



EMPLOYMENT TRIBUNALS

Claimant: Ms Jabeen Haque

Respondent: Mitie Care and Custody Limited

Heard at: London South Employment Tribunal (by CVP)
On: 29 September 2022

Before: Employment Judge Abbott

Representation

Claimant: in person

Respondent: Mr Francis Mortin, barrister, instructed by Dentons UK and Middle East LLP

RESERVED JUDGMENT FOLLOWING OPEN PRELIMINARY HEARING

1. Throughout the period from June 2019 to April 2020, the Claimant had a disability (a mental impairment) within the meaning of section 6 of the Equality Act 2010.
2. The Tribunal has jurisdiction to hear the complaints of discrimination arising from disability and failure to make reasonable adjustments as pleaded.
3. The complaint of discrimination and/or harassment on grounds of religion is dismissed as the Tribunal does not have jurisdiction to hear it.
4. The complaint of discrimination and/or harassment on grounds of race is dismissed as the Tribunal does not have jurisdiction to hear it.
5. The complaint of discrimination and/or harassment on grounds of sex is dismissed as the Tribunal does not have jurisdiction to hear it.
6. The Claimant's application to amend the claim to rely upon her dismissal as an act of discrimination on grounds of religion, race and sex is refused.

REASONS

Introduction

1. This is my judgment following an Open Preliminary Hearing held by video on 29 September 2022, further an order made by Employment Judge Self at a Case Management Preliminary Hearing on 28 February 2022. Paragraph 3 of that order provided that, time permitting and subject to my discretion, the hearing was to deal with the following:
 - a. Any application to amend the Claimant's case;
 - b. Any time limit issues that are appropriate to be determined;
 - c. Whether or not the Claimant is a disabled person pursuant to section 6 of the Equality Act 2010 (**the Act**);
 - d. Further case management including finalising a List of Issues.
2. In the time available, it was possible to hear evidence and submissions on points a)-c) above but there was insufficient time for me to give an oral judgment. I apologise for the delay in producing this reserved judgment, which is due to workload pressures. Further case management is dependent on my decisions on the substantive matters, and a preliminary hearing will be listed for that purpose.
3. I heard oral evidence from the Claimant, Ms Haque, and from Mr Ben Saunders on behalf of the Respondent. I have also read three witness statements submitted by the Claimant from Dr von Fragstein, Mr Darling-Holmes and Ms Little; however, as these witnesses did not attend to give oral evidence, I am only able afford their evidence limited weight and, in any event, the issues they addressed were, in my judgement, not relevant to the issues I had to decide at this hearing.
4. The issues are somewhat interrelated. Logically it makes sense in this judgment to deal first with the question of disability, then with time limits and the Claimant's application to amend.

Is the Claimant a disabled person pursuant to section 6 of the Equality Act 2010?

Relevant law

5. Section 6(1) of the Act provides that:

“A person (P) has a disability if – (a) P has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities”.
6. Supplementary provisions are found in Schedule 1 to the Act. Paragraph 2 of Schedule 1 provides, insofar as relevant, that:

“(1) The effect of an impairment is long-term if – (a) it has lasted for at least 12 months, (b) it is likely to last for at least 12 months, or (c) it is likely to last for the rest of the life of the person affected.

(2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

(3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed...”

7. Paragraph 5 of Schedule 1 provides, insofar as relevant, that:

“(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if - (a) measures are being taken to treat or correct it, and (b) but for that, it would be likely to have that effect.

(2) “Measures” includes, in particular, medical treatment and the use of a prosthesis or other aid...”

8. It is the practice of the Employment Tribunal, consistent with paragraph 12 of Schedule 1, to also take account of ministerial guidance, specifically the *“Equality Act 2010 Guidance: Guidance on matters to be taken into account in determining questions related to the definition of disability”* (May 2011) (**the Guidance**), and I have had regard to the Guidance in making my decision. I have also had regard to the guidance on the meaning of “disability” included in Appendix 1 to the *“Equality and Human Rights Commission: Code of Practice on Employment”* (2011).

