



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4112743/2018**

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**Held in Glasgow on 20 November 2019**

**Employment Judge S MacLean**

10 **Ms W Hesketh**

**Claimant  
In Person**

**Glasgow Caledonian University**

**Respondent  
Represented by:  
Ms A Stobart -  
Counsel**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

20 The judgment of the Employment Tribunal is that the claimant's application to amend as set out in the claimant's Scott Schedule and Further and Better Particulars dated 26 September 2019 is allowed to the extent that it seeks to clarify the existing claims but is not allowed to the extent that it introduces claims of equal pay, discrimination arising from disability and harassment under the Equality Act 2010.

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**REASONS**

**Background**

1. The claimant sent a claim form to the Tribunal's office on 24 July 2018. The respondent sent a response on 28 August 2018.
2. The parties completed agendas for a preliminary hearing for case management on 11 October 2018 (the October PH). The claimant  
30 represented herself. Mr McDowell, solicitor represented the respondent.

3. At the October PH there was discussion about the claims being brought by the claimant including the unfair dismissal claim concerning the researcher post.
4. In relation to the “discrimination claims”, Employment Judge Buzzard noted that the claimant made claims of discrimination against the respondent based on the grounds of: disability; sex; the fact that she was part time; and the fact that she worked on a fixed term contract. Employment Judge Buzzard also noted that he had endeavoured to discuss the specific basis of the claims and that the discrimination claims based on part time and fixed term status were not discussed in detail.
5. Also discussed was the ongoing indirect discrimination in relation to recruitment and promotion which the claimant encountered. The claimant agreed that she would specify the actual acts and omissions of the respondent from September 2015 onwards on which she relied in her claims of indirect discrimination.
6. There was also discussion about additional discriminatory claims arising after the claimant sent her claim form to the Tribunal on 24 July 2018. She mentioned the recruitment process in August/September 2018 which she said was indirectly discriminatory and that the respondent had failed to make reasonable adjustments in relation to the interview process. She also said that she may make a claim of victimisation as she did not understand why she had not been successful in securing further work. There was discussion about the time for presenting these additional discriminatory claims was three months from the date of the act of discrimination. Accordingly, the claimant was within time to make these additional claims provided they were raised within three months. Given that they related to the same respondent and the same issues, the claimant was granted an opportunity to indicate that she wishes to amend her claim to include these further claims.
7. On 24 October 2018, the claimant made an application to amend her claim form to add the claims of failure by the respondent to make reasonable adjustments and indirect discrimination in respect of the interview for the

position of lecturer in law on 20 September 2018; and victimisation by the respondent in that the claimant was not re-employed in the criminology/sociology group following submission of her claim for discrimination (the October Amendment).

- 5 8. After the discussion at the October PH about the unfair dismissal claim in relation to the researcher post which ended on 20 July 2018, the claimant also withdrew this claim. It was dismissed.
9. On 1 November 2018, the respondent confirmed that it had no objection to the October Amendment intimated. The respondent was allowed 21 days to  
10 respond to the amendment which it did on 10 December 2018.
10. Having agreed that at the October PH that she would specify the actual acts and omissions of the respondent from September 2015 onwards on which she relied in her claims of indirect discrimination, on 8 November 2018 the claimant intimated a Scott Schedule (the November SS).
- 15 11. A preliminary hearing was fixed for 7 March 2019 to determine the issue of disability status which was postponed for a medical assessment to take place.
12. On 20 July 2019, the claimant sent an “amended” Scott Schedule (the July SS) which she asked to replace the November SS. The claimant made an application to amend her claim (the July Amendment).
- 20 13. The respondent said that the extent to which the July SS sought to clarify the claimant’s existing claims, there was no opposition. The respondent said that the claimant’s application to amend went further in that it sought to add a fifth potential disability (dyscalculia) and add new claims against the respondent such as for equal pay and dismissal for asserting a statutory right. The  
25 respondent said that these claims were time barred and that there would be hardship and injustice to the respondent in allowing the application to amend in its entirety.
14. At a preliminary hearing for case management on 16 August 2019 (the August PH), Employment Judge Gall noted that the claimant did not accept that the  
30 equal pay claim was a new ground of claim. The claimant also mentioned that

she had been thinking of adding a further act which she regarded as discriminatory. It was agreed that a preliminary hearing would be set down for one day in order to consider the claimant's application to amend: the July Amendment. Employment Judge Gall expressed concern that there were various versions of the Scott Schedule that had appeared. In addition, the claimant had recently lodged further documents comprising of a cast list; a chronology of facts; and documents list. The status of these documents was uncertain and required to be clarified at the preliminary hearing.

