



# EMPLOYMENT TRIBUNALS

Claimant: Mrs Toni Slade

Respondent: Dignity Funerals Limited

## PRELIMINARY HEARING (OPEN)

*This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform. A face-to-face hearing was not held because the relevant matters could be determined in a remote hearing.*

Heard at: East London Hearing Centre  
(Remotely through Cloud Video Platform)

On: 30 June 2022

Before: Employment Judge Goodrich

### Representation

Claimant: Representing herself

Respondent: Mr Norman Rea (Senior In-house Legal Counsel)

## JUDGMENT

1. The complaint of unfair dismissal was not presented in time despite it being reasonably practicable to do so and is dismissed.
2. The complaint of disability discrimination was presented in time, as further explained below, and will proceed to a full Hearing.
3. The Claimant was a disabled person at the relevant times within the meaning of section 6 and schedule 1 of the Equality Act 2010.

## REASONS

### Background and the Issues

1. The background to this Preliminary Hearing is as follows.

2. The Claimant was employed by the Respondent, a national firm of funeral directors and crematoria, as a crematorium manager, from 30 June 2008 until 16 April 2021.
3. The Claimant has brought complaints of unfair dismissal and disability discrimination. These arise from her having been dismissed by the Respondent on the stated grounds of redundancy. The Claimant says that she was chosen for redundancy because she was classified as clinically extremely vulnerable.
4. The Respondent entered a response denying the Claimant's complaints. They also raised a jurisdictional issue, namely contending that her claims were out of time.
5. A Preliminary Hearing was conducted by Employment Judge Lewis on 28 March 2022. Both at that Preliminary Hearing and the Preliminary Hearing before me, the Respondent was represented by Mr Rea, whose position is senior in-house legal counsel for the Respondent.
6. The Claimant was not present at the Preliminary Hearing before Employment Judge Lewis, who recorded that she had emailed the Tribunal on 26 March 2022 (Saturday), asking that the hearing be re-scheduled because she was unwell: but providing no further information as to the nature of, or duration of the illness, or supporting medical evidence.
7. Employment Judge Lewis decided to proceed with the Case Management Hearing in the Claimant's absence. She made a list of issues and Case Management Orders at that Preliminary Hearing.
8. Employment Judge Lewis listed the case for a further Preliminary Hearing to decide the following issues.

*Time Limits*

- 8.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 29 April 2021 may not have been brought in time.
- 8.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
  - 8.2.1 Was the claim made to the Tribunal within 3 months (plus early conciliation extension) of the act to which the complaint relates?
  - 8.2.2 If not, was there conduct extending over a period?
  - 8.2.3 If so, was the claim made to the Tribunal within 3 months (plus early conciliation extension) of the end of that period?
  - 8.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
    - 8.2.4.1 Why were the complaints not made to the Tribunal in time?

8.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

8.3 Was the unfair dismissal made within the time limit in Section 111 of the Employment Rights Act 1996? The Tribunal will decide:

8.3.1 Was the claim made to the Tribunal within 3 months (plus early conciliation extension) of the effective date of termination?

8.3.2 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

8.3.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period thereafter?

*Disability*

8.4 Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

8.4.1 Did she have a physical or mental impairment?

8.4.2 Did it have a substantial adverse effect on her ability to carry out day to day activities?

8.4.3 If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

8.4.4 Would the impairment have had a substantial adverse effect on her ability to carry out day to day activities without the treatment or other measures?

8.5 Were the effects of the impairment long-term? The Tribunal will decide:

8.5.1 Did they last at least 12 months, or were they likely to last at least 12 months?

8.5.2 If not, were they likely to occur?

9. Employment Judge Lewis also provided a list of issues for the final hearing (subject to the outcome of this Preliminary Hearing). She set out the issues for unfair dismissal. So far as her claim for disability discrimination is concerned, she recorded that she was bringing a claim for direct disability discrimination, namely selecting the Claimant for dismissal. Additionally, there was a claim for discrimination arising from disability by selecting her for redundancy because she was clinically extremely vulnerable and for dismissing the Claimant. Employment Judge Lewis made a number of case management orders. She listed the case for this Preliminary Hearing to determine whether the claims were brought within the applicable time limit; and whether the Claimant is a disabled person within the meaning of the Equality Act 2010.

