



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 8000646/2024 Preliminary Hearing by Cloud Video Platform at  
Edinburgh on 16 December 2024**

**Employment Judge: M A Macleod**

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**Sadia Asim**

**Claimant  
In Person**

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**TSB Bank plc**

**Respondent  
Represented by  
Mr D Piddington  
Barrister**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**The Judgment of the Employment Tribunal is:**

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- (1) That the claimant's application to amend her claim is granted;**
  - (2) That the Tribunal has jurisdiction to hear all complaints in this case;  
and**
  - (3) That the respondent's application for strike out of the claimant's claim  
is granted only in relation to complaint 3, and that the Hearing listed to  
commence on 14 January 2025 should proceed on the basis of  
35 complaints 1, 2, 4, 5 and 6 as defined herein.**

**REASONS**

1. The claimant presented a claim to the Employment Tribunal on 13 May 2024 in which she complained that she had been discriminated against on the grounds of race by the respondent.
2. The respondent submitted an ET3 response in which they resisted all claims made by the claimant.
3. A Preliminary Hearing was listed to take place on 16 December 2024 in order to determine the following matters:
  - (1) Whether the claimant's application to amend should be granted;**
  - (2) Whether the claim is time-barred, and the Tribunal therefore lacks jurisdiction to hear it; and**
  - (3) Whether the respondent's application for strike-out of the claim, which failing a deposit order, should be granted.**
4. The claimant appeared on her own behalf, and had the benefit of the assistance of an interpreter in Urdu, Mr Syed Hasan, who assisted her and the Tribunal on the occasions when the claimant requested his help. Otherwise the claimant presented as fluent in English and able to understand questions put and concepts explained to her.
5. The respondent was represented by Mr Piddington, Barrister.
6. The claimant gave evidence briefly about the application to amend, but otherwise the Hearing proceeded on the basis of submissions.
7. A joint bundle of productions was presented to the Tribunal in advance of the Hearing.
8. A Hearing on the Merits has been listed to take place on 14 to 16 January 2025, and accordingly I am very conscious of the need to issue a decision promptly. As a result, the decision set out below is concise and focused only on the issues presented. Where submissions have been made, I have

chosen not to repeat them in full, but to note that they have been considered carefully, and reference will be made to them in the course of the decision.

### **Application to Amend/Time Bar**

#### 5           **Findings in Fact**

9. The claimant commenced employment with the respondent as a Money Confident Expert on or around 25 October 2021.
10. She joined a trade union, Accord, in approximately December 2022.
11. The claimant remains in employment with the respondent, but was absent  
10           from work due to ill health from 19 February until 11 August 2024.
12. She contacted her trade union on 15 February 2024 after a conversation with her manager, Mandy Haddon, which had caused her to be upset. Her trade union representative, Lynda Crouch, contacted her on 17 February, and she also spoke to Stephanie Hunter on 29 April. On 13 June 2024, she  
15           attended a meeting at which she was supported by Lynda Crouch and Michelle White.
13. The claimant's evidence was that during this time she did raise Employment Tribunal proceedings with her trade union, but they were not willing to participate in the Tribunal process on her behalf. She said that they  
20           restricted themselves to helping her with the meetings she required to attend.
14. On 10 May, the claimant wished to take action against the respondent outwith the internal processes, and spoke to the Citizens' Advice Bureau local branch, who suggested she contact ACAS. She did so, on that date,  
25           and after a short early conciliation process, the Early Conciliation Certificate was issued on 14 May 2024 by ACAS (1).
15. On 13 May, the claimant presented her claim to the Employment Tribunal (2).

