Case Number: 2601099/2022

EMPLOYMENT TRIBUNALS

Claimant: Holly Dawkins

Respondents: HM Courts and Tribunal Service (1)

Linda Morris (2)

PRELIMINARY HEARING

RESERVED JUDGMENT AND REASONS OF THE EMPLOYMENT TRIBUNAL

Heard at: Birmingham via CVP **On:** 27 March 2023

Before: Employment Judge **Algazy KC**

Appearances

For the Claimant: **In Person**

For the Respondent: **Ms H. Masood - Counsel**

JUDGMENT

1. The claim against the Second Respondent is dismissed on withdrawal by the Claimant.

2. The Claimant's application to amend the claim is refused save in respect of the amendment identified in paragraph 49 of the reasons below.

3. The Tribunal does not have jurisdiction to hear the Equality Act 2010 claims as they have been brought out of time and it is not just and equitable to extend time for bringing the claims in accordance with section 123 Equality Act 2010.

4. The claim is dismissed accordingly.

5. The Hearing on 24 July 2023 (5-day Final Hearing) is vacated.

REASONS

INTRODUCTION

1. At an Open Preliminary Hearing ("OPH")on 27 March 2023 the Tribunal heard 4 Applications. The Claimant represented herself and the Respondent was represented by Ms H. Masood (Counsel). The Tribunal was provided with a main bundle running to some 600 pages and a smaller supplementary bundle. References in square brackets in these reasons refer to the main bundle. The Claimant gave evidence on her own behalf and was cross-examined. Ms Masood provided a helpful skeleton argument.

2. Directions had previously been given for the OPH at a Case Management Hearing on 26 September 2022 (the 'PHCM")– See Supplementary Bundle ("SB" - pp 1- 4).

3. The Applications before the Tribunal were:

   3.1 The Claimant's application to amend her claim [75-82]
   3.2 The first Respondent's application to strike out the claim [86-90]
   3.3 The Claimant's application to extend time [94-96]
   3.4 The First Respondent's application to remove the Second Respondent [114]

4. At the outset of the hearing the Claimant accepted that Linda Morrison could be removed as Second Respondent from the claim. That disposed of the fourth

application before the Tribunal and references to the Respondent hereafter are to be First Respondent.

THE LAW

Application to amend claim

5. In considering applications to amend, the following guidance emerges from **Selkent Bus Company limited v Moore** [1996] ICR 836, 842:

> '….(**4) Whenever the discretion to grant an amendment is invoked, the tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.**
>
> **(5) What are the relevant circumstances? It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant.**
>
> **(a) *The nature of the amendment.* Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the addition of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The tribunal have to decide whether the amendment sought is one of the minor matters or is a substantial alteration pleading a new cause of action.**
>
> **(b) *The applicability of time limits.* If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory **844* provisions, e.g., in the case of unfair dismissal, section 67 of the Employment Protection (Consolidation) Act 1978 .**
>
> **(c) *The timing and manner of the application.* An application should not be refused solely because there has been a delay in making it. There are no time limits laid down in the Regulations of 1993 for the making of amendments. The amendments may be made at any time — before, at, even after the hearing of the case. Delay in making the application is, however, a discretionary factor. It is relevant**

> **to consider why the application was not made earlier and why it is now being made: for example, the discovery of new facts or new information appearing from documents disclosed on discovery. Whenever taking any factors into account, the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment. Questions of delay, as a result of adjournments, and additional costs, particularly if they are unlikely to be recovered by the successful party, are relevant in reaching a decision.'**

6. The **Selkent** approach (also the test in **Cocking v Sandhurst (Stationers) Ltd** [1974] ICR 650) is to be followed in considering the Claimant's application to amend.

7. This means that all the relevant circumstances are to be taken into consideration and the Tribunal must balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. From **Selkent,** the relevant circumstances include:

   (i) the nature of the amendment;

   (ii) the applicability of time limits; and

   (iii) the timing and the manner of the application.

8. In **Transport and General Workers Union v Safeway Stores Ltd** (2007) UKEAT/0092/07, Underhill J, as he then was, confirmed that Tribunals retain a discretion to allow amendments which cannot be characterised as" re-labelling" even if out of time:

> **'13…. But, as I have sought to show, Kelly and Selkent are inconsistent with the proposition that in all cases that cannot be described as "re-labelling" an out-of-time amendment must automatically be refused: even in such cases the Tribunal retains a discretion. No doubt the greater the difference between the factual and legal issues raised by the new claim and by the old the less likely it is that it will be permitted, but that will be a discretionary consideration and not a rule of law.'**

9. The Presidential Guidance states that the Tribunal draws a distinction between amendments that:

   - Seek to add or substitute a new claim arising out of the same facts as the original claim; and

   - Those that add a new claim entirely unconnected with the original claim.

