EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4102871/2022 Preliminary Hearing (Open) at Dundee on 13 and 14 December 2022

Employment Judge: M A Macleod

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Tracy Mitchell	**Claimant** **Represented by** **Mr D Milne** **Advocate**
Royal Mail Group Limited	**Respondent** **Represented by** **Ms N Moscardini** **Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:

(1) The claimant is and was at the material time a disabled person within the meaning of section 6 of the Equality Act 2010, in respect of ADHD and Anxiety;

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(2) The claimant's claim of unfair dismissal is dismissed for want of jurisdiction, being time-barred;

(3) The claimant's complaints of discrimination, insofar as relating to allegations of acts on 11 September 2021, 1 February 2022 and 13 May 2022 are allowed to proceed, on the basis that they are not time-barred as they form part of a continuing series of acts; and

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(4) The remaining complaints made by the claimant are dismissed for want of jurisdiction, being time-barred.

REASONS

1. The claimant presented a claim to the Employment Tribunal on 20 May 2022 in which she complained that she had been unfairly dismissed and discriminated against on the grounds of disability by the respondent.

2. The respondent submitted an ET3 in which they resisted all claims made by the claimant, and argued that the Tribunal did not have jurisdiction to hear the claims on the basis that they had been presented out of time. They also denied that the claimant was a disabled person within the meaning of section 6 of the Equality Act 2010 at the material time.

3. A Preliminary Hearing took place on 13 and 14 December 2022 in order to determine the preliminary issues arising in this case, at the Employment Tribunal Office in Dundee.

4. The claimant was represented by Mr D Milne, Advocate, and the respondent by Ms N Moscardini, Solicitor.

5. A difficulty arose at the outset of the Hearing when it became apparent that the Joint Bundle of Productions had not been received by the Tribunal. Inquiries were made of the DX Office in order to establish whether the documents had arrived there, but the clerk confirmed that they had not. In the Note following Preliminary Hearing of 28 September 2022, the Tribunal had recorded, at paragraph 7:

   "The parties agreed that they will, by no later than 21 days prior to the Preliminary Hearing, send to each other a list of the documents upon which they intend to rely, together with a copy of those documents; and that they will, by no later than 7 days prior to the Preliminary Hearing, finalise and agree a Joint Bundle of Documents. The respondent will take responsibility for the production of the appropriate number of copies to the Tribunal no later than 3 working days prior to the Preliminary Hearing."

6. It was regrettable that the productions were not available in paper form. However, I had access to an electronic version of the productions and

therefore took a laptop to the bench in order to have the appropriate page available while being referred to, and the clerk to the Tribunal kindly made a copy of the available bundle provided in order to ensure that the witness table was equipped with the productions.

7. The issues for determination by the Tribunal were set out in the earlier Note, and are repeated here for ease of reference:

   (1) whether the claimant is, or was at the material time, a disabled person within the meaning of section 6 of the Equality Act 2010; and

   (2) whether the Tribunal has jurisdiction to hear any or all of the claims presented by the claimant on the grounds of time bar.

8. The claimant gave evidence on her own behalf, being questioned at considerable length in chief in particular. Submissions were thereafter heard on 14 December.

9. Based on the evidence led and the information provided, the Tribunal was able to find the following facts admitted or proved.

Findings in Fact

10. The claimant, whose date of birth is 11 August 1985, commenced employment as a postwoman (or Operational Postal Grade)("OPG") on 3 September 2019. She was initially based in the Dundee East delivery office, and transferred to the Forfar delivery office prior to the termination of her employment.

11. The claimant's employment was terminated as at 1 February 2022, without notice. The letter of dismissal was produced (135) and stated that the reason for the claimant's dismissal was due to her having breached business standards and breached mail integrity. It was expressly stated in the letter of dismissal that the last day of her service with the respondent was to be 1 February 2022. She was given the right to appeal against the decision to dismiss her.

12. The claimant did submit an appeal against dismissal on 1 February 2022 (145), saying that she believed that the decision was harsh.

13. On 10 February 2022, Sorelle Birch, Service Manager – Payroll Processing, wrote to the claimant (147) to provide her with her P45 and a document to assist her with the Benefits Agency, and to confirm that her last day of service would be used in all final pay calculations.

14. On 13 May 2022, Simon Walker, Independent Casework Manager, who had conducted the Appeal Hearing, wrote to the claimant to confirm the outcome of the appeal (164). He concluded that the claimant had been treated fairly and reasonably, and that he believed that the original decision of dismissal was appropriate in the case.

15. However, he did indicate that the claimant's dismissal was to be altered from summary dismissal to dismissal with 2 weeks' notice, which then altered her last day of service to 15 February 2022.

16. The claimant contacted ACAS to notify them of her intention to make a claim to the Employment Tribunal on 16 May 2022; and ACAS issued the Early Conciliation Certificate to her by email on 17 May 2022 (13).

17. The claimant presented her claim to the Employment Tribunal on 20 May 2022.

Disability Status

18. The claimant relies upon three conditions as disabilities in this case: ADHD, anxiety and depression.

19. The claimant's evidence is that she has suffered from ADHD since she was a child, but that she was not formally diagnosed as suffering from the condition until May 2022. Her sleep and concentration are affected; she finds it difficult to articulate what she is thinking; she struggles to read a book or to watch television; and she struggles to cope with too much information at once, and cannot focus on one thing for any length of time. She said that she can be very tired, physically, but her mind remains very

active, and as she put it, if she has something on her mind "it can go at 100mph". She finds difficulty in falling asleep most nights and can be woken up. Her sleep has been affected more significantly since lockdown (by which it is understood she means March 2020 when the coronavirus pandemic became widespread).

20. She said that she often buys items which she does not need, by impulse, when shopping, and that her social relationships have been affected as she talks too much. She does have a small group of close friends who are not troubled by her behaviour as they know and care for her, but when she meets others outwith that close circle she finds it difficult to relate and form new bonds with them.

21. The claimant has not been prescribed any medication in relation to her ADHD.

22. Her evidence is that she worked out, for herself, that she had ADHD in her 20s (she is now 37).

23. She gave evidence that she first attended her doctor about ADHD in autumn 2020. However, the first reference in her GP records, which were produced, to ADHD was on 22 December 2020, when it is noted by Mrs Kim Birse that "patient thinks she has ADHD and wants to discuss" (210). On the same day, she had a telephone consultation with Dr Caroline Thomas, who noted that "Being told by a lot of people that has ADHD, has it managed normally, but during lockdown, things have got worse, easily distracted, impulsive, and also hyperactive, to refer to adult ADHD clinic."

