EMPLOYMENT TRIBUNALS

Claimant: Mrs F Hassanzadeh
Respondents: (1) City of Bradford Metropolitan District Council
(2) …
(3) The Governing Body of Belle Vue Boys' School

HELD AT: Manchester **ON:** 3 July 2017 and (in the absence of the parties) 20 September 2017

Before: Employment Judge Horne

REPRESENTATION:

Claimant: Mr R Shojaee, husband (who left part-way through the preliminary hearing)
Respondents Mr P Smith, counsel

RESERVED JUDGMENT FOLLOWING A PRELIMINARY HEARING

1. The claimant's application for Employment Judge Horne to recuse himself from further involvement in her claim is refused.

2. The tribunal will decide at the final hearing whether or not to allow the claimant to include complaints of detriment contrary to section 44 of the Employment Rights Act 1996 as set out in Allegations 6 to 16 of the Schedule to the case management order sent to the parties on 29 June 2017.

3. The claimant does not have permission to amend her claim to include any other complaint of detriment. For the avoidance of doubt, her application to introduce Allegations 1 to 5 of that Schedule is refused.

CASE MANAGEMENT ORDER

1. The respondent may, but need not, submit an amended response to the amended claim.
2. If the respondent wishes to submit an amended response, it must be delivered to the claimant and the tribunal no later than 4pm on 20 October 2017.

3. If the respondent does not submit an amended response, its grounds for resisting the detriment complaint will be taken to be those set out in its written submissions dated 20 July 2017.

REASONS

The issues

1. By a case management order sent to the parties on 29 June 2017, the claim was listed for a preliminary hearing in public to determine, amongst other things:

   > "…whether or not the claimant should have permission to amend her claim to include…complaints of detriment contrary to section 44 of the Employment Rights Act 1996, as they are set out in the following Schedule".

2. For the sake of convenience I refer to the Employment Rights Act 1996 as "ERA".
3. At various stages, the claimant has applied for me to recuse myself from any further involvement in the case. I decided to consider that application alongside the amendment dispute.

The proposed amendment

4. The Schedule to the case management order read as follows:

   Proposed complaints of detriment contrary to section 44 of the Employment Rights Act 1996

   The claimant's claim (if the amendment is allowed) will be advanced on the following basis.

   1. In circumstances where it was not reasonably practicable to raise the matter through a health and safety representative or a health and safety committee, the claimant brought to the School's attention, by reasonable means, circumstances connected with his work which she reasonably believed were harmful or potentially harmful to health or safety (section 44(1)(c)(ii)), The occasions on which the claimant took these protected steps are completely listed in the table below.
   2. The claimant also wishes to rely on the same facts to show that, on these occasions, there were in circumstances of danger which claimant reasonably believed to be serious and imminent, which she could not reasonably have been expected to avert. In those circumstances, whilst the danger persisted, the claimant left her workplace by going on sick leave and refused to return, by remaining on sick leave (section 44(1)(d).

3. The claimant also wishes to rely on the same facts to show that she took (or proposed to take) appropriate steps to protect herself from the danger (section 44(1)(e)).
4. The claimant's case is that, on the ground of each protected step, the respondent subjected her to the detrimental acts or failures to act set out in the right hand column of the table below.
5. The occasions on which the claimant relies are as follows:

	Date	Protected step	Detrimental act or failure
1.	Various dates prior to 2001	The claimant wrote to her Head Teacher, Mr Berry, stating that work-related stress was "destroying her".	Mr Berry deliberately failed to investigate the claimant's concerns.
2.	2001	The claimant attended the Accident & Emergency Department in Leeds as a result of a peak in her stress levels caused by persistent bullying by Mrs Ogley. The claimant later attended a meeting with Mr Berry, and told him what had occurred.	Despite apologising, Mr Berry deliberately failed to take action to prevent Mrs Ogley from bullying the claimant.
3.	2004	The claimant applied for the position of Assistant Head Teacher, but withdrew her application because of a "nervous breakdown". She told the Head Teacher what the cause was.	The Head Teacher deliberately failed to carry out a stress risk assessment or investigate the cause of the claimant's breakdown.
4.	"A few months afterwards"	The claimant was absent on sick leave for 3 weeks. Her sick note (as it was then called) cited "work-related stress".	The Head Teacher deliberately failed to carry out a stress risk assessment or investigate the cause of the claimant's stress.
5.	Various	Every time the claimant submitted a sick note citing "work related stress"	The Head Teacher deliberately failed to investigate the claimant's concerns.
6.	2008 (shortly after Mr Willsher becoming Head Teacher)	At an interview "to answer for the illnesses", the claimant explained to Mr Willsher that it was all due to the behaviour of Mrs Ogley.	Mr Willsher (a) deliberately failed to carry out a stress risk assessment or investigate Mrs Ogley's behaviour (b) "made a forgery" by deliberately falsifying the record of that meeting.
7.	April or May 2011	The claimant e-mailed Mr Willsher to inform him of Mrs Ogley's bullying behaviour.	Mr Willsher deliberately failed (a) to investigate the complaint; (b) to refer the claimant to Occupational Health and (c) carry out a stress risk assessment.
8.	April 2011	The claimant provided Mr Willsher with a folder of documents in support of her allegation	As above.

9.	2011	The claimant continued to submit GP sick notes.	Mr Willsher deliberately failed to take any action other than referring the claimant to Occupational Health
10.	November or December 2011	The claimant's husband wrote to Mr Willsher, explaining about the claimant's mental health and proposing management action.	Mr Wilshire: (a) Concealed the existence of a written stress policy; and (b) Conspired with the claimant's trade union to conceal that policy.
11.	January 2012	At a meeting with the claimant's trade union representative, the claimant's husband provided a document (Attachment 1 to the claim form) setting out health and safety concerns	(a) At a meeting in mid-January 2012 attended by the claimant, her trade union representative, Mr Willsher and Human Resources, Mr Willsher refused to admit that there had been any failure on the part of the School. This was despite the fact that the Human Resources manager apologised. (b) Mr Willsher deliberately failed to follow Occupational Health advice. (c) Mr Willsher deliberately failed to carry out a stress risk assessment (d) In a meeting in April 2012 to discuss the claimant's return to work, Mr Willsher deliberately failed to mention the obligation to conduct a stress risk assessment.
12.	Mid-January 2012	At the same joint meeting as above, the claimant attempted to explain why things were affecting her health and safety.	As above.
13.	May or June 2012	The claimant's husband informed Mr Willsher of the obligation to carry out a stress risk assessment	Mr Willsher deliberately failed to carry out a stress risk assessment and in particular to investigate allegations that race discrimination was the cause of the claimant's stress
14.	From April 2012	The claimant's husband sent about one or two e-mails per week to the School raising health and safety concerns	Mr Willsher deliberately failed to carry out a stress risk assessment
15.	July 2012	At a meeting at Occupational Health premises attended by Mr Willsher, Human Resources, Occupational Health, the claimant's union representatives,	Mr Willsher: (a) Falsified the minutes of the meeting and (b) Wrote a letter purporting to

