EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	AND	**Respondent**
Ms K Mistry		Coventry University

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Birmingham (remotely, via CVP)

ON 9 August 2021 and 14 September 2021
(and judge alone in Chambers on 25 August 2021)

BEFORE EMPLOYMENT JUDGE Dimbylow

Representation
For the claimant: In person
For the respondent: Mr AF Griffiths, Counsel

This Open Preliminary Hearing took place against the background of the coronavirus pandemic; and was conducted remotely by video platform in accordance with safe practice and guidelines.

JUDGMENT having been sent to the parties on 28 September 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claim. This is a claim by Ms K Mistry (the claimant) against her former employer Coventry University (the respondent). There was a Closed Preliminary Hearing (CPH) held on 30 March 2020 by Employment Judge Johnson by telephone. I do not propose to recite the history and background to the claim as it is set out in the case management summary of Judge Johnson. However, he confirmed that by a claim form presented on **2 October 2019**, following a period of early conciliation from **7 August 2019 to 3 September 2019**, the claimant

brought complaints of: (1) unfair dismissal, (2) discrimination on grounds of age and race, (3) breach of contract and (4) unpaid annual leave entitlement.

2. At the CPH the claimant represented herself. Various orders were made for the just disposal of the final hearing, although the date was not fixed at that time. It was, however, fixed later for 6 days commencing on 19 April 2021. Judge Johnson had defined the issues. Amongst the orders he made was one in relation to amendment. "The claimant shall provide the respondent and the tribunal **by 20 April 2020** with details of each form of treatment or detriment identified in the list of issues, setting out when the incident took place, who was involved and what was said or done. In providing this information the claimant should provide (if possible), the date and time of the incident and with as much detail as possible of what was said or done by named individual." The respondent was granted the usual order, to the effect that if so advised it shall provide the claimant and the tribunal with an amended response **by 26 May 2020.**

3. Unfortunately, the hearing did not take place as planned on 19 April 2021. It came before Judge Cookson, and 2 non-legal members. After some discussion an order was made on day 2 relisting the case over **eight days commencing on 25 April 2022**. It was also ordered that there would be an **ADR hearing on 28 February 2022**, and tailor-made directions for the just disposal of those hearings were given. Judge Cookson also ordered that there would be an Open Preliminary Hearing (OPH) on 9 August 2021 to determine the following: whether the claimant needed to amend her claim form.

4. Judge Cookson set out the reasons why the final hearing in April 2021 needed to be adjourned, and she included this: "There were initial issues raised about the extent to which the claim now presented went beyond the scope of the original claim and the claimant was invited to make an application to amend her claim and issues were also raised about availability of respondent witnesses so that the claimant was invited to consent to adjournment. The claimant declined to [do] take either step and was keen to proceed and on this basis the panel undertook reading on the first day." Judge Cookson noted the events at the start of the second day, and having reflected upon matters the claimant agreed it was best to adjourn the hearing. The hearing was converted into a CPH and Judge Cookson gave detailed directions as to what was required by the claimant to identify her various claims and any amendments that she wanted to make. I do not propose to recite everything here as it can be read in the order. Suffice it to say that Judge Cookson gave very detailed guidance to the claimant as to what was required at the OPH for the amendments to be considered. The Judge suggested a form of template that the claimant may wish to adopt.

4. The claimant was ordered to set out by reference to the claim form and particulars of claim how matters set out in her witness statement prepared for the final hearing related to her claim. She had to do this initially by 17 June 2021, but

it was done by 7 July 2021. Thereafter, the respondent was to identify matters which required amendment by 8 July 2021, and this was in fact done by 16 July 2021. The claimant wrote to the tribunal as directed by 22 July 2021 to identify amendments for new claims or say why no amendment was needed. This was regarded as an application to amend (page 120 in the bundle produced for the OPH). The application explains the reasons and delay which I summarise as follows: (1) initially due to illness, and (2) not understanding the process because she could not identify the claims accurately. There was a further exchange of correspondence between the parties wherein the respondent asked for clarification and the claimant sought to do that (121-130). Later, on 28 July 2021 the claimant asserted that she was still getting amendments to the tribunal (132-137). The claimant also supplied a schedule of loss (139-141) in which she claimed injured feelings amounting to £240,400.00.

