Neutral Citation Number: [2026] EAT 36

Case No: EA-2025-000211-NK

**EMPLOYMENT APPEAL TRIBUNAL**

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 5 March 2026

**Before** :

**BRUCE CARR KC**
**DEPUTY JUDGE OF THE HIGH COURT**

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**Between :**

**MR DANIEL MATOVU**

**Appellant**

**- and –**

**THE CHAMBERS OF MR MARTIN PORTER KC,**
**2 TEMPLE GARDENS AND OTHERS**

**Respondents**

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**Daniel Matovu** the **Appellant** in person
**Christian Davies** (instructed by Farrer & Co LLP) for the **Respondent**

Hearing date: 29 October 2025

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# JUDGMENT

## SUMMARY

### Practice and Procedure

The Appellant made a number of applications to the Employment Tribunal for case management orders. Two of the applications were to amend his Particulars of Claim. Despite the first of those applications being unopposed by Leading Counsel appearing for the Respondents, the Employment Judge engaged in a lengthy debate with the Claimant about the amendment and imposed conditions on its grant which had not been argued for or suggested by the Respondent. The second application to amend was determined against the Claimant but on grounds which again, had not been argued by the Respondents and which had not been the subject of discussion at the hearing. A third application (for an order that the Respondent reply to a Request for Further Information) was also rejected on the basis that this was excessive – and again, this was not an argument that had been advanced by the Respondents. The EJ had wrongly exercised his discretion in relation to the two applications by the Claimant that he had rejected and, taking his conduct as a whole, it was sufficient to amount to apparent bias.

**BRUCE CARR KC, DEPUTY JUDGE OF THE HIGH COURT:**

1. I will refer to the parties using the titles that they held in the Employment Tribunal. As I indicated when this appeal was before me on 29 October 2025, I am allowing the appeal in relation to Ground 1 as advanced by the Claimant. I also stated on that day that I would reserve my decision in relation to Ground 2. This judgment represents my reasoning on both grounds advanced by the Claimant and in so far as there is any variation on Ground 1 as between the outline reasons I gave orally on 29 October and the terms of this judgment, it is the latter that prevails.

**Background**

2. The Claimant is a practising barrister and former member of Chambers at 2 Temple Gardens. He was expelled from membership on 29 October 2019. Prior to his expulsion, he had already brought two sets of proceedings in the Employment Tribunal. Those proceedings were considered by an Employment Tribunal chaired by Employment Judge Snelson ("the Snelson Tribunal"). All of the Claimant's claims were dismissed in a decision sent to the parties on 11 February 2020. Appeals in respect of those claims brought to this Tribunal and the Court of Appeal, were both unsuccessful. The claims had originally been listed for hearing in November 2019 but shortly before the scheduled start date, the Claimant issued a further claim ("the Third Claim") centred on his expulsion from Chambers in late October 2019. The Third Claim had been the subject of an order to stay the proceedings pending the outcome of the Claimant's appeals in relation to his first two claims. That appeals process was concluded on 9 August 2023 on which date Bean LJ refused the Claimant's application for permission to appeal against the earlier decision of the EAT dismissing his appeal against the judgment of the Snelson Tribunal.

3. The Claimant then applied for the stay of the Third Claim to be lifted and this was duly done with effect from 18 July 2024. The Third Claim was then listed for a Preliminary Hearing ("PH") on 13 December 2024. The PH was heard by Employment Judge Hodgson ("the EJ") and it is his conduct of that hearing that is now the subject of the current appeal. Written reasons relating to that hearing were sent to the parties on 3 January 2025.

4. In so far as are relevant to the matters in issue on this appeal, the EJ ruled as follows:

(1) The Claimant was allowed to amend paragraphs 35 and 36 of his Particulars of Claim in the Third Claim ("the Particulars"). This application by the Claimant was allowed subject to certain provisos which were sent out in paragraphs 3.4.1 and 3.4.2 of the EJ's Order ("the Order"). This part of the EJ's ruling is relevant to the issues raised under Ground 2;

(2) The Claimant's application to amend paragraph 32 of the Particulars was refused. This decision is relevant to Ground 1, as well as to Ground 2;

(3) The Claimant's application for an order that the Respondents should provide further information ("the RFI") was also refused. This decision is also relevant to both Grounds 1 and 2.

5. The scope of the application to amend paragraph 32 of the Particulars was as follows (with the proposed additional words shown underlined):

> "In due course the Claimant was expelled with immediate effect on 29 October 2019. This severely impacted on the preparation of his witness statement that was due to be served on 4 November 2019. The brutality with which this was all executed and the whole manner in which the Senior Clerk's grievance was handled and determined leading to the Claimant's expulsion were all done in retaliation for

the Claimant having raised the original complaint against the Senior Clerk and pursued it, <u>and in retaliation for the Claimant having repeated in a Staff Appraisal Feedback form the complaint of race discrimination and alleged victimisation by the Senior Clerk</u>. Given that the claimant's original complaint was a protected act, <u>as was the Claimant's letter of 8 October 2017 (as referred to in paragraph 8 above)</u> and the bringing of proceedings under the Equality Act 2010 also constituted A protected act, the actions of the respondents that culminated in the claimants expulsion, including expulsion itself and the manner of it, amounted to act of unlawful victimisation and/or racial harassment."