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15. On 3 September 2019, a notice of preliminary hearing was sent to the parties confirming that the Tribunal would determine the following preliminary issues:

a. Whether the claim currently comprises a claim under the equal pay provisions and if it does not whether the claimant is permitted to include such a claim; and

b. Whether there will be a separate preliminary hearing set down to consider time bar or whether the hearing will be arranged under reservation of time bar.

16. On 26 September 2019, the claimant submitted a further Scott Schedule (the September SS). She also submitted a document headed "Further and Better Particulars". The respondent said that it opposed the "Further and Better Particulars" as it introduced new legal claims and new factual evidence to existing claims and should be considered at the preliminary hearing on 20 November 2019.

17. On 30 October 2019, the claimant having considered the matter withdrew from her proposed application to amend the claim in respect of unfair dismissal from her role as lecturer. The claimant confirmed that this claim was in respect of non-renewal of her work as a lecturer and was already part of her existing claim of victimisation which was set out in the claim form after the October Amendment had been allowed.

18. Before hearing the parties' submissions on the claimant's application to amend the claim form, the parties clarified that the application to amend which

I was considering was detailed in the September SS and “Further and Better Particulars” provided by the claimant to the respondent and the Tribunal in September 2019.

- 5 19. The parties had prepared a joint set of productions for which extended to 547 pages.

**Application to amend the claim form**

20. The claimant helpfully prepared her submissions in writing, a copy of which was provided to me and Ms Stobart.
- 10 21. In relation to the equal pay claim the claimant’s said that she made a claim for equal pay in her claim form sent on 24 July 2018. Her understanding is that the time limit for presenting an equal pay claim is six months after dismissal. Her position was that she was dismissed from her role as lecturer on 30 September 2018.
- 15 22. The claimant said that she also referred to her equal pay claim in the November SS, both of which were submitted to the Tribunal within the six month-time limit. The claimant said that the respondent was aware of this as the respondent acknowledged the equal pay claim in the amended response on 10 December 2018.
- 20 23. The claimant helpfully took me through the productions pointing out why she considered that the equal pay claim was raised from the outset.
- 25 24. If I did not agree the claimant’s alternative argument was that I should not treat this claim as a new claim but merely altering the basis of an existing claim. She considered that amendments falling within this category were not affected by time limits. The original claim remains intact and all that was sought to be done is to change the grounds on which that claim is being based i.e. relabelling.
- 25 25. The claimant said that in the section of the claim form headed type and details of claim, she had ticked the box for sex (including equal pay) and in the paper apart, the claimant said that she referred to a comparator (Dr Bowness) the

difference in treatment between her and her comparator in relation to the length of contract the fact that she was not employed over the summer whereas he was.

5 26. The claimant stated that the respondent acknowledged Dr Bowness as her comparator in the original response and the amended response. The claimant also referred to her agenda discussed at the October PH in which she referred to sex discrimination because of the difference in treatment between herself and Dr Bowness. The claimant acknowledged that she did not call this equal pay but she referred to "fair pay and associated benefits". The claimant then referred to the November SS where equal pay is listed as a type of claim. At 10 this point, the claimant refers to Dr Buckle as a comparator for equal pay.

15 27. The claimant then referred investigation report into an internal grievance the outcome of which was intimated to the claimant on 2 May 2019. She claimant said that this supported her position that the respondent was aware that she had raised a complaint about equal pay.

20 28. If I did not agree then I was invited to consider that the respondent would not be put at a disadvantage to examine this issue now as the case was still at a preliminary stage in the process and the respondent had the benefit of these facts for over a year and a half and also had the benefit of a year to conduct the grievance process.

29. I was asked to consider that it was just and equitable to allow the equal pay claim to proceed if I was not of the view the equal pay claim had not already been raised.

25 30. The claimant said that she was a party litigant unfamiliar with Scott Schedules. She had problems with their tabular nature because her disability. She thought it would make better sense if she re-wrote it. From Google she thought it was a travelling document. She also understood that she was able to amend the Scott Schedule as and when she needed to. As time has gone on, she has had more time to research the law since the November SS.

31. The claimant explained that the July SS was an attempt to give more detail of the legal basis of her equal pay claim or the addition or substitution of labels to the facts already pled in the November SS. In the July SS, the claimant identified her work with her comparator, Dr Buckle. It also provides details of the equal pay claim with Dr Bowness who was originally referred to the claim form and the November SS. The claimant's position was that the claim currently comprises an equal pay claim. The claimant says that the pay claim is in time in that it is just a relabelling exercise based on facts already given.

