EMPLOYMENT TRIBUNALS

Claimant:	Mr M Hassaballa
Respondent:	United Lincolnshire Hospitals NHS Trust
Heard at:	Nottingham via CVP
Heard on:	16 May 2024
Before:	Employment Judge Victoria Butler (sitting alone)

Representation
Claimant: In person
Respondent: Mr J Heard, Counsel

JUDGMENT having been sent to the parties on 17 May 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

JUDGMENT

The decision of the Employment Judge is:

1. The Claimant's application to amend his claim is refused.

2. The Tribunal does not have jurisdiction to hear his claims because they were presented out of time. It was not just and equitable to extend time to permit the sex discrimination claim to proceed and it was reasonably practicable for the whistleblowing detriment and wages claims to be presented in time. The claims are therefore dismissed.

REASONS

Background

1. The Claimant presented his claim to the Tribunal on 20 September 2023 following a period of early conciliation between 18 and 23 September 2023. He was employed by the Respondent from 1 April 2022 until his resignation with effect from 28 February 2023.

2. The parties attended a preliminary hearing on 5 March 2024 at which this hearing was listed to considering the following:

    2.1 Whether the Tribunal has jurisdiction to consider the claim as it was presented out of time:

    2.2 Whether the claims should otherwise be struck out on the grounds that they have no reasonable prospects of success under Rule 37 of the Employment Tribunal Rules of Procedure 2013 (the 'ET Rules'):

    2.3 Whether a deposit order should be made in order for the Claimant to proceed with all or any part of the claim on the grounds that they have little reasonable prospects of success under Rule 39 of the ET Rules; and

    2.4 General case management should any of the claims be permitted to proceed.

3. On 24 March 2024, the Claimant applied for leave to amend his claim and the Tribunal directed that the application be considered at this hearing.

4. In my deliberations, I had regard to the following key dates:

Relevant date	**Event**
13 April 2021	The Claimant issued Employment Tribunal proceedings against his former employer, Mid and South Essex University Hospitals NHS Trust
October 2022	The date the Claimant says the allegations of whistleblowing detriment and direct sex discrimination occurred
29 January 2023	The Claimant issued Employment Tribunal proceedings against the GMC
28 February 2023	The Claimant resigned
27 March 2023	Limitation period for the wages claim began running (being the date of the last

	payslip after resignation)
27 July 2023	The Claimant signed his witness statement for Medical Practitioners Tribunal Service (MPTS) hearing
21 – 25 August & 13 – 14 September 2023	The MPTS hearing
18 September 2023	Day A - ACAS early conciliation
20 September 2023	Day B - ACAS early conciliation
20 September 2023	The Claimant presented this claim
20 October 2023	The MPTS erased the Claimant from the Medical Register
24 March 2024	The Claimant submitted his application to amend his claim

The hearing

5. I had a bundle of documents from each party and a written skeleton argument from Mr Heard. The Claimant also provided a skeleton argument at pages 32-42 of his bundle which primarily addressed the Respondent's applications under Rules 37 and 39.

6. At the commencement of the hearing, I received two judgments from the Respondent in relation to previous claims issued by the Claimant. I also permitted the Claimant to submit medical evidence in support of his submission that his health had prevented him from presenting the claim both in time and in full.

The application to amend

7. The originating claim identified three complaints:

   (i) a claim of unauthorised deductions from wages and/or breach of contract in respect of the extra working hours,

   (ii) whistleblowing detriments in that the Claimant was restricted from practising following a surgical procedure in which a patient haemorrhaged and not getting the support needed to achieve promotion, and

   (iii) an allegation of direct sex discrimination in that a female doctor was given support after a far worse surgical incident.

8. The Claimant wanted to make the following amendments to his claim (pages 55 – 66 C's bundle) and I went through each one with him at the outset to clarify what legal claim he advanced in respect of each. He confirmed all allegations were of direct race discrimination and allegation 8 was also a whistleblowing detriment:

   1. *Ms Agarwal (Clinical Lead) made a witness statement on 19/06/2023 read at the GMC hearing in September 2023. This had a serious*

detriment on the Claimant. Furthermore, she did not mention that the lead Physician during the incident that occurred in October 2022 wasn't the Claimant, but the Consultant, Mr Christopher Flood, who should have been the one responsible for the operative complication.

