

Neutral Citation Number: [2026] EAT 81

Case No: EA-2025-000780-RS

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London
EC4A 1NL

Date: 08 June 2026

Before:

HIS HONOUR JUDGE JAMES TAYLER

Between:

London Borough of Ealing and others

- and -

Pauline Peace

Appellant

Respondent

Shahzad Ayub (instructed by Legal and Democratic Services
London Borough of Ealing) for the **Appellants**
Nancy Thomas (Litigation Friend) for the **Respondent**

Hearing date: 28 May 2026

JUDGMENT

SUMMARY

Practice and Procedure

The Employment Tribunal erred in law when determining what was, in reality, an application to amend, by failing to properly balance the injustice or hardship which might be caused to the parties by the amendment being allowed or refused.

HIS HONOUR JUDGE JAMES TAYLER:

The issue

1. The issue in this appeal is whether the Employment Tribunal erred in law in identifying the factual disputes and complaints in a claim at a Preliminary Hearing for Case Management in a manner that constituted an amendment to the claim, without properly considering the injustice or hardship that would be caused to either of the parties if the amendments were permitted or refused.

The decision appealed

2. The appeal is against an order of Tribunal Judge Plowright, sitting as an Employment Judge, at a hearing on 22 April 2025. The order was sent to the parties on 23 April 2025.

The relevant law

3. One of the most challenging jobs that faces Employment Judges is efficiently case managing complaints brought by litigants in person in a manner that is fair to both the claimant and the respondent and makes the most effective use of the limited resources of the Employment Tribunal.

4. The pleadings in an Employment Tribunal essentially are made up of the claim form and the response.

5. In civil litigation, if both parties are represented, there should be a clear and reasonably concise claim form that pleads the essential facts and asserts causes of action to which they give rise, to which the defence responds. Where necessary, any amendment to the claim form or defence can be made by removing text, which is struck through, and adding text, which is underlined. This works because the starting point is a document that is fit for purpose, and can easily be amended.

6. The process is generally much more challenging where parties are not represented because where an initial pleading is discursive, lacking in particularity, and does not include a clear connection between the facts set out and the complaints to which they are said to give rise, it is difficult to clarify the pleading by simply adding or removing text.

7. It is the claim form within which the complaints must be found. The defence is to be found in the response. An Employment Judge must do their best to ensure that the complaints and defences set

out in those documents are clarified so far as possible and, when appropriate, amendment may be permitted, always having regard to any injustice or hardship which may be caused by permitting or refusing an amendment.

8. The importance of the pleaded case was emphasised by Langstaff J (President) in **Chandhok v Turkey** [2015] ICR 527:

16. **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 Employment Tribunals Rules of Procedure 2013 (SI 2013/1237), the claim as set out in the ET1.

17. **I readily accept that Tribunals should provide straightforward, accessible and readily understandable fora in which disputes can be resolved speedily, effectively and with a minimum of complication.** They were not at the outset designed to be populated by lawyers, and the fact that law now features so prominently before Employment Tribunals does not mean that those origins should be dismissed as of little value. **Care must be taken to avoid such undue formalism as prevents a Tribunal getting to grips with those issues which really divide the parties. However, all that said, the starting point is that the parties must set out the essence of their respective cases on paper in respectively the ET1 and the answer to it.** If it were not so, then there would be no obvious principle by which reference to any further document (witness statement, or the like) could be restricted. Such restriction is needed to keep litigation within sensible bounds, and to ensure that a degree of informality does not become unbridled licence. The ET1 and ET3 have an important function in ensuring that a claim is brought, and responded to, within stringent time limits. **If a claim or a case is to be understood as being far wider than that which is set out in the ET1 or ET3, it would be open to a litigant after the expiry of any relevant time limit to assert that the case now put had all along been made, because it was their case, and in order to argue that the time limit had no application to that case could point to other documents or statements, not contained within the claim form. Such an approach defeats the purpose of permitting or denying amendments; it allows issues to be based on shifting sands; it ultimately denies that which clear-headed justice most needs, which is focus. It is an enemy of identifying, and in the light of the identification resolving, the central issues in dispute.**

