and was there to assist her in any workplace issues.

14.17. Although the Claimant denied it, the Tribunal does not accept that none of her trade union officials ever mentioned the existence of Employment Tribunal's as an avenue to address her concerns, particularly given the seriousness of the allegations the Claimant was making and the period of time over which union officials were involved in her concerns, a number of years. The Claimant first spoke to a trade union representative in November 2017. Given the comments she was making as long ago as May 2018 to Ms Garrod on 09 May 2018 (see above) it is inconceivable she was not raising similar concerns with her trade union. The Tribunal simply did not accept that the Claimant's account, that none of her trade union representatives mentioned an Employment Tribunal, as credible.

14.18. Whilst the Claimant was critical of the quality of some of the trade union advice, she accepted it was her trade union who assisted the Claimant in successfully appealing against a first written warning she been given for attendance issues. It was the union who negotiated paid special leave and assisted the Claimant to put in an injury claim. This action does not point to union officials being so lacking in knowledge that they would have taken no action whatsoever if the Claimant said she was considering a Tribunal claim.

14.19. The Tribunal is not seeking to suggest the Claimant was deliberately untruthful on this issue. It is possible it was mentioned to her and she has forgotten about it or that, in seeking to process in her own mind the events that have taken place, she has removed any recollection of such a discussion.

14.20. Weighing up all the evidence the Tribunal was not satisfied the Claimant has acted expeditiously when she believed she'd been subject to discrimination. The Tribunal have taken into account her health in reaching this determination. It may well have been if it been a short delay Tribunal might have been persuaded otherwise.

15. **Reasons for delay: The Claimant's health, grievances, and other issues.**

15.1. The Tribunal has noted the Claimant's sickness record from the start of the 2018. In that year she was absent from 4 January to 1 June, a total 149 days and was on special paid leave between the 3 to 23 September. Save for that she was at work.

15.2. In 2019 she was absent for five days between the 4 to 8 February, absent again for one day on 26 February, absent for six days from 28 February to 5 March 2019, on special paid leave between 11 to 13 March and then absent providing sick notes from 19 March until her resignation on 10 July 2019.

15.3. On or about 18 July 2018 the Claimant said her GP to the community mental health team.

15.4. Added to the above information the Tribunal noted that the Claimant had to move from Bristol to Leeds due to harassment from her partner. The Tribunal fully accepted that would have caused her considerable distress. It also appeared that at one stage her partner had traced her to the Respondent's office at Leeds.

15.5. In 2018 she faced financial challenges and had to enter into an individual voluntary arrangement.

15.6. The above were all significant stressors

15.7. Balanced against that Mr Tinnion was entitled to submit that the Claimant had not produced medical evidence to demonstrate that while she was absent from work in 2018 and 2019 her health was such that she was incapable of collecting her thoughts and making an application to the Tribunal.

15.8. The Tribunal found that the Claimant was able to function, whilst absent from work due to ill-health, on some days because there were e-mails written whilst the Claimant was absent which were coherent and well-constructed. By way of example, an email dated 09 May 2018 (225/226) although there were others in the Tribunal bundle.

15.9. In July 2018 the Claimant, albeit with the assistance of the national debt advice helpline was able to coherently assemble her thoughts and make an application for an individual voluntary arrangement due to her financial position.

15.10. On the 17 April 2019 Claimant able to construct and submit an appeal against her refusal of injury benefit.

15.11. The Tribunal does not suggest that the Claimant has anything other than serious underlying health conditions. She clearly has good and bad days. Some of the internal e-mails between managers in the bundle noted that on occasions she was crying in a meeting and at one stage was described as *"manic"*. Even at work, the Tribunal concluded her functioning suffered a degree of impairment.

15.12. Looking at the evidence holistically, whilst the Claimant was subject to significant stressors there was insufficient evidence before the Tribunal, and the burden was upon the Claimant, for it to determine whether there were significant periods when the Claimant was unable to draft an Employment Tribunal claim.

15.13. The Claimant contended that she delayed presenting her claim because she was waiting the outcome of various grievances. The Tribunal accepted if an employee was exploring internal proceedings before going to a Tribunal, although not determinative, that was a factor that might be taken into account, see and contrast **Apelogun-Gabriels –v- London Borough of Lambeth 2002 IRLR 116 CA** and **Robinson v Post Office [2000] IRLR 804**.

15.14. The difficulty the Claimant faced in this argument is that those "grievances" that were not what would normally be regarded as a grievance.

15.15. It was common ground that what the Claimant was referring too were not grievances under the Respondents grievance policy.

15.16. An example of what the Claimant classed as a grievance was found in the bundle the page 144. It was an email between herself and Mr Mark Bailey dated 30 October 2017. Mr Bailey was the Second Respondent's more senior manager. There was no reference whatsoever to a grievance in that e-mail. The Claimant was thanking Mr Bailey for listening to what she had to say and hoped she was not regarded as a nuisance. She concluded *"thank you again for your help and advice".* In the Claimant's statement (paragraph 76) she said she received no response to this grievance. The email objectively was not a grievance and did not require a response.

15.17. Similarly, nor was an email on 13 November 2017 (146 to 148) a grievance as claimed. It was correspondence sent by the Claimant to her trade union official, to which Mr Bailey was copied in. On no reasonable basis could Mr Bailey assume the Claimant was raising a formal grievance that required investigation.

15.18. In 19 June 2018 Claimant was asked by her trade union if you wanted to pursue a formal grievance against management at Leeds but she declined to do so.