24. At that point, no diagnosis was made, but it was being recorded that the claimant believed that she was suffering from this condition.

25. On 6 September 2021, it was noted by Dr Thomas following a telephone consultation (210) that the claimant had been referred to the ADHD clinic, had had a telephone review 2 months before but could not understand the accent of the person with whom she spoke. It was noted that this was

to be chased up. Dr Thomas also noted "? Anxiety and depression also", which I interpret as meaning that she was not making a diagnosis but raising a query as to whether or not the claimant was suffering from these conditions in addition to her own suggestion that she had ADHD.

26. On 17 September 2021, Dr Thomas noted that the claimant had been suspended from work due to having missed a delivery, and that "told them concentration is affected as still awaiting diagnosis of ? ADHD and mental health is not currently very good, wondering if I could do a letter of support if necessary, advised yes…"

27. On 28 September 2021, she was in touch with Michelle Macaskill for emotional support. Ms Macaskill noted that "I had Tracy in to see me today and we discussed the situation with her work and how this is making her anxious and depressed. She hasn't been sleeping great and this makes things ifficult for her during the day…I am going to look into support groups for ADHD and see if there's anywhere that can offer better support till she hears from CMHT…"

28. On 2 November 2021, it was noted by Ms Macaskill that she had found a support group for ADHD and would be referring the claimant to this group for support "with her ADHD while waiting for an assessment". I do not interpret this as suggesting that Ms Macaskill had diagnosed the claimant as suffering from ADHD, but had proceeded on the basis that the claimant's self-diagnosis was correct and should be treated as accurate while she awaited contact with the specialist clinic.

29. On 2 February 2022, after the claimant had advised Dr Thomas that she had been dismissed, Dr Thomas sent an advice referral to CMHT (Community Mental Health Team) about a diagnosis of ADHD (208). The referral itself was produced at 183, and dated 9 June 2022.

30. On 8 March 2022, Dr Thomas wrote a letter to whom it may concern (151) in which she said: "The above named lady, in my opinion, is suffering from ADHD and anxiety. She has been referred to the Adult ADHD clinic but unfortunately the waiting time is currently several years

long and therefore she has not had a formal diagnosis as yet. Currently she is also getting support for her anxiety through Hillcrest support services."

31. On 21 April 2022, prior to the claimant's appeal against dismissal being heard, the respondent received a report from their Occupational Health providers, Optima Health (160). In that report, from which it is not possible to discern the name of the author or their professional clinical status, it is stated that:

"As you are aware Miss Mitchell is currently suspended from work due to work issues which are being investigated. She attributes her work issues to be related to stress aggravated by her undiagnosed mental health condition of attention deficit hyperactivity disorder (ADHD) for which she is waiting for a clear diagnosis on 16/05/2022. She related that on the day in question for which she had an error at work, she was experiencing immense stress due to chest pains and chest tightness which she believes were side effects caused to her covid-19 jab which had previously taken a few days prior to the incident. Her ADHD condition does not help either as this causes her to lose focus and attention particularly during stress. She has stated that she tends to fidget and not being at work is increasing her stress and anxiety.

During this assessment, I used a well recognised mental health tool which indicated that her anxiety and low mood are mild…"

32. The report concluded by expressing the opinion that, disregarding the effect of treatment, the claimant would be considered as disabled under the Equality Act. The condition to which this related was "Stress and Anxiety".

33. In her evidence, the claimant confirmed that she finally received her formal diagnosis of ADHD on 29 September 2022, and made reference to a letter of that date (174). However, that was simply an invitation to an appointment to take place on 22 October 2022 by telephone.

34. The claimant also gave evidence that during lockdown she began to suffer symptoms of anxiety, in approximately July or August 2020. She felt she was being given shift work more than others, which threw her off her routine. By December 2020, she considered that she was becoming more panicky, and struggling more and more to keep focus. She lived on her own, and found the restrictions of lockdown, which prevented her seeing others, to contribute to her anxiety.

35. She said that her anxiety was at its worst just before she moved to the Forfar Delivery Office, on 1 March 2021. However, following her move, she was suspended from duties for the first time, and as a result, had recourse to medical help. On 16 March 2021, the claimant was prescribed Propranolol 40mg (189) to address her anxiety and depression. She continues to have Propranolol at home and takes it on an as required basis, which, by the time of this Hearing, appears to be "barely if ever". She found that the medication relaxed her and took away the feelings of anxiety, helping her to think more clearly and focus better.

36. With regard to her depression, she said that her symptoms of depression began in October or November 2020, and were, again, exacerbated by lockdown. She said that the main effect of her depression was to reduce her energy levels, to the point where it was difficult to concentrate on anything, to discourage her from making social contact and to make her more irritable with people. She found it difficult to face washing dishes, cleaning her house, deal with financial worries or issues.

Time Bar

37. The claimant gave evidence about the acts or omissions amounting to discrimination of which she complains. The purpose of doing so was to seek to persuade the Tribunal that the acts or omissions amounted to conduct extending over a period. The findings in fact made here relate only to that limited purpose, in relation to those alleged acts or omissions. Evidence was also given by the claimant as to the sequence of events

leading to her presentation of the claim to the Tribunal on the date when she did.

38. The first act complained of was the decision by the respondent, confirmed by letter dated 16 November 2020 (42), to issue her with a Serious Warning, for 12 months from 17 September 2020, in relation to an incident in which the claimant was said not to have followed road instructions and reversed out of Bellisle Place junction on to Bellisle Street, and hit an oncoming vehicle, resulting in minimal damage. She described it as a "slight bump". The decision was made by Glynis Jenkins, Cover Delivery Line Manager.

39. The next act complained of was the decision made, with effect from 1 March 2021, to transfer the claimant to a different delivery office, in Forfar. On the evidence, that decision was made at her request, and the claimant was pleased to have been moved to a new office, in the town where she lived.

40. The third complaint relates to the decision to issue the claimant with a precautionary suspension on 15 March 2021 (49), in relation to an incident in which it was alleged, and subsequently found, that she had urinated at a property while working as postwoman and wearing the uniform of the respondent. Her argument was that she was at that time suffering from health issues which had a negative impact on her ability to reach a toilet in time. An investigation was carried out by the respondent (45ff), and following a conduct hearing, Sarah Ward, Operations Manager, EoS North, issued the claimant with a penalty, of Suspended Dismissal, to remain on her file for 24 months. The claimant's position is that these events came about owing to her medical condition, of anxiety and depression, and women's problems.