2. *The Respondent put the Claimant at a disadvantage by holding him responsible for the operative complication and then witnessing against the Claimant on June 2023, omitting a fundamental point, which was Mr Christopher Flood was the Lead Consultant, in the theatre, and not the Claimant.*

3. *The Respondent gave an inaccurate statement in May 2023, which the GMC hearing panel considered in September 2023. In his statement, the Respondent mentioned that the Claimant was operating independently. This had a detrimental effect on the Claimant in September 2023. As a result, the Claimant was put at a disadvantage. The Respondent did not make enquiries to clarify such a pivotal point, before giving the GMC such accurate information.*

4. *In his statement in May 2023, the Respondent wrote:*

   > *"United Lincolnshire Hospitals had serious incident reports that had concluded the bleeding was caused by surgical technique. This report was made without the Claimant even being asked to write his statement. This is one of the basic procedural pathways, which entails obtaining statements from individuals involved in an event. Otherwise, the report will be unfair, putting individuals at a disadvantage. The Claimant was treated less favourably by the Respondent issuing a report, based on which actions are made, which may put individuals at a disadvantage, without asking the Claimant for his statement."*

5. *After reviewing the Respondents and the GMC Guidelines and Policies Unfair and Accurate Referrals, I have realised that there was a serious omission.*

   (a) *A statement, to the GMC in October 2022 the Respondent mentioned the following:*

   > *"I set out my concerns that Dr Hassaballa had been informed by the GMC that he was under investigation on 2 December 2021 but did not inform ULH. In his Model Declaration Form A dated 29 January 2022, Dr Hassaballa stated "no" to the question "Are you currently subject to a fitness to practice investigation and/or proceedings of any nature by a regulatory or licensing body, which may have a bearing on your suitability for the position you are applying for?".*

The Respondent made an omission by not asking the Claimant why he entered "no". Had the Respondent asked the Claimant and given him a chance to explain, the Claimant would have explained to him the vexatious referral that was made to the GMC in November 2021, and that it was a matter of time before the case was closed. The Claimant was put at a disadvantage by the Respondent making the above omission.

(b) The Respondent should have considered the effect of contextual factors, such as the different understanding of the employment form, before making a judgment (section 19 RO referral guidance).

(c) The Respondent should have made sure his referral was checked impartially before sending it through (Section 21 of the RO referral guidance).

(d) The Respondent should have spoken to his Liaison Employment Advisor before making any referrals or statements (ref: section 29RO referral guidance).

6. In his statement to the GMC, in October 2022, the Respondent wrote:

"I was also concerned that he had worked for us more or less full-time via an agency for over 4 months when he was still employed by Mid and South Essex NHS Foundation Trust. The Respondent refers to the period of the Claimant's employment from November 2021 to March 2022. The Claimant resigned from his former employer on 20 October 2021 and used his annual leave that he didn't take for 2 years (33 days x 2 = 66 annual leave. These are divided by 3 months. The Claimant worked 22 days in a month. This, therefore, covers for the 66 days). Part of the employment basic procedure is for the employee to submit his P45, which the Claimant did. This clearly shows the last working day at his previous employment was 20/01/2022 and not at or around 30/03/2022 as the Respondent claims. The Claimant was put at a disadvantage, by the Respondent providing inaccurate accusations against the Claimant, without even making enquiries into the Claimant's P45 as compared to a British/White doctor.

7. The complication that occurred in September 2022, was an inevitable event, that could have occurred with any surgeons, especially the high-risk patients. The Claimant was treated less favourably than a White/British doctor, by Ms Agarwal writing to the consultants, and conveying inaccurate and incomplete information about the Claimant, considering the negative detriment of his behaviour.

8. The Respondent treated the Claimant unfairly by informing him that his

grievance was looked at, and giving the Claimant false impression that his initial request to settle the accommodation payment was accepted to allow time to pass.