		the claimant and her husband, the claimant's husband raised matters that were dangerous to health and safety.	set out how he was going to address the issues raised at the meeting, but which actually was a form of bullying.
16.	From July 2012	On a weekly or monthly basis there were meetings at which there was a discussion of how to carry out the stress risk assessment	Mr Willsher refused to complete the stress risk assessment. In particular he refused to address all the issues going back to 1993.

Relevant procedural history

5. By a claim form presented on 19 March 2013, the claimant presented a number of complaints which included:

    5.1. "Breach of … Health and Safety at Work etc Act 1974"

    5.2. "Breach of… The HSE Management Standard for work related stress"

    5.3. "Breach of… Statutory responsibilities in order to comply with the 2009 OFSTED Inspection Framework"

    5.4. "Breach of Duty of Confidence and Trust"

6. In section 7 of the claim form, headed, "Other information", the claimant stated,

    "Protection Disclosure

    I have explained the details in this respect in the attachment 3."

7. The claim form went on to formulate the claimant's complaints in more detail. Paragraph 4 of the tribunal's written reasons ("the Time Limit Reasons") sent to the parties on 6 July 2017 quote extensively from that part of the claim form. For the purpose of these reasons it is largely sufficient to cross-refer to the Time Limit Reasons. I would that the claimant also made allegations of failure to follow the Managing Staff Attendance Policy and Procedure Document and the Fit Note Guidance for Managers. The Head Teacher was accused, amongst other things, of failing to take appropriate steps based on the claimant's doctor's recommendations expressed in fit notes from July 2011. There were also details of the claimant's claim against National Union of Teachers (NUT). That claim has since been struck out. It was alleged that successive NUT representatives had failed in their legal duties, essentially, by failing to ensure that a stress risk assessment was carried out.

8. The claim form was accompanied by two attachments (Attachment 1 and Attachment 2). The way in which the claim form described the two attachments is set out in the Time Limit Reasons.

9. Attachment 1 gave a narrative account of what the claimant had endured between 1993 and 2012. Broadly speaking, the claimant alleged she had been bullied for many years by the Head of Mathematics, Mrs Joan Ogley, largely by making false accusations about the claimant's performance. The bullying had made the claimant ill with stress and anxiety. A succession of Head Teachers had failed to stop Mrs Ogley's behaviour.

10. More specifically, Attachment 1, included the following allegations:

    10.1. That the claimant had raised "concerns" in writing to Mr Berry, the Head Teacher. The "first written complaint" was in February 1999; the next in May 2000. Attachment 1 did not suggest that the claimant had informed Mr Berry in these written complaints that the claimant was being "destroyed" or that her health was suffering.

    10.2. That the claimant was taken to hospital by ambulance and two days later an urgent meeting was arranged with Mr Berry and others. At that meeting Mr Berry apologised and assured the claimant that he would be more watchful. According to Attachment 1, following the meeting, "there was a period of relative calm between us, although [Mrs Ogley's] hostile attitude towards me remained intact. However, Mr Berry left the school in 2003 and this period of relative calm came to an end." It was not suggested that Mr Berry had failed to prevent Mrs Ogley from bullying the claimant following the meeting.

    10.3. That Mr Whittaker, the next Head Teacher, had been firm with Mrs Ogley and had not allowed her to create a distorted view of the claimant's performance. It was unfortunate, the claimant stated, that Mr Whittaker was not Head Teacher for longer.

    10.4. That, in March 2004, the claimant withdrew her application for the post of Assistant Head Teacher "to stop damaging my health". There was no suggestion that the claimant had informed Mr Whittaker of her reason for withdrawing the application, or that the reason was a "nervous breakdown". Attachment 1 did not accuse Mr Whittaker of having failed to carry out a stress risk assessment or to investigate the cause of the claimant's breakdown. It made no mention of the claimant having taken sick leave during any period that could be described as "a few months" after March 2004.

    10.5. That, in June 2008, "after a series of absent days due to stress and anxiety", the claimant told Mr Willsher, the then Head Teacher, at a meeting, that she was "suffering from chronic tiredness" and "explained in detail all the factors that contributed towards my anxiety and depression." The narrative continued, "Although my explanation was sufficient enough to trigger a risk assessment on the ground of health and safety he failed to do so."

    10.6. That, in May 2011, the claimant provided Mr Willsher with a document indicating the state of her health and the problems with Mrs Ogley. Mr Willsher's action was "another shallow response to his duty of care". There was no mention of a folder of documents having been submitted at this time.

    10.7. There was a mention of the claimant having been referred to Occupational Health in 2011. There was not, however, anything in Attachment 1 to suggest that the claimant had been providing GP fit notes, or that those fit notes had raised concerns about health and safety, or that the School had done anything or failed to do anything in response to those fit notes.

11. The thrust of many of these allegations was that successive Head Teachers had failed to take action *despite* the claimant having raised concerns about

her health. There was no allegation in Attachment 1 or the claim form that the *reason* for the various failures to investigate or carry out risk assessments was *because* the claimant had raised those concerns, or that the claimant had taken sick leave or that she had not yet returned.

12. Attachment 2 was dated 7 February 2013. It alleged that, since March 2011, the School and Human Resources had been acting with the objective of a "cover up of unlawful conducts of the Head of Department and the Head Teacher". It alleged "20 months of delay in starting to write the risk assessment", and "deadlock created by [Mr Willsher and Human Resources] in the process of writing the risk assessment in December 2012". The deadlock was, in the claimant's view, attributable to the "refusal of the School and HR (1) to accept that my stress was a work-related stress, (2) to accept negligence, (3) to follow the school stress policy, (4) to follow HSE Management Standard."

