



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs S Dwyer

**Respondent:** (1) Certitude  
(2) Yarrow Housing

**Heard at:** London South (by video)      **On:** 9 January 2024

**Before:** Employment Judge T Knowles

## Representation

Claimant: In person

Respondent: Mr M Green, Counsel

# RESERVED JUDGMENT UPON APPLICATION TO AMEND

The Judgment of the Tribunal is that:

1. Amendment 1 - Yarrow Housing shall be added as Second Respondent. The claim form does not need to be reserved and the present response form shall stand as covering both Respondents.

2. Amendment 2 - The Claimant is granted leave to amend to add to her claim the following further information concerning her existing claim of failure to make a reasonable adjustment: *“I informed my employer about my learning disability (dyslexia and dyspraxia), and this information was recorded in my employment file. However, my employer denied having any knowledge of my disability as they felt I managed without support. My dyslexia was disregarded when introducing me to a new software. Buzz, my manager, emailed me stating that the software is complicated and would be a huge task to complete, as well as introducing the software to the staff team, including deputy managers. My employers refused to provide training or support, which they used as leverage to prevent me from continuing to work from home. I firmly believe that my learning disability puts me at a disadvantage compared to my colleagues. If I had received the necessary training, I would have been able to complete the work assigned to me while working at home. However, when working at The Crescent in August 2022, I received the training required to use Buzz software, which helped me overcome some challenges. I am now confident in using this software”.*#

3. Amendment 2 (continued) – The Claimant’s application to add the above information as claims of disability discrimination and discrimination arising from disability are refused.

4. Amendment 3 – The Claimant is granted leave to amend to add to her claim the following further information concerning her existing claim of direct discrimination: *“On 1 Aug 2022, I filed a grievance. An acknowledgement was made, and then a hearing and investigation were conducted. I received the outcome of the grievance on 30 Sep. However, on 12 Oct, I appealed the grievance outcome only to be ignored for five months (March). The outcome was not sent until another three months (June). A total of eight months this is not a part of my employer’s procedures.”*

5. Amendment 4 – The Claimant is granted leave to amend to add to her claim the following further information concerning her existing claim of failure to make a reasonable adjustment: *“On 15 Aug 2022, I filed another complaint regarding ongoing issues affecting my livelihood, such as decreased earnings. I was experiencing financial difficulties and struggling to pay bills and provide meals for my children. Despite being employed, I was not eligible for any benefits. I have been reminding my employer about this complaint for the past fourteen months, both verbally and in writing, but it has been ignored and remains unresolved. This complaint has been mentioned in welfare meetings, grievance hearings, back-and-forth emails, grievance outcomes and by Certitude legal representative (Worknest). Furthermore, my employer has not followed the ACAS protocol. I believe that if this grievance were heard, it would allow me back at work. In the grievance, I further offered my interest in the position of Manager role at The Crescent, which is a three-minute walk from my home. Is there a reason why this opportunity was not offered/provided? This post was available at the time and there was no advert. At that time, the service manager at The Crescent verbally informed me of his employment termination before notifying our employer. Despite my prior expressions of interest in the position, I was ignored, missing an excellent opportunity to return to work, which would have met all reasonable adjustments and recommendations. This position was given to a man in Sep 2022 rather than offered to me, considering my circumstances and the fact that I was aware of all the safeguarding issues and built a professional relationship with the staff team. Once the new manager was promoted, the structure model was changed from the original service model created by Sanjay Shan and Gianluca Zucchelli (Operational Managers). That had two positions/roles for a Cluster Manager and a Share Lives Manager.”*

6. Amendment 4 (continued) – The Claimant’s application to amend her claim to include those matters as a complaint of indirect disability discrimination is refused.

7. Amendment 5 – The Claimant is granted leave to amend to add to her claim the following further information concerning her existing claim of failure to make a reasonable adjustment: *“Emails were sent at the end of August 2022. My employer confirmed that the Crescent was not a reasonable adjustment. It was a temporary arrangement while my grievance was being investigated. On 30 Sep 2022, after the investigation concluded, I was left without direction a few days later. On 25 Sep 2022, the post was filled at The Crescent. I then received instructions to return home and complete eLearning and other training until further notice.”*

8. Amendment 6 – The Claimant is granted leave to amend to add to her claim the following further information concerning her existing claim of failure to make a reasonable adjustment: *“I am currently placed on medical suspension verbally without any formal reason on 1 Dec 2022. This suspension was put in place, and I am still waiting for confirmation as to why and when I will return to work. I would like to hear whether they are willing to follow the reasonable adjustment along with any recommendation from Occupational Health and support from Access to Work.”*

9. Amendment 7 – The Claimant’s application to amend to include a claim of harassment concerning Ms Hawtin is refused.

10. Amendment 7 (continued) – The Claimant’s only remaining claim of harassment being those against other individuals which the Claimant has said she no longer wishes

to proceed with, the claim of harassment is dismissed upon its withdrawal by the Claimant.

11. Amendment 8 – The Claimant’s application to amend the claim to include a claim of failure to make a reasonable adjustment concerning the Team Leader vacancy at the Crescent is refused.

12. Amendment 9 – The Claimant’s application to amend the claim to include a claim of direct discrimination in relation to the meeting in February 2023 is refused.

13. Amendment 10 – The Claimant is granted leave to amend her claim to add the following further information concerning her claim of failure to make a reasonable adjustment: *“I have not heard anything in regards to the sickness absence/sickness review since Feb 2023 to the present date. The meeting was adjourned due to Mr Brown's confusion around the meeting. I sent an email asking question as I, too, was confused. I have not received a reply to date. Why am I attending sickness absence/sickness review meetings without confirmation of an illness or injury from my GP or Neurologist? I have a long-term Disability. The following policy and procedures, outlined in my contract states, the statement of terms and conditions, are in accordance with the Employment Rights Act 1996, being offered to me by Certitude support. However, I believe I am exempt from the processes for all of their employees.”*

14. Amendment 11 – The Claimant’s application for leave to amend to include a claim of unlawful deduction from wages concerning the contract issued to her in March 2023 is refused.

15. Amendment 11 – For the avoidance of doubt, I record that although it is not contained in the draft list of issues produced at the last case management hearing, the Claimant’s claim has always included a claim of unlawful deductions from wages concerning the payment of Statutory Sick Pay (SSP) rather than full pay in 2022.

16. The Respondents are granted leave to amend their response to cover the matters for which leave to amend has been granted to the Claimant. The Respondents must send their amended response to the Tribunal and to the other parties on before a period 21 days from and including the date that this Reserved Judgment is sent to the parties.

## **RESERVED REASONS**

### **Issues**

1. This hearing was set down by Employment Judge Frazer at the case management discussion which took place on 12 September 2023.

2. EJ Frazer listed today’s hearing to consider the following issues:

- a. The Claimant’s amendment application which will involve the identification of the claims and issues set out in the amendment document;
- b. Case management to final hearing;
- c. Consideration of how the Tribunal is to hear and determine any dispute over whether the meeting of 6th April 2022 was without prejudice;
- d. Reviewing the time estimate for the final hearing and re-listing if necessary.

3. At the beginning of today’s hearing, the parties agreed that these were the issues.

4. Today’s hearing utilised all of the Tribunal’s listed time (one day) on issue a. which I then reserved Judgment upon due to insufficient time. I was unable to address issues b., c. and d. therefore there will need to be a further case management discussion to address

those issues and to address whether or not the Respondent's application for strike out of the claim will be listed for a preliminary hearing.

5. There has been a delay between the hearing date and the issuing of this Judgment. The issues have taken more than an additional day to consider and determine and I have not been able to schedule deliberation days any earlier. I apologise to the Claimant and Respondent for this delay.

