



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Number: 8000089/2025

Held via video on 10 April 2026

Employment Judge McManus

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Mr S Findlay

Claimant

In Person

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Glasgow Life

Respondent

Represented by:

Ms G O'Neill

(Solicitor)

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The decision of the Tribunal is that:

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The claimant's amendment application to include a claim of automatic unfair dismissal under the Employment Rights Act 1996 section 103A, reliant on having made a protected disclosure is refused.

REASONS

Background

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1. This Preliminary Hearing ('PH') was for the purpose of considering whether or not the claimants' application to amend the ET1 should be allowed. The respondent had prepared a Bundle for this PH and the claimant had sent emails to the Tribunal and the respondent's representatives on 9 and 10 April with various attachments which he sought to rely on at this PH. The

respondent's representative helpfully agreed to organise those attachments into a Bundle for the claimant and provided this.

2. The claimant's ET1 claim form was submitted on behalf of the claimant by Unionline Scotland on 13 January 2025. Unionline were instructed by the claimant's then trade union (GMB). The ET1 and separate 'paper apart' brought complaints of unfair dismissal, discrimination arising from disability, and failure to make reasonable adjustments. Case Management Preliminary Hearings ('CMPHs') took place on 11 March and 4 November 2025. The claimant was represented at the outset and at each of those CMPHs by a solicitor from Unionline Scotland. At those CMPHs there was discussion on the issues which were for determination by the Tribunal. Case Management Orders were made to ensure preparation for the Final Hearing.
3. The Final Hearing ('FH') was scheduled for 20, 21 and 22 January 2026 but did not proceed on those dates. On 15 January 2026 the claimant informed the Tribunal that he was no longer represented by the GMB and sought a postponement of the FH. That postponement application was refused as it was not supported by medical evidence. The claimant then provided a letter from his GP dated 20 January 2026. The Order issued by EJ Wiseman on 20 January 2026 was to allow the claimant's request for a postponement of that FH, on the basis of medical evidence having been produced by him to support that application. The respondent's application for dismissal of the claim based on the claimant's non-attendance was refused.
4. The FH has been rescheduled for 9-11 June 2026.
5. On 17 March 2026 the claimant submitted correspondence including what he asked to be taken as his 'Amended ET1 Paper Apart'. The respondent's representatives objected to such amendment being allowed, for reasons set out in their email to the Tribunal and claimant of 17 March 2026. In summary, their position is that the amendment seeks to introduce a new complaint of automatic unfair dismissal reliant on a public interest disclosure having been made.

6. Prior to this PH, both parties produced documents which they sought to rely on and written outline submissions.

Preliminary Discussions

7. It was identified that the claimant sought to include the terms of his “Amended ET1 Paper Apart’ and that the following paragraphs of that paper apart sought to introduce a complaint reliant on a public interest disclosure having been made:-

- (1) Paragraphs under the subheading ‘Protected Disclosures (Whistleblowing) numbered 1 – 5.
- (2) Paragraphs under the subheading ‘Background and Triggers’ numbered 1 – 4.
- (3) Paragraphs under the subheading ‘The Dismissal and Appeal’ numbered 1 – 4.
- (4) Paragraph under the subheading ‘Legal Claims’ numbered 1.

8. I noted that the documents which the claimant sought to rely on at this PH appeared to include those which would be covered by solicitor / client privilege and that it would not be appropriate from me to consider the content of advice given to the claimant by a solicitor. On that basis those documents were not looked at by me.

Proceedings

9. Evidence was heard from the claimant, including cross examination by the respondent’s representative. Following a break, both parties gave oral submissions in support of their written submissions. At the claimant’s request, I gave my decision orally, with summary reasons.

Findings in Fact

10. The claimant obtained advice from his trade union (GMB) and their instructed solicitors on the termination of his employment with the respondent. Those instructed solicitors submitted an ET1 claim form to the Employment Tribunal

raising complaints on the claimant's behalf against the respondent. Those complaints were in respect of alleged unfair dismissal, discrimination arising from disability, and failure to make reasonable adjustments. There was no indication in the ET1 or paper apart of intention to rely on the claimant having made a protected disclosure.

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11. At the time of the ET1 being submitted on his behalf, the claimant understood that that had to be submitted within the time period of *'three months less a day'*.

