



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Philip Rush

Respondent: Wilts and Dorset Bus Company Limited

HELD REMOTELY AT Southampton
(By VHS video link)

ON: 8 February 2023

EMPLOYMENT JUDGE A J Hogarth

Representation

For the Claimant: Mr Rush in person

For the Respondent: Ms Lunney, solicitor

REASONS

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

Background

1. This was a Preliminary Hearing to determine various issues relating to the time limits applicable to the presentation of the claimants' claims.
2. The decision was given orally to the parties on 8 February 2023, with Judgment sent to the parties on 23 March 2023. I dismissed the claim for direct race discrimination in relation to conduct alleged to have taken place in 2015 on the basis that it was not just and equitable to extend time for making that claim. The other claims for direct discrimination and the claims for harassment on the ground of race were not dismissed, on the basis that it was just and equitable to extend time for those claims.
3. After the oral decision was given, I dealt with various case management matters despite loss of time owing to connection problems. I made Case Management

Orders contained in a Record of a Preliminary Hearing that was sent to the parties on 23 March 2023.

4. On 27 March the claimant emailed the Tribunal to request written reasons. The reasons set out below explain the decision made on 8 February.

Procedural background

5. By a claim form presented on 27 December 2021 the claimant brought claims for (a) discrimination on the grounds of race, and (b) unlawful deductions from wages. A second claim form was presented on 13 January 2022 against Ms Wilks in which he brought claims of; (a) unlawful deductions from wages, (b) unpaid holiday pay, (c) breach of contract and (d) other claims referred to as 'negligent claims'. The two separate claims were consolidated on 13 September 2022.
6. On 27 October 2022 at a Telephone Case Management Hearing, Employment Judge Livesey ordered a Preliminary Hearing to determine various issues. However, the only substantive issues pursued at the preliminary hearing by the respondent were those relating to time limits.

Dismissal of claims on withdrawal by the claimant

7. Employment Judge Livesey's Case Summary of 27 October records that the claims originally made on 13 January 2022 and described as breach of contract and negligent claims were not being pursued by the claimant.
8. The claimant confirmed to me during the hearing on 8 February that the claims and issues set out in that Case Summary are the only claims he wishes to pursue. Accordingly, I dismissed the claims, made on 13 January 2022, described as breach of contract and negligent claims.

The preliminary hearing

9. The hearing was conducted on the VHS video platform with all attendees joining by video link. There were no significant connection difficulties before I gave oral judgment, although there was a loss of time due to connection difficulties towards the end of the hearing, after I gave my oral judgment.
10. The tribunal was provided with an agreed preliminary hearing bundle of 90 pages. On 7 February the respondent sent a further bundle of 151 pages containing the documents so far disclosed by the parties in relation to his claims. This was made available to me at the hearing, through Ms Lunney sending it to the Tribunal.
11. The claimant gave sworn evidence. In his evidence the claimant sought to explain why his claims were made late and why time should be extended in his favour. This took time as the points the claimant was making were not always clear. I also had the benefit of submissions from the claimant and from Ms Lunney on behalf of the respondent.

Claims and issues

12. The Claimant describes himself as Iranian and bases his discrimination and harassment claims on his ethnicity and/or national origins in that respect.
13. The specific claims presented by the claimant and issues for determination at a final hearing of those claims are listed on pages 7 to 9 of Employment Judge Livesey's Case Summary of 27 October 2022.
14. As for the claims made by the claimant, it suffices for the purposes of these reasons to reproduce issues 2.2 and 3.2 as set out in that list:

2. Direct race discrimination (Equality Act 2010 section 13)

...

2.2 Did the Respondent do the following things:

2.2.1 Ignore his complaints about excessive hours of work. Those complaints were first raised in 2020 to the Operations Director, Mr Lee-Kong, then Mr Weller, Line Manager, in 2021 and Mr Wade in that same year;

2.2.2 Mr Weller's treatment of the Claimant in or about January or February 2021. The Claimant alleges that he complained to Mr Weller about the non-payment for extra hours which had been worked. He suggested that he would escalate his complaint to Mr Wade at which point Mr Weller shouted and was rude to him in his office;

2.2.3 Mr Weller referred to the Claimant 'coming from the back door' in 2015 when he raised matters relating to pay. The Claimant understood that he meant that he had come from a different depot.

