IN THE EMPLOYMENT TRIBUNAL (SCOTLAND) AT EDINBURGH

Judgment of the Employment Tribunal in Case No: 8000164/2024 Issued Following Open Preliminary Hearing Heard on the Cloud Based Video Platform on 25th of June 2024 at 10 am

Employment Judge J G d'Inverno

M Benson	**Claimant** **In Person**
ICON PLC	**Respondent** **Represented by:** **Ms G Churchhouse of Counsel** **Instructed by** **Ms F Thornton, Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

(First) The Judgment of the Employment Tribunal is that the person in law who was the claimant's employer and against whom she has Title to Direct her complaints is "Pharm Research Associates (UK) Limited a company incorporated in England and Wales and registered under number 3247433 and whose registered office is at Cannon Road, 78 Cannon Street, London, EC4N 6AF; and that Pharm Research Associates (UK) Limited shall be substituted for ICON PLC as the respondent in the proceedings under Case Number 8000164/2024;

(Second) That the claimant's Application for Leave to Amend is refused.

Joseph d'Inverno

Employment Judge

05 July 2024

Date of Judgment

Date sent to parties 31/07/2024

I confirm that this is my Judgment in the case of Benson v ICON PLC and that I have signed the Judgment by electronic signature.

REASONS

1. This case called for Open Preliminary Hearing on the Cloud Based Video Platform on 25th June 2024 at 10 am.

2. The claimant appeared on her own behalf. The Respondent Company ICON PLC was represented by Ms Churchhouse of Counsel instructed by Ms Thornton.

3. The issues before the Tribunal for determination at Open Preliminary Hearing were:-

   (First) Whether the person in law which was the claimant's employer, both as at the date of commencement and as at the termination of her employment, and the party against which she has Title to Direct her complaints was, ICON PLC, as is contended for by the claimant, or alternatively, Pharm Research Associates (UK) Limited ("PRA") who are a subsidiary of ICON PLC as is asserted by the respondent; and

(Second) Whether the claimant's opposed Application, dated 10th May 2024, for Leave to Amend in terms which bear to introduce a new complaint of Harassment related to the protected characteristic of religion should be allowed.

The Claimant's Position in Relation to the First Issue

4. It is the claimant's contention that when she first engaged with the respondent ICON PLC she did so in answer to an advertisement about a job with ICON PLC and that thereafter, with the exception of her Contract of Employment which she acknowledges was entered into with Pharm Research Associates (UK) Limited, that during the course of her employment, and as she described it, Pharm Research Associates (UK) Limited "*transitioned to ICON*"; and that she and fellow employees were encouraged to always refer to ICON or ICON PLC in their communications with customers of the business without reference to PRA; in short, that notwithstanding her written Contract of Employment with PRA and her payslips, the reality was that she was employed by ICON PLC.

The Respondent's Position in Relation to the First Issue

5. The position of the respondent is that the wrong party has been sued, that the claimant's complaints fall to be directed against the legal entity that was her employer, that person in law being Pharm Research Associates (UK) Limited ("PRA") whom the respondent, at Article 2 of the Grounds of Resistance offers to prove is "a subsidiary of ICON PLC".

Sources of Oral and Documentary Evidence

6. Parties had lodged a Joint Hearing Bundle extending to some 226 pages and to some of which the Tribunal was referred in the course of evidence and or submission. Two additional documents, being public announcements of 24th February 2021 and 1st July 2021 relating to the acquisition by ICON PLC of PRA, were lodged with the Tribunal by the respondent's representative in

the course of the Hearing with consent of the Tribunal the claimant not objecting, and were numbered pages 227 (the 1st July announcement) and pages 228-232 (the 24th February announcement). The claimant's dates of employment were from 9th September 2021 until 16th of November 2023.]

7. The claimant gave evidence, on oath, on her own behalf in relation to the first issue.

8. For the respondent the Tribunal heard evidence, on affirmation, from Mr Keith Hood, one of its Operations Directors. Both witnesses answered questions in cross examination and questions put by the Tribunal.

