



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103216/2022

Held via Cloud Video Platform (CVP) in Edinburgh on 29 September 2022

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Employment Judge: M A Macleod

Jwan Abdullah

**Claimant
In Person**

University of Glasgow

**Respondent
Represented by
Ms L Whyte -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant's application to amend her claim is allowed, but excluding her claim of automatically unfair dismissal set out at paragraphs 35 to 38 of her application to amend.

REASONS

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1. The claimant presented a claim to the Employment Tribunal on 13 June 2022, in which she complained that she had been subjected to discrimination on the grounds of pregnancy/maternity, and also on the basis of religion or belief.

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2. The respondent submitted an ET3 in which they resisted all claims made by the claimant.

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3. A Preliminary Hearing took place on 10 August 2022 by telephone conference call before Employment Judge Whitcombe, following which a Note was issued. In that Note, the Employment Judge directed that a Preliminary Hearing be listed on 29 September 2022 by Cloud Video Platform (CVP) to address the following issues:

(a) The extent to which permission to amend the claim is required;

- (b) Whether, and if so to what extent, permission to amend the claim should be granted;
- (c) Whether any of the claims should be dismissed on the basis that they were presented outside the applicable jurisdictional time limits. If it appears to the Employment Judge conducting the hearing that it is not possible to make a fair decision on this issue at a preliminary stage then they may direct that it will instead be a matter for the final hearing.
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4. At the Preliminary Hearing on 29 September 2022, the claimant appeared on her own behalf, and the respondent was represented by Ms Whyte, solicitor.
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5. Parties made submissions, which supplemented written submissions provided in advance of the Hearing. Their submissions are summarised below. The Tribunal will then address the three preliminary issues and set out a decision thereafter.
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Claimant's Submissions

6. The claimant did not agree that she required permission to amend her claim. She said that she had already explained her position with regard to her financial loss and the reasons for her losing her job.
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7. She submitted that she had provided a response to the respondent's request for further clarification on 19 August 2022. Her previous solicitor did not provide all the necessary detail, and accordingly when the respondent requested that further detail, she provided it. She maintained that she had amended nothing but had simply added details, and a new health condition and work situation.
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8. Before me, the claimant explained that she was looking for a new solicitor in July 2022, but her home insurance did not provide for legal assistance and therefore she had to make the amendment herself. She understood that in the ET1 she had to give simple details and then add further information later.
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9. She said that as an unqualified person representing herself, she did not know legal terminology, and as a result, when she was criticised for not distinguishing between direct and indirect discrimination, she advised that the reason for this was simply that she did not understand what these words meant.
10. The claimant acknowledged that she was due to submit an application to amend on 15 July 2022, but said that prior to that date she emailed the Tribunal and then submitted her amendment on 19 July 2022. She said that when the respondent asked for more detail she supplied it, and added that she had left her current job due to her medical condition, as when she submitted the ET1 she was still working.
11. The claimant then sought to respond to the respondent's submissions.
12. She said that the claim was presented on 13 June 2022. She had instructed a solicitor privately as she was awaiting confirmation from her home insurance provider that she could have their support in paying for legal advice.
13. When she considered which category of claim to select on the ET1 (which she completed herself), she could not find any category covering emergency leave for dependants, so selected maternity as a category. She could not understand why the respondent was making an issue out of whether or not she had instructed a solicitor.
14. She submitted her ET1 while she was still working but when her health deteriorated, she said she had no choice but to resign.
15. The claimant said that she called a number of legal advisers. She did not receive legal advice from Monaco solicitors.
16. She did not add the new information until the respondent asked her to. There is nothing new in the information, in her opinion, and she merely did what they asked her to do. However, she advised that she would be happy to ignore the amended version and simply tell the Tribunal verbally what happened and how the respondent mistreated her.