10 12. The claimant was in a state of shock after being *'dropped'* by the trade union's instructed solicitors on 13 January 2026. His mental health state was such that he was unfit to take action to amend his claim. He was hospitalised from 3 – 7 March 2026 in relation to a separate matter. He took time to recover from that and deal with side effects of medication. He was not fit to deal with an amendment application from 13 January until around 13 or 14 March 2026, from when he *'started to clear [his]' head* and then prepared what is set out in his email to the Tribunal of 17 March 2026.

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Relevant Law

13. I dealt with this case in accordance with the overriding objective of the Employment Tribunal, which is set out in Rule 3 of the Employment Tribunal Procedure Rules 2024 ('The Rules'), which states:-

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"(1)The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2)Dealing with a case fairly and justly includes, so far as practicable -

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(a) ensuring that the parties are on an equal footing;

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c) avoiding unnecessary formality and seeking flexibility in the proceedings;

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(d) avoiding delay, so far as compatible with proper consideration of the issues; and

(e) *saving expense.*

(3) *The Tribunal must seek to give effect to the overriding objective when it –*

(a) exercises any power under these Rules, or

(b) interprets any rule or practice direction.

5 (4) *The parties and their representatives must –*

(a) assist the Tribunal to further the overriding objective, and

(b) co-operate generally with each other and with the Tribunal.”

14. The Employment Rights Act 1996 (‘the ERA’) sets out at section 111 the time limits for submitting a claim of unfair dismissal, including: -

10 “...(2) *Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section 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

15 *(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.”*

15. The key test for considering amendments has its origin in the decision of the National Industrial Relations Court in *Cocking v Sandhurst (Stationers) Ltd* [1974] ICR650, 657B_C:

20 “*In deciding whether or not to exercise their discretion to allow an amendment, the tribunal should in every case have regard to all the circumstances of the case. In particular they should consider any*

25 *injustice or hardship which may be caused to any of the parties, including those proposed to be added, if the proposed amendment were allowed or, as the case may be, refused.”*

16. The leading authority in respect of amendment applications is *Selkent Bus Co Ltd t/a Stagecoach Selkent v Moore* [1996] IRLR 661, [1996] ICR 836.

30 There the EAT confirmed that 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, and set out the factors to be considered as including:-

- (ii) *The nature of the amendment, which can be varied, such as correction of typing errors, the addition of factual details to existing allegations, the addition or substitution of other labels for facts already pled, or the making of entirely new factual allegations which change the basis of the existing claim;*
- (iii) *The application of time limits, and in particular where a new claim is sought to be added by way of amendment whether that complaint is out of time and if so whether the time limit should be extended under the applicable statutory provisions;*
- (iv) *The timing and manner of the application.*

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17. In *Selkent*, Mummery J, as he then was, set out at paragraph 26:

“...an application for amendment made close to a hearing date usually calls for an explanation as to why it is being made then, and was not made earlier, particularly when the new facts alleged must have been within the knowledge of the applicant at the time he was dismissed and at the time when he presented his originating application.”

18. The approach taken in *Selkent* was followed by the EAT in *Vaughan v Modality Partnership 2021 ICR 535*, where in a claim for unfair dismissal and alleged detriment as a result of making protected disclosures, the ET had refused to allow amendment to add two further disclosures. The EAT held

“..in deciding whether to exercise the discretion to allow an amendment, the employment tribunal had to balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it; that, in doing so, it should take into account all the relevant circumstances, and, while it was impossible and undesirable to list all the relevant circumstances, they included consideration of the nature of the amendment, the applicability of time limits and the timing and manner of the application; that, however, the real practical

consequences of allowing or refusing an amendment should underlie the entire balancing exercise; and that the employment judge had directed herself as to the relevant law, applied it on the basis of the submissions made to her and reached a permissible conclusion when deciding to refuse the amendment.”

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19. Lady Smith summarised the relevant law in respect of amendment applications (at paragraphs 20 – 26) in *Margarot Forrest Case Management V Miss FS Kennedy* UKEATS/0023/10/BI. That decision was made with reference to the 2004 Tribunal Procedure Rules, but remains relevant, as follows:-

10 ‘20. An Employment Tribunal has power to grant leave to amend a claim at a hearing (see: *Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004* Rules 10(2)(q) and 27(7)). Thus, if a claimant’s representative seeks permission to alter, add to or subtract from what is written in the claimant’s form ET1, the Tribunal may, in its discretion, allow the representative to do so. The Tribunal does not have power itself to amend a claim.’

