



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr E Ukwu

v

**1. Tritax Management LLP &
others
(including
11. Leena Myers
14. DMJ Recruitment Ltd)**

Heard at: Central London Employment Tribunal

On: 25 September 2020

Before: Employment Judge Brown

Appearances

For the Claimant: In Person

For the Respondents: 1-10 11, 13: Mr M Leake, Solicitor

11, 14: Ms E Walker , Counsel

JUDGMENT AT AN OPEN PRELIMINARY HEARING

The judgment of the Tribunal is that:

1.The Claimant's claims against Respondents 11 and 14 were brought out of time. Time is not extended for the claims. The Tribunal does not have jurisdiction to consider those claims.

2. The claims against Respondents 11 and 14 are therefore struck out.

REASONS

Background

1. The Hearing today was listed to consider a number of matters, including the following:

- 1.1. A strike out application in respect of claims against Respondents 11/14;**
- 1.2. An application for deposit order in respect of claims against Respondents 11/14;**

- 1.3. Consideration of Time limits in respect of claims against Respondents 11/14.
2. Respondent 14 is a recruitment agency which introduced the Claimant to Respondents 1-10, 12 & 13. Respondent 11 is an employee of Respondent 14, who had particular responsibility for recruiting the Claimant to that employment.
 3. The Claimant brings complaints of protected disclosure detriment against the Respondents as follows:
 - a. His contract was not made permanent
 - b. He was stereotype as an illegal immigrant and told to apply for biometric documentation, and this was a smokescreen to conceal his dismissal for making protected disclosures
 - c. He was put under continuous pressure
 - d. Malicious falsehoods about his status were shared amongst his colleagues
 - e. He was not provided with the same benefits package as comparable employees
 - f. He was not provided with documentation on his SAR.
 4. The Claimant also alleges that some of this conduct amounted to race discrimination / race harassment, in particular b. and c.
 5. The Claimant also brings a complaint of protected disclosure automatic unfair dismissal and complaints of failure to pay holiday pay and other pay. These are complaints against his employer.
 6. The Claimant alleges that R 11 and 14 acted as agents of the employer, R1.
 7. The Claimant alleges that he was subjected to the detriments because he made protected disclosures in previous employment and this was known by Rs 11 and 14.
 8. The Claimant and Rs 11 and 14 made lengthy, detailed written submissions for the purpose of this hearing. There were 2 Bundles of documents. The parties asked me to read the DMJ recruitment services agreement with Tritex (bundle page 12) and bundle pages – 1 – 35; 37 – 46; 52 – 55; 65 – 75; 87 – 93; 105 – 112. 238-239, 240 - 241. 243. 245. 250 – 252 medical document (sample), and pages 124 and 130 – 137 of the scanned document bundle.
 9. Given that there were issues about time limits, and whether time should be extended for the Claimant's claims against Rs 11 and 14, I also heard evidence from the Claimant. There had not been an order for the Claimant to provide a witness statement, but the Claimant gave evidence for more than an hour. The Claimant read out the full text of a letter from his treating physician which was missing from the Bundle of documents.

Time - The Allegations and the Claimant's Evidence

10. The Claimant's claim form states, at paragraph [24], that he employed by the First Respondent from 11 June 2018 until his dismissal on 30 November 2018.

11. The Claimant was employed as company secretary.
12. It was not in dispute that Respondent 14 is a recruitment agency which introduced the Claimant to Respondents 1-10, 12, 13. Respondent 11 is an employee of Respondent 14, who had particular responsibility for recruiting the Claimant to that employment.
13. Respondents 11 and 14 were also involved in a recruitment process for R1's permanent company secretary. The Claimant was not appointed to this role.
14. At this hearing I asked the Claimant who was responsible for the alleged unlawful acts.
15. I asked him, for example, who was responsible for not making his contract permanent. The Claimant said that he alleged that all Respondents, except Catherine Fry who was responsible for answering the SAR request, were responsible for not making the Claimant's contract permanent.
16. I asked the Claimant when R11 and 14 did all the relevant acts alleged; what specifically did they do?
17. The Claimant said that Leena Myers put pressure on him in several conversations on 12 June 2018 to leave employment; that she told him then that he could not stay in the First Respondent's offices and need to leave. He said that Ms Myers put further pressure on the Claimant in phone calls on 14 June 2018. She told him that he still needed a Resident Permit in July 2018. He said that Ms Myers sent him emails in August 2018, saying that he needed to start looking for another job. The Claimant told me that Leena Myers had conversations with him on 26 September 2018 about leaving the office.
18. The Claimant also said that he was supposed to be part of the recruitment process for the new permanent company secretary job, but was excluded from this. The recruitment process for this permanent role was completed 15 October 2018.
19. The Claimant said that, while he was on sick leave from R1 after 29 September 2018, he did not have any contact with Leena Myers.
20. The Claimant said that he was alleging continuing discrimination in relation to the benefits he did not receive when employed on his temporary contract. He said that he knew there was a discrepancy between his benefits and those of other employees in December 2018.
21. The Claimant's allegations in relation to the SAR process were set out in paragraphs [54e] – [54f] of his claim form. These were specifically against Catherine Fry, R12, who was not an employee of R11.
22. The Claimant contacted ACAS on 28 February 2019. The ACAS EC period lasted until 28 March ACAS. The Claimant presented his claim on 27 April 2020.
23. In evidence to the Tribunal, the Claimant said that he was aware of the alleged acts when they happened, save that he was not aware until 26 September 2018