41. That decision was issued in May 2021, and formed the basis of the fourth complaint by the claimant.

42. The fifth complaint related to the respondent's decision to suspend the claimant on 11 September 2021, a decision taken by Lee Cumming (82)

pending further investigations into mail security breach and the loss of a customer's item. The claimant said that she delivered the parcel to the correct number but on the wrong street, having started to think that she was having a panic attack after suffering chest pains.

43. The sixth complaint, related to the fifth, was that the respondent decided on 1 February 2022 to dismiss her on the grounds of having failed to safeguard the mail and breached mails integrity on 1 September 2021 (135). She explained, during the conduct meeting, that she had been suffering from anxiety and depression, and also that she had undiagnosed ADHD. An Occupational Health report (97) had been obtained by the respondent, which, the claimant said, had recommended a scoping exercise for the claimant to identify alternative duties with reduced hours and duties, until a formal diagnosis of her mental health condition had been made and there was an appropriate treatment plan. She maintained that she was not given alternative duties, nor did the respondent await her diagnosis or a treatment plan.

44. That report was dated 10 November 2021.

45. The claimant maintained that her ADHD was part of the reason for the incident, in that she had not taken in any new training which was provided on paper due to that condition, and that when she was simply referred to websites by the respondent she did not know how to get access to them as she had never been shown how to do so.

46. It was also her position that she had never received any support from the respondent, but that any support she had received was organised by her through her GP practice.

47. The decision to dismiss the claimant was taken by Lynsey Pyper, Delivery Office Manager.

48. Following the appeal hearing, the claimant was sent a copy of the decision on 13 May 2022 (164) by Simon Walker, Independent Casework Manager.

49. The claimant contacted ACAS on 16 May 2022 (13), and the Early Conciliation Certificate was issued to her by email on 17 May 2022. She presented her claim to the Employment Tribunal on 20 May 2022.

50. The claimant decided to present her claim to the Tribunal on that date because she had received her appeal outcome on 13 May. The claimant was represented throughout each of the disciplinary processes from November 2020 by the Communications Workers Union (CWU), and had had their assistance when seeking a move to a different delivery office. She obtained the assistance of Kenny Logan of the CWU in relation to her appeal against dismissal. She received advice from him as to the time limits for presenting a claim to the Employment Tribunal.

51. The claimant did not herself know that there were time limits for doing so, nor what those time limits might be. Mr Logan told her at the point when she contacted him following the appeal that she required to present her claim as soon as possible thereafter due to the time limit of 3 months less one day.

52. She telephone Mr Logan upon receipt of the appeal outcome (which she believes was 14 May 2022) and left a voicemail message. He contacted her within ten minutes, and when he advised her of the time limit, she told him that she was already over the deadline. He said to present the claim anyway. He had told her after the appeal hearing, but before the outcome was available, that they should get started with the Tribunal claim, after the outcome was known. The appeal hearing took place on 25 March, and it was on that date that Mr Logan advised her to consider lodging a Tribunal claim. There were no further discussions between the claimant and Mr Logan prior to 14 May.

53. She contacted ACAS on 16 May as that was the Monday after her conversation with Mr Logan, and she did not believe that they would be open at the weekend. She has a friend whose assistance she sought in starting to compose the ACAS notification, and consulted her and her own mother in order to do so. She considered that it was better for her, in

light of her medical conditions, to have some help in drafting the documents, to assist her in remaining calm as she did so.

54. The claimant then received the Early Conciliation Certificate on 17 May, and wanted to await her mother's arrival on 20 May before completing the form and submitting it on that day.

55. The claimant's position in evidence was that had she been aware of the timescale she would have taken steps to ensure that she presented the claim in time.

Submissions

56. Both representatives presented written submissions, to which they spoke. Reference is made to those submissions, in the decision section below, and the Tribunal took full account of the submissions in reaching its decisions.

The Relevant Law

57. Section 6(1) of the Equality Act 2010 ("the 2010 Act") provides:

"A person (P) has a disability if –
(a) P has a physical or mental impairment, and
(b) The impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities."

58. The Tribunal also had reference to the "Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011)", a statutory code issued under section 6(5) of the 2010 Act. Although the Guidance does not impose any legal obligations in itself, nor is it an authoritative statement of the law, it is stated that "any adjudicating body which is determining for any purpose of the Act whether a person is a disabled person must take into account any aspect of this guidance which appears to it to be relevant".

59. The guidance confirms that to be substantial, the effect must be more than minor or trivial, and also provides that the time taken to carry out an activity, and the way in which an activity is carried out, should be taken

into consideration when compared with the actions of a person who does not have the impairment.

60. Schedule 1 of the 2010 Act provides further assistance in determining the meaning of disability. Paragraph 2 of Schedule 1 states that the effect of an impairment is long term if it has lasted for at least 12 months, or is likely to last for at least 12 months, or is likely to last for the rest of the life of the person affected.

61. In particular, reference is had to Paragraph 2(2) of Schedule 1, which provides "If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur". The Guidance, at paragraph C5, states: "The Act states that, if an impairment has had a substantial adverse effect on a person's ability to carry out normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur. (In deciding whether a person has had a disability in the past, the question is whether a substantial adverse effect has in fact recurred.) Conditions with effects which recur only sporadically or for short periods can still qualify for the purposes of the Act, in respect of the meaning of 'long term'".

62. Paragraph C9 provides: "Likelihood of recurrence should be considered taking all the circumstances of the case into account. This should include what the person could reasonably be expected to do to prevent the recurrence. For example, the person might reasonably be expected to take action which prevents the impairment from having such effects (eg avoiding substances to which he or she is allergic). This may be unreasonably difficult with some substances.

63. The case of **Swift v Chief Constable of Wiltshire Constabulary 2004 ICR 909, EAT** provides useful guidance on this matter. The EAT there emphasised that the question for the Tribunal is not whether the impairment is likely to recur, but whether the substantial adverse effect of the impairment is likely to recur.

64. "Normal day to day activities" are categorised by the Guidance in paragraph D2 and D3, and while it is said not to be possible to provide an exhaustive list of what such activities might be, it states: "In general, day to day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities." D4 confirms that they are not intended to include activities which are normal only for a particular person, or a small group of people. "Normal" should be given its ordinary, everyday meaning.

