



EMPLOYMENT TRIBUNALS

Claimant: Dr N Nguru

Respondent: Maximus UK Services Limited – First Respondent
Nathan Huet – Second Respondent
Joseph Lloyd - Third Respondent

Heard at: London South (by video)

On: 27 October 2023

Before: Employment Judge Cawthray

Representation

Claimant: In person – not legally qualified

Respondent: Ms Polimac, Counsel

RESERVED JUDGMENT

The Claimant's application to amend her claim is permitted in part and refused in part.

REASONS

Introduction, Background and Procedure

1. The Claimant participated in ACAS Early Conciliation between 29 April 2022 until 9 June 2022. The Claimant submitted her claim on 8 July 2022 and there was no legal representative on record at that time.
2. A Case Management Preliminary Hearing took place before me on 7 June 2023. At that hearing I discussed the complaints with the parties and attempted to record the complaints pursued. I made directions for the Claimant to provide further information and explained the application to amend process.

3. On 25 July 2023 the Claimant made an application to amend her claim. The application document amounted to approximately 30 pages and was submitted with a four page cover letter.
4. A preliminary hearing took place on 8 September 2023, again before me. The hearing had been listed to consider the Claimant's application to amend, any application for strike out/deposit order and any other case management as required. Unfortunately, the entire day was spent further seeking to understand and clarify the complaints, and it was not possible to deal with the application to amend.
5. Fortunately, the parties had complied with the directions made at the last preliminary hearing on 8 September 2023. The parties had produced an "Allegations Table" which amounted to 28 pages and listed each allegation that the Respondent states was not included within the ET1 claim form and required an application to amend. Both parties included comments within the table. The table also identified the allegations that the Respondent says should be made subject to a deposit order.
6. Within the table the Claimant stated that she was withdrawing the following complaints: breach of contract, failure to ensure health and safety and welfare (Health and Safety at Work Act 2010) and detriment under section 44(1)(c) Employment Rights Act 1996. The Respondent's comments within the table say: "C has withdrawn this claim and therefore R will not make any comments in relation to it".
7. At the hearing today, the Claimant explained that going forward she is hoping to be supported by the Equality and Employment Centre and had recently been advised that she should not have withdrawn the section 44 complaint. The Claimant wishes to revoke the withdrawal of section 44 complaint.
8. Ms. Polimac took instructions throughout the course of the hearing. The Respondent submits that the section 44 complaint has been withdrawn in writing and therefore cannot be revived. Ms. Polimac referenced rule 51 of the Employment Tribunal (Constitution & Rules of Procedure) Regulation 2012 and a case of *Khan v Haywood & Middleton Primary Care Trust 2006 EWCA civ 1987*. I have set out my decision in this respect below.
9. A separate withdrawal judgment will be issued in relation to the breach of contract and failure to ensure health and safety and welfare complaints, and it is noted the Claimant accepts the Tribunal does not have jurisdiction to hear those complaints.
10. In terms of reasonable adjustments, we again agreed to have a 15 minute break every 45 minutes. The Claimant's sister has joined the last two video hearings in order to support the Claimant. However, she was not able to attend today. The Claimant requested that we revisit the use of a recording software, Otter. I explained the structure and stages of the hearing today. The Respondent objected to the recording. I noted that that the Claimant's sister had not been involved in previous hearings, and that the Claimant had conversed and engaged very well. Accordingly, it was

agreed that we would start the hearing without the recording tool and the Claimant could indicate if she wished to revisit this at any stage.

11. The Claimant had provided a witness statement and financial documents.
12. I discussed the approach to the hearing with the parties. I heard submissions from both parties on the application to amend. The Claimant swore on the bible and was cross examined by Ms. Polimac in relation to her means to pay a deposit order. Both parties also gave oral submissions in relation to the deposit order.
13. Unfortunately, it was not possible to make a decision within the time allocated due to the large number of allegations subject to an application to amend and application for a deposit order. I explained to the parties that I would send my reserved judgment and reasons as soon as practicable, but that this may take some time.
14. I asked the parties to consider and seek to agree some sensible case management directions, noting that the next preliminary hearing to determine disability is due to take place on 9 January 2024.

Facts

15. It was not necessary to make significant findings of facts in order to consider the application to amend.

Law

16. I considered rules 29 and 34 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 (**the ET Rules**), the Presidential Guidance on Case Management and the principles established in the leading cases including *Selkent Bus Company Ltd v Moore* 1996 ICR 836, *EAT, Chaudhry v Cerberus Security and Monitoring Services Ltd* 2022 EAT 172, *Vaughan v Modality Partnership* UKEAT/0147/20/BA(V) the cases referenced by the parties and the representations of the parties.
17. Neither party directed me to any case law.
18. Rule 51 of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013 states:

“WITHDRAWAL

End of claim

51. Where a claimant informs the Tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end, subject to any application that the respondent may make for a costs, preparation time or wasted costs order.”

Conclusions

19. I considered the relevant factors, including the nature of the amendment, time limits, the timing and manner of the application, and in particular the balance of injustice and/or hardship in allowing or refusing the amendments. I have reminded myself that is not necessary to use Selkent factors as a prescriptive checklist, but have considered relevant factors.
20. I have kept in mind the parties submissions.

General conclusions

21. For brevity, before setting out my decision on each application I have set out some general comments and conclusions.
22. It is noted that the Claimant's position is that she had prepared further information to provide with her ET1, but did not think she could submit an attachment with the ET1 and understood there was a character restriction within the ET1.
23. It was only at the preliminary hearing on 7 June 2023, the first hearing in the claim, that the Claimant became aware of the process of clarifying and seeking to amend a claim, after I explained this to her.
24. Within the ET1 the Claimant provides a brief chronological account at box 8.2 and the Claimant did include some further information at box 15. Within box 8.2, the Claimant refers to discrimination, victimization and harassment.
25. I considered that the ET1 not "something to get the ball rolling", but note that often unrepresented parties do not have a clear understanding of the different types of discrimination and the need for clear pleadings as they do not understand the Tribunal process. In reaching my conclusions in relation to each application I have kept in mind the need to consider the ET1 as a whole.
26. The Claimant has a number of mental health conditions and describes herself as being neurodiverse, although there is a hearing to determine if the conditions amounted to a disability in accordance with section 6 Equality Act 2020 at the material times listed for 9 January 2024.
27. The Claimant's application to amend was not made until 25 July 2023, and on the face of it is out of time. I have not been able to consider any medical evidence in relation to the prospects of it being decided that it would be just and equitable to extend time but note that the Claimant's health is likely to be relevant to any just and equitable extension. However, an application to amend can be granted on the basis that time limits should be determined at a final hearing.
28. The Claimant, who is not legally qualified, made the application after explanations about Tribunal process were provided to her by myself on 7 June 2023. It is not fault of the Claimant that the first preliminary hearing in this claim did not take place until almost a year after the claim was

submitted. The time delay was due to pressures and backlogs in the Tribunal system.

29. Ms. Polimac submitted that most of the persons involved, either as witnesses or comparators, are no longer employed by the Respondent. Ms. Polimac explained that the Respondent has a policy where electronic files/emails are deleted 93 days after an employee leaves the Respondent. Although Ms. Polimac gave end dates for a number of individuals, I have not repeated that information here, save in respect of Nathan Huet, who is also the Second Respondent. I asked Ms. Polimac to confirm again that she was instructed to act on behalf of all three respondents, and she said this was the basis of her instructions. Nathan Huet left the Respondent in March 2022. The Claimant left the Respondent on 2 February 2022, and she submits the 93 days would mean data deletion on 6 May 2022 in relation to her accounts, and sometime in June 2022 for Nathan Huet.
30. Ms. Polimac also referred to a data transportation exercise in December 2022, but noted that data could be retained if a request was made.
31. It was not clear what data has and has not been deleted.
32. The Claimant contacted ACAS 29 in April 2022, however, she submitted a grievance in June 2021 and appeal in August 2021. The Respondent was on notice that the Claimant was upset at how she had been treated and I consider it would have been sensible and reasonable to take steps to preserve documentary evidence. Further, the ET1 was submitted on 8 July 2022, which was months before the December 2022 data migration.
33. I have set out specific comments on each application below, but for brevity have not repeated these general conclusions, but they have been kept in mind and form part of my decision on each application.
34. I have set out each allegation in which an application to amend is made in full and have included the numbering for the allegations as set out in my Case Management Order dated 8 September 2023 in order for the allegations to be easily cross-referenced.

