



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101258/2020 (V)

Held by remotely on 14 and 15 June 2021

Employment Judge: M Sutherland (sitting alone)

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**Claimant
In person**

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**Respondent
Represented by:
**Mr G Fletcher
(Solicitor)****

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

15 The judgment of the Tribunal is that the application to amend is refused with the following exceptions which are granted -

a. Further particulars of the protected disclosures in para.s 7 (a) to (d) of the unamend claim as set out in the disclosures numbered 4, 7 11(4), 8 and 9 of the terms of amendment.

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b. Further particulars of the protected disclosure detriments in para.s 12 (a) to (f) of the unamended claim as set out in para.s 25, 26(1), (2) of the terms of amendment and in the Table as regards LD's refusal to deal her complaint of 30 June 2019 at the meeting on 2 August 2019.

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c. The complaint of harassment by related to disability by reason of the mental impairment of anxiety at para 26(1) namely that at an absence management meeting on 23 September 2019 regarding her long term absence related to her mental health, MC actively prevented her from explaining the reasons behind her absence, told her she should apologise for being off sick, and told her she had no reason for being off sick to her visible distress.

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Introduction

1. An open preliminary hearing was arranged to determine the Claimant's application to amend dated 22 December 2020 (further expanded by tables intimated on 8 April 2021) which was opposed by the Respondent.
2. The Claimant appeared on her own behalf. The Respondent was represented by Mr Fletcher.
3. The Claimant gave evidence. No other witnesses were called to give evidence.
4. The parties lodged a joint bundle of documents.
5. Both parties made submissions. Following discussion it was agreed that the Respondent would give submissions first to which the Claimant would respond.
6. The Claimant at one stage indicated that she was not fit to proceed but having been given an opportunity to consider matters she confirmed she was fit to proceed and did not seek to adjourn the hearing. Although she was at times upset, the Claimant was able to compose herself and was able to properly and fully participate in the hearing.
7. The Claimant advised that she did not want to make an application for anonymity at this stage.
8. The following initials are used to indicate the following individuals –

Initials	Name	Job Title
BW	Barbara Wilson	[tba]
DH	Donna Higgins	Head of Service
GL	Gilbert Logan	Team Leader, Acting ASM
GM	Grace Murray	Head of HR East Division
JL	Jacqui Loye,	Head of HR West Division
KF	Kenneth Freeburn	Deputy Regional North Division
LD	Linda Douglas	HR Director
LMK	Lindsay McLeod-Kerr	Area Service Manager
LS	Lynne Scott	Business Support Manager
MC	Matt Cooper	Deputy Regional Director, West Division
MF	Martin Fraser	Team Leader, Shotts

Initials	Name	Job Title
MM	Murray McEwan	Head of Service
PH	Pauline Howie	Chief Executive
SD	Stewart Daniels	Team Leader
WM	William McLaughlin	ASM

Background

- 5 9. On 28 February 2020 the Claimant lodged a tribunal claim against the Respondent raising complaints of detriment and constructive unfair dismissal by reason of protected disclosure. In her claim the Claimant asserted that she had made the following protected disclosures in summary:

Claim (para no.)	Date	Recipient	Information disclosed
7(a)	18.6.19	LD	Excessive driving
7(b)	18.6.19	LD	Failure to be available for emergency calls
7(c)	18.6.19	LD	Incompetent student technician
7(d)	18.6.19	LD	Stress levels amongst
7(d)	18.6.19	LD	Managerial style causing stress

- 10 10. In her claim the Claimant asserted that she had suffered the following detriments in summary –

Claim (para no.)	Date	Perpetrator	Detriment
12(a)	2.8.19	LD	Refused to deal with her complaint of 30 June 2019
12(b)	23.9.19	MC	Refused to listen to her reasons for being off sick; Not offered mediation; Refused to deal with causes of work related stress; threatened with dismissal

12(c)	#.9.19	MC	Put pressure on LMK to formally investigate
12(d)	27.8.19	DH	Failure to investigate neighbour's complaint regarding her treatment
12(e)	24.8.19	PH	Failure to investigate her complaint
12(f)	7.11.19	LMK	Reported her for misconduct
12(g)	11.19	PH	Failure to support her or investigate her complaint

11. On 16 March 2020 the Claimant was permitted to tick the box in her ET1 claim which indicated that she was making a complaint of disability discrimination. The Respondent was not advised of this until July 2020.

5 12. At a Case Management Preliminary Hearing ('CMPH') on 17 July 2020 the Claimant was given 21 days to submit an application to amend to include terms of amendment. At that hearing it was determined the Claimant had intimated that she had a complaint of disability discrimination within the time limit but the issue of whether this
10 amounted to a bald and unspecified complaint which required particularisation by way of amendment was to be determined at today's hearing. The Agenda submitted by the Claimant in June 2020 in advance of the CMPH contained some of the allegations which were ultimately contained with the terms of the amendment including
15 additional protected disclosures, additional detriments, and sex and age discrimination.

20 13. On 6 August 2020 the Claimant advised that she did not intend to submit an application to amend because she was not in a position to complete the documentation. On 1 September the Claimant advised that she sought to amend but had been unfit to do so in the period allowed. At a CMPH on 12 November 2020 the Claimant was given 21 days to submit a soul and conscience letter from her GP that she was unfit to submit the application to amend in the period 21 July to 7 August 2020 and was given a further 21 days to submit an application
25 to amend.

14. The Claimant submitted different versions of similar terms of amendment on 24 September 2020, 10 October 2020 and 22 December 2020 (the final version which superseded the previous versions). (No tracked change comparison was provided but the Claimant confirmed that there was little material difference between the documents.) The terms of amendment extended to 28 pages of close type narrative text and sought to include complaints of disability, sex and age discrimination, additional protected disclosures and detriments, and further particulars regarding existing protected disclosures and detriment.
15. On 20 January 2021 the Respondent objected to the application to amend.
16. With a view to identifying the necessary elements of a stateable claim in January 2021 the Claimant was required to complete tables in summary including the following information: the act (or omission) amounting to less or unfavorable treatment; the date of the act; the preparator of the act; the basis upon which it could be inferred that the protected disclosure, disability, sex and/or age was the reason for (or related to) the act. The Claimant advised that she required assistance to do so because of issues with her mental health. She advised that she struggled when documenting her claim but she was able to verbalise her claim. She was provided with substantial assistance to document her claim at a CMPH on 25 February 2021.
17. At a CMPH on 26 March 2021 the Claimant was ordered: to provide an impact statement detailing her mental impairment, any treatment prescribed, and the effect of that impairment on her normal day to day activities in the period December 2017 to November 2019, and its effect on her ability to raise or amend employment tribunal claims in the period January 2020 to date; and to provide copies of her medical records pertaining to her mental health for the period December 2017 to date.
18. On 8 April 2021 the Claimant intimated an impact statement, medical records and the final version of the tables.