13. In Attachment 3, the claimant provided further details of her "Protection Disclosure". She identified that she was making a disclosure to the Health and Safety Executive (HSE), in essence, of the respondents' failure to comply with the HSE Management Standard for work related stress. The document asserted that the claimant was following sections 43B to 43D of ERA. Section 43B(1)(d) was amongst the statutory provisions identified. Attachment 3 did not state when the protected disclosure had allegedly been made. From the document it appeared as though the claimant was making her protected disclosure at the same time as presenting her claim to the tribunal. (In fact, the claimant has subsequently clarified that her disclosure to the HSE was made in October 2012).

14. Neither the claim form nor Attachment 3 set out what if any detriment the claimant had been subjected to on the ground that she had made her protected disclosure.

15. Nothing in the claim form or Attachments tried to explain why the claimant could not have raised health and safety concerns through the respondents' health and safety representative or committee.

16. Following a preliminary hearing on 27 November 2013, Regional Employment Judge Lee made a case management order which, at paragraph 3, identified the claims of which the tribunal was seized. These included "public interest disclosure". Complaints under the Health and Safety at Work etc Act 1974 were expressly excluded from the list, on the ground that the tribunal had no jurisdiction to consider them. The claimant was ordered to provide further particulars of all her complaints in the form of a Scott Schedule. The order required the claimant to identify, in respect of every allegation, whether she contended that it was an allegation of detriment on the ground of a public interest disclosure.

17. At the same preliminary hearing, the claimant's husband asked for permission to amend the claim by adding a complaint of constructive unfair dismissal. The respondents did not object in principle to the amendment, but the claim was not amended at that stage, not least, because the claimant's employment had not yet terminated.

18. On or about 16 January 2014 the claimant sent the respondent a letter of resignation. Termination of her employment was treated by the respondent as being effective from 17 January 2014.

19. In a case management order sent to the parties on 12 February 2014 the claimant was encouraged to set out the basis of that complaint in writing. This the claimant's husband did by e-mail dated 21 March 2014. The email ran to 5 pages of densely-typed narrative. Relevant for the purposes of this judgment were the following allegations:

    19.1. "After a few weeks" from the claimant's withdrawing her application for the Assistant Head Teacher post, the claimant was "off sick for 3 weeks due to work related stress".

    19.2. In July 2004, "*Stress Risk Assessment – Guidance for Head Teachers* was sent to the School by Bradford Occupational Health Department."

    19.3. In June 2008, Mr Willsher interviewed the claimant about her sickness absences and knew that the reason was "lethargy", "exhaustion" and "stress". The precise nature of the allegation was difficult to follow, but alleged a "clear act of omission" and alleged that Mr Willsher "chose to ignore" something (although what that something was was not clear).

    19.4. From February 2009, Mr Willsher and others engaged in a "systematic and orchestrated silence" on receipt of the School Stress Policy.

    19.5. The School's Health and Safety Representative had kept quiet about the School Stress Policy.

    19.6. The Head Teacher ignored "trigging points" to "justify his omission in carrying out a Stress Risk Assessment for the claimant.

    19.7. Mr Willsher tried to "impose many unlawful terms in the Stress Risk Assessment"; and

    19.8. Mr Wilsher "kept on ignoring all the… advice of…Occupational Health.

20. On 24 March 2014 the respondents submitted an amended ET3 response, engaging with the constructive dismissal complaint.

21. At some point, the claimant submitted what has become known as her Scott Schedule. The date of submission of this document is unclear. The claimant's husband made reference to the Scott Schedule in his 21 March 2014 e-mail. I take it to have been sent to the tribunal by that date.

22. Amongst the claims listed in the pre-amble to the Scott Schedule were "Claims of Detriments due to Breach of Health and Safety" and "Claims of Victimisation on the ground of Public Interest Disclosure".

23. Section 2 of the Scott Schedule was headed, "Background events". Amongst the relevant events were the following:

    23.1. No 17 – October 2001 to 2002 - Mr Berry was "unable to recognise" the attempts of Mrs Ogley "to push the Claimant to the point of collapse" and supported Mrs Ogley;

23.2. No 20 – Spring term 2003 - A false complaint by Mrs Ogley about the claimant made Mr Berry "upset and supported the claimant"

23.3. No 23 – The claimant withdrew her application for the role of Assistant Head Teacher because of her health. Mr Whittaker failed to find out the reason. (Pausing there, it will be noted that this allegation contradicts Allegation 3 in the Schedule to the 29 June 2017 case management order.)

23.4. No 24 – March to April 2004 – the claimant was off sick for 3 weeks with the sick note indicating work stress. No action was taken by the Head Teacher, Mr Whittaker.

23.5. No 25 – Mr Whittaker kept all the teachers uninformed of *Guidance for Head Teachers* document in July 2004.

23.6. No 27 – 2008 - Mr Willsher started to falsify documents at the Mathematics Department.

23.7. No 29 – June 2008 - The claimant told Mr Willsher about her stress and depression as a consequence of ill-treatment in the Department. Mr Willsher falsified the notes of that meeting.

23.8. No 33 – May 2011 – The claimant informed Mr Willsher of her concerns about Mrs Ogley and about her own fragile state of health due to stress. Mr Willsher "refused to follow her stress issue".

23.9. No 38 – December 2011 to January 2012 - Mr Willsher failed to follow Occupational Health advice and instead wrongly accused the claimant of having given false information. "All kept quiet about the Stress Risk Assessment and the School Stress Policy".

23.10. No 39 – 12 April 2012 – a further allegation of keeping quiet about the School Stress Policy. This was levelled against the NUT as well as against the current respondents.

23.11. No 40 – April 2012 – the claimant's husband brought the School Stress Policy and HSE Management Standard to the School's attention, and was subjected to "great hostility and bullying" by the Head of HR and the claimant's union representative.

23.12. No 41 – "24 July 2014 to September 2014" (presumably a reference to 2012) – falsifying the minutes of a meeting and excluding the claimant's husband to force the claimant to agree with "terms" that "helped the school to cover up 10 years deception about the Stress Risk Assessment". The NUT was also alleged to have been responsible for this act.

23.13. No 44 – October 2012 – "Mr Willsher and Mr Hall with variety of excuses delayed and blocked the progress of completing the Stress Risk Assessment."