Direct discrimination – decision on application to amend

1.1.1 Mr Huet state the Claimant was “looking for special treatment” after a formal probation meeting on 16th June 2021, attended by another manager and her Medical Functional Assessor colleague, KC.

35. In considering the nature of the amendment I considered that the fact the ET1 does not detail the specific comment allegedly made by Nathan Huet. However, the ET1 does state: *“I suffered increasingly worsening mental health caused by a sustained campaign of mental health discrimination, harassment and victimization by Nathan Huet and Joseph Lloyd”*.
36. Although the precise details of the allegation are not set out in the ET1, I consider 1.1.1 to provide better particulars of the general allegation set out in claim form. Accordingly, I do not consider this to be a new allegation, and simply clarification of what is already in the claim form.

Permitted.

1.1.2 Mr. Huet state that “we have already supported you as much as we can, the Occupational Health recommendations are just that, recommendations”, or words to that effect, on multiple occasions between 10th February 2021 to 02nd February 2021, including during two informal meetings held with the Claimant on 24th May 2021 and 12th October 2021.

37. My conclusion in this respect is as per 1.1.1 above, but also noting that the Claimant, in box 8.2 of the ET1 provided a brief chronology and there is reference to Occupational Health which states: “10/02/2021 - An Occupational Health assessment was conducted and advised...” This indicates that the treatment of her relating to the OH assessment was an issue.
38. Although the precise details of the allegation are not set out in the ET1, I consider 1.1.2 to provide better particulars of the general allegation set out in claim form. Accordingly, I do not consider this to be a new allegation, and simply clarification of what is already in the claim form.

Permitted.

1.1.3 Expect the Claimant to undertake three sets of training, examinations and approvals within a short timeframe, by December 2021. The Claimant says other colleagues, the group employed prior to April 2020, were only expected to undertake one set of training within 6 months.

39. The Respondent did not oppose this application, accordingly the allegation is permitted. For completeness, I do not consider this to be a new allegation, and simply clarification of what is already in the claim form.

Permitted.

1.1.6 During Stage 4 of the LCW Re-training, not offer the Claimant any formal support sessions from the Clinical Standards Leads compared with newly employed Medical Functional Assessor colleagues who were assigned weekly support sessions for around 6 weeks.

40. The ET1 does not contain any specific reference to the Stage 4 LCW Re-training or lack of particular support. Box 15 does, as set out in relation to 1.1.3 above, reference training and there is mention of the LCW training: “...the median time for a full-time practitioner at our centre to achieve the productive target after successful completion of LCW All Outcomes training, with no breaks in training, around 7 months.” However, there is no reference to not offering formal support sessions. I do not consider this allegation to be set out within the ET1.
41. Accordingly, I have considered the relevant factors below.

Nature of amendment

42. This is not a new head of complaint. The claim already contains allegations of direct disability discrimination.

43. The ET1 also contains general reference to training.

Time limits

44. On face of it, as noted above the complaint is out of time as the Claimant made her application to amend on 25 July 2023. However, can application can be granted subject to time limits being determined at a final hearing.

Timing and manner of application

45. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, after I explained to her the requirements of needing to formally apply to amend a claim.

Balance of injustice and hardship

46. The Respondent has been on notice of the Claimant's concerns about the training program during her employment. I have set out my conclusions above regarding the deletion of data. Ms. Polimac submits this will result in greater prejudice to the Respondent in seeking to defend allegations where there is potentially missing data, and further, that additional allegations will increase the length of a final hearing and put the Respondent to additional costs.

47. I have considered this against the hardship to the Claimant, and note this is just one element of a claim that will already continue to a final hearing.

48. I do not consider this allegation to be factually distant from other allegations relating to training that will be considered, and do not think it will add significantly to the final hearing.

49. Considering all of the above, and taking all into account, I conclude that greater prejudice would be caused to the Claimant if the application was refused.

Application permitted, subject to determination of time limits at final hearing.

1.1.7 Not give the Claimant five weeks of support sessions with Clinical Standards Leads following her LCW training. Kate Collins was given 5 sessions.

50. In relation to this allegation, I have reached the same conclusions as per 1.1.6 above.

Application permitted, subject to determination of time limits at final hearing.

1.1.8 Expect the Claimant to train with 2 cases a day LCW NET and Stage 3 training. Newly employed Medical Functional Assessor colleagues were only expected to train with 1 case a day.

51. In relation to this allegation, I have reached the same conclusions as per 1.1.6 above, but note the ET1 does not contain specific reference to being required to train with two cases per day but box 15 does refer to Jenny Chapman being permitted to “*only assess 1 client a day for around 5 months of her probation period*”. Therefore, there is partial reference to the allegation in the ET1.

Application permitted, subject to determination of time limits at final hearing.

1.1.9 Require the Claimant to pass LCW training as part of her probation period. The original probation plan did not include this requirement. Kate Collins was not required to pass LCW as part of her probation.

52. The ET1, at box 15, does refer to completion of the LCW training and management not supporting a change in targets and probation objective.
53. Although the precise details of the allegation are not set out in the ET1, I consider 1.1.9 to provide better particulars of the general allegation set out in claim form. Accordingly, I do not consider this to be a new allegation, and simply clarification of what is already in the claim form.

Permitted.

1.1.10 Mr. Huet deny the Claimant’s request to take her four days owed in lieu between her LCW NET training which ended on 28 May 2021 and the Stage 3 training. Kate Collins was allowed to take annual leave between finishing the LCW NET training and commencing the Stage 3 training.

54. The ET1 does not contain any specific reference to the request to take four days owed. However, the ET1 does state: “*I suffered increasingly worsening mental health caused by a sustained campaign of mental health discrimination, harassment and victimization by Nathan Huet and Joseph Lloyd*”.
55. Although the precise details are not set out, I consider 1.1.10 to provide better particulars of the general allegation set out in the claim form regarding Mr. Huet’s behaviour towards the Claimant.
56. Accordingly, I do not consider this to be a new allegation, and simply clarification of what is already in the claim form.

Permitted.

1.1.12 The Claimant was not allowed to have a reduction in performance targets during her phased return (starting on 12 April 2021) and was not permitted to take extra breaks during the working day. Jennifer Caswell

and Jenny Chapman had their performance target reduced and JC was allowed to take extra breaks.

57. Box 15 of the ET1 states: "*Jenny Chapman, a colleague with a learning difficulty had productivity and quality targets quickly adjusted to accommodate her needs while awaiting installation of dyslexia software and technological support.*" Box 15 also states: "*I had been informed that the managers could not support a change of work role during my phased return to work to allow for my mental rehabilitation.... During my employment, I had been informed that the management team could not support a change of targets and probation objective at various stages during my employment*".

58. Although put in a clearer form at 1.1.12, I consider the basis of the allegation is already contained within the ET1, and that it has been clarified.

Permitted.

1.1.14 The Claimant's probation period was not automatically extended. Bethan Male and Kate Collins both had the date of their probation review meetings automatically extended by around 6 - 8 weeks to enable her to meet performance targets.

59. The ET1 does not contain any specific reference to the Claimant's probation period not being automatically extended. However, box 15 does state; *During my employment, I had been informed that the management team could not support a change of targets and probation objective at various stages during my employment*". There is no reference to Bethan Male or Kate Collins in the ET1.

60. Although put in a clearer form at 1.1.14, I consider the basis of the allegation is already contained within the ET1, and that it has been clarified.

Permitted .

Arising From Disability Discrimination – application to amend

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

- a. 2.2.1 The Claimant's sickness absence between February 2021 and April 2021?

61. There isn't a specific reference to the Claimant being absent on sick leave between February and April 2021. However, this appears to be clarification of the something arising in consequence of the Claimant's disability. The Claimant relies on 3 allegations of unfavorable treatment, and this is not challenged by the Respondent. Further, I note that the Respondent would have been aware of the Claimant's sick leave.

62. Accordingly, I have considered the relevant factors.

Nature of the amendment

63. This is not a new head of complaint. The claim already contains allegations of discrimination arising from disability. This is clarification of the something arising from relied upon.

Time limits

64. On face of it, as noted above the claim is out of time as the Claimant made her application to amend on 25 July 2023. However, an application can be granted subject to time limits being determined at a final hearing.

Timing and manner of application

65. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, after I explained to her the requirements of needing to formally apply to amend a claim.

