EMPLOYMENT TRIBUNALS

Claimant: **Mrs J Smith**

Respondent: **Glyndwr University**

Heard at: **Aberystwyth County Court** **On: 4 March 2019**

Before: **Employment Judge** R F Powell

Representation
Claimant: **In Person**
Respondent: **Ms Gardiner, of counsel**

JUDGMENT

The claims of unfair dismissal, sex discrimination and disability discrimination are dismissed.

REASONS

1. This case concerns an application by Mrs J Smith for an extension of time for the presentation of her claims in light of her admitted failure to present her claim form within the primary three-month time limit set by Sections 111 and 123 of the Employment Rights Act 1996 and the Equality Act 2010 respectively.

2. It is agreed that Mrs Smith's employment terminated on the 9th April 2018.

3. It is also not in dispute that the last date for presentation of a claim in respect of the unfair dismissal and the two discrimination claims was the 8th July 2018.

4. It is agreed that her claim was presented to the employment tribunal on the 21st October 2018.

5. The claim presented by Mrs Smith has three elements; unfair dismissal, disability discrimination and sex discrimination.

6. Mrs Smith asserts she was unfairly dismissed in relation to a redundancy process. In particular she states that the University failed to follow a fair procedure in relation to consultation and opportunities to apply for suitable alternative employment amongst other matters set out at page 14 of the bundle before me.

7. Mrs Smith asserts that she was subject to sex discrimination in relation to the amount of redundancy pay she received. In relation to her disability of epilepsy, whilst not founded on an identical factual matrix to that relied upon for the unfair dismissal claim, it is nevertheless contained within that matrix.

8. These issues were initially addressed in a preliminary hearing before Employment Judge S Davies. Her order, dated 7 January 2019, directed that a preliminary hearing would determine the questions which she set out as follows:

> "Was any complaint presented outside the relevant time limits in the Employment Rights Act 1996 and the Equality Act 2010 and if so, should it be dismissed on the basis that the tribunal has no jurisdiction to hear it?
>
> Further alternatively, because of those time limits (and not for any other reason), should the complaint be struck out under Rule 37 on the basis that it has no reasonable prospects of success and/or should one or more deposit orders be made under Rule 39 on the basis of little reasonable prospect of success?
>
> Dealing with these issues may involve consideration of subsidiary issues including: whether it was "not reasonably practicable" for the complaint to be presented within the primary time limit; whether there was any "conduct extending over a period"; whether it would be "just and equitable" for the tribunal to permit proceedings on an otherwise out of time complaints were brought when the treatment complained about occurred".

9. The claimant and respondent have not disagreed upon fundamentals of the timeline in this case. Whilst detail will be added later on in these reasons the following can be noted.

10. The claimant was employed by the respondent between 9 July 2007 – 9 April 2018. At the relevant time she was employed as the safety, health and environmental manager.

11. Prior to the effective date of termination, the claimant had been involved, to a disputed extent, in consultation with the respondent concerning proposed restructure of certain parts of the University's business and, after a consultation period, the claimant's post was placed at risk of redundancy.

12. There were consultation meetings in January – March 2018 and by a letter dated 26 March 2018 the claimant was notified that, if no suitable alternative employment could be found, her employment would terminate on

9 April 2018 and she would receive a statutory redundancy payment in the sum of £7,335.00.

13. On 4 April 2018 the claimant submitted a grievance. It was treated as an appeal against her dismissal albeit there were elements of discrimination which appeared, on the face of the letter, to be focussing on the redundancy payment rather than the manner in which the redundancy consultation had taken place or the decision to terminate her employment itself.

14. As noted above, her effective date of termination occurred on 9 April 2018.

15. On 24 April the claimant wrote to the respondent in advance of the appeal meeting requesting information and wrote again on 9 May 2018 seeking a response.

16. The claimant then made a further request for the provision of information on 13 May 2018 all of which she sought to receive prior to the proposed appeal hearing date on 22 May 2018.

17. At the appeal meeting the claimant, having not received all the answers she had requested, produced a supplemental list of questions for the University to answer. Following consideration of the claimant's verbal representations and her written requests for information the decision to dismiss claimant's appeal set out in a letter dated 12 July 2018 which the claimant received by 15 July 2018.

18. Upon receipt of that appeal decision letter the claimant immediately wrote to the respondent the first of three letters all of which the respondent does not accept it received.