19. The terms of amendment intimated on 22 December 2020 and 8 April 2021 in brief summary sought to include the following ('#' indicates information not provided) –

Further particulars regarding protected disclosures ('PD')

Claim (para no.)	Amend -ment (PD no.)	Date	Recip-ient	Information disclosed
7(a)	4	18.6.19	LD	Excessive driving
7(b)	7	18.6.19	LD	Union Rep failure to comply with contractual duties
7(c)	11(4)	18.6.19	LD	Incompetent student technician
7(d)	8	18.6.19	LD	Stress levels amongst
7(d)	9	18.6.19	LD	Managerial style causing stress

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Additional protected disclosures

Amend -ment (PD no.)	Date	Recip-ient	Information disclosed
1	2.8.19	LD	Professional knowledge/ sexist behaviours
2	11.6.17 31.12.17	SD	Dangerous driving
2	12.2.18	LMK GL	Dangerous driving Patient procedures
2	18.6.19	LD	Dangerous driving; patient procedures; concealment
3	#.4.18	DH; JL	Lack of Student induction and training; bullying

Page 20(2)	1-17.12.18	RS	Sexual harassment
4	#.12.17	SD	Paramedic excessive driving
5	18.6.19	LD	Sexual harassment and concerns re fitness to practice
Page 19(2)	5.10.18	MM	Sexual harassment
5	#.11.18	RS	Sexual harassment and concerns re his fitness to practice
6	2.8.19	LD	Sexual harassment
7	12.18 – 18.11.19	LMK	Union Rep failure to comply with contractual duties
7	#.2.18	KF and GM	Union Rep failure to comply with contractual duties
9	#.12.18	RS	Managerial style contributing to staff stress
10	2.8.19	LD	Sex discrimination Data protection breaches
11(3)	18.6.19	LD	Clinical negligence
Page 24(2)	16.8.19	PH	Concealment of above

Further particulars of protected disclosure detriment

Claim (para no.)	Amendment (page & para no.)	Date	Perpetrator	Detriment
12(a)	Table	2.8.19	LD	Refused to deal with her complaint of 30 June 2019
12(b)	26(1)	23.9.19	MC & JL	Refused to listen to her reasons for being off sick; Not offered mediation;

				Refused to deal with causes of work related stress; threatened with dismissal
12(c)	26(2)	#.9.19	MC	Put pressure on LMK to formally investigate
12(d)	25(1)	27.8.19	DH	Failure to investigate neighbour's complaint regarding her treatment
12(e)	25	#.8/9.19 #.11.19	PH	Failure to investigate her complaint
12(f)	26(2)	7.11.19	LMK	Reported her for misconduct

Additional protected disclosure detriments (the "additional detriments")

Amend- ment (page & para no.)	Date	Perp- etrator	Detriment
#	#.3/4. 2018	SD WM	Refused to deal with her complaints
12(1)	18.7.18	SD and WM	Accused of bullying and harassment
17(2)	2.7.18	WM	Refused to arrange a meeting to discuss her complaints
21(1)	1.2.19	LS & MM	Failure to investigate her counter allegation
21(3)	22.2.19	MM	Accused of lying
22(1)	27.2.19	MC	Ignored complaint regarding MM investigation outcome
23(1)	10.5.19	JL	Ignoring allegations of bullying by AG
24 (3)	23.8.19	LMK	Refused to grant part-time work

24(4)	26.8.19	LMK	LMK failed to arrange for police to knock door down
27(1)	15.11.19	LMK	Failure to resolve work related stress
27(2)	11.20	CLO	Failure of CLO to act upon her concerns

Disability status

The Claimant asserts that she was disabled on account of a mental impairment of anxiety and depression from Summer 2017 onwards and that the Respondent knew or could reasonably have known this from 2017 onwards in summary having regard to her extensive sick absence for work related stress and having regard to the terms of occupational health reports.

Direct discrimination

Amendment (page & para no.)	Date	Perpetrator	Less favourable treatment	Protected characteristic
21(2)	11.2.19	MM	Failure to investigate sexual assault by member of public	Sex
21(3)	22.2.19	MM	Accused of lying	Sex
23(1)	24.7.19	AG	Threatened with dismissal at RTW meeting	Disability

Indirect discrimination

Amendment (page & para no.)	Provision, Criterion or practice ('PCP') applied	Date of application	Protected characteristic	Group Disadvantage	Individual disadvantage
14(1) 24(3)	Preventing part time and flexible working	WM in Nov '17 LMK 23.9.19	Sex	Difficulty fulfilling caring responsibilities	Difficulty fulfilling caring responsibilities

Amendment (page & para no.)	Provision, Criterion or practice ('PCP') applied	Date of application	Protected characteristic	Group Disadvantage	Individual disadvantage
15(3)	Refusing special leave for a sister	BW in Mar '18	Disability	#	#

Failure to make reasonable adjustments

Amendment (page & para no.)	PCP applied	Date of application	Substantial Disadvantage	Reasonable steps
19(4)	Requirement to work different pattern on transfer station	Jul 2018 to Nov 2019	Causing difficulties with her caring responsibilities	Reduced hours
20(2)	Requirement to perform contractual duties	Dec 2018	Causing her to go off sick	Alternative duties
27(1)	Subjected to work related stress	Nov 2019	Causing her to go off sick; leading to her resignation	Support for work related stress

Harassment

Amendment (page & para no.)	Date	Perpetrator	Unwanted conduct	Protected characteristic
13(3)	16.8.17	SD	Shouting at her	Disability
14(1)	##.17	WM	Preventing part time and flexible working by her	Sex Disability
14(4)	15.12.17	SD	Telling her she was an "unnecessary stress"	Disability

Amendment (page & para no.)	Date	Perpetrator	Unwanted conduct	Protected characteristic
15(2)	12.2.18	GL	Advising her to go on medication if she was unhappy at work	Disability
26(1)	23.9.19	MC	Refusing to hear reasons for stress related absence Telling her she should apologise for being off sick and had no reason for being off sick	Disability

Victimisation

Amendment (page & para no.)	Protected Act	Date	Perpetrator	Detriment
15(4)	Email to SD advising of bullying sent to SD on #	11.4.18	DH	Indicating she should leave the service
18(3)	Email to SD advising of bullying	18.7.18	WM and SD	Raising complaint of bullying and harassment against her
19(1)	Email to SD advising of bullying	27.7.18	LMK	Being moved to another station whilst under investigation

