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ORDER OF THE EMPLOYMENT TRIBUNALS

Claimant: **Mrs M Bah**

Respondent: **The Vine Residential Services**

Heard at: **East London Hearing Centre** **On: 24 March 2017**

Before: **Employment Judge Ross (sitting alone)**

Representation

Claimant: **Mr Bah (Husband)**

Respondent: **Mr McDevit (Counsel)**

ORDER

1. **Upon finding that it was not just and equitable to extend time for the presentation of the Claim, the Tribunal has no jurisdiction to consider the Claim.**

2. **The application to amend is refused.**

3. **The Claim is dismissed.**

4. **The full merits hearing listed for 26th – 27th April and 2nd May 2017 is vacated.**

REASONS

Introduction

1. This Preliminary Hearing was fixed to determine the issues outlined in the case management summary of Employment Judge Foxwell following the hearing on 13th February 2017. In the course of these Reasons, I shall identify the Claimant's complaints by reference to the sub-paragraph numbering used in Judge Foxwell's case management summary.

2. In the course of the hearing before me, the Claimant's case was fleshed out. The substance of it was explained by Mr. Bah, who represented his wife with restraint. Her case was that the Respondent's management adopted a policy against the Claimant's interests from the time at which her pregnancy was disclosed.

The Complaints

3. In the course of the hearing, Mr. Bah explained that allegation 7.5 was not a complaint of discrimination, but background evidence only.

4. The parties agreed that complaint 7.6 contained a typographical error, with the relevant date being 14 March 2016.

5. In respect of complaints 7.4, 7.7, 7.8, 7.9 and 7.10, Mr. Bah accepted that these were new. But he contended that 7.8 merely provided particulars of a complaint contained within the transcript of a covertly recorded conversation filed with the ET1. Insofar as the written application to amend (p. 42 bundle) did not include all of these 5 complaints, he was permitted to include all of them within it.

The Evidence

6. There was a bundle of documents, agreed to be complete by Mr. Bah at the outset of the hearing. Page references in these Reasons refer to pages in that bundle.

7. Subsequently, Mr. Bah produced a transcript of the covertly recorded audio-tape, which the Respondent had apparently provided as disclosure, from a file provided by Mr. Bah. I marked this as C1 and I took it into account, reading it during the short adjournment when copies were taken.

8. I heard oral evidence from the Claimant, who provided a short witness statement which was expanded upon. Given the short nature of her statement, and with the agreement of the parties, I asked some questions for clarification at the outset of her evidence, before Mr. Bah asked some questions in examination-in-chief. The Respondent called no oral evidence and relied on documents in the bundle and cross-examination.

The Law

Jurisdiction: the primary time limit

9. Section 123 EA 2010 states that:

> "*Proceedings on a complaint within section 120 may not be brought after the end of –*
>
> *(a) The period of three months starting with the date of the act to which the complaint relates, or*
>
> *(b) Such other period as the employment tribunal thinks just and equitable.*".

10. Section 123(3) EA states that:-

> "*Conduct extending over a period is to be treated as done at the end of the period.*"

11. A distinction is to be drawn between a single act (which may have continuing consequences) and a continuing act arising from a policy, rule, scheme or practice operated over time: *Barclays Bank v Kapur* [1991] ICR 208.

12. Tribunals should not take too literal an approach to the question of what amounts to continuing acts by focusing on whether the concepts of policy, rule, scheme or practice fit the facts of the particular case. The concepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as a complete and constricting statement of the indicia of "an act extending over a period." Instead, the focus should be on the substance of the complaints that the employer was responsible for an ongoing situation or a continuing state of affairs: *Hendricks v Commissioner of Police for Metropolis* [2003] ICR 530 at para 54.

Just and equitable extension of time

13. The principles to be applied are as follows:

13.1. The ET's discretion to extend time under the "just and equitable" test is a wide one to do what is just and equitable; and the tribunal must consider "all the circumstances of the case". I remind myself that there is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised: see *Chief Constable of Lincolnshire Police v Caston* [2010] IRLR 327 per Sedley LJ.