9. In relation to the second issue, the claimant gave evidence on oath as to the timing of her decision and of the bringing forward the potential additional complaint of harassment and answered questions in cross examination.

Findings in Fact

10. On the oral and documentary evidence presented, the Tribunal made the following essential Findings in Fact restricted to those necessary for the determination of the Issues.

11. By written Contract of Employment dated 7th and 9th September 2021 the claimant entered into employment with Pharm Research Associates (UK) Limited, a company incorporated in England and Wales and registered under number 3247443 and whose registered office is at Cannon Place, 78 Cannon Street, London, EC4N 6AF, United Kingdom hereafter referred to as "PRA".

12. The Contract was signed for and on behalf of PRA on the 7th of September 2021, and counter signed by the claimant on the 9th of September 2021. A copy of the signed Contract is produced at pages (99-113) of the Hearing Bundle.

13. The claimant's dates of employment were from 9th September 2021 until 16th of November 2023.

14. At the time of being recruited and of her commencing her employment, PRA had been the subject of an acquisition at the hands of ICON PLC.

15. The acquisition proceeded by way of a Share Purchase Agreement in terms of which, the whole issued share capital in PRA was acquired by ICON PLC with the effect that PRA became a wholly owned subsidiary of ICON PLC.

16. Following the acquisition, PRA continued to be and, as at the date of Hearing continues to be, an operating trading company with employees such as the claimant and her Line Manager the respondent's witness Keith Hood and services a customer base which includes former customers of both PRA and ICON PLC.

17. Following the acquisition, the ICON brand logo has been applied to PRA and increasingly, internal operating systems previously operated by PRA have diminished in use with the ongoing transition of business to the operating systems operated by ICON PLC.

18. At the time of the claimant first responding to an advertisement for employment and at the time of her commencing employment, the process of transitioning from PRA's operating systems to ICON PLC's was ongoing and not yet complete.

19. As the transition progressed, employees of PRA, including the claimant, were directed to adopt ICON branding in their outward facing communication.

20. At the time of responding to an advertisement for employment and up to and including interview, the claimant had gained the impression that the employment she was applying for was employment which would be with ICON PLC.

21. At interview it was explained to the claimant that as the "transition" was not yet complete it was necessary for new employees to complete the validation process using PRA documentation.

22. When the claimant received, on or around the 7th of September 2021, her written Contract of Employment for consideration and signature by her, she noted that the employment being offered was with PRA but decided that that was consistent with the ongoing transition about which she had been informed at interview. She therefore had raised no question at the time of accepting the offer of employment. At the time of accepting the offer of employment the claimant understood from the terms of the Contract that she was signing that she was in fact entering into employment with PRA.

23. The claimant was paid throughout her employment by PRA. Copy payslips are produced at pages 152 and 153 of the Hearing Bundle. The P45 issued to the claimant, on or around 28th November 2023, showed her employment as being with PRA as at the date of its termination, 16th November 23.

24. In the course of her employment the claimant's salary was reviewed upwards on two occasions. On the first occasion it was reviewed upwards and her salary increase was communicated to her by PRA. On the second occasion the communication of increase was branded "ICON".

25. Notwithstanding her written terms of employment and the payment of her salary by PRA, the claimant increasingly formed the impression, in the course of her employment, that she had become an employee of ICON PLC as opposed to an employee of PRA. It was her position in evidence and submission that notwithstanding her written Contract of Employment she had never been an employee of PRA and had always been an employee of ICON PLC.

26. The claimant's conviction in this regard arose from a number of factors:-

(a) The directions received by her from her Line Manager that she and other employees should brand their external communications as "ICON"

(b) Receipt by her of generic internal communications referring to ICON employees, the fact that on HR matters she dealt with an HR Department which titled itself "ICON". She was unaware of any internal PRA HR staff

(c) In her internal grievance process she was referred to by the respondents as an employee/former employee of ICON.