9. *The Claimant has been treated less favourably, as compared to a British/White doctor by the Respondent not supporting the Claimant with his professional development, and his revalidation, as per the job description and contract (the Claimant had achieved over 100 credit hours per 5 cycles, when he only needed 250 to complete his revalidation).*

10. *The Respondent treated the Claimant less favourably, as compared with a doctor of British/ European/ White origin by making him work out-of-hours without paying him from April 2022 to February 2023*

11. *In his statement to the GMC, in October 2022, the Respondent repeatedly alluded to the Claimant's DBS, and criminal record, as if it wanted to draw the GMC's attention to check the Claimant's DBS. His statement was as follows: The form at Exhibit PGD3 is used to ascertain whether as part of the decision-making process to employ someone based on whether they had a previous criminal record or conditions on their GMC registration. We also used the Model A Declaration Form as part of our risk assessment when employing doctors if we do not have an up-to-date Disclosure and Barring Service ("DBS") check. I do not know whether Dr Hassaballa has an up-to-date DBS check. As far as I am aware, ULH carries out checks on the content of the form after it is filled out. For example, if a DBS were returned and it showed a criminal record, then ULH would look and see if that was reflected in a completed Model A Declaration Form. The Respondent has to make enquiries and ask the Claimant for relevant documents, if in any doubt, thereby, applying fairness in verifying first, before making negative suggestions. Considering that unnecessary negative impression this would make on the Claimant, the Claimant was at a disadvantage by the Respondent mentioning the above, as compared to a British/White doctor".*

The law

9. The starting point in an application to amend is always the original pleading set out in the ET1. In ***Chandok v Tirkey*** 2015 ICR 527, the EAT said:

> "*The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with the time limits but which is otherwise free to be augmented by whatever the parties choose to add or subject merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a Respondent is required to respond. A Respondent is not required to*

> *answer a witness statement, nor a document, but the claims made – meaning, under the Rules of Procedure 2013, the claim as set out in the ET1.*"

10. In dealing with an application to amend, the Tribunal will take into consideration its duty under the overriding objective to ensure that the parties are on an equal footing, to deal with the case in a way that is proportionate to the complexity and importance of the issues, to avoid unnecessary formality and seek flexibility in the proceedings, to avoid delay so far as compatible with proper consideration of the issues, and to save expense.

11. In ***Cocking v Sandhurst Stationers Ltd*** **[1974] ICR 650** the President held that regard should be had to all the circumstances of the case and in particular the Tribunal should *"consider any injustice or hardship which may be caused to any of the parties if the proposed amendment was allowed or, as the case may, be refused*".

12. In ***Selkent Bus Company Ltd v Moore [1996] ICR 83*** the EAT held that relevant circumstances include:

> *"Whenever the discretion to grant an amendment is invoked, the Tribunal should take into account <u>all</u> the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.*
>
> *What are the relevant circumstances? It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant:*
>
> *(a) <u>The nature of the amendment</u>*
> *Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the additions of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The Tribunal has to decide whether the amendment sought is one of the minor matters or is a substantial alteration pleading a new cause of action.*
>
> *(b) <u>The applicability of time limits</u>*
> *If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the Tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions e.g., in the case of unfair dismissal, S.67 of the 1978 Act.*
>
> *(c) <u>The timing and manner of the application</u>*

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

13. The Presidential Guidance on General Case Management ("the Guidance") incorporates the factors set out in ***Cocking*** and ***Selkent.***

14. In respect of re-labelling, the Guidance provides: *"While there may be a flexibility of approach to applications to re-label facts already set out, there are limits. Claimants must set out the specific acts complained of, as Tribunals are only able to adjudicate on specific complaints. A general complaint in the claim form will not suffice. Further an employer is entitled to know the claim is has to meet".*

15. Under 'Time Limits' the Guidance provides: *"The Tribunal must balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. Where for instance a claimant fails to provide a clear statement of a proposed amendment when given the opportunity through case management orders to do so, an application at the hearing may be refused because of the hardship that would accrue to the respondent".*

16. A Tribunal can allow an application to amend but reserve any limitation points until the final hearing which might be necessary in cases where it is not possible to make a determination without hearing the evidence – ***Galilee v Commissioner of the Metropolis UKEAT/0207/16.***

Time limits

17. Section 123 EQA provides:

> *(1) Proceedings on a complaint within section 120 may not be brought after the end of—*
>
> *(a) the period of 3 months starting with the date of the act to which the complaint relates, or*

(b) such other period as the employment tribunal thinks just and equitable.