that R11 and R14 were supporting the other Respondents in denying the Claimant the benefits which other employees enjoyed. He also realized on 26 September 2018, from Henry Franklin, R2, that the Respondents were not going to consider him for the permanent position as company secretary.

24. The Claimant confirmed that he is qualified as a solicitor in England and Wales but is not practising as a solicitor.
25. He was aware of Employment Tribunals and time limits and his ability to bring claim in 2018. He had brought 4 previous Employment Tribunal claims.
26. The Claimant told me that he suffered worsening back and shoulder problems while employed by the First Respondent and was signed off sick from work from 29 September 2018. He had had a cortisone injection in April 2018 to manage the pain from this injury. The beneficial effect of this had been short lived, however, and the Claimant said that he also started suffering from stress due to his work conditions.
27. The Claimant told me that he is right handed, and could barely use his right hand during his employment, which led to him recording meetings, rather than taking notes.
28. The Claimant said that, after he was signed off work, his primary focus was to get well. When his doctor told him in September 2018 that he would need surgery under general anaesthesia, he was very scared and got life insurance.
29. The Claimant told me that he was bedridden from 30 September 2018 and had surgery on 6 November 2018. The surgery was on his rotator cuff. The Claimant said that, after surgery, his arm was in a sling he could not move his hand. The Claimant had painkillers, including morphine, which continued in January 2020.
30. The Claimant said that he could not start physiotherapy until December 2019. He told me that he had no movement in right arm at this time. The Claimant said that, because of his surgery and ongoing pain, he did not even look at his emails at this time.
31. The Claimant told me that he was unable to use a keyboard to prepare a claim and that his cognitive abilities were affected. He said that, because of this, he was still unable to prepare a claim form in February 2019. The Claimant told me that he was unable to attend a hearing in a claim against his previous employer, Afren, on 11-13 March 2019, because he was in pain and could not sleep and continued to use codeine as a pain killer.
32. The Claimant also said that, sadly, his mother in law died on 9 December 2019.
33. The Claimant told me that he does not have extended family in this country. His wife had family responsibilities and was working and was unable to help the Claimant with his claim.
34. Regarding the medical evidence, the Claimant submitted sick notes, signing him off work from 29 September 2018, until the end of his employment.