5. At the start of the OPH I enquired of the claimant whether she required any reasonable adjustments, and none were specified. We all agreed the need for regular breaks. We agreed a timetable for the hearing. By 2.30pm I had taken the evidence and submissions; but I decided that I needed more time than was available, and taking into account other reasons specified below, I adjourned the hearing. Therefore, it was agreed that I would give an oral judgement and reasons when we reconvened at **10am on 14 September 2021**. We agreed that the 2nd day of the hearing would also be via CVP. I had to put the start time back until 2pm, on account of having further reading to undertake.

6. The evidence. I received oral evidence from the claimant only. The parties also made submissions to me, which I mention later; and I received documents which I marked as exhibits as follows:

R1 Agreed bundle of documents (178 pages) for this OPH
R2 Agreed bundle of documents produced at the hearing on 21 April 2021

7.1 The law. The respondent took time points in defending the claims and the application to amend. In dealing with the issue of a continuing act, I had regard to the legacy case law which pre-dated the EQA, as it is still relevant. In the case of Calder –v- James Finlay Corporation Limited [1989] IRLR 55, which was approved by the House of Lords in Barclays Plc –v- Kapur and others [1991] IRLR 136, where it was held that an act extending over a period gave rise to continuing discrimination throughout employment when the claimant then was told that she was not “eligible” for a mortgage subsidy and alternatively this was subjecting her to a detriment whilst employment continued. A continuing act should be approached as being a rule or regulatory scheme which during its currency continues to have a discriminatory affect. The fact that a claimant continued to be paid less than a comparator was a consequence of the decision not to up-grade, not a continuing act of discrimination in the case of Sougrin -v- Haringey Health Authority [1991] IRLR 447. The matter was looked at again in the case of Cast -v- Croydon College [1998] IRLR 318. The Court of Appeal

held, amongst other things, that the claimant's complaint was of several decisions by the employer which indicated the existence of a discriminatory policy in her post and its application to her and that this constituted an "act extending over a period". The Court of Appeal considered the issue in Hendricks –v- Commissioner of Police for the Metropolis [2003] IRLR 96. The question is whether the acts complained of by the claimant amounted to an "act extending over a period" as distinct to a succession of unconnected or isolated specific acts, for which time would begin to run from a date when each specific act was committed. The claimant asserted that incidents were linked to one another and that they were therefore evidence of a "continuing state of affairs".

7.2 I then consider the exercise of my discretion over the three-month time limit applying to the EqA, and I have to consider whether it is "just and equitable" to let the case, or part of it, in after three months if the acts complained of are out of time and do not form part of an act extending over a period. The case of British Coal Corporation v Keeble [1997] IRLR 337 provides guidance on how to exercise my discretion. This was considered later in the case of Chohan v Derby Law Centre [2004] IRLR 685 EAT. I also considered the matters mentioned in s.33 of the Limitation Act 1980. Although that refers to the broad discretion for the court to extend the limitation period of three years in cases of personal injury and death, it also requires the court to consider the prejudice which each party would suffer as a result of a decision to be made. I am required to have regard to all the circumstances of the case and in particular, amongst other things, to –

(a) The length of and the reasons for the delay.

(b) The extent to which the cogency of the evidence is likely to be affected by the delay.

(c) The extent to which the respondent had co-operated with any request for information.

(d) The promptness with which the claimant acted once she knew of the facts giving rise to the cause of action.

(e) The steps taken by the claimant to obtain appropriate professional advice once she knew of the possibility of taking action.