Further particulars of constructive dismissal

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Amendment (page & para no.)	Date	Perpetrator	Act or omission
13(2)	7.8.2017	SD	Refusal of special leave
15(1)	13.12.17	SD	Refusal to discuss behavior of colleague involved in an accident
19(3)	18.10.18	RS	Failure to investigate lost property

Amendment (page & para no.)	Date	Perpetrator	Act or omission
22(1)	2.4.19	#	Refusing my request to be accompanied by colleague to disciplinary hearing
Table	#	#	Spreading confidential information
Table	#	SD	Disclosing personal text messages in disciplinary investigation
Table	##.18	#	Having banana smudged in face and being called a wee arsehole
Table	#	#	Laughed at due to allegations

Findings of Fact

20. The Claimant was employed by the Respondent as a Technician from 6 January 2014 until 15 December 2019.

2017

21. In 2017 the Claimant was absent from work by reason of her mental health on the following dates: 1 June 2017 and 13 December 2017 to 18 February 2018. The Claimant was otherwise at work and performing her contractual or alternative duties.

22. In 2017 the Claimant consulted her GP on 20th June 2017 regarding anxiety related symptoms for which she was prescribed medication and on 25 July 2017 regarding anxiety related symptoms.

2018

23. In 2018 the Claimant was absent from work by reason of her mental health on the following dates: 13 December 2017 to 18 February 2018; 28 May to 18 June 2018; and 15 August to 30 September 2018. The Claimant was otherwise at work and performing her contractual or alternative duties.

24. In 2018 the Claimant consulted her GP as follows: on 19 June 2018 regarding work related stress; on 23 August 2018 regarding work related stress; on 29 August 2018 regarding work related stress for which she was prescribed medication; on 12 September 2018

regarding work related stress; on 24 December 2018 regarding low mood for which medication was prescribed increased medication.

25. The Claimant had peaks and troughs in her mental health with a significant trough in July/ August 2018.

5 26. In or around July 2018 complaints of bullying and harassment were made against the Claimant. These complaints were investigated by the Respondent. In January 2019 the Claimant was advised that there was a disciplinary case to answer. A disciplinary hearing took place on 2 April 2019. On 15 April 2019 the Claimant was advised that there were
10 no grounds for any disciplinary sanction being imposed. The Claimant did not receive formal assistance from the union but received some limited informal assistance.

2019

15 27. In 2019 the Claimant was absent from work by reason of her mental health on the following dates: 14 January to 24 July 2019; and 23 August to 15 September 2019; and 15 November to 15 December 2019. The Claimant was otherwise at work and performing her contractual or alternative duties. On 26 August 2019 the Claimant
20 texted MF to advise that she had drunk a bottle of spirits. A PRU (physician response unit) was dispatched to her home.

28. In 2019 the Claimant consulted her GP as follows: on 17 January 2019 regarding stress at work and anxiety for which her medication was changed; on 11 February 2019 regarding work related stress; on 12
25 March 2019 regarding work related stress and low mood for which her medication was increased; on 21 May 2019 regarding work related stress; on 29 August 2019 regarding work related stress and anxiety noting fleeting thoughts of self harm; and on 10 September 2019 regarding depressed mood; and on 19 December 2019 regarding low
30 mood, noting no thoughts of self harm.

29. The Claimant had peaks and troughs with her mental health with significant troughs in January, August and November 2019.

30. On 18 June 2019 the claimant met with LD under the Respondent's whistleblowing policy. During that meeting the Claimant outlined her

concerns in relation to a disciplinary procedure and stress management.

- 5 31. On 28 June 2019 LD wrote to the Claimant noting that during the meeting the claimant alluded to behaviour of staff that was unacceptable but didn't provide specifics. She advised the claimant that if she wanted to proceed to raise concerns then she would be able to do so by providing the information to her in writing by 2 July and she would arrange for matters to be handled through the appropriate processes.
- 10 32. On 1 July 2019 the Claimant submitted to LD a written complaint extending to 7 pages detailing bullying and harassment suffered by the Claimant. She did not document her other whistleblowing concerns.
- 15 33. On 13 July 2019 LD wrote to the Claimant noting that her written complaint appeared to be raising the same issues they have already discussed but that she was happy to meet again to discuss matters.
34. On 25 July 2019 the Claimant returned to work part time.
35. From at least July 2019 the Claimant was aware of her legal rights and the relevant time limits for submitting a claim.
- 20 36. On 2 August 2019 the Claimant met with LD. Their discussion was wide ranging and included her concerns regarding the disciplinary process and the absence management process. On 7 August 2019 LD wrote to the claimant with her summary of that meeting.
- 25 37. On 16 August the Claimant had a brief informal discussion with PH, Chief Executive in passing regarding the issues she had raised with LD. The Claimant understood PH would keep an eye on her situation.
38. On 24 August 2019 the Claimant wrote to PH seeking a formal meeting following their informal encounter. She enclosed a copy of the complaint sent to LD on 1 July expressly stating that it does not contain the whistleblowing information.
- 30 39. In September 2019 the Claimant commenced training for an NHC in legal services which she was awarded in June 2020.
40. On 3 October 2019 the Claimant wrote to PH advising that she still has whistleblowing concerns but she would prefer to verbalise rather than document in writing. She advised that she was studying for an HNC in

law. A meeting was arranged with PH on 31 October 2019 which meeting was postponed at the Claimant's request. By 7 October 2019 the Claimant had received legal advice on account of which she no longer wanted to meet senior management to discuss her concerns.

5 41. On 15 November 2019 PH, Chief Executive emailed the Claimant to invite her to a meeting to discuss her whistleblowing concerns. On 15 November 2019 the Claimant replied advising that she was resigning from the service with four weeks' notice and advising that she had had further issues with management over the past couple of weeks. She referred to continuous bully and harassment from management and HR. She did not indicate that her treatment was because of whistleblowing. The Claimant did not take up PH's offer to meet because there had been a delay in arranging a meeting and because she had been advised to raise her concerns with external bodies.

10 42. On 19 November 2019 the Claimant was invited to an exit interview to discuss matters. She declined to attend that meeting stating that this was because it was being conducted by MC. On 20 November she was then offered a meeting with an alternative member of senior management which she also declined. She did not want to meet with senior management because she had been advised to raise her issues with external bodies.

