Case Number: 2200716/2019

THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON CENTRAL**

BEFORE: **EMPLOYMENT JUDGE ELLIOTT**

BETWEEN:

Mr M Houlihan

Claimant

AND

Closerstill Media Ltd

Respondent

ON: **26 September 2019**

Appearances:
For the Claimant: **In person**
For the Respondent: **Ms T Barsam, counsel**

RESERVED JUDGMENT ON PRELIMINARY HEARING

The Judgment of the Tribunal is that the tribunal has no jurisdiction to hear the claim because there is a valid settlement agreement.

REASONS

1. On 28 February 2019 the claimant Mr Martin Houlihan presented a claim for disability discrimination. He said in his claim form that he worked for the respondent from 6 August 2014 to 1 October 2017 in business development.

The issues for this preliminary hearing

2. On initial consideration, Regional Judge Potter decided that there should be a preliminary hearing to consider whether the tribunal has power to hear the claim presented outside the normal time limit. In the notice of preliminary hearing, the claimant was told that he should provide to the tribunal and the respondent by 27 May 2019 the medical evidence he relied upon to say that he was not fit earlier to begin this claim.

3. The respondent runs business exhibitions internationally in the healthcare and technology sectors. In its ET3 it states that it employs 199 people in Great Britain and 167 people in the place where the claimant worked.

4. In his ET1 it was clear that the claimant was aware that his claim was significantly out of time because he said in the last line of box 8.2 "*I am applying so late because I am only now getting back to myself and I was not capable*." His ET1 set out his case regarding his mental health difficulties.

5. Employment Judge Snelson directed that the preliminary hearing was also to address, in addition to the time point, the jurisdictional matter contained in the grounds of resistance paragraphs 6 – 10. This was the respondent's case that on 13 September 2017 the claimant had entered into a settlement agreement under section 203 Employment Rights Act 1996 and that his employment terminated as a result of his resignation on 31 August 2017. The respondent's position was that the claimant accepted the terms of the settlement agreement in full and final settlement and that he had received independent legal advice from solicitors.

The procedural background

6. The preliminary hearing was listed to take place on 9 July 2019. On 5 July 2019 the claimant applied for a postponement. He said he had been trying to obtain medical evidence in relation to the time point but after receiving legal advice he understood he might need more detailed evidence and he had been trying to make contact with his GP surgery. He wished a postponement in order to present evidence to support his argument that it would be just and equitable to extend time for his claim. He had also recently learned that the tribunal was adding the second jurisdictional issue to the preliminary hearing and he wished to have more time to obtain legal representation. The respondent opposed that application.

7. The postponement was granted by Regional Judge Potter and the preliminary hearing was relisted for Wednesday 7 August 2019. On 17 July 2019 the respondent sought postponement on grounds of councils non-availability, counsel having been instructed on the matter for some time. The claimant also made an application on 19 July 2019 for the tribunal to relist the preliminary hearing for Thursday so that he could receive legal assistance through ELIPS.

8. This postponement application was granted by Employment Judge Glennie and was relisted for this hearing.

Witnesses and documents

9. There was a bundle of documents of about 140 pages and a skeleton argument from the respondent. The claimant produced some separate documents, they were included in the bundle in any event.

10. The tribunal heard from the claimant and from Ms Berni Good, a consultant HR Director for the respondent.

11. The claimant produced a lengthy email titled "Impact Statement for Martin Houlihan" dated 24 September 2019 from Mrs Joyce Woolford who is the grandmother of the claimant's daughter on the mother's side. It set out a great deal of information about the claimant's personal and financial circumstances and family relationships. She gave her opinion about his work situation.

12. I could only attach limited weight to this statement as Mrs Woolford did not attend the tribunal to swear the statement into evidence, she did not say that she had any medical qualifications so far as her views about the claimant's health was concerned and she was not a first hand witness of fact to any of the work related matters.

Medical evidence and findings related to this

13. Prior to this hearing, the claimant had submitted a number of medical documents to the tribunal. There was a letter from West London NHS Trust, Back on Track service, stating that the claimant had been accessing support of Cognitive Behavioural Therapy and that he started treatment on 25 February 2019, this being three days before he presented this claim.

14. There was a letter from the West London Centre for Counselling (WLCC) stating that he had attended an assessment on 30 August 2017 and attended 12 sessions starting on 12 October 2017 and ending on 11 January 2018. The letter said nothing more than that.

