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EMPLOYMENT TRIBUNALS

Claimant: **Mr S Akwagbe**

Respondent: **Barclays Bank plc**

Heard at: **East London Hearing Centre** **On: 8 June 2017**

Before: **Employment Judge C Hyde (sitting alone)**

Representation

Claimant: In person

Respondent: Ms Y Genn (Counsel)

OPEN PRELIMINARY HEARING JUDGMENT

The judgment of the Employment Tribunal is that:-

(1) The application by the Claimant to amend his claim in terms of the proposed amendment sent to the Tribunal on 7 June 2017 was refused.

The reserved judgment of the Employment Tribunal is that:-

(2) The complaint of victimisation under the Equality Act 2010 was struck out on the ground that it had no reasonable prospect of success.

(3) The remaining complaints under the Equality Act 2010 were struck out on the ground that the Tribunal had no jurisdiction to determine them having regard to the date on which the claim was presented and the applicable time limits.

(4) The case management directions for preparation for the hearing made 8 June 2017 are revoked forthwith.

REASONS

Introduction

1 Written reasons are provided for the above Judgment as the Judgment was reserved in relation to the application to strike out/order payment of a deposit. The reasons are provided only to the extent that it is necessary to do so in order for the parties to understand why they have won or lost, and only to the extent that it is necessary to do so.

2 This Open Preliminary Hearing was fixed at a closed preliminary hearing which took place on 8 May 2017 before Employment Judge Warren. The order and the preliminary hearing summary confirming what was discussed was sent to the parties on 19 May 2017. An important part of the Tribunal's task on that occasion was to try to clarify and identify the arguable claims and the issues arising from the claim form. I am not going to repeat what was set out very clearly by way of background in that summary. It was the document on which the Tribunal based its consideration of the instant applications.

3 The main reasons for the preliminary hearing being held were to decide whether any of the Claimant's claim should be struck out as having no reasonable prospects of success; whether he should be required to pay a deposit in respect of any of his allegations on the basis that they had little reasonable prospects of success; and whether any or all of his claim should be struck out as being out of time. The full merits hearing was listed for 3 – 6 & 10 October 2017.

4 Before addressing those arguments, I considered an application made by the Claimant by letters which were sent by email to the Tribunal, between 23 May and 7 June 2017, in which he asked for permission to amend his claim, having already raised the matter before Employment Judge Warren. Both in the email sent on 23 May 2017 and in the document in which the Claimant expanded upon and set out the basis on which he now wished the claim to proceed ("Claimant's Amended Claims"), the Claimant set out his explanations as to why he had not put his claims in this way previously. As those reasons are in writing, it is unnecessary to repeat them here. In summary, the Claimant effectively relied on the fact that he was a litigant in person and more particularly that he had undergone traumatic injuries as a result of a car accident in April 2015 which had affected his ability among other things to recollect clearly what had occurred.

5 Mr Akwagbe had worked for the Respondent since 2006. He was very seriously injured in a serious road traffic accident on 29 April 2015. He had not returned to work thereafter. The disability discrimination claim arose from matters which had occurred since the accident concerning his entitlement in respect of certain insurance benefits and sick pay.

Documents considered

6 The Respondent had prepared a bundle for the open preliminary hearing

consisting of in excess of 200 pages. This was marked [R1]. In addition, a smaller bundle had been prepared containing all the relevant medical evidence in relation to the Claimant and running to some 30 pages. This bundle was marked [R2].

7 The Respondent had also prepared written submissions and a chronology in relation to their application to strike out the claim which was dated 7 June 2017. Those documents were marked [R3]. The submissions and chronology presented on 7 June 2017 supplemented similar documents previously presented on 8 May 2017 and marked in these proceedings [R4].

8 On behalf of the Claimant the document titled "Claimant's Amended Claims" was marked [C1]. It was presented on 7 June 2017. The Claimant had also prepared a chronology [C2] which was sent to the Tribunal by email on 1 June 2017 [C2]. Further, the Claimant presented a formal notice of application to amend the claim dated 7 June 2017. This was marked [C3]. The document in which the Claimant first signified his intention to amend the claim was an email dated 23 May 2017 sent to the other party and to the Tribunal. It was not formally listed as an exhibit.

9 The Claimant also presented on the morning of the hearing a list of documents requested from the Respondent which was marked [C4]; an AXA member report (three pages) which was marked [C5]; a transcript of texts between the Claimant's wife and other parties marked [C6]; and a complaint summary dated 29 June 2016 which was marked [C7].