16. The claimant made reference to the fact that she had had conversations on 4 and 5 March 2024 with Kirsty Thompson, of the respondent, during the second of which Ms Thompson had undertaken to carry out an investigation into the matters which she was raising. She maintained that while she realised on reflection that she should have raised Tribunal proceedings at that point, she trusted Ms Thompson to carry out that investigation and revert to her.
17. She attended a meeting on 29 April 2024, with Stephanie Hunter, at which she was given the opportunity to speak to the investigating manager, and following which Jonathan Tilly, who conducted the hearing, issued a letter of outcome detailing his findings on her grievance on 30 May 2024 (129). By that stage, of course, she had already presented her claim to the Tribunal, which she was able to do as ACAS told her the reference number of the Early Conciliation Certificate by telephone.
18. The claimant maintained before me that she did not understand that there were time limits within which she required to submit her Tribunal claim until she spoke to ACAS shortly before submitting hers. She understood that the claim was presented in time, on the basis that the most recent issue of which she wished to complain took place on 15 February.
19. She also maintained that she was unwell at the time she submitted her claim; that English is not her first language; that she had never presented a claim to the Employment Tribunal and that she did not understand when she wrote the claim on the ET1 that she had to include all the relevant claims which she wanted to make.
20. The claimant said that when she went off on sick leave, in February, she contacted BUPA and obtained fitness to work certificates which she submitted to the respondent. She explained that she was having difficulty sleeping at nights, and that she was in a very poor mental state, to the point where she considered suicide. She had never felt so low in her life. Her GP prescribed anti-depressants for her.

21. So far as the application to amend her claim was concerned, the claimant accepted that the first time she told the Tribunal about the specific complaints she now wishes to include was at the Preliminary Hearing on 23 September 2024 before Employment Judge Sutherland.

5 22. She said that she did not realise that she needed to mention every single act which she wanted to rely upon on the ET1. She had received the ET3 form on 18 June 2024, and acknowledged that the respondent was seeking further details of her claims in that document. She did not act upon that at that stage because she remained optimistic that the internal process would  
10 resolve her grievance.

23. The formal outcome of the resolution meeting was received by her on 7 August 2024.

### **Discussion and Decision**

24. I take the issues before me in turn.

#### **15 Application to Amend/Time Bar**

25. As Mr Piddington observes, there is, in fact, no formal application to amend the claim before the Tribunal, but it has been taken that the claimant's statements in the Preliminary Hearing of 23 September 2024, noted in the Note produced at 45/6 as complaints numbered 1 to 6, amounted to an  
20 application to add complaints to her claim. The claimant maintains that the complaints are not new.

26. In the original claim, the claimant ticked the box identifying a claim of discrimination on the grounds of race, but not of sex. In paragraph 8.2 (8), she stated that: *"My manager has a problem with me from first day she did  
25 first meeting with me and asking am I comfortable with my old bosses as they are men and Asian for me its really hurt after that her behaviour very rude don't given me any task keep things away from me always realise me my understanding not good and I am not good for anything."*

27. While general, it is possible to discern a number of themes emerging from the claimant's concise statement of claim here.

28. In the Tribunal Note, the 6 complaints identified are, put shortly:

- 5 1. Between 22 January and 2 February 2024, Mandy Hadden asked "Are you comfortable with [Beenu Kapoor] because he is Asian?"
2. Between 22 January and 2 February 2024, Mandy Hadden asked "Are you comfortable with [Beenu Kapoor] and [Ian Keddie] because they are both men?"
- 10 3. On 16 January 2024, Mandy Hadden and Suzanne King kept the claimant at work for 20 minutes after her shift had ended.
4. Between 29 January and 2 February 2024, Mandy Hadden shouted at the claimant twice in front of customers.
- 15 5. Between 29 January and 2 February 2024, Mandy Hadden got angry and shouted at the claimant just before the claimant was due to leave to collect her child.
6. On 15 February 2024, Mandy Hadden said that she had failed at her job because of the claimant.

29. These dates are those amended, helpfully, by Mr Piddington in his submission, based on further correspondence from the claimant.

