Case number CVP 2603505/2020

EMPLOYMENT TRIBUNALS

Claimant: Mr D Martin

Respondent: WM Morrisons Supermarkets Plc

Heard at: Nottingham Employment Tribunal

On: 7 and 8 June 2021

Before: Employment Judge Broughton

For the Claimant: In Person
For the Respondent: Mr Bidnell- Edwards – counsel

Covid-19 statement:
This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.

JUDGMENT

The judgment of the Tribunal is as follows;

I. The amendment application to add a claim of breach of an equality clause pursuant to section 127 (1) Equality Act 2010 is refused.

II. The claim of sex discrimination under the Equality Act 2010 is struck out on the grounds it has no reasonable prospect of success under Rule 37

III. The claim of disability discrimination is struck out under rule 37 and the application to amend to include new claims is refused.

IV. The amendment to the claims under sections 47B, 100, 103A and 94 and 98 Employment Rights Act 1996 are permitted.

V. The application to amend the claim brought under section 146 (detriment on the grounds related to union membership or activities under section 46 of the Trade Union and Labour Relations (Consolidation) Act 1992) is refused and the claim is struck out under rule 37.

VI. The application to include a claim for unlawful deductions of wages/ breach of contract for the failure to pay the claimant's wages on 11 May 2018 is refused.

VII. The amendment to the claims for breach of contract/unlawful deduction from wages in relation to the wages and expenses payable in connection with the appeal and grievance hearings, performance related pay and overtime payments, are permitted.

DEPOSIT ORDERS

VIII. The Employment Judge considers that the claimant's allegations that;

a) He was subject, pursuant to section 47B Employment Rights Act 1996, to the detriment of being made to carry out extra hours and carry out extra work and was 'treated differently' because he made protected disclosures, has little reasonable prospect of success. The claimant is ORDERED to pay a deposit of £200 not later than 14 days from the date this Order is sent as a condition of being permitted to continue to advance those allegations or arguments. The Judge has had regard to any information available as to the claimant's ability to comply with the order in determining the amount of the deposit.

b) He was dismissed for a reason pursuant to section 153 and 152 of the Trade Union and Labour Relations Consolidation) Act 1992 Employment Rights Act 1996, has little reasonable prospect of success. The claimant is ORDERED to pay a deposit of £200 not later than 14 days from the date this Order is sent as a condition of being permitted to continue to advance those allegations or arguments. The Judge has had regard to any information available as to the claimant's ability to comply with the order in determining the amount of the deposit.

IX. All other remaining claims will proceed to the final hearing.

REASONS

Background

1. The claimant was employed by the respondent as a Night Team Manager, from 27 November 2017 to the 3 June 2020. The claimant presented a claim form on 14 September 2020 following a period of Acas early conciliation which commenced with the date of receipt of the notification on 10 September 2020 and finished on the date the certificate was issued on 11 September 2020.

2. The claim form at paragraph 8 indicated a claim for unfair dismissal and discrimination on the grounds of age and disability. The form also indicated another type of claim which the claimant described as; "*victimisation – selected inappropriately for redundancy due to raising issues at work related to health and safety and failure to adhere to process and procedures…"*

3. The claimant had also ticked box 10.1 which is relevant to those bringing a 'whistleblowing' claim.

4. After submitting the claim form the claimant wrote to the tribunal on 29 October 2020, repeating an earlier request made on 30, for a copy of documents that were submitted as part of his ET1. The claimant was informed on 4 November 2020 that the tribunal had not received an attachment with his ET1.

5. The claimant sent in documents on 12 November 2020 which he asserted to be documents he had attempted to upload and attach to his ET1, comprising a document just over two pages in length providing more details of his claim which appears in the agreed bundle at pages 40 – 42, transcript of a telephone call on 3 June 2020 and a number of emails.

6. The claimant was not legally represented when submitting the form.

7. The respondent defended the unfair dismissal on the grounds that the dismissal was fair and on the grounds of redundancy. The respondent denied dismissal on the grounds that the claimant had raised health and safety issues or because he was a trade union representative. It admitted within the grounds of resistance that the claimant had *"raised a whistle blowing style complaint*" which included the wearing of headphones by day and night staff. This complaint was dealt with under the grievance procedure. The respondent within the response requested further particulars of these claims. The respondent denied contravening the Equality Act 2010 and requested further particulars of the claims.

8. The claim was listed for a 3-day hearing in February 2022.

Preliminary Closed Hearing – 9 December 2020

9. There was a preliminary hearing before Employment Judge Ahmed on 9 December 2020. The claimant attended in person and the respondent was represented by counsel. The record of that hearing sets out the claims being pursued as;

    9.1 Ordinary unfair dismissal

    9.2 Automatic unfair dismissal for health and safety reasons

    9.3 Automatic unfair dismissal for having made a protected disclosure

    9.4 Detriment for having made a protected disclosure

    9.5 Detriment and dismissal for trade union membership

    9.6 Age discrimination

    9.7 Disability Discrimination

    9.8 Other payment.

10. Employment Judge Ahmed referred to the claimant providing a considerable amount of documentation which whilst lengthy did not on the fact of it appear to suggest that the various complaints have reasonable prospects of success. It was also recorded that it was not possible at that hearing to accurately define the issues at that stage. The case management orders were suspended, and orders made for the claimant to provide medical evidence related to his disability. The claimant's alleged disabilities were stress, anxiety and depression confirmed and

orders were made for disclosure of medical notes etc in support of whether the claimant was disabled at the relevant time and in impact statement, by 17 February 2021. The respondent was required within 14 days thereafter to confirm whether disability is conceded and if not the reasons why.

11. The order included a provision that the parties must within 14 days inform the tribunal in writing from the date the order was sent to them, if they disputed the accuracy of the record. Those 14 days expired on 25 December 2020. The claimant wrote on 22 December to the tribunal disputing not the accuracy of the claims as set out, but factual details recorded around the circumstances of the alternative role and the dismissal.

12. The case was listed for a preliminary for 2 days to determine;

    - *Whether the claimant was a disabled person within the meaning of section 6, and schedule 1 of the Equality Act 2010 in respect of the alleged impairments of stress, anxiety and depression;*

    - *To determine whether **any or all of the complaints** or any allegations or arguments should be struck out if it is considered they have no reasonable prospect of success within the meaning of Rule 37 (1) (a) of the Employment Tribunal Rules of Procedure 2013;*

    - *Alternatively to determine whether the claimant should pay a deposit as a condition of continuing with any or all of the complaints if it is considered that they have little reasonable prospect of success and if so to decide the amount of the deposition to be ordered;*

    - *To make such case management orders as are necessary for the future conduct of the case*

13. While listed to determine whether the claimant was disabled, the case was at the same time listed to determine whether all claims, including the claims of disability discrimination had reasonable prospects of success.

Amendment Application

14. On 8 May 2020 the claimant by email to the tribunal and respondent, stated that he wanted to amend his claim to "*ensure sex and equal pay is confirmed and added*" to his claims. The claimant did not set out details of the claim but referred to the complaints being 'visible throughout' his employment and in tribunal proceedings and being linked to the existing claim.

15. On the 14 May 2021 Employment Judge Heap commenting on the amendment application, informed that claimant that before that can be considered further the claimant would need to set out a draft of the amendment that he wants to make setting out both he factual and legal basis of the additional complaints. A copy of the Presidential Guidance was attached and the claimant was informed to make that application sooner rather than later and it can then be determined at the preliminary hearing. No amendment application setting out the details of the amendment was provided by the claimant.

Today's Hearing

16. Today's preliminary hearing was conducted remotely via Cloud Video Platform. The parties had prepared a bundle of documents which numbered 294. The claimant had produced a witness statement, it was quite lengthy running to 24 pages and was in effect a witness statement for the liability hearing rather than limited to the issues relevant only to this preliminary hearing.

Disability

17. With respect to the issue of disability, the respondent had confirmed on 18 February 2021 (p.85 and 86) that the issue of disability remains in dispute. There was some discussion about whether the claimant wanted a further medical report however the claimant decided that he wanted to proceed to determine the issue of disability today and he confirmed that he understood and was content to do so even when it was explained to him that the tribunal may determine that there is not enough information before it to making a finding that he is disabled as alleged.

18. The claimant has been unrepresented throughout and the claim form was brief. Before being able to determine whether any or all of the complaints or any allegations or arguments should be struck out on the grounds they have no reasonable prospect of success or whether the claimant should pay a deposit as a condition of continuing with any or all of the complaints, it was necessary to clarify the claims. Identifying the claims was not something which had been determined at the first preliminary hearing and therefore at this stage, although the heads of claim had been set out in Employment Judge Ahmed's order, it was unclear what the exact claims were.

19. It was decided, with the agreement of the parties, to first clarify the claims, consider the merits and whether any order under rule 37 or 39 should be made in connection with any of them, and only then move on to deal with the issue of disability, should the claims of disability discrimination be allowed to proceed.

Further clarification of the claims

Ordinary unfair dismissal

20. The claimant was dismissed on 3 June 2020. The respondent's case is that there was a reduction in the number of managerial positions and that the termination of the claimant's employment was fair and that it acted reasonably in treating the redundancy / reorganisation/ claimant's conduct and or the relationship breakdown as sufficient reason for dismissal.

21. Neither party were able to confirm to the tribunal today how many of the respondent's stores were affected by the redundancy situation or indeed the number of management roles at the store (Hinckley), before and after the restructuring exercise.

22. The claimant initially informed the tribunal that he disputes that the real reason was redundancy however, he then qualified this to explain that he accepted that there was a redundancy situation with respect to the reduction in management roles but that he considers the process and the way it was implemented was unfair.

23. What appears not to be in contention is that those who were successful in the section for the new roles, were appointed into level 3 management positions and those who were not successful, were offered redundancy or other roles.

24. The claimant complains about not being selected for a level 3 management role and how he was treated when he was put into the pool of those who had not been successful in terms of other roles.

25. The claimant complains that he should have been given the alternative role of a customer assistant role at the Hinckley store. The respondent in its ground of resistance refers to the claimant being contacted ion 28 February 2020 and told that he had been successful in securing a role and told that it was the respondent's intention that all unsuccessful managers would be retained as customer assistants on a minimum contract of 28 hours with six periods of pay protection. The claimant informed the tribunal that an email dated 3 or 4 May 2020, confirms that

there was no intention of keeping the claimant employed at the Hinckley store. Those involved in that decision he alleges were; Ed Noble, People Manager and Jo Ward, Regional People Manager.

26. The respondent in its grounds of resistance referred to the claimant blaming Mr Noble for his work related stress and accusing him and Callum Davis of lying and that the respondent revoked the offer of alternative work as a customer assistant because; " *…of the claimant's conduct , and the Respondent's inability to satisfy the claimant with the appeal process and investigations performed, his working relationship was untenable and his job offer was revoked*." And that he was therefore treated as being redundant.

27. The claimant also complains that following disclosure from Unison of documents relating to the redundancy process, the respondent advertised externally for vacancies (in click and collect) and these vacancies were not discussed with him.

28. Counsel for the respondent after taking instructions, confirmed that the reason the respondent was relying upon as the reason for dismissal, was the redundancy in terms of the removal of his managerial position but "*then the final reason for his dismissal is conduct."*

29. After some discussion about the unfair dismissal claim, counsel for the respondent informed the tribunal that the respondent was not pursuing an order striking out the claim of unfair dismissal and nor was it seeking a deposit order.

Acas certificate

30. There was no issue with the time limit in terms of the unfair dismissal claim, however the claimant near the end of the first day of the hearing, referred to having an earlier Acas certificate. There was therefore the issue of whether the claim had been properly brought at all however the claimant produced the certificate on the second day of the hearing, which named the prospective respondent as Morrisons Plc. The date of receipt of the notice was 7 August 2020 and date of issue of the certificate was 28 August 2020. The claimant explained that he had sought a second certificate because the name of the respondent was incorrect in the first certificate. However, although not referred to in box 2.7, the claimant had included the earlier Acas number within the claim form at box 15 in the additional information section. Counsel for the respondent conceded that in his opinion the claim had contained the information required under rule 10 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("Rules") in that the form had included the required information and that the name on the first Acas certificate was not a 'million miles' away from the respondent's correct name and accepted that there was "no obvious other Morrisons Plc". This is addressed further in the conclusions section below.

