Neutral Citation Number: [2024] EAT 75

Case No: EA-2021-SCO-000114-DT

EMPLOYMENT APPEAL TRIBUNAL

52 Melville Street
Edinburgh EH3 7HF

Date: 13 May 2024

Before :

THE HONOURABLE LORD STUART

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Between :

MR JAMES JOHNSTONE **MRS CHRISTINE JOHNSTONE**	**Appellants**
- and -	
GLASGOW CITY COUNCIL	**Respondent**

- -
- -

Mr Joshua Jackson (instructed by Balfour + Manson for the **Appellant**
Mr Stephen Miller (instructed by Glasgow City Council for the **Respondent**

Hearing date: 11 September

- -

JUDGMENT

SUMMARY

Procedure – Amendment – Whether Employment Judged erred in exercise of discretion in refusing certain proposed amendments.

The Claimants, husband and wife, were foster carers employed by the respondents. Following, and in connection with, their care of a particular child, the Claimants brought materially identical claims against the respondents arising out of, amongst other things, unlawful detriment suffered on account of making disclosures and/or health & safety concerns, contrary to sections 44 and 47B of the **Employment Rights Act 1996**. After significant procedure in the claims, the claims called before an Employment Judge on the question of whether proposed amendments by the claimants should be allowed. Having heard parties, the Employment Judge allowed some of the proposed amendments and refused others. The claimants appealed that decision in respect of a limited number of refused proposed amendments.

Held: Dismissing the appeal, the decision whether to allow amendment, whether in whole or in part, was a matter of judicial discretion. In the exercise of that discretion the Employment Judge had correctly identified and applied the appropriate legal test, had not taken into consideration any irrelevant considerations nor failed to take into account any relevant considerations and had reached a conclusion, in all the circumstances, that was open to them.

THE HONOURABLE LORD STUART:

Introduction

1. This judgement relates to two identical appeals against the decision of EJ McManus dated 4 October 2021, following a preliminary hearing on 14 September 2021, refusing, in part, the claimants' applications to amend their claims against the respondents.

2. The claimants are foster carers. They are, or were at the material time, employed by the respondents and had been since early 2011. As foster carers the claimants provided a mixture of full time and short break foster care placements for young people with particularly challenging behaviour. This case arises in connection with the claimants' care of one particular child, referred to as "A". The claimants cared for A between June 2015 and May 2016, when A was removed from the claimants' care. The claimants lodged claims against the respondents in June 2016.

Original claims

3. The nature of the claimants' original claims was set out in what appear to be identical Papers Apart attached to the claimants' respective ET1 Forms. The Papers Apart addressed, over almost four pages, (i) the parties, (ii) the claimants' role as foster carers, including daily contact and weekly meetings with the respondents, (iii) a reasonably detailed history of the claimants' involvement with A and the claimants' interactions with the respondents arising from their involvement with A, (iv) the preliminary issues of jurisdiction and the claimants' employment status, (v) unlawful deduction of wages, (vi) unlawful detriment suffered on account of making disclosures and/or health and safety concerns, contrary to section 43B and 44 of the **Employment Rights Act 1996** and (vii) the remedies sought by the claimants.

4. In response, the respondents lodged ET3s with detailed, seven-page Papers Apart addressing the matters raised by the claimants and, in particular, in relation to the claimants' involvement with A. The ET3s denied that the claimants were workers and therefore benefitted from the protection afforded by sections 43 and 44, **Employment Rights Act 1996 ("ERA")**.

Procedure to date

5. Following initial procedure, a preliminary hearing was held on 1 and 2 June 2017 to deal solely with the question of whether or not the claimants were employees of the respondents, workers providing a service to the respondents or neither. By Judgement promulgated 1 August 2017 the Employment Tribunal held that the claimants were employees of the respondents. By judgement promulgated 27 August 2020, the Employment Appeal Tribunal dismissed the respondents' appeal of the ET judgement and the cases were remitted back to the ET.

6. On 19 December 2019, whilst the claims were pending before the EAT, applications were made by the claimants to amend their respective ET1s. Those applications were opposed by the respondents. By correspondence dated 7 January 2020 the ET declined to hear the claimants' applications to amend whilst the claims were pending before the EAT.