Balance of injustice and hardship

66. The Respondent would have been aware of the sick leave. Although the Respondent says most persons involved have now left the Respondent, and data has been deleted, and that this will cause the Respondent prejudice in trying to defend allegations. I have considered the above, and taking all into account, I conclude that greater prejudice would be caused to the Claimant if the application is refused.
67. The Respondent has been on notice of the Claimant's concerns about the training program during her employment. I have set out my conclusions above regarding the deletion of data. Ms. Polimac submits this will result in greater prejudice to the Respondent in seeking to defend allegations where there is potentially missing data, and further, that additional allegations will increase the length of a final hearing and put the Respondent to additional costs.
68. I have considered this against the hardship to the Claimant, and note this is just one element of a claim that will already continue to a final hearing. The Respondent would have been aware of the Claimant's sick leave, and has been clear that the priority is obtaining clarification of the pleaded claim.
69. Considering all of the above, and taking all into account, I conclude that greater prejudice would be caused to the Claimant if the application was refused.

Application permitted, subject to determination of time limits at final hearing.

Indirect disability discrimination

3.1 A “PCP” is a provision, criterion or practice. Did the respondent have the following PCP:...

- a. 3.1.2 A practice of requiring three sets of training for employees starting between April to September 2020.

70. Box 15 of the ET1 states:

“I raised concerns that as a company and local management team, Maximis UK was failing to proactively anticipate and mediate the negative mental health effect that the prolonged period of assessment was having on the select group of employees who needed to undertake three sets of training, examination and approvals...”

71. Box 15 also states: *“In fact, after raising concerns the local management team adjusted the training learning curve for new colleagues (Kate Colling and Claire B?) employed weeks after me”.*

72. Accordingly, I consider there to be reference to the alleged PCP within the ET1 and I consider this allegation to be within the ET1, and that the Claimant has simply provided clarification.

Permitted.

Reasonable adjustments – application to amend

4.2A “PCP” is a provision, criterion or practice. Did the respondent have the following PCPs:

- 4.2.2 A practice of following Occupational Health recommendations if it befits the business capacity

73. Boxes 8 and 15 of the ET1 do not make any identifiable reference to a practice as set out above.

74. The Claimant seeks to rely on two alleged PCPs, the first being *“That all Medical Functional Assessors trainees complete their training on full time hours”* is not challenged by the Respondent and will be considered at a final hearing.

75. I have considered this element together with the application to add a step as set out below, because the two go together.

4.3 What steps could have been taken to avoid the disadvantage? The Claimant suggests:

- i. The Respondent could have followed all of the Occupational Health recommendations which were four months off work, ongoing one to one support, a phased return with a change

in duties, not undertaking telephone assessments for two months and re-referred the claimant back to Occupational Health and given her 8 – 12 weeks to meet targets before termination.

76.

Again, I have had careful regard to the ET1.

77. Box 8.2 states:

“The basis of my employment tribunal claim is that Maximus UK failed to properly investigate and implement protective measures to support...”

“10/02/2021 - An Occupational Health assessment was conducted and advised

- Extended time off work
- 3 days part time
- Phased return to work / change in work role
- Re-referral after 3 months”

78. Box 15 contains the following:

“I had been informed that the managers could not support a change of work role during my phased return to work to allow for my mental health rehabilitation.”

79. “During my employment, I had been informed that the management team could not support a change of targets and probation objective at various stages during my employment.”

80. The information within the ET1 is not precisely the same as 4.3.2 but box 8.2 does reference a specific Occupational Health report and most of the things the Claimant says could have been done to avoid the disadvantage alleged by not following the recommendations.

81. When read together with the opening text in box 8.2 and the text in box 15 I do consider that although put in a clearer form at 4.2.2 and 4.3.2, the basis of the allegation is already contained within the ET1, and that it has been clarified.

82. Accordingly, no amendment is required.

Permitted.

Harassment – application to amend

83. Within the Allegation Table the Claimant withdrew 13 allegations. For clarity, I cross referenced the numbering in the Case Management Order dated 8 September 2023, and the Claimant has withdrawn the following allegations: 5.1.1., 5.1.2, 5.1.3, 5.1.4, 5.1.7, 5.1.9, 5.1.1.10, 5.1.1.12, 5.1.1.14, 5.1.1.15, 5.1.1.16, 5.1.1.17, 5.1.1.20.

84. A separate dismissal upon withdrawal judgment has been issued in this respect.
85. The Respondent says the following allegations require an application to amend: 5.1.5, 5.1.6, 5.1.8, 5.1.11, 5.1.13, 5.1.18, 5.1.19, 5.1.21, 5.1.22, 5.1.23.
86. The Respondent also says the following allegations do not amount to harassment within the meaning of section 26 of the Equality Act 2010 and that if permitted, should be made subject to a deposit order: 5.1.5, 5.1.6, 5.1.8, 5.1.11, 5.1.13. This is dealt with further below.

5.1.5 Deliberately withholding access to Occupational Health services between 10th February 2021 and 12th January 2022.

87. The ET1 refers to Occupational Health recommendations from 10 February 2021 but contains no reference to the Respondent deliberately withholding access to Occupational Health.
88. Accordingly, I have considered the relevant factors below.

Nature of amendment

89. This is not a new head of complaint. The claim already contains one allegation of harassment related to disability.

Time limits

90. On face of it, as noted above the claim is out of time as the Claimant made her application to amend on 25 July 2023. However, an application can be granted subject to time limits being determined at a final hearing.

Timing and manner of application

91. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, after I explained to her the requirements of needing to formally apply to amend a claim.

Balance of injustice and hardship

92. The Respondent has been on notice of the Claimant's concerns about the non-implementation of Occupational Health recommendations from the date of ET1. In relation to this particular allegation, I do not see how the deletion of any data would have a significant impact on the Respondent. However, it will require witnesses to comment on the reasons why the Claimant was not referred to Occupational Health between 10th February 2021 and 12th January 2022. There were no specific comments made in this respect by the respondent, and I would anticipate the same management witnesses that will give evidence in relation to other matters would also deal with this allegation.
93. I have considered this against the hardship to the Claimant, and note this is just one element of a claim that will already continue to a final hearing, subject to a determination on disability.

94. I do not consider this allegation to be factually distant from other allegations relating to Occupational Health that will be considered, and do not think it will add significantly to the final hearing.
95. Considering all of the above, and taking all into account, I conclude that greater prejudice would be caused to the Claimant if the application was refused.

Application permitted, subject to determination of time limits at final hearing.

5.1.6. Mr. Huet's statements implying the Claimant was "looking for special treatment" and minimising the Occupational Health recommendations on multiple occasions.

96. Again, as noted above, the ET1 contains the following:

97. Box 8.2 states:

"The basis of my employment tribunal claim is that Maximus UK failed to properly investigate and implement protective measures to support..."

"10/02/2021 - An Occupational Health assessment was conducted and advised

- *Extended time off work*
- *3 days part time*
- *Phased return to work / change in work role*
- *Re-referral after 3 months"*

98. Box 15 contains the following:

"I had been informed that the managers could not support a change of work role during my phased return to work to allow for my mental health rehabilitation."

"During my employment, I had been informed that the management team could not support a change of targets and probation objective at various stages during my employment."

99. The information within the ET1 is not precisely the same as the allegation at 5.1.6 but the ET1 does reference Mr Huet throughout.
100. However, the allegation remains unclear. The Claimant has not specified the statements allegedly made by Mr Huet and has not set out when they were allegedly made and further does not set out the detail of how he allegedly minimised Occupational Health recommendations and when.
101. The Claimant has been given ample opportunity to seek to clarify the basis of her allegations. As this allegation remains unclear and

unspecified, I have considered that the Claimant is seeking bring a new allegation of harassment that remains unspecified.

102. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, as noted above.

103. I consider the key factor in this allegation is the balance of injustice and hardship.

104. If the Claimant was allowed to continue with this allegation the Respondent would be put to significant disadvantage in being forced to try and defend an allegation that remains unclear, despite there having been three preliminary hearings to date and numerous orders and assistance to obtain clarity.

105. The Claimant has a number of allegations that will continue, and on balance, I conclude that the hardship to the Respondent would be greater.

106. This application to amend is refused.

Refused.

5.1.8. Making unilateral changes to the original probation plan after the Claimant had already successfully achieved the targets and unilaterally extending the probation period without due cause.

107. On review of the ET1 I note in particular that box 15 references 30 days to achieve target, general reference to training and assessment but nothing specific regarding her probation period/plan save for the last paragraph at Box 15 which states:

“During my employment, I had been informed that the management team could not support a change of targets and probation objective at various stages during my employment.”

