Case number 2300705/2018

EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Mrs V Wadke	v	Macmillan Cancer Support

OPEN PRELIMINARY HEARING

Heard at: London South **On:** 1 April 2019

Before: Employment Judge Truscott QC

Appearances:

For the Claimant: in person
For the Respondent: Ms L Harris of Counsel

JUDGMENT on PRELIMINARY HEARING

1. The amendment seeking to add paragraph 18.3 and the content of paragraph 60 after the words "and further informed to Ms Wilde…." is granted.

2. The amendment seeking to add 18.5 with supporting averments of fact is granted.

3. The amendment seeking to add paragraph 60 so far as raising the claimant's own complaints on 25 and 29 September 2017 with Ms Isherwood is granted as a further disclosure.

4. The respondent is given leave to further amend the Grounds of Resistance should they consider it necessary.

5. The draft list of issues is to be finalised in consequence of this judgment by 31 May 2019.

6. The claimant's request for further particulars as specified in her letter dated 7 December 2018 is refused.

7. The Tribunal varies the order for exchange of witness statements from 1 March 2019 to 20 April 2020.

REASONS

Preliminary

1. This Preliminary Hearing was listed to determine the following:
(1) Claimant's application to amend her claim;
(2) Claimant's application for specific disclosure.

Background

2. The claimant made an application to amend her claim by letter dated 10 August 2018. The respondent submitted its written objections to the Tribunal on 17 August 2018. The claimant submitted a further letter in response to the respondent's response on 22 August 2018. The various proposed amendments have been incorporated into a document [133-171] showing the original pleadings with deletions and the additional material. By the date of the preliminary hearing, the extent of the objection to the claimant's proposed amendment had narrowed to the points which are set out in paragraph 5.

3. In a letter to the Tribunal dated 7 December 2018, the claimant sought an order for disclosure of documents / information by the respondent. The dispute about disclosure remained as set out in the correspondence which is set out at paragraphs 10 and 11.

Proposed amendment

4. The claimant states her position as follows:
"Further to the preliminary hearing held on 18th Jun 2018, I believe that in providing further and better particulars of claim, I was elaborating on information provided in my original statement of case as requested by the Respondent. It seemed clear to me that the Respondent viewed my original statement as lacking in detail; consequently, in providing extra details I improved it. If it is the case that the tribunal views the additional information as being distinct from the information provided in my original statement, I am writing to request permission to amend my particulars of claim. In addition to requesting the tribunal to kindly accept my revised statement of case in full as submitted on 6th Jul 2018, I would like to request / specify the following amendments."

She then set out the amendments she seeks.

5. The amendments challenged at the hearing are in paragraphs 18.3 and 18.5:

> "18.3 The Claimant had also reported to the HR Director that the Claimant's manager had misappropriated their internal performance management system and targeted two non-white staff."

This paragraph does not provide the respondent with much information about what is being complained about. The phrase "misappropriation of the internal performance management process" is in the original narrative of the claim in paragraph 66 [158]. In support of this amendment she seeks to add in the contents of paragraph 60 [157-

158] which actually adds a further disclosure to Ms Wilde on 25 and 29 September 2017 in relation to Ms Isherwood's bullying behaviour and then goes on to describe the claimant and a colleague being "tricked" into a rating in the performance management process.

> "18.5 In addition to the ultimate unfair dismissal, the Claimant had also suffered a detriment of bullying as a result of making a protected disclosure."

In support of this amendment, the claimant relies on paragraphs 56-58 [155-157] and 61-62. There are minor changes proposed for paragraphs 57, 61 and 62 which add some further detail with additional material being added to paragraphs 56 and 58.

6. In her submission in support she says
"The bundle submission and witness statements are far from the deadline to exchange. As such, the permission to allow amendments to ET1, i.e. the further and better particulars submitted in the final revised statement of case of 10th Aug 2018, will therefore not cause any prejudice to the Respondent.
I believed that by way of adding paragraphs 18.3 and 60, I was responding to the Respondent's RFI 'whether the protected disclosure in 18.1 was the only protected disclosure the Claimant was relying on', as also responded to the Respondent via email on 13th July 2018: *"I believe I have incorporated all answers to your questions in the revised statement of case".* I believed that paragraphs 1, 2 and 3 in the RFI were a plain summary of the detailed information sought under each question that followed the specific paragraphs that the Respondent was seeking further and particular information on (in an "Under paragraph…" "Of…" "Please state…" format). The failure to repeat information under paragraph 2 of the RFI was inadvertent; however, I apologise and attach the information along with this email, highlighting the updated RFI response for ease. I request the Tribunal to kindly accept the attached RFI and further emphasise that an updated response to paragraph 2 is simply pointing to the information already submitted in my revised statement of case."