18. Section 23 Employment Rights Act 1996 ("ERA") provides:

> ……..
> *(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—*
>
> > *(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or*
> >
> > *(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.*
>
> *…….*
>
> *(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable*

19. Section 48(b) Employment Rights Act 1996 ("ERA") provides:

> *…….*
> *(3) An employment tribunal shall not consider a complaint under this section unless it is presented—*
>
> > *(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or*
> >
> > *(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*

20. I was also referred to and had regard to the following cases where relevant: Vaughan v Modality Partnership UKEAT/1047/20: Chaudhry v Cerberus Security and Monitoring Services Limited [2022] EAT 12: Kumari v Greater Manchester Mental Health Foundation [2022] EAT 132: The Housing Corporation v Bryant [1999] ICR 123: Ali v Office of National Statistics [2005] IRLR 201: Foxtons Ltd v Ruweil UKEAT/0056/08: Redhead v London Borough of Hounslow UKEAT/0409/11: Abercrombie & Others v AGA Rangemaster Ltd [2013] IRLR 953: Galilee v

Commissioner of the Police of the Metropolis [2018] ACR 634: Sridhar v Kingston Hospitals NHS Foundation Trust UKEAT/0066/20: Robertson v Bexley Community Centre [2003] IRLR 434: London Borough of Southwark v Afolabi [2003] ICR 800: Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23: Apelogun-Gabriels v London Borough of Lambeth [2002] IRLR 116: Hunwicks v Royal Mail Group Plc UKEAT/0003/07: Lupetti v Wrens Old House [1984] ICR 348: Miller v Ministry of Justice UKEAT/0003/15: Riley v Tesco Stores Ltd [1980] ICR 323: Dedman v British Building and Engineering Appliances Ltd [1973] IRLR 379: Wall's Meat Co ltd v Khan [1978] IRLR 499: Porter v Bandridge Ltd [1978] ICR 943: Palmer v Southend-on-Sea Borough Council [1984] ICR 372: Asda Stores Ltd v Kauser (2007) UKEAT/0165/07: Marks & Spencer Plc v Williams-Ryan [2005 IRLR 562: Cygnet Behavioural Health Ltd v Britton [2022] IRLR 906: Bodha (Vishnudut) v Hampshire Area Health Authority [1982] ICR: Arthur v London Eastern Railway Ltd [2007] IRLR 58: Pearce v Bank of America Merrill Lynch UKEAT/0067/19: Ahari v Birmingham Heartlands and Solihull Hospitals NHS Trust UKEAT/0355/07; and White v Southampton University Hospitals NHS Trust [2011] EWHC 825 (QB):

Submissions and evidence

21. Mr Heard provided written submissions which he supplemented orally. The Claimant provided brief written submissions and had the opportunity to respond to Mr Heard having heard his oral submissions. I summarise them below and expand as appropriate within my conclusions.

Claimant's submissions & evidence

22. The Claimant gave evidence and made submissions about why the matters subject to the application were not included in the original claim and why they were presented out of time summarised as follows:

    i. He was in a critical mental state with stress and depression when he lodged the original ET1 form. This affected his ability to see and read documents, caused slurred speech and he also developed memory problems.

    ii. He had difficulty understanding the different types of legal claim open to him to bring.

    iii. He did not have the financial means to get legal advice.

    iv. He only became aware of the GMC final decision on 20 October 2023, after lodging the claim in September 2023.

    v. The facts relied on in respect of the amendment were included in the original ET1 and it was a case of merely adding a new label to facts already pleaded and to clarify the issues between the parties.

vi. An order in the terms requested would assist the Tribunal in dealing with the proceedings efficiently and fairly and in accordance with the overriding objective.

vii. There was no prejudice or hardship to the Respondent because it would have ample time to address the issues raised by the amendment in its evidence.

viii. A fair trial was still possible, and it would be in the interests of justice to allow the amendment.

