



EMPLOYMENT TRIBUNALS

Claimant: Miss Sophia Henry

Respondent: The Office of the Public Guardian

Record of a Closed Preliminary Hearing by CVP at the Employment Tribunal

Heard at: Nottingham

Heard on: 30 January 2025

Before: Employment Judge Broughton (sitting alone)

Appearances:

Claimant: Miss McPhilbin, Employment Adviser

Respondents: Mr McLean of Counsel

JUDGMENT

The application to amend the claim succeeds in part.

REASONS

Background

1. The Acas pre action conciliation period started on 18 December 2023 and the certificate was issued on 18 January 2024. The claim was filed on 16 February 2024.

2. The case was listed for today's hearing by Employment Judge Ahmed, at a previous preliminary hearing held on 2 December 2024. The purpose of today's hearing was to determine whether the Claimant was disabled at the relevant time in relation to anxiety. However, prior to the hearing the Respondent conceded the issue of disability. The hearing proceeded as a private hearing in order to clarify the issues and claims and to address what the Respondent argues are amendments the Claimant is seeking to make to the claim.
3. The Respondent had prepared an electronic bundle and documents for today's hearing comprising of 299 pages. The Claimant unfortunately did not have a hard copy of that bundle with her (and the Respondent did not have an extra copy) . She had also not brought a laptop with her. The Claimant was only able to access the bundle through her mobile telephone however she informed me that she was content to proceed and that she did have a hard copy of some of the paperwork with her.
4. The Claimant relies on two disabilities: **anxiety and keratoconus (an eye condition)**. The Respondent now concedes that both conditions qualified as disabilities at the relevant time pursuant to section 6 EqA based on the medical evidence and the impact statement the Claimant has provided.
5. The final hearing is listed for 5 days from **23rd to 27th March 2026**. The Claimant does not envisage calling any supporting witnesses and at present the Respondent anticipates calling 3 witnesses.
6. The Claimant remains interested in Judicial Mediation and the Respondent agreed to confirm within 14 days from today's date, whether it is interested in Judicial Mediation. If it the Respondent is interested, then a Telephone Case Management Hearing will be arranged to discuss it.
7. Before turning to the issue of what the Respondent asserts to be an attempt by the Claimant to amend the claim, I sought to clarify the claims as identified by Employment Judge Butler at the first Case Management Hearing which took place on 20 June 2024.

Reasonable Adjustments Section 20 and 21

Claim 1

8. The Claimant asserts that the Respondent had a PCP of requiring work to be carried out from the office and a refusal to allow working from home.
9. We had some discussion about what the Claimant alleges the substantial disadvantage was for her arising from this putative PCP. It is stated in the Case Management Orders of the 21 June 2024 to be; i) the triggering of the Claimant's anxiety and ii) her anxiety then hindering her recovery after her eyes deteriorated. We discussed this at quite some length and ultimately the Claimant clarified that the substantial disadvantage she says the requirement to work in the office caused her, is as follows:
 - a. The problems she has in physically getting to work because of the deterioration in her vision caused by the keratoconus. She referred to almost being hit by a bus on a number of occasions.

- b. The lighting in the office causing her problems because of her eye condition.
 - c. Attending the office caused further anxiety because the working environment was not supportive. She describes it as a hostile working environment with colleagues disbelieving that she was disabled.
10. I sought clarity from the Respondent over whether they accept that this PCP was in place and I was informed that this is **not** conceded by the Respondent. I note however that paragraph 56 of the grounds of resistance refers to it not being reasonable for the Claimant to carry out the job from home and therefore as I raised with counsel for the Respondent, it is difficult to see on what grounds they are therefore maintaining a position that they did not have the pleaded PCP in place. However, those were counsel's instructions.

Claim 2

11. This relates to a PCP of recording disability related leave as sickness absence.
12. The periods of absence complained of are between **11 October 2023 and 14 November 2023**.
13. In terms of the substantial disadvantage, it is the likelihood of being given a warning. Although the Claimant was not given a warning for the absences during this period, the Claimant complains that she was given a warning for another period of absence and that she had been told that she could be given a further warning, it was therefore the threat or possibility of another warning which was the concern.
14. Counsel for the Respondent confirmed that the Respondent's position is that the Respondent did not have this PCP although it is accepted that the absences had been recorded.
15. Counsel did not have instructions as to whether it is accepted that the absences during the relevant period were disability related.

Further Information From the Respondent

16. In order to identify what is in dispute, which will assist the parties in the preparation of witness statements and disclosure, **within 14 days** from the date of this hearing, it was explained to the parties that the Respondent must confirm:
- (i) *Whether it accepts the alleged PCPs (both claim 1 and 2) and, if not, why not?*
 - (ii) *Whether it accepts that the relevant periods of sickness absence were disability related and, if not, why not?*

Claim 3

17. Claim 3 is a claim of a failure to provide an auxiliary aid.
18. This relates to the provision of Dragon Dictate Read and Write Software and Magnifying Software.

19. The alleged substantial disadvantage is two-fold:
 - (i) Without it, it was harder to perform her role.
 - (ii) The absence of it triggered anxiety.
20. The Claimant's case is that these auxiliary aids should have been provided to her when she first commenced her employment.
21. Counsel confirmed that the Respondent's position is that these aids were recommended in an Occupational Health Report in August 2022 and that Dragon Dictate was provided but that it did not come to their attention until March 2023 that further auxiliary aids were required and when it did, they were then provided.
22. The Respondent therefore denies having knowledge that the auxiliary aids were required before the Occupational Health Report in August 2022 and that further it did not have knowledge that they were not sufficient until March 2023.
23. The Claimant does not dispute that she had all the necessary equipment in place by **August 2023**.

Harassment claim: section 26

24. We then moved to the section 26 harassment claim identified by Employment Judge Victoria Butler at the hearing on 20 June 2024.
25. Employment Judge Butler remarked that there was limited detail around the harassment claim but that she had insufficient time at that hearing to allow the Claimant to particularise it. It was identified that :

“The Claimant complains that her Manager, Miss Beech, harassed her but will provide further particulars in accordance with the order below.”
26. Employment Judge Victoria Butler then ordered that the Claimant to provide further particulars of the complaint of harassment within 3 weeks.

Claim Form

27. I note that the claim of harassment as set out in the particulars of claim (**PoC**) attached with the claim form, makes the following general accusations:

“My disability is constantly being questioned and doubted”.

“I was subject to unnecessary criticism of my performance.”

“I was criticised for minor mistakes.”

*“Due to how I was treated **by the management** everyone began to have an opinion about whether I was telling the truth about my disability or not. This made me feel very uncomfortable and unsafe and excluded from the team.”* (page 22/23). Tribunal stress

28. It is clear that the Respondent understood those to be complaints of harassment because it pleads to them in its response at paragraphs 55 – 57 but complained that there was insufficient detail and that it would be requesting further information.
29. The Claimant complied with the Order to provide further details of the harassment claim but confusingly, and this is no criticism of the Claimant, she did so in a document served on **22 July 2024** (page 70) which she headed '**Amended Particulars of the Claim**'. She tells me today that what she understood she was providing were particulars of the claim as ordered by Employment Judge Victoria Butler.

'Amended Particulars of the Claim' : (page 70) (Further and Betters) : July 2024

30. In what I shall refer to as the Further and Betters, the Claimant complains of the following acts of what I understand she complains to be harassment, namely that:
- 30.1 Miss Irem Malik had said; "*She does not see disability you can either do the job or you can't*". The Claimant clarified that this should read that Miss Malik had said on that occasion: "*I do not see disability you can either do the job or you can't*". The Claimant had however set this out under the heading of a failure to make reasonable adjustments.
- 30.2 The Claimant also makes a number of allegations about her Managers at the time, Miss Beech and Ms Hannah Kirk. She complains generally of intense performance management by them.
- 30.3 The Claimant sets out how her anxiety increased because her absence was being recorded as sick leave.
- 30.4 She also complains in this document, that in October 2023, James May had said that anxiety was not a disability and that in the same month he had advised her that if she has any surgery before October it will be recorded as sick leave and she could receive a warning.
- 30.5 The Claimant complains that Cally Beech received a reply from Occupational Health on 19 August 2022 and that she attempted to use the information from Occupational Health in a negative way to say she was unfit for the role.
- 30.6 The Claimant refers to emotional harassment in that Cally Beech exerted excessive control over her probationary period, of persistent overbearing supervision and excessive micromanagement.
- 30.7 The Claimant also makes a general complaint that due to the way she was managed it lead to a lot of people forming an opinion about whether she was telling the truth about her disability or not which made her feel uncomfortable, unsafe and excluded.
- 30.8 The Claimant generally complains of an unsupportive environment at work.