15. There was a letter from the claimant's GP practice, the Brook Green Medical Centre in London W6 dated 5 July 2019. The letter was from Dr B Loud. The letter explained that over the past couple of years the claimant had consulted and sought treatment for psychological distress relating to a number of psychological stressors.

16. The letter said that he first highlighted problems in February 2017 following the death of his father when he was feeling stressed and anxious as a consequence of the bereavement and the financial implication of the funeral and he took some time off work. Counselling medication and time off work recommended at that time.

17. Dr Loud said that the claimant presented to the GP surgery again in June 2017 and his well-being had been further affected by other bereavements including family and friends who had suffered in the Grenfell fire. He was deemed unfit for work on the basis of his psychological well-being and was once again recommended psychological therapy.

18. The GP said that in June 2017 the claimant also started to experience problems with back pain. In July 2017 his time signed off sick was

extended and he was waiting for an appointment to start his counselling. He continued to report significant psychological distress which was compounded by the fear of losing his job and financial concerns.

19. The GP practice agreed with him that he should try to return to work on an amended work pattern and he was also pointed in the direction of third sector organisations, specifically Citizens' Advice to help advise him with his work and financial issues. From the context of the letter I find that the GP said this to the claimant in about August 2017.

20. The claimant said he did not try to contact Citizens' Advice at that time, but he did once he had spoken to ACAS in January 2019. The claimant said he had "*no clue*" about what the doctor had told him and he was going through a very bad time. He said things went in one ear and out of the other. It was put to the claimant that between August 2017 and December 2018 he could have contacted Citizens' Advice. The claimant said he could not. Based on findings made below, I find on a balance of probabilities that from 26 July 2017 when the claimant's GP said he was well enough to work from home (sick note page 104) and from 7 August 2019 to return to work initially on half days (sick note page 105), he was well enough to make contact with the CAB.

21. The final paragraph of the first page of the GP's letter of 5 July 2019 said:

He reported the issues at work (feeling unsupported in his recovery process) resulted in his resignation when he attended in August 2017. It was felt he needed time off in order to deal with his psychosocial issues and he was once again signed unfit for work in order to facilitate recovery by addressing his social and psychological therapies. Sick notes continued throughout Sept and October whilst he had counselling through the Back on Track psychology service. He presented again in November 2017 following further bereavements and reported problems with anxiety and insomnia and was still unfit for work".

22. The GP letter went on to outline certain physical conditions including for back pain.

23. Dr Loud said that throughout this time the claimant reported his mental well-being as still being affected by past events. His initial counselling finished without resolution of his issues and he was seen in November 2018 when medication and a further referral for counselling was made. The GP said he engaged with the second course of counselling but did not continue to take medication long term, which the GP considered was an acceptable choice. The claimant thought he took the medication for a matter of months but he was not sure.

24. Based on the claimant's evidence and the medical reports I find that the initial counselling ended in January 2018. The claimant could not remember whether between January 2018 and November 2018 he attended any counselling. I find based on Dr Loud's report and on a

balance of probabilities that he did not attend counselling during the period from January to November 2018.

25. The claimant's evidence was that he was very unwell from January 2018 to November 2018 and that even towards the end of his employment in August 2017 he was very unwell.

26. He continued to see the physio team for his back pain until April/May 2019.

27. Dr Loud concluded by saying that the claimant had been seen recurrently in the surgery with physical and mental issues related to psychosocial issues. He said that in particular stress-related to work and bereavement affected his ability to manage his daily activities from a mental perspective and this was compounded by the physical issues of his back.

28. The letter concluded with the doctor saying:

"Clearly being unwell with physical and mental issues will have affected his approach to life during this time and so judgements which he may have made during this period may have been different to the judgements he would have made had these events not been occurring. As a consequence his conclusions and life choices may have been different if he had not been unwell at the time of making them. I would advocate this be considered when reviewing choices he made during the times of his various illnesses."

29. There was a further letter from WLCC dated the day before this hearing, 25 September 2019 (page 59F), sent by a Director and principal counsellor. This covered the claimant's assessment on 30 August 2017 and his sessions from October 2017 to January 2018 as mentioned above. It followed a referral in June 2017. The letter said that the claimant presented with a significant amount of loss and was feeling overwhelmed by recent events and was having difficulty coping on a day-to-day basis. It said that he was experiencing high levels of panic and anxiety, struggling to get sufficient sleep and found he was stuck in very negative thought and behaviour patterns. The letter says that these were impacting his decision-making and relationships.