7. Following the claims being remitted back to the ET, on 14 January 2020, having heard parties, the ET ordered the claimants to provide further and better particulars of their respective claims and thereafter allowed the respondents a period to answer. At a preliminary hearing on 25 June 2021 the ET ordered the claimants to submit a formal application to amend and fixed a preliminary hearing on 14 September 2021 to consider the claimants' applications to amend. As above, this appeal arises out of EJ McManus's refusal, in part, of the claimants' applications to amend.

Judgement of EJ McManus

8. At paragraphs 1 to 10 EJ McManus sets out the background to the claims. At paragraphs 11 to 23 EJ McManus sets out the relevant law. No challenge is made on the basis that EJ McManus set out the wrong legal test. At paragraph 24 EJ McManus makes reference to the parties' submission. For the purposes of this appeal it is relevant to note that the claimants' submission before EJ McManus grouped the proposed amendments into six numbered categories and that it is only EJ McManus's judgement in respect of the first category, referred to as "Amendment 1" that is subject to appeal. Between paragraphs 25 and 39 EJ McManus sets out her general consideration of the proposed amendments and thereafter at paragraphs 40 to 91 addresses the specific categories of proposed amendments, with paragraphs 40 to 55 addressing "Amendment 1".

9. Amendment 1, as per the claimants' skeleton argument before EJ McManus, was described as "Additional allegations of detriment in relation to sections 44 and 47B **ERA** [[Amended Paper Apart, paragraphs] 30, 33, 35-36, 41(c)-(d)/(f)-(g)]."

Submissions of the parties/grounds of appeal

Claimants

10. An application to appeal EJ McManus's judgement was made by the claimants and grounds of appeal dated 11 November 2021were lodged. Those grounds were restricted to paragraphs 9, 26-30, 36, 38(e)-(g) and 41(c) and (g) of the Amended Papers Apart before EJ McManus. Permission to proceed with the appeal was refused under Rule 3(7), **Employment Appeal Tribunal Rules 1993 ("EAT Rules")** for the reasons set out in the EAT letter dated 6 December 2021 sent to the claimants' agents. Thereafter a hearing was sought and took place under Rule 3(10), **EAT Rules**. Following that hearing, permission to proceed with the appeal was granted.

11. Before me the claimants' lodged a skeleton argument. Again, the appeal sought was restricted to paragraphs 9, 26-30, 36, 38(e)-(g) and 41(c) and (g) of the Amended Papers Apart.

12. At this stage it is relevant to note that in terms of the structure of the Amended Papers Apart paragraphs 9, 26-30 and 36 fall under the heading 'Factual Background' and paragraphs 38(e)-(g) and 41(c) and (g) are further averred detriments.

13. The factual paragraphs 26, 27 and 28 each appear to refer to a specific disclosure between the claimants and respondents on a single day. The detriments averred at paragraphs 38(e), 38(f) and 38(g) arise, respectively, from the factual paragraphs 26, 27 and 28. The factual paragraphs 30 and 36, appear to relate to the claimants being under 'scrutiny' during March and April (paragraph 30) and the exclusion from weekly meetings (paragraph 36, referring back to the proposed amendments in paragraph 9). The detriments averred in paragraphs 41(c) and 41(g) arise, respectively, from the factual paragraphs 30 and 36. Thus the relevant factual paragraphs and associated detriments appear to stand or fall together.

14. The factual paragraph 29 appears to have no associated detriment pled and relates to an email sent by the claimants to the respondents on a single day.

15. Ground 1 of the grounds of appeal argues that EJ McManus misapplied the law and/or was plainly wrong in that she (i) wrongly classified the proposed amendments as being 'Category 3' amendments (amendments not linked to or arising from substantially the same facts as the original claim) and (ii) failed to consider whether the proposed amendments were 'closely connected' or 'linked to' the original claims. The factual link between the proposed amendments and the original claim was, it was submitted, clear in that (a) the disclosures pled at proposed amendments paragraph 26, 27 and 28 were linked to previous disclosures, (b) the proposed amended detriments (presumably at paragraphs 38(e)-(g) and 41(c) and (g)) were closely connected to those pleaded in the original claim, (c) the proposed amended disclosures and detriments occurred in the same time period as the acts averred in the original claim and (d) the proposed amended claims had the same legal basis as the original claim, namely ss.44 and 47B, **ERA**.