Reasonable Adjustments

- 30.9 The Claimant also in this document, complains that her doctor had advised the Respondent that working from home was beneficial for her mental health and that if she

had to attend the office, recommended that she be able to choose her office days (page 75). This complaint is about the recommendations made by her doctor on **17 May 2024** and that this recommendation has not been implemented and of the ongoing need for this adjustment.

30.10 The Further and Betters document was sent to the Respondent on 22 July 2024, and although this allegation about the failure to implement the recommendation made on 17 May 2024, post-dates the claim filed in February 2024, had it been presented as a new claim on 22 July 2024, it would have been presented within the 3 months prescribed by section 123 EqA. The Claimant sets out the problems she has travelling to work, the particular problems of travelling in Winter due to the lack of light, the inability to apply eye drops enroute to work and the anxiety caused by the work environment. The Claimant refers to the reasonable adjustment being to permit her to work from home on a permanent basis.

30.11 The Respondent was therefore on notice via these Further and Better particulars presented in July 2024, (2 months after the doctors alleged recommendations), that the Claimant considered that the Respondent was failing to implement an adjustment that she needed. The Claimant sets out in some detail why she says this adjustment is required and the impact on her of this adjustment not being made.

Respondent's Response

31. The Respondent wrote on 19 August 2024 objecting to what it considered to be an application to amend her claim and in particular the addition of the complaint that on **17 May 2024** her GP had recommended that working from home was beneficial for her.
32. The Respondent refers in its August letter to what is said in May 2024 being new, in that it relates to a need for a **permanent** adjustment in terms of homeworking.
33. In her PoC I note however, that the Claimant had raised the issue of being allowed to work from home and how she had tried to resolve this by different managers for 2 years. She refers in her PoC to the problems she has with travel to work. This is clearly identified therefore as a continuation of a situation which had been ongoing since 2023. The Claimant in the PoC, and the issues as captured by Employment Judge Butler, do not identify this as a temporary adjustment or otherwise identify a defined time period during which the adjustment was said to be required. While the Claimant refers in her PoC to the consultant recommending home working to prevent infection, the Claimant refers to other reasons why she needs to work from home, including the problems of travel and the working environment.
34. I also have had regard to the fact that in the original response to the claim, the Respondent refers to the Claimant raising that she wanted the arrangements about attending the office once per week to be **permanent** (para 35) but that this was not a reasonable adjustment for it to make, subject to a review in April 2024.
35. While the Claimant had not written in at this stage to make a formal application to amend, it appears that the Respondent was aware that home working was something the Claimant considered she required and should be accommodated on a permanent/ ongoing basis.

36. The Respondent had been given 28 days after receiving the further particulars about the harassment claim to amend its response. The Respondent filed its amended response on 19 August but did not plead to what it avers were additional claims/facts.

Preliminary Hearing

37. There was then the Preliminary Hearing before Judge Ahmed on 2 December 2024 (page 107).
38. Employment Judge Ahmed at paragraph 5 of his Orders noted that whilst the allegations in relation to the failure to make reasonable adjustments were clear, the allegations in relation to harassment were not and he made an Order for further information.
39. By no later than 16 January 2025 the Claimant was ordered to supply further details of the allegations of harassment and he set out what details it should include. It is to be noted that the details that were required were much more specific than the Claimant had been asked for before, he set out at paragraph 2 what was needed:

“2.1 Details of the allegations of harassment such as what was done, who by, when or approximate dates, the gist of any words used and why it is believed to related to her as a disabled person.

2.2 The Claimant must explain briefly why the treatment violated her dignity of created an intimidating, hostile, degrading, humiliating or offensive environment”.

40. The Claimant now had clear guidance on what further details were required and she then submitted a further document on **8 December 2024** headed ‘**Application for leave to amend claim**’, stating that (page 111- 112):
- 40.1 Some of the issues that she wanted to complain about had continued after the date that the claim form had been submitted.
- 40.2 Her consultant and doctor have requested adjustments.
- 40.3 That equipment to allow her to work from home had only been provided in August 2023.
41. The Claimant also set out in her letter (page 111 of the bundle) that the situation at work had impacted on her health and she had little support from the Union.
42. The Respondent wrote on 16 December 2024 objecting to the application to amend on the grounds that she had not set out what amendment was being sought and that it appeared that she was intending to submit a document in January 2025 which will set out complaints after the date the claim form was submitted and that she should have made the application sooner (page 113).
43. The Claimant sent further details of the harassment claim by **16 January 2025** as ordered by Judge Ahmed. The Claimant explained today, and this was not refuted by the Respondent, that Employment Judge Ahmed explained at that hearing that she could seek to add events since the claim form was submitted to show that there was a continuing act.

44. The Claimant then submitted a document which begins at page 116 of the bundle and which is headed: '**Harassment Claim Time Line**'.

January 2025 : Harassment Claim Time Line

45. The Claimant explained today that what she had attempted to do in this document was set out the further information as Employment Judge Ahmed had directed. The Claimant also included in this document the following allegations which occurred **on or after** the date her claim form was submitted and thus must amount to new allegations/claims:

45.1 Allegation about a training session on 'Difficult Conversations' on **16 February 2024** and the **failure to make adjustments** at this meeting, the lack of comfort breaks which meant she could not apply her eye drops, bright lighting and use of a white board (page 126).

45.2 On **16 February 2024** Chris King commented, "*People have to make their own luck and there is no use complaining*".

45.3 An allegation which is dated 1 March 2024, but refers to an ongoing failure to implement advice from her doctor about working from home being beneficial, lack of support and understanding from management, eye related and anxiety related absences recorded as sick leave by her managers (James May, Charlotte Spencer, Cally Beach and Hannah Kirk). Further generally of an ongoing refusal to acknowledge the issues with her eye condition and anxiety 'to present day' which 'continues to get worse over time.'

46. We did take the time to go through each of the further allegations and obtain some clarity from the Claimant in relation to those complaints.

Harassment Claim Time Line

47. The complaints are as follows:

47.1 The Claimant complains that on **8 February 2022** that Miss Irem Malik made the comment "*I do not see disability, you can either do the job or you can't*". That allegation had been set out in an the original Further and Better's back in July 2023. Counsel for the Respondent takes no issue with the claims as they were clarified in the July document (i.e. the Amended Particulars of Claim document at page 70) and it is quite clear that this allegation is a repeat of what is set out in that July document.

47.2 In terms of the allegation in **March 2022** and the concerns expressed by Cally Beech, the Claimant alleges that she made the comment: "*The Claimant was not the quickest learner*".

47.3 The Claimant generally complains that Cally Beech disbelieved that she had an eye issue and disregarded her anxiety condition and intensified her micromanagement of the Claimant based on her performance and that the Claimant was not listened to when she tried to explain that she needed adjustments (i.e. IT equipment). She complains about being put through extensive meetings twice a week and generally being micromanaged. Those allegations are consistent with the allegations set out in the claim form about being subject to unnecessary criticism of her performance and being criticised for minor

mistakes. The Claimant had identified Cally Beech as a putative harasser in the first Case Management Hearing.