10 At the beginning of the instant hearing the Claimant also passed to the Tribunal and to the Respondent a document with a complementary slip from the Citizens' Advice Bureau which appeared to suggest to the Tribunal that it was a privileged document. The Tribunal explained this to the Claimant when the parties came in and the Tribunal had not read the document. For this reason, the document was not taken into consideration and was handed back by the Tribunal and Respondent to the Claimant at the end of the hearing.

Adjustments

11 The Tribunal raised with the Claimant the issue of whether any adjustments needed to be made for him during the hearing. The Tribunal explained that it would normally rise in any event for a short break after approximately one and a quarter to one and a half hours of sitting. The Claimant having indicated that he needed frequent breaks, was invited to ask for any additional breaks. This applied also to the Respondent. In the event the Claimant did not ask for any additional breaks during the hearing.

12 The second adjustment that the Claimant asked for was related to the time that he needed to consider matters and give any answers. The Tribunal indicated that this adjustment would also be accommodated.

The Preliminary Hearing

13 The Tribunal spent some time going through the relevant documents with the parties and decided, given that the Claimant was a litigant in person, that he needed

frequent breaks and also because of his injuries and his reduced functioning, that it was appropriate rather than dealing with the issue of the amendment at the same time as the deposit and strike out applications referred to above to separate the matters and to deal with the amendment first.

14 Although the Tribunal initially tried to agree a timetable for the first stage of the submissions in relation to the proposed amendment, in the event the Tribunal did not hold the Claimant or the Respondent's representative to a strict timeframe.

15 It was agreed at the beginning of the hearing that the Respondent did not seek to cross-examine the Claimant and that in relation to any matters the Claimant wished to rely on in particular in relation to the exercise of the Tribunal's discretion to extend time, the Respondent anticipated that the Claimant would make submissions in accordance with the written representations which he had already presented to the Tribunal.

16 As set out above the Tribunal dealt first with the issue of the amendment and then dealt with the issue of the applications to strike out and for the payment of the deposit on the alternative basis of prospects of success and time/jurisdiction.

The Application to Amend

17 In the document entitled Claimant's Amended Claims, the Claimant included new claims. Thus, for example, Employment Judge Warren had identified with the parties that there were complaints of failure to make reasonable adjustments, disability related discrimination and victimisation. In the proposed amendment to the claim the Claimant sought to make numerous allegations of direct disability discrimination and indirect disability discrimination. He also recast earlier complaints and/or added to them in relation to heads of claim which had not previously been put. He also effectively repeated the facts that he had complained about previously and sought to put those in a different way. There were some parts of the proposed amendments which were attempts to re-label issues which had been raised already. Further, virtually all of the matters were subject to the objection that they were being brought out of time.

18 The Tribunal also had the benefit of authorities presented by both parties. The Claimant also put before the Tribunal a number of authorities including the cases of ***Cocking v Sandhurst*** and ***Selkent Bus Co Ltd v Moore***, the main cases which set out the now extremely well established principles that a tribunal must apply when assessing whether or not it is appropriate to allow an amendment. In addition, the Tribunal had regard to the guidance to employment tribunals on amendments formulated by the President of the Employment Tribunals (England & Wales).

19 The Tribunal further noted that the relevant timeframes for the amendment application are different to those which need to be considered when assessing whether the complaints in the claim form are out of time. The relevant date for the claims in the claim form is the date on which it was presented. The claim form was presented on 18 February 2017 after the early conciliation process had taken place between 8 December 2016 and 22 January 2017.

20 When considering proposed amendments, the relevant date is the date on which application to amend the claim form to include those complaints was first made

which was in May 2017.

21 The timing of the application to amend was relevant when assessing the appropriateness or otherwise of the amendments. I also had to take into account how extensive the proposed alteration to the case was i.e. whether it was simply re-labelling or whether it was bringing a new claim.

22 I also had regard to the merits of any potential claims that is being brought. It would not be proportionate or in the interests of justice to extend the process that was already underway by adding a claim which had very little merit. Conversely if a claim appear to be very strong then that would weigh more heavily in favour of allowing the amendment even if it was ostensibly brought out of time.

23 In reaching my decision on the application to amend, I had regard to a number of relevant considerations including for example the reasons for the delay, and the prejudice to each of the parties if the amendment was allowed.