20 30. He accepted that complaints 1 and 2 are identified in the original claim, and that it is necessary for the claimant to amend her claim in order to incorporate complaints 3 to 6. It is worth observing at this point, however, that Mr Piddington argues that all of the complaints should be excluded.

25 31. I considered the authorities to which I was referred by Mr Piddington, and in particular **Vaughan v Modality Partnership [2021] IRLR 97** and **Selkent Bus Company Ltd v Moore [1996] ICR 836**.

32. **Selkent** proposes that the Tribunal consider a number of factors when determining whether to grant the application to amend.

33. Firstly, the Tribunal must consider the nature of the amendment. Mr Piddington submitted that complaints 3 to 6 are entirely fresh claims, raising  
5 factual matters not articulated in the ET1. While this is correct, it is plain that they are additional complaints under the headings of direct discrimination and harassment on the grounds of race, but with the additional component of sex in relation to complaints 2 to 6.

34. The amendments all relate to the same period of time, and to two  
10 individuals, namely Mandy Hadden and Suzanne King. Mandy Hadden is the focus of complaints 1 and 2.

35. The claimant did not tick the box marked sex discrimination in the ET1, although complaint 2, which is specifically related to sex, did appear in the  
15 body of the claim. The claimant's explanation on this point was that she did not understand the word "sex" in relation to discrimination to mean male or female.

36. It is also clear that the claim form has a printed section above paragraph 8.2 which states: "Please set out the background and details of your claim in the  
20 space below. The details of your claim should include **the date(s) when the event(s) you are complaining about happened**. Please use the blank sheet at the end of the form if needed."

37. Mr Piddington argued that the new allegations are not a re-labelling of the original claims in the ET1. In general, that is correct, though complaint  
25 number 2 may be seen as a re-labelling of an existing averment, under the heading of sex discrimination rather than that of race, and complaints 3 to 6 under the heading of race/sex discrimination.

38. Secondly, the Tribunal must consider the applicability of time limits. In this case, it is plain that the amendment application has been lodged out of time, since it must be taken to be presented at the very earliest at 23 September  
30 2024. Mr Piddington argued that the date of presentation of the claim will be

the date upon which the application is accepted by this Tribunal following this Hearing. However, it is my judgment that it is important to take account of the date at which the claimant brought the matter to the Tribunal's attention, which is, in any event, outwith the statutory time limit.

5 39. Thirdly, the timing and manner of the application. The application was taken to have been made at the Preliminary Hearing on 23 September 2024, and quite correctly Mr Piddington states that no application was actually made by the claimant. However, the purpose of a case management Preliminary  
10 Hearing is often to clarify the claims in order to ensure a degree of certainty on the part of both parties, especially where the claimant is unrepresented, and in the experience of the Tribunal it is not unusual that new complaints are ventilated in such circumstances.

15 40. However, it is important to note that the claimant did not before then submit an application for amendment, and has accepted that she could have done so, but did not, for reasons which are not clear.

41. It is necessary for the Tribunal to consider the balance of hardship and injustice in determining this matter.

20 42. In considering all of these factors and the helpful submissions made by Mr Piddington, this is a finely-balanced matter. Mr Piddington's submissions were powerful and clear, and he is quite correct when he points out that the claimant has sought to introduce new complaints into this case which had not previously been made to the Tribunal.

25 43. The allegations all relate to events which are alleged to have happened before the date when the claim was originally presented, and therefore must have been in the claimant's knowledge when she presented the claim.

44. The claimant says that she did not realise that she had to put in every single complaint in her ET1. The authorities are clear that the ET1 is not merely a starting point in an ongoing correspondence, but the place where the claim resides unless the Tribunal grants permission for additional complaints to be



added. The claimant plainly did not see the statement at paragraph 8.2 of the ET1 requiring her to set out the details of her claim, including dates.