- 47.4 **April 2022:** The Claimant complains that Cally Beech had told someone called Amna in a handover not to give the Claimant help and not to support her. In the Further Particulars document of July, the Claimant had complained generally of an unsupportive working environment and had named Cally Beech in the original claim form. She complains, for example, that she was provided with the Dragon equipment and the trainer had suggested that she should have time without pressure being applied to get used to using the equipment, but this time was not given to her.
- 47.5 **May 2022 :** The Claimant repeats here allegations about Cally Beech including that she had remarked that the Claimant was not the quickest learner and complains generally about comments by Cally Beech and meetings that she had with her that were not supportive.
- 47.6 **25 June 2022 :** The Claimant repeats an allegation of harassment against Cally Beech. This is an allegation that she had said, *"It's been highlighted that there could be some memory loss concerns"*. She alleges that Hannah Kirk was present and she felt humiliated.
- 47.7 **July 2022:** The Claimant complains about meetings with Cally Beech and Hannah Kirk and a specific allegation that she had eczema on her scalp and that Hannah Kirk had joked about it. The Claimant alleges that Hannah Kirk had said, *"It will just go, get on with your work"* but she alleges the eczema was anxiety related and needed treatment. This specific allegation against Hannah Kirk had not been mentioned previously.
- 47.8 **August 2022:** The Claimant makes allegations here again of a lack of support by Cally Beech including trying to use information from Occupational Health in a negative way to say that she was unfit for the role.
- 47.9 **October 2022:** The Claimant complains again about the lack of support from Cally Beech telling her after treatment that if she did not come back to work she would receive a warning. She also complains that Hannah Kirk had entered in her HR file that the Claimant was happy to return to work when she had told her that she needed plenty of rest after treatment. Again, she complains also in that document about being micromanaged by Hannah Kirk and Cally Beech.
- 47.10 **December 2022:** The Claimant complains that targets were increased again by Cally Beech.
- 47.11 **March 2023:** The Claimant complains that she was given a warning as the outcome of a formal probationary meeting on 2 March by Charlotte Spencer to extend her formal probationary period. She complains that she appealed the warning but the decision was upheld by Marie Meir.
- 47.12 **April 2023:** The Claimant complains that she was told that her probationary period would be extended by Charlotte Spencer on 14 April 2023.

- 47.13 **May 2023:** The Claimant complains that a member of the team informed her that everyone had an opinion on her situation in the LEY Team and that the majority were doubtful and did not know what to think. She confirmed that this comment had been made by someone called Amna (she is not sure of her surname but it is not the same Amna that was involved in the 'handover' complaint).
- 47.14 **June 2023:** The Claimant complains that she informed Neil Faulkner on 5 June 2023 that she would be attending the Queens Medical Centre because her eye was painful but was asked if she could work from home even though she did not have any of the right equipment and this made her feel as though she was not being believed.
- 47.15 **July 2023:** The Claimant she complains that Charlotte Spencer had reassured her that as she was being confirmed in post it meant she could facilitate a move to another team but that when she returned to work she was placed in Team 5 with no discussion and James May confirmed there had been no discussion with them either, this is a complaint about Charlotte Spencer.
- 47.16 **August 2023 :** The Claimant complains that she received no help or support setting up her IT equipment at home even though Charlotte Spencer knew that she was suffering.
- 47.17 **September 2023:** The Claimant complains about an informal attendance review meeting held by James May.
- 47.18 **October 2023:** The Claimant complains because of the way her absence was recorded her Managers, Cally Beech, Charlotte Spencer and James May, a formal attendance meeting with a potential warning was triggered and that James May increased the trigger days but that because her eye and anxiety related absence are recorded as sick leave formal meetings and warnings were still triggered and that James May advised that he did not have to listen her doctor. It is alleged that James May said to her in a conversation in October that anxiety was not a disability.
- 47.19 There are also allegations in **November 2023** which concern James May along the same theme regarding what she says was disability related absence.
- 47.20 In **December 2023** there are also complaints again about the management of her disabilities and she specifically complains that James May told her that it was not a homeworking office.
- 47.21 **January 2024:** The Claimant complains that someone called Stephanie whose surname she could not recall, had said that she did not understand how blind people could work at OPG and that it was not fair on the rest of them and that some people just make a fuss about everything.
- 47.22 **16 February 2024:** The Claimant complains that James May did not make reasonable adjustments for her at this meeting but also complains that Chris King commented; *"People have to make their own luck and there is no use complaining"*.
48. The above are all complaints about incidents which she alleges took place on or before 16 February.

49. The Claimant also includes the additional complaints about events after the date her claim was filed. She complains on 1 March 2024 of a lack of support and understanding from management around her health and that her eye related and anxiety related absences were recorded as sick leave by her Manager, James May (as they had been by Charlotte Spencer, Cally Beech and Hannah Kirk) and that her doctor had advised that working from home was proving beneficial and if she had to attend the office, she recommended flexibility to choose her office days.

Respondent's submissions

50. The Respondent submits that there were are some complaints about harassment raised in the 'Harassment Claim Time Line' document which are not contained within the original claim form. Counsel for the Respondent submits that the following amount to new allegations;

50.1 The allegations about James May in October 2023 (page 123).

50.2 The allegation in 2024 that a colleague had said she did not understand how blind people could work at OPG.

50.3 The February 2024 complaint that Chris King had said that people have to use their own luck and there is no use complaining.

50.4 In March 2024. the last bullet point is a new allegation which is that her doctor advised the Respondent that working from home was proving beneficial to mental health and eyes and recommended flexibility to choose office days.

51. Counsel also submits that the Claimant has added in new individuals to raise complaints against when previously she had only identified Cally Beech.

52. He submits all the allegations from **October 2023 to March 2024** are new allegations which are not in the Further and Betters and that in respect of the following these are individuals against whom allegations are now made and who were not named previously:

(1) Malik

(2) Amna

(3) Charlotte Spencer

(4) Marie

(5) Amna (this is another Amna)

(6) James May from July 2023 onwards

(7) Stephanie

(8) Chris King

- (9) An allegation concerning all Team 5, the LEY Team
53. Counsel submits that Hannah Kirk had been mentioned in the Further Particulars and therefore he is not going to make a 'big point' about any allegations against Hannah Kirk but does allege that allegations against these other individuals are new because the focus previously at the first Case Management Hearing was harassment by Cally Beech.
 54. Counsel submits that they are factually distinct allegations. The allegations concerning Cally Beech were around the way the probation was managed and the harassment was very much in relation to that and the allegations have expanded into something very different which is about attitude to disability.
 55. Counsel argues that the Claimant has expanded her claim beyond the Further Particulars in July 2024.
 56. Counsel submits the Respondent in preparing their case on the basis of 3 witnesses and now the Respondent is broadening it to a number of other individuals.
 57. Counsel argues forensic prejudice on the basis that the evidence has not been captured yet by the Respondent, they have only been told recently about these allegations by the Claimant and they may affect the recall of the witnesses and the evidence they give.
 58. Counsel argues that adding these new claims may put the Case Management Orders at risk if the claim 'mushrooms' into allegations involving a lot more people, it will be a larger hearing because of the need for more witnesses.
 59. Counsel argues that many of these allegations are historic and there are time limitation issues.
 60. Counsel argues that the balance of prejudice favours the Claimant that they should be classed as amendments and should not be allowed and that the allegation of harassment should be limited to allegations against Cally Beech in the context of complaints about her handling the probationary period. Hannah Kirk could be brought in because there has been mention of her in the Further Particulars but beyond that there are new allegations against other individuals. Counsel confirmed that it is **not** going to object about the allegations concerning Hannah Kirk.

Claimant's submissions

61. The Claimant confirmed that the probationary period had finished in July 2023 but there are other issues about how she was managed.
62. The Claimant submits that she had not identified all those she now names before because she did not appreciate that she needed to do that until Employment Judge Ahmed pointed that out to her in December 2024 the detail required, and she then put together the Time Line to show that there had been continuing treatment but there has been a number of changes in those managing her, she has not just been managed by Cally Beech.
63. In terms of James May, although Counsel says he was not mentioned before she had said that she had been penalised about her pay over her surgery and it was James May that had

the meeting with her and refused to amend the document for SSCL and that his reason was that her eye condition and anxiety was not a disability.