24. Section 3 of the Scott Schedule is already referred to in the Time Limit Reasons. As will be seen from those reasons, the claimant made many allegations of disability discrimination and failures to make adjustments against Mr Willsher. These allegations of discrimination arising from disability. The less favourable treatment complained of included numerous omissions to conduct a proper stress risk assessment. There was one similar allegation

levelled at Mr Whittaker going back to 2004. No allegation of disability discrimination was brought against Mr Berry.

25. Section 4 of the Scott Schedule set out three allegations specifically of victimisation on the ground of public interest disclosure. The alleged protected disclosure was to the HSE in October 2012. It was described as, "Persistent refusal of the Head Teacher and Human Resources… in following the School Stress Policy and carrying out an appropriate Stress Risk Assessment which caused the second nervous breakdown of the claimant with no option but to do the Disclosure Protected Act". There was one allegation of detriment levelled at the existing respondents. The allegation was, "The Head Teacher and the HR with all kinds of tricks blocked the completion of the Stress Risk Assessment".

26. Nothing in the Scott Schedule sought to explain why the claimant could not have raised her health and safety concerns through the respondents' health and safety representative or committee.

27. The Time Limit Reasons chronicle the progress of this case, eventually, to a preliminary hearing before Employment Judge Feeney on 20 April 2017. In a case management agenda form prepared in advance of the hearing, the claimant foreshadowed her intention to add a complaint of detriment under section 44 of ERA. This was the first time that a claim under this statutory provision was expressly identified. EJ Feeney ordered the claimant to provide further details of her complaint, including the facts on which the claimant relied, and the detriments to which she was allegedly subjected. A preliminary hearing was listed to take place on 19 June 2017. It was EJ Feeney's intention that the amendment application should be determined at that hearing.

28. At the preliminary hearing, EJ Feeney listed the claim for a final hearing in February 2018.

29. In response to EJ Feeney's order, Mr Shojaee submitted a document dated 9 May 2017 and headed, "Claimant's arguments in support of [Amendments]". So far as the complaint under section 44 of ERA was concerned, the document did not set out any factual allegations or list any detriments. Instead, the claimant's position was:

> "In the ET1 Form …I have listed 3 claims against these respondents for the breach of
>
> - Health and Safety at Work etc Act 1974
> - The HSE Management Standard for work related stress
> - Statutory responsibilities in order to comply with the 2009 OFSTED inspection Framework
>
> The amendment I am requesting is only to [consolidate] these 3 claims into one claim and relabel it correctly as; "Claim under the Employment Rights Act 1996 sections 44(1)(c)(ii), (1)(d) and 1(e)."

30. The respondents made submissions dated 16 May 2017. The amendment was opposed. Because, at this stage, the respondents were still guessing at the factual allegations of detriment, their objections were necessarily couched in general terms. One concern expressed by the respondents was that the

claimant appeared to be using section 44 ERA as another vehicle for pursuing a personal injury claim under the Health and Safety at Work etc Act 1974.

31. The preliminary hearing took place before me on 19 June 2017. That hearing ended up being dominated by the issue of whether the race discrimination complaint had been brought in time. The parties' initial position, however, was that the tribunal ought also to determine the amendment application. To this end, I asked Mr Shojaee a series of questions to elicit the factual allegations underpinning the claimant's section 44 complaint. These were recorded in the Schedule to my case management order, reproduced above. Mr Shojaee also made brief oral submissions. In essence, he repeated the argument that the complaint under section 44 of ERA was merely adding a new label to the existing health and safety complaints.

32. Once I had given judgment on the time limit issue, I listed a further preliminary hearing to determine, amongst other things, the claimant's application to amend. That hearing took place on 3 July 2017.

33. By e-mail sent on 30 June 2017 (the last working day before the hearing), Mr Shojaee made an application that I should not be the judge at the 3 July preliminary hearing,. The grounds of his application included the following:

> "The way you and Judge Feeney have handled the claim of race discrimination so far signals the start of evidence tampering in a calculated plan and in harmony with the legal representatives of the Respondents. If this evidence tampering continues it will lead to an unfair full hearing with the intention of financial fraud by depriving the claimant from the compensation she is entitled to.
>
> You executed the first phase of this evidence tampering at the preliminary hearing on 19 June 2017 with a perverse decision that the claim of race discrimination is out of time."

34. A further letter from Mr Shojaee requested that I reconsider the judgment on race discrimination and time limits.

35. At the outset of the preliminary hearing I asked Mr Shojaee if he wished to make any submissions in relation to his application for me to recuse myself. I suggested to him that, if he wished to make a recusal application, I ought to decide that application first before turning to the other matters for which the hearing had been listed. Mr Shojaee disagreed. He said, "I want my reconsideration application heard before anything else, because if you correct that perverse decision, the bias and misconduct disappears."

36. Having heard the reconsideration application I decided to confirm the judgment. Once I had announced that judgment and explained the reasons for it, Mr Shojaee informed the tribunal that he and the claimant would immediately leave the hearing. He handed the tribunal a pre-prepared letter confirming that he would play no further part. The letter accused me of breaching my judicial oath, of committing "misconduct in public office", of having "resolutely continued to violate the impartiality and independence of the Tribunal", and of having demonstrated a "determination for acting as the servant of the Respondents and their legal representatives rather than acting as an independent and impartial judge". It went on to state, "I will leave this

preliminary hearing to continue with my application for the transfer of this case to an independent and impartial employment Tribunal.

37. As he handed the letter to me, Mr Shojaee said that he would not take any further part in the hearing. He asked for written reasons for the reconsideration judgment as a matter of urgency. I asked him, “Do you realise that, if you walk out now, decisions may be made in your absence?” Mr Shojaee replied, “You can do whatever you want to continue your misconduct in public office. I don’t want to be part of it. I don’t want to be part of this forum. You are under the thumb of the respondent.”

38. I asked Mr Shojaee if he wanted to present any argument as to why I should recuse myself. He replied that I had already decided that point against him. I sought to correct Mr Shojaee, reminding him that I had suggested that he make his recusal application at the start of the hearing and offering him the chance to make submissions on it now. Mr Shojaee declined, adding, “You are not prepared to follow the rule of the Tribunal. I am leaving.”