19. The claimant then submitted her application to the Employment Tribunal on 21 October 2018.

20. For the purposes of this hearing a bundle has been prepared which runs to 113 pages and the parties have respectively produced witness statements; one from the claimant and the other from Miss Emma Taylor who, at the relevant time, was a member of the respondent's HR department.

21. The character of the claimant's application for an extension of time was set out in detail in her claim form which contains a great deal of particularly sensitive personal information relating to members of her family. I do set out more factual detail than is proportionate for the understanding the reasons for my conclusions. However, I have been keenly aware of the content of the ET1 and the claimant's evidence before me.

22. I note that in the claim form Mrs Smith's account at sub paragraph 8.2.1.3 – 8.2.1.5, identified the character of the difficulties she faced and those details were further expanded upon in her witness statement and in many respects corroborated by the documents presented by the claimant, within the agreed bundle, under Section B "general documents"; items 6 (a letter dated 8 January 2018) through to item 28 dated 30 April 2018 (and some subsequent correspondence dated through to July 2018).

23. I have accepted the evidence of the claimant set out in her statement between paragraphs 3 and 14, the last of which contains a schedule of instance (items 14 through to 68) of attendances at medical appointments with members of her family as well as some appointments of her own. I will summarise the entirety of that in a proportionate form for the protection of the privacy of persons who are not directly involved in these proceedings.

24. In the months prior to her effective date of termination Mrs Smith received the terrible news concerning the health of her mother. She was often the primary carer for her mother. In addition, around that same period there were considerable serious and sometimes very serious health concerns relating to the health of her father and health concerns relating to her husband. The combination of those matters exacerbated the claimant's stress which had an impact on her mental health.

25. The period of time which the claimant describes as the most onerous, both emotionally and physically, was between December 2017 – March 2018. By referencing those dates, I do not suggest that all matters were resolved by March 2018. It is evident from the documents that appointments with specialists continued to occur (6 June 2018 and a further similar appointment in August) along with appointments of a less distressing sort which the claimant was either personally involved or was responsible for assisting her parents to attend.

26. The claimant's account, as highlighted in the respondent's written submissions, was that the effect of her own condition, along with the family responsibilities she bore, prevented her from "putting pen to paper". The respondent, while expressing sympathy for the claimant's position and that of her family, challenge whether the evidence within the bundle supports the conclusion that the claimant was debilitated from presenting her claim in a timely fashion by reason of the matters set out in her evidence.

27. In the course of Ms Gardiner's submissions, she presented an analysis of the claimant's contemporaneous written expressions of her case prior to the presentation of the claim on 21 October 2018. From the documents I have before me the pertinent letters start with the claimant's letter dated 4 April 2018 which contained, amongst many other points, the following:

> "*There has been no effective consultation about the reorganisation within the capital SHE department as the sole casualty is me no one else is concerned. There has been no information about how much money has to be saved by the University and how much of this relates to the SHE department or estates and campus management. There has been no discussion about alternatives different configurations of jobs, reduced hours, spreading of administrative tasks, voluntary redundancies etc. When I pressed for information about the savings to be made in health and safety by using consultants, I was told that no proposals had been agreed and no tenders yet submitted. Therefore, I am being told my job is going to save money and yet no one has any idea whether there will actually be any savings. I can only assume that I am being discriminated against possibly because I am a part-time disabled female manager.*

I want to know what other females in my circumstances has been treated in the same way.

No one has sat down with me and discussed my skills and experience or talked about retraining for roles either within or without the University. The one job description forwarded to me was for a senior lecturer engineering which I am of course not currently qualified. Although of course the University could have tested me to find out whether I had the aptitude for such a role and if so, provided appropriate training but chose not to do so.

I know other staff who are leaving as a result of the University's need to reduce costs who have received enhance redundancy/settlement terms. In fact, one individual in similar grade to me on a similar salary, but with less service will receive approximately £25,000 compared to my £7,336, He is of course male – why should I as a female be offered so much less than some of the equivalent male colleagues.

As a consequence of the above I feel I have been unfairly treated by the University in relation to others. I was immediately selected for redundancy prior to any consultation, given no support or guidance and offered a far inferior financial settlement compared to male colleagues. I have been the subject of very clear discrimination".

28. This was a letter which the claimant had been able to write at a time when it is apparent from her witness statement, she was under a considerable amount of pressure due to her need to support her mother and father.