... .

3. Harassment related to race (Equality Act 2010 section 26)

3.1 Did the Respondent do the following things:

3.1.1 Mr Wade accused the Claimant of laziness in the canteen in or January or February 2021;

3.1.2 Mr Wade's email to the Claimant of [25 March 2021] which he alleges was threatening.

... ."

15. During the hearing I was told that the date in issue 3.1.2 as it appears in Employment Judge Livesey's Case Summary (12 August 2021) is wrong. The parties agreed that the correct date is "25 March 2021", so Issue 3.1.2 is amended by the substitution of "25 March 2021" for "12 August 2021".
16. At the start of the hearing Ms Linney explained that the respondent was not objecting to the pay claims on the basis of being out of time, as they were ongoing, but that it was objecting to the discrimination and harassment claims as being out of time. I agreed that it was not necessary for me to deal with time issues relating to the pay claims. Accordingly, the issues falling to be determined at the hearing were as follows (taken from the list on page 6 of Employment Judge Livesey's Case Summary):

Time limits: discrimination and harassment claims

Were the discrimination and harassment claims made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

- a) Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?
- b) If not, was there conduct extending over a period?
- c) If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
- d) If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - i) Why were the complaints not made to the Tribunal in time?
 - ii) In any event, is it just and equitable in all the circumstances to extend time?

The facts

17. I find the following facts proven on the balance of probabilities after considering (a) the whole of the evidence, both oral and documentary, so far as material to the issues being determined and (b) the submissions made by or on behalf of the respective parties. There was little dispute about the underlying facts.
18. The claimant has been employed as a driver by the respondent from at least 27 October 2014 (although the start date appears to be disputed). He continues in that employment.
19. The claimant decided to pursue his various claims in the Employment Tribunal after becoming increasingly dissatisfied with aspects of his treatment by the respondent and as a result of some disputed issues in relation to his pay. He considered some of his treatment to amount to direct race discrimination or harassment related to race. His original ET1 claim form did not make clear what his key allegations were as to what constituted acts of discrimination or harassment, although the respondent's Response helpfully identified various issues (largely to do with shifts, breaks and pay) that it understood to be the focus of the claims.
20. At a Telephone Case Management Hearing on 27 October 2022 Employment Judge Livesey explored the content of the complaints with the claimant and as a result the issues set out in his Case Summary detail the specific actions that he understood the claimant to be alleging as acts of discrimination or harassment. At the hearing on 8 February the claimant confirmed that the actions listed (set out in paragraph 14 above) were correct and complete, apart from the correction he sought to the date in issue 3.1.2 (see paragraph 17 above).
21. The discrimination and harassment claims are disputed, but at the hearing there was sufficient information about the alleged acts of discrimination or harassment and when they took place to enable a decision to be made on extending time. In practice that decision turned on the question whether it was "just and equitable" to extend time to allow the claims to proceed despite being made outside the initial 3-month period (plus EC extension). The key facts relate to the reasons the claimant gave for making his claims late.