65. Section 111(2) of the Employment Rights Act 1996 provides:

"Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal –

a. before the end of the period of three months beginning with the effective date of termination, or
b. within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."

66. What is reasonably practicable is essentially a question of fact and the onus of proving that presentation in time was not reasonably practicable rests on the claimant. "That imposes a duty upon him to show precisely why it was that he did not present his complaint." (**Porter v Bandridge Ltd [1978] ICR 943**).

67. The best-known authority in this area is that of **Palmer & Saunders v Southend-on-Sea Borough Council 1984 IRLR 119**. The Court of Appeal concluded that "reasonably practicable" did not mean reasonable but "reasonably feasible". On the question of ignorance of the law, of the right to make a complaint to an Employment Tribunal and of the time limits in place for doing so, the case of **Porter (supra)** ruled, by a majority, that the correct test is not "whether the claimant knew of his or her rights, but whether he or she ought to have known of them." On

ignorance of time limits, the case of **Trevelyans (Birmingham) Ltd v Norton EAT 175/90** states that when a claimant is aware of their right to make a claim to an employment tribunal, they should then seek advice as to how they should go about advancing that claim, and should therefore be aware of the time limits having sought that advice.

68. I also took into account **Cambridge and Peterborough NHS Foundation Trust v Crouchman [2009] ICR 306** in which the discovery of new factual information should be taken into account by the Tribunal in determining this matter. However, it is to be noted that this will only assist the claimant in circumstances where he initially believes that he has no viable claim, but changes his mind when presented with new information. In that case, the appeal letter contained reference to crucial new facts which genuinely and reasonably led the claimant to believe that he had a viable claim.

69. **Times Newspapers Ltd v O'Regan 1977 IRLR 101, EAT** was a case in which the claimant knew of her rights and knew of the 3 month time limit when she was dismissed. However, a union official advised her incorrectly that the three months did not start to run while negotiations were taking place about her possible reinstatement. The EAT found that the claimant was not entitled to the benefit of the "escape clause" because the union official's fault was attributable to her and she could not claim that it had not been reasonably practicable to claim in time.

70. A similar decision was issued by the EAT in **Alliance & Leicester plc v Kidd EAT 0078/07**, in which the union official's erroneous advice that the claimant had to await the outcome of an internal appeal hearing before presenting a claim to the Tribunal was found to have been insufficient to excuse the late presentation of the claim.

71. Where a claimant relies on the advice of a trade union representative, and the claim is thereby time-barred, the claimant's remedy lies in a claim of negligence against the trade union (**Friend v Institution of Professional Managers and Specialists 1999 IRLR 173**).

72. Section 123(1) of the 2010 Act provides that:

"Proceedings on a complaint within section 120 may not be brought after the end of –

i. the period of three months starting with the date of the act to which the complaint relates, or

ii. such other period as the employment tribunal thinks just and equitable."

73. Section 123(3)(a) provides that *"conduct extending over a period is to be treated as done at the end of the period."*

74. The Tribunal had regard to the authorities to which the parties referred on the interpretation of "just and equitable" and the extent to which it would be appropriate to exercise its discretion under this section.

75. In particular, the Tribunal considered **Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434**, in which the court confirmed that it is of importance to note that time limits are exercised strictly in employment and industrial cases. "When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule."

76. I also considered **British Coal Corporation v Keeble [1997] IRLR 336**, which is authority for the proposition that the Tribunal should consider the prejudice which each party would suffer in the event that the claim be excluded or, as appropriate, permitted to proceed.

77. On ignorance of time limits, the case of **Trevelyans (Birmingham) Ltd v Norton EAT 175/90** states that when a claimant is aware of their right to make a claim to an employment tribunal, they should then seek advice as

to how they should go about advancing that claim, and should therefore be aware of the time limits having sought that advice.

Discussion and Decision

78. The issues in this Hearing were characterised by the claimant's representative as follows:

    1. **Whether the claimant is disabled under the Equality Act 2010 by reason of her stress and anxiety, depression and ADHD;**

    2. **Whether time ought to be extended to allow the claimant's unfair dismissal claim; and**

    3. **If her discrimination claims are out of time, whether time ought to be extended to allow the claimant's unlawful discrimination claims.**

79. It is helpful to seek to define the issues in this way, and I rely upon these 3 issues in addressing the arguments made by the parties.

Disability Status

80. In my view, the issue for determination by the Tribunal is whether the claimant is, or was at the material time, a person disabled within the meaning of section 6 of the Equality Act 2010, with reference to her conditions of ADHD, Anxiety and Depression.

81. The use of the word "stress" adds little to this argument, and in practical terms, Mr Milne did not rely upon it in his submission, to any meaningful extent. Stress is not itself a medical condition nor a disability, but a description of the impact of certain circumstances upon a person. The particular condition which arises from stress in this case, as I see it, is anxiety.

82. Prior to assessing whether or not all or any of the claimant's conditions amount to a disability, I observe that the claimant, who gave evidence over the course of the entire first day of this Hearing, emerged as a

straightforward witness whose evidence about her condition I was prepared to accept. The respondent proposed that her evidence should be treated with care, and that she was prone to exaggerate the effects of her condition upon her, particularly in relation to her ability to focus and concentrate. Ms Moscardini argued that the fact that the claimant was able to point out errors in the respondent's position with regard to dates and other details was not consistent with the claimant's assertions about the impact of her conditions upon her.

83. I concluded from the evidence that the claimant was generally a good witness, seeking to be truthful, and that her ability to identify errors in relation to information personal to her was not inconsistent with her having difficulty in processing information or concentrating and focusing upon information she was seeking to receive. The claimant is plainly an intelligent person who has some awareness and insight into the conditions from which she suffers, and as a result, it is not my view that she was exaggerating or being inconsistent when giving evidence on these matters.

84. The respondent accepts (at paragraph 8 of their written submission) that the claimant has been diagnosed as having ADHD, but denies that this amounts to a disability in terms of the Act.

85. I have considered carefully the evidence about this and have been unable to identify the precise point at which the claimant was diagnosed as having ADHD. There is no doubt that the claimant believes herself, quite sincerely, to have suffered from this condition since childhood; and that her GP, after a number of discussions with her, also expressed a view that she had ADHD in March 2022 (151). Mr Milne submitted that she has been diagnosed with ADHD on 22 October 2022, and the claimant said this too, by reference to a letter (174) which, on inspection, appears to be an invitation to an appointment rather than a report.