29. The respondent also received around that time a statement of fitness to work which recorded, in the opinion of the doctor from the surgery at Hawarden Road, Hope Flintshire that the claimant was unfit for work between 31 March 2018 and 1 May 2018 because of "stress due to mother's diagnosis". The respondent viewed the letter from the claimant as a grievance and an application to appeal against her dismissal and it was approached on that basis albeit that perhaps some elements concerning sex discrimination in the amount of the redundancy payment were discrete. issues.

30. On 24 April 2018 the claimant wrote to the respondent concerning her grievances. This letter contained the following:

"I would like to take this opportunity to point out that I feel only part of my grievance relates to my selection for redundancy which I agree should be dealt with as an appeal under the University's Management of Organisational change policy. However, I also have the issue of discrimination in terms of redundancy/severance offered to me as compared to other redundant staff (both academic and operational). This is a wider matter than selection for redundancy and is not catered for in the Organisational Change Policy and I feel therefore best dealt with as a grievance.

> *I will require the University to provide in advance of the appeal hearing meeting anonymised details of redundancy numbers and payments to operational academic staff bi, gender, ethnicity, grade, length of service and disability in relation to the current cost reduction exercise. In addition, for disclosure of cost and scope with the contract placed with the health and safety consultants and the dates on when the contract was sent out for tender and subsequently placed. Please can I have this information by Friday 4 May 2018".*

31. The respondent was somewhat slow in responding to that correspondence and a letter was sent to the claimant on 11 May. The claimant's response 13 May 2018, addressed to the Director of Human Resources, stated:

> *"Following on from Danielle Sullivan's letter dated 11 May 2018, I note the University have chosen not to supply me with information prior to the appeal hearing but will deal with it at the hearing. I confirm that I will attend the meeting and will be accompanied by my relative who has agreed to support me with the appeal. I am extremely disappointed that I have not received the information requested prior to the appeal hearing meeting. I will be requesting all the information outlined in my previous letter at the start of the appeal hearing, after which, I will wish to adjourn the meeting while I study the information. If the information is not provided it will elongate the appeal meeting as I will have to obtain the information through questioning which will take considerably longer…"*

32. On 17 May 2018, the respondent provided the claimant with information which addressed some questions she had posed.

33. The appeal hearing took place on 22 May 2018. Within the bundle, at pages 84 – 91, are the notes of the meeting taken by the respondent's witness Miss Emma Taylor. These notes were sent to the claimant but not approved by the claimant. Within the notes my attention has been drawn to questions and comments the claimant made. For instance, on page 85:

> "*I should not have been made redundant it was handled appallingly, it was callous and may well be discriminatory where payment has been made on a more generous basis. I was made aware by Linda Powell that some staff have been given settlement payments. I had this taped. I was allowed to have it taped because I have a disability*".

34. The claimant went through the detail of her consultation meetings (page 86) and after considerable discussion the claimant made a number of submissions. The one which was particularly addressed by the respondent is set out on page 90:

> *"I have been excluded from discussions about reducing costs. I have no prior notice or warning; my desk was packed up and I was effectively removed. No steps were made to mitigate the redundancy, it was clear a decision had been made. I think it has been appallingly handled and demonstrates incompetence and exploitative of my medical condition and disability. You would be*

> *aware of the ET test – the actions of the employer must be reasonable. I do not believe you have behaved as a reasonable employer".*

35. In cross examination, it was put to the claimant that she had actually referenced the applicable statutory test in respect of unfair dismissal and thereby, at that date she had the intention, or at least had researched the possibility, of bringing a claim before the Employment Tribunal.

36. The claimant was unclear about what she had said at the meeting. The point she made was that the notes were not verbatim and the context might have been lost.

37. Ms Taylor, who was the note taker and had been responsible for the draft notes at paragraph 9, gave evidence that the claimant was effectively highlighting that she was judging the respondent's conduct by the standards that would be applied by an Employment Tribunal, albeit Ms Taylor was clear to state that the claimant did not expressly indicate her intent to present a claim.

38. Following on from the conclusion of the appeal hearing, which had not managed to cover all of the points that the claimant wished to raise, the claimant prepared and submitted a document which set out twenty-eight questions she wanted answering by the respondent. Examples of those questions are:

> *"how many of these males and how many of these females were employed on a less than full time?*
>
> *How many employees have left or due to leave as a result of this cost projection exercise?*
>
> *How many females full-time and part-time?*
>
> *How many in each category have a known disability?*
>
> *How many in each category have or will be dismissed by way of compulsory redundancy?*

39. In addition to the examples set out above the claimant's questions go on to address the entirety of the redundancy and selection process, the rational and methodology for payment of enhanced redundancy payments and questions relating to the "protected characteristics" of different groups who were processed through the redundancy consultation and all received "voluntary" or "compulsory" redundancy payments.