10. Employment Judge Lewis ordered that the Claimant notify the Tribunal and Respondent within 14 days of the date the orders were sent to the parties if she thought the list was wrong or incomplete, otherwise the list could be treated as final unless the Tribunal decided otherwise. She also made orders for the Claimant to write to the Respondent to give information (specified by the Judge) about her impairment and including issues such as what medical treatment she has received and the effect of such treatment or other measures; ordered the Claimant to send the Respondent parts of her GP and other medical records relevant to whether she had a disability at the time of the events the Claimant was about and any other evidence relevant to whether she had the disability at that time. She also ordered the Claimant to provide a witness statement for use at this Preliminary Hearing, to be sent by 17 June 2022.

11. Employment Judge Lewis also made orders for the Respondent to carry out. They were ordered to notify the Tribunal whether or not it accepted that the Claimant had a disability and, if so, on what dates; and to deal with each impairment separately; and if not accepting that the Claimant had a disability on any relevant date, to explain why.

12. The Respondent was also ordered, at least 7 days before the Preliminary Hearing date, to send an electronic copy of the hearing file and all the witness statements to the Tribunal for the Tribunal's use.

13. The Claimant's compliance with the Tribunal Orders was at best partial. She did not provide a witness statement. She did not provide her GP records.

14. The Respondent was dissatisfied with the Claimant's failure to comply with the Tribunal's Orders and sent a letter to the Tribunal dated 6 June 2022, asking for the claim to be struck out for non-compliance with the Tribunal's Orders.

15. On the same date the Claimant sent an email to the Tribunal and Respondent. In that email she stated that she had already disclosed her disabilities to the Respondent as she had been classified as disabled since 2015 when she was still employed by them. She stated that the HR Department was made aware after she suffered two heart attacks and the subsequent investigations by Cardiologists at St Barts discovered that she suffered from Arrhythmogenic Right Ventricular Cardiomyopathy. She stated that this was classed as a disability and that she had been awarded a personal independence payment. She also stated that she was diagnosed with Polymyalgia Rheumatica after she had suffered a severe auto immune reaction after she was served with a meal containing gluten whilst on a dignity training course, which had been disclosed to HR at the time, and that she was under a Consultant Rheumatologist at Mile End Hospital for this. She also stated that cardiomyopathy is a progressive illness and that she would always have it and that she had the disability before her redundancy and still does.

16. Additionally, the Claimant sent an email dated 22 June in which she supplied a copy of an Occupational Health Report that had been provided to an HR business partner of the Respondent called Ann Graziano, dated 26 August 2020. I noted that in this report was an opinion from the Occupational Health Adviser that the Equality Act 2010 applied to the Claimant although her conditions were not impacting on performance in her role. She also provided a copy of notification that she has a blue badge.

17. By letter dated 22 June, and as directed by Regional Employment Judge Taylor, the Employment Tribunal wrote to the parties to notify them that it was too late to make any further orders and that the Preliminary Hearing would proceed as listed.

18. For their part, the Respondent wrote to the Tribunal, by letter dated 24 June 2022, both complaining about the Claimant's failure to comply fully with case management orders and stating that, because of this, the Respondent found it impossible to comment upon disability.

19. The Respondent themselves had not complied with one of Employment Judge Lewis' Orders. They failed to provide an electronic copy of the hearing file. It would have been helpful to have had such a bundle to have included the documents the Claimant had provided in support of her claim that she was disabled at the relevant times; and such other documents, the letter dismissing her and the letter dismissing her appeal. Mr Rea apologised for the Respondent having failed to provide the hearing bundle.

20. The Claimant for her part explained her failure to have for compliance with the case management orders as that she had been quite unwell and with a lot of family issues and felt overwhelmed by everything.

