EMPLOYMENT TRIBUNALS

PUBLIC PRELIMINARY HEARING

Claimant: **Ms J Kaur**

Respondent: **Esteem Multi-Academy Trust**

Heard at: **Nottingham Tribunal Hearing Centre**

On: **Tuesday 30 September 2025**

Before: **Employment Judge Shore**

Representation

For the Claimant: **In Person**

For the Respondent: **Mr R Holland, Counsel**

JUDGMENT AND WRITTEN REASONS

The judgment of the Employment Tribunal is that:-

(1) The claimant's claim of unfair dismissal under section 94 of the Employment Rights Act 1996 ("ERA 1996"), brought under case number 6006982/2025, is struck out. The Tribunal had no jurisdiction

to hear the claim because the claim was not presented within the prescribed time limit in section 111(2) of the Employment Rights Act 1996 and the claimant did not prove on the balance of probabilities that it was not reasonably practicable to have brought the claim in time.

(2) The claimant's claim of unfair dismissal as an amendment to claim 6004941/2024 is refused.

(3) The claimant's application to amend her claim to add new claims of race discrimination is refused in its entirety.

(4) The claimant's remaining claims are struck out as having no reasonable prospects of success.

(5) In the alternative, the claimant's remaining claims (save for the allegation on 24 April 2024) are struck out as the claimant has no reasonable prospect of showing that they were presented in time or that it would be just and equitable to extend time.

REASONS

Background

1. The claimant was employed by the respondent, a multi-academy trust with responsibility for 13 schools, as a Teaching Assistant from 13 December 2021 to 13 September 2024. Early conciliation started on 22 April 2024 and an early conciliation certificate number R165362/24/95 dated 3 June 2024 was sent to the parties [4].

2. The claimant presented her first ET1 (number 6004941/2024) on 1 July 2024 [5-18]. She was still employed by the respondent on the date that she presented her ET1. The claimant indicated claims of race and disability discrimination. She set out details of her claims in box 8.2 of the ET1 [11] but told me at this hearing that she had written more than appears in box 8.2. She said she had run out of space.

3. The respondent presented its ET3 [19-26] and Response [27-29] on 12 August 2024. It denied any liability.

4. The claimant was dismissed on 13 September 2024. It was agreed that she was dismissed for forging five MED3 certificates that stated she was unfit for work and submitting them to the respondent.

5. A preliminary hearing was held on 18 October 2024 before Employment Judge Phillips by telephone. The claimant represented herself. The respondent was represented by Mr Holland, as today. EJ Phillips noted at paragraph 2 of the case management order [30-35] that he had been told that the claimant had been dismissed on 13 September 2024. EJ Phillips noted that the claim was not at all clear about what the claimant alleged happened to her and why the conduct was discriminatory. I found the same thing at today's hearing.

6. EJ Phillips explained to the claimant that she had to set out in as much detail as possible, allegation by allegation, what happened, when it happened, who was involved, and to use the information about the law of discrimination that was included in the order to understand what sort of discrimination was alleged, and why. The claimant was ordered to give more information about her disability claim.

7. There was no mention in the order of the claimant raising a claim of unfair dismissal or claiming that her dismissal was an act of discrimination. I find that if it had been raised with EJ Phillips, there would have been a note of the claimant's intention to present such a claim, either by amending her existing claim or presenting a new claim. The claimant provided a document titled "Further and Better Particulars" on 19 February 2025 [50-52].

8. The claimant says that the case management agenda that she prepared for the preliminary hearing on 18 October 2024, and which was shared with the Tribunal and the respondent, refers to an unfair dismissal claim at paragraph 11 [241-247].

9. A second preliminary hearing was held before Employment Judge Victoria Butler on 30 January 2025 [42-49]. The claimant represented herself, supported by Mr Pickering, and the respondent was represented by Mr Holland. EJ Butler noted that the claimant had partially complied with EJ Phillips' case management orders but that there "…was still much work to be done." The claimant had not provided an impact statement or medical records to evidence her disability claim. EJ Butler took time to further clarify the claimant's claim and give her practical guidance on how to present her claim.

10. EJ Butler warned the claimant that if she did not provide the necessary information about her claims, then she risked her claims being struck out.