15.19. Ms Jackson submitted that the letter of resignation itself was a grievance and until the Claimant had a response to that letter, she was entitled to defer submitting an Employment Tribunal claim. Although the Tribunal did not have a copy at the resignation letter before it, the purpose of a grievance procedure is to address workplace difficulties and to maintain the employment relationship. An employer is not obliged to go through a formal investigation and grievance procedure if it receives a letter of resignation. In any event the Claimant did submit her Tribunal claim even though she had no formal response, other than the acceptance of her resignation, to the matters mentioned in her letter.

15.20. The Tribunal concluded that this was not a case that on the basis of these "grievances" justified the Tribunal exercising its discretion. It was a world away from the case where an employee has instigated a formal grievance and there were active investigations ongoing and the employee delayed issuing proceedings because they considered there was a realistic prospect that matters would be resolved without the need for proceedings. The Tribunal did not consider, in these particular circumstances the Claimant was entitled to delay submitting her claim form on the basis of what she said were informal grievances that had not been responded too. The Tribunal observed that the Claimant, supported by Ms Jackson, had drafted her claim form and at paragraph 358 gave reasons why time should be extended. Awaiting the outcome of a grievance was not a ground relied upon.

15.21. The Claimant in her statement referred to concerns as to the burden of bringing a Tribunal claim and the adverse publicity. She could not explain why, when specifically questioned by the Tribunal, what had changed. The Tribunal did not find this a convincing argument in the Claimant's favour. Again, this was not a reason relied upon by the Claimant at paragraph 358 of her claim form.

15.22. Or was the Tribunal persuaded that the Claimant feared she would lose her job if you brought a Tribunal claim and this explained the delay. The Tribunal reached this conclusion because in the bundle the Claimant referred to having undertaken protected acts and clearly therefore had an idea of the concept of victimisation and the protection it offered. Again, this was not a reason relied upon by the Claimant at paragraph 358 of her claim form and this as a further factor that the Tribunal took into account and weighed against her submission.

16. **Prejudice**

16.1. Caselaw has emphasised the Tribunal must balance out the prejudice that will be suffered by the Respondent, if the Claimant was allowed to proceed, against the prejudice to the Claimant if she was not.

16.2. If the Respondent's submissions were accepted the Claimant would be left with more than 12 factual situations in which she says she was subjected to discrimination which she would still be entitled to pursue. Thus, a strike out of part of the claim would not deprive her of the possibility of a remedy, were she to succeed.

16.3. The remaining elements would include potentially the most valuable remedy, that is that she was forced to resign because of the discriminatory treatment she received. If she was not allowed to rely upon all the incidents that she says allegedly occurred at Bristol and Leeds the practical effect was that it might have an impact on an injury to feelings award. However, if she was to establish all the matters that she says was discriminatory at Sheffield it was likely that an injury to feelings award would potentially be relatively considerable in any event.

16.4. Thus, whilst there is an element of financial prejudice to the Claimant it was not in the Tribunal's judgement great. There is a further factor to be considered. The Tribunal did not discount that this Claimant was anxious to air in a public forum what she said was discriminatory conduct. If the Respondent's application was granted, she would be deprived of pursuing part of her allegations. That is a potential prejudice Nevertheless, she would still have a substantial discrimination claim against the Respondent. She could still refer to the matters that caused her concern, subject to the permission of the Tribunal, as contextual background although not as acts of discrimination. Whilst therefore there was an element of prejudice to the Claimant the Tribunal did not access that as great.

16.5. From the Respondent's perspective, if the application was granted it would result in considerable savings in cost and work both in relation to preparation and in relation to the hearing itself. The parties agreed before the Tribunal that if the Respondent succeeded, putting aside any reading time, it would be a seven-day hearing, but if it did not, it would be a 15-day hearing.

16.6. Mr Tinnion argued that it would be to the Claimant's advantage in terms of her health to concentrate more on the more recent incidents. The Tribunal did not find that an attractive submission. The Claimant wished to pursue all her allegations and subject to the judgement of this Tribunal, whether

that course of action was wise or unwise for her health is not a matter this Tribunal should or did take into account as a relevant factor.

16.7. The Tribunal cannot say that if it was to extend time, as requested, a fair trial would be impossible. The Tribunal has already noted, however, that there appears to be on the Claimant's own case a document deficit, there has been the passage of time which would affect memories and there is been no formal grievance whereby various investigations would be undertaken so that documents existed to refresh witnesses' memories.

16.8. Balancing all these various factors up the Tribunal concluded that the balance of prejudice fell in favour of the Respondent.

17. **Conclusion in relation to extension of time.**

17.1. Pulling all these factors together and looking at them holistically the Tribunal was not persuaded that it was just and equitable to extend time even having made allowances for the Claimant's health difficulties and difficulties in her personal life. On the evidence before the Tribunal she had not established there were significant periods when she was unable to function such that she could not give instructions or a draft Tribunal claim. In reaching this conclusion the Tribunal also considered whether there might be grounds for extending time in respect of some complaints but not others but was not so persuaded. The Claimant did not seek to suggest that there were special circumstances that applied to some acts and not others.

17.2. In the circumstances it would not be just and equitable to extend time.

17.3. The Tribunal has made a separate case management order, the dates having been discussed with the parties before promulgation.

Employment Judge **T R Smith**

Date: 7 August 2020

Sent to the parties on:

Date: 7 August 2020