## **Evidence**

6. The hearing today was based on submissions only. No sworn witness evidence was heard and no witness statements had been produced.

7. I had before me:

- a. The claim form, particulars of claim and ACAS early conciliation certificate.
- b. The response form and grounds of resistance.
- c. Case Management Orders from 12 September 2023.
- d. The Claimant's application to amend her claim 20 October 2023.
- e. The Respondent's response to that application 17 November 2023.

## **Background – the initial claim 5 December 2022**

8. The Claimant brought her claim by submitting a claim form on 5 December 2022. In her claim form she set out that she worked for the Respondent from 13 July 2020 as a Registered Care Manager at The Crescent Supported Living Service at 6-7 Coburg Crescent on Palace Road, London SW2 (in her later submissions this is referred to as "The Crescent" which I will adopt as an appropriate abbreviation in these reasons). The Claimant set out that her employer's address was in Balham, London SW1. The Claimant set out that her employment was, at the point she brought her claim, continuing.

9. In Section 8.1 of the Claim Form the Claimant ticked boxes to indicate that her claims were:

- a. That she was discriminated on the grounds of disability,
- b. That she was owed holiday pay, and
- c. That she was owed other payments

10. In Section 8.2 the Claimant set out the background and details of her claim complaining of not making reasonable adjustments, forcing her onto SSP, and payments of either no salary or small amounts without explanation. She also raises a breach of confidentiality in that she learned that two employees had gained access to her grievance. She ends this with "please see the attached for further details".

11. The Claimant attaches 6 pages of narrative to her claim form. I describe this in summary only. In her attachment the Claimant sets out background in chronological order, and then describes events from 18 July (2022) specifically. There is then a section headed "How I was discriminated against" which appears to raise issues over reasonable adjustments but also mentions being victimised, rude comments and pay issues. The attachment goes on under the heading "How I have been affected" and describes impacts on her health, finances and family. There is then a heading "It is still happening" which sets out complaints about not being offered work closer to home, being forced onto SSP and threats of disciplinary action over absence. She goes on to describe harassment from Ms Makani and Ms Twell. She then complains of a failure to make reasonable adjustments and sets out a list of adjustments she asked her employer to consider. There are 22 bullet points of suggested adjustments. The attachment concludes by repeating the assertion concerning breach of confidentiality in relation to her grievance.

## **The claims identified at the Case Management Hearing 12**

## September 2023

12. The Claimant's narrative claim form was clearly considered in some depth at the hearing on 12 September 2023.

13. These are the claims that were identified (as taken from beneath the heading "Issues"). These are key extracts only:

### **2. Direct disability discrimination (Equality Act 2010 section 13)**

2.1 *Did the Respondent do the following things:*

2.1.1 *Fail to uphold the Claimant's grievance dated 8th August 2022.*

2.1.2 *Mr Bacon shared the contents of the Claimant's grievance with Ms Twell and Ms Makani, which the Claimant says amounted to a breach of confidentiality.*

...

### **3. Discrimination arising from disability (Equality Act 2010 section 15)**

3.1 *Did the Respondent treat the Claimant unfavourably as follows:*

3.1.1 *At a meeting on 6th April 2022 Ms Makani gave the Claimant the option of either leaving on £2000, holiday pay and one month's notice, or if she did not take that offer, to be put through the Respondent's capability procedure.*

### **4. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)**

...

4.2 *A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:*

4.2.1 *The requirement for the Claimant to attend her normal place of work and carry out her contractual duties.*

4.2.2 *Not paying full salary to individuals who are off work.*

...

4.6 *What steps could have been taken to avoid the disadvantage? The Claimant suggests:*

4.6.1 *Carrying out normal contractual duties from home.*

4.6.2 *Being relocated to a workplace near the Claimant's home*

4.6.3 *Paying the Claimant full pay when she on sick leave.*

...

### **5. Harassment related to disability (Equality Act 2010 section 26)**

5.1 *Did the Respondent do the following things:*

5.1.1 *In response to the Claimant saying that she was not able to go into the*

*environment without her medication being controlled, Ms Yvonne Hawtin said 'it will never be controlled' (date to be advised by further information).*

14. The above list of issues, and how they categorise the claims, are a very helpful digestion of the lengthy narrative which was attached to the initial claim form.

15. Although listed in the list of issues, the harassment claim is identified as one which would require an application to amend the claim. This is because the Claimant had only mentioned harassment concerning Ms Makani and Ms Twell in her claim form, but at the case management hearing she stated that she did not wish to bring a claim of harassment against them but instead against Ms Hawtin. See paragraph 6 of the case management orders from 12 September 2023.

16. There were other issues which the Claimant brought up at the case management hearing on 12 September 2023 which had not been mentioned in the claim form. The case management orders record (under Orders paragraph 6) also "*the allegation that the Respondent failed to make reasonable adjustments from 19th May because the nature of the work was different to what it was before and the Claimant had not received training*". Earlier in the case management order it had also been recorded (under Case Management Discussion paragraph 2) that "*It was clarified that the main disability on which the Claimant relies is epilepsy. However in respect of the allegation that there was a failure to make reasonable adjustments for the period of time that the Claimant worked from home from May 2022 the allegation is that the allocation of duties and the requirement for the Claimant to work on a particular kind of software with no training put her at a substantial disadvantage because of her dyspraxia and dyslexia. It was agreed that this allegation would be included in the amendment document that the Claimant shall produce as it was not in the claim form.*"

17. Another matter is recorded under Case Management Discussion at paragraph 7 as "*a claim for unlawful deductions from wages in respect of the payment of an enhancement for the place at which the Claimant worked from February 2022 on an ongoing basis (it is understood this is being brought as a series of deductions from wages under s.23 Employment Rights Act 1996 and will be included therefore in the new claim)*".

18. I do note however that the Claimant's original claim form had the wages claim box ticked along with other arrears of pay, albeit there was in the attachment no reference to an enhancement, only the non-payment of wages and payment of SSP or small unexplained amounts of wages. Regrettably I cannot see what happened about the wages and other arrears of pay claims although they did not find their way on to the list of issues.

19. The Claimant also mentioned that there were additional matters which happened between September 2022 and September 2023 since she brought her claim (the fact that the claim was brought in December 2022 appears overlooked in this part of the discussion). The Claimant was ordered to add those to her amendment application.

20. There was an issue identified for clarification which was the correct identity of the Respondent. The Claimant felt it was Certitude, the Respondent suggested it was Yarrow Housing Limited. It was an issue the Claimant was asked to reflect upon but if it could not be agreed then it should be dealt with today.

21. I set the above out because the claim and the case management discussion are not easily followed, in part because of the narrative form of the attachment to the claim form but also because at the case management hearing the Claimant appears to have brought up different matters and also matters which happened since she brought her initial claim.

22. The difficulties in considering this application are amplified by the nature of the order made concerning the amendment application and the response it produced. The Claimant was not asked to identify the types of claim that she wished to add by way of amendment, she was simply ordered to provide "full details". This meant that the Claimant's response to

that order, see immediately below, is simply a further list of narrative without any particular type of claim being mentioned.

## **The application to amend the claim 20 October 2023**

23. The Claimant had been ordered to briefly explain, in her application, why the matters she sought to add to her claim were not included in her original claim. In her application she simply states that they happened after her application was sent to the Tribunal.

24. However, it is apparent from reading the narrative that these are not solely matters which occurred after her application was sent to the Tribunal.

25. These are the points set out in the Claimant's application to amend, with numbering added by me:

### **Amendment 1**

As outlined in my 'contract of employment', my employing entity is Yarrow Housing, and my contract incorporates Certitude Support, which consists of four entities, one of which is Yarrow Housing.