**Objection to the application**

10 32. Ms Stobart explained that the respondent's understanding of the claim presented in July 2018 was that it related to the claimant's status as a casual worker against other staff who were given employment contracts.

15 33. The respondent acknowledged that the claimant ticked the box at 8.1 of the of the claim form but there were no details of an equal pay claim in the paper apart. There are no statements which specifically relate to equal pay, yet all the other claims are well articulated. While pay is mentioned, it is not in relation to an equal pay claim but in comparison with permanent members of staff (which is not gender related) and in relation to a fixed term contract. There is also reference to the fact that the difference in treatment between her and Dr Bowness could be sex related. The statement referred to the claimant feeling that she had been treated less favourably because she was a woman or because she was disabled.

20 34. The respondent also acknowledged that the claimant referred to Dr Bowness as a comparator but that was in relation to a direct sex discrimination claim. The reference to pay is in the context of casual employment versus permanent employment, there is also reference to female comparators (Katie Proctor and Ruth Lightbody). The claim was not understood to be one of equal pay but rather about employment status, and discrimination (indirect and direct) because she is a lone parent of a disabled child, gender and her disability.

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35. The October Amendment sets out new facts which post-date the presentation of the claim form to support continued indirect discrimination and new claims of failure to make reasonable adjustments and victimisation. It is a two-page document which demonstrates that the claimant understands how to apply to amend the claim form; the format that it should take; and the need to give reasons for the application. This application was unopposed by the respondent.
36. In relation to the November SS, it refers to the lack of employment rights, but it is a broad claim against all employees who had better contracts than the claimant. The claimant refers to the fact that she feels disadvantaged about the way her contract works in comparison with others and that she should have been given a permanent contract. This is not an equal pay claim. The claimant refers to Dr Bowness and the main point is that she should not be on a fixed term contract. This also includes female employees. It is difficult to understand that this could be read as an equal pay claim. There was several averments which relate to indirect discrimination claims rather than equal pay. If what the claimant intended was that she was bringing an equal pay claim that had not been articulated.
37. In the claim form the claimant refers to her comparator as Dr Bowness (in the context of direct discrimination) but in the November SS, she mentions for the first time the comparator of Dr Buckle (and other full-time members of staff).
38. In the September SS the claimant again refers to Dr Buckle who was not mentioned in the claim form in the context of an equal pay claim. The appointment was to cover Dr Buckle's sick leave in from November 2015 until June 2016.
39. The claimant also appears to be referring to different appointments. On one occasion she was covering for Dr Buckle when he was on sick leave and another occasion when she was covering for Professor McMillan's first maternity leave. The claimant compares herself to Dr Bowness who covered Professor McMillan's second maternity leave. These claims would be time-barred.



40. The claimant also appears to be referring to equal pay because of disability. Unfavourable treatment due to disability would not give rise to an equal pay claim.
41. The claimant also goes on to introduce claims of discrimination arising from disability (section 15 of the EqA) and harassment (section 26 of the EqA). These are new claims which were not previously foreshadowed in the claim form as amended by the October Amendment. These claims are out of time.
42. The claimant is a law lecturer. She had knowledge of the law to plead her claim in full in July 2018. She was also aware of how to amend the claim when she introduced the claims of failure to make reasonable adjustments and victimisation in October 2018. While it was acknowledged that the claimant did not receive feedback on the interview in September 2018 until December 2018, it was perfectly reasonable for her to add any claims in respect of section 15 or section 26 of the EqA by way of amendment in time.
43. Having regard to the *Selkent* factors, it was argued that this was a substantial alteration as they were new causes of action (equal pay, section 15 and section 26).
44. In relation to the equal pay claims, there are strict time limits of six months and the Tribunal does not have discretion to extend these time limits. There is no stable employment relationship. The claimant covered for Dr Buckle 2015/16 and for Ms McMillan in 2017. These claims are out of time.
45. In relation to the section 15 and section 26 claims, these too are out of time as these acts of discrimination were not intimated until September 2019, nine months after the event. There was no good reason advanced by the claimant for the delay in bringing these claims. There is significant hardship to the respondents in allowing new claims. The claimant already has a significant number of claims before the tribunal and to allow the amendment to include equal pay, in relation to section 15 and section 26 claims relating to matters going back to 2015, would significantly increase the scope and would cause prejudice to the respondents particularly as the respondent will have to investigate and reply to those claims.