40. The claimant then received a letter from the respondent dated 12 July. This letter confirmed the outcome of the appeal. It provided answers to some of the questions posed by the claimant had but did not set out the statistical detail that she had requested. She was informed in the last paragraph in the letter (page 107) that there was no further right of appeal.

41. The claimant's response, dated 15 July 2018, stated:

> *"Following on from Emma Taylor's letter dated 12 July 2018 confirming the conclusion of the appeal process I do not agree with the outcome the University has decided and its conclusions that there is no further right of appeal for myself. I asked for an opportunity to meet with you or an appropriate colleague to look into this matter so the situation can be sorted out amicably from both sides. I look forward to hearing from you".*

42. The claimant's case is that there was no response albeit that she had hand delivered this letter to office of Director of Human Resources.

43. By letter dated 4 September 2018 the claimant stated:

> *"Following on from Emma Taylor's letter of 12 July 2018 to yourself dated 15 July please can I ask for a response to my letter dated 15 July".*

44. At the bottom of this letter the claimant stated that a copy of her July letter had been enclosed. The respondent's case, based on Ms Taylor's evidence, was that the post book for the University had been checked and neither of the claimant's letters had been received and that there was no email from the claimant to Ms Taylor or the Director of HR attaching these letters.

45. Lastly, the claimant produced a printed document showing the content of an email which was addressed to Emma.TaylorHR@Glyndwr.ac.uk and dated 11 October 2018 at 10:21am. The document states:

> *"Emma, I hope you are well. I have not had a response to my letter which I address to Peter Gibbs which I sent in response to your last letter. Please can you let me know when I can expect to receive a reply from the University".*

46. Ms Taylor's evidence was set out in a written statement which was not challenged by the claimant. It states that Ms Taylor had ceased to be a member of the HR department before 11 October 2018 and had ceased to use the HR@glyndwr.ac.uk email account. The University's Information and Technologies Team had checked the "HR" inbox for correspondence from the claimant on 11 October 2018 date (page 113)". There was no record of any email being received. She further indicated that an automated response was functioning on her former "HR" email account around that date (because the claimant had moved from HR to a lecturing role and therefore had been provided with a new email address within the University). The claimant did not give evidence of receiving an automated response to her email of 11 October 2018.

47. With regard to the last items of correspondence (the two letters and the email) the respondent's case is that there is no proof that the email was sent and no proof that the letters, if they were sent, had ever been received by the respondent. With regard to the email, the respondent argues that if the email presented by the claimant had been sent there would be an

electronic record of receipt and of an automated response; neither of which, on the evidence before me, appears to exist.

48. The questions that were set by Judge Davies were then addressed through oral submissions by the claimant and in thorough written submissions by Ms Gardiner. I will deal with Ms Gardiner's case first. Her written argument between paragraphs 19 and 28 sets out the statutory matrix and the core cases which the respondent says are pertinent to my decision making. Thereafter Ms Gardiner sets out her summation of the claimant's evidence and then (paragraph 30) the respondent's submissions.

49. The essence of the submission is that the claims which are now put before the tribunal had crystallised on 9 April 2018 and that the claimant had expressed all of those claims in her correspondence dated 4 April, that she had expressed the same complaints again on 24 April. Further, that her written questions, which were posed in preparation for the appeal hearing, demonstrated an understanding of the issues of procedural fairness for unfair dismissal and comparators for the discrimination claims. Furthermore, that the claimant articulated an understanding of the Employment Tribunal jurisdiction and its approach to fairness in relation unfair dismissal during the appeal hearing and that the claimant was an educated woman who had access to the internet and was therefore capable of carrying out online research necessary to bring a claim and finding out the time limits for doing so.

50. Lastly, that by reference to a comment within the ET1 where the claimant said she only realised in October 2018 that she had not submitted a claim, that suggested that the claimant had a intended to present her claim prior to that date.

51. The respondent's submission then focusses on the claimant's assertion in her witness statement that she "could not put pen to paper". The respondent compares that assertion with the claimant's correspondence which the respondent describes as articulate and focussed and submits that this evidence establishes that on or before 8 July 2018: (a) the claimant knew the material facts necessary to present a claim (b) knew that she could bring a claim (c) had demonstrated the ability to write and communicate the character of her claim.