6. From the terms of the proposed amendment, it is apparent that the Claimant was looking to add to the scope of his complaint that his expulsion had been an act of victimisation in response to an allegation of race discrimination that he had made against the Senior Clerk at his former Chambers. The new reference to "the Staff Appraisal Feedback form" was to something that had already been identified in paragraph 27 of the Particulars in which the Claimant had identified the basis on which he had been expelled as being on the grounds that he had allegedly:

> "dishonestly (and so in bad faith) raised and pursued a complaint of race discrimination against the Senior Clerk, dishonestly repeated in a Staff Appraisal Feedback form the complaint of race discrimination and alleged victimisation by the Senior Clerk, and failed to cooperate in an investigation into his own conduct."

7. So, whilst the Claimant had not in terms identified the Staff Appraisal Feedback form itself as being a protected act and one which had led to his expulsion, he had flagged that the contents of that form had apparently been relied on by the Respondents, as part of their

reasons for that expulsion. On the face of it therefore, the effect of the proposed amendment was to add, as an additional protected act which was causative of his expulsion, a factual issue which was already part of the pleaded case.

8. The second aspect of the proposed amendment to paragraph 32 was to add as a further protected act, the letter of 8 October 2017 which had already been referred to at paragraph 8 as being a protected act which was expressly linked to the decision to expel him from Chambers. In that letter, the Claimant had said that the Board of the First Respondent, 2 Temple Gardens ("the Board") should retract a letter that it had sent 4 days earlier on 4 October 2017 in which it had said that the Claimant should have no further dealings with the Senior Clerk in respect of whom he had submitted a complaint of race discrimination in July 2017.

9. As far as the RFI is concerned, this was a short one comprising 3 separate points relating to the allegation of bad faith that the Respondents had advanced in paragraphs 29(c)(iii) and 47(c)(ii) of their Grounds of Resistance ("GoRs"). Paragraph 29(c)(iii) recorded the decision of Panel appointed by the Board to the effect that the Claimant's original allegations of discrimination that had been made against the Senior Clerk, had in fact been made in bad faith. In paragraph 47(c)(ii), the same point was made in the context of a response to the Claimant's allegations of victimisation and the protected act relied on in the form of that same original complaint against the Senior Clerk.

10. Under the first request within the RFI, the Claimant asked for particulars of all facts and matters that would be relied on in support of the contention that he had acted in bad faith. Secondly, he suggested that the same allegation of bad faith had been argued before the

Snelson Tribunal but that the Respondents had failed in this part of their case. The Request was that the Respondents now provide particulars of any new material on which they intended to rely and which was not available for use before the Snelson Tribunal. Thirdly, if they were intending to rely on any such material which had not been so available, they were requested to provide information as to why this could not have been adduced earlier. The purpose of the second and third elements of the RFI appears to have been to assist the Claimant in running an argument to the effect that there was, as a result of the decision of the Snelson Tribunal, an estoppel which prevented the Respondents from arguing bad faith on the same basis in relation to his third claim.

## The Appeal

11. The Claimant submitted a Notice of Appeal on 14 February 2025, advancing two grounds in summary as follows:

    a. **Ground 1** – Perversity – no reasonable Tribunal could have reached the decision to refuse the Claimant's application to amend paragraph 32 of the Particulars and for an order in respect of his unanswered RFI Request;

    b. **Ground 2** – Improper conduct and/or bias (actual or apparent) in the way in which the EJ had conducted himself at the PH on 13 December 2024.

12. The Appeal was considered by the President, Lord Fairley, at the sift stage and under the terms of his order, Ground 1 only was allowed to proceed to a full hearing. As to Ground 2, the Claimant exercised his right to a hearing under Rule 3(10) EAT Rules. This was considered by Michael Ford KC, Deputy Judge of the High Court, at a hearing on 18 September 2025. Mr Ford allowed Ground 2 to also proceed to a full hearing, albeit limited to the specific matters set out at under paragraphs (b)-(f) of the Amended Notice of Appeal

that had been submitted by the Claimant.

**The EJ's decision on the points material to this appeal**

13. Dealing first with the decision regarding the proposed amendment to paragraph 32 of the Particulars, the EJ's conclusions, set out at paragraph 2.40 onwards, were as follows:

    a. The Claimant was seeking to make new claims and in the event the amendment was "substantial",

    b. He did not accept that the amendment was a mere clarification of the matters set out in paragraph 8 of the Particulars;

    c. The first amendment related to a staff appraisal form, which was not part of paragraph 8 of the Particulars but was a new protected act;

    d. The second part of the amendment added nothing to the letter of 8 October 2017;

    e. The amendment raised a new protected act which was substantially out of time. The Claimant could pursue his allegations of victimisation based on his unamended Particulars and would therefore suffer little hardship. In contrast, the Respondents faced much greater hardship – the scope of the factual inquiry would be broadened and there may be a need for further witnesses. There may be difficulties in finding evidence relating to the matters raised by the first part of the proposed amendment;

    f. As far as the second part of the amendment was concerned, this did "not introduce any new claim and appears to be consequential on the narrative of the first part of the proposed amendment. There is no hardship in refusing it. It is essentially irrelevant."