64. In terms of what prejudice it may cause her not to include these further allegations, the Claimant stated that it would make her case unclear and that including these claims would show there was a continuing course of conduct.
65. The Claimant submits that she had not realised that she could add events since she had put in the claim form, until she had the hearing with Judge Ahmed.
66. The Claimant indicated that the surgery she had had for her eye condition may have been a factor in terms of not originally including all the detail in her claim and therefore, because there was potentially an issue about time limits and further claims, she was invited to give oral evidence about the impact of the eye surgery if she wished. The Claimant then proceeded to give sworn oral evidence about the reasons why she had not originally included all the complaints in her claim form. The Respondent did not object to her giving evidence.
67. The Claimant gave evidence that she had been struggling with her health and has low mental health. When she has problems with her eyes, those problems generally impact on her mental health and one effect of that is that she cannot 'think clearly'. She gave unchallenged evidence that she was absent from work from June 2023 until October 2023. She was back at work in October 2023 until August 2024. The Claimant confirmed that she was therefore working when she produced the Further Particulars back in June/July 2024 following the hearing with Employment Judge Victoria Butler.
68. She gave evidence however, that her Doctor had said she needed to work from home and that it was overwhelming and that she had been suffering social anxiety and felt unable to leave the house. She confirmed she prepared Further Particulars back in June/July 2023 when she was working from home.
69. The Claimant gave evidence that she has had a number of surgeries, she had one in August 2024 before that it was October 2023. She went on to give evidence that the 'biggest factor' however, in terms of how she had prepared her case was that her trade union had not been very helpful, they had not helped her to put anything together since she brought the grievance.
70. She complains that she had very low vision after the surgery in October 2023 and that she has not been very well for a long time and she is not always very clear headed. Ultimately, she gave evidence that it was when Employment Judge Ahmed talked to her about a continuous course of conduct and that she needed to put everything down that she then realised that she had to set out everything that had happened more recently.
71. The Claimant completed her oral evidence and after the luncheon adjournment, the Claimant mentioned that she also wanted to add that since June 2023 she has not had a proper prescription for her lenses and wanted that to be taken into account.
72. Counsel for the Respondent clarified that he does not seek to argue that anything within the Further Particulars that were issued in June/July 2024, should not be included in her claim but argues that if anything outside of what is in that document is contained in the more recent

Time Line of events, those complaints should be treated as amendments.

Legal principles

The legal principles – amendment application

73. Employment Tribunals have a broad discretion to allow amendments at any stage of the proceedings pursuant to Rule 30.
74. The discretion whether to allow an amendment must be exercised in accordance with the overriding objective pursuant to Rule 3 to deal with cases fairly and justly.

Case authorities

75. The then President of the EAT, Mr Justice Mummery, gave guidance on how Tribunals should approach applications for leave to amend in ***Selkent Bus Company Ltd v Moore [1996] ICR 836 EAT***. Mr Justice Mummery gave guidance that

“Whenever the discretion to grant an amendment is invoked, the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.”

76. In terms of what the relevant circumstances are, he referred to it being impossible and undesirable to attempt to list them exhaustively but identified three as certainly relevant;

“(a) The nature of the amendment

*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 have to decide whether the amendment sought is one of the minor matters or is a substantial alteration pleading a new cause of action.*

(b) The applicability of time limits

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) The timing and manner of the application

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.”

77. In **Vaughan v Modality Partnership [2021] ICR 535 EAT**, the EAT confirmed the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application and the need for the parties to make submissions on the specific practical consequences of allowing or refusing the amendment.

Nature of the amendment

78. Mr Justice Mummery in **Selkent** made it clear that the nature of the proposed amendment must be considered first before any time limitation issues are considered as it is only necessary to consider the question of time limits where the proposed amendment in effect seeks to adduce a new complaint, as distinct from relabelling the existing claim.
79. However, whatever type of amendment is proposed, the core test remains, namely that the Tribunal must review all of the circumstances, including the relative balance of injustice in deciding whether or not to allow the amendment: **Cocking v Sandhurst (Stationers) Ltd & anor [1974] ICR 650, NIRC**.
80. The Court of Appeal in **Abercrombie & others v Aga Rangemaster Ltd [2013] ICR 2009 CA** stress that it is clear from Mummery P’s judgment in **Selkent** that he was not advocating so formalistic an approach that the fact that an application to introduce a new cause of action would of itself weigh heavily against amendment, rather according to the Court of Appeal, the reference to the substitution of other labels for facts already pleaded, is an example of the kind of case where other things being equal, amendments should readily be permitted by a contrast with the making of entirely new factual allegations which change the basis of the existing claim.
81. It is important therefore for Tribunals to consider, the extent to which the new pleadings are likely to involve substantially different areas of enquiry than the old, the greater the difference between factual and legal issues raised by the new claim by the old the less likely it is that it will be permitted.
82. Tribunals, however, always retain a discretion however whether or not to grant leave to amend.
83. **Martin v Microgen Wealth Management Systems Ltd EAT/0505/06**: The overriding objective requires, among other things, that cases are dealt with expeditiously and in a way which saves expense, undue delay may well be consistent with those aims.
84. Presidential Guidance on General Case Management for England and Wales;

“The timing and manner of the application. An application can be made at any time ...even after Judgment has been promulgated. ...A party will need to show why the application was not made earlier and why it is being made at that time. An example which may justify a late application is the discovery of new facts or information from disclosure of document. ... “
(para 5.3)

85. **Ladbrokes Racing Ltd v Traynor EATS/0067/06**, the EAT gave some guidance on how a Tribunal may take account of the timing and manner of the application;
- why the application is made at the stage at which it is made and why it was not made earlier;
 - whether if the amendment is allowed delay will ensue and whether there are likely to be additional costs because of the delay or because of the extent to which the hearing will be lengthened if the new issue is allowed to be raised, particularly if these are unlikely to be recovered by the party that incurs them;
 - whether delay will put the other party in a position where evidence relevant to the new issue is no longer available which rendered of lesser quality than it would have been earlier.

Time limits in discrimination cases

86. Section 123 of the Equality Act 2010 deals with time limits to which a Claimant must present discrimination claims to the Employment Tribunal and provides as follows:

Section 123: Time limits

(1) Subject to 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

...

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it”

Just and equitable extension

87. In **Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434 CA**, the Court of Appeal stated that when Employment Tribunals consider exercising the discretion under what is now section 123(1)(b) of the EqA there is no presumption that they should do so.
88. The provisions of section 33 of the Limitation Act 1980, as modified appropriately to employment cases, may be relevant (**British Coal Corporation v Keebles [1997] IRLR 336**); and therefore the factors which may be relevant include; the length of and reasons for the delay, the extent to which the cogency of the evidence is likely to be affected by the delay, the extent to which the parties sued had co-operated with a new request for

information, the promptness with which the Claimant acted once they knew the possibility of taking action, the steps taken by the Claimant to obtain appropriate professional advice once they knew of the possibility of taking action.

89. The Court of Appeal in ***Southwark Borough Council v Afolabi [2003] ICR 800 CA*** confirmed that while the checklist in section 33 of the Limitation Act 1980 provides a useful guide, it need not be adhered to slavishly. The factors referred to by the EAT are a valuable reminder of what may be taken into account but it depends on their individual cases; ***Department of Constitutional Affairs v Jones [2008] IRLR 128 CA***.