23. In respect of time limits more generally the Claimant submitted that the matters relied on in the amendment application are continuing acts of discrimination.

Respondent's submissions

24. The Respondent submitted that amendments 1,2,3,4, 5, 6 and 11 were all doomed to fail because they were about evidence that was prepared for and/or referred to at the Claimant's MPTS hearing. The Tribunal has no jurisdiction to hear any claims about that evidence because the principal of judicial proceedings immunity applies.

25. In relation to the amendments more generally, the Respondent submitted that they were all new and there was no link to the facts relied on in the original claim form. Furthermore, all proposed amendments were significantly out of time ranging from six to fifteen months after expiration of the primary limitation periods.

26. The Claimant had not submitted a reasonable explanation and/or evidence as to why he did not include the amendments in the original claim and the balance of injustice and hardship of allowing the amendments would fall against the Respondent given the inevitability of an extension to the final hearing, the associated cost and time needed for preparation, and the fading of memories given the allegations date back to 2022. The original three-day hearing is listed on 23-26 June 2025, and it is inevitable that a later hearing date will be listed if the application were allowed.

27. The Claimant had not shown more generally the something more required to establish a claim of direct race discrimination in any event and simply having a protected characteristic is not sufficient to give rise to a claim of discrimination or establish a prima facie case of discrimination. Furthermore, there is no explanation as to why the new allegations relied on amount to continuing acts.

Conclusions – application to amend

Judicial proceedings immunity – allegations 1,2,3,4, 5, 6 and 11

28. Having regard to *Ahari v Birmingham Heartlands and Solihull Hospitals NHS Trust,* I agreed with the Respondent that the proposed amendments relate to evidence that was prepared for and/or referred to at the Claimant's MPTS hearing. That evidence

attracts absolute immunity and therefore the Claimant cannot rely on it. As such, I refused those amendments.

The nature of the remaining amendments - allegations 7, 8, 9 and 10

29. The Claimant submitted that the amendments were simply adding a new label to facts already pleaded to clarify the issues between the parties. They all emanated from the matters complained of in the claim form and were set out in the list of issues. As such, they cannot be described as new.

30. The Respondent submitted they were all new allegations about which there is no reference to in the claim form.

31. I was satisfied that the allegations of direct race discrimination cannot be read into the originating claim. Whilst the Claimant ticked the box for race discrimination, there are no words within the narrative provided indicating that the Claimant says he was treated less unfavourably because of race. There is only one allegation of discrimination pleaded and that is one of direct sex discrimination, not race.

32. Even if the amendments were a question of relabelling, they still amount to a substantial alteration requiring different evidence, factual enquiry, and analysis therefore amounting to new causes of action.

33. In respect of allegation 8 amounting to a whistleblowing detriment, the facts pleaded in the claim form relate to the claim of non-payment of wages alone. The Claimant pleaded two distinct whistleblowing detriments and, if his original intention was to argue that his complaint about the grievance was a detriment, I would expect him to say so. This is more so because the Claimant is versed in the legalities of employment law having presented claims previously which I address further below. I concluded that amendment 8 is substantial, pleading a new cause of action involving different evidence, factual enquiry, and analysis.

34. As such, I was satisfied that all amendments amounted to new claims and not a relabelling of the existing claims.

Time limits/timing and manner of the application

35. Following my determination that the amendments were new, I considered the question of time limits which are judged at the date the application was made i.e., 24 March 2024. I was able to make this determination given the date of the last act alleged is clear.

36. I have a discretion to extend time, but the starting point is that time limits are exercised strictly. The exercise of that discretion is the exception rather than the rule although I have a wide discretion to extend time if I think it is just and equitable to do so. I was referred to ***British Coal Corporation v Keeble [1997] IRLR 336*** which

sets out some of the matters I might have regard to, but I am not restricted to the matters set out in that case, nor do I have to consider each factor if they are not relevant.