14. As to the RFI, the EJ set out his conclusions at paragraphs 2.47-2.53. The relevant parts of

his decision read as follows:

> "2.47 It follows that there are two strands to the application. The first is an extensive request which is put as follows "all facts and matters as will be relied upon at trial in support of the contention that the claimant's complaints of race discrimination and/or alleged victimisation by the senior clerk were made in bad faith." The second strand is an assertion that allegations of bad faith were not proven before the Snelson tribunal.
>
> 2.48 In oral submissions, the claimant clarified that he wished to obtain full disclosure of the facts relied upon relied on so he may pursue his argument that the respondent is estopped from asserting bad faith.
>
> 2.49 It is the respondents' position that the question of bad faith was not decided by the Snelson tribunal and the question of estoppel does not arise. Further it is the respondent's position that the application for disclosure is inappropriate.
>
> 2.50 I was taken to the Snelson judgement and I note in particular paragraphs 138 and 44. In relation to the bad faith argument, at paragraph 138, the Snelson tribunal said quote we decided that it is not necessary to deal with that plea since the victimisation claims are in any event untenable on other grounds." At paragraph 44, the Snelson tribunal said "We have consciously omitted to record findings on certain matters…. we declined to deal with the bad faith defence."
>
> 2.51 Part of the claimant's application is based on the assertion that the issue of bad faith has, in some manner, being decided. It has not. It is possible that there are findings of fact made by the Snelson tribunal which are relevant but that is not a matter for me, nor a matter relevant to this application.
>
> 2.52 There is no general right to request evidence be produced in advance of disclosure and exchange of witness evidence. There may be occasions when

> further information needs to be provided in order for one party to understand the case of another. This may reflect an inadequacy of pleadings. No party is required to set out every factor on which it relies in support of its predisposition. What is needed is an understanding of the position such that a case can be prepared properly.
>
> 2.53 The claimant's application was extremely wide. By asking for "all facts and matters as will be relied upon at trial" it goes far beyond any reasonable legitimate request for clarification of the respondents' position. Instead, it is asking for pre disclosure of matters properly dealt with in evidence and submissions. That request is inappropriate and oppressive. Moreover it proceeds on the basis of an argument that it would provide a basis for bringing an application based on issue estoppel. For the reasons I have given, I consider that argument appears difficult. This does not preclude the claimant from raising estoppel. I am not making a final decision on estoppel. I am making a decision on the basis of what is needed for the reasonable clarification of the response. Any substantial substantive argument on the question of estoppel is for any tribunal that hears this case and is subject to full argument.
>
> 2.54 For the reasons I have given, I refused the claimants application for further information."

15. As set out above, the Claimant had also made an application to amend in order to add new paragraphs 34 and 35 of the Particulars. This application was unopposed by the Respondents. The application was to add the following paragraphs:

> "<u>35. Further, on or about 18 July 2024, the Second Respondent acting on his own behalf and on behalf of the First Respondent wrongly authorised and or caused to</u>

be made a false declaration, knowing it to be untrue, to the High Court for the purpose of obtaining an order for enforcement in the High Court by writ of control against the Claimant in respect of a costs order issued in the central London county court. This false declaration, which an agent acting on behalf of the Second Respondent was authorised to make, was to certify in terms that to the Second Respondent's knowledge there was no application or other procedure pending at that time. This was untrue, because to the knowledge of the second respondent and his legal representative the set costs order was at the time the subject of a pending appeal and another pending application for a stay of execution (which was subsequently granted in the High Court). The court was thereby knowingly, wilfully and recklessly misled by the Second Respondent in order to obtain the right of control by dishonest means with a view to putting the Claimant under the maximum financial pressure and obtaining an unfair advantage. As a result, the claimant was forced against his will to pay to the second respondent on behalf of the first respondent the sum of £7,820.01. The Second Respondent acted unfairly and dishonestly in this manner towards the claimant to his detriment because he had brought and was continuing to pursue these proceedings against the Respondents which were pending in the employment tribunal. This constituted unlawful victimisation.

36. Even after the High Court had granted a stay of execution pending the Claimant's appeal, the Second Respondent still refused to return the claimants monies which had been obtained by unlawful and wrongful means, despite demands from the Claimant that those monies be repaid to him. This constituted unlawful victimisation of the Claimant."

16. Not only was this application not challenged by the Respondents, but they did not suggest that it should be further particularised or that they required additional information in order to be able to address it. Notwithstanding their position, the EJ agreed to allow the uncontested amendment subject only to the conditions set out in paragraphs 3.4.1 and 3.4.2 of his decision. In explaining his reasoning in relation to this application, he said as follows:

> "2.33 Application of 17 October 2024 seeks to introduce 2 new paragraphs to the claimant being 35 and 36. Both contain new allegations victimisation. The respondent objected to neither or be it I observed that the allegation contained in paragraph 36 is unclear and the respondent accepted this.
>
> 2.34 The tribunal is not bound to order amendment, even where parties have agreed to it. Consent is a relevant matter when considering the balance of hardship. It is still important for the tribunal to identify the nature of the amendment and to consider whether it is introducing new claims. It is necessary to do this in order to consider the balance of hardship. There is this is particularly important where the amendment is unclear. It would be unfortunate if the amendment were granted and then the parties argued over the effect of the amendment. Moreover allowing unclear amendments is unlikely to be appropriate because the tribunal may not know the case it is to judge. The lack of clarity is unlikely to further the overriding objective.
>
> 2.35 My notes the claimant has chosen to bring claims by amendment, which post-date the original claim. It is unclear why he chose that course when he would have an absolute right to pursue those allegations in a fresh claim. Moreover, this amendment potentially takes effect from the date of the decision, and as such it is arguable that the claims are now out of time. I have not determined time substantively. It is unclear to me why the claimant has chosen to take this course

when he could simply have issued proceedings an ensured that there were no time issues. If there were objection taken by the Respondent to this course of action, the time point may have been a factor which would have weighed heavily with me when considering my discretion. However, as it does not object not being objected to by the Respondent I will not refuse the application as these claims may now be out of time, albeit time is a substantive issue for the final tribunal.