Conclusions

90. I turn first to deal with the nature of the amendments and whether the Claimant is in effect seeking to adduce a new complaint, as distinct from providing more details (or further particulars) about a complaint and to do that start by considering the complaints set out in the PoC.
91. The PoC (page 20 – 23) are narrative in form. It covers in broad terms complaints about:
- Constant questioning and doubts about her disability
 - Not providing the Claimant with the software and equipment she needs
 - Being put on performance review and extension of probationary period
 - Heavy micromanage and performance criticism
 - OH report August 2022 recommendations not implemented
 - Cally Beech's behaviour; ignoring her consultants letter
 - The management on 'Lay' team failing to take her disability into account and not making adjustments
 - Lack of support about working from home and provision of equipment
 - Disability related sick leave recorded by James May and Charlotte Spencer as sick leave and warned by James May about potential warnings
 - Lack of support by Cally Beach
 - Felling unsafe and excluded because people had an opinion about whether she was telling the truth about her disability.
92. Those complaints are general in nature and lack detail and Employment Judge Butler recognised the need for the Claimant, a litigant in person, to provide further particulars of the harassment claim.
93. The Claimant then provided the further particulars (document headed ' Amended Particulars

of the Claim'). The Claimant set out some factual background. The Claimant referred to a failure to make reasonable adjustments and set out more detail of what she had complained of in her claim form around a lack of support. She specifically complains about Irem Malik stating that she does not see disability, '*you can either do the job or you can't*'.

94. Irem Malik was therefore named in her Further Particulars in respect of the comment made on 8 February 2022, as well as action by Cally Beech and Hannah Kirk in only increasing the trigger days by one day, generally not considering disability leave and the decision by James May to increase trigger days to 12 but formal meetings and warnings were still triggered. She also raised the comment by James May about not having to listen to her doctor, that he refused to amend her leave to special leave and commented that '*anxiety was not a disability*'.
95. The Claimant also comments in these further details about the journey to work being difficult due to her vision and an unsupportive office environment. Complains about the probationary period and how Cally Beech managed this and then how Hannah Kirk took over as line manager and heavily performance managed her regardless of the advice of OH.
96. The Respondent submitted an amended response but within it complained that further particulars were still required (para 71 page 97). The Claimant then sent in the Harassment Time Line and clearly any allegation about an acts which took place from **16 February 2024**, (after the claim form was filed), is a new complaint.
97. My comments on the individual complaints set out in that document are as follows:
98. **February 2022:** The allegation against Irem Malik was contained in the further particulars and fits into her broad complaint about questions and doubts about her disability and general lack of support.
99. The complaints in **March 2022** are further details about the complaint that Cally Beech was unsupportive.
100. The allegations about the handover in **April 2022**, amounts to further factual details around the allegation of a lack of support and the management not supporting her.
101. **May and June 2022:** These complaints about Cally beech amount to further details of the lack of support and performance criticism she was subjected to. The Claimant repeats an allegation of harassment against Cally Beech about an incident on **25 June 2022** namely an allegation that she had said, "*It's been highlighted that there could be some memory loss concerns*". She alleges that Hannah Kirk was present and she felt humiliated. While this allegation against Hannah Kirk is not a specific allegation that had been raised before, she had raised allegations of a generally unsupportive environment and her treatment by "*management*".
102. **July 2022:** While this specific allegation about Hannah Kirk and the comment about the Claimant's eczema had not been mentioned before, I consider that this amounts to further particulars of the harassment claim concerning the management team.
103. **August 2022:** This complaint I consider amounts to further particulars of the behaviour and

lack of support from Ms Beech.

104. **September 2022 through to August 2023:** I find that the remaining allegations during this period, amount to further details of the lack of support provided to the Claimant in connection with her disability and the adjustments that she needed which is consistent with the nature of the complaints set out in her PoC and Further Particulars.
105. In terms of the above allegations generally, (I deal separately with specific allegations below against certain individuals within this time period) I consider that these do not engage a consideration of time limits, they amount to no more than further particulars of what the Claimant has complained about in broad terms in her PoC and for which she has merely provided further factual details. There is no new cause of action and I do not consider they change the basis of the existing claim, they give rise to the same legal issues and I am not persuaded will give rise to substantial different areas of enquiry.
106. Counsel for the respondent did not identify any specific prejudice in dealing with those complaints beyond a general concern about memories fading and potential impact on hearing time and the need for further witnesses.
107. The Claimant provided the Further Particulars when Ordered to do so. I take into account that she is a lay person and the overriding objective includes putting the parties on an equal footing. The hardship I consider, in whether or not to allow the amendments, weights in favour of the Claimant who has endeavoured, with guidance from the Tribunal, to clarify her claims by the provision of more detail.
108. Whether for time limitation purposes, there was a continuing act of discrimination, is an issue better determined at the final hearing.

From September 2023

James May – September & October 2023

109. The Claimant refers to an informal attendance review meeting held by James May in **September 2023**.
110. I understand that the Claimant is complaining generally of how her disability related absences were treated. She does not make allegations about Mr May's behaviour at this meeting and therefore I understand that what she is complaining about is generally the process which was followed and that her disability related absences should not have been treated as sick leave within that process. To that extent reference to this meeting is further factual detail in support of that complaint, in terms of the process which was followed. To this extent I consider that time limits are not engaged and that the Claimant should be permitted to include within her complaint the fact that this meeting was held with her.
111. The Respondent does not assert that Mr May cannot give evidence about this meeting and I consider that even if it were to amount to an amendment, it is not significant. It will not involve different legal issues or substantially new areas of enquiry. Evidence will need to be heard about the proceed which was followed and this is part of that evidential enquiry.
112. The allegation that **James May in October 2023** (page 123) said anxiety is not a disability

and he did not have to listen to her doctor, is objected to by counsel for the Respondent on the grounds that it is a new allegation presented out of time . Although this was mentioned in full in the Time Line in January 2025, the Claimant had first raised this in the Further Particulars document in **July 2024** (page 73 and74).

113. I find that this allegation is covered by the general allegation of a lack of support by the management and a questioning of her disability and as Ordered the Claimant provided further details back in July 2024 of her claims.
114. I do not find that time limits are engaged in respect of this allegation, this is not a wholly new complaint, but further factual details of the complaint of disability related harassment. However, even if time limits were engaged, and the raising of this in July 2024, 9 months after the event, meant that it was out of time, nonetheless I consider that it would be just and equitable to allow the complaint to proceed. The Respondent has raised no particular issue of prejudice, it is not alleged that instructions have been taken from Mr May and that he cannot deal with this allegation. It is however an important allegations in support of the Claimant's case, it supports her claim that management adopted an attitude which was unsupportive of her condition and why she became more anxious working in the office. In her PoC she had complained of her disability being questioned and doubted.
115. To the extent this allegation amounts to an amendment to the claim, it is granted.

Stephanie – January 2024

116. In respect of the allegation in **January 2024 that a colleague called Stephanie** had said at a daily team meeting that she did not understand how blind people could work at the Respondent, which the claimant alleges was witnessed by all those at the team meeting, while this allegation is covered by the general allegation of an unsupportive environment and of colleagues having an opinion about her disability because of the way she was being managed, this specific comment was not mentioned in her Further Particulars in July 2024. The Claimant cannot recall the specific date it was said other than it was in January in a daily team meeting. The Claimant filed her claim in February 2024, shortly after this incident but did not mention this until she submitted her 'Time Line' in January 2025. This is not the result of Judge Ahmed making her aware that she could include events after February 2024 when she submitted her claim because this incident had predated the claim.
117. The Claimant complains of environment at work and people doubting that she was disabled, and to that extent the Tribunal find that this amounts to further factual particularisation of that allegation which is set out in her PoC and which she says caused her anxiety when required to work in the office.
118. However, to the extent that it is a complaint of disability related harassment by this colleague, this amounts to a new complaint which was not contained in her Further Particulars.
119. It took the Claimant, another circa 6 months after providing her Further Particulars to raise this allegation. The Claimant does not identify which team meeting or who specifically was present when this comment was made and who may therefore have witnessed it.
120. I take into account the inherent prejudice in delaying so long, from February 2024 to January

2025, in raising this complaint which is not about management, but a specific colleague who made one comment circa 12 months before.