**The relevant law**

46. In *Chandhok v Tirkey* 2015 ICR 527 EAT, Mr Justice Langstaff said, “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 in their perspective. It requires each party to know in essence what the other is saying, so that 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 that are proposed, so that the time needed for the case and expenditure 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 resource of the system. It should provide for focus on 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. *Selkent Bus Company v Muir* 1996 ICR 386 sets out guidance as to how tribunals should approach applications for leave to amend, the requirement to carry out a balancing exercise of all relevant factors having regard to the interests of justice and the relative hardship that would be caused to the parties granting or refusing the application.

**Decision**

48. Having heard the parties, I noted that there was no issue that under rule 29 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (the Tribunal Rules), I had discretion to allow an amendment at any stage of the proceedings. However, such discretion must be exercised in accordance with the overriding objective of dealing with cases justly and fairly under rule 2 of the Tribunal’s Rules.

49. I considered that in exercising any discretion, I had to have regard to all the circumstances of the case and carry out a careful balancing exercise of all relevant factors, having regard to the interests of justice and the relative hardship that would be caused to the parties by granting or refusing the

amendment application. The relevant factors include the nature of the amendment, the applicability of time limits and the timing and manner of the application.

50. I started by considering the Tribunal proceedings. The claim form was  
5 completed by the claimant and sent to the Tribunal's office on 24 July 2018. The details of the complaint are set out in a separate eight-page document extending to 29 paragraphs. The claims are well expressed and include statutory references.
51. At the October PH there was discussion about the various claims. The note  
10 of the October PH is detailed and contains no reference to a claim of equal pay.
52. The note of the October PH also refers to the respondent being "unclear of  
15 the actual acts or omissions of the respondent in the period from September 2015 onwards that the claimant specifically relies upon in her claims of indirect discrimination". It was in this context that the claimant agreed to provide a schedule "setting out each and every act or failure which she says caused her disadvantage and upon which she would intend to rely in support of her discrimination claims".
53. I noted that the discussion about additional discrimination claims related to  
20 events around September 2018 relating to the claim of indirect discrimination and new claims of failure to make reasonable adjustments and victimisation. The note of the October PH refers to the time limits for presenting these additional claims and gives the claimant an opportunity to amend the claim form which the claimant did on 24 October 2018.
- 25 54. The claimant did apply to amend in October 2018. She then provided the November SS.
55. A preliminary hearing fixed in relation to disability status was postponed in  
30 March 2019. The claimant then provided the July SS and made an application to amend. The August PH took place and before this preliminary hearing to consider if the claim currently comprises a claim under the equal pay

provisions and if it does not whether the claimant is permitted to include such a claim the claimant provided the September SS and Further and Better Particulars.

56. July 2018 was the last date that the claimant worked for the respondent in any capacity. The post 24 July events relate the interview in September 2018 on which the claimant obtained feedback in December 2018. The case has not been listed for a final hearing. The respondent has raised issues about time bar in relation to certain claims.

57. I next turned to consider the nature of the amendment. In looking at the nature of the amendment the focus in my view was the claim form as amended. I was not satisfied that when looked at as a whole, it contained a claim in respect of equal pay. While I accepted that the claimant set out in the claim form a sex discrimination claim in which Dr Bowness is named as a comparator, there is no basis upon which an equal pay claim is foreshadowed.

58. I did not consider that it was relevant when considering the nature of amendment to look at the response as amended. This was more relevant in relation to relative hardship but in any event, I was not satisfied that there was reference to an equal pay claim in either the original response or the amended response presented in December 2018. The paragraph of the amended response to which the claimant referred is under the heading 'indirect discrimination' and related to the time periods referred to in the claimant's November SS. It also specifically refers to the comparison based on sex discrimination on the grounds of sex.

59. From my reading of the claim form and October Amendment, the amendment application comprising of the September SS and Further and Better Particulars intimated in September 2019, comprised:

- a. Expansion on the facts contained in the claim form as amended;
- b. New facts, most (but not all) of which were known when the claim form was amended in October 2018;

- c. Raising of new causes of action: an equal pay claim, discrimination claims under section 15 and section 26 of the EqA.

60. I considered that the amendment was substantial and not a relabelling exercise.

5 61. The new causes of action are presented out of time. In relation to the equal pay claim this relates to two separate appointments which terminated in 2015 and 2017. The claimant last worked for the respondent on 20 July 2018. Although when making the October Amendment the claimant would not have appreciated that she may have a claim under section 15 and 26 of the EqA,  
10 she had the feedback from the interview in December 2018. She did not mention either of these claims in the July SS and only appears to have done so as an afterthought in the September SS. The claimant could have brought these claims previously when the facts were known to her in December 2018 but she did not do so.