7.3 In the case of Robertson v Bexley Community Centre [2003] IRLR 434 the Court of Appeal confirmed that the Employment Tribunal had a wide discretion in determining whether or not it was just and equitable to extend the time. The tribunal is entitled to consider anything that it takes to be relevant. Nevertheless, the case re-asserts that time limits are exercised strictly in Employment Tribunal cases. When considering the discretion over a claim that is out of time, and whether the time should be extended on just and equitable grounds, the Court of Appeal said that there was no presumption that the tribunal should do so. The

tribunal cannot hear a complaint, unless the claimant convinces it that it is just and equitable to extend the time. Thus, the exercise of the tribunal's discretion is the exception rather than the rule.

7.4 The law in relation to the amendment application. Rule 29 of the tribunal rules gives a broad discretion to the Employment Tribunal to allow amendments at any stage of the proceedings either on its own initiative or an application by a party. This discretion must be exercised in accordance with the overriding objective of dealing with cases fairly and justly in Rule 2, which states:

"Overriding objective

2. The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, 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, so far as compatible with proper consideration of the issues; and

(e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."

7.5 The statutory provisions on time limits. Basically s.123 applies and 3 months is the limited but it can be extended, continuous act or omission or on just and equitable grounds.

7.6 I know from Selkent Bus Co Ltd v Moore [1996] ICR 836, EAT, that when making a determination of an application to amend I am required to carry out a careful balancing exercise of all relevant factors, having regard to the interests of justice and the relative hardship that would be caused to the parties by granting or refusing the amendment. Relevant factors include: the nature of the amendment, the applicability of time limits, and the timing and manner of the application.

7.7 A significant feature in this case was that the parties recognised the application to amend was, on the face of it, made out of time. In considering the

exercise of my discretion I would need, in part, to take into account the 3-month time limit applying to the EqA and the provisions for extending time as described above.

7.8 I make some general observations at this point, including some which were drawn to my attention in the submissions. I am conscious of the fact that when deciding whether or not it is just and equitable to extend time for the presentation of a discrimination complaint, or an amendment, it is unnecessary to give separate consideration to the merits of the claims; but it is part of my task in the exercise of balancing the prejudice likely to be suffered by both parties should time not be extended. It has long been established that in cases such as this there is a multi-factorial assessment involved when no single factor is determinative. In exercising my discretion, I must ensure that no significant circumstance is left out. A key factor is whether a fair trial of the issue is still possible. Nevertheless, as described above, I must weigh other factors such as serious and avoidable delay by the claimant in bringing her claim, or in obtaining advice about the possibility of a claim, and of any amendment.

8. The facts. Once the case was introduced and we started considering the detail of it the claimant indicated that she was working from a "timeline" she had produced commencing at page 132 in the OPH bundle. The respondent asserted that this would not be a good way of proceeding and that we should use the table commencing at page 76 as that was in the agreed format. The claimant confirmed that she had had some fairly recent legal advise but she still didn't understand the process, reiterating that this also applied to her position when she first commenced the proceedings, asserting she wasn't well and did not know the law. I decided that the best way forward was to go through the list produced on 16 July 2021. The claimant wanted to go through her timeline stating she believed that everything in it was in the claim. She then said she was prepared to work from the schedule at 107 and she emphasised that I should recognise her as a litigant in person. Counsel for the respondent asked for an adjournment so that he could consider the claimant's new position and I agreed to the request. Upon resumption I took the claimant through the schedule at 107, item by item, but this became very difficult as the claimant made certain concessions on an item only to change her mind later after we had moved on to the next item. The claimant then stated that at the CPH before Judge Johnson the written record did not give rise to an accurate account of what was said, and she emphasised she was unwell at the time. She asserted that was why Judge Johnson gave her more time to give further information and she had wanted more time for legal assistance.