2.36 Paragraph 35 may be included by amendment subject to the proviso the only claim which I'm allowing to proceed is the allegation that on 18 July 2024 the second respondent, Mr. Martin Porter KC, acting on his own behalf and on behalf of the First Respondent wrongly authorised a false declaration in an application for a writ of control in the High Court. The alleged consequence is that the claimant paid the sum of £7820.01. That consequence does not appear to be put as a separate allegation of victimisation and I do not allow it to proceed as a separate allegation. The alleged false declaration may proceed as an allegation of victimisation relying on the protected act previously identified in the claim. To the extent that there are any further claims contained in paragraph 35 they are not allowed.

2.37 I considered paragraph 36. The claimant's oral submissions on this were unclear. The allegation is one of victimisation for the refusal to return monies said to be obtained unlawfully. The Claimant initially stated he was referring to a single e-mail but he was unable to identify. Thereafter, he stated there were various refusals.

2.38 I asked the claimant to provide details of the e-mail said to constitute refusal. The Claimant provided that information by e-mail of 13 December 2024.

2.39 I allow the amendment to the following extent. The Respondents' refusal contained in the e-mail of 20 August 2024 at 13:37:21 from Mr Jonathan Holgate's

to return monies obtained was an act of victimisation. The protected acts are those which are contained in the claim form."

17. The EJ then recorded as follows

> "3.4 The Claimant's application of 17 October 2024 is granted to the extent set out above: for the removal of doubt the claimant may pursue the following allegations of victimisation relying on the protected acts previously identified in the claim:
>
> > 3.4.1 Paragraph 35 may be included by amendment subject to the proviso the only claim which may proceed is the allegation of an act of victimisation that on 18 July 2024 the second respondent, Mr. Martin Porter KC, acting on his own behalf and on behalf of the first respondent wrongly authorised a false declaration in an application for writ of control in the High Court.
> >
> > 3.4.2 I allow the claim to be amended by the addition of paragraph 36 which contains one claim being the respondents' refusal contained in the e-mail of 20 August 2024 at 13: 37: 21 from Mr Jonathan Holgate to return monies obtained was an act of victimisation. The protected acts of those contained in the claim form."

**The Claimant's Submissions**

18. Dealing first with Ground 1, the Claimant challenges the EJ's decision not to allow him to amend paragraph 32 of the Particulars. He points first of all to the factors set out in the Presidential Guidance – General Case Management (as amended in January 2018) and identifies as relevant to his appeal in particular the references to:

    a. The requirement for a careful balancing exercise to be conducted having regard in

particular to the interests of justice and the balance of hardship to the parties caused by the grant or refusal of the amendment (Paragraph 4 – Presidential Guidance);

b. The substantiality of the proposed amendment, including whether it raises a new complaint (Paragraph 5 – Presidential Guidance);

c. The timing of the application and the time limits referable to any new complaint or cause of action covered by the amendment (Paragraph 5 – Presidential Guidance);

d. Whether the amendment adds any new claim which is connected with the facts of the original claim as pleaded (Paragraphs 6 – Presidential Guidance) ;

e. Whether it falls within the scope of an existing claim or is entirely new claim (Paragraph 7 – Presidential Guidance)

f. Whether there is a link between the facts originally pleaded and those within the scope of the proposed amendment (Paragraph 12 – Presidential Guidance).

19. When that guidance is applied to the amendment which he proposed to paragraph 32 of the Particulars, he asserts that the proposed amendment was relatively minor and that:

a. No new facts were being introduced or added;

b. No new claim was being added:

c. The proposed amendment was within the scope of the existing claim;

d. The proposed amendment arose out of the same facts and was closely connected to those set out in the existing claim.

20. He also suggests that the application to amend was made at an early stage and did not involve any prejudice to the Respondents. The EJ was wrong to refuse the amendment in the following respects:

a. He was wrong to proceed on the basis that the Claimant was raising a new complaint;

b. He was wrong to conclude that the amendment would broaden the scope of the factual inquiry and might give rise to the need for further witnesses;

c. He was wrong in his assessment of the balance of hardship in that there was in fact no hardship to the Respondents if the amendment were allowed whereas if it were refused, he would be denied the opportunity to pursue his existing claim on its full merits.

21. As far as the RFI was concerned, the first part of the request was in a standard form of the sort that one frequently sees in litigation, in particular in the High Court. The Claimant relies on an extract from the speech of Lord Hope in **Three Rivers DC v Bank of England [2001] UKHL 16** at 51 where his Lordship stated as follows:

> "It is clear that as a general rule, the more serious the allegation of misconduct, the greater the need for particulars to be given which explains the basis of the allegation. This is especially so where the allegation that is being made is of bad faith or dishonesty. The point is well established by authority in the case of fraud."

22. And at 55:

> "Of course, the allegation of fraud, dishonesty or bad faith must be supported by particulars. The other party is entitled to notice of the particulars on which the allegation is based."

23. The Claimant says that his application in this respect was fully justified and appropriate. He also said that the other two parts of his request were closely linked to the request for

particular of the alleged bad faith "but were also necessary to clarify the extent to which an issue estoppel plea might potentially be arguable. The requests were therefore "reasonably necessary and proportionate to enable [him] to prepare his own case and would also assist the Tribunal to address such a plea."

