



## EMPLOYMENT TRIBUNALS

**Claimant**  
Ms F Thorn

v

**Respondent**  
Nationwide Building Society

### Judgment with Reasons

**Heard at:** Southampton                      **On:** 29 April 2021

**Before:** Employment Judge Rayner

#### Appearances

**For the Claimant:** in person

**For the Respondent:** Miss D Masters, counsel

1. The claimant's application to amend her claim is refused.
2. Judgment was given with verbal reasons at the end of the hearing.
3. The respondent has subsequently written to the ET requested written reasons of the decision to refuse the claimants application to amend and these are set out below:

### REASONS

1. By a claim form dated 11 June 2020, the claimant brought claim of race discrimination, citing institutional racism.
2. In paragraph 8.2 of the claim form the claimant states as follows:
  - 2.1.1. Acting up in a lead role since 2017, I was denied the opportunity to apply for the role and then when I challenged it, I was allowed to apply but not given the same conditions as my colleagues, and I was heavily underscored. I continued to do the role for many months more, until an underqualified white woman was hired. I was then asked to teach her the role, which I did for nine months before she went off on long-term sick. A contractor was brought in, and when they left I was asked to take on all their work in addition to my own but when I reapplied for the role and was the only strong candidate, they withdrew the role and declined to interview me saying I did not have the skills- which was a ridiculous lie.
  - 2.1.2. I have a number of prior roles during which I experienced discrimination in their department. The company is institutionally racist, and people of colour never reach senior management level. I have languished at the same level for over 10 years.
  - 2.1.3. There is no BAME representation. The company has, but still has no pans [SIC], to correct racial discrimination and BAME people leave all the time. HR does not support BAME staff and of all the multiple times I have raised grievances they have never been upheld.

3. In addition to this paragraph the claimant uploaded a separate and additional document. That document is over two pages long and has 13 numbered paragraphs.
4. In it, the claimant describes her employment since 2006, sets out her personal background and complains that she has seen others with inferior skills leapfrog her and enjoy career progression which she has not enjoyed despite constantly applying for internal roles. She also states *in all my roles I have experienced bullying harassment and victimisation.*
5. The First of five paragraphs are concerned with the claimant's employment prior to September 2014.
6. In Paragraph 7 the claimant refers to applying for a role as a transition consultant and being talent banked. She then states
  - 6.1.1. *Nicola Parsons my then level III manager reacted badly to my attempt to leave her team by commencing a targeted bullying and harassment campaign to discredit me. I fought back but it was hugely distressing and very public. I engaged the union again. The bullying became unbearable and was horrific and blatant. With a stroke of luck the role I was talent banked for was offered to me at that exact time and I accepted, handing in my four weeks' notice at the end of September 2015. Nicola was incandescent with rage and acted completely irrationally telling me through the junior managers to leave immediately and not to worry about my notice. I challenged that by to going to union again. I said I had a very important credit card project to deliver by the 19 October and I would leave the minute I had delivered it. I was piloting a new process that I had designed to deal with dormant credit cards that had been attempted and abandoned twice before. It was groundbreaking and I wanted to complete it. During the 19 days of finishing my project I was asked to write 12 hand over documents so that people could understand and take on the work I was doing.*
  - 6.1.2. *The day after I successfully implemented my project, I came into work thinking it was my last day. I was shocked when I was told without warning or preparation that I couldn't leave. They needed me to write post implementation report so that they could replicate the process without me.*
  - 6.1.2.1. *„*
7. The claimant then explains what happened to her in her new role in 2017 and complains that she was asked to act up into a senior role, but was prevented from applying for the vacant post and then asked to train the person who was appointed. That person subsequently left, and a contractor was then appointed to do the job. The claimant alleges that when the contractor left, she the claimant, was asked to take on their work in addition to her own work. The claimant complains that she applied for the post but was not appointed.
8. The claimant does not state within her claim form whether she is claiming direct discrimination or indirect discrimination. Although she mentions harassment and victimisation, she did not identify which allegations she relied upon in respect of either head of claim.