10. The Guidance provides that in order to determine whether the proposed amendment is within the scope of an existing claim or constitutes an entirely new claim, the entirety of the claim form should be considered. It notes that in some cases, the application will merely be seeking to "re-label" a set of existing facts and may not therefore be as significant an amendment as it first seems.

11. The Tribunal also had regard to the guidance of HHJ Tayler in **Vaughan v Modality Partnership** [2021] I.C.R. 535 and the case of **Marrufo v Bournemouth Christchurch and Poole Council** [2020] 12 WLUK 664, in particular §§34 – 38 & 49. Taken from the Headnote, the approach to amendment applications in the judgement of Stacey J can be summarised thus:

> **'A person bringing a claim had to take responsibility for formulating it in the claim form. They had no right to provide further amendments or particulars as and when they wished. Accordingly, a party seeking amendment had to apply for it, and the core test remained the balance of injustice and hardship in allowing or refusing the application, Selkent Bus Co Ltd v Moore [1996] I.C.R. 836, [1996] 5 WLUK 45 and Vaughan v Modality Partnership [2021] I.C.R. 535, [2020] 11 WLUK 501 applied. The underpin to the tribunal's wide powers of case management was the overriding objective that enabled cases to be dealt with fairly and justly. Precision, specificity and clarity were required in the statements of case or pleadings, particularly in discrimination complaints and complaints where a number of causes of action were relied on. The Respondent had to know the case it had to meet to enable it to respond with equal precision, specificity and clarity and to enable both sides to understand the issues in dispute and prepare for an effective hearing. Detailed guidance was available to assist litigants in person**.'

12. In **Galilee v Commissioner of Police of the Metropolis** [2018] IRC 634, the EAT confirmed that:

- Amendments which introduce new claims or causes of action take effect, for the purposes of limitation, at the time permission to amend is given; they do not 'relate back' to the time when the original claim was presented; and

- An ET can allow an application to amend subject to limitation points.

Application to extend time

13. The time limit for a discrimination claim to be presented to a Tribunal is normally at the end of "the period of three months starting with the date of the act to which the complaint relates" (section 123(1), EqA 2010).

14. The Tribunal has the discretion to extend the time limit for a discrimination claim to be presented by such further period as it considers just and equitable (section 123(1)(b), EqA 2010).

15. In respect of conduct extending over a period, this is to be treated as done at the end of the period (section 123(3) (a)).

Relevant factors

16. In deciding whether it is just and equitable to extend time to permit an out-of-time discrimination claim to proceed, the Tribunal is entitled to take into account anything that it deems to be relevant **- Hutchinson v Westward Television Ltd** [1977] IRLR 69).

17. The Tribunal's discretion is as wide as that of the civil courts under section 33 of the Limitation Act 1980 (LA 1980) - see **British Coal Corporation v Keeble** [1997] IRLR 336 and **DPP v Marshall [**1998] IRLR 494). Courts are required to consider factors relevant to the prejudice that each party would suffer if an extension were refused, including:

- The length of and reasons for the delay.
- The extent to which the cogency of the evidence is likely to be affected by the delay.
- The extent to which the party sued had co-operated with any requests for information.
- The promptness with which the Claimant acted once they knew of the possibility of taking action.
- The steps taken by the Claimant to obtain appropriate professional advice once they knew of the possibility of taking action.

(section 33, Limitation Act 1980.)

18. The emphasis should be on whether the delay has affected the ability of the Tribunal to conduct a fair hearing - **Marshall**.

19. Whilst a Tribunal has a wide discretion when considering whether it is just and equitable to extend time, time limits are strict. **Bexley Community Centre (t/a Leisure Link) v Robertson** [2003] EWCA Civ 576 held that time limits are applied strictly in employment cases, and there is no presumption in favour of extending time. Tribunals should not extend time unless the Claimant convinces them that it is just and equitable to do so. The burden is on the Claimant, and the exercise of discretion to extend time should be the exception, not the rule.