35. The Claimant told me that he was unable to work and, likewise, was unable to prepare a claim. He said that, for him, preparing claim form is work, which requires mental and physical input.
36. I asked him about a detailed text message he had sent on 30 November 2018 to Henry Franklin, R2, page 246, which said, “..it is very disappointing that you have chosen to dissemble and misrepresent the facts regarding my employment and unlawful dismissal. The failure to renew my fixed term contract because I made protected disclosures is unlawful. The reason you previously provided for offering Ms Beard my position and which you are now denying is also unlawful. I have conclusive proof that you denial and claim that I was never offered the permanent role is false. Your response in our telephone conversation today also verified my concerns about the role played by your lawyers in the treatment I received. I will consider my legal options and take appropriate action against all entities and individuals involved in this matter which I believe is linked to the ongoing Afren matter.”
37. The Claimant said that there was a difference between a text message and claim form – he was not capable of completing a claim form – he said that he believed that he had typed this message with his left hand.
38. I asked the Claimant about an email he had sent to Mr Franklin on 7 November 2019, the day after his surgery, page 244. In it, he asked Mr Franklin to forward an email with attachments, and explained that he needed the email and attachments to rectify an error on his Biometric Resident Permit.
39. The Claimant said that he had, indeed, checked his emails on 7 November 2019 and discovered an email from the Home Office about his Resident Permit. The Claimant said that he was going to be unemployed by the end of that month and needed to get a job. He said that, nevertheless, he was unable to do anything with his shoulder for a month after the operation.
40. In cross examination the Claimant was asked about an email he sent on 14 December 2018 to the First Respondent’s employees about the days worked and his annual leave. The Claimant said that he was correcting errors in the records.
41. The Claimant was also asked about a lengthy email he had sent on 7 January 2019, running to 2 pages, page 216, concerning his DSAR request. The Claimant said that this was a “cut and paste” from other litigation, he just needed to change the names.
42. The Claimant was then asked about another lengthy email he sent on 29 January 2020, in which he discussed the Data Protection Act and the Companies Act and made allegations false assertions, protected disclosure and victimization.
43. The Claimant said that he had been a company law specialist for the whole of his career, and could answer questions about company law but could not prepare a claim form. He said that he typed the email with his left hand and it took him a while.

44. This email was part of an email chain starting with the Claimant's email on 7 January 2019, during which the Claimant had also sent similarly detailed emails on 16 January 2019, 25 January 2019 and 28 January 2019.
45. The Claimant said that he had medical evidence that he had been unable to attend a Tribunal hearing in March 2019 and was unable to participate in a disclosure exercise. As the Claimant said that this letter was not in the Bundle, I invited him to read it out. The letter was from Mr Yanni, Consultant Orthopaedic and Hand Surgeon, on 14 February 2019. The letter was directed to the Claimant and said,
- “To whom it may concern
“This is to confirm that you are currently under my care with regard to your shoulder ... it will take the best part of a year for the ultimate plateau of recovery which should be around November 2019. The rehabilitation will take some time before everything settles down. It is my recommendation that you adapt your physical /work activities to a level appropriate to your symptoms. Please submit this letter to your employers....”
46. The Claimant confirmed that he did not have any other medical reports about his ability to participate in proceedings or draft documents at that time.
47. The Claimant said, however, that he was taking Diazepam to help with his stress and to sleep, which affected him significantly.
48. On the facts, I did not accept the Claimant's evidence that he was unable to draft documents or to engage in the Tribunal process after his operation on 6 November 2018. I concluded that the Claimant had not been reliable in the evidence he gave. Initially in his evidence, he told me that he was unable even to check his emails after his operation on 6 November 2018. However, it was clear that he had, on 7 November 2018, not only checked his emails, but written an email to Mr Franklin.
49. His assertion that he was unable to draft documents or formulate claims from November 2018 – February 2019 was further contradicted by his lengthy text message to Mr Franklin on 30 November 2018, stating the basis of claims against the First Respondent and saying he would bring proceedings, and by his email correspondence in December 2018 about his holiday and annual leave records.
50. I considered that he was not reliable in his evidence regarding his correspondence on his DSAR from 7 January 2019. He initially explained his very detailed email of 7 January 2019 by saying that this was “cut and paste”. However, when the Claimant was taken, during cross examination, to further correspondence, it was clear that he had been engaging in detailed email exchanges throughout January 2019, in which he had discussed Data Protection duties and Company law, as well as alleged protected disclosures and victimization.
51. I concluded that the Claimant had exaggerated the effects of his shoulder injury and operation on his ability to draft documents and prepare a claim for the Tribunal. I took into account the fact that the Claimant had been signed off work from 29 September 2018. I took into account Mr Yanni's letter of 14 February 2019. I noted that it did not say that the Claimant was unable to carry out any

particular activity. Indeed, it appeared to envisage that the Claimant would be at work, but with some adjustments.

52. From all the evidence, I decided that the Claimant was likely to have been able to draft documents in November 2018 (although not on 6 November 2018), albeit slowly.
53. The Claimant is a qualified solicitor. He is familiar with Employment Tribunal processes, having presented 4 previous claims. He was familiar with the concept of protected disclosures – as evidenced by his text message of 30 November 2018. I concluded, on the facts, that he was capable of drafting his Employment Tribunal claim in November 2018 and thereafter.