86. I can only conclude from this that the undisputed evidence of the claimant is that she was formally diagnosed with ADHD at that consultation on 22

October 2022, but for reasons unexplained, no written confirmation of this is available from any medical practitioner.

87. However, a medical diagnosis only forms a part of the picture which must be viewed in order to determine whether or not a condition amounts to a disability.

88. The claimant's evidence was that she suffers from a number of consequences of having this condition, namely:

- Her sleep is disrupted – she struggles to get to sleep even when physically tired, and can be awoken by her racing thoughts;

- Her ability to articulate her thoughts, in a manner which is acceptable to others, is affected. She acknowledges that when speaking with people she can come across as loud or hostile without intending to be;

- She struggles to process information, such as training materials or new instructions. She suffers from easy distraction, and cannot concentrate to read a book or watch a long television programme without having to take a break. Indeed, she said that she has never actually completed a book.

- Decision making is also adversely affected. She struggles not to buy on impulse when out shopping, and has to avoid going to supermarkets without a very short list of items to buy. She has found herself overspending on occasions.

89. I am prepared, on the basis of the claimant's evidence and the respondent's acceptance that she has ADHD, to find that the claimant suffers, and has suffered at the material time, from the mental impairment of ADHD. I am also prepared to accept her oral evidence that this is a condition which she has now been diagnosed as having.

90. Does that condition have a substantial and adverse effect upon her? In my judgment, it does. The description which the claimant gave of her

condition has a daily impact upon her ability to concentrate and learn, her ability to process and understand information, her sleeping patterns (with consequent adverse impact upon her ability to carry out normal day to day activities) and her ability to communicate and articulate her thoughts. These are substantial, in the sense that they are, in my judgment, more than trivial, and have clearly had a debilitating effect upon the claimant's daily existence. This amounts to a condition with an adverse impact upon her, in my view.

91. The respondent's position is that the claimant's condition is affected by adverse life events, and that she has therefore suffered a reaction to lockdown through the pandemic and to being suspended by the respondent pending investigation into disciplinary allegations. Ms Moscardini submits, therefore, that these events, which are stressful to anyone, would lead to many people suffering from anxiety and stress, but do not constitute a disability.

92. While I understand the respondent's submission, and take on board the need to look behind the labels which are attached, the evidence in this case indicates that the claimant's difficulties arise from her condition of ADHD, which the respondent accepts she has. ADHD as is generally understood is a complex condition in which the effects upon each individual sufferer can be different, but the claimant has demonstrated that the effect of this condition upon her is substantial and adverse, in my judgment.

93. It is necessary to determine whether or not the condition is a long term one. Obviously, the formal diagnosis arose after she was dismissed by the respondent. However, the claimant herself considered that she has suffered from this condition from childhood; she described the impact upon her of the condition in particular from the start of lockdown in early 2020 as having been significant; and while it appeared for some time that the claimant was relying upon a self-diagnosis, she received support from her GP who expressed the view in March 2022 that she was indeed

suffering from this condition, and it is now known that that formal diagnosis has arrived.

94. In my judgment, the claimant has demonstrated that her ADHD is a mental impairment which has had a substantial, adverse, long term impact upon her ability to carry out normal day-to-day activities, and accordingly, I consider that her ADHD amounts to a disability under section 6 of the 2010 Act.

95. I should observe that the submission made by the claimant's representative at paragraph 17, which encouraged the Tribunal to draw a link between the claimant's alleged actions leading to her second suspension and her ADHD is not one which can be sustained on the basis of the evidence in this Hearing, and would in any event require the Tribunal to go beyond the issues before it at this stage. In essence, that is an issue for determination in the merits Hearing.

96. The claimant also relies upon anxiety. It is difficult, on the evidence, to distinguish between the effect of anxiety and of ADHD, as they appear to relate to similar impacts upon the claimant.

97. It is correct to say that the claimant's anxiety levels between early 2020 and the date of the Hearing have fluctuated, partly due to changing circumstances and partly to the introduction of medication which has clearly had a positive effect upon her.

98. The claimant clearly described the effects of her anxiety upon her, as impairing her ability to process information and to communicate with others. She also made reference to panicky feelings, on occasion. The claimant attended at her GP on a number of occasions between 16 March 2021 and 4 March 2022 in which she made reference to her anxiety. She was prescribed medication on 16 March 2021 in order to address this condition. The Occupational Health reports also refer to the claimant complaining about suffering from anxiety at times.

99. The respondent seeks to argue that the claimant's anxiety was no worse that it would be for any person undergoing the stress which she had to face, when dealing with Covid-19, lockdown and several suspensions from work, as well as difficulties faced with management before her move to the Forfar Delivery Office.

100. In my judgment, there is no basis upon which I could conclude that the claimant was not affected any worse than would any other person faced with such stresses. The question before me is whether or not, on the evidence, the claimant was suffering from a mental impairment which had a substantial, adverse, long term impact on her ability to carry out normal day to day activities.

101. Where this becomes more difficult is in distinguishing between the effect of anxiety and that of ADHD, and also, indeed, of depression. I have concluded, however, that since there is a body of evidence which I accept that the claimant has suffered from anxiety for a period of more than a year, and that she has been on medication for that condition since March 2021 (albeit that that medication has been largely unused in the 3 months prior to this Hearing), it is a condition from which she has suffered, and which has had a substantial and adverse effect upon her (namely, her ability to process information and communicate, and also causing her to suffer from panicky feelings from time to time). I am also persuaded that the condition is one which has been long-term.

102. Accordingly, I am persuaded that the claimant's condition of anxiety is one which amounts to a disability, and that she was suffering from it at the material time in this case.

103. Finally, the claimant complains that she has suffered from depression. As I understand it the claimant says that the impact of this upon her was that she had poor concentration, impaired relationships with others and low energy and mood.

104. It is impossible for this Tribunal to draw any conclusion about whether the impact on the claimant's concentration was caused by, or significantly

contributed to, by depression. It does seem much more likely that in this case that impairment arose from her ADHD.

105. As to her impaired relationships with others, it was clear from the claimant's evidence that in fact she enjoys the benefit of a close circle of friends, who know of her conditions and the way in which they affect her, and are able to understand and tolerate her behaviour as a result. I am not persuaded that her relationships have been impaired by her depression.

106. It does appear that the claimant has suffered from low energy and mood over time, but again on the evidence it is very difficult to distinguish this as an impact of depression or of anxiety. It appears to me, from what I have heard, that this was a consequence of her anxiety, for which she required treatment.