20. The Tribunal also considered **Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] ICR 1194. The Tribunal paid particular regard to §§ 18,19 and 25 of the judgment of Leggat L.J.:

> **'8. First, 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 the Equality Act 2010 does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see British Coal Corpn v Keeble [1997] IRLR 336), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see Southwark London Borough Council v Afolabi [2003] ICR 800 , para 33. The position is analogous to that where a court or tribunal is exercising the similarly worded discretion to extend the time for bringing proceedings under section 7(5) of the Human Rights Act 1998 : see Dunn v Parole Board [2009] 1 WLR 728 , paras 30–32, 43, 48 and Rabone v Pennine Care NHS Trust (INQUEST intervening) [2012] 2 AC 72 , para 75.**
>
> **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). ….**
>
> **25. … There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the Claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard.'**

21. In **Rathakrishnan v Pizza Express (Restaurants) Ltd** [2016]ICR 283, the EAT emphasised that a multi-factorial approach is to be preferred, with no single factor being determinative. A failure to provide a good excuse for the delay in bringing a relevant claim does not necessarily mean an application to extend time should fail.

22. Further, the case of **Adedeji v University Hospital Birmingham NHS Foundation Trust** [2021] ICR D5 reinforced the caution against over- reliance on the **Keeble** factors at § 37:

> **‘37.The first concerns the continuing influence in this field of the decision in Keeble. This originated in a short concluding observation at the end of Holland J's judgment in the first of the two Keeble appeals, in which the limitation issue was remitted to the industrial tribunal. He said, at para. 10:**
>
> > **"We add observations with respect to the discretion that is yet to be exercised. Such requires findings of fact which must be based on evidence. The task of the Tribunal may be illuminated by perusal of Section 33 Limitation Act 1980 wherein a check list is provided (specifically not exclusive) for the exercise of a not dissimilar discretion by common law courts which starts by inviting consideration of all the circumstances including the length of, and the reasons for, the delay. Here is, we suggest, a prompt as to the crucial findings of fact upon which the discretion is exercised."**
>
> **The industrial tribunal followed that suggestion and, as we have seen, when there was a further appeal Smith J as part of her analysis of its reasoning helpfully summarised the requirements of section 33 (so far as applicable). It will be seen, therefore, that Keeble did no more than suggest that a comparison with the requirements of section 33 might help "illuminate" the task of the tribunal by setting out a checklist of potentially relevant factors. It certainly did not say that that list should be used as a framework for any decision. However, that is how it has too often been read, and "the Keeble factors" and "the Keeble principles" still regularly feature as the starting-point for tribunals' approach to decisions under section 123 (1) (b). I do not regard this as healthy. Of course the two discretions are, in Holland J's phrase, "not dissimilar", so it is unsurprising that most of the factors mentioned in section 33 may be relevant also, though to varying degrees, in the context of a discrimination claim; and I do not doubt that many tribunals over the years have found Keeble helpful. But rigid adherence to a checklist can lead to a mechanistic approach to what is meant to be a very broad general discretion, and confusion may also occur where a tribunal refers to a genuinely relevant factor but uses inappropriate Keeble-derived language (as occurred in the present case – see para. 31 above). 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 (as Holland J notes) "the length of, and the reasons for, the delay". If it checks those factors against the list in Keeble,**

> **well and good; but I would not recommend taking it as the framework for its thinking.'**

23. **Adedji** also serves a reminder, if any is needed, that time limits are applied strictly in Employment Tribunals at § 24:

> **'24. At para. 35 she says that there is a public interest in the enforcement of time limits and that they are applied strictly in employment tribunals. The former point is unexceptionable. The latter reflects a statement made by Auld LJ at para. 25 of his judgment in Robertson. That statement was the subject of some discussion in the later decision of this Court in Chief Constable of Lincolnshire Police v Caston [2009] EWCA Civ 1298, [2010] IRLR 327 (per Wall LJ at paras. 24-25 and Sedley LJ at para. 31), but it is not a ground of appeal that the Judge's reference to that statement constituted a misdirection, and in any event I do not think that it did.'**

24. The Respondent drew the Tribunal's attention to the case of **Watkins v HSBC Bank Plc** [2018] IRLR 1015, para 50 for the proposition that in cases where medical reasons are relied on by a Claimant as part of the reason why proceedings were not brought within the time limit, the question is not necessarily whether the Claimant was prevented from bringing proceedings by the medical condition, but whether, in the round, it is just and equitable to extend time in the light of the Claimant's medical difficulties, even if they were not such as actually to prevent the Claimant commencing proceedings.