21. I considered that, in spite of the failures to comply with the case management orders I would be able to conduct a fair hearing of the issues listed by Employment Judge Lewis. I explained that I would ask questions of the Claimant to ascertain her reasons for putting in her claim when she did, rather than earlier; asked questions about her medical conditions that she relies on to show that she was disabled at the relevant times; would give Mr Rea an opportunity to cross-examine the Claimant; and for each side to make closing submissions. Both the Claimant and Mr Rea agreed with this.

22. In the course of my questioning the Claimant, I asked her who it was that she said from the Respondent was responsible for disability discrimination in selecting her for redundancy and dismissing her. The Claimant replied that it was Mr Gant, a director for the Respondent at the time. I further clarified with the Claimant and Mr Rea who it was that had conducted the Claimant's appeal against dismissal and when the Claimant was notified that her appeal was unsuccessful.

23. The Claimant clarified that her case is that (she says) Mr Gant was responsible for the disability discrimination both because the individuals who conducted the hearing at which she was dismissed told her that they would need to go back to Mr Gant before making their decision; and because it was Mr Gant himself who conducted the appeal hearing.

24. I was informed that the Claimant was notified that her appeal against dismissal was unsuccessful by email dated 12 May 2021 from Mr Gant.

25. It appeared to me, therefore, that the time limits for the Claimant's unfair dismissal complaint and her disability discrimination complaint were different and I invited Mr Rea to address this point in his closing submissions.

## **The Relevant Law**

### *Time Limits*

26. Section 111 Employment Rights Act 1996 provides that:

“(2) ... 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.”

27. In relation to a complaint of disability discrimination section 123 Equality Act 2010 provides:

“(1) ... proceedings on a complaint within section 120 may not be brought after the end of:

- a) The period of three 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.”

28. Section 123(3) provides that conduct extending over a period is to be treated as done at the end of the period; and there are also provisions in (3) and (4) as regards the time limits concerning omissions.

29. Time limits are also potentially affected by the requirements of early conciliation with ACAS. If conciliation has been commenced within the relevant time limit, the time limit for bringing the claim may be extended in either of two ways. One is by allowing a claim to be brought up to a month after early conciliation has ended. Another is through what has been described of the “stop the clock” provisions, namely that the period of time in which early conciliation is being conducted does not count for the purposes of calculating time limits.

30. Although the statutory provisions for time limits for unfair dismissal complaints and disability discrimination complaints differ, there have two factors in common. One is that the burden of proof is on the Claimant to establish that time limits should be extended. Additionally, both in consideration of section 111 Employments Right Act 1996 and the Equality Act 2010 a Tribunal should consider all the relevant factors. Although guidance has been given as to considerations Tribunals might apply, no such list is exhaustive.

31. Depending on the circumstances of the particular case, the kinds of factors in the Employment Tribunal may wish to consider when considering whether to extend time under section 111 are such factors as the substantial cause of the employees failure to comply with the statutory time limit; whether he or she had been physically prevented from complying with the limitation period, for instance by illness or a post-strike or something similar; whether, at the time of dismissal, and if not when thereafter, the employee knew of the right to complain of unfair dismissal; whether there was any misrepresentation about any relevant matter by the employer to the employee; whether the employee was being advised at any material time and, if so, by whom; of the extent of the adviser’s knowledge of the facts of the employee’s case; and the nature of any advice which they may have given

him; whether there was any substantial failure on the part of the employee or adviser which led to the failure to comply with the time limit; whether the employee used the employer's appeals procedure, although the fact that an employee was pursuing an appeal through the internal machinery does not mean that it was not reasonably practicable for the unfair dismissal application to be made in time.

32. Where an employee is ignorant of their rights, the employee would need to show that the ignorance or mistaken belief was itself reasonable.