18. In summary, a system of justice involves more than allowing parties at any time to raise the case which best seems to suit the moment from their perspective. It requires each party to know in essence what the other is saying, so they can properly meet it; so that they can tell if a Tribunal may have lost jurisdiction on time grounds; so that the costs incurred can be kept to those which are proportionate; so that the time needed for a case, and the expenditure which goes hand in hand with it, can be provided for both by the parties and by the Tribunal itself, and enable care to be taken that any one case does not deprive others of their fair share of the resources of the system. **It should**

provide for focus on the central issues. That is why there is a system of claim and response, and why an Employment Tribunal should take very great care not to be diverted into thinking that the essential case is to be found elsewhere than in the pleadings. [emphasis added]

9. **Chandhok** was approved in **Moustache v Chelsea and Westminster Hospital NHS Foundation Trust** [2025] EWCA Civ 185, [2025] ICR 1231:

34. Secondly, **the issues raised by the parties are those which emerge clearly from an objective analysis of their statements of case. Identification of the issues does not involve reference to other documents which do not have the status of pleadings and come later.** Nor should the process be a complex or difficult one. As Judge Auerbach said in *Pranczk v Hampshire County Council* (unreported) 12 June 2020, para 49, “That pleadings matter, including in employment tribunals, is not a novel or controversial point”. The EJ should not be expected to analyse a party’s case by reference to documents which come after the pleadings and do not have the same status, such as a witness statement, or by reference to submissions. As Langstaff J (President) explained in *Chandhok v Turkey* [2015] ICR 527, paras 16–17: [emphasis added]

10. The role of the Employment Tribunal is to determine the complaints that have been brought either in the original claim form or by way of amendment rather than those that might have been brought; **Land Rover v Short** (UKEAT/0496/10/RN) approved in **Scicluna v Zippy Stitch Ltd and others** [2018] EWCA Civ 1320.

11. A list of issues can be a helpful case management tool; **Moustache**:

40. **A list of issues is not a pleading but a case management tool. The main purpose of such a document is to summarise the existing pleadings not to amend them. ...**

12. The role of a list of issues was considered in: **Remploy Ltd v Abbott** UKEAT/0405/14/DM (EAT, unreported):

80. While a list of issues may limit the issues to be determined, consistently with the authorities the list of issues cannot extend the issues to be determined beyond those contained in the pleadings. Any addition to those issues will require an amendment.

13. While the list of issues is generally a case management tool rather than pleading, I see no reason in principle why, in appropriate circumstances, the most effective method of case management could not be to add the list of issues by way of amendment to the pleadings to set out the key factual issues and complaints to be determined. It may be an effective way forward where a litigant in person’s original pleadings are muddled and cannot be improved by simple addition or removal of

text. But if that is to be done, it must be done by applying the principles that apply to applications to amend.

14. I considered the correct approach to applications to amend, and the limited grounds upon which such determinations can be challenged on appeal, in **Vaughan v Modality Partnership** [2021] ICR 535

4. Determining applications to amend is a core component of case management. As with all case management decisions the employment judge has a broad discretion. The Employment Appeal Tribunal will not interfere with case management unless it is clear that the employment tribunal has made an error of law.

5. Applications to amend are frequently decided at case management hearings, along with a multitude of other issues, in limited time. As Mummery LJ noted in *Gayle v Sandwell and West Birmingham Hospitals NHS Trust* [2011] IRLR 810, at para 21:

“If the employment tribunals are firm and fair in their management of cases pre-hearing and in the conduct of the hearing, the appeal tribunal and this court should, wherever legally possible, back up their case management decisions and rulings.”

6. Mummery J, as he then was, commented in the context of appeals against decisions refusing applications to amend in *Selkent Bus Co Ltd v Moore* [1996] ICR 836, 843B:

“On an appeal from such a refusal, the appellant would have a heavy burden to discharge. He would have to convince the appeal tribunal that the industrial tribunal had erred in legal principle in the exercise of the discretion, or had failed to take into account relevant considerations or had taken irrelevant factors into account, or that no reasonable tribunal, properly directing itself, could have refused the amendment: see *Adams v West Sussex County Council* [1990] ICR 546.”

7. It will be difficult for a party, especially if represented, to criticise an employment judge for failing to take account of a factor that was not raised in argument.