9. The claimant then made reference to the original trial bundle and I pointed out that I did not have access to it at this hearing. We then reconsidered the structure of the OPH and it was agreed that the claimant would give oral evidence at this stage and she was sworn in. She gave brief evidence in chief to the effect that

her email dated 22 July 2021 timed at 15:14 was her explanation for the delay in making her application to amend the claim. She confirmed that it was true that due to illness and not understanding the process she did not identify her claims accurately.

10. The claimant confirmed that she had no one to advise on how she should issue the claim and that everything that she did was through knowledge she gained on the Internet, and through family and friends. It was only after Judge Cookson gave her some leaflets on sources of free advice that she managed to obtain some legal advice. She accepted that her application to amend was not very clear; but once again emphasised her position as a lay person and stated that the biggest drawback was not understanding what was required of her.

11. I then heard from Mr Griffiths with the respondent's submissions. He addressed me orally. He supplied me with copies of three authorities: (1) Selkent, (2) Keeble, and (3) Adedeji v University Hospital Birmingham NHS Foundation Trust [2021] EWCA Civ 23. He submitted that I should look at the present case in the round; take into account all relevant factors, which included the public interest being properly served, which was not, in the present case, being served with the wasting of court time by the claimant. The claimant was advancing new facts on issues which were out of time. The claimant was not simply changing labels; but introducing new matters. The claimant had failed to demonstrate her incapacity which prevented her dealing with the amendment sooner. Furthermore, any such incapacity did not prevent her from completing a detailed witness statement for the hearing in April 2021. When the claimant presented her claim she was able to provide details in the claim form and a rider to it, setting out all her factual matters and these would have formed the basis of the six-day trial.

12. Mr Griffiths submitted it was only when witness statements were exchanged that the claimant's new allegations came to light. Thus, the respondent had been taken by surprise. The claimant's application to amend had caused the loss of a trial listed over six days. The proceedings today had been unsatisfactory because the claimant had poorly prepared her application to amend. He emphasised again that these were not simply alterations to labels but new facts (109) and the first time names have been mentioned. The claimant is now proposing a wholly new case. The claimant had failed to respond to Judge Johnson's amendment order. The claimant intervened and said that she had replied, although she also said she did not think it was required. She thought that the list of issues at 63-68 was sufficient and had been the reply. I asked her for the date; but she could not say when she had sent it in. Counsel resumed and said that the claimant could have said that harassment was an alternative pleading to direct discrimination; but had not done so. The timing of the application was against the claimant and these were substantive allegations. Mr Griffiths referred to the case of Adedeji, and paragraphs number 37 and 38, for guidance on the application of Keeble.

13. Mr Griffiths reminded me that the burden of proof was on the claimant to persuade me to extend time. I should conclude that there was no evidence of a medical affliction which prevented the proceedings having been presented earlier or an earlier amendment application to include those items now sought to be added. There was nothing to show the claimant was prevented from applying to amend sooner than she did. The claimant had been told in 2020 to amend and she had fail to do so. The claimant had wasted 6 days of the tribunal time in April 2021, and now there was a further day lost with her poorly presented application to amend. He asked me to find that the length of the delay was excessive, the reason for delay was unclear and there was prejudice to the respondent in that it could not now investigate as it could have done and some of the respondent's potential witnesses had left its employ some time ago. The claimant intervened to say that she admitted she had problems in understanding and was confused by the order of 20 April 2020. She asserted that she had replied and she had asked the respondent to do the right thing and include what she wanted to go in the bundle for today. She said the respondent had deliberately failed to include her reply in the bundle. Mr Griffiths then continued and asked me to reject the whole of the application to amend and allow the case to proceed only as originally pleaded.

