



EMPLOYMENT TRIBUNALS

Claimant: Mr Kin Fok
Respondent: Kier Limited
Heard at: London South Employment Tribunal via CVP
Open PH held on: 08 April 2026
Case number: 6015973/2024
Before: Employment Judge M Da Costa sitting alone

ATTENDANCE AND REPRESENTATION

None: these are written reasons written up in chambers following an oral decision and reasons given orally at the open preliminary hearing on 08 April 2026

WRITTEN REASONS FOR A JUDGMENT

Background

1. The claimant had under case number 6015973/2024 brought a claim for race discrimination, in a form ET 1 presented on 22 October 2024.
2. A preliminary case management hearing (PCMH) was held on 12 January 2026.

3. Following that PCMH, a further open preliminary hearing was set for 08 April 2026 for the purpose of hearing the claimant's application to amend his case by adding further heads of claim for constructive unfair dismissal, failure to make reasonable adjustments and discrimination arising from disability.
4. At the open preliminary hearing of 08 April 2026, I heard oral submissions from the respondent opposing the claimant's application to amend, and oral submissions from the claimant by way of rebuttal of the respondent's objections to amendment.
5. After having heard the parties, on 08 April 2026 I refused the claimant's application to amend his case. I gave an oral decision with oral reasons on the same day.
6. On 08 April I wrote and signed a summary judgment to the effect that the claimant's application to amend his case was refused. Since oral reasons had been given on 08 April 2026, that judgment did not contain reasons.
7. On 09 May 2026 the claimant wrote the Tribunal requesting written reasons for my decision to refuse his application to amend his case. On 12 May 2026 that request was referred to me.
8. I note from the electronic file that the written judgment that I had signed on 08 April 2026 was not in fact promulgated. It will therefore be promulgated along with these written reasons.

The basis of the claimant's claim in his form ET1:

9. In his form ET1 the claimant had ticked the race discrimination box **only**. In the details at box 8.2 of the form by way of explanation, the material points were as follows:
 - (a) The starting arrangement was that he worked 2 days a week from the respondent's Crawley Office and 3 days a week from home remotely.
 - (b) On 25 October 2023 he was asked by his line manager to attend Bexhill-on-Sea construction site daily.
 - (c) He made his line manager aware that this would be too much travelling time, and the response was that this was a temporary arrangement.
 - (d) On 04 January 2024 he attended a meeting with his previous line manager, his new line manager and HR, at which he was informed that he had triggered absence management proceedings and that he had been put on a performance improvement plan (PIP) which had started earlier informally. He had not been previously made aware of the PIP.

- (e) At that 04 January 2024 meeting he again raised the travel time point and by that time his health had been significantly impacted by the long driving hours.
 - (f) He saw the absence management and the PIP as “purposeful to increase my stress level and worry”.
 - (g) He then started a grievance against the respondent, internally. This included the PIP.
 - (h) From 04 January 2024 onwards he was offered no support or amended working schedule by the respondent. He believed that this was because he was the only non-white worker on the construction site.
10. In the preliminary hearing of 12 January 2026, further details were added in respect of the race discrimination, namely that:
- (a) His comparators were allowed to stay in a hotel in comparison to him being required to drive long hours each day.
 - (b) From October 2023 on multiple occasions the respondent failed to advise him not to travel to site during stormy weather whereas other colleagues of his were so advised.
 - (c) On one occasion when he advised that he had arrived home at 11pm due to a burst tyre so needed to work from home the next day, the respondent told him to find an alternative way to get to site.
 - (d) The grievance manager failed to uphold his grievance on 21 February 2024 and the internal appeal in March 2024 due to one-sided reasons.
 - (e) He was excluded from monthly client team meetings with the commercial and project managers and internal weekly team meetings and was not provided with minutes.
 - (f) The claimant had to request an OH referral in March 2024 and the respondent then failed to uphold the ensuing recommendations.