108. However, in considering the ET1 as a whole, I do consider that although put in a clearer form at 5.1.8, the basis of the allegation is already contained within the ET1, and it has been clarified. Accordingly, no amendment is required.

Permitted.

5.1.11 The poor processing and repeated delayed communications of the outcomes of grievances. The omission of key details and the manipulation of information recorded in meeting notes and emails, namely the emails about the revised probation plan in May 2021 and the LCW targets in November 2021.

109. In relation to her grievances, the Claimant, at box 8.2 of her ET1 states:

“I raised two formal grievances in July 2022 which were partially upheld.”

110. The Claimant does not set out any concern about the processing of her grievance or any delay anywhere in the ET1. Had she been concerned about this at the time of submission, very few words would have been needed to include this. I do not consider the ET1 contains this allegation of harassment.

111. For completeness I also note here that the Claimant has made a similar allegation of victimisation below, although the allegations are not put in the same way.

112. The ET1 sets out no detail in this respect.

113. Accordingly, I have considered the relevant factors below.

Nature of amendment

114. This is not a new head of complaint. The claim already contains allegations of harassment related to disability.

Time limits

115. On face of it, as noted above the claim is out of time as the Claimant made her application to amend on 25 July 2023. However, an application can be granted subject to time limits being determined at a final hearing.

Timing and manner of application

116. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, after I explained to her the requirements of needing to formally apply to amend a claim.

Balance of injustice and hardship

117. In regard to this allegation, I have noted that there is no detail about this at all in the ET1 other than reference to the fact she submitted a grievance. I have considered this an important factor in assessing the prejudice to the parties.

118. The Claimant could have easily indicated her concerns about this matter in a simple sentence within the claim form.

119. I have considered this against the hardship to the Claimant, and note this is just one element of a claim that will already continue to a final hearing, subject to a determination on disability.

120. It appears that this allegation is factually distant from the other allegations. Although it would not appear to add significantly to the time at the final hearing it is not clear what evidence may be needed to deal with the allegation.

121. Considering all of the above, and taking all into account, in particular the wide range and number of allegations I conclude that greater prejudice would be caused to the Respondents if the application was permitted.

Refused.

5.1.13. The scheduling of medical revalidation appraisals and work exams on the same day.

122. The ET1 sets out no detail in this respect.

123. Accordingly, I have considered the relevant factors below.

Nature of amendment

124. This is not a new head of complaint. The claim already contains one allegation of harassment related to disability.

Time limits

125. On face of it, as noted above the claim is out of time as the Claimant made her application to amend on 25 July 2023. However, an application can be granted subject to time limits being determined at a final hearing.

Timing and manner of application

126. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, after I explained to her the requirements of needing to formally apply to amend a claim.

Balance of injustice and hardship

127. In regard to this allegation, I have noted that there is no detail about this at all in the ET1. I have considered this an important factor in assessing the prejudice to the parties.

128. The Claimant could have easily indicated her concerns about this matter in a simple sentence within the claim form.

129. I have considered this against the hardship to the Claimant, and note this is just one element of a claim that will already continue to a final hearing, subject to a determination on disability.

130. It appears that this allegation is factually distant from the other allegations. The allegation that medical revalidation appraisals and work exams does not appear to feature as part, in the main or background, to any other allegation. Although it would not appear to add significantly to the time at the final hearing it is not clear what evidence may be needed to deal with the allegation.

131. Considering all of the above, and taking all into account, in particular the wide range and number of allegations I conclude that greater prejudice would be caused to the Respondents if the application was permitted.

Refused.

5.1.18. Acting in a manner which damaged the Claimant's reputation and career prospects, such as Mr. Lloyd's avoidance of communication with the Claimant following her filing of grievances and holding meetings in an intimidating way.

132. This allegation remains, in parts, unclear. The Claimant has not specified who, how and when the Respondents acted in a manner that damaged her reputation and career prospects but the Claimant appears to have given an example of Mr. Lloyd avoiding communications and holding meetings in an intimidating way after she lodged her grievances. On plain reading, this element relating to Mr. Lloyd reads more as a complaint of victimisation.

133. As set out below, the Claimant seeks to pursue a complaint of victimisation, but the alleged acts of Mr. Lloyd do not appear as an allegation of victimisation.

134. The ET1 at box 8.2 makes the following reference to Joseph Lloyd:

"The basis of my employment tribunal claim is that Maximus UK failed to properly investigate and implement protective measures to support my well-being against the sustained discrimination, victimisation and harassment maliciously committed by Nathan Huet (Lewes Centre Manager) and Joseph Lloyd (Performance Manager)..."

"29/11/2020 - Joseph Lloyd (Performance Manager) denied a variation of contract to part-time hours during the training period, without good cause."

135. However, this appears to be prior to the Claimant lodging a grievance, which does not align with the allegation as framed above.

"12.04.2021 - 02.02.22 - I suffered increasingly worsening mental health caused by a sustained campaign of mental health discrimination, harassment and victimisation by Nathan Huet and Joseph Lloyd."

136. Again, this part of the ET1 makes only general reference, but does not specify what was allegedly done and why.

"02/02/2022, Joseph Lloyd knowingly put me in a vulnerable position during a performance meeting without trade union or colleague support, terminating my contract with immediate effect at 5.15pm on Wednesday 2nd February 2022."

137. Although reference to Mr. Lloyd in ET1, the Claimant does not reference damage to her reputation or career.

138. As noted above, the Claimant has been given ample opportunity and assistance, to seek to clarify the basis of her allegations. As this allegation remains unclear and unspecified, I have considered that the Claimant is seeking bring a new allegation of harassment that remains unspecified.

139. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023.

140. I consider the key factor in this allegation is the balance of injustice and hardship.

141. If the Claimant was allowed to continue with this allegation the Respondent would be put to significant disadvantage in being forced to try and defend an allegation that remains unclear, despite there having been three preliminary hearings to date and numerous orders and assistance to obtain clarity, in particular directions given on the information needed from the Claimant at the case management preliminary hearing on 7 June 2023.

142. The Claimant has a number of allegations that will continue, and on balance, I conclude that the hardship to the Respondent would be greater.

143. This application to amend is refused.

Refused.

5.1.19. Hostile attitudes, bullying behaviour, and the creation of a sustained toxic and stressful atmosphere by Mr Huet and Mr Lloyd and other senior members of staff, including but not limited to, rolling their eyes when the Claimant spoke in meetings, making her lose confidence, whispering and sudden silence in the admin room when the Claimant entered, making her feel uncomfortable and targeted, Mr Huet's monitoring of the Claimant's movements in the break room and outside of her office, making her and her colleagues feel uncomfortable and Christmas gifts personally chosen by Mr Huet in December 2021, including a brown notebook with a offensive message "YOU DON'T HAVE TO BE CRAZY TO WORK HERE WE WILL TRAIN YOU".

144. This allegation remains, in parts, unclear. The Claimant has mentioned general behaviour by Mr Huet and Mr Lloyd but also "other senior members of staff".

145. She has gone on to say "including but not limited to..." and provided some examples but does not specify with the necessary clarity who did what and when.

146. The part of the allegation that is specific and understandable is: "Christmas gifts personally chosen by Mr Huet in December 2021, including a brown notebook with a offensive message "YOU DON'T HAVE TO BE CRAZY TO WORK HERE WE WILL TRAIN YOU"."

147. However, there is no reference at all in the ET1 to this. For completeness, I note the Claimant also seeks to pursue reference to the note book as an allegation of victimisation.

148. The ET1 at box 8.2 makes the following references to Mr. Huet.

"The basis of my employment tribunal claim is that Maximus UK failed to properly investigate and implement protective measures to support my

well-being against the sustained discrimination, victimisation and harassment maliciously committed by Nathan Huet (Lewes Centre Manager) and Joseph Lloyd (Performance Manager)...

"12.04.2021 - 02.02.22 - I suffered increasingly worsening mental health caused by a sustained campaign of mental health discrimination, harassment and victimisation by Nathan Huet and Joseph Lloyd."