14. Before the claimant commenced her oral submissions I asked if she wanted time to read the three cases which had been provided to her by Mr Griffiths. She replied by saying: "I wouldn't understand them anyway, so I don't want to bombard myself." Mr Griffiths confirmed that the two witnesses by the name of Cartmill and Halliday had left the employment of the respondent. The claimant then resumed and said the delays were not due to her entirely. She submitted that she was granted an extension of time until 15 June 2020 to give the information pursuant to Judge Johnson's order and she had provided it. Unfortunately, since I was working remotely I did not have the file with me to confirm. The claimant then explained that there was fault on the part of the respondent's representatives, stating there had been a delay in exchanging documents and agreement over the bundle. Some important documents had been included at the very end. The claimant submitted that she had been unwell previously and she had now supplied an accurate list of the incidents relied upon in the timeline. She had submitted a GP report saying that she was unwell. That was not before me in the bundle prepared for the OPH. The claimant said that she was "shocked" that I was not in possession of the main bundle used in April 2021. The claimant told me that if I had the tribunal file in front of me and the original trial bundle, I would see that she was given an extension of time to 15 June 2020; and she sent it in to the tribunal pursuant to that extension of time which was granted on 25 May 2020. The respondent put in an amended response on 13 July 2020. She then returned to outlining arguments that had preceded the trial in April 2021, about missing documents. She wanted to highlight how bad the picture of her had been painted by the respondent; and she wanted to redress the balance. Once again she reiterated that she was not well and used her doctor's report in support. She said a lot of information was in the

final hearing bundle to support the amendments. She said that: “I don’t understand instructions. As a layperson I don’t understand what I need to do. The process makes me nervous. Take this into account.”

15. I asked the claimant if she wanted to comment on the three cases provided to her by Mr Griffiths. Initially she said no, “I haven’t understood them properly. It takes me a long time to read them. If I skim read them now everything wouldn’t be digested.” I then asked the claimant if she wanted some time to read them. She replied: “Possibly, I would use tonight to do it.” Mr Griffiths intervened and said that he put two of the cases in the “chat box” at the last hearing in April. The claimant said that she only read “the Madarassy case”.

16. At that point I canvassed with the parties the idea of adjourning the OPH to enable the claimant to read the 3 cases and I would give her until 4pm on the following day to let the tribunal and the respondent have any comments she may wish to make. I indicated that I would also take the opportunity to have a look at the tribunal file and the main bundle from April 2021, as the claimant had raised concern about my not having them available and it would help me resolve some of the issues over responses or failure to respond to orders. This proposal was agreeable to both parties. The claimant did write in to the tribunal the next day stating that she had nothing to say about the 3 cases. We agreed an adjournment of the OPH until **14 September 2021** commencing at 10am with a time estimate of three hours. I said that I would consider the matter in Chambers before then, and should be in a position to give an oral judgment and reasons at the start. This would be followed by any appropriate case management orders to facilitate the just disposal of the final hearing which is due to start on 25 April 2022 and lasting for 8 days.

17. When I attended at the tribunal office on 25 August 2021 I was able to see the tribunal’s file relating to the case. I could not find any evidence that the claimant had been in touch with the tribunal to say that Judge Johnson’s case summary was wrong in any way pursuant to paragraph 3.1. Therefore the claimant did not challenge any inaccuracy and/or incompleteness in the orders or case summary. I was able to see that the claimant sent an email to the tribunal office on 6 April 2020 when she asked for some more time to comply with Judge Johnson’s orders. The tribunal wrote back to the claimant on 15 April 2020 asking for clarification of the email of 6 April 2020 and on 27 April 2020 the claimant wrote to the tribunal again, asking for an eight week extension to comply with orders 1.1 and 4.1, being the amendment and schedule of loss orders. The respondent on 21 May 2020 signified that it had no objection to the claimant’s application. On 15 June 2020 the claimant submitted a schedule of loss and “list of complaints”. The respondent later referred to them as further and better particulars. The respondent filed its amended grounds of resistance on 13 July 2020.

18. In fairness to the claimant, the “list of complaints” document was not in the bundle that I had in the first day of the OPH. When the claimant submitted that document the only thing that was stated in the covering email (which was sent to the respondent’s representative and copied to the tribunal) on 15 June 2020 was this: “As per your email of 25th of May and case management order please see attached schedule of loss and list of complaints.” This did not indicate that an application to amend was being made.