The nature of the amendments that the claimant sought:

11. In his application for the amendments following the 12 January 2026 preliminary hearing in writing in a document dated 7 February 2026, the amendments were:
- (a) The respondent’s persistent and unreasonable failure over a prolonged period to make reasonable adjustments to his work requirements in relation to the disability of chronic back pain (including in relation to a failure to address prolonged and onerous travel requirements known to aggravate that condition)

constituted a fundamental and repudiatory breach of the implied term of mutual trust and confidence, therefore he was constructively dismissed. The final in a series of cumulative acts was the respondent's failure to implement OH recommendations which was what triggered his resignation.

- (b) The termination of his employment amounted to unfavourable treatment and arose because of his chronic back pain – hence discrimination arising from disability.
- (c) The respondent failed to comply with its duty to make reasonable adjustments, and the relevant provision, criterion or practice applied by the respondent was the requirement for the claimant to undertake significant and prolonged travel as part of his role.

REASONS

The relevant law:

- 12. In oral submissions the respondent referred to the well-known case of Cocking v Sandhurst (Stationers) Ltd [1974] ICR 650 which led to the well-established test in Selkent Bus Company Limited (t/a Stagecoach Selkent) v Moore [1966] IRLR 661. He also mentioned the key case of Vaughan v Modality Partnership [2021] ICR 535 which provides guidance on the application of the Selkent tests.
- 13. It is useful to set out the relevance of Vaughan and Selkent.
- 14. Vaughan clarifies that the core test to be applied by an Employment Tribunal in determining any application to amend is the balance of prejudice. Vaughan says that the Tribunal should focus on the real, practical consequences of allowing an amendment. Vaughan does not remove the tests set by Selkent but places those tests in the context on an assessment of the balance of prejudice.
- 15. The Selkent factors are the following:
 - (a) The nature of the amendment to be made. The Tribunal must decide whether the amendment applied for is a minor matter or a substantial alteration which describes a new complaint.
 - (b) Time Limits. If a new complaint or cause of action is intended by way of amendment, the Tribunal must consider whether that complaint is out of time and, if so, whether the time limit should be extended.
 - (c) The timing and manner of the application. An application can be made at any time, but a party will need to show why the application was not made earlier and why it is being made at the time that it is being made.

16. In relation to the Selkent tests the respondent in oral submissions clarified the following:
- (a) As to the “nature of the application”, there is a range, spanning clarifications of existing claims to entirely new claims. The latter causes, as a general rule, more prejudice than the former.
 - (b) The time limits factor only arises if to allow the amendment would result in a breach of the time limits.
 - (c) The “timing and manner” factor is about the reasons why an application was not made earlier, not only about the fact of delay.
17. In addition in relation to the nature of the amendment, the respondent’s written skeleton argument referred to Chandhok v Tirkey [2015] IRLR 1950 as authority that a claim form is not simply a document to “start the ball rolling” but is a critically important document that is expected to include the complaints that a claimant wishes to bring before the Tribunal and must set out the claimant’s essential case. That is supported by the “Presidential Guidance Note 1: Amendment of the Claim” which sets out that “claimants must set out the specific acts complained of, as Tribunals are only able to adjudicate on specific complaints...Further, an employer is entitled to know the claim that it has to meet”, although the respondent did not mention the Guidance in his written or oral submissions.
18. In addition in relation to time limits:
- (a) The respondent’s written skeleton argument said that the case of Galilee v Commissioner of the Police of the Metropolis [2018] ICR 634 could be distinguished, with the result that I could legitimately take into account time limits in considering whether to allow the claimant’s application to amend.
 - (b) In oral submissions the respondent referred to the case of Gillet v Bridge UKEAT/0051/17/DM. Whether a case will be capable of overcoming a jurisdictional time bar is a question relating, to some extent in some circumstances (for example whether there were a series of connected events), to the substantive merits of a case, and Gillet is authority that whether there will be a “reasonable prospect of success” in terms of merits can be taken into account in weighing the interests of justice as part of the consideration of an amendment application. The exact words in Gillet are these:
 - (i) *“Whether at the initial paper stage or at a hearing with representation from the parties, I consider that the Employment Tribunal must be entitled to consider whether the proposed claim has reasonable prospects of success. If a presented claim could be struck out on that basis, it would be inconsistent and anomalous if an application to amend could not be refused on the same basis”, and*