25. When considering whether it is just and equitable to allow an extension of time where the issue of a Claimant's ignorance of their rights or of time limits arises, the Tribunal should have regard to whether it was reasonable for them to have been ignorant, and to have remained so, throughout the period of the primary time limit. Accordingly, the need to consider not only whether the Claimant was ignorant but also whether they were reasonably ignorant applied in the same way to the 'just and equitable' test as it applied to the 'not reasonably practicable' test - see **University of Westminster v Bailey** EAT 0345/09 and **Perth and Kinross Council v Townsley** EATS 0010/10 and in particular § 41 of the judgment:

> **'41. Although both of the above discussions were in the context of the "not reasonably practicable" test which is applicable when considering whether or not to allow an extension of time in an unfair dismissal claim, I consider that the comments regarding the need to consider not only whether the Claimant was ignorant but also whether the Claimant was reasonably ignorant apply in the same way to an application for extension where the "just and equitable" test applies. It seems obvious that it is important when asking whether or not it is just and equitable to allow the extension**

in a case where the Claimant was ignorant of any of the three matters identified by Brandon LJ, to consider whether it was reasonable for the Claimant to have been and have remained in that state of ignorance throughout the period of the primary time limit."

Application to strike out claim

26. Rule 37 of the Employment Tribunals Rules of Procedure provides as follows:

'(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

(a) that it is scandalous or vexatious or has no reasonable prospect of success

(b) that the manner in which the proceedings have been conducted by or on behalf of the Claimant or the Respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).'

KEY FACTS/BACKGROUND

27. The Claimant had successfully appealed a Final Written Warning ("FWW") that had been issued against her with the decision being issued on 28 April 2021 (SB p.19).

28. The following day, 29 April 2021, the Claimant lodged a grievance [471]. The grievance included this passage:

'The treatment includes, but is not limited to, issuing written warnings when policy has not been applied correctly, not implementing reasonable adjustments in regards to my disability despite requests and recommendation from occupational health, not replying to emails I have sent in regards to my poor mental health as well as emails about my physical illness.

I did not receive a reponse to an email in regards to an incident of sexual harassment in the workplace from a court user. Linda Morris directly told me that I should 'consider looking for other work' during my return to work following a 2 week absence which arose from a fit note issued by my doctor in regards to depression/anxiety cause directly by work.

These incidents and circumstances have caused a great deal of stress and anxiety as well exacerbating existing illness, illness that my line manager Linda Morris was aware of. I have suffered greatly over the last few years because of this treatment, due to my disabilities this treatment is also discriminatory and unlawful.'

29. In cross examination, the Claimant accepted that her grievance covered much of the claim she was now bringing before the Tribunal. Indeed, she went further when pressed. Asked whether the grievance in fact included all her complaints now brought before the Tribunal except for the incident involving Claire Jones on 23 June 2021 which post-dated her grievance, the Claimant said that she believed the grievance covered everything she now complained of save for the Clare Jones incident.

30. The Claimant also accepted that those claims in her grievance could therefore have been brought in April 2021. When asked why they were not, the Claimant's response was that:

"It didn't occur to me to do that at that time"

31. The Claimant also confirmed that she was not aware of the three month time limit and said that :

"If I had known, I would have made the claim much sooner"

32. The Claimant resigned on 12th of August 2021 with her last day being 10th September 2021. The ACAS Early Conciliation Certificate [1] shows that notification was received by ACAS on 26 April 2022 and the Certificate was issued on the 29th April 2022. The Claim was received by the Employment Tribunal on 29th April 2022.

33. The Claimant started a job in Wales in October 2021 as a Carer for young people in the care of a Local Authority. That role ended at the end of January 2022 and she moved back to Derby. The Claimant joined an employment agency a week later and shortly after that obtained a job doing administration in a school. The Claimant then obtained a permanent role as an administrator on 22nd March 2022 at Direct Heath and Advice.

34. The Claimant told the Tribunal that she had had advice from the Citizens Advice Bureau when she bought her claim having consulted them the day before she put in her ET1. She believed she must have spoken to ACAS around the 26th of April 2022. From the information that she had gleaned, the Claimant was under the impression that she need only provide initial outline in her ET1 and that she was naive to the process. It was only on receipt of the response that she realised she had not provided enough information in her original claim.