30. The letter from WLCC said that the claimant was in an extremely low and confused state of mind and that he seemed to struggle in his decision-making. The letter also said that the counselling came to an end because the claimant "*dna-ed"* (did not attend) two consecutive sessions and that was in line with their policy on attendance. His case with them was closed on 25 January 2018. The claimant could not remember how many sessions he actually attended.

31. The claimant was not referred to a consultant psychiatrist or psychologist. He said that there was "no free service" and therefore he was referred to the counselling service (WLCC). I find that if his GP considered it clinically necessary, he or she could and on a balance of probabilities would, have

made a referral on the NHS which have resulted in no cost to the claimant. I find that no such referral was made because there was no clinical necessity for it. I find that in the 10 month period from January to November 2018 the claimant was in a position to seek advice had he wished to do so in relation to the termination of his employment.

Findings

32. The claimant worked for the respondent in business development. He was off sick over much, but not all, of the period from 19 June 2017 to 3 September 2017. His sick notes showed that he was absent with a stress related condition (first sick note bundle page 102 and following). More detailed findings are made above in relation to this.

33. The claimant's GP signed him fit to return to work from as of 3 August 2017 "half days initially" (sick note page 105) until 3 September 2017. By 16 August 2017 the GP assessed the claimant as well enough to work on amended duties (sick note page 106).

34. He had a return to work interview on 8 August 2017 with consultant HR Director Ms Good who found the claimant articulate and coherent. The claimant went off sick again shortly after the return to work meeting. At the meeting Ms Good had a discussion with the calimant about his health and return to work. The claimant wanted to work from home and Ms Good's evidence was that he was forceful in putting forward his views about this. She found him coherent and articulate in their discussions on 8 August 2017.

35. The claimant was moved into a different role in about January 2016 which he said he struggled with. There were some concerns about his performance, which the claimant felt were unjustified because he had been moved into the alternative role. Ms Good could not comment on this as she did not have the first-hand knowledge. She was not his line manager. She understood that the claimant was having some struggles and she asked if she could contact his GP but the claimant declined. This was set out in the meeting note of 8 August 2017 (page 110). The claimant also said in the meeting that he thought he was disabled (also page 110). Ms Good's evidence was that the company tried very hard, and even bent over backwards to help the claimant with his difficulties. The claimant did not agree.

36. The claimant's request to work from home was not agreed because managers felt that he needed to managed in person, particularly as he was struggling with the role.

37. Negotiations began between the claimant and the Chief Financial Officer Mr Jonathan Wood as to the possible termination of the claimant's employment. The claimant accepted in evidence that he understood from his discussion with Mr Wood that there was a risk that his employment could be terminated. He said this was "scaremongering" and he should

have been given time to consider it. Ms Good's oral evidence was that if an employee resigned or was dismissed they were treated as a "bad leaver" and any shares were transferred back to the Trustees and reinvested into the business. An employee who was not in service at the date of any sale of the business would not benefit from the share options.

38. Ms Good was not the decision maker in terms of offering the claimant a settlement agreement. Mr Wood as the CFO made the decision to offer settlement terms to the claimant. Mr Wood negotiated direct with the claimant and told him he would need to have this signed off by a solicitor. Mr Wood recommended a solicitor situated in the same building as the respondent, two floors below.

39. Mr Wood has since left the respondent's employment in December 2018 after the sale of part of the business, referred to below.

40. When the claimant entered in to the settlement agreement he had exhausted his entitlement to contractual sick pay and was on SSP. The settlement agreement included a lump sum payment of £30,000 and a waiver of certain loans.

41. The claimant accepted that he saw a solicitor in relation to the settlement agreement as is required by section 203 of the Employment Rights Act 1996. The firm he went to was Hoffman-Bokaei-Moghimi and the individual solicitor was Mr Peter Thibault. The claimant agreed that he met Mr Thibault in person. He could not recall the length of the meeting, he thought it was for about 10 or 15 minutes.

42. The solicitor's certificate in connection with the agreement was at page 130. It confirms in the usual way that the solicitor has given legal advice to the claimant on the terms and effect of the agreement and on its effect on his ability to pursue claims against the respondent. The long list of claims was set out in Schedule 2 and included any claim for disability discrimination (Schedule 2 clause (q) page 128). I find on a balance of probabilities that the advice was given to the claimant as per the certificate and that it was open to the claimant to tell the solicitor that he had not understood or needed more time to consider what he had been told.

43. The claimant said he did not read the settlement agreement. During cross examination he said it was the first time he had seen it.

