

# THE INDUSTRIAL TRIBUNALS

CASE REF: 1411/17

**CLAIMANT:** Orlagh O'Neill

**RESPONDENTS:**

1. Belfast Health & Social Care Trust
2. Mary Stirling
3. Maria McErlane
4. Chris McKee
5. Clare Lundy

## DECISION ON A PRE-HEARING AMENDMENT REVIEW

1. The tribunal is not satisfied that it is just and equitable to permit the claimant to adduce evidence of any alleged acts of discrimination, prior to those already alleged in late 2016, either as individual heads of claim or as part of an evidential timeline leading up to the headline events in this case.
2. The claimant's claim will therefore be confined to the events of late 2016; the evidence will be confined to those events, except where reference needs to be made to the history of her illness and the response to it by the respondents.
3. The claimant's claim may therefore be amended formally to include disability discrimination and failure to make reasonable adjustments arising from the events already pleaded as occurring in late 2016.
4. The claimant indicated at the hearing of this Pre-hearing Amendment Review that she does not now seek to pursue a claim of discrimination regarding part-time working.

**Constitution of Tribunal:**

**Employment Judge (sitting alone):** Employment Judge Browne

**Appearances:**

**The claimant was represented by Mr Keith Smith.**

**The respondents were represented by Ms A Ward, of the Directorate of Legal Services.**

## ISSUES AND CONCLUSIONS

1. The claimant lodged her complaint to the tribunal's office on 22 February 2017.
2. In it she, in terms now accepted by the respondent, alleged constructive unfair dismissal. She also alleged that such dismissal was in effect as a result of disability discrimination by one or more of the respondents.
3. The respondents have now accepted that the claimant was in fact suffering from the alleged disability at the relevant time.
4. The claimant has now stated that her proposed new heads of claim do not now include one for part-time working.
5. The clear import of the claimant's ET1 form relates to a sequence of events, commencing in the Autumn of 2016, which led to both a grievance being raised by the claimant, and ultimately to her resignation on 10 December 2016. She ascribes the basis of her grievance and her ultimate resignation to the treatment she received at the hands of the respondents to their discriminatory of her on the ground of her disability.
6. It appears to me that the claimant had therefore asserted the heads of claim in her original complaint to the tribunal in February 2017. There does not therefore in my view need to be further consideration of those heads of claim as regards their timeliness.
7. The main area of contention between the parties now focuses only on the wish of the claimant to expand the tribunal's enquiry to include incidents dating back as far as at least 2013.
8. There was only passing reference by the claimant in her from ET1 to an unresolved grievance by her in 2013, which included discrimination on the ground of her disability. The clear impression from the remainder of her claim form is that of constructive dismissal, tightly fastened to a specific sequence of events within a readily identifiable timeframe.
9. The claimant, who gave evidence to the tribunal, sought to introduce additional evidence of separate acts of discrimination in the past, stretching as far back as 2013, to demonstrate the discrimination as a continuing act. She told the tribunal that she did not think it was necessary to include detail of them at the outset, notwithstanding that she in her ET1 form had made specific allegations capable of readily identifying that claim as one of unfair constructive dismissal. Her assertions of other incidents were not in my view simply evidence in support of the main heads of claim already established.
10. In the terms of ***Selkent Bus Co. Ltd -v- Moore [1996] IRLR 661***, which established the guiding principles of such an application, it is clear that tribunals have a wide discretion to allow amendment. I am satisfied that, in light of the respondents' acceptance that the unfair constructive dismissal was made out in the original ET1, and that the claimant was disabled at the relevant time, the substance of a claim of

failure to make reasonable adjustments, which was, on the claimant's case, the catalyst for her resignation, was also made out in that claim.

11. The respondents in their initial response addressed in a timeline the history of how they dealt with the claimant's absence and return from illness, so, to that extent, they have to some degree anticipated the claimant's complaints.
12. I am of the view however that the claimant has failed to satisfy me that the scope of the tribunal's enquiry ought only on that basis to be extended to include the claimant's new assertions.
13. The claimant wishes to adduce evidence of what, in effect, were individual discriminatory acts, which she now seeks to utilise as stepping-stones along the path to her ultimate resignation. It seems to me that her failure even to refer to these in her ET1 cannot readily be overlooked.
14. She in her ET1 recognised and included the chain of events at the end of 2016 as amounting to individual discriminatory acts, which in my view sits in stark contrast to her failure to do so regarding those earlier alleged acts, which ought to have at least warranted reference.
15. If those acts were discriminatory, they, prima facie, were actionable in themselves, yet the claimant took no steps to bring proceedings, other than an historic unresolved grievance. No explanation was proffered by the claimant as to why she had not done so.
16. It is open to the tribunal in discrimination cases to extend the time-limit of three months where it is considers it to be "just and equitable" to do so.
17. The claimant is a highly intelligent professional. This case has been "live" for well over a year before this application was made, with no reference to these new heads of claim, bearing in mind that the claimant was well aware of the specifics of a case of discrimination case, as evidenced by her focused narrative in her original ET1.
18. I therefore am not satisfied that it is just and equitable to permit her to adduce evidence of the earlier alleged acts of discrimination, either as heads of claim or as part of a timeline leading up to the headline events in this case. Her claim will therefore be confined to the events of late 2016; the evidence will be confined to those events, except where reference need to be made to the history of her illness and the response to it by the respondents.
19. The claimant's claim may therefore be amended formally to include disability discrimination and failure to make reasonable adjustments within the timeframe of late 2016.
20. The claimant indicated at the hearing of this Pre-Hearing Amendment Review that she does not now seek to pursue a claim of discrimination regarding part-time working.
21. The hearing timetable has now been set for this case, but has been interrupted by consideration of this application. The original timetable should therefore be amended to allow the parties four weeks from the date of this decision being promulgated. That is shorter than the six weeks originally indicated, in light of the

fact that the respondents now accept that the claimant was disabled at the material time. The parties must ensure between them that the case is ready as per the existing timetable for hearing from **15-19 October 2018**.

**Employment Judge:**

**Date and place of hearing: 22 May 2018, Belfast.**

**Date decision recorded in register and issued to parties:**