35. In submissions, the Claimant referred to evidence regarding her medical condition and the stress that she was under during her employment [47] as well as a Statement of Fitness for Work dated 14 December 2020 [51].

36. Paragraph seven of the PHCM order (SB p2) directed as follows:

> **'RESPONSE TO APPLICATION TO STRIKE OUT/ APPLICATION TO EXTEND TIME**
>
> **6. The Claimant is to file and serve on the Tribunal and the Respondent her response to the application to strike out the claim by 4 pm on 15 December 2022.**
>
> **7. The response is to include the claimants application to extend time for bringing her claims as well as any evidence and/or medical evidence in support of her response and application.'**

37. The Claimant again referred to medical evidence in relation to the period when she was working for the Respondent but in respect of the period from September 2021 after she ceased working for the Respondent, the only evidence she initially put forward was a letter from her GP dated 24th November 2022 [102]. The relevant part of the letter reads as follows:

> *'Miss Dawkins informs me that she is currently applying to take a previous employer through the Employment Tribunal system but that she was delayed in submitting her initial application for this. I understand that Miss Dawkins' mental health was affected by her recent employment leading to her having panic attacks and unable to prove what had occurred during that period of employment. She also moved away to Wales with her partner as she could not bear to be in this area in case she ran in to someone from work. She felt incredibly stressed and very ill at this time. This in turn led to her not being able to process her application in a timely fashion and she was unable to do this until she was in a better state mentally.*
>
> *I hope you will be able to take this into consideration when considering her application.'*

38. The Tribunal explained the relevance of the medical records in relation to her application to amend and her application to extend time. In respect of her application to amend, the Claimant confirmed that she was not advancing reliance on any medical reasons. Rather, "**It was just my ignorance".**

39. After the short adjournment, the Claimant drew the Tribunal's attention to the following medical evidence:

    39.1 The entry for 23 June 2021 [112] – this was the earliest relevant entry and it refers to her discharge from A & E with high blood pressure and

arm pain - the Claimant said that she had been told that she had suffered a severe panic attack;

39.2 The entry for 24 June 2021 at 12.02 [109] when she had spoken to her GP about her mental health issues and her long standing depression;

39.3 The fact that she had been signed off for a long absence with anxiety and depression from 25 June 2021 until her resignation [103];

39.4 The entry for 13 July 2021 at 11.19 which refers to anxiety and depression.

The Claimant specifically confirmed that there was no further medical evidence that she wished to draw attention to or rely on.

40. In her concluding submissions, the Claimant told the Tribunal that:

- she moved to Wales in October 2021 as the person she had complained about lived nearby and it was too difficult to be around that person;
- Financial reasons brought her back to Derbyshire- her partner had been offered a job and their best option was for them both too work in Derbyshire;
- Additionally, Claire Jones no longer worked in Derbyshire.

CONCLUSIONS

Application to amend - Analysis

41. At the beginning of the Claimant's cross-examination, Ms Masood on behalf of the Respondent had clarified the claims she was bringing so as to identify which allegations were being pursued as amendments and which were not. The Claimant was asked, more than once, if she was content to proceed on the basis identified by the Respondent and she confirmed that she was. Paragraph 29 of the Respondent's skeleton sets out the Respondent's understanding of the proposed amendments.

42. The Claimant, despite a reference to direct discrimination in the preamble to the Particulars of Claim ("POC"), was not pursuing any claim for direct discrimination. No amendment is required or pursued - §29(1) of R's Skeleton refers.

43. The Claimant accepted that the refusal on 4 June 2020 of an alleged reasonable adjustment request in respect of the Claimant's desk (the "Desk Complaint") was a new claim which required permission to amend – §3 of the POC and §29(2) of R's Skeleton refers.

44. The complaints relating to reduced working hours, and the refusal of a retrospective application for special leave in April 2021 as set out in § 4 of the

POC require separate consideration. The reduced working hours matter is not advanced by the Claimant as a free-standing complaint but only as relevant background. No amendment is required or pursued - §29(3) of R's Skeleton refers.

45. The refusal on 9 April 2021 of a retrospective application for special leave (the "Special Leave Complaint") raises a new factual allegation which requires permission to include as an amendment to the claim.

46. The incident concerning Clare Jones on 23 June 2021 raises a new claim (the "Claire Jones June '21 Complaint"). In cross-examination, the Claimant said this was a complaint of harassment related to disability. It is both a new factual allegation and raises a new cause of action as well as harassment is not referred to in the ET1 - §5 of the POC and §29(4) of R's Skeleton refers.