9. The respondent filed its response to the claim with grounds of resistance dated 15 July 2020 denying that the claimant been discriminated against at all.
10. The respondent specifically addressed each of the allegations the claimant made in respect of her applications for various posts from February 2018, as well as addressing the grievance that the claimant had raised and which was dealt with and dismissed by the respondent on 21 May 2020.
11. The respondent requested clarification of the claims that the claimant was bringing.
12. The claimant filed a second claim to the Employment Tribunal on 14 September 2020. In this claim she alleged both race and disability discrimination.
13. At that point, the claimant was represented by Mr R Reeves, solicitor with Slater and Gordon. In the attached particulars of claim, it is stated that the claim arises from events which post-date the first claim.
14. The allegations made in this second ET1 are of victimisation and disability discrimination. The disability discrimination claim has subsequently been withdrawn.
15. The victimisation claims set out in the claimant's second claim assert that the following were all protected acts:
  - 15.1. a grievance submitted on 12 March 2020;
  - 15.2. her appeal in respect of that grievance;
  - 15.3. her first claim to the Employment Tribunal of 11 June 2020
  - 15.4. an email sent to Tracey Conwell on 17 June 2021,
  - 15.5. an email sent to Mark Pugh on the 29 June 2020;
  - 15.6. an email of the 4 July 2022 Leanne Pearce.
16. The claimant alleges five acts of detriment which she says amounts to victimisation.
17. On 30 October 2020 the claimant's solicitors, Slater and Gordon provided further and better particulars of her claims. The first paragraph of those particulars states *pursuant to the claimant submitting an Employment Tribunal claim on 11 June 2020, the claimant submits these further and better particulars.*
18. The second paragraph states *for the avoidance of doubt the claimant is a British Asian person who brings claims of direct race discrimination under section 13(1) of the Equality Act 2010 and victimisation under section 27 of the Equality Act 2010.*
19. The further and better particulars set out in narrative description of the treatment that the claimant alleges by the respondent, naming a number of individuals. The description of her treatment spans the years 2014 to 2020 and includes a description of the grievance process and the grievance outcome. The narrative is over 50 paragraphs long.
20. The further and better particulars also refer to institutional racism and the claimant's belief that statistical evidence exists which would support her claim.

21. At paragraph 62 there is a summary of complaints. The particulars state, at paragraph 63, that the events prior to 2018 are relevant background evidence in support of claim only.
22. At paragraph 64, the acts and omissions relied on by the claimant are set out.
23. At paragraph 65 the claimant's direct race discrimination claim is set out and the comparators relied upon are set out in paragraph 67.
24. At paragraph 69 -71 the claimant's victimisation claim is repeated. The further and better particulars are dated 30 October 2020.
25. On 18 November 2020 the respondent filed their ET3 in response, denying discrimination on grounds of race or disability.
26. A Case management hearing took place on 6 January 2021, and Ms M Cornaglia of Counsel provided submissions on behalf of the claimant for that hearing, dated 5 January 2021. In respect of the further and better particulars, the submission was made that no application to amend was required because *the further and better particulars do nothing more than clarify the factual details relied upon by the claimant in her original particulars of claim*. In so far as any application to amend may be required, it was submitted that it should be allowed in the interests of justice.
27. At the TCMPh, before EJ Smail, a further preliminary hearing in person was listed for 2 days to determine whether the claimant was a disabled person within the meaning of the Act, and whether historic matters set out in the further and better particulars of 30 October 2020 could be relevant to the issues in the case, such that the ET would admit evidence of them. In part, this second matter refers to the fact of a settlement agreement which the parties had signed in 2014, and the question of its scope.
28. In the interim, the claimant withdrew her claim of disability discrimination.

### **The settlement Agreement – current position**

29. I have heard applications in respect of the settlement agreement and have given my judgment in respect of that, finding that it is a valid and binding settlement and that the claimant cannot bring any claim to the ET arising from any matter which it covers. This effectively means that claimant cannot bring any claim in respect of matters which predate 2014.
30. The claimant has asked for a reconsideration of that judgment, but at the time of writing the respondent is still to provide their response and no determination on the reconsideration has yet taken place.