Relevant Law

54. By *s123 Equality Act 2010*, complaints of discrimination in relation to employment may not be brought after the end of
- 54.1.the period of three months starting with the date of the act to which the complaint relates or
 - 54.2.such other period as the Employment Tribunal thinks just and equitable.
55. By *s123(3)* conduct extending over a period is treated to be done at the end of the period. Failure to do something is to be treated as occurring when the person in question decided on it.
56. In *Commissioner of Police of the Metropolis v Hendricks* [2003] ICR 530, the Court of Appeal held that, in cases involving numerous allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken' in order to establish a continuing act. The Claimant must show that the incidents are linked to each other, and that they are evidence of a 'continuing discriminatory state of affairs'. This will constitute 'an act extending over a period'. The question is whether there is "an act extending over a period," as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed'. Paragraph [52] of the judgment.
57. In *Owusu v London Fire and Civil Defence Authority* [1995] IRLR 574, the EAT held that an employer's repeated failure to upgrade an employee or to allow him to act up at a higher grade when the opportunity arose amounted to a prima facie case of a continuing act 'in the form of maintaining a practice which, when followed or applied, excluded [him] from regrading or opportunities to act up'. Mummery J stated that a succession of specific instances was capable of indicating the existence of a practice, thereby constituting a continuing act extending over a period. Whether those instances did in fact amount to a practice, as opposed to a series of one-off decisions depended on the evidence and the employer's explanations for the refusals.
58. There is a distinction between a continuing act of discrimination and a one-off act with continuing consequences. In *Chaudhary v Specialist Training Authority of the*

Medical Royal Colleges EAT/1410/00, [2001] All ER (D) 294 (Nov); affirmed by the CA [2003] ICR 1510, the EAT observed (per Miss Recorder Elizabeth Slade QC):

"The continuing application of a discriminatory rule or policy to a complainant is to be distinguished from the continuing existence of a discriminatory rule or policy and its single or occasional application to a complainant. An employment policy may be continuously or constantly applied to an employee and operate to his or her detriment as in *Barclays Bank plc v Kapur* [1991] IRLR 136, [1991] ICR 208, *Cast v Croydon College* [1998] ICR 500 at 515B and *Owusu v London Fire and Civil Defence Authority* [1995] IRLR 574. However, the fact that the complainant is an employee cannot be determinative of the issue of whether an employer's discriminatory policy gives rise to a complaint of discrimination. For a complaint to be well founded that policy must be applied to the complainant to his or her detriment.'

59. Where a discrimination claim has been brought out of time the Employment Tribunal can extend time for its presentation where it is just and equitable to do so. In *Robertson v Bexley Community Centre T/a Leisure Link* [2003] IRLR 434 the Court of Appeal stated that there is no presumption that an Employment Tribunal should extend time unless they can justify a failure to exercise the discretion. Quite the reverse; a Tribunal cannot hear a complaint unless the Claimant convinces the Tribunal that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule. In exercising their discretion to allow out of time claims to proceed, Tribunals may have regard to the checklist contained in s33 *Limitation Act 1980* as considered by the EAT in *British Coal Corporation v Keeble & Others* [1997] IRLR 336. Factors which can be considered include the prejudice each party would suffer as a result of the decision reached, the circumstances of the case and, in particular, the length of and reasons for the delay, the extent to which the cogency of the evidence is likely to be affected by the delay, the extent to which the party sued has cooperated with any requests of information, the promptness with which the Claimant acted once he or she knew of the facts giving rise to the course of action and the steps taken by the Claimant to obtain appropriate advice once he or she knew of the possibility of taking action.
60. *S48(3) ERA 1996* provides that an employment tribunal shall not consider a complaint of protected disclosure detriment unless it is presented,
- a. before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, 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.
61. By *s48(4) ERA 1996*, for the purposes of *s48(3)*, where an act extends over a period, the "date of the act" means the last day of the period and a deliberate failure to act is treated as done when it was decided on.
62. An act extending over a period has the same meaning as under the discrimination statutes, *Arthur v London Eastern Railway Ltd* [2006] EWCA Civ 1358, [2007]

IRLR 58, [2007] ICR 193, at para 31). The majority of the Court of Appeal (Mummery and Sedley LJJ, Lloyd LJ dissenting on the point) decided that, it is possible, depending on the facts, for 'a series of apparently disparate acts' to be 'shown to be part of a series or to be similar to one another in a relevant way by reason of them all being on the ground of a protected disclosure' (at para 35, per Mummery LJ).