52. In paragraph 35 the respondent notes that the claimant's correspondence covered the entire limitation period (i.e. from April through to July 2018). The respondent also addressed whether or not the correspondence sent by the claimant after 12 July was in any real sense more than an invitation to the respondent to try and find an amicable resolution which, from her perspective, included a financial payment; compensation for the difference between the amount of money awarded to her as her statutory redundancy payment and that paid to her comparators, which she believed to be, in the region of £25,000.

53. The claimant was asked about this in cross examination, she was initially not entirely clear but she did accept that that was an element of the outcome she sought. In my judgement there is, on the evidence before me, no other obvious intent or purpose in the correspondence save to achieve a

settlement without the need for a less than amicable process before the tribunal.

54. The respondent concludes by challenging the claimant's reliance on that correspondence in the following ways:

55. There was no action from the respondent which indicated there was any intention to enter into dialog or seek to resolve the matter "amicably" and therefore it was unreasonable for the claimant to await a any proposal of a meeting or settlement where none had been intimated and her correspondence had not even been acknowledged in the period between 16 July and 21 October 2018.

56. The last point the respondent makes is that the medical evidence which has been adduced by the claimant is that of the general practitioner. It is dated January 2019. It does not give any precise opinion and does not state whether the claimant was incapable of "setting pen to paper" completing a tribunal claim form:

"...unfortunately, Mrs Smith has been through troubled times recently and has been suffering with low mood and anxiety. I am aware that the complaints regarding her redundancy should have been lodged within ten weeks of the decision and this has not happened due to her mental health issues at the time.

Mrs Smith is now receiving treatment for anxiety and depression and has recognised the error and is trying to rectify this situation".

57. I invited Mrs Smith to look at each of the statutory steps (each of which I briefly summerised) in turn and to comment on Ms Gardiner's submissions.

58. Ms Smith's submissions emphasised the priority of caring for her family health issues and the amount of time and attention that required. She emphasised the emotional turmoil she had to bear. She pointed to her mental health condition which was exacerbated by events at work and in her private life. She directed my attention to the detail of the history of health issues and frustration of dealing with the respondent which was slow to respond to correspondence and which failed to provide all the information she had requested.

<u>The legal matrix</u>

59. Section111 of the Employment Rights Act states:

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) 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.

60. The evaluation of this case requires two separate questions be answered. In respect of the first the burden of proof this rests on the claimant: Porter v Bandridge Ltd [1978] IRLR 271.

61. In Palmer and Saunders v Southend-on-Sea Borough Council [1984] 1 All ER 945 the Court of Appeal gave the following guidance in the interpretation:

"‥ to ask colloquially and untrammelled by too much legal logic— "was it reasonably feasible to present the complaint to the tribunal within the relevant three months?"— is the best approach to the correct application of the relevant subsection."

62. The answer to the question of reasonable practicality must be informed by the surrounding circumstances and the aim to be achieved: Schultz v Esso Petroleum Ltd [1999] IRLR 488:

"In a case of this kind, the surrounding circumstances will always include whether or not, as here, the claimant was hoping to avoid litigation by pursuing alternative remedies. In that context, the end to be achieved is not so much the immediate issue of proceedings as issue of proceedings with some time to spare before the end of the limitation period."

63. The facts of the Schultz case have a degree of similarity with the claimant's case before me. Whilst every case must be determined on its own facts, I have borne in mind that; 'attention will in the ordinary way focus upon the closing rather than the early stages' of the limitation period.

64. If the claimant succeeds in proving that it was not reasonably practicable to present her claim in time, I must then consider whether it was presented within a reasonable time thereafter. The discretion does not give carte blanche to a tribunal to entertain a claim: Westward Circuits Ltd v Read [1973] 2 All ER 1013. The claimant is expected to make her application as quickly as possible once it has become reasonably practicable to do so.

65. In Cullinane v Balfour Beatty Engineering Services Ltd UKEAT/0537/10, the EAT stated that the question whether a further period is reasonable is not the same as asking whether the claimant acted reasonably. Nor is the test whether it would be just and equitable to extend time. I must make an objective assessment of all the factors which caused the delay and what period of time should reasonably be allowed in those circumstances. As noted elsewhere in this judgment, one such circumstance is the public interest in claims being brought promptly.