9. In *Goodwin v Patent Office* [1999] ICR 302, the then President of the Employment Appeal Tribunal, Mr Justice Morison, provided guidance on the proper approach for the Tribunal to adopt, holding that the following four questions should be answered, in order:

- a. Does the claimant have an impairment which is either mental or physical? (‘the impairment condition’)
- b. Does the impairment affect the claimant's ability to carry out normal day to day activities, and does it have an adverse effect? (‘the adverse effect condition’)
- c. Is the adverse effect upon the claimant's ability substantial? (‘the substantial condition’)
- d. Is the adverse effect upon the claimant's ability long-term? (‘the long-term condition’)

However, Morison J. warned of the risk of disaggregating the four questions, noting that it is important to look at the overall picture.

10. The relevant point(s) in time for the assessment of whether the claimant is

disabled is the time of the alleged discriminatory act(s): *Cruickshank v Vaw Motorcast Ltd* [2002] ICR 729. In this case, the relevant period is from June 2019 (when the Claimant alleges a health assessment was carried out but its recommendations not implemented) through to the Claimant's dismissal (which is alleged in the ET1 to have been based on the Claimant's illness) in April 2020.

Findings of fact

11. The facts relevant to the issue of disability are, I find, as follows. Where it has been necessary for me to resolve any conflict of evidence, I indicate how I have done so at the relevant point. References to “[xx]” are to page numbers in the Bundle of Documents. Only findings of fact relevant to this issue, and those necessary for me to determine, have been referred to below. I have not referred to every document I have read and/or was taken to in the findings below, but that does not mean such documents were not considered if referred to in the evidence and/or in the course of the hearing.
12. Ms Haque first suffered from depression and anxiety in July 2009 and suffered further episodes in September 2014 and March/April 2017. At the time of the 2017 episode, Ms Haque's PHQ-9 score met the threshold for “severe depression” and her GAD-7 score met the threshold for “severe anxiety”; she was referred for counselling [84-85].
13. Ms Haque commenced her employment with the Respondent in June 2017. Whilst Ms Haque suffered from some issues with neck pain and ongoing struggles with emotions and wellness (particular as a result of caring for her sick mother), her day-to-day working life was not significantly impacted by her physical or mental health during the time of her employment with the Respondent prior to January 2019.
14. Following allegations having been made in late 2018 against Ms Haque that she had bullied and harassed a colleague in the workplace, and an investigation meeting that took place on 2 January 2019, Ms Haque went off sick from work. Notes from a GP consultation on 14 January 2019 [95] record that Ms Haque presented with neck pain and anxiety, and the GP diagnosed a stress-related problem. Ms Haque was prescribed medication for her neck issues (diazepam 2mg to be taken as required for neck spasm; naproxen 500mg 2x daily for pain) but not, at that stage, any anti-depressant medication. However, following a follow-up appointment on 26 February 2019, Ms Haque was prescribed such a medication (citalopram 10mg 1x daily).
15. On 28 January 2019 Ms Haque emailed Danny Spencer (Operations Director) regarding the investigation against her (the email is at [214-215]). Ms Haque gave oral evidence that, due to her mental health, this email took a considerable amount of time to write. She was unable to be clear exactly how long, but given it was not sent until 26 days after the investigation meeting and the medical evidence from around that time, I accept Ms Haque's evidence that the time it took to prepare and send this email was substantially impacted by the impact of her mental health on her ability to concentrate.

16. With Ms Haque still off work by the end of May 2019 (with GP fit notes referring to a stress-related problem and neck pain), the Respondent organised an Occupational Health assessment. The report from that assessment, carried out on 4 June 2019, is at [219-221]. At that stage, Ms Haque's symptoms were poor sleep, reduced appetite, low mood, being emotional, greatly reduced concentration levels, reduced activity levels, low energy levels, neck pain, reduced mobility due to pain and stiffness, difficulty bending and stretching, reduced memory recall, occasional numbness and pins and needles from her neck, and not currently driving due to reduced concentration and lack of focus. As Ms Haque accepted in her oral evidence, there was some variability in these symptoms with some days being worse than others: on bad days, Ms Haque would struggle to keep on top of domestic chores such as cooking, washing and cleaning, and on particularly bad days (2-4 per month) she would be unable properly to engage. During this time, Ms Haque continued to play an active role in her mother's care, largely by being physically present as a companion, but refrained from socialising with friends and other family members.
17. The OH report concluded that Ms Haque was not fit to return to work at that stage, nor could the assessor predict when she would be fit to return, though the assessor considered Ms Haque would be fit to continue in her current post in the future. The report records that Ms Haque had a medical certificate signing her off work until 20 July 2019 and was due to see her GP prior to that expiring.
18. In July 2019 the Respondent reached out to Ms Haque to seek to organise a welfare meeting. There was a delay in the meeting taking place due to issues raised by Ms Haque [224-248]. Ultimately a meeting scheduled for 13 September 2019 took place in Ms Haque's absence [249-252]. Ms Haque provided detailed comments in relation to the Respondent's letter of 23 September 2019 regarding this meeting by email on 27 September 2019 [265-268].
19. On 8 October 2019 Ms Haque had a further Occupational Health consultation, the report of which is at [274-277]. It indicates that Ms Haque had stopped taking anti-depressants having had a good response, but following the Respondent's recent engagement with her with a view to returning to work and her interpretation of how that had been handled, the symptoms of anxiety and depression had returned, and the assessor had recommended Ms Haque consider re-initiating anti-depressant treatment and initiating talking therapy. The report recorded that Ms Haque's concentration and motivation remained significantly affected at that time. The assessor recommended a phased return to work from mid-November 2019 on the basis that these treatments were sought, and provided a list of recommended adjustments.
20. Following the OH assessment, Ms Haque did return to her GP and was again prescribed citalopram, and was referred for Cognitive Behavioural Therapy (CBT).
21. A capability meeting was held on 18 October 2019 and a further meeting on 19 November 2019. Ms Haque took detailed notes of both of these