(d) She and other employees were encouraged to consider themselves post the acquisition, as part of the ICON family and as she understood it, ICON employees.

27. The acquisition of PRA by ICON, which was effected by a Share Purchase Agreement, did not constitute a relevant Transfer of Undertakings for the purposes of a Transfer of Undertakings Protection of Employment Regulations 2006.

28. The acquisition by ICON PLC of PRA through the mechanism of Share Purchase was completed on the 1st of July 2021. The claimant's employment with PRA did not commence until the 9th of September 2021. The claimant was not an employee of PRA immediately prior to the acquisition.

29. The claimant's Contract of Employment was not transferred from PRA to ICON PLC at any point in the course of her employment.

30. The claimant's former employer and the legal entity against which she has Title to Direct her complaints was, throughout the period of her employment:- "Pharm Research Associates (UK) Limited, a company incorporated in England and Wales and registered under number 3247443 having its

registered office at Cannon Place, 78 Cannon Street, London, EC4N 6AF, United Kingdom".

Applicable Law

Discussion and Decision in Relation to the First Issue

31. Where parties reduce their Contract in writing, they are to be taken to be bound by its terms absence error or ambiguity in those terms. No such situation arises in the present case. In relation to the identity of the employer the Contract is unequivocal on its face. Quite separately the claimant confirmed that she was aware of the identity of the employer which was disclosed on the face of the written agreement at the point at which she was entering into. She rationalised that fact in her own mind as one being not inconsistent with the post acquisition transitioning of systems and practices from those previously used by PRA to those used by ICON.

32. Although the claimant described in evidence various instances and common practices such that, absent the terms of a Contract of Employment specifying PRA as an employer and absent the receipt of salary from PRA, an employee might believe that they were employed by ICON PLC post the acquisition, none of those circumstances were fundamentally incompatible with any of the terms of the written Contract of Employment. They were consistent with a desire to brand the services which, post acquisition, were provided to a client base comprising previous clients of PRA and previous clients of ICON, as ICON Services. There was no consensual variation to the claimant's written terms of employment.

33. No question of a transfer of the claimant's Contract of Employment to ICON under the TUPE Regulations arises. Firstly, because no relevant transfer of an undertaking occurs where an acquisition proceeds by way of Share Purchase Agreement unless it can be shown, notwithstanding that mechanism, that day to day control of the subsidiary company has in reality passed to the holding company. The evidence presented fell far short of what would be required to establish such an exception. Secondly, and in any

event, even had a Transfer of Undertakings occurred, which the Tribunal has not found to be the case, the claimant was not an employee of PRA immediately prior to the acquisition (putative transfer) and accordingly, her Contract of Employment could not have been transferred with the undertaking to ICON PLC.

34. For the above reasons, the Tribunal is satisfied that the claimant's employer was and as at the date of termination of her employment remained PRA.

35. The Tribunal directs that PRA be substituted for ICON PLC as the respondent in the case considering it to be in the interests of justice to have the issues on the merits in the case between the claimant and PRA, her former employer, determined in the proceedings.

36. Following the entering of appearance by or on behalf of PRA, ICON PLC should be dismissed from the proceedings.

The Second Issue - Application for Leave to Amend

37. In the Tribunal's Note issued following the first Preliminary Hearing, Employment Judge Doherty confirmed that the respondents had identified 9 instances of alleged unwanted conduct in the draft List of Issues submitted by it, and, that if the claimant felt that there were allegations of unwanted conduct said to constitute the complaint of harassment, already given notice of, which were not covered in paragraph 3 of the draft List of Issues, then the claimant should identify these so that they can be added to the List of Issues and that this should be done by the 10th of May 2024.