22. The claimant is a lay person with no knowledge or experience of legal matters. It was clear from his evidence and submissions that he has tried to do his best to do things properly and carefully, both by pursuing internal redress procedures and by progressing his claims in the Tribunal, despite a complete lack of knowledge or understanding of employment law in general and Employment Tribunal proceedings in particular. Some of his oral evidence came across as confused and discursive, but I did not consider that he was doing anything but his best to communicate the facts as he recalled or understood them. In particular, I did not view his evidence as self-serving. Indeed, one fact that potentially assisted his case in explaining the delay in bringing proceedings (the fact that a period of sickness absence in mid-2021 lasted 8 weeks) only emerged fully in cross-examination.
23. The claimant became concerned during 2021 about some of the matters giving rise to some of his claims, but he did not know what he could or should do about them. The main trigger for his eventual decision to bring claims in the Tribunal was an email from a manager, Mr Wade, dated 25 March 2021 which the claimant found offensive. Both parties agreed that the email was sent on that day and that none of the claimant's allegations in relation to discrimination and harassment relate to actions of the respondent after that day.
24. The claimant was worried that if he continued to raise concerns with his employer (and in particular concerns about a manager's treatment of him) he might be dismissed as a troublemaker. That may not have been a real risk but that was his perception of the risk.
25. He took some time to establish what he could do about his concerns and then to decide what he was going to do. He referred to an email from another manager in late March 2022 suggesting that he could use the respondent's formal grievance procedure. That led him to think he could use that procedure.
26. However, at this point in late March/early April 2021 the claimant was hoping that matters could be settled informally and was waiting for what he thought would be some sort of resolution or settlement offered by the respondent in response to his informal complaints. He felt the respondent had encouraged him to think there would be some sort of outcome like that. He was also worried about raising a formal grievance against a specific manager (as opposed to a more generic grievance not relating to anybody in particular). He had not done that before.
27. There was no satisfactory informal outcome, from the claimant's point of view. So he decided to raise a formal grievance against Mr Wade relating to the email sent on 25 March 2021. This was started on 12 August 2021, and the outcome letter was of the grievance process was received on 23 September 2021. The determination of that process led to the manager addressing the email with him and some minor changes to his working arrangements. It appears that about a week was taken up with sorting out the action that was taken. The claimant did not formally appeal the outcome of his formal grievance, although he made clear that he did not accept that it was an adequate outcome, as he saw things.

28. He discovered that he needed to approach ACAS before going to the Tribunal. His evidence, which I accept, was that he was not aware of the time limit for bringing his claims. There was no evidence that he was aware of the time limit for presenting his complaints. He thought he needed to go through the internal grievance process first, following the company grievance procedures.
29. The claimant approached ACAS who appear to have encouraged him to use the grievance procedure. ACAS did not specifically advise him he had to conclude the procedure. Nor did they mention the time limit for presenting claims to the Tribunal. He said (and I accept) that he thought the grievance procedure had to be concluded and that “nobody told me” about the usual 3-month time limit or its significance.
30. The claimant began the process of bringing a claim in the Employment Tribunal. He referred the matter to ACAS on 18 October and received an EC certificate on 28 November 2021. His complaint was presented to the Tribunal on 27 December 2021.
31. He was asked by Ms Lunney why there was a delay of over 4 months before he initiated a formal grievance. He attributed this to the time the respondent took to conclude its internal processes (during the COVID pandemic), the fact he was off sick for 8 weeks during this period, and his ignorance of the basic time limit for Employment Tribunal claims. He said he went to ACAS soon after the formal grievance process had ended. He was also very unsure about how to proceed and what he needed to say or do to “prove” his grievance against a specific individual. He agreed with Ms Lunney that he had previously raised a grievance (to do with his working hours) but he felt that complaining about a specific manager was a very different thing.

The applicable law

32. I now summarise the law relevant to the time limit issues. The key statutory provisions are contained in the Equality Act 2010 (“EA 2010”) which deals, among many other things, with claims for discrimination on the grounds of race (a protected characteristic under the Act) and harassment related to race. Those are the relevant claims in this case in relation to time limits issues, based on three acts alleged to be discrimination and two acts alleged to constitute harassment (see paragraph 14 above).
33. Section 120 of EA 2010 confers jurisdiction on such claims to employment tribunals, and section 123(1) provides that the proceedings on a complaint within section 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.Under section 123(3)(a), conduct extending over a period is to be treated as done at the end of that period.
34. The 3-month period allowed by section 123(1)(a) is extended by the legislation governing the effect of Early Conciliation (see section 140B of EA Act 2010). The period from the day after “Day A” (the day early conciliation commences) until “Day