meetings. Following the second meeting, Ms Haque had a consultation with her GP who issued a revised fit note advising that Ms Haque could now return to work on a phased basis from 25 November 2019 [298] (she had previously been signed off until 14 January 2020 [278]).

22. Ms Haque returned to work on 25 November 2019 and was immediately suspended pending the outcome of disciplinary proceedings arising from the allegations made in late 2018. Ms Haque participated fully in those proceedings, including writing a detailed statement on or around 2 December 2019 [305-310], extensive comments to the minutes of the investigation meeting on or around 4 December 2019 [187-199], a detailed statement on or around 25 February 2020 [330-334], attending the disciplinary hearing on 26 February 2020 and preparing a detailed response on or around 29 February 2020 [478-490].
23. Ms Haque was dismissed, without notice, on 14 April 2020 [497-500]. She appealed by email dated 19 April 2020 [504] but the outcome was upheld.
24. During the period of her suspension from work to dismissal (25 November 2019 to 14 April 2020) Ms Haque did not have any appointments with her GP ([102]) but did attend CBT sessions in January to March 2020 [94,97].

Conclusions

(a) The impairment condition

25. There is no dispute that Ms Haque's anxiety and depression diagnosis qualified as a "mental impairment" for the purposes of section 6(1) of the Act at the relevant time.

(b) The adverse effect condition

(c) The substantial condition

26. It is convenient to consider these conditions together. In considering them, I have had particular regard to the illustrative and non-exhaustive list of factors given in the Appendix to the Guidance.
27. As set out in Section D of the Guidance, "normal day-to-day activities" includes such activities as general household tasks, taking part in social activities and general work-related activities.
28. There is no doubt, based on the factual findings above, that Ms Haque's ability to carry out normal day-to-day activities in the period from early January 2019 to 25 November 2019 was substantially adversely impacted, and I did not understand the Respondent to really dispute this. Throughout this period Ms Haque was signed off work, was withdrawn from social activities and struggled with household tasks as a result of low mood.
29. Regarding the period after Ms Haque returned to work on 25 November 2019 up until her dismissal on 14 April 2020, I come to the same conclusion. This is because:

- a. The OH report in October 2019 recognised that her concentration and motivation remained significantly affected at that time and her ability to return to work was contingent on being able to initiate antidepressant medication and (in time) talking therapies – as Ms Haque then, in fact, did.
 - b. Consistent with that report, I find on the balance of probabilities that, but for the antidepressant medication and CBT, Ms Haque would have continued to have suffered the adverse effects that she is accepted to have had in the period up to 25 November 2019.
 - c. Accordingly, applying paragraph 5 of Schedule 1 to the Act, the impairment is to be treated as having a substantial adverse effect on the ability of Ms Haque to carry out normal day-to-day activities.
30. The same conclusion can also be reached by an alternative analysis if, contrary to my finding above, the substantial adverse impact on Ms Haque had ended by around 25 November 2019 even without the medical treatment:
- a. Paragraph 2(2) of Schedule 1 to the Act provides that, if an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.
 - b. In view of Ms Haque's history of episodic anxiety and depression brought on by stressful situations (such as, in 2019, the grievance brought against her), I find that, as at 25 November 2019 and through to at least 14 April 2020, it is likely (i.e. it could well happen) that a recurrence may occur.