13.2. The Employment Tribunal must take into account all relevant factors.

13.3. The discretion is as wide as that given to the civil courts by section 33 of the Limitation Act 1980. The sorts of factors to be considered, therefore, include:

(a) The length of and reasons for the delay;

(b) The extent to which the cogency of the evidence is likely to be affected by the delay;

(c) The extent to which the party sued cooperated with any requests for information;

(d) The promptness with which C acted once he knew of the facts giving rise to his cause of action;

(e) The steps taken by C once he knew of the possibility of taking action.

[See *British Coal Corporation v. Keeble* [1997] IRLR 336]

13.4. These factors are, however, merely a helpful checklist for guidance. The statutory test remains whether it is just and equitable to extend time. Whether a Claimant succeeds is a question of fact and judgement, not law.

13.5. But a Claimant can hardly hope to satisfy the test unless she provides an answer to two questions:

13.5.1. Why was the primary time limit not met? And

13.5.2. Why after the expiry of the time limit, the claim was not brought sooner than it was?

(see *Abertawe Bro Morgannwg University Local Health Board v Morgan* UKEAT/0305/13, cited in Harvey P1 at 277.01 – within the extract used in the Tribunal by Counsel for the Respondent).

The power to amend: Rule 29

14. The power to amend is a general case management power (at Rule 29 of the 2013 Rules of Procedure). I need to consider whether to grant or refuse the application to amend is in accordance with the Overriding Objective.

15. The power to amend is a judicial discretion to be exercised "in a manner which satisfies the requirements of relevance, reason, justice and fairness inherent in all judicial discretions": see *Selkent Bus Co v Moore* [1996] IRLR 661, to which I was referred. Mummery P emphasised that, whenever the discretion to grant an amendment is invoked, the ET should take all relevant circumstances into account and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. The Judgment in *Moore* then continues:

"(*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 provisions,...

> *(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*."

16. The fact that a proposed amendment gives rise to a new cause of action that is out of time is not fatal to the application to amend: it is a relevant consideration but not determinative.

17. Even if the amendment adds a new basis of claim that goes beyond a mere re-labelling of the facts, a Tribunal retains discretion to decide whether or not it should be permitted, see *Transport and General Workers Union v Safeway Stores Ltd* UKEAT/0092/07 at paragraph 13.

18. The weight to be attached to that fact depends on the extent of the difference between the original and the new bases of claim. It is well-established that a "mere re-labelling" is much more likely to be permitted than an amendment that introduces very substantial new areas of legal and factual inquiry: see *Evershed v New Star Asset Management* UKEAT 0249/09 at para 15. This approach (whether the amendment would raise new factual allegations) informed the Court of Appeal's approach in the same case: see *Evershed* [2010] EWCA Civ. 870 at para 50.

19. I have also read and considered the extract from Harveys at P1[311] on Amending the Claim.

20. I remind myself that the circumstances to be taken into account will vary depending on the case.

21. I remind myself that in deciding whether or not to exercise their discretion to allow an amendment, the Tribunal should in every case have regard to all the circumstances of the case. In particular they should consider any injustice or hardship which may be caused to any of the parties, if the proposed amendment were allowed or, as the case may be, refused.

Findings of Fact

22. Having heard the Claimant's evidence, I make the following findings of fact.

23. The Claimant was employed by the Respondent from 1st October 2013 as a support worker, located at a residential home. I heard no evidence that she had been dismissed and dismissal was not a complaint.

24. The Respondent was informed that the Claimant was pregnant in November 2015. A risk assessment was carried out.

25. On 26th November 2015, the Respondent suspended the Claimant from work, stating this was on health and safety grounds. No allegation is made about that decision.

26. There are disputed facts about conversations alleged to have taken place on 28th October and 11th December 2015. I do not need to determine those disputes, and, as recognised by Mr. McDevit, it was not possible for me to do so on a partial view of the evidence.

27. The Claimant's statement set out a number of reasons for delay in submitting her claim. Basically, a number of substantial and adverse events happened to her at or about the same time, shortly after 28th October and 11th December 2015.

28. Around the beginning of December 2015, the Claimant was given a notice seeking possession or notice to quit by her landlady, who was Ms. Williams, one of her managers and sister to the director of the Respondent. The Claimant applied as homeless and was placed in interim accommodation, consisting of hostel rooms, in Barking, then Rainham, then Harold Hill.