### **The applications to amend the claim**

31. At the start of the two-day hearing, the parties jointly applied for the time to be used to determine the issues in the case, including determining any application being made by the claimant to amend her claim.

32. One reason for this, was that the parties had attempted to agree a joint list of issues, and during the process, the respondent asserted that the claimant appeared to add additional claims to the list, which had not been set out in either of her claims to the ET or in her further and better particulars. Whilst the detail of the allegations was unclear, the alleged new claims were claims of indirect discrimination and of additional claims of victimisation.
33. I agreed that this was appropriate and spent some time with the parties trying to pin down what the claimants application was and what the details of the proposed amendments were.
34. During the course of discussion and over-night, the respondent agreed to a number of amendments, where the claimant was providing further details of her existing claims for example.
35. Having identified the amendments as far as it was possible to do so, and having identified the claims in the case which the claimant wanted to add them onto, I heard the claimants application and the respondents objections.

### **Background correspondence between the solicitors.**

36. The parties provided me with a bundle of relevant documents which included some of the correspondence between the parties in respect of the attempt to agree a list of issues. I have summarised this below as it is of relevance to the determination of the application to amend.

37. On 4 February and following the Case Management Hearing at which the claimant was represented by counsel, the respondent solicitor wrote to the claimants solicitors, responding to the claimants proposed final list of issues in the case. She stated as follows:

*Dear Rhydian*

*Please find attached the Respondent's comments on the amended list of issues.*

*For the most part, I have accepted the changes made (including the removal of the Respondent's position on the Claimant's allegations). There are a few parts where I consider that the deletions have the effect of making the Claimant's case less clear and I have reinserted the original wording / appropriate wording.*

*In respect of the historic allegations, Counsel for the Claimant at the PH in January confirmed that the Claimant would not be seeking to rely on any pre-2013 allegations (i.e. those covered by the settlement agreement) either substantively or by way of background. I asked the Judge to reflect this in the Case Management record and he suggested instead this was included in the LOI. While this wouldn't have been my preferred approach, that is what I have done. I have in the amended LOI referenced the Claimant as not relying upon any pre-2017 events. The strong view of EJ Smail at the PH (as well as the Respondent's views, reflected in its submissions) was that it would be unhelpful to include background allegations that were historic, would add to disclosure and related to different individuals than the issues to be determined. It is not possible to draw inferences from what (for example) Nicola Parsons did to what Hazel Hogfress and others are alleged to have done later. Therefore the inclusion of background allegations will be unlikely to assist the Tribunal in determining the issues and yet will add to the time, cost and complexity of the case (which is already significant).*

*If agreed by the Claimant, this would cover any allegations referred to in paragraphs 9 – 17 of the FBPs. It may be that the Claimant continues to wish to rely on the 2014 – 2017 allegations by way of background only, in which case I should be grateful if you could confirm the same.*

*Kind regards*

38. On 4 March 2021, following withdrawal of the claim of disability discrimination, the respondent solicitor wrote to the claimant solicitor with an amended list of issues, reflecting that withdrawal and asking whether the list of issues was agreed. A further reminder was sent on 1 April 2020 asking for confirmation of the agreement of the list of issues. A further exchange took place and a further request was made by respondent solicitor for confirmation in respect of the list of issue on 12 April 2020. One ongoing query was whether or not the claimant intended to seek to rely on historic matters. On 14 April 2021 the Claimants solicitor replied to the respondents stating that he hoped to be able to update them by close of business on 14 April 2021.

39. On 15 April 2021 the claimant wrote in person to the respondents stating that she was no longer represented by Rhydian Reeves or Slater Gordon and was now a litigant in person.