8. In considering reasons for case management decisions, which often, necessarily, will be brief, the appeal tribunal must be astute to avoid an excessively minute analysis. Mummery LJ warned in *Fuller* at para 30:

“The reading of an employment tribunal decision must not, however, be so fussy that it produces pernickety critiques. Over-analysis of the reasoning process; being hypercritical of the way in which the decision is written; focusing too much on particular passages or turns of phrase to the neglect of the decision read in the round: those are all appellate weaknesses to avoid.”

9. This passage is so often quoted that I have reminded myself that it is insufficient to quote it; I must think about it and avoid the pitfall of which Mummery LJ warns.

10. Nonetheless, if an employment judge has, on a fair reading of a judgment, failed

to take account of a relevant matter or failed properly to apply the law, even if quoted in the judgment, it is necessary to interfere.

11. Sedley LJ succinctly stated at para 26 of *Anya v University of Oxford* [2001] ICR 847:

“The courts have repeatedly told appellants that it is not acceptable to comb through a set of reasons for hints of error and fragments of mistake, and to try to assemble these into a case for oversetting the decision. No more is it acceptable to comb through a patently deficient decision for signs of the missing elements, and to try to amplify these by argument into an adequate set of reasons. Just as the courts will not interfere with a decision, whatever its incidental flaws, which has covered the correct ground and answered the right questions, so they should not uphold a decision which has failed in this basic task, whatever its other virtues.”

12. 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] ICR 650, 657B–C:

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

13. No consideration of an application for amendment is complete without a reference to *Selkent* [1996] ICR 836. It is so familiar that it is especially easy to quote it without reflecting on the core principle it elucidates. The key passage is at p 843D:

“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.”

14. Mummery J reiterated this point at p 844B:

“Whenever taking any factors into account, the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment.”

15. A number of factors are generally relevant when considering an application to amend; **Selkent Bus Co Ltd v Moore** [1996] ICR 836 at 843 E to 844 C:

(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 for 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 have to decide whether the amendment sought is one of the minor matters 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 that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions.

(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 for the making of amendments. 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.

Whenever taking any factors into account, 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.” [emphasis added]

16. Where an application is made to amend a number of aspects of a pleading it is generally necessary to consider the amendments separately, or possibly in groups to which the same considerations apply; **Reemploy**:

87. The Employment Tribunal should have looked at each proposed amendment separately rather than lumping them all together and should have addressed the evidence of Ms Goldsbrough. These amendments, as can be seen, are not particularised as they should have been before permission to amend could have been granted. In the absence of particularised amendments it was impossible for the Employment Tribunal or for the Respondent to consider the effect of those amendments, in particular in relation to previous case management and whether the timetable for the hearing would be affected.

17. As I noted in **Vaughan**, applications to amend often arise as one of many matters to be dealt with at a case management hearing. Depending on the nature of the amendment, the reasons may be relatively brief, but one will expect to see something in the decision that shows that the necessary analysis has been undertaken; **Chief Constable of Essex Police v Kovacevic** UKEAT/0126/13/RN:

One would expect to see, on an application for permission to amend, an Employment Judge refer to the *Selkent* test and identify in his reasons those aspects going to injustice and prejudice, if the application is allowed, and those going to injustice and prejudice, if the application is not allowed. One gets, in my judgment, no sense of an exercise of that nature having been undertaken in this case.

18. It should go without saying that in considering an application to amend the Employment Tribunal should always have the overriding objective in mind.

The history of the proceedings in the Employment Tribunal

19. The claimant was employed as a Teaching Assistant, commencing employment either on 1 April 2009, according to her, or 1 August 2010, according to the respondents. The claimant's employment ended on 15 January 2024, when she resigned, alleging constructive dismissal.