29. The Claimant's evidence was that she could not bring any complaint from this time because her documents were in storage, with her other possessions.

30. In December 2015, the Claimant fell ill due to stress, depression and lack of sleep. She could not take medication due to her pregnancy. This is supported by her GP's letter of 23rd February 2017 (p.93). This GP is clearly working from her medical notes as he formulates his letter. The GP's letter also records that the Claimant was taking advice from her trade Union at that time (December 2015).

31. The Claimant had contacted UNITE, her union, in December 2015, and relayed her complaints including what her employer was alleged to have said as recorded in the audio-tape of the meeting between the Respondent and Mr. Bah. The Claimant's evidence in answer to my questions included:

> "*I explained everything*
>
> *TU advice about a claim?*
>
> *They explained that I should try and follow up with a case when I was well. They did explain grievance and what procedure to go through.*
>
> *Explain ET?*
>
> *But they could not go into detail because I was pregnant and depressed. They said I should follow up everything.*
>
> *Not able to do anything because I want a roof over my head*".

32. In cross-examination, the Claimant admitted that she had told the trade union representative by phone that she had been discriminated against at work. Her contact at that time with UNITE was limited to a phone call which lasted slightly less than 10 minutes.

33. The Claimant's evidence was that she did not know the procedure to bring a claim and was requested by the UNITE officer she spoke to, in the above call, to make an appointment to see a union representative; but she could not follow this up due to her ill-health and homelessness.

34. I found that the Claimant could not accurately recall what she must have been told by UNITE in December 2015. There was a great deal going on in her life at that time, with a combination of illness, anxiety given the suspension from work, and homelessness. I find it unlikely that, given she was complaining of discrimination, that a large and organized trade union would not have explained about the role of the Employment Tribunal, at least in outline, even if the phone call was less than 10 minutes long.

35. The Claimant's son was born on 15th March 2016. He was delivered by Emergency Caesarean Section. The Claimant and her son remained in hospital until about 21st March 2016. From experience, I can accept the Claimant's evidence that the period of days leading up to the birth and the few weeks following the birth were very difficult for her and her husband. But there was no evidence to suggest that their son was not a healthy baby.

36. The "maternity letter" necessary for Housing Benefit purposes was provided by the Respondent on 14th March 2016. The Claimant's case is that this was requested in January 2016. The certificate of earnings form was sent because this maternity letter had not been received.

37. The local authority, having accepted the full housing duty under section 193(2) Housing Act 1996, provided the Claimant with accommodation at her current home. The Claimant's evidence about what the precise date that she obtained this accommodation varied. I find that this was because she sought to maximize how long she was homeless, in support of her case for an extension of time. But I am satisfied that the Claimant moved into her new home on, or shortly after, the date that she took her possessions out of storage. This was at or about the end of April 2016.

38. The Claimant explained that after the birth she was unwell, with swollen feet and a wrist condition. It was suggested by Mr. Bah that she had psychological difficulties, but this was not the evidence of the Claimant and there is nil mention of any mental impairment, such as post-natal depression, in the GP report (p.93). This is something that I consciously considered and I examined the evidence carefully in case there was evidence of any such impairment.

39. I find from the oral evidence and the photographs that I saw of the Claimant (posted on Facebook) that, from at least the end of March 2016, the Claimant was able to mobilise, even if her mobility was impaired to some extent (see, for example, the photo at p.97, in a post dated 31st March 2016).

40. In any event, I saw no evidence that the Claimant could not use her smartphone. I can accept that her husband may have held it for a short period around the time of the caesarean section; but from assessing the way that the Claimant gave evidence, I do not accept that she allowed him to hold her phone and to answer inquiries for her once they had left the hospital on about 21st March. I realise that I saw the Claimant for a relatively short time giving evidence, but I formed the view that she was likely to be independent enough to want to control her own smartphone and able to use it; and she would naturally have wanted to keep in touch herself with friends and family after the birth. The Claimant's evidence about this lacked credibility, evidenced by her claim that she had dictated to Mr. Bah for him to type the Facebook post on 19th June 2016 (p.105), which, given its content, was very unlikely.