121. The Claimant did not identify that this allegation as something she had raised as part of any grievance or informal complaint.
122. To the extent that it is an allegation of disability harassment by this colleague, I consider that on balance, the prejudice weighs in the Respondent's favour. This was one verbal comment by a colleague who was not part of the management team, alleged to have been made circa 12 months prior to it being raised by the Claimant and it is a serious allegation to make against an individual.
123. I also take into account, when considering all the circumstances, the impact on a non-member of management, facing an allegation of harassment because of one remark made a year previous, when the full discussion and context may well be very difficult to recall with any level of clarity. The Claimant identifies no specific prejudice by not being allowed to include this as an allegation of harassment by this colleague.
124. On balance I do not consider that in all of the circumstances, including the relative balance of injustice, this amendment should be allowed to the extent that it is an allegation of disability related harassment by Stephanie. It is likely to involve substantial new enquires to be undertaken by the Respondent including no doubt speaking to those at the team meetings in January who may well find it difficult to recall the comment and/or the context. The Claimant may raise this as background evidence as to the culture and of an environment which she considered to be hostile and which she says added to the need for homeworking, because to that extent it amounts to further factual details of that complaint.

16 February 2024 complaints

125. The Claimant complains in her Time Line in **January 2025**, that James May did not make reasonable adjustments for her at this meeting on **16 February 2024** but also that Chris King commented, "*People have to make their own luck and there is no use complaining*".
126. This allegation about this event was not an allegation raised in the Claim Form or Further Particulars . I take on board that the Claimant has raised allegations about the behaviour of Mr May and comments that he has made which in essence are dismissive of her disability, his involvement in a failure to make adjustments and a general lack of support.
127. Whether or not there is such conduct extending over a period until March/May 2024 (section 123 EqA) is a matter best left to be determined at the final hearing: *Galilee v Commissioner of Police of the Metropolis 2018 ICR 634, EAT*. However, even assuming there is a continuing course of conduct, the complaints about events in February and March/May 2024 relate to events after the claim form was presented and not brought in time because they were only mentioned in the Time Line in January 2025.
128. The Claimant was able to prepare Further Particulars in July 2024 and therefore any issues about not having a proper prescription for her lenses since June 2023, or the surgery she had in August 2024, I am not persuaded impacted on her ability to seek advice on how to raise more recent incidents prior to January 2025 or on her ability to include this allegation

within those Further Particulars.

129. I do not consider that there are convincing grounds to extend time to permit this claim relating to the specific incident in February 2024 to be brought in January 2025, on just and equitable grounds. However, despite that, the Tribunal has a broad discretion when it comes to amendment applications even where they are presented out of time. This complaint about the training event however, is a distinct allegation about adjustments needed for that specific event, albeit there is a connection with the disabilities which form the basis of her claim and some of the effects (e.g. need to take eye drops). However, this allegation about this event would I consider require substantially new lines of enquiry into what specifically the Claimant required by way of adjustments for this meeting, what discussions were had at the time about those adjustments and whether those adjustments could be accommodated.
130. The adjustments for this meeting are distinct from the issue about adjustments over recording of disability related absences and home working. This is in many respect of a discrete allegation around a failure to make adjustments.
131. Counsel for the Respondent submits that there 'may' be an issue in terms of the witnesses ability to recall events, and there is concern about the extension of the claims and impact on the hearing. The Claimant however argues no specific prejudice in relation to not allowing this particular amendment.
132. on balance, I consider that the prejudice weighs in favour of the Respondent. This is a new complaint about adjustments for a specific event and the Claimant has not provided a satisfactory explanation why this allegation was not raised if not in her PoC than in the Further Particulars.
133. The amendment concerning the allegation about the Claimant having to attend the office for a meeting on 16 February 2024 and that this gives rise to a complaint of a failure to make adjustments and/or of harassment, is therefore refused.

Comment by Chris King

134. In terms of the comment by Chris King, the Claimant refers to this as comment by a colleague, he is not named as one of the managers that she complains about in terms of the alleged attitude of failing to support her and of harassment.
135. The Claimant complains of the environment at work and people doubting that she was disabled, and to that extent the Tribunal find that this amounts to further factual particularisation of that allegation which is set out in her PoC. The Claimant needs to identify the specific factual examples of what was said to support her allegation that she suffered anxiety when attending work and this I understand, is an example of why she felt anxious.
136. However, as a complaint of disability related harassment carried out by Chris King, this does amount to a new complaint of harassment by him. Mr King was not named in the PoC or in the Further Particulars.
137. The Claimant does not assert that this comment was made prior to her completing her claim form and it was not mentioned in her Further Particulars. The Claimant has not persuaded

me that she was unable to include this complaint against Mr King within that document because of issues with her health.

138. This is a new allegation to the extent that it is a complaint of disability related harassment by a named individual and I do not consider that given the delay and the lack of an adequate explanation for it, it is just and equitable to extend time.
139. I have considered further the issue of relative prejudice because the fact that a complaint is out of time does not necessarily prevent an amendment to the claim being allowed. This is an allegation against a colleague about something which he is alleged to have said to her where the context in which this remark was made is not set out by the Claimant nor has she identified the witnesses (if any) to the incident.
140. There is an inherent prejudice to the Respondent in terms of Mr King's ability to recall this one comment and its context so long after the event. I also take into account when looking at all the circumstances, the impact on Mr King as an individual in having to respond to a serious accusation of what appears to be disability related harassment in connection with one alleged comment he made almost a year before this was raised by the Claimant.
141. The Claimant does not assert that she raised this remark with management at the time or that it was part of a grievance.
142. I do not consider that it would be just and equitable to extend time to allow this claim of harassment and further, consider that prejudice in respect of this complaint of harassment, weighs in favour of the Respondent. The application to amend the claim to add a complaint that this comment amounted to disability related harassment, is refused. To the extent it is mere factual background in support of her complaint that colleagues were doubtful of her disability because of the behaviour of management which meant that it was difficult for her to go into work because it caused her anxiety and thus she needed to work from home, that amounts to further factual detail behind that complaint and to that extent only, it is permitted.

March/May 2024 complaint

143. In the Further Particulars document filed in **July 2024**, the Claimant raised that in **May 2024** (page 75) her doctor had advised the Respondent that working home was beneficial for her mental health and eyes and she recommended flexibility for her to choose her days if she had to go into the office and she set out the difficulties of working from the office and she refers to the benefits of an adjustment of a permanent home working arrangements.
144. The Claimant could have at that stage in July 2024, submitted a new claim to capture the failure to implement the adjustments in May 2024, but instead included this within the Further Particulars document. Albeit no formal application at this stage was made to amend her claim, she is a litigant in person and the Respondent was put on notice that she was complaining about what she considered to be an ongoing failure to make adjustments.
145. In the amended response submitted in August 2024, the Respondent did not engage with the May 2024 advice, but did address the issue of homeworking, referring to continuing to allow her work one day a week in the office and specifically addressing the issue of making this permanent, stating that it is not a reasonable adjustment but that this has been allowed

to continue subject to a review in April 2024 (para 56 and 58 page 935).

146. The Claimant was then at the December hearing informed of the need to make an application to amend when she raised that some of the allegations continued after her claim form was submitted in February 2024 and she then submitted the Time Line as her application to amend in January 2025. This repeated the allegation made in the Further Particulars document of continuing discrimination after February 2024.

147. The Claimant refers to the Respondent continuing to refuse to acknowledge the difficulties she faced due to her problems, refers to anxiety related absences recorded as sick leave and repeats the allegation that her doctor advised the Respondent that working from home was proving beneficial to her mental health and eyes.

148. When the Claimant submitted her claim in **February 2024** and from the Further Particulars she supplied in July 2024 (page 23), it was made clear that she was referring to situation which was ongoing :

“Over the last two years, I have tried to resolve the issues outlined through form and informal discussions...”

*“I therefore agreed to come in one day a week as well as for meetings and training. **This is very difficult** as I have to catch two business either way at peak times, it gets dark early which causes me to struggle as I rely on the one eye...” Tribunal stress*

149. It is clear from the Time Line document filed in January 2025, that the Claimant is complaining that the situation in terms of harassment (regarding the management attitude toward her disabilities) and failure to make adjustments (around home working and how her absences are recorded) were ongoing. She refers to her doctor (page 75) advising the Respondent that working from home is beneficial and that the Claimant should be able to choose her office days. It is clear what substantial disadvantage the Claimant alleges having to attend work continued to cause her because she refers to the difficulty of getting to work and how anxious she finds the office environment.