31. **Automatic Unfair Dismissal:**

a. section 100 ERA – health and safety cases

b. section 103A – protected disclosure

32. The claimant informed the tribunal today that he had raised health and safety issues during his employment. His case is that he was dismissed because of one or more of those disclosures and relies upon the same disclosure for the automatic unfair dismissal claims brought under section 100 and 103A ERA.

33. The alleged disclosures are not set out in the claim form. The claim form only refers to "*raising issues at work related to health and safety and failure to adhere to process and procedures and working practices related to my role and as a union representative".*

34. We took a considerable amount of time today trying to clarify the complaints with the claimant.

a. Health and Safety: section 100 ERA

35. The claimant was taken to section 100 ERA and the tribunal read out the provisions to him. He stated that he relies upon section 100 (1)(a) in that as a manager he was designated to carry out health and safety duties.

36. He also relies upon section 100 (1)(b) in that as a union representative for Sata he is a health and safety representative and should have been in attendance at health and safety meetings, albeit he complains that he was not invited to attend them.

37. Further, he seeks to rely on section 100 (1) (c) (ii) in that although he know understands that there was a health and safety representative on site, it was not reasonably practicable to raise the matters with them because he complains that he did not know there was one at the time because Pauline Clarke (who he now believes was the representative) worked on the night shift and he never received any direction from her, correspondence or attended any meetings with her.

38. The tribunal read out section 100 in full and observed that section 100 (d) and (e) did not appear to apply.

b. Protected disclosure – section 103A ERA

39. The tribunal read out section 43B ERA to the claimant and sought to explain the provision to him whereupon he stated that he felt the type of alleged wrongdoing relevant to the alleged disclosures were all of them i.e. section 43B (1) (a) through to (f), other than (e) (damage to the environment).

40. The claimant explained that if there was a fire in the store and staff were wearing headphones and playing music, they would not hear the fire alarm, which would be a breach of the health and safety regulations and he believes gives rise to criminal liability as it may result in serious injury or death.

41. In terms of miscarriage of justice, it was difficult to see how this type of malpractice was applicable. The claimant argued before the tribunal that the respondent ignored his disclosures and dismissed him for making those disclosures, that the respondent had breached the equal pay provisions and breached its policies. The tribunal read out from the IDS handbook examples of miscarriages of justice and explained that it remained unclear how this subsection applied to the circumstances as described by him.

Trade Union Membership: detriment – section 146 TULRCA

42. The tribunal read out section 152 TULCRA to the claimant and he asserted that section 152 (1) (a) (b) and (ba) all applied to his claim without clarifying the basis for that. The claimant referred to acts of *detriment* he was complaining about and when asked to direct the tribunal to where in the various documents including those he had sent in to the tribunal (and there were a number of lengthy documents which have been sent in) these were set out, the claimant referred to all the evidence being in 'emails' to and from the respondent. He stated that he had not understood

he was required to provide this further information today, that he would have to go through the documents to identify the dates and acts complained of but would be in a position to do so. The claimant again complained of not being told that this level of information was required for this hearing.

Age discrimination

43. The claimant accepted that there was no reference to an age discrimination claim in the claim form or the supplemental document (p.40 – 43).

44. The claimant complains that out of 17 people who were at risk of redundancy at the store, he was the only one of two people not to get an alternative job. He was 47 at the relevant time. He referred to another manager being selected because of his age and he believes the other person was a bit older than him, he requested he alleges, information about the other persons age, but this was not provided by the respondent. He believes the other managers were younger than him. He complains that the dismissal and the way the redundancy process was implemented was because of his age.

Other payments

45. The claimant complains that he worked overtime and extra hours for which he was not paid. He has produced a schedule of loss but this does not confirm all the sums claimed. The claimant contends in his schedule that documents in the possession of the respondent will assist him to quantify the claims. That he was making a claim for 'other payments' was recorded by Employment Judge Ahmed at the first preliminary hearing.

46. The claimant also informed the tribunal at this hearing, that he had 1 week prior realised from seeing his time card and absence report, that when he returned to work on 11 May 2018, he was recorded incorrectly as on unauthorised absence and was not paid for that day. He did not allege this was discrimination but explained that 'hopefully it was a mistake' but wished to amend his claim (he accepted this was not a complaint within the original claim form) to include this claim which as described would be a claim for unlawful deduction and/or breach of contract. He explained that he had a payslip at the time but he did not notice at the time because it did not 'stand out' and his wife deals with his wages. He had the time cards on the 11 May but he had realised on seeing the week before this hearing in documents disclosed, that it had been recorded incorrectly as unauthorised absence and only then did he check the wages he had received.

Equal Pay

47. The claimant accepted that he had not pleaded this in the claim form but argues that it is linked to his existing claims and that he had raised this in his correspondence to the tribunal in May 2021. He had he had not prior to today's hearing made an application to amend which set out details of the factual and legal basis of the claim. He explained today that his complaint is that two female managers carrying out the same role (ie like work) were paid a higher salary.

Sex discrimination

48. The claimant confirmed that the sex discrimination claim relates only to the equal pay complaint, there is no other separate sex discrimination claim.

List of issues

49. The tribunal was concerned that the claimant was unrepresented and following the first day, he had provided a significant amount of information and that he had clearly felt under pressure during the hearing to provide those details. The tribunal prepared a document on 7 June 2021 (following the hearing) setting out a draft list of issues which sought to reflect the further information provided by the claimant during the course of the hearing. The document was provided to the parties on the morning of the 8 June and they were asked to confirm agreement to the same. Neither party sought to dispute that it capture what had so far been discussed.

50. The underlining in the draft list (which was shown in red in the original document provided) , indicates where at the end of the first day of the hearing further particulars were still required and where the claimant had agreed to consider these matters overnight and provide those further details for the morning of the second hearing. The claimant had informed the tribunal on the first day of the hearing, that he would be in a position to provide a list of all the emails and telephone calls in which he alleges that he made protected disclosures or raised health and safety concerns. He was ordered to provide a written list for the start of the second day of the hearing which would include with respect to the emails; the relevant dates; who each email was sent to, confirm the disclosures and wrongdoing alleged to have been raised. The list was also to contain details of the telephone calls, to includes; the date of each call, who the calls were with, the disclosure and wrongdoing disclosed. The intention was to complete the above draft list of issues which would include the further particulars of the claim (including where these may amount to amendments)/

51. The claimant had produced a document entitled 'chronology' and he asserted that this document included the list of alleged detriments. It was not possible to decipher the detriments from this document and indeed when asked whether the claimant could do so and clarify what they were, he responded that he could " *but not quickly*" and complained that had he been aware this information was required he could have set it out months before. It was 33 pages of close type which had not been included within the agreed bundle but sent to the tribunal and copied into the respondent on 11 May 2021 (a copy was on the tribunal file).

52. The claimant was informed by the tribunal that when dealing with the disability claims on the second day of the hearing, the tribunal would require further particulars from the claimant including what the ' something arising from' is in terms of the section 15 claim and in terms of the reasonable adjustment claim what the PCP is which is relied upon. It was explained to the claimant what is meant by 'something arising from' with examples given to him and what is meant by a PCP. The claimant was also referred to the EHRC code for guidance.

53. The emboldened and underlined wording in the list of issues below are the further details provided by the claimant on the second day of the hearing.

54. The further details produced by the claimant reflect the extent of the further information the claimant was able to provide. The tribunal is mindful however, that the claimant had not been directed to provide further particulars in advance of the hearing and being unrepresented, was under some pressure during the course of the hearing to provide a significant amount of further particulars. As is clear from the list of issues below as they stood as on the second day of the hearing, some of the complaints would still require further particularisation but this was the extent to which the tribunal was able to clarify the claims during the time available.

55. ***List of issues***

1. ***Time limits***

1.1 *Were the claims brought in time.*

1.2 *Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:*

1.2.1 *Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?*

1.2.2 *If not, was there conduct extending over a period?*

1.2.3 *If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?*

1.2.4 *If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:*

1.2.4.1 *Why were the complaints not made to the Tribunal in time?*
1.2.4.2 *In any event, is it just and equitable in all the circumstances to extend time?*

1.3 *Was the unfair dismissal / unauthorised deductions / detriments/ made within the time limit in section 111 / 48 / 23 of the Employment Rights Act 1996? The Tribunal will decide:*

1.3.1 *Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination / act complained of / date of payment of the wages from which the deduction was made etc?*

1.3.2 *[detriment] If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?*

1.3.3 *[unauthorised deductions] If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?*

1.3.4 *If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?*

1.3.5 *If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?*

2. ***Unfair dismissal***

2.1 *It is not in dispute the claimant was dismissed with effective from* ***3 June 2020.***

2.2 *What was the reason or principal reason for dismissal?*

2.3 *Was it a potentially fair reason?*

2.4 *Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant, including following a fair procedure?*

2.5 *What was the reason or principal reason for dismissal?*

The respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct (the claimant's role as

Night Team Manager Leader was made redundant following a restructure, he was offered an alternative role as Customer Assistant however this offer was revoked and his employment terminated on the grounds of alleged conduct)

2.6 *If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:*

2.6.1 *there were reasonable grounds for that belief;*

2.6.2 *at the time the belief was formed the respondent had carried out a reasonable investigation;*

2.6.3 *the respondent otherwise acted in a procedurally fair manner;*

2.6.4 *dismissal was within the range of reasonable responses.*

3. ***Protected disclosure: dismissal – section 103A ERA***

3.1 *Did the claimant make one or more protected disclosures as defined in section 43B of the Employment Rights Act 1996 and was the reason for dismissal (or if more than one, the principal reason) that he made a protected disclosure?*

3.2 *The Tribunal will decide:*

3.2.1 *What did the claimant say or write? When? To whom?*

The claimant says he made disclosures on these occasions:

3.2.1.1 ***April to June 2018****– verbally and in an email to Naomi McPhearson (People Manager at the Hinckley Store) and Anna clearly (Store Manager – Hinckley);*

- *Use of headphones by staff working in the store –cannot hear the fire alarms (H & S)*
- *Food hygiene – food being delivered and left on shop floor too long before being put into refrigerators (H &S)*

3.2.1.2 ***April/May 2018*** *and* ***June 2019*** *– in emails to Ms McPhearson; same disclosure as above*

3.2.1.3 *Verbally on almost daily basis between 2018 until Aug/Nov 2019 and in review meetings in* ***Feb and Sept 2018*** *and* ***Feb and Sept 2019*** *- David Marshall (Senior Manager in at the Hinckley Store); same disclosures as above.*

3.2.1.4 *Telephone call – on or around* ***June 2019*** *– David Carroll (H & S Manager);*

- *Use of headphones by staff working in the store –cannot hear the fire alarms (H & S)*

3.2.1.5 *Telephone call –* ***March 2020*** *- David Carroll (H & S Manager);*

- *Use of headphones by staff working in the store –cannot hear the fire alarms (H & S)*

Claimant's alleged he was told to contact the whistleblowing helpline

3.2.1.6 ***21 March 2020*** *– to whistleblowing helpline –*

- *Use of headphones by staff working in the store –cannot hear the fire alarms (H & S)*
- *Food hygiene – food being delivered and left on shop floor too long before being put into refrigerators (H &S)*
- *Breaching company policies; disciplinary and grievance, whistleblowing, attendance management, Acas code of conduct, policies around restructuring exercise*
- *Abuse of hours and pay (putting staff under pressure to work beyond contracted hours in store)*
- *Equal Pay – claimant and fellow male manager paid less than two female managers (Alicia Sewell and Kerry Landers)*
- *Allowing people to exit store with no control*

3.2.1.7 ***2/3 April 2020*** *– meeting with Sara Ross – same disclosures repeated as made to helpline plus*

- *Complained intimidated and told to sign notes*

3.2.1.8 *Further 4 calls to whistleblowing helpline –* ***21 March 2020, 19 April 2020, 5 May 2020 and 17 June 2020***

a. 21 March 2020;

- *Headphones used in store*
- *Food safety/ hygiene*
- *Equal Pay*
- *Breach of policies*
- *Abuse of hours/pay*

b. 19 April 2020

- *As above but also that restructuring not carried out fairly/ people involved lying/ colluding with claimant's union representative*

c. 5 May 2020;

- *As above and; fraud – taking documents out of the claimant's personnel file/ concerns being ignored.*

d. 17 June 2020:

- *As above but not disclosure that dismissed by people involved in dealing with disclosures/ Union talking to respondent about claimant without his consent.*

Note: Last disclosure post-dates dismissal – claimant alleges dismissal decision was upheld on 31 July 2020 after he made the disclosures including on 17 June 2020

3.2.1.9 ***30 March 2020*** *– Zac Crapper - verbally during appeal hearing*

- *Disclosures about the way the restructure was being deal with- whole process and how implemented it*

3.2.1.10 ***19 May 2020 –*** *James Goodfellow – at appeal meeting*

- *Repeated all previous disclosures (as above)*
- *And that forced to sign notes and while in meeting on 30 March 2020 he was required to wait in the corridor during height of Covid pandemic)*

3.2.1.11 ***Email –*** *to James Goodfellow on [ ].*

Disclosures: [claimant agreed at today's hearing to check emails and tomorrow provide details of dates and disclosures]

22 May 2020 two emails to James Goodfellow (JG) and Ms Karen Askell (KA)

23 May 2020: five emails to JG and KA

24 May 2020: one email to JG and KA

25 May 2020: two emails to JG and KA

26 May 2020: two emails to JG and KA

27 May 2020: 1 email to JG and KA.
1 June 2020: Phone call to JG

2 June 2020: phone call to JG

2 June 2020: phone call (or email) to JG and KA

- ***Repeated same disclosure as above***
- ***Also disclosed wrongdoing of those involved in the previous protected disclosures and abused their positions during the meetings involving the restructure and grievance ie they told lied about the matters raised by the claimant***

3.2.2 Did he disclose information?

3.2.3 Did he believe the disclosure of information was made in the public interest?

3.2.4 Was that belief reasonable?

3.2.5 Did he believe it tended to show that – the claimant relies on:

3.2.5.1 a criminal offence had been, was being or was likely to be committed;
3.2.5.2 a person had failed, was failing or was likely to fail to comply with any legal obligation;
3.2.5.3 a miscarriage of justice had occurred, was occurring or was likely to occur;
3.2.5.4 the health or safety of any individual had been, was being or was likely to be endangered;
3.2.5.5 information tending to show any of these things had been, was being or was likely to be deliberately concealed.

3.2.6 Was that belief reasonable?

3.3 *If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.*

If so, it was a protected disclosure.

4. ***Protected Disclosures - Detriments (Employment Rights Act 1996 section 43B / 48)***

4.1 *Did the respondent do the following things:*

4.1.1 *[claimant agreed today to set out list of alleged detriments arising from alleged whistleblowing – he referred to these being set out in a chronology he had prepared – however it was a lengthy document in narrative style and claimant accepted he could not easily during this hearing extract the detriment claims – he will do so overnight for the morning of second day of the hearing]*

(i) ***Claimant was not rewarded a salary increase during 2018, 2019 and 2020: David Marshall, Anna Clearly and Naomi McPherson***

(ii) ***Failure to carry out performance reviews with the claimant in or around April 2018 and September 2018: David Marshall, Anna Clearly and Naomi McPherson.***

(iii) ***Scored down in the February 2019 performance review by David Marshall***

(iv) ***Naomi McPherson failed to deal with claimant's complaints about his reviews in September 2018 and February 2019, when he reported those complaints to her.***

(v) ***In November 2019 when David Marshall left the respondent's employment, the now vacant role of Senior Manager was not offered to the claimant by the Store Manager, Ed Noble.***

(vi) ***End of year review in February 2020; salary increased to only £150 per annum; Ed Noble authorised the amount and instructed Thomas Herb to carry out the review.***

(vii) ***Made to carry out extra work and hours and treated differently.***

(viii) ***The claimant alleges dismissal decision was upheld on 31 July 2020 after he made the disclosures including on 17 June 2020***

4.2 *By doing so, did it subject the claimant to detriment?*

4.3 *If so, was it done on the ground that he made a protected disclosure?* ***The disclosures relied upon are as set out in the section 103A dismissal claim.***

5. ***Health and Safety: dismissal section 100 ERA***

5.1 *Did the claimant carry out health and safety activities, performed functions as a health and safety representative and/or brought to his employer's attention by reasonable means? Circumstances*

connected with his work which he reasonable believed were harmful or potentially harmful to Health and safety?

5.2 *The Tribunal will decide:*

5.2.1 What activities or functions did the claimant perform and what did he say or write to bring health and safety matters to his employers' attention? When? To whom?

The claimant relies on the same disclosures as set out in the protected disclosures limited to the health and safety issues raised. (As above)

5.2.2 The claimant relies on section 100 (1) (a) in that as a manager he asserted that he was designated to carry out health and safety activities in his capacity as a manager

5.2.3 The claimant relies on section 100 (1) (b) in that as a union representative and manager he was also a health and safety representative

5.2.4 The claimant relies on section 100 (1) (c) in that he is only recently become aware that there was a health and safety representative (specifically designated) in store however he was not aware of her role and she was not present on the night shift and thus he asserts that it was not reasonably practicable therefore

[Note: the claimant had initially in discussion sought to rely on section 100(1)(d) (e) in that if there was a fire, there would be imminent danger of staff wearing headphones and referred to a fire drill where someone in store did not hear the alarm however he however he was accepted that this did not on balance present ' imminent' danger]

6. ***Trade Union Membership: dismissal – section 153 TULRCA*** *(Trade Union & Labour Relations (consolidation) Act 1992)*

6.1 Was the reason (or, if more than one, the principal reason) for dismissal that the claimant a reason under section 152 TULRCA-

(a) Was…a member of an independent trade union

(b) Had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time…

(ba) had made use or proposed to make use of trade union services at an appropriate time.

7. *Trade Union Membership: detriment – section 146 TULRCA*

7.1 was the claimant subject to the following detriments;

7.1.1 [claimant to confirm details for start of the second day of the hearing]

(i) Claimant was not rewarded a salary increase during 2018, 2019 and 2020; David Marshall, Anna Clearly and Naomi McPherson

(ii) Failure to carry out performance reviews with the claimant in Feb/March 2018 and September 2018; David Marshall, Anna Clearly and Naomi McPherson

(iii) Scored down in the February 2019 performance review by David Marshall

(iv) Naomi McPherson failed to deal with claimant's complaints about his reviews in September 2018 and February 2019, when he reported those complaints to her.

(v) In November 2019 when David Marshall left the respondent's employment, the now vacant role of Senior Manager was not advertised by the Store Manager, Ed Noble.

(vi) End of year review in February 2020; salary increased to only £150 per annum; Ed Noble authorised the amount and instructed Thomas Herb to carry out the review.

(vii) Made to work extra work and hours and treated differently.

(viii) Failure to carry out any induction as union representative and failure to invite the claimant to meetings including those relating to matters such as wage negotiations, health and safety matters and the consultation meetings relating to the redundancy/restructuring process. The store meetings took place weekly on Monday of each week from his appointment of TU representative in July 2019 up to the date his employment terminated. [The claimant was not able to provide more specific dates,he has requested details of dates of

meetings between the union and the respondent but these have not yet been provided].

7.2 *Was the detriment for the sole or main purpose of-*

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(a) preventing or deterring him from being or seeking to become a member of an independent TU or penalising him for doing so

(b)Preventing or deterring him from taking part in the activities of an independent trade union at the appropriate time or penalising him for doing so

(be) prevent or deterring him from making use of trade union services at an appropriate time or penalising him from doing so

(c) compelling hm to be or become a member of any trade union or of a particular trade union of one of a number of particular trade unions

[claimant to confirm which of these subsections he relies upon]

8. ***Disability***

8.1 *Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:*

8.1.1 Did he have a mental impairment of stress/ anxiety/depression?

8.1.2 Did it have a substantial adverse effect on his ability to carry out day-to-day activities?

8.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the disability?

8.1.4 Would the disability have had a substantial adverse effect on his/her ability to carry out day-to-day activities without the treatment or other measures?

8.1.5 Were the effects of the disability long-term? The Tribunal will decide:

8.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?
8.1.5.2 if not, were they likely to recur?

9. ***Direct age discrimination (Equality Act 2010 section 13)***

9.1 *The claimant was 47 at the time of the redundancy selection process. He complains that out of 17 Managers whose roles were removed, all were given alternative management roles apart from the claimant and one other employee who he believes was older than him.*

9.2 *Note : The respondent did not during this hearing rebut that the factual basis of the claim however, the claim had not been set out in the claim form or in the additional document which the claimant asserts he sent in with the claim form but which the tribunal did not receive (page 40 of the bundle) and thus had not been aware of the basis of the claim before today's hearing.*

9.3 *Did the respondent do the following things:*

9.3.1 Not offer the claimant a managerial post as alternative employment

9.4 *Was that less favourable treatment?*

The Tribunal will decide whether the claimant was treated worse than someone else – a "comparator" – was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether s/s/he was treated worse than someone else would have been treated.

The claimant says s/s/he was treated worse than the other managers selected for redundancy.

9.5 *If so, was it because of age?*

9.6 *Did the respondent's treatment amount to a detriment?*

9.7 *Was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were:*

9.7.1 [ ]

9.8 *The Tribunal will decide in particular:*

9.8.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

9.8.2 could something less discriminatory have been done instead;

9.8.3 how should the needs of the claimant and the respondent be balanced?

10. ***Direct disability discrimination (Equality Act 2010 section 13)***

10.1 *Did the respondent do the following things:*

10.1.1 **October 2017: Ms Clearly and Ms McPherson knowing the claimant had mental health problems " sold him" (ie misrepresented**) ***the job and did not tell him that he would be stacking shelves – he alleges they 'mis-sold' the job to him because they knew because of his ill issues he would not otherwise have done it.***

10.1.2 ***Took advantage of his disability by requiring him to work more hours from 2017 onwards and especially from 2018 when he went onto nights until the end of his employment.***

10.1.3 ***Dismissed him because of his disability because respondent did not want to employ someone off for long periods of time: decision made by Gordon Mc Pherson.*** NB: Tribunal explained to the claimant that this may be more properly pleaded as a section 15 claim – the something arising being the further absences or risk of absence from work

10.1.4 ***As claimant found it harder to complete his work due to his disability he alleges that the respondent required him to work longer hours (and did not pay him for those hours)***

10.2 *Was that less favourable treatment?*

The Tribunal will decide whether the claimant was treated worse than someone else – a "comparator" – was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether /he was treated worse than someone else would have been treated.

10.3 *If so, was it because of disability?*

10.4 *Did the respondent's treatment amount to a detriment?*

11. ***Discrimination arising from disability (Equality Act 2010 section 15)***

11.1 *Did the respondent treat the claimant unfavourably by:*

11.1.1 *[**Dismissed him because of his disability because respondent did not want to employ someone off for long periods of time: decision made by Gordon Mc Pherson]** (see above)*

11.2 *Did the following things arise in consequence of the claimant's disability:*

11.2.1 [what is the something arising]?

11.3 *Was the unfavourable treatment because of any of those things?*

11.4 *Was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were:*

11.4.1 [ ]

11.5 *The Tribunal will decide in particular:*

11.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

11.5.2 could something less discriminatory have been done instead;

11.5.3 how should the needs of the claimant and the respondent be balanced?

11.6 *Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?*

12. ***Reasonable Adjustments (Equality Act 2010 sections 20 & 21)***

12.1 *Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?*

12.2 *A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs (which put the claimant at a substantial disadvantage):*

12.2.1 Hours required to work and/or amount of work required to perform on return to work from 11 May 2018 until end of claimant's employment (but particularly during period until Mr Marshall left in November 2019).