11. Paragraphs 15 to 18 of EJ Butler's case management order were headed "Application to amend". It is useful to reproduce the four paragraphs:

> *"15. I also explained to the Claimant that this is not an opportunity to introduce new allegations into the claim. If she does, they will need to be subject to an application to amend.*

> *16. In this regard, Mr Pickering said that a new matter had arisen out of the Claimant's employment in a hotel which relates to her employment with the Respondent. I did not elicit the detail but explained that if the Claimant thinks the circumstances give rise to a legal claim, she will need to decide whether to issue a fresh claim or apply to amend this one. I could not tell her which route to follow.*
>
> *17. I am concerned that there will be considerable delay in this claim progressing. With this in mind, if the Claimant wants to apply to amend her claim, she must do so in accordance with the order below.*
>
> *18. I attach the link to the Presidential Guidance: General Case Management which explains the matters considered in determining an application to amend.*
>
> *https://www.judiciary.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20180122.pdf"*

12. It is clear to me that the possibility of amendment was discussed and that no mention of an unfair dismissal claim was made by the claimant. In fact, Mr Pickering, who was supporting her, mentioned a possible amendment that appears to have been nothing to do with the claimant's dismissal.

13. EJ Butler left the final hearing as listed and listed a further preliminary hearing on 16 May 2025, which was intended to

14. The claimant had provided a document titled "Further and Better Particulars" on 19 February 2025 [53-59]. On the same date, the claimant emailed the Tribunal and respondent indicating that she wished to claim unfair dismissal [66]. She wrote:

> *"After reviewing my initial submission, I have identified several mitigating factors and external circumstances that were not fully addressed. These factors—such as personal and financial stress, mental health challenges, and other external pressures—were significant in the events leading up to my dismissal. I believe that incorporating this information will provide a more accurate and comprehensive understanding of the circumstances surrounding my case. This amendment is crucial to ensure that the tribunal has all relevant context in order to make a fair and informed decision regarding the fairness of my dismissal."*

15. There was no allegation that the dismissal was an act of race discrimination; the claimant was stating that there were personal, financial, health and other external pressures that cased her to act in a way that led to her dismissal.

16. The claimant presented a second ET1 (claim number 6006982/2025) on 18 February 2025 [113-126].She ticked the box in paragraph 8.1 of the ET1 indicating a claim of unfair dismissal but did not tick the box indicating a claim of race discrimination. The claimant did not write any narrative description of the new claim or make any reference to the previous claim. The claimant relied on ACAS EC Certificate R165362/24/95 [4] on her ET1.

17. The third preliminary hearing in this case was held on 16 May 2025 before Employment Judge Broughton on 16 May 2025 [67-83] at which the claimant represented herself, supported by Mr Pickering, and the respondent was represented by Mr Holland. The main points of discussion in the hearing were:

    17.1 In her further and better particulars, the claimant had named students at the school where she had worked. EJ Broughton felt that consideration ought to be given to making an anonymity order under Rule 50.

    17.2 The claimant withdrew her claims of disability discrimination.

    17.3 Most of the hearing was spent turning the claimant's ET1 and further and better particulars into specific claims. EJ Broughton divided the claims made by the claimant into ones that were in her ET1 (which were placed in Appendix 1 of the case management order) and those that required the Tribunal's permission to be added to the claim (which were placed in Appendix B). As I explained to the claimant at this hearing, the case of **Chandhok v Tirkey** [2015] IRLR 195 made it clear that a claimant's claims are those matters that appear in the claimant's ET1 form and any document attached to it. EJ Broughton had divided the claimant's claims into those that were in the ET1 and needed no permission to be allowed to continue, and those that were not in the ET1 and need the Tribunal's permission to proceed.

    17.4 The claimant's two claims were consolidated. The period of early conciliation started on 22 April 2024 and ended on 3 June 2024. EJ Broughton noted that the ACAS Certificate did not assist the claimant in terms of the limitation period for her claim. However, the claim of unfair dismissal could be the subject of an application to amend the original ET1.