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20. In *Ladbrokes Racing Ltd v Traynor* UKEATS/0067/06MT, the EAT helpfully set out the normal procedure which should be followed by a Tribunal when considering an amendment to an ET1. That was set out from paragraph 30 of the EAT’s decision. That case made reference to *Ali v Office of National Statistics [2005] IRLR 201*, where LJ Waller commented on the importance of giving fair notice to an employer in the form ET1 of the case that the claimant alleges against him. He stated:

25 “39..... ...a general claim cries out for particulars to which the employer is entitled so that he knows the claim he has to meet. An originating application which appears to contain full particulars would be deceptive if an employer cannot rely on what it states.”

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21. The position set out in paragraph 20 of *Ladbroke's Racing Ltd v Traynor* UKEATS/0067/06MT, is also relevant:-

5 “20. When considering an application for leave to amend a
claim, an Employment Tribunal requires to balance the
injustice and hardship of allowing the amendment against the
injustice and hardship of refusing it. That involves it
10 considering at least the nature and terms of the amendment
proposed, the applicability of any time limits and the timing and
manner of the application. The latter will involve it considering
the reason why the application is made at the stage that it is
made and why it was not made earlier. It also requires to
15 consider whether, if the amendment is allowed, delay will
ensue and whether there are likely to be additional costs
whether because of the delay or because of the extent to which
the hearing will be lengthened if the new issue is allowed to be
raised, particularly if they are unlikely to be recovered by the
party who incurs them. Delay may, of course, in an individual
20 case have put a respondent in a position where evidence
relevant to the new issue is no longer available or is of a lesser
quality than it would have been earlier. These principles are
discussed in the well known case of *Selkent Bus Co Ltd t/a*
Stagecoach Selkent v Moore [1996] IRLR 661.”

22. In *British Coal Corporation v Keeble* 1997 IRLR 336, the Court of Appeal set
out the factors to be taken into consideration when considering whether it
25 would be just and equitable to extend the three month time limit, being in
particular:-

- The length of and reasons for the delay;
- The extent to which the cogency of the evidence is likely to be affected by the delay;

- The extent to which the party sued has co-operated with any requests for information;
- The promptness with which the Claimant acted once he or she knew of the facts giving rise to the cause of action;
- 5 - The steps taken by the Claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

23. In *E v X, L & Z* UKEAT/0079/20/RN(V) & UKEAT/0080/20/RN(V), the EAT gave a useful summary of relevant case law and then set out the principles to be applied when dealing with issues of time bar, amendment and strike out. The key principles were set out from para 50 of that decision.

24. The leading authority on the position where a claim has been submitted outwith the time limit as a result of a claimant following the advice of an adviser is *Dedman v British Building and Engineering Appliances Ltd [1973] IRLR 379 CA*. In that case the adviser was a solicitor. The general principle in *Dedman* is that where a claimant puts their case in the hands of a solicitor, that solicitor's failure to present the claim within the relevant time period will not lead to a finding that it was not reasonably practicable for the claim to be lodged in time. It is not every case where a claimant is bound by the fault of the adviser, as each case depends on its own facts and circumstances (*Riley v Tesco Stores Ltd and anor [1980] ICR 323, CA*). The relevant circumstances may include whether the advisor was a solicitor or other advisor (*London International College Ltd v Sen [1993] IRLR 333, CA*). Lord Phillips' view following his review of the *Dedman* principle in the Court of Appeal in *Marks and Spencer plc v Williams-Ryan [2005] ICR 1293, CA*, was that the correct proposition of law derived from *Dedman* is that where the employee has retained a solicitor to act for them and that solicitor fails to meet the time limit because of the solicitor's negligence, the solicitor's fault will defeat any attempt to argue that it was not reasonably practicable to make a timely complaint to the tribunal. That principle was confirmed in *Northamptonshire County Council v Entwistle [2010] IRLR 740, EAT*, by Mr

Justice Underhill, then President of the EAT. He also emphasised that the question of reasonable practicability is one of fact for the tribunal that falls to be decided on the particular circumstances of the case. Underhill P accepted that there could be exceptions to the Dedman principle. In a case where a claimant has consulted skilled advisers, the question of reasonable practicability is to be judged by what he could have done if he had been given such advice as he should reasonably in all the circumstances have been given. Following *Remploy Ltd v Brain EAT 0465/10*, the tribunal should look at the wording in section 111 and to what is essentially a question of fact for the tribunal to decide after taking into account the circumstances of the particular case, whether the adviser is a professional or another, such as a CAB adviser.