33. As regards that it is just and equitable to extend time the kinds of factors mentioned above for extending time in unfair dismissal complaints are also likely to be relevant for extensions of time limits for a disability discrimination complaint. In considering whether it is just and equitable to extend time on grounds that it would be just and equitable to do so Tribunals have been encouraged to consider the kinds of factors that will be considered in extending time under the Limitation Act. Prejudice is extremely important and relevant considerations may include 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 any party sued has co-operated with any requests for information; the promptness with which the Claimant acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the Claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

*Whether an individual is disabled within the meaning of the Equality Act*

34. Section 6 of the Equality Act 2010 provides that a person is disabled if they have a physical or mental impairment, and the impairment has a substantial and long-term effect on that person's ability to carry out normal day-to-day activities.

35. Section 212(1) defines the word "substantial" as meaning "more than minor or trivial".

36. Schedule 1 of the Act contains further provisions as to the definition of disability.

37. It provides that the effect of an impairment is long term if it has lasted for 12 months, or is likely to last for at least 12 months, or it is likely to last for the rest of the life of the person affected.

38. It also provides for what has been described as the "deducted" effects of medical treatment; namely that an impairment is to be treated as having a substantial adverse effect on the ability to carry out normal day-to-day activities if measures are taken to treat or correct it, and but for that, it would be likely to have that effect.

39. The Secretary of State has also issued guidance under section 6(5) of the Equality Act 2010 on matters to be taken into account in determining questions relating to the definition of disability. An Employment Tribunal has a duty to take into account any aspect of the guidance which appear to it to be relevant.

40. The statutory guidance is gives consideration to the relevant tests for assessing whether a person is disabled, such as on the meaning of "substantial adverse effect", cumulative effects of an impairment, coping strategies for impairments, the effects of treatment and what is meant by adverse effects on the ability to carry out normal day-to-day

activities. Guidance is given that, in the context of treatment, 'likely' is to be interpreted as 'could well happen'.

41. In the appendix to the guidance examples are given of circumstances where it would be reasonable to regard the adverse effect on the ability to carry out a normal day-to-day activity as substantial and where it would not be reasonable. These are to be regarded as illustrative and not as tests.

### **The Evidence**

42. On behalf of the Claimant, I heard evidence from the Claimant herself.

43. In addition, I considered the documents to which I have referred above and the documents to which my attention was drawn at this hearing or referred to at this hearing.

### **Findings of Facts**

44. As regards the Claimant's evidence given orally today the veracity of it was challenged only in one respect, although Mr Rea was also critical of the Claimant's failure to provide evidence ordered by the Employment Tribunal, particularly her relevant GP records. The aspect on which the Claimant's veracity was challenged was the Claimant's evidence that she was not given advice as to the correct time limits for bringing her Employment Tribunal claims when she obtained advice from a Citizens Advice Bureau.

### **Time Limits**

45. The Claimant's explanation for presenting her Employment Tribunal claim on 8 September 2021, rather than at an earlier date, was as follows.

46. Although she could not remember the exact date, she was unwell after being dismissed. The stress of her dismissal also caused some increased symptoms of her various illnesses (to which I refer below). After the Claimant was made redundant (by letter dated 7 April 2021, with the effective date of termination being Friday 16 April 2021) she took advice from a Citizens Advice Bureau. She decided to wait for the outcome of the appeal that she had lodged (it is disputed whether this was the advice given by the CAB, but my decisions on extensions of time are not dependent on this point of dispute).

47. The Claimant was sent the outcome of her appeal on 12 May 2021, rejecting her appeal and informing her that the decision was final. It was Mr Gant that heard the Claimant's appeal.

48. The Claimant had asked for the Respondent to record the appeal and send her a copy of it. Although the employer sent her recordings, she was unable to make it work and decided to wait until she got the transcript before taking her claim further. She received a typed version of the appeal meeting on 4 August 2021.

49. After her appeal was rejected, the Claimant contacted a Citizens Advice Bureau for further advice. It is disputed whether on that occasion she asked for or was given advice on time limits. It is disputed whether on that occasion she asked for or was given advice as to the Employment Tribunal time limits although, for reasons explained further below, I find it unnecessary to determine this dispute).