150. The complaint about March/May 2024 as presented in her Time Line , is not a new cause of action, it is a complaint about the same ongoing alleged type of discrimination. It does however relate to events after her claim form was filed and the amendment application was made more than 3 months from the date of the events (March/May 2024) that she identified in the Time Line (page 125).

151. These complaints were made, by January 2025, 5 months out of time.

152. In terms of whether it is just an equitable to extend time to allow these claim, there is a causative link between these claims and the extant claims. I do not consider that they involve substantially new lines of enquiry, it is the same issue about the Claimant having the same disability and the same adjustments not being made for her. I cannot see that it will involve substantially new evidence, expand significantly the witness evidence or the hearing time. The Respondent's position as pleaded, is that a permanent arrangement to work from home was not reasonable and that it did not have a PCP of recording disability related absences as sick leave and it denies that its managers have behaved toward the Claimant in a manner

which amounts to harassment.

153. It is the same issues, the same health concerns and the same adjustments and lack of support and attitude toward her disabilities, which she complains about throughout her claim. The Respondent was on notice in the Further Particulars of this complaint about the advice in May 2024 and had she understood the need to make a formal application to amend and identified it as an application to amend, it would have been presented within the time limit set out in section 123 EqA.
154. This claim is important to the Claimant in terms of establishing that by March/May 2024 the conduct was continuing . The Respondent does not identify any specific prejudice in its ability to respond to this allegation, beyond the general complaints it makes as to prejudice in respect of all the amendments.
155. I consider that despite the delay, it is just and equitable to extend time, and in any event, time limits not being definitive in an application to amend, taking into account all of the circumstances, including the relative balance of injustice in deciding whether or not to allow the amendment (Cocking v Sandhurst (Stationers) Ltd & anor [1974] ICR 650, NIRC), I consider that this amendment is allowed to the extent that it includes:
- 155.1 A complaint of a failure to make homeworking permanent; and
- 155.2 A complaint about recording her eye related and anxiety related absences as sick leave
156. I understand that the complaint is about an ongoing failure to make reasonable adjustment and/or continuing harassment.

Further Complaints in the Time Line document: October 2023 to March 2024

157. Counsel for the Respondent submits all the allegations from **October 2023 to March 2024** in the Time Line document are new allegations which are not in the Further Particulars and that in respect of the following these are individuals against whom allegations are now made and who were not named previously.

Irem Malik

158. The Claimant was required to provide Further Particulars of the alleged harassment and in her Further Particulars in July 2024, complains that Irem Malik had said in February 2022, that she does *'not see disability, you can either do the job or you can't'*. (page 71).
159. Counsel for the Respondent in submissions stated that he was not challenging the allegations concerning Hannah Kirk because she had been mentioned the Further Particulars, by the same token, this complaint was also expressly mentioned and while it was put under a heading of failure to make adjustments, the Claimant was ordered to provide further details of the harassment and set this out as an example of harassment in her Harassment Time Line (page 116).
160. While it appears that this comment was initially identified as part of the reasonable adjustment claim and not harassment, I do not consider that it is a material amendment

which will give rise to a substantially different lines of enquiry so as to engage time limits.

161. The comment was either said or it was not said, no further evidential enquiry beyond that is really required. The Respondent identifies no specific prejudice. The Respondent does not assert that it has made enquires of Irem Malik and that there is a difficulty in terms of recollection of the incident. It is I accept important to the Claimant to support her complaint about the way she was treated in connection her particular health concerns.
162. Whether this is part of a continuing act such that it was brought in time with the claim in February 2024, is better determined at the final hearing.

Cally Beech and Hannah Kirk

163. In terms of the allegations in the Time Line concerning action by Cally Beech, Hannah Kirk and James May, and the concerns expressed about the Claimant's work/productivity, the allegations around lack of support and generally about the comments and conduct toward the Claimant, those further details set out in the Time Line are, I conclude, further particulars of what the Claimant as complained about in her PoC and in the Further Particulars, namely a failure to make adjustments and conduct which she considered to amount to harassment.
164. In the circumstances I do not consider that even if they amount to amendments, they amount to more than clarification of her complaints. They do not give rise to new cause of action. They do not give rise to substantial new lines of enquiry and in terms of prejudice, I consider that prejudice weighs in favour of the Claimant. The allegations around these members of the management team, the failure to make adjustments and their conduct, is central to the Claimant's complaints. The Respondent does not allege that these individuals cannot deal with these allegations.

Amna

165. **May 2023:** The Claimant complains in her Time Line document that a member of the team informed her that everyone had an opinion on her situation in the LEY Team and that the majority were doubtful and did not know what to think. She confirmed that this comment had been made by someone called Amna (she is not sure of her surname). She did not raise this her Further Particulars document.
166. The Claimant did not identify who this individual was but at this hearing, identified the person as someone called Amna, but she could not recall her surname.
167. The Respondent objects to this allegation on the basis that this colleague has never been mentioned before and asserts that the allegations should be restricted to allegations against Cally Beech and Hannah Kirk and the issues around the probationary period only. However, it is clear that her claim extended beyond this. In her PoC (page 21) she referred to the behaviour of others in the office;

"Due to how I was treated by the management everyone began to have an opinion about whether I was telling the truth about my disability or not. This made me feel very uncomfortable and unsafe and excluded from the team."

168. This allegation was repeated in the Further Particulars.

169. The Tribunal find that this amounts to further factual particularisation of the allegation set out in her PoC about colleagues having an opinion about whether she was telling the truth or not and is a factual example of what was said to support her allegation that she suffered anxiety when attending work.

170. However, to the extent that this amounts to a complaint of disability related harassment by Amna, this would give rise to a new complaint and would engage time limits. I do not consider that it would be just and equitable to allow such a complaint. This was one verbal comment by a colleague made in May 2023 which was not mentioned by the Claimant until January 2025. There is an inherent prejudice in the Respondent having to defend an allegation of harassment where there has been such a delay in identifying the complaint, in terms of the recollection of the event in question by any potential witnesses and thus the amendment of adding this as a claim of harassment is refused.

Charlotte Spencer

171. As set out above there are a number of allegations in the Time Line document which complain about the involvement of Charlotte Spencer.

172. The Respondent objects on the basis that her name was not mentioned previously and that this constitutes new allegations.

173. Ms Spencer was one of the manager's involved in the Claimant's case, she was an interim a manager who replaced Cally Beech and she refers to her in the PoC specifically and complains that she recorded her disability related absence as sick leave.

174. The Claimant in her PoC complains in general terms about the 'management' and the failure to take her disability into account.

175. Ms Spencer (CS) is named in her Further Particulars as someone that she raised issues with in an attempt to resolve them (page 79) and it is also clear that her claim is about the way the management team involved in her case failed to support her.

176. In the Harassment Time Line she mentions:

176.1 CS had assured her about as move to another team but she was moved next door to the Lay Team

176.2 CS provided no support to set up equipment to work from home

176.3 Because of the way managers, including CS recorded her absence, she had to attend a formal attendance meeting to face a potential warning with no consideration for the impact on her eye/anxiety and salary overpayments were triggered.

177. In terms of the allegations around absence recording, this is pleaded in the PoC and Ms Spencer being identified as a manager is sufficiently identified as likely to be linked to this complaint.

178. Further, there is a generally pleaded allegation in the PoC of a failure by management to take into account her disabilities and I find that this covers the remaining specific allegations

set out in the Time Line.

179. I therefore do not find what is set out in the Time Line about Ms Spender amounts to an amendment to the claim, but are further particulars of the pleaded claim. In any event, even if amendments, I find that they do not give rise to a new cause of action. It is clear the nature of the Claimant's complaints about her treatment by management and the failure to support her with her disabilities in the workplace. I do not consider time limits are engaged. In any event, it would be prejudicial to the Claimant not to be permitted to allow her to clarify what is a key part of her complaint. The Respondent pleads no forensic prejudice in terms of these allegations. The Respondent does not assert that CS will have difficulty recalling the events or there is any difficulty locating any relevant documents.
180. To the extent this amounts to an amendment, it is granted.