17. She submitted that the respondent is trying to exploit her ignorance rather than checking whether the incidents had any effect on her, and has repeatedly alleged that she missed the 3 month deadline. She argued that the respondent put pressure on her and discriminated against her as a young mother. She never knew her rights, and had never worked in this country before. The pressure around young mothers was huge, and they did not respect her.
18. She remains unclear as to what the respondent says are the new claims being made. She reminded me that she is not a solicitor, and asked what was more important, the tick of the box or the setting out of the story. The reason for lodging her claim late was that she had suffered with her health and with financial loss.
19. She said that she did not know what each incident should be called. She could only explain what she has been through. The respondent continued to change her working times without considering how this would affect people with young children. She had been moved to a different work station due to being discriminated against, at which the finish time suited her; however, she was then moved from that work station to another due to an argument with another agent. She told her line manager that she could not work there due to migraines and the late finishing time, but she was instructed to continue doing so. She took the view that with 700 staff it would not be the end of the business if they moved her to another work station, but they wanted to make her life harder because she was commenting on the quality of the work being carried out.
20. Latterly she was not given a stable work station like other staff, but was moved from place to place as the work required.
21. The amendment sets out the background to her times being changed. The respondent simply wanted her to resign, she said.
22. With regard to other complaints, the claimant said that she has no access to HR data.

Respondent's Submission

23. For the respondent, Ms Whyte submitted, in her written submission, that in the original claim, the only claims identified were those of pregnancy/maternity discrimination and discrimination on the grounds of religion or belief.
- 5 24. The new claims added by the further specification by the claimant provided on 8 August 2022 were, she submitted:
- a. Automatic unfair constructive dismissal contrary to section 57A and 104 of the Employment Rights Act 1996, with reference to Regulation 20 of the Maternity and Paternity Leave etc Regulations 1999;
 - 10 b. Direct race discrimination contrary to the Equality Act 2010, and
 - c. Indirect sex discrimination contrary to the Equality Act 2010.
25. Following the PH before Employment Judge Whitcombe, the claimant provided a further document on 24 August 2022, which the respondent understood to be the claimant's application to amend based on what was
- 15 said at that PH.
26. Where further particularisation has been provided, the respondent does not object to the additions proposed, but where the claimant seeks to amend her claim, the respondent objects.
27. Ms Whyte submitted that since the claimant did have some form of legal
- 20 advice prior to the institution of the ET1, she ought to have been aware of the type of claims she could make at that point. The claimant says that Harper Macleod, solicitors, did describe to her the legal background, which must have been prior to the submission of the ET1.
28. She argued that the nature of the amendment sought is not minor, not
- 25 relabelling, and seeks to introduce new causes of action.
29. She went on to state that the time limits applicable to this application are three months from the date of the unlawful act relied upon, or if more than one, the last in the series, or such other period as the Tribunal considers to be just and equitable.

30. It would not, she submitted, be just and equitable to extend time in this case.
31. The respondent denies, further, that there is any basis for finding that the allegations of discrimination amount to a continuing act.
32. She also argued that it cannot be said that it was not reasonably practicable for the claim to have been presented in time, in relation to the complaint of unfair constructive dismissal.
33. There is no explanation before the Tribunal as to why the claims were presented out of time. There is no new information available to the Tribunal to indicate that she was not aware of the claims prior to the presentation of the ET1. The claimant had the benefit of legal advice before submitting the ET1, and she did not tick the boxes relating to unfair dismissal, sex or race discrimination.
34. The claimant resigned in March 2022. She obtained her Early Conciliation Certificate from ACAS on 7 June 2022. There is no explanation as to why this had been brought separately. The last date upon which the claimant could have brought the claim was 6 July 2022.
35. The claimant, Ms Whyte submitted, has said that she is not a solicitor and is not aware of legal terminology. The claimant's ignorance, however, does not mean that it was not reasonably practicable to bring the claim in time.
36. So far as the race discrimination claim is concerned, the further particulars set this out at paragraph 37, she said. This means that the claim is more than a year out of time, but it does not provide a basis for saying that the claimant's treatment was related to her race. The claimant has not given a reason for the delay, and the onus is upon the claimant to provide an explanation as to why the claim was late or why it would be just and equitable to extend time to allow it to proceed.
37. With regard to the indirect sex discrimination claim, the claimant complains that she was required to adopt flexible working patterns. Ms Whyte submitted that the claimant's employment ended on 22 March 2022, and that the last date for lodging her claim was 12 July 2022.