### **Amendment 2**

I informed my employer about my learning disability (dyslexia and dyspraxia), and this information was recorded in my employment file. However, my employer denied having any knowledge of my disability as they felt I managed without support. My dyslexia was disregarded when introducing me to a new software. Buzz, my manager, emailed me stating that the software is complicated and would be a huge task to complete, as well as introducing the software to the staff team, including deputy managers. My employers refused to provide training or support, which they used as leverage to prevent me from continuing to work from home. I firmly believe that my learning disability puts me at a disadvantage compared to my colleagues. If I had received the necessary training, I would have been able to complete the work assigned to me while working at home. However, when working at The Crescent in August 2022, I received the training required to use Buzz software, which helped me overcome some challenges. I am now confident in using this software.

### **Amendment 3**

On 1 Aug 2022, I filed a grievance. An acknowledgement was made, and then a hearing and investigation were conducted. I received the outcome of the grievance on 30 Sep. However, on 12 Oct, I appealed the grievance outcome only to be ignored for five months (March). The outcome was not sent until another three months (June). A total of eight months this is not a part of my employer's procedures.

### **Amendment 4**

On 15 Aug 2022, I filed another complaint regarding ongoing issues affecting my livelihood, such as decreased earnings. I was experiencing financial difficulties and struggling to pay bills and provide meals for my children. Despite being employed, I was not eligible for any benefits. I have been reminding my employer about this complaint for the past fourteen months, both verbally and in writing, but it has been ignored and remains unresolved. This complaint has been mentioned in welfare meetings, grievance hearings, back-and-forth emails, grievance outcomes and by Certitude legal representative (Worknest). Furthermore, my employer has not followed the ACAS protocol. I believe that if this grievance were heard, it would allow me back at work. In the grievance, I further offered my interest in the position of Manager role at The Crescent, which is a three-minute walk from my home. Is there

a reason why this opportunity was not offered/provided? This post was available at the time and there was no advert. At that time, the service manager at The Crescent verbally informed me of his employment termination before notifying our employer. Despite my prior expressions of interest in the position, I was ignored, missing an excellent opportunity to return to work, which would have met all reasonable adjustments and recommendations. This position was given to a man in Sep 2022 rather than offered to me, considering my circumstances and the fact that I was aware of all the safeguarding issues and built a professional relationship with the staff team. Once the new manager was promoted, the structure model was changed from the original service model created by Sanjay Shan and Gianluca Zucchelli (Operational Managers). That had two positions/roles for a Cluster Manager and a Share Lives Manager.

#### **Amendment 5**

Emails were sent at the end of August 2022. My employer confirmed that the Crescent was not a reasonable adjustment. It was a temporary arrangement while my grievance was being investigated. On 30 Sep 2022, after the investigation concluded, I was left without direction a few days later. On 25 Sep 2022, the post was filled at The Crescent. I then received instructions to return home and complete eLearning and other training until further notice.

#### **Amendment 6**

I am currently placed on medical suspension verbally without any formal reason on 1 Dec 2022. This suspension was put in place, and I am still waiting for confirmation as to why and when I will return to work. I would like to hear whether they are willing to follow the reasonable adjustment along with any recommendation from Occupational Health and support from Access to Work.

#### **Amendment 7**

On 2 Mar 2023, I took out a grievance towards Ms Hawtin for repeated actions of ignoring any form of communication, withholding crucial information and lacking support, constantly sabotaging my opportunity back into work along with my complaints. 1) Ms Hawtin threatened to terminate my employment contract in writing and verbally. 2) Ms Hawtin humiliated me because she did not consider my position as a Care Manager by allowing my colleague/peer to have the authority to manage and supervise me while working in The Crescent, regardless of the number of times Ms Hawtin was informed of his post/role she continued to disregard my feeling and the facts. 3) Stating rude statements, 'I don't think it will ever be controlled,' referring to my medication. I feel this is bullying and she was unprofessional during these meetings, which was addressed in many of my meetings with myself and my union representative regarding her hostile and intimidating body language and constantly interrupting the meeting as the note taker. Ms Hawtin would give negative feedback to block my return, stating I am not fit for this post, referring to an investigation office. 4) I was subjected to over fourteen pointless meetings by Ms Hawtin after complaining about my discrimination. Regardless of my medical suspension, I showed my ability and took available opportunities to return to work by completing tasks and supporting services on my own accord. Some jobs were done at home, and others were done in the services. 5) Ms Hawtin intentionally delayed my return to work by ignoring my emails and communication. At one point, she told me to work at The Crescent, only for the Operational Manager to tell me that he has yet to receive any confirmation from Ms Hawtin, and because of this, I can only work there once he gets confirmation. Emails and calls were made, but I am still awaiting a response. This was so embarrassing for me, as I was looking forward to returning to work and told my friends and family that they could support me whenever I needed them, as they all live in the local area, too.



**Amendment 8**

I informed Alan Brown and Ms Hawtin about a position that had been advertised for a long time for The Crescent. Mr Brown implied that this position would have been addressed in the sickness meeting, but because of the direction of the meeting, it could not be discussed; therefore, it is not available for me. I believe Mr Brown and Ms Hawtin used this opportunity to withhold this position because I had complained about how I was being treated, further preventing me from returning to work.

**Amendment 9**

Ms Hawtin and Mr Brown invited me to attend a sickness absence/sickness review meeting in February 2023. Ms Hawtin confirmed in writing that my employment may be terminated due to long-term sickness, although she had placed me on medical suspension. In this meeting, I was told I was on stage three. This is unfair as the employer's procedures are a stage 1, 2 and 3. As a Care Manager in the company, I follow this process with my staff team with the support of HR. Due to my disability, I was not privileged to attend stages 1 and 2 because stage 3 allows for the possibility of termination of an employment contract. Ms Hawtin gave incorrect/false information that it was okay for stages to be missed/jumped as outlined in the policy 'Absence management policy', and Ms Hawtin failed to provide evidence.

**Amendment 10**

I have not heard anything in regards to the sickness absence/sickness review since Feb 2023 to the present date. The meeting was adjourned due to Mr Brown's confusion around the meeting. I sent an email asking question as I, too, was confused. I have not received a reply to date. Why am I attending sickness absence/sickness review meetings without confirmation of an illness or injury from my GP or Neurologist? I have a long-term Disability. The following policy and procedures, outlined in my contract states, the statement of terms and conditions, are in accordance with the Employment Rights Act 1996, being offered to me by Certitude support. However, I believe I am exempt from the processes for all of their employees.

**Amendment 11**

On 18 Mar 2023, my contract was changed. The contract shows a change in my annual salary from £31,500 to £36,286. This amount has been withheld as I am not in receipt of this increase, and I believe it is because my employer does not value me as an employee. From Feb 2022 to Aug 2022, I was paid incorrectly, resulting in a loss of earnings of £9,040.99 before tax and inc. I was placed on medical suspension without full pay during the above date I was then placed on SSP. I have highlighted some of the effects this caused. I am struggling financially and still in debt, with outstanding arrears on house payments, bills and loans.

**The Respondent's response to the application to amend dated 17 November 2023**

26. On 17 November 2023 the Respondent entered the following responses to the Claimant's applications to amend her claim:

**Amendment 1**

The Respondent accepts that Yarrow Housing Ltd is the correct Respondent in this matter.

**Amendment 2**

The Respondent accepts that they had knowledge of the Claimant's epilepsy, dyslexia and dyspraxia from 6 April 2022. The Claimant is called upon to specify which disability she relies upon for her claims of discrimination, and failure to do so will be founded upon by the Respondent. In response to the Claimant's claim, the Respondent denies that they introduced new software, that the Claimant was asked or tasked with implementing this new software, or that training was refused as alleged or at all.