12.3 *Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that [what was the disadvantage]?*

12.3.1 Claimant found it harder to complete his work due to his disability

12.4 *Did a physical feature, namely [ ], put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that [ ]?*

12.5 *Did the lack of an auxiliary aid, namely [ ], put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that [ ]?*

12.6 *Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?*

12.7 *What steps could have been taken to avoid the disadvantage? The claimant suggests:*

12.7.1 Amendment to hours required to work and/ or workload

12.7.2 ***Delegate to other staff/managers some of claimant's duties eg rotas and back to work interviews***

12.7.3 ***Providing support with management team and sharing responsibilities which were carried out by the claimant***

12.8 *Was it reasonable for the respondent to have to take those steps [and when]?*

12.9 *Did the respondent fail to take those steps?*

13. ***Equal Pay – Equality Act 2020 – Part 5 Chpt 3***

13.1 *The claimant complains that he was paid less than two female managers carrying out the 'same work' as him ;*

13.2 *He alleges this took place: confirm dates*

13.3 *[Note: claimant accepts not raised in ET1 but that he raised it he alleges in correspondence to ET in May 2020 – unable to locate correspondence during the hearing]*

14. ***Unauthorised deductions – section 13 ERA and/or breach of contract claim***

Section 13

14.1 *Were the wages paid to the claimant on [date] less than the wages he should have been paid?*

14.2 *Was any deduction required or authorised by statute?*

14.3 *Was any deduction required or authorised by a written term of the contract?*

14.4 *Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?*

14.5 *Did the claimant agree in writing to the deduction before it was made?*

14.6 *How much is the claimant owed?*

Breach of contract

14.7 *Did these claims arise or was it outstanding when the claimant's employment ended?*

14.8 *Was the following a breach of contract?*

14.9 *How much should the claimant be awarded as damages?*

He claims;

14.9.1 **He was required to undertake the role of a level 3 Night Manager while only paying him for a level 2 role and not paying him for an additional 10 hours per week worked in addition to his contracted 43 hours per week. The claimant calculates that based on a level 2 role, he should have been paid;**

(i) for the period 2017 /2018 a sum of £6,510.40; and

(ii) for 2019/2020 (from February 2019 up to the termination date) when his contractual hours were reduced to 40 hours; a sum of £10,498.80

14.9.2 ***That at Christmas 2019 the claimant was required to work an extra 20 hours and was told that he would be paid £269.20***

14.9.3 ***That at Christmas 2018 he worked 9 hours extra which he was told he would be paid for ; £121.14***

14.9.4 ***2017/2018: failure to award him a performance related pay increase: £1150***

14.9.5 ***2018/2019: failure to award him a performance related pay increase: £1150***

14.9.6 ***2019/2020: failure to award him a performance related pay increase of £1150 . He was awarded only £150 and seeks the difference,***

14.9.7 ***Attended meetings in March/April 2020 to July 2020 for which he claims he is entitled to be paid for and receive expenses ie petrol costs (claimant claims he was paid for the first meeting but not paid thereafter and claims there is a policy which sets out entitlement to these expenses)***

14.9.8 ***Payments for attending store to provide assistance when not on shift from 2018 to 2019.***

14.9.9 ***11 May 2018 – not paid wages on return from sick leave on this day.***

15. ***[Sex Discrimination]***

15.1 *Claimant mentioned a claim of sex discrimination in a statement prepared for today's hearing however, he explained that this was the complaint of Equal Pay.*

15.2 *Not being pursued as separate claim.*

56. On the afternoon of the second day of the hearing, as the claimant was unrepresented it was explained to him by the tribunal the factors it would take into account when determining whether to accept the further details provided as further particulars or as amendments to the claim, and the considering whether to make a strike out or deposit order.

57. The rest of the hearing was then spent dealing with an application by the claimant to include the additional detail either by way of further particulars or amendments, and submissions on whether the tribunal should make orders for a strike out or financial deposit.

58. The time limits and the grounds on which those time limits may be extended with respect to the further details which amount to amendments to the claim , was explained by the tribunal to the claimant and he was invited to give oral evidence in connection with the time limits and confirmed that he wished to do so. The respondent raised no objection to this course of action and the claimant gave evidence and was cross examined.

Findings of fact – time limits – amendment applied for at this hearing

59. The claimant has some past experience of the tribunal process albeit the tribunal accept the claimant's evidence under cross examination that in respect of that previous claim he had brought against another employer (of whistleblowing and disability discrimination) he was assisted by the union and did not draft the claim form himself. The tribunal also find that as clear from the lengthy documents produced by him, he has attempted to clarify his claim albeit what he has provided is by way of a chronology in narrative form setting out events without addressing the required elements of the claims.

60. With regard to the further particulars of his complaints he provided during this hearing when clarifying his claim, the tribunal accept that he had not understood that he was required to provide this information when submitting his claim. He accepted that he understood that there was a 3-month time limit to submit a claim in the tribunal.

61. The claimant evidence is that he does not accept that the equal pay is an amendment but contends that it was raised with the respondent during his employment and included within the claim form. The claim form itself makes no mention of an equal pay claim and the appropriate box at 8.1 (for equal pay) was not ticked however, the claim form does state at box 8.2; "Please see uploaded documents". There is correspondence on the tribunal file in October 2020 where the claimant has contacted the tribunal asking for a copy of the ET1 filed and the document filed with it, dating from 29 October 2020. The document which the claimant asserts he attempted to attach with his claim form (p.40-43) include the following entries;

"*My score appeared to be completed by the store manager and store people manager , neither of whom had ever been on a night shift when I was working or had any experience of me other than my raising issues on health and safety , being asked to work an unreasonable amount of hours with no overtime paid under the guise of 'business needs' and raising issues with lack of management support over management challenges with team members poor behaviour. In addition,* ***I had challenged*** *the fact that colleagues doing the same job were paid differently, colleagues doing a lesser job in the same role were paid more in some circumstances and colleagues in a higher role…" and*

"I believe that I have been discriminated against ***because*** *I have raised health and safety concerns, concerns about the implementation of the process, whistleblowing and* ***concerns about equal pay*** *and abuse of the 'business needs' element of the contract of employment".*

[Tribunal stress]

62. The comments in the document (40-43) do not state that the claimant wanted to bring an equal pay claim, but rather the comments allude to a complaint that he was treated differently because he had raised *concerns* about matters including equal pay, and not that he was bringing before this tribunal a complaint of equal pay. He does not identify the gender or names of the colleagues he was referring to and does not otherwise make it clear that the issues of equality of pay relate to a difference with the pay of female colleagues.

63. The tribunal find on a balance of probabilities, in light of the reference to uploaded documents in the claim form itself and the attempts by the claimant to obtain a copy of it from the tribunal, that the claimant had attempted to include the document (p.40-43) with the claim form but can make no finding on why it was not received by the tribunal office. The respondent does not go so far as to allege that the claimant had not sought to upload a document with his claim form but commented that the document he had provided in November 2020 may not be the original document or may have been amended, however there is no evidence to support that observation.

64. The claimant in answer to the tribunal's questions, explained that he had legal expenses insurance, but they were not willing to cover the claim. He spoke to Acas numerous times and the citizens advice bureau 6 or 7 times over a period of about 7 months to find out what he had to do about the tribunal orders although he complains they were not helpful and directed him back to Acas. He did not get legal advice because he did not want to 'pay for people who have no responsibility for you'.

65. Further on the 8 May 2021, the claimant emailed the tribunal stating that he wanted to amend his claim to include equal pay (and sex) bemuse the respondent had informed him on 7 May 2020 that equal pay was not included within his claim, albeit he disputed this within that email and explained that he had not ticked the relevant box on the claim form because he understood this was for women. He was directed to by Employment Judge Heap on 13 May 2021 to the Presidential Guidance and it was explained that he needed to send a draft of the amendment sought setting out the factual and legal issues, he did not do so on the basis as he explained to this tribunal, he considered he had provided sufficient information. That information was not provided until the 7 June 2021 at this hearing.

66. The claimant gave evidence as to his means.

67. The tribunal shall address in summary the submissions of both parties.

Respondents submissions

Amendments

68. Counsel for the respondent submits that the amendments to all the claims are substantial, the only claim that is less substantial being the automatic unfair dismissal claim but that it remains substantial in terms of the details of the disclosures were not pleaded.

69. With regard to the health and safety disclosures, counsel accepts that it is a form of unfair dismissal however it has also not been adequality pleaded.

70. Counsel argued that some of the claims had not been brought in time including the equal pay claim and age discrimination claim.

71. In terms of hardship; counsel refers to is now being 4 years after some of the events complained about and 3 years in respect of others, he refers back to events in 2017 and 2018 and the case will not now be heard until 2021. He submits that the sheer number of witness and tribunal time would be against allowing 'significant tranches' of the claims to continue.

72. Counsel argued against allowing the equal pay claim which was not alleged in the claim form or in the supplemental document (p.40 – 43). The claim is out of time and he argues should not be allowed to proceed as it is 'contrary against settled principles' to do so.

73. With regards to the section 47B claim (detriment arising from alleged whistleblowing disclosures), he submits that the disclosures were not pleaded in the claim form, there is a passing reference to being dismissed for making whistleblowing disclosures but the facts in support were not pleaded. It is argued that it would not be just and equitable to extend time to allow the whistleblowing claims.

74. Counsel submits that the claimant is 'shoehorning' his claim, alleging numerous reasons for dismissal including disclosure and trade union membership.

75. It is submitted that it was entirely reasonably practicable for the claimant to have provided all the information he provided during this hearing 9 months prior and the claimant accepted, he could have provided the same information 8 months ago if asked for it.

76. Counsel referred to the claimant's additional document (p.40-43) but that he had not provided this until November 2020 and counsel refers to now knowing whether this is the same document or an amended one which he had attached with his claim form but that this document does not expressly link the reason for dismissal with the alleged disclosures, health and safety issues or raising equal pay issues.

77. In terms of a section 103A ERA claim, counsel refers to this being a ' lesser hurdle' for the claimant as it is an unfair dismissal claim but that he still has to explain the delay in providing the supplemental document which was not provided until November 2020. Counsel refers to the tribunal having no record of this document but that it still does not set out the disclosures despite the claimant having prior experience of bringing a whistleblowing claim.

78. About the trade union membership claim; counsel argues that the alleged detriments are entirely missing from the claim form while there is a reference to dismissal.

79. With regards to the claim for ' other payments', the detail previous provided was sparse and there has been a whole series of deductions which the claimant made reference to during this hearing and that with respect to the Christmas 2019 payment, he argues this is out of claim and no good reason could not be brought before. With regards to the November payment, counsel alleges there appears to be no contractual basis for the claimant being paid to attend an appeal hearing and it is out of time.

80. Counsel also asserted that the claimant had named numerous people as having 'it in for him' but referred to it being unlikely that so many people were involved in what would be a 'gigantic conspiracy' and that he has not shown any link between these people and the allegations. That has had the claim of unfair dismissal but the rest of the claims are speculative.

Strike out/ Deposit

81. Counsel submits that the claims of; age discrimination, disability, 'other payments', equal pay and whistleblowing detriments should be struck out as out of time and thus have no reasonable prospect of success.

82. Counsel submits there is no credible evidence to support the equal pay claim and if he felt so strongly, he should have included it within the claim form. That he is basing his claim on his perceptions of the age of other staff. That it is not just and equable to extend time, they are not a mere 'adjunct'.

83. It is submitting that the disability discrimination claims are also a mere afterthought.

84. Other payments, if important he would have pursued earlier, and he has not particularised them previously and they are out of time.

85. Counsel submits about the alleged disclosures, the disclosures including wearing of headphones is not in the public interest and neither is the issue relating to his pay. While he has referred to food hygiene issues, counsel refers to him not alleging consequences i.e. that it had been people unwell. That the claimant is elating to a high-level issue which on the face of it are trivial.

86. In summary counsel referred to claimant being a 'serial malcontent' and argued for a £700 deposit per claim should the tribunal decide on a deposit order on the grounds that all so his income as a delivery driver £19,0000 appears to be disposable.

87. Counsel relied upon the authorities of; GTR Ltd v Rodway and others UKEAT/0283/19/AT and Chandhok and another v Tirkey UKEAT/190/14.

Claimant's submissions

88. The claimant's submission were brief. The claimant denied being a serial complainer. He stated he was 'happy' with what is going on and that a decision needs to be made about his claims. He argued that every claim has merit and denied refusing to attend a back to work interview as alleged by the respondent, that he raised issues in good faith and denied that there were issues with his performance.

Legal Principles

89. Before turning to my findings of fact, it is necessary for me to set out a brief statement of the law which I shall in turn apply to those facts as I have found them to be.

Tribunal Rules

Acas number

90. The Rules which were in force at the relevant time when the claim form was presented which was 14 September 2020((ie before the 8 October 2020 amendments) provide that under Rule 10 when presenting claim it shall be on a prescribed form and contains certain minimum information and that it shall be rejected if this is not included, and this includes an early conciliation number. It has been held that the number must be the correct number: **Sterling v United Learning Trust EAT 0439/14.**

91. Rule 12 (1) (c) does not specify where on the form the early conciliation number must be set out.

Name of the Respondent

92. Rule 12 requires a Judge to reject a claim where the name of the respondent on the claim form is not the same as the name of the prospective respondent on the Acas certificate unless the Judge considers that the claimant made a minor error and it would not be in the interests of justice to reject it. (The rules have changed since the 2020 Regulations from 8 October 2020 and the word 'minor' was replaced by the words; 'an error', however those changes post-date the claim form).