- B” (the day the Early Conciliation certificate is received or deemed to be received by the claimant) does not count towards the 3-month period, and the claimant always has at least one month after Day B to make a claim.
35. In this case the claimant’s claim form was presented on 27 December 2021, just within the period of one month beginning with day B (28 November 2021). The effect of the legislation about extending the period allowed by section 121(1)(a) means, as set out by Employment Judge Livesey in his Case Summary, that claims relating to acts prior to 19 July 2021 (the first day of the period of 3 months ending with day A (18 October 2021)) are made out of time, unless time is extended.
 36. It was common ground between the parties that the last of the dates on which the alleged acts of discrimination and harassment took place was 25 March 2021, almost 4 months before 19 July 2021. So all the claims were made out of time in terms of the period allowed by section 123(1)(a). Accordingly, the question is then whether the claims were made within such period as the Tribunal may think “just and equitable”. If not they must be dismissed.
 37. The words “just and equitable” give the Tribunal a broad discretion in deciding whether to extend the time allowed for making a claim. Underhill LJ commented in *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23, that a rigid adherence to any checklist of factors (such as the list in section 33 of the Limitation Act 1980) can lead to a mechanistic approach to what is meant to be a very broad general discretion. He observed in paragraph 37: “The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time including in particular ... “The length of, and the reasons for, the delay”.”
 38. This follows the dicta of Leggatt LJ in *Abertawe Bro Morgannwg University Local Health Board v Morgan* at paragraphs 18 and 19: “[18] ... It is plain from the language used (“such other period as the employment tribunal thinks just and equitable”) that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980, section 123(1) of [EA 2010] does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in the circumstances to put a gloss on the words of the provision or to interpret it as if it contained such a list ... [19] that said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).”
 39. It is clear from the following comments of Auld LJ in *Robertson v Bexley Community Service* that there is no presumption that a tribunal should exercise its discretion to extend time, and the onus is on the claimant in this regard: “It is also important to note that time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of discretion is the exception rather than

- the rule". These comments have been supported in Department of Constitutional Affairs v Jones [2008] IRLR 128 EAT and Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327 CA.
40. Langstaff J stated in Abertawe Bro Morgannwg University Local Health Board v Morgan (at the EAT) that before the Employment Tribunal will extend time under section 123(1)(b) it will expect a claimant to be able to explain firstly why the initial time period was not met and secondly why, after that initial time period expired, the claim was not brought earlier than it was.
 41. However, As Sedley LJ stated in Chief Constable of Lincolnshire Police v Caston at paragraphs 31 and 32: "In particular, there is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised. In certain fields (the lodging of notices of appeal at the EAT is a well-known example), policy has led to a consistently sparing use of the power. This has not happened, and ought not to happen, in relation to the power to enlarge the time for bringing ET proceedings, and Auld LJ is not to be read as having said in Robertson that it either had or should. He was drawing attention to the fact that the limitation is not at large: there are statutory time limits which will shut out an otherwise valid claim unless the claimant can displace them. Whether a claimant has succeeded in doing so in any one case is not a question of either policy or law: it is a question of fact and sound judgement, to be answered case-by-case by the tribunal of first instance which is empowered to answer it.
 42. If the claimant professes ignorance of his right to make a claim and/or the legal regime in respect of time limits, the overarching question for the tribunal is whether that state of mind (that is the ignorance or the mistake) was itself reasonable. It is not likely to be reasonable if it arises from a failure to make such enquiries as ought to have been made in all the circumstances (Wall's Meat Co Ltd v Khan).
 43. As for the rule in section 123(3)(a) that conduct extending over a period is to be treated as done at the end of the period, the essential question is whether the alleged acts are continuing acts or separate distinct acts. In Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530, CA, the Court of Appeal advised employment tribunals against taking too literal an approach to the question of what amounts to conduct extending over a period. In that case a female police officer claimed (while on stress-related sick leave) that she had suffered sex and race discrimination throughout her 11 years' police service, making numerous allegations against about 50 colleagues. The employment tribunal and the EAT decided that if there was no 'policy' of discrimination there was, accordingly, no continuing act of discrimination. The Court of Appeal held, however, that the EAT focused wrongly on the existence of otherwise of a "policy". Instead what was important was the substance of the allegations was that the respondent was responsible for a continuing state of affairs in which female ethnic minority officers suffered less favourable treatment. Was that 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 act was committed?
 44. The test set out in Hendricks was followed by the Court of Appeal in Lyfar v Brighton and Sussex University Hospitals Trust 2006 EWCA Civ 1548. In that case there were 17 complaints of race discrimination concerning the way in which the

respondent had investigated complaints of bullying and harassment made against her by a co-worker. The employment tribunal decided that the allegations about the employer's internal investigation and subsequent disciplinary hearing (which were, in themselves, continuing acts of discrimination) were not linked to later allegations about her manager's actions after the disciplinary hearing and the employer's handling of her grievance. So, the events giving rise to the 17 complaints were not all part of one continuing act of discrimination, Some of the earlier complaints were potentially time-barred. Ultimately the Court of Appeal upheld the decision on the facts, following the test set out in *Hendricks*.