24. The Claimant also relied on the way in which his applications had been addressed by Leading Counsel who had appeared at the hearing on behalf of the Respondents. In his "Respondents' Note for PH", Richard Leiper KC had made the following points:

    a. As far as the applications to amend were concerned, his submissions were limited to the suggestion that the effect of these were to introduce two new protected acts. He went on to say that this was "surprising" in that they had not been referred to in an earlier application to amend and had not been identified in a List of Issues that the Claimant himself had produced. There was he said, no explanation as to why the amendment was only being made 5 years after the event and that there was no prejudice to the Claimant in refusing them as he would still be able to argue the gravamen of his complaint which was that he had been dismissed because of his original complaint of discrimination against the Senior Clerk and/or because of the first two claims that he had brought against the Respondents. He did not however identify any particular prejudice that he said would be caused to the Respondents if the amendments were allowed and made no reference to any need to call additional evidence.

    b. On the RFI, he again described this as "surprising" in that the Claimant had not asked for it at an earlier stage. He also said that the allegations of bad faith had been "clearly articulated in the written closing submissions before the Snelson Tribunal" and that the request for particulars was based on a misreading of the

judgment of that Tribunal which had not in any event determined the question of bad faith, with the consequence that the question of issue estoppel could not in fact arise in any event. He did not suggest that the request was "extremely wide" or "went beyond anything that was legitimate." If anything, his submission was rather to the contrary in that he had indicated that the facts and matters relied on by the Respondents could be found elsewhere – in the Closing Submissions made to the Snelson Tribunal.

25. Turning to Ground 2, there are a number of matters which are relied on by the Claimant in support of his contention that the EJ was guilty of actual or apparent bias as follows:

    a. In paragraphs 2.1-2.7. the EJ recorded the contents of a discussion between himself and the Claimant in which the latter had made raised concerns about the involvement of the former based on the EJ's prior conduct in relation to the Claimant's earlier claims (which were subsequently dismissed by the Snelson Tribunal). The EJ said that he had little if any recollection of his prior involvement and that nothing that the Claimant had said to him reached the standard of indicating apparent bias. After the EJ indicated that he would continue to hear the case unless a recusal application was made, the Claimant declined to formalise his concerns by way of such application and so the hearing proceeded. The Claimant suggested that the EJ's assurance of impartiality that was given to him at the hearing itself was then something in respect of which he "conspicuously failed."

    b. the fact that the Respondents did not oppose applications by the Claimant to amend paragraphs 35 and 36 of the Particulars, the EJ had "unreasonably questioned" the Claimant as to whether the amendments were drafted with sufficient clarity. On the issue of the unopposed application to amend these two paragraphs, the EJ's

decision was that the Claimant would be directed to provide further details relating to the subject matter of the application and which had not been requested by the Respondents when they had simply consented to the application that the Claimant was making;

c. The EJ's conclusions in relation to his rejection of the Claimant's application to amend paragraph 32 of the Particulars contained matters which had not been argued by the Respondents and so gave the impression that the EJ had entered the arena on their behalf;

d. The same point was made in relation to the Claimant's RFI.

26. The Claimant also relied on the contents of a transcript of the hearing on 13 December 2024 from which he said it was clear that the EJ was conducting himself in a manner that demonstrated actual or apparent bias. In particular he noted the following:

a. When the EJ invited the Respondents' counsel to indicate whether he was opposing the application to amend paragraphs 35 and 36, the Respondents made the point that the Claimant could either has issued a fresh application or alternatively, had it joined to the current (third) claim. On that basis, he was not objecting to it and his only request was that the Respondents should have the opportunity to put in a revised Grounds of Resistance. The EJ then appeared to press Mr Leiper saying of the matters raised "Are they clear? Are they clear what cause of action and what the allegation is? Are they clear?" Mr Leiper's reply was that the amendments were said to be acts of victimisation which could have been brought by way of a separate, fresh claim. Mr Leiper did not suggest that the amendment should in any way be restricted or that further information relating to it should be provided.

b. When moving on to deal with the amendment application relating to paragraph 32, Mr Leiper simply said that the effect of this was to introduce two protected acts which were said to be causative of the detriments which were said to have taken place. He did not raise any difficulties in dealing with them or suggest that there was any hardship to the Respondents if the amendments were allowed. His point was essentially that it was only after 5 years that the Claimant was seeking to expand his case by adding additional protected acts and he "did not understand" why this was only being done at this point.

c. As far as the RFI was concerned, all that Mr Leiper said was that the application was opposed – nothing was added to that comment.

d. There was then an adjournment for the EJ to read documents. On his return, at 10.55 as the Claimant how long he would need for his submissions. The Claimant said that he thought he would need about 20 minutes in response to which the EJ said "I will give you 10 and I will expect you to complete within that time. I have some questions for you so stick to the main points please. If I give you 20 minutes, I give Mr Leiper 20 minutes, I do not have time to actually make the decision. So, 10 minutes please, 10.55".

e. Notwithstanding that the application to amend paragraphs 35 and 36 of the Particulars was unopposed and that the Claimant had been told to limit his submissions to 10 minutes, a significant part of the hearing, as the transcript demonstrates, was then taken up with the EJ, of his own volition and in the face of unconditional consent to the application by the Respondents, engaging in a protracted debate with the Claimant on that issue. The EJ, having been told by the Claimant that the application was unopposed (by Respondents' represented by Leading Counsel) observed that "the question of amendment is not one which can

actually be agreed to by the parties." Whilst this may be technically correct, it is somewhat exceptional for a Judge, in the context of a time-pressured hearing in which the application has been consented to by Leading Counsel appearing for the Respondents, to take a significant part of that hearing to push the Claimant on the basis of that amendment and to insist on information or restrictions which the Respondents themselves had not asked for.

f. During the course of discussion with the parties as to the effects of the amendments and the RFI, the EJ stated that "It does not strike me that allowing any of this is going to make a material difference to the length of the hearing". The Claimant suggests that this comment stands in marked contrast to what the EJ later said in his written reasons. In the same transcript, Mr Leiper for the Respondents, when later dealing with how long should be allowed for the substantive hearing, had said that "Nothing has changed [since the original 6-day listing] apart from the amendments which you [the EJ] have indicated should not take up any material time."