93. The tribunal has considered the EAT decisions of **Giny v SNA Transport Ltd EAT 0317/16** and **Chard v Trowbridge Office Cleaning Services Ltd 2017 ICR D21, EAT**.

Amendments

Time limits in discrimination cases – Equality Act 2010 – disability/ age

94. Section 123 Equality Act 2010 deals with the time limits in which Claimants must present discrimination complaints to the Employment Tribunal and provides as follows:

(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—
(a)the period of 3 months starting with the date of the act to which the complaint relates, or
*(b)such other period as the employment Tribunal thinks just and equitable.*Therefore, Section 123 provides that proceedings must be brought *"within a period of three months starting with the date of the act to which the complaint relates or any other such period as the Tribunal considers to be just and equitable".*

Time limit – equal pay - section 129 EqA

95. Section 129 Equality Act 2010 provides that where a complaint relates to a breach of an equality clause, in a standard case the time limit is; "*The period of 6 months beginning with the last day of the employment or appointment".*

Time limits - breach of contract -

96. Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 -Article 3 of that Order provides as follows

:*"Proceedings may be brought before an employment Tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if-*

(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;
(b) the claim is not one to which article 5 applies; and
(c) the claim arises or is outstanding on the termination of the employee's employment.

Article 7

Subject to Article 8B an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented-

(a) Within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or

…

*(c) where the tribunal is satisfied that it was **not reasonably practicable** for the complaint to be presented within whichever of those periods is applicable, within such period as the tribunal considers reasonable*

Time Limits - Ordinary and Automatic unfair dismissal – 103A/100 ERA and 153 TULRCA

97. Section 111 ERA provides that;

"(2) …an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal –

(a) Before the end of the period of three months beginning with the effective date of termination, or

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

Time Limits – detriments claim: whistleblowing - section 47B ERA

98. *Section 48 (3) ERA provides that;*

"(3) An employment tribunal shall not consider a complaint under this section unless it is presented –

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

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

Section (4) provides that where an act extends over a period, the 'date of the act' means the last day of that period.

Time limits- unlawful deduction from wages – section 23 ERA

99. *Section 23 provides that a worker may present a complaint about a deductions from wages in contravention fof section 13 and that;*

" (2) Subject to subsection (4) and employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of the period of three months beginning with –

(a) in the case of a complaint relating to a deduction by the employment, the date of payment of the wages from which the deduction was made…

(3) where a complaint is brought under this section in respect of –
(a) a series of deductions of payments…

The reference in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to he last of the payments so received.

*(4) where the employment tribunal is satisfied that it was **not reasonably practicable** for a complaint under this section to be presented before the end of the relevant period of three months , the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.*

Time limit – detriment on grounds related to TU membership or activities – 146/147 TULRCA

100. Section 147 provides that an employment tribunal shall not consider a complaint under section 146 unless it is presented

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

(b) Where the tribunal is satisfied that it was ***not reasonably practicable*** *for the complaint to be presented before the end of that period , within such further period as it considers reasonable."*

(2) for the purposes of subsection (1)-

(a) Where an act extends over a period , the reference to the date of the act is a reference to the last day of that period
(b) A failure to act shall be treated as done when it was decided on.

Extension of time: Just and Equitable

101. In ***Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA*****,** the Court of Appeal stated that when Employment Tribunals consider exercising the discretion under what is now section 123(1)(b) EqA, there is no presumption that they should do so. A Tribunal cannot hear a claim unless the Claimant convinces it that it is just and equitable to extend time. This does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds.

102. The Tribunal must have regard to all of the relevant facts of the case and is entitled to take account of anything that it considers to be relevant to the question of a *just and equitable extension.*

103. The provisions of Section 33 Limitation Act 1980, as modified appropriately to employment cases (**British Coal Corporation v Keeble [1997] IRLR 336**) may be relevant;

- *The length of and reasons for the delay.*
- *The extent to which the cogency of the evidence is likely to be affected by the delay.*
- *The extent to which the party sued had co-operated with any requests for information.*
- *The promptness with which the Claimant acted once they knew of the possibility of taking action.*
- *The steps taken by the Claimant to obtain appropriate professional advice once they knew of the possibility of taking action.*

104. Court of Appeal in ***Southwark London Borough Council v Afolabi 2003 ICR 800, CA***, confirmed that, while the checklist in S.33 of the Limitation Act 1980 provides a useful guide for tribunals, it need not be adhered to slavishly. The Court went on to suggest that there are two factors which are almost always relevant when considering the exercise of any discretion whether to extend time: the length of, and reasons for, the delay; and whether the delay has prejudiced the respondent.

105. ***Department of Constitutional Affairs v Jones 2008 IRLR 128, CA*****,** the factors referred to by the EAT in are a 'valuable reminder' of what may be taken into account but their relevance depends on the facts of the individual cases.

Not reasonably practicable extension

106. What is reasonably practicable is a question of fact and thus a matter for the tribunal to decide. Lord Justice Shaw put it in *Wall's Meat Co Ltd v Khan 1979 ICR 52, CA*: 'The test is empirical and involves no legal concept. Practical common sense is the keynote …'

107. The onus of proving that presentation in time was not reasonably practicable rests on the claimant: *Porter v Bandridge Ltd 1978 ICR 943, CA*.

108. ***Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, CA*****,** the Court of Appeal concluded that 'reasonably practicable' does not mean reasonable, which would be too favourable to employees, and does not mean physically possible, which would be too favourable to employers, but means something like 'reasonably feasible'.

109. Lady Smith in ***Asda Stores Ltd v Kauser EAT 0165/07*** explained it in the following words: 'the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done'.

Amendments

General Principles

110. The employment tribunal has a broad discretion to allow amendments at any stage of the proceedings under rule 29 of the Tribunal Rules. The discretion must be exercised in accordance with the overriding objective of dealing with cases fairly and justly in accordance with rule 2.

111. While tribunals generally interpret the ET1 flexibly when determining whether a particular claim can be ascertained the facts pleaded, their discretion to allow additional claims is not without its limitations. As per the comment of Langstaff J former President of the EAT, in the Chandhok case;

"The formal claim, which must be set out in the ET1, is not an initial document free to be augmented by whatever the parties choose to add or subtract. It sets out the essential case to which a respondent is required to respond. An approach whereby a "claim" or "case" is to be understood as being far wider than as set out in the ET1 or ET3 defeats the purpose of permitting or denying amendments."

112. Court of Appeal in ***Ali v Office of National Statistics 2005 IRLR 201, CA*****.** In the opinion of Lord Justice Maurice Kay, it was necessary for claimants to set out the specific acts complained of, as tribunals were only able to adjudicate on specific complaints. A general description of the complaint in the ET1 will therefore not suffice and, according to Lord Justice Waller, such a description 'cries out for particulars'.

113. In Ali the Court of Appeal held that, when considering whether the ET1 contains a particular complaint that the claimant is seeking to raise, reference must be made to the claim form as a whole. Given this, the mere fact that a box is ticked indicating that a certain claim is being made may not be conclusive in determining whether it sets out the basis for such a complaint.

114. ***Baker v Commissioner of Police of the Metropolis EAT 0201/09*****,** the EAT upheld a tribunal's decision that a claim form did not include a complaint of disability discrimination. B, who suffered from learning difficulties and dyslexia, submitted a tribunal claim form in which he ticked boxes marked 'disability' and 'race' to indicate what discrimination he was complaining about.

115. ***Cocking v Sandhurst (Stationers) Ltd and anor 1974 ICR 650, NIRC*:** The key principle was that in exercising their discretion, tribunals must have regard to all the circumstances, and in particular to any injustice or hardship which would result from the amendment or a refusal to make it ('the Cocking test') approved and restated by the EAT in *Selkent Bus Co Ltd v Moore 1996 ICR 836, EAT*

116. The then President of the EAT, Mr Justice Mummery provided guidance on how the tribunal should approach applications for leave to amend in *Selkent Bus Co Ltd v Moore [1996] ICR 386*. A tribunal must always carry out a careful balancing exercise of all the relevant factors, having regard to the interests of justice and to the relative hardship that would be caused to the parties by granting or refusing the amendment. Mr Justice Mummery explained that the relevant factors to consider would include:

117. The nature of the amendment: the tribunal will have to decide whether the amendment that the claimant is seeking is minor or a substantial alteration pleading a new cause of action. Applications may involve the addition of factual details to existing allegations, the addition or substitution of other labels for facts which have already been pleaded in the claim, or more substantially they may involve entirely new factual allegations which change the basis of the existing claim.

118. In *Selkent Bus Co Ltd v Moore*, where the claimant sought to introduce an automatically unfair dismissal claim (on the specific ground of his trade union activity) in addition to the 'ordinary' unfair dismissal claim pleaded in the ET1. The EAT refused the amendment, saying that the facts as originally pleaded could not, in themselves, support the new claim (and there would be a risk of hardship to the employer by way of increased costs if the claimant was allowed to proceed with his new claim). The EAT in Selkent thought that granting the proposed amendment would render it necessary to have new facts not previously pleaded put in evidence and it was unfair to allow that to be done at the stage that had then been reached.

119. It will not always be 'just' to allow an amendment, even where no new facts are alleged. The tribunal must always balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.

120. In ***Lawson v Thomson EAT 324/93*** the EAT upheld a tribunal's refusal to allow an amendment because the tribunal had properly considered the question of relative prejudice. What had particularly weighed with it was the claimant's failure to provide in advance of the hearing a clear statement of the terms of the proposed amendment despite several attempts to elicit this information by the tribunal office. As a result, witnesses whom the employer might have wished to call had dispersed. Therefore, the prejudice caused to the claimant in refusing the amendment was more than outweighed by the potential prejudice to the employer had the amendment been allowed.

121. Where the amendment is simply changing the basis of, or 'relabelling', the existing claim, it raises no *question* of time limitation: ***Hammersmith and Fulham London Borough Council v Jesuthasan 1998 ICR 640, CA*:**

122. Where, however, the claimant cannot show a causative link between the grounds of complaint set out in the ET1 and the proposed amendment, the claimant will be regarded as raising an entirely new cause of action. In such circumstances, the tribunal must consider whether the new claim is in time. The fact that the cause of action contained in the proposed amendment could be brought as a new claim within the appropriate time limit is a 'factor of considerable weight' for the tribunal to take into account: ***Gillett v Bridge 86 Ltd EAT 0051/17*.** However, it is not conclusive in favour of granting the application.

123. **The applicability of time limit**s: if the application to amend includes adding a *new claim or cause of action* it is essential for the tribunal to consider whether that claim is out of time and if so whether the time limit should be extended. It will then be necessary for the party seeking to bring a claim out of time to also present their arguments about why time should be extended in their case to bring the new claim/cause of action.

124. **The timing and manner of the application**: it is relevant for tribunal to consider why the application was not made earlier and why it is now being made.

125. In ***Martin v Microgen Wealth Management Systems Ltd EAT 0505/06*** the EAT stressed that the overriding objective requires, among other things, that cases are dealt with expeditiously and in a way which saves expense: undue delay may well be inconsistent with these aims. However, an application to amend should not be refused solely because there has been a delay in making it, as amendments may properly be made at any stage of the proceedings.

126. Presidential Guidance on General Case Management for England and Wales, '*an application can be made at* any *time as can an amendment even after judgment has been promulgated… A party will need to show why the application was not made earlier and why it is being made at that time. An example which may justify a late application is the discovery of new facts or information from disclosure of documents'* (para 5.3).

127. In *Ladbrokes Racing Ltd v Traynor EATS 0067/06* the EAT gave some guidance as to how a tribunal may take account of the timing and manner of the application. Factors to consider:

- *•why the application is made at the stage at which it is made and why it was not made earlier*
- *•whether, if the amendment is allowed, delay will ensue and whether there are likely to be additional costs* because *of the delay or because of the extent to which the hearing will be lengthened if the new issue is allowed to be raised, particularly if these are unlikely to be recovered by the party that incurs them; and*
- *whether delay may have put the other party in a position where evidence relevant to the new issue is no longer available or is rendered of lesser quality than it would have been earlier.*

128. It is important that amendments are not denied purely punitively or where no real prejudice will be *done* by their being granted: **Sefton Metropolitan Borough Council and anor v Hincks and ors 2011 ICR 1357 EA.**

129. *Selkent Bus Co Ltd v Moore* : the time limit falls to be determined by reference to the date when the *application* to amend is made, not by reference to the date at which the original claim form was presented.