**Amendment 3**

The Claimant's 1 August grievance was combined with a subsequent grievance of 15 August 2022 and both grievances were dealt with together. It is accepted by the Respondent that there was a delay in responding to the Claimant's grievance appeal.

**Amendment 4**

The Respondent's position is that they dealt with both Grievances alongside one another due to elements of overlap and both grievances were heard and responded to in the same outcome letter on the 5th October 2022.

The Respondent's position is that the Claimant is seeking to add in a new head of claim in this section of her amendment. The Respondent objects to this new claim of being denied a role as manager at the Crescent, which was not pled in the original ET1.

Furthermore, this amendment as it seeks to introduce sex discrimination which was not pleaded in the original ET1. In any event, as previously stated, the Claimant was made aware of this position and being advertised, and no job application was ever received for this position from the Claimant.

The Respondent's position is that the Claimant was temporarily placed at the Crescent as an additional member of staff in August 2022. At that time there was a temporary manager in place and subsequently a permanent manager was appointed in October 2022. The Claimant was aware that this role was being recruited for and did not apply for this role. As this was a promoted role it was not a role that could be offered to the Claimant as a reasonable adjustment.

**Amendment 5**

As pled above, the role at the Crescent was a promoted role and not suitable for consideration as an alternative role for the Claimant. It is denied that the Claimant was left without direction or told to return home until further notice.

**Amendment 6**

The most recent OH report confirms that the Claimant requires a chaperone in order to return to her normal duties, this is not something that the Respondent is able to provide for the reasons stated in the Ground of Resistance. The Claimant has a copy of this report and is well aware of that the Respondent is unable to provide a Chaperone. The Claimant's position amounts to a demand that all suggested adjustments are undertaken by the Respondent regardless of their reasonableness.

The Respondent could have placed the Claimant on sick leave due to her inability to perform her substantive post, but chose instead to place her on medical suspension on full pay. The decision to do so was discussed with the Claimant.

### **Amendment 7**

The Respondent's position is that the Claimant is seeking to add in a new head of claim in this section of her amendment. The Respondent objects to this new claim of harassment against Ms Hawtin who is not named on the ET1 and has provided no dates of the alleged acts of harassment. The Tribunal should not allow this new head of claim. Should the Tribunal allow this claim, the Claimant will be required to provide specific dates of alleged harassment.

### **Amendment 8**

The Respondent's position is that the Claimant is seeking to add in a new head of claim in this section of her amendment. The respondent objects to this new claim of being denied another role at the Crescent. This was not pleaded in the original ET1. The Respondent's position is that the role referred to above is a different position to the manager position previously referred to and filled in October 2022. This position was advertised and the Respondent's intention was to discuss this position with the Claimant in the February 2023 meeting but the Claimant did not feel able to continue the meeting and there was no opportunity to discuss this.

### **Amendment 9**

The Respondent's position is that the Claimant is seeking to add in a new head of claim in this section of her amendment. The respondent objects to this new claim of being denied another role at the Crescent. This was not pleaded in the original ET1. The Claimant was invited to a sickness meeting, and the Claimant opted to end the meeting without further discussion, and therefore the Respondent was unable to discuss with her any available roles. In any event the Respondent denies that the Claimant was given any false or incorrect information as alleged or at all.

### **Amendment 10**

The Respondent's position is that the Claimant is seeking to add in a new head of claim in this section of her amendment. This was not pleaded in the original ET1.

The Claimant was invited to a sickness meeting, and the Claimant opted to end the meeting early without giving the Respondent the opportunity to discuss any available role(s). The Respondent does not know what the Claimant means by stating that she is exempt from processes, the Claimant has been treated entirely in accordance with the Respondent's sickness policy.

Notwithstanding this being a new head of claim and the Respondent's position being that this should not be heard by the Tribunal, the Respondent alleges that the Claimant submitted a grievance in March 2023 following the meeting of February 2023 and the outcome of that grievance, which was not appealed, was to obtain a further Occupational Health report and Access to Work information. The Claimant failed to attend the initial Occupational Health assessment and following attendance at a rescheduled OH assessment exercised her right not to release the OH report. As such it was only in November 2023 the Respondent was able to meet further with the Claimant.

### **Amendment 11**

The Claimant seeks to expand their claim from the original ET1 and add to their claim the that they should have been paid an enhanced rate where previously they were claiming for alleged arrears of pay as a reasonable adjustment. This new head of claim should not be permitted by the Tribunal. The Respondent in any event

asserts that the Claimant has not returned or signified acceptance of the new terms and conditions of employment which was a requirement for eligibility for the new rate of pay, and have been sent to her both electronically and by hard copy.

## **The parties representations at the hearing 9 January 2024**

27. At the hearing on 9 January 2024 we discussed each of the proposed amendments at length. The following are my notes of the main points made by the parties.

### **Amendment 1**

On the Respondent's identity, whilst the claim has been brought against Certitude the Respondent has raised that the Claimant's employing entity is Yarrow Housing Limited. The Claimant was unwilling to accept that her employing entity is Yarrow Housing Limited. She referred to her employment contract and acknowledged that her original contract was with Yarrow Housing Limited but suggested that later contracts issued refer also to Certitude Support, Certitude Southside, Certitude Partnership, Certitude Support for Living and Yarrow Housing Limited. The Claimant accepted that it is probably Yarrow Housing Limited that pays her wages. However she would not accept that the identity of her employer was Yarrow Housing Limited. The parties accepted that this would need to be resolved at a final hearing.

### **Amendment 2**

The Claimant confirmed that she is here describing circumstances when she was forced to work from home for a period of 1 week between 19 and 24 May 2022. When she worked from home she was required to work using Buzz software, upon which she had not been trained.

The Claimant accepted that this was a new matter of fact which had not been referred to in her claim form (albeit I pointed out that in the background information she did refer to working from home on 19 May 2022).

I discussed with the Claimant the type of discrimination she was referring to, and she suggested this was direct discrimination, a failure to make a reasonable adjustment and discrimination arising from disability. She told me that the discrimination arose from her condition of dyslexia only.

I did query with the Claimant whether or not this was simply additional information to provide to her existing claim of failure to make a reasonable adjustment by letting her work from home (recorded at issue 4.6.1)

The Claimant suggested that she had not included this in her claim form when she made her original claim because she did not realise this was direct discrimination until she spoke to a legal representative in August 2023. The Claimant did not explain why she had not included any claim of discrimination arising from disability earlier.

The Respondent had no issue with including this as a point of further information concerning the existing claim of failure to make a reasonable adjustment but objected to this becoming a new claim of direct discrimination or discrimination arising from disability, pointing out that this would require new evidence concerning motivation some 2 years after the event, and is a claim that presents with significant time limitation issues. The Respondent also noted that the Claimant has not provided a good reason why the matters were not included in the original claim.

### **Amendment 3**

The Claimant explained that the delay in handling the 1 August 2022 grievance was a

claim of direct disability discrimination. She stated that she believed that the Respondent did not like her because of her dyslexia and epilepsy.

This is something that was mentioned in her claim form, albeit the grievance was in the claim form dated 8 August 2022, and can be seen in the 3<sup>rd</sup> paragraph on page 15 which concludes "*I sent my appeal, which has not been addressed for over two months*".

However, it does not appear as an issue in the list of issues under the heading direct discrimination and appears not to have been discussed at the previous hearing.

In effect, the Claimant is simply seeking to add that the delay was something which carried on beyond the submission of her claim form on 5 December 2022.