**The Respondents' Submissions**

27. Although Mr Leiper KC appeared at the PH, he did not represent the Respondents in the hearing before me. Instead, the Respondents were represented by Junior Counsel, Mr Davies. This could be described as sub-optimal in that Mr Davies was obviously not at the hearing the subject of this appeal and could only advance his clients' case on the basis of his instructions and the material before me. In relation to Ground 1, he reminded this Tribunal of the existence of a wide discretion that ET's retain in relation to case management decisions and in particular the observation of Asquith LJ in **Bellenden v Satterthwaite [1948] 1 All ER 342** (at page 345) that in order for an appeal on this ground to succeed, it

would need to be shown that the discretion had "exceed[ed] the generous ambit within which reasonable disagreement is possible", an observation that was approved in the context of Employment Tribunals by the Court of Appeal in **CICB v Beck [2009] IRLR 740** (per Wall LJ at paragraph 23).

28. Mr Davies' submission was essentially that to refuse the Claimant's application to amend paragraph 32 was indeed within the scope of the EJ's discretion, having regard to the principles applicable to amendment applications and set out in the well-known authority of **Selkent Bus Company Limited v Moore [1996] ICR 836**. He suggested that the effect of the amendment was to introduce two new protected acts which were substantially out of time and which, if not allowed, would not prevent the Claimant from pursuing his allegations of victimisation based on the protected acts that had already been pleaded. He also stated that it was "self-evident" that the factual inquiry would be broadened if the amendment was allowed and that the ET was fully entitled to suggest that there 'may' be a need to call further witnesses and that after many years, it may be difficult to find relevant evidence.

29. Similarly, with regard to the RFI, it was again properly within the EJ's discretion to refuse the application. He relied on the observations of the EAT in **Byrne v The Financial Times [1991] 417**, at paragraph 18 as follows:

> "General principles affecting the ordering of further and better particulars include that the parties should not be taken by surprise at the last minute; that particulars should only be ordered when necessary in order to do justice in the case or to prevent adjournment; that the Order should not be oppressive; that particulars are for the purposes of identifying the issues, not for the production

> of the evidence; and that complicated pleadings battles should not be encouraged."

30. He further submitted that the ET was entitled to conclude that (a) the Respondents' allegations bad faith were sufficiently pleaded, (b) the Claimant's application was extremely wide and (c) the stated purpose was to run an argument based on issue estoppel which was misconceived given that the Snelson Tribunal had expressly not adjudicated on the question of bad faith.

31. On Ground 2, actual or apparent bias, Mr Davies submitted that the allegation of actual bias was untenable and the Claimant had not advanced any factual basis on which actual bias might be inferred. He suggested that any errors of law relating to Ground 1, do not of themselves provide an arguable basis for a bias appeal and that with regard to the unopposed application to amend, it was perfectly legitimate for a Tribunal to question whether the proposed amendment was drafted with sufficient clarity. In any event, he said, the EJ *had allowed* the amendment, albeit subject to the provisos that he imposed. The rejection of the two of the Claimant's applications (the RFI and the amendment to paragraph 32 of the Particulars) represented the permissible exercise of the EJ's case management discretion and again provided no basis for an argument of apparent, still less actual bias. Even if the EJ had wrongly exercised his discretion in relation to case management decisions, this would still fall short of establishing bias.

## Relevant Law

32. Dealing first with the issue of discretion, the law is well-settled in spelling out that an appellate court should only interfere in the event that the EJ took account of an irrelevant

matter, failed to take into account a matter that it was necessary to consider in order for the discretion to be exercised properly or alternatively, came to a conclusion which was beyond that which an reasonable judge or tribunal could have decided – see for example **Carter v Credit Change Ltd [1979] ICR 908**.

33. As far as allegations of bias are concerned, again the test to be applied is well-settled. A finding of actual bias is extremely rare, requiring as it does positive evidence that a Judge is in fact biased in favour of one side over the other. The approach to questions of apparent bias can be found in the House of Lords decision in **Porter v Magill [2002] 2 AC 357** in which Lord Hope stated that the question to be asked was "whether a fair minded and informed observed who had considered the facts would conclude that there was a real possibility that the tribunal was biased.".

## Conclusions – Ground 1

34. As already stated above, in announced my decision on Ground 1 and gave outline reasons for it at the hearing on 29 October 2025. I start with paragraph 2.44 in which the EJ set out his reasons for rejecting the application to amend paragraph 32. The points on which he came to his conclusion were in my view, in large part unsustainable. I make the preliminary observation that the EJ's reasons were not given on the day of the hearing (13 December 2024) but were set out in a record of the discussion dated 30 December 2024. There is sometimes a risk that when a decision is reserved, that a Judge may in subsequently compiling his/her reasoning, either lose sight of the way in which the earlier hearing has proceeded and/or adopt what one might call a "boiler plate" approach to the justification for a decision which is again at odds with that earlier hearing.

35. In this particular case, the EJ at paragraph 2.44 suggested that "the scope of the factual inquiry would be broadened. There may be a need for more witnesses. When matters are raised many years after the relevant events, it may be difficult to find relevant evidence." These sorts of points are ones that one will often see set out as reasons for rejecting an application to amend, however, none of them were points which the Respondents themselves had sought to argue. Whilst Mr Leiper in his Note prepared for the PH suggested that the amendment had the effect of introducing 2 new protected acts, his objection was limited to suggesting that this was "surprising" given that they were not in the original claim and were not identified by the Claimant in a more recently prepared List of Issues. He did not add to these arguments in his oral submissions (as is apparent from the transcript of the proceedings).