149. Again, this part of the ET1 makes only general reference, but does not specify what was allegedly done and why.
150. However, the allegation generally remains unclear. The Claimant has not specified the conduct relied on, save for the Christmas gift – which is not mentioned anywhere in the ET1.
151. As noted above, the Claimant has been given ample opportunity and assistance, to seek to clarify the basis of her allegations. As this allegation remains unclear and unspecified, I have considered that the Claimant is seeking bring a new allegation of harassment that remains unspecified.
152. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, as noted above.
153. I consider the key factor in this allegation is the balance of injustice and hardship.
154. If the Claimant was allowed to continue with this allegation the Respondent would be put to significant disadvantage in being forced to try and defend an allegation that remains unclear, despite there having been three preliminary hearings to date and numerous orders and assistance to obtain clarity, in particular directions given on the information needed from the Claimant at the case management preliminary hearing on 7 June 2023.
155. The Claimant has a number of allegations that will continue, and on balance, I conclude that the hardship to the Respondent would be greater to permit the entire allegation as drafted to continue.
156. This application to amend is refused, save for the following is permitted to continue as an allegation of harassment: "Christmas gifts personally chosen by Mr Huet in December 2021, including a brown notebook with a offensive message "YOU DON'T HAVE TO BE CRAZY TO WORK HERE WE WILL TRAIN YOU"."
157. In reaching this decision I took into account the factor as noted in the applications granted above. Namely, noting it is not a new head of complaint. The claim already contains allegations of harassment related to disability and noting the time limits mean on the face of it is out of time and the application was made after my explanation to the Claimant on 7 June 2023.

158. However, in particular, in considering the balance of injustice and hardship, I have considered that although this specific detail is not included in the ET1, the Claimant does make various reference to Mr. Huet as set out above. The evidence of Mr. Huet will be required to deal with other allegations, and indeed he is a respondent to the claim. This precise allegation should not need any significant further hearing time or additional line of enquiry. On balance, in relation to the particular notebook allegation, I consider the prejudice would be greater to the Claimant was this not permitted to continue.

Refused in part and permitted in part, subject to determination of time limits at final hearing.

5.1.21. Unilaterally scheduling the Claimant for face-to-face training during a period of stricter social distancing measures and COVID-19 risks in December 2021, and failing to inform the Claimant of a COVID positive case and site closure in August 2021, putting her at undue risk due to her increased susceptibility to COVID-19.

159. The Claimant has sought to pursue a similar allegation as part of a complaint of victimisation at allegation 6.2.4, below – albeit this allegation relates only to the failure to inform the Claimant of a Covid case and site closure.

160. There is no detail of the allegation within the ET1. The Claimant has not specified the person/s involved.

161. There is no detail of this specific alleged detriment within the ET1.

162. Accordingly, I have considered the relevant factors below.

Nature of amendment

163. This is not a new head of complaint. The claim already contains one allegation of victimization, and this overlaps with an allegation of harassment regarding the same factual matters.

Time limits

164. On fact of it, as noted above the claim is out of time as the Claimant made her application to amend on 25 July 2023. However, can application can be granted subject to time limits being determined at a final hearing.

Timing and manner of application

165. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, after I explained to her the requirements of needing to formally apply to amend a claim.

Balance of injustice and hardship

166. However, in particular, in considering the balance of injustice and hardship, I have considered that although this specific detail is not included in the ET1. It is not clear who was potentially involved, but the Claimant gives a specific date that will enable the Respondents to make enquiries. The Respondents did not make any submissions specific to any particular hardship caused by this allegation continuing.
167. This precise allegation appears to be quite contained and should not need any significant further hearing time or additional line of enquiry, indeed it may overlap with Mr. Huet addressing his instructions to the Claimant regarding clients to be seen in August 2021.
168. As above, the Respondent has been on notice of the Claimant's concerns generally about Mr. Huet's treatment of her. There were no specific submissions as to whether the Respondents may required particular documents to deal with this allegation and I have set out my conclusions above regarding the deletion of data. Ms. Polimac submitted generally that permitting applications to amend would result in greater prejudice to the Respondents in seeking to defend allegations where there is potentially missing data, and further, that additional allegations will increase the length of a final hearing and put the Respondent to additional costs.
169. I have considered this against the hardship to the Claimant, and note this is just one element of a claim that will already continue to a final hearing.
170. Considering all of the above, and taking all into account, I conclude that greater prejudice would be caused to the Claimant if the application was refused.

Application permitted, subject to determination of time limits at final hearing.

5.1.22. Withholding the letter confirmation of LCW training approval as a tactic to stall the Claimant's productivity, as Mr Huet stated that all of her reports were to remain 100% audited until she received the letter.

171. The ET1 contains no reference to this specific allegation, namely withholding the LCW training letter and Mr Huet's comments regarding reports being audited.
172. As noted above, the ET1 at box 8.2 makes the following references to Mr. Huet.
173. *"The basis of my employment tribunal claim is that Maximus UK failed to properly investigate and implement protective measures to support my well-being against the sustained discrimination, victimisation and harassment maliciously committed by Nathan Huet (Lewes Centre Manager) and Joseph Lloyd (Performance Manager)..."*
174. ."

175. *“12.04.2021 - 02.02.22 - I suffered increasingly worsening mental health caused by a sustained campaign of mental health discrimination, harassment and victimisation by Nathan Huet and Joseph Lloyd.”*
176. Accordingly, I have considered the relevant factors below.
177. Nature of amendment
178. This is not a new head of complaint. The claim already contains one allegation of harassment related to disability.
179. Time limits
180. On fact of it, as noted above the claim is out of time as the Claimant made her application to amend on 25 July 2023. However, can application can be granted subject to time limits being determined at a final hearing.
181. Timing and manner of application
182. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, after I explained to her the requirements of needing to formally apply to amend a claim.
183. Balance of injustice and hardship
184. However, in particular, in considering the balance of injustice and hardship, I have considered that although this specific detail is not included in the ET1, the Claimant does make various reference to Mr. Huet as set out above. The evidence of Mr. Huet will be required to deal with other allegations, and indeed he is a respondent to the claim. This precise allegation should not need any significant further hearing time or additional line of enquiry. On balance, I consider the prejudice would be greater to the Claimant was this not permitted to continue.
185. I have also note that the withholding of the letter is also alleged to be detriment under the victimisation complaint, which is addressed below.

Application permitted, subject to determination of time limits at final hearing.

5.1.23. The Claimant was singled out with specific clients' files which were lengthier and more complex than other colleagues.

186. This allegation remains, in part unclear. The Claimant has not specified who allocated her particular files and when such files were allegedly allocated.
187. Further, there is no reference to this matter at all in the ET1.
188. As noted above, the Claimant has been given ample opportunity and assistance, to seek to clarify the basis of her allegations. As this

allegation remains unclear and unspecified, I have considered that the Claimant is seeking bring a new allegation of harassment that remains unspecified.

189. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, as noted above.
190. I consider the key factor in this allegation is the balance of injustice and hardship.
191. If the Claimant was allowed to continue with this allegation the Respondent would be put to significant disadvantage in being forced to try and defend an allegation that remains unclear, despite there having been three preliminary hearings to date and numerous orders and assistance to obtain clarity, in particular directions given on the information needed from the Claimant at the case management preliminary hearing on 7 June 2023.
192. The Claimant has a number of allegations that will continue, and on balance, I conclude that the hardship to the Respondent would be greater, it would not understand the basis of the allegation, the persons involved and the evidence needed to defend the claim.
193. This application to amend is refused.

Refused.

Victimisation – application to amend

194. The Respondent maintained that all the allegations of victimisation detriment are subject to an application to amend save for 6.2.11. Therefore, a complaint of victimisation will be heard at a final hearing.

6.2.1 Fix the following meetings at short notice: informal meeting with Nathan Huet (October 2021), training (December 2021).

195. There is no detail of this alleged detriment within the ET1.
196. As noted above, the ET1 at box 8.2 makes the following general references to Mr. Huet.
- “The basis of my employment tribunal claim is that Maximus UK failed to properly investigate and implement protective measures to support my well-being against the sustained discrimination, victimisation and harassment maliciously committed by Nathan Huet (Lewes Centre Manager) and Joseph Lloyd (Performance Manager)...”*

“12.04.2021 - 02.02.22 - I suffered increasingly worsening mental health caused by a sustained campaign of mental health discrimination, harassment and victimisation by Nathan Huet and Joseph Lloyd.”

197. Accordingly, I have considered the relevant factors below.

Nature of amendment

198. This is not a new head of complaint. The claim already contains one allegation of victimisation.

Time limits

199. On fact of it, as noted above the claim is out of time as the Claimant made her application to amend on 25 July 2023. However, can application can be granted subject to time limits being determined at a final hearing.

Timing and manner of application

200. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, after I explained to her the requirements of needing to formally apply to amend a claim.