38. Ms Whyte submitted that the balance of hardship would fall upon the respondent if the claims were allowed to proceed, rather than upon the claimant if they were not. The delay was not caused by an act or omission of the respondent. The final hearing would be significantly extended by the inclusion of the new claims. Given that the Lighthouse laboratory was set up by the respondent to deal with many hundreds of thousands of PCR tests, it is now downsizing and she said it was likely that many of the potential witnesses for this case are no longer employed by the respondent.
39. She also argued that it would not be wrong for the Tribunal to consider the merits of the claim and weigh them in the balance even if it is not possible to find that there is no reasonable prospect of success. The claimant's new claims are weak and unlikely to succeed. The Tribunal could make an assessment of the merits of those new claims.

Claimant's Response

40. The claimant made a number of comments in reply to the respondent's submission. She said that she had "*no idea*" of the time bar provisions, as nobody had told her that there was any such requirement. When she was told about the grievance hearing by the respondent she said that that was the first time she had heard about such things. She said that she thought that she had to await the appeal outcome before she could raise an ACAS certificate. She was told on 29 April 2022 that her appeal had been unsuccessful, and she went to ACAS herself, and then completed her ET1 on her own.
41. With regard to the comment by the respondent that the claimant had had the benefit of legal advice, she said that all she was advised by her former solicitor was to keep it short, to submit the form herself and that her solicitors could not give her advice for free.
42. The claimant then stressed that the reason she had resigned was that she had been mistreated by the respondent, who had given priority to the people who had treated her badly. She holds a PhD, and considered that she should be useful to this country and to the respondent as she had a lot of

knowledge to give. She did not know to mention the discrimination aspects of her case at the outset; she just wanted to tell her story and her feelings, and how this had affected her life.

Discussion and Decision

- 5 43. The first issue to determine is the extent to which permission to amend is required, and the second, to determine whether or not permission should be granted.
44. In assessing this, it is necessary to summarise the terms of the original claim, and then the application itself.
- 10 45. In paragraph 8.2 of the ET1, the claimant set out a number of complaints which she wished to make, pointing to a series of incidents which the claimant identified as having abused, harassed and insulted her.
46. Those were:
- 15 a. February 2021 – the University decided to forget about a complaint of discrimination by the claimant;
- b. July 2021 – the claimant was offended by a member of staff, who admitted doing so; and her manager moved her to another work station despite knowing that this would cause huge stress for her in relation to child care;
- 20 c. Having been contacted by Marie Claire, she moved the claimant to another shift;
- d. She was accused of working hard to impress managers;
- e. Sick leave was rejected when her son was diagnosed with shingles, on 15 August 2021;
- 25 f. September 2021 – hospital appointment leave rejected;
- g. September to October 2021 – laboratory started changing times, which placed her under huge stress due to child care struggles;

- h. 9 September 2021 – when suffering Covid symptoms, she was told to sit in a car and wait 4 hours for a test result;
- i. December 2021 – a colleague bullied her by using inappropriate language to her while she was running the work station;
- 5 j. Manager told her not to point at him;
- k. The claimant's grievance and appeal were both rejected;
- l. The respondent's recruitment and selection processes were corrupt.

47. It should be noted that it is not entirely clear what the last of these points referred to. However, the Tribunal informed the claimant that further
10 information would be required, and accordingly the claimant was given the opportunity to clarify and particularise her claims.

48. It is also noted that while the claimant states that she presented the claim herself, she did add the name of a solicitor from Harper Macleod LLP as her
15 representative, suggesting that she had the advice and support of that solicitor when drafting her claim. It is now clear that the claimant's position is that while she had conversations with that solicitor she proceeded to draft and submit the ET1 on her own.

49. The claimant then submitted a document in her email of 19 August 2022 entitled "*Further Specification*".

20 50. Within that document, which ran to 43 paragraphs over 6 pages, the claimant set out a background to her claim, and then included a number of headings relating to claims she wished to make.

51. The document provided considerable detail, including names and dates of the incidents relied upon. The legal claims relied upon were specified very
25 precisely, in that they were defined according to the statutory legal definitions relevant to each claim. It is not clear, and the claimant did not in the Hearing before me make it clear, whether this was drafted by herself or by a solicitor, or perhaps a combination of both. However, the nature of the

document suggests very strongly that legal advice was obtained prior to its submission.