(d) The long-term condition

31. It follows from my conclusions above that, by the time of Ms Haque's dismissal in April 2020, the long-term condition was met. This is because the impairment is treated as having lasted for at least 12 months prior to the date of dismissal (the latest episode having commenced in January 2019; dismissal coming in April 2020).
32. Ms Haque also relies on events from around June 2019, specifically a failure to make reasonable adjustments following an OH report, similar issues following the OH report in October 2019, and in relation to the conduct of welfare / capability meetings from July to November 2019. These all fall within a period of less than 12 months after the onset of the latest episode of depression and therefore paragraph 2(1)(a) of Schedule 1 to the Act does not apply. I do not consider the 2009, 2014 or 2017 episodes to assist Ms Haque because, though there is evidence of impairment in 2017, there was no direct evidence before me as to how Ms Haque was affected during those episodes – in particular, no evidence of any prolonged absences from work.
33. However, I conclude that paragraph 2(1)(b) of Schedule 1 to the Act does apply as at the date of each of these events. This is because:

- a. At the time of Ms Haque's OH report in June 2019, she had already been off work for around 5 months, was signed off for a further 1.5 months, and the assessor was unable to predict when she would be fit to return to work. I find that, at that time, it was likely (i.e. it could well happen) that Ms Haque would still be unfit for work for a period such that she would have been off work for more than 12 months – and I consider unfitness to work to amount to a substantial adverse effect on a normal day-to-day activity. On the same basis, it is likely that the other adverse effects Ms Haque was experiencing (e.g. with household tasks) would have persisted for more than 12 months in total, particularly if the effects of medical treatment were (as they are required to be) ignored.
- b. By October / November 2019, Ms Haque's fitness to work was conditional on her medical treatment (the effects of which are required to be ignored). I therefore consider it likely also at this time that (ignoring the effects of medical treatment) the adverse effects Ms Haque was experiencing would have persisted for more than 12 months in total, particularly bearing in mind the passage of time since the beginning of the episode in January 2019.

Conclusion on disability

34. I therefore conclude that, at all relevant times (i.e. throughout the period from June 2019 to April 2020), Ms Haque had a disability (a mental impairment) within the meaning of section 6 of the Equality Act 2010.

Time limits: Equality Act claims

35. In this case, Ms Haque raises complaints of race, religion and sex discrimination, in each case argued either to be direct discrimination (contrary to s.13 of the Act) or harassment (contrary to s.26 of the Act). As originally formulated, the allegations are clarified in paragraph 32 of EJ Self's Order [48-49].
 - a. In respect of race discrimination, the acts complained of occurred in 2017 and 2018, the latest acts being in July 2018.
 - b. In respect of religious discrimination, the only act complained of occurred in December 2017.
 - c. In respect of sex discrimination, the acts complained of occurred in 2017 and 2018, the latest acts being in summer 2018.
36. Ms Haque also raises complaints of disability discrimination, argued to be failure to make reasonable adjustments (contrary to s.20(3) and s.21 of the Act) and discrimination arising from disability (contrary to s.15 of the Act). The acts complained of under this claim took place between June and November 2019, plus Ms Haque's dismissal in April 2020.

Relevant law

37. Section 123(1) of the Act provides, insofar as relevant, that a complaint under the Act 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.

38. Under section 123(3), conduct extending over a period is treated as done at the end of the period, and a failure to do something is to be treated as occurring when the person in question decided on it.
39. In this case, even assuming for present purposes that all of the acts complained of under each separate head of discrimination can be linked together as continuing acts, all other than the dismissal itself took place considerably more than 3 months before the claim was presented in June 2020. Accordingly, the relevant question is whether it is 'just and equitable' to allow the complaints relating to all incidents other than dismissal to be presented when they were.
40. In considering this question, the Tribunal has a wide discretion but must take account of all relevant factors, including considering the length and reason for the delay and whether the delay has prejudiced the respondent in respect of matters such as investigation and obtaining evidence (see *e.g. Secretary of State for Justice v Johnson* [2022] EAT 1). The burden of persuasion is on the claimant (*Robertson v Bexley Community Centre* [2003] IRLR 434).