130. *Rawson v Doncaster NHS Primary Care Trust EAT 0022/08*, the effect of an amendment is to backdate the new claim to the date on which the original claim form was presented.

131. *Galilee v Commissioner of Police of the Metropolis 2018 ICR 634, EAT*, the Appeal Tribunal held that it is *not* always necessary to determine time points as part of the amendment application. In its view, a tribunal can decide to allow an amendment subject to limitation points. This might be the most appropriate route in cases where, for instance, the new claims are said to form part of a continuing act with the original, in-time, claim, given the fact sensitive nature of determining whether there is a continuing act.

132. In *Reuters Ltd v Cole EAT 0258/17* In the EAT's view, it was only necessary for the claimant to show a prima facie case that the primary time limit was satisfied (or that there were grounds for extending time) *at* the amendment application stage.

133. As Mr Justice Underhill observed in *Transport and General Workers' Union v Safeway Stores Ltd EAT 0092/07*, whether the fresh claim in question is in time is simply that it is 'a factor, albeit an important and potentially decisive one, in the exercise of the discretion'.

Striking out a claim or part of it – Rule 37 Employment Tribunal Constitution and Rules of Procedure Regulations 2013

134. Employment Tribunals must look to the provisions of Rule 37 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 when considering whether to strike out a claim.

135. Rule 37 provides as follows:

"At any stage of the proceedings, either on its own initiative or on the application of a party, the Tribunal may strike out all or part of a claim or response on any of the following grounds:

(a) That it is scandalous or vexatious or has no reasonable prospect of success.
(b) That the manner in which the proceedings have been conducted by or on behalf of the Claimant or the Respondent (as the case may be) has been scandalous, unreasonable or vexatious;
(b) For non-compliance with any of these Rules or with an order of the Tribunal;
(c) That it has not been actively pursued;
(d) That the Tribunal considers it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out.)"

136. A claim can have no reasonable prospect of success if there is no jurisdiction for a tribunal to entertain it.

137. In dealing with an application to strike out all or part of a claim a Judge or tribunal must be satisfied that there is "no reasonable prospect" of success in respect of that claim or complaint. It is not sufficient to determine that the chances of success are fanciful or remote or that the claim or part of it is likely, or even highly likely to fail. A strike out is the ultimate sanction and for it to appropriate, the claim or the part of it that is struck out must be bound to fail. As Lady Smith explained in **Balls v Downham Market High School and College [2011] IRLR 217, EAT** (paragraph 6):

"The Tribunal must first consider whether, on a careful consideration of all the available material, it can properly conclude that the claim has no reasonable prospects of success. I stress the words "no" because it shows the test is not whether the Claimant's claim is likely to fail nor is it a matter of asking whether it is possible that his claim will fail. Nor is it a test which can be satisfied by considering what is put forward by the Respondent either in the ET3 or in the submissions and deciding whether their written or oral assertions regarding disputed matters are likely to be established as facts. It is, in short, a high test. There must be no reasonable prospects…"

138. Claims or complaints where there are material issues of fact which can only be determined by an Employment Tribunal will rarely, if ever be, apt to be struck out on the basis of having no reasonable prospect of success before the evidence has had the opportunity to be ventilated and tested.

Deposit Orders – Rule 39 Employment Tribunals (Constitution & Rules of Procedure Regulations 2013

139. Different considerations apply, however, in relation to Deposit Orders made under Rule 39 of the Regulations. Rule 39 provides as follows:

"(1) Where at a Preliminary Hearing (under Rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.

(2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit."

140. Thus, a Tribunal may make a Deposit Order where a claim or part of it has little reasonable prospect of succeeding. However, this is not a mandatory requirement and whether to make such an Order, even where there is little reasonable prospect of success, remains at the discretion of the Tribunal to determine whether or not such should be made.

Conclusions

Claim form

Acas number

141. The claimant included within the claim form the number from the first Acas certificate number and the tribunal gave judgment during the hearing, that the claim form met the requirements of Rule 10 in that it contained the minimum required information (albeit the number was inserted into a different box than the one allocated for it). The respondent was in agreement that the claim form complied with Rule 10.

Name of the Respondent

142. Although the name of the respondent on the Acas certificate which referred to Morrisons Plc, was not correct in that the parties accept that the correct name is WM Morrison Supermarkets Plc (which is the name on the claim form), the respondent took no issue with the difference in the name and the tribunal made a finding at the hearing itself, that this was a minor error taking into account that it was clear which legal entity the claimant was issuing the claim against and that the claimant was unrepresented.

143. The claim form was therefore properly presented on 14 September 2020. The correct Acas certificate is the first certificate, issued on the 28 August 2020.

Amendments

Equal Pay - Amendment

144. As set out in the findings of fact, equal pay was not mentioned in the claim form and for the reasons set out in its findings, the tribunal does not accept that the document the claimant attempted to upload with the claim form, included any reference to a claim for breach of an equality clause pursuant to the Equality Act 2010.

145. That the claim included a complaint about equal pay claim was not understood by Employment Judge Ahmed at the first preliminary hearing, who set out the claims as he understood them to be in his record of that hearing. The claimant did not challenge the accuracy of the claims as recorded despite the order inviting the parties to do so. The claimant did seek to correct the record but not in relation to the head of claim.

146. The tribunal conclude that an equal pay complaint under the EqA was not included within the original claim form. Equal pay was raised in the context of a complaint about how the claimant had been treated (as he put it 'discriminated against') *because* (in part) he had *raised a complaint* about equal pay during his employment.

147. Although the claimant indicated an intention to make an application to amend to include a claim for equal pay in his email of the 8 May 2021, it was explained to him by Employment Judge Heap that he needed to set out a draft of the actual amendment he was seeking. At that stage the amendment application did not set out the required factual and legal issues. The details were only provided at this hearing on 7 June 2021 and that is the date which this tribunal consider was the date the amendment application was properly made, in terms in which the respondent can understand the claim it may have to meet.

148. Although the claimant refers to making a complaint about equal pay during his employment, and this it is linked to the claims pleaded, a claim for breach of an equality clause under the EqA does not rely on the same facts as the facts relied upon in respect of the extant claims. The equal pay claim requires further and different facts to be pleaded, it is not simply a re- labelling of the facts already set out in the original claim form. Further, even if (which is not the case) the claim sought to rely on the same facts, a claim of whistleblowing (for making a *complaint* about the breach of an equality clause) and an actual complaint that there has been such a breach, gives rise to substantially different causes of action involving different legal tests and differences in the remedies sought and how compensation is calculated. Time limits are therefore relevant and have to be considered when determining whether to allow this amendment to claim.

Time Limit

149. The applicable primary time limit is within 6 months of the last day of employment ie within 6 months of the 3 June 2020 namely the 2 December 2020. The amendment was made therefore, 6 months out of time. (Even if the amendment were treated as made from the date of the email of the 8 May, it would still have been made 5 months out of time). There is no provision to allow an extension of time under section 129 EqA. However, although whether the amendment was brought within the relevant statutory time limit is a factor of considerable weight in an amendment application, it is not conclusive.

150. In terms of why the complaint was not made earlier, the claimant's position is that he understood his claim was already included and that it was not until the respondent explained that it was not, that he applied to amend. However, the claim in the additional document, included a lot of detail none of which explained that he wanted to pursue an equal pay claim and further, he does not allege that he mentioned the equal pay complaint to Employment Judge Ahmed at the first preliminary hearing. Although the claimant states that he understood the box on the claim from related to women only because of its reference to sex, the box also clearly states that it includes equal pay and if he was unsure, he does not allege that he sought any advice whether from the tribunal office or otherwise, despite the numerous calls he made to Acas and the CAB for advice.

151. Further, in terms of the manner of application, the claimant had written to indicate that he wanted to include such a claim on 8 May and despite being sent the Presidential Guidance and directed to set out the factual and legal issues and send in a draft of the amendment sought, he does not

dispute that he did not do so, considering that he had provided enough information and disregarded the direction of Employment Judge Heap.

152. In terms of prejudice; the claimant may still pursue this claim in the County Court if he wishes to do so and thus has another avenue of redress. He also has other claims before this tribunal, which are not contingent on this claim proceeding.

153. With regards to the respondent; if the amendment is allowed to introduce this new claim, it is likely to extend quite significantly the hearing and indeed the hearing listed for August 2022 would in all likelihood have to be vacated and the case relisted for a longer hearing. The respondent will be put to additional cost in having to respond to this new claim.

154. The amendment raised a new claim which would involve new facts, it is a new complaint significantly brought out of time and taking into account the respective prejudice to the parties and the absence of any compelling explanation for the failure to make reference to this claim in the claim form or at the first preliminary hearing, taking into account the injustice and hardship of allowing it or refusing it which the tribunal find favours the respondent, , the amendment application is refused.

The amendment application to add a claim of a breach of an equality clause pursuant to section 127 (1) EqA is <u>refused.</u>

Whistleblowing/ Health and Safety claims: section 103A /100 and section 47B ERA

155. The claimant has during the course of this hearing, provided further particulars of the claims pursued under section 103A, section 100 and section 47B ERA.

156. The original claim form made it clear that the claimant was complaining of being made redundant *because* of issues he had raised which related to health and safety and "*failure to adhere to process and procedures and other working practices.*" He ticked the box 10.1 which is relevant to protected disclosure cases.

157. The additional document (p40 -43) refers to his dismissal due to ''*challenging process and working practices"* and being made redundant for "*raising whistleblowing*" issues

158. The claimant refers to being discriminated against because in part of raising health and safety matters and whistleblowing about abuse of "*the business elements*" of the contract of employment, of being denied the opportunity to succeed because of little training, no constructive feedback and no management support. He also complains of being scored down in reviews and not getting a pay rise.

159. Addressing however the further information as set out in the draft list of issues, during the course of this hearing, the claimant has provided a significant amount of further detail, identifying the dates of disclosures, the alleged wrongdoing with reference to section 43B ERA and identifying who the alleged disclosures were made to and by what method.

160. The tribunal consider that the claim of whistleblowing (both detriment and dismissal), and that he was allegedly dismissed because of raising health and safety issues, was clearly alleged in the claim form. These are therefore not new heads of claim. What the claimant has provided are further

particulars of those types of claim. The claimant alleged in broad terms conduct which he has gone on to detail and particularise in terms of the breaches of health and safety, abuses of his contract, failure to award him pay rises, lack of procedures being followed. He has included new facts but these do not alter the basis of the existing claims.

161. The tribunal do not find therefore that in considering whether to allow these amendments, it is necessary to consider whether they are brought in time.

162. In terms of the timing of the provision of this information, the tribunal takes into account that the claimant is unrepresented, he has also clearly gone to considerable effort in trying to provide more detail but what he had not understood and not been directed previously to provide, are the legal and factual details required to meet the relevant legal requirements for the claims. When asked to do so, he did so during this hearing, and the tribunal accept that to be required to provide this further information during a hearing is difficult for an unrepresented claimant. It may well be that the claims require some further particularisation in due course and this can be addressed at the next preliminary hearing.

163. In terms of prejudice; these complaints form a significant part of the claimant's claims. In terms of the respondent, it was not disputed by the respondent during this hearing that these are matters which they were put on notice of during his employment and which were raised by him during meetings and the grievance process, it has thus had the opportunity to consider and investigate them.

164. Counsel for the respondent although alluding to how historic some of the alleged act complaints are, did not set out any specific prejudice that it would suffer in responding to the claims, it did not allege that there would be any particular difficulty with regard to witnesses nor with respect to the cogency of any evidence.

165. In the circumstances, the tribunal find that the additional information provided amounts not to a new claim so as to engage time limits, but further particularisation of an existing claim and the amendments are permitted. This tribunal for the avoidance of doubt, makes no determination on whether the acts or omissions complained of form a series of similar acts or failures and thus any decision on that issue and generally whether the claims were brought in time, is reserved to the final hearing: *Galilee v Commissioner of Police of the Metropolis 2018 ICR 634, EAT*

The amendments to the claims under sections 47B, 100 and 103A ERA which are set out in the draft list of issues above, are permitted with the issue of time limits and whether the acts/failures amount to a series of similar acts/failures reserved to the final hearing.