38. At paragraph 11 of her Note Judge Doherty stated that:-

> "*It is emphasised that this is not an invitation to introduce new matters, but to identify instances of alleged unwanted conduct relied upon from the material in the ET1. If the claimant seeks to introduce new matters that may be regarded as an amendment to the claim,*

which would be opposed by the respondent and the Tribunal would have to consider whether it should be allowed." (page 64 of the Bundle)

39. That note was issued to parties on the 23rd of April 2024. At paragraph 12 of her Note (page 65 of the Bundle) Judge Doherty records:-

"*The claimant was able to confirm that the allegations of unwanted conduct relied upon as harassment are also relied upon as matters which amounted to a breach of the implied term of mutual trust and confidence in her Contract of Employment, in response to which she resigned. If any matters are to be added to the List of Issues in respect of this claim, then these should be provided by 10th May 2024, and again should reflect the material already contained in the ET1."*

40. By email correspondence dated 10th May 2024 the claimant wrote to the Tribunal giving notice of certain additional matters. With the exception of the paragraph set out below, which falls to be construed as an Application for Leave to Amend, the remainder of the claimant's correspondence comprises a mixture of background information and further specification of complaints already captured within the draft List of Issues referred to by Judge Doherty and which relate to the two complaints perspectively of; Constructive Unfair Dismissal and of section 26 Equality Act 2010 Harassment related to the claimant's protected characteristic of Race. While in so providing further background information and reiterated/Further Particulars the claimant is going beyond the terms of Judge Doherty's Direction and while the detail provided may not add significantly to the merits of the complaints already given notice of they are, otherwise unobjectionable and not objected to and as such the Tribunal considers that they may be received under the heading of "Further Particulars of Claim" (further specification of complaints already given notice of), subject to the respondent being afforded an opportunity to adjust the terms of its Grounds of Resistance in response.

41. The remaining paragraph contained in the claimant's correspondence of 10th May 2024, to which objection is taken by the respondent, appears at page 66 of the Hearing Bundle and is in the following terms:-

"**Harassment Claim**

> 22nd March 2023 – I missed a team outing (Laser Tag) as I have church commitments some evenings which I had informed Dawn about previously and coming up to the event, I did ask if there was any possibility this could be moved but she said there was no other time which I didn't [Judge d'Inverno not sure I've spelt correctly] see a problem due to people's schedules. The next day (23rd March 2023) in the office Dawn came to me and said 'How was church? Can I even ask that' as she laughed."

42. The above paragraph comprises new factual allegations of which no notice is given in the initiating Application ET1 or in the claimant's grievance which she attached to it by way of a paper apart. The passage seeks to introduce a new complaint of section 26 EqA Harassment related to the protected characteristic of Religion. The proposed addition was brought forward on the 10th of May 2024, 14 months after the date upon which it allegedly occurred. It is a standalone allegation relating to a single incident and doesn't fall to be regarded as an instance of conduct extending over a period, the last instance of which is said to have occurred within the primary time limits prescribed by Parliament for the presentation of such a complaint. The facts relating to it are first referred to by the claimant in her PH Agenda lodged with the Tribunal and intimated to the respondent on the 29th of March 2024, in excess of a year after the date of the alleged incident, 22nd March 2023. It is first presented to the Tribunal as a proposed change to the claimant's pleadings on the 10th of May 24, some 14 months after the alleged incident.

43. The claimant gave evidence as to the reasons for the timing of her Application based upon which the Tribunal makes the following additional Findings in Fact;

44. The claimant had not at any time forgotten the occurrence of the incident but, at the time of lodging her grievance had decided not to put it into her grievance letter and thus as she had incorporated her grievance letter within her ET1 utilising it as her Particulars of Claim, her ET1 contained no reference to it or indeed to any harassment or unwanted conduct related to the protected characteristic of Religion.

45. When filling in the PH Agenda return in advance of the first Preliminary Hearing on 19th April 2024, the claimant had been prompted by the structure and questions contained in the Form to "*gather my thoughts and look back at things that had happened*".