- (ii) *"Nor do I accept that as a matter of principle the Employment Tribunal must never take account of its assessment of the merits of the claim. Selkent refers to "all the circumstances", and Olayemi is an example where the prospects of success "did not appear good" and were taken into account".*
- (c) In oral submissions the respondent referred to the case of Woodhouse v Hampshire Hospitals NHS Trust UKEAT/0132/12/DM. Woodhouse is authority that there is no point in allowing an amendment to a hopeless case. The actual words in Woodhouse are these:
- (i) *"It is true that in the assessment of the balance of hardship and the balance of prejudice there may in all the circumstances include an examination of the merits - in other words, there is no point in allowing an amendment to add an utterly hopeless case. But otherwise it should be assumed that the case is arguable, for this is what Mummery P said in describing what Tribunal practice should be when an application is made: where the matter is arguable and of substance, there should be representations by the parties."*
19. Galilee was considered in Reuters Ltd v Cole UKEAT/0258/17/BA in which Soole J said at paragraph 31:
- "... a potential issue arises from the conflict in EAT authorities as to whether the Tribunal must definitively determine the time point when deciding on the application to amend (Amey Services Ltd & Enterprise Managed Services Ltd v Aldridge & Others UKEATS/0007/16 (12 August 2016)) or whether the applicant need only demonstrate a prima facie case that the primary time limit (alternatively the just and equitable ground) is satisfied (Galilee v The Commissioner of Police of the Metropolis UKEAT/0207/16 (22 November 2017)). In the light of the exhaustive analysis of the authorities undertaken by His Honour Judge Hand QC in Galilee, I would follow the latter approach ..."*
20. In the same vein, the EAT in Szymoniak v Advanced Supply Chain BFD Ltd EAT-2019-001201-LA (a decision of HHJ Auerbach) held at paragraphs 74 – 75:
74. *"It is clearly established that the fact that a proposed amendment would, had it been presented as a fresh claim at the same time have been out of time, is not a knock-out blow when the application is one to amend. The tribunal is also not obliged to determine the time point at the same time as determining the amendment application. There is no doctrine of relation back, and sometimes the tribunal can, or indeed should, leave the time point to be resolved at the full hearing: see Galilee and Reuters v Cole UKEAT/0258/17/BA.*
75. *However, a time point of this sort is a factor that can be properly weighed in the balance when deciding whether to allow the application to amend. In this case, the time point had been identified for consideration at this PH and indeed witness evidence was directed in relation to it. As the EAT has observed several times,*

that may be a hazardous, and sometimes the wrong, course to take, if in the given case time points cannot properly fairly be determined at a PH. A case where it is argued that complaints that would otherwise be out of time, are in time because they form part of a continuing act together with later complaints, is the most common example.”

21. In the Reuters case where the application was to add a claim under section 13 Equality Act 2010 to an existing claim under section 15 of that Act, at paragraph 30 Soole J said:

“... the Judge should have considered the exercise of her discretion, having regard to all the relevant factors. These include the degree of difference in the factual enquiry and the fact that the new claim has been made outside the primary three-month time limit ... as part of the exercise of discretion, it is necessary to consider the just and equitable ground for the extension of time ...”,

and

at paragraph 31 said that the applicant needed only to demonstrate a prima facie case that the primary time limit (alternatively the just and equitable ground) is satisfied.

22. In MacFarlane v Commissioner of Police of the Metropolis [2023] EAT 111 Michael Ford KC, sitting as a Deputy Judge of the High Court, held at paragraph 45

“45 ... Statutory time limits are a relevant, but not decisive, factor because an amendment application should not too easily become a means of circumventing the limitation periods which Parliament has laid down for tribunal claims. The weight to be given to that consideration equally depends upon the extent to which the new claim is in substance the same as, similar to, or wholly different from the originally pleaded claim: see Abercrombie per Underhill LJ at §50.”

23. In New Star Asset Management v Evershed [2010] EWCA Civ 870 (and in the EAT at [2009] UKEAT/0249/09/3107) an application to add an (out of time) s 103A (automatically unfair dismissal by reason of whistleblowing) claim to an existing “ordinary” unfair dismissal claim was allowed; the time limit issue was a relevant factor, but not a decisive factor – with the emphasis being on substance (whether the amendment requires “very substantial new areas of legal and factual inquiry”) rather than form (whether the amendment is technically adding a new claim).