2020

15 43. In 2020 the Claimant consulted her GP as follows: on 16 January 2020, noting depressed mood, no thoughts of self harm and starting to feel some benefit from increased medication; on 18 May 2020 noting no abnormal thoughts and denies any thoughts of self harm; on 3 July 2020 discussing stress and anxiety and referred to psychologist due to problems with anxiety, depression and some PTSD like traits noting continuing relevant medication (there was a delay in making the referral because of the COVID lockdown); and on 16 December 2020 she was advised by a midwife to reduce relevant medication because of her pregnancy.

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44. In December 2019 and in January 2020 the Claimant undertook some limited training and voluntary work with the Citizens' Advice Bureau.
45. The Claimant was in receipt of legal advice from a solicitor from December 2019 to around February 2020. Her tribunal claim form was drafted with the assistance of an accredited specialist in employment law. On 20 January 2020 the Claimant provided her solicitor with 3 pages setting out in writing details of disclosures and detriments. The Claimant researched her claims online. The Claimant ultimately made a complaint regarding their legal advice.
46. In February 2020 the Claimant noted in correspondence with her solicitor that her depression had affected her for over a year and was likely to affect her for a wee bit longer.
47. On 28 February 2020 the Claimant lodged a tribunal claim.
48. In early 2020 the Claimant attended sessions with a private counsellor which was funded by a charity.
49. On 16 March 2020 the Claimant wrote to the tribunal indicating that she was making a complaint of disability discrimination.
50. From around February to October 2020, the Claimant raised her concerns externally in writing with a number of individuals including with two Members of the Scottish Parliament, Health Improvement Scotland and the Scottish Public Services Ombudsman.
51. In March 2020 the Claimant was deemed unfit to work by the DWP and was placed in the Support Group category such that she was not expected to engage in work related activity for 12 months.
52. In June and July 2020 the Claimant engaged in detailed correspondence with the Tribunal and the Respondent. On 17 July 2020 the Claimant participated in a Case Management Preliminary Hearing at which an order was issued giving leave to amend within 21 days.
53. On 6 August 2020 the Claimant wrote to the tribunal to advise that she did not intend to submit an application to amend because she was not in a position to complete the documentation.

54. The Claimant lived in a caravan and worked part time at a hotel in the Outer Hebrides from August to October 2020 where she had only very intermittent internet access. On 6 August 2020 the Claimant advised that she did not intend to submit an application to amend because she was not in a position to complete the documentation. On 8 August 2020 the Claimant wrote to the tribunal to advise that she has missed the deadline; her mental health is poor; she would be able to verbally discuss her claim and answer questions but she does not have the capacity to complete the paper work regarding the specifics of her clam.
55. The Note of the CMPH on 17 July 2020 was not issued to the parties until 25 August. The Claimant did not know until she received that Note that she was entitled to make an application for the order to be varied. Following her return from the Outer Hebrides, on 1 September 2020 the Claimant advised that she sought to amend but had been unfit to do so in the period allowed. On 13 September 2020 she submitted an application for an extension of time on the basis that in the time period allowed she attended a hospital appointment regarding a low risk form of skin cancer on 3 August 2020, her home was broken into, her mental health was poor, she relocated to work part time near her sister, she had been assisting HCPC with their enquiries, and had been corresponding with a member of parliament. On 24 September 2020 she submitted a very detailed minute of amendment which was in very similar terms to the final version submitted on 22 December 2020. The Claimant participated in Case Management Preliminary Hearings held on 12 November 2020.
56. The Claimant engaged in detailed correspondence with the Tribunal and the Respondent in September, October and November 2020.
57. On 16 December 2020 her GP advised, in response to an order of the tribunal: the Claimant has been suffering from mental health problems for at least over three years; she has been on psychotropic medications since August 2017 initially due to problems with anxiety; her condition has been deteriorating gradually since June 2018; and there has been a significant and steady deterioration since January 2019. In respect

of the period 21 July to 7 August 2020 her GP further advised that she has been suffering from anxiety and depression, that she is receiving medication for those conditions in above average dose, that her condition is moderate to severe, and that on balance of probabilities she might have been unfit to engage with her case before the Tribunal in that period.

58. During the course of 2020 the Claimant attempted to obtain pro bono (i.e. free) legal advice without success.

59. When trying to specify her claims in 2020 and in early 2021, the Claimant experienced a tension between the mental health advice she had received to let things go (i.e. not to fixate on matters) and the requirement to particularise her tribunal complaints. The Claimant understood what information was missing from her complaints but found it difficult to add that information. She was only able to tackle adding additional information for a limited period at a time. She preferred to verbalise her complaints. Her husband was able to assist her in putting those complaints in writing (until he was affected by a redundancy situation in around March 2021).

60. The Claimant had peaks and troughs with her mental health with significant trough in December 2020 when her medication was temporarily removed on account of her pregnancy.

2021

61. In 2021 the Claimant consulted her GP as follows: on 8 January 2021 noting she had been struggling since coming off medication which was re-prescribed; on 5 February 2021 discussing balancing risks and benefits of increasing medication; and on 12 April 2021 regarding increased medication.

62. On 22 February 2021 the Claimant was assessed by a psychologist who advised: "intervention continues to be focused on providing psycho-education in relation to low mood and anxiety". The Claimant started therapy in February 2021.

63. The Claimant had peaks and troughs with her mental health which improved in mid-January 2021 once she was put back on her

medication following the significant trough in December 2020 when it had been removed.

64. The Claimant participated in Case Management Preliminary Hearings held on 25 February 2021 and on 26 March 2021.

5 65. The Claimant engaged in detailed correspondence with the Tribunal and the Respondent in January, March, April and June 2021.

66. On 8 April 2021 the Claimant intimated an impact statement, medical records and the final version of the tables.

10 67. The Claimant does not currently have the financial means to meet an award of costs.

Observations on the evidence

15 68. Although she was upset at times in giving evidence, the Claimant was able to compose herself. The Claimant came across as very intelligent and articulate. It was apparent that she fully understood the issues under consideration and was able to give relevant evidence, answer questions and raise issues appropriately and effectively.

20 69. The Claimant was considered in the main to be a credible and reliable witness but there were some significant issues with her evidence which was not wholly consistent with the other evidence.

70. The Claimant stated in evidence in chief that she was having suicidal thoughts in the period 2017 to 2021 but this is not supported by her GP records.

25 71. The Claimant stated in evidence in chief that she was too caught up emotionally to properly inform her solicitor but she accepted in cross examination having sent a detailed 3 page email to her solicitor detailing a number of the protected disclosures. The Claimant initially stated in cross examination that she only scanned over the claim form drafted by her solicitor but having been referred to the documentary evidence she accepted that she had in fact reviewed it.