39. Following the hearing a written case management order was sent to the parties. Paragraphs 5 and 6 of that order made provision for the parties to rely on further written submissions in relation to the amendment dispute. The Discussion section indicated the legal principles upon which I proposed to direct myself in the event of any recusal application being renewed.

40. The respondent’s further written submissions were dated 20 July 2017. They raised a number of generic objections in addition to the more tailored submissions in respect of each allegation in the Schedule. The generic objections were, essentially:

    40.1. That, in respect of 15 of the allegations, the “protected step” was alleged to have occurred more than 3 months prior to the presentation of the claim form. Even if the section 44 complaint had been included in the original claim, it would have been out of time.

    40.2. For the purpose of section 44(1)(c)(ii), the claimant had not explained why it was not reasonably practicable to raise health and safety concerns through the health and safety committee.

    40.3. For the purpose of section 44(1)(d), the claimant’s going on sick leave was not removing herself from the situation of danger: sick leave is aimed at rest and recuperation, rather than avoiding risk.

    40.4. For the purpose of section 44(1)(d) and (e), the facts alleged by the claimant did not amount to “serious and imminent danger”.

41. The claimant made written submissions in reply. The written submissions reminded the tribunal that the claimant had attempted to “commit suicide” in February 2013. They emphasised the importance of the stress risk assessment as a thread running through all the legal strands of her claim. They also indicated that the date of the alleged protected disclosure to the HSE was in October 2012.

42. Amongst the claimant’s written submissions was a renewed recusal application. Recusal was necessary, argued the claimant, because I had been, “getting the law and facts continually wrong with misstatements and omissions for shielding the scandalous conducts of the Respondents’ lawyers.”

43. I caused the case to be relisted on 20 September 2017 in the absence of the parties so that I could deliberate in private on the written and oral arguments I had received. On telephoning the tribunal office Mr Shojaee was informed of the deliberation date and that the parties were not required to attend. He subsequently e-mailed the tribunal expressing a wish to present further arguments in relation to the amendment dispute. I declined to allow the parties to attend the tribunal, but gave the claimant the opportunity to make a third set of written submissions if she wished. This Mr Shojaee did on 19 September 2017. The respondent did not object. I took his submissions into account.

Relevant law

Overriding objective

44. Rule 2 of the Employment Tribunal Rules of Procedure 2013 sets out the overriding objective as follows:

> The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—
>
> (a) ensuring that the parties are on an equal footing;
>
> (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
>
> (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
>
> (d) avoiding delay, so far as compatible with proper consideration of the issues; and
>
> (e) saving expense.
>
> A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

Whether amendment is required

45. A tribunal must not adjudicate on a claim that is not before it: *Chapman v. Simon* [1993] EWCA Civ 37.

46. In *Chandhok v. Tirkey* UKEAT0190/14, Langstaff P observed:

> 17. ….Care must be taken to avoid such undue formalism as prevents a Tribunal getting to grips with those issues which really divide the parties. However, all that said, the starting point is that the parties must set out the essence of their respective cases on paper in respectively the ET1 and the answer to it. If it were not so, then there would be no obvious principle by which reference to any further document (witness statement, or the like) could be restricted. Such restriction is needed to keep litigation within sensible bounds, and to ensure that a degree of informality does not become unbridled licence. The ET1 and ET3 have an important function in ensuring that a claim is brought, and responded to, within stringent time limits. If a "claim" or

a "case" is to be understood as being far wider than that which is set out in the ET1 or ET3, it would be open to a litigant after the expiry of any relevant time limit to assert that the case now put had all along been made, because it was "their case", and in order to argue that the time limit had no application to that case could point to other documents or statements, not contained within the claim form. ...

18. In summary, a system of justice involves more than allowing parties at any time to raise the case which best seems to suit the moment from their perspective. It requires each party to know in essence what the other is saying, so they can properly meet it; so that they can tell if a Tribunal may have lost jurisdiction on time grounds; so that the costs incurred can be kept to those which are proportionate; so that the time needed for a case, and the expenditure which goes hand in hand with it, can be provided for both by the parties and by the Tribunal itself, and enable care to be taken that any one case does not deprive others of their fair share of the resources of the system. It should provide for focus on the central issues. That is why there is a system of claim and response, and why an Employment Tribunal should take very great care not to be diverted into thinking that the essential case is to be found elsewhere than in the pleadings.

47. In *Ali v. Office for National Statistics* [2005] IRLR 201 the Court of Appeal emphasised that, in deciding whether a particular complaint has been raised in a claim form, the tribunal should examine the document as a whole. Merely ticking a box alleging discrimination by reference to a protected characteristic may not be sufficient to raise a complaint of such discrimination if the underlying facts cannot be ascertained from the narrative.

48. In *Amin v Wincanton Group Ltd* UKEAT/0508/10/DA, HHJ Serota distinguished between a claim that is "pleaded but poorly particularised" and a *Chapman v. Simon* case, where the complaint is not pleaded at all. In the former case, the claimant is not required to amend the claim. The lack of proper particulars does not affect the tribunal's jurisdiction. The remedy in an appropriate case would be to strike out the relevant part of the claim. It is, HHJ Serota observed, "clearly undesirable that important issues in Employment Tribunal proceedings should be determined by pleading points".

<u>Whether amendment should be granted</u>

49. Guidance as to whether or not to allow applications to amend is given in the case of *Selkent Bus Company v. Moore* [1996] IRLR 661. The following points emerge:

49.1. A careful balancing exercise is required.

49.2. The tribunal should consider whether the amendment is merely a relabelling of facts already relied on in the claim form or whether it seeks to introduce a wholly new claim. (Technical distinctions are not important here: what is relevant is the degree of additional factual enquiry needed by the claim in its amended form: *Abercrombie & Ors v Aga Rangemaster Ltd* [2013] EWCA Civ 1148).

49.3. Where the amendment raises substantial additional factual enquiry, the tribunal should give greater prominence to the issue of time limits and whether or not the relevant time limit should be extended.

49.4. The tribunal should have regard to the manner and timing of the amendment.

49.5. The paramount consideration remains that of comparative disadvantage. The tribunal must balance the disadvantage to the claimant caused by refusing the amendment against the disadvantage to the respondent caused by allowing it.