24. The following principles can be distilled from the cases commenting on Galillee:

(a) The applicability of time limits is a factor in deciding whether to grant an application, but it is not decisive.

(b) The decision on time limits can be postponed.

(c) The applicant still needs to show a prima facie case on time limits.

- (d) There is in theory scope for granting amendments to add claims which are subject to the “reasonably practicable” test, and which are prima facie out of time.
- (e) Granting those amendments does not deprive the respondent of a limitation argument.
25. The claimant was not legally represented and so, understandably, was not able to cite legal cases and their relevance. I attempted to minimise any disadvantage by summarising the Selkent and Vaughan tests and via questions trying to ascertain from him the practical reasons why he had not made the application to amend before the date on which he did so.
26. One thing that the claimant did say about the case law though, was that the Cocking and Vaughan cases were very old and that in his opinion current working arrangements and ways of living had fundamentally changed since then, in that current situations have adapted, with more and more people having different working environments and settings, and that in his opinion the law had changed drastically so as to protect the employee more, with unions being formed to enable a better balance between employer and employee. Unfortunately for the claimant and with the greatest of respect to him for trying his best, these points are not relevant to the legal tests that I am bound by appellant authorities to apply under Selkent and Vaughan, and so I did not take those points into consideration.
27. Finally, it is useful to rehearse here the statutory tests for time limits.
28. In relation to unfair dismissal, section 111 provides as follows:
- “111 Complaints to employment tribunal:*
- (1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.*
- (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*
- (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.”*
29. In relation to discrimination complaints, section 123 of the Equality Act 2010 provides as follows:
- “123 Time Limits*
- (1) Subject to section 140B, proceedings on a complaint within section 120 may not be brought after the end of-*

- (a) the period of three months starting with the date of the act to which the complaint relates, or*
- (b) such other period as the employment tribunal thinks is just and equitable.”*

30. As to the statutory provision in section 111, the respondent’s oral submission was that:
- (a) the “not reasonably practicable” test in section 111(2)(b) requires cogent evidence before a tribunal can conclude that it was not reasonably practicable to present the claim in time, and
 - (b) the statute requires that the “reasonably practicable” test is considered as part of the original 3-month time limit, and only if that is satisfied does the “within such further period as the tribunal considers reasonable” test fall to be considered.
31. As to the test in section 123 of the Equality Act, the respondent suggested in oral submission that the factors in section 33 of the Limitation Act 1980 are a useful analogue, though of course not a fixed test, and that “length and reasons for delay” is one such factor that reasonably falls to be assessed.

The parties’ submissions:

A: the respondent’s submissions:

32. As to the first Selkent factor (nature of the amendment), the respondent’s representations were:
- (a) It is beyond argument that all the amendments sought by the claimant were new claims as opposed to clerical amendments or substitutions of facts.
 - (b) Although this factor has limited force because at the time that the claimant made his initial claim in October 2024, his assertion that the facts which give rise to all of the claims now brought all hinge on his dismissal had yet to crystallise, I could nevertheless take into account that these are new claims. This was significant in this case because it meant that the time limits for the new claims sought applied in a way they would not otherwise have applied (namely, the limitation date including accounting for ACAS conciliation would have been 12 September 2025 which is some 5 months before the claimant made the application to amend). This aspect, the respondent said, was weighty and militated against granting the amendments.
33. As to the second Selkent factor (time limits) the respondent’s representations were:
- (a) the primary limitation including factoring in ACAS conciliation would have expired on 12 Sept 2025 but the application to amend was made on 7 February

2026 which was 5 months later, 9 months after the claimant was allegedly constructively dismissed and almost 3 times primary statutory time limit allows.