63. It is also necessary to distinguish between the concepts of 'act' (or 'failure to act') and 'detriment', *Flynn v Warrior Square Recoveries Ltd* UKEAT/0154/12 per Langstaff P at [3]. Time runs from the date of the 'act', regardless of whether a claimant has any knowledge of the detriment that the act produces. Tribunals should not confuse a continuing detriment with a continuing act. Accordingly, per Langstaff P in *Flynn* : "...in any case that considers a question of whether a complaint is out of time, it is incumbent upon an employment tribunal to identify carefully the act, or the deliberate failure to act, that the Claimant identifies as causing him a detriment." [5].
64. The test to be applied to extension of time where a protected disclosure detriment claim is out of time is the "reasonable practicability" test, not the "just and equitable" test.
65. By *s43K ERA 1996*, a worker includes an individual who is not a worker as defined by *s230(3) ERA 1996* but who "(a) works or worked for a person in which – (i) he is or was introduced or supplied to do that work by a third person, and (b) the terms on which he is or was engaged to do the work are or were in practice substantially determined not by him but by the person for whom he works or worked, by the third person or by both of them ... and any reference to a worker's contract, to employment or to a worker being "employed" shall be construed accordingly."

Discussion and Decision

66. The Claimant brings his complaints of direct discrimination race, race harassment and protected disclosure detriment against R11 and R14 on the basis that they acted as agents of the other Respondents. R11 and R14 were third party recruitment agents who placed the Claimant with R1 as company secretary. They also acted as recruiting agents for a permanent company secretary role which the Claimant was not offered.
67. The Claimant said that his case is based on a continuing act. He said that the last date of R11 and R14's continuing act was 30 November 2018. This was when his temporary company secretary contract with R1 ended and he was not given the permanent company secretary position.
68. He said that the acts of R11 and R14 resulted in him not being offered the permanent role on 30 November 2018 and that they were therefore involved in his dismissal on 30 November and the failure to offer him the permanent role from 30 November 2018.
69. It was clear to me, however, that the Claimant was not saying that R11 and 14 did any act or omission, or made any decision, on 30 November 2018. The First Respondent, his employer, dismissed the Claimant on 30 November 2018.

70. In his claim form, the Claimant was clear that he was employed by R1.
71. Insofar as R11 and R14 were involved in any decision not to offer the Claimant the permanent company secretary role, the recruitment process for the permanent company secretary post ended on 15 October 2018. That was the last date when R11 and R14 could have been involved in a decision not to employ the Claimant as the permanent employee. For the purposes of the protected disclosure detriment claims, R11 and R14 might be liable pursuant to s43K(1) ERA 1996 in respect of that decision. However, I concluded that that was a decision with continuing consequences, rather than a continuing act by R11 and R14.
72. The Claimant's dismissal by R1 on 30 November 2018 arose from that earlier decision.
73. The Claimant also said that he was alleging that the failure to offer him the contractual benefits enjoyed by other employees of R1 was a continuing act.
74. I decided, however, that while that may have been a continuing act by R1 during his employment by R1, the Claimant was not alleging that R11 and R14 were the employer.
75. R11 and R14 therefore did not continue to apply those (allegedly) less favourable contractual terms to the Claimant.
76. I concluded that R11 and R14's alleged acts in applying less favourable contractual terms to the Claimant occurred if R11 and R14 were involved in any relevant decision to offer those terms/ acted as agent in offering the terms, at the start of his employment by R1 in June 2018. However, there was no continuing discriminatory act by R11 and R14 in applying less favourable contractual terms to the Claimant, because there was no ongoing employment relationship between the Claimant and R11 and R14, unlike *Barclays Bank plc v Kapur* [1991] IRLR 136, [1991] ICR 208, *Cast v Croydon College* [1998] ICR 500 at 515B and *Owusu v London Fire and Civil Defence Authority* [1995] IRLR 574.
77. This was the case in respect of both the Claimant's discrimination allegations and his protected disclosure detriment claims. For the purposes of the protected disclosure detriment claims, R11 and R14 might be liable pursuant to s43K(1) ERA 1996 when the terms were initially decided upon at the start of the employment, if they were involved in formulating those terms. However, R1's application of the contractual terms of employment amounted to an ongoing detriment, rather than a continuing act by R11 and R14, *Flynn v Warrior Square Recoveries Ltd* UKEAT/0154/12 per Langstaff P at [3]. Time, in respect of protected disclosure claims against R11 and R14 in this regard, ran from the date of R11 and R14's 'act'.
78. The dates of other alleged acts by R11 and R14 were as follows: Leena Myers put pressure on him in several conversations on 12 June 2018 to leave employment; she told him then that he could not stay in the First Respondent's offices and needed to leave. Ms Myers put further pressure on the Claimant in phone calls on 14 June 2018. She told him that he still needed a Resident Permit in July 2018. Ms