Disability Discrimination

166. The claimant had indicated on the claim form that he intended to bring a claim of disability discrimination by ticking box 8.1 however, within the claim form itself although he referred to his mental health, he did do not allege that he had been subject to any treatment which could be construed as amounting to complaints of discrimination. He referred to his mental health only in the context of not feeling able to return to his manager role.

167. The supplemental document (p40-43) makes only the following reference to his alleged disability;

"*As these had been the main driver of my absence for work related stress and anxiety in addition to the* ***prolonged appeals process*** *which lasted for nearly 3 months and the fact that I had to travel to various sites during the covid – 19 lockdown for meetings as the managers who held the*

appeals were not prepared to travel, I did not feel it was appropriate for this manager and felt that this was intimidating".

[tribunal stress]

168. The original claim therefore did not include any of the detail provided during this preliminary hearing.

169. The amendments sought in respect of the direct discrimination and failure to make reasonable adjustments, are that he was required to work more hours because of his alleged disability however he does identify a comparator for the direct discrimination claim and referred to the abuse of hours and pay more generally amongst staff at the store where he worked. With respect to the reasonable adjustment claim, he does not identify the substantial disadvantage beyond finding it harder to work the hours but does not allege that he did not work the hours he was asked to work over and above his contracted hours. He also alleges that he was dismissed because the respondent did not want someone who would be off for long periods of time but again does not explain the basis on which he maintains that this was the reason for his dismissal and alleges also that he was dismissed for a variety of reasons including his age and for whistleblowing. Further, the claimant accepts there was a redundancy situation and that he was offered (after his period of sickness) an alternative role as customer service assistant which was withdrawn it would appear, following his protestations about the appeal and the conduct of certain members of the management team which is not supportive of his complaint that his dismissal was because of his disability or the risk of having further periods off work sick.

170. The claim form did not set out the nature of the claim even in general terms. The extent to which the claimant indicated a claim for disability discrimination was the ticking of box 8.1. The application to amend includes significantly new factual allegations. It may be possible to read into the claim form a complaint about the suitability of alternative employment and/or the length of time it took to hear the appeal however, the claimant does not seek to include claims about those issues.

171. The complaints raised during this preliminary hearing are new complaints of disability discrimination. The amendment involves the introduction of significant and different facts from those pleaded and the claims are of a different nature to the extant claims. In those circumstances the amendment gives rise to new claims and requires the consideration of time limits.

172. The last alleged act, in relation to the section 13 and 15 discrimination claims is the act of dismissal on the 3 June 2020. The last act for the purposes of the reasonable adjustments claim is also the date of dismissal on the basis it is alleged, there was an ongoing duty and failure to make adjustments to the claimant's hours of work.

173. The primary time limit expired therefore on 2 September 2020. The application to add these claims was made therefore 9 months out of time. That is a considerable delay.

174. In terms of the reason for the delay; the claimant did not put forward any good reason for not setting out why he alleges he was discriminated on the grounds of his disability within the original claim, even if in general terms. The claimant had received advice from Acas and CAB and therefore had an opportunity to seek advice on what he needed to include within his claim. His reason for not taking professional legal advice was because he was not it seems, prepared to spend the money to obtain the advice despite having the tribunal find, the disposable income to do so. The claimant had also previous experience of presenting a claim in the tribunal of disability discrimination.

175. In terms of prejudice; the raising of significant new facts almost a year after the termination of his employment, may well create difficulties for the respondent in terms of the recollection of witnesses. These are not complaints which the claimant alleges he brought to the respondent's notice during his employment or included within his grievance or appeal (if it was, he did not put that evidence before this tribunal). Some of the allegations date back to 2017, approximately 3 years before his employment ended and almost 4 years before he made this amendment application.

176. The October 2017 complaint, is a free standing complaint which the claimant does not allege is linked with the other complaints, and he provided no explanation for why he had not issued a claim in respect of that allegation previously and why he waited over 4 years to raise it.

177. The tribunal have also considered when determining whether to permit the addition of these new claims, the merits of the claims when assessing the relative prejudice. The claimant does not identify any comparator, he does not set out the grounds for believing that any treatment was because of his disability. The tribunal considers that the complaints on the face of them as presented during this hearing, have little reasonable prospect of success of the claimant establishing a prima facie case. Further, the claimant does not allege that he raised with the respondent any difficulties he was having with the hours he was working or otherwise why he contends the respondent knew or could reasonably expected to know that he was placed at substantial a disadvantage.

178. Taking all the above factors into account including the merits of the claim, the delay and relative hardship, the application to amend to include these complaints of disability discrimination is refused.

The application to amend the claim to include complaints of disability discrimination is refused and therefore the complaint of disability discrimination to the extent it is indicated in box 8.1 of the claim, is struck out under Rule 37.

Strike Out/ Deposit

'**Ordinary' Unfair dismissal claim – section 94/98 ERA**

179. There is a reasonable prospect of the success in respect of this claim. The claimant is not disputing that there was a genuine redundancy situation as a consequence of the decision to restructure the management team however, his complaint relates to how that process was implemented and particularly with regards to him, how he was treated with respect to alternative employment.

180. The respondent relies upon the claimant's conduct as a reason for revoking an offer of alternative employment, but the respondent does not assert that it followed a formal disciplinary process for conduct.

181. The respondent itself is not pursuing an order striking out the claim or for a deposit order in the circumstances and the tribunal conclude that the claim has reasonable prospects of success and that it should proceed to a final hearing. The further particulars provided during this hearing and set out in paragraphs 22 to 27 above, amount to nothing more than further particulars of the claim and do not amount to new factual allegations which change the basis of the existing claim and those amendments are accepted..

The claim has reasonable prospects of success and therefore no order is made under rule 37 or 39.

Sex discrimination claim

182. The claimant confirmed that he is not bringing a separate claim of sex discrimination, and therefore this claim is struck out as having no reasonable prospect of success under section 37.

The claim of sex discrimination under the Equality Act 2010 is struck out on the grounds it has no reasonable prospect of success under Rule 37.

Whistleblowing/ Health and Safety claims: section 103A /100 and section 47B ERA

Dismissal

183. It is not in dispute that the claimant raised grievances which included complaints about having made protected disclosure raising health and safety issues. There are material issues of fact which can only be properly determined by being tested before a tribunal.

184. With regards to the automatic unfair dismissal claims, the burden is on the employer to show the reason for dismissal. The respondent in this case, relies on the final decision being conduct in circumstances where it is alleged the claimant was not satisfied with the appeal process and made accusations against the managers at the store. That the respondent was relying on conduct as the reason for dismissal was only clarified by the respondent during this hearing. The respondent during this hearing, did not assert that it carried out a formal disciplinary process in respect of the alleged misconduct. The employer argues a fair reason, under section 98 (1) for the final act of dismissal and as the claimant alleges this was not the real reason, he acquires an evidential burden to show that there is an issue which warrants investigation and which is capable of establishing the automatically unfair reason advanced but he is not required to prove that. Should the claimant satisfy the tribunal that there is an issue, worthy of investigation, the burden reverts to the respondent which must prove, on the balance of probabilities, which of the competing reasons was the principal reason for dismissal.

185. The identification of the reason or principal reason will turn on direct evidence and permissible inferences to be drawn. Taking the claimant's case at its highest, he made disclosures which on the face of it, at least some of those have a reasonable prospect of meeting the criteria under section 43B ERA. The respondent selected the claimant for redundancy and he was not offered another management position, he was offered alternative employment which was withdrawn after he alleges he made disclosures and he was dismissed for conduct issues without it would appear, a disciplinary process being followed. On the claimant's case and considering the burden of proof, these claims overall, cannot be said to be bound to fail or even to have little prospect of success and therefore no order is made to strike out or for a deposit order made.

186. The tribunal is mindful that the claimant was under some pressure to clarify the claims during the hearing and that he had some difficulty understanding the requirements of section 43B ERA. An order is made below for further particulars of the disclosures and detriments he identified during this hearing and those will be considered at the next preliminary hearing when the tribunal will seek to finalise the issues. This is not an opportunity for the claimant to add to the disclosures or detriments, any additional is disclosures or detriments would require a further application to amend the claim.

No order is made to strike out the claim or for a financial deposit. These claims which relate to the dismissal, will proceed to a hearing.

Detriments

187. If the claimant made the disclosures he alleges and establishes on a balance of probabilities that he was subject to the detriment by the respondent as alleged, then it will be for the respondent to show he was not subject to the detriment on the ground that he made the protected disclosures. Taking the claimant's case at its highest, there is a reasonable prospect of him establishing that at least some of the alleged protected disclosures meet the section 43B criteria and there is a reasonable prospect of him establishing that the acts complained of amount to detriments.

188. Any dispute of fact can only be resolved after the evidence has been properly tested before a tribunal and therefore the tribunal has determined that it would not be appropriate to make an order under rule 37.

189. The claimant however was given an opportunity set out the alleged detriments and in respect of the alleged detriment of being made to work more hours and carry out extra work and being 'treated differently' , he did not provide dates of when these incidents took place, what extra work he was allocated or extra hours he was required to work. He also did not identify what the other different treatment was. He also referred to other staff being put under pressure to work longer hours which would not support a claim that he was made to work longer hours because he made protected disclosures (rather than this being the culture within the store more generally). The tribunal consider that this allegation therefore as pleaded as little reasonable prospect of success and that the claimant should be required to pay a deposit to proceed with this allegation.

190. **The allegation that he was made to carry out extra work and hours and 'treated differently', has little reasonable prospect of success and the claimant is required to pay a financial deposit of £200 within 14 days to proceed with this specific allegation.**

Trade Union Membership - section 153/ 146 TULCRA

Dismissal: section 153 TULRCA

191. The claim form refers to the claimant being selected for redundancy related to his role and as a union representative but there is no reference to any alleged detriments of not being invited to meetings, or any of the other detriments now alleged by the claimant and which are set out in the draft list of issues prepared during the course of this hearing.

192. The tribunal conclude that the allegation of dismissal *because* of his trade union membership is pleaded in the original claim form. However, the tribunal considers that taking the claimant's case at its highest, the claim has little reasonable prospect of success. The claimant does not identify the grounds for asserting that the decision to dismiss was on grounds related to his union membership or activities. He alleges that he was dismissed for making protected disclosures, and while the tribunal accept that the claimant asserts that he had a responsibility to raise health and safety issues in his role as a union representative, he does not expressly plead that it is those activities rather than his position as a representative itself that was the reason for his dismissal. If the claimant intends to proceed with this claim, he will be required to provide further particulars as

set out in the orders section below. However, the tribunal consider that the claimant should pay a financial to proceed with this allegation on the grounds that as currently pleaded and to the extent this claim was clarified during this hearing, this claim appears to have little reasonable prospects of success..

The claimant is required to pay a financial deposit of £200 within 14 days to continue with this claim.

Detriment: section 146 TULRCA

193. The further detail regarding the detriments, the tribunal find amounts to a new claim of detrimental treatment which is not currently pleaded. There is no reference within the claim or supplemental document, to treatment other than selection for redundancy related to his role and as a "union representative". These do not amount to additional factual allegations which relate to existing allegations but rather amount to a new cause of action. Although Employment Judge Ahmed included this within the list of claims, it was only by way of a head of claim, with no detail of what the actual allegation or claim was.

194. Although the majority of the acts relied on as detriments are the same acts relied upon in connection with the section 43B ERA claim, the nature of the claims are different. The claimant is required to meet the threshold of making s43B ERA disclosures which presents a not insignificant hurdle for the claimant.

195. Applying Selkent, the tribunal consider that the amendment to add this claim is significant, raises a new cause of action and therefore tribunal must consider time limits.

196. The applicable test is whether the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of 3 months from the date of the detriment (or the last in a series of similar acts or failures), and within such further period as it considers reasonable where it was not reasonably practicable. The last act is alleged to be date of termination in that the claimant alleges he was made to work extra hours and carry out extra work and was not invited to meetings in his capacity as a trade union representative up to the date of termination.