41. The Claimant did not consult the GP about any mobility or psychological impairment from April to October 2016.

42. The Claimant's trade union were contacted again to represent her at the grievance hearing, on 17th and 23rd August 2016 (they were due to represent the Claimant, but no representative was available).

43. I could not accept the Claimant's evidence about when she found out that legal advice about employment issues could be obtained from the Citizen's Advice Bureau. Her evidence was that it was in early August 2016, when a friend told her. Although she could recall several dates precisely (such as when certain photos on Facebook were taken), she was vague about when she was told by the friend about the CAB as a source of legal advice. I regret that I found that she was evasive when asked about when she first heard of the CAB.

44. I find, by inference from this unsatisfactory evidence, that she knew of the existence of the CAB as a source of legal advice well before August 2016. It is more likely that she sought help from her friends as to obtaining legal advice in about May 2016, after she had consulted UNITE, after the birth of her son, and after she had obtained her new home.

45. I find that when she consulted the CAB, it is likely that the Claimant would have learned that the Employment Tribunal was the forum for her employment dispute and that she would have been warned of the relevant time limits.

46. I find that, despite the Claimant's evidence, from at the latest Mid-May she had knowledge both of the nature of the complaints that she could bring, the appropriate forum in which to bring them, and the relevant time limits.

47. On 7th August 2016, the Claimant submitted a grievance to her employer. This is a quite detailed letter (p.69-70), which refers to bullying, unfair treatment and discrimination since she informed the Respondent of her pregnancy. It concludes:

> "*For your information a copy of this letter will be sent to my union representative and relevant parties*."

48. The inference from this letter is that, prior to the grievance, the Claimant must have had a discussion with a trade union officer about her complaints. I infer that this would probably have included a discussion of her complaints of discrimination, the role of the grievance process, and that the Employment Tribunal was the appropriate forum in which her complaints could be pursued if not resolved.

49. The Claimant was represented at the grievance appeal hearing by a trade union representative.

50. The outcome of her grievance appeal was sent by letter dated 29th September 2016.

51. The Claimant confirmed that the grievance decision and the grievance appeal decision were not alleged to be acts of discrimination.

52. The Claimant's case was that the latest acts of discrimination were the late provision of the "maternity letter" and the failure of the Respondent to return the certificate of earnings provided to it by the local authority, which was allegedly not returned even by the date of this hearing. Her case was that the maternity letter from the Respondent, required by Housing Benefit, was not provided until 14th March 2016 – which she alleged was late and placed her at a detriment because it jeopardized her entitlement to Housing Benefit. The certificate of earnings was also to be provided for the Housing Benefit Office purposes. She did not allege that Housing Benefit had not been paid to her; this is not a complaint within the Claim Form or her grievance.

53. The Claimant's case is that the late provision of these documents is part of a continuing act. Putting her case at its highest, the alleged decision to delay sending the maternity letter is likely to have been made at the latest by the mid February 2016. The decisions not to provide these documents may have had continuing consequences, but time starts to run from when those decisions were made.

54. The complaint in respect of the failure of the Respondent to serve the certificate of earnings is part of the amendment application, which I address below.

55. The Claimant entered ACAS Early Conciliation on 5th October 2016. The EC Certificate was issued on 19th October 2016.

56. The Claim was presented on 7th November 2016.

Submissions

57. The parties made oral submissions. Mr. McDevit produced extracts from *Harveys on Employment Law* in respect of the power to extend time under section 123(1) EA 2010 and in respect of the power to amend. He took me to relevant parts and relied on *Robertson v Bexley Community Centre* [2003] IRLR 434.

58. Mr. Bah made oral submissions referring to the substance of the case, and reiterating key pieces of evidence. He argued that the delay in providing the documents referred to (maternity letter and certificate of earnings) was all part of a policy against the Claimant, demonstrated by the incidents complained of over time;

and that the approach towards the Claimant had changed after disclosure of her pregnancy.

Conclusions

Issue 1: Jurisdiction

Continuing act?