The Respondent accepted that this was part of the original claim form and if the Claimant is suggesting that this was direct discrimination it can be dealt with.

#### **Amendment 4**

The amendment articulated at Amendment 4 refer to the situation concerning the Claimant having to manage on SSP rather than on full-pay, and the refusal to allow the Claimant to take the position of Manager at The Crescent.

The Claimant accepts that the pay issues are already covered. See issue 4.2.2 in the draft list of issues.

However, the Claimant stated that the Manager position was not directly referred to.

I did identify that at paragraph 3 on page 15 of the claim form the Claimant had stated "*I also complained about the lack of consideration of not offering me a position at the service three minutes from home*".

When we discussed this the Claimant agreed it was further information about the same point.

The Claimant expressed this as indirect disability discrimination. I explained that I was unable to understand how she was expressing this as an indirect discrimination point as she explained that as her being deliberately ignored. I explained the difference between being treated less favourably (a claim of direct discrimination) and being treated the same but put at a disadvantage (indirect / failure to make a reasonable adjustment). The Claimant then suggested this may be a failure to make a reasonable adjustment.

The Respondent submitted that if this was a more narrow point that ignoring the second grievance was an act of direct discrimination, the Claimant had provided no strong submissions about this point and it may in any event come within the ambit of the existing issue in relation to the first grievance, the Respondent having handled both grievances together as one.

#### **Amendment 5**

The Claimant accepted that this was more information about the Manager's role at The Crescent (as per Amendment 4).

The Claimant then suggested that this is adding the fact that she was sent home from work between 22 September 2022 and 1 December 2022 owing to her epilepsy and was paid SSP.

I asked the Claimant whether or not this was not simply part of the failure to make reasonable adjustments claim which is, in essence, about working from home or being

relocated or in the absence of those adjustments being paid in full whilst on sick leave (see paragraph 4.6 in the draft list of issues).

The Claimant explained that this was direct disability discrimination, sending her home under a false pretence, and a failure to make reasonable adjustments. The Claimant then added that it may also be indirect disability discrimination. The Claimant's final position was that this was direct discrimination but may have an element of failure to make reasonable adjustments.

The Respondent submitted that there is no issue with the information if it is simply more information on the asserted failure to make reasonable adjustments, but the addition of this as a new direct discrimination complaint is problematic as there is no clear act pleaded, the matter could have been included in the initial claim, and appears to lack any merit. There seems little prejudice to the Claimant in not allowing this amendment if she already has a failure to make reasonable adjustments claim based redeployment closer to home.

### **Amendment 6**

The Claimant accepted that this point was simply that failing to allow her to return to work with adjustments was something which persisted after she put in her claim form until her dismissal in December 2023.

The Respondent concedes that there is no issue if this is simply adding that the failure to make reasonable adjustments continued, as it is the same point as had been put originally.

### **Amendment 7**

This is the harassment claim against Ms Hawtin that was mentioned at the earlier case management claim.

The Claimant explained that the matters complained of occurred between August 2022 and March 2023.

The Claimant explained that the harassment was subtle at the beginning and she did not realise that she was being harassed when Ms Hawtin became very vocal in November or December 2022.

The Claimant suggested that she did not bring the complaint of harassment earlier than the amendment application because she had not been sure of where it would fit in and it was not until the case management hearing that the Judge mentioned harassment.

The Claimant reiterated that she did not wish to bring any claim of harassment against Ms Makani or Ms Twell, despite the fact that the only harassment claim mentioned in her claim form (page 17) related to them expressly.

The Respondent reiterated that harassment by Ms Hawtin had not been mentioned in the original claim form. The Claimant could have mentioned this in December 2022 when she brought her claim even if it was at that stage subtle. In any event the Claimant says this was clear by the end of November 2022. The Claimant not being sure of where it would fit in is not a good reason to omit this when the Claimant had managed to put others in. The Respondent will have to gain her particular evidence and we haven't got much clarity. There is no particularity as to dates in the text of the amendment. It is for the C to make a proper application.

### **Amendment 8**

The Claimant explained that the failure to offer her a position at The Crescent referred to

in this amendment was different to the one explained in Amendment 4. This concerned a vacancy for a Team Leader at the Crescent around January or February 2023.

The Claimant sees this as a failure to make a reasonable adjustment.

The Claimant also suggested this may have been victimisation because it was withheld because of the way the meeting went in February 2022.

The Respondent submitted that this was different position at the Crescent to the Manager position considered at Amendment 4. The claim could have been brought earlier. It is not clear why it was not raised earlier. It is not the Respondent's fault that the Claimant did not know to raise it. She has researched how to bring a claim and brought her other claims. The claim would be out of time and shouldn't be allowed.

### **Amendment 9**

The amendment application concerns being told in February 2023 that her employment may be terminated due to long-term sickness without the first 2 stages of the 3 stage absence policy being applied, something which the Claimant described today as direct discrimination. The Claimant explained that she was on medical suspension not sick leave and had never submitted a sick note.

The Respondent submitted that this would require an examination of the motivation. It would require additional evidence. It was not clear that this needs to be the focus of the claim. The claim is out of time, and the Claimant has raised no good reason why she could not bring it earlier.

### **Amendment 10**

The Claimant confirmed that this was further information about the continuing situation concerning her not returning to work and was a failure to make reasonable adjustments. The Claimant explained that her last absence review meeting was December 2023.

The Respondent submitted that they had no issue with the Claimant asserting a continuing failure to make reasonable adjustments but a breach of policy claim, as a separate and new claim, was more problematic as it has not been raised previously and will increase the length of the hearing.

### **Amendment 11**

The Claimant explained that she had been sent a new contract of employment which included changes which included an increase of pay, but had failed to notice that or to accept the new terms. She states that she was not made aware of the increase in pay until another person mentioned it to her late in October 2023.

The Respondent acknowledged that wages for 2022 was in the claim form, but that the new contract in 2023 was not. There is no reason why this could not have been included earlier other than she did not realise. It is a new claim, based on different evidence and is completely different. The balance of hardship is in favour of disallowing this.

## **The Law**

28. The Tribunal's power to consider amendments to a claim is set out in the Employment Tribunal Rules 2013 which are contained in Schedule 1 to the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 ("the Rules").

29. The overriding objective of the Rules is set out as follows:

“2. Overriding objective

*The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—*

- (a) ensuring that the parties are on an equal footing;*
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;*
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;*
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and*
- (e) saving expense.*

*A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.”*

30. The specific rules which contain the powers are Rule 29 which permits the Tribunal to make case management orders and Rule 41 which allows the Tribunal to regulate their own procedure in the manner they consider fair, having regard to the overriding objective set out above. Amendments are thus a matter of judicial discretion.

31. Guidance given by Mummery J in **Selkent Bus Company Ltd v Moore [1996] ICR 836** at the time when he was President of the EAT is frequently quoted as the key test for determining an application to amend a claim. These were the key points made:

*“(1) The discretion of a Tribunal to regulate its procedure includes a discretion to grant leave for the amendment of the originating application and/or notice of appearance: Regulation 13. See Cocking v. Sandhurst Ltd [1974] ICR 650 at 656G - 657D. That discretion is usually exercised on application to a Chairman alone prior to the substantive hearing by the Tribunal.*

*(2) There is no express obligation in the Industrial Tribunal Rules of Procedure requiring a Tribunal (or the Chairman of a Tribunal) to seek or consider written or oral representations from each side before deciding whether to grant or refuse an application for leave to amend. It is, however, common ground that the discretion to grant leave is a judicial discretion to be exercised in a judicial manner ie, in a manner which satisfies the requirements of relevance, reason, justice and fairness inherent in all judicial discretions.*

*(3) Consistently with those principles, a Chairman or a Tribunal may exercise the discretion on an application for leave to amend in a number of ways:*

*(a) It may be a proper exercise of discretion to refuse an application for leave to amend without seeking or considering representations from the other side. For example, it may be obvious on the face of the application and/or in the circumstances in which it is made that it is hopeless and should be refused. If the Tribunal forms that view that is the end of the matter, subject to any appeal. On an appeal from such a refusal, the appellant would have a heavy burden to discharge. He would have to convince the Appeal Tribunal that the Industrial Tribunal had erred in legal principle in the exercise of the discretion, or had failed to take into account relevant considerations or had taken irrelevant factors into account, or that no reasonable Tribunal, properly directing itself, could have refused the amendment. See Adams v. West Sussex County Council [1990] ICR*



546.