7. The respondent's position is:

1. The Claimant appears to be seeking to introduce a new cause of action, namely that she was subjected to a detriment on the ground that she made a protected disclosure (paragraph 18.5), albeit this is not listed in paragraph 1 alongside the other alleged causes of action. This claim was not pleaded, nor alluded to, within the ET1 or Original GoC.

2. The Claimant is seeking to introduce a second protected disclosure (paragraphs 18.3 and 60). Although the Claimant referred to her performance review by way of background in the Original GoC, the allegation that the Claimant's manager allegedly misappropriated the Respondent's internal performance management system plainly was not pleaded as a separate protected disclosure. The Respondent specifically asked in its RFI whether the protected disclosure in paragraph 18.1 of the Original GoC is the only protected disclosure on which the Claimant intends to rely, thereby affording her a further opportunity to clarify this. That question was left unanswered in the RFI Response. Accordingly, it was

reasonable for the Respondent to assume that the Claimant only intends to rely on the protected disclosure pleaded in paragraph 18.1 of the Original GoC.

8. The respondent submits that:

The additional, alleged whistleblowing detriment claim is significantly out of time. The alleged detriment on which the Claimant seeks to rely took place in September 2017, some 11 months before she made the Application. In circumstances where the Claimant was apprised of the facts on which she now seeks to rely in relation to this new claim, there is no good reason why this claim has been submitted out of time, or why it was not submitted at the time of her Original GoC. The Claimant has provided no explanation for why it was not reasonably practicable for the complaint to be presented in time or at the time of the Original GoC and, therefore, it is the Respondent's position that the Tribunal should not exercise its discretion to extend the time limit in relation to this claim.

Disclosure of documents

9. The claimant says:

"With regards to my letter dated 19 Oct 2018, I am writing to highlight that the following documents, which are in the Respondent's possession, have not been disclosed by the Respondent in the final hearing bundle submitted on 20 Nov 2018. I further request to the Tribunal to kindly make an Order for inclusion of these documents in the hearing bundle because they are essential to establishing my claims, for the reasons explained below.

Point 1: Glassdoor and social media reviews of the Respondent highlighting a culture of bullying and discrimination.
The information provides contextual evidence to my racial discrimination claim by demonstrating that bullying and discrimination is commonly felt by the current and former employees at the Respondent, in a similar way as I have experienced it. The document is therefore relevant to my claim.

Point 5: Email conversations around mid-Dec 2017 between the Claimant, Jane Sey and Kerry Isherwood where the Claimant was asking to offer an interview to Jordan but Kerry denied that, including the email exchange in which Jane Sey had shared the JD for the senior ER role on the Claimant's request.
The email conversation, relevant to point 54.b in the SoC, provides indirect evidence for my racial discrimination claim. It provides evidence that Kerry Isherwood treated ethnic minority less favourably. Jordan L. Marquis, Black male, was a HR Advisor reporting to me. Additionally, the information contained in the said email conversation is required for witness evidence to support that racial discrimination was a consistent theme within Kerry Isherwood's team.

Point 6: Email conversation between the Claimant and Kerry regarding 'acting up' promotion to Katie Nurse.
The email conversation, relevant to point 54.b in the SoC, provides indirect evidence for my racial discrimination claim. It provides evidence that Kerry

Isherwood treated her white staff favourably. Katie Nurse, White female, was being consistently and exclusively selected for development opportunities, job promotions and financial increases. Additionally, the information contained in the said email conversation is required for witness evidence to support that racial discrimination was a consistent theme within Kerry Isherwood's team.

Point 13: Email exchange between Hannah Mahony-Smith and the Claimant (March/April 2017), which started with HM-S passing demeaning comments to the Claimant for eating lunch in a lunch-time meeting.
The comments provide contextual evidence to the culture of bullying and discrimination. It further demonstrates that HR department on the whole lacked credibility in the business and I felt lack of backing from Kerry Isherwood and Dawn Wilde when attacked by business, in comparison to other White comparators. The information is therefore relevant to my claim. Also required for witness evidence.