Balance of injustice and hardship

201. However, in particular, in considering the balance of injustice and hardship, I have considered that although this specific detail is not included in the ET1, the Claimant does make various reference to Mr. Huet as set out above. The evidence of Mr. Huet will be required to deal with other allegations, and indeed he is a respondent to the claim. This precise allegation should not need any significant further hearing time or additional line of enquiry, Mr. Huet should be able to address a meeting held on short notice in October 2021 and training in December 2021.

202. The Respondent has been on notice of the Claimant's concerns generally about Mr. Huet's treatment of her. There were no specific submissions as to whether the Respondents may required particular documents to deal with this allegation and I have set out my conclusions above regarding the deletion of data. Ms. Polimac submitted generally that permitting applications to amend would result in greater prejudice to the Respondents in seeking to defend allegations where there is potentially missing data, and further, that additional allegations will increase the length of a final hearing and put the Respondent to additional costs.

203. I have considered this against the hardship to the Claimant, and note this is just one element of a claim that will already continue to a final hearing.

204. I do not think it will add significantly to the final hearing.

205. Considering all of the above, and taking all into account, I conclude that greater prejudice would be caused to the Claimant if the application was refused.

Application permitted, subject to determination of time limits at final hearing.

6.2.2. Nathan Huet withhold the letter approving passing LCW training in Autumn 2021,

206. It is noted that withholding the LCW training letter is also alleged to be an act of harassment, and my conclusions in this respect are set out in relation to 5.1.22 above.

207. I have not repeated my conclusions here, as the same reasoning applies to this application to amend.

Application permitted, subject to determination of time limits at final hearing.

6.2.3 Nathan Huet on three occasions in Autumn 2021 interfered in working day by requestion the claimant see specific clients.

208. There is no detail of this specific alleged detriment within the ET1.

209. As noted above, the ET1 at box 8.2 makes the following general references to Mr. Huet.

“The basis of my employment tribunal claim is that Maximus UK failed to properly investigate and implement protective measures to support my well-being against the sustained discrimination, victimisation and harassment maliciously committed by Nathan Huet (Lewes Centre Manager) and Joseph Lloyd (Performance Manager)...”

“12.04.2021 - 02.02.22 - I suffered increasingly worsening mental health caused by a sustained campaign of mental health discrimination, harassment and victimisation by Nathan Huet and Joseph Lloyd.”

210. Accordingly, I have considered the relevant factors below.

Nature of amendment

211. This is not a new head of complaint. The claim already contains one allegation of victimisation.

Time limits

212. On face of it, as noted above the claim is out of time as the Claimant made her application to amend on 25 July 2023. However, can application can be granted subject to time limits being determined at a final hearing.

Timing and manner of application

213. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, after I explained to her the requirements of needing to formally apply to amend a claim.

Balance of injustice and hardship

214. However, in particular, in considering the balance of injustice and hardship, I have considered that although this specific detail is not included in the ET1, the Claimant does make various reference to Mr. Huet as set out above.

215. Further, the Claimant pursues a direct discrimination allegation at 1.1.4 that states: *“Subject the Claimant to rapidly changing work processes and performance targets throughout her employment. In particular change the number of clients she was required to see in a day.”* The Respondents did not submit that this required an application to amend, and therefore will continue to any final hearing. There appears to be some potential overlap in relation to the changes in number of clients required to be seen in a day.

216. The evidence of Mr. Huet will be required to deal with other allegations, and indeed he is a respondent to the claim. This precise allegation should not need any significant further hearing time or additional line of enquiry, Mr. Huet should be able to address his instructions to the Claimant regarding clients to be seen in August 2021.

217. As above, the Respondent has been on notice of the Claimant's concerns generally about Mr. Huet's treatment of her. There were no specific submissions as to whether the Respondents may required particular documents to deal with this allegation and I have set out my conclusions above regarding the deletion of data. Ms. Polimac submitted generally that permitting applications to amend would result in greater prejudice to the Respondents in seeking to defend allegations where there is potentially missing data, and further, that additional allegations will increase the length of a final hearing and put the Respondent to additional costs.

218. I have considered this against the hardship to the Claimant, and note this is just one element of a claim that will already continue to a final hearing.

219. I do not think it will add significantly to the final hearing.

220. Considering all of the above, and taking all into account, I conclude that greater prejudice would be caused to the Claimant if the application was refused.

Application permitted, subject to determination of time limits at final hearing.

6.2.4 On 16 August 2021 the respondent failed to inform the claimant of a covid case and site closure.

221. The Claimant has sought to pursue a similar allegation as part of a complaint of harassment at allegation 5.1.21 above.
222. There is no detail of the allegation within the ET1. The Claimant has not specified the person/s involved.
223. There is no detail of this specific alleged detriment within the ET1.
224. Accordingly, I have considered the relevant factors below.

Nature of amendment

225. This is not a new head of complaint. The claim already contains one allegation of victimization, and this overlaps with an allegation of harassment regarding the same factual matters.

Time limits

226. On the face of it, as noted above the claim is out of time as the Claimant made her application to amend on 25 July 2023. However, an application can be granted subject to time limits being determined at a final hearing.

Timing and manner of application

227. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, after I explained to her the requirements of needing to formally apply to amend a claim.

Balance of injustice and hardship

228. However, in particular, in considering the balance of injustice and hardship, I have considered that although this specific detail is not included in the ET1. It is not clear who was potentially involved, but the Claimant gives a specific date that will enable the Respondents to make enquiries. The Respondents did not make any submissions specific to any particular hardship caused by this allegation continuing.

229. This precise allegation appears to be quite contained and should not need any significant further hearing time or additional line of enquiry, indeed it may overlap with Mr. Huet addressing his instructions to the Claimant regarding clients to be seen in August 2021

230. As above, the Respondent has been on notice of the Claimant's concerns generally about Mr. Huet's treatment of her. There were no specific submissions as to whether the Respondents may require particular documents to deal with this allegation and I have set out my conclusions above regarding the deletion of data. Ms. Polimac submitted generally that permitting applications to amend would result in greater prejudice to the Respondents in seeking to defend allegations where there is potentially missing data, and further, that additional allegations will increase the length of a final hearing and put the Respondent to additional costs.

231. I have considered this against the hardship to the Claimant, and note this is just one element of a claim that will already continue to a final hearing.

232. Considering all of the above, and taking all into account, I conclude that greater prejudice would be caused to the Claimant if the application was refused.

Application permitted, subject to determination of time limits at final hearing.

6.2.5 The admin team, under the instruction of Nathan Huett, give the claimant specific lengthy and complex client files in Autumn and Winter 2021.

233. As will be noted from harassment allegation 5.1.23 above, under that allegation the Claimant said: *“5.1.23. The Claimant was singled out with specific clients' files which were lengthier and more complex than other colleagues.”*

234. As per my conclusions above, this allegation remains unclear in part, but does differ from 5.1.23 as the Claimant references the admin team under instruction of Natham Huett, she gives the time frame but she does not identify the files. There are therefore important differences in how the two allegations are framed and put.

235. There is no reference to this matter in the ET1, but there is reference generally to Nathan Huet in box 8.2.

“The basis of my employment tribunal claim is that Maximus UK failed to properly investigate and implement protective measures to support my well-being against the sustained discrimination, victimisation and harassment maliciously committed by Nathan Huet (Lewes Centre Manager) and Joseph Lloyd (Performance Manager)...”

“12.04.2021 - 02.02.22 - I suffered increasingly worsening mental health caused by a sustained campaign of mental health discrimination, harassment and victimisation by Nathan Huet and Joseph Lloyd.”

236. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, as noted above.

237. I consider the key factor in this allegation is the balance of injustice and hardship.

238. The evidence of Mr. Huet will be required to deal with other allegations, and indeed he is a respondent to the claim. This precise allegation should not need any significant further hearing time and, Mr. Huet should be able to address his instructions to the admin team regarding client files in Autumn and Winter 2021.

239. As above, the Respondent has been on notice of the Claimant's concerns generally about Mr. Huet's treatment of her. There were no

specific submissions as to whether the Respondents may require particular documents to deal with this allegation and I have set out my conclusions above regarding the deletion of data. Ms. Polimac submitted generally that permitting applications to amend would result in greater prejudice to the Respondents in seeking to defend allegations where there is potentially missing data, and further, that additional allegations will increase the length of a final hearing and put the Respondent to additional costs.

240. I have considered this against the hardship to the Claimant, and note this is just one element of a claim that will already continue to a final hearing.

241. I do not think it will add significantly to the final hearing.

242. Considering all of the above, and taking all into account, I conclude that greater prejudice would be caused to the Claimant if the application was refused.