36. Not only did Mr Leiper not suggest that the effect of the amendment would give rise to the need for further evidence or broaden the scope of the factual inquiry, but the EJ himself gave the same indication during the course of the hearing – as I have set out above. So, having not had any submission made to him about any expansion of the evidence needed at the full hearing and having himself addressed the parties on the basis that there would not be any such expansion, the EJ then rejected the Claimant's application substantially on the opposite basis. If the Respondents, represented by highly experienced Leading Counsel, did not think it appropriate to advance any argument as to any substantive change to the factual inquiry to be addressed at the full merits hearing, it is surprising to say the least, that the EJ took it upon himself to reject the application on that basis. All the more so when that basis flies in the face of his own observations made at the hearing and which observations were accepted by the parties. The EJ, in his written reasons, suggested that the amendment was "substantial" (see paragraph 2.41) – I do not accept that characterisation of the addition of

two protected acts, the content of which was already within the scope of the pleaded case.

37. The EJ also suggested that there may be a need for further witnesses – no such suggestion was made by Mr Leiper. In so doing, the EJ appears not to have followed his own direction at paragraph 2.30 of his reasons in which he had referred to the decision of Underhill P (as he then was) in **Evershed v New Star Asset Management EAT 0204/09** in which the then President had indicated that it was "necessary to consider with some care the areas of factual inquiry raised by the proposed amendment." There was in fact no apparent assessment of the extent to which the amendment would actually lead to significant areas of factual inquiry – the reality is that the addition of two alleged protected acts would have been highly unlikely to have had any real impact on the case which was to be advanced by the Respondents which was that the Claimant had been expelled from Chambers for having made allegations of race discrimination against the Senior Clerk which had been put forward in bad faith. That argument would be substantially the same whether there were two, three of four protected acts on which the Claimant relied.

38. In addition, in circumstances in which Mr Leiper had not made any suggestion that the Respondents would suffer hardship if the amendment were allowed, it is difficult to see how the EJ reached the conclusion that they would. Mr Leiper expressed only 'surprise' at the timing of the application to amend – having agreed with the EJ that there would be no material impact on the scope of the factual inquiry, he did not suggest that there were any additional witnesses that might need to be called or any difficulty in finding relevant evidence. In fact, both of the matters on which the Claimant sought by way of amendment, to rely on as protected acts, were already referred to in his original pleading so it is likely that the only additional matter which the ET at the substantive hearing was

likely to have to address was whether the relevant communications were in fact protected acts within the scope of section 27(2) Equality Act 2010. Further, given that the two new protected acts contained substantially the same allegations of discrimination by the Senior Clerk, any issue of bad faith was likely to also remain substantially the same.

39. Whilst I accept that the EJ was entitled to take the view that the hardship that the Claimant would face if the application was rejected, was limited, ultimately that application failed as he reached the contrary – and in my view sustainable – position with regard to any hardship faced by the Respondents. In doing so, he took into account irrelevant matters which had not been suggested by the Respondents as being applicable and by failed to carry out the necessary consideration of what would in fact be the impact of allowing the amendment sought by the Claimant. For those reasons, I reach the conclusion that to reject the Claimant's application to amend paragraph 32 of the Particulars was one which fell outside the wide discretion within which the EJ was operating.

40. I also allow the appeal in so far as it relates to the RFI – and for substantially the same reasons. In his Note for the PH, Mr Leiper had again suggested that the timing of the application was "surprising" and had not been requested at an earlier stage in the proceedings. He said it was based on a misreading of the decision of the Snelson Tribunal (in that it could not be used to support an issue estoppel argument as the Snelson Tribunal had not in fact made a ruling on bad faith) and therefore was not required. He also said that the allegation of bad faith had been articulated in the written closing submissions which had been presented to the Snelson Tribunal. What he did not do was to suggest that the application was oppressive or otherwise inappropriate in the sense that the Claimant was asking for information to which he was not prima facie entitled. In the

course of the transcript he can be seen to make essentially the same points for the same reason.

41. In his conclusions however, the EJ again took points which had not even been argued by the Respondents and concluded that the RFI was “extremely wide” and went “far beyond any legitimate request for clarification of the Respondents’ position”. It was, said the EJ a “request for pre-disclosure of matters properly dealt with in evidence and submissions.” He expressly disavowed reaching any conclusion on the question of issue estoppel, saying that that would be a matter for the substantive hearing of the Claimant’s third claim.

42. Where an allegation of bad faith is made, it is generally recognised that a party who is the subject of such an allegation is entitled to ask for particulars of the facts and matters relied on in support of it. That much is clear from the extract from the speech of Lord Hope in the **Three Rivers** case to which I have already referred. Whilst it may be less commonly found in ET proceedings, the Claimant’s RFI is of a kind that one frequently sees in High Court or county court litigation in which allegations of bad faith or other disreputable conduct, such as fraud, are made. It is perhaps for that reason that Mr Leiper did not seek to suggest that the RFI was oppressive – if anything he went the other way in submitting that the Respondents’ case was particularised but was to be found elsewhere, namely in the closing submissions presented to the Snelson Tribunal. So again, as with the application to amend paragraph 32, the EJ has reached a conclusion which was not argued by the Respondents and was even at odds with the arguments that they did make. In addition, in doing so, he reached a conclusion which was in any event unsustainable – I do not think that it can properly be said that the RFI was “extremely

wide". The Claimant was plainly entitled to ask for particulars of those matters on which the bad faith argument was based and, given not least the Respondents' own suggestion that they had already set out their case elsewhere (albeit not in the pleadings related to the Claimant's third claim) it would appear that to provide those particulars – potentially by reference to their earlier closing submissions to the Snelson Tribunal – would not have been in any way difficult for them.