107. I am very conscious that I am not medically qualified nor in a position to make any form of detailed diagnosis, but in this particular case, it appears to me that the claimant has demonstrated that she is disabled under the 2010 Act in respect of ADHD and anxiety, but not, if it is to be considered a separate condition, depression.

108. However, on that basis, the claimant's claim for discrimination on the grounds of disability may proceed.

Time Bar – Unfair Dismissal

109. The issue proposed under this heading is that the Tribunal should determine whether time ought to be extended to allow the claimant's unfair dismissal claim. There is a slight lack of precision in this, and it seems to me that the issue should be expanded to consider whether time ought to be extended to allow the claimant's unfair dismissal claim to proceed.

110. The Tribunal must determine, firstly, whether it was not reasonably practicable for the claimant to have presented her claim within 3 months of her dismissal, taking into consideration any extension granted as a

result of the ACAS Early Conciliation Scheme; and secondly, if it was not reasonably practicable, whether the claim was then submitted within such further time as the Tribunal considers reasonable.

111. An unusual point arises in this case, in that the claimant was dismissed without notice, with effect from 1 February 2022, clearly and unambiguously; but that following her unsuccessful appeal against dismissal, she was given 2 weeks' notice, and her date of termination was then said to be 15 February 2022.

112. The respondent argues that an unsuccessful appeal outcome cannot retrospectively change the effective date of termination. Ms Moscardini referred to **J Sainsbury Ltd v Savage 1981 ICR 1, CA**, approved by the House of Lords in **West Midlands Co-operative Society Ltd v Tipton 1986 ICR 192, HL**.

113. In those cases, however, an issue arose as to the proper interpretation of the internal disciplinary procedure. In the **Sainsbury** case, the procedure stated that the employee would be suspended pending the appeal decision, without pay, but if reinstated would receive full back pay for the suspension period following dismissal. The Court of Appeal upheld the reasoning of the Employment Appeal Tribunal, which concluded that notwithstanding that there was an element of control still available to the employer following dismissal, if the appeal were unsuccessful, that affirmed the original decision of summary dismissal, and therefore the date of termination did not change.

114. Since there is no evidence before me as to the terms of the disciplinary procedure in this case, and nothing to suggest that there was any form of post-termination unpaid suspension, I do not consider this decision to be on all fours with the circumstances with which this Tribunal requires to engage.

115. In the case of **Drage v Governing Body of Greenford High School 2000 ICR 899, CA**, the Court found that in order to determine the

effective date of termination, it is necessary to consider the letter of dismissal, the wording of the contract and the surrounding circumstances.

116. In that case, the claimant was advised that he was summarily dismissed from his post by letter of 17 February 1996. He appealed against that decision, and following the appeal hearing, the claimant was advised that the appeal panel had formed the belief that his conduct was such that he should be dismissed with immediate effect; and further, received another letter telling him that his employment would now terminated on 13 March 1996. The Tribunal found that the claimant had been summarily dismissed on 17 February 1996 and therefore that his claim was presented out of time.

117. The Court of Appeal considered that the critical question was whether the employee was either dismissed with the possibility of reinstatement or suspended until dismissal was confirmed or revoked, in the period following 17 February 1996. The events subsequent to the letter of dismissal may be of assistance in determining the true date. In that case, the Court of Appeal took the view that the employer's articles of government were of significance, in providing that a staff committee's decision to dismiss would not be implemented until after any appeal hearing, and that the letters of 17 February and 13 March indicated that the school would not implement the decision to dismiss until after the appeal process was concluded. It was also of importance that the claimant continued to be paid until 13 March. As a result, it was decided that this was a case where the employee was suspended pending outcome of the appeal hearing, and therefore that his claim was presented in time because his date of dismissal was 13 March.

118. The claimant's submission proposes that where the decision at an internal appeal results in a change of the date on which the employment is terminated, that decision is to be taken into account in determining the effective date of termination (**Hawes & Curtis Ltd v Arfan and another [2012] ICR 1244**).

119. That is a very broad proposition, and therefore the case requires to be considered carefully. In that case, 2 employees were dismissed summarily on 5 October 2011, and subsequently appealed against dismissal. Following an appeal hearing, the employers wrote to the employees to advise that their appeals had been unsuccessful, that the decision to dismiss them summarily had been upheld and confirmed, but that the chair of the appeal panel had requested that they be paid up to 4 November 2011, the date of the appeal outcome letter. Parties were in agreement that that payment did not represent a notice payment.

120. In this case, the circumstances were rather different to those set out in these decisions. The claimant was summarily dismissed on 1 February 2022; in the course of his appeal process, there is no evidence, nor any suggestion, that he was "suspended" or in any way continuing in employment with the respondent pending confirmation of the dismissal or otherwise; and when his appeal was unsuccessful, he was informed that the appeal manager had decided that his dismissal should have been with notice, rather than summary, and advised that his date of dismissal was now 15 February 2022.

121. The respondent submits that parties cannot retrospectively contract with each other to alter the date of dismissal. I accept that proposition. However, as **Hawes & Curtis** demonstrates, the decision reached at an internal appeal is part of what happened between the parties for the purposes of establishing the effective date of termination, and where the internal appeal results in a change of the date on which the employment is terminated, that decision is to be taken into account in determining the effective date of termination.

122. It seems to me that in this case, where the appeal decision explicitly stated that "your amended last day of service becomes Tuesday 15 February 2022", the respondent has altered the effective date of termination following careful consideration of the circumstances of the dismissal in the appeal process. That appeal decision does not amount to an offer to the claimant for acceptance, but an inherent part of the

respondent's consideration of the circumstances in which the claimant's employment should be ended. Section 97 of the Employment Rights Act 1996 provides that in a case where termination is effected by notice, the effective date of termination is the date upon which the notice expires.

5 123. The effective date of termination in this case, in my judgment, is 15 February 2022. To determine otherwise would be illogical. The respondent has decided, following the proper process of internal appeal which the claimant was entitled to pursue, that notice should have been given, and has corrected that, while upholding the decision to dismiss. In 10 my judgment, it is plain that the contract effectively ended, following the full process of dismissal and appeal, on 15 February 2022, not on 1 February 2022.

124. Accordingly, having determined that matter, it is necessary to consider when the claim was presented, and should have been presented, to the 15 Employment Tribunal.

125. From the effective date of termination of 15 February, the claimant should have presented her unfair dismissal claim by no later than 14 May 2022, subject to any extension granted to her by the ACAS Early Conciliation process.