Application permitted, subject to determination of time limits at final hearing.

6.2.6 Nathan Huet refuse the claimant's request to be referred back to OH in October and December 2021.

243. The ET1 contains the following text regarding Occupational Health:

"10/02/2021 - An Occupational Health assessment was conducted and advised

- *Extended time off work*
- *3 days part time*
- *Phased return to work / change in work role*
- *Re-referral after 3 months".*

244. It therefore makes reference to a recommendation for referral to OH but do not set out specifically the allegation that Nathan Huet refused requests from the Claimant in October and December 2021. However, as noted above, there is reference generally to Nathan Huet in box 8.2.

"The basis of my employment tribunal claim is that Maximus UK failed to properly investigate and implement protective measures to support my well-being against the sustained discrimination, victimisation and harassment maliciously committed by Nathan Huet (Lewes Centre Manager) and Joseph Lloyd (Performance Manager)..."

"12.04.2021 - 02.02.22 - I suffered increasingly worsening mental health caused by a sustained campaign of mental health discrimination, harassment and victimisation by Nathan Huet and Joseph Lloyd."

245. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, as noted above.

246. I consider the key factor in this allegation is the balance of injustice and hardship.

247. The evidence of Mr. Huet will be required to deal with other allegations, and indeed he is a respondent to the claim. This precise allegation should not need any significant further hearing time and Mr. Huet should be able to address whether or no he refused requests from the Claimant to be re-referred to Occupational Health.

248. As above, the Respondent has been on notice of the Claimant's concerns generally about Mr. Huet's treatment of her. There were no specific submissions as to whether the Respondents may require particular documents to deal with this allegation and I have set out my conclusions above regarding the deletion of data. Ms. Polimac submitted generally that permitting applications to amend would result in greater prejudice to the Respondents in seeking to defend allegations where there is potentially missing data, and further, that additional allegations will increase the length of a final hearing and put the Respondent to additional costs.

249. I have considered this against the hardship to the Claimant, and note this is just one element of a claim that will already continue to a final hearing.

250. I do not think it will add significantly to the final hearing.

251. Considering all of the above, and taking all into account, I conclude that greater prejudice would be caused to the Claimant if the application was refused.

Application permitted, subject to determination of time limits at final hearing.

6.2.7 In December 2021 did Nathan Huet give the Claimant a notebook with a cover saying you don't have to be crazy to work here.

252. The Claimant has sought to bring an allegation of harassment regarding the notebook as referenced under 5.1.19 above. However, there is no reference at all in the ET1 to this. For completeness, I note the Claimant also seeks to pursue reference to the note book as an allegation of victimisation.

253. I have not repeated my findings in relation to 5.1.19 above, but in relation to the notebook they apply. Accordingly, for the same reasons, I conclude that this allegation should be permitted.

Permitted, subject to determination of time limits at final hearing.

6.2.8 Did not properly consider the contents of the claimant's grievance and grievance appeal, did not make any recommendations and unreasonable delayed in the management of the grievances.

254. The Claimant has made a similar allegation of harassment, at 5.1.11 above, although the allegations are not put in the same way.

As set out in relation to 5.1.11 above, the ET1 states:

"I raised two formal grievances in July 2022 which were partially upheld."

255. The Claimant does not set out any concern about the consideration of her grievance, the delay or lack of recommendations anywhere in the ET1. Had she been concerned about this at the time of submission, very few words would have been needed to include this. I do not consider the ET1 contains this allegation of victimization.

256. The ET1 sets out no detail in this respect.

257. Accordingly, I have considered the relevant factors below.

Nature of amendment

258. This is not a new head of complaint. The claim already contains allegations of victimisation.

Time limits

259. On the face of it, as noted above the claim is out of time as the Claimant made her application to amend on 25 July 2023. However, an application can be granted subject to time limits being determined at a final hearing.

Timing and manner of application

260. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, after I explained to her the requirements of needing to formally apply to amend a claim.

Balance of injustice and hardship

261. In regard to this allegation, I have noted that there is no detail about this at all in the ET1 other than reference to the fact she submitted a grievance. I have considered this an important factor in assessing the prejudice to the parties.

262. The Claimant could have easily indicated her concerns about this matter in a simple sentence within the claim form.

263. I have considered this against the hardship to the Claimant, and note this is just one element of a claim that will already continue to a final hearing, subject to a determination on disability.

264. It appears that this allegation is factually distant from the other allegations. Although it would not appear to add significantly to the time at the final hearing it is not clear what evidence may be needed to deal with the allegation.

265. Considering all of the above, and taking all into account, in particular the wide range and number of allegations I conclude that greater prejudice would be caused to the Respondents if the application was permitted.

Refused.

6.2.9 Withholding mentorship support from Clinical Standards Leads

266. The Claimant has made similar allegations regarding lack of support in relation to clinical lead support as complaints of direct discrimination at 1.1.6 and 1.1.7 above, and the conclusions I reached in this respect are relevant for this application.

267. The ET1 does not contain any specific reference to withholding mentorship support from Clinical Standards Leads. I do not consider this allegation to be set out within the ET1.

268. Accordingly, I have considered the relevant factors below.

Nature of amendment

269. This is not a new head of complaint. The claim already contains allegations of victimisation. The claim will consider support and training provided by Clinical Standard Leads as part of the direct discrimination complaint.

Time limits

270. On the face of it, as noted above the claim is out of time as the Claimant made her application to amend on 25 July 2023. However, an application can be granted subject to time limits being determined at a final hearing.

Timing and manner of application

271. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, after I explained to her the requirements of needing to formally apply to amend a claim.

Balance of injustice and hardship

272. The Respondent has been on notice of the Claimant's concerns about the training program during her employment. I have set out my conclusions above regarding the deletion of data. Ms. Polimac submits this will result in greater prejudice to the Respondent in seeking to defend allegations where there is potentially missing data, and further, that

additional allegations will increase the length of a final hearing and put the Respondent to additional costs.

273. I have considered this against the hardship to the Claimant, and note this is just one element of a claim that will already continue to a final hearing.

274. I do not consider this allegation to be factually distant from other allegations relating to training that will be considered, and do not think it will add significantly to the final hearing.

275. Considering all of the above, and taking all into account, I conclude that greater prejudice would be caused to the Claimant if the application was refused.

Application permitted, subject to determination of time limits at final hearing.

6.2.10 The grievance investigator and the grievance appeal investigator recommended unrealistic targets within the extended probation timeframe.

276. The Claimant has sought to pursue allegations regarding her grievance at allegations 5.1.11 and 6.2.8, and the conclusions in relation to those allegations are relevant here.

277. In relation to her grievances, the Claimant, at box 8.2 of her ET1 states:

"I raised two formal grievances in July 2022 which were partially upheld."

278. The Claimant does not set out any concern about the recommendation of unrealistic targets within the ET1. Had she been concerned about this at the time of submission, very few words would have been needed to include this. I do not consider the ET1 contains this allegation of victimisation.

279. The ET1 sets out no detail in this respect.

280. Accordingly, I have considered the relevant factors below.

Nature of amendment

281. This is not a new head of complaint. The claim already contains allegations of victimisation.

Time limits

282. On the face of it, as noted above the claim is out of time as the Claimant made her application to amend on 25 July 2023. However, an application can be granted subject to time limits being determined at a final hearing.

Timing and manner of application

283. The Claimant made the application to amend after the first case management preliminary hearing on 7 June 2023, after I explained to her the requirements of needing to formally apply to amend a claim.

Balance of injustice and hardship

284. In regard to this allegation, I have noted that there is no detail about this at all in the ET1 other than reference to the fact she submitted a grievance. I have considered this an important factor in assessing the prejudice to the parties.

285. The Claimant could have easily indicated her concerns about this matter in a simple sentence within the claim form.

286. I have considered this against the hardship to the Claimant, and note this is just one element of a claim that will already continue to a final hearing, subject to a determination on disability.

287. It appears that this allegation is factually distant from the other allegations. Although it would not appear to add significantly to the time at the final hearing it is not clear what evidence may be needed to deal with the allegation.

288. Considering all of the above, and taking all into account, in particular the wide range and number of allegations I conclude that greater prejudice would be caused to the Respondents if the application was permitted.

Refused.

289. In summary, and for ease of review, I have included the table below to summarise my decisions as there were a large number of applications to amend. The paragraph numbers accord with the paragraph numbers within the draft List of Issues in the Case Management Order dated 8 September 2023.

290.