    17.5 EJ Broughton also noted that the recent case of **Abel Estate Agent Ltd and ors v Reynolds** 2025 EAT 6, had overturned the argument that S.18A(8) of The Employment Tribunals Act 1996 deprives the Tribunal of jurisdiction to hear a claim if the claimant has failed to comply with the EC scheme. It concluded that the fact that the employee had presented her claim in breach of S.18A(8) did not mean that the employment tribunal did not have jurisdiction to hear it. The practical consequences of that decision for this claimant are that the Tribunal could not strike the new claim out because she had not presented a valid ACAS Certificate but could strike out the claim on time limit issues or because the claim had no reasonable prospect of success.

    17.6 EJ Broughton set out for the claimant section 111 of the Employment Rights Act 1996, which deals with time limits in unfair dismissal cases together with detailed guidance on amendment applications in Appendix 3 to the case management order [81] and detailed guidance on strike out and deposit orders in Appendix 4 [82-83].

18. EJ Broughton listed the hearing I have conducted to day to determine the following matters:

18.1 whether the amendments set out in Appendix 2 to these orders should be allowed.

18.2 whether the claim for unfair dismissal should be struck out on the grounds that the tribunal does not have jurisdiction to hear it or allowed as an amendment to the original claim.

18.3 whether any of claims should be struck out under Rule 38 or subject to a deposit order under Rule 40 on the grounds that they have no or little reasonable prospect of success.

18.4 whether any of the claims should be struck out under rule 38 or subject to a deposit order under rule 40 on the grounds that they have been brought out of time, or the claimant has little reasonable prospect of showing that they were presented in time.

18.5 other case management orders to be made as appropriate (including for anonymity of the 4 students).

19. In preparation for this hearing, the parties produced an agreed bundle of 253 pages. I have noted the relevant page numbers in the bundle in square brackets where I have referred to documents from the bundle.

20. Mr Holland produced a skeleton argument. The claimant produced a witness statement consisting of two pages. I read the entire bundle, the skeleton argument and the claimant's witness statement together with the Tribunal's digital files on both claims before the hearing started.

21. The claimant represented herself. I reminded myself on the guidance given to judges on Litigants in Person in the Equal Treatment Bench Book. I reminded the claimant of the overriding objective of the Tribunal at the start of the hearing.

The law

22. The statutory law in this case is contained within the ERA 1996 and the EqA 2010. I reproduce below sections 98(4), and 111(2), of the ERA 1996 and sections 123 and 136 of the EqA 2010.

23. For the purposes of the unfair dismissal claim, the relevant sections of the ERA 1996 are sections 98, and section 111(2).

Section 98 Employment Rights Act 1996

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it-

(a) Relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) Relates to the conduct of the employee,

(c) Is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)—

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical, or professional qualification relevant to the position which he held.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal was fair or unfair (having regard to the reason shown by the employer)-

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case."

24. Section 111(2) deal with time limits in unfair dismissal claims:

"… an employment tribunal shall not consider a complaint … unless it is presented to the tribunal -

(a) before the end of the period of three months beginning with the effective date of termination, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."

25. The relevant sections of the EqA 2010 for the claims of direct and indirect discrimination are:

123. Time limits

(1) Subject to sections 140A and 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.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a)the period of 6 months starting with the date of the act to which the proceedings relate, 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.

136. Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

(5) This section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to—

(a) an employment tribunal;…

26. We were referred to precedent cases by Mr Miah and Mr Michell in their closing submissions. We considered all the case law that was presented before making our decision.

The issues

27. The issues in the claim were set out in the case management order of dated 28 September 2022 [51-76] with the additional issues submitted with the claimant's application to amend her claims to include the complaints of victimisation [88-89].

Findings

Time Limits

28. The burden is on a claimant to show that their claims were presented in time. We find that the clock began to run on the claimant's claims for unfair dismissal, breach of contract and unauthorised deduction from wages on 5 February 2021.

29. The claimant cannot benefit from the extension of time for ACAS early conciliation.

30. The question of what is reasonably practical or means what was reasonably feasible (**Palmer & Another v Southend on Sea Borough Council** [1984] ICR 372). In the case of **Dedman v British Building and Engineering Appliances Limited** [1974] ICR 53, the Court of Appeal stated the relevant questions were –

    30.1 what were the claimant's opportunities for finding out [their] rights?

    30.2 did [they] take them, if not, why not?

    30.3 [were they] mislead or deceived?

31. The claimant submitted that at the time that she made her original claim, she only engaged with ACAS so that it could intervene on her behalf with the respondent to resolve her problems with her colleagues at work. I find that to be implausible.