16. Ground 2 of the grounds of appeal addresses EJ McManus's judgement insofar as it considers the distinctions between the claimants' proposed amendment application in December 2019 and the proposed amendments before her in July 2021, in particular it asserts (i) EJ McManus failed to take that distinction into account or that she placed inadequate weight on it and in doing so acted irrationally, (ii) place disproportionate weight on the December 2019 amendment and/or (iii) failed to take into account the claimants' submissions regarding the distinction.

Respondents

17. For the respondents, in relation to ground 1 of appeal, it was argued that EJ McManus had identified and applied the correct test, had taken into account all relevant factors and had reached considered decisions in respect of the various proposed amendments that were open to her in all the circumstances. Whilst ground of appeal 1 submitted that EJ McManus wrongly held the proposed amendment were "Category 3 amendments" (a classification referenced in

Harvey on Industrial Relations), EJ McManus made no reference to such a classification. There was no basis in law to interfere with EJ McManus's decision. In relation to ground 2 of appeal, the respondents' position in respect of ground 2(iii) is unclear. In respect of grounds 2(i) and (ii), the respondents argue that the claimants' argument amounts to one of perversity, for which the high test is not met in the circumstances.

Relevant law

18. In **Vaughan v. Modality Partnership** (EAT) [2021] ICR 535 at paragraph 1 His Honour Judge Taylor observed in a case concerning the correct approach to adopt when considering an application to amend, "*It might be said that everything that needs to be said about amendment has already been said. That is probably true, but ...*". The 'but' I agree with, but it is the former and cited part that is relevant for current purposes. In this case what needs to be said about amendment can be accurately summarised by what has already been said by The Honourable Mrs Justice Eady DBE (President) in **Cox v. Adecco UK Ltd & Ano.** [2023] EAT 105, at paragraphs 6 to 13:

> "Amending the claim
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> 6. The importance of the accurate pleading of a claim before the ET was stressed by the EAT in **Chandhok v Tirkey** [2015] ICR 527; as Langstaff J observed:
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> > "The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely on their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a respondent is required to respond. A respondent is not required to answer a witness statement, nor a document, but the claims made—meaning … the claim as set out in the ET1"
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> 7. In considering an application to amend a claim, the ET exercises its general case management power, as afforded under rule 29 schedule 1 **Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013** ("ET Rules"). As such, it has a broad discretion and the EAT will not readily interfere with its decision to refuse such an application; as Mummery J (as he then was) observed in **Selkent Bus Co Ltd v Moore** [1996] ICR 836, [1996] IRLR 661:
>
> > "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] IRLR 215*."
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> 8. As His Honour Judge Tayler observed in **Vaughan v Modality Partnership** [2021] IRLR 97 (see paragraph 12), the approach to be adopted to deciding whether or not to exercise the discretion to allow an amendment has its origin in the National Industrial

Relations Court decision in **Cocking v Sandhurst (Stationers) Ltd** [1974] ICR 650, where it was stated (see p 657B-C):

> "In deciding whether or not to exercise their discretion to allow an amendment, the tribunal should in every case have regard to all the circumstances of the case. In particular they should consider any injustice or hardship which may be caused to any of the parties, including those proposed to be added, if the proposed amendment were allowed or, as the case may be, refused."

9. In **Selkent** , it was similarly said that regard must be had to "*all the circumstances*", in particular any injustice or hardship which would result from the amendment or a refusal to make it. In providing guidance as to the kind of factors that would be relevant, Mummery J suggested these would include (non-exhaustively) the nature of the amendment sought, the applicability of time limits, and the timing and manner of the application, whilst emphasising:

> "… the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment."

10. In later cases, it has been confirmed that the guidance in **Selkent** was not intended to be a box ticking exercise, but a discussion of the kinds of factors likely to be relevant when carrying out the required balancing process; see **Abercrombie v Aga Rangemaster Limited** [2013] EWCA Civ 1148, per Underhill LJ at paragraph 47, and **Vaughan** at paragraph 16.