Point 16: Current status of the June 2017 performance rating for Charmaine Goddard (the Claimant is aware CH has been promised by Dawn Wilde that her 'purple' rating from June 2017 will be corrected).
Relevant to point 54.b, 60, 62, and 64 in the SoC, directly in support of racial discrimination claim. A back-dated correction of rating for Charmaine Goddard from purple to green, provides evidence that both Charmaine and I (both BAME) were originally tricked into a purple rating because of ethnicity, and that performance was not a real issue. Also required for witness evidence.

Point 22: Ethnicity pay gap, internal promotion data broken down by ethnicity, and ethnicity breakup for employees at band 3 and above at the Respondent.
The information is directly relevant to points 46.a and 46.b, and contextual evidence to 54.b in the SoC to support my racial discrimination claim. It provides evidence that the Respondent is a white organisation, where white member of staff have received favourable treatment in terms of higher salary and senior level promotions. Kerry Ishwerood's statement "Maybe this is not the right organisation for you" was a reflection on my ethnicity and ways of doing things in the context of a dominantly White organisation, particularly at senior level positions.

Point 26: The Respondent to confirm that no information has been withheld or omitted from the draft bundle, with regards to the additional information requested by the Claimant under paragraph 2.3 in the case management agenda, of the Preliminary Hearing on 18 June 2018, as stated in my letter of 19 Oct 2018.
I suspect the Respondent has applied non-disclosure clauses incorrectly to withhold crucial evidence that supports my claims. As advised by ICO, the Tribunal has greater authority to make an Order and I therefore request your Order to obtain the information as requested under point 26 above.

These missing documents provide direct, indirect or circumstantial evidence and are required to argue my claims especially as I represent myself. It is my understanding

that parties are under an obligation to disclose any relevant documents and information that may or may not be helpful to their case."

10. The respondent submits that:

"It is the Respondent's position that, for the reasons set out below, the Claimant is unable to establish this in relation to any of the documents requested in the Application, the majority of which do not even meet the test of relevance, let alone necessity for a fair disposal of her claims (the numbers used align with those in the Application):

Point 1

The Claimant's race discrimination claim is one of direct discrimination and, therefore, is limited to incidents which directly affect the Claimant. Accordingly, a selection of unverified and anonymous opinions about the Respondent, expressed on a public website, are neither relevant to, nor necessary for a fair disposal of, the issue of whether the Claimant was subjected to less favourable treatment on the grounds of her race, or indeed to any other aspect of the Claimant's claim.

Points 5 & 6

As above, the Claimant's race discrimination claim is one of direct discrimination. Accordingly, documents relating to alleged less favourable treatment allegedly suffered by employees other than the Claimant are neither relevant to, nor necessary for a fair disposal of, the issue of whether the Claimant was subjected to less favourable treatment on the grounds of her race, or indeed to any other aspect of the Claimant's claim. Such matters are, at best, background information and accordingly do not, in the Respondent's view, meet the tests for specific disclosure outlined above.

Moreover, matters relating to the employees named at points 5 and 6 of the Application are not pleaded in the Claimant's particulars of claim. The Claimant refers in the Application to "point 54.b in the SoC". This is a reference to paragraph 54 (b) of the Claimant's amended particulars of claim. The Claimant's application to amend her claim (to which the Respondent has objected) is due to be heard by the Tribunal at the preliminary hearing on 8 February 2019. Unless and until that application is granted, paragraph 54 (b) does not form part of the Claimant's pleaded claim. In any event, that paragraph does not in fact refer to the allegations referenced at points 5 and 6 of the Application.

Point 13

This alleged incident is not pleaded in the Claimant's particulars of claim or amended particulars of claim, nor is it referenced in the Claimant's response to the Respondent's request for information. In the circumstances, it cannot be said even to amount to background information (which, in any event, would not, in the Respondent's view, meet the test for specific disclosure as outlined

above). Accordingly, documents relating to this alleged incident plainly are not necessary for a fair disposal of, or even relevant to, any of the issues in the Claimant's claim.

Point 16

As above, the Claimant's race discrimination claim is one of direct discrimination. Accordingly, documents relating to the appraisal rating of another employee of the Respondent, who is not a named comparator of the Claimant, is not relevant to, nor necessary for the fair disposal of, the Claimant's race discrimination claim, or any of the Claimant's other claims.

Point 22

None of these matters are pleaded in the Claimant's particulars of claim or amended particulars of claim, nor are they referred to in the Claimant's response to the Respondent's request for information. Therefore, these matters do not form part of the Claimant's pleaded claim and any documents detailing this information plainly are not necessary for a fair disposal of any of the issues in the Claimant's claim. In any event, the Respondent does not currently record this information, so such documents do not, in fact, exist. It is not incumbent upon the Respondent to create documents for the purposes of disclosure.