52. The heads of claims identified were as follows.

53. Firstly, the claimant asserted that her dismissal was automatically unfair
5 contrary to section 104 of the Employment Rights Act 1996, namely that she had asserted a statutory right (raising a grievance).

54. Secondly, the claimant asserted that she had been directly discriminated
10 against on the grounds of religion and/or race (the heading is incomplete but the text below completes the sentence). She asserted that she had been subjected to discriminatory remarks about her religion and her decision to abstain from the consumption of alcohol, tobacco and shisha; that she had raised a number of concerns about working hours, her treatment by colleagues and the handling of leave requests. She maintained that had she not been Muslim or of Kurdish ethnicity she would have been moved
15 work stations on request, her complaints would have been taken seriously and action would have been taken against her colleagues. In addition, she would have had her requests for time off granted.

55. She also argued that she was overlooked for promotion and alternative roles in favour of less experienced and qualified colleagues.

20 56. Thirdly, the claimant asserted that she had been subject to indirect sex discrimination. That was the heading of the relevant section. However, within the body of that section, she referred to direct discrimination, but it is plain that this was a typographical error, since she relied upon section 19 of the 2010 Act, in which indirect discrimination is prohibited.

25 57. The PCP relied upon was that she had to adopt flexible working patterns and had her hours regularly changed, which placed a female person at a substantial disadvantage compared to males. The wording of the paragraph is slightly confusing. She refers to her ability to accommodate the alternative hours, without specifying what those hours were; and identified
30 the requirement to work alternative hours was a proportionate means of achieving a legitimate aim. At this stage I simply note that the question is

not whether some alternative action would have amounted to a proportionate means of achieving a legitimate aim – that would properly be characterised as a reasonable adjustments claim – but whether the respondent was able to justify the imposition of the PCP objectively.

- 5 58. Having delineated the differences between the original claim and the proposed amendment, it is necessary to determine the extent to which that document amounts to an amendment or merely the provision of further particulars.
- 10 59. The original claim complained of pregnancy or maternity discrimination, as well as religion or belief discrimination, in the boxes ticked at paragraph 8.1.
- 15 60. It appears to me that the claimant misunderstood the meaning of pregnancy or maternity discrimination. She seems to me to be seeking to rely upon her status as a mother, rather than as a person on maternity leave or pregnant, in this matter. In the acts she seeks to complain of in her ET1, she does make reference to her belief that she was treated less favourably because of her status as a mother with young children and child care needs, of which the respondent was aware but took no account. That is part of the substance of the original claim.
61. However, it is appropriate to deal with each of the claims individually.
- 20 62. With regard to the claim for automatically unfair dismissal, based on constructive dismissal, the claimant presented her claim to the Tribunal on 13 June 2022, but made no mention therein of having resigned her employment, other than to identify her employment as having come to an end as at 24 March 2022.
- 25 63. It is plain that the claimant knew, when she presented her ET1, that she had resigned, but made no mention at all of the matter as part of her complaints.
64. It is necessary for the claimant to seek to amend her claim in order to incorporate a claim for automatically unfair dismissal, since it does not appear in the ET1.

65. It is, in my judgment, a significant new claim. It introduces the need for new evidence in order to focus upon the events leading to, and precipitating, the claimant's resignation at the point when it happened; and to assist the Tribunal to determine whether or not her resignation arose not only as a result of a repudiatory breach, or repudiatory breaches, of the contract of employment by the respondent, but also because of her having exercised a statutory right, namely raising a grievance.
66. The reason for the timing of the application to amend is quite unclear. The claimant knew that she had resigned when she presented her ET1. By her own admission, she had sought legal advice, and, without disclosing the nature of that advice, had had conversations with a solicitor which, if nothing else, focused upon what she needed to say and do in order to present her claim to the Tribunal. Even if she did not ask her legal adviser for advice about how to present a claim for automatically constructive unfair dismissal, she had the opportunity to do so, and there is no explanation as to why she did not include it within the ET1.
67. I consider the issue of time limits below, in reviewing all of the aspects of the application to amend.
68. The next heading was that of discrimination on the grounds of religion and/or race.
69. In the original claim, the claimant ticked the box marked religion and/or belief, but in the substance of the complaint made no reference either to the religion to which she belonged nor to the specific actions which were directed against her on that ground.
70. Similarly, in the ET1, there was no reference to the claimant's race nor to her ethnicity, nor did it contain any allegations which could be interpreted as complaints of race discrimination.
71. In my judgment, this is another significant and substantial amendment sought by the claimant. Although the claimant did mark the box suggesting that she wished to make a claim on the grounds of religion and belief, she did nothing more to expand upon or specify that claim in her ET1. The