11. Where the proposed amendment simply amounts to a re-labelling of facts already pleaded, it will generally be readily permitted. Even, however, if it would introduce a new complaint or cause of action, the ET still has a discretion to allow the amendment; see Underhill J (as he then was) at paragraph 13 **Transport and General Workers Union v Safeway Stores Ltd** UKEAT/0092/07 (6 June 2007, unreported). That is so even where (as here, see section 48(3) **ERA**) the statutory test to be applied in determining whether to extend time would be of reasonable practicability rather than considering what would be just and equitable. In carrying out the balancing exercise it is required to undertake, the ET's approach should be informed by the substance of the amendment, not merely its form; as Underhill LJ stated in **Abercrombie**:

> "48. … the approach of both the EAT and this Court in considering applications to amend which arguably raise new causes of action has been to focus not on questions of formal classification but on the extent to which the new pleading is likely to involve substantially different areas of enquiry than the old: the greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that it will be permitted. It is thus well recognised that in cases where the effect of a proposed amendment is simply to put a different legal label on facts which are already pleaded permission will normally be granted: see the discussion in *Harvey on Industrial Relations and Employment Law* para. 312.01-03."

12. And as HHJ Tayler cautioned in **Vaughan**:

> "21. … Representatives would be well advised to start by considering, possibly putting the *Selkent* factors to one side for a moment, what will be the real practical consequences of allowing or refusing the amendment. If the application to amend is refused how severe will the consequences be, in terms of the prospects of success of the claim or defence; if permitted what will be the practical problems in responding. This requires a focus on reality rather than assumptions. It requires representatives to take instructions, where possible, about matters such as whether witnesses remember the events and/or have records relevant to the matters raised in the proposed amendment. Representatives have a duty to advance arguments about prejudice on the basis instructions rather than supposition. They should not allege prejudice that does not really exist. It will often be appropriate to consent to an amendment that causes no real prejudice. This will save time and money and allow the parties and tribunal to get on with the job of determining the claim."

13. The focus on the practical consequences of allowing or refusing an amendment requires the ET to determine whether – and, if so, how - it is actually of importance to the claim or defence that the amendment be allowed. That can then be weighed in deciding where the balance of justice lies. Examples provided in **Vaughan** provide a helpful illustration of this point:

> "24.1. A minor amendment may correct an error that could cause a claimant great prejudice if the amendment were refused because a vital component of a claim would be missing.
> 24.2. An amendment may result in the respondent suffering prejudice because they have to face a cause of action that would have been dismissed as out of time had it been brought as a new claim.
> 24.3. A late amendment may cause prejudice to the respondent because it is more difficult to respond to and results in unnecessary wasted costs."

However, as the EAT then went on to observe:

> "25. No one factor is likely to be decisive. The balance of justice is always key."

19. In considering the approach that the Employment Appeal Tribunal adopts to appeals has, likewise, been the subject of considerable appellate consideration and the approach is clear. The decision of an employment tribunal must be read fairly and as a whole, without focusing on individual phrases or passages in isolation, and without being hypercritical. A tribunal is not required to identify all of the evidence relied upon in reaching its conclusion of fact. It is not legitimate for an appellate court or tribunal to reason that a failure by an employment tribunal to refer to evidence means that it did not exist, or that a failure to refer to it means that it was not taken into account in reaching the conclusions expressed in the decision. An appellate court or tribunal should not interfere with a first instance judge's conclusions on primary facts unless it is satisfied that he or she was plainly wrong, by which is meant that no reasonable judge could have reached such a conclusion. The weight which the first instance judge gives to the evidence is pre-eminently a matter for them. Further, where a tribunal has correctly stated the legal principles to be applied, an appellate court or tribunal should be slow to conclude that it has not applied those principles, and should generally do so only where it is clear from the language

used that a different principle has been applied to the facts found. Tribunals sometimes make errors, having stated the principles correctly but slipping up in their application; but if the correct principles were in the tribunal's mind, as demonstrated by their being identified in the express terms of the decision, the tribunal can be expected to have been seeking faithfully to apply them, and to have done so unless the contrary is clear from the language of its decision. If authority for these propositions is needed, see **DPP Law LLP v. Greenberg** [2021] EWCA Civ 672; **Volpi v. Volpi** [2022] EWCA Civ 464).