44. The claimant said in evidence that he did not understand that he could not pursue any claims against his employer. He could not recall what his solicitor had told him. The claimant was asked why he thought the respondent was prepared to pay him around £30,000. He said that he understood from Mr Wood that the respondent was planning to sell the business within three years. It was not definite. The claimant had another 90 shares in the company that had not yet matured. The claimant considered that the incentive to the respondent in offering him £30,000 was to save them paying more when the sale of the business took place.

The claimant considers that he has lost out on around £90,000.

45. The claimant was in difficult financial circumstances at the time he entered in to the agreement. His contractual sick pay had run out and he was going on to SSP. From his oral evidence I find that in August 2017 he was keen to encourage his GP to sign him as fit to work so he could continue to receive his full pay.

46. The claimant agreed in oral evidence that he was aware when he entered in to the settlement agreement that he was giving up his loan notes (settlement agreement clause 5.1 page 119). At clause 5.2 a valuation was put on the loan notes of £5,955 and £11,913. This was reflected in the loan notes at pages 134 and 135. The claimant said he was confused as to how these figures came about. I find they were clearly set out in the original loan notes.

47. Clause 5.3 said that the employee would transfer 90 "D shares" to the respondent. The claimant said it was all jargon to him and he did not understand it. This was the transfer back to the respondent of the claimant's shares on the termination of his employment.

48. The claimant also agreed in evidence that a loan he had taken from the respondent in the sum of around £4,000 would not need to be repaid. This was taken from the loan notes. The claimant had previously been repaying the loan through deductions from salary during employment.

49. The claimant sent a lengthy email to the tribunal on 10 September 2019 setting out his position in advance of the preliminary hearing. In short form he said he was pressurised into entering into the settlement agreement of 13 September 2017 and that the respondent did not wish to continue to employ him because of his disability. He relied upon this is direct discrimination. He also referred to discrimination arising from disability under section 15 Equality Act and relied upon pressure to sign up to the settlement agreement as due to his "perceived underperformance" which he said was something arising from his disability. I find based on the claimant's stated lack of knowledge and understanding of the law, that this email was prepared with the benefit of some legal input.

50. The claimant explained that as part of his contract of employment it was agreed that he would receive part of his pay in shares and that as a result of this basic pay was lowered according, as he said, "to industry standard". He stated that he agreed to this. He set out circumstances giving rise to mental health difficulties and described himself as becoming very mentally vulnerable with no support and some days even feeling suicidal. He said that was when the respondent decided to "*pressure me into giving up and selling my shares*". This led to the settlement agreement.

51. The claimant said in this email, that he was applying so late (which I understood to mean that he had not presented his claim until 28 February 2019) because he was only now getting back to himself and "*was not*

capable of fighting for the past year". He said he had been fighting with mental and physical health and doing this with no legal help.

52. Although the claimant said he had no legal help he referred in an email to the tribunal of 5 July 2019 to "*attending ELIPS on 27 June 2017*". This may have been a typing error and may have referred to June 2019. It was clear from this email that he had taken advice from ELIPS who had informed him that he should present further medical evidence to support his case at this preliminary hearing that he was not fit to present his claim any earlier and that he had taken advice in relation to the second jurisdictional argument concerning the settlement agreement. He said in that email that he was seeking representation from FRU or Advocate.

53. The claimant accepts that he has had advice from counsel through ELIPS and had seen them a number of times and from Mr Thibault in connection with the settlement agreement. The claimant has received advice from a QC through ELIPS.

54. The sale of the respondent's business took place in December 2018. The claimant found out about this from an ex colleague. On 21 December 2018 the claimant sent an email to Ms Sarah Rayner in HR at the respondent (page 137) saying "*Just a quick one. when I left I know I still had loan notes? The ones I hit my targets already for. Not the ones that were from the last time or the ones I was due if I would have hit further targets. Can you get back to me plz*." The claimant said that when he said loan notes he really meant shares.

55. The claimant received a reply on 22 December 2019 from Ms Good referring to the settlement agreement. The claimant replied saying it made no sense. He referred it to it as "*disgusting behaviour*" and that he felt he had been "*tricked into losing everything*" when he was very vulnerable and that he would be contacting a solicitor. He did not contact a solicitor because he said he could not afford to. I find that he was very clear at this point that he wanted to take action because he told the respondent on 22 December 2018 that he was going to take legal advice (page 138).