Marie

181. **March 2023:** The Claimant complains that she was given a warning as the outcome of a formal probationary meeting on 2 March by Charlotte Spencer to extend her formal probationary period. She complains that she appealed the warning (which was on the basis that she had not met the performance targets after the software was in place) but the decision was upheld by Marie Meir and that nothing was done about the matters she raised. She includes that as part of her allegation of disability related harassment.
182. The Respondent objects to this complaint on the basis that no complaint about Ms Meir was made previously and there is a risk of the case 'mushrooming' and requiring a longer hearing. The Respondent does not allege that Ms Meir has been spoken to and that there will be any difficulty in her responding to the allegation or in the ability to locate the relevant documents.
183. In her PoC the Claimant had raised the issue of voice recognition software which had been recommended by OH. She also refers to OH reporting that the Claimant felt unsupported at work and that;
- "I was also not given the correct equipment and software until June 20203. I was performance managed whilst getting used to the new software even though the trainer did not recommend this because of the stress that this would cause."*
184. The Claimant expressly complains in her pleaded case about her probation being extended and being criticised for things but complains that reasonable adjustments were not being made for her to enable her to do her job to the best of her abilities.
185. The Respondent addressed this in its response and it specifically referred to the appeal against the warning (para 21) and alleges that an adjustment was made as a result of the appeal (movement to a quieter area).
186. The Claimant in the PoC had complained about the warning and for being criticised for her performance. In the Time Line the Claimant addresses the warning further and the absence of any action arising from the appeal process.
187. I do not consider therefore that even if the complaint about a lack of action from Ms Meir, who sat in the appeal panel, amounts to an amendment, it amounts to a new cause of action

such that time limits are engaged.

188. I do not find that the addition of a complaint about the conduct of Ms Meir in not taking action to address the issues the Claimant raised at appeal, will lead to substantially new areas of enquiry. The Respondent addresses the appeal in its own pleaded case and it pleads that an adjustment was made as a result of the appeal, evidence therefore would no doubt in any event be heard about the appeal, what it covered and the outcome of it.
189. In the circumstances I consider that even if it is an amendment, it is not significant, and no specific prejudice has been identified by the Respondent in dealing with it. The allegation is clearly an important part of the Claimant's case in terms of the treatment of her performance and the failure to consider the absence of adjustments when assessing her performance and considering whether a warning was appropriate, and I consider that prejudice weighs in favour of the Claimant.
190. I am of the opinion that in all the circumstances it is just and equitable to allow the amendment.

Amna (this is another Amna)

191. **April 2022:** The Claimant complains in the Time Line that Cally Beech had told Amna, a stand in manager in a handover not to give her help and not to support her.
192. In the Further Particulars of July 2024, the Claimant had complained generally of an unsupportive working environment and had named Cally Beech in the original PoC as a manager who was failing to support her. The allegation does not appear to be against Amna but of Cally Beech who she believes gave this instruction.
193. In the circumstances I consider that even if this amounts to an amendment, it provides further factual details of the lack of supportive working environment which is a key part of the Claimant's case. I do not consider it raises a new cause or action or that It will require any significant further lines of enquiry to be undertaken.
194. In the absence of any specific prejudice which the Respondent identifies in allowing what it asserts to be an amendment, I consider that it would cause greater prejudice to the Claimant to not allow her to include details of this incident as an example of the alleged lack of support provided by management including, and in this instance Cally Beech. It is not a significant amendment, it does not give rise to new legal issues but if further factual detail around the alleged failure to support the Claimant and prejudice weighs in favour of the Claimant.
195. To the extent that it amounts to an amendment it is permitted.

Neil Faulkner

196. In terms of the **June 2023** relating to, the Claimant had not mentioned Mr Faulkner specifically before her Time Line but had mentioned generally the lack of support from the management.
197. The Claimant complains that she informed Neil Faulkner on 5 June 2023 that she would be attending the Queens Medical Centre because her eye was painful but was that she asked

if she could work from home even though she did not have any of the right equipment, and this made her feel as though she was not being believed.

198. This is the only allegation involving Mr Faulkner and concerns this one specific incident which does not appear to be directly related to her complaints more generally about an adjustment to allow her to work from home or the recording of her absences as sick leave.
199. I take into account that the Respondent's concerns about extending the claim to include other witnesses and that Mr Faulkner is only mentioned in connection with this discrete event back in 2023.
200. An allegation that this amounted to harassment, will require evidence to be heard about what was said about working from home for that one specific day and any discussion about how viable that may be, and given that this relates to a specific one off event which occurred more than 18 months before the Time Line was presented, there is an inherent difficulty in recalling accurately what was discussed at that time (albeit no specific prejudice about the ability of Mr Faulkner to recall this event has been argued). The Claimant does not allege that this formed part of her internal grievance.
201. This specific allegation does not support the Claimant's case about the need for homeworking or how her sickness was recorded and I consider it is of limited assistance in supporting her claim about the attitude of management given that this is the only incident it would seem, which involves Mr Faulkner.
202. In the circumstances, I consider that it does give rise a new allegation of disability related harassment by Mr Faulkner, Mr Faulkner was not named previously and in the circumstances consider that prejudice favours the Respondent in respect of whether to allow an amendment to include this allegation.
203. The application to include this incident within the list of claims of acts of harassment is refused.

Turning more generally to the allegations from October 2023 to March 2024:

204. I consider that the remaining allegations during this period, are further details of the allegations she has already identified in her PoC and Further Particulars, in terms of how her absences were dealt with, the ongoing attitude about home working and the impact on the Claimant of attending the office. I consider that these are not significant amendments but the provision of more factual detail which will not involve significant further enquiries or witnesses, the main individuals named are the members of the management team; Mr May, Cally Beech, Hannah Kirk and Charlotte Spencer
205. Counsel for the Respondent cannot identify any specific forensic prejudice in allowing what it contends to be amendments. The Tribunal accept the importance to the Claimant's claim of the ongoing treatment of her condition, and what she would say is a failure to make adjustments to how her absences are reported and to allow her to work from home. In the circumstances I consider that even if they amount to amendments, time limits are not engaged because of the nature of them, in that they give rise to further factual particularisation of her complaints and any prejudice weighs in favour of the Claimant.

206. In considering the amendments generally, I have taken into account that the hearing itself is not for another 12 months and witness statements have not yet been exchanged, in terms of the impact on case management and the final hearing.

Summary

207. The amendments are permitted other than the following, which are refused:

207.1 **September 2023**: The complaint about the informal attendance review meeting held by James May.

207.2 **June 2023**: The complaint that the Claimant informed Neil Faulkner on 5 June 2023 that she would be attending the Queens Medical Centre and the request that she work from home.

207.3 The allegation in **January 2024** that a colleague called Stephanie had said at a daily team meeting that she did not understand how blind people could work at the Respondent, to the extent that it is an allegation of disability harassment by Stephanie.

207.4 The allegation about the Claimant having to attend the office for a meeting on **16 February 2024** and the failure to make adjustments and/or harassment by James May.

207.5 The allegation that on **16 February 2024** Chris King commented, "*People have to make their own luck and there is no use complaining*" to the extent that this amounts to an allegation of disability related harassment by Mr King.

207.6 In **May 2023** Amna informed her that everyone had an opinion on her situation in the LEY Team and that the majority were doubtful and did not know what to think, to the extent this amounts to allegation of disability related harassment by Amna.

208. There will be a further telephone case management hearing to finalise the claims and issues. A date shall follow in due course and the parties are to attempt to agree a draft list of issues and file a copy with the Tribunal in advance of that hearing. If the parties reach agreement on the issues and do not consider that a further hearing is required, they may write in and request that it is vacated.

Approved by:

Employment Judge Broughton

Date: 21 March 2025

JUDGMENT SENT TO THE PARTIES ON

...25 March 2025.....

FOR THE TRIBUNAL OFFICE

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