19. I have already described events concerning the proposed amendment and the way it was raised at the hearing in April 2021. I reminded myself of paragraph 63 of her order where Judge Cookson stressed the purposes of the exercise was to identify any matters that the claimant identifies as claims she wishes the employment tribunal to determine to help identify if an amendment application is required. Judge Cookson warned the claimant: “If she fails to make an application to amend her claim in relation to any new matters….. the tribunal will not make any legal determination in relation to those claims.” She was encouraged to help identify if an amendment application was required. On 7 July 2021 the claimant sent to the tribunal pursuant to paragraph 63 her list. It uses the headings provided by Judge Cookson; but what it fails to do is indicate whether the items contained in the list were the subject of an application to amend. I think that the respondent recognised that, and tried to help by supplying a further table on 16 July 2021 which had an additional column on the far right giving the respondent’s response to each item numbered 1 to 55. In the covering letter the respondent set out two lists, firstly listing those matters which it asserted the claimant must make an application to amend her claim, and in the second making a request to the claimant to clarify what she intended so that it could confirm its position.

20. The claimant acknowledged the request on 19 July 2021 and said that she would like to make an application to amend the claim to raise new claims. She said: “I am in the process of setting out my new claim and will forward it as soon as it’s completed.” The claimant, on 22 July 2021 (120), supplied a further copy of the schedule attaching an additional column on the far right clarifying those matters where the respondent had requested clarity. The claimant failed to identify in relation to those matters whether they were existing claims or new claims. She also said this in her email:

“I would like to make an application to amend my claim to raise new claims. Initially, due to illness and not understanding the process I was not able to identify my claims accurately. I am in the process of setting out my new claim and will forward it as soon as it’s completed.”

The respondent objected to any application in an email dated 27 July 2021. On 28 July 2021 the claimant wrote to the respondent and the tribunal and said this:

"I write in response to the objection raised by the respondent and would like to bring to their attention point 63 of the CMO. I would like to clarify that the original claim did mention "discrimination, harassment and victimisation" and the evidence is already provided in the bundle and I am now merely listing the acts under its appropriate label.

I have endured significant prejudices in my last 7 years at work and it would be a great injustice to me if I was not allowed to present these claims as the decision made by the tribunal will effect the rest of my life. Since the termination of my contract I had to face a lot of hardships which the perpetrators have not.

I will endeavor to get the amendment to you very soon."

I conclude that, at that time, the claimant had not made an application; but was still in the process of going to do so in due course.

21. The claimant then prepared and served what she called a "time line of incidents/claims." These appear at pages 121 to 130. This adopts a completely new format, and still fails to state what are existing and new claims.

<u>22. My conclusions and reasons</u>. I apply the law to the facts and explain my analysis.

23. The length of and reasons for the delay. The claimant has failed to demonstrate to me that she has made an application in writing to amend her claim. This was an issue which was canvassed by Judge Johnson on 30 March 2020. The expectation was after that hearing the claimant would give detailed information about those matters which were identified in the list of issues that he defined. I conclude that the claimant did not say that the issues were inaccurate or incomplete in writing to the tribunal as she asserted to me on the first day of this OPH. I think the list provided by the claimant on 15 June 2020 is further information about the existing claims. It would appear that the claimant made an oral application to Judge Cookson, but there was a lack of clarity in it. This made the further orders necessary to inject some clarity into any application from the claimant. The claimant has not made it clear when she was making an application in correspondence. It goes without saying that some procedural vigour is necessary in making such an application and processing it. On the face of it, any new claims, which are not specified, will be substantially out of time. The various documents that the claimant has supplied are poorly crafted, and plainly if allowed would substantially widen the scope of the claim, without much particularity all.