24 The Claimant addressed the Tribunal about his capacity to bring legal proceedings given the serious effects on him of the injuries sustained in the accident. However I was persuaded by the Respondent's submissions that there was no medical evidence which supported the contention that the Claimant did not have that capacity. We had a bundle of medical evidence [R2], none of which established that proposition. A finding to that effect by the Tribunal needed to be based upon such evidence.

25 The Tribunal also took into account that the Claimant had instructed solicitors previously and certainly well before the summer of 2016. Further, from late 2015 the Claimant engaged directly in detailed correspondence with his employers and managers following the accident. There was thus ample evidence which established that the Claimant was capable of running his own affairs and that he was able to engage appropriate assistance to do so from late 2015.

26 All these matters were relevant in relation to the delay in applying for the proposed amendments.

27 The Claimant's position was that it was only when he started to compile a chronology of events in similar terms to the one that the Respondent had produced for the hearing in May 2017 that a lot of these events came to mind.

28 It appeared to me also that a lot of the matters that the Claimant sought to rely on may well be relevant as background information but that did not mean that they were permissible as amendments to bring substantive new claims.

29 I considered the proposed amendments relating to the direct and indirect disability discrimination allegations. It was not at all clear in relation to the direct discrimination allegations in the proposed amendments, who the comparators were and also whether it was likely that the Claimant would succeed in arguing that there was less favourable treatment by reason of disability.

30 Further, a number of the indirect discrimination complaints appeared to relate either to points which had already been covered in terms of the facts and the summary

which Employment Judge Warren identified when he was clarifying the issues. An example of this was point 9 of the proposed amendment document which was very similar to paragraph 9 of Employment Judge Warren's order in which he had identified a complaint of failure to make reasonable adjustments. The proposed amendment did not appear to add anything to that complaint.

31 There were other indirect and direct discrimination allegations in the proposed amendments and many of them went back to for instance 2015 and even predated the matters which had already been identified in the preliminary hearing summary.

32 It was also questionable whether there was any detriment to the Claimant in relation to some of them. For example, the Claimant complained about inadequate information being given to him about being referred to occupational health (point 6 in his proposed amendment); that related to events in September 2015. At that point the Claimant was being treated by very skilled medical professionals in the National Health Service. It appeared to be unlikely that the Claimant would be able to establish any disadvantage to himself.

33 I took some time to consider in relation to the indirect discrimination allegation which appear to recast the allegation which in the May hearing had been said to be victimisation, and I took into account the comment made in paragraph 17 of the preliminary hearing summary to the effect that the facts did not disclose any protected act.

34 In the proposed amendment, the Claimant wished to say that this amounted to indirect discrimination. However, having looked at the relevant document which the Claimant took me to in relation to his entitlement to various benefits under the rules of the health insurance policy, it did not appear to me that the merits of the proposed amendment were likely to be very high. For example, the Claimant complained about having been paid £5,000 albeit belatedly in April 2016 after he had brought a grievance and that was part of the outcome. Under the relevant rules of the policy however, it was quite clear that £5,000 was the maximum that could be paid out as a benefit. This example illustrated my view that it did not appear that the proposed amended claim had reasonable prospects of success.

35 As a further example, the Claimant had included a claim against AXA which had not been put in the original claim. AXA is not a respondent in this case. The Respondents are liable for the actions of themselves, their employees and the Trustees but not for the actions of AXA; and AXA were not said by the Claimant to have been his employers or former employers. That was another reason why that claim could not proceed.

36 In all the circumstances, it appeared to me that the appropriate step to take having looked at these matters was to refuse the application to amend.

Jurisdiction, Prospects of Success – Strike Out/Deposit Orders

37 The Tribunal then proceeded by considering the time points and the prospects of success in relation to the issues and claims identified by Employment Judge Warren in the hearing in May and set out in the order already referred to.

38 Both parties made submissions on these points. Although the Claimant accepted that the Tribunal had not granted his application to amend, in addressing the strike out and deposit order applications he relied to a large extent on matters which he had set out in the document [C1] which included the proposed amendments

39 The Respondent primarily addressed the application to strike out on the basis of the Tribunal's lack of jurisdiction and suggested to the Tribunal that that matter be dealt with first; and then if the Tribunal was against the Respondent in relation to those submissions, the Tribunal could make a decision in relation to the little reasonable prospects of success arguments.

40 The applications were the Respondent's therefore Ms Genn made her submissions first.

41 As the Respondent's submissions were committed to writing in documents [R3] and [R4] it is not proportionate or necessary to repeat them out in these reasons.