32. In the leading case of **Marks and Spencer plc v Williams-Ryan** [2005] EWCA Civ 470, it was described as the 'first principle' of analysis of the 'escape clause' that the question of what is reasonably practicable should be given 'a liberal interpretation in favour of the employee'. I applied that guidance. I also considered the overriding objective. The question of what is reasonably practicable was a question of fact for me to determine.

33. The claimant's first line of submission was her alleged ignorance of the Tribunal and the law. I appreciate that the claimant was resident in the United Kingdom on a student visa when she began work with the respondent and that English is not her first language. However, I also note that she is a graduate and had no problem understanding and answering Mr Rhodes' questions.

34. The claimant admitted that after submitting six months of genuine fit notes (MED3 Forms), she forged and submitted a further five. She was dismissed for submitting the forged documents. The claimant said that there were extenuating circumstances that made the dismissal unfair. Her explanation of that point was vague and unconvincing: she said that the respondent took two weeks to dismiss her and that she had been waiting for six months for her problems at work to be resolved.

35. The leading textbook on employment law: Harvey on Industrial Relations and Employment Law makes the following comment:

> *"It was held by Brandon LJ in **Wall's Meat** that ignorance or mistake 'will, further, not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made […]'. One question to be asked in ignorance or mistake cases will therefore be whether the claimant who did not engage an advisor acted reasonably in failing to do so. Consideration will be both to the reasonableness of failing to instruct a solicitor, but also the reasonableness of failing to seek advice from other sources such as the Citizens Advice Bureaux, pro bono charities, ACAS or, increasingly, sources of information available on the Internet. On the latter point, the ease of accessing information on the Internet is a material development which makes it far harder for a litigant to claim ignorance is objectively reasonable. In **Cygnet Behavioural Health Ltd v Britton** [2022] IRLR 906 the EAT, Cavanagh J, held (at [56]) that it had been perverse to accept as reasonable the ignorance of a severely dyslexic claimant suffering from mental health issues given that his ability to function in other respects (continuing to work, submitting an appeal against dismissal and engaging with his regulator) showed no evidence of his being unable to 'type a short sentence into a search engine and to seek information about unfair dismissal time limits, or to ask an acquaintance by email to search for that information' adding (at [58]) that 'it would be the work of a moment to ask somebody about time limits or to ask a search engine'."*

36. I find that it was not reasonable for the claimant to have failed to make simple enquiries about the matters that she now complains about around the time that they allegedly occurred. Further, I find that the claimant's lack of action because she could not find a representative was unwise and unreasonable when so much information is readily available online.

37. The claimant knew she had been dismissed on 13 September 2024 but did not indicate a wish to amend her claim to include unfair dismissal until 19 February 2025.

38. The claimant hinted at being unwell at the relevant time but produced no medical evidence and did not actually say that her illness had made it not reasonably practicable to submit her claim in time.

39. "Matters relevant for an ET to consider include whether or not the claimant was or ought reasonably to have been aware of the right to claim unfair dismissal etc, and the time limit for bringing a claim. further **Northamptonshire County Council v. Entwistle** [2010] IRLR 740 (para 5, per Underhill LJ). If the claimant ought reasonably to have known of their right to claim, it will probably be held that it was

reasonably practicable to present a claim within the time limit, whether they in fact knew of the right or not. See **Porter v. Bandridge Ltd** [1978] 1 WLR 1145.

40. The question of what the substantial cause of the failure to present the claim within time was, and whether there was any "substantial fault" on the part of the claimant. As to the meaning of "*not reasonably practicable*", the issue is pre-eminently one of fact for the ET. Whether something is 'reasonably practicable' is "*a concept which comes somewhere between whether it is reasonable and whether it is physically capable of being done*" (per HHJ Shanks, **Stratford on Avon DC v. Hughes** [2020] 12 WLUK 628). The burden of proof is always on the claimant, who must convince the tribunal that they fall within the exception to the general rule that claims are to be presented within the allotted time.

41. I do not have to consider whether to extend time in this case, but in **Nolan v Balfour Beatty Engineering Services** EAT 0109/11 the EAT reiterated this point, stating that tribunals, when considering whether to extend time under S.111(2)(b) ERA, should always bear in mind the general principle that litigation should be progressed efficiently and without delay.