- (b) There are strict time limits for a reason.
 - (c) It was beyond argument that the amendments were out of time.
 - (d) This was a strong factor, and particularly important regarding constructive unfair dismissal, since the section 111(2)(b) “not reasonably practicable” test is a difficult mountain for claimants to climb, requiring cogent evidence before a tribunal can conclude that it was “not reasonably practicable” to present the claim in time.
 - (e) In this case, there was no evidence at all of why it was not reasonably practicable for the claimant to have presented the claim in time. There was no apparent impediment at all, and no reason for an impediment had even been provided by the claimant. In that context, it was difficult to see how it was reasonable for the claimant to wait 5+ months; and also in that same context the delay could be “just and equitable”.
 - (f) As to ignorance of the law and of the time limits, the case law is that there is a duty on claimants and litigants to make enquiries that reasonably could have been made. The claimant could and should have done such research himself and should have obtained advice. Although a wholly understandable misconception of the law can be “just and equitable” to allow (*Hawkins v Ball and Anor* [1996] IRLR 258), a claimant’s failure to conduct any analysis is not a good reason. Only where ignorance is “reasonable” does it qualify. It is not reasonable if there are enquiries that the claimant reasonably could have made. This claimant was to some degree aware of the new facts he was now attempting to plead, from the time of his initial claim, meaning that it must have been reasonable for him to have made earlier enquiries as to his rights and as to time limits.
 - (g) As to the *Gillett* and *Woodhouse* cases above, inevitably if I were to allow the amendments the Tribunal at trial would be forced to consider the jurisdictional time limits question, and as to that regrettably the claimant here finds himself in the “no reasonable prospect of success” category.
34. As to the third *Selkent* factor (manner and timing of the amendments), the respondent’s representations were:
- (a) These amendments were made very late indeed, a year after the events claimed and some 5 months out of time, with no reason (as to why the amendment application was being made only now) having been provided by the claimant in his in the witness statement that the Tribunal of 12 January 2026 had directed him to make in support of his amendment application.

(b) The practical consequences for the respondent (see the Vaughan requirement) in terms of prejudice to the respondent were:

- i. There would be an increase in costs to the respondent in having to defend claims that are new and out of time. This would include the time and cost of making new inquiries in response and in obtaining further witness evidence.
- ii. If I were to accede to the application a further hearing might be needed to consider time limits and the costs of amending the respondent's defence, disclosure and new witness evidence. This would increase costs for the respondent significantly.
- iii. Any increased costs would in all likelihood not be recoverable by the respondent.
- iv. The final hearing set for September 2026 for 5 days would likely have to be vacated because 5 days may not be sufficient. To vacate the final hearing would cause significant further listing delay, with a detrimental effect on the cogency and memories of witnesses, which would not be in accordance with overriding objective.
- v. The countervailing prejudice to the claimant would be minor. This is because he already has an extensive race discrimination claim as part of which he could if successful claim for injury to feelings and for any losses arising from his resignation.
- vi. In summary in relation to detriment: the new claims added nothing to the narrative and to the claimant's ability to recover losses but would instead add costs and delay to no discernible benefit.
- vii. For these reasons the balance of prejudice fell in favour of refusing.

B: the claimant's submissions:

35. As to time limits the claimant's submissions were:

- (a) As explained in paragraph 8 of his witness statement that the Tribunal of 12 January 2026 had directed him to make in support of his amendment application, there was no delay at all in him submitting his initial ET1 claim form after ACAS conciliation had failed.
- (b) As also explained in that witness statement, he had proactively engaged with ACAS starting on 01 September 2024 in good faith before he his employment had terminated, so it was not his fault that the subsequent claims that hinged on his alleged constructive dismissal were brought after the date that he first presented his ET claim form.