50. In *Amey Services Ltd v. Aldridge* UKEATS 0007/16, Lady Wise held that tribunals must not allow an amendment to a claim whilst leaving questions of time limits to be determined at a later stage. The case concerned what is known in the jargon as a "*Prakash*-type amendment" - adding an allegation based on events occurring since presentation of the claim form. Lady Wise did not, however, distinguish between such amendments, on the one hand, and applications, on the other hand, to amend claims based on the events that took place before the claim form was presented. The rationale for taking time limits into account was that an amendment has the effect of backdating the new claim to the date that the original claim form was presented, meaning that the respondent cannot revisit the time limit issue later (*Rawson v Doncaster NHS Primary Care Trust* UKEAT/0022/08). Unfortunately, Lady Wise did not distinguish between the period from original presentation to amendment, on the one hand, and, on the other hand, the time that elapsed between the alleged discriminatory act and the presentation of the claim.

51. It appears at least possible, therefore, that *Aldridge* will be interpreted as meaning that the time limit question must be determined at the amendment stage in every case. This could even apply where, as here, there is a long series of allegations stretching over a number of years, with a dispute as to whether the acts complained of were part of an act extending over a period. That is a notoriously fact-sensitive question.

<u>Health and safety detriment</u>

52. Section 44(1) of ERA relevantly provides:

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that—

…

(c) being an employee at a place where—

…(ii) there was … a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been

expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or

(e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

53. Section 48(1) confers jurisdiction on employment tribunals to consider a complaint that section 44 has been breached.

54. By section 48(3), a tribunal must not consider such a complaint unless it was presented:

    (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

    (b))within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

55. For the purposes of subsection (3)—

    (a) where an act extends over a period, the "date of the act" means the last day of that period, and

    (b)a deliberate failure to act shall be treated as done when it was decided on;

    and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done

56. Whether a detrimental act was part of a "series of similar acts" is a fact-sensitive question. It is not the same as the test in discrimination cases of whether an act extended over a period. The tribunal must ask whether there is a link between the different acts and omissions that makes it just and reasonable to be considered as part of the same series. It is generally preferable for that question to determined at a final hearing after having heard the evidence. A tribunal may err in law by deciding the point on submissions alone. *Arthur v. London Eastern Railway* [2006] EWCA Civ 1358.

57. In deciding whether acts form part of the same series, the following factors are potentially relevant:

    57.1. It is necessary to look at all the circumstances surrounding the acts.

    57.2. Were they all committed by fellow employees?

    57.3. If not, what connection, if any, was there between the alleged perpetrators?

    57.4. Were their actions organised or concerted in some way?

    57.5. Why did they do what is alleged?

57.6. It is not necessary that the acts alleged to be part of the series are physically similar to each other

57.7. It may be that a series of apparently disparate acts could be shown to be part of a series or to be similar to one another in a relevant way by reason simply of them all being on the ground of a protected disclosure (Lloyd LJ disagreed on this point).

Recusal

58. As previously indicated to the parties, my self-direction in relation to recusal is in accordance with the principles summarised in *Ansar v. Lloyds TSB Bank plc* [2007] IRLR 211, CA. These include, but are not limited to, the following:

58.1. The test in determining bias is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased;

58.2. In any case where there is real ground for doubt, that doubt should be resolved in favour of recusal.

58.3. Judges must not yield to a tenuous objection any more than they should ignore any objection of substance;

58.4. Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour; and

58.5. Parties cannot assume or expect that findings adverse to a party in one case entitle that party to a different judge or tribunal in a later case.

Conclusions - recusal

59. I do not think that there is any merit in the claimant's recusal application. I do not see how any fair-minded and informed observer would conclude that there was any real possibility of bias. There is nothing to suggest to a neutral observer that I was in any way helping the respondent to tamper with evidence. There is simply no basis for contending that I have been "shielding" any "scandalous conducts". As explained in my case management order following the 3 July 2017 hearing, I deliberately sought written, rather than oral, submissions in order to achieve the maximum possible transparency after Mr Shojaee had walked out of the hearing. The claimant has not put forward any evidence to suggest that I was working "in harmony" with the respondent. During the course of the preliminary hearing on 19 June 2017, I made at least one decision (to offer a further preliminary hearing to deal with extension of time) in the teeth of the respondent's objections.

60. Mr Shojaee argues that I got the law wrong and misstated the facts. If he is right, his remedy is an appeal to the Employment Appeal Tribunal. Errors of law or fact do not mean that an impartial observer would think there was any real danger of bias. Even the most conscientious of judges can misunderstand the law or reach incorrect findings of fact.

61. It seems to me that the claimant's real reason for seeking recusal is that she – or Mr Shojaee – is unhappy with the outcome of the preliminary hearing on time

limits. My view is based in no small part on Mr Shojaee's remarks at the preliminary hearing on 3 July 2017. He wanted me to reconsider the time limit judgment before dealing with any recusal application. If only I would reverse my original decision, he said, any perception of bias would disappear. That is not a ground for recusal.

Conclusions - amendment

New factual enquiry

62. My starting point is the degree of additional factual enquiry necessitated by the newly-formulated claim.

63. The claimant argues that the amendment is a mere relabelling exercise. In my view, that argument is far too simplistic.

64. I start by comparing the amended version of the claim with the original claim form. The claimant's argument is that a claim under section 44 of ERA is a new legal label for the existing complaints under the Health and Safety at Work etc Act 1974, the HSE Management Standard, and statutory responsibilities in connection with Ofsted. It was difficult to understand precisely what those claims were. One thing the reader could be confident about, however, was that a claim under those legal provisions would *not* be about being subjected to a detriment for having raised health and safety concerns. Even on a non-technical reading of the 1974 Act, it is easy to see that it is aimed at protecting the health and safety of employees and others. It does not give workers protection against reprisals from their employers for speaking out on health and safety matters or for taking urgent preventative action.

65. The reader of the claim form would form the same impression looking at the detailed factual allegations of what the respondents had done wrong. Those allegations were found in the claim form and Attachments 1 and 2. The claimant appeared to be saying that the respondents failed to follow procedures (in particular, to conduct a proper risk assessment) *despite* her raising health concerns and *despite* her health problems apparent from her sickness absence and GP notes. It appeared to be her case that the respondents' failings had worsened her state of health.

66. The general impression given by the claim form and Attachments 1 and 2 was thrown into some doubt by Attachment 3. That document indicated that the claimant was relying on a protected disclosure. It did not allege that the claimant had been subjected to any detriment as a result of it. Of course, an inquisitive reader might well have wondered why the claimant was bothering to mention that she made a protected disclosure at all if she were not also complaining about a subsequent detriment. The mere fact of making a protected disclosure does not give rise to a claim. But, at the stage of presentation of the claim, it was impossible to tell what if any detriment was being alleged.