application to amend here relates to her assertion that she was discriminated against on the basis that she was a Muslim, and to certain lifestyle decisions she had made as a result of her religious belief.

5 72. There is nothing in the ET1 to indicate that the claimant intended to complain of these matters. The amendment seeks to introduce new allegations of fact which were not previously pled. The only indication was the claimant's ticking of the box.

10 73. So far as the allegation of race discrimination is concerned, the claimant has now sought to base her allegation on her Kurdish ethnicity. Not only did she not tick the box relating to race in the ET1, she also made no reference in the specific allegations to her race or to any actions which she regarded as discriminatory on the grounds of race. The allegations in the claim form relate to mistreatment which she attributes to her status as a working mother.

15 74. Accordingly, this is a significant new set of allegations, and both claims are, in my judgment, new claims not previously foreshadowed in the ET1 in any meaningful way.

20 75. The events which are referred to by the claimant all took place prior to her presenting the claim, and therefore, as above, it is entirely unclear why she did not include these allegations within the ET1, particularly given that she had access to legal advice.

25 76. So far as the third heading is concerned, namely indirect sex discrimination, there is no doubt that the ET1 sets out complaints which relate to her treatment as a working mother. Although being a mother is not a protected characteristic under the Equality Act 2010, it is clear, in my view, that the ET1 presents a series of complaints which relate to her difficulties with the hours she was required to work due to child care responsibilities.

30 77. The claimant's further specification states that the claimant was required to adopt flexible working patterns at short notice, and that that placed her as a woman at a substantial disadvantage.

78. While there is a slight lack of clarity as to the effect of the disadvantage as
pled, it is my judgment that this is simply a clarification of the complaints
already made, in an attempt to identify and classify those complaints under
section 19 of the 2010 Act. As a result, I regard this aspect of the claimant's
5 further particulars as a simple re-labelling exercise, and of itself, not an
alteration to the pleadings which requires the Tribunal's permission as an
amendment to the claim.
79. The second issue, then, is whether the claimant's application to amend,
encompassing the claim of automatically unfair dismissal and the claims of
10 discrimination on the grounds of religion and race, should be granted.
80. According to the Selkent test, the Tribunal, having considered the different
aspects of the amendment as above, must determine whether or not to
grant the application, weighing up the potential hardship suffered by each
party.
- 15 81. In determining this matter, it is important to consider carefully the third issue
before this Hearing, namely the time bar implications of the new claims, as
well as the issue of hardship.
82. In the case of the claim of automatically unfair dismissal, the appropriate test
in respect of time limits is to consider whether it was not reasonably
20 practicable for the claim to have been presented in time, and if not, whether
it has been presented within such further time as the Tribunal considers
reasonable.
83. In my judgment, it cannot be said, based on the claimant's submissions and
the information available, that it was not reasonably practicable for the unfair
25 dismissal claim to have been pled at the time when the ET1 was presented,
and thus within three months of the claimant's resignation. The unfair
dismissal claim is based upon facts which must have been within the
claimant's knowledge at the point when she lodged her Tribunal claim; she
had conversations with an expert legal adviser competent in the field of
30 employment law; she is herself a plainly intelligent and articulate person with
access to the internet and the information contained therein on websites

concerning Employment Tribunals and the law surrounding the presentation of a claim thereto; and there is no reason advanced by her to explain why she could not have presented the claim in time, other than that she did not understand that it was necessary to set out her full claim within the ET1.

5 84. Accordingly, it is my view that the claimant has not met the onus upon her to demonstrate that it was not reasonably practicable for her to have presented her unfair dismissal claim in time. In these circumstances, the claimant's application to amend her claim is refused, insofar as it seeks to introduce a claim of automatically unfair dismissal.