20 126. No extension was available to her as she did not notify ACAS of her intention to submit a claim until 16 May 2022.

127. She presented her claim to the Tribunal on 20 May 2022, and therefore was 6 days late in doing so.

128. The claimant's explanation for having presented her claim late was 25 essentially that she did not know, herself, the deadline by which she required to do so, until she spoke to her trade union representative Kenny Logan on receipt of the appeal decision letter, on 14 May. He advised her that she was already out of time to present her claim, but that she should do so anyway, as quickly as possible. As it turns out, that advice was of 30 itself incorrect, since that was the final day for presentation of her claim.

129. The claimant had the benefit of trade union representation through the CWU throughout the process of disciplinary, dismissal and appeal, either by Mr Logan or by one of his colleagues. It appears to have been the advice of the CWU that the claimant should await the outcome of the appeal prior to presenting her claim.

130. The Tribunal must consider whether it was not reasonably practicable, or not reasonably feasible, for the claimant to have presented her claim in time. She does not rely upon her disability in seeking to explain the delay here. The only reason why she did not present her claim in time, on the evidence, is that she was awaiting advice from her union representative, and then when she was advised to present her claim as soon as possible, she waited for her mother and her friend to help her with drafting it. The claimant did say in evidence that had she been aware of the deadline, she would have taken steps to ensure that the claim was presented in time.

131. In these circumstances, I cannot conclude that it was not reasonably practicable for the claimant to have presented her claim in time, that is, by 14 May 2022. She had access to trade union advice. If that advice were incorrect, she has recourse to another remedy, but it does not mean that it was not reasonably feasible for her to acted in time. In his submission, Mr Milne argued that the claimant was not told by Mr Logan of the time limits to bring a claim until 16 May 2022. While I am of the view that Mr Logan spoke to the claimant on 14 May and therefore could and should have told her of the time limits on that date, and may indeed have done so, the reality is that after the appeal hearing on 25 March 2022 Mr Logan advised her to consider raising Tribunal proceedings. Even if the claimant had not received advice from Mr Logan at that point, it was open to her to carry out research online to establish how to present a Tribunal claim. As it turned out she was able to present her claim on 20 May 2022, without any assistance from her trade union at that time, and so I am not persuaded that the claimant's persistent ignorance of the statutory time limits was reasonable in these circumstances. The claimant presented as an intelligent individual who was, when the time

came, able to present her claim to the Tribunal herself. As she herself said, had she been aware of the correct date, she would have taken steps to make sure she presented the claim in time.

132. Accordingly, the claimant's claim for unfair dismissal must be dismissed as having been presented out of time, for want of jurisdiction.

Time Bar - Discrimination

133. The test for determining whether or not the claimant's claim for discrimination should be permitted to proceed is essentially whether the claimant's claim was presented within 3 months of the act to which the complaint relates, or such other time as the Tribunal considers just and equitable. While it is axiomatic that this test is less strict than that for unfair dismissal, it remains necessary for the Tribunal to apply the statutory time limits unless it is considered just and equitable not to do so.

134. The first issue, then, is to determine whether or not the claim was presented within 3 months of the act to which the complaint relates.

135. As established, the claim was presented on 20 May 2022.

136. The acts of which the claimant complains under this heading relate to a series of acts, which she maintains amount to a continuing course of conduct by the respondent. If this is correct, then the act from which the time limit starts to run would be the last in that series of acts.

137. The acts complained of are, in the claimant's submission, a series of acts culminating in the decision of the appeal panel issued on 13 May 2022. Reading the claim form, it is clear that the claimant was complaining about the appeal outcome as a separate act of discrimination in this case, in that she states that "the appeals manager has used this report [by Occupational Health] and twisted it to say that they couldn't guarantee that I would be able perform my duties as required, but I was perfectly capable before the pandemic hit to perform my duties."

138. The question, then, is whether or not the other acts complained of amounted to a continuing series of acts.

139. The respondent seeks to highlight the gaps between the different acts. Of itself, that does not mean that they did not, taken together, form a series of continuing acts. The claimant's submission is simply that all of the alleged acts relate to her disability. Ultimately, that is what is alleged, by the claimant, though any determination of whether or not that is in fact the case will require to await the hearing on the merits.

140. The last act in the series, I am persuaded, was the decision by the appeal panel on 13 May 2022. That act is plainly within the statutory time limit, as it took place 7 days prior to the presentation of the claim.

141. The act prior to that was the decision to dismiss the claimant on 1 February 2022. In my judgment, that was part of a series of continuing acts in relation to which the claimant complains of discrimination, and is plainly linked very closely to the claimant's appeal outcome, arising as it does from the same set of circumstances and the same acts. It is true that the complaint is different in relation to the appeal than to the dismissal but in my judgment it is clearly part of a connected series of acts.

142. The previous act complained of was the claimant's suspension on 11 September 2021. It was that suspension, and the investigation arising from the circumstances giving rise to the suspension, which led to the claimant's dismissal, and to her appeal. Again, it is entirely reasonable to consider that the respondent's actions in relation to these matters were part of a continuing series of acts involving suspension, investigation, dismissal and appeal, all closely connected.

143. Prior to those allegations, there are four relevant complaints placed before the Tribunal by the claimant:

1. In November 2020, the respondent issued the claimant with a serious warning for an incident in a van which she was driving;

2. On 1 March 2021, the claimant was transferred to a different delivery office by request and with assistance from her CWU representative due to difficulties with the behaviour of her manager surrounding her mental health;

3. On 15 March 2021, she was suspended from work for an incident on 3 March 2021 which the claimant said related to her mental health and women's problems; and

4. May 2021, the respondent issued the claimant with a suspended dismissal due to that incident on 3 March 2021.

144. It is the claimant's submission that all of these acts relate to disability, albeit that the Tribunal "will make what it will" of the serious warning of November 2020.

145. That incident was one in which the claimant was driving a vehicle and was investigated for causing damage to that vehicle by colliding with another. In her claim form, her complaint appears to relate to the harshness of the sanction, and the delay in dealing with the matter by the respondent. There is nothing in the claimant's claim which makes any reference to her disability having any bearing on this decision. It may be that this is what Mr Milne meant by saying that the Tribunal would make what it will of this incident, but in any event, it is my view that this was an isolated incident, unrelated to any of the others, and not expressly stated to have been an act of disability discrimination.