- (c) At the time he made his claim in his initial ET1 claim form, he was ignorant of the cases of Cocking and Selkent.
 - (d) In terms of any potential research that the respondent says he should have done at the time about time limits and his legal rights, he would have had to research on the internet, but because of the anxiety that the respondent's behaviour was causing him at that time, he would not have been able to. During that difficult time, he needed support from my employer but got none. He spoke to various people within the respondent, including telling HR that his line manager was not supporting him. The HR dept told him that everything was available on the intranet. However, that was not good enough. Putting material on the intranet does not erase the responsibility of a line manager to support the employee. He had already waited long enough for support, and it was inappropriate that he was forced to wait even longer, by seeking support via OH via the intranet, then making an enquiry to OH after that.
36. A general point that the claimant made was this. That in the disability impact statement that he had prepared pursuant to directions from the 12 January 2026 preliminary hearing, he had listed the impact of his disability (back pain) and its cause (the long driving times occasioned by the respondent's refusal to accommodate his request for partial home working) and had provided evidence to support his claim. In short, the respondent's behaviour had impacted him by way of prolonged and permanent damage to his health including his mental health from which he was still now recovering. The respondent was well aware of this before he resigned but no support was given to him, which is a very disappointing way for a big organisation to behave (namely to provide close to zero support).
37. Other general points that he made were that:
- (a) Flexible working was not offered so he had to ask for it himself because of the cost to his mental and physical health.
 - (b) The respondent was aware of this from day 1.
 - (c) Failure to provide flexible working was also a breach of contract.
 - (d) The issue of excessive driving hours was never discussed in any timely manner.
38. Concerned that, as an unrepresented litigant in person the claimant was not understanding where to focus his arguments (but instead seeking to litigate his cause substantively in a premature way), I sought to help him by asking targeted questions. From those the following assertions by him emerged:
- (a) On the form ET1 there was limited space to explain. He was not aware at the time he presented the ET1 that he would need to put the new matters on that form.

- (b) Although the hearing of 12 January 2026 and today were interlinked, he **now** realised that the amendments are different claims.
 - (c) Initially, he was not aware of any timescales or time limits aside from any related to the initial ET1 form. He thought that the ET1 was just an initial action to start a claim, and that by adding more amendments pursuant to the directions of the 12 January 2026 hearing he was just following usual process. He thought he could just add things on afterwards.
 - (d) He resigned from the respondent because physical and mental health support by the respondent was lacking. He thought that by resigning he would reduce his anxiety levels, rather than staying and continuing to expect support from the respondent that was not forthcoming. At the time of resignation, he was clear that his disability was not being catered for by the respondent. But only at the hearing of 12 January 2026 did he understand that the new claims were separate **legal issues**.
 - (e) The reason why he did not mention disability on the ET1 was that he initially saw the reason for the respondent's adverse treatment as being because of race. But at the 12 January 2026 hearing he realised it was because of disability as well.
 - (f) At the time of putting in the ET1 and at the time of his resignation he did not do any research into his legal rights including into the nature of claims and time limits. This is because he was focusing on his health problems. His initial understanding was that he was mistreated because of race, which then made him ill and disabled because of deterioration in his health relating to adverse treatment at the hands of the respondent.
39. The counterpoint made by the respondent at the hearing to what the claimant said as reported above was this:
- (a) The claimant's position, only just then reported in the hearing, was:
 - i. He knew at the time of his resignation, as of March 2025, that the reason why he resigned was that he was not provided enough support by the respondent for his disability, but
 - ii. he only discovered in January 2026 that he could bring a separate legal claim about disability.
 - (b) For obvious reasons, that is a mistaken belief as to how the law operates in relation to the "just and equitable" and "reasonably practicable" tests.
 - (c) The key question to determine is "was that mistaken belief reasonable?"

- (d) The claimant suggested that anxiety prevented him from doing research into the correct position, otherwise he would have realised. That is the impediment as he had put it just now. The problem is that he had not provided me with any evidence at all, medical or otherwise, about how anxiety had affected him in that way. I should be slow to accept that position in the absence of any medical evidence, because it does not necessarily logically follow as a matter of course that anxiety would have prevented the claimant from doing legal research to correct his mistaken belief, especially with anxiety and depression being variable conditions. It was not appropriate for me to simply take judicial notice of that on its own, in the absence of pertinent evidence.
- (e) I should be cautious because this was the first time that the claimant had advanced these arguments, and he had not said it in a witness statement in preparation for these proceedings. The claimant had said that he suffered anxiety and depression in 2024, but when he presented his original form ET1 he was clearly able to make that first claim notwithstanding, therefore it did not immediately and necessarily make sense that the condition would have prevented a different head of claim from being made – moreover I had no evidence about it.
40. To the respondent's counterpoint the claimant then said that the reason why he had not made further heads of claim at the start, despite him suffering from anxiety, was that he had originally wanted if at all possible to stay in his job with the respondent, and that to make other claims would "not be a good thing to do as an employee". He then repeated that he initially saw his claim as a race claim, in the sense that race discrimination originally caused the problem, and that his health deterioration health was a consequent impact of that race discrimination.