42 As set out in paragraph 2 of the preliminary hearing summary sent to the parties and prepared by Employment Judge Warren the Claimant's case focused on four key dates as follows:

31.1 22 May 2015 when his wife telephoned the Respondent for information on what benefits he was entitled to;

31.2 24 November 2015, when his line manager, Mr McCarthy, informed the Respondent's payroll department, belatedly, of Mr Akwagbe's long-term absence;

31.3 8 April 2016, when the Respondent through a Mr Rider, made an offer of payment of £12,500 described as a gesture of good will and without admission of liability; and

31.4 13 October 2016, when a Board of Trustees appointed by the Respondent, replied to three complaints made by Mr Akwagbe with regard to his entitlement to health insurance benefits.

43 Mr Akwagbe sought to correct the record in the preliminary hearing summary at subparagraph 31.1 above which referred to a telephone conversation on 22 May 2015. His position was that the telephone conversation was on 20 May 2015. The Tribunal assured the Claimant that that difference in date was not significant for present purposes. The Tribunal however noted the correction.

44 In relation to subparagraph 31.2 above the Claimant's case was that the line manager should have informed the payroll department of his long-term absence almost immediately after the Respondent was informed of the circumstances of the Claimant's sickness absence on behalf of the Claimant who at the time, namely in April 2015 onwards was very seriously ill in hospital. He complained therefore of a delay between May and November 2015.

45 The Claimant's reference to the offer of 8 April 2016 was an offer of a payment which was made by the Respondent as a result of their partial upholding of his grievance. The Claimant did not dispute, although the summary refers to an offer of payment, that the £12,500 was actually paid to him by the Respondent.

46 The Respondent's case in relation to the Claimant's complaint that that figure was not sufficient especially in relation to the component of £5,000, was that £5,000 was the maximum payable under the rules of the scheme. It was not in dispute that payments were offered to the Claimant to compensate him for two types of benefits that he complained that he had been deprived of as a result of a delay on Mr McCarthy's part in notifying the payroll department of his long-term absence.

47 Finally, the events of 13 October 2016 were complained about and characterised at the case management hearing on 8 May 2017 as acts of victimisation. However, as Employment Judge Warren recorded at paragraph 17 of the preliminary hearing summary, he was unable to identify that the Claimant had pleaded facts relating to 13 October 2016 which could be said to amount to a claim of victimisation. In particular it was accepted by the Claimant that he had not done a protected act. In the course of his closing submissions he appeared to refer to the formal grievance. This appeared at page 169 of the bundle. However it did not appear to the Tribunal that this met the definition of a protected act under the Equality Act 2010.

48 It was convenient to deal with the complaint about the last key fact in October 2016 as this was material in the light of the Claimant's case that he had suffered from a continuing act of discrimination. In the light of the remark by Employment Judge Warren about the Claimant's case at the hearing on 8 May 2017 and the absence of an assertion by the Claimant that the decision of the Trustees was influenced by any complaint of discrimination; or that the Claimant had complained to AXA about discrimination, the claim of victimisation in relation to the Trustee's decision in October 2016 was bound to fail. In those circumstances, therefore those events could not be relied upon to be discriminatory acts which were continuous with earlier events.

49 The remaining allegations were of failure to make reasonable adjustments and disability related discrimination. In relation to the events of May 2015 referred to above, the Claimant alleged a failure to make reasonable adjustments in that his case was that the Respondent had a provision, criterion or practice ("PCP") of refusing to provide information relating to benefits. In relation to the delay of some six months in terms of Mr McCarthy informing the payroll department of the Claimant's long-term absence (24 November 2015 key fact), the Claimant also alleged failure to make reasonable adjustments in relation to a PCP of the line manager not reporting periods of sickness absence to payroll promptly.

50 The third failure to make reasonable adjustments complaint was based on a case that the Respondent had a PCP of not providing support and guidance on the benefits available during the first six months of absence for those on long-term sickness absence or their relatives. This complaint arose from the complaint about the Claimant's wife telephoning the Respondent in May 2015 for information on what benefits he was entitled to and the subsequent delay in failing to inform the payroll about the fact that the Claimant was on long-term sickness absence.

51 The Claimant next alleged disability related discrimination in two respects. First he stated that the offer of compensation made on 8 April 2016 constituted disability related discrimination. The unfavourable treatment relied on was that the payment was insufficient and the fact that liability was not admitted by the Respondent.