146. Accordingly, I am not persuaded that that complaint was part of a continuing series of acts by the respondent, and therefore it is unquestionably time barred, having taken place some 18 months prior to the presentation of the claim to the Tribunal.

147. I will consider below whether or not it was presented in such time as the Tribunal considers just and equitable.

148. The second incident complained of, that is the decision to transfer the claimant to the Forfar office on 1 March 2021, does not appear to me to

be a complaint at all. She specifically states in the ET1 that the transfer was "by request and help from Tam McCabe". The decision to transfer her was therefore taken not only with her consent but also at her request. What may be the focus of her complaint is the treatment she received from her manager prior to that, in "making my life hell by disregarding my medical needs surrounding my mental health".

149. The lack of clarity surrounding this complaint leads me to the conclusion that it is not a separate head of complaint in itself, nor specifically or clearly related to her disability. Since she was transferred at her request, that decision cannot amount to less favourable treatment on the grounds of disability. As a result, it is not a complaint which is related to the other complaints of disability, and indeed, of itself, it is so unclear that it fails to provide clear notice of the complaint being made.

150. The next 2 complaints are, in my judgment, linked, in that on 15 March 2021 she was suspended in respect of an act which she maintains related to her disability, and then in May 2021 she was issued with a suspended dismissal, to remain on her record for 2 years.

151. In my judgment, these are not part of a continuing series of acts by the respondent. These two matters, while connected to each other, relate to an entirely separate process of discipline imposed upon the claimant to that which came later following the second suspension in September 2021, and to an entirely separate allegation. The matter was closed some 4 months prior to the suspension in September 2021, and was dealt with by an entirely different manager.

152. I do not therefore consider that the actions of the respondent in relation to these complaints were part of a continuing series of acts, of which the last took place on 13 May 2022.

153. Accordingly, it is my conclusion that the complaints which related to her suspension on 11 September 2021, her dismissal on 1 February 2022 and her appeal outcome on 13 May 2022 are all part of a series of continuing acts, culminating on 13 May 2022. The last of those acts took

place less than 3 months prior to the presentation of the claim to the Tribunal, and it is therefore my judgment that the claim, insofar as relating to those 3 complaints, has not been presented outwith the statutory time limit, and may be permitted to proceed to a final Hearing on the basis that the Tribunal has jurisdiction to hear them.

154. It is, finally, necessary to consider whether or not the complaints relating to November 2020, March 2021 and May 2021 should be allowed to proceed on the basis that they have been presented within such time as the Tribunal considers to be just and equitable.

155. It is necessary to consider the reasons why the claims were presented late, and the relative prejudice which would fall upon each respective party were they to be allowed to proceed, or not.

156. It is not entirely clear why the claimant did not present her claims to the Tribunal prior to 20 May 2022, other than that she was unaware of her right to do so and the timescales for doing so until at least 25 March 2022, and at the latest 16 May 2022. It does seem to me that the incident in November 2020 is not related to her disability, nor said to be, and accordingly that must explain why she did not raise it before 20 May 2022 – that she did not consider it to be the basis of a claim for discrimination.

157. The claimant did have access to advice throughout the process, through her trade union, and that advice was plainly not restricted to formal disciplinary hearings – she was able to engage the support of Tam McCabe in securing a transfer to the Forfar office in May 2021.

158. I am not persuaded that it would be just and equitable to permit the claims related to the November 2020 warning and the transfer in May 2021 to proceed. They took place more than a year prior to the presentation of the claim, in different offices to the one in which the claimant latterly worked, and there is no clear basis upon which it could be said that there was any complaint of discrimination made by the claimant in her ET1 about either decision. The prejudice to the respondent in allowing these claims to proceed would be significant, in my judgment, since they would require to

investigate matters well over 6 months old, in a different workplace to the claimant's last base, without any clear indication as to the basis upon which such incidents or decisions have been included in a claim for discrimination. The length of time which has passed is very significant and likely to create significant difficulties for the respondent in carrying out meaningful investigations into these matters.

159. I am conscious that in **Robertson** the Tribunal is reminded that time limits should be applied strictly in discrimination cases, and that the extension of time should be the exception rather than the rule. It may be warranted if the claimant persuades the Tribunal that it would be just and equitable to allow time to be extended, but in this case I am not convinced that it would. I accept that the claimant would lose the right to pursue her complaints from November 2020 and 1 March 2021, but the prejudice to her in losing that right is much less significant than the prejudice upon the respondent of allowing such stale claims to proceed.

160. As to the complaints relating to the claimant's suspension on 15 March 2022 and the issue of a suspended dismissal in May 2022, these two matters do have a relationship to the claimant's complaint of disability discrimination. Although it is not entirely clear what caused the claimant to act as she did, as it seemed to relate in part to what she described as "women's problems", she does say that her mental health was affected at the time, and therefore that it was an incident related to that condition.

161. However, again, it is necessary to consider the reason for the delay in presenting these claims, and again it is unclear why there was such a lengthy period of time passing between May 2021 and May 2022 when the claim was lodged. The claimant had the benefit of trade union support in the event that she felt that she had been discriminated against, but either did not seek that support or did not act upon it. The length of time which has passed is very significant, and in my judgment the prejudice accruing to the respondent in requiring to defend itself against these complaints, which are very considerably out of date, is greater than to the claimant in refusing to allow her to proceed with them.

162. The Tribunal has a discretion, where it considers it just and equitable to do so, to extend the time allowed to a party to present their claim, but that discretion does not amount to permission to a party to leave matters to the side for many months before raising them with the Tribunal. It would not be fair, in my judgment, and therefore not just and equitable, to allow the claimant to proceed with these complaints at such a distance of time.

163. The prejudice to the claimant is minimal, in my view. In this case, it is plain that the claimant's chief focus is upon the events which led to her dismissal, and given that she is permitted to proceed with the claims relating to her suspension, dismissal and appeal from September 2021 onwards, she will still have the opportunity to seek redress for what she considers to have been discriminatory conduct by the respondent.

164. Accordingly, it is my judgment that the Tribunal does not have jurisdiction to hear the claimant's claims of discrimination relating to any incidents prior to September 2021, on the grounds that they are time-barred; but that the allegations relating to the respondent's actions on 11 September 2021, 1 February 2022 and 13 May 2022 may proceed to a Hearing on the Merits on the basis that it is just and equitable to allow them to do so.

Employment Judge:	**M A Macleod**
Date of Judgment:	**11 January 2023**
Date sent to parties:	**12 January 2023**