59. I am prepared to accept that, putting the Claimant's case at its highest, Mr. Bah is correct in arguing that, on the face of the allegations, there was a continuing act in respect of the complaints of discrimination. But, on the evidence that I heard and saw, the continuing act ended at the date of the last act relied upon – the decision to delay sending the maternity letter on about 14th February 2016. There is no allegation of discrimination about events after the birth of the Claimant's son.

60. I have considered the guidance in *Hendricks* and examined whether there was an ongoing state of affairs after the birth of the Claimant's son. But there is no evidence of an ongoing state of affairs. The Claimant was on maternity leave. The grievance was investigated by an external human resources consultant; and the grievance was not found to be proved. There is no complaint about the conduct of the grievance or the outcome.

61. Accordingly, the time to file the ET1 would have expired, including a 1 month extension for Early Conciliation, on about 13th June 2016.

62. The extension of time required is accordingly 3 months and 25 days.

Is it just and equitable to extend time?

63. In my judgment, it would not be just and equitable to extend time in this case for the following reasons. I emphasise that I have taken all relevant factors into account.

Knowledge of the right to claim and the Employment Tribunal procedure

64. The Claimant complained to UNITE in December 2015 because she believed that she had been discriminated against. She had all the requisite knowledge required to bring a claim at that point. I accept, however, that given her mental state and the events in her life from December to about end March or beginning of April 2016, it was probably impractical for her to take substantive steps to proceed with a claim.

65. As I have explained, the position changed in April 2016 and the Claimant's circumstances markedly improved. I find that from the beginning of May 2016, the Claimant was in a position where she was able to take steps to proceed with her complaints and how to do so, whether by consulting UNITE further, or by seeking advice elsewhere.

66. I am satisfied that by May 2016, the Claimant learned of the availability of legal advice through the CAB. I am satisfied that she was informed of the right to claim in the Employment Tribunal and informed of the relevant time limit by the CAB, probably by the end of May at the latest.

67. Looking at the first of the questions identified in *Abertawe Bro Morgannwg University Local Health Board v Morgan*, I did not receive evidence to show why the Claimant had not been able to submit the claim within the primary limitation period.

Length of and reasons for the delay

68. Linked to the above points, in my judgment, the length of the delay in this case was significant. The statutory limitation period is 3 months; the length of the delay here was more than double that.

69. Moreover, by reason of the findings of fact and the conclusions set out above, there was no real reason for the delay.

70. I accept that delay caused by a claimant invoking an internal grievance procedure may justify the grant of an extension of time. In this case, however, there was a substantial delay before the grievance procedure was commenced. The primary time limit had expired almost two months before the grievance was submitted. There was no explanation as to why the Claimant could not have both made a Claim, to protect her position, and proceeded with the grievance. She was, by the date of the grievance, in receipt of advice from the CAB and in contact with her trade union.

71. Had there been some good reason for the delay, the delay in itself might not have troubled me. But, in this case, I can see that much will turn on the oral evidence of the parties. Cogency of the oral evidence is material. It is inevitable that memories fade over time. In particular, the transcript of the meeting (C1) and what it really showed, was contested; the author of the transcript himself stated that it was difficult to understand what was being said by listening to the audio tape. The meeting itself (at which the recording was taken) was over 15 months ago.

Promptness in acting after learning of right to claim and time limit

72. Even on her own case, the Claimant knew from the beginning of August 2016 all she need to know in order to make a Claim to the Employment Tribunal. I find that the delay after the advice from the CAB to be unexplained by oral evidence.

73. Moreover, even though the Claimant may not have been able to act on or recall the advice provided by UNITE in December 2015, she knew that she could ring them for advice. I heard no explanation as to why she did not contact them after April 2016 but before about August 2016 (when she sought representation at her grievance).

74. I have seen and heard the Claimant give evidence, and seen the photos of her, spending time happily with her baby. I have no doubt how precious that child is to the Claimant and Mr. Bah. I infer that the delay is in part explained because the Claimant was enjoying the first months of her first child's life. I can fully understand that; but I do not consider that this can make it just and equitable to extend time in this case.

75. The Claimant is a relatively young person familiar with social media and the internet. She could have used those tools to find out all she needed to know about bringing an Employment Tribunal claim in a short time.