197. The amendment was made on 7 June 2021 was therefore brought almost a year after the claimant's employment was terminated and 9 months after the expiry of the primary time limit. The same points are applicable in terms of the reasons for delay as set out above in respect of the disability discrimination claims including that although unrepresented the claimant had taken steps to obtain advice, felt this was of limited assistance but was not prepared, despite having the means to do so, to take some professional legal advice. The claimant indicated an intention in May 2020 to amend his claim, but not to add complaints of detrimental treatment in connection with his role as a trade union representative.

198. With respect to the relative injustice and hardship; counsel for the respondent did not identify any specific difficulties other than the passage of time generally. He did not identify any specific hardship in terms of availability of witnesses and indeed it appears on the face of it that largely the same witness will be required in respect of the same detriments, when explaining the reason for the alleged treatment. However, the most recent complaints which relate to working extra hours and not being allowed to attend meetings, remain unspecified in that the claimant has not provided details of the meetings or the extra work or hours he was required to carry out. He has also not set out why he asserts the earlier alleged detriments were for reasons covered by section 146. In terms of comparators however, he compares his treatment to other staff and asserts that the

performance review process was not followed in his case, in that he did not have reviews and was not awarded a fair pay award to reflect his performance.

199. The tribunal remains mindful however of the circumstances in which the further particulars were provided, by a litigant in person during the course of the preliminary hearing and that he has requested documents to ascertain the dates of meeting in respect of the last complaint, but these have not been provided. The hearing may well however be quite significantly extended by the introduction of these new complaints including the last allegation which involves potentially a not insignificant number of meetings, given the allegation relates to meetings relating to wage negotiations and health and safety matters over a period from July 2019 to June 2020.

200. In terms of hardship to the claimant, the main complaint in terms of his treatment would appear to be the treatment he received because of the alleged protected disclosures and the fairness of the dismissal.

201. Taking all the above factors into account, including the relative hardship to the parties of permitting the claims to proceed, the potential impact on the length of the hearing and the important albeit not determinative issue of time limits, the tribunal considers that it is not in the interests of the overriding objective to allow the addition of what are a significant number of additional claims at this stage. The claim is struck out under rule 37 as having no reasonable prospect of success, without the amendments, such a claim has no reasonable prospect of success.

The application to amend to include this claim is refused and the claim is therefore struck out under rule 37.

Other Payments: breach of contract / unlawful deduction of wages

Appeal and grievance hearing – attendance and travel expenses

202. Within the claimant form the claimant identified several complaints of a failure to receive certain payments; overtime not paid prior to Christmas 2019, unpaid additional hours worked, not paid for appeal meetings and not paid for travelling expenses.

203. The claimant has also produced a schedule of loss where he has set out meetings he attended from 30 March 2020 to 23 June 2020 which he alleges he was not paid for. These were referred to in his claim and the addition of the detail at this hearing (with further details having already been provided within his schedule of loss) applying Selkent, amount the tribunal determine, to the addition of further details or particularisation of the claim which is already pleaded.

204. The respondent argues that there is no contractual right to these payments, the claimant states that he received one payment and that there is a policy. Taking his claim at its highest, the claims have a reasonable prospect of success. Although the last alleged payment due to the claimant related to a meeting on 23 June 2020, which post-dates the date of termination and therefore would appear not to be able to qualify as a claim for wages for the purposes of section 13 ERA, if there is a contractual policy, it is arguable that he has a contractual right to the payment under Article 7. The tribunal recognise that there is an issue around whether it is a claim '*which arises on termination'* of his employment, however given the connection with his employment, it is not without merit and requires consideration by a tribunal of the applicable contractual provisions.

205. For the avoidance of doubt this tribunal makes no determination on whether alleged deductions form a series of similar acts or failures and any decision on that issue and generally on whether

the claims were brought in time, is reserved to the final hearing: *Galilee v Commissioner of Police of the Metropolis 2018 ICR 634, EAT*

The amendments are permitted.

Overtime payments not paid

206. The claimant pleaded a failure to pay him for additional hours worked.

207. The claimant provided further during this hearing about the sums he claims but way of additional hours worked. He simply pleaded additional hours worked within his claim form. He attempted to particularise them during this hearing however the tribunal notes that the schedule of loss he has drafted appears to include other payments.

208. The claimant contends that he worked hours for which he was not paid up to the termination date, however it remains unclear whether these relate to hours where there was an express contractual right to payment (either because there had been a separate agreement to pay or the contract or a policy provides for payment).

209. Before the tribunal is able to reach any proper assessment on this part of his claim, mindful that he is unrepresented, has provided further particulars of what is being claimed at this hearing and in his schedule of loss, the tribunal consider it is in the interests of the overriding objective to order the claimant to set out further details of precisely what is claimed and on what grounds he is asserting that these payments are due to him. An order is made as set out below.

210. The amendments as set out in the above draft list of issues are accepted and the claimant is ordered to provide further particulars.

211. For the avoidance of doubt this tribunal , makes no determination about whether alleged deductions form a series of similar acts or failures and any decision on that issue and generally on whether the claims were brought in time, is reserved to the final hearing: *Galilee v Commissioner of Police of the Metropolis 2018 ICR 634, EAT*

11 May 2018 – payment on return from sick leave

212. This is a new claim. The claimant informed the tribunal that he had only become of aware that he had not been paid been for this day, the week before this hearing. The day had been wrongly coded as unauthorised leave. The claimant however, accepted that he had a payslip but had not noticed at the time because his wife sorts out his earnings.

213. That the claimant had not checked his own payslip and salary with sufficient diligence to ensure his payments were correct is not it would appear to this tribunal, to be a satisfactory explanation for a delay in issuing a claim to recover the shortfall.

214. It may well be argued that the amount remained outstanding on termination and can be recovered as a breach of contract claim such that the relevant time limit does not run from the date of the deduction but the termination date. However, even if the time limit runs from 3 June 2020, it is brought approximately 9 months outside of the primary time limit.

215. The respondent does not plead any specific prejudice in respect of this claim and it is not asserted by counsel that it would cause the respondent any difficulty to check its records and ascertain whether a simple mistake was made with how his absence was coded. The respondent also does not dispute the claimant's account that he was only recently provided with documents the week before this hearting, which he says, made him aware of the error.

216. This is a claim which the claimant could pursue through the small claims court and therefore he has an alternative right of redress.

217. Taking into account the extent of the delay and that the reason is down to the claimant's failure to check his own payslips and pay at the relevant time with sufficient diligence, and the importance of time limits in terms of finality of litigation and dealing with matters expeditiously, the application to amend to include this claim which dates back to May 2018, is refused.

The application to amend to include this claim is refused.

Performance related pay

218. The claimant alleges that he was not paid what he was entitled to under the performance related pay scheme.

219. Although there is no reference to this specific claim in the claim form, there is reference in the supplemental document to the claimant being scored down deliberately and not being given a pay rise.

220. Whether the claimant is entitled to payment under the scheme as a breach of contract or unlawful deductions claim engages different legal tests to those which apply to the section 43B ERA claim, however a lot of the same factual information (around his performance, how he was assessed and the application of the policy) will be relevant to both types of claim. The respondent will therefore have to address the application of the pay award scheme in any event as part of the s43B ERA claim.

221. The tribunal consider, taking into account that the claimant is unrepresented and that he complained in the supplemental document to not being given a pay rise and being scored down in reviews, that in broad terms the claimant included facts within his claim to support these complaints. While he did not expressly refer to wanting to pursue these claims as unlawful deductions or breach of contract claims, the tribunal is satisfied that what he has provided during this hearing amounts to further particularisation of the '*other payments'* he is pursuing.

222. For the avoidance of doubt this tribunal makes no determination on whether alleged deductions form a series of similar acts or failures and thus any decision on that issue and generally on whether the claims were brought in time, is reserved to the final hearing: *Galilee v Commissioner of Police of the Metropolis 2018 ICR 634, EAT*

The amendment is permitted.

ORDERS

Made pursuant to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013

Preliminary hearing

223. The case management orders of the 19 September 2020 are stayed. The complaints of disability discrimination are not proceeding therefore the preliminary hearing fixed for 1 day on the 9 September 2021 is converted into case management hearing for **2 hours by telephone** to finalise the issues in the case. Details of the hearing will follow.

224. The parties are to attempt to agree an amended list of issues to be discussed at the preliminary hearing and provided to the tribunal in advance of the hearing.

Action required by the claimant: WITHIN 14 DAYS

225. If the claimant is to pursue the claim under section 153 and 152 of the Union and Labour Relations (Consolidation) Act 1992 (TULRCA) he is to provide **by the date of the preliminary hearing on 9 September 2021,** the following details;

225.1 The claimant is to confirm which of the sections 152 (1) (a) to (c) TULRCA he seeks to rely upon and to explain why he says those sections are apply.

226. With respect to the 'whistleblowing' disclosures as set out in at para 3 of the draft list of issues (above), the claimant is required to provide the following details within **14 days from the date of this judgement i**n respect of each and every alleged disclosure;

226.1 What were the exact words said or written by the claimant when making the alleged disclosures?

226.2 Which type of wrongdoing does the claimant allege each disclosure tends to show (refer to the types of wrongdoing in section 43B Employment Rights Act 1996) and why?

226.3 Why does the claimant assert, in respect of each disclosure, that he believed when making it, that it was made in the public interest?

226.4 Which detriments as set out in para 4 of the draft list of issues does the clamant allege were done because of which alleged disclosure/s?

226.5 Which of the alleged disclosures does the claimant allege were the reason or principal reason, for the decision to terminate his employment?

227. With respect to the payments the claimant alleges were due to him for additional hours worked, he is required to set out a complete list **within 14 days from the date of this judgment,** of the payments due to include the following information;

227.1 The date he alleges he worked additional hours and what hours he worked

227.2 In respect of each date; the sum he alleges is due to him

227.3 In respect of each date; why he alleges he was entitled to be paid and if he relies on a term in the contract of employment or a term of a policy, then he must identify the term and applicable contract or policy document which applies. If the entitlement is not set out in a

policy or contract, the claimant must explain why he alleges he is entitled to payment for those hours worked.

228. The above matters to be discussed at the next preliminary hearing.

Employment Judge Broughton

17 August 2021

Sent to the parties on:

……

For the Tribunal:

NOTE ACCOMPANYING DEPOSIT ORDER

Employment Tribunals Rules of Procedure 2013

1. The Tribunal has made an order (a “deposit order”) requiring a party to pay a deposit as a condition of being permitted to continue to advance the allegations or arguments specified in the order.

2. If that party persists in advancing that complaint or response, a Tribunal may make an award of costs or preparation time against that party. That party could then lose their deposit.

What happens if you do not pay the deposit?

3. If the deposit is not paid the complaint or response to which the order relates will be struck out on the date specified in the order.

When to pay the deposit?

4. The party against whom the deposit order has been made must pay the deposit by the date specified in the order.

5. If the deposit is not paid within that time, the complaint or response to which the order relates will be struck out.

What happens to the deposit?

6. If the Tribunal later decides the specific allegation or argument against the party which paid the deposit for substantially the reasons given in the deposit order, that party shall be treated as having acted unreasonably, unless the contrary is shown, and the deposit shall be paid to the other party (or, if there is more than one, to such party or parties as the Tribunal orders). If a costs or preparation time order is made against the party which paid the deposit, the deposit will go towards the payment of that order. Otherwise, the deposit will be refunded.

How to pay the deposit?

7. Payment of the deposit must be made by cheque or postal order only, made payable to HMCTS. Payments CANNOT be made in cash.

8. Payment should be accompanied by the tear-off slip below or should identify the Case Number and the name of the party paying the deposit.

9. Payment must be made to the address on the tear-off slip below.

10. An acknowledgment of payment will not be issued, unless requested.

Enquiries

11. Enquiries relating to the case should be made to the Tribunal office dealing with the case.

12. Enquiries relating to the deposit should be referred to the address on the tear-off slip below or by telephone on 0117 976 3033. The PHR Administration Team will only discuss the deposit with the party that has been ordered to pay the deposit. If you are not the party that has been ordered to pay the deposit you will need to contact the Tribunal office dealing with the case.

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DEPOSIT ORDER

To: HMCTS Finance Support Centre

Temple Quay House

2 The Square

Bristol

BS1 6DG

Case Number _____

Name of party _____

I enclose a cheque/postal order (delete as appropriate) for £_____

Please write the Case Number on the back of the cheque or postal order.