Myers sent the Claimant emails in August 2018, saying that he needed to start looking for another job. Leena Myers had conversations with him on 26 September 2018 about leaving the office. The Claimant was excluded from the recruitment process for the new permanent company secretary job. The recruitment process was completed on 15 October 2018.

79. While the Claimant was on sick leave from R1 after 29 September 2018, he did not have any contact with Leena Myers.
80. Insofar as the Claimant was alleging that R11 and R14 were acting as agents for the other Respondents in his discrimination claims, the Claimant did not allege that they did any acts as agents after 15 October 2018.
81. The relevant acts of R11 and R14 in the protected disclosure claims also ended on 15 October 2018, even though they were alleged to have continuing consequences.
82. I decided that, even if R11 and R14's acts before 15 October 2018 amounted to a continuing act, or series of similar acts or failures, that continuing act ended on 15 October 2018.
83. Time for bringing the Claimant's complaints against R11 and R14 therefore ran from 15 October 2018.
84. The Claimant should have contacted ACAS by 14 January 2019. He contacted ACAS on 28 February 2019 and presented his claim on 14 April 2019. His complaints against R11 and R14 were therefore at least 6 weeks out of time.
85. I considered whether time should be extended for the Claimant's complaints against R11 and R14.
86. As set out above in my findings on the evidence, I did not accept that Claimant's evidence that he was unable to draft and present a claim to the Tribunal from November 2018 – February 2019. I decided that the Claimant was likely to have been able to draft documents in November 2018 (although not on 6 November 2018), albeit slowly.
87. The Claimant is a qualified solicitor. He is familiar with Employment Tribunal processes, having presented 4 previous claims. He was familiar with the concept of protected disclosures – as evidenced by his text message of 30 November 2018. I concluded, on the facts, that he was capable of drafting his Employment Tribunal claim in November 2018 and thereafter.
88. The Claimant was aware of the relevant acts when they occurred, save that he was not aware until 16 September 2018 that R11 and R14 supported the other Respondents regarding the contractual terms he was offered.
89. There was very little to persuade me that it would be just and equitable to extend time for the Claimant to present his discrimination complaints.

90. I considered that R11 and R14 would be prejudiced by having to defend complaints against them which were out of time. On the other hand, the Claimant still had complaints against 12 other Respondents. R1 was the principal respondent in any event, as the Claimant's employer. R11 and R14 were only being pursued as agents of the principal. There was very little prejudice to the Claimant in not extending time for complaints against the agents.
91. The delay was relatively lengthy and there was no good reason for it. Many of the alleged acts had occurred in June – July 2018, more than 6 months before the Claimant contacted ACAS and almost 9 months before he presented his complaint to the Tribunal. The Claimant was legally qualified and was well aware of his employment rights, but did not take the appropriate action to bring a claim.
92. It was not just and equitable to extend time for the Claimant's discrimination claims.
93. For the reasons set out, it was clearly reasonably practicable for the Claimant to bring his protected disclosure detriment claims in time. There was no basis for an extension of time regarding those complaints.

30 November 2018 as Last Act – Time Limits

94. Although I decided that the Claimant's claim against R11 and R14 was out of time, I agreed with the Claimant that, if the last day of the continuing act had been 30 November 2018, he would have been in time when he contacted ACAS on 28 February 2019, as that was the last day in the month. The correct method of determining the last day of the 3 month period is to take the day and date before the last day of the continuing act and go forward three months; if there is no corresponding date in the month, then the last day of the month is taken, *Pruden v Cunard Ellerman Ltd* [1993] IRLR 317. There was no 29 February 2019 as 2019 was not a leap year, so the Claimant would have been in time when he contacted ACAS on 28 February 2019, because it was the last day in the month.

Employment Judge **Brown**

Date: 5 October 2020

SENT to the PARTIES ON

06/10/2020

FOR THE TRIBUNAL OFFICE