46. In the course of that reflection, the claimant had formed the view that the incident should be regarded as an instance in a series of incidents and had now decided therefore to seek to include it.

Applicable Law

Discussion and Decision – The Second Issue

47. Recently affirmed guidance on the approach which a Tribunal should adopt when considering Applications to Amend was set out by HHJ Tayler in ***Chaudhry v Cerberus Security and Monitoring Services Limited*** [2022] EAT172; the Tribunal should:

    (a) firstly identify the amendments sought, which should be in writing; and then

    (b) in express terms, balance the injustice and or hardship of allowing or refusing the amendment or amendments, taking account of all of the relevant factors including, to the extent appropriate, those referred to in *Selkent*.

48. In ***Vaughan v Modality Partnership*** [2021] ICR 535, EAT, HHJ Tayler confirmed that:

(a) The core test in considering Applications to Amend is the balance of injustice and hardship in allowing or refusing the Application, so the Tribunal should consider the specific practical consequences of allowing or refusing the amendment.

(b) The *Selkent* factors are not a checklist, but factors to be considered, amongst others, in conducting the exercise of balancing the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.

(c) It's not merely a question of the number of factors, but their relative and cumulative significance in the overall balance of justice.

(d) Where the prejudice of allowing an amendment is additional expense, consideration should be given as to whether the prejudice can be ameliorated by an award of costs, provided the other party will be able to meet it.

Selkent Factor 1: The Nature of the Amendment

49. If fresh points "*can properly be considered to be particularisation of an allegation already pleaded, a more liberal approach may be taken in considering whether to grant permission to amend, than in cases where the point is a "new" point, or will require the parties to produce further evidence of disclosure and prejudice the timetable set for the proceedings or cause further delay."*

50. Thus a distinction may be drawn between amendments that seek to add or substitute a new claim arising out of the same facts as the original claim, and those that add a new claim entirely unconnected with the original claim. In

order to determine whether the Proposed Amendment is within the scope of an existing claim or constitutes an entirely new claim, the entirety of the claim form should be considered. In some cases, the Application will merely be seeking to relabel a set of existing facts and may not therefore be as significant an amendment as it first seems. Provided the ET1 includes facts from which such a claim can be identified, a Tribunal may tend to adopt a flexible approach and grant amendments that only change the nature of the remedy claimed.

51. In the instant case what is sought to be introduced, namely a section 26 EqA complaint of Harassment related to the protected characteristic of Religion sits in the category of "a new claim", the factual averments upon which it is based appearing nowhere in the initiating Application ET1 or the claimant's grievance attached as a paper apart thereto. It is an amendment which bears to raise a new cause of action.

52. The approach towards amendments which raise new causes of action was summarised by Underhill LJ in ***Abercrombie v Aga Range Master Limited*** [2013] EWCA Civ 1148 at paragraph [48] where he stated the approach to be "… *to focus not on the questions of formal classification but on the extent to which the new pleading is likely to involve substantially different areas of enquiry than the old: the greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that it will be permitted."* In the instant case the Proposed Amendment if allowed would introduce a new cause of action in terms of formal classification. The incident to which it relates however is a one off standalone incident said to arise out of the general factual matrix, namely the claimant's work place relations with her Managers, as give rise to the existing claims. It is not, on balance, one that is likely to involve substantially different or at least additional areas of enquiry at Hearing.

53. According to the Court, Mummery P's reference in ***Selkent*** to the "*substitution of other labels for facts already pleaded*" is an example of the kind of case where – other claims being equal – amendment should readily

be permitted, by contrast with "*the making of entirely new factual allegations which change the basis of the existing claim."*

54. In determining whether the Proposed Amendment amounts to a wholly new claim, as opposed to a change of label, following the English Court of Appeal's Judgment in ***Housing Corporation v Bryant*** [1999] ICR 123, it is necessary to examine the case in the original application to see if it provides a causative link with the Proposed Amendment.

