



EMPLOYMENT TRIBUNALS

Claimant: Mr F Ben Hassel

Respondent: Liveperson (UK) Limited

RECORD OF A PRELIMINARY HEARING

Heard at: Reading (CVP) **On:** 1 October 2025

Before: First Tier Tribunal Judge Davison sitting as an Employment Judge

Appearances

For the claimant: Ms A Fraser Counsel

For the respondent: Mr M Humphreys Counsel

JUDGMENT

1. Save as expressly accepted by the respondent, see post, the claimant's application to amend his claim are refused.

Reasons

1. The relevant background to this application is somewhat lengthy. Following the submission of an ET1 on 28 April 2023 there have been multiple Case Management hearings that have unfortunately not been able to progress matters. On 24 August 2023 Judge Anstis requested further information from the claimant about the issues. Further hearings were postponed, or utilised to provide further evidence.
2. The central document setting out the additional information on claims that the claimant now seeks to rely upon is at page 45 of the bundle prepared for the hearing today. It is headed "claimant's additional information". It is not a complete list of the amendments that the claimant wishes to make. During submissions it was also stated that the claimant alleged a shortfall in some holiday pay owed and that the multiplier used in his redundancy calculation was incorrect. All of this would be set out in the schedule of loss.
3. It was submitted by the claimant's representative that when the original ET 1 was filed the claimant was representing himself, he was undergoing therapy and so was not in a position to set out his claim as accurately as he would have

liked. Since that time he has been let down by various firms of solicitors. It is claimed that he has on each occasion fully told them of the claims that he wished to advance and they have been negligent in their actions of not fully pleading his claim.

4. The matters being considered are somewhat dated. The claimant last worked for the respondent on 1 July 2021. His employment ended in November 2022 following an extended period of absence.
5. The respondent has not challenged all the paragraphs in the Claimant's Additional Information.
6. For ease of reference I will utilise the numbering in the Claimant's additional information and address the issues in turn. As noted in the attached Case Management Orders the parties are to agree a finalised list of issues following this Judgment on the amendment application.

Unfair dismissal

- i) The respondent accepts the claimant was dismissed on 15 November 2022 and has made an allegation of unfair dismissal. Paragraphs 2.1 and 2.3 are therefore not in dispute.

Collective Redundancy/Protective Award

- i) The respondent states that paragraph 2.2 and the entirety of section 3 "Collective Redundancy/Protective Award" should be excluded from consideration. In the grounds of resistance (paragraphs 11 and 12) the respondent highlights that the claimant was paid his statutory redundancy upon termination as well as an enhanced amount. The claimant was requested to confirm whether he was pursuing a claim for a further redundancy payment. The grounds of resistance were filed on 6 June 2023. The claimant had a solicitor acting for him since at least September 2023. The application to amend was made on 11 September 2025. The respondent therefore asserts it was reasonably practicable for the claimant to have advanced this claim earlier.

Disability

- i) The respondent states that section 4 on disability forms part of the claim and is to continue.
- ii) The respondent does not object to a section 15, Discrimination arising from disability claim. The respondent accepts that the claims advanced at subparagraphs 5.1.3, 5.1.7, 5.1.8, 5.1.10, 5.1.11, 5.1.12, 5.1.13 and 5.1.14 are all in the original claim and should therefore proceed.
- iii) The respondent objects to paragraphs 5.1.1, 5.1.2, 5.1.4, 5.1.5, 5.1.6 and 5.1.9 being included.
- iv) The respondent did not object to paragraph 5.2 as this is providing further particulars of the "something arising" that needs to be addressed under section 15.

Direct race discrimination/harassment because of race (section 13, 26 and 39 EA)

- i) the respondent accepted that paragraphs 6.1 and 6.2.1 insofar as “mispronouncing” the claimant’s name form part of the claim to be considered.
- ii) The respondent stated that if the further particulars relied upon were said to form a distinct head of claim that these should not be admitted. If these are merely the context around the claim of direct race discrimination by mispronouncing the claimant’s name, then the evidence could be admitted as context. Specifically paragraphs 6.2.2, 6.2.3 and 6.2.4 all relate to other instances not relating to the claimant’s name and should therefore be excluded.
- iii) The respondent did not object to 6.2.5 being included. It was noted that this should be slightly amended to read “From January 2015 to his dismissal,”
- iv) There was also no objection to the comparators and the fact he was dismissed as noted in paragraph 6.2.6 and 6.2.7 being admitted for consideration.

Failure to make reasonable adjustments (sections 20 and 21 EA)

- i) Whilst in the respondent’s initial note this amendment had been objected to, the respondent noted on reflection that there was no objection to this amendment and this section being considered.

Victimisation

- i) The victimisation claim raised in section 8, the respondent objected to. It was submitted this has not been raised in the ET 1. There was no factual basis for a victimisation claim. The claimant had not highlighted any different or adverse treatment. He stated that a grievance had been raised and then claimed nothing changed. His factual narrative in the ET1 would therefore be inconsistent with a claim for victimisation. This was new claim, which was out of time which should not be admitted.