20. The claimant presented a claim that was received by the Employment Tribunal on 14 April 2024. At section 8.1 of the claim form, the claimant ticked the boxes for complaints of unfair dismissal, race discrimination, disability discrimination, for various payments owed and for "another type of claim". At section 8.2, the claimant set out a brief narrative of her claim:

1. I commenced working for the first & second Respondents as a Teaching Assistant at Drayton Green Primary School from April 2009;
2. I ... suffered with long term illnesses which amounted to disabilities and I was not given any reasonable adjustments
3. On my return back to work after prolonged absence, reported the breaches to the Head, Karen Doherty (Whistleblowing), who instead of investigating, within days placed me on suspension and wrongfully accused me of child abuses.
4. She told me she has to put me on probation for a short while for investigations to be carried out and that I would be back in my job within days. But instead the Respondents placed me on probation for a very prolonged period of time and had ignored my phone calls and emails for follow up
5. I was investigated by LADO and the Metropolitan Police as a child abuser/offender due to falsified evidence and collusion from the Respondents.
6. All my phone calls and emails were being ignored by the Respondent, and grievances were disregarded and I did not receive any form of care or support from the Respondent and I eventually ended up very sick mentally and physically.
7. From July 2023, the first and second Respondent stopped paying my salary, and threatened me with further investigation of child abuse when I tried to force my return back to the school and my job in January 2023.

8. The Respondent has breached the employment contract due to the prolonged suspension and by withholding my salary from July 2023.

9. Then after I had emailed requesting for confirmation that I can return to work, the Respondent again started to write and threaten me that if I tried to return that they would restart another investigation, proving that they did not want me back and that as I needed permission to return, and could not freely do so, that I was still under suspension.

10. Due to ongoing harassment, intimidation and victimisation, I constructively resigned on 15th January 2024.

21. This set out a reasonably clear story that should have been capable of case management to a hearing, within a reasonable period.

22. At section 15, the claimant suggested that she was claiming:

1. Direct discrimination on grounds of disability contrary to s 13 of the Equality Act 2010 ('the EqA')
2. Discrimination arising from disability contrary to s 15 of the EqA;
3. Failure to make reasonable adjustments contrary to s 21 of the EqA;
4. Indirect discrimination on grounds of disability contrary to s 19 of the EqA;
5. Indirect discrimination on grounds of race
6. Personal Injuries - psychological and physical damages
7. Breach of contract
8. Constructive unfair dismissal
9. Wrongful dismissal
10. Unlawful deduction of wages contrary to s 13 of the Employment Rights Act 1996 ('the ERA') and Loss of Employer's Pension Contributions (Gross)
- 11 . Intimidation, Victimisation, and Harassment contrary to s 26 of the EqA; .
12. Detriment on grounds of health and safety contrary to s 44 of the ERA.
13. Loss of new Job opportunity offered & / promotion due to bad references to new employer
14. Loss of future earnings and future pensions due to health and age.
15. Injury to Feelings
16. Unfair Grievance, unfair Investigation and Unfair Grievance Appeal Processes and

Failure to follow the Acas Code of Conduct

16. Aggravated/ Punitive Damages

23. The various complaints and remedies were not linked to the narrative and appeared, as is increasingly the case, to attempt to advance every possible complaint, rather than focus on the core of this relatively straightforward claim.

24. The respondents served a response in which they denied the allegations in broad terms and asserted that the claim, as pleaded, lacked clarity and required further and better particulars. The response would have benefited from setting out clearly and concisely the respondents' factual response to the main gist of the claimant's narrative. A request for additional information was attached to the response in tabular form.

25. At a Preliminary Hearing for Case Management on 10 September 2024, Employment Judge Spencer accepted that the complaints were unclear and ordered the claimant to provide further information. Provision was made for a revised response and the agreement of a list of issues.

26. On 10 September 2024, the claimant provided a document entitled "Particulars of Claim" which set out a great deal more detail, including a considerable amount of new material, but did not help much in clarifying the complaints pleaded in the claim form.

27. In April 2025, the respondents produced a draft list of issues which stated in express terms that the respondents asserted that those parts in square brackets were new complaints that could only be advanced if a successful application to amend was made. The list of issues had blanks into which relevant information such as dates could be entered by the claimant and highlighted some areas that the respondents contended were particularly lacking in clarity. The claimant replied with an amended version. The parties could not agree the list. The respondents produced a second draft sent under cover of an email of 17 April 2025, with similar caveats.

28. The respondents accepted that the list of issues could be completed in a manner that, once any contested amendments had been allowed or refused, would allow it to form part of the pleaded case by way of amendment to the claim form so that the Employment Tribunal at the final hearing would

know that any complaints in the list of issues formed part of the pleaded case and would have a roadmap to help it to determine the complaints.