30 72. The Claimant initially accepted that elements of her claim were not adequately specified but she advised she was unfit to set out her claim

5 fully in writing because of her mental health. Having explained that she felt able to verbalise her complaints, she was then offered the opportunity to provide that specification orally at the hearing. However the Claimant declined to do so instead insisting that this was already set out in her terms of amendment. E.g. She was asked on what basis she had inferred that her negative treatment by a specific member of staff was because of her whistleblowing, sex or disability. She initially advised that she unable to document this. When asked to described this at the hearing she then insisted that this was already in the terms of her amendment.

10 73. The Claimant alleged that PH refused to deal with her concerns and that she had requested a further meeting but PH did not meet with her. The Claimant accepted in cross examination that she had been offered a meeting with PH to discuss her concerns which offer the Claimant had declined.

15 74. The Claimant stated in chief that she is not legally trained but omitted to mention that she has an HNC in legal services which she accepted in cross examination.

20 75. The Claimant provided an impact statement and gave evidence regarding the effect of her anxiety on her concentration for reading and writing.

The law

25 76. The Tribunal has a broad discretion under Rule 29 to allow amendments at any stage of the proceedings either on its own initiative or on the application by a party.

30 77. The EAT in *Selkent Bus Company Ltd v Moore* [1996] IRLR 6 provided the following guidance on amendment: *"Whenever the discretion to grant an amendment is invoked, the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it"*.

78. That discretion should be exercised in a way that is consistent with the requirements of “relevance, reason, justice and fairness inherent in all judicial decisions”.

5 79. That discretion also should be exercised in accordance with the overriding objective of dealing with cases fairly and justly including, so far as practicable (a) ensuring that the parties are on an equal footing; (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues; (c) avoiding unnecessary formality and seeking flexibility in the proceedings; (d) avoiding delay, 10 so far as compatible with proper consideration of the issues; and (e) saving expense.

15 80. The following non-exhaustive factors are relevant to the exercise of that discretion: the nature of the amendment; the applicability of any time limits; the timing and manner of the application; and all the circumstances including prospects of success.

The nature of the amendment

20 81. *“Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the addition of factual details to existing allegations and the addition or substitution of other labels of facts already pleaded to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The Tribunal have to decide whether the amendment sought is one of a minor matter or is a substantial alteration pleading a new cause of action” (Selkent).*

25 82. There are broadly three types of amendment: amendments which add to or alter the basis of an existing claim or defence (“minor”); amendments which add or substitute a new cause of action or defence arising out of facts already plead (“re-labelling”); and amendments which add or substitute a wholly new cause of action (“substantial”).

30 83. The Court of Appeal in *Abercrombie & Others v Aga Rangemaster Ltd [2013] EWCA Civ 1148; [2013] IRLR 953* provided: “the approach of

5 both the EAT and this Court in considering applications to amend which
arguably raise new causes of action has been to focus not on questions
of formal classification but on the extent to which the new pleading is
likely to involve substantially different areas of enquiry than the old: the
greater the difference between the factual and legal issues raised by
the new claim and by the old, the less likely it is that it will be permitted”.

The applicability of time limits

84. *“If a new complaint or cause of action is proposed to be added by way
of amendment, it is essential for the Tribunal to consider whether the
10 complaint is out of time and, if so, whether the time limit should be
extended under the applicable statutory provisions” (Selkent)*

85. The applicable time limits do not ordinarily affect minor amendments
or re-labelling exercises. For substantial amendments the tribunal
should consider whether the complaint is out of time and if so whether
15 the time limit should be extended. This is only a factor and not wholly
determinative.

The timing and manner of the application

86. *“An application should not be refused solely because there has been
a delay in making it. There are no time limits laid down in the Rules for
20 the making of amendments. The amendments may be made at any
time – before, at, even after the hearing of the case. Delay in making
the application is, however, a discretionary factor. It is relevant to
consider why the application was not made earlier and why it is now
being made; for example, the discovery of new facts or new information
25 appearing from documents disclosed in discovery. Whenever taking
any factors into account, paramount considerations are the relative
injustice and hardship involved in refusing or granting an amendment.
Questions of delay, as a result of adjournments and additional costs,
particularly if they are unlikely to be recovered by the successful party,
30 are relevant in reaching a decision.” (Selkent)*

87. Consideration should be given to the effect of any delay on the quality of evidence, additional areas of enquiry, and the stage of the tribunal proceedings.

All the circumstances

- 5 88. *“Whenever the discretion to grant an amendment is invoked, the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it” (Selkent).*
89. The tribunal should take into account all the circumstances including
10 prospects of success.

The Claimant’s submissions

90. The Claimant’s submissions were in summary as follows –
- a. She was not aware that she could ask for an extension of time to submit the application to amend when she advised that she was no longer
15 making an application.
- b. She was not fit to make the application to amend sooner. She had not been fit to properly instruct her solicitors when they drafted the original claim.
- c. She had tried her best to provide the information missing from the table
20 but was not fit to do so. The information missing from the table is in the terms of amendment.
- d. It is not necessary for a litigant in person to fully particularise their claim before the matter proceeds to a full hearing
- e. The Respondent’s representative admitted to not having read the tables
25 and he is therefore unable to comment on them
- f. The focus in determining disability status is what a claimant cannot do or cannot do without difficulty and not what the claimant can do

- g. There are no issues of time bar – the events are not disparate events but are instead a single chain of events which culminated in her resignation.
- h. There is no prejudice to the Respondent who has been on notice of a claim for disability discrimination since March 2020 and has been aware of the broad terms of the amendment since September 2020 and arguably since June 2020 having regard to the terms of her Agenda.

The Respondent's submissions

91. The Respondent's submissions were in summary as follows –

- 10 a. The issue of amendment has already been determined (*Okinedo v Northwest Guarding Ltd (debarred) EAT 0510/07*). The Claimant was given the opportunity to amend but advised she no longer intended to do so. An open preliminary hearing that was listed to hear the application to amend was converted to a closed case management preliminary hearing. There is a need for certainty in litigation.
- 15 b. The issue is what are the real practical consequences of refusing or permitting the amendment (*Vaughan v Modality Partnership UKEAT/0147/20/BA*)
- 20 c. The tribunal must consider whether the terms of each amendment are properly particularised (*Remploy Ltd v J Abbott UKEAT/0405/14/DM*). It was previously explained to the Claimant exactly what information was required to adequately particularise her complaints. The amendments are inadequately particularised.:-
- 25 i. In respect of whistleblowing detriment, the Claimant has failed to specify the dates for certain protected disclosures and a basis upon which it could be inferred that the protected disclosure was the reason for the detriment.
- ii. In respect of direct discrimination the Claimant has failed to specify a basis upon which it could be inferred that disability, age

and/or sex was the reason for the treatment or that her treatment was less favourable than an actual or hypothetical comparator.