Point 26

The Respondent has confirmed to the Claimant that information which has been redacted from documents within the bundle does not include any information relevant to the issues in her claim, nor any of the Claimant's personal data. Redactions have been applied to certain documents within the bundle in order to preserve confidential information and/or protect third party personal data.

11. The respondent says that:

The Respondent has already carried out detailed searches in relation to the matters pleaded and the facts in dispute in the Claimant's claim, resulting in a bundle which runs to 4 lever arch files. Following the Claimant's original request for further documents, the Respondent carried out further searches and added a number of additional documents to the bundle. The Respondent submits that it is neither reasonable nor proportionate to require the Respondent to carry out further searches for documents, many of which the Claimant herself describes as "contextual", which plainly aren't necessary for a fair disposal of the Claimant's claims.

12. In addition to the sections of written argument set out above, the parties presented further oral argument at the hearing.

Amending the claim

13. The general case management power in rule 29 of First Schedule to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (amended and reissued on 22 January 2018) ("the Rules") together with due consideration of the overriding objective in rule 2 to deal with the case fairly and justly, gives the Tribunal power to amend claims and also to refuse such amendments.

14. Employment tribunals have a general discretion to grant leave to amend the claim. It 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. General guidance on making amendments to a claim is contained in **Selkent Bus Co Ltd v. Moore** [1996] ICR 836 EAT and **Cocking v. Sandhurst (Stationers) Ltd** [1974] ICR 650 NIRC. Their approach was approved by the Court of Appeal in **Ali v. Office of National Statistics** [2005] IRLR 201 CA.

Factors to be considered in the exercise of the discretion

15. Mummery J concluded in **Selkent** at 844 B-C. that the test to be applied is essentially a balancing act wherein "…the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment." At 843F to 844C guidance is provided as to what circumstances should be taken into account in the exercise of the discretion, as follows:

> "(4) Whenever the discretion to grant an amendment is invoked, the tribunal should take into account *all* the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.
> (5) What are the relevant circumstances? It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant:

The nature of the amendment

16. Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the additions 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.

The applicability of time limits

17. 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, e.g., in the case of unfair dismissal, s.67 of the 1978 Act.

The timing and manner of the application

18. 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 Rules 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."

19. It must be emphasised that the above is expressly stated not to be an exhaustive list and when considering whether to allow an amendment in the application of the balancing test the tribunal must weigh in the balance all the circumstances and factors relied upon by the parties and not just identify those that have tipped the balance in the judicial exercise of the discretion one way or the other, it is necessary to explain the reasoning and basis for the conclusion reached, as a failure to do so will constitute an error of law. (See Harvey at Division PI paragraph 312).

20. The position is also summarised in the Presidential Guidance issued under the provisions of Rule 7 of the Rules which the Tribunal has also considered.

21. **Selkent** held that a distinction required to be drawn between:

(i) Amendments which are merely designed to alter the basis of an existing claim, but without purporting to raise a new distinct head of complaint. Amendments falling within this category are not affected by the time limits, as the nature of the original claim remains intact, and all that is sought to be done is change the grounds on which that claim is based, ie re-labelling.

(ii) Amendments which add or substitute a new cause of action but one which is linked to, or arises out of the same facts as, the original claim.

(iii) Amendments which add or substitute a wholly new claim or cause of action which is not connected to the original claim at all.

22. Amendments falling within category (i) are not affected by the time limits, as the nature of the original claim remains intact, and all that is sought to be done is change the grounds on which that claim is based.

23. So far as category (ii) is concerned, the tribunals and courts have always shown a willingness to permit a claimant to amend to allege a different type of claim from the one pleaded if this can be justified by the facts set out in the original claim. It is usually described as putting a new 'label' on facts already pleaded. The position is, therefore, that if the new claim arises out of facts that have already been pleaded in relation to the original claim, the proposed amendment will not be subjected to scrutiny in respect of the time limits, but will be considered under the general principles applicable to amendments, as summarised in **Selkent**.