40. The claimant also wrote to the ET on 15 April 2021, making an application to amend her claim, to include adjudication of all matters arising since 2013. She stated:

*I wish to amend my claim to overcome a conflict of interest that has emerged and which effectively narrowed the basis of my claim to exclude many of the issues which I detailed in my ET1.*

*My former representative Rhydian Reeves was not acting in accordance with my instructions but on the conflicting instructions of the Nationwide Group Staff Union, who have close ties with the Respondent. This circular arrangement has confused the issues and I am now litigating in person so as to ask for adjudication on all events from 2013 onwards.*

*As I have recently removed my claim for disability, in the PH listed for 29-30 April 2021, I hope add to the agenda consideration of my contention that my settlement agreement should be set aside as null and void given that my redundancy dismissal at the end of 2013 was an act of racial discrimination. I will further argue that the Respondent's HR department is at the root of all the discrimination I have suffered and that the discriminators in each of the 3 cases (2013, 2014/2015, and 2018 onwards), were acting under the guidance and within the processes and procedures defined by HR. These therefore form part of a continuing course of discriminatory conduct which still continues unabated, and in which HR remains complicit.*

41. The respondents therefore asked the claimant for her comments on the list of issues.

42. On 20 April 2021 the claimant confirmed the names of HR protagonists she was making allegations against.

43. On 22 April 2021 the respondent wrote to the ET asking that the PH consider the application to strike out any part of the claimants claim that was covered by the settlement agreement of 27 January 2014
44. I set out the chronology of the pleadings and a description of the correspondence between the parties over the attempt to agree a list of issues to which I have been referred, in an attempt to identify the issues set out within both claims and the further and better particulars and those issues which have been added into the list of issues by the claimant very recently and which are new and additional issues.
45. The respondent prepared a very helpful position paper in advance of this hearing to which she attached the latest version of the draft list of issues. She has indicated within the draft list those matters which the respondent asserts are not set out in either set of pleadings or in the further and better particulars and in respect of which the respondents say an application to amend is required, and which is resisted by the respondent.
46. The claimant has only set out her allegations in respect of indirect discrimination and in respect of some allegations of victimisation, for the first time in the draft list of issues and it has been necessary for the respondent to carry out a significant amount of work in order to identify these matters and I have also spent significant time during this hearing discussing the issues with the parties.
47. Following discussion of the proposed issues the respondent has taken a pragmatic approach and agreed a number of amendments. The matters that remained in dispute before me were in respect of the following matters, which the respondent asserts required formal application to amend and which the respondent objected to:
48. The claimant's claims of indirect discrimination which are as set out in the draft list of issues follows:
- 48.1. The Claimant relies on the following practices as evidence of indirect race discrimination:
- 48.1.1. The Respondent, Nationwide Building Society, is an institutionally racist organisation that has always operated and continues to operate with a staff Ethnicity Pay Gap which has always impacted and continues to impact the Claimant.
- 48.1.2. The Claimant has always been and continues to be disadvantaged by the failure of the Respondent to implement fair internal recruitment procedures to protect BAME staff from the poor outcomes in career progression.
- 48.1.3. The Respondent has failed to properly investigate and address any of the Claimant's Racial Discrimination grievances and appeals despite evidence that BAME people are disproportionately disadvantaged in this organisation and that BAME staff are poorly represented at mid and senior job levels.
- 48.1.4. The Respondent's Director of People and Culture (known as HR) continue to promote and practice processes and procedures which have disadvantaged the Claimant.

- 48.1.5. The Respondent's Head of Recruitment continues to employ practices and procedures which have disadvantaged the Claimant in her internal job applications.
49. The claimant seeks to add the following claims of victimisation
- 49.1. In 2015, Nicola Parsons began a targeted campaign of victimisation, enlisting the aid of Toby Silvester and Martin Punter, against the Claimant in response to Protected Act 9 -*The respondent objects to this amendment and asserts that it has not been pleaded and is significantly out of time*)
- 49.2. In November 2019, the conversation at RB 432, heavily redacted by the Respondent, occurred between Toby Silvester and Martin Punter to continue to prevent the progress of the Claimant despite her not having worked with them for 4 years, as a consequence of Protected Act 9. *The respondent objects to this amendment, and asserts that it has not been pleaded and is significantly out of time. In addition, it is asserted that in any event this predates any of the pleaded protected acts*
- 49.2.1. On Wednesday 21 April 2021, The Claimant was asked by her Line Manager to refrain from contacting her colleagues (alleged to be on the grounds of Protected Acts 1,2,3,4 and/or 5). *The respondent objects to this amendment and asserts that it has not been pleaded.*