- 5
- iii. In respect of indirect discrimination, the Claimant has failed to specify the date of application of the policy, the group or individual disadvantage and the basis of inference of that disadvantage.
- 10
- iv. In respect of failure to make reasonable adjustments, the Claimant has failed to specify the basis upon which it could be inferred that the Respondent knew that the Claimant was likely to be put to that disadvantage.
- v. In respect of harassment the Claimant has failed to specify the purpose or effect of that conduct and has failed to specify the basis upon which it could be inferred that the unwanted conduct related to disability or sex.
- 15
- vi. In respect of victimisation, the Claimant has failed to specify the date of the protected act and the basis upon which it could be inferred that the protected act was the reason for detriment.
- vii. In respect of constructive dismissal, the Claimant has failed to specify the dates and the perpetrators.
- 20
- d. The Claimant gave conflicting evidence to her solicitors and the DWP regarding her fitness to work
- e. She made external complaints in writing to various bodies in 2020 and is therefore able to document her complaints
- 25
- f. The Claimant only had 4 GP appointments in 2020. Her GP had last seen her on 3 July 2020 when her GP advised of her fitness to participate the period 21 July to 7 August 2020. Her GP did not know of her attendance at tribunal hearings and her engagement in tribunal correspondence. The GP's assessment is uncertain.

- g. She was able to engage in the conduct of her case in June and July 2020. She relocated and undertook work in August to October 2020
- h. There has been substantial delay in making the application to amend. Some of the acts or omissions occurred in 2017. The passage of time impacts the reliability of evidence and the ability to investigate matters. The investigation will take front line health care workers away from their duties during a pandemic.
- i. Having regard to the recipients of the additional protected disclosures and the perpetrators of the alleged acts, 14 new witnesses will require to be precognosed and to attend a final hearing. The time and financial costs will be considerable. The scope of evidence at any final hearing will be vastly increased. The length of the final hearing will increase by an estimated 20 or more days.
- j. Not all relevant information has been provided and further case management will be required to identify that information and to address further procedure in light of the expanded claim increasing costs and adding further delay.
- k. The Claimant is unable to meet the cost of any award of expenses in respect of her claims that have no reasonable prospects of success
- l. The Claimant was in receipt of specialist legal advice in respect of her unamended claim. A decision was taken by her or her solicitors not to include these matters within her original claim. The Claimant has a remedy against her previous agents if they drafted her claim negligently. The ET1 claim is not something to set the ball rolling which may be freely augmented (*Chandhok v Turkey [2015] IRLR 195, EAT*).
- m. By allowing the Claimant to tick the box and by failing to inform the Respondent, the Respondent was denied the opportunity to oppose the application to amend

- n. There is minimal prejudice to the Claimant who has already intimated claims for whistleblowing detriment and constructive unfair dismissal for which she would be entitled to similar compensation.
- 5 o. If a new claim is added by way of amendment the tribunal must consider whether the complaint is out of time or whether there is an arguable case that it is in time (*Galilee v Comr of Police [2018] ICR 634*). Final specification was not given until 8 April 2021, some 13 months after the lodging of her original claim.
- 10 p. The complaints of detriment must be made within 3 months or such further period as is reasonably practicable. The complaints of detriment are at least 12 months late, and some are much later. The Claimant engaged professional advisors on this issue. It was reasonably practicable for her to raise these matters within her original claim.
- 15 q. The complaints of discrimination must be made within 3 months of the act or such further period as the tribunal thinks just and equitable. The Claimant had been aware of her rights and the time limits.
- r. The burden of proof is upon the Claimant. There was no evidence that she was disabled at the relevant time. The complaint of detriment against PH, Chief Executive has no reasonable prospects of success in
20 light of the documentary evidence.
- s. Reactions to adverse circumstances may not of themselves amount to a mental impairment and whether there is an impairment is a question for the tribunal (*Henry v Dudley Metropolitan Council UKEAT/0100/16/:A*)

25 **Decision**

The application to amend already decided

92. The Respondent submits that the application to amend has been considered and refused and the Claimant is barred from making a
30 further application to amend. A party should not be entitled to revisit a

5 case management order which has already been decided unless there
is a material change in circumstances or other exceptional
circumstances justifying a reconsideration as necessary in the
interests of justice. The Claimant had intimated that she did not intend
to make an application to amend because she had missed the
deadline. An open preliminary hearing that had been listed to
determine any such application was converted to a case management
preliminary hearing. The application to amend was not given
substantive consideration by the tribunal. The Claimant is a litigant in
10 person and she did not know that she was entitled to apply for a
variation to the time allowed for amendment. When she established
that she applied for an extension of time. That extension was granted
at the Case Management Hearing on 12 November 2020 at which the
Respondent made submissions on this issue. The issue of whether the
15 Claimant was barred from making a further application to amend was
the subject of reconsideration in December 2020. The application to
amend had not been already decided. The issue of whether the
Claimant was barred had already been decided.

The nature of the amendment

- 20 93. Terms of amendment which seek to add additional factual details to
existing complaints may be considered minor. That description could
be applied to the following amendments: paragraphs 4, 8, 9 and 11(4)
(where it gives further particulars of protected disclosures already set
out in the claim); paragraphs 25 and 26 (where it gives further
25 particulars of detriments already set out in the claim); and where it
seeks to add additional facts relied upon in asserting a repudiatory
breach.
94. Terms of amendment which seek to add a new cause of action to facts
already plead may amount to a re-labelling. That description could be
30 applied to the following amendments: para. 26 (1) (where it applies the
label of harassment related to disability to facts already relied upon in
asserting detriment in para. 12(b) of the claim); and to para. 27(1)

(where it applies the label of failure to make reasonable adjustments to facts already relied upon in asserting detriment in para. 12(b) and (c) of the claim).