24. It is essential that a person bringing a claim must be responsible for formulating it. It is their case and they are obliged to set it out properly in the claim form. It is well established that a filed claim cannot be altered haphazardly. It cannot be amended unless and until permission has been given by the tribunal.

There is helpful information for parties given in the Presidential Guidance on the rules of procedure, and Judge Johnson in his order provided the claimant and the respondent with a link to it. There is specific guidance about amending a claim, in guidance note 1: paragraphs 1 to 14. These are all well worth reading, and I have taken them into account in coming to my decision. The claimant put forward illness and lack of understanding as her explanations for the delay in making the application to amend, and even for not putting the "new" matters in the original claim form. This argument was not persuasive and lacked relevant supporting medical material throughout the time leading up to the presentation of the claim and any amendment application. Some of the claims are years out of date, even if there was an application to amend to include them. I conclude the reason for any delay was inactivity on the part of the claimant. She has known the relevant facts for years and done nothing about them. She knows she has a remedy available in the tribunal, and has failed to take steps in a timely manner to make any amendment. However, that in itself is not the end of the matter.

25. The extent to which the cogency of the evidence is likely to be affected by the delay is relevant in this case. The respondent submits that some of the personnel referred to have now left their employ. Some of the allegations go back many years. I do recognize, however, that the parties have already exchanged witness statements and they will be able to refocus should any amendment be granted.

26. The claimant has not argued that the respondent had failed to co-operate with any request for information relevant to any application she has been making or attempting to make in relation to an amendment.

27. The promptness with which the claimant acted once she knew of the facts giving rise to the cause of action has been lamentable in relation to those matters that do not appear in the claim form.

28. The claimant has taken some limited legal advice, but this only appears to have been after she attended at the hearing in April 2021, and by that time any matter subject to an amendment would have been substantially out of time.

29. I then looked at the balance of hardship. If I do not grant the amendment or amendments the claimant will be shut out from having those particular issues tried before a full tribunal. However, there are a number of matters which are in play which can be heard. Has the delay caused prejudice to the respondent? The answer to that is yes, as the application to amend has led to the loss of the trial dates in April 2021 and any attendant costs in relation to it. There is obviously further delay to the next hearing date in 2022. On reading the various documents submitted by the claimant in support of the amendment, if there were viable claims in an application to amend then they were likely to fail because they are not issues upon which the tribunal can give a judgement because they are background matters or something else and many of them will be out of time. There is a prospect that the respondent would be put to the expense and

inconvenience of having to deal with its defence of claims which have potentially little merit. The details so far provided by the claimant are woefully inadequate. There should be specific allegations set out with precision and clarity, and this detail is lacking.

30. I noted that Judge Johnson ordered at paragraph 3.1 that if a party considered what was contained in his case management summary and issues was inaccurate or incomplete in any important way they should say so in 14 days of the date the order was sent to them (it was sent to the parties on 15 April 2020). The claimant made no comment. This contradicts what she told me on the first day of the OPH.

31. **When coming to my conclusions I had regard to how the claimant presented** to me. The claimant is articulate and intelligent. However, she was not a good witness in her own cause. She was prone to exaggeration. This was demonstrated in the way in which she has valued her claim. In particular where she seeks compensation of £240,400.00 for injured feelings. The application to amend was disjointed, and difficult to follow. In effect, it was as if she was asking the tribunal to sort the application out for her, by putting it into shape, as well as make the decision over it. I concluded that the application to amend was a further exaggeration by widening the scope of the complaints without giving any real thought to the process and the effect on the case..