52 Second, he claimed that something arising in consequence of his disability was his absence from work and his wife not being told about the benefits to which he was entitled and the late notification to the Claimant by the Respondent of the end of the period of sick pay at full pay.

53 The Respondent did not dispute that Mr McCarthy had failed to inform payroll that the Claimant was on long-term sickness absence until 24 November 2015. Nor indeed was it disputed for current purposes that the Claimant's wife telephoned the Respondent in May 2015 enquiring as to what information there was on the benefits that the Claimant was entitled to.

54 The background in relation to the financial benefits under the health insurance policy was as follows:-

44.1 The Claimant claimed he was entitled to a £5,000 NHS cash benefit but that he had not been given this in 2015 because the rules said that AXA had to be informed within 48 hours of the individual being admitted to hospital.

44.2 There was a further £5,000 cash benefit payable for admission to an 'out of directory' hospital.

44.3 AXA had approved a two-month period of outpatient rehabilitation treatment at the private Wellington Hospital. When asked for an extension of six months AXA refused because further rehabilitation treatment was available on the NHS. The Claimant was unhappy about this because his contention was that the quality of treatment from the NHS was lower and would have involved delay.

55 The claim was presented to the Tribunal on 18 February 2017. The early conciliation period lasted from 8 December 2016 to 22 January 2017.

56 The Tribunal having removed from consideration the facts relied upon in relation to the victimisation complaint (October 2016), the last set of events complained about occurred in April 2016. The primary limitation period in relation to those matters therefore expired on 7 July 2016. As that limitation period had expired before the early conciliation process was undertaken, the early conciliation did not serve to extend time. It therefore meant that the claim form was presented over seven months after the expiry of the primary limitation period on 7 July 2016.

57 The Tribunal considered the authorities referred to in the Respondent's submissions in relation to jurisdiction and adopted the statement of the law set out in Ms Genn's written submissions [R3] at paragraphs 7 to 14. The Tribunal also noted that taking matters from 8 April 2016 was taking the Claimant's case at its highest. The Tribunal noted that the earlier two matters related to events between May and

November 2015. It was not asserted by the Claimant that the Respondent had failed beyond 24 November 2015 to inform him of his potential benefits. It was therefore difficult in relation to the 2015 matters to mount an argument of continuing discrimination which was continuous with the events on 8 April 2016 when the Respondent at the end of a grievance process in relation to those matters offered financial recompense to the Claimant to address the Respondent's earlier failings. When considering the arguments about continuing acts, the Tribunal accepted the Respondent's submission at paragraph 9 of the written submission in which it was stated that when considering whether there may be said to be a continuing act, it is necessary and important to distinguish between the continuance of a discriminatory act, such as may be seen in the case of the application of a scheme or practice that has a discriminatory effect, and the continuance of the consequences of a discriminatory act: *Amies v Inner London Education Authority* [1977] ICR 308 at p.311 paras B-F.

58 Thus even if the Respondent's actions in failing to notify payroll as of 22 May 2015 that the Claimant was on long-term absence, constituted a discriminatory act under the Equality Act 2010, whilst the omission was rectified in November 2015, and the Claimant suffered financial consequences thereafter, the Tribunal did not consider that on any view matters that occurred after November 2015 in relation to the consequences of the failure to notify payroll could extend the date on which the omission was said to have occurred. The Tribunal also had regard to the fact that the Act provides that when one is having to determine when an omission took place, the Tribunal should determine when the act should reasonably have been done. On that view the Tribunal considered that the omission after 22 May 2015 should have been put right at some reasonable time after that say one month. Although there was no direct evidence about this issue, the Claimant referred the Tribunal to notifications by Mr McCarthy in relation to the Claimant's training schedule. Certainly by the end of June/beginning of July 2015, he had notified the training department that the Claimant was on long-term absence.

59 The Tribunal considers that this stricter interpretation of when time would have begun to run in relation to the omission simply reinforces the Tribunal's finding about this omission coming to an end at the very latest by 24 November 2015.

60 In considering whether to extend time, the Tribunal had regard to the principles set out in the case law also referred to by the Respondent and in particular the principles in the Limitation Act section 33.

61 The Tribunal accepted the Respondent's submission that what needs to be demonstrated by the Claimant is the existence of a discriminatory scheme or practice. In the absence of that, the failure to provide information about benefits represents an allegation that there has been a single act of discrimination/failure to make adjustments. Thus the ongoing failure to notify of benefits, if this was the case, was at some point after 22 May 2015, merely the ongoing consequences of the original failure.