Findings of fact

41. The facts relevant to this issue are, I find, as follows.
42. In the ET1, the dismissal is pleaded as a detriment only in relation to Ms Haque's illness, and not related to race, religion and/or sex. Ms Haque sought to argue otherwise, but that is the clear reading of the ET1 as filed which was prepared by a legally qualified individual. Of particular relevance are the reference in the first sentence to "based on my illness" (bundle page 15) and the absence of references to the dismissal in the sections headed "race discrimination" and "gender discrimination" (bundle pages 19-20).
43. Ms Haque did not raise any grievance relating to race, religion or sex discrimination prior to February/March 2020. It was Ms Haque's evidence that she feared recriminations if she had raised these issues at the time they happened; however, I do not accept that evidence. Ms Haque was employed in a senior role (Head of Clinical Governance) and at least some of the individuals complained of were in more junior positions to Ms Haque. I find that Ms Haque made a conscious decision, without duress, not to raise the allegations at the time to avoid damaging her working relationships.
44. From January to November 2019, Ms Haque was suffering from ill health which would have substantially affected her ability to raise a discrimination complaint. From 25 November 2019, with the assistance of medical treatment, Ms Haque was not so impaired.
45. During Ms Haque's absence from work from January to November 2019, responsibility for supporting her, understanding what welfare support was required, and determining whether there was a capability issue, fell to Mr Ben Saunders, with the support of Ms Gemma Marchant (ER and Change

Partner). Mr Saunders was not involved in the subsequent disciplinary process that led to Ms Haque's dismissal.

46. Immediately upon her return to work on 25 November 2019, Ms Haque was suspended pending an investigation into alleged misconduct. The investigation and disciplinary process continued until April 2020 when Ms Haque was dismissed.
47. The last of the acts complained of in respect of race discrimination took place 23 months before the claim was presented, and around 5 months before Ms Haque's ill health began. One of the individuals complained of, Mrs Susan Cunningham, passed away in 2021. The individuals involved were not involved in the disability discrimination allegations, nor the dismissal.
48. The last of the acts complained of in respect of religious discrimination took place 30 months before the claim was presented, and around 12 months before Ms Haque's ill health began. Mrs Cunningham is also alleged to have been involved in this act, as well as Mr Seb Stewart who is no longer employed by the Respondent. The individuals involved were not involved in the disability discrimination allegations, nor the dismissal.
49. The last of the acts complained of in respect of sex discrimination took place around 22-23 months before the claim was presented, and around 5-6 months before Ms Haque's ill health began. The individuals involved were not involved in the disability discrimination allegations, nor the dismissal.

Conclusions

50. I will deal first with the race, religion and sex discrimination claims. I can deal with them together. For each of these claims, the alleged incidents took place a very considerable time before the complaint was presented (upwards of 22 months), much more than the three-month primary time period. I have found that the reason for delay was a conscious decision, without duress, on the part of Ms Haque. I consider that the Respondent would be significantly prejudiced by having to deal with these complaints now given the passage of time, and in particular where some of the individuals involved have either left the business (Mr Stewart) or passed away (Mrs Cunningham).
51. On that basis, I am not persuaded that it is 'just and equitable' to extend the period for these complaints. Accordingly, the complaints of race, religion and sex discrimination will be dismissed on the basis that the Tribunal does not have jurisdiction to hear them.
52. In respect of the disability discrimination allegations, the situation is different. Other than the dismissal, the alleged incidents are outside the three-month primary time period by a few months. However, I have found that Ms Haque's ability to raise a discrimination complaint was substantially impaired by her ill health up to 25 November 2019, so a delay in raising complaints up to that date is explicable on that basis. Upon her return to work on that date, Ms Haque was immediately made the subject of a disciplinary investigation and, understandably, her focus was on that

process rather than on raising complaints of disability discrimination. I consider that is a justifiable excuse for delay. I do not consider that the Respondent will be substantially prejudiced by having to deal with these complaints: there will be a disability discrimination complaint to be heard at the Final Hearing in relation to the dismissal in any event; and, more importantly, the main alleged protagonist in the disability discrimination allegations, Mr Ben Saunders, remains available to the Respondent (and, indeed, gave evidence for the Respondent at this Preliminary Hearing).

53. On balance, therefore, I am persuaded that it is 'just and equitable' to extend the period for all of the disability discrimination complaints raised in the claim – the relevant incidents being those elaborated upon in paragraphs 15-19 of Ms Haque's Claims Statement of 12 April 2022 (which the Respondent confirmed are all within the scope of the claim as originally pleaded).