67. Nothing in the claim form or Attachments asserted that the claimant could not have raised health and safety concerns through a health and safety representative or committee.

68. On a comparison between the claim form (including the Attachments) and the proposed amendment, two important new areas of factual enquiry would therefore be raised:

68.1. As a convenient shorthand, I will call the first enquiry the "Reason Why Question". That is to say, what was the reason why successive Head Teachers subjected the claimant to the alleged detriments? Was it because the claimant had raised health and safety concerns and/or was staying away from work? That question involves looking at the mental processes of the decision-maker. In addition to the Reason Why Question, other avenues of enquiry would also be opened up. Some of the alleged protected steps (for example, telling the Head Teacher in 2004 about her "nervous breakdown") were simply not mentioned in the original claim. Similarly, the claim form was silent about some of the newly-alleged detriments, such as ignoring Occupational Health advice.

68.2. The second question is whether it was reasonably practicable for the claimant to raise her health and safety concerns in the manner prescribed in section 44(1)(c)(ii).

69. That, however, is not the end of the matter. The tribunal is not just concerned with the formulation of the claim at the time it was originally presented. There have been three significant developments since the date of presentation:

69.1. First, the claim has already been amended, without objection, to introduce a complaint of unfair constructive dismissal, based on the facts asserted in the 21 March 2014 e-mail. That complaint is to be treated as having backdated to the date of presentation the claim form (see *Rawson,* cited above). The allegations of breach of the implied term of trust and confidence correspond to many of the (hitherto) missing allegations of protected steps and detriments, such as submitting GP notes and ignoring Occupational Health advice. Its allegation of "systematic and orchestrated silence" from 2009 went beyond a mere failure to act and suggested a positive cover-up. Once constructive dismissal formed part of the claim, the tribunal was required to explore the question of whether, objectively, the respondents had reasonable and proper cause for their actions. That is not quite the same as the Reason Why Question, which is subjective, but the evidence deployed in addressing the two legal tests would be likely to be similar. The issue of reasonable and proper cause is likely to be of particular interest to the tribunal when examining the events occurring recently before the claimant resigned. Historic events going back many years, whilst still relevant, are less likely to have been an effective cause of the claimant's resignation.

69.2. Second, the claimant has provided further details of her complaint of whistleblowing detriment in her Scott Schedule. There is no suggestion that the claimant is required to amend her claim in order to advance these allegations. The protected disclosure detriment complaint introduced a factual enquiry that is still closer to the Reason Why Question. What was the reason why the Head Teacher resorted to "all kinds of tricks" to block the stress risk assessment? Was it because the claimant had made a disclosure to the HSE? This question would, of course, only be relevant to the events occurring after October 2012, when the disclosure to HSE was made.

69.3. Third, the claimant has clarified her complaint of direct disability discrimination, again, without any requirement to amend her claim. Under that legal heading, the tribunal must, again, ask itself why Mr Willsher acted as he did, before going on to ask whether that reason (or "something" in the

language of section 15 of the Equality Act 2010) arose in consequence of the claimant's disability. The actions under scrutiny are highly similar in nature to the alleged detrimental actions in the section 44 complaint. The only difference is that, instead of asking, "Was it because the claimant had raised health and safety concerns etc?", the tribunal must ask, "Was it because of the alleged 'something' and did that 'something' arise in consequence of the claimant's disability?" Mr Whittaker only needs to answer one allegation under this heading, compared to the many faced by Mr Willsher. There is no disability discrimination alleged against Mr Berry.

Time limits

70. I imagine for a moment that the claim in its amended form had all been included in the original claim form on 19 March 2013. For any detrimental act or failure "done" before 20 December 2012, the claimant would have needed an extension of time. If, however, an act occurring prior to 20 December 2012 was part of a series of similar acts culminating in act done on or after 20 December 2012, the claim would have been treated as having been presented within the time limit for the earlier act as well as for the later one.

71. Allegation 16 in the Schedule might very well have been treated as being in time. It is, in my view, reasonably arguable that Mr Willsher's ongoing omission to address historic events was something that was "done" every month following the monthly meetings leading up to the end of the claimant's employment.

72. It is reasonably arguable that Allegations 6 to 15 were part of a series of similar acts culminating in Allegation 16. The alleged perpetrators were the same. The nature of the allegation is, in each case, obstructing the process of properly investigating the causes of the claimant's stress at work.

73. In my view it is not reasonably arguable that Allegations 1 to 5 formed part of the same series as Allegations 6 to 16. Here are my reasons:

    73.1. Different Head Teachers were involved.

    73.2. It is highly unlikely that the previous Head Teachers acted in concert with Mr Willsher because they were not involved in the management of the claimant at the same time as he was.

    73.3. The claimant's case is that the detrimental acts or failures done by previous Head Teachers were on the grounds of different protected steps than those done by Mr Willsher.

    73.4. Failure to carry out a stress risk assessment in 2004 is not the same as failure to carry out such an assessment in 2008. The circumstances were different. On the claimant's own case, Mr Whittaker did not allow Mrs Ogley to bully the claimant. Nothing in particular is alleged to have happened during the 4-year period between 2004 and the commencement of Mr Willsher's headship in 2008.

74. Returning to Allegations 6 to 16, I must take into account not only the period of time from date of detriment to date of original presentation, but also the delay between original presentation of the claim and the application to amend. This delay is considerable. The first time the claimant sought to allege breach of section 44 of ERA was shortly before the preliminary hearing on 20 April 2017. More than 4 years had gone by since the claim form was originally presented to the tribunal.

75. I understand it to be the claimant's case that the last detrimental act was a failure lasting, or recurring monthly, up until the termination of the claimant's employment on 17 January 2014. Taking that assertion at face value, the last day for presenting the claim would have been 16 April 2014. In my view it would have been reasonably practicable for the claimant to have applied to amend to introduce her section 44 complaint by then. By that date the litigation was already 2 years old. There had been numerous preliminary hearings at which the claimant had been invited to clarify her claim. Whatever immediate crisis may have stood in the way of formulating the claim properly in March 2013 had, by that time, passed.