*(b) If, however, the amendment sought is arguable and is one of substance which the Tribunal considers could reasonably be opposed by the other side, the Tribunal may then ask the other party whether they consent to the amendment or whether they oppose it and, if they oppose it, to state the grounds of opposition. In those cases the Tribunal would make a decision on the question of amendment after hearing both sides. The party disappointed with the result might then appeal to this Tribunal on one or more of the limited grounds mentioned in (a) above.*

*(c) In other cases an Industrial Tribunal may reasonably take the view that the proposed amendment is not sufficiently substantial or controversial to justify seeking representations from the other side and may order the amendment ex parte without doing so. If that course is adopted and the other side then objects, the Industrial Tribunal should consider those objections and decide whether to affirm, rescind or vary the order which has been made. The disappointed party may then appeal to this Tribunal on one or more of the limited grounds mentioned in (b) above.*

*(4) 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.*

*(5) What are the relevant circumstances? It is impossible and undesirable to attempt to list them exhaustively, but the following are 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 eg, 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."*

32. **Ladbrokes Racing Limited v Traynor [2006] EATS 0067/06** highlights that an application to amend must include details of the amendment sought in precise terms. They draw my attention to paragraph 20:

*“When considering an application for leave to amend a claim, an Employment Tribunal requires to balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing. That involves it considering at least the nature and terms of the amendment proposed, the applicability of any time limits and the timing and the manner of the application. The latter will involve it considering the reason why the application is made at the stage that it is made and why it was not made earlier. It also requires to consider whether, if the amendment is allowed, delay will ensue and whether there are likely to be additional costs whether 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 they are unlikely to be recovered by the party who incurs them. Delay may, of course, in an individual case have put a respondent in a position where evidence relevant to the new issue is no longer available or is of lesser quality than it would have been earlier. These principles are discussed in the well known case of Selkent Bus Co Ltd t/a Stagecoach Selkent v Moore [1996] IRLR 661.”*

33. In **Scottish Opera Limited v Winning [2009] EATS 0047/09** it was held at paragraph 5 that “clear and accurate pleadings are of importance in all cases, but particularly in discrimination claims. It is essential that parties seeking permission to amend to introduce such a claim formulate the proposed amendment in the same degree of detail as would be expected had it formed part of the original claim; and tribunals should ensure that the terms of any such proposed amendments are clearly recorded.”

34. **Chief Constable of Essex Police v Kovachevic [2013] UUEAT/0126/13/RN** warns of the dangers of an Employment Judge engaging with the application to amend. At paragraph 21 it is stated:

*“It is quite plain that the Employment Judge wrongly engaged with the application to amend in this case. Before even turning to the question of the right test, it is fundamental that any application to amend a claim must be considered in the light of the actual proposed amendment. The Employment Judge did not have before him, reduced to writing or in any form, the terms of the amendment being proposed. It might be, ... that in certain circumstances (e.g. where a very simple amendment is sought or a limited amendment is asked for by a litigant in person) that an Employment Judge may be able to proceed without requiring the specifics of the amendment to be before him in writing. But this was a case in which the Claimant was being represented by a professional representative whom he had selected and recently instructed. The Employment Judge plainly could, and should, have required the representative to reduce the application to writing before considering it on its merits. The dangers of doing otherwise are obvious and are made manifest by what happened in this case.”*

And at paragraph 23:

*“One of the dangers of permitting an amendment without seeing its terms is that, having been given the green light to draft an amendment, a party may go beyond the terms which the Judge was led to understand might be included in the amendment he was permitting. In this particular case, the schedule later drawn for the Claimant in response to the Judge’s order sets out a very large number of allegations and incidents which span a period of many years and involve many different individuals and occasions.”*

35. In the case of **Vaughan v Modality Partnership [2021] ICR 535** it was held that:

*“This judgment may serve as another reminder that the core test in considering*

*applications to amend is the balance of injustice and hardship in allowing or refusing the application. The exercise starts with the parties making submissions on the specific practical consequence of allowing or refusing the amendment. If they do not do so, it will be much more difficult for them to criticise the Employment Judge for failing to conduct the balancing exercise properly.*

*The balancing exercise is fundamental. The Selkent factors should not be treated as if they are a list to be checked off.*

*An Employment Judge may need to take a more inquisitorial approach when dealing with litigants in person.“*

36. In **Office of National Statistics v Ali [2004] EWCA Civ 1363**, the Court of Appeal held that *“the question whether an originating application contains a claim has to be judged by reference to the whole document. That means that although box 1 may contain a very general description of the complaint and a bare reference in the particulars to an event (as in Dodd), particularisation may make it clear that a particular claim for example for indirect discrimination is not being pursued. That may at first sight seem to favour the less particularised claim as in Dodd, but such a general claim cries out for particulars and those are particulars to which the employer is entitled so that he knows the claim he has to meet.”*

37. In **Baker v Commissioner of Police of the Metropolis EAT 0201/09**, where the EAT upheld a tribunal’s decision that a claim form did not include a complaint of disability discrimination, despite the fact that the Claimant had ticked the box indicating that he was bringing that complaint. The rest of the form contained no particulars about any claim of disability discrimination. The EAT found that although a claimant could explain and elucidate a claim made in an ET1 by way of further particulars, the claim itself still had to be set out in the ET1. The EAT did however find that the tribunal in that case should have gone on to consider whether or not to allow an application to amend the claim to include a claim of disability discrimination.

### **On time limitations**

38. Time limits are not the determinative factor in an application to amend but are part of the consideration in determining the balance of prejudice in allowing the amendment compared to not allowing it.

39. Section 123 of the Equality Act 2010 contains the following provisions concerning time limits:

(1) *Subject to section 140B 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.*

(4) *In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—*

(a) *when P does an act inconsistent with doing it, or*

(b) *if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.*

40. In ***Kingston upon Hull City Council v Matuszowicz 2009 ICR 1170 CA*** the Court of Appeal considered the application of time limits in cases involving alleged failures to make a reasonable adjustment. The Court of Appeal noted that, for the purposes of claims where the employer was not deliberately failing to comply with the duty, and the omission was due to lack of diligence or competence or any reason other than conscious refusal, it is to be treated as having decided upon the omission at what is in one sense an artificial date. In the absence of evidence as to when the omission was decided upon, the legislation provides two alternatives for defining that point (see S.123(4) EqA). The first of these, which is when the person does an act inconsistent with doing the omitted act, is fairly self-explanatory. The second option, however, requires an inquiry that is by no means straightforward. It presupposes that the person in question has carried on for a time without doing anything inconsistent with doing the omitted act, and it then requires consideration of the period within which he or she might reasonably have been expected do the omitted act if it was to be done. In terms of the duty to make reasonable adjustments, that seems to require an inquiry as to when, if the employer had been acting reasonably, it would have made the reasonable adjustments. That is not at all the same as inquiring whether the employer did in fact decide upon doing it at that time. Both Lord Justice Lloyd and Lord Justice Sedley acknowledged that imposing an artificial date from which time starts to run is not entirely satisfactory, but they pointed out that the uncertainty and even injustice that may be caused could be, to a certain extent, alleviated by the tribunal's discretion to extend the time limit where it is just and equitable to do so. Sedley LJ added that 'claimants and their advisers need to be prepared, once a potentially discriminatory omission has been brought to the employer's attention, to issue proceedings sooner rather than later unless an express agreement is obtained that no point will be taken on time for as long as it takes to address the alleged omission'.