Within ET1 – no amendment required	Permitted, save for determination re time	Refused
1.1.1	1.1.6	5.1.6
1.1.2	1.1.7	5.1.11
1.1.3	1.1.8	5.1.13
1.1.9	2.2.1	5.1.18
1.1.10	5.1.5	5.1.19
1.1.12	5.1.19 in part	5.1.23
1.1.14	5.1.21	6.2.8
3.1.2	5.1.22	6.2.10
4.2.2	6.2.1	
4.3.2	6.2.2	
5.1.8	6.2.3	
	6.2.4	
	6.2.5	
	6.2.6	

	6.2.7	
	6.2.9	

291. table

Deposit order

292. The Respondent, within the Allegations Table, highlighted in yellow the allegations of harassment that it submits should be subject to a deposit order. A number of those allegations were withdrawn by the Claimant.

293. This left allegations 5.1.5, 5.1.6, 5.1.8, 5.5.11 and 5.1.13. However, the first decision I had to make was whether or not those allegations, which were all subject to an application to amend, should be permitted to continue. I refused the Claimant's application to amend to add allegations 5.1.6, 5.1.8, 5.5.11 and 5.1.13, and therefore it was not necessary for me to consider whether a deposit order was appropriate in relation to those allegations.

294. In relation to 5.1.5, that allegation was permitted to continue. The allegation at 5.1.5 is: Deliberately withholding access to Occupational Health services between 10th February 2021 and 12th January 2022.

295. Rule 39 of the ET Rules states:

“Deposit orders

39.—(1) *Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party (“the paying party”) to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.*

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

(3) The Tribunal's reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.

(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21.

(5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—

(a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and

(b) the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders),

otherwise the deposit shall be refunded.

(6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order.”

296. The Respondent submits this does not fall within the definition of harassment, but has not made any further or particular submissions.

297. Section 26 of the Equality Act 2010 sets out the definition of harassment:

26 Harassment

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

age;

disability;

gender reassignment;

race;

religion or belief;

sex;

sexual orientation.

298. I have considered the Equality and Human Rights Commission Code of Practice, and harassment is dealt with at chapter 7. It states, in relation to unwanted conduct:

“Unwanted conduct covers a wide range of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person’s surroundings or other physical behaviour.

The word ‘unwanted’ means essentially the same as ‘unwelcome’ or ‘uninvited’. ‘Unwanted’ does not mean that express objection must be made to the conduct before it is deemed to be unwanted. A serious one-off incident can also amount to harassment.”

299. As neither party have made any specific submissions I considered generally whether not doing something could amount to harassment. In this case, the allegation is that there has been a deliberate withholding access, and I consider that the deliberate withholding of access to a service could potentially be something that amounts to unwanted conduct. I have made no decision on this, other than to set out I can see that such construction may be possible.

300. In considering more widely whether the allegation has little prospect of success, again, no specific submissions were offered. As set in Rule 39, a deposit may be ordered where a “*Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success.*”

301. The test for the ordering of a deposit is therefore that the party has little reasonable prospect success. It was said by the Employment Appeal Tribunal in *Hemdan v Ishmail [2017] IRLR 228* that the purpose of a deposit order is “*To identify at an early stage claims with little prospect of success and to discourage the pursuit of those claims by requiring a sum to be paid and by creating a risk of costs, ultimately, if the claim fails*” and it is “*emphatically not...to make it difficult to access justice or effect a strike out through the back door.*” A

deposit order should be capable of being complied with and a party should not be ordered to pay a sum which he or she is unlikely to be able to raise.

302. As for the approach the Tribunal should take, in *Wright v Nipponkoa Insurance [2014] UKEAT/0113/14* and *Van Rensburg v Royal Borough of Kingston-Upon-Thames and others[2007] UKEAT/0095/07* it was said, a Tribunal is not restricted to a consideration of purely legal issues; it is entitled to have regard to the likelihood of the party being able to establish the facts essential to their case and, in doing so, to reach a provisional view as to the credibility of the assertions being put forward. That said there is a balance to be struck as to how far such an analysis can go. It was also made clear in *Hemdan* that a mini-trial of the facts is to be avoided. If there is a core factual conflict it should properly be resolved at a full merits hearing where evidence is heard and tested. When deciding whether to make a deposit order, a broad assessment of the merits is all that is required.

303. In this case, I have minimal information available, I have not been directed to any documentation, or absence thereof. It is not clear what evidence may or may not be available. The Claimant may be able to provide specific evidence of how access to Occupational Health services was withheld, by who and when, or she may not. I have also kept in mind that the Second Respondent was the Claimant's manager throughout the Claimant's employment. There is likely to be a factual dispute about this matter.

304. At this stage, I am not satisfied that the complaint has little reasonable prospect of success and I do not consider that it is appropriate to make a deposit order. This should not be read in any way as a view on the prospects of the allegation.

Section 44 Employment Rights Act 1996

305. Following the preliminary hearing on 8 September 2023 the Claimant completed the "Allegations Table" and sent the same to the Respondent on or around 6 October 2023. The Respondent added comments to the table, as ordered, and the Allegations Table was sent to the Tribunal via email on 20 October 2023.

306. In relation to the section 44 complaint, the Claimant has stated, next to each allegation: "*The Claimant agrees that the Tribunal has no jurisdiction to hear this complaint and will pursue the complaint through the Civil Courts.*"

307. As set out above, the Respondent deemed this to be a withdrawal, and added no comments to the Allegations Table in relation to this complaint.

308. The Case Management Order set out the 7 alleged detriments under the section 44 complaint purportedly being pursued, these were recorded under a general heading of "**Failure to ensure health and safety and welfare**". **At the preliminary hearing on 8 September 2023,**

the Claimant's application to amend document was discussed, and my Case Management Order records:

"[The Claimant's health and safety claim is not entirely clear, and it would be sensible for the Claimant to consider this allegation. The Respondent says that this is new and subject to an application to amend, but further, that the Tribunal has no jurisdiction to hear such complaints under section 2 of the Health and Safety at Work Act 2010. The Claimant says the health and safety breaches are as set out at (i) to viii) pages 12 – 14 of her Application to Amend.]"

309. However, below this text the order set out the alleged section 44 detriments, and there was no specific order in this respect.

310. At the start of the hearing today, when discussing the issues, the Claimant said she no longer wished to withdraw the section 44 complaint and asked that her written withdrawal be revoked. The Claimant said she had obtained legal advice and was told that she should not have withdrawn the section 44 complaint, and that the Employment Tribunal was the right place for such a complaint.

311. The Claimant said she has been having advice from the Equality and Employment Law Centre.

312. The Respondent's position is that the section 44 complaint has been withdrawn, and that brings an end to that complaint. It relies on the wording of Rule 51 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, which states, under the heading "Withdrawal":

"WITHDRAWAL

End of claim

51. Where a claimant informs the Tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end, subject to any application that the respondent may make for a costs, preparation time or wasted costs order".

Rule 52 states:

"Dismissal following withdrawal

52. Where a claim, or part of it, has been withdrawn under rule 51, the Tribunal shall issue a judgment dismissing it (which means that the claimant may not commence a further claim against the respondent raising the same, or substantially the same, complaint) unless—

(a) the claimant has expressed at the time of withdrawal a wish to reserve the right to bring such a further claim and the Tribunal is satisfied that there would be legitimate reason for doing so; or

(b)the Tribunal believes that to issue such a judgment would not be in the interests of justice”.

313. .The Respondent submits that the section 44 complaint has been withdrawn in writing, and therefore that part of the claim has ended. The also directed me to the case of *Khan v Haywood & Middleton Primary Care Trust 2006 EWCA Civ 1087*. I note that this case was decided under the earlier version of the Employment Tribunal rules, the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2004, and the applicable rule was 25.

314. The 2013 rules contain no express power for seeking permission to continue with a withdrawn claim. I have also kept in mind the Overriding Objective in Rule 2 and Rule 29. On plain reading of the rules, a withdrawal in writing by claimant brings a claim or part of it to an end.

315. I have considered whether the Claimant’s comments in the Allegations Table amount to a clear withdrawal. I do not consider they do. The wording used by the Claimant indicates that she wishes to pursue a section 44 complaint but that she believes the correct place to do this in the Civil Courts. I do not consider the wording used by the Claimant, a litigant in person, to amount to a clear withdrawal of the section 44 complaint in all the circumstances. Accordingly, that complaint is not treated as withdrawn, and requires further case management.

Employment Judge G Cawthray

Date **17 January 2024**

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
23 January 2024

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FOR EMPLOYMENT TRIBUNALS