- 5 95. Terms of amendment which seek to add a new cause of action in respect of facts not already plead may be considered substantial. That description could be applied to the following amendments: the additional complaints of protected disclosure detriment; the complaints of direct discrimination; indirect discrimination; failure to make reasonable adjustments (excluding para. 27(1)); harassment
10 (excluding para. 26(1)); and victimization. The fact that the Claimant has already made complaints in respect of other detriments does not prevent the addition of new detriments being considered substantial. The fact that a Claimant has ticked the box in respect of disability discrimination but where no specific complaints had been made, does
15 not prevent the addition of specific complaints of disability discrimination being considered substantial. However it is noted that the unamended claim does refer to the Claimant severely struggling mentally, her absences with work related stress, and the failure to put in support measures.
- 20 96. Formal classification is not always helpful and it is necessary to also consider whether the amendments are likely to involve substantially different areas of enquiry. Her unamended claim concerns disclosures made orally at a meeting on 18 June 2019 with LD and the detriments that she suffered thereafter as a consequence which were perpetrated
25 by LD on 2 August 2019, PH after 24 August 2019, DH on 27 August 2019, MC on 23 September 2019, and LMK on 8 November 2019. The following amendments would involve substantially different areas of enquiry: amendments seeking to include protected disclosures made prior to 23 June 2019 and/or made to individuals other than LD;
30 detriments or discriminatory acts perpetrated prior to August 2019 and/or by other individuals; acts amounting to repudiatory breach perpetrated prior to August 2019 and/or by other individuals.

5 97. Determining disability status will entail different areas of enquiry but not substantially so given that her unamended complaint would require consideration of whether she was subjected to a detriment at a formal absent management meeting for long term absences from work on account of her mental health. It is therefore anticipated that the issue of disability status and knowledge thereof would be determined at the final hearing.

The applicability of time limits

10 98. The applicable time limits do not ordinarily affect minor amendments or re-labelling exercises. For substantial amendments the tribunal should consider whether the complaint is out of time and if so whether the time limit should be extended. This a material factor but not necessarily determinative.

15 99. A complaint of protected disclosure detriment must be made within 3 months (extended to allow for ACAS Early Conciliation) or where that was not reasonably practicable within such further period as the tribunal considers reasonable. The terms of amendment making complaints of additional detriment which occurred in 2018 and 2019, were first intimated in September 2020 and subject to further minor expansion in
20 the period to April 2021. Accordingly the complaints of additional detriment are out with the statutory time limit unless it was not reasonably practicable to make the complaint (with the exception of para 27(2) which was intimated within 1 month of the alleged detriment).

25 100. A complaint of discrimination must be made within 3 months (extended to allow for ACAS Early Conciliation) or such other period as is just and equitable. The terms of amendment making specific complaints of discrimination which occurred in 2017, 2018 and 2019 were first intimated in September 2020 and subject to further minor expansion in
30 the period to April 2021. Accordingly the complaints of discrimination are out with the statutory time limit unless the period is extended on just and equitable grounds.

101. The Claimant suffered and continues to suffer from low mood and anxiety from August 2017 and to date. From December 2017 to December 2019 the Claimant had intermittent extended periods of absence from work by reason of her mental health but also had periods during that time frame where she attended and performed her contractual role or other duties. The Claimant was aware of her legal rights and the relevant statutory time limits for submitting a claim. The Claimant submitted a detailed written account of her complaints extending to 7 pages on 1 July 2020. The Claimant had the benefit of professional legal advice in December 2020 and January 2021. The Claimant did not experience a significant trough in her mental in December 2020 or January 2021. The Claimant was capable giving her professional legal advisors detailed legal instructions and she did so. Her claim was drafted by her professional advisors based upon those instructions. A decision was taken by the Claimant not to include the complaints contained in her amendment within her claim.
102. In March 2020 the Claimant resolved to include a claim for disability discrimination as detailed in her request to tick that box in her claim. In June 2020 the Claimant resolved to include additional protected disclosures, additional detriments and complaints of sex and age discrimination as detailed in her Agenda. At the Case Management Preliminary Hearing on 17 July 2020 the Claimant was afforded a period of 21 days in which to make an application to amend and to include terms of amendment. The Claimant was not aware until 25 August 2020 that she could apply for an extension of time to do so. On 1 September 2020 the Claimant made an application for an extension of time on the basis of a hospital appointment regarding her skin, her temporary relocation to the Outer Hebrides, her poor mental health and third-party whistleblowing. Having regard to the available evidence it is considered that the reason that the Claimant did not intimate the amendments in the period allowed was not because of issues with her mental health but largely because she had relocated to the Outer Hebrides where she had very limited internet access. On 24

September 2020 the Claimant submitted terms of amendment which was in very similar terms to that submitted on 22 December 2020.

103. At a Case Management Hearing on 12 November 2020 the Claimant was afforded a further 21 days from date of issue of the Note (i.e. by 2 December 2020) to make an application to amend to include terms of amendment. The Claimant intimated a slightly updated version on 22 December 2020.

104. The terms of the amendment intimated on 22 December 2020 are in a narrative style extending to 29 pages and did not appear to disclose the elements required for a stateable claim in each case. Mindful that the Claimant is a litigant in person and with a view to providing her with an opportunity to put forward all the elements of a stateable claim, on 26 January 2021 the Claimant was advised of the information required and given a further period of 28 days to provide that information. The Claimant responded advising that she had difficulty documenting her complaints in writing but was able to verbalise them. She was given an opportunity to verbalise those complaints at a Case Management Hearing on 25 February 2021 which was captured in writing for review and revision by her. At a further Case Management Hearing held on 26 March 2021 the Claimant advised that she had been unable to do so but would now do so with the assistance of a friend or relative. On 8 April 2021 the Claimant provided the additional information to the best of her current ability. The Claimant did not experience a significant trough in her mental health in the period 26 January to 8 April 2021.

105. Having regard to the above there was no real impediment which prevented the Claimant from including the additional complaints in her claim as lodged in February 2020, there was no real impediment to her making an application to amend in the period to July 2020, there was some impediment to the Claimant making the application to amend in the initial 21 day period allowed (given the length of the amendments, the limited internet access, and the short timescale allowed), and there was no real impediment which prevented the Claimant particularizing

the terms of amendment sometime in the period between January and April 2021.