45. Later cases have also followed *Hendricks*. In *Aziz v FDA 2010 EWCA Civ 304*, the Court of Appeal noted that, in considering whether separate incidents form part of an act extending over a period, 'one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents'. In *Greco v General Physics UK Ltd EAT 0114/16*, the EAT held that despite six of seven acts of sex discrimination involving a particular manager, that involvement was not a conclusive factor and the employment tribunal was justified in finding that the allegations concerned different incidents treated as individual matters. Accordingly, they were not considered as part of a continuing act and, in consequence, some were out of time.

Conclusion

46. The discrimination and harassment claims in this case were not made within the period of 3 months allowed by section 121(1)(a) of EA 2010 (as extended by the relevant legislation relating to Early Conciliation). This was not in dispute between the parties.
47. Ms Lunney submitted that time should not be extended under section 121(1)(b) owing to the absence of a good reason for the claims being made out of time and the length of the delay before bringing a claim. As for the direct discrimination claims, she relied on the following facts relevant to the claims in paragraph 2.2 as set out in paragraph 14 above:
- (a) the claim in paragraph 2.2.1 does not identify specific dates for what appears to be conduct taking place in 2020 and 2021 up to about 25 March at the latest. This means the 3 months allowed by section 121(1)(a) ended on about 24 June 2021, yet the claimant did not refer the matter to ACAS until 18 October 2021, almost 4 months later;
 - (b) the claim in paragraph 2.2.2 relates to acts in January or February 2021. But they were referred to ACAS (on 18 October), at least 4.5 months after the expiry of the 3 months allowed.
 - (c) the earliest claim, in paragraph 2.2.3, relates to an act in 2015, 6 years or more before the claim was made on 27 December 2021;
- As for the harassment claims, Ms Lunney made similar submissions, relying on the fact the claim in para 3.1.1 relates to acts in January or February 2021 and the claim in para 3.1.2 related to an email sent on 25 March 2021.
48. The claimant's position was that time should be extended on the basis that it is just and equitable to do so under section 123(1)(b).

49. The claimant submitted (and I accept) that at the root of his allegations (other than the one in paragraph 2.2.3 from 2015) were his failed attempts, over a period from September 2020 to March 2021, to complain of what he regarded as excessive working hours ie. the failure by the respondent referred to in the allegation in paragraph 2.2.1. In my view the alleged failure by the respondent to respond to those complaints (through the failure by different managers to act) constitutes a continuing act, a view that must have been shared by Employment Judge Livesey in referring to all the complaints in a single numbered allegation. The “last act” for that allegation appears to have occurred on 25 March at the latest, when things came to a head owing to the email from Mr Wade mentioned in the allegation in paragraph 3.1.2.
50. The claimant said that the allegations in paragraphs 2.2.2, 3.1.1 and 3.1.2 were linked (as he saw things) to the difficulties he had in trying to get his employer to deal with his complaints about being made to work excessive hours and not being not properly paid for all of them. In my view it is more likely than not that they were all linked with the allegation in paragraph 2.2.1. They all involve managers to whom complaints mentioned in that allegation had been made. On that basis, I consider that it is right to treat them as all constituting a single continuing act, or course of conduct, for the purposes of section 123(3)(a) (which provides that conduct over a period to be treated as done on the last day of that period).
51. It was not entirely clear from the claimant’s evidence at the hearing whether he was claiming that his allegation from 2015 (a single comment made by Mr Weller to the claimant) was part of that single course of conduct or not. In a document on page 57 of the bundle setting out his complaints, the claimant described how Mr Weller had referred to the claimant ‘coming from the back door” in discussions about the claimant’s complaint about his grading. The document suggests that Mr Wade (a more senior manager) accepted that the claimant had been unfairly treated. In any event, the matter appears to have been left as it was by the claimant and there is a gap of about 4 years before the alleged conduct described in paragraph 2.2.1 started in October 2019.
52. In my view there was nothing before me to suggest that the allegation in paragraph 2.2.3 from 2015 was anything but a separated isolated incident. It was not, in my view, connected to the other allegations in a way that might indicate that it formed part of a single continuing act of discrimination. I do not consider that the fact that Mr Weller was one of the people who was allegedly involved in some of the other allegations affects that conclusion.
53. The conclusion that the allegations (bar the one from 2015) form conduct over a period means that they are to be treated, for time limits purposes, as done on the date of the last act on (or about) 25 March 2021. The complaints were made in a claim form submitted around 4 months late.
54. I conclude that it is just and equitable to extend time to allow those complaints to proceed. This is because in my view the reasons given for the lateness and delay provide a reasonable explanation of the claimant’s mistakes and have led me to that conclusion. I consider that it was an understandable mistake for the initial deadline to be missed (because, in the different language of section 111 of the