56. The claimant's evidence was that it was not until he discussed this with his daughter's grandmother in January 2019 that he realised he could do something about it. I find that he had decided by 22 December 2018 that he wanted to do something about it because this is what he told the respondent in his email of that date. He said "*I will not let Closerstill get away with this*" (page 138). He said his daughter's grandmother told him that he should contact ACAS about it to see what he could do. In January 2019 the claimant began to research and contact ACAS. He commenced Early Conciliation on 30 January 2019 and the EC certificate was issued on the same date. He filed his ET1 on 28 February 2019. The primary time limit had expired by 15 months. He was 15 months out of time when he presented the claim.

57. The claimant's evidence was that he could not research his rights because

he did not have access to the internet. Like most people in this country he has a phone from which he can email and access the internet. He sends his emails from his phone. He said he could only do this when with friends and connected to their wifi. Public wifi facilities are not uncommon, such as in coffee shops or other public places and accepts he has friends who have wifi. I did not accept the claimant's evidence that he could not access the internet.

The relevant law

58. In ***Glasgow City Council v Dahhan EATS/0024/15*** the EAT in Scotland made clear that the tribunal has jurisdiction to set aside a settlement agreement, not just on grounds of misrepresentation, economic duress or mistake. It can include the claimant lacking mental capacity to enter into the agreement.

59. In relation to economic duress, it is a particularly high threshold. In ***Hennessy v Craigmyle & Co Ltd and ACAS 1985 IRLR 446 EAT*** and ***1986 IRLR 300 Court of Appeal*****,** the EAT and CA considered the question of economic duress in relation to a conciliated settlement via ACAS, the principles of which are relevant to a settlement agreement. The EAT said *"... we believe that the circumstances in which (economic duress) is likely to be successfully alleged will arise in employment law only in the most exceptional circumstances"*.

60. The Court of Appeal said at paragraph 23: "*It is entirely sensible to observe that in real life it must be very rare to encounter economic duress of an order which renders actions involuntary*". The Master of the Rolls said at paragraph 18:

> *In* Pao On's *case Lord Scarman added: 'It must be shown that the payment made or the contract entered into was not a voluntary act'. This led Mr Tyrrell to argue that Mr Hennessy was forced to agree to the settlement. To use a phrase beloved of politicians and trade union officials, 'There was no alternative'. As is the norm when that phrase is used, in fact there was a very clear alternative, namely, to complain to an Industrial Tribunal and to draw social security meanwhile. It may have been a highly unattractive alternative, but nevertheless it was a real alternative.*

61. Under section 1(2) of the Mental Capacity Act 2005 a person must be assumed to have capacity unless it is established that he lacks capacity. Subsection (3) provides that person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success and subsection (4) says that a person is not to be treated as unable to make a decision merely because he makes an unwise decision.

62. Section 123 of the Equality Act 2010 provides that:

> *(1) ……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.

63. This is a broader test than the reasonably practicable test found in the Employment Rights Act 1996. It is for the claimant to satisfy the tribunal that it is just and equitable to extend the time limit and the tribunal has a wide discretion. There is no presumption that the Tribunal should exercise that discretion in favour of the claimant. It is the exception rather that the rule - see ***Robertson v Bexley Community Centre 2003 IRLR 434*.**

64. In ***British Coal Corporation v Keeble 1997 IRLR 336*** the EAT said that in considering the discretion to extend time:

It requires the court to consider the prejudice which each party would suffer as the result of the decision to be made and also to have regard to all the circumstances of the case and in particular, inter alia, to –

(a) the length of and reasons for the delay;

(b) the extent to which the cogency of the evidence is likely to be affected by the delay;

(c) the extent to which the party sued had cooperated with any requests for information;

(d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action;

(e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.

Conclusions

The settlement agreement

65. I considered firstly whether the settlement agreement entered into by the claimant on 13 September 2017 was a valid agreement or whether it should be set aside.

66. There is no argument that the conditions concerning settlement agreements (section 203 ERA) have not been complied with.

67. The claimant's primary argument was that the respondent took advantage of his vulnerability and that he should never have been offered these terms and that he should have been given more time to think about it. He also relied upon his mental and physical health conditions over the period from August 2017 when he had discussion with the CFO Mr Wood, through to 28 February 2019 when he presented his claim.

68. The claimant considered that the respondent was under a very high duty of care to "*look after his financial best interests*". I do not agree. The respondent is a business and although employers have a number of duties

towards their employees, I find that "*looking after their financial best interests*" is not one of them. That is one of the reasons the law requires employees to have taken independent legal advice before entering into a valid settlement agreement.