62 The reference to 24 November 2015 is effectively the Claimant's identification of when the manager took action that he should have taken earlier. He does not complain about the action of notifying payroll on that date, save that it was delayed.

63 The Tribunal therefore concluded that the events or the omissions complained about in relation to May-November 2015 were not continuous with the decision at the end of the grievance which the Claimant complained about on 8 April 2016. The November 2015 matters were therefore out of time by a greater time than the events complained about on 8 April 2016. As the April 2016 matters were in effect the Respondent looking back and reviewing the previous decision and there was no evidence of linkage with the initial acts in May 2015 and the omission by Mr McCarthy to notify the Respondent's payroll team, the Tribunal dealt with the May 2015 omissions as discrete acts.

64 The Tribunal did not consider that in accordance with the principles in the case of *Hendricks*, the Claimant had established that there was an ongoing state of affairs or practice. The nature of the allegations in relation to May 2015 and the failure to inform the payroll department which was not rectified until November 2015 were on their face one off acts or events.

65 The Tribunal is satisfied therefore that in any event these matters were out of time.

66 The next issue to be considered was whether to exercise the Tribunal's discretion to extend time taking into account that the primary limitation periods expired between August 2015, February 2016 and July 2016.

67 The Claimant first contended that the injuries sustained made it very difficult for him to launch the claims within the relevant timeframes. The Tribunal accepted that the Claimant was involved in an extremely serious accident and that the injuries he sustained were also extremely serious. Further his treatment and rehabilitation involved extended stays in hospital and health facilities. Indeed the Tribunal was prepared to accept that until late 2015, he was on any view incapacitated in terms of pursuing a claim by reason of his health. However, from about that time onwards the Claimant, and at some stages others on his behalf including a firm of solicitors, engaged in communication with the Respondent about the Claimant's work and entitlement to benefits etc.

68 Further, it did not appear that the Claimant had asserted this until he was responding to the defence of jurisdiction raised by the Respondent in the response. In particular, the Tribunal took into account the finding above in relation to the application to amend but there was no evidence produced for the Tribunal to support this particular submission and certainly no medical evidence available which established that the Claimant did not have the mental capacity to pursue the claim at any point.

69 The Tribunal took into account that when considering the extension of time on the basis that it was just and equitable to do so, the Tribunal must have regard to the fact that such an extension is exceptional and also that there have to be cogent grounds for exercising the discretion.

70 A further matter that the Tribunal was entitled to have regard to in considering whether to exercise its discretion was to have regard in general terms to the prospects of success in accordance with the case of *Hutchinson v Westwood Television*.

71 The Tribunal considered that the prospects of the Claimant establishing a PCP to the effect that the Respondent refused to provide information relating to an individual employee's benefits by citing the Data Protection Act when enquiries were made by persons other than the individual employee, were not high. The Respondent disputed this and there was no reference to any policy document or any other example of such a practice or an event having occurred.

72 The second PCP (line managers not reporting periods of long-term absence promptly to the Respondent's payroll department), suffered from the same difficulty. Indeed the Claimant acknowledged that the Respondent had a policy in place for the reporting of absence but said that there was a practice of not doing so (para 9 of Preliminary Hearing Summary).

73 The third PCP relied upon of the Respondent not providing support and guidance on the benefits available during the first six months of absence in respect of those on long-term sickness absence and/or to their relatives are also in the Tribunal's view suffered from the same difficulty. There was no evidence whatsoever relied upon by the Claimant of a similar matter having occurred or of there being a practice and established in some other way to this effect.

74 In all the circumstances therefore, it appeared to the Tribunal that there were insufficient grounds to exercise the discretion to extend time. The Tribunal therefore had no jurisdiction to determine the remaining claims as identified in the preliminary hearing on 8 May 2017 either on the grounds that they were out of time (failure to make reasonable adjustments and disability related discrimination); or on the basis that the victimisation claim had no reasonable prospects of success.

Directions for Preparation for the Full Merits Hearing

75 Before the Tribunal adjourned to consider its decision in relation to the Jurisdiction/prospects of success arguments, the directions previously made by EJ Warren were varied. However, as the Tribunal's Judgment is that all claims have been struck out, those directions do not survive.

Employment Judge Hyde

11 July 2017