20. Finally in respect of relevant law, some of the submissions made by the claimants in this appeal are based on asserted irrationally. It is trite law that an argument based on irrationality or perversity ought to only succeed where an overwhelming case is made out that the Employment Tribunal reached a decision that no reasonable tribunal, on a proper appreciation of the evidence and the law, could have reached (**Yeboah v Crofton** [2002] IRLR 634 CA, paragraph 94, Familiar Authority, no. 14).

Decision

21. Whether to allow an amendment in whole or in part is the exercise of judicial discretion, exercised in the particular circumstances of the case. As cited above, on an appeal from such a refusal, an appellant would have a heavy burden to discharge. She would have to convince the appeal tribunal that the employment 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.

22. Considering first the claimants' ground of appeal 1. The claimants argue, by reference to a number of short passages extracted from EJ McManus's judgement, that EJ McManus concluded the proposed amendments "were Category 3 amendments (i.e. amendments which are not linked to or that do not arise from substantially the same facts as the original claim)." The claimants' reference to 'Category 3' and 'Category 2' amendments, as I understood it, refers to the classification referenced in *Harvey on Industrial Relations*. That publication refers to and summarises the differing nature of possible amendments at paragraph [311.15] as follows:

> "Distinctions may be drawn between (i) amendments which are merely designed to amend the basis of an existing claim, but without purporting to raise a new distinct head of complaint; (ii) amendments which add or substitute a new cause of action but one which is linked to, or arises out of the same facts as, the original claim (often referred to as relabelling); and (iii) amendments which add or substitute a wholly new claim or cause of action which is not connected to the original claim at all."

23. EJ McManus does not, in her judgement, make reference to the classifications referenced in *Harvey* and/or classify the relevant proposed amendments as "Category 3 amendments", or any other category. As was observed by Underhill LJ in **Abercrombie v. Aga Rangemaster Ltd** [2014] ICR 209 (an authority relied upon by the claimants) at paragraph 48 when considering

applications to amend that arguably raise new causes of action the correct approach is:

> "… to focus not on questions of formal classification but on the extent to which the pleading is likely to involve substantially different areas of inquiry that the old …".

24. The criticism in ground of appeal 1 appears to invite a focus on questions of formal classification. That was not the approach taken by EJ McManus and EJ McManus was correct not to follow such an approach.

25. Further, irrespective of any formal classification, it is clear from a substantive reading of EJ McManus's judgement, read as a whole as one is required to do, that EJ McManus's approach was far more nuanced than ground of appeal 1 asserts. Reading EJ McManus's judgement substantively makes it clear that EJ McManus considered the relevant proposed amendments both more generally or broadly where she considered the whole relevant circumstances (paragraphs 25 to 39), including issues of the nature of the proposed amendments, the timing of the proposed amendment, including the delay in making the application to amend, the consequences of that delay for the investigation of the matters sought to be raised by way of amendment, the issues of additional cost and further procedure and that the parties were professionally represented throughout the proceedings.

26. Thereafter, EJ McManus considered each proposed amendment specifically (those relevant to this appeal at paragraphs 40 to 55), including whether the proposed amendments were likely to involve substantially different areas of inquiry compared to the original claims made. In undertaking this exercise, it is clear EJ McManus concluded some proposed amendments merely sought to amend or amplify the existing claims, some sought to 'relabel' existing claims and some sought to add new claims. For example, in her distinction between the proposed amendments at paragraphs 38(a)-(d) of the claimants' revised Papers Apart, which EJ McManus described as re-statement of existing claims, on the one hand, and 38(e)-(g), matters not included in the original claims, on the other, and/or, in relation to paragraph 41(d) of the claimants' revised Papers Apart, which EJ McManus described as "re-labelling", a term, the use of which is entirely inconsistent with the claimants' submission that EJ McManus treated all proposed amendments as Category 3 amendments, as opposed to Category 2.