41. The onus is on the Claimant to satisfy the tribunal that it is just and equitable to extend the time limit (***Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434 Court of Appeal***).

42. Case law has made it clear that the Tribunal may be guided, in making a determination on time limits, by matters such as 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 party sued has cooperated with any requests for information; the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action. Cases have also made it clear that lists such as these are only a guide and in some cases some of those factors may not be relevant. Case law has also suggested that the length of, and reasons for, the delay; and whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh) are almost always relevant.

43. In all cases the Tribunal should take into account the balance of prejudice between the parties in granting or refusing an extension of time.

44. In cases involving one-off acts where there is no assertion of any continuing act, it will be usual for the tribunal to make a final determination on time limit, and determine whether or not time will be extended, within its judgment on the application to amend.

45. This approach might not be suited to a case in which the discriminatory act is alleged to be a continuing act. In such cases, given that they are fact sensitive, the issue of time

limit may be reserved to the final hearing even if the amendment is allowed. That is because a determination of the issue of whether or not an act is a continuing one would require the hearing of evidence and substantive determination.

46. In *Reuters Ltd v Cole EAT 0258/17* the EAT held that it was only necessary for the claimant to show a prima facie case that the primary time limit was satisfied (or that there were grounds for extending time) at the amendment application stage.

## **Conclusions**

47. The Claimant's applications to amend must each be considered upon an individual basis.

48. I mentioned earlier in these reasons that the application has been difficult to determine because the previous orders have elicited what mainly consist of further assertions of fact which repeat the narrative format of the original claim form.

49. I am mindful that the Claimant is a litigant in person and is not a lawyer. Applications to amend are a difficult arena for many litigants to navigate, including those with experience in Tribunals.

50. I am mindful of the overriding objective, that the Respondent is represented by expert employment lawyers, and that a more inquisitorial approach is necessary where litigants in person are involved.

51. I do make some generic observations about the applications to amend, which I have had in mind in considering all of them.

52. It was clearly envisaged at the last hearing that the Claimant wished to add matters which had occurred since the claim form was issued on 5 December 2022.

53. The Claimant has told me that she understood that she could do that if she made an application to amend. It appears that she has to a degree understood that to mean that the application would be granted as a matter of course, not as a matter of Judicial discretion. However, I remind the Claimant that the order stated that Tribunal would need to consider this as a formal amendment application.

54. My conclusions upon each application are as follows.

### **Amendment 1**

55. In the absence of agreement between the parties as to the identity of the Claimant's employer, I will add Yarrow Housing as a Second Respondent and the identity of the Claimant's employer shall be added to the list of issues for determination at the final hearing.

56. I would recommend that the parties give this greater thought before the final hearing. There is no organisation simply named Certitude registered in the UK. Certitude may be a trading name of Certitude Support, a registered society. There is no organisation named Yarrow Housing Limited registered in the UK, only Yarrow Housing, again a registered society as opposed to a limited company. The Claimant mentions from her contract Southside Partnership, and there is a limited company of that name registered in the UK. Support for Living is also the name of a registered society in the UK. I did not gain the impression today that either party really understood the group structure in place.

### **Amendment 2**

57. In my conclusion, the matters set out by the Claimant in Amendment 2 are simply minor additions of factual details to her existing claim of failure to make reasonable

adjustments, specifically that relating to allowing her to work from home (presently in the draft list of issues at 4.6.1).

58. The issue carries with it issues concerning time limits, but they are already listed as an issue in relation to all of the claims.

59. It seems to me that the Respondent has conceded that there would be little prejudice to them given their submission on this point concerning it being considered as part of the claim of failure to make a reasonable adjustment of allowing the Claimant to work from home.

60. The matter would not require a change to the draft list of issues as it is already within the draft at paragraph 4.9.

61. However, I consider the addition of the labels of direct discrimination and discrimination arising from disability to be different in nature.

62. These are new causes of action.

63. Ordinarily, adding a new label to an existing set of facts would not cause too much prejudice to the Respondent and ordinarily such applications are dealt with by consent or allowed.

64. However, the problem with the Claimant's application to amend is that the additional facts do not appear to explain either a claim of direct discrimination or a claim of discrimination arising from disability.

65. In terms of direct discrimination, I do not know what the act of discrimination is specifically or who the Claimant is suggesting she suffered less favourable treatment compared to. I cannot determine from her added wording how she is suggesting that the Respondent was motivated by her dyslexia to act in a particular manner.

66. In terms of discrimination arising from disability, I am uncertain what the act of unfavourable treatment complained of is, so far as that might be something distinct from the existing claim of failure to make reasonable adjustments.

67. My concern here is that the Claimant may be overcomplicating her claim, adding further matters which the Claimant, Respondent and the Tribunal may need to attend to and consider at additional time and expense, in circumstances where the claims are not clearly articulated. This would mean more lengthy preliminary hearings where there are already claims, related to broadly similar facts, which are far more clearly articulated.

68. For those reasons, I refuse the application to amend to add these matters as claims of direct disability discrimination or discrimination arising from disability; in my view the hardship and injustice to the Respondent in allowing those amendments exceeds the hardship and injustice to the Claimant in refusing those amendments in circumstances where there is an existing failure to make reasonable adjustments claim more clearly articulated concerning the Respondent's refusal to allow the Claimant to work from home.

### **Amendment 3**

69. The parties agreed during the hearing that the grievance was mentioned in the original claim form.

70. Both the issues about the grievances and the delay in receiving an outcome were mentioned in the original claim form but the issue is not noted in the draft issues in the case management order.

71. I categorise this therefore as (a) further information about something already in the claim form and (b) updating the claim to accommodate the fact that the grievance was not

resolved until some time after the claim was issued.

72. In my conclusion the Claimant should therefore be permitted to add the facts asserted in paragraph 3 to her claim as additional information. This should be added to the list of issues under direct disability discrimination as an alleged act of “failure to deal with the Claimant’s grievances raised in August 2022 in a timely manner”.

73. Time limits remain an issue, but this is already accommodated in the list of issues.

#### **Amendment 4**

74. The references in this amendment are in one respect simply adding further factual information about the pay issue which is already mentioned in the claim form (the periods for which the Claimant was paid SSP not full pay), which is already documented in the draft list of issues (paragraph 4.2.2).

75. I will therefore permit the addition of that information by way of amendment.

76. In terms of the addition of issues concerning the position of Manager at the Crescent, again I find that this was already referred to in the original claim form at paragraph 3 on page 15.

77. I would therefore allow the addition of this information by way of amendment as additional information concerning an existing complaint of failure to make a reasonable adjustment.

78. Redeployment is already covered in the draft list issues; see paragraph 4.6.2. There can be a simple addition to that issue to refer to redeployment generally but also to include specifically the Manager role at the Crescent referred to in the Claimant’s grievances of August 2022.

79. I take a different view in relation to the Claimant’s expression of these matters as indirect disability discrimination.

80. My concern here is that the Claimant may again be overcomplicating her claim, adding further matters which the Claimant, Respondent and the Tribunal may need to attend to and consider at additional time and expense, in circumstances where the claims are not clearly articulated. This would mean more lengthy preliminary hearings where there are already claims, related to broadly similar facts, which are far more clearly articulated.