42. Regarding the EqA 2010 claims, section 123 EqA provides that (subject to s140B EqA) proceedings ought to be brought within three months of the act of the date to which the complaint relates, or such other period as the ET thinks just and equitable.

43. When the discriminatory act is said to be a dismissal, time runs from the effective date of termination. See **Gloucester Working Men's Club & Institute v. James** [1986] ICR 603.

44. Conduct "extending over a period" is to be treated as done at the end of the period- s.123(3) EqA.

Just and equitable extension

45. As regards any 'just and equitable extension' pursuant to s.123(1)(b) EqA, the onus is (again) on the claimant to satisfy the ET that they should be treated as a suitable exception to the general rule that claims are to be brought in time. **Robertson v Bexley Community Care** [2013] IRLR 434.

> "*It is… of importance to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule*."

46. Factors such as the reason for delay, whether the claimant was aware of their rights to make a claim, the conduct of the employer, the length of the extension sought, and the balance of prejudice as between the parties, are all material. Tribunals do not need to follow a formulaic approach to factors which may be relevant, especially when no reliance is placed on them. **Chohan v. Derby Law Centre** [2004] IRLR 685.

47. Other points to note for present purposes are:

    47.1 A failure to provide a good excuse for the delay in bringing a relevant claim will not inevitably result in an extension being refused. **Concentrix CVG Intelligent Contact Ltd v Obi** [2023] IRLR 35, *per* HHJ Auerbach at [49]–[50]. However, lack of good reason is important. As is put in Harvey: "*even without a formal rule, the absence of a good reason for the delay is likely to weigh heavily in the balance of whether it would truly be 'just and equitable' to extend time*".

    47.2 If there is forensic prejudice to a respondent, that will be "crucially relevant" in the exercise of the discretion, telling against an extension of time. It may well be decisive. But the converse does not follow. If there is no forensic prejudice to the respondent, "*that is (a) not decisive in favour of an extension, and (b), depending on the ET's assessment of the facts, may well not be relevant at all. It will very much depend on the way in which the ET sees the facts*." **Miller v. MoJ** [2016] UKEAT/0003/15.

    47.3 The weakness of a claim - even if it is not hopelessly weak - may be a relevant factor to take into account when deciding if it is just and equitable to extend time. See **Kumari v Greater Manchester Mental Health NHS Foundation Trust** [2022] EAT 132 (26 April 2022, unreported) at [63]. Relevance must surely be close to determinative where a claim has no reasonable prospect of success (especially where an assessment of the merits is made after the ET has heard evidence)."

48. I find that all the claimant's EqA claims were presented out of time, save for the allegation on 24 April 2024. The claimant cannot benefit from the ACAS EC extension. The claimant offered no explanation as to why the claims were presented when they were. The claimant did not explain why she chose to start early conciliation on 19 August 2021.

49. I find that the claimant has no reasonable prospect of persuading a Tribunal to extend time on the just and equitable basis.

Amendment

50. There is extensive jurisprudence on the question of amendments to Tribunal claims. The authorities regarding amendments are set out in several cases including **Cocking v Sandhurst** [1974] ICR 650, **British Newspaper Printing Corporation (North) Ltd v Kelly** [1989] IRLR 222, **Selkent Bus Co v Moore** [1996] IRLR 661, **Housing Corporation v Bryant** [1999] ICR 123, **Harvey v Port of Tilbury (London) Ltd** [1999] ICR 1030, **Ali v Office of National Statistics** [2005] IRLR 201, **Abercrombie v Aga Rangemaster plc** [2013] EWCA 1148. It was most recently considered by the EAT in **Vaughan v Modality Partnership** [2021] IRLR 97.

51. I also considered the EAT decision in **Baker v Commissioner of Police for the Metropolis** [2010] UKEAT/0201/09. In that case, it was decided there was no error of law in concluding that an employment tribunal claim form (ET1) did not contain a complaint of disability discrimination where the box in relation to disability discrimination was ticked, but all the details in the form related to race discrimination.