66. Section 123 of the Equality Act 2010 states:

(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—

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

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

67. Under Section 123 of the Equality Act 2010 the tribunal has 'a wide discretion to do what it thinks is just and equitable in the circumstances of each case and it is to take into account anything which it judges to be relevant': Hutchison v Westward Television Ltd [1977] ICR 279, EAT. The discretion is broader than that which applies to section 111 of the Employment Rights Act 1996 'not reasonably practicable' formula: British Coal Corporation v Keeble [1997] IRLR 336*, EAT*; Mills and Crown Prosecution Service v Marshall [1998] IRLR 494.

68. Although, the discretion is broader, I must take into account that time limits are exercised strictly in employment cases and that there is no presumption that I should exercise this discretion to extend time on the just and equitable' basis. The exercise of discretion is the exception rather than the rule: Robertson v Bexley Community Centre [2003] EWCA Civ 576.

69. The burden is on the claimant to persuade the tribunal that it is just and equitable to extend time, in Abertawe Bro Morgannwg University Local Health Board v Morgan UKEAT/0305/13 the EAT stated that a litigant can hardly hope to satisfy that burden unless she provides an answer to two questions:

"The first question in deciding whether to extend time is why it is that the primary time limit has not been met; and insofar as it is distinct the second is the reason, why after the expiry of the primary time limit the claim was not brought sooner than it was.'

70. In Edomobi v La Retraite RC Girls School UKEAT/0180/16 Laing J stated:

"I find it difficult to see how a claimant can discharge the burden of showing that it is just and equitable to extend time if he or she simply does not explain the delay, nor do I understand the supposed distinction in principle between a case in which the claimant does not explain the delay and a case where he or she does so but is disbelieved. In neither case, in my judgment, is there material on which the tribunal can exercise its discretion to extend time. If there is no explanation for the delay, it is hard to see how the supposedly strong merits of a claim can rescue a claimant from the consequences of any delay."

Discussion and conclusions

71. There are two separate tests that I must determine with regard to Sections 111(1)(a) and Section 111(1)(b) of the Employment Rights Act 1999. I first address the issue of reasonable practicability.

72. I remind myself that the question of reasonable practicability is an objective one. Secondly, the burden of proving the facts which demonstrate that it was not reasonably practicable to present a claim within the time limit rests upon the claimant.

73. The test of reasonable practicability is one of the reasonably feasibility; it is not one of strict physical capability to present the claim form.

74. In this case I am satisfied of the following:

    a. That the claimant knew the necessary facts to enable her to present her claims by the date of her grievance correspondence of 4 April 2018.

    b. That she was aware that she could bring proceedings to the Employment Tribunal and she was alert to elements of the statutory framework for discrimination claims by the date of her appeal hearing on 22 May 2018.

    c. That the claimant was aware of the time limit for the presentation of a tribunal claim before the 8th July 2018.

75. The fundamental dispute is, in the context of the circumstance of the claimant's private life, her redundancy and her mental health condition; whether it was reasonably practicable for her to have formulated and presented her case in the form ET1 by the 8th July 2018.

76. I have no hesitation in accepting that impaired mental health or preoccupation with pressing health concerns can make it reasonably impractical for a person to present a claim to the employment tribunal in a timely fashion. A combination of both factors (whether contemporaneous or sequential in their respective adverse effects) might logically be a greater impediment.

77. I must decide this case on the facts I can draw from the evidence before me, part of which includes an evaluation of the degree to which the evidence identifies the claimant's ability to understand and articulate her case in the relevant period. In this respect I have reached the following conclusions.

78. I have not had any cause to doubt the claimant's description of the material facts concerning her family's health and I do not doubt that the claimant had between March – May 2018 (and thereafter) "stress due to mother's diagnosis" and equally compelling circumstances relating to her father. I accept that that she suffered from mental health problems and had continued family responsibilities through to the expiry of the primary time limit in July 2018.

79. The question then is, viewed objectively, did these circumstances which inhibited the ability to present a claim, act upon her so as to make it not

"reasonably feasible" for her to have presented the claim before the 8th July 2018?

80. It is evident that the claimant could correspond with the respondent in paper and electronic format between April and July 2018.

81. It is evident that the claimant was able to prepare and present a cogent case at her appeal hearing in May 2018.

82. It is evident that the claimant was determined to press her case through internal procedures or a successful non contentious resolution as set out in her letters dated between April and July 2018.