24. It is only in respect of amendments falling into category (iii)—entirely new claims unconnected with the original claim as pleaded—that the time limits will require to be considered. Judge Hand QC in **Galilee v. Commissioner of Police of the Metropolis** [2018] ICR 634 EAT at para 109(a) concluded that where a new claim

is permitted by way of amendment, it takes effect for limitation purposes from the date on which permission to amend was given. Judge Hand held that the guidance given by Mummery J in **Selkent** and the use of the word 'essential' should not be taken 'in an absolutely literal sense and applied in a rigid and inflexible way so as to create an invariable and mandatory rule that all out of time issues should be decided before permission to amend can be considered' (at para 109 (d)), Judge Hand held that in cases where there is alleged to be a continuing act of discrimination, or in cases in which a claimant seeks to argue for a 'just and equitable' extension of time, it may not be possible to decide the limitation point without hearing evidence; in such cases, depending on the circumstances, a tribunal is entitled either to defer the whole question of amendment and limitation to be decided after the evidence has been given, or to allow the amendment and leave the limitation issue to be decided at that later stage (at para 98).

25. But, even though it is necessary for the tribunal to consider the time limits, they are only 'a factor, albeit an important and potentially decisive one', in the exercise of the overall discretion whether or not to grant leave to amend, which remains the relative injustice/hardship test set out in **Cocking v. Sandhurst (Stationers) Ltd** [1974] ICR 650 657B–D NIRC and in **Selkent** [1996] ICR 836 at 843F. Accordingly, the fact that a proposed amendment involving a new cause of action may be outside the relevant time limit, and an extension of time may be refused on the wording of the applicable escape clause, does not create an absolute bar to an amendment being made; even then the tribunal retains a discretion.

26. In **Evershed v. New Star Asset Management** UKEAT/0249/09 (31 July 2009, unreported), Underhill J pointed out that it is no more than a factor, the weight to be given to it being a matter of judgment in each case (para 24). When considering whether to allow an amendment, an employment tribunal should analyse carefully the extent to which the amendment would extend the issues and the evidence. In **Evershed**, the claimant claimed unfair (constructive) dismissal and later sought (after the expiry of the time limit) to amend it by adding a claim under ERA 1996 s 103A that the dismissal was due to his having made a protected disclosure, and hence was automatically unfair. An employment judge refused to allow the amendment, inter alia, on the ground that it would require 'wholly different evidence' to be given but he did not explain the basis for this conclusion. On appeal to the Employment Appeal Tribunal and the Court of Appeal, this omission by the judge was held to be an error of law. In the Employment Appeal Tribunal, Underhill J stated that it was 'necessary to consider with some care the areas of factual inquiry raised by the proposed amendment and whether they were already raised in the previous pleading' (para 16). He carried out this exercise himself and concluded that the new evidence would be substantially the same as would be given in respect of the original claim, and, accordingly, allowed the amendment. The Court of Appeal approved this approach and agreed that the amendment did not raise 'any materially new factual allegations' (**Evershed v New Star Asset Management Holdings Ltd** [2010] EWCA Civ 870 at para 50).

27. Although the arguments in **Evershed** did not focus on whether the addition of a whistleblowing complaint to an existing claim of 'ordinary' unfair dismissal constituted an entirely new claim requiring consideration of an extension of time if the amendment was out of time, this point was raised and dealt with by the EAT in

Pruzhanskaya v International Trade & Exhibitors (JV) Ltd UKEAT/0046/18 (17 July 2018, unreported). As in **Evershed**, the claimant applied out of time to amend her unfair dismissal claim by asserting that the principal reason for her dismissal was the making of protected disclosures and that her dismissal was automatically unfair under ERA 1996 s 103A. An employment judge refused the amendment on the ground that it amounted to 'a significantly changed case', which added 'a substantial new issue which plainly is brought considerably out of time', and would cause prejudice to the respondents if they had to deal with it at a late stage. On appeal Judge Richardson agreed that it added a significantly new issue but held that a whistleblowing dismissal was an aspect of the right not to be unfairly dismissed under Part X of ERA 1996, and so did not create a separate head of complaint to which a separate time limit applied (para 36).

Disclosure

28. The 2013 Tribunal Rules which contain the power to order disclosure and inspection are linked to the Rules of the County Court where the relevant rule on disclosure and inspection is that contained in Part 31 of the CPR 1998, which should be read in conjunction with the Practice Direction on Disclosure and Inspection (PD31A), and the Practice Direction on Disclosure of Electronic Documents (PD31B). The rules governing disclosure and inspection under the CPR r 31 are based on the principles of necessity (is disclosure necessary for the fair disposal of the case?) and openness. A party is required to disclose only those documents (being documents which are or have been in his control) (*a*) on which he relies; (*b*) which adversely affect his own or another party's case, or which support another party's case; and (*c*) which he is required to disclose by a relevant practice direction (CPR rr 31.6, 31.8). Each party must make a reasonable search for documents falling within (*b*) and (*c*) above (CPR r 31.7).