The decision challenged in the appeal

29. The determination challenged in this appeal was made at a Preliminary Hearing for Case Management held by Tribunal Judge Plowright, sitting as an Employment Judge, at a hearing on 22 April 2025. The claimant was assisted by her litigation friend, Ms Thomas, who represented her in the appeal. The respondents were represented by Mr A Burrell of Counsel, who did not appear in the appeal. At this hearing the respondents were ably represented by their in house solicitor, Mr Ayub, to whom I am grateful for the clarity of his submissions, who was not present at the hearing in the Employment Tribunal.

30. Judge Plowright dealt with the list of issues as follows:

43. I decided that the best way forward was to work through the list of issues with the parties and to finalise a list of issues so that the case could proceed to a final hearing. **Mr Burrell noted that some of the matters raised in the “Particulars of Claim” had not been raised previously in the original claim form.** However, even if this is right, I indicated that there was nothing before me to suggest that the respondents would be prejudiced by these new matters, given that the Particulars of Claim had been provided in October 2024 and the length of time the respondent have to prepare before the final hearing.

44. The **original claim form and the Particulars of Claim therefore cover all the matters pleaded by the claimant.** The list of issues has been prepared by reference to these documents. [emphasis added]

The appeal and cross-appeal

31. It is asserted in the appeal that the Employment Tribunal failed to correctly apply the balance of injustice and hardship test and failed to take account of relevant circumstances. The claimant has a cross-appeal in which it is asserted that, should the appeal be allowed, nothing should be removed from the list of issues because it sets out complaints that should go forward to hearing.

Analysis

32. Unfortunately, the analysis of the Employment Tribunal was wholly inadequate and the appeal must be allowed. The Employment Judge concluded that because the respondents had advance notice

of the matters in the document misleadingly titled “Particulars of Claim” (which I will refer to as the additional particulars), they would not suffer any prejudice because there would be time to respond. There was no real analysis of whether there were new complaints that had not been asserted in the claim form and which could only be introduced by way of amendment. In respect of complaints that would require an amendment, the Employment Judge was required to balance the injustice or hardship which might be caused to the parties were the amendment allowed or refused and, so far as relevant, consider the nature of the amendment, applicability of time limits and the timing and manner of the application.

33. In the circumstances of this case, it was necessary for the Judge to identify, at least briefly, and not necessarily in the order I have set out, in respect of the challenged allegations:

- 1) was the allegation contained in the original claim form
- 2) if not, was it in the later additional particulars, or was it asserted orally at the hearing
- 3) what is the nature of the amendment, particularly, does it assert a new complaint
- 4) if the allegation was not in the original claim form, why not – i.e. what is the explanation for the timing of the application to amend
- 5) whether the allegation adds a complaint that would be out of time (which may involve consideration of whether it may be part of an act continuing over a period) and if so whether there is a good reason why the amendment should be permitted notwithstanding the time point
- 6) finally, and fundamentally, the balance of injustice or hardship to the parties if the amendment is allowed or refused

Disposal

34. The matter must be remitted to the Employment Tribunal to be determined again. Mr Ayub contended that, so far as possible, I should determine the matter myself. Absent the consent of both parties, that is generally only appropriate if there is only one possible outcome. I also take account of the fact that the claimant is acting in person with the assistance of her litigation friend. I have

concluded that she should have an opportunity to consider this judgment carefully. The claimant should focus on the core complaints and issues. In respect of the matters that the respondents assert were not in the original claim form, the claimant should prepare to explain whether she asserts that the matter was pleaded in the original claim form, and if it is accepted that it was not, or in case the Employment Tribunal concludes that it was not pleaded in the claim form, be prepared to provide clear submissions on the nature of the amendment, the applicability of time limits and to explain the timing and manner of the application to amend. Above all, consideration will have to be given to the balance of injustice or hardship which might be caused to the parties were the amendment allowed or refused.

35. Care will also need to be taken with some of the complaints which at the moment do not appear to be workable, particularly the indirect discrimination and discrimination because of something arising in consequence of disability complaints. The claimant should be prepared to abandon complaints that are illogical, or expect short shrift when the amendment application is considered.

36. The matter will be remitted to be considered by a different Employment Judge, which will maximise the chance that it can be dealt with speedily, so that the listing of the final hearing in September can be preserved, if at all possible.