83. I have undertaken a comparison of the content of the claimant's presentation of her case, as sent to the respondent within the primary time limit with that she set out in her claim form.

84. With regard to sex discrimination (page 16 section 8.2.3 – 8.2.35) the content of this section of her ET1 pleading is largely a quotation from her own correspondence which she drafted and sent to the respondent on 24 April 2018. The next section 8.2.33 is also a quotation from the same letter. The subsequent two paragraphs refer to the respondent's responses and the last paragraph refers to a consultation meeting and reference to severance packages.

85. None of that information is an account that is materially different from that which the claimant was able to set down in writing and send by post within the primary time limit.

86. The issues of disability discrimination relate to failure to make reasonable adjustments to allow the claimant to record her meetings with the respondent. She notes that the request was initially refused and that an alternative was proposed but at a later point she was allowed to record meetings. Again, I have undertaken a comparison with the content of the ET1, the correspondence that the claimant sent to the respondent and comments she made orally during her appeal hearing on 22 May 2018. There is nothing significantly different in the ET1 on this head of claim.

87. Turning lastly to the claim for unfair redundancy dismissal. This is set out on page 14 – 15 of the bundle under section 8.2.2. Again, it is notable that the content of the pleaded case is very similar to the matters that the claimant had set out in her grievance/appeal letter and referenced in her requests to the respondent for further information. It is also apparent with the absence of the provision of the full answers from the respondent did not inhibit the claimant from presenting her argument at the appeal hearing.

88. On the balance of probabilities, I have concluded that the claimant was capable of articulating in written form the essential character of her claims and that she was capable of articulating her arguments and questioning the respondent on 22 May 2018.

89. The content of the claimant's letters wherein she formulates her grievance, requested detailed explanations or evidence would, with modest

amendments, have been sufficient to set out intelligible and coherent claims within the ET1 form.

90. This level of ability demonstrated by the claimant was performed in the most difficult circumstances. I have reminded myself of the content of paragraph 7 of the claimant's statement; the matters which affected her and that the claimant continued to look after her mother and father, to differing degrees, throughout the period between April and July.

91. Thus, the impact of the claimant's own mental health, the exacerbation of that impairment caused by the worry about, and caring for, her parents can be judged by the degree to which the claimant was able to express herself in her correspondence, and in the appeal meeting.

92. I am not persuaded that it was not reasonably practicable for the claimant to have presented her Employment Tribunal claim on or before the expiry of the principle time limit of Section 111(1)(a). I have concluded that the conduct of the claimant in a contentious formal meeting and in her articulate and well structured correspondence demonstrates that she had the ability to communicate the same content, in largely the same format, by paper or electronic means, to the Employment Tribunal on or before the expiry of the primary time period.

93. By reason of my conclusion I find that the claim for unfair dismissal is not within the jurisdiction of the employment tribunal and must be dismissed.

94. If I were wrong in that decision, I would then have gone on to consider what was a further period of time was reasonable for presentation of the claim.

95. The claimant's description of the issues affecting herself and her family appeared to become less severe in the latter part of the year albeit I do not, for one moment, consider that the claimant was not adversely affected.

96. The claimant's account includes a statement in the ET1 at page 13 of the bundle:

> "I realise my claim is out of time, I only realised a week ago that I had not lodged a claim and feel my epilepsy affects my decision as I could not put pen to paper to claim to the tribunal between the end of April and the end of September….".

97. In the next section she states the trigger points in making this claim to the tribunal:

> "I personally dropped off a letter at the University on 17 July and informed them I did not agree with the decision they had come to and request a further meeting to try and sort the issue out amicably".

98. She then highlights the letter on 4 September and the email of 11 October and then states again that she received no reply;

> "Due to having no reply from any of my correspondence is why I am submitting this claim now. My mind was so preoccupied since my

redundancy, in relation to problems I had with balance loss and that put me down to the stress that may have triggered my epilepsy. The impact of stress, epilepsy and the way I was treated has affected my mental state".

99. It is notable in the account that the claimant set out in the ET1 the reason for the timing of her application:

"due to having no reply from any of my correspondence is why I am submitting this claim now".

100. In my judgment, the reason the claimant delayed presenting her claim was the hope of an amicable resolution. She presented her claim when she gave up any hope of such a resolution.

101. This is not a case where the respondent had indicated that it was going to consider making any offer or that was even going to enter into any discussion at all.

102. The claimant's delay from the 17 July through to 21 October was considerable given she had received no hint of any willingness from the respondent to engage with her.