10 85. In addition, the hardship which falls upon the claimant in being prevented from taking up this claim is less significant than the hardship which would be incurred by the respondent were it to be allowed. Although the claimant would lose the opportunity to make a new claim in addition to her existing complaints, the respondent would be faced with an entirely new claim,
15 focused on the claimant's resignation and the events which specifically led to that. It is of a different character to the discrimination claims which are already in place, and in my judgment, it is not in the interests of justice to allow her to proceed with this particular claim.

20 86. So far as the claimant's attempt to introduce a claim of religious and race discrimination is concerned, a different test must be applied, namely whether the claims have been presented within such a time as the Tribunal considers just and equitable.

25 87. Although the claimant intimated a claim of religious discrimination in her ET1, she gave no substance to that claim; and her claim of race discrimination is entirely new in the application to amend.

30 88. Taking into careful consideration the authorities to which the respondent referred me, it is clear that while the test is a less stringent one than that for unfair dismissal, the courts are of the view that time limits are present for a reason and that permitting such an application late may be seen to be the exception rather than the rule.

89. The allegations under this heading relate to a period prior to the claimant's resignation, but unfortunately it is not clear when it is the claimant alleges she was subjected to this treatment. In paragraph 39, the claimant says that she "*has been*" subjected to discriminatory treatment on the grounds of her religion and of her race; and that she raised a number of concerns "*throughout her employment*". She also complains that she was overlooked for promotion and alternative roles in favour of candidates with much less experience.
90. On the other hand, the claimant was only employed by the respondent for a short period of time, from 13 January 2021 until 24 March 2022. Any allegedly unlawful acts must therefore have taken place no earlier than 13 January 2021 on the basis of the amendment. She does suggest that the acts amounted to a series of continuing acts, taking her to the point where she resigned, which did come within the three month time limit, including ACAS early conciliation, for the presentation of the claim. That is a matter on which it is not currently possible to make any determination, and will require to be reserved for the Hearing on the Merits.
91. On balance, I am persuaded, with some hesitation, that the complaints which the claimant is making under these headings are consistent with the complaints set out in the ET1, albeit they are new claims not previously pled, and based on facts not previously alleged. As a result, it seems to me that the balance of hardship is of less clear application to the respondent in this exercise. While the respondent will have to face more specific allegations of unlawful discrimination, the period during which those incidents must have occurred is a relatively short one and therefore the compass of the evidence at any Hearing on the Merits is not likely to be expanded widely. The allegations relate to the same circumstances. I accept that they are not as specific as they might be, and therefore the precise identities of those against whom they are directed are not clearly set out. That can be addressed by ordering the claimant to be more specific both about who acted in this way, and when they did so.

92. The proceedings are at a sufficiently early stage to allow the respondent to carry out a full investigation into these matters. I do not consider that the Hearing is liable to be lengthened by a significant period of time, and in my judgment the claimant would face much greater hardship if she were deprived of the opportunity to advance her claims of discrimination on the grounds of religion and race, than the respondent would if they required to defend themselves against such claims.
93. I do take account of the fact that the claimant had access to legal advice at the time of presenting her ET1, but it is not clear precisely what advice she received about the content which she should include within the ET1.
94. This is a difficult matter to balance, but in the end I have come to the conclusion that the claimant's application to amend should be granted insofar as seeking to add complaints of religious and race discrimination.
95. Finally, it is my view that the third heading of the further and better particulars does not amount to a new head of claim, and does not require the Tribunal's permission to amend the claim.
96. Accordingly, it is my judgment that the claimant's application to amend the claim should be granted, but only in part, and only to the extent set out in paragraphs 1 to 36, and 38 to 43. The factual allegations made in those paragraphs which may be taken to relate to the claimant's resignation will be treated as background information, and do not form the basis of a valid claim for automatically unfair constructive dismissal.

97. An Order will be issued by the Tribunal to require the claimant to provide more specific information, particularly relating to the identity of the individuals involved and the dates upon which the unlawful acts allegedly occurred, as to the claimant's claim of religious and race discrimination.

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Employment Judge: M MacLeod
Date of Judgment: 11 October 2022
Entered in register: 14 October 2022
and copied to parties

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