50. The Claimant's explanation for waiting from 4 August 2021 to 8 September 2021 for presenting her claim was not made entirely clear. The Claimant stated that she could not remember whether she was ill or trying to get legal advice. She spoke to a few solicitors who told her that they were too busy to take her case on.

51. The Claimant believed that her complaint was in time, although she readily accepted that she was mistaken about this.

52. The Claimant believes that her dismissal was unfair and that she was dismissed because of discrimination on Mr Gant's part because of her disabilities and she feels aggrieved.

### **Disability**

53. The Claimant relies on four health conditions. These are Arrhythmogenic Right Ventricular Cardiomyopathy (referred to further above); Polymyalgia Rheumatica; Diverticular Disease; and Sleep Apnoea.

54. All the above conditions were referred to in an occupational health report (to which I have referred earlier above) dated 26 August 2020 obtained at the instigation of Ms Graziano from HR with the Respondent.

55. The Occupational Health Advisor advised in that report that the Claimant was fit to continue in her current role and would benefit from such adjustments.

56. The Advisor stated in her report that the Claimant has a complex medical history with multiple medical conditions, including cardiac conditions (ARVC) or Arrhythmogenic Right Ventricular Cardiomyopathy and heart failure (gastro intestinal conditions Diverticular Disease and Gluten Intolerance (asthma, polymyalgia and more recently had investigations for Sleep Apnoea), Mrs Slade tells me her episodes or cardiac arrhythmia are completely asymptomatic and do not impact on her activities including driving, although she is trying to limit driving as far as possible due to fatigue. However, the combination of her conditions can render her short of breath and very fatigued at times, which does need to be carefully managed. Mobility is variable with a combination of medical conditions, and she describes having good and bad days. Mrs Slade follows a very careful diet due to her gastrointestinal issues, which is much easier to manage at home. Indeed, all her symptoms and conditions have been better managed during lockdown, when she was working from home. She tells me mornings are generally better in terms of symptoms, and at present she is splitting her day between the office and home to make the most of that.

57. The Occupational Health Physician went on to recommend various adjustments in order for the Claimant to continue at work; and gave her opinion that the Equality Act was likely to apply to the Claimant.

58. The Claimant described the effects of her various medical conditions on her ability to carry out normal day to day activities as follows.

59. In January and May 2015, the Claimant suffered two heart attacks.

60. The Claimant has been taking medication for her heart namely bisoprolol (a form of beta blocker); and also, warfarin to thin her blood. Her understanding is that if she did not

take her medication, she would have a cardiac arrest because that is what happened in 2015 before she took the medication. She described the likely effect of not taking the medication would be that she would die.

61. The Claimant's Polymyalgia Rheumatica was described by her as being a type of arthritis which affects her joints and mobility, causes "brain fogs" from time to time and constant pain. She finds walking difficult and painful and the condition sometimes better than others. There are times when she cannot get up the stairs and she become breathless when walking.

62. The Claimant's movements are restricted because of her Polymyalgia Rheumatica so that she needs help putting on her shoes and socks and washing. She takes steroids and pain killers as medication for this treatment. If not taking this medication her movements would be extremely limited and she would be in a lot of pain.

63. The Claimant needs help dressing and washing; cannot reach below her knee or behind her properly. She is not allowed to lift weights of more than 2 kilos. As regards the Claimant's condition of Diverticular Disease, this causes her to have diarrhoea and need to be near a toilet. She can also be incontinent.

64. As regards the Sleep Apnoea, the Claimant gets tired. She does not drive for longer than one hour because she gets too sleepy. She sometimes falls asleep when watching television, reading a book or occasionally when someone is talking with her.

65. The Claimant explained that she has obtained a Blue Badge because she cannot walk long distances because of pain and breathlessness.

### **Closing Submissions**

66. Both Mr Rea and the Claimant gave verbal closing submissions.

67. On behalf of the Respondent, Mr Rea's closing submissions included the following points:

67.1 There were no grounds for it not being reasonably practicable for the Claimant to put her claim in time.

67.2 The Claimant had the capacity to go to the Citizens Advice Bureau and solicitors. Despite what she said, it was reasonable to say that she was aware of the correct deadlines.