47. The unfavourable treatment by Linda Morris in §6 of the POC that is alleged to have occurred on 5th January 2021, namely that the Claimant perhaps "…should look for other work" (the "Other Work Complaint") is relied on as a claim by the Claimant and she clarified that this was an allegation of harassment in answer to a question from the Tribunal. The Respondent sought to argue that the reference to this matter only in Box 15 of the ET1 (Additional Information) meant that this was not specifically pleaded as a complaint. Such a restrictive approach would not seem to accord with the Presidential guidance cited above. In my judgment, this is more properly to be considered as a 're-labelling' exercise as there is no reference to harassment in the ET1 - §29(5) of R's Skeleton refers.

48. The "vicarious trauma" matter at §7 of the POC was only included as relevant background. No amendment is required or pursued - §29(5) of R's Skeleton refers.

Application to amend - Conclusion

49. The "Other Work Complaint" amendment is allowed. This is a re-labelling amendment and does not involve a new factual allegation nor does it cause the Respondent any or any significant prejudice.

50. The other amendments sought are however in a different category. Those are:

- The "Desk Complaint" – 4 June 2020
- The "Special Leave Complaint"- 9 April 2021
- The "Claire Jones June '21 Complaint" – 23 June 2021

51. Those complaints are all considerably out of time. Acknowledging that the Tribunal still has a discretion to allow amendments which cannot be

characterised as “re-labelling” even if out of time (see **Safeway Stores Limited (op cit)**) I decline to exercise my discretion to allow these amendments.

52. In so concluding, I take into account:

- The nature of the amendments sought. They are not minor amendments and raise new factual matters as well as one new cause of action;

- The applicability of time limits. At this stage of the exercise of the Tribunal’s discretion, I approach this consideration by making a limited preliminary assessment of whether the Claimant might persuade the Tribunal that there is any justification for extending time in respect of the amended claims. On the basis of the evidence and submissions above set out, I am very far from persuaded that the Claimant has shown even a prima facie case that there are grounds for extending time - see **Reuters Ltd v Cole EAT 0258/17;**

- The timing and the manner of the application. The Claimant had supplied an amended claim (without permission) on 6 June 2022 prior to the PHCM on 26 September 2022. The amendments were prompted by the response and the Claimant’s apparent lack of awareness of the correct procedure. The formal application was not made until 24 October 2022 and I consider the application to amend by reference to that date;

- Prejudice to the Respondent caused by the sheer staleness of the new allegations and the movement of relevant staff into different roles.

Application to strike out/Application to extend time

53. The individual claims, as amended, are substantially out of time. The Respondent’s primary position is that the claims should all have been brought before the termination of the Claimant’s employment. The key dates here are:

- 12 August 2021 - Claimant’s resignation
- 10 September 2021 - Termination/last day
- 26 April 2022 – ACAS EC Notification
- 29 April 2022 - ACAS EC Certificate
- 29 April 2022 - Claim received by the Employment Tribunal

54. The Respondent submits that it would not be just and equitable to extend time in reliance on the following matters:

- The claims form a series of discrete acts and the Respondent does not accept that the claims can properly be considered as continuous conduct extending over a period for the purposes of section 123(3) EqA- §37 of R’s skeleton;

- If the Respondent is wrong about that, the latest date from which it could be argued that limitation began to run would be the Claimant's last day, 10 September 2021;

- The claims are still significantly out of time. Even adopting the most generous and favourable approach to the Claimant, ACAS were still not notified until 26 April 2022, over 7 months after termination of her emplyment. This was long after the primary period of limitation had expired and attracted no extension as a result of ACAS conciliation – **Pearse v Bank of America Merrill Lynch** UKEAT/0067/19/LA;

- The Claimant was able to present a grievance on 29 April 2021 which covered all her complaints brought before the Tribunal except for the incident involving Claire Jones on 23 June 2021 which post-dated her grievance;

- The lack of any or any compelling medical evidence supporting the application for an extension of time – see findings above set out on the evidence relied on by the Claimant;

- Even when viewed in the round in accordance with **Watkins v HSBC Bank Plc**, the relevance of the medical evidence is considerably diminished in light of the Claimant's responses in cross-examination to the effect that she would have brought the claims sooner if she had known of the 3-month time limit;

- The prejudice caused to the Respondent by the staleness of the claims: this includes individuals having to give evidence about events of some years ago as well as one witness having left the Respondent and for which no contact details are available.