37. Mr Heard calculated the extent of the delay in respect of each allegation of direct race discrimination at paragraph 71 in his skeleton argument which ranged from six to fifteen months outside the primary time limit. The allegations all occurred before the Claimant's resignation on 28 February 2023 and the Claimant was required to contact ACAS by 27 May 2023 at the latest but did not do so until 18 September 2023. The allegations are therefore substantially out of time.

38. The Claimant was signed off sick from work between 10 May 2023 until 13 October 2023 during which time he engaged in early conciliation and submitted his claim form.

39. He gave evidence that at the time of submitting the claim, his health was in a critical state and so poor he could not remember things and he had also developed slurred speech. He was not able to read documents, including his witness statement prepared for the MPTS hearing which he says he signed without reading and has not read it to this day. He was only able to read the witness statements prepared by the Respondent recently.

40. Mr Heard reviewed the Claimant's medical records and submitted that there is nothing within them to suggest that he was not able to complete his claim form or deal with Employment Tribunal proceedings. Nor is there anything to corroborate his oral evidence that he could not prepare or read documents or that he had developed memory problems and slurred speech.

41. Further, Mr Heard highlighted that the Claimant was able to write to Ms Blatchford of the Respondent on 23 August 2023 whilst he was off sick in the following terms:

> *"I hope you are fine. I am under the impression that you have paid my accommodation fees already. I would appreciate it if you sort that out with the accommodation office, as I am in no position of paying that amount. I would like to inform you that my career and whole life is now in a turmoil as a result of working at Lincoln Hospital. Please refer to my grievance letter accordingly".*

42. Ms Blatchford replied explaining that she had never agreed to pay his accommodation fees and was unsure why he would think that. In response the Claimant said:

> *"I was about to sue the Trust for £10,000 (please refer to my grievance letter) but did not proceed as I was under the impression that you have agreed to pay the accommodation fees. I also have serious concerns about bullying, and victimisation during my work and false accusations of fraud by working while on sick leave. I would appreciate it if you give this case a serious consideration in order to avoid a public hearing against the Trust, as I will also claim £50,000 on top of the £10,000 for pain and suffering".*

43. I did not accept that the Claimant was medically prevented from setting out the allegations at the outset. The medical evidence relates to his absence from work and not his ability to participate in proceedings which he was clearly able to do. He was able to contact ACAS and submit his claim form without assistance. Furthermore, despite the Claimant being absent from work he was well enough to contact Ms Blatchford in the terms set out above. I add at this point that in my deliberations, I mistakenly considered the Claimant's grievance at page 110 in the bundle (submitted on 26 January 2023 before he was signed off sick) rather than the August 2023 e-mails. When this was brought to my attention, I reviewed the e-mails and explained to the parties that my decision remained unchanged. The Claimant clearly had the capacity to e-mail Ms Blatchford, explain his predicament and give thought to litigation and figures/compensation. This was contrary to his evidence that he was unable to see or read documents and had difficulty remembering things.

44. During evidence, the Claimant gave a contradictory account to explain his failure to include the allegations in this originating claim. On the one hand he relied on ill health yet on the other said he was so preoccupied with dealing with false allegations by the Respondent, i.e., the MPTS proceedings. This led me to doubt his credibility more generally.

45. I did not consider the Claimant's evidence credible that his advisors drafted a witness statement for the MPTS hearing without his input or that he failed to review it before signing because of his health. It is inconceivable that he would not have significant input into a witness statement prepared to defend his career. I also had regard to the Claimant's evidence, contradictory as it was, and considered it more likely in the circumstances, that his time was taken up with his MPTS proceedings.

46. The Claimant said he had difficulty understanding the different types of legal claim he was able to advance until they were explained to him by Employment Judge Shore at a preliminary hearing on 5 March 2024. However, in April 2021 he issued a claim against his former employer, Mid and South Essex University Hospitals NHS Trust (case no: 3201896/2021) in which he alleged disability discrimination, unauthorised deduction of wages, race discrimination, religious belief discrimination and sex discrimination. The parties attended a preliminary hearing on 28 November 2023 at which the Claimant had the benefit of representation.