15 62. There was no suggestion that the claimant was not aware of any facts or there was a delay in making in presenting the claims in time was due to the respondent. The claimant's position at the preliminary hearing was that the claim form included an equal pay claim. She therefore knew of the right to do so on 24 July 2018; and by October 2018 of her right to bring further claims;  
20 and that this could be done by way of amendment or a new application. She was also aware of the time limits involved. These were expressly stated in the notes of the October PH. There was no explanation provided to me as to why the claimant did not apply to amend when she received feedback of the interview in December 2018. She understood time limits and the need to seek  
25 permission to amend particularly when raising new causes of action. There was no explanation as to why it would be just and equitable to extend the time limit in respect of the jurisdictions where I had the discretion to so do.

63. Turning to the timing and manner of the amendment application, the claimant is unrepresented. She has a law degree and lectures in law. While the  
30 claimant does not specialise in employment law, from the claim form which she completed the claimant is able to articulate claims relating to

discrimination based on sex, disability, part time workers, fixed term employees and unfair dismissal. A considerable amount of time was spent at the October PH clarifying with the claimant the nature of her claims during which there was no mention of an equal pay claim. She knew at the October PH the need to apply to amend if she wanted to make new claims. The claimant did so in October 2018 and added additional claims under section 20 and 27 of the Equality Act 2010 in respect of the events happening after 24 July 2018.

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64. There was no explanation why the claimant did not seek to amend on receipt of the interview feedback in December 2018. She was aware of the process and the time limits involved. The claimant's first mentioned claims under section 15 and 26 of the Equality Act 2010 was in the September SS.

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65. I could understand why after December 2018, the focused was on clarifying the disability status and seeking clarification in relation to the existing complaints which rely on different protected characteristics and types of discrimination. While I appreciated that the claimant is unrepresented, her correspondence with the Tribunal and the respondent shows as one would expect of her qualifications a good understanding of Tribunal practice and procedure.

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66. While the lateness of an application is a relevant factor it is not an insuperable reason for refusing an application to amend. This case has not been listed for a final hearing, but it relates to events from 2015 and was raised in July 2018. The amendment procedure in October 2018 was understandable given that it related to events since the presentation of the claim form. There have been two case management preliminary hearings to focus on the issues so that the respondent and the Tribunal knew the case that was to be answered and the issues to be determined. My impression is that the application to amend that it now before me is being made not because matters have just to the claimant's attention but rather that she had now had an opportunity to raise the case which from her perspective suits best having had a chance to consider the legislation.

67. I then turned to consider the interests of justice and hardship of granting and refusing the amendment application.
68. If the amendment is allowed, I anticipate that the respondent will seek further information in relation to the equal pay claim before being able to respond. It appeared to me that the equal pay claim as currently presented was contradictory and lacked detail.
69. The situation is further complicated in that in the September SS, the claimant's comparator is Dr Buckle who is not referred to in the claim form as amended. The equal pay claim is different from the direct discrimination claim using Dr Bowness as a comparator. The respondent will be involved in making new and different lines of enquiry. The respondent has not prepared for an equal pay claim. There will be a delay while the respondent investigated the equal pay claim. This would necessarily expand on the documentary, oral evidence and expense. It would involve clarifying what work undertaken by the comparators. Dr Buckle has passed away.
70. The respondent will in any event need to reply to the additional information that is set out in the September SS and further and better particulars insofar as they relate to the existing claims. While there are existing claims involving sex and disability discrimination, the claims under section 15 and 26 of the Equality Act 2010 require different lines of enquiry which the respondent has not undertaken at this stage.
71. If the amendment is refused, the claimant will not be able to advance her equal pay claim and claims under section 15 and 26 of the Equality Act 2010. However, she has already significant claims before the employment tribunal that are required to be determined.
72. Looking at all the circumstances and balancing the hardship and injustice to both parties, I concluded that the amendment should not be allowed to the extent that it introduces claims of equal pay, discrimination arising from disability and harassment.

73. I have not addressed the issue of whether there should be a preliminary hearing on time bar as there was in sufficient time to deal with this on the day and the respondent's position on this was possibly dependent on the outcome of the amendment application.

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Employment Judge:

S MacLean

Date of Judgement:

17 December 2019

10 Entered in Register,

Copied to Parties:

17 December 2019