67.3 As regards the Claimant's disability, the Occupational Health report of 26 August 2020 showed that the Equality Act was not impacting on the Claimant's performance at work. It was very difficult to make decisions on the Claimant's disability when the Claimant had ignored orders, not provided notes from the GP and had not provided witness statement as ordered setting out how her disability affected her. She was doing her job at work.

68. The Claimant's closing submissions included the following points:

68.1 She believed that her claim was in time.

- 68.2 She was not in a good state and was having psychiatric help from a psychologist.
- 68.3 The Claimant's disabilities did affect her at work, for example by only being able to do short journeys and working from home during lock down did help her.
- 68.4 She was referred to Occupational Health by the Respondent's HR Department who advised that she should be allowed to work at home and recommended other adjustments.
- 68.5 She is disabled and it affects her day-to-day living.
- 68.6 Although some of her symptoms were worse because of the stress of being dismissed essentially, they were all present when working with the Respondent around the time of her dismissal.

## Conclusions

### *Time Limits*

69. The time limit for the Claimant to bring her unfair dismissal claim was 2 September 2021, for the following reasons.

70. The effective date of the termination of the Claimant's employment was 16 April 2021, so the primary limitation period, not taking into account ACAS early conciliation, was 15 July 2021. The Claimant requested ACAS early conciliation on 23 June 2021, so was within the primary limitation period when starting early conciliation.

71. The date ACAS issued the early conciliation certificate was 2 August 2021. The Claimant therefore had an extension of time of one month by virtue of the early conciliation regulations, meaning that the deadline for submitting the claim was 2 September 2021. The Claimant was, therefore, out of time by six days in submitting her claim.

72. Was it reasonably practicable for the Claimant to issue her complaint within the statutory time limit for bringing an unfair dismissal complaint? Although this is recorded as part of my conclusions, it is more a finding of fact. I find and conclude that it was reasonably practicable to bring the complaint in time, having balanced a number of factors for and against whether it was reasonably practicable as follows:

- 72.1 The Claimant was not in good health in the time being dismissed and presenting her claim. In addition to managing her mental conditions, being dismissed increased her level of stress and her mental health was affected.
- 72.2 The Claimant was, however, able to work up to the time of her dismissal through the consultation process leading to her dismissal and managed her medical condition sufficiently to do so. Although her dismissal was harmful for her medical conditions, she was able to appeal against her dismissal, participate in her appeal, contact a Citizens Advice Bureau both after being dismissed and after her appeal, contact a number of solicitors to enquire about her taking her claim, contact ACAS and (with some help from her husband)

draft and present her claim. Her ill health did not, therefore, prevent her from being able to bring her claim.

- 72.3 The Claimant was a manager with the Respondent, so an employee at a reasonably senior level, with many years' experience at work. As an experienced manager herself she could and should have asked for advice on the time limit for bringing an Employment Tribunal claim.
- 72.4 By 4 August 2021 the Claimant had finished her ACAS early conciliation. Additionally, she had not only known since 12 May 2020 that her appeal had been unsuccessful, but also received the minutes of the appeal hearing she had been waiting for. She has given no convincing explanation for waiting more than one month from then to present her claim.
- 72.5 This is not a case where there is any misrepresentation by the Claimant's employers that could have misled the Claimant about bringing a claim. Mr Gant wrote in his letter dismissing the Claimant's appeal that his decision was final.

73. The Tribunal does not, therefore, have jurisdiction to consider the Claimant's unfair dismissal complaint and it is dismissed.

#### *Time Limits – Disability Discrimination*

74. The Claimant's complaint of disability discrimination concerns her selection for redundancy and her dismissal.

75. The Claimant's case is that it was Mr Gant who was the perpetrator of the discrimination against her. It was Mr Gant who conducted the Claimant's appeal and notified the Claimant that he had rejected the appeal. The Claimant was notified of this on 12 May 2021.