## Applicable Legal Principles

50. An Employment Tribunal only has jurisdiction to determine the case put before it, not some other case (per Gibson LJ at paragraph 42 of **Chapman-v-Simon** [1994] IRLR 124). If a case is not before the Tribunal, an application to amend is needed to include it.
51. When considering whether or not to grant an application to amend I remind myself that I must take into account all relevant matters and that these will vary from case to case. In particular I must consider and balance any injustice or hardship which may be caused either to the claimant or to the respondent if the proposed amendments in this case were allowed or if they are refused. These are paramount considerations. see for example **Vaughan v Modality Partnerships UKEAT/0147/20/BA** )(V) and **Cocking v Sandhurst (stationers) Ltd** 1974 ICR 650 at 657.
52. In **Selkent Bus Company Ltd-v-Moore** [1996] ICR 836 EAT, which approach was also endorsed by the Court of Appeal in **Ali-v-Office of National Statistics** [2005] IRLR 201 CA, Mummery J set out examples of factors that might be relevant to an application to amend and I remind myself that these are not a checklist to be ticked off in order to determine an application but are factors to take into account when carrying out the fundamental exercise of balancing the injustice or hardship of allowing or refusing an amendment.
53. My starting point for consideration of the balance of hardship has been to consider the practical consequences of either allowing the proposed amendment or of refusing the proposed amendments. This involves consideration of factors such as whether the length of time that has passed since the events relied upon leads to



practical problems because their recollection of events may have faded with the passage of time for example?

54. If an amendment is refused what will the effect of that refusal be on the claimant? In this case the applications to amend are all made by the claimant. I remind myself that a refusal to allow an amendment inevitably involves a potential or perceived prejudice to the person making the application.

55. I have also considered the applicability of time limits in this case and the primary time limit as well as the timing and manner of the application itself. These are factors which may assist in carrying out the fundamental balancing exercise, but they are not necessarily the only factors.

56. I must also consider whether and to what extent any amendment granted may result in a respondent suffering prejudice because they have to face a claim which would have been dismissed out of time had been brought new claim for example, and weight this against the prejudice to the claimant of not being able to bring her claim in the way she now wants to do.

57. I have also considered whether the respondent face practical difficulties in responding to an amendment made at a late stage?

58. I have also reminded myself that the

### **Submissions and considerations**

59. Both the claimant and the respondent made submissions in respect of the application to amend.

60. The new allegations made by the claimant are in respect of matters which happened, on her case in and after 2014. They are , on the face of it significantly out of time.

61. In respect of the timing of the claims, the claimant accepts that she has been aware of the allegations she now wishes to make, and add, for some time. She did not suggest that she had not known of them at the time that she filed her first claim to the ET, or when her solicitors filed her second claim or the further particulars in respect of her first claim. She also does not suggest that she did not know of them when the matter was considered at the TCMPH.

62. What the claimant does say is that her legal representatives did not properly represent her claims. Her legal representative did not however draft her first claim to the ET in which she made specific reference to her line manager at the time.

63. The claimant and her representative have now parted company, but the claimant has not explained further what instructions she gave her solicitors which were ignored or misunderstood or incorrectly recorded, for example.

64. She asserts that she will be prejudiced if she is not able to pursue her claims of indirect discrimination and asserts that she had always intended to bring such a claim.