Application to amend

54. By an email dated 12 April 2022, Ms Haque requested to amend her claim in accordance with a "Claims Statement" attached thereto. The Respondent accepted that, for the most part, the Claims Statement simply restated the claim as already pleaded so no amendment was necessary, and took no objection to the relabelling of the discrimination claims as harassment in the alternative. The Respondent however raised two objections.
55. The first objection was to the third, fourth and fifth sentences in paragraph 6, which were an attempt on the part of Ms Haque to offer a comparison to a colleague named Janet whose accusation of bullying and harassment was, it is alleged, managed informally by a director of the service. On challenge, Ms Haque agreed that this point could fall out.
56. The second objection was to Ms Haque pleading the dismissal as an act of discrimination on grounds of race, religion and sex. As I have already found (paragraph 42 above), in the ET1 the dismissal was pleaded only as an act of discrimination on grounds of disability.

Relevant law

57. When considering an application to amend a claim, the Tribunal must always carry out a careful balancing exercise of all the relevant factors, having regard to the interests of justice and to the relative hardship that would be caused to the parties by granting or refusing the amendment. In the case of *Selkent Bus Co Ltd v Moore* [1996] ICR 836, the then President of the EAT explained that relevant factors would include:
- a. the nature of the amendment — applications to amend range, on the one hand, from the correction of clerical and typing errors, the addition 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 that change the basis of the existing claim. The tribunal has to decide whether the amendment sought is one of the minor matters or a substantial alteration pleading a new cause of action;

- b. the applicability of time limits — if a new claim or cause of action is proposed to be added by way of amendment, it is essential for the tribunal to consider whether that claim/cause of action is out of time and, if so, whether the time limit should be extended; and
- c. timing and manner of the application — an application should not be refused solely because there has been a delay in making it as amendments may be made at any stage of the proceedings. 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.

58. More recently, the EAT in *Vaughan v Modality Partnership* [2021] ICR 535 emphasised the need to focus on the balance of hardship and injustice.

Conclusions

59. In this case, I consider the following factors to be relevant.
60. The nature of the amendment is a substantial alteration, pleading new causes of action. I have already determined that the race, religion and sex discrimination complaints already pleaded should be dismissed. Allowing this amendment would bring back those causes of action and, in all likelihood (even if only as background evidence) the historical allegations of race, religion and sex discrimination that I consider the Respondent would be substantially prejudiced in dealing with. As Mr Mortin put it in submissions, this is not just tacking on an extra avenue for success on the same facts, but widening the scope of the inquiry to unlinked areas.
61. The complaint is considerably out of time. Where a complaint is introduced by an application to amend, it is treated as brought at the date of the application, here 12 April 2022. That is almost 2 years after the dismissal. If I was to allow the amendment I would have to be satisfied it is 'just and equitable' to extend time (applying the test set out in the Time Limits section of this judgment). The length of delay is considerable and no good explanation has been provided for why. As mentioned in the previous paragraph, it is inevitable that, in order to make out the claim, Ms Haque will rely as background the historical allegations of race, religion and sex discrimination that I consider the Respondent would be substantially prejudiced in dealing with.
62. The initial claim was drafted by a legal professional and clearly ties the dismissal to disability, not to the other protected characteristics. Ms Haque was unable to provide a credible explanation for why it was drafted in that way if the intention was to allege the dismissal was also an act of discrimination on grounds of race, religion and/or sex. Nor was any credible explanation offered for not applying to amend earlier (the claim having been presented in June 2020, 22 months before the application was made).
63. The reason for dismissal will have to be determined for the purposes of the unfair dismissal claim. However, that in itself does not justify advancing a menu of potential reasons via different discrimination complaints. It also means that there is the possibility of something coming out in documentary

disclosure or evidence that supports race, religion or sex being the reason for dismissal – in which case, an amendment application in reliance on such evidence is an option available to Ms Haque at a later stage.

64. Balancing all the factors, I consider that the balance of injustice and hardship lies more on the Respondent than on Ms Haque if the amendment is permitted. I therefore refuse the application to amend.

Employment Judge Abbott
Date: **8 December 2022**

JUDGMENT SENT TO THE PARTIES ON
Date: **9 December 2022**

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FOR THE TRIBUNAL OFFICE

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