81. For those reasons, I refuse the application to amend to add these matters as claims of indirect disability discrimination; in my view the hardship and injustice to the Respondent in allowing those amendments exceeds the hardship and injustice to the Claimant in refusing those amendments in circumstances where there is an existing failure to make reasonable adjustments claim more clearly articulated concerning the Respondent’s refusal to allow the Claimant to work from home.

#### **Amendment 5**

82. I will permit the addition of this further information so far as it related to the Manager’s position at the Crescent. This is simply more information about Amendment 4.

83. I refuse permission for leave to amend to include these issues as claims of direct or indirect discrimination for the same reasons as they were refused in relation to Amendment 4.

84. This amendment has no impact upon the draft list of issues beyond those already dealt with under Amendment 4.

**Amendment 6**

85. I believe the parties are in agreement that this is simply updating the claim to include reference to the failure to allow the Claimant to work from home after the claim form was issued.

86. I therefore allow this information to be added by way of amendment.

87. This amendment has no impact on the draft list of issues, working from home already being covered at paragraph 4.6.1.

**Amendment 7**

88. I refuse the Claimant's application to add the claim of harassment against Ms Hawtin.

89. These matters occurred both before and after the issue of the claim form on 5 December 2022.

90. The Claimant asserts that the took place between August 2022 and March 2023.

91. These matters were not mentioned at all in the original claim form.

92. The Claimant had mentioned harassment in the claim form but not in relation to Ms Hawtin. In fact she mentioned only two other individuals.

93. These are substantial new matters.

94. They were not brought up until the case management discussion on 12 September 2023.

95. The matters were therefore first raised 5 months after the alleged acts which is significantly outside of the time limitation for bringing such a claim.

96. I do not consider that the Claimant has given a good reason for not seeking to add this earlier.

97. The explanation that she did not know where this would fit in is not a good one in circumstances where the Claimant was aware of time limits and had been able to articulate claims of harassment previously against other individuals, albeit they have since been abandoned.

98. It would not in those circumstances be just and equitable to extend time to allow this part of the Claimant's claims to proceed.

99. Part of my concerns here are that the Claimant is adding further matters which the Claimant, Respondent and the Tribunal may need to attend to and consider at additional time and expense.

100. For those reasons, I refuse the application to amend to add these matters as claims of harassment

101. In my view the hardship and injustice to the Respondent in allowing those amendments exceeds the hardship and injustice to the Claimant in refusing those amendments in circumstances where the Claimant already has a large number of other claims against the Respondent which will proceed.

102. Paragraph 5 of the draft list of issues was already a paragraph which Employment Judge Frazer had noted was subject to this application.



103. Paragraph 5 of the draft list of issues can be deleted entirely.

**Amendment 8**

104. I refuse the Claimant's application to add the claim of failure to make a reasonable adjustment or victimisation in relation to the Team Leader vacancy at the Crescent around January or February 2023.

105. These matters occurred after the issue of the claim form on 5 December 2022.

106. The Claimant already has a generic claim of failure to make a reasonable adjustment.

107. These are substantial new matters.

108. They were not brought up until the application to amend was made on 20 October 2023.

109. The matters were therefore first raised more than 7 months after the alleged acts which is significantly outside of the time limitation for bringing such a claim.

110. I do not consider that the Claimant has given a good reason for not seeking to add this earlier.

111. The explanation that she did not know where this would fit in is not a good one in circumstances where the Claimant was aware of time limits and had been able to articulate her other claims.

112. It would not in those circumstances be just and equitable to extend time to allow this part of the Claimant's claims to proceed.

113. Part of my concerns here are that the Claimant is adding further matters which the Claimant, Respondent and the Tribunal may need to attend to and consider at additional time and expense.

114. The Claimant already has a claim of failure to make a reasonable adjustment by redeploying her closer to home.

115. For those reasons, I refuse the application to amend to add these matters as claims of further failures to make reasonable adjustments or victimisation.

116. In my view the hardship and injustice to the Respondent in allowing those amendments exceeds the hardship and injustice to the Claimant in refusing those amendments in circumstances where the Claimant already has a large number of other claims against the Respondent which will proceed.

**Amendment 9**

117. I refuse the Claimant's application to add the claim of direct discrimination in relation to the meeting in February 2023.

118. These matters occurred after the issue of the claim form on 5 December 2022.

119. These are substantial new matters.

120. They were not brought up until the application to amend was made on 20 October 2023.

121. The matters were therefore first raised more than 7 months after the alleged acts which is significantly outside of the time limitation for bringing such a claim.

122. I do not consider that the Claimant has given a good reason for not seeking to add this earlier.

123. The explanation that she did not know where this would fit in is not a good one in circumstances where the Claimant was aware of time limits and had been able to articulate her other claims.

124. It would not in those circumstances be just and equitable to extend time to allow this part of the Claimant's claims to proceed.

125. As I have already explained, part of my concerns here are that the Claimant is adding further matters which the Claimant, Respondent and the Tribunal may need to attend to and consider at additional time and expense.

126. For those reasons, I refuse the application to amend to add these matters as claims of further direct discrimination.

127. In my view the hardship and injustice to the Respondent in allowing those amendments exceeds the hardship and injustice to the Claimant in refusing those amendments in circumstances where the Claimant already has a large number of other claims against the Respondent which will proceed.

#### **Amendment 10**

128. The parties appear to be in agreement that so far as this is further information about the continuing failure to make reasonable adjustments to facilitate a return to work then this should be considered as an issue in the claim.

129. I therefore allow the amendment as additional facts in support of the failure to make reasonable adjustments claim which bring the claim up to date in so far as these update the claim to include the fact that the Claimant remained off work.

130. The addition of these facts to the claim has no impact upon the draft list of issues.

#### **Amendment 11**

131. So far as part of this application to amend relates to the contract issued in March 2023, which offered to the Claimant a higher rate of pay if she accepted new terms and condition of employment, I refuse the Claimant's application for leave to amend.

132. The complaint is that the Respondent failed to implement the pay rise unilaterally.

133. The contract was issued in March 2023.

134. The matter was first raised by the Claimant at the case management hearing in September 2023.

135. The claim was therefore first raised more than 5 months after the alleged failure.

136. Time would, in my conclusion, run from the time that the Respondent issued the contract for approval for the purposes of Section 123(3)(b) of the Equality Act 2010.

137. The Claimant has not provided a good reason for her failing to raise this earlier.

138. She did not read the contract. She refused to sign new terms. She made that decision based on inadequate information, but the cause of that inadequacy was her failure to read what had been put to her.

139. The Claimant has not presented to me any matters which indicate that she was

prevent from considering what was being presented to her at the time.

140. It would not in those circumstances be just and equitable to extend time to allow this part of the Claimant's claims to proceed.

141. As I have already explained, part of my concerns here are that the Claimant is adding further matters which the Claimant, Respondent and the Tribunal may need to attend to and consider at additional time and expense.

142. For those reasons, I refuse the application to amend to add these matters as claims unlawful deductions from wages.

143. In my view the hardship and injustice to the Respondent in allowing those amendments exceeds the hardship and injustice to the Claimant in refusing those amendments in circumstances where the Claimant already has a large number of other claims against the Respondent which will proceed.

144. There is however an issue which the Respondent acknowledges is already set out in the claim form, namely the 2022 payments of statutory sick pay, a claim of unlawful deduction from wages.

145. These should be added to the draft list of issues, as they are already contained in the claim form and have never been abandoned by the Claimant or received any judicial consideration.

Employment Judge T Knowles

14 March 2024