My findings – and application of the Selkent and Vaughan tests

A Findings:

41. My findings were as follows:
- (a) Although the prolonged driving since 25 October 2023 and the lack of support in relation thereto after 04 January 2024 were mentioned in his form ET1, the ET1 claim was very clearly wholly premised on race discrimination. The particulars of the ET1 as amplified at the 12 January preliminary hearing were very clearly related to treatment because of race. Although impact on the claimant's health was mentioned in the ET1, disability was **not** pleaded or explained therein. Failure to make reasonable adjustments were very clearly **not** pleaded in the form ET1 and only referred to **tangentially** in the hearing of 12 January 2026.
- (b) This means that in my judgment, the amendments **cannot** be described as flowing from the same factual matrix as pleaded in the ET1 but are in substance

wholly different from the originally pleaded claim. This means they **cannot** be described as “re-labelling” but instead are **new** heads of claim subject to time limitation periods of their own.

- (c) The above (in (a) and (b)) was abundantly clear from what the claimant said in the hearing of 08 April 2026. He was crystal clear that he was in his opinion mistreated because of face, which then made him ill.
- (d) It follows that substantial new areas of legal and factual enquiry would be required for the respondent to address the claimant’s amendments.
- (e) On the facts pleaded by the claimant in his ET1, amplified at the hearing of 12 January 2026 and supported by the medical evidence provided after the preliminary hearing of 12 January 2026, there was no reason why the claimant could not have pleaded reasonable adjustments and disability arising from discrimination in his ET1. This is because it is clear that the facts on which those would be based were, in the claimant’s **own admission**, within his knowledge at the time that he submitted his form ET1.
- (f) Even if it were reasonable for the claimant to wait until the case relating to all of his amendments had crystallised upon his resignation, there was no reason why he could not have pleaded all of the amendments immediately after his resignation. The facts on which the amendments that he now makes were based, were within his knowledge at the time he resigned from the respondent’s employ on 31 March 2025.
- (g) For the reasons in (e) and (f) immediately above, I did not accept the claimant’s assertion in his witness statement that “the period between the original presentation of my claim (22 October 2024) and this application is...because the catalyst for the amendment was the content of the Respondent’s Response, which I could not have anticipated at the time of filing my original claim”. That assertion also lacked credibility in that it was wholly conflicting with the account he gave in the hearing of 08 April 2026 which was that he simply did not realise he could not add claims on in later time as he wished, because he had though (now wrongly as he now realised) that the ET1 form was simply a starting point.
- (h) The facts pleaded by the claimant in the ET1 and confirmed as at the date of his resignation revealed no impediment to him claiming disability discrimination and failure to make reasonable adjustments in October 2024, or alternatively those claims with constructive unfair dismissal in April 2025; and his witness statement in support of the amendments did not outline any such impediments at all.
- (i) It did not follow as a matter of necessity that, even if the claimant was suffering from anxiety and/or back pain after October 2024, that would have prevented him from making the amendment application, or from making reasonable enquiries about his legal rights (including time limits) in relation thereto, before

12 January 2026; and no medical evidence had been produced to support that contention. Indeed, at the hearing of 08 April 2026, the claimant (see paragraph 40 above) even suggested that he **deliberately** avoided making claims aside from race discrimination leading up to October 2024.

B Application of the Selkent and Vaughan tests

42. I agreed with the respondent's submissions. Based on and flowing from my findings immediately above, my reasoning was:

(a) Selkent factor 1:

The claimant's amendments were not minor matters and did not constitute "re-labelling". They were substantial alterations describing new complaints. This counted as a factor against allowing the amendments. In line with New Star Asset Management and MacFarlane, I focused in this respect on the need for substantial new areas of legal and factual inquiry rather than mere form (i.e. the technicality of adding a new claim).