Decision

25. I applied the approach set out in the relevant authorities. The terms of the proposed amendment seek to introduce a new complaint reliant on section 103A Employment Rights Act 1996 ('ERA'), reliant on the claimant having made protected disclosures. That complaint was not foreshadowed in the ET1 or paper apart submitted with that ET1. It has been made at a late stage in proceedings, after identification of the complaints and the issues to be determined by the Tribunal. The note of the CMPH on 4 November 2025, at paragraph 18, under the heading 'Summary of Claims and Issues' states:-

"There is no dispute that the respondent's reason for dismissal was the potentially fair reason of capability (s.98(2)(a) of the Employment Rights Act 1996)."

26. The complaint reliant on section 103A ERA is submitted by the claimant's amendment application on 17 March 2026. That is significantly outwith the time limit in section 111 ERA. The claimant's dismissal was on 4 July 2024. The date of receipt by Acas of the EC notification was on 1 November 2024 and date of issue of ACAS Early Conciliation Certificate was on 13 December 2024. The ET1 claim form was submitted on behalf of the claimant by

Unionline solicitors on the last day of the extended limitation period (13 January 2025).

27. In circumstances where the claimant's professional advisors submitted a claim with complaints of unfair dismissal and disability discrimination within the applicable time limits, I do not find that it was not reasonably practicable for a complaint of automatic unfair dismissal reliant on a protected disclosure having been made to also have been submitted within the statutory time limit. In circumstances where the paper apart to the ET1 does not dispute that the reason for the dismissal was '*due to absences*' (para 24 of paper apart to ET1) and it was confirmed in CMPHs that the reason for the dismissal was not disputed as being on grounds of capability, a complaint based on section 103A is an entirely new complaint.

28. The claimant relied on the advice of his trade union and that because of his PTSD, anxiety and depression he '*read things but did not take them in*'. He relied on an unfair dismissal complaint having been made.

29. Although a claim of unfair dismissal was made in the original ET1, that claim was not reliant on the claimant having made a protected disclosure. A claim for automatic unfair dismissal reliant on a protected disclosure having been made is made under section 103A ERA. That is a distinct complaint from a complaint of unfair dismissal under section 98 ERA, which is what was made in the ET1. The EAT's decision in *Vaughan v Modality Partnership 2021 ICR 535*, is authority for those being distinct and separate complaints. In that case the amendment was not allowed to bring in a separate basis for the protected disclosure complaint, although both an unfair dismissal complaint under section 98 ERA and a claim for automatic dismissal under section 103A reliant on a protected disclosure has been brought in the ET1 in that case.

30. I looked at the real practical consequences of allowing or refusing the amendment. If allowed, the amendment would involve substantially different areas of inquiry (*Abercrombie v Aga Rangemaster Ltd (CA) [2014] ICR 209*). If the amendment were allowed it would significantly lengthen the Final Hearing, which is scheduled for three days in June and has already been

postponed. In determining a complaint under section 103A ERA reliant on the claimant having made a public interest disclosure, the Tribunal would require to determine additional issues to those currently identified for the Final Hearing. The issues would then include determinations on whether (1) the claimant made the disclosure or disclosures to the employer, (2) that he believed that disclosure tended to show one or more of the things itemised in section 43B(1)(a)-(f), (3) that his belief was reasonable, (4) that the disclosure was made in good faith, and (5) that the disclosure was the principal cause of the dismissal. The evidence which would be required to determine those issues is separate to the evidence relevant to the disputed issues in the current complaints, as identified in the CMPHs. Determination of those additional issues would require significant additional evidence. There would require to be consideration on whether the claimant had made a disclosure of information, as distinct from an allegation or statement of opinion. The respondent's solicitor's enquiries to defend the additional claim would be being made at a late stage, and after identification of the issues for the Final Hearing.

31. I balanced the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. I took into account all the relevant circumstances, as relied on in the submissions. That included consideration of the timing and nature of the amendment (including how it came about and that this was a new complaint sought to be brought rather than a re-labelling of the facts previously pled) and the applicability of time limits.

