EMPLOYMENT TRIBUNALS

Claimant: Dr Julia Sas

Respondent: Cardiff Council

Heard: In private, by video **On:** 23 June 2025

Before: Employment Judge S Jenkins

Representation:
Claimant: In person
Respondent: Mr J Walters (Counsel)

The decision on the Claimant's application to amend her claim having been sent to the parties on 24 June 2025, and reasons having been requested by the Claimant in accordance with Rule 62(3) of the Rules of Procedure 2013:

REASONS

Background

1. The Claimant issued her ET1 Claim Form in this case on 19 September 2024, following the termination of her employment on 24 June 2024. At the time of submitting the Claim Form, the Claimant was legally represented by solicitors, and she remained represented until April 2025.

2. The Claimant brought complaints of constructive unfair and wrongful dismissal, and of failure to make reasonable adjustments, although that last complaint was withdrawn in January 2025.

3. A preliminary hearing took place before Employment Judge Sharp on 5 December 2024, although, in error, the Record of Preliminary Hearing was not sent to the parties until earlier in June 2025. That recorded the complaints and the issues underpinning them, and set out a case management timetable

to ensure that the case was ready for a four-day hearing commencing on 1 July 2025.

4. Judge Sharp's orders included a direction that the Claimant provide further particulars of her complaints, which she did on 21 January 2025. Those further particulars expanded on what Judge Sharp had felt had been areas within the list of issues which lacked detail.

5. The Claimant's further particulars indicated that the core of her constructive dismissal complaints involved an alleged breach of the implied duty of trust and confidence, involving five broad elements:

    a. Failure to properly consider and address the Claimant's initial violence at work report.
    b. Significant delay in the consideration of her grievance.
    c. Failure to properly consider grievance.
    d. Significant delay in consideration of her grievance appeal.
    e. Failure to provide the Claimant with timely access to relevant organisational policies.

6. On 29 May 2025, the Claimant submitted an email to the Tribunal, providing information which she felt needed to be updated regarding a potential protected disclosure.

7. Regional Employment Judge Davies then directed that an email be sent to the Claimant, which was sent on 17 June 2025, which noted that, if the Claimant wished to amend her claim, she had to make an application and copy it to the Respondent and the Tribunal by 19 June 2025. Judge Davies directed that an urgent preliminary hearing should be held on 23 June 2025 to consider other outstanding case management matters and any application to amend. The notice of hearing was sent on the same day confirming that.

8. On 19 June 2025, at 8:00am, the Claimant submitted an application to amend, by amending the original ET1 Claim Form, setting out that she wished to pursue a whistleblowing complaint. She also attached a document explaining the background to her application.

9. Upon referral by the Employment Tribunal administration, coincidentally to me, I noted that no detail of the amendment had been provided. I directed that an email be sent to the Claimant requiring further detail, and that was sent on 19 June 2025 at 4:30pm.

10. The Claimant then provided further information in a document attached to an email on 20 June 2025 at 10:34am. In that, the Claimant set out an addendum to her complaint, in which she set out ten asserted protected disclosures and fifteen asserted detriments. However, with regard to the

protected disclosures, all that was provided was the subject matter of the asserted disclosures. No information was given as to the persons to whom any disclosure was made, how any was made, or when.

Law

11. The Employment Appeal Tribunal ("EAT") noted in ***Chandok v Tirkey*** **[2015] ICR 527**, at paragraph 16, that:

"*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.*"

12. With regard to amendments, the test to be applied involves the assessment of the balance of injustice and hardship of allowing or refusing the amendment. The EAT, in ***Selkent Bus Co Ltd v Moore*** **[1996] ICR 836**, reiterated that point, which had previously been made in ***Cocking v Sandhurst (Stationers) Limited*** **[1974] ICR 650**, and noted a non-exhaustive list of relevant circumstances which would need to be taken into account in the balancing exercise, namely; the nature of the amendment, the applicability of time limits, and the timing and manner of the application to amend. Those points were subsequently encapsulated within the Employment Tribunals (England & Wales) Presidential Guidance on General Case Management (2018), Guidance Note 1.

13. The EAT, more recently, in ***Vaughan v Modality Partnership*** **[2021] ICR 535**, gave detailed guidance on applications to amend tribunal pleadings. That confirmed that the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application, but noted that the focus should be on the real practical consequences of allowing or refusing the amendment, considering whether the Claimant has a need for the amendment to be granted as opposed to a desire that it be granted.

14. With regard to the timing and manner of the application to amend, the EAT, in ***Martin v Microgeneration Wealth Management Systems Ltd*** **(UKEAT/05/006)**, noted that, whilst late amendments can be permitted in appropriate cases, the later an application is made, the greater the risk of the balance of hardship being in favour of rejecting the amendment. Indeed, the overriding objective, which the Tribunal Rules require to be applied, involves dealing with cases expeditiously and in ways which save expense, and undue delay may be inconsistent with that.