65. She also alleges that she will be prejudiced if she is not able to bring further claims of victimisation.
66. Miss Masters counsel for the respondent asserts that the matters which the claimant now seeks to add were matters which were within her knowledge at the time her first and second claims were filed to the ET and could have been included within in them.
67. The respondent points to the fact of the claimant being legally represented at the point when her second claim was submitted and the further better particulars of the first claim provided. These are full particulars and are assumed to represent the claimant's instructions at the time.
68. The respondent alleges that they will be significantly prejudiced by having to deal with yet further allegations in a claim which has already developed beyond what was initially pleaded .The reason for the prejudice is that the matters date back many years, and will involve calling additional witnesses and asking them to recall matters from a number of years ago. There is a real and well based concern that memories will have faded.
69. In addition the respondent submits that the claimant will not be prejudiced by a refusal of an amendment in respect of indirect discrimination, because the matters she wants to raise as indirect discrimination can be dealt with as part of her existing claim of direct discrimination. The allegations she makes are more akin to direct discrimination, or evidence that may support an allegation of direct discrimination.
70. The claimant asserted that her case was similar to the case of *Essop*, but that does not assist me.
71. The respondent suggests that the reason why no claim for indirect discrimination was made initially or identified by her legal representatives or counsel, is more likely to be because the matters she alleges are properly alleged as direct discrimination.

## Conclusions and Reasons

72. Is an Application to amend necessary?
73. The first stage of my decision was to consider whether or not any of these matters are pleaded within either the initial claim form or whether they have been set out within the further and better particulars.
74. I have reviewed the claimants first and second ET1 forms, and the associated narratives, and her further and better particulars as well as the submissions set out on her behalf by counsel for the purposes of the case management hearing. I find that there is no claim of indirect discrimination in respect of any protected characteristic referred to at all.
75. Both claims are detailed, and the further and better particulars are expressly stated to include no new claims.

76. Whilst victimisation has been alleged in the original claim forms, the acts of victimisation relied upon have been set out specifically and in detail, and do not include the allegations now raised as being acts of victimisation.
77. In respect of the application identified in paragraph 49 above, the facts now alleged are wholly new set of facts. The claimant has referred to Ms Parsons in her first ET1, but does not refer at all to either Mr T Silvester or Mr M Punter, and does not make reference to any of the factual matters she now alleges.
78. It is therefore necessary for the claimants to make an application to and she confirmed that she was therefore applying to amend to add the claims as set out above.
79. I have considered and set out in some detail above the chronology of the claimant's first and second claim to the Employment Tribunal. I have considered the advice and representation that she has had at various stages as her claims progressed and I have also considered the nature and the detail of those claims. I have considered the timing and the context and circumstances of the applications now being made to amend and I have considered whether those claims could have been brought as in time claims.
80. I have also considered what the effect will be on the claimant if applications to amend are refused. Will she still be able to raise concerns that she has about discrimination before the employment tribunal? If she will not be able to raise the concerns I have considered whether the balance of hardship or prejudice is greater for the respondent. I have looked at this particularly in the context of the application to amend by adding claims of victimisation in respect of matters that arose some years ago.
81. In respect of the claimant's application to add claims of indirect discrimination, I have taken into account both what has been written on the face of her first and second claim and the further and better particulars and I do not accept that the claimant has identified either an appropriate PCP nor has the claimant identified the disadvantage which the claimant says she and others suffered as a result and nor has the claimant set it out in any way that it is evident that there is a claim on the face of the claim. That of itself does not mean that the claimant cannot make an application to amend.
82. I have looked at the nature of her claim and I agree with Miss Masters that the claim the claimant makes is properly put as one of direct discrimination. It is a discrimination claim about appointments and progression internally, in which the claimant alleges that particular individuals made decisions which the claimant thinks were either consciously or subconsciously influenced by the fact that the claimant is Asian.
83. The claimant is not prevented in a direct discrimination claim from making reference to other evidence that she says supports her allegations that her employer was an institutional racist organisation. She says she has evidence of poor outcomes for black and minority ethnic people in grievance procedures which

may well be relevant. It does not seem to me that she is prevented from referring to that because she is bringing a direct discrimination claim.