76. The primary limitation period for this act of discrimination, namely three months from the date of the act to which the complaint relates, is 11 August 2021.

77. The Claimant started ACAS Conciliation within the primary time limit, 23 June 2021 and was issued with a certificate on 2 August 2021.

78. By virtue of the "stop the clock" provisions of the early conciliation legislation the deadline for at least this aspect of the Claimant's disability discrimination complaint was 20 September 2021.

79. Although it is unnecessary for me to determine whether the selection of the Claimant's for redundancy was in time (this was an issue for the full merits hearing of the case), if the Claimant is correct that Mr Gant was the instigator of the Claimant's selection for dismissal it appears at the least to be reasonably arguable that both the selection for redundancy and the dismissal, including the dismissal of her appeal, would be regarded as acts extending over a period and within time. Guidance, however, in cases such as *Hendricks the Commissioner of Police for the Metropolis* (2003) IRLR 96 CA are that such issues are often better dealt with at a Full Merits Hearing.

80. The Claimant's disability discrimination complaint at least as far as her complaint regarding the rejection of her appeal is concerned, therefore, within time; as, probably, is her complaint about being selected for redundancy. Even, however, if I had concluded that the claim was out of time, I would have concluded that it would have been just and equitable to extend time limits. In addition to the balancing of factors set out above on the unfair dismissal complaint the Claimant outlined the prejudice of not being able to bring a claim which she felt strongly about and believed would be successful. The Respondent did not identify any specific prejudice in having time limits extended. The claim was less than one week out of time, which would have no effect on the cogency of evidence and the claim the Claimant's dismissal which was, I understand, documented by the Respondent. If the Respondent has good defence to the claim, they will ultimately be successful in their defence.

*Whether the Claimant was disabled*

81. After hearing the Claimant's oral evidence, I did invite Mr Rea to consider whether the Respondent continued to dispute that the Claimant was disabled at the relevant times. He continued to dispute, however, that the Claimant had any disability.

82. In making my considerations, I have considered the deducted effects of the medication taken by the Claimant, namely what would be the effects were she not to be taking medication. I consider it reasonably obvious that the Claimant having had two heart attacks in 2015 and taking beta blockers and warfarin in order to prevent her having a further heart attack, it appears obvious that this amounts to a disability. If a consequence of not taking medication is a very real risk of a further heart attack which might be fatal, disability appears obvious.

83. In addition, the Claimant's heart condition causes shortness of breath and difficulty in walking more than short distances without difficulty. I find and conclude, therefore, that the Claimant is disabled by virtue of her heart condition of Arrhythmogenic Right Ventricular Cardiomyopathy.

84. I also find and conclude that the Claimant is disabled by reason of Polymyalgia Rheumatica.

85. The difficulties the Claimant describes for such day-to-day tasks are dressing, washing, being unable to reach below her knee, doing housework, lifting weights of more than 2 kilos (whether this is a symptom of her heart condition or rheumatic condition or both) are clearly affects on her normal day to day activities that are more than minor or trivial.

86. I also find and conclude that the Claimant was disabled by virtue of Diverticular Disease. Having diarrhoea and incontinence from time to time affect normal day to day activities and are more than minor or trivial.

87. So far as Sleep Apnoea is concerned, I am less clear about the effects of this on her normal day to day activities and it is probably unnecessary for me to reach a conclusion on this, particularly as it is difficult to assess exactly which medical condition affects which day to day activity and to what extent

88. It is also apparent that the combination of the Claimant's conditions have severe effects on her abilities to carry out normal day to day activities. To give some examples

given in the appendix on the statutory guidance on the definition of disability the Claimant has difficulty in getting dressed; difficulty in going up or down steps, stairs or gradients; ability to walk only a short distance without difficulties; difficulty picking up and carrying objects of moderate weight, all of which are examples given of factors which it would be reasonable to regard as having a substantial adverse effect on normal day to day activities.

**Employment Judge Goodrich  
Dated: 1 August 2022**