47. The Claimant also issued proceedings against the General Medical Council on 29 January 2023 alleging harassment, victimisation and whistleblowing detriment (2600211/2023). During these proceedings, the parties attending a preliminary hearing on 24 April 2023 at which (or at least beforehand) the Claimant was able to give instructions to his representative to withdraw claims of harassment related to race, victimisation and whistleblowing detriment.

48. Given his two sets of prior proceedings and ability to plead wages and/or breach of contract claim, a whistleblowing detriment claim, and sex discrimination claim in this claim, I did not accept that the Claimant had difficulty understanding the different types of claim available to him. The Claimant had had the benefit of legal

representation in the past and, even though he does not have that benefit in this claim, I was satisfied that he had the requisite knowledge to advance the claims he now wanted to introduce. Even if I had given him the benefit of the doubt in this regard, it does not explain why he failed at the very least to plead the facts giving rise to the amendments.

49. Given I was satisfied that ill health had no bearing on the Claimant's ability to prepare proceedings, he had the facts giving rise to the allegations in the application in his possession before expiry of the limitation period, was able to e-mail the Respondent threating proceedings in August 2023, able to assist prepare his witness statement for his MPTS hearing and able to enter into Early Conciliation and submit a claim form, I was satisfied that it was not just and equitable to extend time to permit him to rely on the allegations.

50. For the same reasons, I found that it was reasonably practicable for the whistleblowing allegation to be presented in time. As such, the allegations were all out of time.

51. Again, for the same reasons, I was also satisfied that the Claimant failed to provide any credible explanation for the delay in presenting the application to amend, some six months later given his knowledge of the facts, employment law and procedure.

Other considerations

52. I agreed with the Respondent's submission that there is nothing within the allegations to indicate why they were because of the Claimant's race simply other than the fact that he holds this protected characteristic. I was also satisfied that there was no explanation given to substantiate the Claimant's submission that they amounted to continuing acts. As such, on the face of it the allegations are weak.

53. In balancing the injustice and hardship to the parties, I found that the prejudice to the Respondent was much greater than that to the Claimant if I granted the application. I had regard to the changing shape of the claim, the significant impact on the length of the hearing, the number of witnesses likely to be required, the additional cost and the effect on witness memory given that the hearing will be in 2025 at the earliest and the allegations date back to 2022.

54. To conclude, I was satisfied that the allegations subject to the application were all new, the Claimant failed to provide a satisfactory explanation for making the application six months after the issue of his claim, the allegations were out of time and weak in any event and the balance of injustice and hardship would fall against the Respondent if the application was granted. Therefore, I refused the application to amend the claim.

Jurisdiction

55. The claims were limited to those identified in the claim form as set out in paragraph

seven above. The parties' submissions in respect of jurisdiction were the same as those explained above save an additional submission in respect of the wages claim which I address below.

56. The limitation period for the wages claim began running from 27 March 2023 (being the Claimant's last payslip after leaving) and he was required to contact ACAS by no later than 26 June 2023.

57. The alleged whistleblowing detriments and act of discrimination occurred in October 2022 so the primary time limit would have expired by 31 January 2023 at the latest therefore he was required to contact ACAS by no later than 30 April 2021.

58. The Claimant did not contact ACAS until 18 September 2023, some two-and a half and five months out of time respectively.

59. Whilst the allegations in the claim form are not as late in their presentation as those subject to the application to amend, they are still nevertheless out of time.

60. I had regard to the same matters referred to in the application to amend and reached the same conclusions, namely that I should not exercise my discretion to extend time to permit the sex discrimination claim to proceed. It was also reasonably practicable for the whistleblowing detriments claim to be presented in time.

61. In respect of the wages/breach of contract claim, the Claimant argued that it was not reasonably practicable for it to be presented in time because he was awaiting the outcome of his grievance submitted on 26 January 2023 (page 110). However, he conceded that he was aware that the alleged deductions had occurred over a period of eleven months before he resigned. As such, I was satisfied that the Claimant knew of the facts giving rise to the claim and coupled with his knowledge of employment law and Tribunal proceedings, it was reasonably practicable for the claim to be presented in time.

62. Accordingly, I dismissed the claims for want of jurisdiction.

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Employment Judge Victoria Butler

Date: 27 June 2024

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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