84. Similarly, evidence showing the number of black and minority ethnic employees who progress above a certain level is the sort of evidence that might support a claim of direct discrimination. I referred the parties to the case of ***Rihal v London Borough Ealing CA*** for example.
85. The distinction between the claimant's claim and the claim in ***Essop & Others v Home Office*** is that in ***Essop*** there was a very particular aspect of the process which appeared to be causing the problem and it was identifiable. The claimant's submission is that internal application should have been anonymised to remove the possibility of subconscious bias by individuals. This appears to be about direct discrimination, and not indirect discrimination.
86. It is the claimant's decision how she puts her claim at the outset but at this stage in proceedings, it is not desirable or proportionate to grant the claimant leave to amend her claim to put her claim in another way.
87. The application to amend is made after an initial case management hearing has taken place at which the claimant was again represented by counsel.
88. The fact that the claimant has recently parted company with those she had instructed and that she appeared before me as a litigant person. I have taken into account the claimant's concerns that matters which she now wishes to raise were not been set out at the earliest stage in her pleaded case by her solicitors or raised by counsel. However, the claimant has not produced or provided any evidence of any occasion on which she raised either indirect discrimination or the specific allegations of victimisation that she now makes with her solicitors whilst they were still instructed.
89. The claimant's application to amend in respect of indirect discrimination is now significantly out of time. I find that the claimant knew of the matters which she now alleges before she filed her claim and throughout the period when she was instructing the legal advisers. I have no evidence before me explaining why she was not able to bring her claim at an earlier stage in the process, or refer to these matters when she filed her first claim. I find that she was able to do so and that there is no reason why she did not do so either then or at date before this application. I do not accept that she could not have instructed her legal representatives to do so, had she chosen to. I have no evidence to support such a conclusion.
90. I conclude that it is therefore proportionate to the issues and in line with the overriding objectives and it is also of no prejudice to the claimant to reject her application to amend by adding a claim of indirect discrimination.

### **Application to add claims in respect of events in 2015**

91. In respect of the claims relating to Nicola Parsons in 2015 and the claims in respect of Mr Hunter and Mr Sylvester, I have considered the nature of the claims originally made and the timing of them, as set out above.

92. These new claims name Ms Parsons, which was referred to in the claimant's first claim, and also refer to Mr Silvester and Mr Punter, who as I have set out above have not been identified at all in any earlier pleadings.
93. The events which the claimant wants to make claims in respect of, are new matters not referred to or set out anywhere in any part of her pleadings of further particulars.
94. The matters are, on the face of it, significantly out of time.
95. Although I am not determining whether or not time should be extended and I am not determining whether or not these matters are part of a continuing course of conduct I am struck by the fact that these matters took place in 2015 and that the claimant has known about them for a very long time. The claimant could have brought the claim to the Employment Tribunal about those matters. They are very old, and I have considered the prejudice to the parties both to the claimant of not being able to proceed with that claim and of the respondent of having to deal with it. The respondent's witnesses may well have difficulty remembering events which took place almost 6 years ago.
96. I have also considered the additional time, and cost to the respondent, that would be added onto a hearing which has been listed and cases managed on the basis that the claim is one which focuses on matters primarily in respect of 2017 and onwards.
97. I conclude that the balance of prejudice would be significantly against the respondent and that it is not in line with the overriding objective to allow the amendment of the claim in this respect and I refuse it.
98. In conclusion, the claimant's applications to amend are all refused. The claimant's claims are as set out in the finalised list of issues agreed following this hearing.
99. In respect of the allegation made against Mr Hunter and Mr Silvester the claimant raises an issue about an email which appears, on the face of it, to be relevant to the question of discrimination. I have specifically granted the claimant leave to include it in the bundle of documents and to make reference to it as background evidence to her claim.
100. In respect of the job security policy I find that the claimant made an application to be granted some benefits under this policy when she returned to work for the respondent for a second time in 2014.
101. Her application was refused. She has made subsequent applications but has never raised a claim in respect of the policy or her 2104 refusal before.
102. I refuse her leave to amend her claim to include it add such a claim now. The claimant knew of these matters when she filed her first claim and for years before and has given no good reason for not making an earlier claim. The prejudice to the respondent of having to deal with a claim made so many years out of time, outweighs any prejudice to the claimant, who could have brought a claim had she wished to do so, many years ago.

103. It would be prejudicial for the respondent to have to deal with this matter many years later.

**Employment Judge Rayner**

**Date: 25 June 2021**

Judgment and Reasons sent to the Parties: 20 July 2021

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.