**Conclusions – Ground 2**

43. I can deal in brief with the Ground 2 of the Claimant's appeal in so far as it is advanced on the basis of actual bias. Whilst it is correct to note that, at the beginning of the hearing in December 2024, the Claimant raised an issue with the EJ presiding over the PH on the basis of his concerns about how the Judge had conducted himself at a previous hearing involving the same parties, the Claimant ultimately elected to continue with the hearing, albeit after the EJ had give an open assurance to him as to his impartiality. The Claimant in the event devoted most of his submissions to the issue of apparent bias and also did not identify any factual basis on which it might be said that the EJ was in fact guilty of actual bias. I therefore reject the Claimant's appeal on Ground 2 in so far as it is advanced on that ground.

44. However, as far as apparent bias is concerned, the position is less straightforward. In his Grounds of Appeal, the Claimant put forward a number of specific grounds on which he alleged bias on the part of the EJ. As already stated, the first of these was dismissed by Michael Ford KC, at the Claimant's Rule 3(10) hearing. That left 5 matters for consideration before me, as set out in paragraphs (b)-(e) of Ground 2 of the Claimant's Amended Notice of Appeal:

b. The first matter relied on is the EJ's approach to the Claimant's unopposed application to amend paragraphs 35 and 36 of his Particulars. I have already touched on the issues raised by the Claimant. It is more than a little surprising that, in response to an application to which Leading Counsel has raised no objections, the EJ thought it appropriate to engage in extensive discussion with the Claimant, ultimately leading to requirements being attached to the grant of permission to amend which were never suggested by Mr Leiper KC as being necessary. That this occurred against the backdrop of an extremely limited period being allowed for submissions is a further point on which the informed observer may start at the very least, to raise an eyebrow as to how the EJ was going about his task. Add to that that the EJ saw fit to criticise the Claimant (at paragraph 2.35 of his decision) for not having sought to pursue the matters which were the subject of the amendment by the alternative mechanism of issuing fresh proceedings. He then said that, had the Respondents taken objection to the amendment on the basis that the claims within it might be out of time, he this would have "weighed heavily" with him in his decision. In those circumstances, the impartial observer would be likely to ask him/her-self why the EJ was making any reference to this at all? It is apparent from what was said by Mr Leiper at the hearing itself, that the amendment was not objected to on the basis that the relevant events had occurred in the summer of 2024 and could have been pursued by way of a fresh claim – it seems clear that he was saying that because they could have been brought on that basis, there was no merit in objecting to them coming into the present claim by way of amendment. There was on the face of it, no need for the EJ to make the unnecessary and irrelevant observation criticising the Claimant for not issuing a fourth claim in the ET

rather than doing what he did do, which was to apply to amend his third claim. All the more so when one looks at the transcript of the hearing and observes that this point was not even canvassed with the Claimant during the course of his submissions.

c. Under this sub-heading, the Claimant suggests that apparent bias can also be inferred from the way in which the EJ dealt with the application to amend paragraph 32 of the Particulars. I have already determined that the EJ wrongly exercised his discretion in refusing that amendment. An incorrect exercise of discretion, without more, would not in my view provide a proper basis for asserting that a consequential inference of apparent bias should be drawn. However, what would be of concern to the informed observer, would be that the EJ decided the point against the Claimant by reference to arguments that had not even been raised by counsel for the Respondents, either orally or in writing and (with reference the potential for the factual inquiry to be broadened) were contrary to the EJ's own observations made during the course of the hearing.

d. The Claimant raises similar arguments by reference to the EJ's rejection of his application for an order in terms of his RFI. Again, the EJ appears to have determined the matter on a basis which was not argued by the Respondents and which, in so far as it suggests that the RFI was oppressive, is not in any event sustainable for the reasons that I have already stated.

e. The EJ's approach to the RFI is also said by the Claimant to stand in marked contrast to his approach to the Claimant's (unopposed) application to amend paragraphs 35 and 36 of the Particulars. I think that there is something of an 'apples and pears' quality to this part of the Claimant's submissions, but I am nevertheless troubled by the vigour with which the EJ appears to have pursued

the issue of further (unrequested) particularisation of an (uncontested) application to amend the relevant paragraphs.

f. The Claimant suggests that the flawed exercise of discretion in relation to the application to amend paragraph 32 and the RFI, provide further evidence from which apparent bias can be inferred, particularly as the EJ had given him an express assurance as to his impartiality. I am not sure that in fact this point really adds anything over and above that which I have considered at points c. and d. above.

45. Whilst I proceed on the basis that an appellate court should be extremely careful before reaching a conclusion that a Judge's conduct is of sufficient concern to warrant a conclusion that there has been apparent bias in the conduct of a hearing, I do feel that I am driven to that very conclusion when taking the points set out above on a cumulative basis. Were there only one matter which might cause the informed observer to question themselves as to at least ask the question as to whether there was a real possibility of bias, then the answer would, on the basis of any of the concerns that I have set out above, almost certainly be 'no'. However, when one puts all of them together, I do think that the Claimant has established his case in relation to apparent bias under Ground 2. The combination of significant questioning and criticism of the Claimant in relation to unopposed matters, the determination of contested matters on bases that were not even argued by the Respondents and which are in any event unsustainable, are in my view, sufficient to justify that conclusion.

46. I will therefore order that the appeal be allowed on Ground 2 as well as the already stated Ground 1. In addition, whilst my provisional order was that EJ Hodgson should not be

involved in the Claimant's case pending my conclusion on Ground 2, given that the Claimant has now succeeded on that Ground, then the Order should continue to apply for as long as the claim in pursued in the Employment Tribunal.