<u>Manner and timing of amendment application</u>

76. The claimant's application to amend was made a long time after the claim was first presented. On the other hand, the proposed claim was initimated approximately 10 months before the date of the final hearing.

<u>Disadvantage to the claimant if amendment refused</u>

77. I now turn to the most important consideration, namely the relative disadvantage caused by either refusing or allowing the amendment.

78. I proceed on the footing that, if I were to refuse the amendment, I might risk depriving the claimant of the opportunity to pursue a claim of substance. Allegations 6 to 16 are not obviously hopeless on their merits. The generalised arguments raised by the respondent are not, in my view, knockout blows. It is true that the claimant has not spelled out why it was not reasonably practicable to raise her concerns through a health and safety committee. But, given, the factual allegations she makes about the conduct of her trade union representatives, the tribunal might infer that the claimant had no confidence in an employer-union committee to take her health and safety concerns seriously. It is already part of her case that the respondents' health and safety representative "kept quiet" about the School Stress Policy. It might also be open to her to argue that her health was so precarious that the alleged stressful environment amounted to circumstances of serious and imminent danger. An attempt by the claimant to take her own life in 2013 would be a frightening illustration of her fragile state of health at that time.

79. There is still the very real question about whether Allegations 6 to 16 would have been presented within the time limit had they been included in the claim form. Because the claimant's case on a "series of similar acts" is reasonably arguable, it is not appropriate for me to determine that question without hearing the evidence. For the purposes of this judgment, therefore, I must assume that Allegations 6 to 16 are capable of overcoming the time limit hurdle. On the other hand, I should not make a judgment, without hearing evidence, that deprives the respondents of the opportunity to argue that these allegations are out of time.

80. I have taken into account the respondents' detailed submissions in tabular form specifically addressing the individual allegations. In relation to Allegations 6 to 16, those submissions do not in my view alter the analysis. The respondents have set out what, in effect, would be their substantive response to the allegations in an attempt to demonstrate that they are not well-founded. But it would not be possible to uphold those submissions without making findings of

fact. It would not be appropriate to make such findings without hearing the evidence.

81. In respect of Allegations 1 to 5, my view is different. Even if these allegations had been included in the original claim form, they would have been doomed to fail. This is because it is not even reasonably arguable that they formed part of a series of similar acts ending after 19 December 2012. So far as these allegations are concerned, refusing the amendment would result in no disadvantage to the claimant, as the complaints would be time barred in any event.

Disadvantage to the respondents if amendment granted

82. I do not think there would be much disadvantage to the respondents in allowing the claimant to pursue Allegations 6 to 16. So far as Mr Willsher's acts and omissions are concerned, the Reason Why Question is now almost indistinguishable from the other issues already in the case. Mr Willsher already has to answer numerous allegations of direct disability discrimination, whistleblowing detriment and breach of trust and confidence. Determination of those allegations will shine a spotlight on Mr Willsher's efforts – or lack of them – to conduct a stress risk assessment, and his motivation at each step of the way. The occasions on which the claimant raised health and safety concerns, or was absent on sick leave and submitted GP fit notes, will already have to be examined in detail as part of the background.

83. There would be some disadvantage to the respondents in having to deal with the "reasonable practicability" question under section 44(1)(c)(ii) of ERA. They would have to adduce evidence of the appropriate channels by which they say the claimant could have raised her concerns. Such evidence would be unnecessary in the absence of a section 44 complaint. It is likely that the claimant, when questioned about safety representatives and safety committees, would start criticising her trade union representatives and the school health and safety representative. But criticisms of this kind will probably emerge in any event. Although her claim against the trade union has been struck out, it remains part of her case (see Scott Schedule Section 3, Allegations 39-41) that Mr Willsher and her union representatives jointly discriminated against her by falsifying meeting minutes and covering up the existence of the School Stress Policy.

84. Amending the claim would put the respondent to some additional expense. I do not think that, in the context of this claim, the expense is likely to be significant. The respondent has already engaged in detail with the substance of the newly-formulated claim. If an amended ET3 response is necessary at all, it is likely to reproduce much of the same content. I would be surprised if the respondents' witness statements would look substantially different, whether the amendment is granted or refused.

85. I now consider the disadvantage that would be caused to the respondent by allowing the claimant to introduce Allegations 1 to 5. In my view it would be considerable. The respondent would have to call Mr Whittaker and Mr Berry to give evidence about matters occurring more than 10 years ago. In Mr Berry's case, he would be asked to recall events going back 20 years or more. If the amendment were to be refused, the tribunal would be unlikely to concentrate in much detail on the period before Mr Willsher's headship. These events

happened so long before the claimant resigned that it is unlikely to have weighed significantly on her mind in comparison with the more recent events. Mr Whittaker only faces one allegation of disability discrimination and Mr Berry faces none at all.

Balancing exercise – overall conclusion

86. So far as Allegations 6 to 16 are concerned, the overriding objective points towards allowing the amendment dispute to be decided at the final hearing. The claimant should be permitted to argue her case as set out in the relevant parts of the Schedule to my case management order. The tribunal should hear all the evidence before deciding whether or not to allow the amendment. If it is the tribunal's view that Allegations 6 to 16 would have been out of time even if they had been included in the original claim form, they are likely to refuse the amendment.

87. I should make it clear that, had it not been for the decision in *Aldridge,* I would have allowed the amendment outright and left only the question of time limits to be determined at the final hearing. The only reason why I am not taking this step is that I am concerned that *Aldridge* could prevent time limit issues being raised once an amendment has been granted.

88. I have sympathy for the respondents' argument based on the extent of delay, but that consideration is less important than the extent of disadvantage caused by the amendment.

89. In respect of Allegations 1 to 5, the scales fall heavily the other way. The amendment should be refused.

90. I should make one thing clear in relation to Allegations 1 to 5. In reaching my overall decision I took into account my view that those detrimental acts and omissions were incapable of being part of the same series of similar acts as those alleged to have occurred later in time. But even if I had not held this view, my overall conclusion would have been the same. As with Allegations 6 to 16, there was considerable delay in making the amendment application and – crucially – the respondent would be put to a considerable disadvantage if Allegations 1 to 5 were pursued.

Employment Judge Horne

2 October 2017

JUDGMENT SENT TO THE PARTIES ON

6 October 2017

FOR THE TRIBUNAL OFFICE