32. I appreciated that the claimant was and is a litigant in person and that I should do my best to enable and empower her by adapting the system to suit such litigants. This helps with the concept of the equality of arms in litigation, and Rule 2. However, I cannot change the law or adapt it to give her an advantage. The claimant was resourceful and had some knowledge, and had obtained some limited legal advice. Unfortunately, she was not focused, as demonstrated by her failure to comply with the order of Judge Johnson, for further information, wherein it lacked specific details, and the order of Judge Cookson in the structure and approach to the amendment. I found that the claimant lacked objectivity and emotional distance from her case. Factors such as these are bound to have an adverse effect on the preparation and presentation of a litigant in person's case, and I believe that that is true in the case before me. The claimant was prone to exaggeration in the way in which she has valued her claim, and this has spilled out into exaggeration over obstacles which she stated prevented her from making her amendment much sooner or including the same facts in the original claim form and particulars of claim.

33. The claimant provided some information about her medical condition and treatment. She had a counselling appointment on 9 September 2019. In a letter from her GP practice dated 18 March 2020 this set out that the claimant had been suffering from work-related stress and anxiety symptoms, manifesting as low mood, anxiety and chest pain since October 2018, and this was ongoing. On 25 August 2020 the claimant's GP practice wrote a letter indicating the claimant's

anxiety disorder as a result of stress from work since October 2018, and she continues to be on antidepressant medication to help her sleep. At that time she was awaiting a referral to the psychotherapy team. In effect, the claimant is asking me to imply into this documentation confirmation that she was incapable of submitting a claim or amending it within the appropriate time. I cannot come to that conclusion on the information before me. The claimant has failed to demonstrate any relevant physical or mental impediment on the balance of probabilities which would have prevented her doing what was necessary to ensure her claim was brought in time and applying to amend shortly thereafter.

34. I made it my task to go into the tribunal office and look at the hard copy case file to see if there was anything that would help the claimant further in her application to amend. Also, I sought to find the original bundle of documents but this had been presented electronically to the tribunal office and access was no longer available. I made enquiries of the parties and it was re-sent. I was able to have a look at it before we reconvened. This gave me a very good insight into the case. However, I could find nothing which altered my view. Specifically, I tried to find information which the claimant may have relied upon over any delay in the claim and the amendment; but there was nothing to support her case that she was incapacitated. I was able to see occupational health reports, and I could see the GP report once again dated 18 March 2020. I was able to put the application for the amendment into the perspective of the case as a whole. I could see that the claimant had failed to give particulars of instances of discrimination, whether age or race, when she had been encouraged to do so by the respondent, before proceedings were commenced, including at the stage of the appeal against her dismissal. She refers to matters which may have formed a claim for disability discrimination; but she brings no such claim. On the information before me the claimant is unlikely to satisfy the initial burden of proof upon her in the discrimination claims and they will fail. The real issue in the case is the fairness or otherwise of the dismissal. Clearly the claimant had significant issues in her working relationships and found it very difficult to take simple management instructions and this led to conflicts with a number of colleagues. This is not a strong claim on the face of it, and rather surprisingly the claimant has included in the main hearing bundle documents about advice from her trade union and their solicitors. A trade union representative ventured to suggest that age and ethnicity had nothing to do with matters in hand, and the solicitors would not authorise representation. Instead of clarifying the issues, the way in which the claimant has gone about her application is rather to blur them and distract from the central issues which were discussed with Judge Johnson. I conclude there was serious and avoidable delay by the claimant in making her application to amend. The application is refused, and this is just, fair and proportionate.

35. I have listened very carefully to what the claimant had to say and I hope she finds that she had a fair hearing, notwithstanding the fact that it has not gone her way. I would round off by saying that I cannot give advice to the claimant but I would encourage her to get some professional independent legal advice urgently

from a solicitor or barrister who specialises in employment law and the Equality Act 2010. Even if she does not wish to engage someone for the whole of the case I would urge her to seek, at least, a one off advice from a specialist in this field of law on the strength and value of her case.

36. After I gave my judgement and reasons, I canvassed with the parties whether any further orders were required for the just disposal of the case; but none were identified. The case has been set up for an ADR hearing, and orders relating to that have been made. There were no further matters arising.

Employment Judge Dimbylow
Date 9 November 2021