55. The Claimant had provided a document entitled **"Reasons for late claim"** [77] which the Tribunal considered along with such additional oral submissions as were advanced by her.

56. In her document setting out the matters she relied on, the Claimant firstly described the history of her mental and physical health going back to her childhood. The document than went to raise the following considerations in support of her application to extend time:

> **"During my time within HMCTS I struggled significantly with both my physical and mental health, my mental health was affected by my job role and the treatment I received whilst in it. I believe I experienced vicarious trauma due to one particular case I dealt with, this is something my managers were aware of. Upon leaving HMCTS I took up employment in Wales, as my partner is from there and we decided to move there to get a fresh start, I did not want to work in Derby or visit Derby in the event that I ran into a member of**

staff from HMCTS. I was working in Wales and staying with my partners family from October until the end of January. In this time my partner was given a promotion at his current job role, and we decided to stay in Derbyshire for the time being. I left my job in Wales and took up employment back in Derbyshire. In March 2022 I finally felt that I could be around Derby and the area without panicking about running into members of staff from Derby court, I became aware that one of the people I was anxious about seeing was no longer based in Derby and this made me feel more comfortable. It is only recently I have felt able to face the area and even considered making a claim.

I was not aware that a claim had to be made within 3 months less one day, as a lay person I did not know this and thought that claims could be made at any point, just as historical crimes can be reported. As I had not previously considered making a claim to the tribunal I had not looked into the process and as soon as I did, I started my claim knowing that it would only be taken in on exceptional circumstances. I felt that I had to make my claim as I feel I have been treated unfairly, unlawfully, that policies and procedures in relation to my disabilities were not followed, impacting both my professional and personal life. It is therefore due to my physical and mental health conditions, as well as a physical move from the area in order to move on from the treatment I received, that I did not look to start a tribunal claim until very recently when I felt I was in a position to be able to do so."

57. It was not explained why the Claimant's move to Wales until January 2022 provided any, or at least any valid and meritorious, basis for not issuing proceedings earlier. Indeed, on one view, being physically away from the area of conflict might be said to have been of positive benefit to the Claimant in pursuing her claim.

58. In any event, the Claimant waited several more months after her return to England before she contacted ACAS.

59. As to the Claimant's lack of knowledge of the time limits, the question arises as to whether that ignorance was reasonable in all the circumstances – see **Perth and Kinross Council v Townsley (op cit).**

60. It is noteworthy that in the space of 3 days between 26 and 29 April 2022, the Claimant was able to contact the CAB as well as ACAS, inform herself of the correct position and issue her claim. The Claimant adduced no evidence as to why a simple internet search or phone call to the CAB or ACAS could not have been undertaken prior to the termination of her employment or for over 7 months after termination.

61. In all the circumstances, the Tribunal does not consider the Claimant's failure to inform herself of the applicable time limits to have been reasonable. I reach

that conclusion without taking into consideration the fact that the Claimant actually worked in HM Courts Service at Derby Combined Court.

62. I am persuaded by, and accept, the submissions of the Respondent above set out which militate against extending time for the Claimant to pursue her claim.

63. After weighing up all the factors for and against permitting the Claimant to have an extension of time for bringing her claim on just and equitable grounds, and having regard to the balance of prejudice, I decline to exercise my discretion to extend time. The Tribunal has no jurisdiction to hear the claim and it is dismissed accordingly.

64. The application to strike out the claim was also advanced on the basis of the claim, or at least parts of the claim, having no reasonable prospects of success as well as on time jurisdiction grounds.

65. Ms Hasood candidly acknowledged her difficulties in respect of the "no reasonable prospects of success" application in her oral closing submissions. Jurisdiction was the primary ground relied on by the Respondent. In light of the Tribunal's decision on the time point, this application is not considered further.

66. As the Tribunal Judgment in respect of the issues determined at the Preliminary Hearing disposes of the claim, there is no longer any need for a further Preliminary Hearing, provisionally envisaged for 26 May 2023, nor for the 5-day Final Hearing listed for 24 July 2023 which is duly vacated.

Jacques Algazy K.C.

Electronically Signed by EJ Algazy K.C.

Date: 10 May 2023

Sent to the parties on: 17 May 2023

For the Tribunal Office: *M C Roberts*