Employment Rights Act 1996, it was “not reasonably practicable” for the claim to be brought in time) and that there was no unreasonable delay subsequently in bringing the claim when he did. The claimant had no understanding of employment law or procedure and considered, first, that he should wait for his informal complaint to conclude, before deciding whether to bring a formal grievance (an action he considered might be risky for him). He believed he had to conclude that grievance before going to the Tribunal, being unaware of the time limit for bringing claims or the potential significance of missing the deadline. I consider that to be a reasonable belief for someone in the claimant’s position. He was also off sick for 8 weeks during the time in question. I do not consider that the respondent is significantly prejudiced in having to defend a claim that was made 4 months late. The claim was not so stale as to make it difficult to defend the claim effectively. The respondent was, in any event, familiar with the issues from the grievance process carried out in 2021, prior to the claim being made. Once he had his response to the formal grievance and worked out that he needed to contact ACAS, he acted reasonably promptly in my view. It is understandable that he needed to decide whether or not pursuing the grievance and then bringing a claim in the Tribunal was the right thing to do.

55. My conclusion that the four allegations in question describe a single course of conduct or continuing act for the purposes of section 123(3)(a) means I do not have to determine whether it is right to extend time for each allegation complained of taken separately. However, my reasons for concluding that it is right to extend time for those four complaints would in my view have applied equally to the acts which took place (or are deemed to take place) at the end of March 2021 (i.e. the acts described in paragraphs 2.1.1 and 3.1.2). And while the other two incidents (the allegations described in paragraphs 2.1.2 and 3.1.1) took place a month or more earlier, there would, in my view, still be a strong case for extending time for them individually, had it been necessary to decide that point.
56. My conclusion in paragraph 52 about the allegation from 2015 means it must be considered on its own. Is it just and equitable to extend time for that specific complaint to be brought out of time as it was? That allegation is at least 6 years out of time and I conclude that it is not just and equitable to extend time for it to be allowed to continue. The reasons given by the claimant for the failure to meet the 3 month deadline, and for the subsequent delay, does not, in my view, apply with equal force to this allegation relating to a single alleged comment by Mr Weller in 2015. But in any event, the decisive consideration for me that that the matter is so stale that the respondent would be significantly prejudiced by having to defend a complaint made 6 years late in 2021. It is more likely than not that a fair trial of the issue is not now possible so long after the event, with the inevitable effect of time on witnesses’ memories and the likely difficulties of finding any witnesses to the relevant events. In my view that prejudice outweighs any prejudice to the claimant in not being able to pursue his complaint so long after the event.
57. It follows from the above conclusions that all the complaints other than the allegation from 2015 may proceed. The complaint in relation to that allegation is dismissed.

Employment Judge Adrian Hogarth
Date: 19th May 2023

REASONS SENT TO THE PARTIES ON
26th May 2023 by Miss J Hopes

FOR THE TRIBUNAL OFFICE