27. Further, the nature of the respective proposed amendments, that is whether they were merely designed to amend the basis of an existing claim or add or substitute a new cause of action linked to, or arising out of the same facts as the original claim (re-labelling) or add or substitute a wholly new claim or cause of action, is only one element of the overall test of considering all of the relevant circumstances of the case with the paramount consideration being the relative injustice and hardship involved in refusing or granting an amendment. It is quite apparent from reading EJ McManus's judgement as a whole, and in particular paragraphs 25 to 55, that EJ McManus made her decision by considering all of the of the relevant circumstances of the case with the paramount consideration being the relative injustice and hardship involved in refusing or granting the proposed amendment.

28. In these circumstances, it cannot be properly said that EJ McManus erred in legal principle in

the exercise of her discretion, failed to take into account relevant considerations, took irrelevant factors into account, or that no reasonable tribunal, properly directing itself, could have reached the decision EJ McManus did in the whole circumstances of the case.

29. Accordingly, I reject the claimants' ground of appeal 1.

30. Turning to the claimants' ground of appeal 2, in relation to point 2(iii), I reject the argument that EJ McManus failed to take into account the claimants' submission regarding the distinction between the amendment applications of December 2019 and July 2021. On analysis, the speaking note for the claimants for the hearing before EJ McManus references a "clear distinction" based upon the "resources to bring" the respective claims focused in each amendment. At paragraph 27 of her judgement EJ McManus states:

> "I took into account that there was no evidence before me on why it was not reasonably practicable for the claims to be brought within the relevant statutory time, *or at the time of the amendment application in December 2019* (JB101 – 102) [my emphasis]. I noted Mr Jackson's submission on the claimants' '*limited resources*', and that it would not have been a proportionate use of these resources to apply to amend at an earlier stage. There was no evidence before me to support Mr Jackson's position. I heard no evidence on the reasons for the delay in applying to amend."

31. Thereafter at paragraph 35, EJ McManus stated, read short:

> "I considered the fact that an amendment application had been sought to be made in December 2019 to be contrary to Mr Jackson's submission that … it would not have been a proportionate use of resources to amend at an earlier stage."

32. I accept that the use of the word "explanation" in the following sentence beginning "*There was no explanation before as to why a previous amendment application had been made to include only a claim for ...*" appears confusing when read against the previous paragraphs.

33. That said, as has been repeatedly made clear by the EAT and Appeal Courts, a judgement must be read as a whole and, reading EJ McManus's judgement as a whole it is abundantly clear that EJ McManus was aware of and took into account "Mr Jackson's submission" about "limited resources". That is sufficient to deal with ground 2(iii). However, it is also clear that in taking Mr Jackson's submission into account, EJ McManus considered that she was unable to accept that submission in the absence of evidence to support it (in addition to the paragraphs cited above, see also paragraph 30 of EJ McManus's judgement). That is a position that EJ McManus was entitled to take.

34. In respect of grounds 2(i) and (ii), it is clear from reading EJ McManus's judgement that she was aware of, or appreciated, the distinction between the amendment applications in December 2019 and July 2021. The latter was the subject of discussion before EJ McManus and in the final sentence of paragraph 35 EJ McManus appears to detail the subject matter of the

December 2019 amendment application. The claimants' argument insofar as it argues an absence of reasoned consideration regarding that distinction is misplaced. It is clear from reading EJ McManus's judgement as a whole that it was the substantive consequences of delay that principally concerned her, rather than the factual distinction itself.

35. Thereafter the claimants' submission resolves to one of irrationality or perversity in respect of the weight EJ McManus gave to the December 2019 and July 2021 applications to amend. As stated above, an argument based on irrationality or perversity ought to only succeed where an overwhelming case is made out that the employment tribunal reached a decision that no reasonable tribunal, on a proper appreciation of the evidence and the law, could have reached. It cannot properly be said that in applying the balance of hardship test, in light of all the factors present and relevant to that test, that no employment tribunal, properly directed, could not have considered the delay between December 2019 and July 2021 and its consequences a "very significant factor" (paragraph 27 of judgement).

36. Accordingly, I reject the claimants' grounds of appeal at 2(i) and (ii).

37. In light of my decisions above, I refuse the claimants' appeal.