69. The claimant's case is throughout that 18 month period he was not well enough to do anything about it or to seek advice until January 2019. His evidence was that it was in January 2019 after he had learned from Ms Good's email of 22 December 2018 that there was nothing further coming from the respondent following the sale of the business, that he was well enough to contact ACAS and begin the process towards commencing these proceedings.

70. In the medical evidence I have seen, there is no suggestion that the claimant lacked the mental capacity to enter into the settlement agreement. I have made findings above that from 26 July 2017 the claimant was well enough to work, albeit from home, and that from 8 August 2017 he was well enough to return to work on half days. I have found above that from 26 July 2017 he was well enough to seek advice from the CAB as recommended by his GP who specifically pointed the claimant in that direction for advice on his work related matters. I find that the doctor would not have given the claimant that advice if he did not think the claimant well enough to act on that advice. This was prior to entering in to the settlement agreement.

71. I have no doubt that the claimant has been through very challenging times and that he has had mental and physical difficulties and I sympathise with him. However, I have seen a number of letters from medical professionals, none of whom found the claimant's condition significantly serious to warrant a referral to a psychiatrist or psychologist. Counselling was the recommended treatment and medication for a brief period. The claimant was an NHS patient. The lack of a "free service" did not come into it. Doctors make recommendations based on clinical need. He was not in counselling during January to November 2018.

72. I find that the timing of the claimant seeking advice is revealing. It was upon finding out from a former colleague that the business had been sold and contacting Ms Rayner in HR about his loan notes and the response the following day (22 December 2018) from Ms Good that he decided to find out about any rights he might have against the respondent.

73. This information was the catalyst and the driver for the claimant to find out about his rights, not any recovery he had made in January 2019 or lessening of the circumstances he relies upon. Had the sale of the business happened earlier and the claimant had received this information earlier, I find he would have acted upon it at that time because of what he saw as the financial implications to himself**.** Had the sale of the business not taken place, I find on a balance of probabilities that the claimant would not have taken steps to commence these proceedings.

74. The claimant's secondary argument, raised in this hearing and not relied upon in his ET1 or witness statement, was that he was under financial duress to enter into the settlement agreement and the respondent knew about his financial difficulties.

75. I agreed with the respondent's submission that there was an inconsistency in relying on both grounds. There is an inconsistency in saying "*I did not understand what I was being asked to give up because of my mental health and vulnerability*" and at the same time saying "*I was under financial duress to give up my rights to my shares*". These two arguments do not sit well together.

76. As the case law set out above shows, there is a high threshold for a successful argument of financial duress. If the reason the claimant entered into the settlement agreement was because of financial pressure, because he feared he would otherwise lose his job, there were alternatives available to him. As clearly set out in the case law, one such alternative, however unattractive, was to take advice and bring a claim against the respondent and claim state benefits in the meantime. The claimant does not meet the threshold of being under such financial duress that he had no alternative but to enter in to the settlement agreement.

77. I find that the claimant entered into an agreement that he later came to regret when he discovered that the sale of the business had gone through and former colleagues had prospered financially as a result of this. This information was the trigger for him to take advice and commence the process and not because he had become well enough in January 2019 to pursue a claim for disability discrimination.

78. This means that the tribunal has no jurisdiction to hear the claim for disability discrimination because there is a valid settlement agreement which precludes such a claim.

<u>The time point</u>

79. I rely on my findings above in relation to the time point which it is strictly not necessary to determine. The claim is 15 months out of time and the I find that the medical evidence is not sufficient to satisfy the tribunal that the claimant was unable prior to 28 February 2019 to commence proceedings for disability discrimination.

80. I have found that in late July and early August 2017 he was well enough to take advice, he had been pointed in that direction by his GP in relation to his work situation. He did not require specialist treatment from a psychiatrist or psychologist. He was not in counselling during January to November 2018. I find that had he wished to do so he could have made enquires about making his claim. I have found that he could have made enquiries over the internet had he wished to do so. There is no good reason for the substantial delay.

81. The claim is 15 months out of time. One of the reasons for the time limit is because memories inevitably fade over time. Mr Wood who is a key witness has left the respondent's employment as of December 2018 and other managers have left.

82. I find that if the claimant considered that he had a claim for disability discrimination then he did not act promptly in seeking advice.

83. For those reasons, I find that even if there was otherwise jurisdiction to hear, the tribunal lacks jurisdiction because the claim is out of time and it is not just and equitable to extend time.

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Employment Judge Elliott
Date: 26 September 2019

Judgment sent to the parties and entered in the Register on: 27/09/2019 : :
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_____ for the Tribunals