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106. According to the terms of the amendment: the additional protected disclosures were made in 2017, 2018 and 2019; the additional detriments occurred in 2018 and 2019; the direct discrimination occurred in 2019; the indirect discrimination occurred in 2017, 2018 and 2019; the failure to make reasonable adjustments occurred in 2018 and 2019; the harassment occurred in 2017, 2018 and 2019; and the victimization occurred in 2018; the further acts amounting to repudiatory breach occurred in 2017, 2018 and 2019. The cogency of evidence regarding any events which occurred in 2017 and 2018 is very likely to have been materially affected by the passage of time.
107. There is some prejudice to the Claimant if her application is refused because her avenues for a successful complaint would be reduced. However her claim would not be at an end and she would still be able to proceed with her unamended claim for protected disclosure detriment and automatically unfair dismissal by reason of protected disclosure.
108. There is material prejudice to the Respondent if her application is granted as noted below.
109. Having regard to the decision not to include the additional complaints in the unamended claim lodged February 2020, the length of delay in seeking to amend that claim until September 2020, the length of delay in seeking to particularise that application, the absence of a real impediment, it is considered that it was reasonably practicable for her to bring her additional claims of detriment within the original time limit. Having regard to the above factors, the effect on the cogency of evidence, and the relative prejudice to the parties, it is not considered on balance not just and equitable to extend the period of time to allow her to bring complaints of discrimination (with the exception of the complaint of harassment at para 26(1) which is closely related to the unamended claim at para 12(b)). Whilst these are important factors

they are not necessarily determinative of an application to amend a claim which was brought within the statutory time limit.

The timing and manner of the application

5 110. Applications to amend may be made at any time, and although the proceedings have been ongoing since February 2020, they are at a relatively early procedural stage given that a final hearing has not yet been arranged.

10 111. The Claimant failed to provide to provide the additional specification sought in the period January to April 2021 despite clear explanations, additional time and tribunal assistance having been provided. The delay in making the application to amend, together with the delay in providing the specification sought, may have affected the cogency of the evidence regarding the detriment and discrimination alleged to have occurred in 2019.

15 112. The amendment if allowed would generate very substantial new areas of enquiry in respect of disclosures not made to PD, in respect of detriments or discrimination not caused by LD, MC, DH, PH and LMK and in respect of detriments, or discrimination, or acts contributing to repudiatory breach, occurring prior to August 2019. Additional costs
20 will be incurred by the Respondent which are unlikely to be recovered from the Claimant if the amended claim was unsuccessful and an award of costs was made.

All the circumstances

25 113. The additional protected disclosures are considered to be stateable but without hearing evidence it is not possible to assess their prospects of success. However the disclosure made to LMK in 2019 (para 8(2)) specifies wrongdoing disclosed by LMK rather than by the Claimant.

30 114. As regards the additional detriments, it is for the Claimant to assert facts from upon which it could be inferred that a detriment occurred on the ground that she made a protected disclosure (*Timis v Osipov [2017]*)

5 *UKEAT/0058/17/DA, EAT*). The Claimant has failed to set out (either in writing or verbally a hearing) a basis upon which it could reasonably inferred that the additional detriments occurred because she had made protected disclosures. Further as regards para 27(2) there was no detriment – she was advised that her concerns had been raised with the Respondent and there was therefore no failure to act upon her concerns by the CLO. The steps taken by the CLO may well be legally privileged (i.e. confidential) information.

10 115. The Claimant's assertion of disability status by virtue of anxiety at the time of the absence management meeting has reasonable prospects of success given her intermittent periods of absence for over a year, her GP records, and her treatment for anxiety and low mood, and the effect on her concentration for reading and writing as described in her impact statement. The Claimant's assertion that MC who conducted
15 the absence management meeting had actual or constructive knowledge of her disability on account of anxiety has reasonable prospects of success given the stated terms of the occupational health reports.

20 116. As regards direct discrimination, it is for the Claimant to assert facts from which it could be inferred that the reason for the less favourable treatment was disability and/or sex. The Claimant has failed to set out (either in writing or verbally a hearing) a basis upon which it could reasonably be inferred she was treated less favourably because of disability and/or sex.

25 117. As regards indirect disability discrimination the Claimant has failed to set out (either in writing or verbally at a hearing) the group or individual disadvantage caused by refusing special leave for a sister. As regards indirect sex discrimination the Claimant does not have reasonable prospects of establishing that there was a practice of refusing part time
30 work because the Claimant was in fact granted part time work.

118. As regards the failure to make reasonable adjustments in light of her caring responsibilities, this complaint has no reasonable prospects of

5 success because it does not pertain to her own disability. As regards the failure to provide alternative duties the Claimant does not have reasonable prospects of establishing that there was a practice of requiring staff to perform their contractual duties since other staff and the Claimant were in fact given alternative duties. As regards the failure to make reasonable adjustments by not giving support for work related stress, the Claimant has not stated in the terms of amendment the steps which ought to have been taken. Although in para 12b) and c) of her unamended claim she sought the opportunity to explain the reason behind her work-related stress and for those reasons to have been investigated it is not clear what support she sought to allow her to give regular and effective service.

10 119. As regards harassment the Claimant has failed to set out a basis upon which it could reasonably be inferred that the unwanted conduct related to sex or disability or had the prohibited purpose or effect with the exception of para. 26(1) where she asserts that at an absence management meeting regarding her long-term absence related to her mental health, MC actively prevented her from explaining the reasons behind her absences, told her she should have apologized for being off and that there was no medical reason for her being off, to her visible distress.

15 120. As regards victimization the Claimant has failed to set out (either in writing or verbally at a hearing) a basis on which it could reasonably be inferred that the protected act was the reason for the detriment.

20 121. As regards constructive dismissal the Claimant does not have reasonable prospects of arguing that unfavourable treatment perpetrated by SD in 2017 and 2018 was a factor in her resign to resign over a year later in 2019.

25 122. Taking into account all the circumstances including the decision not to include the complaints in the unamended claim when the Claimant was in receipt of professional advice, the delay in making and specifying the amendments, the Claimant's fluctuating mental health issues, the

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5 historic nature of the complaints, their lack of specification, the injustice and hardship of allowing the amendment on the Respondent, the adjustment and hardship of refusing the amendment on the Claimant, the application to amend is refused with the following exceptions which are granted -

- 10 a. Further particulars of the protected disclosures in para.s 7 (a) to (d) of the unamend claim as set out in the disclosures numbered 4, 7, 11(4), 8 and 9 of the terms of amendment.
- 15 b. Further particulars of the protected disclosure detriments in para.s 12 (a) to (f) of the unamended claim as set out in para.s 25, 26(1), (2) of the terms of amendment and in the table as regards LD's refuse to deal her complaint of 30 June 2019 at the meeting on 2 August 2019.
- 20 c. The complaint of harassment by related to disability by reason of the mental impairment of anxiety at para 26(1) namely that at an absence management meeting on 23 September 2019 regarding her long term absence related to her mental health MC actively prevented her from explaining the reasons behind her absence, told her she should apologise for being off sick, and told her she had no reason for being off sick to her visible distress.

25 Employment Judge: Michelle Sutherland
Date of Judgment: 25 June 2021
Entered in register: 29 June 2021
and copied to parties