103. Allowing again for the adverse effect upon the claimant of her surrounding personal circumstances, I asked the question whether it was reasonable for the claimant to delay presenting her claim until 21 October 2018. I take into account all the circumstances, which include the public policy consideration of claims being managed effectively and some respect for the time limits that are generally strictly imposed in the Employment Tribunal.

104. In my judgement it might have been reasonable for the claimant to have delayed presentation until she became aware of the appeal outcome (on the 16th July 2018); which she could reasonably have anticipated to arrive before or close to the 8th July 2018 but it was not reasonable for the claimant to delay for a further three months in the hope, which had no foundation, that an amicable solution would obviate the need to present a claim to the employment tribunal.

105. Thus, had the second limb of section 111(1) been a matter for determination, I would have concluded that her delay between 16 July and 21 October 2018 was such not a reasonable further period.

"Just and Equitable Extension"

106. I have above set out the legal matrix and I have been referred in the submissions on behalf of the respondent to the cases of the Chief Constable of Lincolnshire Police and Caston [2010] IRLR 327 which is applying Robertson v Bexley Health [2003] IRLR 434. I have also been taken to British Coal Corporation and Keeble [1997] IRLR 336. All of which are pertinent to the exercise of my discretion under Section 123(1)(b) of the Equality Act 2010.

107. With respect to the primary three-month period (April to 8th July 2018), I have not found the explanations the claimant gave persuasive.

108. The reasons for the delay are set out above with respect to the period from 9 July through to 21 October 2018.

109. Turning firstly to the issues under the "Keeble criteria" the length of the delay in this case was some three and a half months beyond the limitation period.

110. There is prejudice to the claimant and the respondent if one is denied the right to present her claim and the other required to defend a claim which could have been presented in time.

111. The second issue is the extent to which the cogency of the evidence is likely to be affected by the delay. The respondent submits that it is inevitable with the passage of time there is some loss of recollection by witnesses. I accept that is so but the parties have been alert, certainly on the respondent's submissions, to the prospect of an employment tribunal claim and have understood quite thoroughly the issues in this case since that the claimant presented them in April/May 2018 for the purposes of appeal.

112. I have considered the extent to which the parties cooperated with requests for information. There was a degree of reticence by the respondent in providing full responses to requests for information. However, I do not find in this case that the delay in provision of information had any practical impact on the timing of the submission of the claim form; the claimant's explanation for her delay, and my own findings of fact are consistent with this conclusion.

113. I have considered the promptness of which the claimant acted once she knew the facts giving rise to the cause of action. In this case those matters are, so far as my factual findings are concerned, addressed above. The claimant did not act promptly. I have not accepted her explanation for her late presentation of the claim.

114. I have had little detail provided in respect of the merits of the claims beyond the respective pleadings. The claim of sex discrimination, asserts that the claimant was treated less favourably than male comparators by reason of the lesser redundancy payment she received. On the face of the pleadings the respondent has a more generous voluntary redundancy pay scheme than it has for those, such as the claimant, whose redundancy is compulsory this maybe be the decisive issue in that claim. The disability claims pleadings do not persuade me the claims are notably strong or weak; it is factor which I have considered but to which I give little weight in this case.

115. The operative matters which have led to my conclusion as the application of section 123 of the Equality Act 2010 are those relating to the claimant's explanations for the timing of the presentation of the case and the broader judicial discretion open to me under the Equality Act.

116. I am not satisfied that the claimant has provided an explanation for her failure to present her claim by the 8th July 2018; I have rejected her explanation for that period. I have concluded that she unwisely and unreasonably delayed her presentation until 21st October 2018 firstly in the hope her appeal would succeed and thereafter in the hope, which had no real foundation, that a none contentious resolution would be reached.

117. I have considered the above matters in the context of the guidance noted in paragraphs 67 to 70 above.

118. The claimant does not have the benefit of a presumption that a just and equitable extension will be granted. An extension is the exception rather than the rule. It is for the claimant to establish facts upon which the tribunal's discretion will be exercised. In this case, for the reasons set out above, I have not found her explanation entirely credible and the claimant has not persuaded me that it is just or equitable to extend time for the service of the claims of discrimination.

119. For these reasons I dismiss the claims of disability and sex discrimination.

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Employment Judge R F Powell

Date 8th September 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON
13 September 2019

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FOR THE TRIBUNAL OFFICE