5 45. The claimant maintains that because English is her second language, and because she was unwell at the time, she was unable to articulate her claim properly and fully. In my observation, the claimant was able to converse clearly and articulately in English before me, speaking and understanding (largely) fluently. I do not accept that she was so limited as to be unsure about how to complete the form which was to be considered by the Tribunal. As to her state of health, although there are no medical certificates  
10 supporting the claimant's assertions, it is clear that between the start of her sick leave and the date of presentation of the ET1 (that is, between 16 February and 13 May 2024), the claimant was able to attend a number of meetings and correspond with her employers.

15 46. However, it is critical to note that in determining this matter I must have regard to the balance of hardship and prejudice in this case, appropriate to the decision before me.

20 47. In my judgment, the prejudice to the claimant, in losing out on the right to pursue these additional complaints, would be considerably greater than that to the respondent. The claims are of a consistent and similar nature, and relate largely to one person, who would require to give evidence in relation to complaints 1 and 2, and are restricted to a short timeframe. They are clearly defined and capable, in my judgment, of being defended by the respondent without significant additional resources being expended by them.

25 48. Mr Piddington candidly accepted that the respondent has been preparing for the Hearing on 14 January 2025 on the basis that they require to defend all 6 complaints, and he does not submit that the Hearing would be jeopardised if the amendment were allowed to proceed. In my judgment, 3 days should still be sufficient to complete the Hearing.

30 49. On the question of time limits, again, it is clear that the application to amend was made outwith the statutory time limits, and that it could and should

have been presented to the Tribunal before 23 September 2024 or indeed the date of this Hearing. However, understanding that time limits are in place for a reason which is to ensure finality in litigation and that a party should not have to face an allegation which is difficult to investigate due to the passage of time, in my view there appears to be little prejudice to the respondent in allowing the amendment to proceed albeit late, since they are in the process of preparing for the Hearing on that basis, and there is no clear reason why the respondent could not investigate those new complaints with the same witness or witnesses as they intend to call anyway, relating to a very similar time period. I did not understand the respondent to be suggesting that they are unable to carry out a full investigation and preparation of the case in the event that all complaints proceed, nor that the relevant witnesses are either absent, unavailable or unable to remember the events in question.

50. Accordingly, I consider that to the extent that the application to amend is late, it is just and equitable in all of the circumstances to allow it to proceed.

51. Mr Piddington submitted that all of the complaints are outwith the three month period within which it is necessary to commence a complaint of discrimination before the Tribunal..

52. In my judgment, the same considerations apply to the whole claim as to the application to amend the claim. It is my judgment that to the extent that the claims are outwith the statutory time limit, it is just and equitable to allow them to proceed on the basis that the claimant would be severely prejudiced in the event that she were to lose the right to pursue her claims. It is clear that the claimant has had the opportunity to seek advice, both from her trade union and the CAB, but I am not prepared to find that it was unreasonable for her not to have obtained advice about time limits from them. It is clear that when she was speaking to these organisations she was either told that they were unwilling to assist, or providing them with the information that the claims related to a date within the time limit. The claimant is unrepresented and unqualified, and it is clear that she was unwell at the time when she was preparing to present her claim to the

5 Tribunal. I note that Mr Piddington submitted that no evidence had been presented by the claimant as to her mental health, but the claimant gave evidence herself before this Hearing to the effect that she was very low in mood, was having difficulty in sleeping, was at the point of being suicidal and was prescribed antidepressants by BUPA, as well as being signed off from work. There was therefore evidence that the claimant was unwell at that time.

10 53. Accordingly, I consider that the claim should be allowed to proceed to the Hearing in January 2025 on the basis of all 6 complaints identified by Employment Judge Sutherland.

#### **Application for Strike-out**

15 54. The respondent's application for strike out, with the alternative of a deposit order, is based on the proposition that the claimant's claims of discrimination on the grounds of race or sex have no reasonable prospect of success.

55. Mr Piddington correctly accepted that strike out of a discrimination claim will only be appropriate in the most obvious of cases (**Anyanwu and anor v South Bank Student Union and anor [2001] ICR 391**); however, he argued that this is one such case.