52. Mr Justice Underhill considered the appropriate conditions for allowing an amendment in **Transport and General Workers Union v Safeway Stores Ltd** UKEAT/009/07. In particular, he referred to the guidance of Mr Justice Mummery in **Selkent Bus Company Ltd v Moore** [1996] IRLR 661 where he set out some guidance. That guidance included the following points:

> (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 addition of factual details to existing allegations and the addition or substitution of other labels of 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 has to decide whether the amendment sought is one of a minor matter 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 the complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions, e.g., in the case of unfair dismissal, Section 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 in discovery. Whenever taking any factors into account, 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].".*

53. In the **Safeway** judgment, Mr Justice Underhill also referred to the judgment of the Court of Appeal in **Ali v Office of National Statistics** [2005] IRLR 201 where Lord Justice Waller referred to Mr Justice Mummery's guidance in **Selkent**, pointing out that, in some cases, the delay in bringing the amendment where the facts had been known for many months made it unjust to do so. He continued: "There will further be circumstances in which, although a new claim is technically being brought, it is so closely related to the claim already the subject of the originating application, that justice requires the amendment to be allowed, even though it is technically out of time." As Mummery J emphasised in *Selkent*:

> *'…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'*.

54. In **Evershed v New Star Asset Management** UKEAT/0249/09, Underhill J stated that it was *'necessary to consider with some care the areas of factual inquiry raised by the proposed amendment and whether they were already raised in the previous pleading'*. He carried out this exercise himself and concluded that the new evidence would be substantially the same as would be given in respect of the original claim, and, accordingly, allowed the amendment. The Court of Appeal approved this approach and agreed that the amendment did not raise *'any materially new factual allegations'. '[T]he thrust of the complaints in both is essentially the same'*.

55. In **Chandhok v Tirkey** [2015] IRLR 195, the Langstaff J referred to the importance of the ET1 claim form setting out the essential case for a claimant, as follows:

> *"... 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 upon 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, under the Rules of Procedure 2013, the claim as set out in the ET1."*

56. In **Abercrombie & Others –v- Aga Rangemaster Ltd** [2013] EWCA Civ 1148 Lord Justice Underhill pointed out that the **Selkent** factors are neither intended to be

exhaustive nor should they be approached in a tick-box fashion. There is nothing in the Rules or the caselaw to say that an amendment to substitute a new cause of action is impermissible. Further, at *paragraphs 48 and 49 of the Abercrombie judgment, Lord Justice Underhill went to say:*

> "*Consistently with that way of putting it, 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.... We were referred by way of example to my decision in* **Transport and General Workers Union v Safeway Stores Ltd** *(UKEAT/0092/07), in which the claimants were permitted to add a claim by a trade union for breach of the collective consultation obligations under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 to what had been pleaded only as a claim for unfair dismissal by individual employees. (That case in fact probably went beyond "mere re-labelling" – as do others which are indeed more authoritative examples, such as* **British Printing Corporation (North) Ltd v Kelly** *(above), where this Court permitted an amendment to substitute a claim for unfair dismissal for a claim initially pleaded as a claim for redundancy payments.)*
>
> *It is hard to conceive a purer example of "mere re-labelling" than the present case. Not only the facts but the legal basis of the claim are identical as between the original pleading and the amendment: the only difference is, as I have already said, the use of the section 34 gateway rather than that under section 23. In my view this factor should have weighed very heavily in favour of permission to amend being granted. As the present case only too clearly illustrates, some areas of employment law can, however regrettably, involve real complication, both procedural and substantial; and even the most wary can on occasion stumble into a legal bear-trap. Where an amendment would enable a party to get out of the trap and enable the real issues between the parties to be determined, I would expect permission only to be refused for weighty reasons – most obviously that the amendment would for some particular reason cause unfair prejudice to the other party. There is no question of that in the present case."*

57. In **Vaughan v Modality Partnership** [2021] IRLR 97 at [24], HHJ Tayler reviewed the authorities on amendment. The following principles emerged:

    57.1 the fact that an amendment would introduce a complaint which is out of time is a factor to be taken into account in the balancing exercise, but is not decisive [§15];

57.2 the **Selkent** factors should not be treated as a checklist, but must be considered in the context of the fundamental consideration: the relative injustice and hardship in refusing or granting an amendment [§16];

57.3 the Tribunal may need to adopt a more inquisitorial approach when dealing with a litigant in person [§19];

57.4 that balancing exercise should be underpinned by consideration of the real, practical consequences of allowing or refusing an amendment [§21];

57.5 it is important to consider the **Selkent** factors in the context of the balance of justice [§24]

- 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;

- 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;

- a late amendment may cause prejudice to the respondent because it is more difficult to respond to and results in unnecessary wasted costs.