(b) Selkent factor 2:

In light of the case law cited above commenting on Galilee, I agreed with the respondent's submission that it was appropriate for me to take into account that the claimant's complaints were very substantially outside of the primary time limit. I did not agree with the respondent's submission that I should take the claimant's amendments as being **substantively** (as to substantive subject matter) "utterly hopeless" in Woodhouse terms because I thought it would be unfair to conduct an assessment of the substantive merits without having heard evidence. However, I did agree with the respondent's submissions that the amendments were very substantially out of time and that this was a weighty factor counting against allowing the amendments because of the lack of any impediment preventing the claimant from bringing the new claims (i) within the limitation date of 12 September 2025, and (ii) in relation to disability discrimination much earlier than that. To that extent, I agreed with the respondent's reliance on Gillet, and in line with Reuters I decided that it was appropriate to consider whether the "reasonably practicable" and "just and equitable" tests would be satisfied. I concluded because of my findings above that, in line with Reuters, the claimant had not established any prima facie case that the primary time limits had been satisfied. Bearing in mind Szymoniak, I agreed with the respondent's submission that Galilee should be distinguished. This is because I did not see that there would be any value in deciding the substantive time limitation points after a trial, given that the factual basis for the amendments had been substantially explained in the claimant's application of 7 February 2026 and their success would not depend on arguments at trial in relation to race discrimination. Further, I did not consider that an examination, at a later hearing and after directions for further evidence, of whether there were a series of connected acts by the respondent for the purposes of the primary time limits, would bear fruit. This is because I agreed with the

respondent's written submission that the latest relevant date for those purposes would in any event be the date of the claimant's resignation on 31 March 2025.

(c) Selkent factor 2 in relation to ignorance of the law and of time limits:

I agreed with the respondent's submission that the claimant was to some degree aware of the new facts he was now attempting to plead, from the time of his initial claim, meaning that it must have been reasonable for him to have made earlier enquiries as to his rights and as to time limits. My findings above illustrate that. More than that, it was crystal clear to me that the real reason why the claimant had not pleaded the amendments earlier was because he had simply **never before intended** to plead them. Their **viability** as legal grounds may well have not **occurred to him** until at a later date he started to explain his claim at the 12 January 2026 preliminary hearing, but this does **not** mean that he **misunderstood** the function of the ET1 and/or the applicability of time limits. Building on my findings above and based on what the claimant clearly said at the hearing of 08 April 2026, I find that in fact there was no "understandable misconception of the law". Instead, there was an intention after the fact and out of time to build on and bolster his initial case, when that occurred to him. In any event even if there had been a misconception, I agreed with the respondent's submission that I was in no position to accept the claimant's argument that **anxiety prevented** him from making any, or sufficient, enquiries as to the legal position on amendments or time limits. This is because (a) there was no medical evidence to support that, (b) it did not follow as a matter of logic given his ability to make his initial claim and (c) the claimant undermined his own credibility on that point in light of what he said at the hearing of 08 April 2026 (that he always thought of the claim as a race discrimination claim).

(d) Selkent factor 3:

I agreed with the respondent's submissions on this (see paragraph 34(a) above). My findings above illustrate. This counted as a factor against allowing the amendments.

(e) Vaughan balance of prejudice:

I agreed with the respondent's submissions as described in paragraph 34(b) above. If I had allowed the amendments and ruled on the time limitations now in favour of the claimant, the increase in time and costs to the respondent would flow from the fact that substantial new areas of legal and factual enquiry would be required for the respondent to address the claimant's amendments substantively at trial. In relation to the prejudice to the respondent of having to produce a defence subject to a **Galilee postponement** of a substantive decision on time limits on approval of the amendments, I considered whether that prejudice could be mitigated by an argument that the grant of the amendment would not deprive the respondent of a jurisdictional defence at a later date.

- However, I decided that in view of the lack of a prima facie case on time limits, the prejudice would not be mitigated even with a Galilee postponement, and to that extent I agreed with the respondent's submission that the possibility of a further hearing to consider time limits, disability status and disclosure would remain a substantial detriment. For the reasons given by the respondent above in paragraphs 34(b)(v) and (vi), I agreed that the countervailing prejudice to the claimant would be less than the prejudice to the respondent.
43. The overall result was that all three Selkent factors weighed against allowing the amendments; and standing back from Selkent the Vaughan balance of prejudice fell in favour of refusing the amendments. For those reasons I refused the claimant's application for the amendments.

Employment Judge M Da Costa
15 June 2026

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