20 56. He maintained that the claimant has presented no basis for asserting a difference in treatment to a comparator, let alone that the reason for any such difference was on the grounds of race (and presumably also sex).

25 57. The claimant admitted that at the time of the alleged comment in complaint 1 being made, she did not consider it to be racist, he said. The claimant's response was that while that may be the case, she came to the view over time that it was. I do not consider that it can be said that complaint 1 is so weak as to justify a finding that it should be struck out as having no reasonable prospect of success. There is no doubt that such a claim may be the subject of challenge by the respondent, but in my judgment, the

factual dispute at the heart of the allegation and its meaning and context require to be carefully considered by the Tribunal following evidence.

58. Mr Piddington argued that complaint 2 does not provide any basis for a finding of discrimination, and in any event the claimant did not mention the matter to her manager on 4 March 2024 (107). I am not prepared to conclude that a statement that a female employee would be more comfortable working for a man is not discriminatory is such as to have no reasonable prospect of success. It is open to the claimant to challenge the individual or individuals who made the comment to establish what was meant by the comment and to put to them her interpretation. It may not be a strong component of the claimant's case, but I am not of the view that it has no, or little, reasonable prospect of success without hearing the evidence about the incident itself.

59. Complaint 3 related to the allegation that the claimant was asked to stay 20 minutes late at work on one occasion, for reasons which the respondent says was to assist with quarterly cash checks. Leaving aside that there may be a factual dispute about that explanation, it seems to me that the claimant has failed utterly to identify a basis upon which the reason for her being kept late at work was because of her race or her sex. Accordingly, I am of the view that this allegation should be struck out as having no reasonable prospect of success. The claimant is unclear as to the basis of this complaint, and accordingly I can see no foundation for her assertion that being kept on late on one occasion could amount to discrimination on the grounds of race or sex, based on her claim.

60. The evidence relating to complaint 4 is likely, on the basis of the respondent's submissions, to expose a significant dispute as to whether the incident actually happened in the first place, and if it did, what was said by whom, and how. In my judgment, noting that the respondent considers that the claimant has not identified a basis in race or sex for her treatment, it is essential for this allegation to be determined following the hearing of evidence about it, in order for the Tribunal to make a decision based on its own findings of fact about what was said and how it was said.

61. Complaints 5 and 6 are similar, in that there is a clear dispute as to whether or not the conversations alleged actually happened, and if it did, what was said. Given the factual dispute, it is necessary to allow this to proceed to a Hearing to allow the Tribunal to determine the matter for itself.

5 62. Finally, Mr Piddington submitted that the claimant will be unable to demonstrate that she was harassed in these incidents on the grounds of either race or sex. Once again, it is my conclusion that the complaints should be allowed to proceed so that full findings in fact may be made in order to allow the Tribunal to determine the claimant's complaints.

10 63. While it is understandable that the respondent is seeking to argue that the claims have little or no reasonable prospect of success, I am not persuaded that the case is so lacking in its prospects that it should suffer the draconian sanction of strike-out at this stage in the proceedings. I accept that the claims do not appear to be strong claims, nor are they particularly well-pled,  
15 but I do not consider that this is one of those cases which are so exceptional as to justify strike out on the grounds that they have no reasonable prospect of success, nor a deposit order on the grounds that they have little reasonable prospect of success.

20 64. It is my conclusion, therefore, that the respondent's application for strike out succeeds only in relation to complaint 3, and that the remaining claims 1, 2, 4, 5 and 6 should be allowed to proceed to the Hearing listed to commence on 14 January 2025.

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**Employment Judge: M A Macleod**  
**Date of Judgment: 19 December 2024**

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Date sent to parties

20 December 2024

I confirm that this is my Judgment in the case of Asim v TSB Bank plc and that I have signed the Judgment by electronic means.