Discrimination claim only

76. Counsel for the Respondent argued that this was a stand-alone discrimination claim; and because there was no unfair dismissal claim, it made it more equitable to refuse to extend time. I do not agree. It seems to me that, if anything, the fact that my refusal to extend time will end the Claim altogether (subject to my conclusions on the amendment application) weighs in the Claimant's favour in this application.

77. However, even taking this factor into account, for all the above reasons, I consider that it is not just and equitable to extend time.

Issue 2: Amendment

78. In deciding this issue, whilst keeping in mind that I should take all relevant circumstances into account and should balance the justice and injustice of allowing or refusing the amendment, I have found it helpful to use the guidance in *Selkent* to structure my conclusions.

Nature of the amendment

79. The amendments proposed in this case amount to the making of five new factual allegations of pregnancy discrimination.

80. Although it cannot be said that these change the nature of the case, they double the number of allegations of pregnancy discrimination pleaded originally. In substance, I find that the amendment proposed would be a substantial expansion of the Claimant's case. This weighs against the grant of the amendment.

81. Although the new allegations are not limited to the same factual incidents as the original claim, Mr. Bah maintains that complaint 7.7 is related to 7.6. He maintains that complaint 7.8 although not in the Claim form is referenced in the extract of the audio recording served with it. The nature of the amendment is thus not quite the weighty factor that it might otherwise be.

82. The new allegations, however, will require further evidence to be collected over fifteen months after the events alleged. Complaints 7.8 to 7.9 concern the behaviour of van drivers and the conduct of other managers, not previously identified in the Claim. In my view, this weighs against the grant of the amendment.

Applicability of time limits

83. I remind my that it is not fatal to the application that the incidents within the proposed amendments would, if the amendment were permitted, have the effect of including complaints which were presented outside the primary time limit.

84. On any view, the earliest that this application to amend was made was on 13th February 2017, the date of the Preliminary Hearing before Judge Foxwell. Given my findings above, this means that these additional complaints are eight months out of time.

85. I have set out above detailed reasons to explain why the original complaints are out of time, and why I have found that it was not just and equitable to extend time in respect of the original complaints.

86. In my view, those same reasons mean that it would not be just and equitable to extend time in respect of the proposed additional complaints (which are at 7.4, 7.7, 7.8, 7.9 and 7.10 of the order of Employment Judge Foxwell). Indeed, the delay is far longer and the Claimant has had advice in respect of her ability to make a claim from before her grievance was presented.

87. I emphasise that I heard no evidence to explain why the proposed additional complaints could not have been presented earlier.

Timing and manner of the application

88. The application has been made quite late in the day. The Claim was presented on 7th November 2016. The matter is listed for final hearing on 26th – 27th April and 2nd May 2017.

89. Delay in itself is no reason for refusal of the application. But it is a factor that has at least some weight in the balance against allowing the amendment. This is particularly so here, where there was no reason given to explain why the application was not made earlier; I appreciate that the Claimant and her husband may not have been able to pay for legal assistance, but they knew the routes to obtain free legal advice (via CAB and through UNITE).

90. Moreover, the new factual allegations will involve further costs, time and expense for the Respondent. Further disclosure and witness statement evidence would be inevitable.

91. I have considered what the new complaints would add to the Claimant's case. I tend to agree with Counsel that they would add little by way of any award of injury to feelings.

92. I have borne in mind that if I refuse the application, the Claimant's claim will be dismissed, given my conclusion on Issue 1 above. This seems to me to carry weight in the Claimant's favour in the balancing exercise that I must carry out.

Conclusion on Issue 2

93. In conclusion, weighing up all the relevant factors, I find that the balance of justice comes down in favour of refusing the amendments. The combined effect of the nature of the amendment, the applicability of the statutory time limit (with all the proposed new complaints being around eight months out of time), and the delay and

timing in making the application, mean that the balance of justice comes down on the side of the Respondent.

94. Accordingly, the application to amend is refused.

Orders

95. My conclusions in respect of issues 1 and 2 mean that the Tribunal lacks jurisdiction to hear this Claim. Accordingly, the Claim is dismissed.

96. The full merits hearing listed to commence on 26th April 2017 will not proceed. The trial dates are to be vacated.

EMPLOYMENT JUDGE ROSS

3 APRIL 2017