32. The amendment seeking to bring a claim reliant on a protected disclosure having been made is not a re-labelling of facts already pled. Further than the box not being ticked at section 8 to indicate a complaint of whistleblowing, what is set out in the paper apart to the claim, and what was discussed at the CMPHs gives no indication of such a complaint.

33. Allowing the amendment would significantly widen the scope of the arranged FH. Specification on what the claimant relies on as a qualifying disclosure, and why, would be required. The issues to be determined at the Final Hearing would be significantly extended, to include determination of whether what the

claimant relies on were qualifying disclosures in terms of section 43B ERA. Additional witness evidence is likely to be required. It is likely that the Final Hearing will again be postponed to enable the specification to be provided and further investigation to take place. Considerable time has lapsed since the events relied upon as being protected disclosures occurred and that is likely to affect the cogency of evidence.

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34. It is very significant that the claimant was professionally represented at the outset of this claim and until 13 January 2026. In these circumstances, where the claimant relied on professional advice from his trade union and from a solicitor, the claimant's remedy for any loss arising from the actions of the professional advisors in submitting the claim in the terms made would be a claim of professional negligence against that advisor.

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35. I took into account that the claimant acted on the basis of advice from his professional representatives. I accepted that once he was no longer represented, he was incapacitated until around 13 March 2026. In the circumstances of this case, where the claimant was represented by a solicitor at the outset of his claim, it was reasonably practicable for a complaint under section 103A reliant on the claimant having made a protected disclosure to have been brought within the relevant statutory time period. I make no finding in fact on whether the claimant discussed with his union or then instructed solicitors the possibility of bringing a claim reliant on having made a protected disclosure.

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36. I took into account the effect on the length of the Final Hearing should the proposed amendment be allowed. I balanced the potential loss to the claimant should the proposed amendment be allowed, and succeed, with the prejudice to the respondent of allowing the amendment. I noted the consideration of *Abercrombie v Aga Rangemaster Ltd* [2014] ICR 209 at para 72 of *Galilee v Commissioner of Police of the Metropolis* [2018] ICR 634, supporting the principle that "out of time amendments should not be considered save in special circumstances." Following *Amey Services Ltd, Enterprise Managed Services Ltd V Mr R Aldridge and others* UKEATS/0007/16/JW time bar is one of the factors to be taken into

consideration in considering the balance of prejudice in allowing or refusing the amendment. I did not focus on one factor to the exclusion of others (*Conteh v First Security Guards Ltd UKEAT/0144/16/JOJ*). I took into account issues of timebar and noted that the test to be applied in relation to the complaint in the proposed amendment is that of 'reasonably practicable' (and not 'in the interests of justice').

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37. In weighing up the balance of justice and the hardship in allowing or refusing the amendment, I took into account that the proposed amendment made new factual allegations not foreshadowed in the paper apart to the ET1 claim and are on a statutory basis not relied on previously or discussed at the CMPHs. There would be separate considerations and evidence required to that in relation to the existing complaints.

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38. Refusal of the amendment would not affect the claimant's ability to pursue his complaints of unfair dismissal and disability discrimination. The hardship to the claimant is the restriction of his claim to those complaints identified at the CMPHs i.e. of unfair dismissal (section 98(4) ERA) and disability discrimination (sections 15 and 20/ 21 Equality Act 2020) The hardship to the respondent is the expense of dealing with the new complaint and their ability to properly prepare their defence, and a significantly extended Final Hearing. The ability to properly prepare a defence is significant.

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39. In weighing up the balance of justice and the hardship in allowing or refusing the amendment, I took into account that the claims proceed in respect of the matters brought in the original claims. In all the circumstances, following *Vaughan v Modality Partnership 2021 ICR 535* I decided that the balance of hardship to the respondent in allowing the amendments to now include matters which had arisen before the outset of the original claims and were not included in the original claims, where the claimants were professionally legally represented throughout, outweighs the hardship to the claimant in refusing these amendments.

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Further Procedure

40. Following my decision being given orally, the claimant's position was that as
the amendment was not allowed he wished his claim to be 'struck out'. I
5 invited the claimant to consider his position. I reminded him that although the
amendment was not allowed his complaints of unfair dismissal and disability
discrimination proceed and I made no comment on the prospects of success
of those complaints.

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Date sent to parties

21 April 2026