55. Even if there is a causative link this is not conclusive of the amendment being allowed, it is no more than a factor, the weight to be given to it being a matter of judgment in each case, per Underhill J at paragraph [24] in ***Evershed v New Asset Management*** UKEAT/0249/09 (31 July 2009) unreported. As Underhill J stated at paragraph [16] as approved by the Court of Appeal, it was '*necessary to consider with some care the areas of factual enquiry raised by the Proposed Amendment and whether they were already raised in the previous pleading'.*

Selkent Factor 2: The Applicability of Time Limits

56. While there exists a line of authority which permits the allowance of Leave to Amend subject to the challenge of time bar to be reserved for determination at a later date, when, in the absence of particular reasons justifying such an approach, an Employment Tribunal is considering whether to allow a Proposed Amendment to a claim any issue of time bar will most appropriately be considered as an intrical part of an overall decision to grant or refuse the amendment including consideration of whether, in circumstances where the Tribunal lacks Jurisdiction to Consider the claim in terms of section 123(1)(a) and 123(3) Consideration of whether, it would be just and equitable in the circumstances to extend time such as to constitute its Jurisdiction to Consider the complaint in terms of section 123(1)(b), all of the Equality Act 2010; and thus, treating the granting or refusal as a single stage exercise. (See ***Amey Services v Aldridge*** UKEATS/007/16 and of ***Gallilee v Commissioner of Police*** UKEAT/0207/16 – ***Gallilee*** is not authority for the proposition that time

points cannot be considered as part of the amendment application at Preliminary Hearing, rather, that it is not mandatory to do so and notes that that may be the position in cases where it would be difficult to do so without significant evidence. In the instant case were the Proposed Amendment to be raised as a new claim it would be out of time and the Tribunal considers that the applicability of time limits is a factor amongst those to be considered in the exercise of balancing of relative injustice and hardship of allowing and of refusing the Application for Leave to Amend.

Selkent Factor 3: The Timing and Manner of the Application

57. The Tribunal should consider the timing and manner of the Application and the stage in proceedings at which it is made and what effect it has on the existing Case Management Directions. The Application is made some 14 months after the incident to which it relates. It is made, however, at a relatively early procedural stage. The List of Issues in the case to be determined at a Final Hearing has not yet been finalised and the assessment of the time required for a Final Hearing is yet to be made. No dates have yet been allocated to a Final Hearing in the case.

58. As the Tribunal has found in fact, the complaint was not raised within 3 months of the occurrence of the alleged incident nor was it included in the initiating Application ET1, some 11 months later because, as the Tribunal has found in fact, the claimant, although being aware of the incident and its perceived effect upon her, took a conscious decision not to include it in her grievance and thus not to make a complaint about it or subsequently to include it amongst the complaints which she raised before the Tribunal. (As the Tribunal has found in fact)

59. By way of explanation, the claimant in submission reminded the Tribunal that she was a litigant in person and that at the material times had had no access to legal advice. The claimant did not expand upon how the absence of legal advice had resulted in her deciding not to include any reference to factual incident either in her grievance or in her ET1. Separately, that explanation is

at odds with the claimant's statement, contained within her grievance, in which she states that prior to lodging it with the respondent she sought "legal counsel".

60. In her evidence, the claimant explained that although she had decided at first instance not to include the incident in her ET1, subsequently, upon reflection prompted by the exercise of filling in her PH Agenda return and in particular by the various questions posed in that Form, she had, on reflection decided to seek to include it. She provided no explanation as to why that realisation having occurred on or about the 29th of March 2024, she had decided to await the elapse of a further 6 weeks before acting upon her decision.