57.6 where the prejudice of allowing an amendment is additional expense, consideration should generally be given to whether the prejudice can be ameliorated by an award of costs, provided that the other party will be able to meet it [§27].

57.7 an amendment that would have been avoided had more care been taken when the claim or response was pleaded is an annoyance, unnecessarily taking up limited tribunal time and resulting in additional cost; but while maintenance of discipline in tribunal proceedings and avoiding unnecessary expense are relevant considerations, the key factor remains the balance of justice [§28].

58. I followed the jurisprudence set out above when making my decision, Particularly, I considered all the circumstances and the balance of justice. I make the following findings:

58.1 The claimant only completed box 8.2 of the claim form. She did not produce any further information about the 'missing' claims until early 2025. Her explanation for the failure was not plausible.

58.2 I find that the claimant made no reference to unfair dismissal in her first ET1 as she had not been dismissed at that point. I reject the claimant's submission that she raised *unfair* dismissal at the first PH before EJ Phillips on 18 October 2024 [30-35]. I also find that while the claimant's CMA for that hearing noted that she had been dismissed, it did not allege that the dismissal was unfair.

58.3 The claimant appeared before EJ Victoria Butler on 30 January 2025. It is clear that the claimant did not raise unfair dismissal at this hearing. EJ Butler gave clear information to the claimant about how to apply to amend her claim, including a link to the Presidential Guidance.

58.4 The claimant did nothing until 19 February 2025.

58.5 I find that the exercise is not one of rebadging as the claims are all entirely new, as found by EJ Broughton. There was nothing to rebadge.

58.6 The real practical consequences of granting the application would be to add extra claims to the claimant's allegations race discrimination and unfair dismissal discrimination. I find that the new discrimination allegations range in time from September 2022 to January 2024 (all of which are before the claimant presented her first ET1). As the claimant did not start early conciliation until 22 April 2024, all the claims are out of time and would have to rely on the discretion of the Tribunal on the just and equitable rule in section 123 of the Equality Act 2010 to succeed.

58.7 Following the guidance of HHJ Tayler in **Vaughan**, I find that the amendment sought is a major amendment as it adds a completely set of discrimination claims and an entirely new claim of unfair dismissal. The new claims stretch in time over a period of more than three years. However, rejecting the application would still leave the claimant with a substantial case that remains to be litigated.

58.8 I considered granting the application and letting the final hearing decide any time points but found that would still incur more expense to the respondent and the taxpayer and would delay the conclusion of the case.

58.9 The amendment sought is late and would cause the respondent to incur more cost and expend more time. It would cost the taxpayer more expense as it would lengthen the hearing.

58.10 I find the new claims to be very week. I cannot see how the claimant will win an unfair dismissal claim when she admits forging NED3 forms. Her discrimination claims are entirely speculative and, when she explained them, are not claims of discrimination at all. The claimant went through an entire grievance process without once mentioning an allegation of race discrimination.

58.11 The amendment would result in the respondent suffering prejudice because it would have to face a cause of action that would have been dismissed as out of time had it been brought as a new claim. The respondent would also have to investigate factual matters going back to November 2020.

58.12 I find that the prejudice cannot be ameliorated by an award of costs, or other sanction as the entire case now rests on granting or refusing the application.

58.13 I find that this amendment would have been avoided had more care been taken when the claim was pleaded or defined. That is an annoyance, unnecessarily taking up limited tribunal time and resulting in additional cost. However, the key point is the balance of justice and hardship, and I find that the injustice and the hardship is greater on the respondent than the claimant.

59. I refuse the amendment sought.

Reasonable prospects

60. I find that all the claimant's claims are very weak and have no reasonable prospects of success. Her evidence before me was internally inconsistent, inconsistent with the documents and implausible. Her credibility was seriously damaged by her admission of forging the MED3 Certificates.

61. I repeat my comments above about the strength of the claimant's case

Approved by:
Employment Judge Shore
Dated: 29 October 2025

Sent to the parties on

...27 November 2025.....

For the Employment Tribunal

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