29. Documents to be disclosed are those that: (a) support either party's case; or (b) adversely affect either party's case. There is no requirement to provide documents which do not fall within these categories but are part of the story or background, including documents which, although relevant, are not necessary for a fair disposal of the action. Further, there is no requirement to disclose train of inquiry documents i.e. documents which may lead to a train of inquiry enabling a party to advance his own case or damage that of his opponent. The touchstone, even at the standard disclosure stage, therefore, is closer to one of necessity.

30. In accordance with the principles outlined in **Harrods Ltd v The Times Newspaper Ltd** [2006] EWCA Civ 294, standard disclosure requires a reasonable and proportionate search for documents by reference to the issues in the case. The relevance of documents is analysed by reference to the pleadings, and the factual issues in dispute on the pleadings.

31. In respect of specific disclosure, the touchstone is necessity, not relevance. As *Hollander on Documentary Evidence (§8-15)* notes: "The starting point is that the CPR had in mind that far fewer documents would be disclosed than was the case previously under the RSC. So that policy must feed through to CPR r.31.12. That means that it will not be sufficient in order to obtain an order for specific disclosure to show that the document or classes of documents sought are relevant. Something

more than that must be shown. Otherwise we would be back to Peruvian Guano. It is important that the categories or documents which were required were identified with precision."

32. Of general importance when applying for, and considering the extent of any order for disclosure and inspection, is the overriding objective, particularly those aspects of the objective that relate to saving expense and proportionality. These are matters which, particularly in complex cases, the parties should have in mind when applying for orders of specific disclosure, and which the employment judge or tribunal should take into account when deciding whether to make such an order and, if so, the extent of it.

DISCUSSION and DECISION

33. The correspondence between the parties is more extensive than the material set out in this judgment. The Tribunal reviewed all of the documentation and the contents of the correspondence and also the submissions made at the hearing.

34. Paragraph 18.1 sets out the disclosure which was contained in her original case concerning the intention to advertise vacancies of existing roles. From the narrative in paragraphs 18.3 and 60, the claimant refers to herself and another employee being "tricked" in relation to the performance management system. This claim is connected to the original claim because it involves the same parties in the same employment context and is contained in the original claim.

35. Paragraph 60 also identifies a new disclosure about bullying which builds on the claims already made by the claimant

36. Paragraph 18.5, identifies a claim of detriment arising from narrative in the original claim.

37. The Tribunal considered that these amendments were connected to the existing case in that they build on existing paragraphs in the claim. The Tribunal considered it appropriate to apply the guidance to category (ii) cases to each amendment. It noted the time lapse in making the amendment application and that the amendment and the time lapse had come about in consequence of extensive exchanges between the parties about the pleadings. The Tribunal took into account the fact that the claimant was representing herself but had skill in human resources. The Tribunal considers that claimant is being disingenuous where she says "I believed that by way of adding paragraphs 18.3 and 60, I was responding to the Respondent's RFI 'whether the protected disclosure in 18.1 was the only protected disclosure." However, the Tribunal is not prepared to exclude the proposed amendments. In balancing relative injustice, the Tribunal considered that while the amendment might cause hardship to the respondent in that it has to incur some additional expense in further investigation, the Tribunal considered that the case as now pled should be addressed at the hearing on the merits. While the Tribunal understands that proving discrimination can be problematic, the claim is not necessarily assisted by the wide ranging approach adopted by the claimant. The case as a whole would benefit from much more focus on what happened to the claimant and the reason why it happened.

38. In relation to the requests for disclosure, the Tribunal decided that the claimant did not establish that the documents which she seeks are not only relevant to the pleaded issues but necessary for a fair disposal of the action. Taking each request in turn, in relation to 1, the claimant's case would not be advanced by social media comment. In relation to 5 and 6, while the Tribunal understands that proving discrimination can be difficult and how other employees may have been treated might be relevant, however, the Tribunal is not prepared to grant this request as it could only be a means of expanding the current case to review the treatment of others rather than providing support for the claimant's case. In relation to 13, there is no basis in the pleadings for granting this request. In relation to 16, as with points 5 and 6, the Tribunal is not prepared to allow the enquiry into the claimant's case to be expanded to consider another employee's treatment. In relation to 22, for the same reasons as 13, this request is refused. In relation to 26, the Tribunal is not prepared to grant a request based on suspicion. The requests are accordingly refused.

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Employment Judge Truscott QC

Date 23 April 2019