



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms G Jeffrey

**Respondent:** South West London & St George's Mental Health NHS Trust

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Norwich (A)

**On:** 19 March 2021

**Before:** Employment Judge S Moore (sitting alone)

### Appearances

**For the Claimant:** In person with Mr Kwame, MacKenzie Friend

**For the Respondent:** Ms Owusu-Adjei, Counsel

This has been a remote hearing on the papers to which the parties did not object. The form of remote hearing was CVP. A face-to-face hearing was not held because it was not practicable and all matters could be determined in a remote hearing.

## JUDGMENT

- (1) The claims of direct sex and age discrimination (claims (1)-(3)) are struck out on the grounds they are out of time and the Tribunal does not have jurisdiction to hear them.**
- (2) The claims of direct race discrimination (claims (5)-(6)) are struck out on the grounds they are out of time and the Tribunal does not have jurisdiction to hear them.**
- (3) The claim of failure of make reasonable adjustments (claim (8)) is not struck out. it will be a matter for evidence and argument at the hearing as to whether any failure to make reasonable adjustments was a one-off act or a continuing act and/or whether the claim is out of time.**

## REASONS

1. The Claimant has been employed by the Respondent since 3 February 2014. She contacted ACAS on 30 April 2019 and an ACAS early conciliation certificate was issued on 30 April 2019. By a claim form dated 30 May 2019 she brought claims for discrimination on grounds of sex, race, age and disability, making a number of allegations dating from February 2017.
2. The Response pleaded that many of the allegations were out of time and should be dismissed for want of jurisdiction. On 4 September 2019 the Respondent's solicitors requested a 1hr Preliminary Hearing be converted to an three-hour Open Preliminary Hearing (OPH) to consider whether the Claimant's claim was valid. After that hearing was postponed on account of the Claimant's ill-health, the Respondent's solicitors sent an email on 13 August 2020 with another request that an OPH be listed to consider time limits and jurisdictional issues.
3. Notwithstanding that request, a two-hour closed preliminary hearing was listed for 16 December 2020, at the conclusion of which a three-hour OPH was finally listed for today (19 March 2021) "to consider any application to strike out any parts of the Claimant's claim". The Claimant was also ordered, by 15 January 2021, to identify in writing any act or failure to act relied upon said to amount to discrimination; and to identify the date or dates when each act or omission occurred, by whom they were done, and explaining how each act was because of or related to the protected characteristics on which she relied. If she relied upon any acts occurring after 30 May 2019, or wished to add to matters occurring before 30 May 2019 not in her original claim, she had to apply to amend her claim in those respects.
4. The Claimant provided Further and Better Particulars (FBPs) of her claim on 19 February 2021, and a further, amended version on 12 March 2021. Those FBPs do not comply with the order made on 16 December 2020 since they were in the form of a 30-page narration and did not identify what particular acts or omissions the Claimant was relying upon. Nor did they make any application to amend her claim to bring identified new claims other than simply to ask for the Tribunal for general permission to amend or add new claims where such permission was necessary.
5. Accordingly, the first part of the hearing was spent going through the Claimant's FBPs and identifying the acts and failures to act relied upon and to what claims they gave rise, and further which claims were not included in the original claim and required an application to amend. The results of that exercise are set out in the Case Management Summary.
6. The Respondent subsequently made an application that the Claimant's claims of direct sex and age discrimination (claims (1)-(3)), direct race discrimination (claims (5)-(6)) and of failure to make reasonable adjustments (claim (8)) occurred on or before 30 January 2019, were out of time and should be struck out on the grounds the Tribunal has no jurisdiction to hear them. The Respondent further submitted that the claims of direct race discrimination should be struck out on the grounds they had no reasonable prospect of success.

7. Mr Kwame for the Claimant made an application for the hearing to be adjourned so that the Claimant could take legal advice, however I refused that application because the Claimant had had ample notice that the Respondent would be making an application to strike out part of her claim on the grounds it was out of time (see above at paragraphs 2-3). In these circumstances it was not in the interests of justice to delay matters further.
8. As regards claims (1)-(3), these refer to acts of alleged age and sex discrimination occurring in February 2017 and April 2018. Even if these matters are regarded as a continuing act of discrimination for the purposes of section 123(3)(a) of the Equality Act 2010, the claims were brought at least 6 months out of time and I am not satisfied the Appellant has shown it would be just and equitable to extend time to allow the claims to proceed. No explanation for the delay was given other than the ill-health the Claimant suffered from the time she was required to move to the Lower Ground Floor, but this was said by way of assertion by Mr Kwame and there was no evidence the Claimant was so ill at that time she could not have investigated her rights and brought a claim. Further, the heart of this part of the claim is a demotion of which the Claimant was informed in February 2017. This is already more than 4 years ago, and if the matter proceeds the Respondent will be significantly prejudiced by having to justify at trial decisions that were taken a very long time ago indeed.
9. As regards claims (5)-(6), these are claims of alleged direct race discrimination, and are approximately 4 months out of time. Further I am not satisfied the Appellant has shown it would be just and equitable to extend time to allow the claims to proceed. Again there is no evidence that the Appellant was so unwell that she could not have investigated her rights and brought a claim. Again by the time the matter comes to trial these events are likely to have occurred more than three years ago. I also take into account that despite the provision of very lengthy particulars, the Claimant has not explained how the Respondent leaving her personnel file unsecured amounted to an act of direct race discrimination and the claim appears to me to be fundamentally weak.
10. As regards claim (8), disability discrimination/failure to make reasonable adjustments, I am not satisfied the claim is out of time and I decline to strike it out. The Claimant says that between April 2018 and May 2019 she made repeated requests to be moved from the Lower Ground Floor and/or given an individual or shared room, and it will be a matter for evidence and argument at the hearing as to whether any failure to make reasonable adjustments was a one-off act or a continuing act, and whether the claim is out of time.
11. For completeness I record that the claim of on-going harassment related to disability (claim (12)) is not out of time (and the Respondent did not argue that it was).

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**Employment Judge S Moore**

Date: 20 March 2021