7. In the case of *Selkent Bus Company Limited v Moore [1996] ICR 836* the Employment Appeal Tribunal (“EAT”) set out the test to be applied by a Tribunal in deciding whether to exercise its discretion to grant an amendment. It said 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. The EAT in *Selkent* also set out a list of factors which are certainly relevant, which are usually referred to as the “*Selkent* factors”. In brief they are:

- (1) The nature of the amendment i.e. whether the amendment sought is one of the minor matters or is a substantive alteration pleading a new cause of action;
- (2) The applicability of time limits. If a new complaint of 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; and

- (3) 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 making amendments, but delay is 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).
8. In the case of *Vaughan v Modality Partnership UKEAT/0147/20/BA* the EAT reminded parties and Tribunals 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 consequences of allowing or refusing the amendment. That balancing exercise is fundamental. The *Selkent* factors should not be treated as if they are a list to be checked off.
9. The issue of amendment applications was more recently discussed in *CX v Secretary of State for Justice [2025] EAT 114*.
10. All the above guidance has been considered in assessing this application. Analysis of the practical impact of granting or refusing the application must be undertaken. In determining whether to grant an application to amend, an Employment 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.
11. The hardship and injustice test is a balancing exercise. Lady Smith noted in *Trimble and anor v North Lanarkshire Council and anor EATS 0048/12* that it is inevitable that each party will point to there being a downside for them if the proposed amendment is allowed or not allowed.
12. I have considered the original ET 1 claim form, the evidence supplied in the bundles for hearing and the oral testimony/ submissions.
- i) nature of the amendment
13. I find the nature of the amendment to fall into different headings. As set out above some of the amendments are seeking to produce extra factual background and context to claims that are already before the Tribunal. The respondent has not disputed these and this factual backdrop to the claims are admitted. However, other aspects of the amendment application are to add new claims of collective redundancy and victimisation, these have been set out in writing. Further in submissions a wages act claim was also advanced. The contentious aspects of the amendment I find to be substantial, in that they are seeking to raise new heads of claim.
- ii) applicability of time limits
14. The factual basis to the amendments in paragraphs 5.1.1, 5.1.2, 5.1.4, 5.1.5, 5.1.6 and 5.1.9 I find to be dated. The ET1 was filed in April 2023. These are all new factual allegations relating to observed behaviour in 2020 until 2022.

Witness evidence would be required. As these matters relate to a discrimination claim the “reason why” the respondent acted in such a manner would be a central consideration. All these factual issues in the paragraphs are dated. Whilst for the claimant he wishes to have all issues covered and address every grievance as set out. This has to be balanced against both the timing and the difficulty that the respondent would have in addressing these allegations. In considering these competing interests I find that the balance weighs against the claimant.

15. In the application page 96 at paragraph 24 there are a list of matters that the claimant is seeking to introduce. These go back to 2016, 2017 and 2018. Mr Oddell left the respondent’s employment in 2024. The line manager Mr Holmes left in March 2023. These allegations and claims relate to the distant past. They relate to people no longer in the employment of the respondent. The applications would be out of time given they are substantive new heads of claim. In order for it to be admitted the time limit would have to be extended.#

iii) the timing and manner of the application

16. 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.
17. The list of amendments has kept expanding and even in oral submissions a claim for holiday pay was advanced. No details have been provided as to what holiday pay the claimant asserts he is entitled to. His claim would be advanced either as a breach of contract or under the working time regulations. It would have to be shown that it had not been reasonably practicable for him to make the claim within 3 months. No argument was advanced to satisfy this test.
18. The Presidential Guidance on General Case Management for England and Wales notes the *Selkent* provisions are not intended to be an exhaustive list. There may thus be additional factors to consider in any particular case (*Conteh v First Security Guards Ltd EAT 0144/16*).
19. I have therefore considered all matters advanced in submissions and in the documentary evidence alongside the *Selkent* provisions.
20. As noted above in *Vaughan v Modality Partnership 2021 ICR 535, EAT*, His Honour Judge James Tayler emphasised that the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application. The parties must therefore make submissions on the specific practical consequences of allowing or refusing the amendment.
21. The claimant’s representative. Asserted there had been past failings by previous solicitors. There is no evidence that the claimant has brought any form of action against these firms for negligence.

22. For the respondent many of the witnesses are no longer in their employment. As noted above some of the factual issues date back a very long time. Most of the issues now raised would be time-barred. I acknowledge that by making the above decisions the claimant will not be able to advance certain claims. However, other claims relating to similar facts still remain before the respondent. Completely precluded from bringing their claim. The balance of injustice or hardship in allowing the amendments is the central consideration. The claimant cannot simply be allowed to continue to bring other heads of claim up to and including the date of today's hearing. The respondent is entitled to know what claims need to be defended and to be able to seek the necessary evidence to do so in a reasonable time period. Given the passage of time I find the balance weighs against the claimant.

Conclusion

23. Save the points expressly conceded by the respondent as noted above the application for amendment is refused. The claims have not been brought in time, the claims could have been brought in time, they do not form part of continuing acts, it would not be just and equitable to extend time.
24. For completeness it was noted that a previous Case Management Order had noted that a potential application for costs was going to be pursued before me today. It was confirmed by the respondent that no such application was being advanced. No costs order was therefore considered.

Approved by:
First Tier Tribunal Judge
Davison sitting as an
Employment Judge

1 October 2025

Sent to the parties on:
22 October 2025

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For the Tribunal Office:

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