15. In ***Ladbrokes Racing Ltd v Traynor*** **(UKEATS/0067/06)**, the EAT gave guidance as to how a Tribunal may take account of the timing and manner of the application in the balancing exercise. It will need to consider:

    - 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; and

    - whether delay may have put the other party in a position where evidence relevant to the new issue is no longer available or is rendered of lesser quality than it would have been earlier.

16. However, the appellate courts have made clear that applications to amend can be made at any stage, with the key principle being the need for the applicant to show why the application to amend was not made earlier.

Conclusions

17. Looking at the various ***Selkent*** factors before undertaking the required balancing exercise, the application to amend was, in my view, a substantial one, which did not involve simply relabelling originally pleaded facts.

18. I noted that the Claimant contended that she was not introducing new matters, but in her submissions to me she referenced criticisms of the Respondent's conduct not included within her initial grounds of complaint, e.g. concerns over how the Respondent dealt with a complaint involving her in 2023. Several of the alleged detriments also appeared to involve matters not previously raised, e.g. an alleged failure to protect the Claimant's right to privacy, a failure to send the Claimant a copy of her employment contract, and a failure to support the Claimant attempt to get a formal medical diagnosis.

19. Beyond that, the categorisation of the Claimant's existing concerns as being on the ground of protected disclosures would, of itself, expand the assessment to be undertaken by the Tribunal, requiring it to consider whether any protected disclosures had been the reason for the alleged failures, rather than whether the failures had simply occurred.

20. I noted that the application had been made very late in the day. The ET1 Claim Form had been submitted on 19 September 2024, and a preliminary

hearing had taken place on 5 December 2024, during which the complaints and issues had been discussed in detail. No mention was made of any whistleblowing complaint.

21. During that preliminary hearing, the Claimant was directed to provide further information regarding her complaints, which she did in January 2025, and, again, no mention was made of a whistleblowing complaint.

22. As I have noted, the Claimant was represented by solicitors throughout that period, and up to April 2025, and she had been represented by counsel at the preliminary hearing on 5 December 2024.

23. The first reference to a possible amendment was made on 29 May 2025, and the Claimant provided a formal application on 17 June 2025. However, that did no more than say that a whistleblowing claim was sought to be added. Even at this hearing, following my directions on 19 June 2025, no detail of the alleged protected disclosures has been provided.

24. Any application to amend, if granted, is to be assessed when made, and any complaints of whistleblowing detriment or whistleblowing unfair dismissal, pursuant to sections 47B and 103A of the Employment Rights Act 1996, even if the Claimant's initial raising of the matter on 29 May 2025 was considered to be the relevant date, would be significantly out of time.

25. Turning to the balance of injustice and hardship, the Claimant has complaints of constructive unfair and wrongful dismissal, which she will be able to pursue without reference to any whistleblowing issue. I recognised, however, that there would be a cap on the compensation that could be awarded to the Claimant if successful with those complaints, in comparison to the position if she was successful with her whistleblowing unfair dismissal complaint, which would be to her disadvantage.

26. Similarly, with regard to any detriment complaint, the Claimant would not be able to pursue an award of compensation for injury to feelings if her application was not granted.

27. On the Respondent's side was the fact that it would have to face an entirely new basis for the complaints against it, i.e., not only would it have to address whether it, in fact, did the things alleged or failed to do them, but it would have to address its motivation for doing them or failing to do them, responding to the allegation that the basis was protected disclosures made by the Claimant. In addition, the Respondent would have to address whether protected disclosures had, in fact, been made.

28. That would involve a fundamental reassessment of the case the Respondent has to meet, and a significant adjustment of the evidence due to be provided

by its witnesses. It would also involve an assessment of further witness evidence e.g. from those to whom any protected disclosures may be said to have been made.

29. All that was in the context of the final merits hearing in this case being due to commence eight days after this preliminary hearing, in circumstances where, although there was regrettably some further minor case management to be undertaken, the case was ready for hearing.

30. Allowing the amendment would, in my view, certainly mean that the final hearing could not go ahead as scheduled. Furthermore, any revised hearing would be significantly longer, with any re-listed hearing not being able to take place for some time, quite possibly not until 2026.

31. In addition to the balance of injustice and prejudice between the parties, the scope of the overriding objective is to deal with cases, i.e. all cases, fairly and justly. That also had a bearing on my consideration, in that the removal of the case from the Employment Tribunal's list at such short notice would not give sufficient time for other hearings to be booked in, and other cases, looking to be heard later this year or early next year would be subjected to delay.

32. Overall, I considered that the balance of prejudice, and the application of the overriding objective generally, lay in favour of refusing the amendment application.

Authorised for issue by
Employment Judge S Jenkins
17 September 2025

Sent to the parties on:

28 September 2025
For the Tribunal Office:

Katie Dickson