61. In ***Chandhok v Tirkey*** [2015] IRLR 195 (EAT) at paragraph 16 Langstaff J stated "*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 time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract 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"*

62. Langstaff J goes on to conclude in ***Chandhok*** "*It was not sufficient for the Appellant simply to add these claims at a later date*". In principle it is not permissible to expand the scope of a claim or a response through, for example, Further Particulars, inter party correspondence, a List of Issues or a witness statement. In summary the claimant seeks to add the new complaint against a background of having decided not to include it at first instance and of having come to a realisation at the time of preparing for the first Preliminary Hearing that upon reflection she wished to do so.

63. The respondent opposes the Application on the grounds that:

(a) what is introduced bears to be a new complaint based upon new factual allegations;

(b) that the claim is substantially out of time and it would not be just and equitable in the circumstances for the Tribunal to extend time based upon the explanations provided,

(c) that allowance of the amendment would result in forensic prejudice to the respondent in that witnesses would require to attempt to recollect matters which may well be said to have occurred in excess of 18 months earlier by the time they came to give their evidence; and,

(d) that the balance of injustice and hardship lay in favour of refusing the amendment.

64. As stated by the EAT in ***Mrs G Vaughan v Modality Partnership*** (per HHJ James Tayler):-

> "Refusal of an amendment will self evidently always cause some perceived prejudice to the person applying to amend. They will have been refused permission to do something that they wanted to do, presumably for what they thought was a good reason. Submissions in favour of an application to amend should therefore not rely only on the fact that a refusal will mean that the applying party does not get what they want …"

Nor is it the case that permission to amend should be granted solely because no prejudice will result to the respondent. In the instant case no explanation is advanced which goes to show why the amendment would be, for example, necessary, to advance the pre-existing claims. That is of itself perhaps unremarkable as the claim of Harassment due to the protected characteristic of Religion is an additional distinct claim which is not necessary to enable the claimant to advance the complaints which she has already given notice of in her initiating Application ET1 and as had been recorded by Judge Doherty by

reference to the draft List of Issues. The refusal of the amendment will not deprive the claimant of her opportunity to take forward those pre-existing claims to a Final Hearing.

The Balance of Injustice and Hardship

65. In seeking to balance the relative injustice and hardship resulting to the parties in the respective cases of allowance or non allowance of the amendment, I have concluded, on the one hand, that refusing the Application would not cause significant prejudice to the claimant in that she would not be deprived thereby of her various existing complaints but rather of a single additional complaint which were she to seek to raise it as a new separate complaint would be out of time and in respect of which, on the basis of the explanations provided and, in light of guidance given in ***Chandhok v Tirkey***, the Tribunal does not consider that it would be just and equitable in the circumstances presented to extend time by the 14 months or thereby which would be required to constitute its jurisdiction to consider the complaint in terms of section 123(1)(b) of the EqA.

66. On the other hand, to allow the amendment would cause significant prejudice to the respondent;

(a) by requiring them to respond to a claim over which the Tribunal would have no jurisdiction by reason of time bar were it to be raised as a separate claim.

(b) by requiring them to respond to and incur the cost of responding to the additional complaint.

67. I do not consider it consistent with the Overring Objective to allow, in June of 2024, an amendment which introduces a new factual basis for a complaint in circumstances where the introduction of such a claim would otherwise be time barred and which on the basis of the reasons placed before the Tribunal,

the claimant had decided not to include amongst the claims which she gave notice of when first presenting her initiating Application in February of 2023.

68. Upon a consideration of all of the relevant circumstances, including those particularly identified in ***Selkent Bus Company Limited v Moore*** and on a carrying out of a balancing of the relative prejudice and hardship the Tribunal determines that the balance lies in favour of refusing the amendment and it accordingly does so.

69. The case should now proceed as accords with the separate supplemental Case Management Orders which are issued to parties of even date with this Judgment.

Employment Judge: **d'Inverno**
Date of Judgment: **08 July 2024**
Entered in register: **31 July 2024**
and copied to parties 31/07/2024

I confirm that this is my Judgment in the case of Benson v ICON PLC and that I have signed the Judgment by electronic signature.